



Gender Issues in Comparative Legal History

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Contents

2.1	Introduction	16
2.2	The Antiquity	19
2.2.1	Egypt	19
2.2.2	Mesopotamia	20
2.2.3	Jewish People of the Old Testament	22
2.2.4	Ancient Greece	23
2.2.5	Ancient Rome	25
2.3	Middle Ages	27
2.3.1	Byzantine Law	27
2.3.2	The First Arabian Caliphates	28
2.3.3	Eastern Europe (Slavic Laws)	29
2.3.4	Western Europe (Germanic Laws)	30
2.3.5	England (Common Law)	31
2.3.6	Gender within the Christian Church(es)	32
2.4	Modernity	33
2.4.1	Gender and Civil Law	34
2.4.2	Gender in Front of the Courts	36
2.4.3	Gender and Criminal Law	38

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2.4.4	Gender, Public Law and Democracy	40
2.4.5	Religion, Law and Gender in a Secularising World	42
2.4.6	Gender, Race and Colonialism	45
2.5	Conclusion	47
	References	49

Abstract

This chapter analyses the key gender issues throughout comparative legal history, from the Antiquity to the contemporary era. A wide array of subjects will be briefly touched upon, such as the traditional roles of men and women and their legal recognition, the legal status of women, the patriarchal patterns and the trends of their change, the interaction of religion and law in these areas. These various subjects all portray a millennia-long domination of the patriarchal system and the long and arduous struggle for gender equality. The text is mainly concerned with the Western legal systems, broadly speaking—European, Near-Eastern and American—showcasing individual legal systems in the Antiquity and Middle Ages, where differences during these times were greater, but focusing instead on key issues and areas of law in the Modern era, where convergence and common tendencies become more pronounced. By understanding these issues in their historical context, readers will gain valuable knowledge of the historical background of the current status of gender relations in the main legal systems of the world.

2.1 Introduction

During the second half of the twentieth century, the alluring myth of the initial rule of matriarchy was dispelled. It was impossible to reach a general and definite conclusion that women were the dominant sex in the earliest stages of human history, when the only available evidence were the sporadic instances of matrilineality and matrifocality in a handful of cultures. Unfortunately, the patriarchal patterns have been dominating the history of gender relations for thousands of years, skilfully changing their form and tailoring the structure of marriage, family, and society, which enabled them to survive until today. From its emergence in the middle stage of barbarianism—according to Morgan—patriarchy bloomed and persisted, finding its support in customs, religion, and laws, all created by men.¹

For this exact reason, researching gender relations throughout history up to the modernity has been, in its essence, a one-way road. The main focus has always been placed on the male perception of the female sex and the roles which men gave women in society and family, and not on the ways in which both sexes shaped and

¹ Bolger (2013); Lerner (1986).

influenced each other.² Even in Ancient Egypt, the civilisation which was a sole bright spot in the Antiquity and Middle Ages when it came to the position and treatment of women, a queen as powerful as Hatshepsut had to don male clothes and wear a ceremonial beard in order to resemble a male pharaoh. Above that, her heir and stepson Tuthmose III, ordered the destruction of every one of her representations and mentions of her name.³ The history of mankind is actually a chronicle of male supremacy, written by a male hand. Therefore, it is not surprising that the Trojan war was not attributed to Achaean voracity and greed, but to Helen's infidelity and defence of male honour. Delilah was not a patriot, but an evil traitor. Cleopatra was not a skilful and powerful queen of Egypt, but a seductress and the mistress of Julius Caesar and Mark Antony. Theodora was not an intelligent Byzantine empress who used her wits to protect her husband, but a woman of the lowest class who used her spells to cloud Justinian's mind and occupy a place which did not belong to her. Joan of Arc, a woman of great bravery and unwavering faith, whose agency was pivotal to the outcome of the Hundred Years' War, went down in history as a witch who was burned at a stake simply because she dared to wear a pair of trousers. Catherine the Great, a prominent empress who picked the reformation process up where Peter I left off and rebuilt Russia, was depicted as a lustful and insatiable ruler. Cynicism attributed to Marie Antoinette's 'Let them eat cake' was presented as the cause of the French Revolution, and not the existing socio-economic issues.

The second characteristic of the history of gender relations is that it is, above all, a representation of the gender relations among the higher class. The surviving sources usually tell nothing of the poor, although it is not difficult to assume that the position of lower-class women was quite bad. Especially because of the intersectionality and multiple discrimination that they endured.

Another important characteristic is that researching gender relations must have an interdisciplinary approach. Patriarchal matrix can be revealed only when legal history bands together with ethnology, anthropology, sociology, archaeology, and other social science disciplines. That is the only way to paint a comprehensive picture of patriarchy and all of its forms, and discover effective weapons to overpower it. This battle has been fought for thousands of years and it must not and will not be lost. The chapters in this textbook are dedicated to that cause.

In the Antiquity, all civilisations, with the exception of Egypt, removed their women from public life and confined them within their homes. Neither Greece nor Rome changed that. On the contrary—Ancient Athens, the cradle of democracy, granted equality only to Athenian men, but never Athenian women. Women were always second-class citizens.

In criminal law, women were severely punished, but barely offered any protection. In private law, their position was constantly inferior, with slight differences between the states: some awarded women partial legal capacity, but some kept them completely legally incapacitated.

²Clay et al. (2009); Jones et al. (2011); Meade and Wiesner-Hanks (2004).

³Cooney (2014).

An almighty male head of the family dominated family law and sometimes even had the power to decide over life or death of his family members. Additionally, everything revolved around sons. They inherited not only the material goods, but also the spiritual family legacy. Sons continued the family line and maintained the cult of—primarily—male ancestors. Undesirable as a daughter, oppressed as a wife, living in the shadow of her father, brothers, husband and in-laws, a woman sometimes managed to gain fragments of legal capacity only as a widow.

In marriage law, there were three usual, but quite undignified ways of securing a wife: through purchase, kidnapping or an agreement which included a dowry. The outcome was always the same: the husband gained complete power over his wife, and sometimes certain aspects of that power extended into the arms of his relatives (e.g., levirate). Women were usually denied the right to inherit, especially when it came to immovable property, and most of the time the only property they could “inherit” was their own dowry.

In property law and law of obligation, women were considered to be unreliable business partners, thanks to the male prejudice that women were superficial and error-prone. For that same reason, women were often unable to be witnesses. In some legal systems, seen in Sharia law, it went a step further. Witness statements of two women were considered of equal value as a statement of a single man.

The Middle Ages seem to have slightly improved the position of women, however not for reasons that have anything to do with achieving gender equality. The main motivation behind such changes stemmed from the religions’ and churches’ own interests and calculations. During this period, Christianity had an important role: the church occasionally improved the position of women—when it was in its interest (e.g. improving women’s property rights as women frequently bequeathed their property to the church), but mostly it had a great role in reproducing patriarchy. In Byzantine and even in post-classical Rome, under the influence of Christianity, child protection was bettered and women’s inheritance rights were broadened, however women still remained in the shadows. Germanic peoples heavily relied on their customs, codified in *Leges barbarorum* when transitioning from their pre-state societies to kingdoms after the fall of the Western Roman Empire. Women enjoyed great protection under criminal law and were somewhat respected, but their position in family, inheritance and marriage law was not improved. The Near East was generally unsympathetic to women, but their treatment in Pre-Islamic Arabia was especially brutal. While spreading the new religion, Muhammad became aware that both men and women were needed in order for Islam to prevail. For that exact reason, the Qur’an changed the position of women for the better. Unfortunately, those same verses that brought women some kind of liberation in seventh century AD, became their ball and chain in modern times. In other places, like Medieval England, the position of women remained unfavourable for a very long time.

The Modern Era, which started with great industrial and political revolutions, was the first one to carry the essential historical changes in the political, economic, social and cultural spaces. This enabled the later emergence of the emancipatory tendencies regarding the position of women and gender relations. However, the historical

changes which the Modern Era brought were quite controversial. For example, the Industrial Revolution finally introduced women into the public sphere, creating new job positions for them, but primarily because there was a great need for a cheap workforce.⁴ The Age of Revolution did not result in the realisation of women's revolutionary demands and its outcome was not very beneficial to women. The Puritan Revolution worsened the position of women and the great French Revolution completely bypassed them, blatantly ignoring their desire to contribute, as well as their expectations to be the equal subject of "the rights of the man and of the citizen". Notwithstanding, Modernity is the first era in human history which started to essentially scrutinise patriarchy. Consequently, it enabled the beginning of a long struggle for overcoming the patriarchy and establishing gender equality.

Learning Goals

With the help of this chapter, the students should:

- have a basic understanding of the key gender issues throughout comparative legal history;
- be able to perceive the historical background of the current status of gender relations in the main legal systems of the world (both the achieved improvement and those issues where there is more left to be gained), and
- be able to understand/envisage the most appropriate solutions (historically and culturally speaking) to issues still open in the twenty-first century.

2.2 The Antiquity

Urbanisation, emergence of the first states, the invention of the writing system, increasing conflicts between the communities—all of these factors were responsible for the worsening of the position of women. Patriarchy had already set its roots in tradition, customs and religion, but now it made a grand entrance through the first law codes written by male hand. All of the cuneiform law codes, Hebrew commandments of the Old Testament, the Laws of Manu in India, laws of Ancient Greece and *ius civile* provide clear evidence of that.

2.2.1 Egypt

Isolated from the rest of the world by a desert, Ancient Egypt managed to develop peacefully. Stability and lack of conflicts were the main reasons why patriarchy had not reached its full extent. Order was maintained by the pharaoh, under the watchful

⁴Gerhard et al. (2016).

eye of the goddess Ma'at, a metaphysical representation of justice and cosmical balance (manifested through the 'right way of living' on Earth). In Egyptian mythology, the loving relationship between Osiris and Isis became a role model for all spouses.⁵ Great respect for the family and the intergenerational hierarchy were the main conservative elements in Egyptian society. Just as the pharaoh took care of his people, parents took care of their family. That is why they were deeply respected and protected—the only known cruelty of the Egyptian law was the punishment for patricide.

On the other hand, patriarchy manifested in two spheres. Firstly, women penetrated the public sphere and became rulers with great difficulty. Women pharaohs were rare—some of the most notable were Hatshepsut and Cleopatra.⁶ That being said, women could take on any other profession, just like men. Secondly, the belief in the afterlife and the cult of the ancestors led to the glorification of the firstborn son, who had an advantage over his siblings in the Inheritance Law. Apart from this, differences between the sexes and genders were minor.

Unfortunately, no laws have been preserved, only a few individual legal texts which cannot offer a more detailed account of the legal system. What is certain is that women had full legal capacity—they could own property and after a divorce, one-third of marital property went to the wife. Women could marry and divorce by free will, they could conclude contracts and go into court by themselves. In inheritance law, sisters were equal to brothers (with the exception of the firstborn son). Also, women could freely dispose of their property *mortis causa* (e.g. the will of a certain Naunakhte).⁷

In criminal law, no difference was noted between the sexes. Some Greek writers had very disputable claims about Egyptian society, like Diodorus Siculus who mentioned that women's noses were cut off as the punishment for adultery.⁸ However, there is no trace of such practice in the Egyptian sources and the usual way of resolving this situation was initiating divorce.⁹

The appearance of eunuchs in the court could be interpreted as the first manifestation of transgender relations, but one has to keep in mind that becoming a eunuch was not a voluntary act.¹⁰

2.2.2 Mesopotamia

Things were completely different in Mesopotamia, whose grounds were not so tame and hospitable. Although almost every cuneiform law code stressed the intention of

⁵Wilkinson (2017).

⁶Cooney (2018); Graves-Brown (2010).

⁷Robins (1993); Stanimirović (2006); Tyldesley (1995); Graves-Brown (2010).

⁸Robins (1993); Stanimirović (2006); Tyldesley (1995); Graves-Brown (2010).

⁹Robins (1993).

¹⁰Depauw (2003); Wilfong (2010).

the ruler to bring justice and protection to the most vulnerable members of the society, patriarchy was deeply rooted and men were valued more than women.

The first law codes of humanity show exactly how men perceived women. They were already at that moment characterised as sinful, lustful, reckless and dangerous to men. Women's rights were heavily limited, so it comes as no surprise that Middle Assyrian laws are also known as the 'Women's Mirror'—the laws were a reflection of how women were supposed to behave.¹¹

A father, as the head of the family, exercised great power over its members. He could surrender them into peonage and send his daughter to a temple (where sometimes she would engage in religious prostitution). If a child ever attempted to hit him, they would lose their arm. Incest between a mother and a son was punished severely, unlike the one committed between a father and a daughter.¹²

Women had limited legal capacity. Marriages were arranged between the groom and the father of the bride. As for the marriage gifts, there was *tirhatu* (pre-marital gift), *sheriktu* (dowry) and *nudunu* (marital gift).

► **Definitions** *Tirhatu* was a sum of money which was given by the future groom to the future bride's father, as a promise that the marriage would happen. If the future groom backed out of the arrangement, he would lose the money; if the future bride's father married her off to someone else, he would have to return double the amount of *tirhatu* to the misled groom. *Sheriktu* was the property which a father gave to his daughter when she was getting married as an element of financial security, and it was the only part of her father's property she would inherit and officially own in case of his death. *Nudunu* was a gift which a wife would receive from her husband during their marriage, but it officially became her property only when the husband died. (*The Code of Hammurabi* art. 159–184)

In inheritance law, the only property a woman could own were *sheriktu*, *nudunu*, and also a part of her father's property in one specific case: when a father would surrender his daughter to a temple, she had the right to inherit one-third of the share her brother would receive. However, a wife could sometimes lose her *sheriktu* and *nudunu* when her husband initiated a divorce. Also, he had the right in certain instances to turn his ex-wife into his slave, who then had to serve him and his new wife. The right to initiate a divorce was rarely given to a woman—only in certain extreme cases. Infidelity and various sexual liberties were allowed to men, but strictly forbidden to women under the threat of a death sentence. Her 'purity' was tested in a trial by water.¹³

Patriarchal patterns are especially noticeable in criminal law. One of the most brutal sanctions—impaling, was reserved for a woman who murdered her husband because of another man. Such punishment was not imposed if the roles were

¹¹ Stol (2016); Roth (1997); Peled (2020).

¹² Budin (2008).

¹³ Stol (2016); Chavalas (2014); Stanimirović (2006); Westbrook (2003a, b).

reversed. In the law code of Ur-Nammu, raping a newlywed woman was punished not because of sexual violence, but because her husband was deprived of personally taking her virginity. Many other provisions of the law are focused only on female culprits.¹⁴

2.2.3 Jewish People of the Old Testament

Not even the two most important monotheistic religions of Antiquity treated women well. The Bible laid down a path of their discrimination and removed them from the public life, creating an ‘ideal woman’ who was servile, humble and unconditionally obedient to her father or husband.¹⁵

There is a great contradiction in the Old Testament regarding the attitude towards women. There are passages which claim that God created men and women simultaneously in his image, but there are also mentions that Eve was created from Adam’s rib. On one hand, the Old Testament created religious patterns for subduing women and enabled the transmission of patriarchal relations from generation to generation. The first sin, which was attributed to Eve, was used as an excuse to portray women as reckless, superficial, treacherous, prone to sin and of weak character. These same arguments were also used to justify the existence of polygyny in Jewish society.¹⁶

On the other hand, Jewish people could not exist without women, so there is a passage in the Old Testament which says: ‘When people began to multiply on the face of the ground, and daughters were born to them, the sons of God saw that they were fair; and they took wives for themselves of all that they chose’ (The Book of Genesis 6.1–6.2). Even the wisest of them all, King Solomon, fell from God’s grace due to his love of women. Also, there are many representations of strong, brave and clever women. There is a mention of a female judge in the old Hebrew state—a woman named Deborah who was an oracle.¹⁷ As family was deeply valued, the Old Testament offered equal protection to both parents, but did so in a calculating manner in order to secure the enforcement of patriarchal patterns by both mother and father. Spiritual legacy was extremely important, so unsurprisingly sons were greatly valued, as they continued the bloodline. For that same reason, the institution of levirate was created.¹⁸

► **Definition** Levirate was a custom which dictated that when a man died childless, his brother was obliged to marry his widow. Their first-born son would be considered as a son and heir of the deceased brother, not the living one (the biological father). (*Deuteronomy* 25.5–10.)

¹⁴Tetlow (2004).

¹⁵Harris (1984).

¹⁶Heger (2014); Peled (2020).

¹⁷Deen (1955).

¹⁸Weisberg (2009); Marsman (2003).

In everything else, relations between the sexes were regulated in the same way as in other Near Eastern societies.¹⁹ It is obvious that in many of its segments, the Old Testament followed the tone of its cuneiform predecessors.

2.2.4 Ancient Greece

In the most important Doric polis, Sparta, patriarchy was deeply ingrained into the state politics and goals. Being war-oriented, it was in constant need of strong, obedient and brave men, which directly shaped the idea that men were of key importance for the polis. Women were valued only within the role which was reserved for them: they had to become mothers—preferably to boys, as many times as possible.

Excessive females and handicapped male babies were instantly killed after birth. Marriage served only for the purpose of producing healthy boys and therefore, unsurprisingly, was polyandrous. Wives were allowed to commit adultery, however two conditions had to be met: firstly, her lover had to be stronger than her husband and secondly, the purpose of the affair had to be in creating offspring ('the stronger the father—the stronger the child' logic was applied). It is obvious that unfaithfulness was allowed for women only because it served the needs of the polis.²⁰

Both boys and girls were removed from their mothers at a very young age and were placed into the *agoge* system where strict discipline and physical toughness were encouraged. Mothers were expected to accept this and to willingly participate in the enforcement of the patriarchal patterns, which were hidden behind the motives of patriotism and honour.²¹

Example

The famous sentence which mothers used to say to their departing sons is a perfect example: '*Come back with your shield or on it!*', meaning: return from war victorious or die honourably. (Plutarch *Moralia* 241) ◀

If there were no sons, the bloodline could be continued through a daughter-heiress. Until the end of the fifth century BC, a daughter was nothing more than a means to create a true heir to her father by marrying someone from the group of her closer male relatives. Only in the next century did daughters become true heirs of their fathers and could own land.²²

¹⁹Hecht (2002); Peled (2020); Matthews et al. (1998).

²⁰Pomeroy (1994, 2002); MacDowell (1986); Lacey (1968).

²¹Pomeroy (1994, 2002); MacDowell (1986).

²²Pomeroy (2002); MacDowell (1986).

Minoan civilisation, based on the preserved artifacts, valued women. Indicative of it is the fact that they worshiped the Snake Goddesses, mother and daughter, often connected to fertility and the Sacred Feminine.²³ However, that changed with the arrival of the Doric tribe on Crete.

In a more peaceful polis they created, Gortyn, women had more rights than in any other Greek polis. However, in the oldest preserved law code of Europe—the Gortyn law code, significant influence of conservative Doric values is noticeable.

Women had limited legal capacity: they could possess movable property and were the sole beneficiary of the *donatio mortis causa* in the amount of 100 staters. On the other hand, indifference towards women is visible in the II column of the law code, where the only crimes mentioned were rape and adultery, for which the punishment was pecuniary and its amount depended on the social status of the victim/adulteress. The Gortyn daughter-heiress never received the right to own her father's property, like the Spartan did.²⁴

The most important Ionic polis, Athens, famous for its democracy and cultural heritage, was undoubtedly the least favourable in Ancient Greece, regarding the treatment of women. One of many examples of it is seen in the title of the famous Aristophanes' comedies—'Women in Parliament'.

Unmarried Athenian men were forbidden from becoming state officials, so that was the main motivation behind getting married. Women were completely excluded from the public sphere and confined within their homes as mothers, wives and housekeepers. They couldn't show up in court, in marketplaces they needed to have an escort and there was a special state official whose task was to monitor women's behaviour in public.²⁵

Women had no legal capacity and throughout their whole lives they had a *kyrios* (guardian). Until marriage that was the role of their father (or the closest male relative of age, if the father had died) and after that was their husband. They could not own or inherit anything: the position of the Athenian *epikleros* (heiress) was similar to the one in Gortyn, however the first had absolutely no choice in whom to marry—it *had* to be her closest living male relative, while in Gortyn she could choose from a wider group of men.²⁶

Women's infidelity was severely punished, unlike men's who had an array of women for their entertainment (*pornai*—street workers, *pallake*—concubines, *hetairai*—elite prostitutes). The only women who had access to education were the *hetairai*, highly cultured courtesans who had to relinquish the idea of having a family in order to gain knowledge.²⁷ Also, homosexual relations between Athenian men were not uncommon.²⁸

²³ Marinatos (1993).

²⁴ Avramović (2020); Gagarin and Cohen (2005).

²⁵ Katz (1992); MacDowell (1978); MacLachlan (2012); Just (1989); Todd (1995).

²⁶ Schaps (1981); Pomeroy (1994); Lacey (1968); Harrison (1968); Golden (2015); Foxhall (1989).

²⁷ Pomeroy (1994); Tetlow (2005); Gilhuly (2008); Katz (1992); Winkler (1990).

²⁸ Dover (1989).

It is interesting how Egyptian and Greek law became intertwined during Hellenism, which directly reflected on the position of women. In Greece, women gained limited legal capacity, thanks to the influence of Egyptian law. In comparison, the position of the Egyptian women became slightly worse and some new, until then unthinkable rights of the *kyrios* appeared, like the right to renounce his new-born.²⁹

2.2.5 Ancient Rome

A synthetic frame on Roman women's condition, starts from the patriarchal setting of society and the existence of a class hierarchy that prevents us from talking about a single idealised type of woman.³⁰

Rome was intimately founded on the benevolent relationship with the land, which conditioned the very structure of the family. There is also a problem of availability of legal sources, suggesting a wider consideration for the imperial age.³¹

It can be said that women certainly followed a path of emancipation.³² Firstly, within the family, and later outside the *domus*. Often behind the scenes, public offices were formally interdicted to *mulieres*.³³ But, it was a matter of levels: compared to Greek women, Roman ones were granted better dignity and legal status.³⁴

The whole is condensed into two famous statements by Papinian and Gaius, well-known Roman jurists. Papinian affirmed (D. 1.5.9): "There are many points in our law in which the condition of females is inferior to that of males".³⁵

This is an undeniable truth, but it should be read in its context.³⁶ The traits of this *deterior condicio* must certainly be identified in the awe that the wife had, due to the respect to her husband.³⁷ Educated in the values of modesty, humility and confidentiality, Roman women generally married very young, mostly to a man chosen by the family.³⁸

Latin terms *patrimonium* and *matrimonium* actually hide the truth of a distant world. The main task of the matron was to manage the household, to generate and educate children, as *mos maiorum* prescribed. Marriage originally envisaged a

²⁹Pomeroy (1990, 1994).

³⁰Peppe (2016), pp. 27 ff.

³¹Giunti (2012); Pölönen (2016), pp. 8 ff.

³²Vigneron and Gerkens (2000).

³³Evans Grubbs (2002).

³⁴Dixon (2001), pp. 74 ff.

³⁵[transl. by A. Watson, *The Digest of Justinian*, IV, Philadelphia 1998].

³⁶Lamberti (2014).

³⁷Mercogliano (2001).

³⁸Treggiari (1991), pp. 34 ff.

woman's submission to the *manus*, the marital power: but around II century BC *sine manu* unions became absolutely prevalent.³⁹

From an archaic age, Roman women had the right to inherit part of their father's assets, just as Roman men did. It matters little whether control was expressed through *patria potestas*, *manus* or *tutela* and, therefore, that was exercised by a father, a husband or a legal guardian.

Physical frailty or fickleness of the soul⁴⁰ were falsely charged to women in order to justify surveillance on their activities. But when the agnatic family finally faded out, the fresh energies and entrepreneurial skills of women were established. Thus the mask of hypocrisy falls and legal science recorded these transformations. Gaius frankly admitted (Gai. 1.190): "But why women of full age should continue in wardship there appears to be no valid reason."⁴¹

Formally, the juridical concept of *tutela mulierum* survived. However, from the first century BC the whole system appeared widely outdated.

In the context of his reform of family law - summarised in the *lex Iulia et Papia* - Augustus recognises the *ius liberorum* to women, which allows exemption from *tutela* who has at least two or three children. A few years later, emperor Claudius abolished the agnatic guardianship on women.

Incidentally, with the crisis of the Roman Republic, new female models entered society. Roman women, at least those belonging to higher social classes, received a school education and examples were not lacking (such as Cornelia and Pompeia).

Among the most educated and cultured women who went down in history, some were capable of animating cultural circles and promoting trends with their ideas.⁴² We should not only think of the Augustae, who often inspired the good government of emperors.

Of course, these are women who actively participated in what has been called the "Roman paradox",⁴³ in the sense of attributing to Roman women the care and diffusion of male morality and patriarchal tradition, through social behaviour.

In short, the complexity of the various female figures does not allow for a single and unitary portrait. Even the world of cults confirms this datum, with the particularities relating to the college of Vestals. Being a Vestal was certainly a hard burden and an honour at the same time, but it permitted an autonomous management of sometimes large personal assets.⁴⁴

³⁹ Gardner (1986), pp. 259 ff.

⁴⁰ Quadrato (2001).

⁴¹ [transl. by Ed. Poste, Gai Institutiones, 4th ed., Oxford 1904].

⁴² Hemelrijk (1999), pp. 20 ff.

⁴³ Cantarella (1996).

⁴⁴ Ortu (2018).

2.3 Middle Ages

Early Medieval law slightly improved the position of women, but not because of the sudden enlightenment of the Medieval people or the emancipation of women. Instead, it was due to specific reasons which mostly had to do with the interests of the church and religion. Byzantium inherited post-classical Roman law, which improved the position of women under the influence of Christianity. This was especially in the segment of marriage, inheritance, and property law, however, more in the interest of the children than women. Shariah law also improved the position of women to a certain extent, as they were much needed for the expansion of Islam. The Germanic peoples managed to preserve their customary law which was relatively benevolent to women. Still, many legal systems of this era, even those which emerged in the later years like the common law in England, together with the existing religious systems, continued to protect patriarchy and give advantage to men.

2.3.1 Byzantine Law

According to Ostrogorsky, Byzantium developed on the basis of “Roman political concepts, Greek culture and the Christian faith”.⁴⁵ Yet the gender hierarchy was less strict and the legal position of women was better than in both classical Rome and Greece, although the overall patriarchal structure remained. Women had full legal capacity like men. The dowry belonged to the wife, although the husband had usufruct on it. A husband usually gave his wife a marriage gift (*hypobolon*), which belonged to her after his death, if they were childless. If they had children, she had to share equally with them and usufruct on the rest.⁴⁶

While court and army roles were closed for women, some women became ruling empresses.⁴⁷ Women could not be priests, but convents, some founded and organised by prominent women, could have a high degree of autonomy.⁴⁸

A pronounced dichotomy existed in sex-related crimes. Adultery of either spouse was a ground for divorce, but only an adulterous wife and her lover could be criminally prosecuted: they were to be whipped, shorn and their noses cut off. A rapist was to suffer the same penalty, while the abduction of a woman could be punishable by death.⁴⁹

A category distinct enough to be worth calling a ‘third gender’ were eunuchs, mostly castrated on purpose at a young age to make them suitable for court service, since they could not conquer the throne (the Emperor had to be perfect in body), had

⁴⁵ Ostrogorsky (1968), p. 27.

⁴⁶ Von Lingenthal (1892), pp. 55–207; Buckler (1936); Laiou (1981).

⁴⁷ Garland (2002); Herrin (2013).

⁴⁸ Garland (2016).

⁴⁹ Von Lingenthal (1892), pp. 341–345; Laiou (1998).

no progeny to conspire for, and could safely serve in the women's quarters. They could rise to prominent positions in the court, the army and the Church (they could even be patriarchs—heads of the Orthodox Church), but they were not considered fully men. They could not marry and until Leo VI, could not even adopt children.⁵⁰

2.3.2 The First Arabian Caliphates

In the infidel Arabia, divided by tribal chauvinism, one common denominator was an extremely bad position of women. In a society where polygyny existed, women were acquired by purchase or kidnapping, had no legal capacity and were inherited as a part of their fathers' or husbands' property.

The prophet Muhammad and the Qur'an understood the significance of women for the victory of Islam, so they improved their position in the beginning of the seventh century. Although still needing to submit to their fathers or husbands, women slowly stepped out of the shadows.⁵¹ They could appear in court, but as witnesses they were only half as worthy as men. This idea that one man is as worthy as two women got transferred into the inheritance law: if they were descendants of the same degree, a man's inheritance share was twice as big as the woman's. However, it should be noted that women could inherit both movable and immovable property, which was then unimaginable in Western Europe.⁵²

Polygyny was limited to four wives, but only if the husband could provide for each one of them with separate lodging, be it a house or a private room. Men had the traditional role of the protector and provider. It was a matter of family honour that he financially supported his wife, in accordance with the reputation and the social status of her native family.

Excursus

This is why there is no dowry in Islam, only *mahr*. This marriage gift used to be a bride price in the pre-Islamic times, but after the introduction of Islam it became an obligatory marriage gift. The groom gave it to the bride and it also represented an obstacle to a one-sided divorce initiated by the husband, because only then he would have to pay the bride its full amount.⁵³ ◀

In marriage, wives were submitted to their husbands to such an extent that the Qur'an compares them to their husbands' fields.⁵⁴

⁵⁰Guilland (1943); Ringrose (2007); Tougher (2008).

⁵¹Heger (2014).

⁵²Nasir (2009); Russell and Abdullah Al-Ma'a Mun (2008).

⁵³Stanimirović (2006); Voorhoeve (2012).

⁵⁴Tucker (2008).

In criminal law, the Qur'an lists adultery among the only five felonies which were punishable by Allah himself (*hudud*). Adultery was at first punishable by one hundred lashes, but later with stoning, just like in old Jewish society. Another felony mentioned in the Qur'an was the false accusation of adultery.⁵⁵

2.3.3 Eastern Europe (Slavic Laws)

Some Slavic countries (such as Russia, Serbia and Bulgaria) were culturally, religiously and legally influenced by the Eastern Roman Empire and a part of the "Byzantine Commonwealth."⁵⁶ Other Slavs were more influenced by the Catholic faith and Western cultural traditions. Yet a core of common customary law was visible in Slavic countries and the position of women within it was fairly positive by medieval standards, though women were still subservient to men.

Before Slavs accepted Christianity, polygyny was likely present but not widespread. Customs such as a bride-price or bride kidnapping were also present, and divorce initiated by both sides was easy. Some sources (e.g. the sixth century *Strategikon*) document a widow's suicide after her husband's death—likely voluntary, yet supported by custom. Christianity brought monogamy and gradually fought against customs that were contrary to its teaching, with mixed success.⁵⁷

Women mostly had full legal capacity and could own property,⁵⁸ while their husbands had only usufruct on their dowry. But dowries were usually not too valuable (at least in the more numerous lower classes), and a woman with no property was very dependent on her husband. Males mostly had priority in inheritance, though regimes varied. Further, women were expected to gain financial security in marriage: in Russian law, a nobleman was even fined if his adult daughter wasn't married.⁵⁹

Crimes such as rape and abduction were punished severely, but so was a woman's adultery. Estate differences were also pronounced: e.g. the Serbian Dušan's Code (1349, amended in 1354) punished a noblewoman's liaison with a servant with the severance of arms and nose to both parties: the same penalty as for a man's rape of a woman of his own station. However, a nobleman's rape of a commoner would likely be punished only by the slitting of the nose, according to transplanted rules of Byzantine law. This shows that such crimes were primarily seen as insults to the man's (husband's or father's) honour. An emphasis on male honour was also

⁵⁵ Hamzić (2016).

⁵⁶ Obolensky (1971).

⁵⁷ Kadlec (1924), pp. 78–82; Levin (1989), pp. 79–135; Пушкарева (1989), pp. 70–85.

⁵⁸ E.g., only two contracts of sale survive from medieval Serbia, but in both the sellers are women (Šarkić (2001), pp. 567–569).

⁵⁹ Stanimirović (2006); Taranovski (2002), pp. 512–516; Margetić (1996), pp. 246–252; Ицанов (1970).

apparent in some other crimes, such as the insult of pulling one's beard (a symbol of masculinity), which was also severely punished.⁶⁰

Example

Sex crimes in the Code of Stefan Dušan (1349).⁶¹

Art. 53: "And if any lord takes a noblewoman by force, let both his hands be cut off and his nose be slit. But if a commoner takes a noblewoman by force, let him be hanged. And if he takes his own equal by force, let both his hands be cut off and his nose slit."

Art. 54: "And if a noblewoman commits fornication with her man, let the hands of both be cut off and their noses slit." ◀

Women could also appear in various roles before courts: e.g. Czech law allowed a woman to take part in trial by combat, under special conditions; in Serbian law, women could be jurors.⁶²

2.3.4 Western Europe (Germanic Laws)

Germanic tribes applied the law on the basis of the principle of personality, which was one of the reasons why each tribe protected their customary law. These customs were preserved from the pre-state period, throughout Antiquity, until the early Middle Ages, when they were codified as *Leges Barbarorum* by the rulers of the first Germanic states.⁶³ With the exception of Langobards,⁶⁴ every other tribe managed to avoid the influence of Roman law, which continued to be an important source of law among the conquered Gallo-Roman people.

Although the role of the male protector was prominent, women had a certain number of rights and even fought shoulder to shoulder with men in some tribes.⁶⁵ Firstly, women enjoyed great protection under criminal law. Every touch (on the finger, hand or elbow of a woman) was punished. For murdering a woman who could not bear children, the punishment was blood money (*Wergeld*), as well as for the murder of a free Frank. For murdering a woman who was of childbearing age, the punishment was fixed on 600 solids, which was also the punishment for murdering the Frankish courtiers. Finally, for the murder of a pregnant woman, the punishment

⁶⁰Levin (1989), pp. 160–246; Kršljanin (2021); Solovjev (1928), p. 193.

⁶¹Translation from Old Serbian: Burr (1949), p. 208, slightly modified.

⁶²Kuklík (2015), p. 24; Solovjev (1939).

⁶³Gibbon (2000); Todd (1992); Brunner (1880).

⁶⁴Drew (1973).

⁶⁵Tacitus *Germania* 18.

was fixed on 800 solids. Some Germanic legal systems even penalised insulting a woman.⁶⁶

Women were under the power (*mundium*) of men their whole lives: first their fathers and later their husbands. Marriage was arranged between the groom and the father of the bride. During the conclusion of the marriage, the father would transfer his *mundium* to his son-in-law, who in return gave a symbolic gift to the bride. The most important Germanic marriage gift was the ‘morning gift’ (*Morgengabe*), which reached one-quarter of the husband’s property in Langobard society. It was given to the bride the morning after the wedding night, if her chastity was proven. However, if it was not proven, the disgraced bride would have to return to her family and various methods of public humiliation of the bride and her family were available.⁶⁷

In inheritance law, daughters were considered as heirs even when they had living brothers, however it seems like they could inherit only the movable property.⁶⁸

2.3.5 England (Common Law)

The English common law was uniformed thanks to the work of the King’s Courts. When the Roman law was banished from the isle, by the Statute of Merton from 1236, the common law developed into one of the rare autochthonous legal systems in the late Middle Ages.⁶⁹ Although the church’s efforts were somewhat helpful, women still had a very low position in England—especially the married ones.

Example

Apart from the dowry, the common law also recognised another form of special women’s property—paraphernal property. The ecclesiastical courts contributed especially to its establishment by separating the wife’s property from the husbands during a divorce from bed and board.⁷⁰ ◀

With marriage, women lost their legal capacity and their husbands gained total control over them. All matters related to marriage, with the exception of the marital property issues, fell under the jurisdiction of the church. One thing where the Church and the common law were in agreement: ‘*The husband and wife are one, and that one is the husband!*’ (William Blackstone). He made decisions about everything. Women needed their husbands’ permission in order to appear in court. Additionally, husbands personally punished their wives for every offense at their own discretion.⁷¹

⁶⁶ *Lex Salica* titles XX, XXIV and XXX.

⁶⁷ Drew (1991); Oman (1919).

⁶⁸ Drew (1991); Kandić (1969).

⁶⁹ Baker (2005); Hale (2002); Stanojević (1980).

⁷⁰ Basch (1982); Stone (1990); Stone (1993).

⁷¹ Leyser (1995); Jones (2006); Karras (1996).

Upper classes of the English society, just like the upper classes of other societies, used their daughters to arrange political marriages, get closer to influential families or to gain allies. In marriage, all spousal property was in the husband's hands. Also, a dowry (at first called *maritagium*, and from the fourteenth century dowry), belonged to the husband through the institution of courtesy. The only thing that guaranteed the wife some kind of a future was her widow's share (dower), in case she outlived her husband. Dower was first mentioned (as well as dowry) in the Domesday Book. A widow gained legal capacity on the basis of the dower. Yet she could still not dispose of the immovable property in her hands, but had to take care of it and leave it to her sons or other male heirs.⁷²

2.3.6 Gender within the Christian Church(es)

An analysis of the complex topic of law and gender in Christian churches must start with an examination of Jesus Christ's teachings. Jesus did not discriminate against women. In fact, he always showed great respect for them, choosing them as interlocutors or witnesses, or indicating them as a model of authentic faith.⁷³ The Gospels clearly tell us that some women were Jesus' followers and supported his mission,⁷⁴ both materially and spiritually. Equality between men and women is proclaimed by the Apostle Paul in a famous passage of his Letter to the Galatians: "There is neither Jew nor Greek, there is neither slave nor free person, there is not *male and female* [italics ours]; for you are all one in Christ Jesus".⁷⁵ His appreciation of female identity did not only concern family life, with regard to which he claimed the will of the wife was on the same level as the will of the husband because without it the marriage could not arise,⁷⁶ but also the public organisation of the ecclesiastical community. Women had three roles in particular: widow, virgin and deaconess. The most important role was certainly that of deaconess. This is a bit of a mysterious title, because it is not totally clear what the nature and functions of deaconesses were. However, in the Eastern Church, they performed some important tasks, such as to handle other women, carry out some tasks which would have been imprudent to entrust to men visit sick women, anoint neophytes' bodies during the christening and to supervise women's behaviour during the holy Mass.⁷⁷

The situation was totally different in the Western Church, where there is no trace of this role, even in the first centuries of Christianity. Some councils actually forbade

⁷² Stanimirović (2006); Jewell (1996); Broomhall (2015).

⁷³ Matthew 15.21-28, 26.13, 28.1-10; Mark 5.27-34, 14.9, 16.1-8; Luke 7.37-47, 10.38-42, 24.1-11; John 4.7-29, 20.11-18.

⁷⁴ Matthew 27.55-61; Mark 15.40-41; Luke 8.2-3, 23.49 and 55-56.

⁷⁵ Galatians 3.28.

⁷⁶ Ephesians 5.22-24.

⁷⁷ *The Didascalia Apostolorum in English* (translated from Syriac by Gibson (1903)).

the ordination of deaconesses, deeming this ritual heretical, for instance, the Council of Nîmes and the First Council of Orange.

This hostility against deaconesses was probably caused by the fear that they could carry out some of the tasks typical of clerics and be included in the clergy. In that period the Church absolutely ruled out women being able to receive the sacred order.

The role of deaconess therefore only survived in the Eastern Churches, gradually losing its relevance until it vanished between the eighth and ninth century AD.

Once the deaconess had disappeared and the tasks of widows and virgins had become focused on in prayers and charity, the original equality between men and women was gradually forgotten partly because of the influence of cultural and social backgrounds. In addition to some discriminatory elements, this influence was contained in the New Testament and in Patristics.⁷⁸

The idea of the inferiority of women to men was confirmed and exacerbated in subsequent rules of canon law, especially during the so-called Classical Age (twelfth–sixteenth century), in which the *Corpus Iuris Canonici* took shape.⁷⁹ The Catholic Church excluded women from every ecclesiastical position about administration of sacraments and acts of worship. Their incapacity to receive the sacred order was reaffirmed: they were not able to serve at the altar or allowed to move close to the altar. Similar restrictions concerned the public functions of women. They were not able to teach, preach, proclaim the Gospel and neither to take the floor in public.

According to canon law, there were other incapacities affecting women: they could not testify at trials, with the only exception of matrimonial causes, nor file a complaint. Inside the family, the woman had to be submissive to her husband, who was her chief.

2.4 Modernity

The Modern Era brought many changes in the field of women's emancipation and gender equality. It marked the beginning of the steady deconstruction of the male-dominated society. The Industrial Revolution and the political revolutions of the eighteenth and nineteenth century were the main initiators of change, as they included women in the economic production and encouraged them to fight for their rights.⁸⁰ Also, the First and Second World War had a great, yet paradoxical role in the history of human rights. On the one hand, they brought massive destruction and devastation and on the other hand they helped women in their fight for equality. These wars enabled women to give their patriotic contribution to their countries, both by fighting in combat and taking men's places in the production back

⁷⁸ *1 Corinthians* 1.8-9, 11.5-10, 14.34-35; *1 Timothy* 2.11-14.

⁷⁹ The so-called *Corpus Iuris Canonici* is a set of compilations of the canon law. It was used as the main repository of law until the *Code of Canon Law* of 1917.

⁸⁰ Vujadinović (2015).

home. This made them more visible in the public sphere and softened the public attitude towards their attempts to be politically recognised.

The second half of the twentieth century was marked by the rise of numerous feminist movements which further emphasised the necessity of introducing full gender equality and nurturing women's self-awareness. Many feminist authors emerged during this period and contributed greatly to the fight for women's rights and recognition (Betty Friedan, Simone de Beauvoir, Kate Millett and many, many others). The shift in the international law also happened, where after several centuries of using the term "men's rights" to describe human rights, the expression was finally abandoned in favour of the neutral term "human rights," which now included women's rights as well (as seen in The Universal Declaration of Human Rights).⁸¹ The fight for women's political and citizens' rights, right to education and labour rights was lengthy and hard. It was finally recognised in international law during the end of the twentieth century, when a legal framework for the protection of women's rights was established. In the twenty-first century, legislation is being reviewed under the feminist lens, and "gender mainstreaming, e.g., the so-called "state feminism" has taken central stage."⁸²

2.4.1 Gender and Civil Law

The great bourgeois revolutions marked the end of the absolute monarchies, feudalism and legal particularism. Unfortunately, this victory failed to bring changes within the family structure or improve the position of women. Regardless of women's patriotic contributions, they were excluded from the new democracy and denied political rights. Puritans confined women even more, and such a rigorous attitude would travel across the ocean and reach Northern America with the first settlers—the Salem witch trials are the perfect example.⁸³ However, what the political revolutions, the American Declaration of Independence and the French Declaration of the Rights of the Man and of the Citizen brought into the historical arena was this very revolutionary idea of universal equality. This would be recognised by women as the basis for their emancipation. Thus, inspired them to fearlessly fight for their rights and to strive for their own recognition.

The first modern law codes were expected to right these wrongs. Nevertheless, it would take an additional one and a half centuries to finally introduce provisions of gender equality into the democratic constitutions and contemporary civil law. The French *Code Civil* of 1804 was chronologically the first modern law code. It was created under the influence of the School of Natural Law and incorporated both Roman law and French customary law. It was indeed a magnificent codification, except for the provisions of family law, marriage law, property and inheritance law

⁸¹ Vujadinović (2015); Offen (2011).

⁸² Vujadinović (2015).

⁸³ Gerhard et al. (2016); see also the subsection on Criminal law.

which regulated the position of women. They maintained strong elements of patriarchy, mostly due to the great influence of the extremely conservative Napoléon Bonaparte.

Example

“The husband owes protection to his wife, the wife obedience to her husband. The wife is obliged to live with her husband and to follow him to every place where he may judge it convenient to reside: the husband is obliged to receive her, and to furnish her with every thing necessary for the wants of life, according to his means and station. The wife cannot plead in her own name, without the authority of her husband, even though she should be a public trader, a non-communicant, or separate in property.”⁸⁴ ◀

Women had only partial legal capacity and if married, they were under the total power of their husbands, just like in Medieval England. They were heavily discriminated against in inheritance law. Full adoption and consensual divorce were introduced only because Napoléon needed them: he wanted to divorce his first wife, Joséphine, because they did not have any children. Marital property was regulated as a communion of goods under the control of the husband. However, the law code allowed the spouses to use a marriage contract to make different property arrangements.⁸⁵

The Civil Code of Austria from 1811 (ABGB) partially improved the position of women in accordance with the Germanic tradition. The separation of property regime in marriage shows that women had legal capacity. A husband had a usufruct on his wife’s property and a wife had the right to deal with all legal business regarding the household. Also, a husband had a responsibility to financially support his wife in accordance with her social status. Under the pressure from the Catholic church, divorce and separation from bed and board was not allowed. On the other hand, sons and daughters were equalised under inheritance law, which was unthinkable in many less developed societies in the nineteenth century.⁸⁶

Excursus

Sometimes, regulations on these subjects underwent unusual changes. For example, Serbia used the ABGB as a model for its own Civil Code of 1844. However, under the pressure of customs, traditions and patriarchy, changed its marriage, family and inheritance law provisions to better serve the needs of traditional Serbia. Regulations of a joint family (*zadruga*) were added, as it was typical for the Serbian society, women were made more inferior (especially married women

⁸⁴Code Napoléon, title V ch. VI art. 213–215, translated from the original by A barrister of the Inner Temple, William Bening, Law bookseller (1827).

⁸⁵Lobingier (1918); Crabites (1927); Herchenroder (1938).

⁸⁶Baeck (1972); Berger (2010); Frohnecke (2001).

who were equated with minors, squanderers and mentally disabled), women were also denied inheritance, and dowry became optional, unlike in ABGB where it was obligatory.⁸⁷ On the other hand, the Turkish Civil Code of 1926, created during the effort to modernise and westernise Turkish law, adopted a large part of the Swiss Civil Code of 1912. In marriage law, civil marriage was introduced, polygyny abolished, and the husband's right to divorce his wife by a simple statement, originating in shariah law (*talak*) was replaced by a list of causes for divorce available to both spouses. However, these reforms were very slow to reach the rural population, the majority of which continued to live according to old customs.⁸⁸ These are just two of many interesting examples of Alan Watson's theory of legal transplants – a theory which claims that most changes in most legal systems occur as a result of borrowing legal solutions from one system to another, and the choice of the system to borrow from is often a result of convenience and coincidence.⁸⁹ ◀

In England, despite the growing dissatisfaction with the treatment of women and many written works dealing with this topic, like those of John Stuart Mill and Harriet Taylor Mill, things changed only at the end of the nineteenth century. The *Married Women's Property Act* of 1882 was enforced, which radically improved the position of women, as married women were finally given the right to own property and dispose of it in their own right. This launched England to the very top of the list of countries which greatly contributed to the emancipation of women. Similar processes took place in the USA, Canada, Australia and New Zealand.⁹⁰

2.4.2 Gender in Front of the Courts

Until well into the twentieth century, procedural law more or less copied the gender hierarchy of private law. While women generally could be parties or witnesses in a trial, wherever a married woman's legal capacity was reduced (a prevalent case), so was her procedural capacity. In some countries, even women who had full (material) legal capacity, still needed to be represented by a man in court. Women were mostly accepted as witnesses, but frequently considered to be less credible than men. Where a jury system existed, only men were initially jurors, with women being reluctantly admitted to jury service around the turn of the twentieth century. Though in practice, their participation was often avoided, under various pretexts.⁹¹

⁸⁷ Avramović (2017); Polojac et al. (2015); Stanimirović (2006).

⁸⁸ Oguz (2005).

⁸⁹ Watson (1974).

⁹⁰ Birks (2001); Mendelson and Crawford (2000); Szreter (2002); Pinchbeck (2014); Stanimirović (2006).

⁹¹ Röwekamp (2020); Rodriguez (1999); Crosby (2017).

From the mid-nineteenth century and in greater numbers from the early twentieth century, women gained access to legal education and the practice of law. The first women lawyers faced both formal obstacles and informal problems in practice. Many universities did not accept women, or only accepted a small quota of female students, thus making the criteria for their acceptance markedly higher. As in other professions, female graduates were often not expected to practice, as it was thought they had entered university to find a good husband there—or they were expected to give up their career and devote themselves solely to the house and family upon marriage. Access to the bar was often restricted, with women first not being accepted at all (some had to go to court to demand access), and later only in front of lower courts. Setbacks also happened in some countries. Furthermore, as law was seen to embody mostly male values, clients were frequently sceptical of female attorneys, believing them to be less intellectually capable or less aggressive than men. Even such superficial issues as “unbusinesslike” (feminine) clothing could lead to a loss of a client. For these reasons, many of the first women lawyers were members of their country’s women’s rights movements, fighting for equal access to the legal profession, equal standing in civil law matters and female suffrage.⁹² They often specialised in giving legal counsel to other women, including free legal aid for the poor, thus raising awareness of the importance of law in women’s lives. It is argued that female lawyers saw helping others and improving the system as goals more important than self-promotion and profit.⁹³

Entry to the judicial function was even slower, and the percentage of women judges stayed disproportionately low (compared to the overall number of female lawyers) for a long time. Appointments to higher courts were all the rarer, with supreme and constitutional courts opening their doors to women only in the late twentieth century.⁹⁴ The appointment of female judges has been a particularly sensitive subject in Muslim countries, as many Islamic scholars argue that it violates *shariah* because of women’s inherent intellectual deficiencies. Further, feminist initiatives are often seen as unwelcome intrusions of the west. Other issues, such as the general patriarchal outlook of large numbers of the population or mandatory gender segregation in public spaces must also be taken into account. Thus, advancement has been much slower in these countries, with some Islamic countries appointing their first female judges only in the twenty-first century.⁹⁵

⁹²International organizations also played an important role, particularly the International Federation Women in Legal and Juridical Careers (founded in 1928) and the International Federation of Women Lawyers (founded in 1944).

⁹³Mossman (2006); Kimble and Röwekamp (2016) (and papers within), Kimble and Röwekamp (2018). It is worth noting that women were accepted to the medical profession much more easily, as it could be justified as an extension of a woman’s natural nurturing role, as well as by the needs of female patients’ modesty.

⁹⁴Cook (1984); Kenney (2008).

⁹⁵Sonneveld and Lindbekk (2017).

2.4.3 Gender and Criminal Law

Throughout history, men were widely considered to be more violent and more prone to criminality. But this did not mean the treatment of women was necessarily milder: on the contrary, women who committed violent crimes were often viewed as monsters or madwomen.⁹⁶ Women also, being physically weaker, frequently employed different means of achieving the same criminal goal: e murder by poisoning was considered a typically female crime.⁹⁷ Still, the gender profiling of some crimes merits attention.

While men were more often involved in violent crime (for both biological and social reasons), the criminalisation of duelling created a purely male crime, as duels used to be a purely male activity. Private vendettas, where they were still a living custom, were also almost certain to be executed by men.⁹⁸

Crimes against civil, military or clerical service were *de facto* male offences until women gained entry to those professions. A different, but also notable, aspect of this patriarchal outlook is the fact that few women held important positions in criminal organisations.⁹⁹

A typically male crime, of course, was rape. As in pre-modern times, only a man was foreseen as a perpetrator, and frequently (though not always) only a woman as a victim. A gender-neutral definition of rape appeared only in the late twentieth century and is still absent from many legislations. Many misguided notions about anatomy and sexuality, carried over from the Middle Ages—such as the belief that conception could not occur if the woman had not consented to intercourse—lowered the conviction rate for rape for a long time; matters of class and status also played an important role.¹⁰⁰

Homosexuality was also widely punishable until the mid-twentieth century, though usually only male homosexual acts were illegal: lesbianism was mostly overlooked by legislators.¹⁰¹ On the other hand, adultery was still dominantly a female crime. While most legislations punished a woman for any intercourse with a man other than her husband, a man's adultery was either not a crime, or was punishable only if he kept his mistress in the family home. The contemporary era brought about a decriminalisation of adultery in the Western world, but it is still punishable in many Muslim countries.¹⁰²

Accusations of witchcraft, where still extant, were mostly directed against women, frequently single or barren ones. Officially, they were considered weaker

⁹⁶Lombroso and Ferrero (2004); Zedner (1991).

⁹⁷Jones (2009); Martin (2007), pp. 123–154.

⁹⁸Frevert (1999); Boehm (1984).

⁹⁹Pizzini-Gambetta (1999).

¹⁰⁰Walker (1998), Vigarello (2001). Naturally, most rapists *are* men and most victims women, but the relative rarity of other combinations led to such cases not being criminalized.

¹⁰¹Han and O'Mahoney (2018).

¹⁰²Weinstein (1986), pp. 216–238.

than men in resisting the Devil's temptations. Unofficially, women living on the margins of society and not fulfilling their stereotypical roles as wives and mothers were more likely to attract the negative attention of all-male witch-hunters.¹⁰³

Excursus

The first witch trials in Northern America were documented in the end of seventeenth century, in the city of Salem in the puritan colony of Massachusetts, as a transatlantic continuation of the European witch-hunt fervour which emerged in the fifteenth century. ◀

Two more typically female crimes were abortion (which was illegal worldwide until the twentieth century) and infanticide. Both were frequently caused by a patriarchal double standard in which an extramarital pregnancy brought shame and sometimes even legal sanction upon a woman (more than the man, even when he was known), and efficient means of contraception were scarcely available.¹⁰⁴ Penalties for infanticide varied greatly. Some legislations counted it as murder (even a severe case of murder) and some, from the nineteenth century on, adopted a theory that blamed a temporary postpartum disorder, thus prescribed lighter penalties. Where special regulations for infanticide existed, it was usually defined as the killing of a (newborn) infant by its mother, making it an exclusively female crime. If the father or a third party killed the child, they would be tried for ordinary murder.¹⁰⁵

Another complex subject was prostitution. Whether it was criminalised or legally regulated, depended both on country and period, with many countries changing their attitudes back and forth over the centuries. Naturally, prostitutes were mostly women and their clients men, while both men and women appeared in the roles of procurers or owners of brothels. Where prostitution was illegal, both legal sanctions and social stigma were usually significantly higher for the prostitute than for the client.¹⁰⁶

When men and women were convicted of the same or similar crimes, penal policies usually favoured women. Women could also postpone execution or corporal punishment, or sometimes even have those penalties exchanged for milder ones, if they were pregnant when convicted. The modern conception of prisons included sex-segregation, but the harshest prison regimes were usually reserved for men, believed both to deserve and be able to endure harsher punishment and were more likely to attempt to escape.¹⁰⁷

¹⁰³ Durrant (2007).

¹⁰⁴ Though abortions were also used by married women who already had many children and could not support more.

¹⁰⁵ Milner (2000), Kilday (2013), Lewis (2016).

¹⁰⁶ Gibson (1986), Bartley (2000), Laite (2012).

¹⁰⁷ Rafter (1985), King (1999).

2.4.4 Gender, Public Law and Democracy

Just as public functions in the Antiquity and Middle Ages were an exclusively male domain, they continued to be that way for the greater part of Modernity. Even in those monarchies where a woman could inherit the throne, women could not vote, be elected or hold a high public office. The Enlightenment and the French Revolution brought the idea of natural rights of Man to the fore, but that “Man” was mostly a white male, and not every human being. Olympe de Gouges, advocate of women’s rights and the author of the Declaration of Rights of Women and (Female) Citizens, was executed in 1793. Further, men who advocated women’s rights, such as Marquis de Condorcet, fared no better.¹⁰⁸

Example

“Habit can so familiarise men with violations of their natural rights that those who have lost them neither think of protesting nor believe they are unjustly treated.

Some of these violations even escaped the notice of the philosophers and legislators who enthusiastically established the rights common to all members of the human race, and made these the sole basis of political institutions.

Surely they were all violating the principle of equal rights by debarring women from citizenship rights, and thereby calmly depriving half of the human race of the right to participate in the formation of the laws. Could there be any stronger evidence of the power of habit over enlightened men than the picture of them invoking the principle of equal rights for three or four hundred men who had been deprived of equal rights by an absurd prejudice, and yet forgetting it with regard to 12 million women?”

Marquis de Condorcet, “On the emancipation of women. On giving women the right of citizenship (1790)”.¹⁰⁹ ◀

The 19th and early twentieth century saw the rise of strong feminist and suffragist movements in many countries, headed by such figures like the Mills (John Stuart and Harriet) and the Pankhurst family in England, Elisabeth Cady Stanton, Susan B. Antony or Alice Paul in the USA, Kate Sheppard in New Zealand, Mathilde and Fredrik Bajer in Denmark or Mathilde Hidalgo de Procel in Ecuador, to name but a few.¹¹⁰

Many suffrage movements in the west were linked to anti-slavery or temperance (anti-alcohol) movements, attracting some supporters, but alienating others. Elsewhere, connections between feminism and socialism intensified with time: Auguste Bebel’s book *Women and Socialism* propagated equality before the law (while still

¹⁰⁸ Landes (1988), Beckstrand (2009); Offen (2011), Vujadinović (2019).

¹⁰⁹ Lukes and Urbinati (2012), p. 156.

¹¹⁰ van Wingerden (1999), Nym Mayhall (2003); Chapman Catt and Shuler (1923); Baker (2002); Adams (2014).

assuming that many women would opt for the role of mother and housewife), reaching beyond Germany to fame in Eastern Europe; the revolutionary Alexandra Kollontai became the leading feminist in Russia/USSR.¹¹¹ But throughout the world common male responses to female suffrage campaigns included ridicule, pointing out women's intellectual inferiority or the un-femininity of politics (this echoed even by many women),¹¹² or using the struggle as a political bargaining chip, while more extreme campaigners often faced criminal prosecution.

Female suffrage on a local level, or votes by noblewomen or female property owners existed previously in many countries. Some federal component states in USA and Australia granted women suffrage in the nineteenth century, and some small island communities¹¹³ were organised on a basis of gender equality.¹¹⁴ But the first independent country to enfranchise women (all, including Maori) was New Zealand in 1893. Australia followed in 1902, but only for white women: Aboriginal women only if they already could vote in their states. Over 20 countries enfranchised women during or shortly after WWI—mostly European, but also Canada and USA (though black women soon lost the vote in many states and did not fully regain it until the 1960s). A second wave took place after WWII and decolonisation, with women in over 100 countries gaining suffrage. The last European countries to grant it were Liechtenstein (in 1984) and Switzerland (where women gained suffrage on a federal level in 1970, but the last canton do grant it on a cantonal level, Appenzell Innerrhoden, did so in 1990). The last overall was Saudi Arabia, where women gained the right to vote in municipal elections in 2015.¹¹⁵

Most feminist authors believe that the fight of suffrage movements led to this victory,¹¹⁶ some claim the impetus came from wars or national liberation movements¹¹⁷ and some credit the changed perception of women's roles.¹¹⁸ The truth likely lies somewhere in between: the movements brought out the question of female suffrage and public service and gradually changed the views of the public, while wartime or national struggles accelerated the process in some countries.

Passive suffrage usually was not far behind active suffrage on paper, but in practice, despite eligibility, women continued to occupy a small percentage of parliament seats and government functions. Some countries have adopted positive

¹¹¹ Bebel (1904); Roelofs (2018).

¹¹² Bush (2007).

¹¹³ E.g. Pitcairn Island, Rarotonga (Markoff 2003, pp. 102–103; Adams 2014, pp. 24–27).

¹¹⁴ As Markoff (2003), p. 90 claims, “Women’s suffrage was pioneered in lesser places in the geography of wealth and power and then advanced to more central locations.”

¹¹⁵ Grimshaw (1988), Oldfield (1992); Adams (2014); Karolak and Guta (2020).

¹¹⁶ E.g. DuBois (1998).

¹¹⁷ Adams (2014).

¹¹⁸ McCammon et al. (2001).

discrimination measures, but their fairness is sometimes disputed: this question remains open for the twenty-first century.¹¹⁹

2.4.5 Religion, Law and Gender in a Secularising World

After the so-called classical age, canon law regarding women, continued without any big changes until the twentieth century. In 1917, the first code of canon law was promulgated. Unfortunately, women's inferiority was recognised by the code, which limited their legal influence and capacity, describing them as frail creatures, emotionally fragile, intellectually deficient, in need of protection and unable to perform executive roles. The code affirmed that women were not able to receive the sacred order, they were not allowed to move close to the altar, inside religious buildings they had to sit separately from men, they had to veil their heads and they had to dress demurely.¹²⁰ Regarding teaching, women were not allowed to preach or take the floor in public.¹²¹ Moreover, the charters of ecclesiastical universities made it very difficult for women to study the sacred sciences and graduate.

Turning to the power of governance, the few forms of participation that were allowed for the lay male believers remained closed to women. For instance, they were not able to be a diocesan administrator (the person who rules the diocese while the episcopal see is vacant), a member of the board of directors of the diocese, or a canon lawyer.¹²²

Regarding the family, the code of 1917 established the supremacy of the husband over his wife both in their relationship with each other and with their children.¹²³ Ultimately, the code reaffirmed all the directives about women's inferiority contained in the *Corpus Iuris Canonici*.

In the second half of the twentieth century, the huge movement aimed at promoting the emancipation of women, inspired the Catholic Church to completely change its attitude to the female sex.

The new code of canon law for the Latin Catholic Church, promulgated in 1983, has recognised the equality of every kind of person and consequently has banned sex discrimination. The difference between the sexes is not relevant, for instance, in relation to marriage: "Each spouse has an equal obligation and right to whatever pertains to the partnership of conjugal life" (can. 1135). This equality concerns both the relationship between husband and wife and the relationship between parents and children.

This absolute equality between men and women also includes the three public functions of the Catholic Church, the teaching function (*munus docendi*), the

¹¹⁹ Swiss (2009), Wängnerud (2009).

¹²⁰ The *Code of Canon Law* of 1917, cann. 813, § 3, 968, § 1, 1262, §§ 1–2.

¹²¹ The *Code of Canon Law* of 1917, cann. 1327, § 2, and 1342, § 2.

¹²² The *Code of Canon Law* of 1917, cann. 1520, § 1, and 1521, § 1.

¹²³ The *Code of Canon Law* of 1917, e.g., cann. 756, § 2, and 1112.

sanctifying function (*munus sanctificandi*) and the power of governance (*munus regendi*). Regarding the teaching function, women have the right to attend the ecclesiastical universities and receive a higher knowledge of catholic doctrine. They can be catechists, missionaries and university lecturers in sacred science.¹²⁴ They can also preach, with the sole exception of the homily, during the Mass.¹²⁵

Moving on to the sanctifying function, women can access religious buildings without any restrictions, including service at the altar.¹²⁶ The active role of women also includes cooperation with parish priests, as ministers of exposition or reposicion of the Most Holy Eucharist, or distributing it. Recently, women have been permitted to perform durably the role of lector and acolyte.¹²⁷

Finally, lay women can take part in the power of governance, in the same way as lay men. By and large, women are able to hold every ecclesiastical office, which does not require the sacred order (for instance, legates of the Roman Pontiff or judges in a canon court).¹²⁸

In relation to this sacrament, we must highlight that the code and some statements by the Popes and the Congregation for the Doctrine of the Faith, have reaffirmed that one of the prerequisites of becoming a member of the clergy is to be a male.¹²⁹ The prohibition against ordaining women certainly concerns the episcopate and the presbyterate, but leaves an opening about the diaconate, referring to additional in-depth analysis for a definitive solution. Unfortunately, it has been impossible to clarify the question about the position of deaconesses in the first century and consequently, to establish whether it would be possible to restore this particular role. In August 2016, Pope Francis established a Commission (half of whose members were women) to look at the problem, but it was unable to reach a definite conclusion. As a result, in April 2019, the Pope appointed a new Commission, which has been examining this topic once again.

In recent years, some voices have been calling for the reinstatement of the female diaconate. These requests have never been accepted, and the recent Post-Synodal Apostolic Exhortation “Querida Amazonia” by Pope Francis reaffirmed that women

¹²⁴The *Code of Canon Law* of 1983, cann. 211, 217, 229, §§ 2 and 3, 774, § 1, 784 and 785, § 1.

¹²⁵The *Code of Canon Law* of 1983, cann. 230, § 3, and 767, § 1.

¹²⁶The *Code of Canon Law* of 1983, cann. 213 and 214.

¹²⁷Francis, *Spiritus Domini* (2021, 10th January), in www.vatican.va; the *Code of Canon Law* of 1983, can. 230, § 1, as modified by *Spiritus Domini* (“Lay persons who possess the age and qualifications established by decree of the conference of bishops can be admitted on a stable basis through the prescribed liturgical rite to the ministries of lector and acolyte. Nevertheless, the conferral of these ministries does not grant them the right to obtain support or remuneration from the Church”).

¹²⁸The *Code of Canon Law* of 1983, cann. 129, § 2, and 274, § 1.

¹²⁹Cfr. the *Code of Canon Law* of 1983; John Paul II, Apostolic Letter *Ordinatio sacerdotalis* (1994, 22 May) in www.vatican.va; Congregation for the Doctrine of the Faith *Responsum ad propositum dubium concerning the teaching contained in “ordinatio sacerdotalis”* (1995, 28 October), *ibidem*; Id., *General decree regarding the delict of attempted sacred ordination of a woman* (2007 19th December), *ibidem*.

cannot become clerics. However, it did specify that they should have access to positions that do not entail Holy Orders,¹³⁰ including ecclesial services.

Turning to other Christian churches, during the Modern Age, the Protestant denominations developed their legal systems, which were less complete than canon law because in the Reformation there was a very strong contrast between law and Gospel. The former was typical of the State and the latter was typical of religion. As a result, some matters, like marriage, remained under the rules of the State.¹³¹ However, it is also possible to analyse the relationship between law and gender in the Protestant denominations, especially with regard to the priestly calling. Since the beginning of Protestantism, the three kinds of calling, deacon, pastor and bishop, have been accessible to women. The first ministry fulfilled by women was the diaconate. Some denominations decided to revalue the praxis of the primitive church, conferring some functions regarding charity and teaching to some women: the deaconesses. The first examples of Protestant deaconesses were Germany in 1836 and France in 1841. The Anglican Church had some deaconesses in 1861 and the Methodist Church in 1888.¹³²

In the nineteenth century a debate started about the possibility of having women as pastors or bishops. Quaker communities affirmed this, based on the principle that “souls do not have a sex”. In 1821, American Quakers officially recognised a woman as a pastor.¹³³

In Europe, at the beginning of the twentieth century, the so-called congregationalist denominations of the United Kingdom had the first female pastors. Other Protestant churches, especially the more structured ones, arrived at this result later and more gradually. In the 50s and 60s in Germany, France and Scandinavia, Protestantism accepted female pastors. The pattern in the Anglican Church was different, and the first female pastors were ordained outside the United Kingdom, in Hong Kong, the USA, Canada, New Zealand, Kenya and Uganda. Only in 1992 did the English Anglican Church reach a decision about this subject and there is still no unanimity about this point in the Anglican Community. Most Pentecostal denominations preferred (and prefer) to only award women the diaconate.

Later, several denominations made it lawful to ordain women bishops. The first female bishop was an American Methodist, in 1980, followed, 2 years later, by a woman belonging to the Reformed Church of Alsace Lorraine.

Sometimes, a strange phenomenon occurs, because the function of parish priest or of bishop are jointly assigned to a married couple. For instance, in the first years of the twenty-first century in Nuremberg, in Germany, the role of Lutheran bishop was taken on by a husband and wife.¹³⁴

¹³⁰Cfr. Francis, *Post-synodal apostolic exhortation “Querida Amazonia”* (2020, 2th February), nn. 99–103, in www.vatican.va.

¹³¹Witte (2002).

¹³²Witte (2002); Long (2008).

¹³³Green (1996); Long (2008).

¹³⁴Long (2008).

The Orthodox Churches have been living an historical path very similar to the Catholic Church's one.¹³⁵ In the past they experienced a very deep contradiction between the theological data, the equality of men and women and the influence of conservative society. Gregory from Nazianzo highlighted that males and females have the same Creator, the same law, the same death and the same resurrection. Moreover, some women were called "isapastoloi", that is "like the Apostles", because they had a fundamental place in the spread of Christianity. At the same time, the Orthodox society marginalised women inside a household role, putting them under the rule of men (fathers, brothers or husbands).

Nowadays, the Orthodox Churches have left the idea of women's inferiority but only partially. Furthermore, they only hold men to be the true members of the clergy. Recently (since the second half of the twentieth century), some sectors of public opinion have been asking for the reintroduction of the female diaconate.¹³⁶ The Orthodox Greek Church decided, in 2004, to approve the request. However, there is not a general decision binding all the Orthodox Churches: the Pan-Orthodox Council, which happened in Crete (17–26 June 2016), did not face the question about the deaconesses.

2.4.6 Gender, Race and Colonialism

No overview of historical relations of law and gender can be complete without addressing racial issues and the grim legacy of colonialism all over the globe. By subjecting many countries to imperialist rule and turning their inhabitants into slaves (or, later, cheap workforce) to be exported, colonial powers created the cruel myth of lower races, which deeply impacted the lives of both men and women.

Colonial powers frequently enforced native patriarchal laws and customs because it suited their needs. But even when they sought to reform them, this caused two new problems. Seen as "invaders' interventions", the reforms were frequently opposed in order to preserve indigenous traditions—e.g., the practice of *sati* in India (a wife's suicide on the husband's funeral pyre) rose in frequency after the British forbade it. Even when reforms were successful, they were lauded as successes of civilised white colonisers saving backward natives, enforcing this harmful stereotype. Naturally, while male conquerors argued about women, these women's own voices were rarely heard.¹³⁷

In some areas, the traditional social structure and customs, while patriarchal in their particular modality, differed from the model known to white colonisers. In many African or Native American traditions, for example, women played an active role in agriculture, commerce, social life and even politics (although male and female activities were often separate and the male superior). Not attempting to

¹³⁵ Kalaitzidis (2016).

¹³⁶ Salapatas (2015); Kalaitzidis (2016).

¹³⁷ Spivak (2010); Banerjee-Dube (2014), pp. 93–99.

understand local traditions, colonisers imposed legal, economic and social reforms that shifted this structure towards the western type of patriarchy and worsened the position of women.¹³⁸ For example, in colonial Nigeria, the British bureaucracy, used to the European division of gender roles, focused their measures for improving agriculture solely on men as cash crop farmers, ignoring the fact that in traditional Nigerian farming practices, male and female activities usually complemented each other. Only men were drawn into educational programmes for modernising agriculture, although women played an important role in Igbo agriculture.¹³⁹

As invaders' power allowed them to set their own standards to conquered societies, white colonisers were projected as ideals of civilised masculinity, and native men as either effeminate, often 'boys' compared to white men, or savage and bestial. White ladies were delicately feminine, while dark-skinned women were seen as sly and promiscuous. Far from being 'just' social stereotypes, these views frequently impacted both legislation and verdicts, ranging from attitudes towards sexual violence to labour conditions and wages.¹⁴⁰

Of the colonial powers themselves, this issue was particularly expressed in the US due to widespread slavery and later segregation. While the female suffrage movement was born of the antislavery movement, middle-class white women have long ignored the plight of black women (and even working-class white women), dismissing many issues important to them (racism, lynching, unequal access to education and job opportunities, as not being real women's issues. A good example can be seen in the fight for reproductive rights, where white women focused only on access to contraception and abortion, while others were frequently subjected to forceful sterilisations. Black men were, on the other hand, frequently depicted as more prone to crime and violence, especially through the myth of the black rapist. Segregation, systematic disenfranchisement and lynchings, that authorities turned a blind eye on, were the reality of the US black population for a long time. While direct legal discrimination has been abolished, negative stereotypes and indirect discrimination live on, often with disastrous consequences.¹⁴¹

As non-white women felt excluded from the feminist movement, and their burning issues were ignored by its white leaders, this gave rise to a critique of feminism, and new movements such as *womanism* or *black feminism* evolved.¹⁴²

¹³⁸ Korieh (2010); Osborn (2011); Jagodinsky (2016); Chuku (2018).

¹³⁹ Korieh (2010), pp. 97–111.

¹⁴⁰ Sinha (1995); Harris-Perry (2011), Fjelde Tjelle (2013).

¹⁴¹ Davis (2011), Freedman (2002), pp. 73–94, Wing (2003); Breines (2006).

¹⁴² See chapter on Feminist Theories in this book.

2.5 Conclusion

Thousands of years of written sources speak of the dominance of patriarchy and countless manifestations of patriarchal patterns. Written law has, from the beginning, followed the beaten path so devotedly paved by ancient customs and religions. Men persistently and consistently guarded their privileges woven into the tradition of primitive societies, leaving no room for manoeuvre in the struggle for the emancipation of women and gender equality. Both the Antiquity and the Middle Ages removed women from public life. It was a world of visible men and invisible women. In every branch of the law, women have been discriminated against, and certain concessions to women have been made for a million reasons, but not as an expression of awareness of the ubiquitous injustice against them. Monotheistic religions mostly made the already difficult situation worse, being immune to any form of change. Catholicism during the Inquisition and Modern Radical Islam are perhaps the most vivid examples.

The first real advances were made in the Modern Era, although patriarchy was still putting up a vigorous fight. The first codifications slowly improved the position of women, primarily in Civil Law), but it is only after the Second World War that the Civil Law¹⁴³—especially the Family Law,¹⁴⁴ and the Criminal Law¹⁴⁵ greatly improved the gender equality on the basis of two key moments. First, the establishment of the constitutional democracies in the developed Western countries as the role model for the rule of law. Second, the shift in the focus of International Law towards human rights,¹⁴⁶ followed by transferring the centrality of the human rights (and gradually also the women's rights) into the national legislations. Despite the positive legal changes in favour of the universal human rights and women's rights in the Public Law, and also against gender discrimination in Civil Law, the full implementation of gender equality is yet to be achieved in the private and public life of every country. Although there was more advancement in Western democracies. The struggle for women's rights and gender equality bore its first fruits in the last century, universal female right to vote has been achieved, but the fight for the gender equality has not yet been won, especially when taking into account all the various existing grounds of discrimination within the societies and within the global context. The modern contradictions between patriarchy and the methods of overcoming it, both in law and everyday life, differ globally depending on the economic, cultural and political conditions. Not only are there differences between countries, but there are also great divisions within the countries themselves. As such, there are also various modalities of multisectional discrimination of different minorities and women. During the twentieth century, the human rights revolution

¹⁴³ See chapter on Private Law in this book

¹⁴⁴ See chapter on Family law in this book.

¹⁴⁵ See chapter on Criminal Law in this book.

¹⁴⁶ See the chapters on EU and International Law, as well as the chapter on Human Rights in this book.

and the question of minority rights has been emerging ever since the 1970s, encompassing gradually and increasingly the rights of the LGBTQIA+ community. The common factor for all the above-mentioned contexts and movements for recognition, is the necessity of the continuous struggle for overcoming the discriminatory nature of patriarchy and for preventing its potential revival. In other words, the fight for widening the space of human rights protection/liberation/emancipation both in the private and public life, in developed and underdeveloped countries, locally and globally.

The awareness of the necessity of change is growing. In the twenty-first century it is crucial to create the mechanisms which will overcome the persistent logic of patriarchy faster and more efficiently. Further, these mechanisms will reach gender equality, and for the sake of the advancement of gender equality, prevent the current rising regressive trends of repatriarchalisation and re-traditionalisation. The past experiences are there to learn from and not to repeat the same mistakes.

Questions

1. How did gender influence an individual's legal status in the legal systems of the Antiquity? What are the common characteristics? Is any legal system an exception to this rule, and why?
2. How did legal recognition of gender differences change in the Middle Ages? What was the role of religion in this period—was it a force of change or stagnation? What were the positive and negative sides of religious influence on law and gender?
3. In which area of law did the legal status of women and gender discrimination improve first in the Modern era, and why? Which area do you feel was the slowest to change, and why?
4. What were the main reasons and manners of limiting the legal capacity of women throughout history? How much do you think this affected their everyday life?
5. Why did males have precedence over females in inheritance in most legal systems? How did economic and cultural reasons combine to cause this discriminatory regime, and what contributed to achieving gender equality in this area?
6. What were the most prominent reasons for the different treatment of male and female offenders and victims in criminal law throughout history? Do you think they were justified, and to what extent?
7. Why do you think men frequently dominated government and state law, even in societies where the position of women in private law was fairly good? Which factors contributed to the realisation for the need of female suffrage and other forms of participation in the state government?
8. Which factors other than gender itself could influence (or work together with) gender discrimination throughout history? Which of them do you

(continued)

consider to be the strongest and why? Which have been mostly eliminated in the modern world and which are still present?

9. How did the legal position of individuals who do not conform to gender archetypes and stereotypes (eunuchs, homosexuals, transgender people etc.) change throughout history? What does this tell us of the law's treatment of gender issues?
10. Do you see any parallels with today's law in what you've learned about the historical development of the influence of gender on one's legal status? Which of the problems shown in the historical outline do you believe to be still present in contemporary legal systems?

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