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TUTELA MULIERUM THE INSTITUTION OF GUARDIANSHIP OVER FULL AGED WOMEN IN THE LATE ROMAN REPUBLIC AND EARLY PRINCIPATE

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Abstract: The purpose of this study is to examine the social and legal opportunities of the Roman women through the *tutela mulierum* in the late Republic and early Principate. The base of the disquisition is a remark in Gaius' Institutes, which says that full aged women, in spite of being legally under guardianship, administer their own property. The examined sources show relevant social changes, which resulted in the guardians' sanction becoming merely formal, yet indispensable condition for concluding certain transactions. Therefore the reason for retaining guardianship may be associated with the nature of these transactions. Women, who did often run enterprises on their own, did not have the authority to conclude the transactions of archaic law, based on the so-called „words of creation", until the legislative reforms of the 4th century AD.

Key-words: tutela mulierum, guardianship, Roman women, auctoritas, Gaius, manus, mancipatio, res mancipi.

Veteres enim voluerunt feminas, etiamsi perfectae aetatis sint, propter animi levitatem in tutela esse.[1] Textbooks on Roman Law often cite this sentence from Gaius concerning guardianship. Although apprehending its true meaning may be quite problematic, mostly because Gaius himself – who presumably was born in the second century AD – could only have vague ideas about the original intentions of the *veteres*.

This study attempts to examine the life of Roman women through the *tutela mulierum*, for it was – at first sight at least – an institution determining their status and limiting their social opportunities. Our first question to ask is what sort of idea can we gain of the *tutela mulierum* from ancient legal sources. The second is how these rules of the law could have worked in real life, as literary and archaeological sources reflect upon them.

The basic reason of our disquisition is a remark in Gaius' Institutes that makes the statement quoted above much less unambiguous. It says that despite

[1] Gai. 1, 144.

the strict rule, full aged women administered their own property: „*Feminas vero perfectae aetatis in tutela esse fere nulla pretiosa ratio suasisse videtur: nam quae vulgo creditur, quia levitate animi plerimque decipiuntur et aequum erat eas tutorum auctoritate regi, magis speciosa videtur quam vera; mulieres enim, quae perfectae aetatis sunt, ipsae sibi negotia tractant.*"[2]

In the next chapters we attempt to examine whether traces of this alleged financial independence can be found in the extant sources. In case of a positive answer, the question that remains is why was the *tutela mulierum* retained even two centuries after the age of Gaius.

Tutela mulierum in legal texts

The two basic reasons for being under guardianship in Roman law were being under-aged and being a woman. Guardianship concerned *sui iuris* Roman citizens only, those who were not under *potestas* or – in case of married women – under *manus*. It ceased to exist over male children coming of age, while age had no significance in case of female wards. Generally women remained under lifelong guardianship until the age of Augustus, who extended the *ius liberorum* to all women. According to this rule, freeborn women who had borne three children and *libertinae* who had borne four, were disengaged from the authority of their guardian.[3]

When examining the legal status of women we must consider the two different types of marriage in the rules of Roman law. To conclude marriage with *manus*, a formal legal action was necessary, either *coemptio* or *confarreatio*.[4] Free marriage (*matrimonium sine manu*) could come into effect simply by sharing the same household and having the intention to get married. On the other hand, such cohabitation could turn into marriage with *manus* simply by the passing of time. Usucaption of *manus* over the wife was automatic, if the cohabitation lasted for one whole year uninterruptedly (*usus*).[5] If the couple

[2] Gai. 1, 190.

[3] According to Pál Csillag, before the Augustan legislation the *ius liberorum* used to be given to women as a privilege, but later it was generalized to women engaged in certain trades. The *Lex Iulia de maritandis ordinibus* extended this right to all women bearing the proper number of children. *P. Csillag*, The Augustan Laws on Family Relations. Budapest 1976, 83.

[4] It is clear from Gaius' statement that the *coemptio*, the *confarreatio* and the *usus* were the exclusive forms of gaining *manus*, and not of concluding the marriage. Gai. 1, 110.

[5] By the age of Gaius *usus* was either partly abolished by statute, or partly obliterated by mere disuse. Gai. 1, 111.

wished to avoid this, they had to spend three nights separately before the year ended (*trinoctium*).[6]

A woman concluding marriage with *manus* ceased to be under her father's *potestas* and came under her husband's *manus*, while in case of *matrimonium sine manu* she remained under *potestas* as long as the *pater familias* was alive. The wife married with *manus* entered her husband's *familia* and legally was regarded as being *filiae loco*,[7] while her relations broke with her family of origin concerning intestate succession.[8] The wife's goods were absorbed into the husband's property just like everything else she gained from that moment on. If the wife entered a free marriage, according to the rules of Roman civil law she did not become a member of her husband's family in a legal sense (*familia proprio iure*), but remained in her father's agnation.

Thus a woman came under guardianship if she was single and ceased to be under *patria potestas*, or if she concluded a free marriage and later on paternal authority ceased to exist over her, or if she concluded a marriage with *manus* and the *manus* ceased to exist. On the whole, a woman was a subject of *patria potestas* or *manus*, or if neither, she got under guardianship. The father or – in case of *matrimonium cum manu* – the husband was entitled to determine the person of the guardian in his will.[9] This regulation seems to have been declared by the Twelve Tables as well.[10] If the guardian was not appointed in the will of the deceased, the nearest agnatic relative became the woman's legal guardian *ipso iure*. If she concluded a marriage with *manus*, her husband's nearest agnate became her guardian, on the grounds of leaving the paternal agnation.

According to Gaius, the lifelong guardianship over women was declared as far back as the Twelve Tables,[11] including the regulation on legal guardianship. The practical reason of the latter was presumably that the nearest male agnate – in case of intestate succession – was the heir of the ward, so keeping the property was his main interest. This regulation remained valid for centuries, giving legal guardians special authorization even when the rules of the *tutela mulierum*

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[6] As far as we know, details on the forms of Roman marriage were first recorded by Gaius, cf. Gai. 1, 108-113. 115b.

[7] The term *filiae loco* appears in the sources regarding *matrimonium cum manu* concluded by *coemptio*. In the marriage concluded by *confarreatio*, the term for the wife is usually *domina*. *J. Zlinszky*, Ius Privatum. Budapest 1998, 23-26.

[8] Gai. 1, 156. The fact that the *uxor in manu* does not become a member of her husband's agnation was pointed out by *R. Brósz*, Ist die uxor in manu eine agnat? Annales Universitatis Scientiarum Budapestiensis de Rolando Eötvös nominatae. Sectio iuridica 18 (1976) 42-57.

[9] Gai. 1, 144-148.

[10] XII *tab.* 5, 1.

[11] XII *tab.* 5, 1.

started to become obsolete. On the other hand neither the guardian, nor the ward had the right to choose in this case, legal guardianship being compulsory for both of them. The regulation was formally abolished by the Claudian legislation.[12] From then on, the Urban Praetor and the majority of the Tribunes of the people assigned a guardian in case of the lack of testamentary appointment.[13]

Traces of the *tutela mulierum* in some non-legal texts

According to the rules of the law a Roman woman was under the lifelong control of men – a father, a husband or a guardian. The next question is whether we still can find data in non-legal texts to confirm Gaius' notion that, in spite of all that, women of full age did in fact administer their own property.

Even though the rules of the law were so strict concerning the guardian's sanctioning power that may not always be reflected in everyday life. To examine women's capacity for independent legal actions in practice, we must turn to data gathered from personal correspondence, contracts or inscriptions, referring to transactions concluded regularly by a female party.

The first trace to be studied is in one of Cicero's family letters. The most interesting letter concerning guardianship is the one written by Cicero to her wife Terentia on 26th November 58 BC.[14] We learn from this letter that Terentia showed great independence and activity not only in the field of family business, but also in public matters. She prepared the return of her husband from exile, and also kept close relations with many of Cicero's influential friends. It is clear from Cicero's reflection that her wife planned to sell her rural estate (*vicus*), and he was desperate to convince her to change her mind on that.[15]

According to Susan Dixon's study of other letters,[16] Cicero tried to dissuade Terentia from using her property in his behalf, arguing that her money alone would not be enough anyway and they should ask for their friends' help in-

[12] *T. Nótári*, De matrimonio cum manu. Jogtörténeti Szemle 2005, 2, 52-56.

[13] The same method was used if the testamentary guardian was appointed under some condition or to act upon a certain day, until the condition was fulfilled or the certain day arrived, and also if a guardian was appointed testamentally, as long as there was no heir under the will, cf. Gai. 1, 185-186.

[14] Cic. *Ad fam.* 14, 1.

[15] Cic. *Ad fam.* 14, 1: *Quod ad me, mea Terentia, scribis te vicum venditurum, quid, obsecro te – me miserum! –, quid futurum est? et, si nos premet eadem fortuna, quid puero misero fiet? Non queo reliqua scribere – tanta vis lacrimarum est…*

[16] *S. Dixon*, Family Finances: Terentia and Tullia. In: The Family in Ancient Rome. New Perspectives, ed. *B. Rawson*, New York 1986, 95-102.

stead. As a final point he mentions their son, fearing that young Cicero would end up deadbeat without his maternal heritage.

This reveals on the one hand the fact of the separate administration of the spouses' property. The rules of Roman law provide that in a marriage with *manus* the wife's property is absorbed into her husband's estate and she acquires ownership for him by all modes of acquisition.[17] In a free marriage there was no community of property *ipso iure*, yet the husband gained ownership over the dowry, at least as long as the marriage lasted.[18] First the rules of Roman law did not regulate the question of dowry,[19] but later it became obvious that if the marriage ended with divorce or the husband's death, it had to be restored to the wife in some form.[20] The first legal action concerning dowry is traditionally related to the divorce of Carvilius Ruga, also the development of the *actio rei uxoriae*. The first statutory regulation derives from the legislation of Augustus.[21]

However, it seems that in practice – despite the husband's legal ownership – the dowry was considered as the wife's property. Cicero was sentenced to exile and confiscation of property, yet he was able to safeguard her wife's estate from it.[22] In the letter mentioned above Cicero clearly refers to her wife's money („*tua pecunia*").[23] This means that their property was administered separately – including the dowry. Dixon emphasizes that though the spouses shared the same social status, they did not form an economic unit.[24]

Terentia's plan of selling her rural estate is especially significant concerning guardianship. According to Plutarch, Terentia's father was already dead.[25] It is

[17] If the husband was still under *patria potestas*, all the property belonged to his *pater familias* and both the spouses acquired for him. *S. Treggiari*, Roman Marriage. Iusti coniuges from the Time of Cicero to the Time of Ulpian. Oxford 1993, 365.

[18] *G. Hamza*, A házastársak közti ajándékozási tilalom eredetének kérdései a római jogban [with a German summary titled: Die Fragen bezüglich des Ursprungs des Schenkungsverbotes unter Ehegatten im Römischen Recht]. Acta Facultatis Politicae-iuridicae Universitatis Scientiarum Budapestiensis de Rolando Eötvös nominatae 20 (1977) 157.

[19] The date of the appearence of dowry in Roman law is uncertain. The preserved fragments of the Twelve Tables do not mention it, the first known allusion is related to the development of the *actio rei uxoriae*. *S. Dixon*, The Roman Family. Baltimore 1992, 50.

[20] At first this was only true if the dowry was confirmed by *stipulatio*. In some cases the wife's relatives had a claim to restore the dowry for them on her death. *Treggiari*, Roman Marriage (note 17), 466.

[21] *Hamza*, A házastársak közti ajándékozási tilalom (note 18), 158.

[22] *Dixon*, Family Finances (note 16), 97.

[23] Cic. *Ad fam*. 14, 1: *…si non erunt, tu efficere tua pecunia non poteris.* According to Dixon this was the usual term for goods belonging to the dowry. *Dixon*, Family Finances (note 16), 96.

[24] *Dixon*, Family Finances (note 16), 98.

[25] Plutarch mentions that Terentia's estate consisted of dowry and paternal heritage, cf. Plut. *Cic*. 8.

obvious that she concluded a free marriage with Cicero, consequently she was under guardianship. Roman law declares all Italian lands to be *res mancipi*, mancipable things.[26] Gaius emphasizes that for the ancient procedure of *mancipatio* – which was the only way to alienate *res mancipi* – the guardian's sanction was indispensable for the wards.[27]

It appears that Cicero did not find his own authority as a husband enough to dissuade his wife from her plan, for he desperately begged her to change her mind, bringing up their son's interest as a final argument.[28] On the other hand, whoever Terentia's guardian was, he did not seem to have any voice in her business either. Cicero does not even mention the guardian in the letter to try and argue with his authority. Presumably, Terentia could take the guardian's sanction for granted, even despite her husband's objection.

It is true that Terentia is known as an unusually self-willed woman.[29] On the other hand, her independence may not be so unique. It might be the part of a process beginning in the late Republic, giving more financial independence to women as the spouses' community of property slowly passed our of common usage. This independence could easily make the guardians' authority much less significant.

Keith R. Bradley's statistic analysis, calculating the incidence of remarriage among the Roman elite of the late Republic, is interesting regarding female wealth as well.[30] His analysis is based on the data concerning 58 *consul*s and their wives. Of course, a precise calculation of the rate of remarriage is beyond reach, for full records of their matrimonial history just do not exist. Yet supplemental prosopographical and chronological studies – including their children as well – may provide the basis for reasoning out some unknown data.[31]

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[26] *Res mancipi* were the Italian lands, the ancient servitutes (*iura rusticorum praediorum*), slaves and four-footed animals. The difference between *res mancipi* and *res nec mancipi* was that the former could only be alienated by the ancient procedure of *mancipatio*, while the latter by simple *traditio*. *A. Földi – G. Hamza*, A római jog története és institúciói [The history and institutes of Roman law]. Budapest 1996, 27.

[27] Gai. 2, 80.

[28] Dixon even considers that as an „emotional blackmail". *Dixon*, Family Finances (note 16), 98-99. Yet this instance sheds light on the importance of maternal heritage as well.

[29] According to Plutarch she treated her husband just the way she wished to, cf. Plut. *Cic.* 29.

[30] *K. R. Bradley*, Remarriage and the Structure of Upper-class Family at Rome. In: Discovering the Roman Family. Studies in Roman Social History. New York 1991, 156-175. He examined consular families between 80-50 BC.

[31] The frequency of divorce was a commonplace for many authors in the late Republic and early Principate. People often divorced for practical – not emotional – reasons as well. Hermogenianus and Gaius give the reasons of entering the priesthood, sterility, old age, illness or military service.

16% of the *consul*s in question remarried for certain, yet considering the supplemental studies, the rate goes up to 39%. It reaches even 47% if we take into account the new marriages of their wives.[32] In most of the cases the end of the first marriage was caused by divorce, and „serial-marriage" – up to five marriages in a row – was not rare either.[33]

This analysis of members of the senatorial order may also be significant because most of the wealth was concentrated here in Roman society. The consequence of frequent divorce could have been omitting the spouses' community of property. Separate administration must have seemed more flexible, and this could make gaining financial and economic independence much easier for married women too. All this is presumably related to the fact that marriage with *manus* began to pass out of common usage. We do not know for certain when exactly it disappeared for good or when it was abolished, but it seems that it still was a part of everyday practice in the early 1st century BC. Gellius reports a case of Q. Mucius Scaevola in which the accurate calculation of the duration of *trinoctium* resulted in the usucaption of *manus*, in spite of the wife's objection.[34] Still even then marriage with *manus* was likely far less common than before, and – except for *confarreatio* – it disappeared by the age of Gaius.[35]

We cannot state that the only or even the main motive of the disappearance of *manus* can be traced back to financial matters. Yet marriage with *manus* could make the life of a married couple quite uneasy in this regard too, considering the change of social circumstances. Most of the couples were likely to choose separate administration, which is reflected in one of Martial's epigrams too. He ranks a wife in the line of heroines, for she made her husband the extreme favour of sharing her paternal heritage with him.[36] This joke is of course exaggerated, yet it surely reflects the true social situation of the poet's age. Most wives probably administered their estate separately from their husbands', and the proliferation of free marriages must have advanced this trend.

D. 24, 1, 60-61. Martial trifles about a wife divorcing her husband because his praetorial election would cost her too much money, cf. Mart. 9, 41.

[32] *Bradley*, Remarriage (note 30), 160.

[33] The two well-known statesmen, Sulla and Antonius were also involved in such „serial-marriages". For details on their marriages see Plut. *Sulla* 6; *Ant.* 9. 10. 31.

[34] Gell. 3, 2.

[35] Gai. 1, 111. Yet certain priestly offices could only be held by someone born in a marriage solemnized by *confarreatio*, if he himself was also married by *confarreatio*. Gai. 1, 112.

[36] Mart. 4, 75: *…te patrios miscere iuvat cum coniuge census, / gaudentem socio participique viro. / Arserit Euhadne flammis iniecta mariti, / nec minor Alcestin fama sub astra ferat; / tu melius.*

As free marriage became more common, the number of *sui iuris* women grew. In a marriage without *manus* the wife remained under *patria potestas*, and after her father's death she usually did not become a subject to anyone else's control. Independent women, on the other hand, became wealthier too, because their property was not absorbed into the husband's estate, and they were able to acquire further goods for themselves, e.g. the paternal heritage or perhaps the benefits of their investments. As for their wealth, it was only the guardian who could legally have an impact on its administration, as the guardian's sanction was requisite for the ward's certain legal actions. One of these legal actions was selling real-estates.

Pliny the Younger reports an instance of a real-estate vendition with a woman in the lead. Pliny sold real-estates from his heritage to his late friend's daughter, Corellia. The transaction was not easy, and Pliny tells all the details about the difficulties.[37] There is one thing that he does not even mention, and that is the contribution of Corellia's guardian. Moreover he does not mention any man – a husband or a relative – who took action on her behalf. Considering that her father was dead, Corellia was presumably a *sui iuris* woman, thus she had to be under guardianship. We know from Gaius that as a ward she needed the sanction of her guardian to participate in the vendition of the real-estate, but it was probably mere formality, so Pliny did not consider it worth remarking.

For Pliny did not hesitate to remark the extraordinary, as shown at another instance in his letters. C. Caecilius *consul* designate took legal action against Corellia, the same woman as mentioned above. In this case Pliny reveals the expression of surprise at the unusuality of taking legal action against a woman,[38] and also tells us that he is going to take on the unpleasant task of standing for her in court.[39] In all, it is inferential that if Pliny met with anything new in the case of the vendition mentioned above, he would not have passed by it without a remark. Consequently, women's practically independent participation in legal processes must have been no rarity, even though the rules of the law made the guardian's sanction inevitable. The fact that the sources will not even mention the guardians allows us to presume that the sanction could be mere formality.

According to a group of Finnish researchers of the Ostian brick stamps, it appears that some women were quite active in investing their money. According to Päivi Setälä, brick production was one of the favourite fields of invest-

[37] Plin. *Epist.* 7, 2-14.
[38] Plin. *Epist.* 4, 17. *…a quo – ut ais – nova lis fortasse ut feminae intenditur…*
[39] Plin. *Epist.* 4, 17: *Et admones et rogas, ut suscipiam causam Crelliae absentis contra C. Caecilium consulem designatum.*

ment of the senatorial order from the 2nd century AD.[40] Not only the purchase of lands but also of the clay beds seemed profitable. The study sheds light not only on a new focus of the female aspect, but also on the development of land ownership in the areas adjacent to Rome.

It seems that clay beds were administrative units (*officinae*) through which brick production was provided. The brick stamp served as an abbreviated contract between the landowner (*dominus*) and the contractor responsible for the production (*officinator*).[41] In case of brick stamps with only one name, the owner presumably did not enter into a contract with an *officinator*, but oversaw the production himself.[42]

Out of the 150 names identified as *domini* on the brick stamps examined by Päivi Setälä, 50 belonged to women. That rate goes even higher when examining the stamps of investors from the senatorial order in the 2nd century only, as 50% of the landowners of this age were women. Yet the rate is lower in case of the landowner entrepreneurs – the ones without an officinator –, 20% of them being women. For these women brick production was a livelihood, possibly an investment.[43]

Setälä revised her own approach, for it is no longer based on the idea that female land owners were inheritors of the land and the clay beds. In most cases no family relations can be detected between the *dominae* and the *officitatores* or the successive landowners. That means that they acquired the land by some other legal transaction, most likely by purchase. Some women also seemed cunning in business. The year 123 AD brought the demand of a great expansion of building. The name of the consuls of this year are found in 207 stamps, and 60% of the names of the *domini* is not known from other sources. The brick producers of this productive year could be small-scale landowners for whom brick production was an important and immediate livelihood. After Hadrian the *domini* were almost exclusively members of the senatorial order, and their diminished number shows that brick production was increasingly in the hands of a small number of families, including the imperial family. [44]

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[40] *P. Setälä*, Women and Brick Production – Some New Aspects. In: Women, Wealth and Power in the Roman Empire. Ed.: *P. Setälä*. Roma 2002, 181.

[41] The types of the contracts could be *locatio conductio rei, locatio conductio operis* or *locatio conductio operarum*. *Setälä*, Women and Brick Production (note 40), 183-184.

[42] *Setälä*, Women and Brick Production (note 40), 183.

[43] *Setälä*, Women and Brick Production (note 40), 184-185.

[44] Setälä examined the consular dated stamps only, for she considered this as a sign of organized operations and a proof that the state was interested in this industry, cf. *Setälä*, Women and Brick Production (note 40), 186.

It is interesting to see that the majority of the *dominae* in this prominent year were women. Thus women met the demand for bricks just as men did. Most of their names were found on stamps dated from this year only, which means that they joined the business only as long as it was profitable. Therefore they must be defined as female entrepreneurs.[45]

All this is especially important regarding guardianship, because again it is about the purchase of Italian lands for which women needed the sanction of their guardians. The brick stamps offer insight into the transactions of quite a large group of women. That shows that real-estate purchase was just as frequent among women as it was among men.

It seems though that some women went much further than purchasing a piece of land. There are many stamps where the woman's name succeeds her father's or husband's name as a landowner. These women presumably joined the family business. On the other hand there are *dominae* who seem to have joined the business first in their family, and some of them carried on extensive and well-organized operations. E.g. Flavia Seia Isaurica, who is known only on the basis of brick stamps, produced bricks and owned several clay beds between 115 and 141 AD. She was the first brick producer in her family. She operated during the most active building period, with the names of ten *officinatores* appearing on her stamps. She was succeeded by her son in the business, who however did not continue the production at every unit owned by her mother.[46]

We find female names among the *officinatores* as well, although their rate is quite low, i.e. 6% only. It is interesting to note that the rate of *officinatrices* is the highest in the imperial family, i.e. 25%. In all, brick stamps prove that many women purchased land and clay beds, especially from the 2nd century AD.

Of course whether it was their own decision or somebody else acted on their behalf[47] is unknown, for these inscriptions are far too laconic. Yet comparing them with the literary sources, we may presume that the guardians' contribution here too could be. The fact that we find female names among the *officinatores* indicates that women's legal opportunities may have broadened in practice. An *officinator*'s job probably included personal contribution, besides the classic administration of property that used to be a guardian's task. So presumably if a

[45] *Setälä*, Women and Brick Production (note 40), 186-187.
[46] With many other examples, see *ibid.*, 190-191.
[47] Women often hired clerks, as mentioned in one of Martial's epigrams. He trifles on a husband, whose wife's clerk is much too handsome, so he presumably does the husband's work instead of the wife's, cf. Mart. 5, 61. Despite the frivolous joke the story shows that wives had their own clerks so often that husbands found it to be natural too.

woman appeared as *officinator*, than she must have been involved in the course of production at some level, being a real entrepreneur. This might show that the social status of women went through serious changes as well, and eventually some of them got the chance to step out of the limits of the family and have a more active role in society.

The altered social role of wealthy Roman women is reflected extensively in literature. We find the most extreme references in the satires of the 1st century AD. The poets – meeting the demands of the genre – often portrayed rich women in an exaggeratedly negative sense, and in the background we may again detect the changes in the social structure. Beside the caricaturistically overdrawn bad attributes of the women of their age, the poets glorify the virtues of matrons of the past.[48]

Intolerabilius nihil est quam femina dives[49] – says Juvenal plainly. In his famous sixth satire he gives endless examples of women's indecent, sometimes manly behaviour. These women do not even reflect the good old virtues of the late matrons, for them family and morals do not mean anything. Among others, he makes the following remark about women infiltrating the men's world: *Illa tamen gravior, quae cum discumbere coepit, / laudat Vergilium, periturae ignis-cit Elissae, / committit vates et comparat, inde Maronem / atque alia parte in trutina suspendit Homerum. / Cedunt grammatici, vincuntur rhetores, omnis / turba tacet, nec causidicus nec praeco loquetur / altera nec mulier: verborum tanta cadit vis, / tot pariter pelves ac tintinnabula dicas / pulsari.*[50]

Women's estate as a goal of marriage also appeared quite often in the coarse jokes of the satires.[51] That women bragged with their wealth and gained influence through it did not seem very attractive in the poets' eyes either. Martial comments on an instance: *Bella es, novimus, et puella, verum est, / et dives, quis enim potest negare? / Sed cum te nimium, Fabulla, laudas, / nec dives ne-que bella nec puella es.*[52]

Wealth infiltrating the relationship of the spouses also influenced Martial: *Uxorem quare locupletem ducere nolim / quaeritis? Uxori nubere nolo meae. / Inferior matrona suo sit, Prisce, marito: / non aliter fiunt femina virque pa-*

[48] These satires of course also reflect the „moral crisis" of their age. We only examine the reactions to female wealth. For more details on this crisis at Juvenal, see *R. P. Bond*, Anti-feminism in Juvenal and Cato. In: Studies in Latin Literature and Roman History, Vol. 1. Ed. *C. Deroux.* Bruxelles 1971, 7-58.
[49] Juv. 2, 6, 460.
[50] Juv. 2. 6, 434-442.
[51] Juv. 2, 6, 136-137: *Optima sed quare Caesennia teste marito? / Bis quingena dedit: tanti vocat ille pudicam.*
[52] Mart. 1, 64.

res.[53] Horace and Martial both mention women with huge dowry as tyrants of their husband,[54] and the „reigning widows"[55] as characteristic features of Rome.

It is remarkable that, according to Juvenal, women could even enter into a sphere reserved exclusively for men. He says that women go to court just as men do: *Nulla fere causa est, in qua non femina litem / moverit. Accusat Manilia, si rea non est. / Conponunt ipsae per se formantque libellos, / principium atque locos Celso dictare paratae.*[56] Of course, „officially" the field of public law remained closed for women, they were not allowed to accuse even in the age of Ulpian.[57]

Although Juvenal's words are obviously exaggerated, it may be possible that – despite the strict prohibition – some women could actually break into the closed field of public law. Presumably wealthy, independent women had the chance to reach beyond the potentials offered by their formal legal opportunities. Women showed up in segments of society which they were not allowed to enter before. Thus in the eyes of some they acted more or less „manly", in a way that does not suit a Roman matron. This must have been a reason why poets created such a negative picture of them.

The new role that some women played – according to Juvenal at least – could reach the field of public law as well, yet their widening opportunities were most significant in the sphere of civil law. In this sphere even legislators were willing to acknowledge the developments in social structures.

The legislators' will

In all it seems that the spread of the separation of the spouses' property and the gradual disappearance of *manus* brought about the financial and eco-nomic independence of wealthy women, which ended up in the decline of the significance of guardianship in practice. The result of this process is a commonplace for Gaius.[58] This might indicate that these changes passed off „naturally", as an

[53] Mart. 8, 12.
[54] Hor. *Carm.* 3, 24.
[55] Mart. 1, 49, 33-34: *Procul horridus Liburnus et querulus cliens, / imperia viduarum procul…*
[56] Juv. 2, 6, 243-245.
[57] D. 50, 17, 2: *Feminae ab omnibus officiis civilibus vel publicis remotae sunt, et ideo nec iudices esse possunt, nec magistratum gerere, nec postulare, nec pro alio intervenire, nec procuratores existere."* For further information on women's legal opportunities in court, see *R. Brósz*, Nem teljes jogú polgárok a római jogforrásokban [with a German summary titled: Die nichtvollberechtigen Bürger in den römischen Rechtsquellen]. Budapest 1964, 124.
[58] Gai. 1, 190.

integral part of social development and not as a result of legislative reform. The rules of the law concerning guardianship did not change significantly, only their function seems to have altered.

All this of course is true in the case of freeborn, wealthy *sui iuris* women. We may not state either that all Roman women enjoyed the same independence as Terentia or the women investing in clay beds. But it certainly appears that those women who did not enjoy it, were not kept from it by the institution of guardianship. On these grounds, the purpose of the guardians' sanction – at least by the age of the late Republic – was not chastening the women's inordinate demands or counteracting their levity of disposition. It even seems that, by the age of Gaius denying the necessary sanction could be regarded as an abuse of authority. State secured regulations came into effect that were meant to protect women from the abuse of power committed by their guardians.

One of these regulations was that the *praetor* could enforce the guardian to interpose his sanction. According to Gaius this enforcement was not the result of a legal action, but substituted for it. A woman of full age did not have the tutelary action against her guardian, thus the praetor was able to enforce the sanction in the course of an extra-judicial procedure.[59] We do not know any further details about this procedure. Neither it is clear that how often it ended with enforcing the sanction or with the contrary, balking the transaction the ward was trying to make. On the other hand this was not the only chance for a female ward to have her way. She could to set aside her reluctant guardian – except if he was one of her ascendents – and substitute him with another.[60]

In the case of legal guardians the applicability of the enforcement of sanction by the *praetor* was limited. The ward's patrons and ascendents as legal guardians could not be compelled to interpose their sanction for making a testament, alienating a *res mancipi* or undertaking obligations, unless there were very weighty reasons for the latter two.[61] To judge whether or not the reason was „weighty" enough was probably in the *praetor*'s competence, which means

[59] Gai. 1, 190-191: *…mulieres enim, quae perfectae aetatis sunt, ipsae sibi negotia tractant, et in quibusdam causis dicis gratia tutor interponit auctoritatem suam; saepe etiam invitus auctor fieri a praetore cogitur. Unde cum tutore nullum ex tutela iudicium mulieri datur: at ubi pupillorum pupillarumve negotia tutores tractant, eis post pubertatem tutelae iudicio rationem reddunt.* Gardner believes that the true reason why female wards of full age could not take legal action against their guardians was that in this case the guardians did not have practical trusteeship, so the action would not have been equitable. Even legal guardians could only use passivity as a weapon to affect their ward's decisions. *J. Gardner*, Women in Roman Law and Society. Bloomington 1986, 21.

[60] Gai. 1, 115.

[61] Gai. 1, 192.

that he eventually decided on the necessity of the legal transaction the ward was about to make.

So presumably the process of enforcement was made to avoid the abuse of authority by the guardian,[62] a situation in which the guardian's denial alone was capable of inhibiting a necessary transaction. In certain cases the praetor could decide to compel even legal guardians to give their *auctoritas* if the transaction was found requisite. On the other hand, the *praetor* probably did not enforce the sanction if the denial was reasonable enough. Although in the light of what was said above we may have doubts about the frequency of such conflict between the women and their guardians.

The fact that female wards were allowed to demand a substitute in place of an absent guardian – regardless of the duration of the absence – must have served for the same purpose. This was allowed by the senate especially for full aged women.[63] All this might confirm the assumption that the guardian was not meant to judge the necessity of legal transactions. His sanction must have been pure formality, yet indispensable as such. The fact that Gaius does not mention the absent guardian's right to supervise the transaction on his return seems to affirm the same. On the contrary, the authority of the absent guardian ceased to exist with the substitution.[64]

The female ward also enjoyed considerable freedom in choosing the person of her guardian. On the one hand, in case of marriage with *manus* the husband could secure in his will her wife's freedom to choose her own guardian. He could allow her to choose once or several times, or – in case of unlimited option – even an indefinite number of times.[65] This might mean that husbands also found their wife's free choice important, that they considered the family property more secure with her in charge of the decisions, instead of the nearest agnate as a legal guardian.

On the other hand, being empowered by the husband's testament was not a woman's only chance to choose her guardian. The act of *coemptio* as a fictious sale did not only function as a method to conclude marriage with *manus* but also – as a part of a complicated series of legal transactions – to substitute the female ward's guardian by a more „suitable" one. According to Gaius this was accomplished by concluding two fictitious sales in a row, followed by a special

[62] Gaius puts this statement – that we ought not to make a bad use of our lawful rights – into general terms too: Gai. 1, 53: *male enim nostro iure uti non debemus*.
[63] Gai. 1, 173.
[64] Gai. 1, 173.
[65] Gai. 1, 150-153.

process named *manumissio vindicta*.[66] For the *coemptio,* being a special version of *mancipatio,* the guardian's sanction was needed. Thus first the woman had to be „bought" by way of a *coemptio* by someone in her confidence, with the sanction of the original guardian. Through this she already reached the goal of setting aside her guardian, but she became subject to the buyer's control.[67] In order to gain independence and get the desired guardian she needed a second *coemptio*. This time she was bought by the new guardian to be, and then liberated by him through *manumissio vindicta*. This complicated process was based on the regulations that assigne the guardianship of a freedwoman to her patron.[68]

All this indicates the mere formality of the guardians' sanction, but also sheds light on its indispensability. No matter how little influence the guardian had on the decision preceding it, his authority was absolutely necessary for the validity of the legal transaction the ward wished to achieve. Yet there were many warrants that were meant to mitigate the female wards' defencelessness originating in this.

The question of the nearest agnates' legal guardianship is also interesting. A rule of the Twelve Tables declared that if no guardian was appointed testamentarily, the nearest agnatic relative became the guardian of the under aged male and female as well as the full aged female wards. In the case of marriage with *manus* the husband's nearest agnatic relative became the guardian, because the wife had already lost all relations with her family of origin in a legal sense. The office of guardianship was compulsory for the legal guardians, yet theoretically it was in their interest too. For in the case of intestate succession the nearest agnate was the ward's heir, so his task was to administer the estate he – or his heir – was looking forward to receive. Regarding full aged women the guardianship of the nearest agnatic relative was abolished by the Claudian legislation.[69]

Even in the age of Gaius ascendents as legal guardians received special rights providing them an exceptional role compared to that of the appointed guardians. As already mentioned above, they could not easily be compelled to give their sanction, and not at all in the case of making a testament. Gaius explains this with the fact that legal guardians are the ward's heirs of intestacy,

[66] Gai. 1, 114-115a.
[67] The legal methods involving getting under someone else's control were not rare in Roman law. Emancipation and making a will by a woman – before the legislation of Hadrian – were also two of these methods, cf. Gai. 1, 115a.
[68] Gai. 1, 165.
[69] Gai. 1, 157.

and their loss of estate by testamentary disposition, or the diminution of its value by debt or by alienation of a considerable portion had to be prevented.[70]

Considering, all this it seems that the legal guardians could have had the greatest influence on the decisions of their wards. This could have been the only case when the guardian was able to actually limit his ward's legal opportunities, regarding the administration of property, for the good of the guardian himself. This might even have been true when the practical functions of the guardians were already harshly diminished.

Nevertheless, Dixon emphasizes that presumably the agnates' „selfish" interests attached to the guardianship only existed initially. Later on, the idea of guardianship changed, and it was not regarded any longer as the preliminary trusteeship of the heir apparent of the estate. In the case of under aged wards, the guardianship was seen as an obligation, primarily aiming at the safekeeping of the inexperienced child's estate. On the other hand, the guardians of full aged female wards lost most of their rights as trustees of the estate. This was advanced both by legislation and changes in practice. Furthermore, while the guardianship of under aged wards lasted for a limited period of time, in the case of a full aged woman it could last awkwardly long: until her very death.[71]

On the grounds of all this, gaining *ipso iure* guardianship over their female relative probably did not make the agnatic relatives very happy. On the contrary, they most likely tried to fink out of the obligation, to which the *Lex Claudia* offered them a helping hand. J. A. Crook shares the same opinion.[72] Both he and Dixon were inspired by one of Gaius' remarks, saying that legal guardians were allowed to transfer the guardianship of a female ward but not of an under aged male ward, for the latter was „not considered onerous, being terminated by the wards' attaining of the age of puberty".[73]

Being a legal guardian could have been troublesome indeed. This is also confirmed by the fact that legal guardians – unlike the ones appointed testamentarily – were compelled by the *praetor* to give security for due administration. According to Gaius, the purpose of this was to keep the guardians away from destructing or wasting of the ward's property.[74] Based on all this, we can assume that Claudius did not take a revolutionary step to „liberate" women but

[70] Gai. 1, 192.
[71] *Dixon*, Family Finances (note 16), 99-100.
[72] *J. A. Crook*, Feminine Inadequacy and the *Senatusconsultum Velleianum*. In: The Family in Ancient Rome (note 16), 90-91.
[73] Gai. 1, 168.
[74] Gai. 1, 199-200.

codified an already existing practice,[75] saving the agnates the trouble of being legal guardians.

In all, the institution of guardianship certainly was not meant to be the control of women „on account of their levity of disposition".[76] Of course, if a father or a husband wished to control his wife's or daughter's financial decisions, he probably could do so quite easily. Presumably not all women had the same opportunities of financial independence either. Yet focussing on the full aged female wards' guardians, we can state that they did not have so much influence on their wards' decisions as to actually limit their opportunities. The range of their participation in the legal transactions was repressed to the level of formality.

Tutela mulierum and *auctoritas*

The remaining question is this: what could have been the practical purpose of the *tutela mulierum*, why could it be so significant that it was not abolished until the 4th century AD?[77] An obvious explanation would be that it was necessary because of the women's missing or limited legal capacity. Yet there were some transactions that women were allowed to conclude on their own, without their guardian's sanction. It is not easy to explain why a woman could independently loan money regardless of the sum of it, while she was not allowed to sell a mule – being a mancipable thing – without the sanction of her guardian. It is hard to see why was her legal capacity enough for the former, if it was not for the latter.[78]

The practical tasks as a trustee of the guardians of full aged female wards vanished with time and legislation, so presumably the significance of the institution of the *tutela mulierum* can be found in the theory of law. According to Gardner, there was an illogical and absurd relationship between the rules of the law concerning guardianship and its materialization in everyday life. This arose

[75] According to Brósz, it was also a considerable reason for the *Lex Claudia* that Claudius wished to marry her niece – his brother's daughter – who was under legal guardianship. *Brósz*, Nem teljes jogú polgárok (note 57), 124. For the sake of that Claudius also abolished the relative impediment to the marriage with one's niece, but only in case of marrying a brother's daughter, not a sister's one. Gai. 1, 62. According to Suetonius Claudius also gave the *ius liberorum* to many women as a privilege. Suet. *Claud.* 19.

[76] Gai. 1, 144.

[77] The guardianship of full aged women was abolished by the legislation of Constantine. *Brósz*, Nem teljes jogú polgárok (note 57), 124.

[78] Not to mention the fact that many women – on the basis of the number of their children or the privilege given by the senate or the emperor – were exempted from guardianship which makes the retention of the institution even more questionable.

from the contradictions between men's political and public roles, and their private personal relationships. While the former, the public sphere remained under their full control, we can not say the same about the latter, due to the changes detailed above. So the retention of the *tutela mulierum* meant the retention of at least the appearance of men's control over the disposal of property.[79] Men had all the political rights, they monopolized the state's governance, they had the privilege of legislation and jurisdiction.[80] At the same time in the field of private law – presumably reflecting social demands – even legislation seems to have realized the fact that women had the opportunity to be independent.

There are illogicalities and absurdities in the legal system of the *tutela mulierum* itself too. At least the difference between the transactions that were achievable by women without the guardians' sanction and the ones that were not, does not seem very logical at first sight. Yet there might still be a logic in the way the transactions were divided. Perhaps this special kind of logic hides the reason for the retention of the *tutela mulierum*, closely related to the appearance of men's control over legal transactions.

The tradition of Roman law may play an important part in all this. A part of it is the legal sense of the concept of *auctoritas*, which in itself can be expounded in a broad spectrum. The difference between loaning money and selling a mule – which presumably used to be evident for the Romans – becomes more plausible, if we consider the difference between the legal transactions leading to them. A mule as a four-footed animal was a mancipiable thing (*res mancipi*) according to the archaic division of things. Thus it could only be alienated by an ancient legal transaction called *mancipatio*. On the other hand, in the case of the loan of money – which appeared later in Roman law – the regulations were much less strict.

Mancipable things were the Italian lands, the ancient servitutes (*iura rusticorum praediorum*), slaves and four-footed animals. The difference between *res mancipi* and *res nec mancipi* had no practical significance as time went by, yet the legal tradition kept the rule that the subject of *mancipatio* could only be *res mancipi*.[81] Everything else could be alienated by simple *traditio* based on the will of selling.

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[79] *Gardner*, Women in Roman Law and Society (note 59), 22.

[80] On the lack of women's rights in public law, see *Brósz*, Nem teljes jogú polgárok (note 57), 121-124.

[81] *Földi – Hamza*, A római jog története és institúciói (note 26), 272. Later the control over free persons – primarily *alieni iuris* members of one's family – was also transferred by *mancipatio*. This was the only exception, cf. *Földi – Hamza*, *ibid*., 313.

Following Gaius' text, we can select the transactions in which full aged women needed the sanction (*auctoritas*) of their guardians. This reveals a harsh difference between the guardianship over under aged and full aged (female) wards. While neither the under aged nor the full aged wards could alienate *res mancipi* without their guardians' sanction, full aged women could sell everything else independently.[82]

Therefore, women lacked not the legal capacity – the able-mindedness needed to undertake an obligation – but the authority to participate in the ancient legal transactions performed in a strict, solemn form. So the difference between the transactions for which women needed their guardians' auctoritas and the ones they could conclude on their own, does not lie in the type of obligation deriving from them, but in their formalities.

The conclusion of the first transaction types in Roman law – assigned only to a limited range of subjects – was confined to male citizens of Rome by legal tradition. It was prohibited for everyone else even centuries later, when the significance of these were faded out by the development of less strict and less complicated transactions. The words of the *nuncupatio*, a solemn verbal pronouncement meant to secure the validity of the contract, had to be uttered in a strict order. Their effect could only turn into power of creation – thus constituting law – in the mouth of the Quirites.

All this seem to confirm the assumption that the retention of the guardians' *auctoritas* was at best sufficient to maintain the appearance of men's control over the disposal of property. It is true that the things falling under *res mancipi* composed a significant part of the Romans' estate and women were not allowed to alienate them on their own either. Yet the proportion of the value of *res mancipi* and *res nec mancipi* altered vigorously from the 2nd century AD on. The latter gained far more significant value than it had ever before.[83]

If the determinative and effective purpose of the *tutela mulierum* was the practice of social control over the disposal of property, then it would have been more efficient to require the guardians' sanction for transactions reaching an allotted limit of value. Considering that women could freely loan money, give

[82] Gai. 2, 80.

[83] *Hamza*, A házastársak közti ajándékozási tilalom (note 18), 50. This process is confirmed by one of Martial's epigrams saying that silverware, artworks and ornaments provided important part of one's estate, 4, 39: *Argenti genus omne conparasti, / et solus veteres Myronos artes, / solus Praxitelus manum Scopaeque, / solus Phidiaci toreuma caeli, / solus Mentoreos habes labores. / Nec desunt tibi vera Gratiana / nec quae Callaico linuntur auro / nec mensis anaglypta de paternis.*

presents[84] and alienate *res nec mancipi* (including provincial lands), such control was at best illusory. Guardianship could not grant defence from the „fortune-hunters" – appearing so often in literary sources – either, for the kept men probably did not quite often ask their ladies for Italian lands or mules. Speaking of a similar case, Martial mentions crimson, precious stones and gold among the things that the „exploited Chloe" gives her lover.[85] Concluding from what was said above, a *sui iuris* woman could squander her money freely, if she wished to, by giving away her valuable yet not mancipable assets. On the whole, guardianship was not an efficient device to control women's property but at best one to maintain the appearance of such control.

The question is whether there was a way, in which the *tutela mulierum* could have been more effective. Trying to maintain the control over the field of private law does not necessarily mean that it was meant to reserve the control over the disposal of property. Perhaps the privilege of concluding certain transactions, being fundamentally important as the only transaction of the archaic Roman law, could have been equally significant for a Roman man.

It is clear from Gaius' text that women under guardianship needed the *auctoritas* of their guardian if they wished to conclude an ancient legal transaction, which in the age of the archaic law had been the privilege of the Quirites, i.e. full aged Roman men fit for military service.[86] It seems that though women in fact did administer their own property, the legislators were still unwilling to give them the right to conclude the ancient legal transactions independently. This may be in coherence with the concept of *auctoritas*, which covers a broad scale of meanings.[87]

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[84] Donations between spouses – presumably from the 1st century BC – were prohibited by the rules of Roman law. The reason for this, according to Gábor Hamza, lies in the legal construction of donation and in its original nature. *Hamza*, A házastársak közti ajándékozási tilalom (note 18). Apart from her husband a woman could donate everybody else freely.

[85] Mart. 4, 28: *Donasti tenero, Chloe, Luperco / Hispanas Tyriasque coccinasque, / et lotam tepido togam Galaeso, / Indos sardonychas, Scythas zmaragdos, / et centum dominos novae monetae: / et quidquid petit usque et usque donas. / Vae glabraria, vae tibi misella: / nudam te statuet tuus Lupercus*. Another epigram warns of the danger of fortune-hunters too, 2, 34: *Cum placeat Phileros tota tibi dote redemptus, / tres pateris natos, Galla, perire fame.* It appears that not all women were known for their profitable investments.

[86] *Zlinszky*, Ius privatum (note 7), 16.

[87] *Auctoritas* falls under the concepts of *mos maiorum*. It is bound up with the concept of dignitas, which used to belong to the patricians only. On further meanings of *auctoritas*, see *L. R. Lind*, The Traditions of Roman Moral Conservatism. In: Studies in Latin Literature and Roman History. Vol. 1. Ed. *C. Deroux*. Bruxelles 1971, 22. In the following we will concentrate on the legal sense of *auctoritas* only.

According to Lind *auctoritas* was always an active power, unlike its counterpart, *dignitas* which was static in nature.[88] This must have been needed to establish control over a thing or a person by the „words of creation", very important in Roman religion too, when the ancient transactions first appeared. Presumably this process hid behind the words of the *nuncupatio*, which always had to be pronounced clearly and in the right order.[89] On the other hand there were further conditions of gaining *auctoritas*. No one could gain it who was inexperienced, unskilled in the field in question or lacked authorization from the proper power, often from the Roman people itself.[90]

Adapting all this to the conclusion of ancient transactions, it seems that *auctoritas* served as the grounds of quiritary ownership which was attainable on the basis of the *ius Quiritium*. The grounds lay in the transaction itself, based on quoting the „words of creation". This active power establishing ownership was the privilege of the *Quirites*, which neither strangers, nor women or under aged children could gain.

Regarding contracts, the obligation also used to be generated by words, by a solemn promise uttered in strict order (*sponsio*). The one who broke it became accursed (*sacer*). According to Gellius the debtor breaking his promise or the patron deceiving his client offended against *fides*, which explains the severe punishment declared by the Twelve Tables.[91] Yet these punishments might have never been carried out, because the power of *fides* and the „words of creation" were strong enough to withhold from breaking it.

With the continuous subsistence of the two ancient legal transactions, *mancipatio* and *stipulatio*, the words constituting law were part of the development of Roman law for centuries. Their essence was not the same in later periods as in the age of the Twelve Tables, but their formalities remained unchanged. They were probably considered far too significant for legislation to abolish them, breaking with the legal tradition.

Presumably, the Romans' legal conservativism played an important role in retaining the *tutela mulierum* even after its practical functions had disappeared. The difference between the cases where the guardian's sanction was required and where it was not, must have been based on the legislators' effort to reserve

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[88] *Lind*, The Traditions of Roman moral conservativism (note 87), 30.

[89] On the „word of creation" in Roman religion, see *Th. Köves-Zulauf*, Bevezetés a római vallás és monda történetébe [Introduction to the History of Roman Religion and Mythology]. Budapest 1995, 70-151.

[90] *Lind*, The traditions of Roman moral conservativism (note 87), 30.

[91] Gell. 20, 1. The debtor of more creditors was to be cut in an equal number of pieces to the number of his creditors. XII *tab.* 3, 1-6.

the full aged Roman men's privilege to conduct the ancient legal transactions.[92] The essence of these transactions staled with time and social changes, yet the significance of the externals remained the same. So much that a woman, who on the other hand, ran her own business independently, needed an intermediary to conclude such transactions. She needed a male Roman citizen, the „heir" of the Quirites.

Thus a full aged *sui iuris* woman – under the proper circumstances – could decide when, how and on what conditions she would use her property. The only thing she could not do was to conclude the ancient legal transactions, which used to be the most important instruments of the disposal of property in the age of archaic Roman law. So the male Roman citizens not only controlled the field of public law, but they were able to maintain the appearance of controlling the most significant transactions of civil law as well.

Presumably, the *tutela mulierum* disappeared when even the formal significance of the ancient transactions vanished. The archaic formalities were replaced by more flexible, faster and more simple transactions, and – for the sake of the security of commerce – writing became more important than words.[93]

In the Institutes of Justinian we can not find any trace of the distinction between *res mancipi* and *res nec mancipi*, and of course there is no tarce of the guardianship of full aged women either. The *tutela mulierum* was abolished by the legislation of Constantine, who tried to rationalize Roman law in many aspects. Apart from the *tutela mulierum* he abolished the punishments of childlessness and unmarried state introduced by the legislation of Augustus.[94] So after all the recognition of social demands and putting forward practical aspects gave the *coup de grâce* of the illusion, maintained through the *auctoritas* of the guardians.

[92] The *ius liberorum* – whatever it's grounds were – must be considered as a privilege.
[93] *Zlinszky*, Ius Privatum (note 7), 106.
[94] *CodTheod* 8, 16, 1. In a resemblance with the *ius liberorum*, one could gain acquittance from the provisions of the Augustan legislation against childlessness. E.g. Martial – who was single and childless – received the right of three children from the emperor, Mart. 2, 90-91.