

THE WOMAN IN THE ROMAN SOCIETY

Ideals – Law – Practice

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Meeting 3 Legal standing of a woman in Roman law. The Twelve Tables and Beyond. Women under authority and autonomous.

Suggested readings:

1. Gaius, *Institutions*, book I
2. Lefkowitz & Fant, Chapters IV & V

AI. LEGAL STANDING IN THE EARLY TIMES

I. Leges Regiae (The laws of the kings): FIRA I, p. 3. Tr. ARS, rev. L)

Laws attributed to Romulus, the founder; traditional dates, 753-716 B.C.

4. Romulus compelled the citizens to rear every male child and the first-born of the females, and he forbade them to put to death any child under three years of age, unless it was a cripple or a monster from birth. He did not prevent the parents from exposing such children, provided that they had displayed them first to the five nearest neighbours and had secured their approval. For those who disobeyed the law he prescribed the confiscation of half of their property as well as other penalties.

6. By the enactment of a single ... law ... Romulus brought the women to great prudence and orderly conduct ... The law was as follows: A woman united with her husband by a sacred marriage shall share in all his possessions and in his sacred rites.

7. The cognates sitting in judgment with the husband ... were given power to pass sentence in cases of adultery and ... if any wife was found drinking wine Romulus allowed the death penalty for both crimes.

9. He also made certain laws, one of which is severe, namely that which does not permit a wife to divorce her husband, but gives him power to divorce her for the use of drugs or magic on account of children or for counterfeiting the keys or for adultery. The law ordered that if he should divorce her for any other cause, part of his estate should go to the wife and that part should be dedicated to Ceres. Anyone who sold his wife was sacrificed to the gods of the underworld.

11. If a daughter-in-law strikes her father-in-law she shall be dedicated as a sacrifice to his ancestral deities.

Laws attributed to Numa Pompilius; traditional dates, 716-673 B.C.

9. On the Vestal Virgins he conferred high honours, among which was the right of making a will while their fathers lived and of doing all other juristic acts without a guardian.

12. A royal law forbids the burial of a pregnant woman before the child is extracted from the womb. Whoever violates this law is deemed to have destroyed the child's expectancy of life along with the mother.

13. A concubine shall not touch the altar of Juno. If she touches it, she shall sacrifice, with her hair unbound, a ewe lamb to Juno.

2. XII Tables Rome, 450 B.C. (traditional date). (FIRA², vol. I p. 23. Tr. ARS. L)

Table IV. Paternal power

1. A notably deformed child shall be killed immediately.

3. To repudiate his wife, her husband shall order her ... to have her own property for herself, shall take the keys, shall expel her.

Table V. Inheritance and guardianship

1. ... Women, even though they are of full age, because of their levity of mind shall be under guardianship ... except Vestal Virgins, who ... shall be free from guardianship.

2. The conveyable possessions of a woman who is under guardianship of male agnates shall not be acquired by prescriptive right unless they are transferred by the woman herself with the authorization of her guardian ...

4. If anyone who has no direct heir dies intestate, the nearest male agnate shall have the estate;

5. If there is not a male agnate, the male clansmen shall have the estate.

6. The agnatic relatives are guardians of those who are not given a guardian by will.

Table VI. Ownership and possession

4. Usucaption of an estate lasts 2 years, of other things one year.

5. ... If any woman is unwilling to be subjected in this manner (by *usus*) to her husband's marital power, she shall absent herself for three successive nights in every year and by this means shall interrupt his prescriptive right of each year.

Table X. Sacred law

4. Woman shall not tear their cheeks or shall not make a sorrowful outcry on account of a funeral.

A2: WIVES IN PRIVATE/WIVES IN PUBLIC

3. Valerius Maximus, *Memorable Deeds and Sayings* 6.3.9-12, 1st cent AD L)

Egnatius Metellus... took a cudgel and beat his wife to death because she had drunk some wine. Not only did no one charge him with a crime, but no one even blamed him. Everyone considered this an excellent example of one who had justly paid the penalty for violating the laws of sobriety. Indeed, any woman who immoderately seeks the use of wine closes the door on all virtues and opens it to vices.

There was also the harsh marital severity of Gaius Sulpicius Gallus. He divorced his wife because he had caught her outdoors with her head uncovered: a stiff penalty, but not without a certain logic. 'The law,' he said, 'prescribes for you my eyes alone to which you may prove your beauty. For these eyes you should provide the ornaments of beauty, for these be lovely: entrust yourself to their more certain knowledge. If you, with needless provocation, invite the look of anyone else, you must be suspected of wrongdoing.'

Quintus Antistius Vetus felt no differently when he divorced his wife because he had seen her in public having a private conversation with a common freedwoman. For, moved not by an actual crime but, so to speak, by the birth and nourishment of one, he punished her before the crime could be committed, so that he might prevent the deed's being done at all, rather than punish it afterwards.

To these we should add the case of Publius Sempronius Sophus who disgraced his wife with divorce merely because she dared attend the games without his knowledge. And so, long ago, when the misdeeds of women were thus forestalled, their minds stayed far from wrongdoing.

4. Punishment for adultery, Rome, 2nd cent. BC (Aulus Gellius, *Attic Nights* 10.23, 2nd cent. AD L)

An excerpt from a speech of Marcus Cato on the life and customs of women of long ago and on the right of the husband to kill a wife caught committing adultery.

Those who have written about the life and culture of the Roman people say that women in Rome and Latium 'lived an abstemious life', which is to be say that they abstained altogether from wine, called *temetum* in the early language, and that it was the custom for them to kiss their relatives so they could tell by the smell whether they had been drinking. Women however, are said to have drunk the wine of the second press, raisin wine, myrrh-flavoured wine and that sort of sweet drink. These things are found in these books, as I said, but Marcus Cato reports that women were not only judged but also punished by a judge as severely for drinking wine as for committing adultery.

I have copied Cato's words from a speech called *On the Dowry*, in which it is stated that husbands who caught their wives in adultery could kill them: 'The husband' he says, 'who divorces his wife is her judge, as though he were a censor; he had power if she has done something perverse and awful; if she has drunk wine she is punished, if she has done wrong with another man, she is condemned to death.' It is also written, regarding the right to kill: 'If you catch your wife in adultery, you can kill her with impunity; she, however, cannot dare to lay a finger on you if you commit adultery, nor is the law.'

5. Women demonstrate and obtain repeal of the Oppian law. Rome, 195 B.C. (Livy, *History of Rome* 34.1, exc. Late 1st cent. B.C.-early 1st cent. A.D. L)

Among the troubles of great wars, either scarcely over or yet to come, something intervened which, while it can be told briefly, stirred up enough excitement to become a great battle. Marcus Fundanius and Lucius Valerius, the tribunes of the people, brought a motion to repeal the Oppian law before the people. Gaius Oppius had carried this law as tribune at the height of the Punic War, during the consulship of Quintus Fabius and Tiberius Sempronius. The law said that no woman might own more than half an ounce of gold nor wear a multicoloured dress nor ride in a carriage in the city or in a town within a mile of it, unless there was a religious festival. The tribunes, Marcus and Publius Junius Brutus, were in favour of the Oppian law and said that they would not allow its repeal. Many noble men came forward hoping to persuade or dissuade them; a crowd of men, both supporters and opponents, filled the Capitoline Hill. The matrons, whom neither counsel nor shame nor their husbands' orders could keep at home, blockaded every street in the city and every entrance to the Forum. As the men came down to the Forum, the matrons besought them to let them, too, have back the luxuries they had enjoyed before, giving as their reason that the republic was thriving and that everyone's private wealth was increasing with every day. This crowd of women was growing daily, for now they were even gathering from the towns and villages. Before long they dared go up and solicit the consuls, praetors, and

other magistrates; but one of the consuls could not be moved in the least, Marcus Porcius Cato, who spoke in favour of the law:

‘If each man of us, fellow citizens, had established that the right and authority of the husband should be held over the mother of his own family, we should have less difficulty with women in general; now, at home our freedom is conquered by female fury, here in the Forum it is bruised and trampled upon, and, because we have not contained the individuals, we fear the lot ...

‘Indeed, I blushed when, a short while ago, I walked through the midst of a band of women. Had not respect for the dignity and modesty of certain ones (not them all!) restrained me (so they would not be seen being scolded by a consul), I should have said, “What kind of behaviour is this? Running around in public, blocking streets, and speaking to other women’s husbands! Could you not have asked your own husbands the same thing at home? Are you more charming in public with others’ husbands than at home with your own? And yet, it is not fitting even at home (if modesty were to keep married women within the bounds of their rights) for you to concern yourselves with what laws are passed or repealed here.” Our ancestors did not want women to conduct any-not even private-business without a guardian; they wanted them to be under the authority of parents, brothers, or husbands; we (the gods help us!) even now let them snatch at the government and meddle in the Forum and our assemblies. What are they doing now on the streets and crossroads, if they are not persuading the tribunes to vote for repeal? Give the reins to their unbridled nature and this unmastered creature, and hope that they will put limits on their own freedom; unless you do something yourselves, this is the least of the things imposed upon them either by custom or by law which they endure with hurt feelings. They want freedom, nay licence (if we are to speak the truth), in all things.

‘If they are victorious now, what will they not attempt? ... As soon as they begin to be your equals, they will have become your superiors ...

‘What honest excuse is offered, pray, for this womanish rebellion? “That we might shine with gold and purple,” says one of them, “that we might ride through the city in coaches on holidays and working-days, as though triumphant over the conquered law and the votes which we captured by tearing them from you; that there should be no limit to our expenses and our luxury.” ...

The woman who can spend her own money will do so; the one who cannot will ask her husband. Pity that husband-the one who gives in and the one who stands firm! What he refuses, he will see given by another man. Now they publicly solicit other women’s husbands, and, what is worse, they ask for a law and votes, and certain men give them what they want. You there, you, are easily moved about things which concern yourself, your estate, and your children; once the law no longer limits your wife’s spending, you will never do it by yourself. Fellow citizens, do not imagine that the state which existed before the law was passed will return. A dishonest man is safer never accused than acquitted, and luxury, left alone, would have been more acceptable than

it will be now, as when wild animals are first chafed by their chains and then released. I vote that the Oppian law should not, in the smallest measure, be repealed; whatever course you take, may all the gods make you happy with it.'

After this, when the tribunes of the people, who had declared that they would oppose the motion to repeal, had added a few remarks along the same lines, Lucius Valerius spoke on behalf of the motion which he himself had brought:

'[Cato] used up more words castigating the women than he did opposing the motion, and he left in some uncertainty whether the women had done the deeds which he reproached on their own or at our instigation. I shall defend the motion, not ourselves, against whom the consul has hurled this charge, more for the words than for the reality of the accusation. He has called this assemblage "secession" and sometimes "womanish rebellion", because the matrons have publicly asked you, in peacetime when the state is happy and prosperous, to repeal a law passed against them during the straits of war. What, may I ask, are the women doing that is new, having gathered and come forth publicly in a case which concerns them directly? Have they never appeared in public before this? Allow me to unroll your own Origines before you. Listen to how often they have done so-always for the public good. From the very beginning-the reign of Romulus-when the Capitoline had been taken by the Sabines and there was fighting in the middle of the Forum, was not the battle halted by the women's intervention between the two lines? How about this? After the kings had been expelled, when the Volscian legions and their general, Marcius Coriolanus, had pitched camp at the fifth milestone, did not the matrons turn away the forces which would have buried the city? When Rome was in the hands of the Gauls, who ransomed it? Indeed the matrons agreed unanimously to turn their gold over to the public need. Not to go too far back in history, in the most recent war, when we needed funds, did not the widows' money assist the treasury? And when new gods were summoned to bring their power to our difficulties, was it not all the matrons who went to the sea to meet the Idaean Mother? You say these cases are different. I am not here to say they are the same; it is enough to prove that nothing new has been done. Indeed, as no one is amazed that they acted in situations affecting men and women alike, why should we wonder that they have taken action in a case which concerns themselves? What, after all, have they done? We have proud ears indeed, if, while masters do not scorn the appeals of slaves, we are angry when honourable women ask something of us ...

'Who then does not know that this is a recent law, passed twenty years ago? Since our matrons lived for so long by the highest standards of behaviour without any law, what risk is there that, once it is repealed, they will yield to luxury? For if the law were an old one, or if it had been passed to restrain feminine licence, there might be reason to fear that repeal would incite them. The times themselves will show you why the law was passed. Hannibal was in Italy, victorious at Cannae. Already he held Tarentum, Arpi, and Capua. He seemed on the verge of moving against Rome. Our allies had gone over to him. We had no reserve troops, no allies at sea to protect the fleet, no funds in the treasury. Slaves were being bought and armed, on condition that the price be

paid their owners when the war was over. The contractors had declared that they would provide, on that same day of payment (after the war), the grain and other supplies the needs of war demanded. We were giving our slaves as rowers at our own expense, in proportion to our property rating. We were giving all our gold and silver for public use, as the senators had done first. Widows and children were donating their funds to the treasury. We were ordered to keep at home no more than a certain amount of wrought and stamped gold and silver. At a time like that were the matrons so taken up with luxury and fancy trappings that the Oppian law was needed to restrain them, when, since the rites of Ceres had been suspended because all the women were in mourning, the senate ordered mourning limited to thirty days? To whom is it not clear that poverty and misfortune were the authors of that law of yours, since all private wealth had to be turned over to public use, and that it was to remain in effect only as long as the reason for its writing did? ...

‘Shall it be our wives alone to whom the fruits of peace and tranquillity of the state do not come? ... Shall we forbid only women to wear purple? When you, a man, may use purple on your clothes, will you not allow the mother of your family to have a purple cloak, and will your horse be more beautifully saddled than your wife is garbed? ...

[Cato] has said that, if none of them had anything, there would be no rivalry among individual women. By Hercules! All are unhappy and indignant when they see the finery denied them permitted to the wives of the Latin allies, when they see them adorned with gold and purple, when those other women ride through the city and they follow on foot, as though the power belonged to the other women’s cities, not to their own. This could wound the spirits of men; what do you think it could do the spirits of women, whom even little things disturb? They cannot partake of magistracies, priesthoods, triumphs, badges of office, gifts, or spoils of war; elegance, finery, and beautiful clothes are women’s badges, in these they find joy and take pride, this our forebears called the women’s world. When they are in mourning, what, other than purple and gold, do they take off? What do they put on again when they have completed the period of mourning? What do they add for public prayer and thanksgiving other than still greater ornament? Of course, if you repeal the Oppian law, you will not have the power to prohibit that which the law now forbids; daughters, wives, even some men’s sisters will be less under your authority—never, while her men are well, is a woman’s slavery cast off; and even they hate the freedom created by widowhood and orphanage. They prefer their adornment to be subject to your judgment, not the law’s; and you ought to hold them in marital power and guardianship, not slavery; you should prefer to be called fathers and husbands to masters. The consul just now used odious terms when he said “womanish rebellion” and “secession”. For there is danger—he would have us believe—that they will seize the Sacred Hill as once the angry plebeians did, or the Aventine. It is for the weaker sex to submit to whatever you advise. The more power you possess, all the more moderately should you exercise your authority.’

When these speeches for and against the law had been made, a considerably larger crowd of women poured forth in public the next day; as a single body they besieged the doors of the Brutuses, who were vetoing their colleagues' motion, and they did not stop until the tribunes took back their veto. After that there was no doubt but that all the tribes would repeal the law. Twenty years after it was passed, the law was repealed.

5. On the guardianship of women: Gaius, Institutes 1.144-5; 189-93.

§ 144. The law allows a parent to appoint guardians in his will for the children in his power, below the age of puberty, if they are males; whatever their age, and notwithstanding their marriage, if they are females; for, according to our ancestors, even women who have attained their majority, on account of their levity of disposition, require to be kept in tutelage. 145. Accordingly, when a brother and sister have a testamentary guardian, on attaining the age of puberty the brother ceases to be a ward, but the sister continues, for it is only under the *lex Julia* and *Papia Poppaea* by title of maternity that women are emancipated from tutelage; except in the case of vestal virgins, for these, even in our ancestors' opinion, are entitled on account of the dignity of their sacerdotal function to be free from control, and so the law of the Twelve Tables enacted. 189. The wardship of children under the age of puberty is part of the law of every state, for it is a dictate of natural reason that persons of immature years should be under the guardianship of another, in fact there is scarcely any state which does not permit a parent to nominate a testamentary guardian for his children under the age of puberty, though, as we have before stated, only citizens of Rome appear to be invested with parental power. 190. But why women of full age should continue in wardship there appears to be no valid reason; for the common allegation, that on account of levity of disposition they are readily deceived, and that it is therefore right that they should be controlled by the sanctionary power of a guardian, seems rather specious than true, for women of full age administer their own property, and it is a mere formality that in some transactions their guardian interposes his sanction; and in these cases he is frequently compelled against his own will to give his sanction. 191. Accordingly, a woman has not the tutelary action against her guardian; whereas since the guardians of youthful wards, both male and female, administer their wards' property, they are liable to be sued on account of such administration when the ward has come to the age of puberty. 192. The statutory guardianship of patrons and parents is not purely ineffective, as they cannot be compelled to give their sanction to a will or to the alienation of mancipable property, or to the undertaking of obligations, unless there are very weighty reasons for the obligation or the alienation; but this rule is in their own interest as heirs of intestacy, and is designed to prevent their loss of the estate by testamentary disposition, or the diminution of its value by debt or by alienation of a considerable portion. 193. In other countries, though not under the same tutelage as at Rome, women are generally subject to a quasi tutelage: for instance, the law of Bithynia requires the contract of a woman to be sanctioned by her husband or by a son above the age of puberty.