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Translating Law for Women?

The *Institutes du droit civil pour les dames* in Eighteenth-Century Helmstedt

Abstract

Institutes du droit civil pour les dames is the title of a unique piece of work printed in 1751 in the small town of Helmstedt. Its author, a little known jurist, Johann Heinrich Kratzenstein (1726–1805), close to the Pietistic circles, composed an abridged French translation in 48 pages of Justinian's *Institutes*, one of the most widespread texts in European legal history. It was written as a birthday gift for a noblewoman, Regina Charlotte Topp, wife of an influential law professor of the University of Helmstedt. This short essay examines this rare attempt to translate and adapt Latin juridical texts for a female audience. What legal topics did Kratzenstein choose? What kind of legal knowledge did he consider »suitable« for the »other«, the female readership? What kind of reader did he »construct«, and what motivated him to engage in such a singular project? How was his work received? Could jurisprudence find a place among the new »popular« scientific and philosophical genres, promoted in certain enlightened circles, especially on the bookshelves of the so-called *Frauenzimmer-Bibliotheken* (the specially designated ladies' libraries)?

To answer these questions about Kratzenstein's translation, I discuss a topic that has so far been neglected by mainstream legal history, which is traditionally centered on legal scholarship: the vivid early modern debate on women's education (the so-called *querelle des femmes*) and its impact on the field of jurisprudence in the eighteenth century.



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The *Institutes du droit civil pour les dames* in Eighteenth-Century Helmstedt*

I. Introduction

»It is unforgivable not to enable the *beautiful sex* to study certain sciences rendered in a language that *he* understands. For it is clear that this study will be of great advantage to women, preventing them from harming themselves frequently due to lack of better instruction. I mean, for example, the study of Law, or at least of some parts of jurisprudence. None has tried it so far. I hope to succeed in this attempt. I will mention here only the legal topics that a woman must necessarily know«.

With these words, Johann Heinrich Kratzenstein (1726–1805), a fairly unknown jurist, opened his *Institutes du droit civil pour les dames*, printed in Helmstedt in 1751, in a small *octavo* format.¹ Presented as an abridged translation in 48 pages of Justinian's *Institutes*, it is certainly a unique piece, or at least of an extremely rare kind. Kratzenstein wrote it as a birthday gift for a woman of aristocratic descent, Regina Charlotte Topp (1714–1786).² She was the daughter of Johannes Justus von Vieth, a member of the Prussian royal war

council (*Preussischer Kriegs- und Domänenrath*) and the wife of a law professor at the University of Helmstedt, Johann Konrad Sigismund Topp (1692–1757), who was Kratzenstein's patron.³

A study of Kratzenstein's singular work would not *prima facie* suit a special issue dedicated to *law and translation*. This essay does not deal with the usual »transfer« of legal institutions, works or authors from a source legal system to a foreign one. Nor are the *Institutes du droit civil pour les dames* the usual »translation« of a text in the modern sense, even if the author presented it to the readership as a sort of translation – putting law in a language that »the beautiful sex« understands. Like most translators and authors in the early modern *republic of letters*, Kratzenstein used Justinian's text as a guide, an authoritative repertoire for the selection of the topics he needed, not as a sacred text he felt obliged to follow or translate word for word. Early modern readers were familiar neither with the »hierarchies that have subordinated translation to a concept of originality«⁴ nor with the idea of authorship as individual ownership protected by copyright rules. To write in jurisprudence, as well as in theology, sciences or letters,

* I thank Ben Kamis and Bartolomé Clavero for the careful reading and suggestions. This contribution was developed within the HICOES research project, directed by Marta Lorente (Spanish Ministry of Economy, nr. DER2014-56291-C3-1-P).

1 »Il est impardonnable de ne pas faciliter au beau sexe l'étude de certaines sciences en les lui donnant dans une langue qu'il entend, puis qu'il est certain, que cette étude lui seroit évidemment d'un très grand avantage et qu'il eviteroit souvent par là de se faire tort à soi même faute d'être mieux instruit. Je veux dire par exemple l'étude du Droit ou au moins de quelques parties de la Jurisprudence. On ne s'est pas encore avisé d'en faire l'essai, voions si j'y reussirai. Je n'ai qu'à alleguer ici les points de Droit, qu'une femme doit necessaire-

ment savoir«. KRATZENSTEIN (1751) 9. I am transcribing the accents and orthography of the original, which do not correspond to modern French orthography. Kratzenstein used *masculine* forms when referring to the female reader, according to a common language use in the eighteenth century. For the sake of clarity, I have used also neutral and feminine forms in the English translations throughout this essay, indicating the original French passages in the footnotes.

2 She was born on 10 May 1714, according to the information found in the funeral molds for her tomb (see the file NLA WO 9 Slg. Nr. 6 in the regional archive *Niedersächsisches Landesarchiv Wolfenbüttel*). She probably met Kratzenstein after moving to Helmstedt in 1748, when her husband was appointed to a chair at the

law faculty. They had been married since 1731, and six of their children were still alive when Topp died in 1757. From 1760 to 1770 she lived in her father's house in Golßen in Lower Lusatia, then in Braunschweig and, finally, from 1773 on in Wolfenbüttel, where she died on 8 July 1786, ZIMMERMANN (1894). Her daughter Hedwig Charlotte married Johann Benedict Carpzov IV, professor in Helmstedt and Leipzig, descendent of the famous theologian of the same name. AHRENS (2004) 45.

3 Kratzenstein refers to Topp as his *Gönner* (patron or benefactor), for instance in the *Trostschreiben*, which was dedicated to Regina Topp after her husband's death. KRATZENSTEIN (1757).

4 CHAMBERLAIN (1988) 325.

was to write within a tradition and always included an important »reproductive« element. The literary value relied on clarity, style or on a new arrangement of someone else's materials. Authors and compilers presented the potential »novelty« of their works as the rescue of pre-existing arguments and *loci* that had been forgotten and were already available in the treasure trove of the juridical tradition.⁵

Yet I am dealing with *translation* as a complex process of negotiation between two different worlds of experience, as Homi Bhabha defined it.⁶ In this case, the negotiation occurs between the world of the learned jurists and that of potential female readers, who at that time did not have access to formal higher education. Thus, rather than an inquiry into the work's scientific value or the translator's fidelity to the original source-text of Justinian, I will focus on the complex process of *cultural exchange* that is always present in any act of translation. As with any cultural exchange, it depends on how the *other* is conceived in a certain context.⁷

Why did Kratzenstein, as a *mediator* between these different worlds, select certain topics and a certain language to address his audience? What kind of legal knowledge did he consider »suitable« for the »other«, the female readership? What kind of reader did he »construct« and what motivated him to engage in such a singular project? How was his work received?

To answer these questions about Kratzenstein's »translation«, I discuss a topic that has been so far neglected by mainstream legal history, which is traditionally centered on the history of legal scholarship: the vivid early modern debate on women's education (the so-called *querelle des femmes*⁸) and its impact on the field of jurisprudence in the eighteenth century.

Could jurisprudence find a place among the »popular« scientific and philosophical genres promoted in certain enlightened circles? There was indeed an old tradition of »popular« and »pragmatic« legal pieces addressed to non-professional scholars,⁹ but could jurisprudence join the bookshelves of the so-called *Frauenzimmer-Bibliotheken* (the specially designated ladies' libraries)?¹⁰

The *Institutes du droit civil pour les dames* was one more reaction to the ongoing debate on the education of women. It was produced among manifold cultural and religious trends of the early German Enlightenment, such as Pietism or the philosophical ideas of Christian Thomasius (1655–1728) and Christian Wolff (1679–1754). Kratzenstein was impressed by the notoriety achieved by a few learned women of his time, such as the mathematician Maria Gaetana Agnesi (1718–1799), who held a position at the University of Bologna,¹¹ and Johanna Charlotte Ziegler (1725–1782), author of a philosophical book for women. He was well aware of the growing corpus of literature *by* and *for* women in the German territories.¹² Krat-

5 I have developed these ideas in BECK VARELA (2013) 64 ff.

6 For a discussion on the various metaphors of cultural translation, see FOLJANTY (2015).

7 FOLJANTY (2015).

8 There are several studies on the *querelle des femmes*, which by that time had become an academic subject and generated a considerable corpus of literature dedicated to discussing women's nature and role in society. See, among others, KELLY (1984); FIETZE (1996); MESSBARGER (2005); FRIZE (2013) 9–23.

9 Roderich Stintzing offered an overview of the so-called »popular« legal literature of early modernity, many of which were addressed to the so-called »pettifoggers« (*Rabulisten* in German, *râbulas* and *leguleyos* in the Spanish and Portuguese speaking world): STINTZING (1867). The peda-

gogical writings known as »*Modos de passar en derechos*« established a clear division between two different *paths* of legal training: an official one for law students who wanted to obtain the license (*licentia docendi*) and an abbreviated one for »practical« users of jurisprudence (such as practical lawyers, church and royal officers, clergymen etc.). See ALONSO (1997). I analyze this genre in BECK VARELA (2013) 262 ff.

10 The popular genres dedicated to the female readership usually addressed both women and the *amateurs*, those who were not professional scholars (*Gelehrte*). The title of the work of August Batsch (1761–1802) illustrates clearly this neat distinction, so typical of the Enlightenment culture, between scholarly production and the unprofessional, popular field of knowledge: *Botanik für Frauenzimmer*

und Pflanzenliebhaber, welche keine Gelehrten sind (»Botany for Ladies and Plant Lovers Who Are not Professional Scholars«).

11 Together with the physicist Laura Bassi (1711–1718), Maria Gaetana Agnesi was one of the first women to hold a university position. See CERANSKI (2000); CAVAZZA (1997).

12 Ziegler's *Grundriß einer Weltweisheit für das Frauenzimmer* (*Towards Universal Wisdom for Ladies*), published in 1751 and reprinted in 1767, was one of the most important attempts of »popularizing« philosophy for women. See SCHNEIDER (1991) 80 f.; POLOCH (2011) 139. On the *Frauenzimmer-Bibliotheken* see the seminal study of NASSE (1976) and the several catalogs of notorious women and new literary genres for women examined by SCHMIDT-KOHLBERG (2014). For a comparison with the

zenstein wished to contribute to it with this single attempt of *translating law for women*.

II. The Translator: Johann Heinrich Kratzenstein's Life and Works between Law and Pedagogy

New school systems, university reforms and pedagogical theories were topics frequently discussed by many »Enlightenment families« during the eighteenth century. Pedagogical concerns shaped the very definition of the *Aufklärung* (»Enlightenment«) as a new age of autonomy and emancipation.¹³

Johann Heinrich Kratzenstein's life had developed, since his youth, in a pedagogical environment between two lively peripheral centers of the Holy Roman Empire. He was born on 6 July 1726 in Wernigerode, as the son of Thomas Andreas Kratzenstein (1684–1765), a schoolteacher, and Maria Elisabeth Manneßen (1690–1760), both of high social status. He died on 20 November 1805 in Helmstedt.¹⁴

Descending from a family of scholars, Thomas Andreas Kratzenstein was not only a teacher and member of the city's administration, later becoming a member of the city council and mayor, but he also published biblical works for children.¹⁵ Johann Heinrich attended the Latin school,¹⁶ as had his elder brother, Christian Gottlieb (1723–1795), who achieved distinction as a natural scientist and inventor after having studied at the University of Halle. The two brothers seem to have maintained a close relationship throughout their lives.¹⁷ Johann Heinrich published his first work in 1748 under a pseudonym, Zweysporn,¹⁸ defending Christian Gottlieb's theories against his opponents and in public disputes.¹⁹ Speaking of the two brothers Kratzenstein, the abbey Denina, in *La Prusse littéraire*, remarked that from the small town of Wernigerode came »an incredible amount of wise men«.²⁰

The noble family of Stolberg-Wernigerode played a significant role in the famed erudition of the city. Thanks to Count Christian Ernst von Stolberg-Wernigerode (1691–1771), who ruled in the city from 1710 to 1771, the religious movement known as *Pietism* persisted longer in Werni-

Italian context, see Francesco Algarotti's *Il Newtonianismo per le dame* (1737), a popular explication of Newton's optics, translated into German in 1745, and Elena Barbapiccola's abridged translation of Descartes' philosophy, *I Principi della filosofia di Renato Descartes tradotti dal francese col confronto del latino ...*, published in Turin in 1722. For Barbapiccola's reaction to the criticism on her attempt of »popularizing« Descartes' philosophy: MESSBAERGER / FINDLEN (2005) 56–58. On women and science overall, see: FINDLEN (1995); ROGERS (2003). According to Ceranski, besides basic abridgements there were also demanding works of science directed at women: CERANSKI (2000) 293.

13 For the most recent discussion on Pocock's thesis on *local Enlightenment*, see: ISRAEL (2016). On the birth of pedagogy in the eighteenth century, see: KERSTING (1992) and MAYER (2006b).

14 There is scarce information about him in the various dictionaries and protobibliographies of the time: HAMBERGER-MEUSEL (1797), 254; ID. (1810), DENINA (1791) 131–132,

WEIDLICH (1781) 431, KESSLIN (1856) 91. There is some confusion about the dates of birth and decease. Here I adopt those proposed by AHRENS (2004) 134. See also SPLINTER (2007) and KÜHNELT (1979). He married Wilhelmine Lademann, the only daughter of a high justice officer of the royal council of Prussia. An homage written by Andreas Heinrich Kratzenstein dates their marriage to 1777: *Viro illustri, consultiissimo ... S. I. 1777* [note of the University of Halle catalog, shelfmark 78 M 493, Kapsel (8): *Hochzeitglückwunsch auf Johann Heinrich Kratzenstein, Jurist, 15. April 1777*]. They had one son, Carl, born in 1793, SCHRADER (1954).

15 Thomas Andreas Kratzenstein, *Biblisches Spruchbuch der vornehmsten Sprüche auf alle Sonn- und Festtage durchs gantze Jahr ...* second enlarged edition, Wernigerode 1738, quoted by REENTS, MELCHIOR (2011) 173.

16 KESSLIN (1856) 91.

17 See the most recent survey on his life: SPLINTER (2007) 49.

18 HOLZMANN (1906) 320.

19 For details, see SPLINTER (2007) 49, 94–98. Apparently, Johann Heinrich had written a defense of his brother

against Georg Erhard Hamberger (1697–1755), and Johann Friedrich Kessel (?–1754) answered with another piece published in 1751. J. H. Kratzenstein reacted with the publication of *Verteidigung des Hrn. Hofr. Hambergers gegen den Jenaischen Land-Med. J. F. Kessel in puncto plagii* (1752), which is quoted in Haller's correspondence. BOSCHUNG et al. (*Hallers Repertorium*, 2002, Nr. 573, 287).

20 DENINA (1791) 131–132.

gerode than it did elsewhere.²¹ In 1762, Johann Heinrich published a greeting poem²² in celebration of the wedding anniversary of Count Christian Ernst and Countess Sophie Charlotte (1695–1762), who also belonged to a pietistic family, the Leiningen-Westerburg.²³

Pietism was a religious movement of social reform, committed to the spread of Christian values in the entire society, such as the salvation of the soul and renunciation of the »worldly life«. It had a strong pedagogical mission and was concerned with women's education.²⁴ As the works of one of its main exponents show, the Halle professor August Hermann Francke (1663–1727), the Pietistic project encompassed not only pedagogical theories but also the creation of a complete system of schooling, echoing the station-oriented society of the time. The *Waisenhäuser* (orphanages, or boarding schools for the poor, such as the prototypical one founded in Halle in 1695, which was widely known also for its important printing office) were one of the central pieces in Francke's schooling system.²⁵

However, Pietism was also related to an increasingly conservative view about women's education,²⁶ as it advocated a more traditional role of women in the household. Christian Thomasius held a different position, promoting feminine participation in public life in the context of his philosophy based on tolerance, worldly wisdom (*Weltklugheit*) and independence from the Church.²⁷ Thomasius's support of women's education and of the diffusion of philosophical and scientific knowledge contributed to the growth of »popular« genres in the German literary panorama, including those directed at women. The work

published in Leipzig in 1720 under the pseudonym of *Clisander*, entitled *Die Einleitung zu der Welt-Weisheit oder Philosophie eines galanten Frauenzimmers* (Introduction to the Universal Wisdom or Philosophy of a Gallant Lady), was immediately attributed to the school of Thomasius.²⁸

A proposal analogous to Clisander's was Johanna Charlotte Ziegler's *Grundriß*, published in 1751.²⁹ The *Zieglerin*, who was later known as the *Unzerin* after her husband's name, was influenced by Siegmund Jacob Baumgarten (1706–1757), one of the leading figures of Pietism in the theological school of the University of Halle. Baumgarten had attempted to conciliate pietistic principles with Christian Wolff's philosophy in spite of strong disputes between Wolff and the pietists.³⁰ Wolff himself had also contemplated writing a philosophical book for ladies,³¹ and his ideas had inspired *La Belle Wolfienne*, a romance on his philosophy in six volumes, written by Jean Henri Samuel Formey between 1741 and 1753 (translated partially into German in 1741–42 as *Die schöne Wolfianerin*).

Ziegler's *Grundriß* was one of the direct influences of Kratzenstein's *Institutes du droit civil pour les dames*, as he himself declared³² and as a reviewer in the *Göttingische Zeitungen von gelehrten Sachen* noted.³³ Kratzenstein and Johanna Ziegler probably met at the gatherings of the *Deutsche Gesellschaft*, a society for the study of German language and literature founded in Helmstedt in 1745.³⁴ The *Zieglerin* belonged to this society as an honorary member.³⁵

Kratzenstein became familiar with Wolff's philosophy in the course of his legal studies. Wolff's natural law theories influenced many Helmstedt

21 BRECHT (1995) 347. See also REENTS, MELCHIOR (2011) 173. For a recent survey on the impact of Pietismus in the principedom of Wolfenbüttel, with various references to Helmstedt and its university, see JAKUBOWSKI-TIESSEN (2015). On their daughter, the erudite Countess Ferdinande Adriane von Stolberg-Wernigerode (1717–1787), an active supporter of Bible reading circles in which women were encouraged to participate, see WEIGELT (1998) 128.

22 KRATZENSTEIN (1762).

23 BRECHT (1995) 346–347.

24 The »familia pietistica« also promoted overseas missions and received Prot-

estant emigrants from southern territories. BRECHT (1995) 323.

25 Later on, he founded the *Paedagogium Regium* and the *Gymnaecium* for the bourgeois education of the nobility's boys and girls, respectively. Fénelon's treatise on the education of girls, whose translation into German Francke had ordered in 1698, MAYER (2006a) 736, inspired the *Gymnaecium* and the foundation of the famous girls' school of St Cyr, JACOBI (2015).

26 BRECHT (1995) 319–357; on 337 for the ironic criticism of Louise Adélgunde Gottsched of the »Pietistery«.

27 MAYER (2006) 735.

28 THOMASIVS (1687), (1691). In his later years, Thomasius assumed a more conservative view on women's role in society: SCHNEIDER (1991) 61 f.

29 See note 12.

30 On Baumgarten: BRECHT (1995) 331. The pietists' attacks on Christian Wolff obliged him to leave Halle and settle in Marburg.

31 NEUMANN (2012); SCHNEIDER (1991) 66–67.

32 KRATZENSTEIN (1751) 8.

33 See III, B, *infra*.

34 BRUNING (2012) 921.

35 HARDING (2014) 142.

professors,³⁶ such as Topp, who had published an introduction to the law, inspired by his method. In 1781, Kratzenstein prepared the third enlarged edition of Topp's work.³⁷

Kratzenstein and Topp probably met around 1748, when the latter decided to accept a professorship in Helmstedt, renouncing his career at the High Court in Celle.³⁸ By the mid-eighteenth century, the University of Helmstedt, once known as the »ornament of the land«,³⁹ due to prominent figures such as Hermann Conring and Georg Calixt, was a decadent provincial center, in spite of the efforts of Duke Carl to revive it since 1745.⁴⁰ The city remained, however, closely connected to new scientific and philosophical ideas thanks to the flow of periodical publications.⁴¹ Topp's academic life in Helmstedt did not run smoothly. Although seemingly appreciated for his didactic skills, the public quarrel with his colleague Johann Georg Pertsch (1694–1754) finally led to his withdrawal from the *Spruchkollegium* (advisory board) in 1751.⁴² At that time, Topp started to direct the newly founded orphanage (*Waisenhaus*)⁴³ and later supervised the *Convictorium* as well.⁴⁴

The *Waisenhaus*, one of the cornerstones of the pietistic project, was another space of close collaboration between Topp and Kratzenstein.⁴⁵ After

Topp's sudden death by stroke in 1757, Kratzenstein seems to have devoted much personal and financial effort to improving it.⁴⁶ He left an enduring impression on at least one of his former pupils, Johann Karl Daniel Curio (1754–1815), who had grown as an orphan in Helmstedt and later became one of the main educational reformers of the pedagogical society in Hamburg.⁴⁷

Topp's death possibly influenced the choice of the theme of Kratzenstein's doctoral dissertation. He wrote on the particular rights of the widows⁴⁸ and showed once again his interest in the role of *mediator* between women and the world of law. It was a topic of great interest, due to the recent legislative changes introduced by the *Constitution* of 1754⁴⁹ and to the permanent concern about the financial situation of widows.⁵⁰ He was not the only one in Helmstedt interested in writing on the legal situation of women, and the Topp family was especially concerned about it after a lawsuit regarding the rights of Topp's eldest daughter, who was born out of his first marriage. Mencke, Topp⁵¹ as well as his son Georg August wrote on the rights of women.⁵²

On April 7, 1761, Kratzenstein was appointed adjunct professor⁵³ and apparently did not wish to pursue a tenured professorship.⁵⁴ He combined

36 BEHSE (1920).

37 TOPP, KRATZENSTEIN (1781).

38 On Topp's life: LENT (2006); AHRENS (2004) 235; RÜCKERT (2003) 429; GUNKEL (1911) 70, 75; BEHSE (1920) 76 f.; ZIMMERMANN (1894) 449–451; WERNSDORF (1758).

39 MIESERMANN (2015) 254.

40 By then, Helmstedt had reached its lowest rate of enrolment for new students, counting only 32 in 1770. BRUNING (2012) 915. See also SCHIKORA (1973) 64 f., BEHSE (1920). On the significance of its law faculty: STOLLEIS (2011).

41 BRUNING (2012) 923–924.

42 MÜLLER (1998), 400; BEHSE (1920); SCHIKORA (1973) 66; ZIMMERMANN (1894). WERNSDORF (1758) mentions that among his unpublished works there was a draft dedicated to *Gedanken zur Erziehung der Kinder* (»Thoughts on Rearing Children«) and the fact that he educated both his sons and daughters. On Pertsch, see EISENHART (1887).

43 The *Waisenhaus* in Helmstedt was founded in 1752, according to

SCHAPER (1980) 12–14; MEUMANN (2003); MEUMANN (1995) 260. On the strict discipline in the *Waisenbäuser* see MEUMANN (1995) 284–292.

44 ZIMMERMANN (1894).

45 See, for example, the report prepared by Topp and Kratzenstein on the enduring financial problems of the *Waisenhaus* in Helmstedt and other documents held in the file NLA WO 2 Alt Nr. 14750.

46 SCHAPER (1980) 12.

47 Curio wrote a *Festschrift* for Kratzenstein: CURIO (1772a). He played a fundamental role as one of the founders of the *Gesellschaft der Freunde des vaterländischen Schul- und Erziehungswesens* (»Society of the Friends of the Homeland School System«) in Hamburg: NABEL (1957) 441. The pedagogical movements in Hamburg were especially attentive to female education, MAYER (2006a) 738.

48 The dissertation, developed under the presidency of Johann Friedrich Eisenhart, was published in 1760. See the dedication pamphlet: VV.AA. (1760).

49 The constitution of 1754 had enhanced succession rights for the surviving spouse in the Duchy of Brunswick and changed the old rules about the *ab intestate* succession (*Constitutio novissima*, 30 Dezemb. 1754 die Erbfolge der Ehegatten betreffend ..., in: *Braunschweigische Anzeiger*, vol. 11, anno 1755, 9tes Stück. Mittwochs, den 29. Januarii, 185–191).

50 On the provisions and strategies regarding the financial situation of the widows of university professors, see WUNDER (2009), especially 249–254.

51 See the list of his works in BEHSE (1920) 77 and TOPP (c. 1755).

52 See MENCKE (1752). Georg August Topp wrote a short text dedicated to his father as a birthday gift containing a few critical paragraphs on Justinian's texts regarding the widows: TOPP (c. 1750), and a dissertation on the paternal usufruct in 1756, dedicated to his grandfather, J. J. von Vieth.

53 AHRENS (2004) 186.

54 BEHSE (1920) 146.

his efforts as director of the *Waisenhaus* with his duties as a lawyer and as *syndicus* of the prestigious St. Ludgerus cloister.⁵⁵ Later he also served as provost of the cloister in St Marienberg⁵⁶ and was awarded the title of *Hofrath*, probably around 1772.⁵⁷

Concern for the situation of those in need of guardianship and protection of some kind, such as orphans and widows, marked his life and works. The *Institutes du droit civil pour les dames* is yet another testimony to his care for those he considered vulnerable in some way. Its uniqueness in the literary landscape drew the attention of its readers.

III. The *Institutes du droit civil pour les dames* and Its Readers

A. *The Institutes du droit civil pour les dames and the Female Readers: Beauty and Utility*

»It is not necessary to explain here all the contracts in detail. These subtleties, which are not useful for the beautiful sex, will embarrass [him] in vain.«⁵⁸

After a few introductory pages, Kratzenstein divided his brief work into six chapters: *I – Des Droits en general* (On Laws in General); *II – De l'état des hommes et de l'effet des divers ages* (On the State of Men and the Effects of the Various Ages); *III – Des*

manières d'acquérir la propriété des biens (On the Ways to Acquire the Property of Goods); *IV – De l'aquisition de l'hérédité et principalement des testaments* (On the Acquisition of the Inheritance and Especially on the Testaments); *V – Des successions ab intestate* (On *ab intestate* Successions); and finally *VI – Des contracts en general et principalement de la fideiussion des femmes* (On Contracts in General with Special Attention to Female Surety Contracts).⁵⁹

In spite of its wide-ranging chapter titles, the book was conceived neither as a complete overview of all subjects mentioned nor of all topics that might directly interest the female audience. He consciously left aside, for example, dowries and the impediments of marriage, postponing them to a future – and never completed – translation of the Digest.⁶⁰ Kratzenstein tried to catch the attention of his potential female audience with a few rhetorical artifices, which were quite common to the new works of *Damenphilosophie*⁶¹ but not among legal books. For example, he dedicated it to a woman,⁶² adopted a colloquial style and made constant appeals to *beauty* and *utility*. He was trying to present jurisprudence as »pleasant« and »useful« wisdom. Moreover, he chose the French language, which was more accessible to most educated women of the upper social ranks⁶³ and possibly in expectation of some distribution for his small piece.

His allusions to »*le beau sexe*« (»the fair sex«),⁶⁴ »*Vôtre sexe enchanteur*« (»Your beguiling sex«),⁶⁵ or »*mes aimables Lectrices*« (»my adorable female read-

55 See Mencke's dedicatory words in Kratzenstein's dissertation, praising him as a »celebrated lawyer« (*advocatus celeberrimus*) and for his labors as provost of St. Ludgerus. Idem EISENHART (1760).

56 He was the provost of St Marienberg from 1773 until 1805, according to Müller (1998) 303. Kratzenstein lived at Papenberg 14, the later *Pastorhaus*, which belonged to the cloister St Ludgerus. On the importance of this monastery, whose *syndicus* was nominated by the *Herzog* (Duke), see BRUNING (2012) 906.

57 This is what indicates the title of an homage written by his pupil CURIO (1772b).

58 »Il n'est pas nécessaire d'expliquer ici spécialement tous les Contracts.

Ces subtilités, qui ne sont pas de l'usage du beau sexe, l'embarrasseroient inutilement.« KRATZENSTEIN (1751) 44.

59 KRATZENSTEIN (1751) 7–14; 14–19; 21–28; 28–39; 40–44; 44–48, respectively.

60 KRATZENSTEIN (1751) 48.

61 SCHNEIDER (1991) 55.

62 Kratzenstein mentions the rarity of dedicating legal books to women in his prologue as well. He addressed Lady Topp as *Madame la Conseillère*, after the title of her husband (*Hofrath*, i. e., court counsellor). On the role of professors' wives for the legitimation of their husbands' social position: HARDING (2014), WUNDER (2009).

63 On the habit of hiring a »Französin« (a French governess) and on the pre-

sence of one of them in Helmstedt in the 1750s, to teach the children of the university professors: HARDING (2014) 145.

64 KRATZENSTEIN (1751) 14, 15, 31, 44.

65 »Je ne saurois que m'estimer heureux, si réussissant dans cette entreprise je puis mériter le nom d'Auteur par un ouvrage, où je ne me suis proposé, que de servir Vôtre sexe enchanteur« (»I can only consider myself happy if this endeavor earns me the title of Author with a work, which I devote to nothing but serving Your beguiling sex«). KRATZENSTEIN (1751) prologue.

ers»),⁶⁶ which might look naïve to the modern reader, were not, however, mere rhetorical devices. They were intended to ensure that such an uncommon object of study fitted what was socially appropriate for female learning.⁶⁷ The »beautiful sex«, explained Immanuel Kant in his *Der schöne Verstand des schönen Geschlechts* (*The Beautiful Reason of the Beautiful Sex*), in spite of its inherent intellectual qualities, should study exclusively »beautiful things« suited to female nature, not subjects that require a deeper understanding or an inquiry on transcendental matters.⁶⁸

This tension between the acknowledgement of inherent intellectual qualities of women and their social role is evident in Kratzenstein's pages as well, especially in the first two chapters where he expressed his opinions about some of the most sensitive questions of the *querelle des femmes*.⁶⁹

He criticized those who claimed that women did not belong to humankind, arguing that the Roman texts employed the Latin word *homo* indiscriminately for men and women, and the same applied for its German equivalent (*Mensch*).⁷⁰ Women were masterpieces (*chefs d'œuvre*) of nature

and should be placed among the *angels*.⁷¹ They have qualities such as ambition, wit (*esprit*) and penetration, which make them naturally suited for intellectual activities.⁷² Furthermore, he was openly referring to the exclusion of women from study in general⁷³ and was clearly in favor of women participating not only as active members of the *respublica litterarum* (such as Ziegler), but also as teaching staff at the universities (such as Agnesi), although he did not specify in what capacities.⁷⁴ He mentioned that the pope himself had supported Agnesi's nomination in Bologna, stating that the study of sciences would become much more »agreeable« if women were allowed to join the German universities as professors.⁷⁵ For the distinction between Roman, Canon and local laws he found a »feminine-friendly« analogy as well: the reception of Roman law in late-medieval German territories developed in a way similar to the successful French sartorial fashions women liked to follow in the eighteenth century.⁷⁶

Another crucial distinction in jurisprudence was the one between human, divine and natural law. The latter dictated that our actions must

66 KRATZENSTEIN (1751) 24–25.

67 On similar rhetorical artifices used in the scientific literature for women: CERANSKI (2000) 213.

68 »Das schöne Geschlecht hat eben so wohl Verstand als das männliche, nur es ist ein schöner Verstand, der unsrige soll ein tiefer Verstand sein, welches ein Ausdruck ist, der einerlei mit dem Erhabenen bedeutet ... Tiefes Nachsinnen und eine lange fortgesetzte Betrachtung sind edel aber schwer, und schicken sich nicht wohl für eine Person, bei der die ungezwungene Reize nichts anders als seine schöne Natur zeigen sollen.« (»The fair sex is possessed of as much reason as the masculine, but whereas it is a beautiful reason, ours is a deeper reason, which signifies identity with the sublime ... Deep reflection and long, protracted observation are noble but difficult, and they are not suited to a person whose effortless charms should show nothing but her beautiful nature.«) Kant (1764) 250–251. On the influence of Rousseau's pedagogical writings on Kant, see MAYER (2006b) 125.

69 See note nr. 8. 9.

70 KRATZENSTEIN (1751) 14–15.

71 »... je ne puis me résoudre à être assés impitoyable envers le beau sexe pour le soutenir ou même l'approuver, et j'aimerois mieux l'élever encore au dessus du reste des hommes et leur donner place entre les Anges et les hommes« (»I cannot resolve to be so pitiless towards the fairer sex to support or approve him, and I would prefer to raise him even above the rest of men and give him a place between angels and men«). KRATZENSTEIN (1751) 15.

72 KRATZENSTEIN (1751) 8.

73 »Jusqu'ici le beau sexe a été exclu de la republique des lettres et l'étude des beaux arts et des sciences n'a été le partage que des hommes« (»Until now the fair sex has been excluded from the domain of letters and the fine arts, and the sciences have been the province of men«). KRATZENSTEIN (1751) 7.

74 KRATZENSTEIN (1751) 8. It is important to stress that he was quoting two »real« women (Ziegler and Agnesi) instead of legendary, mythical women, which is how they appeared in the

old catalogs in Boccaccio's tradition. RANG (1998).

75 »Plut à Dieu que toutes les Universités d'Allemagne possédassent de tells Professeresses! Les sciences mêmes en deviendroient plus agréables.« (»May God will that all universities in Germany have such female professors! Even the sciences would be more agreeable«.) KRATZENSTEIN (1751) 9.

76 »C'est I. le Droit Romain qui est reçu partout en Allemagne et vaut aussi à moins qu'un Souverain n'ait donné en quelque cas une loi qui soit contraire à ce droit. Cette reception du Droit Romain a quelques ressemblances avec les modes, en ce que les Dames regardent celles qui viennent de France comme les meilleures et les adoptent comme telles« (»It is the Roman law that is respected throughout Germany and whose value is apparent in the fact that hardly a sovereign has passed a law against it. The reception of Roman law bears some resemblance to fashion in that women hold fashion trends coming from France to be the best and adopt them«.) KRATZENSTEIN (1751) 12 (italics from the original).

pursue the accomplishment of the appropriate social *status*,⁷⁷ correcting or refraining from the previously mentioned »inherent« intellectual capacities of women.

Besides »beauty«, the recourse to »utility« helped Kratzenstein to soften the rigor of jurisprudence. What could not be presented as pleasant, enjoyable and advantageous or seemed negative to women's legal condition was presented as useful, as a necessary tool for women to defend their interests and improve household management, especially in case they had to face some years of widowhood and the guardianship of their minor offspring.

It was clear that most of the basic topics that belonged in the basic education of every learned jurist, such as the several types of contracts, needed no explanation, since they were not »useful« for ladies. Those »subtleties«, he said, that are not »useful« for the »beautiful sex«, will embarrass him in vain.⁷⁸

The few »useful« and elementary notions comprehended the forms of guardianship (the figures of the *vulgaris* and *pupillaris* substitution), the duties regarding the administration of the goods of minors and its effects (such as the restitution *in integrum*), legacies and succession rights (the *lex Falcidia*, *Trebellianica* and some basic rules about the deduction of the inheritance) and the formal requirements of testaments.

Concerning contracts, he focused on those ones women were allowed to conclude (with con-

straints), such as donations and surety contracts (*fideiussio*). One of the exceptions to the general rule regarding donations evidenced, according to Kratzenstein, »women's prerogatives in law«. If the beneficiary of a donation was a woman, even if its sum was above 500 ducats, the law exempted the donor of declaring it before the judge.⁷⁹ Similarly, he insisted on the benefits of the *senatusconsultum Velleaeanum*, which prescribed the nullity of surety contracts (*fideiussio*) concluded by women, unless they wished to renounce it expressly. The jurist from Wernigerode presented it as a benefit created by the »Roman wisemen« to protect women from their own generous inclinations.⁸⁰

However, the general regime of donations encompassed further principles that were neither »beautiful« nor advantageous for women, such as restrictions concerning the goods of widows in case of remarriage. He announced that women might dislike it (*»qui ne sera peut être pas trop de leur goût«*).⁸¹ Indeed, if a widow remarried, she was to renounce the goods donated by her first husband. In addition, widows could not donate or legate to the second husband more than they had done for the children of the first marriage. Breaking this rule would nullify the donations. There were, though, a few »favorable« strategies, such as the possibility of legating to the children of the first marriage. According to Kratzenstein, this advice proves very clearly how important it is for the »beautiful sex« to have »some smattering of law« (*»quelques teintures du droit«*).⁸²

77 KRATZENSTEIN (1751) 11.

78 KRATZENSTEIN (1751) 44, cit.

79 »Nouvelle preuve des prerogatives des femmes dans le droit.« KRATZENSTEIN (1751) 24–25; 29.

80 They could renounce this benefit if they were informed about it in their mother tongue: »Comme les Femmes se laissent aisément gagner sur ce chapitre, les lois Romaines y ont pourvû par le benefice du Senatus-consulte Velléien. Ce Senatus-consulte portoit que les femmes ne pouvoient s'obliger pour qui que ce fût, et encore moins pour leur mari. Mais selon le Droit Canonique la fidejussion d'une femme est valable, quand elle renonce à ce benefice par serment, c'est à dire, que si en ayant été informée auparavant dans sa langue maternelle, elle affirme seulement de ne server point de ce benefice, »so wahr

ihr Gott helfe« und sein heiliges

Wort.« KRATZENSTEIN (1751) 47.

The *Senatusconsultum Velleaeanum* (Ulp. D. 16, 1, 2, 1), by which women were prohibited from incurring liability for the benefit of others (especially their husbands), as in the case of surety contracts, was modified by Justinian in the famous *Authentica si qua mulier*. See ZIMMERMANN (1996) 145–152. The SCV was explained in other popular works for women, such as the one published by Corvinus under the pseudonym *Amaranthes* in 1715, including diverse entries, from cooking recipes to the exemplary life of virtuous women of the past centuries and philosophical and legal concepts: »Vellejanischer Rathschluß. Ist eine denen Weibern in Rechten zugestandene Wohlthat, welche verordnet, daß eine Frau, so sich vor

einen andern verschrieben oder gut gesaget, nicht bezahlen darff, es sey dann, daß sie eine Kauff-Frau wäre, so ihre eigene Handlung oder ihres verstorbenen Mannes in ihrem Rahmen fortführe, oder auch, wann sie diesem Beneficio, das man ihr zuvorher erkläret, renunciert und ich dessen freywillig begeben.« (»The SCV is a good deed for women in law stating that a woman who has made a commitment to another need not pay unless she is a merchant, on her own account or continuing the business of her deceased husband, or she freely renounces this benefit after having had it explained to her«.)

AMARANTHES (1715) 2062.

81 KRATZENSTEIN (1751) 30–31.

82 KRATZENSTEIN (1751) 31.

When he faced legal principles and institutions that could hardly be presented as »advantageous« for women, Kratzenstein sometimes remained silent, diverting the reader's attention from the details. For example, when alluding to the fact that women could not be witnesses in testaments – alongside the insane, furious, blind, deaf, mute or those below the age of puberty (who had been disqualified for the weakness of their judgment a few pages before⁸³) – he did not add any special remark, taking its propriety for granted or simply keeping quiet about it.⁸⁴

Kratzenstein's few forays into the women's question were, nevertheless, »innovative« in his context. From the open environment of the University of Helmstedt,⁸⁵ he probably perceived an expanding horizon of women's participation in public life. This participation, however, would lessen in the next decades. Kratzenstein's work was destined to remain an isolated experiment, ridiculed by professional male jurists.

B. *The Institutes du droit civil pour les dames and Male Readers: Embarrassment and Frivolity*

»Jurisprudence will lose much of its respectability, which some consider irksome, when

women start to converse about the *Quarta Falcida*, *restitution in integrum*, *usucapione* and the like.«⁸⁶

These are the merciless words of an anonymous referee in the Göttingen scholars' journal in 1751, after mentioning that Kratzenstein's *Institutes*, under the influence of Ziegler's philosophy for ladies, were an attempt to teach some understanding of the laws to women (»dem Frauenzimmer einen Begriff von den Rechten beyzubringen«). He also mentioned that the author was hoping to write a more comprehensive legal work for women based on the Digest.⁸⁷ Embarrassing, unserious, frivolous; the judgment of the male *Gelehrte* (scholar) was caught in these negative impressions about a work that was trying to seduce a potential female readership with arguments of *beauty* and *utility*.

In his *Biographische Nachrichten von den jetzt lebenden Rechtsgelehrten in Teutschland* published in 1781, Weidlich reproduces the negative excerpt about Kratzenstein's work, though without mentioning the influence of Ziegler's philosophy for ladies, which was immediately present to the readers in 1751.⁸⁸

More than a hundred years later, in 1920, Behse again replicates the very same negative excerpt, stressing the uniqueness (*einzig*) of his proposal,

83 KRATZENSTEIN (1751) 16.

84 »Au reste les aveugles, les sourds, les muets, les furieux et les insensés, les impubères, les femmes, l'héritier et ceux, qui dépendent de lui, ne sont pas propres à être témoins.« KRATZENSTEIN (1751) 33–34.

85 Commenting on Ziegler's nomination in Helmstedt, WUNDER (2011) 160 asserts that »Die Professoren der Universität Helmstedt waren in dieser Frage auf der Höhe der Zeit.« (»Professors at the University of Helmstedt were moving with the times as regards this question«).

86 »(...) K. hat sich durch die Zieglerische Frauenzimmer Philosophie auf die Gedancken bringen lassen, dem Frauenzimmer auch einen Begriff von den Rechten beyzubringen; wovon er gegenwärtig nur einen Versuch nach Art der Juristischen Institutionen liefert, worin die ersten Grundsätze von dem Inbegriff der Römischen und Canonischen Gesetzbü-

cher, von dem veschiedenen Zustande der Menschen, von den Arten zu erwerben, von Erbschaften u. d. a. vorkommen. Nach deren gütigen Aufnahme macht Hr. K. Hofnung eine Art von Pandecten für das schöne Geschlecht zu schreiben, und den Umfang der Rechte vollständiger abzuhandeln. *Die Rechtsgelehrsamkeit wird vieles von ihrem ernsthaften, was andere verdrisslich nennen, verliehren, wenn erst das Frauenzimmer anfangen wird, sich auch von der Quarta Falcidia, restitutione in integrum, usucapione, u. v. zu unterhalten.* Gegenwärtige Abhandlung zieret noch eine Zusage an Madame la Conseillere Topp née de Vieth bey Gelegenheit ihres Geburtstages«, *Göttingische Zeitungen von gelehrten Sachen* (1751) 664 (»K. allowed the Zieglerian ladies' philosophy to bring him to the idea of teaching law to women, of which he has as yet only produced one attempt in the style of legal institutions, in

which the very basics of Roman and Canon legal texts, means of acquisition and the various social ranks and such like appear. After their generous inclusion, Mr. K seeks to write a kind of pandect for the fairer sex in order to cover the range of laws more completely. Jurisprudence will lose much of its respectability, which some consider irksome, when women start to converse about the *Quarta Falcida*, *restitution in integrum*, *usucapione* and the like. A dedication to Madame Counsellor Topp, née von Vieth, graces the current treatise«).

87 KRATZENSTEIN (1751) 49.

88 WEIDLICH (1781) 431.

in an almost ironic tone. He indicates, moreover, that the unusual fact of *dedicating* a legal book to a woman might have helped to cast doubts on the seriousness of the proposal,⁸⁹ apparently ignoring how common these dedications were in works of *Damenphilosophie* in the eighteenth century. Taken out of context and read through the lens of nineteenth century scholarship, it probably looked worse than it once did for eighteenth century learned jurists. Behse closes his brief paragraph on Kratzenstein by noting that he was the last adjunct professor who had not obtained a tenure position in Helmstedt.⁹⁰

Writing in the beginning of the twentieth century, Behse's approach was not so different from that of Weidlich or the anonymous reviewer in eighteenth century Göttingen.⁹¹ In addition, Kratzenstein belonged to Topp's circle of friends and pupils, whose professional activity Behse qualifies as *Allerschlechtesten* (the worst of all)⁹² and his classes as mere *Cathecismus-Schulen* (catechism lessons), reproducing Pertsch-style criticisms. He considered Topp a mediocre follower of Christian Wolff.⁹³

The professional jurists, the *Gelehrten*, were pitiless with a work that was not originally written for them. Professional jurists were not only railing against Kratzenstein's sweetened rhetoric. They also opposed law being made the object of a popular

legal genre for women and the need to *mediate* between women and professional scholarship. Was jurisprudence suitable for the »beautiful sex«? Kant's aforementioned assertion would suggest not. An anonymous contributor of the widespread journal *Der Gesellige: eine moralische Wochenschrift* in 1748 could not have been more clear, as amply demonstrated in the quote below.

IV. »Popular« Legal Literature for Women: a Failed Project?

»Among the higher sciences I include theology, jurisprudence, medicine, philosophy and mathematics. I shall not demonstrate extensively that jurisprudence is not part of ladylike erudition. Men are the masters and protectors of women. As jurisprudence only serves to protect our rights, a lady has nothing to gain from it.«⁹⁴

Until the middle of the eighteenth century, not even the most radical proposals regarding women's education had conceived of the possibility of women regularly studying law with all its consequences, including access to public offices and the eventual exercise of distinct degrees of jurisdiction. The few active feminine voices by that time, such as Christiana Mariana von Ziegler (1695–1760), also in-

89 »Gewidmet ist das Buch der Frau Hofrätin Topp zum Geburtstage, doch bin ich nicht der Ansicht, daß aus diesem Grunde an dem Ernst der Vorschläge zu zweifeln ist, und es etwa nur eine Artigkeit gegen seine hohe Gönnerin darstellen soll«. (»The book is dedicated to Lady Counsellor Topp for her birthday, but I am not of the opinion that this constitutes a reason to doubt the seriousness of the work; rather, it was merely meant as a courtesy to his great benefactor«.) BEHSE (1920) 146.

90 BEHSE (1920) 146.

91 This approach contrasts with the recent biographical notes by Sabine Ahrens, tending to exaggerate Kratzenstein's contribution as a supporter of the education of women: AHRENS (2004) 134.

92 »Seine Tätigkeit in der Fakultät scheint am allerschlechtesten gewesen zu sein« (»His activity in the fac-

ulty seemed to be the worst of all«.), BEHSE (1920) 77.

93 BEHSE (1920) 77–78. Moreover, the association with the model of the Institutes of Justinian, a symbol of didactical mediocrity and lack of systematic approach, did not help Kratzenstein's case. On Savigny's »curse« over the legal literature based on the Institutes of Justinian and its impact on legal scholarship: BECK VARELA (2013) 349–390.

94 »Es gibt viele Theile der Gelehrsamkeit, die ein gelehrtes Frauenzimmer gar nicht wissen muß (...) Ich will mich in diesem Blatte bemühen, diejenigen Theile der Gelehrsamkeit namhaft zu machen, aus welchen die Frauenzimmergelehrsamkeit besteht. Man kan die ganze Gelehrsamkeit in drey Theile zergliedern. Zu dem ersten rechne ich die philologischen Wissenschaften, zu dem andern die schönen, und zu dem dritten die hö-

heren Wissenschaften. (...) Zu den höhern Wissenschaften rechne ich die offenbarte Gottesgelahrtheit, die Rechtsgelehrsamkeit, die Arzeneykunst, die Weltweisheit, und die Mathematik. Ich darf nicht weiltäufig beweisen, daß die Rechtsgelehrsamkeit gar nicht zur weiblichen Gelehrsamkeit gehöre. Die Männer sind die Häupter und Beschützer der Weiber. Da nun die Rechtsgelehrsamkeit blos zum Schutze unserer Rechte brauchbar ist, so kan ein Frauenzimmer mit der Rechtsgelehrsamkeit nichts anfangen. (...)« (»There are many branches of learning that a learned lady need not know ... In this work I seek to cover those areas of learning that are relevant to ladylike scholarship. One can divide learning into three parts. In the first I include philosophical inquiry, in the second the fine arts and higher sciences in the third.«) Frauenzimmergelehrsamkeit (1748), *Der Gesellige*, 247–248.

sisted that learned women did not desire offices and honors.⁹⁵ Even Poulain de la Barre, one of the most notorious supporters of women's access to universities, expressly defended their access to the study of law but meant only the exercise of teaching, the public *docentia*.⁹⁶

Indeed, jurisprudence and theology remained the provinces most resistant to the presence of women. There are rare examples of »exceptional women« who had a superior command of Latin and who obtained degrees in medicine, philosophy and the natural sciences. The closed fields of jurisprudence and theology, though, seemed harder to penetrate. The polemic episode of the Venetian noblewoman Elena Cornaro Piscopia, the first woman to receive a degree in 1678, illustrates these difficulties. After a long convoluted process, she ended up not receiving a degree in theology, as originally planned, but only in philosophy (*magistra et doctrix in philosophia tantum*). The ceremonial formula had been adapted to the occasion of her graduation, through elimination of the standard references to the exercise of honors, immunities and privileges.⁹⁷ Similarly, the frustrated attempt of the young noblewoman Maria Vittoria Delphini Dosi to obtain a law degree in Bologna illustrates plainly the added difficulties in those cases. One of the main supporters of Delphini Dosi's cause,

Carlo Macchiavelli, argued that the doctoral degree in law allowed the public exercise of teaching but not necessarily access to further offices, honors and jurisdictional immunities.⁹⁸ Other women who attended early modern universities, such as Anna Maria van Schurmann (1607–1678) in Utrecht, were allowed to teach only private *collegia*.⁹⁹

In the notorious *Diatriben* on the female erudition fostered by Jakob Thomasius in Leipzig in 1671, both Smalcus and Sauerbrei echoed a similar view. For Smalcus, women's nature was suited neither for the church offices (*Kirchenämtern*) nor for the exercise of secular authority (*weltliche Herrschaft*), and as a result the study of theology and jurisprudence was inappropriate for them. Consequently, the customs and statutes barred education for women.¹⁰⁰ As Christoph Heumann argued in 1724, daughters deserved to be treated as human beings (*Menschen*) and their instruction should not be restricted to the mere memorization of the catechism, sewing and cooking. Therefore, since they had »no hope« of reaching public office, it was useless to prepare them for it. This reasoning also explains why they were not to be taught in the scientific languages – Latin and Greek – but in their mother tongue. Through proper education, women would learn to reason, to put their emotions in order and to behave virtuously.¹⁰¹

95 ZIEGLER (1739), *Abhandlung, ob es dem Frauenzimmer erlaubt sey, sich nach Wissenschaften zu bestreben? In der Deutschen Gesellschaft abgelesen*, in: ZIEGLER, *Vermischete Schriften in gebundener und ungebundener Rede*, Göttingen, 394–399: 397, *apud* HAHNE (2015) 139.

96 »If women studied in universities alongside men or in other universities set aside for them in particular, they could take degrees and aspire to the titles of Doctor and Master in Theology, Medicine, and [canon or civil] Law. And their natural talents, which fits them so advantageously for learning would also suit them to be successful teachers«. François Poulain de la Barre, *De l'égalité des deux sexes* (1673), *apud* ROGERS (2006) 99. The German Jurist Theodor Gottlieb von Hippel is one of the few exceptions that clearly supported the access of women to public offices in 1792. See: SCHMID (1996) 341, WUNDER (2010) 68.

97 NEVEU (1999) 28–29; for a reconstruction of Cornaro Piscopia's case see: LABALME (1980) 140–144.

98 MACHIAVELLI (1722). For a brief reconstruction of this case, see TOSCHI (1988). Among the few women who must have had some notion of jurisprudence in the German context is Anna Christina Ehrenfried Balthasar (1737–1808), daughter of the Greifswald law professor Augustin von Balthasar. See NIEMEYER (1996b).

99 On Schurmann, see IRWIN (1996).

100 FIETZE (1996) 246.

101 »Weil nun die Töchter eben so wohl Menschen sind, als die Söhne, so folget, daß man einerley Aufferziehung beyderseits gebrauchen müsse, mit dieser einzigen Ausnahme, daß, weil sie zu öffentlichen Ämtern und Professionen zu gelangen keine Hoffnung haben, man sie auch hierzu vorzubereiten keine Ursach hat. Daher ist es nöthig, die Töchter in der allen Menschen nützlichen Weißheit in der Mutter=Sprache zu unterrichten, da-

mit sie nicht nur ihren Verstand recht gebrauchen lernen, sondern auch ihre Affecten in gute Ordnung bringen, um hierdurch zur wahren Gemüths=Vergnügung und recht tugendhaften Conduite zu gelangen ...« (»Since daughters are human beings just like sons, it follows that one should use the same techniques in raising both with the exception that they have no hope of reaching public office or professions, which negates any cause for such training. Therefore, it is necessary to teach daughters the wisdom that is useful to all in the mother tongue, which is useful to all, so that they learn not only to use their reason, but also to bring their emotions into good order, so that they may achieve true contentment and quite virtuous conduct.«) HEUMANN (1724).

The impossibility of achieving public office, which was the ultimate goal of the study of jurisprudence, certainly limited the potential interest of »popular« works about law written for a female audience. Moreover, to *translate law for women* in the eighteenth century inevitably entailed ambivalence. Kratzenstein's displayed this ambivalence in his pages when he oscillated between »beauty«, »utility« and »embarrassment«. ¹⁰²

On the one hand, he wrote for women because he believed in their intellectual capacity in some fashion, in their »ambition, wit, and penetration«. Even if he was not obviously pleading for women's emancipation or social equality, even if his work was offering only some basic legal notions and did not mean to educate »real« lawyers, it is clear that he shared a positive yet limited view of women's prospects of joining the republic of letters. On the other hand, he presented a few basic principles of one of the superior disciplines – jurisprudence – whose point of departure was not autonomy but women's subjection to men's permanent guardianship. Additionally, Kratzenstein was writing in Lower Saxony, where even unmarried women needed an official curator, as Heineccius recalled, in context of explaining the general rule of the husband as the curator of the wife. ¹⁰³

Thus, this first attempt to elucidate law for women was limited by the contents of law itself. Teaching law to women in the eighteenth century meant explaining to »autonomous minds« the mechanisms restricting their autonomy in social life. Explaining law to women required telling them that they were equivalent to the *insane* for most acts of civil life. It meant telling them that most contracts they might wish to sign would have

the same value of one signed by a seven-year-old child.

The ultimate goal of the *Aufklärung*, as the release from self-incurred immaturity, according to Kant's celebrated definition (»*der Ausgang des Menschen aus seiner selbstverschuldeten Unmündigkeit*«), was difficult to transfer to the field of jurisprudence, where women were technically in a permanent state of *Unmündigkeit* (immaturity). Even on the few occasions in the social life of a woman when she could act as an autonomous (*sui iuris*) person, as a widow and guardian of minor sons, for instance, she still had to rely largely on male authorization and counsel for several juridical acts.

Therefore, a few notions of law for *amateur ladies* squared better with the sparse entries of the *Frauenzimmer* lexica, dispersed as they were among cooking recipes, household management instructions, lives of legendary women and principles of »universal wisdom«. ¹⁰⁴ It was harder to offer them in a systematic work dedicated exclusively to legal principles and rules.

Besides the evident constraints of law itself, the educational model for women that finally prevailed, especially in the second half of the eighteenth century, did not foster a receptive environment for Kratzenstein's work. Recent studies have distinguished between an *early* and a *late* Enlightenment approach regarding women's education. ¹⁰⁵ The old humanist Christian ideal of the learned woman, the extraordinary child educated together with her male brothers in Latin and Greek (such as the daughters of Thomas More and Phillip Melanchton) had been slowly replaced by a new model centered on »schönen Künste« and on practical skills. ¹⁰⁶ Late Enlightenment pedagogy

102 Ceranski analyzes the contradictions found in the scientific literature for women, where rhetorical artifices tried to hide the failure of the authors in their attempt to reduce the depth of the issues covered: »Prior to about 1850, however, the main text often failed to distinguish between knowledge useful for women and that for men in either the scope or the depth of issues covered. This contradiction at times carried into the text ...« (...) »I believe that authors wanted to present their subject as fully and comprehensively as possible for whatever reasons. Their ritualistic declarations must then be read as the

means to ensure that their work fitted into what was regarded as the binding concept of female learning«, CERANSKI (2000) 213.

103 In his *Elementa iuris germanici* (HEINECCIUS, 1748, lib. 1, tit. 16, § 380) and *Elementa iuris civilis* (HEINECCIUS, 1748, lib. 2, tit. 23).

104 On the diversity of topics covered in the popular literature for ladies, see NASSE (1976); LESEMANN (2000), and an example in: AMARANTHES (1715) (note nr. 80 *supra*). Some of those works included a few medical ideas, which were recommendable for housewives: LESEMANN (2000) 259. On Dorothea Leporin Erleben, the

first woman to obtain a degree in Medicine and practice professionally as a physician in Germany, see POETER (2008).

105 Among others, WUNDER (2009, 2010), NIEMEYER (1996a), LESEMANN (2000).

106 The old humanist model did not disappear, though, as isolated examples show. WUNDER (2009) 265–269.

avored the fine and liberal arts (music, painting, dancing), modern languages (particularly French), literature, history and practical abilities such as sewing, cooking and other useful tools of household management. Some notions of »universal wisdom« (*Weltwissen*) were not meant to stimulate intellectual autonomy,¹⁰⁷ but were aimed at teaching women virtuous behavior according to their social station. This instruction of girls in »useful« knowledge, which was determined by moral standards and the ultimate goal of domestic happiness (*häusliche Glückseligkeit*), was more restrictive regarding the potential spheres of social interaction for women. Heide Wunder describes this shift as a path from an educational model centered on the »erudite lady« (*Gelehrte Frauenzimmer*) to one based on the »natural female duties« (*»die natürlichen Aufgaben der Frau«*).¹⁰⁸

The attitudes of the few erudite women active in social and academic circles show this shift in cultural patterns. Whereas in the first half of the eighteenth century learned women like Christiana Mariana von Ziegler (1695–1760) and Louise Adelgunde Gottsched (1713–1762) were proud of their erudition and left texts they had authored, the same cannot be said of most learned women of the last decades of the century. This »growing divergence between science and femininity«¹⁰⁹ made opting for university and study ever less attractive for women at the end of the eighteenth and beginning of the nineteenth century.¹¹⁰ By the end of the century a sort of biological determinism, a »natural disposition of the female« (*natürliche Bestimmung des Weibes*) to be spouse, housewife and mother broadly shaped pedagogical standards¹¹¹ and introduced important changes to the

earlier situation. Whereas women's access to education had formerly depended mainly on their social *status*, it became constrained by their supposed »nature«.

These mainstream trends in Enlightenment philosophy help to explain the progressive disappearance of female erudition during the nineteenth century, or at least its relegation to virtual invisibility.¹¹² In this context, the law schools in the new state universities, now less flexible than the old university corporations, closed their doors absolutely to the already exceptional presence of women.

V. Conclusions

Kratzenstein's timid response to the debate on the education of women faced several reactions and obstacles.

On the one hand, learned jurists showed no interest in sharing notions of jurisprudence with women. The »female other« was still defined in terms of legal »minority«, excluded from public office and from the *respublica litterarum*. Kratzenstein's proposal, then, was considered frivolous, embarrassing, useless and not substantial enough to merit discussion. It soon became obsolete, since the natural determination of women's domestic role was reinforced by the philosophical and pedagogical trends of the end of the century.

On the other hand, jurisprudence was progressively losing its importance among higher disciplines, and Kratzenstein's attempt showed that it was hard to articulate the women's question with juridical texts. It is, therefore, not surprising that

107 WUNDER (2009) 266, 268.

108 The old humanist model and the teaching of Latin and Greek was still in use in some social circles, see WUNDER (2009) 265–269, WUNDER (2010) 67. According to LESEMANN (2000) 264, »Bildung war nicht losgelöst von praktischen Aufgabenstellungen, blieb insofern immer Ausbildung« (»Education was not freed from practical divisions of tasks and thus remained only training«.)

109 NIEMEYER (1996a) 293.

110 »Der ideologische Ausschluß aus diesem Ausbildungszweig wurde schließlich im 19. Jahrhundert durch die institutionelle Entwicklung auch

formal festgeschrieben und wirkte so rigide, daß der Zugang zum Studium am Ende des 19. Jahrhunderts von Frauen völlig neu erkämpft werden mußte.« (»The ideological exclusion from this field of training became so entrenched and formally codified in the 19th century through institutional development that women had to recommence the struggle for access to education from scratch at the end of the 19th century«.) NIEMEYER (1996a) 294.

111 WUNDER (2009) 267; MAYER (2005).

112 »Apart from private reading, the manifold possibilities of women's access to science that had existed in the

eighteenth century disappeared around 1800. In most cases, such opportunities do not seem to have been abolished by design; rather, they vanished as consequences of major social and political changes such as moving laboratories out of houses and administrative modernization. Yet in some instances – for example, confining girls' education to the realm of the family – women's disappearance from scientific activities directly related to the new concepts of femininity developed by the spokesmen for a middle-class ideology who articulated the new social order of modernity.«, CERANSKI (2006) 214.

his project of translating the Digest for women would never leave his desk drawer.

Nevertheless, the few female readers of the *Institutes du droit civil pour les dames* might have benefited from it, as the book served at least to render women more prepared for situations of their daily lives. A few years after the publication of the work, due to the death of her husband, Regina Charlotte Topp was officially declared guardian (*legitima tutrix*) of her own children in a ceremony celebrated at the family house on 5 April 1757 and presided over by the rector of the University of Helmstedt and its secretary (Eisenhart and Wernsdorf, respectively). During the official act of granting guardianship (*Vormundschaft*), the university authorities mentioned, among other juridical forms, the duties of the guardian and the »benefice« of the already cited *senatusconsultum Vellaeianum* regarding surety contracts. According to this *senatusconsultum*, surety contracts signed by women were null, but they could renounce this benefice, when duly informed about it in their mother tongue instead of Latin.¹¹³ As described above, Kratzenstein's work had focused precisely in some of the legal institutions that interested women as widows in charge of their children, that is, on one of the few occasions in their »juridical« lives that they could act without a male protector.

It is evident that the few elementary notions of jurisprudence (*quelques teintures du droit*) did not aim at changing roles in society. However, the *Institutes* offered their female readers a few tools that might have expanded their skills in social participation.¹¹⁴ Historians of women's education

have long been long advocating a broader definition of education, incorporating informal, domestic spaces and multiple sources.¹¹⁵ If we adopt a comprehensive view of learning as a means of increasing participation in the activities of the community,¹¹⁶ it is possible to close this essay with a few positive words about Kratzenstein's piece, despite its limitations.¹¹⁷ As the metaphors of translation suggest, »Nothing would stay exactly the same in the course of an intercultural encounter – on either side«.¹¹⁸

Kratzenstein's particular work did not find a receptive environment. A closer look at it offers another sample of the antagonism between the supposed universalism of Enlightenment thought and the legal and cultural constraints of a state-determined society. Even in the twentieth century, after the enduring »invisibility« of women in the nineteenth century, law still remained the very last province resistant to women's presence, as Limbach stresses.¹¹⁹ It is, then, understandable that Kratzenstein's *rara avis* has neither enjoyed a wide reception nor generated a new genre of legal literature for female audiences. Yet this singular piece opens a small window onto various social, cultural and legal questions discussed in eighteenth century German universities. It shows how jurists reacted to and engaged in one of the most important academic debates of the time, so far neglected by legal scholarship: the *querelle des femmes*.

113 The regional archive in Wolfenbüttel (*Niedersächsisches Landesarchiv*) holds this document under the file 37 Alt Nr 3760, entitled »Kinder des Hofrats in 1757«. On the SVC see note nr. 80 *supra*.

114 On the various occasions of socialization for wives and daughters of university professors: WUNDER (2009) 256.

115 See the collections of essays edited by WHITEHEAD (1999).

116 LAVE, WENGER (1991).

117 »Furthermore I take seriously the idea that knowledge represents a form of power, so that even the most reactionary learning experiences transmitted knowledge, be it simply the ability to read, that allowed certain women to challenge contemporary representations of femininity and thus contributed to changing women's lives«. ROGERS (2006) 98.

118 FOLJANTY (2015) 9.

119 LIMBACH (2010) 252.

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