

REVIEW

Arjava, Antti. *Women and Law in Late Antiquity*. New York: Clarendon Press, 1996. Pp. xi + 304. \$65.00. ISBN: ISBN 0-19-815033-4.

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The blurb on the dust-jacket advertises Antti Arjava's book as "the first comprehensive account of women's legal and social positions in the west from classical antiquity through to the early middle ages." And in Oxford University Press's recent catalogue it was billed as a "provocative new assessment of women's legal and social roles in the classical world and antiquity". It is obviously unfair to judge a book against the claims made by the publisher's advertising department rather than against the author's own stated intentions; nevertheless it would be hard to describe this book as provocative, either in tone or analytical approach. On the contrary, A.'s approach is measured and cautious. This is not to be taken as a criticism. It is a strength of this book that A. does not import an anachronistic agenda into his analysis. A.'s monograph may seem to be a natural sequel to Jane Gardner's *Women in Roman Law and Society* (London & Sydney 1986), which treated the period 200 B.C. to A.D. 300, but it differs from the former in more than simply chronological focus. The slight shift of emphasis in the formulation of the title (*Women and Law*) reflects a difference of approach. In fact A.'s book is in many respects a survey of the current state of the question rather than the argumentation of a specific thesis. In this respect it is timely, given the flurry of scholarly activity in the fields of the socio-legal history of women and the family in the Roman imperial period, especially late antiquity, over the last decade;[[1]] a flow which was shown no sign of abating since the appearance of A.'s book. [[2]]

Women and Law is undoubtedly Roman law for students of social history rather than for lawyers. Indeed, A.'s intention to address the non-specialist reader is clearly signalled by the presence of a helpful glossary of Latin legal terms. This is relatively comprehensive, though I did notice a couple of technical terms, which A. does actually employ in his main text without explanation, that perhaps ought to have merited inclusion there. What is a reader unfamiliar with the terminology of Roman law to make of 'hypothec' (p. 60) and *condictio* (p. 137)? In general, however, the Latin-less are well served, thanks to the translation of any extended passages quoted, while the specialist reader's interest in technicalities of wording are catered for by the retention of the original language for the quotations of legal sources and, above all, by the provision of a thorough index of the citations of the ancient legal, literary and documentary sources. On the other hand, the occasional Greek phrases have suffered a somewhat pointless transliteration in a rather ugly, (not to say eccentric) fashion (e.g. "endokotatos", p. 66) that is, no doubt, attributable to the tyranny of the economics of modern type-setting.

Returning to A.'s chronological coverage, the encaustic on wood mummy portrait which illustrates the dust-jacket cover seems at first glance to be at odds with the title. For it is clearly not late antique according to most people's definition of that term, being, in fact, early second-century in date. However, as A. states in his introduction, the horizons of his late antiquity are roughly the second and seventh centuries A.D. respectively; though the cut-off point for the eastern empire is effectively with Justinian, while some developments in the west are taken up to the beginning of the Carolingian period. Thus A.'s study takes in the major classical jurists as well as the legislation of later emperors and the kings of the

successor kingdoms. Indeed, the time-frame comprehends the three major socio-political phenomena that might be supposed to have had an impact on women's lives and legal position between the era of the classical jurists and A.D. 600: vulgarisation, Christianisation and barbarisation, each of which represents a different pivotal point chronologically. By vulgarisation (which is not intended in a pejorative sense) I mean the process of the reception and accommodation of Roman private law by the majority of the empire's inhabitants in the wake of Caracalla's grant of citizenship in A.D. 212 and the influence of their non-Roman legal customs upon subsequent developments in Roman law. Constantine's conversion at the battle of the Milvian bridge in 312 ushers in the sequence of Christian legislators and barbarisation might be said to take place with the settlement of non-Romans within the bounds of the empire and promulgation of law codes by the successor kingdoms in the fifth and sixth centuries.

It is A.'s chief purpose to trace the position of women as it was affected by social and legal developments in late antiquity against that which can be surmised from the history of the earlier imperial period and classical Roman law. As A. candidly admits in his introduction there is a danger inherent in contrasting subsequent imperial (or royal) legislation with the position illustrated by the classical jurists, in that, the Institutes of Gaius apart, the bulk of classical legal material as we have it is the result of excerption and editing by the compilers of Justinian's Digest, where divergences from contemporary practice were deliberately expunged. Thus our corpus of "classical" law actually post-dates the late antique legislation that is being measured against it.

A.'s methodology is to examine women's legal statuses both within the family and in society at large in relation to their different familial roles (as daughter, sister, mother, wife and widow). In what was politically and socially a male-dominated society, women are naturally most visible in the legal texts as *mater*, *uxor*, *filia* and *soror*. However, as A. points out (p. 230) it should not be forgotten that they did, nevertheless, have a legal existence outside the family. Indeed, the classical jurists explicitly stated that the "anyone" of "*si quis. . .*" clauses in statutes, as well as the male gendered terms *homo*, *libertus*, *seruus* and *puer*, were to be considered as connoting the female equally. However, as A. points out (p. 230), this meant only that the Roman private law did not discriminate against women as far as their own affairs were concerned. It is not to be understood as a statement of a juristic principle of general equality of the sexes. Women's public activities were, in fact, subject to many legal restrictions. These restrictions the jurists often justified on the basis of classical notions about female nature that assumed that women were handicapped by innate *imbecillitas* or *fragilitas* (i.e. mental or physical weakness), which necessitated a male guardian (*tutor*) to oversee their legal actions.

Of their male contemporaries, it is fathers rather than husbands who emerge as the dominant figures in A.'s account. For traditionally Roman law privileged the agnatic family over the nuclear family. It is one of A.'s conclusions that the far-reaching legal power of fathers over their adult descendants (*patria potestas*), which had originated in the social customs of archaic Rome, was still very much a living institution in late antiquity and even survived in the legal practice of Romans in the western successor kingdoms (p. 48-50, 73-5). The assessment of the practical effect of *patria potestas* upon grown sons has been minimized by recent demographic studies of the Roman family, but in contrast A. argues that it had a genuine impact on women's lives. Given that they were consistently a decade younger when they married, there was considerably more likelihood of a living father being able to decide whom they should wed and continuing to maintain his influence for some time thereafter (p. 30 ff.). Indeed, A. stresses that, when the emperor Constantine made "abduction marriage" a capital offence, this was not being punished as an infringement of women's rights but of those of the parents of both parties. The relatively favourable position of women as possessors and inheritors of property in Roman practice (indeed, A. estimates that up to 45% of property may have been in female hands), meant that Roman law was

chiefly interested in women as a conduit for inherited property, the primary source of family wealth in a pre-industrial society (pp. 64-71, 108). So strong is this underlying theme that one almost feels that this book could equally well have been entitled *Women and Property in Late Antiquity*.

In conclusion, A. detects no general historical trend relating to the position of women in society. For instance, a change in social practice as notable as the shift from *dos* (bridal dowry) to *donatio* (wedding gift from husband) he considers as having left the overall financial position of women unchanged (pp. 54-65). As far as the various socio-political developments of late antiquity are concerned, A. reveals that even something as all-pervading as Christianisation had relatively little impact. This is chiefly because, by and large, Christians shared the same cultural prejudices about women as pagan legislators and classical jurists (pp. 191, 228, 256). Following Evans Grubbs (see note 1), Constantine and also Theodosius are seen not as legislators inspired by Christian teaching but as representative of the newly dominant cultural world of the provinces, as opposed to the urban aristocracy which had supplied the emperors and jurists of the early empire (pp. 168, 191, 259). Thus, changes such as the withering of classical *tutela mulierum* (guardianship of women) and equalisation of inheritance rights between male and female lines are seen as symptoms of vulgarisation (pp. 108, 156). However, A. does acknowledge the part played by the Christian ideal of the virtue of the ascetic life in provoking the repeal of the Augustan legislation penalising celibacy, even if he is sceptical about our ability to assess the subjective happiness of independent virgins and widows (pp. 157-64). In most respects their lives remain unchanged: political life is still a male preserve and the kind of culturally ingrained sexual inequality that led to the consideration of female marital infidelity as a crime of a much higher degree (*adulterium*) than its relatively trivial male equivalent (*stuprum*) continued unabated. Nevertheless, A. sees the legal regulations of Roman antiquity as a heyday of independence (at least as far as urban propertied women were concerned), fuelled by their control of property and facilitated by a strong centralised state structure and peaceful conditions. Thus, by the extension of Roman civil law to all provincials from A.D. 212, late antiquity saw the bringing of this benefit to a much larger section of the empire's female population (pp. 154-6, 265). In this respect he finds that women were disadvantaged by comparison in the Germanic law codes (p. 72), even if mothers and daughters gained rights and freedoms in the field of marriage (pp. 32, 40).

While A.'s is not a feminist analysis, he is not insensitive to what must have been the actual experience of women's lives. He is, however, pessimistic about how far the practical impact of legal rules on behaviour can be assessed (pp. 192, 255) and has been criticised for lack of due consideration of this factor.[[3]] This is perhaps slightly unfair, since the value of A.'s study lies not in any attempt to reconstruct women's lived experience but in its focus on socio-cultural attitudes to the status of women as seen in the mirror (albeit refractive) of law and legal developments. Moreover, this is based on a sure grasp of the legal material. In sum, even if it does lack the provocative edge proclaimed for it, *Women and Law* is to be welcomed as a balanced and accessible survey of the field, whose popularity is already demonstrated by its transfer to paperback.

NOTES

[1] Notably: J. Beaucamp, *Le Statut de la femme a Byzance (4e- 7e siecle) I-II* (Travaux et memoires du Centre de recherche d'histoire et civilisation de Byzance, monographies 5-6: Paris, 1990-92), S.M. Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford, 1991), E.J. Champlin, *Final Judgements: Duty and Emotion in Roman Wills 200 BC-AD 250* (Berkeley, 1991), B. Rawson (ed.), *Marriage, Divorce and Children in Ancient Rome* (Oxford, 1991), G. Clark, *Women in Late Antiquity: Pagan and*

Christian Lifestyles (Oxford, 1993), J.-U. Krause, *Witwen und Waisen im romischen Reich I-IV* (Heidelberger Althistorische Beiträge und Epigraphische Studien 16-19: Stuttgart, 1994-95), J. Evans Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation* (Oxford, 1995), G. Cloke, *This Female Man of God: Women and Spiritual Power in the Patristic Age, AD 350-450* (London and New York, 1995); this last was probably not available when A.'s text went to press.

[2] Part Two of H. C. van Bremen's *The Limits of Participation: Women and Civic Life in the Greek East in the Hellenistic and Roman Periods* (Amsterdam, 1996), K. Cooper, *The Virgin and the Bride: Idealized Womanhood in Late Antiquity* (Cambridge Mass. & London, 1996), J.F. Gardner, *Family and familia in Roman Law and Life* (Oxford, 1998) and G. Nathan *The Family in Late Antiquity* (London & New York, 1998).

[3] J.D. Harries in *Journal of Roman Studies* 87 (1997), 317.