

Call for Article Proposal for a Special Issue

Gender, History, and Law

Clio@Themis. Revue électronique d'histoire du droit. N° 25, 2023.

Coordinated by Hélène Duffuler-Vialle, Marie Houlemare, Florence Renucci and Todd Shepard

This call for article proposals sets the stage for a special section of issue 25 (2023) of the journal *Clio@Themis* (<https://publications-prairial.fr/cliothemis>).

It is open to all scholars—whatever their relationship to the academy—from all disciplines, who work on questions that bring law and gender into conversation. The coordinators of this special section aim to reinvigorate how these questions are studied, so we are especially eager to read work from junior scholars, who we encourage to submit.

Article proposals (title and an overall description no longer than 3500 characters, including spaces) should be sent jointly to all of the coordinators before **December 31, 2021**:

Accepted proposals should be submitted by December 1, 2022, at the latest. This will allow evaluation by *Clio@Themis*, including peer review, with the publication of issue 25 scheduled for November 2023.

Calendar and Process of Evaluation for Proposed articles

Article proposals (maximum length of 3500 characters, including spaces) must be submitted on or before December 31, 2021.

- ☐ Call for proposals appears in October 2021.
- ☐ Article proposals, submitted by December 31, 2022.
- ☐ Seminar with all the participants of this special issue to exchange on the articles (in Geneva) in October 2022.
- ☐ Accepted articles submitted by December 1, 2022.
- ☐ Initial committee evaluations of articles in January 2023.
- ☐ Submission of revised articles by June 1, 2023.
- ☐ Second committee evaluation of articles in June-July 2023.
- ☐ Submission of final versions of articles by September 15, 2023.
- ☐ Publication in November 2023.

Rationale

How to define gender has inspired substantial philosophical and sociological discussions. For this special issue of *Clio@Themis*, we adopt a broad definition. We understand gender as processes that construct differences of sex and sexuality, which include material, symbolic, and hierarchical dimensions. Gender is also a category of analysis, a methodological tool to interpret law.

The prism of gender has allowed humanists and social scientists to substantively reinterpret their subjects of research.

The legal topics that have drawn the most attention have been how and in what ways law has been either favorable or unfavorable to women and the identification of feminist struggles to alter the legal competence of married women (Rochefort, 2005).

In French legal research, however, gender as object and as method continues to be marginalized. From 2011 to 2015, a research project on gender and law entitled “Régine,” which a team of researchers in positive law carried out, sought “to anchor feminist legal theory in the field of French juridical research” and “to demonstrate that gendered inequalities are not only visible in the law but also are produced by the law” (<http://www.regine.u-paris10.fr>). It led to the publication of several reference books, such as *Genre et droit. Ressources pédagogiques* (Hennette-Vauchez, Pichard, Roman, 2016). At the same time, several major surveys—such as “Virage” on violence against women—received the support of the Gip MRDJ [Mission for Research on Law and Justice]. We note that these projects included close to zero engagement with historical perspectives.

Several histories of law have explored the place of women (Demars-Sion, 1991; Lemonnier-Lesage, 2000), of marriage as institution (Bontems (dir.), 2001), sexualities (Royer and Poumarède, 1987; Boninchi, 2005), and domestic violence (Vanneau, 2016), through scholarship that nourishes reflection on the social relations of sex and on the sexual division of law. Such publications, however, situate themselves in classical perspectives of legal history or juridical anthropology, insofar as they do not explicitly engage gender studies approaches. That said, there are recent works in legal history into gender (Paturet; Wijffels), as well as a 2015 thesis that studies the regulation of prostitution and related criminal judicial treatment (Duffuler-Vialle, 2015). In addition, The French National Research Agency (ANR) has just selected the project HLJPGenre¹ for one of its “young researchers awards,” which will allow the project to begin work in 2022. This research project aims to analyze the presence of social relations of sex and sexuality in juridical and law enforcement systems, from the Revolution until today (with a focus on penal law, but also including public law, commercial law, employment law, and family law, in terms of their enforcement mechanisms). The goal is to introduce gender studies into the disciplinary field of legal history and, at the same time, to enrich gender studies through the work of legal historians.

The analytic possibilities of gender studies have key limits, as the work of scholarly critics has established. Intersectional approaches, to great effect, aim to address these blindspots. Yet gender studies remain generative, because it requires a radical decentering of perspective and renders visible phenomena that otherwise remain unseen. Law announces itself as neutral and universal. Gender studies scholarship pinpoints the ways that this facade obscures representations and stereotypes linked to social relationships of sex and sexuality and unpacks how law produces gendered differences and discrimination. A gendered rereading of legal history thus still seems necessary, at this late stage in the larger discussion, to propose histories that challenge existing narratives that our discipline’s scholarly and pedagogical publications continue to hold dear. We need widely varied angles into the intersections between gender and law, whether thematically (feminine, masculine, and transgender; sexualities and/or genders),

¹ This project, coordonné par which Hélène Duffuler-Vialle coordinates, engages a multidisciplinary team (with historians, such as Véronique Blanchard, Marie Houlemare, Régis Révenin, Marc Renneville—the sociologist Nicolas Bué—postivie law jurists Christine Desnoyer, Hugues Hélio, Anne Jennequin, Frédérique Le Doujet-Thomas, Corinne Robaczewski, Fanny Vasseur-Lambry), includes legal historians from diverse subfields (Luisa Brunori : history of business law, Fatiha Cherfouh-Baïch, Alexandre Frambery-Jacobone, Nader Hakim, Arnaud Paturet et Alain Wijffels: history of legal theory, Sébastien Dhalluin : history of criminal law, Paul-Emmanuel Babin, Sonia Baï, Silvia Falconieri, Florence Renucci, Anne Ulrich-Girollet : history of colonial law, Farid Lekéal : history of employment and social law, and Sabrina Michel : history of civil law).

chronologically (from Roman Law to the contemporary era), geographically (France and territories subjected to it, including possible comparative studies) and juridically (civil law, public law, criminal law, employment law, business law...). Our approach to how law is gendered is global, encompassing processes that produce norms, the application of such norms, as well as how transgressions are punished, and, equally important, how those ensnared by law seek to reappropriate or evade it. We envision three main poles of discussion: how law works to affix gender, how those excluded from such juridical gendering are dealt with, and the emancipatory strategies legal subjects propose to escape fixed gendering.

- 1. How law works to affix gender.** This first pole groups investigations into ways that law, in specific times and spaces, assigns certain characteristics to people on the basis of gender—people and law situated in time as well as space. How are men defined? Women? What is the juridical space allotted, for example, to the ability to make a child? Do children or slaves have a gender? Is it possible, in other words, to speak of “juridical femininity” and “juridical masculinity”? How do the performative dimensions of such characterizations, whether latent or manifest, function? What role(s) do juridical injunctions that concern sexuality—and their justifications—play? What place do essentialist arguments have in such developments, how do they function in juridical debates? How important is religion, tradition, and/or the play of power in such gender assignments? What types of expertise or science are deployed in juridical or judicial debates to justify them?
- 2. Excluded or unthought.** What consequences do those who do not fit such gender assignments face? Or those who are defined out of law’s binarized construction, or those whose sexuality slips beyond the neat categories law relies on, i.e. intersex people, trans*, or those whose sexuality is other than heterosexual? What juridical and judicial treatment do they face in different times and spaces? In the binarized and heteronormative construction that law affirms, what juridical and judicial treatments are reserved for people whose gender is not easy to identify, those who reject injunctions to assume a gendered identity, or those whose sexual practices stand outside of heteronormative expectations? How do such treatments evolve and/or resist change?
- 3. To be emancipated, or To emancipate oneself through law/by taking advantage of law(s)/in opposition to law.** One of law’s defining features is that it works to establish order, as we note above, in the service of moralizing, religious, or political ends. Law, however, also can lend itself to emancipation. Legal histories tend to present such emancipatory work in teleological terms. Yet attention to longer term developments reveals more complex pathways: the Revolution of 1789, for example, did not produce a clean break in this domain. It is also necessary to recognize that the emancipatory histories of different categories of people vary significantly. For many centuries, women had more rights than others in certain domains, which facilitated commercial activities and the disposal of their belongings, for example. This was the case in quite disparate situations, from the *signares* of West Africa (Vial, 2019), to widows, without forgetting the privileges accorded market women under the Old Regime (Slimani, 2008). What remains to be explained are the genealogies, reasons, and the veritable actors that produced these partial or complete emancipations, as well as analyses of how gender intersected with other factors that produce difference in such developments.

Alongside such histories, feminist movements actively worked for emancipation. We have numerous studies of feminist efforts, yet the historiography

around organizations of jurists that were wholly or substantially female remains sparse, with certain exceptions, such as work from lawyer Maria Vérone (Machiels, 2008) and studies focused on certain groups within Africa (S. Dezalay (ed.), 2015 ; M. N'Diaye, 2011). In such case, actors' abilities to make use of courts, institutions, and social or political influence is in sharp tension with juridical capacity. In such a case, intersectional logics would appear to bring particular insight: how, in effect, could analyses of emancipatory strategies ignore social class, racial questions—most especially in colonial contexts—or generation, factors that might well explain more than assigned gender?

Finally, this special issue of *Clio@Themis* surely will contribute new elements into debates around the key (irresolvable?) dilemma: is it better to reframe law so as to target and combat gender discrimination or, to the contrary, is the best path forward to seek to expel gender from law so as to move toward a truly universal legal system ?

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