

# **Honour and Disgrace: Women and the Law in Early Modern Catalonia**

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“Memory is the web on which history is intertwined, its threads attempting to reach out into the *big vacuum* of amnesia. Indeed, what people opt to remember or forget is the basis for the relationship between human beings and history”.

Annarita Buttafuoco. “Historia y memoria de sí. Feminismo e investigación histórica en Italia”, in Giulia Coalizzi (ed.), *Feminismo y teoría del discurso*. Madrid, 1990, p.47.

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## **PREFACE**

### **Women's History and the Law**

Our preliminary and basic reflection is to question the so-called scientific objectivity, and more specifically the alleged “positive objectivity” of historical science. This assertion is not limited to the interpretation of data, but also extends to its selection and presentation. Thus, the manipulation of collective memories and amnesia, that is, the selection of important and significant past experiences, has contributed to the legitimisation of fixed social orders, from patriarchal societies to class societies or imperialist racism.

Women have throughout history cooperated with and played an active role in the formation and evolution of societies; however, they have been the forgotten elements of history, their historical contribution largely ignored. As Gerda Lerner reminds us, until a few years ago, history was written by men alone. They have described and treasured their experience and have named it “Universal History”<sup>1</sup>. This history includes some “remarkable women” only, mentioned as examples of outstanding achievement; however, the emphasis is on their adjustment to pre-established roles. It is the result of women’s exclusion from the task of elaborating symbols, philosophies, sciences and laws.

In the last twenty years, the development of historical research as well as feminist politics have challenged this “Universal History”, which until now was perceived as “History”, a neutral name with masculine connotations.

As for the latest developments in historiography, the last two decades have provided countless possibilities for research; studies in this field have increased with the incorporation of new methodologies and history categories, such as the history of attitudes, social history, women’s history.

Women’s history has been one of the most active and productive research areas in recent historiography. It is a consolidating field of study, which has already been recognised by leading historiographic researchers. It has been fully implemented in Anglo Saxon countries and its results have appeared in a considerable number of publications, offering valuable information on women’s experiences throughout history. Like any other area of scientific research, with the advent of new data, it can be subject to changes. In Spain, implementation occurred later and even though the amount of research in this area has multiplied during the last ten years, it is still a new field, quite extensive, with little or no research in some areas.

Thus, historiography has begun to focus on women’s history. This has helped to acquire a deeper knowledge of the past and has broadened and enriched the historiographic scene of today, thanks to the incorporation of new contents as well as the use of new categories of conceptual analysis and interpretative patterns. Women who had always been excluded from the traditional historical discourse have now incorporated themselves as active components of social evolution. By using gender and interpretative patterns arising

from feminist beliefs - as a historical category - historical texts can be read from a different perspective, analysing the sub-texts and discovering what until now has been denied: that women have a role in history.

Secular marginalisation of women resulted in their exclusion from history, even contempt, oblivion and disregard for anything that was considered feminine. This was also achieved by ignoring those women who had not fulfilled their pre-established roles. Claiming their status as social beings has brought about the recovery of their history, the awareness that they have always been part of history, that they have a past that is part of their identity. In this sense, and according to Gerda Lerner, “women’s history is indispensable and essential to the emancipation of women”<sup>2</sup>. Consequently, the inclusion of women in the historical process does not only encompass the incorporation of half of humanity into history, but rather it is a phenomenon that affects the whole of humanity. By sexualising the analysis, a challenge is posed against the validity of the current interpretative patterns; the centrality of hegemonic analysis is modified, showing the androcentrism of traditional scientific and historical discourse; thus, the global production of history becomes conditioned.

In this regard, Gisela Bock affirms that “women’s history does not concern only half of humanity but humanity as a whole”, and that the influence of women’s history on other categories of history must not be overlooked<sup>3</sup>. Consequently, men are also perceived as sexual beings, thus offering a new perspective.

Therefore, women’s history has posed new challenges to historiography; the very conception of the historical process is under debate, and questions such as these arise: what aspects of history should be regarded as important? Where and how were women present? What was their contribution to history? Was their evolution similar or different to that of men?

Most researchers of women in history have expressed themselves in a similar fashion to that of the above-mentioned writers, as far as the implications of the results of their studies on human history as a whole is concerned. It has been proven that in cases where women have been part of history, their experience has not always been the same as that of men. This happened in the early modern period. Adding new data to that already existing is not enough; it is impossible to achieve without losses or difficulties, since the problem lies in linking information from totally different conceptions.

Many historians, feminists in particular, have found it difficult to incorporate new findings about women into the traditional historical discourse. This is due not only to the omission or non-existence of women in such a discourse, but also because, although exciting, it is always difficult to deal with unexplored areas in the traditional manner. Information has to be interpreted from a different perspective in order to give women a place in history and make their role meaningful.

The study of history must take into account the different attitudes and roles that each society assigns its men and women. This analysis will help us to better understand the



evolution of societies and, as expressed by Edward H. Carr and Josep Fontana<sup>4</sup>, by studying the past, the present will be better understood. By throwing some light on the experiences of half of humanity, women's history should help to contribute to the achievement of an authentic "Full History", as defined by the Annals School, and especially by Lucien Fébvre and Marc Bloch.

As discussed above, women's history is still an area open to many new lines of research, some of them hardly explored. One of these lines, only partially studied, refers to the juridical status of women. Law is both a powerful component of discourse and a weapon to impose or maintain a given social structure. The study of law and its implementation is therefore essential in order to understand any society. As for gender relationships, finding out how law affected women's lives, particularly in the areas of family and succession law, becomes an important element.

This study aims to contribute to the recovery from the collective "amnesia", whether intentional or unintentional, that Western society in general, and historical science in particular, have had with regard to women's experiences and to their simply being and existing. More specifically, this study aims, from the legal discourse, to reconstruct Catalan women's lives in the early modern period, and to reveal how Catalan law established what was considered appropriate for women according to the codes of honour, as well as how the female population lived and adapted - or not - to those norms, or if they transgressed and challenged them. The study of law and legal practices in relation to women, as well as the conflicts originating from them, will help to understand how modern justice worked, while bearing in mind the existence of a hierarchy of genders.

When formulating my analysis on women and legal discourse, the emphasis will be on civil law. In the early modern period we must consider both civil and ecclesiastical law. Civil law deals with the various aspects of family law, especially those related to property. Ecclesiastical law mostly regulates marriage-related matters. Continuous conflicts about family law between both tribunals, and the state's interest to legislate on inheritance as a way of controlling the family community, make it imperative to know what civil law prescribed for women, in order to ascertain their legal standing in the Ancien Regime.

The book deals with how Catalan law affected women during the early modern period as regards the concept of honour. Catalan law was another expression of the dominant discourse during the period. From the sixteenth to the eighteenth century, women's lives revolved around the concept of honour. As will be seen in more detail below, this has been a recurrent historical fact, from the first civilisations to the women's liberation campaigns of today. Even today, there are still remnants in moral rules and people's mentality of the concepts of honour and dignity that imply double moral standards according to a person's sex at birth.

The concept of honour - that is, male honour and female dignity, since a man's honour is measured according to the sexual conduct of the women in his family - has uninterruptedly marked women's lives throughout history, since gender roles have been established around this main concept. Throughout the centuries, legal discourse has in

many ways prescribed - depending on its time frame and context - appropriate female sexual behaviour, and legal norms have been written according to these prescriptions. In this way, morally as well as legally, as far as women are concerned, the principle of honour overrides other important principles such as class or social stratum. In these pages, the reader will find that the main division among women in the eighteenth century was not social discrimination according to class, but according to honour, although affluence and honour were usually closely linked. The control exerted on women at the time divided them into two groups: the good and the bad; that is, those who stayed within the limits set by honour and those who violated those limits. As a reward, “honourable” women would stay in a social role subordinate to men, but they would also receive male protection - although often relative - against other men's violence, which could be a permanent threat to “dishonourable” women.

Honour and dignity were closely linked to the human body, clothing, decency, or calling a woman pure/chaste or impure according to her sexual behaviour. But the codes of honour were usually supported by law because, in Michel Certeau's words, legal regulations consider the human body as an important part of the social or collective order, and structure the wide category of subjectivity required at certain times<sup>5</sup>.

Most of the issues this book deals with are linked not only to law but also to honour. The history of women under Spanish law before and during the early modern period and its precedents in Roman and Gothic law is also the history of honour. Its links with the legislation are also explained. The kind of work allowed to women, their right to speak and write, to have a public life, their access to culture, their adaptability or lack thereof to predetermined roles, would always be related to honour and the modesty required from them when alluding to such interests.

Women's life cycles, marriage and widowhood, succession rights, women as criminals and as victims of crime, lawsuits and juridical practice involving women, are some of the aspects explored in this book. The reader will find that law prescribed a wife's obedience to her husband, that women were the necessary elements for reproduction and transmission of wealth in marriage while rarely being the beneficiaries of this wealth. Widowhood rights in Catalonia during the early modern period depended on the husband's wishes, which made the woman's position still more vulnerable than in other regions under the Spanish Crown rule and in the Middle Ages.

For women in modern Spain, the need to adjust to values designated by the codes of honour would determine their scope of action. This limited their capacity to act as women in different environments: in the legal area, by making it impossible for them to possess a full legal identity; in the labour area, by limiting female tasks within specific bounds without social recognition; at a public level, by denying them freedom of speech or writing.

Thus, women become mutilated, incomplete human beings. This lack of identity – which in Freud's theory is based on the absence of a penis - was even more distressing during the sixteenth to eighteenth centuries. Philosophers and moralists of the time followed the classical misogynous traditions, with a religious veneer at first and a scientific

one later. Thus, the female body, when compared to the male one, was negatively described. Any departure from the established model was considered an imperfection or degradation<sup>6</sup>.

However, women frequently disregarded these barriers. Throughout history, ambiguities in the definition of what was honourable or not helped to create a sufficiently broad boundary; at the same time, it allowed a certain margin for action, which women used for their personal development or benefit. This is an obvious conclusion from the study of settlements and civil suits, in which some women manage to make use of the law to their benefit in order to keep rights, or obtain properties.

### **Methodology and sources**

The study of spaces or experiences that had not been part of earlier historical research revealed the inadequacy of traditional historical techniques and methodologies. A different problem, always emphasised by historians, was the inexistence, in many cases, of direct information written by women whose experiences are described. To be able to visualise and explain how these women lived these experiences, it was then necessary to re-read the existing sources of information. One possible way was to reconcile the feminist theory and its interpretative patterns with long-established academic methods of writing history, including those employed in social history and the history of mentalities.

All too often, especially when women's history was in its early stages, a number of historians mentioned the lack of sources available to allow reconstruction of this part of history. However, it has been proven ever since that such a problem does not exist; quite the contrary, I have been able to note this through my own research. Although the problem still exists in regard to direct sources from the women themselves, the voices of women in the past can be reconstructed in a number of ways. Firstly, through the consultation of overlooked documents in civil and monastic archives - for example, there is abundant documentation about women's communities in convents. Secondly, there is ample documentation that describes, alludes to and reproduces a number of situations directly related to women, from both the upper and lower classes. Re-reading many traditional historical documents facilitates the recovery - as has been proven by extensive research on social history and the history of attitudes - of events experienced by those people that, in principle, appear to be silent: the lower classes, the outcasts, and the women.

In the case of this study, the very nature of the sources frames the unknown woman as the protagonist of my research; I will attempt, through the legal framework, to reconstruct the existing, prevailing discourse on women in the early modern period. There are women from all social classes; however, differences amongst them will be determined, as seen through the chapters of this research, by differing legal practices in some respects and by different abilities to adjust to legal norms. Where possible, I will attempt to reconstruct the system of values behind these women so as to understand their lifecycles and their condition within the social and family structures better.

As a counterpoint to the discourse - what is explained and institutionalised, what those in power legislate about women - the study of juridical proceedings in this research has been an approach to women's own voices. Legal proceedings include women's testimonies in trials, and reveal the existence of numerous unknown heroines who during their lives challenged the prevailing discourse. They struggled between the need/willingness to adjust and integrate into the society they lived in, as a daily survival strategy, and their need for personal regard at different levels, in a society that deprived women of such regard.

## Notes

1. G. LERNER, *The Creation of Patriarchy*, Oxford, Oxford University Press, 1986, pp. 4-5.
2. Ibid, p. 3. Along the same line, Victoria Sau says that it is necessary to approach the study of gender and its social repercussions in V. SAU, "Sexo, género, educación. Un enfoque teórico", *Cuadernos de Pedagogía*, no. 171, June 1989.
3. G. BOCK, "La historia de las mujeres y la historia del género: aspectos de un debate internacional", *Historia Social*, no.9, Winter 1991, p.59. With regard to the significance and evolution of women's history, I also refer to an article by M. CABRE, M. CARBONELL, M. RIVERA, "La història de les dones", *L'Avenç*, No.134, pp.57-63.
4. Famous Spanish historian, Josep Fontana, in 1977 wrote *La Historia*, Series GT, Salvat. The book includes an interview with Edward H. Carr and provides a vision of history similar to Carr's as expressed in *What's History*, Penguin Books, London, 1965.
5. E. GROSZ, *Volatile Bodies: Toward a Corporeal Feminism*, Sydney, Allen & Unwin, 1994, p.118.
6. For a critique of Freudian theories on female sexuality, see L. IRIGARAY, *Speculum. De l'autre femme*, Paris, Editions de Minuit, 1974. See also, GROSZ, *Volatile Bodies*. For a description and critique of biologist discourses on the female body, see R. BLEIER, *Science and Gender. A Critique of Biology and its Theories on Women*, Oxford, Pergamon Press, 1987, pp.1-47. N. Z. DAVIS, *Les cultures du peuple. Rituels, savoirs et résistances au 16e. siècle*, Paris, Aubier, 1979, pp.210-218.

## 1. WOMEN IN SPANISH LAW

The origin of the configuration and normalisation of law in the early modern period ought to be situated in the Late Middle Ages, when European states began to take a more stable shape. Medieval law, however, adopted norms that were previously in force, such as those derived from Roman and Gothic Law.

### Roman Law

Roman society, following to a great extent the Greek tradition, was a rigidly patriarchal society, especially during the first centuries, which is obviously reflected in its law. Women had neither civil nor political rights - even though at some stage they may not have been dependants of a family head - and they could only exercise civil rights with their guardian's consent.

The *paterfamilias* was the head of the patriarchal family. He had the right of life or death over the persons under his command, that is, over his sons and daughters, his servants and slaves, and his wife, although in the latter case subtle differences were apparent, as the interests of two families were at stake. The rights of the *paterfamilias* over his descendants, the *patria potestas*, did not cease when they reached adulthood, but remained in force for as long as the *paterfamilias* was alive. When the father died, only his direct descendants, and their sons and daughters where the direct descendants had died, were released from the *patria potestas*. They then became *sui iuris*, ie, subjects of the law. The other family members came then under the son's *potestas*, who became the new *paterfamilias*. However, in the case of women, even if they happened to be *sui iuris* and were eligible to receive the title *materfamilias*, they had no right whatsoever over their descendants, apart from the limitations imposed on them to exercise their civil rights <sup>1</sup>.

The *paterfamilias* granted the right to life or death beginning from when, at the birth of a son or daughter, he accepted or rejected the child. That is, he decided whether the child should live or die. In the case of males, the father showed acceptance of his son if he held the child in his arms, and in the case of females, he would order that the child be wrapped up. It is well known that the exposition of girls constituted common practice in Rome, as it had been in Greece before. According to a provision attributed to Romulus, adopted in the Law of the Twelfth Tables of Rome, the exposition of any son and that of the first-born daughter was penalised with the confiscation of half the father's assets. The rest of the daughters could be subjected to exposition. The aforesaid law raised no objection to females being named the female versions of their fathers' names. If the father decided to bring up more than one daughter, then they would be given numerals, for instance, Octavia I, Octavia II, etc. The data indicates that during the Empire, from the 2nd to the 4th centuries, masculinity rates were very high. In Hispania, there were 126 males to every 100 females. In Italy, this percentage reached 140 males to every 100 females. These high figures prevailed despite the fact that not all girls that were subjected to exposition died. Some of them were brought up by procurers who would place them in brothels around the city as soon as they were old enough to work as prostitutes <sup>2</sup>.

Girls would marry young and their fathers would give them a dowry. Generally, their engagements were arranged when the girls were around seven years of age, and they would marry by the age of twelve. At such an age, the *conubium* had been established for women. That was the age that was considered apt for girls to marry.

Marriage, especially among aristocratic families, was a way of exchanging assets between heads of family. In Rome, there were diverse forms of marriage. In the first place, *in manu* or *cum manu*. Through this juridical figure, the husband acquired the manus over the wife and became her guardian; therefore, a married woman, was in practice considered her husband's "daughter". Nonetheless, it is unclear whether the husband had absolute dominion over his wife. The oldest form of *in manu* marriage was the *confarreatio*, a religious ceremony presided by a priest, which soon became obsolete. Another form of marriage was the *coemptio*, a purchase, whereby a father sold his daughter to her future husband. And finally a woman could marry through *usus*, a special form of usucapion. Usucapion is the right to acquire the property of an asset through possession and use during a period of time. In the case of *usus*, after a year of cohabitation, if *coemptio* had not been celebrated, the husband or his *paterfamilias* would acquire the manus over the wife. This right would not materialise if the wife spent three nights per year outside the husband's home (the so-called *trinoctium*), and so she continued to be under her father's *potestas*<sup>3</sup>.

In relation to *usus* there was the *sine manu* marriage. In this form of marriage, the guardianship was not transferred from the father to the husband. The father continued to hold the *patria potestas* over his daughter. This type of marriage had existed since the times of the Twelfth Tables. This practice did not become common until the end of the first century, and especially during the 1st and 3rd centuries. In *sine manu* marriages a wife could not be treated as her husband's "daughter"; thus, not being considered an agnate of the family, she could not participate in the rites celebrated by her husband and their children, but she continued to participate in her father's cult.

According to Sarah B. Pomeroy, a *sine manu* marriage gave added freedom to women, as paternal guardianship meant they were under the authority of someone who lived in a place other than their own. Her husband, instead, could keep a daily watch over his wife, but had no authority over her. Notwithstanding this, the spouses had no say in the selection of the type of marriage they were to have. It was the two families who decided this, as the reasons behind choosing this form of marriage over others were principally of a patrimonial nature. If the girl was rich, for instance in the case that she were *sui iuris*, the marriage had to be *sine manu* as her blood relatives would want the patrimony to remain within their own family. But if the girl had many brothers, the contrary would occur. It was preferable for her relatives that she married *cum manu*, as the girl ceased to have rights over her paternal inheritance after being transferred to another family, whilst at the same time she acquired rights in the new family, where she was treated like a "daughter"<sup>4</sup>.

It can be said that by contrast with other contemporary peoples and likewise with the Christian era, marriage dissolution through divorce became common practice in Rome. Divorce was easily achieved and, at least in theory, either spouse could file for it.

At a patrimonial level, succession laws in Rome, even though they enormously benefited males, also made it possible for women to inherit. This happened to a comparatively lesser extent in Greece and was non-existent in other contemporary societies. Most Roman law historians agree that originally women had the same inheritance rights as those of men in the case of *abintestato* succession. In the absence of a will, daughters - or in their case, *cum manu* wives, as they were their husbands' *loco filiae* - had the same inheritance rights as their brothers; and female descendants shared the same conditions as their male counterparts. Furthermore, in the absence of descendants, if the inheritance passed down to the collaterals, agnate succession was preferred. Female relatives on the male side would be given preference ahead of male relatives on the female side, and they would be on equal terms with the males on the same side<sup>5</sup>.

At any rate, such equality, especially in its origins, is unclear, and some scholars have at least questioned it. The Law of the Twelfth Tables uses male gender language and refers to *suus*, the son *in potestate*, and in his absence, of the *adgnatus proximus*, the closest collaterals through the male line<sup>6</sup>.

Where there was a will, it prevailed. A will was a public deed. This very fact meant that women could not take part in wills. The first form of will in Rome was a solemn act that was complied with before the curial tribunals, and during this act the *sui iuris* person was forced to yield to the testator's *patria potestas*. Thus, due to the public nature of the will, women could neither make wills nor be appointed heiresses.

Notwithstanding this, women would eventually become heiresses and make wills. Wills known as *per aes et libram* then came into force. As these wills were an application of the *mancipatio*, they did not exclude women. Another system that granted added freedom to make wills was the *coemptio fiduciaria* or *testamento faciendi*. This was a highly complicated way of making a will, whereby women could elect a guardian of their choice to act on their behalf. Apart from its complexity, a further limitation was that very young female heiresses could not be appointed. This system lasted until the times of Emperor Hadrian, during whose reign it was made easier for women to make wills<sup>7</sup>.

It was not until the *Senatus-consultum Orfitianum* Law of 178 that descendants were able to inherit from their mothers, or mothers from their descendants. During the times of Augustus, the value of the assets that a woman could inherit was lower than the allocated value if she had no children. Likewise, there were other laws that placed limitations on the value of the assets that females could inherit, such as the *Voconia* law of the year 169 BC, which stipulated the maximum value of assets that upper-class women could inherit. These women could not belong to the first class of the census, that is, to those with a patrimony higher than two hundred thousand ases. Where there was no will, only agnate women up to the second degree of kinship were eligible, as collaterals, that is, the sisters of the deceased. A woman could not receive a large patrimony and, if she



received a legacy, its value could not exceed that of the legacy received by the heir or heirs. Despite all these obstacles, there is evidence to suggest that there were a considerable number of wealthy women in Rome. It should also be mentioned that families preferred that the inheritance be passed down to females in their lineage, where there were no males in the family, rather than allow their inheritance to go to strangers<sup>8</sup>.

Adultery was a specifically feminine offence. A law attributed to Romulus allowed a husband to kill his wife if she had committed adultery or drunk wine. The Law of the Twelfth Tables of Rome indicated that a husband could divorce his wife if she had committed adultery. If the wife was under the guardianship of her father, then he could kill his daughter. The justification for the death penalty for women who drank wine was that women who consumed alcohol lost their modesty and chastity and were more prone to commit adultery under the influence. In the times of Augustus, with the *Lex Iulia de adulteriis*, adultery ceased being a private matter to become a matter of the state, a public offence. Thus, under this law, any citizen could report an adulteress woman. The punishment both for the woman and her lover was *regulatio in insulam*, which consisted in banishment to different islands, and it also implied hefty economic sanctions. As a counterpoint, Augustan legislation contemplated that a wife could divorce her husband if he had committed adultery, but she was not compelled to do so, nor was he liable to any criminal prosecution whatsoever<sup>9</sup>.

## **Gothic Law**

The Visigoths arrived in Hispania in the fifth century as a result of a treaty with Rome. The Romans, unable to check the invasion from other peoples, especially the Suevi, gave the Visigoths lands in virtue of an *hospitalitas* pact. From the middle of the Sixth century, after the collapse of the Visigothic kingdom of Toulouse, in France, the said kingdom became Hispanic.

Gothic law, like Germanic law in general, was ambivalent. The Goths' were a barely developed and highly patriarchal society, but one where there were still remnants of a time when women had some weight.

As regards Gothic society, it is a social fact that women were considered inferior to men. This was explicitly translated into Gothic law. The first Germanic codes reflected a world in which women were considered as family property. As such, they had less value than men did. According to an old law of Leovigildus, the penalty imposed on the owner of a dangerous animal that happened to kill a person depended on the age and gender of the person killed. This law followed a similar formula to that of the Hammurabi code. Killing a man was a far more serious offence than killing a woman. If the man was between 20 and 50 years old, then the penalty could be as high as 300 *solidi*. In the case of a woman what mattered was her fertile age; if the woman was between 15 and 40 years old, the penalty could reach as much as 250 *solidi*<sup>10</sup>.

Girls were destined to marriage or to life in a convent. The marriage age for girls was around 15 years; until then they were still their parents' dependants. The spouses of

royal women were fixed by their parents, as much by the father as the mother. It would seem that the rest of women had added freedom of choice.

Once a woman was married, her husband had almost total authority over her, to the extent that she was legally almost non-existent, unless it was in relation to her husband, and she lived to satisfy his needs. A woman could not write to secular people on her own behalf, but on her husband's behalf. And at least until the Council of Elvira, at the beginning of the fourth century, if a woman had been baptised, she could not receive friendship letters addressed to her alone. This submission was generally observed in Germanic peoples. Wives were expected to be faithful, fertile, to bring up healthy children, especially male ones, to manage or work for the good running of the household and family unity, and where possible, a wife was expected to collaborate with her husband in his military enterprises <sup>11</sup>.

Furthermore, in this society, marital dowries were still in force; the husband's family paid a dowry to the father of the wife as a price for the bride. In Catalonia, the marital dowry was also called nuptial dowry and consisted of a tenth of the husband's total assets. This amount was the wife's property during her lifetime and was passed down to their children upon her death. Where the wife died with no children, then the dowry reverted to her husband or his family. There was apparently another type of payment made by the wife towards the marriage. This contribution was not given a name before the twelfth century, but its value must have been limited and its character was totally subordinated to the marital dowry <sup>12</sup>.

The matrimonial economic regime in force seemed to be that of joint acquired assets during the marriage, which in fact meant that the husband had dominion over his wife's assets. Later, from the ninth century onwards, the regime of separation of estates appears in Catalonia; at the same time, a system of donations and counter-donations within the marriage can be observed. Such donations were usually modest, and were allowed only after the first year since the wedding <sup>13</sup>.

An analysis of the *Liber Iudiciorum* (656), the first code applicable to all inhabitants of the Iberian peninsula following the invasions of diverse Germanic peoples, shows that the status of women as subjects of law over inheritance issues during this period was somewhat confusing. The norm declared equal rights for both sons and daughters as far as inheritance was concerned and prohibited favouritism for one child over another. Daughters, as well as sons, would inherit, whether a will existed or not. In any case, it does not seem that this norm was widely complied with. In fact, among the Germanic peoples, the custom seemed to reflect a preference for male children, even though girls had to receive a part of the inheritance or all of it where there were no sons. Splitting the inheritance into equal parts seems rather a custom of Celtic origin. Furthermore, in Visigothic Spain, women could not inherit anything their children had acquired either from the King or their masters, although women were entitled to a third of the assets acquired by their sons during their war campaign <sup>14</sup>.

As for the most frequent punishable acts in relation to women in Visigothic society,

these continued to be basically the same as those in force in previous and subsequent times, although their treatment diverged somewhat in certain aspects. The most common offences committed by women in this society were prostitution, adultery, abortion and infanticide. Rape and kidnapping were the two offences committed against women, or against the honour of their male relatives.

In Visigothic Spain prostitution affected almost exclusively the humble layers of society, that is, there were no high-standing prostitutes. It is said that in the times of Eurico the population was so poor that some men even sold their daughters. This King promulgated a law prohibiting prostitution. The law later became obsolete, but it was re-established by Leovigildus. The Count was in charge of defending or punishing all free prostitutes in the city, while the judge dealt with slave prostitutes. Prostitutes were condemned by religious institutions and could only be admitted to the religious faith if they eventually married<sup>15</sup>.

As far as adultery is concerned, the *Liber Iudiciorum* dictated the punishment for married and engaged women. This law gave total control to the husband over the wife and her lover. He could even kill them and go unpunished. Likewise, her assets became the property of the husband, except in cases where there were children from previous marriages. It is also interesting to note that a woman who was found with another woman's husband was at her lover's wife disposal. Men, nonetheless, went unpunished for adultery except in cases where they happened to be the lover of a married woman<sup>16</sup>.

The ecclesiastic councils of the time also discussed adultery. A woman who committed adultery was punished to seven years of penitence. If the woman committed adultery with another woman's husband, she would be denied communion even at the hour of her death, except where she abandoned her lover and did penitence for ten years. In the same manner, if a woman married two brothers, or if a man married two sisters, he or she was forever denied communion, and in the case of survival, they had to do penitence during a pre-established period of time<sup>17</sup>.

The councils also addressed abandonment, as much on the part of the wife as on that of the husband. Women who abandoned their husbands without a cause and began relationships with other men could not receive communion, not even at the moment of their death. If the husband was an adulterer but also a Christian, then the wife had to wait until he died before she could receive communion. Likewise, husbands who abandoned their wives, unless because of fornication, could not take communion until they went back together with them. If the bishop's admonition went unheeded up to three times, during the period they "remained in sin" they would lose their rights of high dignity "because they gave their flesh to the dagger of discord"<sup>18</sup>.

Abortion and infanticide were common practices, especially in the case of illegitimate sons or daughters. The church condemned these practices, with penalties that ranged from ten years of penitence to death. In any case, these norms, which became more lenient towards the end of this period, do not seem to have had much relevance. On the other hand, these are offences only contemplated by canon law<sup>19</sup>.

The rape and kidnapping of maidens and widows, on the contrary, was condemned by civil law. The *Liber* punished rapists and kidnappers to servitude, depending on the severity of the offence<sup>20</sup>.

### **The evolution of medieval law**

Medieval law based on Roman and Germanic laws generally considered women as under age beings, legally incapable. Its utmost expression was feudal law. In countries where oral law based on customs prevailed, seemingly more related to Germanic law, paternal guardianship was not recognised for women of age, although marital guardianship was. In countries where written law prevailed, especially those in southern Europe, such as the Iberian Peninsula, Italy or the South of France, a woman would pass from paternal to marital authority<sup>21</sup>.

Throughout the Middle Ages, historians have noted a changing situation as far as women were concerned. The early Middle Ages display numerous invasions by the Germanic peoples of the territories that were part of the former Roman empire. An era of war commenced, one of generalised insecurity and famines; lords seized the occasion to dispossess peasant families of their land. In these circumstances, the vulnerability of the lower classes and of women before the abuses of power of the lords increased. Feudal society began to consolidate under these premises and so did feudal law.

The social and legal situation of women was always precarious during the period of formation of this society and of feudal law. Among the examples that highlight this evolution, the punishments for adultery should be singled out. Feminine adultery, as it had been happening previously, was the only form of adultery that was contemplated in this society, and could be punished with death. The husband could kill the adulterous wife after showing her around the town naked, whilst lashing her. A further example was the punishment given to murderers according to the gender of the victim. This practice was not solely contemplated in Gothic law, as it has already been seen. The law punished whoever killed a woman between 14 and 20 years of age to a penalty higher than that paid for killing a man; however, if the victim was younger or older, then the penalty was lower, six times lower if the woman was over 20 years of age<sup>22</sup>.

Moreover, differential infanticide by gender seems to be well documented in many places during the early Middle Ages, while we still find literary references in the twelfth century, for instance in one of Marie de France's lays. As had occurred in Rome, it was the man who decided which would be the infant(s) that would live and be educated. Women had to obey their husbands' orders, and look after the care of the infant, if that were the case. There is no evidence in the literature of the existence of any law like that of Romulus', either punishing or allowing this practice<sup>23</sup>.

Therefore, feudal law had a strong gender element. This fact is evident in the dominance/dependence relations typical of a feudal society. In this manner, a female servant or slave was unable to marry outside her feudal lord's dominion, given that if she

did, her sons and daughters would be distributed between her former lord and her new husband<sup>24</sup>.

The obligations of the peasant people towards the feudal lords are yet another example. In the case of Catalonia, the Six Bad Usages and the Three Iniquitous Customs do not only mean the lord's dominance over his peasant worker as head of the family or over the family as a unit, but this dominion was exerted through sexed violence. Among the iniquitous customs, there was the *droit du seigneur*, allowing the lord to sleep with the bride the first night whenever a peasant's wedding took place, whilst the right of wet-nursing forced the peasant woman to suckle her lord's child before her own.

In the Bad Usages this hierarchy was also evident. The figure of the *intestia* gave the lord the right to a third of all the assets of his peasant worker, if he died intestate and had a wife and children. If leaving either wife or children, then the lord could keep half his assets. The *cugucia* allowed the peasant husband of an adulterous woman and his lord to divide her assets between them. With respect to sterility, if a couple had no issue, they had to pay the lord a third of their personal property. Finally, if a peasant family had to mortgage their assets in order to pay a dowry for their daughter, they were forced to pay the lord a proportion of the mortgage, a usage known as *firma de expolio*.

Moreover, no peasant person could marry without permission or without paying the lord the nuptial fee. For a girl to be able to leave the manor, even if it were in order to marry, she had to redeem herself from the feudal link. The lord had the obligation to redeem his men's daughters at a cost of two and a half *solidi* if they were virgins, and if an heir remained in the manor. If the girl was not a virgin she herself had to pay a third of the assets. Thus, a price was placed on virginity<sup>25</sup>.

The eleventh and twelfth centuries meant an improvement to the life of women. A certain idealisation of women took place, especially among the nobility, and courtly love appears. Women took on an active role in many and diverse ambits of life, including the public domain, until these domains became institutionalised.

As far as marriage was concerned, the Church had not yet placed sexual morals under its control, so that apart from legal marriages, de facto marriages were quite common and socially accepted by the community, although increasingly less and less so. Girls would marry young and had to pay a dowry, while nearly always widowhood would be followed by a new marriage. Legally, the dowry belonged to the wife, but in practice she could only have control over it if her husband died or if she decided to give it to her progeny. Furthermore, husbands continued to make a less important contribution, which in Catalonia was called *escreix*<sup>26</sup>.

At any rate, during the late Middle Ages, the Church increased its intervention. Civil authority was also interested in exerting power in this issue, especially where the transmission of patrimony was concerned. A well-documented example in Catalonia was the legislation that disinherited maidens who married without paternal consent, in an

attempt to impede secret marriages. A marriage was an economic contract to be decided by the parents<sup>27</sup>.

In Catalonia, the *Usages* of Barcelona, which are the basis of the legislation later adopted by the *Cortes* (parliament), the *Constitucions i altres drets de Catalunya*, adopted as law some of the Bad Usages, such as the *Intestia* and the *cugucia*. The usage of the *cugucia* was contemplated along with other provisions that punished adultery and that implied evidence related to ordeals and punishments. Although the extent of these is unknown, they may have been as severe as life confinement within walls<sup>28</sup>.

Succession law in Catalonia placed women at a clear disadvantage in relation to males as far as patrimonial succession was concerned, because the *heretament* (inheritance pact) involved masculine unigeniture and primogeniture. In the meantime, in most of Europe, from the twelfth to the fourteenth centuries, women continued to own property in their own right, and also continued to receive wedding donations from their husbands, quite often in cash. Women could buy or sell property and appoint their own heirs. Despite all this, they had less access to property than their male counterparts, as succession laws favoured males to the detriment of women<sup>29</sup>.

As we have seen, women lost part of their legal status in the fourteenth century. This fact is detected particularly within the fields of work and widows' rights<sup>30</sup>.

### **The social status of women in the early modern ages**

In the territories of the Hispanic monarchy, as in the rest of Europe, the transition from the Middle Ages to the Renaissance period came about with a regression in the social conditions and status of women at all levels. This backlash happened after a period of progress. The eleventh, twelfth and thirteenth centuries constituted a clear improvement for the female population with respect to previous conditions. It was the transition process of the institutionalisation of guilds municipal councils that allowed women to enter into diverse fields, exerting power that until then had been unthought of by women. At times, women occupied places in public domains, many times exceeding the limitations that gender roles had imposed on them. However, the regression became manifest from the fourteenth and fifteenth centuries onwards.

### **The Fifteenth, Sixteenth and Seventeenth Centuries**

The famous *querelle des femmes* is represented in Spain by Jaume Roig and Isabel de Villena, both from Valencia. The former had been physician to Queen Mary of Castile. He had been a benefactor of the Trinidad Convent, where Isabel would be an abbess, and he was also the doctor of the nuns of the convent, where one of his daughters had entered. In the year 1460, as an old man, he wrote *L'Espill*, a profoundly misogynous piece. Later on, Isabel wrote *Vita Christi*, as a reply to *L'Espill* and as a textbook of the Christian doctrine for nuns. In this piece the women in the gospel play an important role. It is likely that Isabel de Villena knew the work of Christine de Pizan. In her work, Pizan depicts the Virgin Mary as doctor of the Church, as possessing great wisdom, and she shows Mary

instructing apostles on theology. Pizan depicts a lettered, learned feminine figure that had access to the word and to instruction. In this sense, both Isabel de Villena and Christine de Pizan make a contribution towards readopting the figure of Mary as a positive role model for women, as a strong character who is not Eve's contraposition, but rather joins her in reciprocal acknowledgment<sup>31</sup>.

In the subsequent centuries, especially from the seventeenth century onwards, medieval polemics became the so-called “war of the sexes”, focused rather on the necessity or not of education for women. In Spain there were voices for and against it. Among Spanish humanists, Luis Vives stood out as one who supported education for women, although he always maintained the view that feminine ‘virtues’ had to be developed, including their domestic and reproductive tasks. Other more conservative humanists, such as Fray Luis de León, were opposed to any form of feminine instruction, on the grounds of a supposedly 'natural' intellectual inferiority of women<sup>32</sup>.

On the other side of the debate, the work of Christine de Pizan exerted clear influence on Margaret of Navarre's (1492-1543) *Heptameron*, a literary piece that crossed the French borders and reached the Spanish readership. Later on, in the seventeenth century, María de Zayas y Sotomayor, defended the right of women to gain access to culture and education in the seventeenth century, by criticising in her work *La esclava de su amante* (Her lover's slave) the significant limitations on women's access to education: “teaching me [...] the most important things about my condition. It shall be understood through the virtues that form a virtuously Christian person, the honest exercises of reading, writing, playing a musical instrument and dancing, and all other things that make a person of my qualities, and all those things that parents wish their daughters to like and take pleasure in”. This, naturally, if she was lucky enough to belong to a privileged class<sup>33</sup>.

In general, upper class women, who had access to education, would receive their instruction at home, imparted by private tutors. There also existed, since the sixteenth century, feminine schools in convents, which used to take girls from the bourgeoisie and middle layers of society. In any case, the education provided to women was always very limited and less normative and solid than that available to males. Moreover, as in the rest of Europe, universities were not open to women<sup>34</sup>.

During the Renaissance, humanism also reached the Hispanic monarchy. In Catalonia, a number of noble women were followers of Ramon Llull, such as Beatriu de Pinós, who worked as Ramon Llull's disciple in Majorca during the fifteenth century. She left her fortune to the Llull cause to the detriment of her own children, who practically were left no inheritance. Also in the same century, Leonor López de Córdoba, wrote her *Memorias*, the first autobiography written in the Castilian language. Leonor achieved considerable political power in the time of Catherine of Lancaster, Henry III's wife and mother of John II. But Catherine had to withstand severe pressure, which eventually forced her to remove Leonor from the court as, in Fernán Pérez de Guzmán's words, it was less dishonourable for the queen to rely on a low-born man than on a woman, even though she was of the highest nobility<sup>35</sup>.

Some women wrote essays on scientific and/or philosophical topics. These women transgressed, as did Leonor López de Córdoba, the specific roles assigned to them by society, by making public use of their voices and of their word, and availing themselves of an authority that was denied to them in principle, especially in the domain of knowledge. The polemics they triggered in their lifetime and even after their death reflect this transgression of roles. One of these women was Teresa de Cartagena, a fifteenth-century religious woman in the Kingdom of Castile. Her work *Arboleda de los enfermos* (Grove of the ill) analyses the experiences caused by her twenty years of deafness, the pain and incommunication that this inflicted on her, and how despite this, she learned to love her body. Cartagena's work was received with hard criticism on the part of Castilian intellectuals of the time. She defended herself by attributing the criticism of her work to the fact that she was a woman and alluding to divinity as a source of inspiration<sup>36</sup>.

A special mention should be made of Oliva de Sabuco de Nantes Barrera. Oliva de Sabuco is - along with Trotula (Italy, eleventh century) or Judith Leyster (Holland, seventeenth century) - one among the many women who, when men wrote the history of science, art, etc., were turned into men, or whose work was ascribed to men within their circle -relatives, friends, etc.-. Her life spanned the end of the sixteenth century and the first third of the seventeenth century. In 1587, she published one of the medicine books that would become famous in the modern era, entitled *La nueva filosofía de la naturaleza del hombre* (A new philosophy of the nature of man). In this book, in whose prologue she assumed the authorship and at the same time dedicated the work to the king, Philip II, she proposed the theory of the "jugo nérvico" (nervous juice), which meant an innovation in the progress of medicine. Shortly after the publication of her book, her father Miguel Sabuco, tried to acquire authorship of the book, without success. It is interesting to note that it was not until the end of the nineteenth century and the beginning of the twentieth, when university disciplines were restructured and institutionalised, that Miguel de Sabuco was suddenly acknowledged as author of the book<sup>37</sup>.

Apart from these important figures, there were a number of educated women called *bachilleras* (bluestocking) in the seventeenth century, who were often ridiculed by their male counterparts. These were women who had an interest in culture, and who learnt to speak with loquacity. Some of these high-cultured ladies also belonged to literary and academic circles, which were harbingers of the eighteenth century salons. In Spain, these women represented the *preciosas* (precious ones)<sup>38</sup>.

On a daily life level, the degradation of living conditions was manifest in the most diverse fields. In legislation, women lost some of their rights as widows, as they were deemed unable to continue the domestic and productive roles within the community. In the fifteenth century the rights of widows became restricted, and widows were banned from continuing the work of their late husbands. Cases are known, as in 1486, when members of the weavers' guild of Barcelona, on the day after the death of a master weaver, ripped the weaving looms from the walls of the deceased person's house and took away the tools in order to prevent his wife from continuing to work in the workshop<sup>39</sup>.



One of the most severe effects of this legislation was precisely that it left widows in a very precarious situation, as it prevented them from continuing to manage their deceased husbands' workshop. They were unable to keep the workshops if they had no male offspring who could succeed their fathers. If there were male children, then the widow had to appoint a master worker to manage the shop until their children became of age. This fact contributed to many widows continuing to lengthen the queues of the poor.

In the work domain, recognition of women's work progressively decreased; their possibilities of achieving independence were minimal, as were the range of jobs they could do. The number of apprenticeship contracts available to women was slowly reduced, as were the proportion of paid working women. During the Middle Ages, in the cities, it was common for a married woman to work in her husband's workshop. Women generally managed the sales in the shops. The shops were usually located on the ground floor. It was also common for young peasant girls to go to the cities to work as domestic helpers, or for poor mothers to work as wetnurses. Also, many women from the artisan classes were skilled labourers, with skills different to those of their husbands: spinners, haberdashers, weavers, milliners, bakers, etc. It was not unusual to find women working in leather tanneries, in building sites or in mines. In the thirteenth century, in Seu d'Urgell and in Barcelona, some women, generally widows, participated in the world of business as entrepreneurs and as moneylenders<sup>40</sup>.

On the other hand, medieval women did not participate in municipal government, since they were not granted status as denizens, even though they may have complied with all the necessary requirements that men had to fulfil. For instance, in Spain, women could have participated in the repopulation process, with the economic importance it implied. Despite this, it can be seen that bourgeoisie women did participate in communal assemblies in its beginnings, along with males. There are well-documented cases in Barcelona<sup>41</sup>.

From the fifteenth century onwards, this was no longer possible. The opportunities for women became drastically restricted. It became very difficult for them to have their own business, or to have their work in their husband's workshop acknowledged.

As far as witch hunting was concerned, it is important to highlight that in Spain this persecution was less severe than in other European countries. The Spanish Inquisition acted more cautiously in this kind of proceedings. Notwithstanding this, during the peak period of witch burning, the number of executions notably increased, although it was nowhere near that of other European countries. Contrary to the rest of Europe, the Spanish Inquisition maintained its sceptical stance with respect to witchcraft. It was necessary to have evidence, and a confession alone was considered insufficient, since according to the Inquisition itself, torture or fear of torture, as well as leading questions, could make a person declare what had never taken place. Torture was limited to an hour, while in Germany it could last from a whole day to four days and its nights<sup>42</sup>.

Even though in some regions there seemed to be more cases of witchcraft, witches were found almost anywhere, especially in rural areas. It would seem that the number of witches was proportionally related to the amount of medicinal herbs available in a given