

[AccueilRevenir à l'accueilCollectionBoite\\_028 | Ultimes papiers.CollectionBoite\\_028-2-chem | Pile - Ensemble. 1° médecins ; 2° Antiques \(notes diverses sur la sexualité dans l'Antiquité\). Dite `pile I` \[annotation de D. Defert\] Item\[J. A. Cook, Law and Life in Rome - suite\]](#)

## [J. A. Cook, Law and Life in Rome - suite]

**Auteur : Foucault, Michel**

### Présentation de la fiche

Coteb028\_f0278

SourceBoite\_028-2-chem | Pile - Ensemble. 1° médecins ; 2° Antiques (notes diverses sur la sexualité dans l'Antiquité). Dite `pile I` [annotation de D. Defert]

LangueFrançais

TypeFicheLecture

RelationNumérisation d'un manuscrit original consultable à la BnF, département des Manuscrits, cote NAF 28730

### Références éditoriales

Éditeuréquipe FFL (projet ANR *Fiches de lecture de Michel Foucault*) ; projet EMAN (Thalim, CNRS-ENS-Sorbonne nouvelle).

Droits

- Image : Avec l'autorisation des ayants droit de Michel Foucault. Tous droits réservés pour la réutilisation des images.
- Notice : équipe FFL ; projet EMAN (Thalim, CNRS-ENS-Sorbonne nouvelle). Licence Creative Commons Attribution - Partage à l'Identique 3.0 (CC BY-SA 3.0 FR).

Notice créée par [équipe FFL](#) Notice créée le 22/03/2021 Dernière modification le 23/04/2021

---

introduce a stepmother over all 'his children'.<sup>18</sup> We hear of persons who, having lived in concubinage, subsequently enter into *iustae nuptiae*,<sup>19</sup> and there is plenty in the *Digest* about legacy to concubines. A large body of evidence is available on this institution from tombstones, and it has been the object of more than one study.<sup>20</sup> One striking feature is the predominance of concubinage between women of high status and men of a humbler sort. Perhaps unhappy first marital experience and early widowhood are relevant here. To marry a man of low class for whom she had a true affection might be impossible by the rules, or just socially declassing, for a woman of high family; but the alternative was there. It has often been held that the frequency of concubinage was forced upon Rome by Augustus' legislation making it impossible for the senatorial order to contract a full marriage with *humiliores*. But numerous cases have been shown of concubinage between couples whom the Augustan rules would not have debarred from full marriage.<sup>21</sup> There are certainly difficult problems of source-criticism in considering how far the status was legally regulated. Thus, the 'Opinions of Paulus' give a rule that a man cannot have a wife and a concubine simultaneously,<sup>22</sup> but this must be post-classical. Not only do we hear of a wife making her husband promise on pain of a money penalty that he would not associate with a concubine during the marriage,<sup>23</sup> but there are tombstones erected by men to wife and concubine in situations where it is pretty certain that the women exercised their respective functions concurrently.<sup>24</sup> Again, at some stage it seems to have been held that concubines, or some concubines, could be prosecuted for adultery.<sup>25</sup> And finally there lurks the difficult question whether only such women could be concubines who were sufficiently humble for relations with them not to constitute *stuprum*. Some legal texts suggest this, but the better view is that the lawyers were themselves uncertain.<sup>26</sup>

Marriage, then, was a condition of fact dependent on the intention of the parties. How did you prove that you were married? Normally there would be the evidence of all those ceremonies that are described in the books on 'Daily Life in

BnF  
MSS

