

WOMEN AND THE LAW  
IN THE ROMAN  
EMPIRE

A sourcebook on marriage, divorce  
and widowhood

*Judith Evans Grubbs*



London and New York

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## WOMEN AND THE LAW IN THE ROMAN EMPIRE

It is widely recognized that Roman law is an important source of information about women in the Roman world, and can present a more rounded and accurate picture than literary sources.

This sourcebook exploits fully the rich legal material of the imperial period – from Augustus (31 BCE–14 CE) to the end of the western Roman Empire (476 CE), incorporating both pagan and Christian eras, and explaining the rights women held under Roman law, the restrictions to which they were subject, and legal regulations on marriage, divorce and widowhood.

The main focus is on the major legal texts (the *Digest*, the *Institutes of Gaius*, the *Code of Justinian*, the *Theodosian Code*), but a significant number of non-legal documentary sources are included. These are particularly important as they illustrate how the law worked in practice, and how this practice (particularly in the provinces) could differ from the letter of the law.

Accessible English translations are enhanced by clear, concise background material, which includes useful explanation of historical and geographical context, and a helpful glossary of Roman legal and administrative terms adds to the volume. Comprehensive and user-friendly, this will be a core text for students and an essential reference guide for more advanced scholars.

**Judith Evans Grubbs** is Professor of Classical Studies at Sweet Briar College, where she has taught since 1987. She is also the author of *Law and Family in Late Antiquity: The Emperor Constantine's Legislation on Marriage* (1995), and articles on women and the family in imperial Roman law.



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# CONTENTS

<i>Preface. A sourcebook on women and the law in the Roman Empire: marriage, divorce, and widowhood</i>	xi
<i>List of abbreviations</i>	xv
<i>Glossary of Latin legal terms</i>	xvii
<i>Acknowledgments</i>	xxiii
<b>Introduction: historical and legal background</b>	<b>1</b>
<i>I The legal sources</i>	1
A The sources of classical law	1
B Sources of late Roman law	4
<i>II Roman social structure and the legal system</i>	6
<i>III Timetable of important events and laws</i>	13
<b>1 The status of women in Roman law</b>	<b>16</b>
<i>I Definitions</i>	16
A Gender and inclusiveness	16
B Women in the family	17
<i>II Forms of legal power</i>	20
A <i>Patria potestas</i> (“paternal power”)	20
B <i>Manus</i> (marital subordination)	21
C <i>Tutela impuberum</i> (guardianship of minors)	23
<i>III Tutela mulierum (the guardianship of women)</i>	23
A Legal sources on <i>tutela mulierum</i>	24
1 The <i>Institutes</i> of Gaius on <i>tutela mulierum</i>	25
2 Selections from the <i>Rules of Ulpian</i>	11 29
3 The Flavian Municipal Law ( <i>lex Irnitana</i> )	30

## CONTENTS

B	<i>Tutela mulierum</i> in non-legal sources	31
C	The guardianship of women in the Roman East	34
D	The <i>ius liberorum</i>	37
E	<i>Tutela mulierum</i> in late antiquity	43
IV	<i>Legal stereotypes of women's abilities and behavior</i>	46
A	Legal assistance for women	47
B	Women's modesty and the need for protection	48
C	"Womanly weakness"	51
1	"Womanly weakness" in Roman legal sources	51
2	"Womanly weakness" in the papyri	52
D	The <i>senatusconsultum Velleianum</i>	55
V	<i>Women in court: restrictions and rights</i>	60
A	Restrictions on women's right to act legally	60
1	Prohibition on bringing a request on others' behalf	60
2	Prohibition on bringing criminal charges	63
3	Prohibition on being an informer to the <i>fiscus</i>	64
B	Right to act legally on behalf of oneself or one's family	65
1	Right to act legally in civil cases	65
2	Right to bring criminal charges	66
3	Right to bring an action over a family member's freedom	68
4	Right to bring an action for the public welfare	69
C	A sister seeks to avenge her brother's murder	69
D	Women as defendants or witnesses	70
VI	<i>Women in public life: restrictions and responsibilities</i>	71
A	The importance of status	71
B	Prohibitions on holding public office	74
C	Wealthy women and <i>munera</i>	74
2	<b>Marriage in Roman law and society</b>	81
I	<i>Marriage and its consequences in classical Roman law</i>	81
A	The purpose and nature of marriage	81
1	What is marriage?	81
2	What makes a marriage valid?	82
B	The Augustan marriage legislation	83
C	Preliminaries to marriage: age, betrothal, and consent	88

## CONTENTS

1	Age	88	
2	Betrothal	88	
3	Consent	89	
D	Dowry	91	
1	Dotal pacts and the purpose of dowry	91	
2	Providing a dowry	92	
3	The dowry during marriage	95	
4	Recovery of dowry after marriage	97	
E	Gifts between spouses and a married woman's property	98	
1	The ban on gifts between husband and wife	98	
2	Women's property within marriage	101	
II	<i>Marriage and its consequences in late Roman law</i>		102
A	Repeal of the Augustan penalties on celibacy	103	
B	Paternal power and consent to marriage	104	
C	Pre-nuptial gifts, <i>arrhae sponsaliciae</i> , and dowry	110	
III	<i>Marriage contracts from Egypt and the Near East</i>		122
A	Marriage contracts from Roman Egypt	122	
1	A <i>synkboresis</i> from Alexandria	123	
2	Abstract of an alimentary contract from Tebtunis	125	
3	A Latin marriage contract	126	
4	A mother gives her daughter in marriage	127	
5	The marriage of two embalmers	129	
6	A husband moves in with his wife and her father	129	
B	Marriage agreement from the "Cave of Letters"	131	
C	Marriage contract from Dura Europos	133	
3	Prohibited and non-legal unions		136
I	<i>Prohibited and non-marital unions in classical law</i>		136
A	Prohibitions based on kinship	136	
1	Parent-child and sibling marriage	136	
2	Uncle-niece and aunt-nephew marriage	137	
3	Former slaves and incestuous marriage	138	
4	Legal consequences of incestuous marriage	139	
5	Diocletian's edict against close-kin marriage	140	
B	Non-marital unions based on social status	143	

## CONTENTS

1	Slave unions and slave-free unions	143
2	The <i>senatusconsultum Claudianum</i>	145
3	Unions between women and their freedmen	146
4	Unions between senators and former slaves	148
5	<i>Concubinatus</i> (concubinage)	150
C	Other prohibitions	154
1	Unions between citizens and non-citizens	154
2	Marriage between <i>tutor</i> and <i>pupilla</i>	156
3	Marriage between imperial officials and locals	157
4	Marriage of soldiers while in service	158
5	Marriage to two women simultaneously	160
II	<i>Prohibited and non-marital unions in late antiquity</i>	161
A	Prohibitions based on kinship	161
B	Prohibitions based on status	166
1	Expansion of the Augustan prohibitions	166
2	Concubines	170
3	Free men and slave women	173
4	Free women and slave men	176
C	Forced marriages	181
D	Other prohibitions	184
4	Divorce and its consequences	187
I	<i>Divorce in classical law</i>	187
A	Definition and causes of divorce	187
B	Sending a notice of divorce	189
C	Return of dowry after divorce	191
D	Freedwomen and divorce	192
E	Divorce and <i>patria potestas</i>	195
1	A father's right to break up his child's marriage	195
2	Children after divorce	198
II	<i>Divorce in late Roman law</i>	202
III	<i>Divorce in Egypt and the Near East</i>	210
A	Divorce documents from Roman Egypt	210
1	A <i>synkboresis</i> from Alexandria	211
2	A wife's complaint	212
3	A divorce agreement from Tebtunis	212
4	A grave-digger's divorce	213

## CONTENTS

5	A late fourth-century divorce agreement	214
6	A mother's complaint against her son-in-law	215
B	A divorce from Dura Europos	217
<b>5</b>	<b>Widows and their children</b>	<b>219</b>
<i>I</i>	<i>Remarriage in Roman law</i>	220
A	Legally imposed delays on remarriage	220
B	Remarriage and inheritance	223
<i>II</i>	<i>Widows and the guardianship of fatherless children</i>	236
A	Mothers and <i>tutela</i> (guardianship) in Roman law	236
1	The obligation to request a guardian	236
2	Guarding the guardians	240
3	Mothers as guardians	242
B	Mothers and guardians in the Greek East	248
1	Appointment of guardians	248
2	A mother brings suit against her son's guardians	250
3	Mothers as guardians	254
4	A guardian mother defends her children's interests	257
<i>III</i>	<i>Pregnant widows</i>	261
A	Surveillance of pregnant widows	261
B	Inheritance rights and the supposititious child	264
C	Pregnant widows in the papyri	267
	<b>Summation. The condition of women: rights and restrictions</b>	<b>270</b>
	<i>Notes</i>	272
	<i>Bibliography</i>	327
	<i>Index of sources</i>	337
	<i>General index</i>	343



## PREFACE

### A sourcebook on women and the law in the Roman Empire: marriage, divorce, and widowhood

"In many parts of our law the condition of women is below that of men," stated the third-century legal writer Papinian (D.1.5.9). Examination of the sources for Roman law under the Empire bears out the basic truth of his statement, while also revealing that women in the Roman classical period enjoyed greater property rights and freedom to divorce than did their American and European counterparts before the twentieth century.

This book presents, in English translation, sources from the Roman imperial period which illustrate the rights women held under Roman law, the restrictions to which they were subject, and legal regulations on marriage, divorce, and widowhood. It is intended as an aid for the study of women in antiquity, Roman imperial law, and Roman social history in general. It is what is known as a "sourcebook," a collection of ancient sources translated from the original languages with introductory material and commentary. *Women and the Law in the Roman Empire* covers the Roman imperial period, from the reign of the first emperor Augustus (31 B.C.E.–14 C.E.) to the end of the Roman Empire in the west (476 C.E.). It draws heavily on the major legal texts (the *Digest*, the *Institutes* of Gaius, the *Code of Justinian*, and the *Theodosian Code*, all written in Latin, the language of Roman jurists), and also on non-legal documentary sources in Greek and Latin that illustrate women's interaction with Roman imperial law.

Today it is widely recognized that Roman legal and documentary sources are an important source of information about women in the Roman world, and can present a more well-rounded and accurate picture of women's lives than classical literature, which is often tendentious and bound by the conventions of genre. Much of this rich source material is still unexploited, however; sometimes it is not even available in a reliable or accessible English translation. Many books on "women in antiquity" either ignore the legal sources or present them sketchily and inaccurately, providing little in the way of context. On the other hand, the work now being done on the Roman family makes extensive use of classical Roman law, but in general focuses on the city of Rome, or at most, the elite classes of Italy and the Latin-speaking western Empire. Moreover, the law of the *later* Roman Empire (284–476

C.E.) has only recently begun to receive attention even from scholars of the Roman family, who concentrate on the “classical” period of Roman law and culture – the first century B.C.E. to the early third century C.E.

Several different types of sources appear in this book. Most important, of course, are the Roman legal sources that lay out the norms and regulations of the law: in particular, for the classical period, the *Digest* and the *Institutes* of Gaius, and for the later period, the *Theodosian Code*. The nature and limitations of these sources are discussed in Part I of the Introduction. Also included are documents illustrating how these regulations worked in “real life” and how actual practice, particularly in the provinces, differed from the norms of Roman law. These “documentary” sources comprise documents written on papyrus, a paper-like material made from the stalk of the papyrus reed plant, and documents inscribed on stone or bronze. Unlike the legal sources, which have been transmitted to us (albeit in incomplete form) via the manuscript tradition, documentary papyri and inscriptions were found in the ground, either in proper excavations or in a more haphazard way. Of these, the papyri are almost all written in Greek, and almost all found in Egypt; a few are in Latin (generally for those few Roman citizens living in Egypt before 212), and a few were discovered elsewhere in the Middle East, for instance the Babatha archive in the “Cave of Letters” on the Dead Sea (see Chapter 5, Part II.B.2), or documents from the Roman outpost of Dura Europus on the Euphrates. Papyri in other languages (Syriac, Coptic, and Aramaic) are not included in this book. Inscriptions on stone or bronze survive in Latin (from Italy or the western provinces) or Greek (from the provinces of the eastern Mediterranean). Most extant inscriptions are either funerary or honorific; those appearing in this sourcebook are included because they illustrate Roman law. A few texts of actual laws are also known from inscriptions, usually on bronze, which have been found in Italy and the provinces. For instance, the Flavian Municipal Law is known from several sites in Spain (see Chapter 1, Part III.A.3).

Also preserved via the manuscript tradition are selections from Latin and Greek literature found in this sourcebook. I include far fewer examples of literary than of the legal or documentary sources, for several reasons. In general, I have included “literary” sources only when they directly mention or illustrate Roman law and its workings in ordinary life. Works of classical literature are in general more likely to be accessible in English translation than are legal or documentary sources, and most of the many books that have already been published on women in antiquity focus on literary sources. I have, however, made an effort to include Christian sources relevant to Roman law because these are usually not included in books devoted to women in antiquity, and are often little known.

Something should be said about the limits I have imposed on this work, in terms of time, space, and topic. My chronological and spatial limits coincide with the traditional historical view of the “Roman Empire” as a

political and geographical whole. The time limits are admittedly arbitrary: 31 B.C.E. is the year in which Octavian (the future emperor Augustus) defeated Mark Antony and Cleopatra at the Battle of Actium and thus became the first sole ruler of territory which at that time extended from the Hispanic peninsula in the west to the Euphrates in the east and from France in the north to the Sahara in the south. The Empire at its height in the second century included even more territory, having added Britain and lands west of the Rhine and south of the Danube (as well as modern Rumania, north of the Danube). By the mid-fifth century parts of the western Empire in Europe and North Africa had fallen under the control of Germanic peoples, and in 476 the last Roman emperor in the west, Romulus Augustulus, was deposed. At that point the Roman Empire as we think of it today can be said to have ended, although the Byzantine Empire continued in the eastern Mediterranean for another millenium, and Roman law continued to shape the legal traditions of east and (for a time) west.

These time limits are not hard and fast: even before 31 B.C.E., Roman power extended over almost the same amount of territory, and the accession of Octavian/Augustus did not have immediate consequences for the legal systems of regions where few of the inhabitants were Roman citizens, and which continued by and large to follow their local law and custom until (and indeed, in many respects, even after) the grant of universal citizenship by the emperor Caracalla in 212. Moreover, already in the fourth century, the administration of the Empire was devolving into eastern and western halves, with two imperial capitals (Rome and Constantinople), each with their own Senate, and usually at least two reigning emperors with their own legal staffs. However, the publication of the *Theodosian Code* in 438 (see Part I.B of the Introduction) did bring legal unity to east and west, albeit very briefly. In 476, the promulgation of post-Theodosian “new” Roman laws (*novellae*) in the west ended, and although the new Germanic nations did use Roman law for their Roman inhabitants, and were influenced by Roman legislation in their own law-making, I believe a case can be made for ending a treatment of “Roman imperial law” in 476. Nevertheless, it must be recognized that Roman law, and Roman administration, did continue, *mutatis mutandis*, in the “Byzantine” (our word, not theirs) eastern Empire for centuries. Indeed, our knowledge of “classical” Roman law is almost entirely dependent on the project of the sixth-century Roman/Byzantine emperor Justinian, which resulted in the publication of the *Digest*, the Justinianic Code, and the *Institutes* of Justinian (see Part I.A. of the Introduction).

My self-imposed chronological limits do mean that two voluminous and extremely valuable sources of Roman law are omitted: at the one end, the many speeches of the late Republican orator and statesman Cicero, at the other end, the original legislation of Justinian promulgated in his “*novellae*.” Considerations of space, and, in particular, the limitations of my own expertise, have necessitated this.

## PREFACE

I hope that this sourcebook will serve as a complement and companion to the works of Jane Gardner and Antti Arjava, who have provided clear and thorough accounts of the position of women in Roman law of the classical and late antique period respectively. Their books are narratives which include excerpts from ancient sources to illustrate specific points. This book, on the other hand, centers on the ancient sources themselves, providing extended translations of examples from the sources for the topics they discuss. It is certainly not the first “sourcebook” on women and family life in the Roman Empire; the past twenty years have seen many books that collect and translate ancient sources focusing on women, beginning with Mary Lefkowitz and Maureen Fant’s *Women’s Life in Greece and Rome* (first published in 1982, with a second edition ten years later), and including also Jane Gardner and Thomas Wiedemann’s sourcebook on *The Roman Household* in 1991. More recently, there is the excellent collection of texts (mostly from papyri) on *Women and Society in Greek and Roman Egypt*, edited by Jane Rowlandson and published in 1998. All of these books include selections from legal sources, and there is inevitably some overlap between them and this sourcebook. The difference is that my book focuses on the legal evidence, and restricts its coverage to the Roman imperial period. I have also tried to include texts which have been published within the past fifteen years (such as documents from the Babatha archive or the *lex Irmitana* from Spain) or which are from regions of the Empire outside Italy or Egypt, and which therefore have not received as much attention in previous sourcebooks. Although I have tried not to duplicate selections found in earlier books, in some cases the material is so important or so unique that it had to be included. Needless to say, I have greatly benefited from these and other sourcebooks as models of an ever-growing genre.

This book is intended primarily for students and teachers (undergraduate and graduate) in the fields of women’s studies, classics, ancient and medieval history, and history of the family. There will be much less here for specialists in Roman law, who will already be familiar with most of the material covered, and will find the commentary rather over-simplified. My focus in this book is on the sources, and I do not attempt to provide thorough analysis or detailed legal and historical context; however, the footnotes contain details which may be of interest to some. I have also (with a few important exceptions) restricted bibliographic items to those written in English, particularly during the last twenty years, although there is a voluminous bibliography of works on Roman law and on women in the Empire published in European languages. For more detailed coverage, readers should go to the fine works of Gardner and Arjava, as well as the many other scholars who are cited in the notes and bibliography.

# ABBREVIATIONS

## Legal texts

- Cod. Just. *Corpus Iuris Civilis, ii. Codex Iustinianus*, ed. P. Krueger (Zurich: Weidmann, 14th edn., 1967)
- Cod. Theod. *Theodosiani Libri XVI cum Constitutionibus Sirmondianis et Leges Novellae ad Theodosianum Pertinentes*, ed. Th. Mommsen and P. Meyer (Berlin: Weidmann, 1904)
- D. *The Digest of Justinian*, Latin text, ed. Th. Mommsen (Berlin: Weidmann, 1868); repr. with English trans., ed. A. Watson (Philadelphia: University of Pennsylvania Press, 1985)
- FIRA *Fontes Iuris Romani Antejustiniani* (Florence: Barbera, 2nd edn); *I. Leges*, ed. S. Riccobono (1968); *II. Auctores*, ed. J. Baviera (1968); *III. Negotia*, ed. V. Arangio-Ruiz (1969)
- Frag. Vat. *Fragmenta Vaticana*, in FIRA II, 463–540
- Rules of Ulpian* *Regulae Ulpiani (Tituli ex corpore Ulpiani)*, in FIRA II, 261–301
- Sent. Pauli* *Sententiae Pauli*, in FIRA II, 319–417

## Epigraphic and papyrological collections

- BL *Berichtigungsliste der Griechischen Papyruskunden aus Aegypten*
- CIL *Corpus Inscriptionum Latinarum*, ed. Th. Mommsen
- CPL *Corpus Papyrorum Latinarum*, ed. R. Cavenaile (Wiesbaden, 1958)
- ILS *Inscriptiones Latinae Selectae*, ed. H. Dessau (Berlin, 1892)
- M.Chr. *Grundzüge und Chrestomathie der Papyrskunde II. Juristischer Teil*, L. Mitteis and U. Wilcken, (Leipzig and Berlin, 1912)
- P.Oxy. *The Oxyrhynchus Papyri*, Egypt Exploration Society (London)
- SB *Sammelbuch Griechischer Urkunden aus Aegypten*

Complete references for the abbreviations of papyrus collections not listed here can be found in the *Checklist of Editions of Greek and Latin Papyri, Ostraca*

## ABBREVIATIONS

*and Tablets*, ed. J.F. Oates, W.H. Willis, R.S. Bagnall, and K.S. Worp (BASP Supplement, 4th edn., 1992), on-line at <http://SCRIPTORIUM.LIB.DUKE.EDU/PAPYRUS/TEXTS/CLIST.HTML>

### Journal abbreviations:

BASP	<i>Bulletin of the American Society of Papyrologists</i>
EMC/CV	<i>Echoes du Monde Classique/Classical Views</i>
JRS	<i>Journal of Roman Studies</i>
PBSR	<i>Papers of the British School at Rome</i>
RHDFE	<i>Revue historique de droit françois et étranger</i>
RIDA	<i>Revue internationale des droits de l'antiquité</i>
TAPA	<i>Transactions of the American Philological Association</i>
ZPE	<i>Zeitschrift für Papyrologie und Epigraphik</i>
ZSSRRA	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung</i>

## GLOSSARY OF LATIN LEGAL TERMS

- arrahae sponsaliciae* in late antiquity, sureties exchanged by a betrothed couple to ensure that the marriage took place [see Chapter 2, II.C].
- bona materna* “maternal goods,” property inherited by children from their mother.
- bonorum possessio* possession obtained by succeeding to a deceased person’s property.
- calumnia* vexatious prosecution or the bringing of a false charge.
- clarissima femina* “most splendid woman,” a title indicating senatorial status [see Introduction, Part II and Chapter 1, VI.A].
- coemptio* a mock sale of herself by means of *mancipatio* that a woman had to undergo before entering a *manus*-marriage or before making a will [see Chapter 1, II.B].
- concubinatus* a non-legal but long-term sexual relationship, usually between an unmarried man and a woman of lower status with whom *iustum matrimonium* was either legally impossible or socially inappropriate [see Chapter 3, I.B.5].
- contubernium* a quasi-marital union, entered into by those who were unable to make a legal marriage, particularly slaves [see Chapter 3, I.B].
- conubium* the legal ability to enter into legitimate marriage (*iustum matrimonium*)
- curator minorum* “caretaker of minors,” who assisted fatherless young men and women under twenty-five but over the age of puberty, replacing the *tutor impuberum*, the guardian of children below puberty.
- dikaion teknon* the Greek term for the *ius liberorum*.
- donatio ante nuptias* pre-nuptial gifts [see Chapter 2, II.C].
- Edictum Perpetuum* the Praetor’s Edict, published at the beginning of his year in office by the urban praetor of Rome, in which he stated what legal remedies he would make available for particular situations. Under Hadrian, the Praetor’s Edict was put into a fixed form.

- epitropos* (1) the Greek name for a guardian of fatherless minors [see Chapter 5, II.B.1]; (2) the word used in Judaea and Arabia to describe a woman's guardian, elsewhere called *kyrios* [see Chapter 1, III.C].
- equites* "equestrians," a man of high rank, below senators but above other *honestiores* [see Introduction, Part II].
- familia* "household" or "family;" the word has several connotations, but generally denotes all members of a household under the power of a *paterfamilias*, including slaves [see Chapter 1, I.B].
- filiafamilias* (masc. *filiusfamilias*) "daughter (son) of a family;" a child who was under the power of a *paterfamilias*. Even adult children were *filiifamilias* unless they had been emancipated from *patria potestas*.
- honestiores* the "more honorable;" men and women of higher status, who could expect better treatment under the law [see Introduction, Part II].
- humiliores* the "more lowly;" men and women of low status, who could expect harsher penalties and treatment under the law [see Introduction, Part II].
- infamia* legal infamy, a state which carried certain legal disabilities such as the inability to represent someone else in court or to appoint a legal representative for oneself, or to be a witness in court. *Infamia* was a penalty for a number of offenses under Roman law. Practitioners of certain professions considered particularly shameful (prostitution, pimping, appearing as a gladiator) were also *infames* (infamous).
- ingenua* (masc. *ingenuus*) freeborn, i.e., born to a free mother.
- iniuria* "outrage" or "insult" against another person, punishable by law.
- iudicium publicum* trial by jury, in particular a trial held before one of the permanent jury courts (*quaestiones perpetuae*) which dealt with the crimes of adultery, forgery, murder, violence, and treason.
- ius (trium) liberorum* "right of (three) children," granted by the Augustan marriage laws to women who had borne three children; it enabled them to conduct their legal affairs without a *tutor mulierum* [see Chapter One, III.D].
- ius vitae necisque* "right of life and death" which legally a *paterfamilias* wielded over his direct descendants [see Chapter 1, II.A].
- iustum matrimonium* legal marriage, marriage made in accordance with Roman law. Also called *iustae nuptiae* [see Chapter 2, I.A].
- kyrios* the name for a woman's guardian in some Greek-speaking parts of the Empire, analogous to the Roman *tutor mulierum* [see Chapter 1, III.C].
- lex Aelia Sentia* "Aelian–Sentian law," enacted in 4 C.E., said that slaves could not be legally freed until they were at least 30 years of age and that slaveowners had to be at least 20 to manumit their slaves [see Introduction, Part II].

- lex generalis* “general law;” in the late Empire, refers to legislation which applied to all subjects throughout the Empire [see Introduction, I.B].
- lex Julia de adulteriis* “Julian law on adulteries,” part of the marriage legislation of Augustus enacted in 18 B.C.E. [see Chapter 2, I.B]
- lex Julia de maritandis ordinibus* “Julian law on the marriages of the social orders,” enacted by Augustus in 18 B.C.E. [see Chapter 2, I.B].
- lex Julia et Titia* “Julian and Titian law” enacted in the first century B.C.E., which gave provincial governors the right to appoint guardians.
- libellus* petition directed to the emperor or a provincial or local official.
- liberta* (masc. *libertus*): a former slave.
- mancipatio* an ancient way of conveying property in which the seller transferred ownership to the buyer “by means of bronze and scales” (*per aes et librum*) in the presence of five witnesses.
- manus* literally, “hand,” the legal authority a husband had over his wife in early Roman society. *Manus*-marriage was virtually obsolete by the time of Augustus [see Chapter 1, II.B].
- munera* “duties” owed by men and women of wealthy families to their communities, usually involving expenditure on public works or entertainment [see Chapter 1, VI.C].
- nomen* the Roman family name. Children born in legitimate marriage took their father’s *nomen*; *libertae* and *liberti* took their patron’s *nomen*. (Married women retained their father’s *nomen*.)
- parapherna* Greek word meaning “things in addition to the dowry,” items a bride brought to a marriage in addition to her dowry.
- paterfamilias* “father of the family,” the oldest male ascendant who had *patria potestas* over all his male and female children and his sons’ children.
- patria potestas* “paternal power,” the legal authority a *paterfamilias* had over all his children and sons’ children, including ownership of any property they held and the *ius vitae necisque* [Chapter 1, II.A].
- patronus* (fem. *patrona*) (1) the former owner of a freed slave (*liberta/us*), who had certain rights over the property and activities of his or her *liberta/us*; (2) the patron of a town or *collegium*, who was expected to provide financial and political support.
- peculium* the “allowance” given by a *paterfamilias* to those under his *potestas*, particularly sons (but sometimes also daughters) and slaves.
- peregrina* (masc. *peregrinus*) a foreigner; someone who does not have Roman citizenship.
- postulare* to make a legal request, that is, to ask the praetor or other magistrate to appoint a judge to hear one’s case (in civil law) or to accept an accusation (in criminal law).
- procurator* representative appointed by a woman (or man) to represent her (or him) in court or in business dealings.

*publicum iudicium* see *iudicium publicum* above.

*pupilla* (masc. *pupillus*) a minor (for girls, under age twelve, for boys, under fourteen) whose *paterfamilias* was dead; they needed the assistance of a *tutor impuberum* [see Chapter 1, II.C and Chapter 5, II.A].

*querela inofficiosi testamenti* “complaint of undutiful will,” which could be brought against a will by a legitimate child who had been left less than one-fourth (or less than his or her share of one-fourth, if there was more than one child) of a parent’s property by will.

*repudium* notice of divorce sent by one spouse to the other [see Chapter 4].

*res mancipi* certain kinds of property whose ownership had to be transferred by the form of sale called *mancipatio*, including certain animals, urban and rural estates in Italy, and slaves [see Chapter 1, III.A–B].

*rescriptum* (pl. *rescripta*) imperial response to a petition from a private subject (*subscriptio*) or from an imperial official; a rescript.

*senatusconsultum* (pl. *senatusconsulta*): a decree of the Roman Senate.

*senatusconsultum Claudianum* (1) senatorial decree of 49 C.E. legalizing marriage between a man and his brother’s daughter [see Chapter 3, I.A.2]; (2) senatorial decree of 52 C.E. penalizing unions between a free woman and someone else’s slave [see Chapter 3, I.B.2].

*senatusconsultum Plancianum* senatorial decree passed in the early second century to regulate cases where a divorced woman claimed to be pregnant by her ex-husband [see Chapter 4, I.E.2].

*senatusconsultum Tertullianum* senatorial decree passed under Hadrian, which granted a woman with the *ius liberorum* the right to inherit from her children who died intestate (i.e. without a will).

*senatusconsultum Velleianum* decree of the mid-first century C.E. which discouraged women from guaranteeing the debts of others and said that such a guarantee would not be enforceable in court [Chapter 1, IV.D].

*stipulatio* an oral contract, binding in Roman law, in which the stipulating party requested a verbal promise from the other party.

*stuprum* illicit sex, punishable under the *lex Julia de adulteriis*. This included adultery (sexual relations between a married woman and someone other than her husband), as well as sexual relations with an unmarried woman or virgin of respectable status.

*subscriptio* (pl. *subscriptions*) the emperor’s reply to a petition from a private subject, so called because the emperor would write “*subscripsi*” (“I have subscribed”) in his response below the original petition.

*sui heredes* a person’s heirs if he or she died intestate (i.e. without a will). All a *paterfamilias*’ children, male or female, were *sui heredes*, unless he had emancipated them from *patria potestas*.

*sui iuris* legally independent. Women (and men) whose *paterfamilias* was dead were *sui iuris*, and could own and inherit property in their own right.

- tutela* guardianship. This could either be *tutela impuberum* (guardianship of a fatherless minor) or *tutela mulierum* (guardianship of a woman).
- tutor impuberum* the guardian of a fatherless minor (*pupilla/us*), who would be responsible for administering the minor's property until he or she reached puberty (considered to be twelve for girls, fourteen for boys).
- tutor legitimus* a guardian who was the closest male agnate (relative on the father's side), often a paternal uncle. If the person (woman or *pupillus*) whose tutor he was died without a will, he would stand to inherit, and therefore had a vested interest in the guardianship [Chapter 1, III.A.1].
- tutor mulierum* the guardian of a woman over twelve whose *paterfamilias* was dead; she needed his authorization in order to carry out certain legal and business activities [see Chapter 1, Part III].

### Administrative offices

- boule* Greek name for the town council (*curia* in Latin).
- curia* the local town council, on which *decurions* (*curiales*, pl.) served.
- decurion* town councilor, member of the *honestiores* (s.v. above); in late antiquity known as *curialis*.
- epistrategos* regional magistrate in Roman Egypt, representing a level of authority between the *strategos* and the prefect.
- exegetes* municipal official in Roman Egypt.
- praetor* in the Republic and early Empire, the Roman magistrate responsible for administering justice in Rome. At the beginning of his year in office, he published an edict setting out what legal remedies he would offer (s.v. above, *Edictum Perpetuum*).
- praetorian prefect* in the late Empire, the most important imperial official (besides the emperor), responsible for publishing and enforcing the emperors' laws and for receiving petitions and hearing legal cases. There were four praetorian prefects, one for Gaul, one for Italy, one for Illyricum, and one for the Orient (east).
- prefect (of Egypt)* the governor of the province of Egypt, of equestrian rank.
- prefect (of the city)* in the late Empire, there were two urban prefects, one in Rome and one in Constantinople. They were responsible for criminal justice and maintaining law and order in the city.
- quaestor* in the late Empire, the official responsible for drafting the laws
- strategos* magistrate in the province of Egypt, with authority over a *nome* (district).
- vir clarissimus* (v.c.) "most splendid man," indicating a man of senatorial status. The feminine equivalent was *clarissima femina* (c.f.)

**Monetary units**

*denarius* a Roman silver coin, worth four sesterces.

*drachma* the standard unit of currency in Roman Egypt, equivalent to one sestertius.

*sestertius* (pl. *sestertii*) “sesterce,” a silver coin, the standard unit of currency in much of the Empire. Senators were required to have a net worth of 1,000,000 sesterces; equestrians had to have a net worth of 400,000 sesterces.

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# INTRODUCTION

## Historical and legal background

### I The legal sources

The sources of Roman law include several different kinds of legal text: constitutions of Roman emperors (both general laws and responses to individual cases), and writings of legal experts called jurists. Virtually all the texts found in Roman legal sources were written in Latin, the language of Roman law and administration. The selections in this book cover the period from the reign of Augustus (31 B.C.E.–14 C.E.) to the fall of the last Roman emperor in the western Empire in 476 C.E., spanning in legal terms both the “classical” and “late antique” periods of Roman law. The “classical” period is generally defined as running from the early first century B.C.E. to 235 C.E.; the “late antique” is often seen as extending from the early fourth through the sixth centuries. The last two-thirds of the third century occupy a liminal area, both historically and legally. This period is usually considered the beginning of late antiquity, a time of intense social and political change, but the law of the later third century adhered to classical principles despite a rapid turnover in emperors and almost continual military crises.<sup>1</sup> In distributing the sources in this book, I have therefore included the imperial rescripts of the post-Severan emperors in the sections on “classical” law, and have begun “late antique” source material with the reign of Constantine (307–337).

#### *A The sources of classical law*

The most important source for our knowledge of “classical” Roman law is the *Digest* of Justinian, comprising fifty books of selections from the voluminous commentaries of the most influential jurists.<sup>2</sup> The *Digest* was compiled under the sixth-century emperor Justinian (reigned 527–565), much later than the jurists whose work it collects. Justinian instructed his team of legal scholars to read through thousands of pages of classical legal texts and distill them into a much shorter work, preserving only what was still valid and useful (hence the title “*Digest*”). The fifty books of the *Digest* are divided into “titles,” denoting the topics treated in the particular book. Within each title

is a varying number of excerpts from different juristic works. Justinian's compilers carefully noted which jurist and which work by that jurist were being cited, thus enabling modern scholars to reconstruct (to a limited extent) the content of the original works, which are now lost. Most of the jurists whose works are excerpted in the *Digest* wrote in the second or early third centuries C.E. The most famous and influential was Ulpian, from Phoenicia (Syria), who wrote in the early third century. Other important jurists are Modestinus and Paulus, both also writing in the early third century, and Julian (writing under the emperor Hadrian in the early second century). It should be remembered, however, that the Justinianic compilers took their excerpts out of their original contexts, which were much longer works. The final shape of the *Digest* is due to the sixth-century lawyers, not to the jurists whose works are quoted.<sup>3</sup>

Unlike the emperors and the Senate, jurists were not makers of law, but rather interpreters of it. However, passages from the jurists preserved in the *Digest* often discuss, and sometimes quote verbatim, imperial enactments and also laws passed by the Roman Senate (*senatusconsulta*). Nor were jurists always in agreement with each other on points of law: though most evidence of disagreement among legal authorities was omitted by Justinian's compilers, who were harmonizing and condensing the hundreds of volumes of juristic writings, it is still possible to find evidence for such differences of opinion and interpretation in the *Digest*.

Though the *Digest* is the major source for our knowledge of classical Roman law, a sourcebook of this size and scope can only include a small selection of the entire fifty books. Selections from the *Digest* in this sourcebook are indicated by "D.," followed by the number of the book, title, and number within the title from which the excerpt is taken. After the *Digest* book, title, and selection numbers, in parentheses, is the name of the jurist from whose work the excerpt was taken. Some of the *Digest's* fifty books are much better represented here than others: for instance, Book 23, which deals exclusively with marriage, is quoted extensively in Chapter 2, Part I.

Other Roman legal texts from the "classical" period have been preserved outside of the *Digest*. The most important is the *Institutes* of Gaius, a handbook dating to the second century C.E. which has survived virtually complete.<sup>4</sup> Gaius' *Institutes* are particularly valuable in providing information about aspects of classical law no longer valid in Justinian's day, which were therefore not included in the Justinianic corpus. For instance, almost all our knowledge of the legal guardianship of women (*tutela mulierum*) derives from Gaius's *Institutes* (see Chapter 1, Part III.A). Later handbooks setting forth the law of the late classical period (the end of the third century C.E.) have also survived: the *Rules of Ulpian* (*Regulae Ulpiani*, also called *Epitome Ulpiani* or *Tituli ex Corpore Ulpiani*), and the "Opinions of Paul" (*Sententiae Pauli*). Though attributed to the third-century jurists Ulpian and Paulus respectively, these handbooks were composed after their lifetimes, in

the early decades of the fourth century. Another interesting legal compilation, also apparently of the fourth century, is the so-called *Vatican Fragments* (*Fragmenta Vaticana*), which contains excerpts from juristic commentaries as well as some imperial rescripts.<sup>5</sup>

In addition to the *Digest*, the emperor Justinian was responsible for compiling another important source for Roman private law of the second and third centuries C.E., the *Codex Justinianus* or *Code of Justinian*.<sup>6</sup> Whereas the *Digest* contains extracts from jurists' commentaries, the *Code* is a collection of legal enactments by Roman emperors from Hadrian (reigned 117–138) up to Justinian, under whose auspices the *Code* was published in 529. Beginning with the reign of Constantine (307–337), these imperial enactments are usually in the form of general laws, often edicts or letters addressed to an imperial official and intended to have general publication and application throughout the Empire. But the legislation of the emperors of the second and third centuries is usually in the form of rescripts (*subscriptiones*, or more generally, *rescripta*): replies given by the emperor to petitions from individuals, mostly private subjects, who had written to the emperor for information or assistance on particular points of law. Rescripts were probably not the work of the emperors themselves, but were composed by the imperial secretary *a libellis* ("for petitions") and signed (subscribed) by the emperor. They were posted in a public place (the forum, or other meeting area) in the city where the emperor was residing at the time he answered the petition. The petitioner had to make sure that the emperor and his bureau *a libellis* actually received the petition – not an easy undertaking for ordinary subjects, especially in areas not regularly visited by the emperor – and also to wait for the reply to be posted and then copy down its contents before returning home to make use of the information or imperial ruling that the rescript contained.

Almost all of the approximately 2500 rescripts in the *Code of Justinian* date between 193 and 305; more than half are from the reign of Diocletian (282–305). The recipients of imperial rescripts represent a much broader spectrum of the population of the Roman Empire. About a fifth of all the rescripts are addressed to women (a quarter for the reign of Diocletian) – a far greater representation of women than in any literary source of Greco-Roman antiquity. Many of the people who wrote to the emperors were from the provinces of the Empire rather than Rome; almost all the rescripts from Diocletian's reign emanate from the eastern chancellery, and so are addressed to recipients in Greece or Asia Minor or the Middle East. Unfortunately, the petitions (called *libelli*) to which the rescripts reply were not preserved, but their contents can often be inferred from the responses.<sup>7</sup>

Imperial rescripts are cited in this sourcebook to illustrate points of law known through the jurists, and to show which issues or questions about Roman law were of particular concern to ordinary women (and men) in the

Empire. Like the *Digest*, the *Code of Justinian* is divided into books (there are only twelve books of the *Code*, however), and titles and numbers within books. Citations from the *Code of Justinian* in this sourcebook appear as “Cod. Just.” plus the book number, the title number, and the number of the rescript under that title. Most rescripts are dated, either by date of subscribing by the emperor or date of posting, and I have also included these dates.

### *B Sources of late Roman law*

Very little general legislation (as opposed to rescripts, sent to individuals) of emperors before the fourth century C.E. is actually extant. Even the famous legislation on marriage and adultery of Augustus (see Chapter 2, Part I.B) is known only from snippets in the *Digest* and from Roman historians rather than in its original form. This changes in the late antique period of Roman law. For the period from Constantine onward, we have a much fuller record of emperors’ enactments than for the preceding three centuries. Though rescripts continued to be issued to private petitioners, few survive from after the reign of Diocletian. On the other hand, another form of legal enactment becomes much more common: *leges generales* (“general laws”), which applied to all subjects (not just to those individuals to whom rescripts were sent) and were intended for public distribution throughout the Empire. *Leges generales* include both imperial edicts and letters (*epistulae*) sent to government officials, particularly the praetorian prefects, the most important imperial officials after the emperor, who were supposed to relay their contents to their subordinates or to the public.<sup>8</sup>

After the death of the emperor Julian in 363 (the last of the Constantinian dynasty), the Empire was almost always ruled by at least two emperors simultaneously, the essential division being between the Greek-speaking eastern half, whose imperial seat was Constantinople, and the Latin-speaking western half, whose emperor(s) resided in Trier or Milan, or (in the fifth century) Ravenna or Rome. Each emperor would have his own consistory and would make his own laws. In the fourth century, particularly under the emperor Theodosius I, laws made by one emperor would be received by his colleague(s), but after Theodosius’ death in 395, the imperial split became more pronounced and emperors did not always accept each other’s laws. It is sometimes possible to detect the working out of contrasting policies in east and west, for instance in regard to the situation of illegitimate children (see Chapter 3, Part II.B) or divorce (see Chapter 4, Part II).<sup>9</sup>

The laws of emperors from Constantine to Theodosius II (ruled 408–450) were collected and published in 438 by Theodosius II in the *Codex Theodosianus*, or *Theodosian Code*.<sup>10</sup> Theodosius’ compilers actually did not retain the full text of the laws they were collecting (which were very long), but made excerpts, deleting the rhetorical prefaces and other verbiage, but keeping what they considered the gist of the original laws. We also have the

complete texts of many laws enacted after the publication of the *Code*, known as the post-Theodosian *novellae* (“new laws”), up until the fall of the last emperor in the west in 476. For the sixth-century eastern Empire, we have, in addition to his collections of earlier Roman law, many *novellae* of Justinian (which are not included in this sourcebook).

Late Roman legislation may seem totally unlike “classical” law. In part, this is due to a change in the nature of our sources.<sup>11</sup> In what we have preserved of classical law in the *Digest*, the emperor’s voice is mediated through the explanations of professional lawyers; in the pre-Constantinian rescripts of the *Code of Justinian*, the emperor (or his secretary for petitions) is responding to concerns and questions from below. In the edicts and general laws of the *Theodosian Code* and post-Theodosian *novellae*, the emperor is addressing his subjects directly and bluntly. Late Roman laws also tended to be verbose (though much of their original wordiness was deleted by the compilers of the Theodosian Code) and were designed to impress, or even to frighten, the emperors’ subjects into compliance. The emperors state in no uncertain terms what Roman subjects must do and not do, and threaten horrific punishments for those who disobey. The overall effect of reading late antique laws is to be nearly overwhelmed by a combination of verbal obfuscation and moral exhortation that contrasts sharply with the calm deliberations of the jurists or the short, to-the-point responses of the rescripts.

The wording of late Roman legislation is highly rhetorical, sometimes to the point where it is difficult to know what the emperor (or his *quaestor*, the official who actually drafted the laws) is really saying. Often the laws have to be deconstructed to determine what they mean and what issues or events lie behind them. Furthermore, as public pronouncements of what the emperor stood for and what he desired for his Empire, late antique laws had a strong propaganda purpose. Penalties for criminal offenses (which become a more important aspect of late Roman law than previously) are explicitly stated in the laws, rather than being left to the discretion of individual judges, as they were before. But these often-horrific penalties also serve as propaganda, setting forth the ideals of the ruler, and we should not assume that such penalties were always carried out.

Late Roman law also reflects a change in imperial ideology and administration, from a generally “hands-off” attitude toward the private lives of its subjects, particularly in the provinces, to an emphasis on what we would today call “micromanagement”: the number of provinces was greatly increased, the size of provinces correspondingly decreased, and the number of positions in imperial administration for running the empire increased enormously.<sup>12</sup> At the same time, imperial ideology projected the emperor as concerned with the lives and welfare of all his subjects, including those who were not wealthy and influential, and imperial enactments take on a strongly moralistic flavor. This has often been linked with the rise of Christianity (most emperors of this period were Christians), but moralistic fervor is not

unique to Christians, as can be seen from Diocletian's edict against close-kin marriage, or in earlier imperial rescripts setting forth Roman *mores*.<sup>13</sup>

Unlike the Justinianic *Code*, which was intended as a working document of current law, and therefore omitted references to laws no longer valid in the sixth century, the *Theodosian Code* was supposed to collect all general laws enacted by legitimate emperors (legislation of rulers later branded "usurpers" was supposed to be omitted) from Constantine through Theodosius. This gives the *Theodosian Code* a historical dimension absent in the later Justinianic compilation: even laws overturned or substantially modified by later emperors were included, so we can see how legal policy developed over a century and a half. Laws in the *Theodosian Code* were arranged in sixteen books, each comprised of a number of "titles" (headings) for different topics. Under each title, excerpts of the laws relevant to that topic would be arranged in chronological order, the principle being that the latest law in the title (whether of an eastern or western emperor) would express the current legal stance as of 438. The historical importance of Theodosius II's decision to include laws no longer relevant in his day cannot be underestimated; it is only because of his scholarly and traditionalist interests that we have so much legislation of earlier emperors like Constantine, whose laws underwent considerable alteration in the century after his death.<sup>14</sup>

Translations from the *Theodosian Code* in this sourcebook are indicated by "Cod. Theod.," the book number, the title number, and the number of the rescript, along with the date of promulgation or posting. Sometimes a law preserved in the *Theodosian Code* also appears in the *Code of Justinian*, though often in abbreviated or otherwise altered form. Where a law appears in both codes, I have translated the *Theodosian Code* version, which is closer to the original text (though still having undergone abbreviation and editing), and have noted the corresponding Justinianic text in a footnote. It has sometimes been difficult to render a translation of a late Roman law which remains faithful to the rhetorical spirit and colorful verbosity of the original but is still intelligible to modern readers. While I have often broken up the sometimes incredibly long sentences and added connectives and punctuation where they did not originally exist (and, like Theodosius' compilers, I have occasionally simply omitted long-winded passages that were not directly relevant to the law's intent), I have retained much of the ornateness and opacity of the original laws. Because the late Roman laws are more difficult to understand and are less familiar to most classicists, I have also provided more footnotes and explanatory material than for the classical material, while trying to let the sources speak for themselves as much as possible.

## II Roman social structure and the legal system

The social structure of the Roman Empire has been described as a pyramid, with the very narrow tip being the wealthiest aristocracy, the middle part

being the more prosperous upper classes of the cities of the Empire, and the broadest part being the vast majority of inhabitants of the Empire who existed at subsistence level.<sup>15</sup> Roman society was always very conscious of social status and rank. Not only honors, but legal privileges and penalties were allotted according to the individual's status in society.

Until the second century C.E., the main factor determining legal status was citizenship. Roman citizens could expect better treatment under the law, and non-citizens were liable to penalties, such as corporal punishment and execution, that citizens usually did not suffer. Even humble citizens had important rights that non-citizens (*peregrini*) did not have – they could not be beaten or abused by officials, and if convicted of a capital crime would generally be subject to exile rather than outright execution. But by the second century, as more and more people in the Empire acquired citizenship and as the Empire became less and less focused on Rome and Italy, Roman citizenship as a criterion for legal status began to lose importance. Then, in 212, the emperor Antoninus (Caracalla) granted Roman citizenship to all free inhabitants of the Empire, which ultimately led to devaluation of its worth.<sup>16</sup>

Even before 212, the legal dichotomy of citizen/non-citizen was being replaced, or supplemented, by a distinction based on rank, at least in some areas of the law. In terms of rank, the two basic groups were the “more honorable” (*bonestiores*) and the “more lowly” (*humiliores*). The *bonestiores* were those of higher status, who received public honor and legal privileges: members of the Senate and their children and grandchildren, *equites* (equestrians), decurions (town councillors), and military veterans. All others were *humiliores*, or classed with *humiliores* in terms of legal treatment. By the reign of Hadrian (117–138), the *bonestiores/humiliores* distinction was enshrined in law.<sup>17</sup>

Highest in the Roman social order, at the top of the *bonestiores*, were senators and their families. By the end of the first century, the offices that led to membership in the Senate were no longer elected in the popular assemblies, but were chosen by the Senate (with the Emperor's approval) or by the Emperor. Membership in the imperial Senate was not hereditary, in that sons of senators did not automatically become senators, but they were encouraged to attend meetings and hold offices on the traditional *cursus honorum*, and preference in choosing senators would generally be given to those from a senatorial family. There were about 600 senators in the Empire (Augustus had reduced the numbers considerably, but there were still about twice as many as there had been before the first century B.C.E.), many of whom originated not from Rome or Italy, but from all over the Empire, though mostly from the west (especially Italy, Spain, and North Africa). Members of the Senate, their wives, children, and their sons' children held the honorary title of *clarissimus* (for males) or *clarissima* (for females).<sup>18</sup>

As part of his policy to restore Rome, Augustus made rules concerning membership in the Senate. Senators had to have a net worth of at least one

million sesterces. Some senators, of course, had many times that much,<sup>19</sup> but emperors were known to give gifts to senators or to their sons who had fallen below that census. By the second century if not before, they were required to have at least one-third of their property in Italy. In 18 B.C.E., Augustus also enacted legislation which placed restrictions on the marriages and social behavior of senators. By this legislation, senators (and their children and grandchildren of both sexes) could not marry ex-slaves, actors or children of actors, or those prohibited to all freeborn people. Other legislation passed by the Senate forbade senators and their children and grandchildren to perform in public.<sup>20</sup> Emperors could and did use the powers of censor to remove from the Senate those considered unfit in some way.

In the third century, the power and influence of the Senate (never as important as it had been in the late Republic) declined, as imperial priorities shifted to defense of the frontiers and shoring up of a collapsing economy, and emperors, who for the first time were not themselves of senatorial rank, gave preference to equestrians and military men. In the late Empire, however, senatorial numbers and prestige again increased, beginning with the social reforms of Constantine and his inauguration in 330 of a new capital in the east, Constantinople. The number of senators expanded to about 2000, and senatorial ranks were divided into *illustres* (the highest of the high), *spectabiles*, and simple *clarissimi*.<sup>21</sup> The new social structure again had ramifications for marriage law, as had been the case at the beginning of the Empire with Augustus' reforms.<sup>22</sup>

Next in the Roman status hierarchy was the equestrian order. Equestrians (*equites*) had to have a net worth of at least 400,000 sesterces. Many had much more; some who were worth over a million sesterces preferred to remain equestrians rather than to become senators by holding offices which led to membership in the Senate (among these were some sons of senators who "opted out" of politics and remained equestrians).<sup>23</sup> The background and wealth of equestrians varied more widely than did that of senators, and there were many more of them. In the Empire, there were administrative, and certainly military, positions reserved for *equites* – the most important being the prefect of Egypt (governor) and the praetorian prefect, head of the praetorian guard and often the Emperor's right-hand man. Thus there was little real difference between senators and the upper echelon of equestrians – they could be equally wealthy and both were involved in imperial administration (indeed, often the same family would include both senators and equestrians). In addition to the census requirement of 400,000 sesterces, equestrians had to meet certain requirements to ensure their respectability: they and their parents and grandparents had to be of free birth, and, like senators, they were barred from performing on stage or in the amphitheater. Unlike senators, they could marry freedwomen.

Also included among the *bonestiores* were decurions (called *curiales* in late antiquity), members of municipal senates (town councils). Most towns had

an “order” of 100 decurions (though smaller towns might have fewer). They, and their families, formed the upper rank of the towns of the Empire. Some decurions were wealthier and more powerful than others. There was not a universal census requirement as there was for senators and equestrians, but individual towns and cities presumably had requirements.<sup>24</sup> Only those of free birth could become decurions; freedmen could not, but their sons could. Decurions were responsible for the upkeep of their cities – including constructing and maintaining public buildings like theaters, temples, and civic buildings.<sup>25</sup> In fact, they were ultimately responsible for ensuring that the taxes owed to the imperial treasury were paid (though collection was in the hands of the imperial procurators, often equestrians): if the people of their municipality did not provide the full amount of taxes owed to the imperial government, decurions would have to make up the difference.

Until the third century, the honor attached to being a decurion and to those who benefited their cities, and the general prosperity of the Empire, meant that in spite of these drawbacks there were still many men willing to hold such a position. But in the later Empire, being a decurion became more and more onerous because of increased demands made by the imperial government and a tight economic situation. The spirit of pride and desire to benefit their city by gifts and building projects suffered as more and more decurions tried to escape their obligations. At this point emperors began trying to make decurial status hereditary, so that the children of decurions had to follow in their fathers’ footsteps, whether they wanted to or not; others who had enough property were forced to become decurions.<sup>26</sup>

Women could not hold office, either as senators or as local magistrates such as decurions. They could, however, wield influence, particularly in their home towns or provinces, by serving as priestesses of public cults. Often the women of prominent and wealthy local families held religious office, and participated in public benefaction (euergetism) by endowing building projects or financing festivals. Elite and wealthy women were sometimes honored as patronesses of towns or of *collegia* (trade associations), to which they had contributed money, and if they held high rank, this would be indicated on inscriptions honoring them for their generosity.<sup>27</sup>

The basis of wealth in ancient society was land. The Empire’s wealthiest families would have property in many different parts of the Empire (imperial senators were required to own land in Italy), especially the west – North Africa, Sicily, Gaul and Spain, and perhaps Asia Minor. Senators and equestrians of moderate wealth would have local estates in the country (their family seat) and perhaps one or two other properties elsewhere. Decurions generally owned property in and around their town.<sup>28</sup> Women in the Roman Empire, though barred from imperial and municipal offices, did own property in their own right (generally via family inheritance), and are found in legal and documentary sources as owners, purchasers, leasers and renters of land.

Though the biggest difference in terms of wealth and privilege was between the *honestiores* and *humiliores*, there were status distinctions within the *humiliores* also. *Humiliores* as a group were not defined as closely as *honestiores*, and comprised a much wider economic and social range. They included freeborn people (*ingenui*) below the status of decurions, and freed-people (*libertini*), who had been born slaves but subsequently freed. Slaves, while technically not *humiliores*, were subject to the same – or worse – legal treatment, and so are generally grouped with *humiliores*.

*Ingenui* (feminine form *ingenuae*) were “freeborn,” that is, born of a free mother, as normally it was the mother’s status that determined the status of the child.<sup>29</sup> Virtually all *honestiores* were *ingenui* (senators and decurions had to be of free birth, though they could be descended from former slaves), but the *humiliores* also included many *ingenui*. Many were the children of former slaves; to be freeborn, it was only necessary that one’s mother have been freed by the time of one’s birth. Augustus’ marriage legislation laws barred all *ingenui* from marrying prostitutes and pimps. Other than that, the legal situation of non-elite *ingenui* might not differ much from that of former slaves, except that the freeborn did not owe duties to a patron (former master). Freeborn *humiliores* might be peasants, tenant farmers, or (along with many former slaves) the lower-class inhabitants of towns and cities.

Slaves frequently appear in Roman legal sources and in documentary evidence, but almost always as property to be sold, bought or inherited. There has been considerable debate over the sources of the slave supply in the Empire.<sup>30</sup> In the Republic, slaves came into Italy in large numbers by way of Roman conquest, particularly from Greece, Asia Minor, and Gaul. By the early Empire, the number of slaves acquired each year by conquest had decreased, but the slave population continued to be enhanced by defeated rebel peoples (especially Jews after the revolts of 66–72 and under Hadrian) and by “barbarians” from outside the borders of the Empire who had either been defeated in war or purchased from traders. Slaves in the imperial period were frequently acquired by breeding and by the rescue and rearing of newborn infants abandoned (“exposed”) or even sold by parents unable or unwilling to bring them up.<sup>31</sup>

Slave labor on a large-scale basis was only found in Italy and Sicily, a legacy of the large estates of the Republic. In many parts of the Empire, other sources of agricultural labor supply, such as free tenant farmers (*coloni*) or serfs, were more common than enslaved people, who were more likely to be employed in domestic chores within households. Even families of fairly modest wealth would have one or two slaves; only the very wealthy, senatorial families, and the imperial household, would have hundreds of slaves. It used to be thought that slavery declined in the later Empire, and that enslaved workers were largely replaced by *coloni*, whose legal status became closer to that of actual slaves. But scholars now recognize that different kinds of labor were used all along, even on the same lands, and indeed there

is plenty of evidence in the legal sources for the continuation of the institution of slavery in late antiquity.<sup>32</sup>

The circumstances and conditions of slavery varied enormously. Whereas legally slaves were at the bottom of the social scale, some might be better off, or have better chances of improving their life or their children's lives, than the freeborn poor. Domestic slaves had the best chance of being manumitted and joining the large freed population. They also might be given an allowance (*peculium*) by their owner, which they might be able to use to purchase their freedom, or be allowed to keep after manumission. Legally slaves could not marry, but some managed to have a family life, and even to maintain ties with children and partners in slavery after manumission.<sup>33</sup>

Manumission of a slave by his or her master or mistress was quite possible, either during the owner's lifetime or (more often) in his or her will. A large number of slaves was freed, and those still in slavery could always look to successful freedmen as models. However, the vast majority of slaves in the Empire were never manumitted.<sup>34</sup> Moreover, as part of his extensive social legislation, Augustus placed restrictions on the circumstances under which slaves could be freed. The *lex Fufia Caninia* of 2 B.C.E. limited the number of slaves an owner could free in his or her will: those with ten slaves or fewer could free up to half their slaves; those with between eleven and thirty slaves could free up to a third; and those with between thirty-one and a hundred slaves could free up to a fourth.<sup>35</sup> The *lex Aelia Sentia* of 4 C.E. said that for a slave to be legally manumitted, he or she had to be at least thirty years of age, and the manumittor at least twenty. There were exceptions to this rule, however: a master could free one of his slavewomen in order to marry her, or could free his blood relatives (perhaps his own children by a slave), even if master or slave did not meet the age requirements, as long as this was done before a tribunal (*consilium*) specially constituted for that purpose.<sup>36</sup> It was not illegal or unusual for a man to free his slave-woman and marry her (unless he was a member of the senatorial aristocracy and so forbidden to marry ex-slaves; see above). On the other hand, for a slave mistress to free her male slave in order to marry him was generally not approved socially and was illegal in the later Empire.<sup>37</sup>

The situation of former slaves who had not been freed under the rules of the *lex Aelia Sentia* was addressed by a later *lex Junia*. Under this law, such freedmen and freedwomen, called Junian Latins, did not have Roman citizenship (unlike those who had been manumitted under the law by Roman citizens) and occupied a sort of legal limbo. They lived in freedom and could own property and marry (as could legally manumitted freedpeople), but they could neither inherit nor leave property to their children, and when they died their property reverted to their former master (patron), as did a slave's *peculium*. Any children that Junian Latins had after being freed informally would be freeborn (those born while their mother was still in slavery would be slaves) but illegitimate. However, Junians could convert their status to

that of Roman citizens by the procedure of *anniculi probatio* (“evidence of a one-year old child”) if they went before the urban praetor or a provincial governor with a child they had borne who had attained the age of one year. The number of Junian freedmen is unknown, but they may have comprised a large percentage of the former slave population in the early Empire and, to judge from late Roman laws, this continued to be the case in late antiquity.<sup>38</sup>

Rank carried legal privileges. Ancient society was much more concerned with honor than modern western society – and honor was what one had in the eyes of others, due to birth and social status. More credence and respect was given to *honestiores* as a matter of course; in a legal dispute with an *honestior*, a *humilior* could not hope to prevail unless, perhaps, he had a very powerful patron. *Honestiores* were rarely subject to capital punishment; even for serious crimes they were likely to be exiled instead. One of the most obvious differences in the legal treatment of *honestiores* and *humiliores* can be seen in the criminal penalties to which the two groups were subject. In general, *honestiores* were punished by monetary penalties, or, in the case of serious crimes, exile. Exile came in two forms, depending on the seriousness of the offense: *relegatio* involved banishment for a period of time but not confiscation of property; *deportatio*, the severer form, entailed not only physical banishment but also loss of citizenship and confiscation of property by the imperial treasury. Also, *honestiores* were not supposed to be liable to torture, except in cases where they were suspected of treason against the emperor. (This rule was not always followed, however, and the lower end of the *honestiores* were vulnerable to treatment from which they were supposed to be exempted.) *Humiliores*, on the other hand, who generally had neither the financial resources nor the honorable standing in the community of *honestiores*, received corporal punishment: beating, if the offense was not serious, or condemnation to the mines, or, for serious crimes, a degrading form of the death penalty such as burning, crucifixion or condemnation to animals in the arena.<sup>39</sup> Under the Empire, slaves were subject to the same legal treatment as *humiliores*, or indeed, to worse treatment. Torture of slaves to extract evidence was standard legal procedure; this included not only slaves who were themselves accused of crimes, but also in some cases those whose owners had been accused.<sup>40</sup>

Status was almost as critical a factor in determining one’s place in society as gender. Though women were subject to some legal restrictions with regard to their public activities, and their actions were subject to the approval of some man (father, *tutor*, or husband), women of the elite had privileges not available to men who were below them legally.<sup>41</sup> In studying the legal position of women in the Roman Empire, the importance of social status must always be kept in mind.

### III Timetable of important events and laws

- 753 B.C.E. Traditional founding date of Rome
- 508 B.C.E. Last king of Rome overthrown. Beginning of the Republic.
- 450 B.C.E. Publication of the Twelve Tables, Rome's first written law code.
- 169 B.C.E. *Lex Voconia* (Voconian Law) stating that in families with the highest property rating (i.e., the very wealthiest), women could not be made heirs. This was considered unfair and ways were found to get round it.
- 40 B.C.E. *Lex Falcidia* (Falcidian Law) stating that at least one-fourth of an estate had to be left to the heir or heirs; otherwise they could sue for "undutiful will."
- 31 B.C.E. Octavian (Augustus) defeats Mark Antony and Cleopatra at the Battle of Actium, marking the beginning of one-man rule over Empire.
- 18 B.C.E. Augustus introduces the *lex Julia de maritandis ordinibus* (Julian law on regulating the marriages of the social orders). The *lex Julia de adulteriis* (Julian law on adultery) probably dates from this year also [Chapter 2, Part I.B].
- 2 B.C.E. *Lex Fufia Caninia* limits the number of slaves a slaveowner could free in his or her will [Introduction, Part II].
- 4 C.E. *Lex Aelia Sentia* sets limits on the circumstances in which slaves could be legally freed [Introduction, Part II].
- At some point, either under Augustus or Tiberius (probably either 17 B.C.E or 19 C.E.), the *lex Junia* (Junian Law) regulated the situation of slaves who had been freed without following the rules set out in the *lex Aelia Sentia* [Introduction, Part II].
- 9 C.E. Additional legislation on marriage, modifying the laws of 18 B.C.: the *lex Papia-Poppaea* (Papian-Poppaeian Law) [Chapter 2, Part I.B].
- 41–54 *Lex Claudia* abolished *tutela legitima* for all citizen women except freedwomen [Chapter 1, Part III.A].
- 46 *Senatusconsultum Velleianum* stated women cannot provide surety or take on financial obligations for anyone else [Chapter One, Part IV.D].
- 49 A *senatusconsultum Claudianum* legalized marriage of a man with his brother's daughter [Chapter 3, Part I.A].
- 52 Another *senatusconsultum Claudianum* penalized a free woman who entered into an informal union (*contubernium*) with someone's else slave [Chapter 3, Part I.B].

HISTORICAL AND LEGAL BACKGROUND

- early 2nd c. *Senatusconsultum Plancianum* laid down procedure to follow when a divorced woman claims she is pregnant by her ex-husband [Chapter 4, Part I.E].
- 117–138 *Senatusconsultum* gave women the right to make wills without going through complicated procedure of *coemptio fiduciaria*.  
*Senatusconsultum Tertullianum* enables a mother who has *ius liberorum* to succeed to a child who died without making a will [Chapter 5, Introduction].  
 Floruit of jurist Julian, who put the Praetor's Edict into final form.
- c.160 The Roman jurist Gaius writes his *Institutes*.
- 175–180 Law of Marcus Aurelius and Commodus bans marriage between a guardian (*tutor*) and his ward (*pupilla*) [Chapter 3, Part I.C].
- 178 *Senatusconsultum Orphitianum* gives a woman's children first claim as her heirs if she died intestate [Chapter 5, Introduction].
- 193–235 Floruit of jurists Papinian, Ulpian, Modestinus, and Paulus.
- 202–3 Law of Septimius Severus and Caracalla relaxed the ban on gifts between husband and wife [Chapter 2, Part I.E].
- 212 Edict of Caracalla (*Constitutio Antoniniana*) granted Roman citizenship to all free inhabitants of the Roman Empire.
- 284–305 Publication of two collections of imperial rescripts (*Codex Gregorianus* and *Codex Hermogenianus*) under emperor Diocletian.  
 Probable date of *Sent. Pauli* and *Rules of Ulpian*.
- 295 Edict of Diocletian against close-kin marriage [Chapter 3, Part I.A]
- 320 Constantine repealed Augustan penalties on the unmarried [Chapter 2, Part II.A].
- 330 Foundation by Constantine of Constantinople (modern Istanbul).
- 331 Constantine restricted unilateral divorce [Chapter 4, Part II].
- 380 Theodosius I made Nicene Christianity the Roman state religion.
- 390 Theodosius I allowed mothers who vow not to remarry to serve as their children's guardian [Chapter 5, Part II.A].
- 438 Publication of the *Theodosian Code* under Theodosius II.
- 476 End of Roman emperors in the west.

## HISTORICAL AND LEGAL BACKGROUND

527–565

Justinian emperor in the east, attempts to reconquer west.

Compilation and publication of Justinianic corpus of Roman law (*Digest*, *Code of Justinian*, *Institutes* of Justinian, *Novels*).

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