Laura Beck Varela

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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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. 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). She was the daughter of Johannes Justus von Vieth, a member of the Prussian royal war council (Preussischer Kriegs- und Domänenrat) and the wife of a law professor at the University of Helmstedt, Johann Konrad Sigismund Topp (1692–1757), who was Kratzenstein’s patron. 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 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 seraévidemment d’un très grand avantage et qu’il éviterait 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, voici si j’y réussirai. Je n’ai qu’à alléger ici les points de Droit, qu’une femme doit nécessairement savoir. KRATZENSTEIN (1751) 9.

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.

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

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 «translations», 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 femmes8) 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); FUEZTE (1996); MESSBARGER (2005); FRIEZE (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, rabalas and legádoyos in the Spanish and Portuguese speaking world); STINTZING (1867). The pedagogical writings known as «Modos de pasar en derecho» 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 physician 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 NAHSE (1976) and the several catalogs of notorious women and new literary genres for women examined by SCHMIDT-KONBERG (2014). For a comparison with the
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, Zwesporn,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 Prasse 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: Messerberger/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 Enlightenments, 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-Meissel (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 Kühnel (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, consultissimo … S. l. 1777 [note of the University of Halle catalog, shelfmark 78 M 493, Kapsel (8): Hochzeitsglückwunsch auf Johann Heinrich Kratzenstein, Jurist, 15. April 1777]. They had one son, Carl, born in 1793, Schrader (1954).


16 Kesslin (1856) 91.

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

18 Holzemann (1906) 320.


20 Denina (1791) 131–132.
gerode than it did elsewhere. In 1762, Johann Heinrich published a greeting poem 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.

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. 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.

However, Pietism was also related to an increasingly conservative view about women’s education, as it advocated a more traditional role for 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. 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.

A proposal analogous to Clisander’s was Johanna Charlotte Ziegler’s Grundriß, published in 1751. The Zieglerin, who was later known as the Unzirer 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. Wolff himself had also contemplated writing a philosophical book for ladies, and his ideas had inspired La Belle Wolfeinne, 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 Wolf-\(\text{ff}\)inerin).

Ziegler’s Grundriß was one of the direct influences of Kratzenstein’s Institutes du droit civil pour les dames, as he himself declared and as a reviewer in the Göttingische Zeitungen von gelehrten Sachen noted. 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. The Zieglerin belonged to this society as an honorary member.

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, MECHIOR (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-Tresien (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 Weigel (1998) 128.

\[22\] KRATZENSTEIN (1762).


\[24\] The »familia pietistica« also promoted overseas missions and received Protestant emigrants from southern territories. BRECHT (1995) 323.

\[25\] Later on, he founded the Paedagogium Regium and the Gymnacceum 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 Gymnacceum and the foundation of the famous girls’ school of St Cyr, Jacob (2015).

\[26\] BRECHT (1995) 319–357; on 337 for the ironic criticism of Louise Adelgunde Gottsched of the »Pietisterey«.


\[28\] THOMASIUS (1687), (1691). In his later years, Thomasius assumed a more conservative view on women’s role in society: SCHNEIDER (1991) 61 f. See note 12.


\[31\] KRATZENSTEIN (1751) 8.

\[32\] See III, B, infra.

\[33\] BRUNING (2012) 921.

\[34\] HARDING (2014) 142.
professors, 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.

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. By the mid-eighteenth century, the University of Helmstedt, once known as the «ornament of the land», 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. The city remained, however, closely connected to new scientific and philosophical ideas thanks to the flow of periodical publications.

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 Sprachkollegium (advisory board) in 1751. At that time, Topp started to direct the newly founded orphanage (Waisenhaus) and later supervised the Convictorium as well.

The Waisenhaus, one of the cornerstones of the Pietist project, was another space of close collaboration between Topp and Kratzenstein. After Topp’s sudden death by stroke in 1757, Kratzenstein seems to have devoted much personal and financial effort to improving it. 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.

Topp’s death possibly influenced the choice of the theme of Kratzenstein’s doctoral dissertation. He wrote on the particular rights of the widows 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 1754 and to the permanent concern about the financial situation of widows. 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, Topp as well as his son Georg August wrote on the rights of women.

On April 7, 1761, Kratzenstein was appointed adjunct professor and apparently did not wish to pursue a tenured professorship. He combined...
his efforts as director of the Waisenhaus with his duties as a lawyer and as syndicus of the prestigious St. Ludgerus cloister. Later he also served as provost of the cloister in St Marienberg and was awarded the title of Hofrath, probably around 1772.

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.«

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'acquerir la propriété des biens (On the Ways to Acquire the Property of Goods); IV – De l'acquisition 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).

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. 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 but not among legal books. For example, he dedicated it to a woman, 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 ranks and possibly in expectation of some distribution for his small piece.

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

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. 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. 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 guerelle des femmes.

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).

Women were masterpieces (chefs d’œuvre) of nature and should be placed among the angels. They have qualities such as ambition, wit (esprit) and penetration, which make them naturally suited for intellectual activities. Furthermore, he was openly referring to the exclusion of women from study in general and was clearly in favor of women participating not only as active members of the republique litteraun (such as Ziegler), but also as teaching staff at the universities (such as Agnesi), although he did not specify in what capacities. 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. 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.

Another crucial distinction in jurisprudence was the one between human, divine and natural law. The latter dictated that our actions must be part of a higher order, which is how they appeared in the common object of study.

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pursue the accomplishment of the appropriate social status,\textsuperscript{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.\textsuperscript{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 constraints), such as donations and surety contracts (fideiusso). 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.\textsuperscript{79} Similarly, he insisted on the benefits of the senatusconsultum Vellaeanum, which prescribed the nullity of surety contracts (fideiusso) 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.\textsuperscript{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»).\textsuperscript{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»).\textsuperscript{82}

\textsuperscript{77} Kratzenstein (1751) 11.
\textsuperscript{78} Kratzenstein (1751) 44, cii.
\textsuperscript{79} «Nouvelle preuve des prerogatives des femmes dans le droit.» Kratzenstein (1751) 24–25; 29.
\textsuperscript{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 pourvu par le bene de ses femme et leurs enfants.« (Senatusconsultum Velléianum (Ulp. D. 16, 1, 2, 1), by which women were prohibited from incurring liability for the benefits of others (especially their husbands), as in the case of surety contracts, was modified by Justinian in the famous Authentica si quae 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: «Velléianischer Rathschluß. Ist eine denen Weibern in Rechten zugestandene Wohltat, welche verordnet, daß eine Frau, so sich vor einem andern verschrieben oder gut gesagt, nicht bezahlen darf, es sey dann, daß sie eine Kauffrau wäre, so ihre eigene Handlung oder ihres verstorbene Mannes in ihrem Rahmen fortfuhrte, oder auch, wann sie diesem Beneficic, das man ihr zuvorher erklärt, renunciert und ich dessen freewillig 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.
\textsuperscript{81} Kratzenstein (1751) 30–31.
\textsuperscript{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 bezubringen»). He also mentioned that the author was hoping to write a more comprehensive legal work for women based on the Digest.87 Embarrassing, unseemly, 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 (einzlig) of his proposal, 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».

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.»
85 Kratzenstein (1751) 33–34.
86 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»).
87 More than a hundred years later, in 1920, Behse (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, 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.

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

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 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 moraleische 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.«

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-
sisted that learned women did not desire offices and honors. 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.06

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.07 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.08 Other women who attended early modern universities, such as Anna Maria van Schurmann (1607–1678) in Utrecht, were allowed to teach only private collegia.09

In the notorious Diatriben on the female erudition fostered by Jakob Thomasius in Leipzig in 1671, both Smalcius and Sauerbrei echoed a similar view. For Smalcius, 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.10 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

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.
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 Auffreizung beyderseits gebrauchen müsse, mit dieser einzigen Ausnahme, daß, weil sie zu öffentlichen Amtern und Professionen zu gelangen keine Hoffnung haben, man sie auch hierzu vorzube reiten keine Ursach hat. Daher ist es nöthig, die Töchter in der allen Menschen nützlichen Weisheit in der Mutter-Sprache zu unterrichten, damit sie nicht nur ihren Verstand recht gebräuchen lernen, sondern auch ihre Afe cten in gute Ordnung bringen, um hierdurch zur wahren Gemüths- Vergnügung und recht tugendhaff ten 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». 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.

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». 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. 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. Late Enlightenment pedagogy

102 Ceranski analyzes the contradictions found in the scientific literature for women, where rhetorical artifacts 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 ...» ( supra (note nr. 80)

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 Nass (1976); Leseemann (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: Leseemann (2000) 259. On Dorothea Leporin Erxleben, 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), Niemeyer (1996a), Leseemann (2000).

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

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» made opting for university and study ever less attractive for women at the end of the eighteenth and beginning of the nineteenth century. 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 standards 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. 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

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 LSEMANN (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 müßte.» («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 re-commence the struggle for access to education from scratch at the end of the 19th century.») NIEMEYER (1996a) 294.
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 Vellaeanum 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. 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. Historians of women’s education have long been long advocating a broader definition of education, incorporating informal, domestic spaces and multiple sources. If we adopt a comprehensive view of learning as a means of increasing participation in the activities of the community, it is possible to close this essay with a few positive words about Kratzenstein’s piece, despite its limitations. As the metaphors of translation suggest, »Nothing would stay exactly the same in the course of an intercultural encounter – on either side«.

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. 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.

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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).


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.


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