

# WOMEN AND JURISPRUDENCE

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It is important to reflect on influence that cultural legacy and humanist influence on juridical analysis. These influences, combined with Greco-Roman thought, define the institutions that continue to describe, prescribe, and interpret the law based on a concrete methodology.

Western thought emerged when the Greek culture developed the rules of logic that allow for scientific discourse. The Logos of Parmenides laid the first foundations for knowledge. This foundation was based on the canons of identity of the human being and the absence of contradiction, combined with the objective of learning the truth regarding any given object. This process required setting aside one's beliefs and opinions as paths of reflection, in order to open the doors to reason. The laws of reason demand using a clear methodology to apply principles that lead to scientific knowledge.

These reflections provided a conceptual framework for Roman scholars, who first sought to delimit their identities in order to establish their being. This set up a body of rules identifying them as Roman in order to preserve the principle of unity. The logos of the Roman scholar was interpreted by religious magistrates who possessed a monopoly on juridical activity. Thus the legal profession, in its early stages, was inaccessible to most other community members because these magistrates retained power over the rules through which the norms of custom were to be applied; Roman thought gave rise to the terms *jus*<sup>1</sup> and *fas*.<sup>2</sup>

The early Roman period was managed by a federation of noblemen

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1. In Roman law, *jus* meant the science or department of learning. The term was also used to refer to rights; that is, powers, privileges, faculties, or demands inherent in one person and incident upon another.

2. *Fas* meant right; justice; the divine law.

and families regulated by a monarchical and priestly authority. They designed a system in which the interpreter established the parameters of behavior in the community, with the aim of preserving peace and order. Peace and order were defined in terms of respect for principles of organization based on noble status and the family. These principles are expressed, for example, in the law's emphasis on citizenry determined by bloodlines, which was used to protect the origin and dignity of Roman status.

This archaic system changed when groups lacking the appropriate lineage challenged the existing law. These groups came to constitute a new class known as the common people (*plebes*). This placed pressure on the monarch to issue a series of legislative dispositions with the goal of harmonizing and unifying the population. As a result, for the first time, the people attended the coronation of a new king.

This signaled the transition to a second phase of Roman Law where old and new noble groups constituted a new social class. This social class still excluded the common people from other juridical, political, economic and social benefits through the monopoly of the upper class (*patricians*) on the creation, interpretation and application of the law.

This system was based on a "voluntarist" theory that justified the theoretical juridical framework, in which a classist State advanced the interests of one group to the detriment of others. This framework led to a class struggle between the upper class and the commoners. The complaints of the commoners emphasized the need to satisfy the demands of their social class and to place limits on benefits that were exclusive to the upper class. This process climaxed in the creation of a body of magistrates, known as tribunes, who became the spokespersons of the common people and who were heard in the popular assembly.

At this juncture, the law acquired new meaning by including the lower class, thus broadening the cultural framework that determined the meaning of the law, and thereby regulating in a normative framework the rights and interests of the commoners. These new laws were woven into the basic Roman law set forth in the Laws of the Twelve Tables. The objective of these Tables was to firmly establish the law through a written system. This system provided advance notice to the population through public dissemination, in order to avoid misapplication of the law.

This new system sought to preclude discrimination by doing away with laws that favored certain sectors. This resulted in the creation of