

A Short History of Women's Rights

From the Days of Augustus to the Present Time. With
Special Reference to
England and the United States

By Eugene A. Hecker

SECOND EDITION REVISED, WITH ADDITIONS

To

MY MOTHER

PREFACE TO THE SECOND EDITION

In this edition a chapter has been added, bringing down to date the record of the contest for equal suffrage. The summary on pages 175-235 is now largely obsolete; but it has been retained as instructive evidence of the rapid progress made during the last four years.

E.A.H.

CAMBRIDGE, MASS. _August, 1914_.

PREFACE

While making some researches in the evolution of women's rights, I was impressed by the fact that no one had ever, as far as I could discover, attempted to give a succinct account of the matter for English-speaking nations. Indeed, I do not believe that any writer in any country has essayed such a task except Laboulaye; and his Recherches sur la Condition Civile et Politique des Femmes, published in 1843, leaves much to be desired to one who is interested in the subject to-day.

I have, therefore, made an effort to fill a lack. This purpose has been strengthened as I have reflected on the great amount of confused information which is absorbed by those who have no time to make investigations for themselves. Accordingly, in order to present an accurate historical review, I have cited my authorities for all statements regarding which any question could be raised. This is particularly so in the chapters which deal with the condition of women under Roman Law, under the early Christian Church, and under Canon Law. In all these instances I have gone directly to primary sources, have investigated them myself, and have admitted no secondhand evidence. In connection with Women's rights in England and in the United States I have either consulted the statutes or studied the commentaries of jurists, like Messrs. Pollock and Maitland, whose authority cannot be

doubted. To such I have given the exact references whenever they have been used. In preparing the chapter on the progress of women's rights in the United States I derived great assistance from the very exhaustive History of Woman Suffrage, edited by Miss Susan B. Anthony, Mrs. Ida H. Harper, and others to whose unselfish labours we are for ever indebted. From their volumes I have drawn freely; but I have not given each specific reference.

The tabulation of the laws of the several States which I have given naturally cannot be entirely adequate, because the laws are being changed constantly. It is often difficult to procure the latest revised statutes. However, these laws are recent enough to illustrate the evolution of women's rights.

Finally, this volume was written in no hope that all readers would agree with the author, who is zealous in his cause. His purpose will be gained if he induces the reader to reflect for himself on the problem in the light of its historical development.

E.A.H.

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A Short History of Women's Rights

CHAPTER I

WOMEN'S RIGHTS UNDER ROMAN LAW, FROM AUGUSTUS TO JUSTINIAN--27 B.C. TO 527 A.D.

[Sidenote: Guardianship.]

The age of legal capability for the Roman woman was

after the twelfth year, at which period she was permitted to make a will.[1] However, she was by no means allowed to do so entirely on her own account, but only under supervision.[2] This superintendence was vested in the father or, if he was dead, in a guardian[3]; if the woman was married, the power belonged to the husband. The consent of such supervision, whether of father, husband, or guardian, was essential, as Ulpian informs us,[4] under these circumstances: if the woman entered into any legal action, obligation, or civil contract; if she wished her freedwoman to cohabit with another's slave; if she desired to free a slave; if she sold any things *_mancipi_*, that is, such as estates on Italian soil, houses, rights of road or aqueduct, slaves, and beasts of burden. Throughout her life a woman was supposed to remain absolutely under the power[5] of father, husband, or guardian, and to do nothing without their consent. In ancient times, indeed, this authority was so great that the father and husband could, after calling a family council, put the woman to death without public trial.[6] The reason that women were so subjected to guardianship was "on account of their unsteadiness of character,"[7] "the weakness of the sex," and their "ignorance of legal matters." [8] Under certain circumstances, however, women became *_sui iuris_* or entirely independent: I. By the birth of three children (a freedwoman by four)[9]; II. By becoming a Vestal Virgin, of whom there were but six[10]; III. By a formal emancipation, which took place rarely, and

then often only with a view of transferring the power from one guardian to another.[11] Even when *_sui iuris_* a woman could not acquire power over any one, not even over her own children[12]; for these an agnate--a male relative on the father's side--was appointed guardian, and the mother was obliged to render him and her children an account of any property which she had managed for them.[13] On the other hand, her children were bound to support her.[14]

[Sidenote: Digression on the growth of respect for women]

So much for the laws on the subject. They seem rigorous enough, and in early times were doubtless executed with strictness. A marked feature, however, of the Roman character, a peculiarity which at once strikes the student of their history as compared with that of the Greeks, was their great respect for the home and the *_materfamilias_*. The stories of Lucretia, Cloelia, Virginia, Cornelia, Arria, and the like, familiar to every Roman schoolboy, must have raised greatly the esteem in which women were held. As Rome became a world power, the Romans likewise grew in breadth of view, in equity, and in tolerance. The political influence wielded by women[15] was as great during the first three centuries after Christ as it has ever been at any period of the world's history; and the powers of a Livia, an Agrippina, a Plotina, did not fail to show pointedly what a woman could do. In the early days of the Republic women who touched wine were severely punished and male

relatives were accustomed solemnly to kiss them, if haply they might discover the odour of drink on their breath.[16] Valerius Maximus tells us that Egnatius Mecenas, a Roman knight, beat his wife to death for drinking wine.[17] Cato the Censor (234-149 B.C.) dilated with joy on the fact that a woman could be condemned to death by her husband for adultery without a public trial, whereas men were allowed any number of infidelities without censure.[18] The senator Metellus (131 B.C.) lamented that Nature had made it necessary to have women.[19]

The boorish cynicism of a Cato and a Metellus--though it never expressed the real feelings of the majority of Romans--gave way, however, under the Empire to a generous expression of the equality of the sexes in the realms of morality and of intellect. "I know what you may say," writes Seneca to Marcia,[20] "'You have forgotten that you are consoling a woman; you cite examples of fortitude on the part of men.' But who said that Nature had acted scurvily with the characters of women and had contracted their virtues into a narrow sphere? Equal force, believe me, is possessed by them; equal capability for what is honorable, if they so wish." The Emperor Marcus Aurelius gratefully recalls that from his mother he learned piety and generosity, and to refrain not only from doing ill, but even from thinking it, and simplicity of life, far removed from the ostentatious display of wealth.[21] The passionate attachment of men like Quintilian and Pliny to their wives exhibits an

equality based on love that would do honour to the most Christian households.[22] All Roman historians speak with great admiration of the many heroic deeds performed by women and are fond of citing conspicuous examples of conjugal affection.[23] The masterly and sympathetic delineation of Dido in the Aeneid shows how deeply a Roman could appreciate the character of a noble woman. In the numerous provisions for the public education at the state's expense girls were given the same opportunities and privileges as boys; there were five thousand boys and girls educated by Trajan alone.[24]

[Sidenote: Decay of the power of the guardian.]

Such are a few examples of the growth of respect for women; and we should naturally conclude that, as time progressed, the unjust laws of guardianship would no longer be executed to the letter, even though the hard statutes were not formally expunged. This was the case during the first three centuries after Christ, as is patent from many sources. It is to be borne in mind that because a law is on the books, does not mean necessarily that it is enforced. A law is no stronger than public opinion. Of this anomaly there are plenty of instances even to-day--the Blue Laws of Massachusetts, for example. "That women of mature age should be under guardianship," writes the great jurist Gaius[25] in the second century, "seems to have no valid reason as foundation. For what is commonly believed, to the effect that on account of unsteadiness of character they are generally hoodwinked, and that,

therefore, it is right for them to be governed by the authority of a guardian, seems rather specious than true. As a matter of fact, women of mature age do manage their own affairs, and in certain cases the guardian interposes his authority as a mere formality; frequently, indeed, he is forced by the supreme judge to lend his authority against his will." Ulpian, too, hints at the really slight power of the guardian in his day, that is, the first three decades of the third century. "In the case of male and female wards under age, the guardians both manage their affairs and interpose their authority; but in the case of mature women they merely interpose their authority." [26] The woman had, in practice, become free to manage her property as she wished; the function of the legal guardian was simply to see to it that no one should attempt a fraud against her. Adequately to observe the decay of the vassalage of women, we must investigate the story of their rights in all its forms; and the position of women in marriage will next occupy our attention.

[Sidenote: Women and marriage.]

As in all Southern countries where women mature early, the Roman girl usually married young; twelve years were required by custom for her to reach the marriageable age. [27] In the earlier period a woman was acquired as wife in three different ways: I. By coemptio--a mock sale to her husband [28]; II. By confarreatio--a solemn marriage with peculiar sacred rites to qualify men and women and their children for

certain priesthoods[29]; III. By usus, or acquisition by prescription.

A woman became a man's legal wife by usus if he had lived with her one full year and if, during that time, she had not been absent from him for more than three successive nights.[30]

All these forms, however, had either been abolished by law or had fallen into desuetude during the second century of our era, as is evident from

Gaius.[31] A man could marry even if not present personally; a woman

could not.[32] The woman's parents or guardians were accustomed to

arrange a match for her,[33] as they still do in many parts of Europe.

Yet the power of the father to coerce his daughter was limited. Her

consent was important. "A marriage cannot exist," remarks Paulus,

"unless all parties consent." [34] Julianus writes also that the daughter

must give her permission[35]; yet the statement of Ulpian which

immediately follows in the Digest shows that she had not complete free

will in the matter: "It is understood that she who does not oppose the

wishes of her father gives consent. But a daughter is allowed to object

only in case her father chooses for her a man of unworthy or disgraceful

character." [36] The son had an advantage here, because he could never be

forced into a marriage against his will.[37] The consent of the father

was always necessary for a valid marriage.[38] He could not by will

compel his daughter to marry a certain person.[39] After she was

married, he still retained power over her, unless she became independent

by the birth of three children; but this was largely to

protect her and
represent her in court against her husband if necessity
should
arise.[40] A father was not permitted to break up a
harmonious[41]
marriage; he could not get back his daughter's dowry
without her
consent,[42] nor force her to return to her husband
after a divorce[43];
and he was punished with loss of citizenship if he made
a match for a
widowed daughter before the legal time of mourning for
her husband had
expired.[44] A daughter passed completely out of the
power of her father
only if she became *_sui iuris_* by the birth of three
children or if she
became a Vestal, or again if she married a special
priest of Jupiter
(*_Flamen Dialis_*), in which case, however, she passed
completely into
the power of her husband. Under all circumstances a
daughter must not
only show respect for her father, but also furnish him
with the
necessaries of life if he needed them.[45]

[Sidenote: "Breach of Promise."]

Under the Empire no such thing as a "breach of promise"
suit was
permitted, although in the days of the Republic the
party who broke a
promise to marry had been liable to a suit for
damages.[46] But this had
now disappeared, and either party could break off the
betrothal at
pleasure without prejudice.[47] Whatever gifts had been
given might be
demanded back.[48] The engagement had to be formally
broken off before
either party could enter into marriage or betrothal with
another;
otherwise he or she lost civil status.[49] While an
engagement lasted,

the man could bring an action for damages against any one who insulted or injured his fiancée.[50]

[Sidenote: Husband and Wife.]

The Roman marriage was a purely civil contract based on consent.[51] The definition given by the law was a noble one. "Marriage is the union of a man and a woman and a partnership of all life; a mutual sharing of laws human and divine." [52] The power of the husband over the wife was called manus; and the wife stood in the same position as a daughter.[53] No husband was allowed to have a concubine.[54] He was bound to support his wife adequately, look out for her interests,[55] and strictly to avenge any insult or injury offered her[56]; any abusive treatment of the wife by the husband was punished by an action for damages[57]. A wife was compelled by law to go into solemn mourning for a space of ten months upon the death of a husband[58]. During the period of mourning she was to abstain from social banquets, jewels, and crimson and white garments[59]. If she did not do so, she lost civil status. The emperor Gordian, in the year 238, remitted these laws so far as solemn clothing and other external signs of mourning above enumerated were concerned.[60] But a husband was not compelled to do any legal mourning for the death of his wife.[61]

The wife was, as I have said, in the power of her husband. Originally, no doubt, this power was absolute; the husband could even put his wife to death without a public trial. But the world was

progressing, and that during the first three centuries after Christ the power of the husband was reduced in practice to absolute nullity I shall make clear in the following pages. I shall, accordingly, first investigate the rights of the wife over her dowry, that is, the right of managing her own property.

Even from earliest times it is clear that the wife had complete control of her dowry. The henpecked husband who is afraid of offending his wealthy wife is a not uncommon figure in the comedies of Plautus and Terence; and Cato the Censor growled in his usual amiable manner at the fact that wives even in his day controlled completely their own property.[62] The attitude of the Roman law on the subject is clearly expressed. "It is for the good of the state that women have their dowries inviolate." [63] "The dowry is always and everywhere a chief concern; for it is for the public good that dowries be retained for women, since it is highly necessary that they be dowered in order to bring forth offspring and replenish the state with children." [64] "It is just that the income of the dowry belong to the husband; for inasmuch as it is he who stands the burdens of the married state, it is fair that he also acquire the interest." [65] "Nevertheless, the dowry belongs to the woman, even though it is in the goods of the husband." [66] "A husband is not permitted to alienate his wife's estate against her will." [67] A wife could use her dowry during marriage to support herself, if

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