

Women in Late Antiquity: Pagan and Christian Lifestyles

Gillian Clark

Oxford University Press 1994

Clark analyzed late Roman empire laws regarding women including marriage, divorce, dowry, adultery, prostitution and rape, contraception and abortion, inheritance, and public life. She notes that "[t]he law codes of any society tell us something about the actions the society wishes to prevent and persons it wishes to protect. They do not tell us enough, because legislation has to deal in general rules which do not always match what people think or do. " page 6

- 1) A dowry was probably the biggest financial transaction in which a woman was ever involved. Certainly it was a major investment by her family and often it was her share of the family inheritance." page 13
- 2) The minimum age for formal betrothal was seven and for a legally valid marriage was 12. Marriages were arranged by the father or guardian with the advantages to the family (not the girl) in mind. Since most girls were married by 16, a father or guardian who had failed to arrange a marriage by then was suspected of political or financial scheming.
- 3) "Under Roman law, a child was in the *potestas*- that is power to take actions which have an effect in law- of his or her father until the father died; so the child could not independently contract a valid marriage. . . . A girl could refuse to marry the man her father chose only if he was unworthy in status or behavior . . . , and the choice of a dead father took precedence over that of mother, guardian or other kin - or the girl herself . . . , since she might act against her own best interest." pages 14-15
- 4) "A woman remained in the *potestas* of her father, not of her husband, when she married, and became legally independent on her father's death. For almost all legal purposes, the important question was not whether she was married, but whether she was still in *potestas*. " page 15
- 5) The origin of the dowry was to protect the wife's financial security since it was not in the interests of the state to have poor widows, often with children, dependent on it. "Any property she inherited or acquired after her father's death remained her own. Her dowry could be used by the husband from the time of marriage, but with the powerful restraint that he might have to give some or all of it back if there was a divorce - exactly how much depended on the law of the time and the terms of the marriage settlement. It did not simply become his property. . . . If the husband had a financial disaster, return of dowry took precedence over the claims of his creditors." page 16

"Dowry cases take precedence always and everywhere, for it is in the public interest that dowries be safeguarded for women: it is absolutely essential that women should be dowered to procreate offspring and replenish the state with children' Dowry, which might look to us like a bribe to an intending husband, was in fact intended to give a wife status and security independent of her husband." page 16

6) "A wife was not allowed to give her husband any money or property: it was a traditional principle of Roman law that gifts could not be made between husband and wife, because love or pretended love (what Constantine called the 'usually deceptive blandishments' of spouses . . . , could lead to financial loss. The one exception to this rule was a further security for married women, the 'nuptial donation' This was a gift (or designation) of money or property by the bridegroom to his bride, and could be paid after the marriage had taken place. . . Nuptial donations rose in value, and by the time of Justinian (. . . AD 539), it was expected that the donation should be equal in value to the dowry, so that both parties should profit equally from the marriage." page 17

7) A women could divorce if she had financial and moral support of her family, or was legally independent. page 17

"Marriage was a contract made by people, which could therefore be unmade by people; the children had to be considered, but with regard to their inheritance, not the far more difficult problem of their emotional security." page 18

"The concern of the law was not to prevent remarriage . . . , but to ensure that the children's inheritance was not damaged by a dishonest or careless stepfather, or by their mother's rejecting them in favour of her new family." page 18

Legislators made occasional reproaches, but the law was chiefly concerned to ensure that property went to the legitimate heirs," page 29

8) A law formulated under Constantine stated: "A woman is not permitted to send notice of divorce to her husband, because of her depraved desires, for a far-fetched reason, as that he is a drinker or gambler or womanizer, nor are husbands allowed to divorce their wives for any and every reason. But when a woman sends notice of divorce, only the following charges shall be investigated: has she proved that he is a murderer, sorcerer, or destroyer of tombs? If so, she is praised and recovers her entire dowry. If she has sent notice of divorce for other reasons than these three charges, she should leave her last hairpin in her husband's house and be deported to an island for her great presumption. If males send notice of divorce, these three charges shall be investigated: do they wish to repudiate an adulteress, a sorceress [*medicamentaria*] , or a procuress? If a man expels a wife who is free from these charges, he must give back all the dowry and not marry another. If he does, the former wife shall be allowed to enter his house and

transfer to herself all the dowry of the second wife, in compensation for the injury done her." pages 22-23

A medicamentaria : someone who used drugs or spells for any purpose (including for the treatment of infertility, as an aphrodisiac, or as a contraceptive) page 22

Recall, a bit of historical trivia, that Justinian married the ex-actress (which was considered to be the closest thing to a prostitute possible), Theodora

9) Divorce laws frequently changed radically from divorce on demand to almost no tolerance for divorce (see item #8 above). The sense that marriage was a contract between two parties and like any other contract could be revised at will coexisted with the Christian moral sense that marriage was a divine sacrament and could not be abrogated except by God.

Yet, "[d]ivorce law, even at its most restrictive, failed to match the strictness of Christian teaching." page 26

10) As was often the case in antiquity, "a married woman was an adulteress if she had any male sexual partner other than her husband; whereas a man was an adulterer, whether or not he was himself married, only if his partner was a married woman." page 29

"A husband's infidelity, . . . was not taken seriously unless he threatened his wife's status by installing another woman in his house or spending most of his time in another woman's house, or if his affairs were so blatant as to insult his wife. But a man who seduced another man's wife had committed a most serious offence." page 35

11) "A man could not marry a barmaid, and if he had intercourse with her (or any other woman in that category), there could be no charge of unlawful sexual intercourse (*stuprum*), which applied only when the woman was marriageable or quasi-married as a concubine" page 29

12) "A slave could not marry because he or she had no rights over children or property, and was himself or herself in the power of an owner. Benevolent owners might recognize the partnership . . . of their slaves, and refrain from separating slave families . . . , but they retained their legal rights." pages 33-34

13) The crime of *raptus* "was not necessarily rape and did not necessarily imply sexual intercourse: *raptus*, like the eighteenth century 'ravish', covered abduction, seduction, and rape. For us, the obvious question to ask is whether the woman was actually a rape victim, but late Roman law has other priorities. A girl or woman who was abducted, whether or not intercourse had taken place, had in any case lost her reputation and her chance of marriage to anyone except her abductor. Her family was thus left without a choice, so *raptus* was in fact a known tactic for making a family consent to a marriage, and the girl was not always a

helpless victim This, not violence against women, is what provoked so much anger: just as adultery denied a father his right to legitimate heirs, so *raptus* denied a father his right to choose the man who would benefit from his daughter's inheritance." page 36

"Penalties for *raptus*, in Justinian's law, differed according to the social status of the woman [and by extension her father, the man to whom she "belonged"], not the level of violence inflicted on her, or the social status of the man concerned," page 37

14) "In later years he [Augustine] told his congregation that it was not acceptable to have a concubine before you married, and argued that a man who dismissed a faithful concubine, in order to marry, had committed adultery in his heart, not against his wife, but against his concubine, who was guiltless if she maintained her fidelity. . . ." page 39

15) Clark speculates on the rationale for the Church's opposition to cousin-marriages. Arguments supporting and refuting various strategies by which the Church benefited financially from the rejection of cousin-marriage are presented on pages 40-50.

16) Regarding abortion: The death of the fetus was not regarded as a crime since it was considered to be a part of the mother. Murder charges could result from the death of a woman during an abortion. If a woman had an abortion over the objection of the father, thus depriving him of an heir, she could be exiled for a time. If the father (or anyone speaking on his behalf in regards to a posthumous heir) concurred in the abortion decision, and if the woman survived, there was no problem for the law. Proving (attempted) abortion was difficult, since pregnancies were notoriously risky and unstable.

17) Regarding inheritance by minor children of a deceased father's estate: "In Roman practice . . . , as distinct from law, widows had been left in charge from the late second century, and ingenious legal devices had ensured that they were in control of the property which the children would inherit; whereas widows and divorcees had been bringing up children, with the nominal control of a guardian, at least since Cornelia mother of the Gracchi." page 59

18) "Under Augustus, there had been a decision not to enforce a creditor's claim against a woman who had taken responsibility for her husband's debt: it was a basic principle of Roman law that the property of husband and wife remained separate unless she actually passed into his family (a form of marriage which had become obsolete in the late empire). The consuls now asked the senate to advise on obligations undertaken by women on behalf of others, and were assured . . . that 'it is not equitable for women to undertake the duties of men, and be bound by any such obligations.' This principle also had the desired effect of safeguarding the woman's share of her family's property." page 60

19) Classical Greek medical theory considered women to be merely vessels in which the man's sperm was incubated much like the earth was the place where sown seeds grew. In late Roman antiquity, medical theory acknowledged that women actually contributed to the formation of their children. Since it is the man's seed that initiates the pregnancy, a woman's contribution to the child was of a lesser quality than that of the man's. Yet, Stoics and others agreed that the mother contributed elements of soul as well as body. A distinct improvement from classical Greece.

20) "Galen thought that celibacy in either sex was actually a health risk, causing problems from the retention of (male or female) seed." page 76 :-)

21) "Medical writers expected menarche in the fourteenth year" page 76

22) "Intercourse during menstruation (ranked with adultery in Leviticus 18:19) was said by Christian writers to produce deformed children" page 79

23) "Hippocratic medicine held that, until the embryo was 'formed' and the mother began to experience foetal movement, there was only a process of conception going on. Interference in this phase therefore counted as contraception. . . . Christians could find support for this in the standard Greek translation of Exodus 21: 22-3, which defines the penalties for hitting a pregnant woman so that she miscarries: they are said to be less if the child is not 'formed' . . ." pages 84-5

The reference to Exodus 21:22-23 is the only place in the Bible where the subject of termination of pregnancy is discussed and it reads in the NRSV:

When people who are fighting injure a pregnant woman so that there is a miscarriage, and yet no further harm follows, the one responsible shall be fined what the woman's husband demands, paying as much as the judges determine. If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, and stripe for stripe.

24) A rehash of the misogynistic biological theories of Aristotle, which is too revolting to reproduce here, appears on page 121. Basically Aristotle claims that women are inferior to men because of our differing biological processes. The Roman Platonists, Stoics, and Christians looked much more favorably upon women: they argued that women as female are obviously inferior to men, but women, like men, are human and have souls.

25) Our author makes a digression into a bit of modern feminist Christian theology: "A simpler solution was to read Genesis 1: 26-7 in the light of Genesis 2: 17-25, which describes the creation of Eve from Adam's rib. Modern feminist exegesis points out that, in the Hebrew text, *adam* means the human being created by God: there is no male Adam until 'the *adam* ' is separated into male and female Eve." page 122

Regarding the creation story in Genesis where God creates a "helpmate" for man: ". . . since the Hebrew word *ezer*, translated 'help', is also applied to God, it cannot imply subordination." page 124

26) "A Christian woman had the option of refusing the role defined for her by society and Scripture. She could argue that Mary's obedience to God had redeemed the disobedience of Eve; that Christ had redeemed all the children of God from slavery to sin, and that she too was a baptized Christian who had Christ's help in resisting sin. Her physical weakness could be overcome, and she had the moral and spiritual strength to manage without the support of a husband; she could resist desire and refuse to bear children in pain; she would be choosing the better part of devoting her life to God, as the bride of Christ, as a chaste widow, or even (with her husband's agreement) in a celibate marriage." page 126

27) "Perhaps only Bishop Atticus, preaching in Constantinople in the presence of Pulcheria, sister of Theodosius, could go so far as to declare: 'Through Mary all women are blessed; the female can no longer be held accursed, for the rank of this sex surpasses even the angels in glory. Now Eve is healed' . . . and he went on, anticipating the feminism of the 1970s, to list the admirable women to be found in the Bible." page 127

28) "Virginity . . . was liberation from the demands of society. . . ." page 127

29) "Women were prominent in many theological movements which came to be seen as heretical Their status within any such movement was one way of attacking it, on the grounds that women are naturally more credulous than men, and that it is quite improper for them to be in authority. If Mary did not baptize or exercise priesthood, it could not be right for other women to do so" an argument which has survived until the present. People who use this argument forget that Christ did not baptize or exercise the priesthood either. page 128

30) Christianity enlarged women's possibilities. By stressing the importance of one's commitment to God, both men and women, could reject duties to family and the State. For the first time in history some women "could reject marriage and child-bearing, and live at home with their mothers, or in solitude, or in a community of women. Prayer and Bible study could displace domestic life, whereas literature and philosophy had had to fit round it." page 140

Noonan, J. T. , Jr.

Contraception: A History of its Treatment by the Catholic Theologians and Canonists, 1966, (Cambridge, Mass.: Belknap)

The Morality of Abortion: Legal and Historical Perspectives, 1970, ed., (Cambridge, Mass.: Belknap)

Riddle, John M., *Contraception and Abortion from the Ancient World to the Renaissance*, 1992, Harvard University Press