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The Legal Treatment of Hermaphroditism in Ancient Rome. From Persecution to Integration

RALPH EVÊQUE

In 2009, Caster Semenya is 18 years old. The South African 800m athlete is beginning to impress observers with her promising performances¹. On 31 July of the same year, she became African Junior Champion and in the same movement, she captured the world's best performance of the year at any age. A few weeks later, she took part in the Senior World Athletics Championships. Qualifying quickly for the final, she was the favourite for the title. The public then discovered her. If her tactician talents and the beauty of her strides are undeniable, it is above all her physical appearance combined with her masculinity that seems to question. On the eve of the women's 800m final of the World Athletics Championships, which she will eventually win, the International Association

¹ Pape M., Roger P., *Science, Sport, Sex, and the Case of Caster Semenya: Decisions about who can Compete as a Female Athlete in World-Class Athletics should be Informed by Science, but they are ultimately Subjective*, in *Issues in Science and Technology*, 2019, 1, 56-63; McQuoid-Mason D., *Would it be Ethical or Legal for Doctors in South Africa to Administer Testosterone-Reducing Drugs to Caster Semenya?*, in *South African Medical Journal*, 2019, 109-8, 552 ss.; Mahomed S., Dhali A., *Discrimination and Racial Bias*, in *South African Medical Journal*, 2019, 109-8, 548-551; Farham B., Semenya C., *The Questionable Practice of Gender Verification*, in *South African Medical Journal*, 2019, 109-8, 543 ss.; Olivesi A., Montanola S., *Quels locuteurs pour quelles définitions de l'identité sexuée dans les médias?*, in *La langue. Revue de linguistique et d'analyse du discours*, 2018, 10-1, 205-220.

of Athletics Federations (IAAF) is testing her for eligibility². The

² Femininity tests first appeared in the sports context in the 1930s, just as women were beginning to gain access to high-level sport. Their role was to exclude from sports competitions both men masquerading as women (either out of concupiscence or in order to win more easily) but also athletes deemed too virile, since their particularities would give them an advantage over their competitors. For the first decades, these tests were limited to a simple cursory visual examination imposed on athletes who, because of their physical appearance judged to be male, caused controversy. Although tests of femininity were initially only carried out on an ad hoc basis, from 1966 onwards this was not the case. From that date onwards, the IOC systematised the tests and issued “certificates of femininity”. From 1966 to 1968, sportswomen were tested on the basis of morphological and gynaecological tests. From 1968 to 1991, the way of assessing femininity evolved and was now based on genetics (Barr’s corpuscle test). In short, the aim is to check that athletes who wish to compete in the female categories have two X sex chromosomes. Since 1991, femininity has been considered according to another method, the search for the SRY gene, a marker of masculinity. However, the determination of femininity by means of genetics shows its limitations. Particularly in the “Maria Jose Martinez-Patino case”. The Spanish runner had initially been declared ineligible for the 1988 Seoul Games because she did not have two X sex chromosomes but XY. However, the latter showed an insensitivity to androgens which resulted in the fact that she had developed as a woman. Defended by many geneticists, Maria Jose Martinez-Patino is rehabilitated by the IOC. Her misadventure was also experienced by eight athletes who were first excluded and then allowed to participate in the 1996 Olympic Games in Atlanta. From then on, the genetic method was abandoned and the gynecological examination was returned to. At the same time, at the end of the 1990s, under the influence of Bernard Digeon, responsible for gender control at the 1992 and 1994 Olympic Games, a change (in mentality or simply in vocabulary?) took place. Indeed, we now speak of a gender test, on the understanding that femininity is too complex and undulating a concept to be “measured” by means of a simple scientific analysis. In 2000 (in fact and officially in 2005), the IOC gave up the idea of systematically checking sportswomen and girls and, by the same token, of “certificates of femininity”. However, the Olympic Committee reserves the right to test an athlete for whom there is serious doubt as to her gender identity. At the end of the 2000s and in particular after the Caster Semenya scandal, the tests carried out focused on hormonal criteria, in particular the testosterone level, which must be less than 10 nanomoles per litre of blood for a sportswoman to be able to compete in the women’s categories (5 nanomoles since 2018). Currently, the terminology used

results are made public, Caster Semenya has a genotype XY (male) and a testosterone production higher than that normally produced by a biological female (hyperandrogenism). Since then, Caster Semenya has won the world title three times and the Olympic title twice. However, between August 2009 and July 2010, and since mid-2019, she has been suspended due to her sexual indeterminacy³. The situation has now reached an impasse. Indeed, in April 2018, an IAAF regulation stipulates that sportswomen competing in long-distance (100, 200 and 400 metres and 110 metres hurdles) and middle-distance (800 and 1500 metres)⁴ with a testosterone level of more than 5 nanomoles per litre of blood can no longer

by the International Olympic Committee (IOC) is that of an eligibility test, since sports bodies consider that gender, like femininity, is too sensitive a concept to be defined by a test. Eligibility tests would only have the ambition to highlight the criteria for authorising or not authorising a sportswoman to compete in the women's category. This semantic change has in fact not led to any significant structural changes. Whether one speaks of a test of femininity, gender or eligibility, the mechanism is the same: that of a "sex police" which classifies athletes into one of the two categories recognised as legitimate (male/female) on the basis of physical appearance and subjective scientific standards. On this subject, read: Bohuon A., *Catégorie dame. Le Test de féminité dans les compétitions sportives. Une histoire classée X?*, Paris, Éditions IX^c, 2012; Fausto-Sterling A., *Corps en tous genres: La dualité des sexes à l'épreuve de la science*, Paris, La Découverte, 2012, 19; Montanola S., Olivési A., *Gender Testing in Sport: Ethics, Cases and Controversies*, London, Routledge, 2016.

³ There has been considerable controversy in the specific community regarding the sporting benefits of hyperandrogenism. In any case, it should be noted that this stems from the injustice of considering that a high testosterone level is an unfair advantage for a sportswoman but to ignore other particularities (size, creatine production, heart rate...).

⁴ It appears that the abovementioned Regulation is specifically directed against Caster Semenya. Indeed, it does not seem entirely logical to limit the application of this obligation to the substantive and middle ground and to exclude from the scope of this regulation athletic disciplines such as throwing. Indeed, it has been shown that testosterone levels have a more decisive impact on shot put, hammer, javelin and discus throwers than on runners.

compete in the women's categories⁵. The IAAF allows – and even encourages – the athletes concerned to take medication that reduces their testosterone levels so that they can continue to practice their sport at the highest level⁶. Caster Semenya, having endured, and continuing to endure, a deplorable exposure of her private life, has nevertheless contributed to the necessary media coverage of the issue of intersexuality/intersex⁷.

Today we will discuss the legal treatment of persons with mixed sexual characteristics. Before doing so, however, let us provide some necessary terminological and methodological clarifications.

Persons with congenital genital, gonadal or chromosomal sexual characteristics that do not correspond to the usual definitions of male or female bodies have been designated in different ways in Western history. Julien Picquard lists no less than ten different terms used today in his book *Ni Homme, Ni Femme*. Investigation

⁵ On 18 February 2019, Caster Semenya will initiate an appeal against the above-mentioned IAAF Rules before the Court of Arbitration for Sport (CAS). Despite the support of the United Nations Human Rights Council, CAS upholds the IAAF's ruling on 1 May 2019. Caster Semenya subsequently referred the matter to the Swiss Supreme Court, which decided to suspend the contested settlement and to lift the suspension on 30 July 2019. Since then, the Complainant has increased the number of appeals. In view of the fact that she refuses to take medication, Caster Semenya can no longer take part in long-distance and middle-distance races and is therefore considering taking part in longer distance races or trying out other sports (football in particular).

⁶ One can be circumspect in the face of this obligation, which aims at mediating patients even though they have no pathology.

⁷ Note that Caster Semenya is not the only hyperandrogenic and intersex athlete. We can cite, without however being able to be exhaustive, the cases of the legendary Maria Mutola specialist in sprint and middle distance, Olympic champion in the 800 metres in 2000; Pamela Jelimo Olympic champion in the 800 metres in 2008; Dutee Chand specialist in sprint and suspended in 2014; Margaret Wambui who won the bronze medal in the 800 metres at the Olympic Games in Rio in 2016 or Francine Niyonsaba runner-up to Caster Semenya at the same Olympic Games in 2016.

of intersexuation: hermaphrodite, pseudo-hermaphrodite, intersex, intersexed, intersexed, intersexual, intergender, androgynous, third sex, person presenting a sexual or genital ambiguity, individual presenting a sexual development disorder (SDD)⁸.

During Greco-Roman antiquity, the term hermaphrodite was most often used. It should be noted that this term refers to a Greek myth in which the character Hermaphróditos is the main protagonist⁹. Hermaphróditos is the son of the gods Hermes and Aphrodite. The latter, of a very beautiful constitution, arouses the desire of the naiad Salmacis as he bathes undressed in the lake of which she is the protector¹⁰. Intoxicated by this new love and devastated by the indifference of Hermaphróditos Salmacis begs Zeus to unite him forever to the young epebe. Her wish is granted when, under the influence of divine power, the bodies of the nymph and her beloved are united into a single entity endowed with both masculine and feminine attributes¹¹. During the ancient period, other more

⁸ Picquard J., *Ni Homme, Ni femme. Enquête sur l'intersexuation*, Paris, La Musardine, 2013.

⁹ Theophrastus, *On Moral Characters*, XVI; Diodorus of Sicily, *Historical Library*, IV, 6, 5; Ovid, *Metamorphoses*, IV, 288-390. Read too: Brisson L., *Le sexe incertain Androgynie et hermaphrodisme dans l'Antiquité romaine*, Paris, Les Belles Lettres, 1997.

¹⁰ Ovid, *Metamorphoses*, IV, 285-379. Note that the nymph Seleucis is explicitly named only in Ovid.

¹¹ The legend of Hermaphróditos may be related to the myth of the androgynous one reported by Plato in *The Banquet* (189d-193d): «In many civilizations appears, before the distinction between man and woman, the figure of the androgynous one. What is this myth? According to mythology, the human species was born from the androgynous. An androgynous was formed by two beings of opposite sexes coupled together. Two beings into one. Proud of their double nature, the Androgynous wanted to defy the Gods, especially Zeus, by trying to enter the kingdom of the Gods. The Gods, in anger, and through the voice and lightning of Zeus, decided to punish the androgynous people by separating them into two distinct beings. Thus would have been born men and women as we are today. The separated androgynous people were very sad and began to find each other again. Their quest

or less stigmatizing terms coexisted with that of hermaphrodite: being sexually ambiguous, monster, prodigy, androgynous, person of both sexes, true eunuch¹².

No significant semantic evolution is to be reported before the end of the 19th century¹³ when doctors who had been interested

was usually a long one. The myth says that love is only a feeling of lack of this state of oneness between two beings. Thus, the soul mate, the loved one, could be the part of the androgynous being that was taken away from you by the wrath of the Greek Gods. A myth to describe what love is, and which, in the end, represents all that one can feel when one has found one's soul mate. Since that time, we have been searching for that lost part of ourselves. This explains the attraction that exists between beings. If we are a man and that half was female, we will look for that woman. If, on the other hand, she was male, we will look for that other male. And vice versa».

¹² Boehringer S., *Sexe, genre, sexualité: mode d'emploi (dans L'Antiquité)*, in *Kentron*, 2005, 21, 92-94; Cantarella E., *L'hermaphrodite et la bisexualité à l'épreuve du droit dans l'antiquité*, in *Diogène*, 2004, 208-4, 3-15; Vallar S., *Les Hermaphrodites: l'approche de la Rome antique*, in *Revue Internationale des droits de L'Antiquité*, 2013, LX, 201-217; Cantarella E., *Selon la nature, l'usage et la loi. La bisexualité dans le monde antique*, Paris, La Découverte, 1991; Crifò G., *Prodigium e diritto. Il caso dell'ermafrodita*, in *Index*, 1999, 27, 113-120.

¹³ Dreger A., *Hermaphrodites and the Medical Invention of Sex*, Cambridge, MA, Harvard University Press, 1998, Chapter 5; Geertje M., *Altérations des logiques du sexe. L'hermaphrodisme dans des cas médicaux et juridiques du XIXe siècle*, in *Cliniques méditerranéennes*, 2017, 95-1, 21-34; Houbre G., *Un sexe indéterminé?: l'identité civile des hermaphrodites entre droit et médecine au XIXe siècle*, in *Revue d'histoire du XIXe siècle*, 2014, 48-1, 63-75; Salle M., *Une ambiguïté sexuelle subversive: L'hermaphrodisme dans le discours médical de la fin du XIXe siècle*, in *Ethnologie française*, 2010, 40-1, 123-130; Houbre G., *Un individu d'un genre mal défini. L'hermaphrodisme dans les procès en nullité de mariage (France, XIXe Siècle)*, in *Rue Descartes*, 2019, 95-1, 80-107; Delcourt M., *Hermaphrodite. Mythes et rites de la bisexualité dans L'Antiquité classique*, Paris, PUF, 1992; Paturet A., *Ambivalence sexuelle et identité juridique à travers les âges*, in *Journal of Research in Gender Studies*, 2012, 2-1, 11-27; Cuny-Le Callet B., *Rome et ses monstres: Naissance d'un concept philosophique et rhétorique*, Paris, Millon, 2005; Peter O.M., *Olim in Prodigiiis Nunc in Deliciis - Lo Status Giuridico dei Monstra nel Diritto Romano*, in *Iura antiquita, iura moderna*, ed. G. Hamza; Benedek F.F., *Studia Iuridica Auctoritate*, Pecs, Universitatis Pecs Publicata, 2001, 207-216.

in natural curiosities since the 17th century¹⁴ began to distinguish

¹⁴ In particular, the book of Isidore Saint-Hilaire G., *Histoire générale et particulières des anomalies de l'organisation chez l'homme et les animaux*, Paris, Baillière, 1832. See: Graille P., *Le Troisième sexe. Être hermaphrodite aux XVIIe et XVIIIe s.*, L'Aquila, Arkhè, 2011; Closson M., *Avant-propos*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 7-33; Kramer F., *Hermaphrodites Closely Observed. The Individualisation of Hermaphrodites and the Rise of the observatio genre in Seventeenth-Century Medicine*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 37-60; Duong-Iseler S., *Tous les hermaphrodites ne sont point des monstres. L'hermaphrodite chez Fortunio Liceti*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 61-76; Graille P., *Classez ce monstre, cela fait venir d'obscures pensées aux Lumières*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 77-90; Stănică M.G., *Représenter l'ambiguïté dans l'Encyclopédie de Diderot et d'Alembert*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 91-107; Leibacher-Ouvrard L., *Imaginaire anatomique, débordements tribadiques et excisions Le Discours sur les hermaphrodites (1614) de Jean Riolan fils*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 111-124; Seth C., *Entre curiosa et œuvre scientifique Les cas de Louis Hainaut, Marie Augé et Jaqueline Foroni*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, pp. 125-145; Klöppel U., *The lost Innocence of Hermaphrodites Medical Reasoning on Hermaphroditism around 1800*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 147-168; Rothstein M., *L'androgyne politique au XVIe siècle*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 169-183; Denzel V., *Entre le rire et la subversion. Le changement de sexe dans les épopées italiennes et françaises du XIVe au XVIe siècle*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 185-206; Raviez F., *Voltaire ou l'hermaphrodite en question(s)*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 279-303; Brancher D., *Le genre incertain De l'hermaphroditisme littéraire et médical*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 307-324; Cerf-Michaut C., *Hermaphroditisme et langage: le cas de l'équivoque*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 325-340; Closson M., *Une utopie dans l'utopie: la langue hermaphrodite*, in *L'Hermaphrodite de la Renaissance aux Lumières*, ed. Closson M., Paris, Garnier, 2013, 341-356; D'Angelo F., *Libertinage, hermaphroditisme et masculinité*, in *Les Dossiers du Grihl* [On line], 2010-01 (accessed: 02.05.2019). <http://journals.openedition.org/dossiersgrihl/3964>; Graille P., *Les hermaphrodites au XVIIe et XVIIIe s.*, Paris, Les Belles Lettres, 2001.

between true and pseudo-hermaphroditism¹⁵. The first type of sexual mixing¹⁶ consists in the presence in the same individual, who may present a XX or XY karyotype, of true male and female genital structures (erectile penis, prostate, vagina and uterus).

Pseudo-hermaphroditism can be either feminine or masculine. In the first case, the individual has an XX karyotype, functional internal female sexual organs but ambiguous external sexual organs due to either exposure to androgens during pregnancy which caused virilizing effects, or congenital adrenal hyperplasia (which causes the same effects). In the second case, the person has an XY karyotype but a testosterone-related problem. Or because of a condition called androgen insensitivity syndrome (AIS), which results in the patient having female external sex organs due to non-functional testosterone receptors but also internal testicles and an absence of uterus. Or due to an early testosterone deficiency which causes ambiguity of the external genitalia and sterility in most cases.

In the middle of the First World War, the Austrian geneticist Richard Goldschmidt is at the origin of a considerable change in the apprehension of the individuals presenting a sexual mix by desig-

¹⁵ Geoffroy Saint-Hilaire distinguishes masculine, feminine, neutral, mixed and bisexual hermaphroditism (*Histoire générale et particulières des anomalies de l'organisation chez l'homme et les animaux*, Paris, Baillière, 1832). A few decades later, the Scottish physician James Young Simpson differentiates between true and false hermaphroditism (*Anaesthesia, Hospitalism, Hermaphroditism, and a Proposal to Stamp Out Small-pox and Other Contagious Diseases*, Edinburgh, Black, 1871). In 1876, the German Theodor Albrecht Klebs perfected the previous classification by making a distinction between true and pseudo hermaphroditism (*Handbuch der Pathologischen Anatomie*, Berlin, Hirschwald, 1876). Read: Dorlin E., *Sexe, genre et sexualités Introduction à la théorie féministe*, Paris, PUF, 2008, 33 ss.

¹⁶ On the difficulty of assessing the prevalence of different forms of hermaphroditism: Chau P., Herring J., *Defining, Assigning and Designing Sex*, in *International Journal of Law, Policy and the Family*, 2002, 327.

nating them by means of the term intersexual¹⁷ which has the merit to have a connotation less mythological, phantasmagoriated and exotic than that of hermaphrodite¹⁸. More importantly, the term “intersexual” reflects in a more subtle way the fact of experiencing an atypical sexual development, of presenting a genital ambiguity¹⁹. It is only in the 1950s that the term “intersexual” began to impose itself in the American medical field. It should be noted that many people prefer to use the word “intersex”²⁰ to describe themselves because “intersex” is an ambiguous term often associated with sexual or gender identity²¹. Even more recently, in 2005, an asso-

¹⁷ Goldshmidt R., *Intersexuality and the Endocrine Aspect of Sex*, in *Endocrinology*, 1917, 1-4, 433-456.

¹⁸ The Collectif Intersexes et Allié.e.s-OII France notes that: «The term hermaphroditism [...] is biologically erroneous: the intersex are not half-male, half-female beings with a double functional genital apparatus. However, some intersex people have reappropriated the stigmatizing and exoticizing burden of the term and make it a political identity. Beware, if some intersex people use it, it is very inappropriate for dyadic people to do so». <https://cia-oiifrance.org/2018/07/03/intersexe-cest-quoi-2/>.

¹⁹ It should be noted that the term “hermaphroditic”, which refers to having both male and female genitalia, is often misused. For example, journalist Emmanuel Quintin described Caster Semenya as a hermaphrodite in *Le Figaro* in September 2009, even though he admitted that: «Blood, chromosomal and gynecological tests carried out on the young South African woman reveal that she does not have ovaries but internal testicles that produce testosterone».

²⁰ It should be noted that while the terms “intersex” and “intersexed” are generally considered synonymous so that Janik Bastien Charlebois (*Les sujets intersexes peuvent-ils (se) penser?*, in *Socio*, 2017, 9, 143-162) proposes the following writing: intersex(ué)es. However, the associations of persons concerned make a distinction (Charlebois, *ibid.*). Thus, intersexed persons would be: «all persons who deviate from the normative developmental figures “male” and “female” created by medicine, and who can be “corrected” by it during early childhood or adolescence», whereas the expression “intersexed persons” refers to those: «who are aware that they belong to a group of persons who have suffered the same medical disability, who adopt a positive and non-pathologizing view of their bodies and who affirm a political identity».

²¹ http://sts67.org/html/gloss/fr_glossaire.html#intersexuation.

ciation of intersex people²², the Intersex Society of North America (ISNA), advocated for a change in nomenclature and proposed a new, more neutral term for them, DSD for “Disorders of Sex Development”²³. This new proposal did not meet with consensus since the term DSP is considered pathological and led – in reaction – to the creation of the International Intersex Organization²⁴. It should be noted that it is very difficult to define precisely the scope of the population qualified as intersex. Firstly, because intersex people do not always have visible sexual mixing at birth and are therefore not diagnosed. Above all, because of the narrow or extensive conception of intersex. Thus, the incidence can be as high as 2% of births (4% for the psychologist John Money)²⁵ when it is considered that intersex refers to any deviation from a standard ideal of the male or female genitalia²⁶. This same incidence may decline to less than 0.4% when the term intersex is reserved only for people with a divergence between their karyotype and their phenotype or when the phenotype is totally ambiguous²⁷. The UN defines intersex

²² The development of associations of intersex people can be noted from the early 1990s. The Intersex Society of North America is the precursor to this. It was created in 1993 in the United States in the same movement as the precursor article of Sterling A., *The Five Sexes*, in *The Sciences*, 1993, 33-2, 20-24.

²³ Dreger A., Chase C., Sousa A., Gruppuso P., Frader J., *Changing the Nomenclature/Taxonomy for Intersex: A Scientific and Clinical Rationale*, in *Journal of pediatric endocrinology & metabolism*, 2005, 18-8, 729-733.

²⁴ The International Intersex Organization was established in 2003 even before the publication of the disputed article (in 2005).

²⁵ Gillis J., *Letters from Readers*, in *The Sciences*, 1993, 33-3, 4-51.

²⁶ 1,7% according to Fausto-Sterling A. (*Corps en tous genres: la dualité des sexes à l'épreuve de la science*, Paris, La Découverte, 2012); 2,0% for Blackless M., Charuvastra A., Derryck A., Fausto-Sterling A., Lauzanne K., Lee E., *How Sexually Dimorphic are we? Review and Synthesis*, in *American Journal of Human Biology*, 2000, 12, 151-166.

²⁷ 0,4% for Hullet C.L., Fausto-Sterling A., *Letter to the Editor*, in *American Journal of Human Biology*, 2003, 15-1, 112-116; 0,018% according to Sax L., *How Common is Intersex? A Response to Anne Fausto-Sterling*, in *Journal of Sex Research*,

people as those «born with physical sex characteristics that do not fit medical norms for female or male bodies»²⁸.

While some countries have changed their legislation to include intersex people by no longer imposing a binary sexual determination of the child at birth (this has been the case in Australia since 2006, New Zealand since 2009 and Germany since 2013), most states are still mostly hostile or, at best, indifferent to intersex. In France²⁹, many voices are calling for a legislative change allowing the recognition of a third gender (or neutral gender) and the fight against genital mutilation assigning intersex(ue)s to one of the two socially recognized genders³⁰. However, for the time being, the legislator remains deaf to these insistent foot calls.

Evoking modern issues such as gender and sexuality for ancient civilizations implies being cautious. Three precautions must be taken.

First of all, the above-mentioned approach necessarily implies recourse to what Claude Calame calls “transcultural translation”³¹, i.e. the confrontation between two distinct and strongly different cultural models, that of a distant past of more than twenty centuries and that of our Western present. Yet, such a comparison cannot be made – even with the greatest concern for neutrality – without recourse, as Sandra Boehringer points out, to «cultural pre-constructions linked to the hic et nunc of the person making the

2002, 39-3, 174-178; 0,015 for Byrne A., *Is Sex Binary?*, in *Arc Digital*, November 2018.

²⁸ <https://web.archive.org/web/20161121185256/http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>.

²⁹ Fortier C., *Intersexués: le troisième genre en question en France et au-delà*, in *Socio*, 2017, 9, 91-106.

³⁰ Moron-Puech B., Fenouillet D. (eds.), *Les intersexuels et le droit*, Paris, Paris-II Assas University Press, 2011.

³¹ Calame C., *Interprétation et traduction des cultures*, in *L'Homme*, 2002, 163, 51-78.

study»³². However, this inevitable anachronism is not necessarily detrimental if it can give rise to new questions³³.

Then, it is a question of being careful with the exploited sources. Indeed, for the ancient period, it is particularly notable that the texts or images available to us were produced by the dominant groups and thus convey a normative oriented discourse.

Finally, it is necessary to bear in mind that concepts such as masculinity, femininity, the difference between men and women, sexual orientation and gender identity are not natural concepts but rather a social construction dependent on geographical and chronological contexts³⁴. The same applies – at least in part – to intersexuality. Indeed, if, in general, biological sex is a matter of the empire of nature while gender is a cultural construction, the sexual assignment of a baby with genital ambiguity depends on societal considerations³⁵.

³² Boehringer S., *Sexe, genre, sexualité: mode d'emploi (dans l'Antiquité)*, in *Kentron*, 2005, 21, 83-110.

³³ According to Loraux N., *Éloge de l'anachronisme en Histoire*, in *Le genre humain*, 1993, 27, 28: «It is an anachronism to go to Ancient Greece on the condition that the historian assumes the risk of asking questions that are not already Greek to his Greek subject: he agrees to subject his ancient material to questions that the Ancients did not ask themselves or at least did not formulate or, better still, did not cut out as such [...] Not everything is absolutely possible when one applies questions from the present to the past, but one can at least experiment with everything on condition that one is at all times aware of the angle of attack and the object in question».

³⁴ Boehringer S., *ibid.*: «To make a history of gender is to admit beforehand that what we call woman, man, feminine, masculine is a culturally constructed concept or ensemble, shaped by a given society, depending on the geographical and temporal context from which it emerges. If everything were natural, there would be no need to make history. We make history of what evolves, of what changes, of what is unnatural». One will note the opposition between naturalism and constructivism. On this subject, read: De Fornel M., Lemieux C., *Naturalisme versus constructivisme*, Paris, EHESS Press, 2008; Foucault M., *La Volonté de savoir, Histoire de la sexualité*, I, Paris, Gallimard, 1984; *L'Usage des plaisirs, Histoire de la sexualité*, II, Paris, Gallimard, 1984; *Le Souci de soi, Histoire de la sexualité*, III, Paris, Gallimard, 1984; Laqueur T., *Making Sex: Body and Gender from the Greeks to Freud*, Cambridge, MA, Harvard University Press, 1990.

³⁵ Boehringer S., *ibid.*.

In our contemporary Western societies, there is a biconstruction of gender (male/female) and a need, in order to belong to the normal order, to see a conformity between gender and sex (male/female). Given the fact that the conception of gender depends on the *hic and the nunc*, it is only logical that its apprehension is not the same in Greco-Roman antiquity as it is today³⁶. In ancient Greece and Rome, social organisation was not built – as much as it is today – on the division between men and women, but on the opposition between free/slave and citizen/non-citizen. Similarly, sexuality is not perceived in a similar way in the Greco-Roman and Western worlds today. For one simple reason: in ancient Greek and Roman societies, we can speak of a “before sexuality”³⁷ since sexual activity was not considered independently of other social practices involving the body³⁸. As a result, in ancient European communities there never existed homogeneous categories of people attracted to the opposite or same sex³⁹, nor was there the very contemporary opposition between homosexuality and heterosexuality⁴⁰.

³⁶ Gleason M., *Making Men: Sophists and Self-Presentation in Ancient Rome*, Princeton, Princeton University Press, 1995; Hallett J., Skinner M., *Roman Sexualities*, Princeton, Princeton University Press, 1997; Williams C., *Roman Homosexuality, Ideologies of Masculinity in Classical Antiquity*, Oxford, Oxford University Press, 1999; Éloi T., Dupont F., *L'Érotisme masculin dans la Rome antique*, Paris, Belin, 2001; Nussbaum M., Sihvola J., *The Sleep of Reason. Erotic Experience and Sexual Ethics in Ancient Greece and Rome*, Chicago, University of Chicago Press, 2002.

³⁷ Halperin D. (eds.), *Before Sexuality. The Construction of Erotic Experience in the Ancient World*, Princeton, Princeton University Press, 1990.

³⁸ Halperin D., *How to do the History of Homosexuality*, Chicago, University of Chicago Press, 2002.

³⁹ Veyne P., *La famille et l'amour sous le Haut-Empire romain*, in *Annales ESC*, 1978, 33, 35-63; Winkler J., *The Constraints of Desire. The Anthropology of Sex and Gender in Ancient Greece*, London, Routledge, 1990; Calame C., *L'Éros dans la Grèce antique*, Paris, Belin, 1996; Calame C., *Les Chœurs de jeunes filles en Grèce archaïque, I Morphologie, fonction religieuse et sociale, II Alcman*, Roma, Edizioni dell'Ateneo & Bizzarri, 1977.

⁴⁰ Tin L.G., *L'invention de la culture hétérosexuelle*, in *Les Temps modernes*, 2003, 624, 119-126.

Let us project some twenty centuries back in Roman territory and examine the legal and social treatment of intersexuality in Rome.

Roman civilization was spread over about twelve centuries, which can be broken down into three main periods. The archaic period characterized by a monarchical type of power and taking place from the legendary foundation of Rome in 751 B.C. to 509 B.C. Then, the Republic which is characterized by a mixed political regime and which extends from the fall of the last Roman king in 509 B.C. until the advent of the first emperor in 27 B.C. Finally, the Empire which, from 27 B.C. to 476 A.D. (for the West), is marked by a new monarchical regime, sometimes temperate (from 27 B.C. until 284), sometimes absolute (284-476). Each of these periods is characterized by quite different attitudes of the public authorities and of the population with regard to intersex people.

1. The legal treatment of hermaphrodites (Archaic Period - II century before J.C.)

in Rome, any person who manifests sexual ambiguity (*ambiguus sexus*) – that is, the congenital or non-congenital presence of both male and female characteristics⁴¹ – is referred to as a hermaphrodite. In antiquity, hermaphrodites tended to be defined in terms of genitalia. The late clinical description by the physician Paul of Aegina in the 7th century is quite characteristic:

The disease of hermaphrodites was named after the composition of the names Mercury and Venus. It brings a lot of deformity to both sexes. There are, according to Leonides, four different species: three for men and one for women. For the first, the place of the female sexual parts, furnished with hair, appears sometimes at the perineum, sometimes in the middle of the scrotum; the third species oc-

⁴¹ In ancient ancient art, the Hermaphrodite generally presents male genitalia, female breasts and habitus.

curs in those who urinate through a kind of urethra located at the scrotum. For women, an overgrowth similar to that of the male organ is often found at the top of their genitals, near the pubis, with three parts rising up, one like the penis and two like the testicles. The third species, which in males consists of urine discharged through the scrotum, is incurable. But the other three can be healed by removing unnecessary parts and treating them like wounds⁴².

Other terms are used, such as *semivir*, which means half-man. Pliny the Elder in his *Natural History* establishes a division of the category of *semiviri* and distinguishes three types: *spadones* (*castrates*), those whose testicles have been altered naturally or by accident and finally hermaphrodites⁴³.

The Romans also used to use the term eunuch to refer to intersex people. This is not surprising considering that the effects of castration are similar to certain types of intersex such as androgen insensitivity syndrome (AIS).

However, it is inaccurate to equate intersex and eunuch in the sense that the former has not undergone any mutilation that would lead to genital ambiguity. Therefore the Romans often speak of a natural or congenital eunuch to refer to hermaphrodites⁴⁴. This is notably the case of Favorinus of Arles, an eminent character to which we shall return.

We also find in the sources the presence of the terms “bisexuality” and “androgyny” as a synonym of “hermaphroditism”. The first term today refers to the fact of having a sexual attraction for both

⁴² Paul of Aegina, *Medical Compendium in Seven Books*, LXIX.

⁴³ Pliny, *Natural History*, XI, 110.

⁴⁴ The most obvious equivalent of the “natural eunuch” in moderate terms is the hypogonadotrophic eunuch, in whom an endocrine deficiency leads to puberty failure. Horstmanshoff M., *Who is the True Eunuch? Medical and Religious Ideas about Eunuchs and Castration in the Works of Clement of Alexandria*, in *From Athens to Jerusalem: Medicine in Hellenized Jewish Lore and in Early Christian Literature. Papers of the Symposium in Jerusalem, 9-11 September 1996*, eds. Kottek S., Horstmanshoff M., Rotterdam, Pantaleon Reeks, 2000, 101-118.

sexes, whereas in ancient times, the word reflects the presence of both sexes in the same individual⁴⁵. As for androgyny (androgens), this concept nowadays refers to the person whose physical appearance makes sex and/or gender uncertain, formerly characterizes genital duplicity or at least sexual or social behaviour outside the norm of the place and time⁴⁶.

Whatever the semantics, the first reaction of the Romans to intersex people was rejection, and this was widely echoed in their law.

The difficulty that Roman law has in understanding the intersex is due to the fact that there is no third gender in Rome, since in order to respect the eternal order of things willed by the gods⁴⁷, every person must absolutely be male or female. Thus, whoever came out of this intangible framework was considered as a *prodigium*⁴⁸. A prodigy is a phenomenon, an out of the ordinary incident caused, according to

⁴⁵ Cantarella E., *ibid.*; Brisson L., *Bisexualité et médiation en Grèce ancienne*, in *Nouvelle Revue de psychanalyse, (Bisexualité et différence des sexes)*, 1973, 7, 27 ss.; Brisson L., *Aspects politiques de la bisexualité. L'histoire de Polycrite*, in *Hommages à M.J. Vermaseren*, I, Leida, Brill 1978, 80 ss.; Brisson L., *Neutrum utrumque. La bisexualité dans l'Antiquité gréco-romaine*, in *L'Androgynie (Cahier de l'hermétisme)*, Paris, Albin Michel, 1986, 27 ss.

⁴⁶ Sebillotte Cuchet V., *Androgynie, un mauvais genre? Le choix de Plutarque (Ve siècle avant J.-C.-IIe siècle après J.-C.)*, in *Genre, mœurs et politique dans l'Antiquité grecque et romaine*, eds. Azoulay V., Gherchanoc F., Lalanne S., Schmitt Pantel P., Paris, Editions de la Sorbonne, 2012, 103: «It is characterized either by a physical, congenital or accidental abnormality, or by a disorder of gestures and ways of behaving, or by an inappropriate way of expressing erotic desires». View more: Brisson L., *ibid.*

⁴⁷ Thomas Y., *La division des sexes en droit romain*, eds. Duby G., Perrot M., in *Histoire des femmes en Occident*, I, eds. Schmitt Pantel P., *L'Antiquité*, Paris, Plon, 1991, 103-168; Thomas Y., *L'union des sexes. Le difficile passage de la nature au droit, entretien avec Y. Thomas*, Le Banquet, 1998, 12, 108-135.

⁴⁸ Various terms close to the word prodigium exist in the Latin language. Let us quote the words: *Portentum* (event that announces something to come, omen that can be conjured up); *Ostentum* (event that hints at something. Gave the word ostensible); *Monstrum* (warning from the gods constituted by an unusual phenomenon. Gave the verb to show and the word monster).

the Romans, by a divine action intended to reveal an imminent rupture of the *Pax deorum*, the concord between men and gods⁴⁹. To put it simply, the prodigy is a divine warning directed towards the entire human community and whose objective is to incite it to take urgent action in favour of the deities, otherwise the *Ira deorum*⁵⁰ will be definitively unleashed. Initially identified by the Roman priests⁵¹, prodigies receive official status after the Senate has legislated and taken, in association with the pontiffs, the measures to be taken to recover the *Pax deorum* that has begun to be shaken (*Procuratio prodigiorum*)⁵². Prodigies can be divided into six main categories:

- Exceptional meteorological and geological phenomena
- Exceptional epidemics due to their long and deadly nature
- Strange events due to an extraordinary temporality or location (a rooster crows in the middle of the night, a pig bursts into a temple in the middle of a ceremony...).
- Odious crimes (parricide in particular)

⁴⁹ Either an event that is unusual in nature (plagues, earthquakes, volcanic eruptions, monstrous births), or an event that is ordinary in nature but occurs in an unusual place (temple in particular). It is not because the prodigy is an unusual event that it must necessarily be considered abnormal. It is enough that it is unusual and attracts attention by some strange or frightening peculiarity. The divine sign carrying a threat is not always easy to distinguish, the *prodigium* can be considered negligible. Thus it happened that prodigies that were at first unknown were renewed, in identical form, and that they were recognized because of this repetition.

⁵⁰ It should be noted that the prodigy is distinct from the omen in that it announces the future only in the event that humans fail to take the necessary steps to appease the gods.

⁵¹ Especially the pontiffs, augurs and haruspices. On this subject, see: Berthelet Y., *Le rôle des pontifes dans l'expiation des prodiges à Rome, sous la République: le cas des "procurations" anonymes*, in *Cahiers Mondes anciens* [On line], 2011, 2 (accessed: 09.06.2020). <http://journals.openedition.org/mondesanciens/348>.

⁵² Bloch R., *Les prodiges romains et la «procuratio prodigiorum»*, RIDA, Studies Fernand de Visscher, I, 1949, 119-131; MacBain B., *Prodigy and Expiation: A Study in Religion and Politics in Republican Rome*, in *Latomus*, 1982, 177.

- Births of monstrous animals (talking, severely malformed, hybrids between several animals...).
- The “monstrous” human beings

Regarding the last of these categories, we can say that the Romans knew five groups of human prodigies: severely malformed children⁵³, precocious children⁵⁴, monsters half-man half beast⁵⁵, multiple births⁵⁶ and hermaphrodites. Sources concerning mal-

⁵³ More than twenty cases of malformed or deformed children are recorded during Roman history. They constitute the numerically most important category, even before that of hermaphrodites, but, unlike the latter, only newborns are taken into account. The Romans did not have a specific term for them. There were two categories of malformations. The first category includes babies with missing eyes, noses, limbs, or a physical deformity. The second is newborns that have supernumerary limbs. The Romans' attitude and discourse about these individuals varied according to the severity of the malformation. Mild deformities, such as supernumerary limbs, were felt to be an embarrassment to the individual and caused less particular concern. On the other hand, the most important malformations, such as the birth of Siamese twins, were considered a very serious wonder.

⁵⁴ Two types of early children are known: early talkers and children who are born with teeth. There are five known cases of early talkers and several testimonies of children born with teeth. The wonders of the early talkers are pure imagination because it is scientifically impossible for a child to speak at birth or even at six months of age. On the other hand, there is nothing scientifically wrong with a child being born with teeth. In Rome, the birth of the first teeth was symbolic. According to funeral rites, it was necessary to wait until the teeth had grown in before the child was cremated or buried like adults. It is easier to understand why the Romans considered these children to be prodigies because these abnormalities (early speech or teeth pushed too early) called into question the stages of childhood.

⁵⁵ Monsters, both animal and human, which are the result of two or more cross-breeding species are rare in Rome. For the latter, we have in 209 BC, the birth of a child with the head of an elephant and a woman giving birth to a snake. As far as the snake is concerned, it should be remembered that this animal, which was the attribute of the goddess Juno, was ambivalent, both good and bad. At the same time dangerous and at the same time beneficial and protective, when it was assimilated to a deity, to Jupiter or Apollo (in this case, it was put at the service of medicine, of health).

⁵⁶ These births are a special case, because the Romans' attitude changes according to the number of children. The birth of twins was never considered a prodigy.

formed children as prodigies range from 218 B.C. to the end of the Republic. There is no doubt, however, that malformed children were considered prodigies much earlier, i.e. from the beginning of the Etruscan influence on Rome in the middle of the archaic period⁵⁷. However, due to the weakness of the use of the written word, we have no trace of this.

When an extraordinary event was discovered, the presence of a particular hermaphrodite, the priests of the city and the Senate were immediately notified and two steps were taken.

- On the advice of the priests, the Senate would vote on whether it was a prodigy or not.
- If the event was considered a prodigy, the question remained as to how to deal with it (*procuratio prodigiorum*). The Senate, after having asked the opinion of two particular bodies of priests, the pontiffs and the haruspices⁵⁸, voted a second time to decide the fate of the prodigy and how to appease the divinity that had raised him in the world of men.

In the republican era, twins were welcomed in a positive way (a sign of abundance, wealth and fecundity since it obviously reminds us of the birth of Romulus and Remus) although some Romans saw in it the mark of the mother's adultery. For the birth of triplets, only one case is noted in the list of prodigies in 163 BC. A number higher than three is considered a prodigy. While the birth of triplets is debatable, the birth of quadruplets and a higher number of children does not pose any problems of interpretation. It is a prodigy that calls into question the fixity of the human species. The latter category of prodigies is to be related to early children.

⁵⁷ Indeed, the concept of prodigy is of Etruscan origin and penetrates the Roman mentalities at the time when the Etruscan kings, Tarquin the Elder first, imposed their yoke in the urbs. On this subject, read: Bloch R., *Les prodiges dans l'antiquité classique (Grèce, Étrurie et Rome)* (Coll. «Mythes et religions»), Paris, PUF, 1963; Lehmann Y., *Divination et prédestination à Rome. Enjeux doctrinaux et politiques*, in *Pouvoir, divination et prédestination dans le monde antique*, eds. E. Smadja, E. Geny, Besançon, Institute of Sciences and Techniques of Antiquity, 1999, 249-258; Bloch R., *La divination, Essai sur l'avenir et son imaginaire*, Paris, Fayard, 1991.

⁵⁸ The haruspices were called upon only when the pontiffs had no solutions to offer, when they did not know how to deal with the prodigy that had just appeared.

The assumption of the prodigy (*procuratio prodigiorum*) by the Roman civil (magistrates) and religious (pontiffs) authorities took place in two phases. In the first phase, the aim was to eliminate the defilement that the prodigy represented by making it disappear. In the second phase, it was necessary to regain divine favour by means of a number of ceremonies. For our purposes, only the examination of the first phase is presented here.

This first step was the elimination of the prodigy. It is necessary to relate this necessity to Roman legislation dealing with disabled newborns⁵⁹. The first standard on this subject is attributed to Romulus, the first Roman king who founded the urb in 753 BC⁶⁰. This royal law states that Romulus required: «[...] the inhabitants to bring up all their male children and, in the case of girls, their firstborn, forbidding them to kill any child under three years of age, unless the newborn was from birth crippled or monstrous (*teras*)⁶¹, in which case he did not forbid the parents to expose the child provided they had shown it to five men in the neighbourhood and obtained their consent»⁶². It should be noted that this legislative provision establishes a difference in treatment between boys and girls, and between children considered normal and those who were malformed. The physically handicapped child was left to the arbitrary action of his or her *Pater familias*, who could either expose him or her (put him or her on the street, in which case an-

⁵⁹ Allély A., *Les enfants malformés et considérés comme prodigia à Rome et en Italie sous la République*, in *Revue des Études Anciennes*, 2003, 105-1, 127-156.

⁶⁰ Allély A., *ibid.*, 129.

⁶¹ The religious term *teras* is used. This word, which has undergone an important semantic evolution over time, meant sign. Then in the language of the 5th and 4th centuries, it took on the meaning of human, animal or even plant malformation. Read more: Roux O., *Monstres: Une histoire générale de la tératologie des origines à nos jours*, Paris, CNRS, 2016, 40 ss.

⁶² Dionysius of Halicarnassus, *Roman Antiquities*, II, 15.

yone could take him or her, kill him or her, sell him or her)⁶³ or bring him or her into the family. If the father of the family chose the way of the exhibition, he had however to refer to five neighbours⁶⁴. It seems that the purpose of this restriction was to dissuade or, at least, oblige the *Pater familias* to think carefully about this fatal action. Later, the *Law of the XII tables* of 451 B.C. prescribes the killing of handicapped children: «Let the child suffering from a manifest deformity be killed quickly but without bloodshed»⁶⁵. The Decemvir legislation marks an evolution from the previous Royal Act⁶⁶. Indeed, it now seems that the *Pater familias* no longer has any option: he had to eliminate his malformed child. How was this to be done? Either by strangulation or suffocation, or by re-

⁶³ On the exhibition of children in Ancient Rome, read: Boswell J., *The Kindness of Strangers: the Abandonment of Children in Western Europe from Late Antiquity to the Renaissance*, New York, Pantheon Books, 1988; Harris W., *Child-Exposure in the Roman Empire*, in *Journal of Roman Studies*, 1994, 54, 1-22; Corbier M., *La petite enfance à Rome. Lois, normes, pratiques individuelles et collectives*, in *Annales HSS*, 1999, 6, 257-1290; Chuvin P., *Quand l'abandon n'était pas un crime*, in *Les collections de l'Histoire*, 2006, 32, 8-13; Evans Grubbs J., *Hidden in Plain Sight: Expositi in the Community*, in *Children, Memory, and Family Identity in Roman Culture*, eds. Dasen V., Späth T., Oxford, Oxford University Press, 2010, 293-310; Evans Grubbs J., *Infant Exposure and Infanticide*, in *The Oxford Handbook of Childhood and Education in the Classical World*, eds. Evans J. Grubbs, Parkin T., Oxford, Oxford University Press, 2013, 83-107; Allély A., *L'exposition des petites filles à Rome sous la République et sous le Principat*, in *Annales de Bretagne et des Pays de l'Ouest*, 2017, 124-3, 49-64.

⁶⁴ Delcourt M., *Stérilités mystérieuses et naissances maléfiques dans l'Antiquité classique*, Liège, Presses universitaires de Liège, 1938.

⁶⁵ Cicero, *De legibus*, III, 8, 19. It should be noted that for Moreira Alves J.C., *A forma humana no direito romano*, in *Direito romano*, ed. Moreira Alves J.C., Rio de Janeiro, Forense, 1960, 28, Cicero, who is our main source for this passage from the law of the XII tables, would have simply disguised the previous provision from a law of Romulus.

⁶⁶ Thomas Y., *Vitae necisque potestas, Le père, la cité, la mort, Du châtement dans la cité, supplices corporels et peine de mort dans le monde antique* (Table ronde de Rome des 9-11 novembre 1982), Roma, École française de Rome, 1984, 499-548.

fusal of maintenance⁶⁷. However, it is clear from the above-mentioned provision that the parents were not subject to any sanction in the event of non-application of the *Law of the XII Tables*⁶⁸. This explains why, in spite of this provision of the disappointing legislation, many testimonies indicate that some children with disabilities were not put to death. Why was this? Probably because their disability was considered mild (not obvious). These children, when they reached adulthood, were undoubtedly discriminated⁶⁹ against and could not exercise certain professions such as priesthood or the

⁶⁷ Radin M., *The Exposure of Infants in Roman Law and Practice*, in *The Classical Journal*, 1925, 20, 339 ss.

⁶⁸ Horace, *Satires*, 1, 3, 43-48: «Friends, as a father we owe it to ourselves not to be disgusted even if our son is touched by a vice. The father says of his son that he looks sideways while he squints; if his son is an extremely small runt, that he is a little small; if he was born prematurely, that he will one day be a true Sisyphus; of the one who has deformed legs, he says that they are knackers; he maintains that the one who has a clubfoot unfortunately has a twisted heel». Contra: Cuny-Le Callet B., *Rome et ses monstres. Naissance d'un concept philosophique et rhétorique*, Grenoble, Millon, 2005, 102, considers that the elimination of abnormals in the family setting has been practised on a massive scale. See more: Delcourt M., *ibid.*, 53; Vallar S., *ibid.*, 213.

⁶⁹ Stiker H.J., *Corps infirmes et sociétés. Essai d'anthropologie historique*, Paris, Aubier, 1982; Bodiou L., Mehl V., Soria M., *Corps outragés, corps ravagés de l'Antiquité au moyen-âge*, Turnhout, Brepols, 2011; Collard F., Samama E., *Handicaps et sociétés dans* Goodey C.F., Rose M.L., *Disabilities in Roman Antiquity. Disparate Bodies a Capite ad Calcem*, Leida, Brill, 2013; Allély A., *Les enfants malformés et considérés comme prodigia à Rome et en Italie sous la République*, in *Revue des Études Anciennes*, 2003, 105-1, 127-156; Allély A., *Les enfants handicapés, infirmes et malformés à Rome et dans l'Empire romain pendant l'Antiquité tardive*, in *Pallas*, 2018, 106, 197-211; Baroin C., *Les cicatrices ou la mémoire du corps*, in *Corps romains*, ed. Moreau P., Grenoble, Millon, 2002, 27-46; Laes C., *Learning from the Silence; Disabled Children in Roman Antiquity*, in *Arctos*, 2008, 42, 85-122; Laes C., *Silent Witnessess; Deaf-Mutes in Graeco-Roman Antiquity*, in *Classical Worlds*, 2011, 104-4, 451-473; Laes C., *How does one Do the History of Disability in Antiquity? One Thousand Years of Case Studies*, in *Medicina nei secoli*, 2011, 23-3, 915-946; Cuny-Le Callet, *ibid.*

judiciary⁷⁰. What can we learn from the Roman legislation on *teras* and how does it relate to human wonders? Roman republican Roman law in practice leaves it to the *pater familias* to decide what will happen to his child if he is born with a disability. However, if the deformity was very significant, the Senate was immediately notified after birth and decided whether the malformed child was a prodigy. If so, the child was compulsorily executed, with the father losing the exercise of his *patria potestas*. The elimination of the human prodigy was the responsibility of the priests and magistrates of the city in the sense that this extraordinary birth put the fate of the entire city at stake⁷¹. Ancient sources identify 46 human prodigies. Among them, we find sixteen examples of androgynous women (twelve newborns and four children and adolescents)⁷². The hermaphrodites were considered the most frightening prodigies⁷³, in

⁷⁰ Baroin C., *Le corps du prêtre romain dans le culte public: début d'une enquête*, in *Actes du colloque: Corps outragés, corps ravagés. Regards croisés de l'Antiquité au Moyen Âge*, eds. Bodiou L., Soria M., Mehl V., 6 mars 2009, Université de Bretagne-Sud Lorient, Turnhout, 2011, 291-316; Baroin C., *Intégrité du corps, maladie, mutilation et exclusion chez les magistrats et les sénateurs romains*, in *Handicaps et sociétés dans l'Histoire. L'estropié, l'aveugle et le paralytique de l'Antiquité aux temps modernes*, eds. Collard F., Samama E., Paris, L'Harmattan, 2010, 49-68; Husquin C., *Penser le corps social en situation à Rome et dans le monde romain: perceptions et représentations de l'atteinte physique du 1er siècle avant notre ère au IVe siècle de notre ère*, Thèse de doctorat, Université de Lille, 2016; Evêque R., *Le poids de la piété. L'intégrité corporelle des prêtres romains au sens du ius sacrum*, in *Droit et cultures*, 2021 (seemingly).

⁷¹ Vallar S., *ibid.*, 208 ss.

⁷² Hermaphrodites are the only category of human prodigies in which we find newborns, children, adolescents and even adults at the same time. Allely A., *ibid.*, 136.

⁷³ Livy, *Roman History*, 31, 12, 6-8 (200 B.C.): «They also announced the birth of several monsters in different places: in Sabina, it was a child of a dubious sex, man and woman at the same time; they had also found another hermaphrodite aged sixteen; in Frusinone, it was a lamb with the head of a pig; in Sinuessa, a pig with the head of a man; in Lucania, in a field that belonged to the State, a five-legged colt: hideous and shapeless productions that were seen as errors of a perverted nature. Above all, hermaphrodites were abhorred; they were immediately thrown into the

the sense that they «questioned the fixity of the human species [...] the clear biological differentiation that existed between man and woman, which in turn led to a differentiation of social tasks»⁷⁴.

How were *hermaphroditi* eliminated? The sixteen sources in our possession – authored mainly by Livy and Julius Obsequens⁷⁵ – generally converge in the same direction. Generally, the Romans got rid of androgynous people by means of «a non-violent expulsion into the aquatic environment»⁷⁶. To put it simply, the *prodigium* was first removed from the city in which it was discovered, placed in a wooden crate, and thrown into the sea. Two passages from the Roman History of Livy illustrate this point⁷⁷.

sea, as before, under the consulate of C. Claudius and M. Livius, a monster of the same kind had been thrown into the sea. Nevertheless, the Decemvirs were ordered to consult the Sibylline books on this prodigy; and, according to these books, the Decemvirs prescribed the same ceremonies which had recently been celebrated following a similar prodigy. They further decreed that three choirs of nine girls should sing a hymn as they went about the city and make an offering to Juno Regina».

⁷⁴ Allely A., *ibid.*, 138.

⁷⁵ In our opinion, we will have to give credence to the testimonies of Livy, an active historian between the end of the first century B.C. and the beginning of the first century. In fact, he is a contemporary of a time when hermaphroditi were still considered prodigies. On the other hand, the observations of Julius Obsequens, an author about whom very little is known but who seems to have lived in the fourth century, should be taken with caution.

⁷⁶ Paturet A., *ibid.*, 12. Read more along the same lines: Radin M., *ibid.*, 339 s.; Macbain B., *Prodigy and expiation: A Study in Religion and Politics in Republican Rome*, Bruxelles, Latomus, 1982, 177, 101 ss.; Bennett H., *The Exposure of Infants in Ancient Rome*, in *The Classical Journal*, 1923, 18, 344 ss.; Boyce A., *The Expiatory Rites of 207 B.C.*, in *Transactions and Proceedings of the American Philological Association*, 1937, 68, 170; Lentano M., *Sbatti il mostro in fondo al mare: Caligola e le "spintriae" di Tiberio*, in *Quaderni del Ramo d'Oro*, 2010, 3, 295 ss.

⁷⁷ In the same direction, Julius Obsequens, *Liber prodigiorum*, 22 (142 B.C.): «At Luna, an androgynous was born, who, by the order of the aruspices, was thrown into the sea»; 27 (133 B.C.): «In the territory of Férentine, an androgynous was born, who was thrown into the river»; 32 (122 B.C.): «In the territory of Férentine, an androgynous was born, who was thrown into the river»; 32 (122 B.C.): «In the

[...] in Frusinone there was a newborn child the size of a four-year-old child; it was not so much his size that seemed surprising as the uncertainty of his sex; as the child born in Sinuessa two years before, it could not be said whether he was male or female. Aruspices, commissioned from Etruria to Rome, declared that this prodigy was sinister and ominous: the child should be cast out of Roman territory, left no contact with the land, and drowned in the sea. So they locked him up alive in a chest, carried him out into the open sea, and submerged him there.

By another decree of the pontiffs, three choirs of nine girls each had to go around the city singing a hymn to the gods.

Livy, *Roman History*, 27, 37 (207 B.C.)

In Sinuessa was born two years before, a child of uncertain nature, it was not known whether he was born a man or a woman. But the haruspices of Etruria were consulted and described him as a terrible and infamous prodigy: they had him removed from the Roman territory, far from contact with the earth, and thrown into the depths. Placed alive in a chest, they threw him into the sea.

Titus Livius, *Roman History*, 27, 34, 5-7 (205 B.C.)

The procedure followed was a hygienic concern. Indeed, as already mentioned, the *prodigia* as a harmful sign was permeated with filth. They had to be disposed of far from the dwelling places, temples or fields in order to limit as much as possible the pollution that they intrinsically carried within them. Moreover, exposure to

territory of Férentine, an androgynous was born, who was thrown into the river»; 32 (122 B.C.): «In the territory of Férentine, an androgynous was born, who was thrown into the river»; 32 (122 B.C.): «In the territory of Férentine, an androgynous was born, who was thrown into the river»; «In the forum of Vesse, an androgynous was born and was thrown into the sea»; 34 (119): «An androgynous ten-year-old was discovered in Saturnia, and he was drowned in the sea: twenty-seven young girls went singing through the city to purify it. The rest of the year passed quietly»; 47 (98 B.C.): «When the deceased was sacrificed in the temple of Apollo, the upper part of the liver was not found in the victim, and during the sacrifice itself a serpent was seen near the altar. An androgynous man was drowned in the sea»; 48 (97 B.C.): «An androgynous man, born in Urbinum, was drowned in the sea. Peace within and without»; 50 (95 B.C.): «An androgynous man was drowned»; 48 (97 B.C.): «An androgynous man, born in Urbinum, was drowned in the sea».

water made it possible to get rid of the androgyne without shedding blood that would have irremediably contaminated the earth. Another advantage of the water element was that it was watery. Reputed to be purifying, water retained the soul of the hermaphrodite, preventing her, rejected from the community of men, and deprived of burial, from coming back to haunt the living⁷⁸. Placing the *prodigium* in a wooden box seems to be an additional precaution. The sea or the river, however purifying they may be, could otherwise be polluted by the body of the hermaphrodite. It should be noted that the elimination of the androgynous is not strictly speaking a killing. Indeed, the latter is placed alive in the wooden box, which allows men not to bear the responsibility for his death, since it was understood that the deities could, if they wished, save the unfortunate captive. This is what is known as a “concerted accident”⁷⁹ in connection with the immersion of the hermaphrodite.

Apart from immersion, we find in Roman springs two other ways of eliminating the hermaphrodite: relegation to a desert island and fire. These alternatives are exceptional since in each of these two cases we find only one illustration.

The metamorphosis of women into men is not a fable. We read in the annals that under the consulate of Q. Licinius Crassus and C. Cassius Longinus, a daughter of Casinum, living with her parents, became a young boy, and that she was transported by the order of the aruspices to a desert island. Licinius Mucianus claimed to have seen at Argos a young man named Arescon, who, once a girl, under the name of Arescusa, had been married; but the beard and the organs of virility having manifested themselves, he had married a woman. The same Licinius said that he

⁷⁸ Jobbé-Duval E., *Les morts malfaisants: “larvae, lemures”, d’après le droit & les croyances populaires des Romains*, Paris, Sirey, 1924, 181 ss.

⁷⁹ Briquel D., *Formes de mise à mort dans la Rome primitive: quelques remarques sur une approche comparative du problème*, in *Du châtimeut dans la cité: supplices corporels et peine de mort dans le monde antique*, ed. Thomas Y., Round Table (Rome 9-11 November 1982), Roma, Publication of the French School of Rome, 79, 1984, 225-240.

had seen a young man in Smyrna undergoing a similar metamorphosis. I myself saw in Africa L. Cossicius, a citizen of Thysdrus, who, being a woman first, changed sex on his wedding day. He is still alive at the moment when I tell the story of his adventure. Pliny, in the same book, says again: "There are beings that unite the two sexes, we call them hermaphrodites; they used to be called androgynous, and they were looked upon as monsters. Today they delight in the delights of libertineity"⁸⁰. Gellius, *Attic Nights*, 9, 4, 15 (171 B.C.)

Likewise, in Naples and many other places, sudden changes of this kind would have occurred. Not that the male and female natures were united to form a truly bisexual type, for this is impossible, but that Nature, to the dismay and mystification of mankind, gave a false impression through the body parts. And this is why we considered that these sex changes were worthy of being recorded, not for entertainment, but for the improvement of our readers. For many men to think of such things as omens is to fall into superstition, and not only of isolated individuals, but even of nations and cities. At the beginning of the Marches War there was, at any rate, according to the news, an Italian living not far from Rome who had married a hermaphrodite similar to those described above; he laid a report before the Senate who, in a fit of superstitious terror and in obedience to the Etruscan soothsayers, ordered the creature to be burned alive. Diodorus of Sicily, *Historical Library*, 32, 12, 1 (90 B.C.)

It should be noted that these two methods of eliminating *hermaphroditi* are derogatory to the common practice and affect individuals whose intersexuality has been revealed in adulthood. A human prodigy in advanced age is even more worrying than a newborn with the same deformities.

In fact, the fact that the prodigy was able to cross the years means that the sign that he constitutes was not identified as soon as he irrupted into the world of men, that divine anger has been smouldering for a long time and that the defilement that the *monstrum* carries in him has had time to spread for a long time and everywhere. In view of these observations, radical measures must be taken and the death of the *prodigium* must be ascertained at all

⁸⁰ This event is also reported by Pliny, *Natural History*, 7, 36 (171 B.C.).

costs. Immersion to ensure too many chances of survival, relegation to an island or immolation were chosen in these exceptional cases. These methods of execution had the advantage of being more radical but just as hygienic as immersion since no blood was shed⁸¹. Execution by fire is particularly astonishing in the sense that the Romans took the initiative to kill the *prodigium* and no longer hid behind a “concerted accident”. This unusual voluntarism can probably be explained by the astonishment caused by the irruption of an androgynous man who had gone beyond early childhood and the particular political climate surrounding this event: the beginning of the Roman war against the Marses⁸².

2. The legal treatment of hermaphrodites (Imperial Period - II century before J.C.)

At the end of the Republic, hermaphrodites cease to be considered as prodigies to be eliminated. They are given a place within the human race and a legal status. How can this change be explained?

Mainly because of a change in the Roman mentality that took place from the middle of the 2nd century, largely under the influ-

⁸¹ In the case of immolation, the ashes of the *prodigium* were collected and then thrown into the sea or a river in order to benefit from the purifying character of the water.

⁸² We'll bring the immolation of 90 B.C. closer to another event. In 186 B.C., a 12-year-old hermaphrodite is discovered. We do not know how the Romans eliminated it but we learn that its execution was quick and direct (without going through the practice of “concerted accident”). Livy, *Roman History*, 39, 22: «Around the same time it was learned that a hermaphrodite of about twelve years old had been discovered in Umbria. Frightened of this prodigy, the magistrates ordered the child to be transported out of Roman territory and put to death at once». Julius Obsequens, *Liber prodigiorum*, 3, reports the same incident: «A hermaphrodite of about twelve years of age, born in Umbria, was put to death by the Order of Haruspices».

ence of the conquests of Greece (146 B.C.) and Asia (133 B.C.)⁸³. This revolution of minds is mainly manifested by two notable changes: a forgetfulness of Roman tradition and an interest in Greek rationality.

First, let us mention that the Eastern Roman conquests brought about a lack of interest on the part of the Romans in their own tradition, which was replaced by Hellenic culture. The Roman is like the soldier described by Horace who forgets his city in the arms of a young Parthian woman⁸⁴. This change has consequences, especially regarding the liberalization of morals. “*Cum fracta virtus*” as the poet Horace said⁸⁵. What has become of Roman virtue? The east wind seems to have prevailed. Latin historians believe that the *Mos maiorum*⁸⁶, i.e. the custom of the ancestors, gradually fell into disuse⁸⁷ after the first Eastern conquests and that from then on decadence was on the horizon⁸⁸. Among the changes affecting

⁸³ Vallar S., *ibid.*, 217; Peter O.M., *ibid.*, 214 ss.

⁸⁴ Horace, *Ods*, III, 5, 5-12.

⁸⁵ Horace, *Ods* II, 7, 11: «When virtue breaks».

⁸⁶ Linke B., Stemmler M., *Mos maiorum: Untersuchungen zu den Formen der Identitätsstiftung und Stabilisierung in der Römischen Republik*, Stuttgart, Steiner, 2000. *Mos maiorum* is based on seven components: *pietas* (piety); *fides* (good faith); *constantia* (stability); *majestas* (dignity); *frugalitas* (temperance and simplicity); *virtus* (courage); *gravitas* (seriousness).

⁸⁷ Cicero, *De Republica*, V, 1: «Before our time, it was ancestral tradition that called to work the men of the first rank, and it was the eminent men who kept the ancient customs and institutions of our fathers in force [...] Our generation behaved differently». Read Moatti C., *La raison de Rome*, Paris, Seuil, 1997, 35 ss.; 50 ss.

⁸⁸ Robert J.N., *Eros romain*, Paris, Les Belles Lettres, 1997, 110 ss.: «In less than half a century, the Romans were masters of Greece and Asia as far as Syria. It is another planet that awaits them: the sons of the she-wolf have left a dirty, cramped, nauseating Rome where the generals are only the elected representatives of the people for a very short time, they arrive in cities of luminous marble where the eye is lost in the harmonies of art, where the spirit has been blowing in for centuries, where undisputed rulers reign as despots in a debauchery of luxury and pleasure. How could the head not turn? [...] How could the new masters of the universe, as they called

Roman society from the middle of the republican period, we can mention the following: the appearance of a new freedom granted to women⁸⁹, the devaluation of the ancestral religious marriage *cum manu* in favour of the marriage *sine manu* less constraining for the wife, and of the concubinage (*concupinatus*)⁹⁰, the development of the feeling of love because of the influence of Alexandrian poetry and Greek epicureanism⁹¹, the taste for immediate pleasures

themselves, be content with the frugal virtue of the old ones when they command men who look upon them, with rancour and height, like peasants [...] The morality of sacrifice has lived on. It has succumbed to the mirages of Eastern magic and has given way to a tremendous appetite for enjoyment. Money and luxury are the new masters of Rome. The 2nd century saw the development of urban civilization and its pleasures».

⁸⁹ Robert J.N., *ibid.*, p. 117 ss. Two significant events can be seen as the starting point for the increase in women's rights: the Bacchanalian scandal of 186 B.C. and the repeal of the *lex Oppia* (a sumptuary law prohibiting women from wearing excessively luxurious finery) following a major women's revolt in 195 B.C.

⁹⁰ Lévy-Bruhl H., *Les origines du mariage sine manu*, *Tijdschrift voor Rechtsgeschiedenis*, 1936, 14, 453-456; Abbott E., *Une histoire des maîtresses*, Montréal, Fides, 2004, 23 ss. See Horace, *Odes*, 3: «Our century, rich in crime, has first soiled marriages, generations and families; from this source all evils have spread to the people and to the homeland. The virgin, barely a teenager, joyfully learns the voluptuous dances of Ionia; she bends her docile limbs to them, and from childhood dreams of incestuous love. Soon, an adulterous woman, at the very table of a husband, she seeks younger lovers, and without choice, in the darkness, furtively lavishes scandalous pleasures. But her husband becomes her accomplice; she rises in his presence and at his command, to follow some vile agent of infamy, or the master of an Iberian ship, who pays with gold so much opprobrium! They were not born of such parents, those young Romans who reddened the seas of Carthaginian blood, who tamed Pyrrhus, the great Antiochus and the terrible Annibal. But they were young males, robust children of hardy soldiers: skillful in stirring the earth with the sabin hoyau, and docile to the voice of a rigid mother, they brought back wood cut from the forests when the sun, lengthening the shadow of the mountains, delivered the tired oxen from the yoke, and, fleeing on his chariot, brought back the beloved hour of rest. What does not the disastrous course of time alter? Our fathers, less virtuous than their forefathers, bore more guilty sons, who will give birth to a more depraved race».

⁹¹ Robert J.N., *ibid.*

and luxury⁹², the abandonment of the general interest in favour of the particular interest⁹³, the impact of Greek culture particularly in educational and religious matters⁹⁴ (rhetoric and philosophy in particular) ... In short, in spite of a historicist reaction which developed at the end of the Republic⁹⁵, tradition gradually suffered the onslaught of modernity and ended up being totally neglected by the Romans⁹⁶. Cicero may well merge into laments, tirelessly sermonizing that: «to ignore what happened before one was born is to be always a child»⁹⁷, amnesia is inevitable and the Roman is like a «sleepwalker in his city»⁹⁸ to use the expression of Claudia Moatti. This progressive oblivion of the custom of the ancestors is visible in legal matters when equity tends to replace *ius strictum*⁹⁹ and *ius civile* is no longer learned and memorized¹⁰⁰; in the literary field when ancient authors are now unknown¹⁰¹; with regard to the understanding of ancient Latin¹⁰²; with regard to the knowledge by citizens of their own genealogy¹⁰³, but also, and this is what will retain us in this case, in religious matters. Indeed, at the end of the Republic, the temples are less maintained than before, which be-

⁹² Moatti C., *ibid.*, 53 ss.

⁹³ Cicero, *De officiis*, I, 14, 42 ss.

⁹⁴ Irénée Marrou H., *Histoire de l'éducation dans l'Antiquité, tome 2: Le monde romain*, Paris, Seuil, 2014, Chapter II.

⁹⁵ Moatti C., *ibid.*, 52 ss.

⁹⁶ Cicero, *De Republica*, V, 2: «What is left of the customs of the past that kept Rome standing? We see them so forgotten that not only are they no longer in the spotlight, but they are now ignored».

⁹⁷ Cicero, *Orator*, 120.

⁹⁸ Moatti C., *ibid.*, 52.

⁹⁹ Moatti C., *ibid.*, 44 ss.

¹⁰⁰ Cicero, *De divinatione*, I, 15, 28; *Brutus*, 214; Tacitus, *Annals*, XI, 15,1; *Dialogue on Oratory*, 28; 32.

¹⁰¹ Cicero, *Brutus*, 68-69.

¹⁰² Cicero, *De Republica*, V, 1, 1, 2; *De legibus*, II, 23, 59.

¹⁰³ Cicero, *Letters to Atticus*, VI, 1,17-18; Tacitus, *Dialogue on Oratory*, 28.

trays a lack of interest in religious matters¹⁰⁴; the citizens no longer show the same piety as their ancestors¹⁰⁵ and the priests themselves no longer master the orthopraxis of the religious rite¹⁰⁶. It will be noted that, logically, the prodigies that used to make every good Roman tremble go unnoticed in a world devoid of fear of heaven¹⁰⁷. As a result, hermaphrodites, like all those once considered human prodigies, are no longer performed since the *procuratio prodigiorum* ceremony is no longer performed. The last trace of such a ritual dates back to 95 B.C. with the immersion of a hermaphrodite in

¹⁰⁴ Gros P., *Aurea templa: recherches sur l'architecture religieuse de Rome à l'époque d'Auguste*, École française de Rome, 1976, 21 ss. During the reign of Augustus and in general, at the beginning of the Empire, the temples are again well maintained. (Ovid, *Fasts*, II, 61).

¹⁰⁵ Horace, *Ods*, III, 6: «You will suffer, without merit, the punishment of your father's crimes, O Roman! until you have raised up the shrines, the collapsing temples, and the statues of the gods that are soiled by black smoke. It is in your submission to the gods that your power resides; it is there that we must seek the causes of your greatness or your ruin: the despised gods have unleashed evil on unfortunate Italy».

¹⁰⁶ On the subject of the neglect of omens, Cato reported by Cicero, *De divinatione*, I, 15, 28: «Doesn't your auspices approach certainty? It is true that now the Roman auguries, allow me to tell you, ignore the science that the Cilicians, the Pamphylans, the Pisidians and the Lycians possess in depth. Do I need to remind you of an illustrious and venerated name, that of our host King Deiotarus? You know that this prince undertakes nothing without consulting the auspices. One day, warned by the flight of an eagle, he interrupted a planned and begun journey; and the room where he should have slept, if he had not turned back, collapsed the next night». On the neglect of the pontiffs, Cicero, *De legibus*, II, 29: «The pontiffs negligently allowed Numa's legislation to perish» e Varro, *Antiquitates rerum humanarum et divinarum*, I, 2a.

¹⁰⁷ Livy, *Roman History*, XLIII, 13,1: «I am aware that nowadays people no longer believe in the omens sent by the gods, and that as a result of this disbelief, they have lost the habit of publishing miracles and recording them in the annals. But in writing the history of ancient times, my mind involuntarily takes on the colour of antiquity, and I would be scrupulous to regard as unworthy to appear in my annals the facts which the wisdom of our forefathers considered worthy of publicity».

Urbinum¹⁰⁸. It should be mentioned that the evolution of the Roman reaction to malformed newborns is also due to the disappearance of the Etruscan cultural influence in Rome, which also seems to be linked to the crisis of tradition in Rome from the 2nd century B.C.¹⁰⁹ onwards. In fact, as we have already mentioned, the belief by the Romans in divine signs called prodigies is an Etruscan heritage probably dating back to the reigns of Tarquin the Elder, Servius Tullius and Tarquin the Magnificent (616-509 B.C.)¹¹⁰.

Moreover, after the conquest of Greece, Rome was converted to the religion of reason. Horace's adage «Greece conquered conquers its fierce conqueror»¹¹¹ has never been truer than in the field of rationality. The scientific revolution that Rome is undergoing is expressed in particular in the field of law, whose origin, in order to ensure legal good, truth and continuity, must be the natural law that man discovers by deduction through his reason¹¹². This new rationality, discovered by the Romans during the Republic, did not fail to change the relationship of men with the supernatural. From the second century B.C. onwards, there was a clear mistrust of gullible and unfounded belief. As one separates the wheat from the chaff, it is important at the end of the Republic to distinguish in religion between thoughtful and superstitious belief¹¹³. In this respect, the philosopher and poet of the first century B.C., Lucretia,

¹⁰⁸ The last human prodigy reported by sources dates back to 42 B.C. and is a child with 10 fingers on each hand. It is not known, however, whether he was put to death.

¹⁰⁹ Peter O.M., *ibid.*, 214 ss.

¹¹⁰ Bloch R., *ibid.*; Haack M.L., *Les haruspices dans le monde romain*, Pessac, Ausonius, 2019, 9 ss.

¹¹¹ Horace, *Ods*, II, 1, 156.

¹¹² Cicero, *De legibus*, I, 18-19; 29; 33, 42; *De officiis*, I, 6, 17-18; *Brutus*, 258; *De Republica*, I, 26, 41; III, 28, 40; 29, 4. Read: Moatti C., *ibid.*, 241 ss.

¹¹³ In this respect, Varron too knew that the city's religion had its errors (Augustin, *De civitate Dei*, IV, 31-32). See: Gaudin P., Houziaux A., *La religion est-elle une superstition?*, Ivry-sur-Seine, Éditions de l'Atelier, 2005.

in her *De natura rerum*, contrasts the rational luminous with the irrational obscure, considering that only a reasoned and rational explanation of the causes of a belief can make it acceptable: «These darknesses of the soul (*animi tenebras*), it is necessary to dissipate them not the rays of the sun, nor the luminous features of the day, but the exact view of nature and its reasoned explanation»¹¹⁴. In short, and Lucretius is supported in this by her contemporary Cicero, tradition is not enough to make a belief credible. In the absence of justification supported by reason, i.e. revelation of causes, all phenomena and all history are superstitious. Divination is the main practice questioned and classified as superstition. In his *De divinatione*, Cicero opposes his brother Quintus, who holds the prodigies to be true, and consequently the divination which is based on their observation, relying to affirm it only on the word of the ancestors, which is supposed to be necessarily true because of its antiquity and the faith that is given to them¹¹⁵. For the former, on the contrary, it is only «ignorance of natural causes that makes one believe»¹¹⁶ and he asks, pretending to be totally open-minded, for proof of the truthfulness of the divination: «I do not attack the science of haruspices, says Cicero, I ask only the reason for it»¹¹⁷. Cicero shares his scepticism¹¹⁸ with two Roman intellectuals. As

¹¹⁴ Lucretius, *De natura rerum*, V, 1211. Lucretius opposes *verum et traditum*. In the same vein, Cicero, *De legibus*, I, 2; 3; *De oratore*, II, 8, 36; 15, 63.

¹¹⁵ On the contrary, Cicero emphasizes the credulity of the elders and the limits of tradition. Read: Cicero, *De officiis*, I, 4, 11; *De divinatione*, II, 57, 117; II, 33, 70; *De Republica*, II, 39, 66.

¹¹⁶ Cicero, *De divinatione*, I, 22,49; II, 7,58. About the *De divinatione*, see: Kany-Turpin J., Pellegrin P., *Cicero and the Aristotelian theory of divination by dreams*, in *Cicero's knowledge of the Peripatos*, eds. W. Fortenbaugh, P. Steinmetz, Rutgers, Rutgers Studies in Classical Humanities, 1989, 220-245.

¹¹⁷ Cicero, *De divinatione*, II, 20, 46.

¹¹⁸ It is worth noting that in the time of Cicero, great men believed in divination (or pretended to believe in it in order to attract the good graces of the populus). On Caesar's relationship with superstition, read: Suetonius, *Caesar*,

early as the 2nd century B.C., Cato had difficulty believing in haruspicine¹¹⁹ and Ennius considered all astrologers as charlatans¹²⁰. The Arpinate defended both his circumspection regarding divination¹²¹ and his apology of the Roman religious tradition. Indeed, for Cicero, extracting from the Roman religion the superstitions which parasitize it has the effect of strengthening it, of giving it an additional legitimacy. Moreover, Cicero has the good game of bullying divination while being the champion of the defence of tradition since he affirms the Etruscan origin of the science of haruspicine¹²². Criticizing a foreign superstition does not harm the religion or even the tradition of the ancestors¹²³. The mistrust of Roman intellectuals is not limited to divination. Other parts of the Roman religion are scratched: the humanization of the deities¹²⁴, the notion of apotheosis¹²⁵, certain legends like that of the foundation of

59; Cicero, *De divinatione*, II, 24, 52; II, 16, 36. De même au sujet de Pompée: Cicero, *De divinatione*, II, 24, 53. Au sujet de Sylla: Cicero, *De divinatione*, I, 44, 99. Voir sur ce sujet: Liebeschuetz J.H.W.G., *Continuity and Change in Roman Religion*, Oxford, Oxford University Press, 1979, 32; Linderski J., *Cicero and Roman Divination*, in *La Parola del Passato*, 1982, 37, 34 ss.; Weinstock S., *Divus Julius*, Oxford, Clarendon Press, 1971, 26-28; Calboli G., *La linguistica moderna e il latino*, Bologna, Pàtron, 1975, 157 ss.

¹¹⁹ Cicero, *De divinatione*, II, 24, 51.

¹²⁰ Ennius, *Annals*, I, 58, 132.

¹²¹ It should be noted that voices are being raised at the end of the Republic to affirm that divination has more in common with magic than with religion. See the following: Cicero, *De legibus*, II, 32; *De divinatione*, II, 35, 75.

¹²² Cicero, *De divinatione*, II, 72, 149; *De legibus*, II, 24.

¹²³ The Arpinate seems to contradict himself since in his *De legibus*, II, 33, Cicero concedes that the Romans practiced divination even before they suffered from Etruscan imperialism.

¹²⁴ Varro, *Satyrical*, I, 1.

¹²⁵ Cicero, *Philippics*, I, 13; *De natura deorum*, III, 21, 53. This asserted opposition does not prevent Cicero from wanting to divinize his daughter Tullia, who died early. Read on this subject: Boyancé P., *Études sur l'humanisme cicéronien*, Bruxelles, Latomus, 1970, 335-341.

the urbs¹²⁶ and even the existence of the gods themselves. Indeed, for Seneca or Varro, religion is a necessary invention. Myths would be human inventions¹²⁷.

But, far from being useless, they help to unite the community around the same profound belief.

We have understood that, at the end of the Republic, divination is questioned and the hermaphrodites who were considered to be the most threatening prodigies are no longer eliminated¹²⁸. The last example of a hermaphrodite mentioned as a prodigy and drowned dates back to 95 B.C.¹²⁹. Moreover, from the beginning of the second century B.C. onwards, more and more hermaphroditic children and even adults outside the context of divination are found in sources, which is proof of the increasing scarcity of executions of intersex newborns¹³⁰. The latter, like all deformed beings,

¹²⁶ Livy, *Roman History*, Preamble. Read: Mazzarino S., *Il pensiero storico classico*, II, Bari, Laterza, 1983, 283 ss.

¹²⁷ Seneca, *De superstitione*, 3; Augustine of Hippo, *De civitate Dei*, IV, 31; VII, 17 (on Varro). Read: Mazzarino S., *Il pensiero storico classico*, II, Bari, Laterza, 1983, 195; North J.A., *Democratic Politics in Republican Rome*, in *Past & Present*, 1990, 126-1, 582 ss. It should be noted that for Lucretius, *De natura rerum*, II, 1044-1047. He is guilty of allowing men to stoop to vain beliefs that imprison them. On the contrary, they must be educated to free them from superstition. In the same vein, Cicero, *De divinatione*, II, 33, 70; 40, 83; 72, 148-149.

¹²⁸ However, two authors report without further details that at the beginning of the Empire, monstrous children were still eliminated. Tibullus, *Elegies*, 2, 5, 69; Seneca, *Dialogues*, 3, 15, 2.

¹²⁹ Julius Obsequens, *Prodigiorum Liber*, L. There is mention of two *hermaphroditi* considered prodigies in 92 BC. (Julius Obsequens, *Prodigiorum Liber*, LIII). However, we have no information on how they were treated.

¹³⁰ Vallar S., *ibid.*, 213. One example is Diodorus of Sicily, who mentions the case of two people who have undergone a "sex change" without being considered prodigies. Diodorus of Sicily, *Bibliothèque Historique*, 32, 10-11: «Heraï, it is said, fell ill with a strange and quite incredible infirmity. A serious tumour appeared at the base of his abdomen, and as the area became increasingly swollen and high fevers developed, his doctors suspected that ulceration had occurred at the mouth of the uterus. They applied the remedies they thought might reduce the inflammation,

are regarded as victims of biology's aberrations¹³¹. This is how Livy wrote in the last third of the first century B.C.: «I am not unaware that by virtue of the same indifference that commonly makes us doubt today that the gods are sending us any signs, prodigies are never officially announced again and are no longer mentioned in the annals»¹³². In the same vein, let us mention the outraged and almost militant reaction of the historian Diodorus of Sicily when he recounts, with a few decades of hindsight, the execution by fire of a hermaphrodite in 90 B.C.:

but despite this, on the seventh day the surface of the tumor burst and a male genital organ with testicles appeared protruding from his groin [...] Herais, now that her shame had been publicly revealed, exchanged her female clothing for that of a young man. And the doctors, on seeing the evidence, concluded that his male organ had been concealed in an ovoid part of the female organ, and that since a membrane had abnormally enveloped the organ, an opening had formed through which the excrement was evacuated. Consequently, they considered it necessary to scarify the perforated area and induce scarring: having thus restored the male organ to a decent state, they were credited with having applied such treatment to the extent that the case allowed. Herais, who changed his name to Diophantus, was enlisted in the cavalry and, after fighting in the king's forces, accompanied him in his withdrawal to Abae. A sex change under similar conditions occurred thirty years later in the city of Epidaurus. There was a child of Epidaurus, named Callo, orphaned by both his parents, who was supposed to be a girl. [...] Later, a tumour appeared on his genitals and, as it caused great pain, several doctors were called in. None of them treated her, but a certain apothecary, who offered to treat her, cut the swollen area, on which a man's private parts were protruding, namely the testicles and an unperforated penis. While everyone else was stunned by this extraordinary event, the apothecary took steps to remedy the remaining deficiencies. First, by cutting into the glans, he made a passage through the urethra, and by inserting a silver catheter, he removed the liquid residue. Then, by scarifying the punctured area, he brought the parts together. After getting a cure in this way, he demanded a double payment, saying that he had received an invalid woman and had made a healthy young man out of her. Callo set aside his loom shuttles and all the other instruments of female work, and, taking in their place the dress and status of a man, changed his name (adding a single letter, N, at the end) to Callo».

¹³¹ Paturet A., *ibid.*, 12.

¹³² Livy, *Roman History*, XLIII, 13.

Thus he whose nature was similar to ours and who was not, in reality, a monster, met an untimely end through ignorance of his illness. Shortly afterwards, another such case occurred in Athens, and once again the person was burned alive through lack of understanding of his illness. There are even fanciful stories that animals called hyenas are both male and female, and that they take turns riding on each other over the years. This is simply not true. The male and female each have their own simple and distinct sexual attributes, but there is also an accessory in each case that creates a false impression and deceives the casual observer: the female, in her parts, has an appendage that resembles the male organ, and the male, on the other hand, has an appendage that is similar in appearance to that of the female. This same consideration applies to all living beings, and while it is true that monsters of all kinds are frequently born, they do not develop and are unable to reach full maturity. Let this be said, then, to remedy superstitious fears¹³³.

Is their fate now more enviable? Undoubtedly, but the intersexed will continue to suffer from prejudice for a long time to come. If they are no longer associated with prodigies, *hermaphroditi* are, from the end of the Republic, considered as *deliciae*, objects of entertainment and pleasure. Exposed to amuse, sexually exploited to satisfy the fantasies of wealthy citizens, the Romans will struggle to consider intersex people as their fellow men¹³⁴.

Despite the maintenance of prejudices, the intersexed were, from the first century B.C. onwards, integrated into society as persons¹³⁵. As a result, Roman law is obliged to assign *hermaphroditi* to one of the two recognized sexes in order to benefit from the rights

¹³³ Diodorus of Sicily, *Historical Library*, 32, 12, 1.

¹³⁴ Augustine of Hippo, *De civitate dei*, XVI, 8; Longinus, *On the sublime*, XLIV, 5; Suetonius, *Life of Claudius*, II, 3; Seneca, *Apocolocyntosis*, 5; Pliny, *Natural History*, 34. Read: Husquin C., *L'intégrité du corps en question: perceptions et représentations de l'atteinte physique dans la Rome antique*, Rennes, Presses universitaires de Rennes, 2020, 67 ss.; Chappuis Sandoz L., *La survie des monstres: ethnographie fantastique, handicap et imagination*, Bruxelles, Latomus, 67-1, 2008, 32 ss.; Garland R., *The Eye of the Beholder. Deformity and Disability in the Graeco-Roman World*, London, Duckworth, 2010, 70 ss., Brisson L., *ibid.*, 2002, 38-39.

¹³⁵ Tacitus, *Annals*, 15, 47, evokes indeed children with two human or animal heads thrown on the public highway or immolated, as full victims, at the time of sacri-

assigned to the latter¹³⁶. In fact, in ancient Rome there was a very great difference between the rights granted to men and women, particularly regarding access to property or participation in the political life of the city¹³⁷.

The first consideration of hermaphrodites by a jurist is the fact of Sabinus, jurist of the Augustan period and founder of the *Schola sabiniana*¹³⁸: «One wonders to whom one can assimilate the hermaphrodite? I think we should remember that he is one of those of the same sex as the one who dominates his home»¹³⁹. Sabinus continues¹⁴⁰: «A hermaphrodite can perfectly well institute a posthumous heir if the virile parts predominate in him».

In addition to Sabinus, taken up and commented on by a 3rd century jurist, Ulpian, we find another consideration of *hermaphroditi* by the law. Indeed, at the beginning of the third century, Paul wrote: «To know whether a hermaphrodite can be admitted [as a witness] on the occasion of a will, one will look at the nature of the sex that dominates in him when he is aroused»¹⁴¹.

To sum up, from the first century and Sabinus' legal thinking, it is the dominant sex in an ambiguous individual that will determine his gender and the right he will enjoy. The *Digest*, the jurisprudential part of *Justinian's Corpus iuris civilis*, which came into

files. On this subject, read: Delcourt M., *Stérilités mystérieuses et naissances maléfiques dans l'Antiquité classique*, Liège, Presses Universitaires de Liège, 1939, 64 ss.

¹³⁶ First, because the law must «discipline what is» (Julian D.1.3.10).

¹³⁷ Thomas Y., *La division des sexes en droit romain*, in *Histoire des femmes en Occident*, I, *L'Antiquité*, eds. G. Duby, M. Perrot, Paris, Plon, 1990, Chapter 3.

¹³⁸ His words are reported by a 3rd century jurist, Ulpian in his commentary on the *libri iuris civilis* of Sabinus. On this point, read: Crifo G., *ibid.*, 116-117; Peter O.M., *ibid.*, 214 ss.

¹³⁹ D.1.5.10.

¹⁴⁰ Whose voice is always carried by Ulpian (D.28.2.6.2).

¹⁴¹ D.22.5.15.1. Indeed, the opening of a will is a solemn moment that only men can attend. On this point, see: Thomas Y., *ibid.*, 105. Paturet A., *ibid.*, 14.

force in 533, remains in this continuity by quoting both Sabinus and Paul¹⁴². Thus, *hermaphroditi*, in whom the penis and testicles are more apparent than the vulva, will be able to benefit from rights like those of men.

On the contrary, female hermaphrodites will be confined to prerogatives similar to those of women. However, similar or still similar does not mean that these individuals were gratified with all the rights that men or women could have in ancient Rome. Let us try to find out more.

At the beginning of the imperial period, Pliny the Elder, who was not a jurist but a naturalist, established in his monumental *Natural History* an attempt to categorize the intersexed¹⁴³. Lacking certainty, Pliny considers that *hermaphroditi* are assimilated to women¹⁴⁴ and that they should be included in the category of *semiviri*¹⁴⁵, that is, semi-men: «In man alone the testicles are destroyed accidentally or by a natural disease, and this forms a third species of incomplete men, together with hermaphrodites and castrated individuals»¹⁴⁶. In the present case, there is no question of creating a third genus¹⁴⁷, but of bringing together in the same category individuals who, because of their genital particularities, cannot fully claim the rights granted to men. *Semiviri* usually include men who have seen their male organs mutilated during their lifetime, hermaphrodites, and eunuchs. It should be noted that in Rome, eunuchs are divided into

¹⁴² Thomas Y., *ibid.*, 105.

¹⁴³ *Natural History* was published around 77.

¹⁴⁴ Pliny, *Natural History*, 11, 262.

¹⁴⁵ Other terms synonymous with *semivir* such as *semimas*, *mollis* or *cinaedus* are found in the sources. The best translation would be “effeminate man” or “devoid of virility”. Read more on this topic: Robinson M., *Salmacis and Hermaphroditus: When Two Become One: (Ovid, Metamorphoses, 4, 285-388)*, in *The Classical Quarterly*, 1999, 49, 212 ss.

¹⁴⁶ Pliny, *Natural History*, 7, 69; 11, 263; 39, 22.

¹⁴⁷ Paturet A., *ibid.*, 13.

two categories according to the course and extent of their castration. The *spadones* whose testicles have been altered or destroyed by hand not removed (we distinguish among the *spadones*, the *thlibiae* castrated before the age of three by crumpling or testicular ligation and the *thlasiae* whose testicles are crushed in adolescence) and the *castrati* in whom the testicles and often the penis are surgically removed¹⁴⁸. Despite the erratic nature of Pliny's argument, his reflection on the inclusion of *hermaphroditi* in the category of *semiviri* may help us to get more information. In fact, legal sources provide us with information on this subject but lack completeness concerning all the rights they are recognized as having. Although we now know that a hermaphrodite is close to the sex that is most evident in her genitals, and that consequently an intersexed person who is assimilated to a man may be present at the opening of a will, we cannot say whether androgynous women possessed all the rights attached to their dominant sex.

The prerogatives granted by Roman law to *semiviri* vary according to their degree of incompleteness. In the field of family law, for example, it should be noted that all the individuals making up the eunuch subgroup are deprived of the possibility of contracting a valid marriage. Moreover, accidental castration is a legitimate cause of divorce¹⁴⁹. Furthermore, within the eunuchs themselves, it is nec-

¹⁴⁸ Read: Cordier P., *L'étrange sexualité des castrats dans l'Empire romain*, in *Corps romains*, ed. Moreau P., Grenoble, Million, 2002, 61-76; Cameron A., *Eunuchs in the Historia Augusta*, Bruxelles, Latomus, 24, 1965, 155-158; Hopkins K., *Eunuchs in politics in the later Roman Empire*, in *PCPhS*, 1963, 9, 62-80; Bullough V.L., *Eunuchs in History and Society*, in *Eunuchs in Antiquity and Beyond*, ed. Tougher S., Swansea, Classical Press of Wales, 2002, 1-17; Sciasca G., *Eunucos, castratos e spadones no direito romano*, in *Varietà giuridiche, Scritti brasiliani di diritto romano e moderno*, Milano, Giuffrè, 1956, 112 ss.; Pennuto C., *Il n'est pas sûr de laisser les eunuques surveiller les femmes: réflexions sur les eunuques à la Renaissance in Sixteenth century*, 2011, 111-123.

¹⁴⁹ D.23.3.39.1

essary to distinguish between *spadones* who can adopt as half-mutilates, and *thlasiae* and *castrati* who do not have this licence. Finally, it is necessary to mention the fact that it was not until the Justinian era that eunuchs, whoever they may be, could make wills¹⁵⁰. On the basis of this new information what can we say? That within this category of *semiviri* the hermaphrodites seem to be close to the *spadones* (and more specifically the *thlasiae*) those eunuchs whose testicles have only been altered. As a result, it is doubtful whether hermaphrodites can make a valid will or even marry legitimately. On the contrary, one can opine in the direction of their capacity to adopt.

Let us also say a few words about the opportunity for intersexed persons assimilated to men to have access to civil and religious magistracies and to be able to participate in the political life of the city¹⁵¹. Recent studies on the conditions for the exercise of magistracy and ecclesiastical offices in ancient Rome converge in the same direction: there is no general rule imposing total physical integrity on candidates (or holders) for civil or religious office¹⁵². However, the individuals concerned had to be sufficiently seasoned to be able to

¹⁵⁰ Kaser M., *Das römische Privatrecht*, I, Munich, Beck, 1971, 314, note 28; *Das römische Privatrecht*, II, Munich, Beck, 1975, 161 ss.

¹⁵¹ On the understanding that Roman political and religious life is monopolized by men. See, Thomas Y., *op. cit.*

¹⁵² Baroin C., *Le corps du prêtre romain dans le culte public: début d'une enquête*, in *Actes du colloque: Corps outragés, corps ravagés. Regards croisés de l'Antiquité au Moyen Âge, 6 mars 2009*, eds. L. Bodiou, V. Mehl, Université de Bretagne-Sud Lorient, Turnhout, 2011, 291-316; Baroin C., *Intégrité du corps, maladie, mutilation et exclusion chez les magistrats et les sénateurs romains*, in eds. Collard F., Samama E., *Handicaps et sociétés dans l'Histoire. L'estropié, l'aveugle et le paralytique de l'Antiquité aux temps modernes*, Paris, L'Harmattan, 2010, 49-68; Husquin C., *Penser le corps social en situation à Rome et dans le monde romain: perceptions et représentations de l'atteinte physique du 1er siècle avant notre ère au IVe siècle de notre ère*, Thèse de doctorat, Université de Lille, 2016; Evêque R., *Le poids de la piété. L'intégrité corporelle des prêtres romains au sens du ius sacrum*, in *Droit et cultures*, 2021 (seemingly).

carry out their functions and had to manifest total physical and moral purity in order to approach the gods during the various ceremonies that constellated Roman religious and political life. It does not seem to us that the hermaphrodites, who were regarded until recently as diabolical beings, could claim such functions during the empire. The same is not true of participation in political life, which does not require any physical completeness, and which seems accessible to all men and assimilated.

To exemplify this evolution of Roman law with regard to intersexed persons, let us recall the case of Favorinus of Arles (80-160) who, during the High Empire, despite his status as a “congenital eunuch”, was able to become one of the greatest rhetoricians in Roman history, open his own school and be so assimilated to a man that he was condemned for adultery.

Favorinus of Arles is a famous and celebrated Roman rhetorician born in Arles in the Roman province of Gaul-Narbonnaise in 80 and 90 and died between 143 and 176. He is one of the principal members – alongside Dion of Prussia, Aelius Aristide and Lucian of Samosate – of the Second Sophistic, a literary movement which appeared in the first half of the first century and ended in the first third of the third century¹⁵³. Favorinus of Arles is also a philosopher, affiliated either to the new academy or to the sceptical sect¹⁵⁴. He is the author of numerous treatises. One will retain in particular those devoted to exile and old age¹⁵⁵. Friend of

¹⁵³ Bowersock G.W., *Approaches to the Second Sophistic*, American Philological Association, 1974.

¹⁵⁴ Opsomer J., *Favorinos versus Epictetus on the Philosophical Heritage of Plutarch: A Debate on Epistemology*, in *Plutarch and his Intellectual World*, J. Mossman (ed), Swansea, Classical Press of Wales, 1997, 17-34.

¹⁵⁵ Barigazzi A., *Favorino di Arelate. Opere: Introduzione Testo Critico e Commentario*, Firenze, Le Monnier, 1966; Amato E., *Favorinos d'Arles, Oeuvres I. Introduction générale - Témoignages - Discours aux Corinthiens - Sur la Fortune*, Les Paris, Belles Lettres, 2005.

the great intellectuals of his time such as Plutarch, Herod Atticus and Fronto, he will be the master of the great Gellius¹⁵⁶ who will speak of him as being «the most representative person of culture in Rome in the middle of the second century»¹⁵⁷. Favorinus will also be a close friend of power since he is known to have been a close friend of Hadrian before their relationship fell into dissension¹⁵⁸. It is also known that Favorinus was in exile¹⁵⁹ and that he took advantage of it to write a philosophical essay, a consolation on this ordeal. What is the cause of this forced deportation that is known to have taken place on the island of Chios? Nothing is certain, but three hypotheses emerge: an accusation of adultery, which will be discussed later, the consummate divorce from Hadrian, the intrigues of his main enemy, Polemon of Laodicea, who was very jealous of him¹⁶⁰.

The life of Favorinus is not banal and three paradoxes can be noted¹⁶¹. First, the feat of being a Gaul by birth but nevertheless brilliantly Hellenistic¹⁶². Then, the feat of having quarrelled with

¹⁵⁶ Ioppolo A.M., *The Academic Position of Favorinus of Arelate*, in *Phronesis*, 1993, 38, 183-213.

¹⁵⁷ Gellius, *Attic Nights*, I, 3, 37.

¹⁵⁸ Swain S., *Favorinus and Hadrian*, in *ZPE*, 1989, 79, 150-158.

¹⁵⁹ Probably from the early 130s until the advent of Hadrian's successor, Antoninus the Pious in 138.

¹⁶⁰ Perhaps the last two hypotheses are confused: Polemon would have fomented with Hadrian to obtain internment on Chios de Favorinus.

¹⁶¹ Holford-Strevens L., *Favorinus: the Man of Paradoxes*, in *Philosophia togata*, eds. Barnes J., Griffin M., vol. II, Oxford, Oxford University Press, 1997, 188-217; Collart P., *Favorinus d'Arles*, in *Bulletin de l'Association Guillaume Budé*, 1932, 34, 23-31.

¹⁶² However, mastery of the Greek language was not so unusual in Gallic intellectual circles. Indeed, excellent educational centres existed in Gaul (especially in the south). In this respect, let us mention the Menian schools of Autun (Augustodunum) or those of Marseilles (Massalia). The case of Massalia is worth mentioning. Indeed, this city, long a Hellenic colony (from the 7th century B.C. until the Roman conquest in 49 B.C.) is located a few kilometres from Arles.

the emperor but finally survived. Finally, being intersexed and becoming a famous intellectual of his time¹⁶³. About the intersex of Favorinus of Arles, what do we know? We are informed through various sources. First, of course, by Philostratus, Favorinus' biographer, who describes the famous rhetorician as doubly androgynous¹⁶⁴. Firstly, because of his high-pitched, female-like voice. Secondly, because of his hairless skin, both young and old. Philostratus primarily uses two terms to speak of Favorinus: *diphues* meaning double-natured and *androthelus*, i.e. androgynous. The biographer also uses Favorinus' own words, calling himself a eunuch. We also learn of Favorinus' interest in (heterosexual) sexuality and the fact that he was accused of adultery by a man of consular rank. We can also read Lucien, a rhetorician of the 2nd century to learn more about Favorinus. In the essay *Demonax*, dedicated to the Greek philosopher of the same name, Lucian reports with undisguised irony the encounter between the latter and Favorinus:

Phavorinus, having heard that Demonax mocked his philosophical talks, and especially the verses from which he cut his speeches, a procedure which gave them a cowardly, effeminate, unworthy of philosophy, went to him, and asked him what he was to flout his method thus: "A man", replied Demonax, "whose ears are not easily seduced". The sophist insisted, "But what were your provisions, Demonax, when you began to philosophize as a child? – My manhood". Another time, the same Phavorinus approached Demonax and asked him which sect he preferred. "Who told you", he replied, "that I am a philosopher?" And as he withdrew laughing heartily, Phavorinus asked him what he had to laugh about. "I find it very pleasing", he said, "that you want to distinguish between philosophers with beards, you who have none"¹⁶⁵.

¹⁶³ Sudan B., *Favorinus d'Arles: corps ingrat, prodigieux destin*, in *Langages et métaphores du corps dans le monde antique*, eds. Wilgaux J., Dasen V., Rennes, Presses universitaires de Rennes, 2008, 169-182.

¹⁶⁴ Anderson G., *Philostratus: Biography and Belles Lettres in the Third Century A.D.*, London, Routledge, 2014, 102-104.

¹⁶⁵ Lucian, *Demonax*, 12-13.

In another of Lucian's works, the satire *The Eunuch*, which describes the career of Bagoas, a semivir who wanted to obtain a chair of philosophy at the school of Athens, Favorinus is evoked, always with acidity:

Finally, with a slender and feminine voice, he claimed that Diocles was wrong to exclude a eunuch from philosophy, since it admits women. He cited Aspasia, Diotius and Thargelia in support of his cause, and, moreover, a Gallic eunuch of the academic sect, who, a little before our time, had made a name for himself among the Greeks. [...] "Judges", he said, "though the speaker has smooth cheeks, the voice of a woman, and all the appearances of a eunuch, have him stripped, and you will see that he is really a man. If even what is said of him is true, he was once caught in the act of adultery, hand to hand, as the scroll of laws says; but then he claimed that he was a eunuch, and the invention of this subterfuge made him absolve himself of a crime which the judges did not believe possible at the sight of the accused alone. Today, however, I think he will recant, to earn the promised salary"¹⁶⁶.

In addition to Philostratus and Lucian, the sophist Polemo in his *Physiognomonica* also stops in his writings on Favorinus. The words are brittle, and the hostility is obviously justified only by an assumed disgust for Favorinus' intersex:

When the eye is open and shines like marble, with a sharp look, it is a sign of immodesty. It is nature that exists in the eyes of men unlike other men, like an uncastrated eunuch without testicles. I think I can find only one example of this kind of man, from the land of the Celts. He was lecherous and dissolute beyond all limits. His eyes were the eyes of the worst kind of man, just like the description... He had a swollen forehead, soft cheeks, a wide mouth, a long thin neck, fat legs, fleshy feet. His voice was like a woman's and his other joints and extremities were all soft. He did not walk upright, but his limbs and joints were loose. He took great care of his Persian, caring for his abundant hair and doing anything that aroused sexual desire. His voice was like a woman's and he had thin lips"¹⁶⁷.

¹⁶⁶ Lucian, *Eunuchus*, 7-10. If no name is ever pronounced, it is obvious that the "Gallic eunuch" and the "orator" mentioned are confused in the person of Favorinus of Arles.

¹⁶⁷ Polemo of Laodicea, *Physiognomonica*. It is obvious that the "Celtic eunuch" of whom Polemon speaks is none other than Favorinus. It should be noted that the

What can we learn from these testimonies? That Favorinus was sexually ambiguous at birth with absent or undescended testicles, that he was assigned to the male sex but did not show the usual signs of puberty in men (facial and body hair, deep voice and muscle development), that he was capable of having sexual intercourse and that he was heterosexual.

It should be noted that despite his intersexuality, which seems to be more precisely the consequence of Reifenstein's syndrome (SIA)¹⁶⁸ or Klinefelter's syndrome¹⁶⁹, Favorinus was able to fol-

objective of physiognomy in the words of Polemon is to «determine the disposition and habits of men by inspecting their bodies, faces, foreheads and eyes».

¹⁶⁸ Male pseudo-hermaphroditism includes a number of different syndromes with very different biological consequences. One example is the oestrogen insensitivity syndrome. A condition that results in a feminine appearance but cryptorchidian testicles (absence of one or both testicles in the scrotum) and no ovarian structure. Another example is the Reifenstein syndrome that Favorinus may suffer from. This syndrome is characterised by frequent cryptorchidism, a significant reduction in body and facial hair, a generally high-pitched voice, hypospadias (when the opening of the urethra is not at the end of the glans but at another place in the urinary tract), a feminine distribution of subcutaneous fat, a tendency to obesity from the forties onwards and often gynecomastia. Patients with Reifenstein syndrome have a normal libido. While the descriptions we have of Favorinus generally seem consistent with the fact that he may have been a carrier of Reifenstein's syndrome, no witness in the life of the famous speaker reports any gynecomastia. However, if there had been gynecomastia, it is difficult to think that Polemo would have failed to mention it. However, it is noteworthy that a number of patients with Reifenstein's syndrome have gynecomastia as part of general obesity. Another problematic point is that Reifenstein's syndrome does not explain a number of features present in Favorinus and reported by Polemo: uncontrolled blinking eyes, a long thin neck, or fleshy legs. However, these physical features are all found in patients with a muscle disease, myotonic dystrophy. If Favorinus had had myotonic dystrophy, however, he would also have had premature frontal baldness, progressive mental and somatic deterioration, reduced libido, or altered or even lost visual acuity. On this subject, read: Mason H., *Favorinus' Disorder: Reifenstein's Syndrome in Antiquity?*, in *Janus*, 1978, 66, 1-13.

¹⁶⁹ Klinefelter's syndrome, which is the most common disorder of male sexual development, is the consequence of a karyotype 47, XXY. Favorinus may have been affected. Indeed, patients with this syndrome have reduced hair growth, a high-

low higher education, lead a brilliant career as a speaker, became a sought-after master and frequented the highest spheres of the urbs. His personal situation shows that at the beginning of the Empire, sexual ambiguity was no longer a permanent obstacle to the possibility of leading a normal life and being able to achieve professional success. Moreover, one event in Favorinus' life is decisive: his accusation of adultery. In the second century, an intersexed person could be recognized in law as a man. However, the severe criticism Favorinus must have felt, focusing on his physical characteristics, shows the persistent mistrust of society towards *hermaphroditi*.

pitched voice, often have no beard but have a normal libido. However, there are a number of factors that prevent Favorinus from being attributed to this condition. For example, in Klinefelter's syndrome, the testicles are smaller than normal but correctly located in the scrotum and the condition is undetectable before puberty (apart from the practice of genetic testing). In addition, many of the patients with Klinefelter's syndrome have gynecomastia, mental retardation, memory problems and permanent fatigue. Contra Mason H., *op. cit.*