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Women, Law, and Social Realities in Late Antiquity: A Review Article

Joëlle Beaucamp, *Le statut de la femme à Byzance (4e-7e siècle)*. Travaux et Mémoires du Centre de Recherche d'Histoire et Civilisation de Byzance, Collège de France, Monographies. I. *Le droit impérial*, Paris 1990 (Monographies 5). 1 + 374 pp. II. *Les pratiques sociales*, Paris 1992 (Monographies 6). xxxii + 493 pp.

The sheer bulk of this work, some 950 pages, will probably make of it a book more consulted than read. Its origin in a thesis, moreover, is visible throughout in the detailed level at which every question is pursued, regardless of the originality of the resulting conclusions. This, too, may daunt readers. That would be regrettable, because the work amply repays the labor of a careful reading. For one thing, this is a major contribution to a vital subject, the condition of women in late antiquity. For another, it offers abundant material and reflection on the degree to which the period from Diocletian to Heraclius differs from the three preceding centuries. And, not the least of its attractions for papyrologists, it provides an unprecedentedly detailed investigation of the value of the papyri for interpreting late Roman society as a whole, bringing them into confrontation with the legal, literary, and ecclesiastical sources.¹ The papyri emerge from this analysis as a generally reliable source for the social practices of the eastern Mediterranean world of late antiquity and probably representative of most of the early Byzantine empire.

The very detailed summary of the contents of these two volumes that occupies the first two sections of this review is thus a tribute both to the importance of the book and, unfortunately, to the likelihood that many users will read only portions of it. It also provides the basis for critical comments in the third section of the review. There I shall look at a number of conceptual and evidential problems that, to my mind, the author did not sufficiently consider.

1. Imperial Law

The stage is set in the Introduction, which cites a variety of opinions about the situation of women in late antiquity, variously crediting Christianity for its improvement or blaming it for its deterioration, according to an author's views and biases. These opinions have, in Beaucamp's

¹But not art; visual or archaeological information is nowhere brought to bear.

view, generally been based far too much on the literary sources; she sees the papyri and the imperial laws as far more reliable guides, with all the rest so much material for verification and fleshing out of the basic picture.

The Preamble, occupying §§ 2-4, introduces the discourse about women characteristic of late imperial constitutions. Women are portrayed as weak, passive, easily deceived, morally semideveloped, and inferior to men. With Justinian—who generally assigns a much higher value to women than his predecessors—the vocabulary changes, with the emperors using women's weakness as a basis for protection rather than an excuse for legal incapacities. Despite their low level of moral development, heavy obligations are laid on them, especially in the way of modesty and chastity.

Chapter 1 treats incapacities and protections. In § 5 women's exclusion from public life, especially offices, is detailed, and in § 6 the corresponding limitations on their judicial activity are set out: no litigation for others, no representation of others, limited rights to accuse others of crimes (not even the husband of adultery), severe limits on the ability to act as witnesses. In § 7 we see that the restrictions on women's ability to serve as curators or tutors are eroded in the late fourth century and later, at least to the extent that widows are allowed to serve as tutors for their children. A detailed discussion of the prohibitions of the *SC Velleianum* on "intercessions" occupies § 8. Women were restricted from contracting most obligations for the benefit of a third party and given a defense against suits involving such obligations. The sources of the fourth and fifth centuries are silent on the matter, but Justinian revived and reinforced these protections.

Ignorance of the law is the subject of § 9. The *Digest* has some provisions (especially in matters of procedure, where *imperitia* was expected), but no coherently developed doctrine. The fourth-fifth century constitutions restrict this protection, showing that it cannot be entirely a compilers' invention. In § 10 prohibition against forced marriages and protection of widows are treated. Most of these are old doctrines that show minimal development in late antiquity.

Chapter 2, discussing morality, is the weightiest of the volume. Unlike the protections, the concern with morality is largely a fourth century and later innovation. The first issue is *raptus* (§ 11), a tremendous preoccupation of late antique legislation, which differs from earlier enactments mainly in its focus on morality, i.e., on repression of immorality (by both women and men). Classical legislation, in contrast, had focused on prevention of violence against women. The offense is constantly classed with murder and adultery, and *raptus* of virgins is at the top of the list. *CTh* 9.24.1 eliminates defenses and extenuating circumstances and adds threats against the parents if they connive in the abduction. The woman is also punished, and it is clear that protection of parental choice of marriage partner is the central issue. This is, in Beaucamp's view, repressive and misogynistic.

Later alterations affect mainly the penalties. Justinian extends the rules to slaves and thus turns *raptus* from forcible marriage into a crime potentially affecting all women, even those who cannot marry. But he does put all of the responsibility on the raptor (even if he was already the woman's fiancé), not on the woman.

Before the discussion turns to adultery, two less central issues are handled, laws governing prostitutes and actresses (§ 12) and corruption of chastity (§ 13). The most notable development here is Justinian's elimination of the constitutions that compel actresses to remain in their profession and their daughters to follow them.

Adultery, as befits its importance in the codes and to Beaucamp's thesis, gets more than thirty pages. All extramarital sex is criminal for an honorable woman, but not for the man except when with an honorable woman. The fundamental and universally acknowledged inequality of the treatment of the sexes in this regard is oddly characterized as "peu soulignée." The *Digest* made it difficult to accuse a married woman directly; her husband had to divorce her first. Justinian in fact reversed the order, requiring the accusation of adultery to come first. Constantine eliminated the right of accusation for nonkin entirely. This is clearly a shift in favor of preserving marriage. But Constantine extends the covered classes to include fiancées and concubines. Obligatory prosecution (the classical doctrine) was undermined by its applicability only to *in flagrante* cases and by the end of public prosecution (an important development). The husband's rights are put ahead of the father's. Justinian's "clemency" is seen also in the penalties in the *Novels*, which are less severe than the Constantinian ones, and in his provision allowing a husband to pardon his guilty wife.

But that is not all. Divorce for misconduct occupies § 15. The motives allowed for a legal divorce in the late imperial legislation are different for the sexes, something Beaucamp describes as another aspect of late antique moral repression. Since such divergences in the social acceptability of behavior date back many hundreds of years, it is hard to see anything special about it. Similarly, the behavior of unmarried women (§ 16) is viewed differently from that of men. The condemnation of irregular durable unions occupies § 17: the union of a free woman and the slave of another and concubinage. Despite moralizing, it is clear that the first of these was aimed at protecting owners' property rights. The emperors viewed concubinage as not-marriage, hence illicit. But stable unions were gradually treated more favorably. The laws focus on the ability of natural children to inherit and of concubines to receive gifts. Justinian gradually removed most of the restrictions where there were no legitimate heirs, a change Beaucamp calls "spectacular."

Much of the legislation described above affected only *matronae*, i.e., *matres familiarum*, women of honorable status. Ulpian had defined the term

as determined by *boni mores*, not by marital status, but it hardly seems that young women who had never been married could be included. Excluded from condemnation were non-honorable women (§ 18): actresses, procuresses, prostitutes, tavern girls, and alumnae of those occupations. On the other hand, they were also subjected to other discriminatory measures regarding status and property. Justin I relaxed these rules for actresses and their daughters, and Justinian, in *Nov.* 117.6 (542) swept away all restrictions. Here if anywhere is legislation driven by an emperor's personal circumstances. From what precedes, Beaucamp concludes that overall moral demands were higher on women than on men—hardly a discovery. But she discerns two evolutions: (1) the penalties for misconduct were highest under Constantius, then diminish; (2) inequality was gradually reduced from the fifth century on, though not drastically.

The last two sections of this chapter deal with proprieties: obligatory mourning (§ 19) and divorce and remarriage (§ 20). Mourning was classically limited to women and involved a wait of 10 months for remarriage. The original motive is contested, but may have involved both of the contenders (avoidance of any confusion about paternity, general sense of decorum). Late antique legislation emphasized the moral nature of the wait and became more severe; Theodosius I required a year. The provisions appear aimed at protecting the children of the first marriage. For some reason Beaucamp thinks it all "purely moral." Women also bore a greater moral burden in remarriage, and a delay was imposed. Once again the fourth and fifth century emperors look misogynistic. But it is again clear that the concern of the legislators was mainly for the property of the children, especially that coming from their father. There is a greater degree of equalization in the fifth and sixth century, especially with Justinian, as men become subject to the same moral repression.

Chapter 3 considers the limits of women's autonomy and of their power of initiative generally. Beaucamp sets out to show that three key characteristics were accentuated in the late empire: (1) women had little influence on their own lives; (2) women occupied a dependent position; and (3) women's power over their children grew. The first two point to increased passivity, the third to the reverse. The first section (§ 21) is about a woman's role in deciding the course of her life. Marriage was a far more central event for women than for men. Classical law required the consent of both parties and of their fathers if the couple were in their fathers' power. But girls were expected to consent to their fathers' wishes unless there was a good reason not to. Of course, a father's role could also be passive, the girl's active, but that was less common. The same rules apply to engagements as to marriages. Specific cases suggest that women had less autonomy than the general rules would indicate.

The enactments of the fourth to sixth centuries freed women to marry at 25 without being disinherited, even without their father's consent, if the

parents had not by that time married them off. On the other hand, emancipated women under 25 still needed their father's consent. The distinction between minority and majority thus effectively replaces being in power. Where the father was dead, the mother and the *propinqui*, sometimes with a magistrate's intervention, decided. The woman's consent remained formal and passive. The reverse seems to be true with divorce; there is no sign that a father could end his daughter's marriage without her consent. Nor do the laws allow disinheritance of a daughter who stays married against her father's wishes. And no one can prevent a woman from divorcing (within the legal bounds). Entry into religious life was the woman's choice, so also leaving it.

In § 22 we get a description of "la femme-reflet," as Beaucamp puts it. Marriage was *de facto* a relationship of great disparity; the woman was "the passive reflection of her husband," who had the dominant role. There are some signs that *his* intention was primary in distinguishing marriage from other types of relationships (this seems unavoidable, as there is no equivalent of concubinage with the roles reversed). The mother's connection with her children was natural, the man's dependent on his explicit statement. Women acquired their husbands' status and were thus assimilated to them. So too with privileges and exemptions, such as from taxes (this is found in the Hellenistic period already). Beaucamp claims that the late empire accentuated women's passivity.

Some detailed investigations occupy the following sections. In § 23 social ascent by marriage is discussed. Classical Roman law was opposed to very radical disparities in the ranks of spouses, which would allow women to rise dramatically. Justinian eroded, then demolished, this barrier. For example, classical law allowed manumission of a slave woman and then marrying her only if the status gap was not too great; the *Novels* end the prohibitions on unequal rank, which Constantine had still upheld, apparently as part of his general legislation preventing the offspring of irregular unions from usurping rights. Justinian abolished Constantine's law in 542, but he strengthened the woman's dependence on the man in such unions, especially through restrictions on freedwomen trying to divorce their patrons.

In § 24 attention turns to concubines. Concubinage was not repressed or penalized, but neither was it regularized. Constantine tried to prohibit legitimation of such unions and their offspring, starting from the date of his law (but legitimating earlier ones retroactively), but this was eroded in the sixth century. Justinian then allowed the legitimation of children from a concubine even without the partner's marrying her in certain cases. Having multiple concurrent concubines was condemned but not penalized; i.e., the man only got a scolding. A concubine's rights depended entirely on the man's wishes.

The mother's role is discussed in § 25 (rules derived from classical law) and § 26 (late imperial developments). This role was clearly subordinate. Abortion was viewed as depriving a man of his right to a child and thus moderately punished—but apparently there was no penalty if the man also wanted the abortion. A woman had no power over her children, but was owed *pietas*. Widows, however, acquired more of a role, especially if not remarried. Their wishes for a tutor for their children were accorded a considerable role by magistrates, and they were obliged to request one. Some tendency to increase the mother's responsibility is visible. In the late empire, mothers acquired the right to be tutors (formalized in 390, origins undatable), and even some rights while the father was alive. Some precautions followed: the woman was required not to remarry and had to renounce the protection of the *SC Velleianum* and hypothecate her property in order to take on the management of property. Overall, the development of the woman's role is much greater as mother than as daughter or as wife, and widows gain at the expense of the agnatic family.

The conclusions are summarized in § 27. In matters of weakness and dependence, continuity dominates, with little change from the earlier empire. Women's legal capacity was limited to defending their own interests. Dependence and subordination in family matters also continue; the lack of major change is unsurprising. Change, by contrast, is visible in the increasing weight of morality. Much here is constant, but much is not. *Raptus* and procuring are offered as major examples of cases where the burden of law increased. Violations of sexual morality and the proprieties both get more rigorous punishment. Beaucamp recognizes that some of this is just the more moralistic style of discourse of the law of the period, but she does not think that this is enough to explain the evolution. Finally, mothers gain power over their children.

Arriving at a general conclusion is difficult. Overall, Beaucamp is forcibly struck by continuity. That is not so surprising; what is problematic is that the two major changes she notes do not form a homogeneous evolution, and she is driven to renounce finding any master explanation for the whole pattern that she sees. She points out also that much of the sexual repression loses force after Constantine, whose legislation and penalties seem basically out of line with those of the other emperors. Justinian, especially, is milder, although his moves toward equalization of what is expected of male and female remain modest. The individual reigns and periods can thus be seen to have their own "tonalities," with Constantine and his sons severer than others. Justinian makes the strongest impression of an individual character: his innovations are all favorable for women, and he even says favorable things about them, unlike the others.

How is one to explain this? Beaucamp rejects "contingent" explanations, like Justinian's marriage to Theodora, as being insufficient.

Christianity, the main explanation generally offered, is equally problematic, especially because one cannot tell if whatever influence it had would have been exercised directly on the process of legislation or rather through the larger role of the east and its gradually Christianized population in the formation of law. The discussion thus must turn to the study of social practices to get a handle on this. Beaucamp advances two main reasons to expect significant divergences between practice and law: (1) The law is of centralizing Roman origin, whereas the population was multiform and diverse; (2) the sources for later law are compilations, and it remains hard, even with intensive study, to know what in them was still valid and what was just a fossil.

2. Social Practices

And so we turn to Beaucamp's attempt to understand social realities. The Introduction notes that from the late third to the mid 7th century over 1300 papyri involving women survive. They compose the material of Part 1. Part 2 then treats scattered information from "protobyzantine" sources, which are used to test and complete the information of the papyri.

Chapter 1 deals with women's exclusion from public life. In § 28 Beaucamp treats magistrates and other public offices, of which she finds no instances in the third and fourth centuries except for priestesses.² Things seem to change in the second half of the sixth century, with women attested in civic offices, but these are actually public responsibilities attached to patrimonial holdings, *munera patrimonialia*, and women exercise no actual authority. It might be pointed out that financial responsibility had always been the main point of such functions, and in any case it is only asserted, not actually proven, that in the sixth century the women mentioned did nothing except accept financial liability. Women also sometimes had inherited obligations deriving from paternal liturgies. No women are known to have served as judges or arbitrators, even before this became illegal. Beaucamp concludes that the papyrological evidence conforms to the laws, and that no evolution is visible. She notes also that all daughters of *bouleutai* whose husbands are known married other *bouleutai*.

In § 29 other public roles are treated. There is no evidence for women representing men at law, but women do appear on their own behalf in many cases. Similarly, women appear in trial records as witnesses on several occasions, but they never act as witnesses to contracts.

§ 30 considers specific protections for women mentioned in the legal sources (§§ 8-10), with little result. Widowhood is evoked rhetorically for

²For the 5th century she notes *πολιτευομένη* in *SPP XX* 114, not having been able to know Worp's correction in *BL* 8.467 (1992) to *πολίτις* 'Ρωμέων (read 'Ρωμαίων).

captatio benevolentiae (nothing new there), but not for any specific status-related protection. Much the same is true of feminine weakness (the references, none after the fourth century, are collected on p. 46). Intercessions, in the technical sense, figure only in that women appear occasionally as guarantors; these typically are widowed mothers. The problem of intercessions simply does not seem to have been a live issue. For forced marriages and excusing of ignorance of the law there is no evidence.

Chapter 2, on morality, begins with the fact that the papyri are short of information on morality. § 31 treats social ethics and the proprieties. There is little evidence for concubines, and none for men taking concubines instead of remarrying. For free women's unions with the slave of another person there is also no evidence. Nor is there much about prostitutes and actresses (Beaucamp sees *BGU IV 1024* as a rhetorical exercise). Imperial legislation on these groups is never cited in papyri. The section on slaves and freedwomen is not strong, and Beaucamp unfortunately follows Fikhman's views that slavery was in decline. She is wrongly skeptical that women would commonly escape slavery.³ The proprieties are also not well represented: there is no reference to any obligation of widowhood, for example. All known dissolutions of marriage permit immediate remarriage; their only interest is in the dissolution of property links. Practices thus oppose or ignore imperial legislation. A list of attestations of female remarriage is given (p. 67), although this status would in any case rarely be documented. There is, Beaucamp thinks, no sign that children were an obstacle, and no sign that social practice followed either the imperial or the Christian disapproval of remarriage.⁴

In § 32 the difficult subject of sexual morality is treated. Only a few papyri deal with rape or abduction. On the whole, it seems that marriage, not prosecution, followed abduction—just what the emperors tried to prevent. Imperial concern to avoid the imprisonment of women (to avoid compromising their chastity) seems to have been ignored, even by the authorities: there are a number of documented cases of women being detained, mainly for financial reasons. On the repression of misconduct

³Against Fikhman, see my "Slavery and Society in Late Roman Egypt," *Law, Politics and Society in the Ancient Mediterranean World*, ed. B. Halpern and D. Hobson (Sheffield 1993) 220-40. For virtually universal manumission (later for women than for men, however), see R. S. Bagnall and B. W. Frier, *The Demography of Roman Egypt* (Cambridge 1994).

⁴The evidence of Roman census returns, however, suggests that women actually remarried after divorce or widowhood at a much lower rate than men did. See *Demography of Roman Egypt* (above, n. 3) 126-27, 153-55. The dramatically different patterns for men and women found in Roman Egypt are paralleled by those in fifteenth-century Tuscany: see David Herlihy and Christiane Klapisch-Zuber, *Tuscans and their Families. A Study of the Florentine Catasto of 1427* (New Haven 1985) 213 fig. 7.3 for a graphic representation. (They seem to suggest on 217 that the non-remarriage of widows was a matter of choice, but the Catasto provides no warrant for such an inference about motives.)

there is little clear information. Even the few references to punishing misconduct do not seem to connect at all with imperial law.

Divorce for misconduct is handled in § 33. Only two marriage contracts relate moral obligations to anticipated causes of divorce, and those inconclusively. The partners' duties were, unsurprisingly, asymmetrical. In some marriage agreements, the husband's only duty was support, while the wife's were largely moral; in others, the husband had more detailed obligations spelled out, some of them moral, while the woman's moral duties were treated briefly. Acts of divorce, on the other hand, with one exception, are all formally a matter of mutual consent. The *πονηρὸς δαίμων* is generally blamed.⁵ Only *P.Oxy.* I 129 preserves a unilateral divorce. A consideration of *P.Oxy.* L 3581 leads to the conclusion that imperial enactments on process (how to divorce a spouse) fared better than those on substance (why you can divorce a spouse). Beaucamp rejects as bad method the use of *NovTheod* 12 to date this papyrus after 439, mainly because of the lacunose character of our knowledge of legislation and the underlying uncertainty about its effectiveness. There is no proof of a direct linkage of the terms of marriage or divorce to the imperial laws, nor any evidence that in the fourth century unilateral divorces suffered any legal consequences except any agreed on contractually. Constantine, in sum, leaves no echo in the papyri. People seem to know and "use" imperial law, but not to observe it. Overall, the evolution of morals seems less marked in practice than in law; put another way, marriage in Egypt is still dominated (as it had been for many centuries) by provisions of private law, not by imperial criminal enactments.

Chapter 3 deals with the location within the family of power over women's lives. In first place comes the ability to conclude a marriage (§ 34). The fifteen surviving contracts related to marriage are varied in nature and preservation. The groom is a party to all but one (in *P.Cair.Masp.* I 67006 verso it is his father); the woman is a party in six, her father in about the same number, her mother in two. Many of these are purely property settlements, but even they show the father as the key figure. Since the parents usually supplied the bride's dowry, this is not surprising. Beaucamp concludes that for a *parthenos*, her parents normally arranged a marriage, but that women concluded their own marriages if orphans or formerly married. The contracts do not, alas, answer the controversy over whether it is consent or *ekdosis* that makes a marriage. Narratives about marriages offer similar problems. The vocabulary connected to the act treats women as passive, but whether (*ἐκ*)*δίδωμι* is descriptive or juridical is hard to say. Interestingly, the persons mentioned most often as intervening are mothers, with the father in second place. Others (uncles, older brothers) show up

⁵At p. 90 n. 40 there is a long note on this topic, good on the jealous character of the demon but missing altogether its connection to the evil eye.

only occasionally. Beaucamp argues that "to give" has a strong sense and refers to the person who actually concluded the marriage. She remains unsure about the ability of a father to give a daughter in marriage without her agreement. None of this seems to reflect much change from the Roman period.

In § 35 women's subordinate role in the household is explored. The marriage contracts of the sixth century show clearly an asymmetry of duties, with the wife required to obey her husband; this is a matter of custom, not of law. Wives were usually of the same *origo* as their husbands; residence and domicile questions thus play little role in the papyri. Relying on documentation in Annexe V, Beaucamp tries to see if a wife's status followed her husband's; overall this seems to be so, although by the last third of the sixth century women of the senatorial aristocracy tend to inherit their rank to some degree. There is an interesting discussion of the *matrona stolata*, tending to reject Holtheide's thesis that this term always refers to the wives of *equites*.

Scholarship on divorce (§ 36) has been dominated by the question of a father's ability to end a daughter's marriage. The surviving divorce documents do not help very much, since all except *P. Oxy.* 129 are *dialyseis* by mutual consent, in which marital obligations are liquidated. They are always symmetrical and carried out by the spouses; the woman acts autonomously.⁶ In *P. Oxy.* 129 there is no evidence of the daughter's views. Beaucamp concludes that probably a father could end a marriage without the daughter's consent, but there is absolutely no evidence in this document to support this view. Narratives, as in petitions, can help flesh out the formalism of legal acts, but they are mostly very partial, in both senses of the word. Against one known case of a wife's abandoning her husband, there are three cases of a husband's expelling his wife, plus some abandoned women. Beaucamp notes that women had a need to litigate to get their property back at the end of a marriage, and men did not.

For assessing the role of the family, *P. Oxy.* LIV 3770 and *P. Sakaon* 38 are the key texts; the latter especially points to a father's role in reality much greater than the authorities—bound to enforce the imperial laws, where a woman's consent is central—would accept. From all of this, Beaucamp concludes that feminine passivity was normal. Thus legal acts and social realities operated at different levels. In this, too, she sees a continuity with earlier centuries.

The relative powers of the father and mother in a family are treated in § 37 (the situation with both living) and § 38 (after the father's death). For adoption the three known documents show couples acting together when both are alive, but women acting alone when widowed. Beaucamp argues

⁶*P. Ness.* III 33 alone stands out; but it is not certainly a divorce settlement and is, Beaucamp argues, probably a patrimonial post-marriage settlement, not a divorce.

that widows' power was derivative and that women could not, unlike men, adopt alone. Egyptian adoption remained unconnected to Roman practices, not being a matter of *patria potestas* but rather of creating rights of succession. A key question is whether widows simply raise orphans or have a real *tutela*. *P.Sakaon* 37 offers an interesting example, in which a woman is *κηδέστρια*, best taken (Beaucamp argues) in a general sense (one of the children is between 14 and 25, and thus would have a curator, not tutor). But there are no later examples of the term, despite the evolution of imperial law. An analysis of instances of tutors or curators who are *not* the mother shows no case in which the mother is demonstrably living; there was thus a preference for the mother if she was living. But the father could dispose otherwise by testament.

Widowed mothers acting as tutors had real control over the children, including the ability to give them in adoption or marriage, or to put them out to service or apprenticeship; this was also true in Roman period. With the property, similarly, they took part in settling the succession from the husband and acted for the children. Beaucamp argues that women normally took on *curatela/tutela* responsibilities only when they were widows, that their power derived from the mother's role and father's death and did not need any official designation. If anything, she thinks, Egyptian practice was ahead of the laws. Once again, widows appear to have been far ahead of girls and married women in their ability to act independently.

Chapter 4 is a remarkable and satisfying study of the transformation of the guardianship (or *tutela*) of women into the husband's power over the wife, something of a *tour-de-force* of papyrological investigation. Early studies of the *tutela mulierum*, Beaucamp believes, tended to see it too much in Roman terms. The Greek papyri, of course, use the term *κύριος*, rather than (like Latin) use the same term as that used for tutors of minors. In § 39 the formulas connected with *tutela* are examined in detail. Strikingly, for the 350 years of this period, only four documents (scattered in time) use the phrase *μετὰ κυρίου*, which is thus virtually extinct, while more than 60 use phrases mentioning *absence* of a *kyrios*. These thus seem to be operating on different planes. In all four positive cases, the *kyrios* is the husband. This continues the normal Hellenistic and Roman practice in Egypt—in contrast to Roman law, where the tutor normally was not the husband. Women acting without a *kyrios* appear in 66 cases from 284 to the 7th century. Beaucamp has sharp criticisms of Sijpesteijn's articles on this subject for failing to make essential distinctions. She identifies 13 formulas (listed, with examples, pp. 199-202). They show chronological and geographical variation, with actual mention of the *ius liberorum* dropping out of use after 389. They are thus not at all a homogeneous body of material and need much more analysis to answer the many questions raised: What does the post-389 formula mean? Is the absence of a tutor a

permanent right? Does a woman using it lack a husband or act without one that she has? Beaucamp argues that the formulas refer to a continuing state and specifically denote widowhood. There is not a single instance in which a woman using this formula is known to have had a husband. The usage of the terms for widowhood (*χήρα*, *χηρεύουσα*) in documents is similar in character to that of the "without *kyrios*" phrases.

Among the conclusions derived from this investigation are the following: (1) Only husbands were tutors; (2) from the second half of the fourth century on, if not before, husband and tutor were the same; (3) widows escaped *tutela* in the sixth century, mothers in the third-fourth century. But these then lead to new questions: (1) When did the change occur? (2) what about divorcées and the unmarried? (3) was this a matter of the husband's control or of a wife's incapacity at law? Overall, Beaucamp thinks that the freedom of widows from *tutela* dates to the mid fourth century; there were thus dual escape routes from *tutela* for a time.

Some fourth century documents have both "without a *kyrios*" and a husband present. This is a sign, Beaucamp shows, that even *ca* 300 incapacity was not the issue any more; the husband's power was. That is, a woman could have the juridical capacity to transact business independently but still need to have the husband involved. Increasingly, the husband was seen less as a tutor and more as a husband.

The argument is pursued in § 40, where Beaucamp undertakes to look systematically at documents showing *tutela* and husbands' appearances to see how they resemble one another or differ. This is, she notes, a difficult process with methodological pitfalls that she describes with care. It is clear that the *ius liberorum* is not used systematically. This may be partly the reflection of the type of document, but it is easy enough to show that this is an insufficient explanation.⁷ Rather, it looks as if the nature of the transaction, not its form, is critical. The central problem is the alienation of patrimonial goods. A detailed study of transaction types shows that the husband is virtually always present if a significant impact on the couple's property is at stake. In § 41 the argument is continued through a comprehensive analysis of all legal acts involving either a husband or a tutor. This shows that references (positive or negative) to *tutela* by married women or widows are uniformly present *only* in those acts where mention of the husband is normal. Elsewhere, it is variable. Thus all the references to *tutela* essentially refer to marital control, throughout the Byzantine period. There is no evidence for the autonomous existence of *tutela* in the Byzantine period; it is always an expression of marital control.

The final stage of this investigation (§ 42) covers the presence of third parties in documents; these are mainly persons with a property interest (especially one of succession) in the goods being alienated. Beaucamp then

⁷Beaucamp shows also that no geographical or chronological explanation is adequate.

looks more closely at the term *συνεστῶς*, which she shows is not a technical juridical term (instances are listed in Annexe VII). Mostly it is not a form of tutela (thus connected with juridical incapacity) but an expression of marital power.

The conclusions reached are then in § 43 connected to the development of imperial law. The *tutela mulierum* disappears in law, too, but the moment is unknown; it could have been by abolition or by disuse. The last mention is in *Frag. Vat.* 325 of 293 or 294. As the husband-tutor is already a third century development in Egypt, this can hardly be a case of Egypt's diverging from the empire in the fourth century. Even if the husband-tutor is not found in imperial law, he is consistent with a late antique tendency to favor the husband's involvement in the wife's patrimonial affairs. Once again, then, the legislators favor the reinforcement of the nuclear family cell, privileging the common patrimony of the couple. Beaucamp believes that the changes are simply a legitimation of longstanding social practices, not a big ideological change. But this brings her to move to the non-Egyptian evidence.

The "protobyzantine" world, which occupies Part II, is approached through an enormous range of source material, each genre of which needs to be considered on its own terms. The different types of material are not easily comparable to others. The inscriptions yield little for this subject, and overall Beaucamp finds in these sources few facts and many representations: attitudes about virtues and duties. The discussion proceeds in the usual systematic fashion. Chapter 1 is thus about seeing whether the pattern is one of incapacities or of exclusions (§ 44). Just as in the papyri, the only public function of women is as priestesses. Nothing corresponding to the fiscal burdens of the papyri turns up in other sources, and only a few references to patrimonial burdens. Women, especially widows, did use the courts, but almost entirely to defend their own or their children's interests.

The protections for women found in legislation are missing in other sources as they are in the papyri. There are many references to widows as needing protection and as potential victims, but as in the papyri it is a matter of *captatio benevolentiae*, not of specific rights to be protected. Similarly, there are references to women's weakness, often using the story of Eve. Beaucamp suggests that the absence of this theme after the fourth century in the papyri is probably chance. In § 45 the norms of the church are brought into the discussion. Women's participation in religious rites is routinely taken as a sign of heresy. Their exclusion from the priesthood was taken for granted, based both on biblical examples and on arguments based on the subordination of women. Similarly, women were forbidden to teach in public, but not in private; their teaching girls was normal. None of this, certainly, is an innovation of the period.

Family powers are the subject of chapter 2. The question of who decided about a girl's marrying (or not marrying) is brought back for a

reprise in § 46. All of the abundant information on the arranging of first marriages (where the woman is called *kore* or *parthenos*) indicates the woman's passivity, which becomes more visible as the social status rises. The evidence supports the idea that early marriage was the norm, but some anecdotes refer to engagements, and these are not easily disentangled. Paternal power was paramount, even though both parents were sometimes mentioned. Widows, however, acquire more independence. The religious life was in principle a woman's own choice, but it was often hard to realize if she was faced with her family's hostility. On the other hand, a family might force a monastic vocation to avoid coming up with a dowry. In divorce the situation is similar to that in the papyri: parents (and mainly the father) play a role in social reality, but the state concentrates officially on the woman's wishes.

In § 47 the wife's dependent status is explored. A wife's status and fate are universally represented in the early Byzantine sources as depending on those of the husband. But the quality and quantity of real evidence are not great, and hard questions on the margins are unanswerable. Not surprisingly, the overall picture is one of endogamy within social strata. Social climbing by women is viewed positively in most sources. Husbands were expected to treat wives kindly and instruct them; one is strongly reminded of Xenophon's *Oikonomikos* (not mentioned by Beaucamp). But this stress on the husband's duties suggests that in reality there was a high incidence of domestic violence, especially routine "correction" of the wife by the husband. Nothing in this sphere need to be assigned to Christian influence, as little of it is new in late antiquity. The literature is particularly clear on the husband's domination of the wife. But Beaucamp cites Julian's criticism of the Antiochenes (*Misop.* 27, 35; *Letter* 84) for allowing their wives too much autonomy. One might well conclude (but Beaucamp does not) from this that the commonplace male vision of obedient wives was as far from reality as many other moral norms.

Various questions about mothers' roles are treated in § 48. The frequent references to mother love and widowhood are not very helpful in discerning the degree of maternal authority. Church and society were both hostile to abortion. Fertility was, after all, usually essential to a wife's status and even to the survival of the marriage, and reproduction was in all ancient thought the principal, even the only, purpose of marriage. Christian thought developed a strong view of male/female equality, but this did not lead the church to adopt any different legal norms from those of the surrounding society.

Unlike the papyri, the literary and ecclesiastical sources are very interested in moral prescriptions. In § 49 the social norms and legislative strictures are compared. There is, just as in the papyri, little sign of any application of the imperial constitutions; what consequences there are for seduc-

tion and similar misdeeds are nonjudicial. The sources seem to suggest widespread knowledge of the stated penalties for adultery and similar crimes, but concrete cases of actual application are scarce. Continuity is visible in the fact that the importance of moral obligations varies with social status. Peasant women, unlike their wealthier urban counterparts, were not secluded. Literature accepts the killing of adulterers by the husband and expects respectable women to be invisible. There is praise for women married only once, and also for widows who do not remarry; but if there are no children, there is no blame for a remarriage. "Sous ces deux angles, la législation nouvelle apparaît donc en harmonie avec l'ensemble de la société protobyzantine. Ou, plus exactement, avec les principes qu'elle met en avant. Car la pratique du remariage, dans la mesure où elle peut être saisie, suggère des conclusions quelque peu différentes" (p. 350). Remarriage and divorce were known in all social circles, and in general Beaucamp regards the papyri as representing typical behavior (352).

A comparison of imperial and ecclesiastical norms (§ 50) finds both convergences (about actresses and other low estates, and about nuns and on deaconesses), and divergences (about abduction, where the church is less severe and more inclined to accommodate social realities, especially favoring the marriage of the parties; and about adultery and infidelity, where the church's penalties are severe but equal and there is hostility to any publicity that might harm the parties). Church texts show two tendencies, one (in authors) ethical and equalizing, opposed to both legislation and the prevailing social norms, the other (in canons) more nearly reflecting civil conceptions in the penalties set for some misdeeds. As the church was more hostile to divorce than the state, so was it also to remarriage.

The conclusions (§ 51) give a final look to some of the key questions that occupy this book. Beaucamp thinks that the "society of the papyri" is despite some difficulties the most readily describable zone of late antique society. There are both areas of stability and areas of change. In the former, she cites women's absence from the public sphere and the modest degree of change in the family throughout the period. For the latter, the most salient feature is the growing role of widows in controlling their children's fates.⁸ Social practices elsewhere seem to be in agreement with the papyri. They change much less than the legislation, which gradually seems to be taking account of practices in some respects.

The legislation about morality, however, does not conform to this pattern. This, Beaucamp argues, is because of the influence of the church. But she admits that there is absolutely no evidence for such influence except the convergence of ideas in the two. That is, the argument is not even *post hoc*

⁸This is indeed an area in which the change from the earlier empire seems to be genuine. See Susan Treggiari, *Roman Marriage. Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford 1991) 501.

ergo propter hoc. The two streams run side by side. Legislation certainly saw much more change than did reality. Beaucamp attributes this difference to the much swifter Christianization of the state than of society. In the end, she refuses to see all of this as either progress or regress for the status of women, at least not in any simple fashion, and she thinks that the role of Christianity is generally overestimated.

The work concludes with two key questions. First, the relationship of law and society, certainly a complex situation. Some elements of law, mainly those affecting official behavior and public life, are clearly effective. In some others, application is partially effective; yet others are known but not applied. In still others, the authorities try to enforce the law but are ignored. Where there is silence, then, one must be prudent and not assume that any one of these patterns offers a simple answer. Second, the individuality of Egypt. There are large areas where the evidence from elsewhere confirms the picture in the papyri. In some others, there is no way of confirming or disproving the wider applicability of the Egyptian evidence. What discernible differences there are may reflect only the state of the documentation. Overall, any such distinctiveness of Egypt seems to be minor, and there is not one specific question in which it can be proven.

Seven appendices set out in more detail the evidence for some of the key subjects treated in this volume:

I: Proposals for readings, restorations, datings, and identifications in the papyri.

II: Women of curial family.

III: Women engaged in judicial process or arbitration.

IV: Requests emanating from women.

V: Titles and dignities of women: *matrona stolata*, *λαμπροτάτη*, *ἐνδοξοτάτη*, *μεγαλοπρεπεστάτη*, *ἰλλουστρία*, *ὑπάτισσα*, *πατρικία*.

VI: Contracts to which a woman is a party.

VII: *Συνεστώς* and related terms.

Each volume has a full index of sources, and there is an index of subjects (including Greek and Latin words) to both volumes at the end of volume 2.

3. Critical Reflections

This is obviously a work of remarkable range and power. Even the bare sketch of the subjects treated and the main conclusions given above should give some sense of the vast reading of ancient sources and modern bibliography that Beaucamp has carried out. This is a work of great learning. It will not end discussion of the subject she chose, but it will obviate any foreseeable need to repeat the work of collecting and analyzing in detail most of the evidence. The treatment of individual texts seems to me usually accurate, sound, and dispassionate, despite Beaucamp's clearly stated and strongly worded opinions about the subject. She is almost always well

informed about critical literature treating the papyri and other texts she discusses. Many of her conclusions are original, and all readers of this book will find their own approach to the subjects it treats transformed.

Many books, no matter how long in the making, seem destined to appear just when another year or two would have allowed the author to take into account important contributions to the subject. The most obvious instance here is Susan Treggiari's *Roman Marriage* (Oxford 1991), which appeared in the year between Beaucamp's two volumes. It might have spared Beaucamp some of the detailed analysis of the classical background of late antique legislation. Anyone who reads both books cannot help noting the large areas of convergence, strengthening the sense of continuity between classical and late antique Roman norms and behavior. Because Treggiari treats legal and literary materials together, she is much less repetitious than Beaucamp and often more realistic in discussion of the legal questions. Treggiari does, however, pay scant attention to documents and almost none to the papyri; her focus on the Roman elite is far more pronounced.

Gillian Clark's *Women in Late Antiquity: Pagan and Christian Lifestyles* (Oxford 1993), on the other hand, was able to profit from volume 1 of Beaucamp's book and several of her articles, but not from volume 2. Clark's short textbook is certainly written for a different audience, and it will be accessible to students in a way Beaucamp cannot be. Unfortunately, it shows almost no interest in the documentary evidence that Beaucamp exploits so brilliantly and effectively.

Despite the many merits of this book, there are many aspects of the author's approach and conclusions that I find problematic. First and foremost are the main components of the subject, as stated in the title. There are only occasional nods to the difficulties posed by "women" as a unitary category (a problem with Clark's book, too). The feminism of the author's approach seems to date from a more youthful period of women's studies, when gender alone appeared to offer a magic key. By now it is widely recognized that—at the very least—differences of social and economic standing fragment women into groups with divergent experiences. Our sources are enormously more rewarding for the top stratum than for lower, and this is true of the late antique papyri as much as it is of the literary sources. To be sure, the papyri do not limit us to the tiny aristocratic crust of Constantinopolitan society, nor even to its counterpart in other major cities. But they are overwhelmingly urban and emanate with relatively few exceptions from the propertied elements in the upriver cities of Egypt.⁹ Their convergence with the literary sources, which Beaucamp well documents, is important and striking, but it is very much bound to status and class.

⁹See my remarks on this subject in *Egypt in Late Antiquity* (Princeton 1993) 4-6.

Just a single example will suffice to show the kind of difficulty at stake, but it is an example central to the conclusions of this book. Widowhood keeps emerging in Beaucamp's discussion as a much more attractive status than marriage—attractive, that is, judged by the standards of independence of action. To the women of wealthy families who are the source of the documentation used in this book, there may be something to this idea. But to the poor and destitute woman, the loss of a working husband was certainly a disaster, leading in some cases to unattractive unemployment, even to prostituting herself or her daughter.¹⁰ Independent control of property was not meaningful to those who had none. It is hard not to see a certain upper-class fear of and fascination with widows in the picture Beaucamp has given us; the quotidian reality for most people was very different.

"Byzantine" is equally problematic if not equally important. Despite our long usage of the term in papyrology, it is difficult to defend as a term for the period from Diocletian through the fourth century, wherever one may wish to distinguish periods.¹¹ Perhaps the most important drawback of a Byzantine conception of this book is that it allows the author to exclude all western evidence. If the evidential record in the East were ampler one might not regret this omission; it can certainly be argued that it allows an unbiased investigation of the East and its eventual comparison with the West. And who would wish to see another 500 pages added to the bulk before us? But when we are told that the epigraphic record for this period is meager—which is true for the Greek East—how can the vision of the massive volumes of the *Inscriptiones Christianae Urbis Romae* help but rise before our eyes?

There are other important conceptual and theoretical difficulties. To start with volume 1, Beaucamp is well aware that the normative legal sources may not reflect the actual state of affairs, and she explicitly seeks to confront them with other evidence throughout volume 2. The results of the discussions there often suggest (as the summary above shows) that these norms were by no means observed. But the discussion in volume 1 constantly slips back into a mode suggesting that the legal sources *do* display the social realities of late antiquity. Most strikingly, Beaucamp never really comes to terms with the view—to use A. H. M. Jones's formulation—that the laws' "chief evidential value is to prove that the abuses which they were intended to remove were known to the central government."¹² From that

¹⁰Cf. Herlihy and Klapisch-Zuber (above, p. 80, n. 4) 113 for a similar phenomenon at Florence in the fifteenth century.

¹¹See on this A. Giardina, "Egitto bizantino o tardo antico? Problemi della terminologia e della periodizzazione," *Egitto e storia antica* (Bologna 1989) 89-103.

¹²*The Later Roman Empire 284-602. A Social, Economic, and Administrative Survey* (Oxford 1964) I, viii.

point of view, legislation is a guide to what was happening that the government felt it had to prohibit, either because of its visibility or because of its widespread character. If anything, then, the laws would suggest that the opposite of what they ordain was commonplace, and that what they order reflects an elite code of behavior. They may therefore be seen as corresponding to Julian's criticism of the Antiochenes for allowing their wives too much autonomy: an elite male view of how things ought to be, but not a reflection of unruly real life.

The organization of volume 1 is of considerable interest and concern in its own right. Beaucamp rejects the usual legal framework of subjects and questions, deriving ultimately from Gaius's *Institutes*, in favor of her own tripartite approach (incapacities and protections, morality, limits of autonomy). That structure has its merits, but she does not defend it on any *a priori* grounds, nor does she adduce reasons to think that it corresponds to any ancient structure of thought. I shall suggest below that it may actually lead her to separate things that belong together and thus reach doubtful conclusions.¹³

In volume 1, this problem of organization becomes important in thinking about the emperors' motives. Beaucamp does not always distinguish clearly between the effects and the intentions of legislation. Since effects are not demonstrated in volume 1, all the discussion can hope to do is to tell us about intentions (that is, the ideology underlying the enactments). That is valuable in itself, but it matters a great deal whether emperors enacted rules affecting women because they were specifically concerned about women or because they were interested in other subjects. In the second case, decisions or views about women would have to be seen simply as byproducts of a concern with larger legal questions or social structures. Beaucamp's general hypotheses in volume 1, however, depend in part on the assumption that women *per se* actually occupied an important space in the emperors' thinking. This may not be true.

It is, in fact, possible to take all of her findings in volume 1 and from them construct a social ideology and long-term development that affects women but is not principally about them. Beaucamp recognizes this development but does not ask whether it might explain much of what she observes. For example, at various points (lastly the conclusions to volume 2) she notes the importance for the status of women of the decline of the agnatic family. We may suppose that the legislative changes of late antiq-

¹³One anomalous deficiency in Beaucamp's treatment of the legal sources needs to be noted here. She consistently cites the *Digest* as if it (and the classical jurists) were a unitary source, troubled only by questions of the compilers' abridgements and interpolations. But the classical jurists were characterized by numerous controversies, and treating them in this way does violence to their thought. Beaucamp hardly ever even indicates from which jurist a particular passage from the *Digest* comes, a practice for which I can see no conceivable defense. Treggiari is often preferable on matters of classical law discussed by both authors.

uity were responding to the well-known, long-term shift of Roman society from an agnatic family structure to one based on the marital union and the family created by it.

This shift may (as Beaucamp seems to recognize) derive in part from an increasing impact on legislation by the social norms of the eastern empire. But there are signs of it in the classical western sources, too. It makes the survival of marriages much more important than it had been before. The liberality of the classical Roman law of marriage and divorce is inseparable from a legal structure that largely insulated the transmission of patrimonial property to male heirs from the vicissitudes of marriages.¹⁴ As property came to be conceived of as the goods of the couple,¹⁵ as de facto happened already under the earlier empire,¹⁶ this link became unstable. It is hardly surprising that a whole panoply of measures (some "repressive", some not) aimed at regulating marriages and stabilizing them came into being. These included preserving parental choice in the formation of marriages (hence the hostility to abduction), keeping partners together and reducing divorce, enabling the mother to take care of children after the father's death, and many of the other rules and practices described in both volumes.

In the long run this shift is of enormous importance. Whether or not it is positive for women is difficult to say. Overall, I think it was; the classical "liberalism" of Roman law worked in large part because women did not really matter. Now they did. But there was a price to pay for mattering. Constantine was ferocious about it, Justinian almost pastoral; but the underlying concerns were the same.

The structure imposed on the legal evidence continues to organize volume 2. There is a certain logic in arranging the material from the documents along the same lines as that from the legal sources, but it creates a predisposition to ask the same questions where different ones might be more interesting. Volume 2, in short, seems to me far too bound to legal interests to be able to support the broad conclusions that it reaches.

The persuasiveness of the conclusions of volume 2, then, is much less than it might seem at first reading. The questions asked are prefabricated, the material from earlier periods is not brought into the discussion, and the entire approach is much less conscious of the limits of the evidence than

¹⁴Cf. the rhapsodic treatment by F. Schulz, *Classical Roman Law* (Oxford 1951) 115-121 (118: "Free marriage had no immediate effects on property"), 132-36. Even the brief and sober remarks of W. W. Buckland, *A Textbook of Roman Law*³ (rev. by P. Stein, Cambridge 1963) 106-07 note that "Apart from issue, the effects of marriage were few, in law, a result of the Roman conception of *liberum matrimonium*."

¹⁵See now Beaucamp's important article, "L'Égypte byzantine: biens des parents, biens du couple?" *Eherecht und Familiengut in Antike und Mittelalter*, ed. D. Simon, *Schriften des Historischen Kollegs, Kolloquien* 22 (Munich 1992) 61-76.

¹⁶See Treggiari, *Roman Marriage*, chapter 11.

one would like. Various remedies would have been possible. One might, for example, ask systematically how far what is found in the documents could have been applicable to various other sectors of the female population. One might simply define as precisely as possible *which* women are being discussed and argue that the others cannot be studied meaningfully with the available evidence.

Or one might look for comparative evidence, from other periods of Egyptian history or from other societies, in part to allow other questions to emerge, in part to suggest hypotheses for testing. Throughout the reading of Beaucamp's two volumes, and especially in the second, I was struck by the sense that parallels for many of the social situations she describes could readily be found in Ptolemaic Egypt. And it is here that a troubling set of paradoxes and difficulties remains. If Egyptian practices in the domain of male-female relationships and family structure in the Roman period change only modestly in late antiquity, and if the practices of late antique Egypt resemble closely those of the rest of the East—both claims supported by Beaucamp's investigation—it should follow that these practices in Roman Egypt also resembled those of the rest of the Roman East. The next step is to point out that Roman Egypt is in this respect generally considered to bear a marked resemblance to Ptolemaic Egypt, and that Ptolemaic Egypt is usually supposed to be strongly marked by the encounter and partial transformation of Greek marriage customs with and by distinctively Egyptian patterns of behavior.

At this point we face several possible directions, all difficult. Egyptian patterns could be argued to be much less distinctive than the ancients thought. Perhaps much more of the Hellenistic and Roman East resembled what the Ptolemaic papyri indicate. Or perhaps the Greek style of behavior seen in the evidence from classical Athens may have been less typical of the Greek world than we imagine. Or our constructs of "Greek" and "Egyptian" may themselves be flimsy deceptions, usable as they stand only if we ignore differences of class. These are not, of course, mutually exclusive possibilities.

I rather imagine, too, that large parts of the picture could be matched in Mediterranean cultures of later periods.¹⁷ This larger context is entirely lacking from Beaucamp's treatment of the evidence. It is, yet again, hard to reproach the author of a work as long, as exhaustive, and as learned as this for not having extended the investigation still further. And yet I do not see how to draw any meaningful significance from this mass of evidence and analysis without a wider context. In particular, the large and haunting questions with which Beaucamp begins¹⁸ look as unresolved as ever at the end.

¹⁷For one example see the citation of Herlihy and Klapisich-Zuber (above, p. 80, n. 4) on remarriage after death of a spouse.

¹⁸These, to be sure, have problems of their own. Beaucamp seems to have accepted the widespread notion that change is what defines history, and set up change as the central problem of the book. This may in itself distort the investigation.

It is, however, a tribute to what she has done that the work of synthesis can, for the period of more than three centuries that this book treats, build on such a solid base.

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