BARBARA CORTESE[*]

WOMEN AND ROLES: THE SOCIAL-JURIDICAL ROMAN CONTEX

ABSTRACT. *This short essay brings together some of my reflections presented during the international conference in Poitiers entitled 'Les Femmes'.*
From a still preliminary review of the Roman approach to regulating the legal status of women in society, it seems to me that we can discern an economic and legal policy choice that had nothing to do with the ideology of female inferiority and subordination.
This is clearly a complex issue, which I reserve the right to return to.

CONTENT. 1. 'Gender' in not a roman concept – 2. Who is the roman woman? – 3. The Legal rules and the legal language giving the roles – 4. Women and political legal choises

[*] Associate Professorin Roman Law, RomaTre University, Department of Law.

1. 'Gender' in not a roman concept

These reflections are intended as an initial analysis of the continuity or discontinuity of women's roles between antiquity and modernity, a topic I reserve the right to return in greater depth.

However, some preliminary remarks are necessary.

When we talk about Roman women, we must consider the complex history of Roman society, which imposes distinctions, albeit fairly generalised ones, between ancient Rome, republican Rome and imperial Rome.

We must also take into account the fact that, even within these periods, political influences, which varied according to the policies adopted by each emperor, had a considerable impact on the social and legal status of women.

Another preliminary remark concerns the total unfamiliarity of the Roman world with concepts such as 'gender identity'. Eva Cantarella argues: «A concept such as that expressed by the term 'gender' linked to sexual belonging did not exist at that time. In fact, it has only been in use for a few years, translating the English word 'gender', introduced by feminism to indicate that the difference between the sexes is not only biological but is socially and culturally constructed»; she goes on to say that «male and female identities were truly different»[1].

It must be said that men were not subject to identity definitions either: the male figure was by no means homogeneous in terms of social and legal status. To be clear, men, like women, were not the focus of generally recognised rights simply because they belonged to the male gender. Therefore, in the Roman context, the issue of gender did not even arise in a broad sense: women and men were different creatures, and, again quoting Cantarella, «this diversity had consequences not only on men's attitudes towards women, but also – and above all – on the social and legal rules they established».

Whereas the main corollary of this principle of difference was inferiority: «difference equals inferiority, therefore, and consequently subordination»[2].

This is one of the fundamental points, in my opinion.

[1] Eva Cantarella, 'Identità, genere e sessualità nel mondo antico, in "Homo", "caput", "persona". La concezione giuridica dell'identità nell'esperienza romana. Dall'epoca di Plauto a Ulpiano' in Gagliardi Lorenzo and Maffi Alberto (ed), *Diritto e società in Grecia e a Roma. Scritti scelti*, (Giuffrè, 2011) 941.

[2] Cantarella, (n 1) 944.

2. Who is the roman woman?

Since Cantarella sees a sort of causal link between perception (and therefore male behaviour) and social and legal rules; that is to say, that the law and society recognise diversity as a consequence of male sentiment.

In truth, it seems to me that although the perception of diversity is purely empirical, a natural awareness, the socio-legal consequences in terms of inferiority are the result of a "political" choice that has been made since the days of mores.

Many studies have shown that matriarchal family organisation was not unknown to archaic European civilisation: the idea that the cell of society was constituted by the monogamous patriarchal family is not corroborated by the sources, which, on the contrary, seem to point in the opposite direction, (epigraphic sources would account for the centrality, if not the cruciality, of the female presence in sacred symbolism)[3].

Therefore, the positioning of women at a lower and different level than men would be the result of a political line of law dictated immediately after the birth of the Roman community with the clear intention of placing men at the centre of social, economic and institutional relations.

Roman legal tradition thus provides the first example of a well-articulated special discipline imposing a discriminatory legal status on females. In other words, the difference between men and women was linked to their belonging to a different gender.

It should be borne in mind that, since women did not have access to the political institutions of the Roman world, it was impossible for law and politics to produce forms of recognition and/or protection. The subjective situations of women in the Roman world were therefore modelled on parameters of exclusion from constitutional structures, inferiority in legal relations and exclusion from the exercise of political power. Suffice it to say that women were part of the populus, in the anthropological sense, but even though they were *civis*, they did not participate in public functions.

In other words, what Eva Cantarella famously described as the "Roman paradox" came into effect, operating through numerous legal mechanisms with the specific aim of entrusting Roman women with the preservation and transmission of male morality and patriarchal tradition, imposed on them by men. This established the legal relevance of a difference between the sexes as such and, consequently, the special status of women, the purpose of which seems to be to establish complementary regulatory regimes for

[3] Marija Gimbutas, *The language of Goddess. Unearthing the hidden Symbols of Western Civilization*, (Harper & Row, 1989).

the male and female sexes, to which a predetermined legal function is assigned. Thus, women are predestined to complementarity with men, not equality. In this world, in which women are not born free and with the same rights as men, the perspective appears to be legally androcentric[4].

This represents the basis of the status of women throughout the Roman era, with fluctuations depending on political, territorial and economic factors that determined the history of Roman civilisation. The legal status of women, affected across the board by this rationally conducted sexual discrimination in political and legal terms, then diversified significantly according to the individual social status of women.

In fact, there were different types of women in Roman society[5]: types that established a real social and therefore legal status, sometimes not explicit but inferable from a series of limitations and prohibitions. This means that when talking about Roman women, it is necessary to indicate which type is being referred to, as there could be a huge difference between one and another.

Based on birth: free women, slaves, freedwomen.

Based on social status: aristocrats, plebeians, workers, prostitutes.

Based on role: matrons, priestesses,

Based on family status: wifes, mothers, daughters, servant.

Each with her own status; a status made up of recognition or exclusion of rights and/or duties: it is not the woman who is entitled to them or not: it is her role, her social status, her function.

Women are not recognised as subjects of law as such[6].

This is the other fundamental issue.

Women are constructed as different, inferior; this inferiority is modulated and declined according to the needs of an androcentric society, attributing roles and functions that are oriented towards complementarity with male needs[7].

[4] D. 1.5.9 (Papin. 31 *quaest.*): *In multis iuris nostri articulis deterior est condicio feminarum quam masculorum.*

[5] Leo Peppe, *Posizione giuridica e ruolo sociale della donna romana in età repubblicana* (Giuffrè, 1984) 54 ff.

[6] Eva Cantarella, *L'ambiguo malanno. Condizione e immagine della donna nell'antichità greca e romana* (1981).

[7] Patrizia Giunti, 'Il ruolo sociale della donna romana di età imperiale: tra discriminazione e riconoscimento' (2012) 40 Index 342ff.

3. The Legal rules and the legal language giving the roles

It is clear that on a hypothetical scale of importance, free women of high social standing, integrated into a family context, occupy the highest position[8]. However, this is still a subordinate position. The legal status of such women began to take shape with the typical features of a special discipline in Roman history, when it took on defined contours, not only in terms of *mores*[9], but also in legislation, a status specific to persons of the female sex, which prescribes different rules from those for males in crucial areas of legal experience, such as family law, with particular reference – in an emblematically significant way – to marriage[10], but also to legal proceedings, obligations, contracts, succession due to death, etc.

Since ancient Roman times, restrictions have been imposed on these women to shape their behaviour towards typical continence. The rules specifically aimed at regulating women's lives are part of a context that is, as is well known, much broader than the discipline of family and kinship, as well as the extremely accurate terminology used in Roman legal practice.

Women are identified with the role of wives and mothers, while there is no provision for a legally independent female figure, free from the authority of a man. In fact, marriage ideally fulfils the institutional function that the Roman world assigns to women: to produce descendants for citizens, providing children for their husbands, who can always repudiate them[11].

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[8] Leo Peppe, *Civis romana*, *Forme giuridiche e modelli sociali dell'appartenenza e dell'identità femminili in Roma antica* (Edizioni Grifo 2016) 58ff.

[9] Maria Pia Baccari, 'Alcune osservazioni sulla condizione della donna nel sistema giuridico-religioso', in *Fides, humanitas, ius. Studii in onore di L. Labruna*, vol. 1 (2007) 253ff.

[10] Roberto Fiori, *'La struttura del matrimonio romano'* (*2011) 105* BIDR 197ff; Antonio Corbino, 'Il matrimonio romano in età arcaica e repubblicana', (2012) 40 Index 155ff; Maria Vittoria Sanna, *Matrimonio e altre situazioni matrimoniali nel diritto romano classico. Matrimonium iustum – matrimonium iniustum*, (2012); Luigi Capogrossi Colognesi, 'Matrimonium, «manus» e trinoctium', in *Marriage: Ideal- Law-Practice. Proceedings of a conference held in memory of H. Kupiszewski* (2005) 63 ss.; with extensive discussion, in turn, clarifies aspects and problems Patrizia Giunti, *Consors vitae. Matrimonio e ripudio in Roma antica* (2004) 145ff.

[11] Giunio Rizzelli, *Le donne nell'esperienza giuridica di Roma antica. Il controllo dei comportamenti sessuali*, (2000); Eva Cantarella, 'Virtù della donna, onore del maschio', in Eva Cantarella and Paolo Ricca, *Non commettere adulterio* (2010) 109 ff, Eva Cantarella, 'La causa d'onore dalla «lex Iulia» al Codice Rocco', in *Testimonium Amicitiae* (1992) 73 ss. (now in Cantarella (n 1) 553 ff). In ancient times, the penalty for repudiation was particularly severe, as it compromised the moral and social status of a person, who suffered a regression, but above all, it irreversibly compromised their legal, religious and economic status. Gaius recalls how repudiation, even in classical times, extinguished

Marriage is reserved for the purpose of procreation, which in practice must be carried out by the wife, and the child is then born into the legal status of the father at the time of conception, in the case of a regular marriage.

The legitimacy of filiation appears to be a constant, especially for the senatorial aristocracy, which seems to leave no legal room for the offspring of women's "sinful" unions. Full rights and public life could not, therefore, be enjoyed by those who did not boast a precise agnatic line into which they could neatly fit. Thus, the Lex Minicia (I sec. A.D.) deprived Roman women who were not married in a lawful marriage of the right to give birth to a Roman citizen: once again, the ultimate aim of the law was to limit citizenship to the descendants of Roman citizens alone.

The mother does not have parental authority over her children. She cannot therefore adopt. Women are prohibited from remarrying before a widowhood period of ten months has elapsed, otherwise they may be liable to erroneous attributions of paternity, which the nascent city community already intended to avoid, with a view to a series of marital duties inspired by female continence, which I mentioned at the beginning, suitable for consolidating, through legally formalised values imposed on women, the city community, which since the time of the kings had symbolically provided for the asymmetrical punishment of adultery.

Other rules restricting women's position included a total ban on drinking wine[12],

the marriage but not the manus. The second reason that justified repudiation was, as mentioned, the woman's drunkenness: in fact, she was forbidden from drinking pure wine (*temetum*). Both Cicero and Gellius report similar information in their works, confirming what Plutarch says about punishment for drunkenness, but also informing us about what women were allowed to drink: they were only allowed to drink beverages that were sometimes mistakenly considered non-alcoholic, or at least less alcoholic than pure wine, such as *passum* and *loream*. The reason for this prohibition is explained by Valerius Maximus: drunkenness led to lust and, therefore, if married, a lustful woman would certainly be an adulteress, although the fact that it would also lead to abortion cannot be ignored. Therefore, the woman was punished not so much for disrespecting her husband as for the questionable legitimacy of the children who would be born to a woman of easy virtue. The third reason for which legitimate repudiation was permitted was if the woman committed adultery. It has already been mentioned that in earlier times, women were punished with death in cases of adultery. However, in later times, when marriage began to be subject to repudiation, the death penalty for adulterous women could only be applied if the husband caught her in the act. Otherwise, the husband could only repudiate his wife for just cause. It can therefore be concluded that, both in the case of adultery and in other cases where repudiation could be imposed, the punishment applied evolved over time: thus, the punishment went from capital punishment to the husband's right to terminate the marriage bond, leaving the woman in a situation of both economic and moral hardship.

[12] Linked to the prohibition of female adultery, which also dates back to the royal age: of "sexual taboo and alcohol taboo" at the same time, he speaks evocatively; Patrizia Giunti, *Adulterio e leggi regie. Un reato fra storia e propaganda* (1990) 155ff. About this also Eva Cantarella, *Passato prossimo. Donne romane da Tacita a Sulpicia*, (1996) 62ff; and

linked to the fact that a drunk woman could behave inappropriately and perhaps jeopardise the legitimacy of any child she might have.

In terms of legal capacity and ability to act, women had no choice: they were subject to their father or husband. In the case of a woman *sui iuris*, on the other hand, it was compulsory to submit to guardianship. And even when the rigidity of guardianship was relaxed, leaving room for greater autonomy, the *auctoritas interpositio* of the guardian was still necessary. But here too we see the fluctuations mentioned above, as regulatory measures had introduced prohibitions on the negotiating activities to which women were admitted: consider the *Lex Voconia* of 169 BC, which affected women's inheritance rights (even Cicero described it as damaging to women). This law established that no legatee could receive more than the heir had received. However, it was easy to circumvent the purpose of the provision by arranging a large number of legacies that did not exceed the share allocated to the legatee. It also limited women's inheritance rights, more precisely prohibiting anyone who left an inheritance worth more than one hundred thousand in their will from appointing a woman as heir.

One of the main reasons for the enactment of this law was to safeguard the male line of descent.

Trough the *SC. Tertullianum*, enacted in 178 AD, containing provisions relating to succession mortis causa between mother and children, it established, in particular, that only first-degree descendants (and not further descendants) could participate in the intestate succession of the deceased mother, and that they had precedence over other agnatic collateral relatives, who were therefore excluded.

In the Hadrianic era, in terms of the duties imposed on mothers, who were thus finally able to become civil heirs of their children. The turning point was the establishment of the mother's responsibility and the symmetrical recognition of an inheritance expectation. Women are therefore now assigned a "parental" role with legal significance, albeit in constant compliance with male authority over guardianship of minors. In fact, it is established that the mother, in the interests of her minor child, must comply with the duty to request a suitable guardian for the latter. However, this legitimisation of the mother's right to postulatio tutoris, during her child's lifetime, entails the sanction for the mother herself of exclusion from her child's legitimate inheritance in the event of non-compliance, on grounds of unworthiness.

The *Senatus Consultum Velleianum*, dates back to the 1st century AD and is a senate act that can be dated to approximately the middle of the 1st century AD, established a limit on women's legal capacity, prohibiting women from *intercedere pro aliis*,

156ff (ntt. 59-64); C. Cascione, 'Matrone «vocatae in ius»: tra antico e tardo antico' (2012) 40 Index 238.

i.e. from assuming obligations on behalf of others. It prevented women from interceding, assuming guarantees and obligations for third parties, by granting the female debtor sued by the creditor a procedural exception against him. In theory, it guaranteed the defence of women's interests, who, being considered the weaker sex, were unable to resist their husbands, brothers, male relatives and friends who demanded their help. But beyond any false intention to protect them, through the Velleian senate consultation, women became unreliable contractors and therefore less active in the public and commercial sphere[13].

4. Women and political legal choises

The legal superstructures that seek to instil cultural characteristics that justify the logic of inferiority also pass through the terminology used by both jurists and legislative or edictal measures. The terms[14] used in legal language to designate female weakness are usually '*infirmitas*' and *imbecillitas* or the soft '*levitas*' (used by Gaius).

'*Infirmitas*' and '*imbecillitas*' are usually used in the sense of physical and mental infirmity, referring to weakness as a characteristic of the female gender.

Less discriminatory and certainly less offensive is Gaius, who significantly uses '*levitas animi*', in the sense of volatility, lack of firmness, a vulnerability that is more psychological than anything else.

In this way, an attempt is made to justify the discriminatory logic of the law by indicating that women, due to their congenital weakness (*infirmitas*), lack the faculties to go beyond the narrow sphere of their personal interests and are therefore unable to fulfil civil duties or perform functions of public constitutional importance.

Women are different, and in their difference (their physical fragility and psychological weakness) they cannot be considered capable of performing roles and functions that are useful to society and which therefore become exclusively male[15]. The classic example is that of guardianship, which is inaccessible to women. In other words, women are made to feel that they do not exist outside the roles they play or the functions they perform.

[13] Tiziana J. Chiusi, 'La fama nell'ordinamento romano. I casi di Afrania e di Lucrezia' (2010-2011), 6/7 Storia Delle Donne 89-105.

[14] Renato Quadrato, "Infirmitas sexus' e 'levitas animi': il sesso "debole" nel linguaggio dei giuristi romani', in '*Gaius dixit' la voce di un giurista di frontiera* (2010) 137ff.

[15] Felice Mercogliano, 'Deterior est condicio feminarum…' in *Fundamenta*, (2nd edn, 2012) 205ff.

However, various anecdotes and facts testify to the gap between models and reality.

Giunti and Cenerini[16], each in different ways, have in fact highlighted that the real social perception of women is one thing, but how they were expected to be seen is another. Models are one thing, practice is another.

So, if the predominant model «is relentlessly structured around the marital-reproductive function and the domestic role»[17], it is also true that in the reality of the domus, social circles and daily activities, the situation was different.

This can be seen in the reactions, even inconsistent ones, that men had when faced with women who escaped the tight mesh of this model.

This is particularly evident in the case of Afrania, which touches on the issue of legal representation closely related to the social standing enjoyed by a particular individual, a connection that demonstrates how extremely important it was for Roman society to be able to represent someone in court. In fact, anyone who could not represent a friend in court was marginalised by society. It was customary for women to be represented in court by a person they trusted, obviously of the male sex. However, this was not mandatory.

In this unclear context of the late Republican era, we find the figure of Afrania, a citizen and wife of Senator Buccone[18], who used to conduct trials not only on her own behalf but also on behalf of others, and apparently did so with passion.

The first of these is by Valerius Maximus and is rather negative towards women[19]:

«*C. Afrania vero Licinii Bucconis senatoris uxor prompta ad lites contrahendas pro se semper apud pretore verba fecit, non quod advocatis deficiebatur, sed quod imprudentia abundabat. Itaque inusitatis foro latrati bus adsique tribunalia exercendo muliebris calumniae notissimum exemplum evasit, adeo ut pro crimine improbi feminarum moribus C. Afraniae nomen obiciatur. Prorogavit autem spiritum suum ad C Caesarem iterum P. Servilium consules: tale enim monstrum magis pro tempore extinctum quam quo sit ortum me-*

[16] Francesca Cenerini, *La donna romana. Modelli e realtà* (2009).

[17] Giunti (n 7) 356.

[18] We only know about Licinius Buccone from Valerius Maximus' account of his wife Afrania.

[19] Afrania is described as a reckless woman who used to speak personally before the magistrate in her own defence, not because she did not have lawyers who could defend her, but because of her strong and bold character. She was therefore labelled a troublemaker in court and soon became a famous example of female slander, so much so that her name was used to refer to a crime committed by women of easy virtue. She lived until the consulate of Gaius Caesar and Publius Servilius and, according to Valerius Maximus, it is more important to remember the moment of her death than the moment of her birth.

moriae tradendum est.[20]

"Caia Afrania, wife of Senator Licinius Buccone, naturally inclined to quarrelling, always spoke personally in her own favour before the magistrate, not because she lacked lawyers, but because she was abundantly impudent. And so, by continually harassing the courts with her barking, unusual in the forum, she became a well-known example of female slander, to the point that the name C. Afrania is used to indicate the crime of women with brazen customs. She lived until the second consulate of Gaius Caesar and Publius Servilius: indeed, the memory of such a monster should be handed down from the moment of her death rather than that of her birth".

The reason why Valerius Maximus lashes out so violently against women who speak in public, in the forum and in court, is that he clearly perceives a danger in women attempting to assume a role that is typically reserved for male Roman citizens: that of defence counsel in court and public speaker[21]. Having the opportunity to defend a friend who cannot defend his own interests in a trial is a very important factor in the social life of Roman citizens, as it demonstrates that they are both supporters and supported members of the network of friendships without which social and political success is unattainable. Afrania, clearly, with her *inverecondia*, proves to be a danger to that model, as she attempts to enter a world that does not belong to her and that should absolutely not belong to her. For this reason, her words are defined as "barking" that annoys the magistrate, her attitude not at all in line with the commonly accepted model of female behaviour.

The other description belongs to Ulpian and, compared to the previous one, seems to be much more lenient:

D. 3.1.1.5 (Ulp. 6 *ad ed.)*: «*Secundo loco edictum proponitur in eos, qui pro aliis ne postulent: in quo edicto excepit praetor sexum et casum, item notavit personas in turpitudine notabiles. sexum: dum feminas prohibet pro aliis postulare. Et ratio prohibendi, ne contra pudicitiam sexui congruentem alienis causis se immisceant, ne virili bus officiis fungantur mulieres: origo vero introduca est a Carfania improbissima femina, quae inverecunde postulans et magistratum inquietans causam dedit edicto*».

"Secondly, the edict is directed at those who are prohibited from petitioning for judgement in the interests of others: in this edict, the magistrate has established exclusion on the basis of gender and physical disability, and has also indicated those who may be punished for disgraceful conduct. With regard to gender, it prohibits women

[20] Valerius Maximus, *Facta*, cit. 8, 3, 2. About this Valeria Viparelli, 'Donne avvocato a Roma (Val. Max. 8.3)', in *Fides, humanitas, ius. Studi in onore di L. Labruna*, vol. 8 (2007) 5843ff.

[21] Luigi Labruna, 'Un editto per Carfania?' in *Adminicula*³, (1995) 167ff.

from petitioning for judgement in the interests of others. The reason for the prohibition is that women should not interfere in the disputes of others in contrast to the modesty proper to their sex and should not exercise masculine functions. Indeed, the origin of the prohibition was given by Carfania, a very impudent woman who, by petitioning for judgement in a brazen manner and annoying the magistrate, gave rise to the edict".

Ulpian's text refers to a praetorian edict that decreed the impossibility of *postulare pro aliis* for certain categories of people, including women, who cannot defend anyone other than themselves in court.

The text explains the reasons behind this decree: "*ne contra pudicitiam sexui congruentem alienis causis se immisceant, ne virilibus officiis fungantur mulieres*".

It seems that the reasons for this decree can be found in the prohibition on women interfering in other people's cases, thereby failing to observe the modesty required of their sex, and, on the other hand, in the prohibition on women performing tasks reserved for men. Immediately afterwards, Ulpian adds the episode that gave rise to the decree: "*origo vero introducta est a Carfania improbissima femina, quae inverecunde postulans et magistratum inquietans causam dedit edicto"*.

The jurist, therefore, refers to a female character whose figure is outlined with great rhetorical care through the use of three terms, "*improbissima", "inverecunda"* and "*inquietans"*, which share the same negative prefix in- and belong to the sexual sphere.

The adjective *improbus*, in fact, despite having a specific legal meaning, is often used to describe someone who is "*impudicus, audax, saevus, speciatim in re amatoria*".

It is clear, therefore, that the reason for the prohibition lies in preventing women, who are expected to be modest as befits their gender, from performing tasks that are strictly masculine.

The jurist, on the other hand, does not take into consideration the emotional aspects of Afrania's character, but focuses solely on the prohibition whereby women cannot and must not perform tasks that are strictly masculine, and must remain outside public life. And so, poor Afrania becomes the bearer of the blame for the introduction of the prohibition on women of *postulare pro aliis*.

Another late classical jurist, Paul, also explicitly contrasts those who are unable to exercise the functions of a judge due to their natural condition with those who are unable to do so. I am referring to the deaf, the mute, and also the mentally ill or the prepubescent, who are temporarily or permanently lacking in judgement; above all, women, who are excluded from this office only because of custom, and not because they lack judgement[22].

[22] D. 5.1.12.2: «*Non autem omnes iudices dari possunt ab his qui iudicis dandi ius habent: quidam enim lege impediuntur*

Gaius seems to be more favourable to women[23]. Regarding the need to protect women, he writes that, unlike minors, this cannot be based on *ratio naturalis*. Gaius does not consider the argument of frivolity, which is normally put forward, to be valid because it does not correspond to reality: women resolve their own affairs and sometimes the praetor must compel their guardian, if he refuses, to give authorisation (which is always necessary from a legal point of view) for the transaction that the woman wishes to conclude, even against his will.

Regarding the difficulty of managing rebellious women, a difficulty that translates into outright schizophrenia, we note that women of a certain calibre are not always treated so badly by authors: Valerius Maximus, in fact, while malevolent towards Afrania, attests only to a masculine spirit in Mesia[24]. The same author then describes Hortensia, the daughter of the famous orator Hortensius, as a woman who, through a brilliant speech worthy of her father, manages to convince the triumvirs Antony, Octavian and Lepidus not to tax the wives of their political opponents[25]. These two cases, however, appear to be mere exceptions: Mesia's personal problem, the taxation of noble women; in the case of Hortensia, her brilliant speech is not attributed entirely to her own ability, but there is a reference to her father, who is considered a co-author of the speech itself.

Afrania, on the other hand, does not speak only for herself, and her behaviour is not characterised by the exceptional nature of a specific situation. This is what determines her bad reputation, what has made her remembered negatively.

Ultimately, Afrania represents the emblem of opposition to a system that assigns a secondary role to women, believing that they should live behind the scenes of public life, in the shadow of men. Her bad reputation stems from this behaviour, and other women are, just like her, subject to the prohibition that effectively limits their ability to act. Afrania is often cited in reference to the prohibition on women holding the office of solicitor, but this reference is reductive. In fact, we have said that *postulare pro aliis* is first and foremost a noble officium towards friends, and therefore a duty that constitutes the network of social relationships that enable a citizen to enjoy good esteem and have

ne iudices sint, quidam natura, quidam moribus. Natura, ut surdus mutus: et perpetuo furiosus et impubes, quia iudicio carent. Lege impeditur, qui senatus motus est. Moribus feminae et servi, non quia non habent iudicium, sed quia receptum est, ut civili bus officiis non fungantur».

[23] Gai. 1. 190: « *Nam quae vulgo creditur, quia levitate animi plerumque decipiuntur et aequum erat eas tutorum auctoritate regi, magis speciosa videtur quam vera* ».

[24] Valerius Maximus, *Facta*, cit., 8.3.

[25] *Ibidem*, 8, 3; Quintiliano, *De institutione oratoria libri* XII, 1.1.6.

a certain influence in the society in which they live. But in this context, there is no room for a role to be attributed to women, who are kept away from the rest of society.

Therefore, in my opinion, the problem of women's inferior status should not be attributed primarily to cultural factors, but rather to political and legal choices, which only subsequently became a cultural phenomenon, albeit not always consistent or continuous. We must also take into account how much this phenomenon has been reinforced by Christian doctrine, which in turn is difficult to say where it drew some of its dictates on the role of women and their subordination, if not from the cultural substratum then present in the Romanised territories.

Now, if we look at modern societies, especially Italian society, we see how it is grappling with the opposite problem: it is trying to eradicate a cultural phenomenon through political and regulatory choices. The legal mechanisms used by the Romans are now being reversed.

If we refer back to the sociological studies of Talcott Parsons[26] and Margaret Mead[27], it is perhaps possible to identify the origins of certain paradigms in the Roman world, to the detriment of a neutral condition. Parsons highlights how, modern society has greatly changed the dynamics between people, replacing bonds that were previously based on the family with bonds that the individual establishes: a society of individuals rather than families. However, in this evolution, balance is still maintained by the family unit, albeit reduced in scope to "wife-husband, mother-father". In this sense, roles guarantee the stability that allows society to go through changes without falling into imbalance, as long as women are assured a position of reproduction and domestic care and fathers of sustenance and guidance, roles that children, both male and female, internalise and can reproduce. In this sense, women would not find themselves in a position of inferiority, but in the only position possible for them.

In other words, the distinction between male and female roles and the associated functions would not only be indispensable to social balance, but would be the natural state of affairs.

On the other hand, through her observation of populations far removed from civilised experiences, Mead learned of organisations in which roles are spontaneously distributed differently from the dichotomy we are familiar with, highlighting how, without external conditioning (political, economic and legal), it is possible to develop different social models in which there is no preordained division of roles corresponding to ours. The difference between male and female, while clearly recognised in terms of

[26] Talcott Parsons, *Social Systems and the Evolution of Action Theory* (Free Press,1977).

[27] Margaret Mead, *Male and Female: A Study of the Sexes in a Changing World* (W. Morrow, 1949).

sexual reproduction, does not translate into the assignment of roles that imply a hierarchy and, consequently, inferiority for women.

At this point, therefore, it seems possible to observe that while the Parsonian model is steeped in the traditional culture that was imposed on Roman society by political and legal superstructures, Maes' observations demonstrate that the distinction between roles and the hierarchy between them are phenomena that have no natural roots but represent the cultural precipitate of choices that are clearly political.