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WOMEN AND THE LAW IN ROME: LEGAL CODES

Rome was clearly a patriarchal society. In the early period of the republic, punishments against women, for example in cases of adultery, were very harsh, whereas men were treated much more leniently. By the time of the Empire (27 B.C.E. ff), however, legal protections began to improve. The inequalities of patriarchalism continued, but Roman women were far more protected in law than was common in patriarchal societies.

The following passages convey essential features of gender law during the Roman Empire. A first section comes from a speech attributed to the emperor Augustus in 9 C.E. Augustus was addressing some upper-class fathers, explaining why he had greatly increased protections for the family rights of women (protections for which he had been much criticized). The passage invited analysis toward explaining why Roman law began to treat women somewhat more fairly.

The second section contains laws pertaining to some of the key aspects of women's lives in Roman society, all associated with family life, which was the arena in which women were most involved. The laws come from various periods of the Empire, up to the Justinian Code in the early 6th century. The laws require fairly close reading to tease out two elements: first, ways in which women were receiving rather unusual protections; but second, ways in which they were still, even in family matters, treated as unequal to men.

Legal conditions were not, of course, the whole story. Women had no formal role in political life. Under the Empire they were allowed to testify in court, but with severe limitations. Individual upper-class women were sometimes educated, but men tended to scorn their capacities in this area.

Women's situation in the Roman Empire invites comparison with other classical societies, such as China, covered by other documents on the classical period.

WOMEN IN ROME

I. AUGUSTUS ON FAMILY

Though you are but few altogether . . . yet for this very reason I . . . praise you the more, and am heartily grateful to you because you have shown yourselves obedient and are helping to replenish the fatherland. For it is by lives so conducted that the Romans of later days will become a mighty multitude. We were at first a mere

From Seutonius. *The Twelve Caesars: Gaius Seutonius Tranquillus*, translated by Robert Graves (Baltimore: Penguin Books, 1957). Permission Granted by Carcanet Press Limited.

handful, you know, but when we had recourse to marriage and begot us children, we came to surpass all mankind not only in the manliness of our citizens but in the size of our population as well. Bearing this in mind, we must console the mortal side of our nature with an endless succession of generations that shall be like the torchbearers in a race, so that through one another we may render immortal the side of our nature in which we fall short of divine bliss. It was for this cause most of all that that first and greatest god, who fashioned us, divided the race of mortals in twain, making one half of it male and the other half female, and implanted in them love and compulsion to mutual intercourse, making their association fruitful, that by the young continually born he might render even mortality eternal. . . .

For is there anything better than a wife who is chaste, domestic, a good house-keeper, a rearer of children; one to gladden you in health, to tend you in sickness; to be your partner in good fortune, to console you in misfortune; to restrain the mad passion of youth, and to temper the unseasonable harshness of old age? And is it not a delight to acknowledge a child who shows the endowments of both parents, to nurture and educate it, at once the physical and spiritual image of yourself, so that in its growth another self lives again? . . . Those are the private advantages that accrue to those who marry and beget children; but for the State, for whose sake we ought to do many things that are even distasteful to us, how excellent and necessary it is, if cities and people are to exist, and if you are to rule others and all the world is to obey you, that there should be a multitude of men, to till the earth in time of peace, to make voyages, practice arts and follow handicrafts, and, in time of war, to protect what we already have with all the greater zeal because of family ties and to replace those that fall by others. Therefore men—for you alone may properly be called men—and fathers. . . . I love and praise you for this; and I not only bestow the prizes I have already offered but will distinguish you still further by other honors and offices, so that you may not only reap great benefits yourselves but may also leave them to your children undiminished. . . .

II. LAWS OF MARRIAGE

A betrothal, like a marriage, is made with the consent of the contracting parties, and therefore, as in the case of a marriage, a son under paternal control must agree to it.

A girl who evidently does not resist the will of her father is understood to give her consent. A daughter is permitted to refuse to consent to her father's wishes only when he selects someone for her husband who is unworthy on account of his habits or who is of infamous character.

Widows under the age of twenty-five, even though they may have obtained the freedom of emancipation, still cannot marry a second time without the consent of their father. If, however, in the choice of a husband, the desire of the woman is opposed to that of her father and other relatives, it is established (just as has always been decreed with reference to the marriage of virgins), that judicial authority should be interposed for the purpose of examination, and if the parties are equal in family and in morals, he shall be considered preferable whom the woman has selected herself. . . . [371 C.E.]

The following law (326 C.E.) put an end to the activities of outside informers who must often have extorted blackmail.

III. ADULTERY ACCUSATIONS (TO PROTECT AGAINST OUTSIDE ACCUSATIONS AND BLACKMAIL)

Although adultery is considered a public crime, the right of accusation for which is granted to all persons in common, without any special interpretation of the law, still, lest the right of accusation be rashly entrusted to persons who wish to dishonor marriages, it is Our pleasure that the right of accusation shall be granted only to the nearest and closest of kin, that is, a father or cousins, and especially to consanguineous [blood] brothers who are driven by real indignation to accusation. But even upon those persons We impose the law that they shall have the right to suppress the accusation by annulment of the suit. The husband above all ought to be the avenger of the marriage bed, since to him the former Emperors of olden time granted the right to accuse the wife even on suspicion and not to be bound by the bond of inscription within the statutory time limits. [*Theodosian Code*, 326 C.E.]

IV. DIVORCE

It is our pleasure that no woman, on account of her own depraved desires, shall be permitted to send a notice of divorce to her husband on trumped-up grounds; as, for instance, that he is a drunkard or a gambler or a philanderer, nor indeed shall a husband be allowed to divorce his wife on every sort of pretext. But when a woman sends a notice of divorce, the following criminal charges only shall be investigated, that is, if she should prove that her husband is a homicide, a sorcerer, or a destroyer of tombs, so that the wife may thus earn commendation and at length recover her entire dowry. For if she should send a notice of divorce to her husband on grounds other than these three criminal charges, she must leave everything, even to her last hairpin, in her husband's home, and as punishment for her supreme self-confidence, she shall be deported to an island. In the case of a man also, if he should send a notice of divorce, inquiry shall be made as to the following three criminal charges, namely, if he wishes to divorce her as an adulteress, a sorceress, or a procuress [panderer]. For if he should cast off a wife who is innocent of these crimes, he must restore her entire dowry, and he shall not marry another woman. But if he should do this, his former wife shall be given the right to enter and seize his home by force and to transfer to herself the entire dowry of his later wife in recompense for the outrage inflicted upon her [*The Theodosian Code*, 331 C.E.]

On Property Rights

After the time of Augustus, the adulterous wife lost half her dowry.

It is to the interest of the state that women [in case of divorce] should have their dowries preserved in order that they can marry again.

The cause of the dowry always and everywhere takes precedence, for it is to the public interest for dowries to be preserved for wives, as it is absolutely necessary

that women should be endowed for the procreation of progeny and to furnish the state with freeborn citizens.

When anyone desires to separate from a woman whom he married without a dowry, he shall not be permitted to do so, unless some fault is committed which is condemned by Our laws. If, however, he should reject her without her having been guilty of any fault, or he himself should commit such a fault . . . he shall be compelled to give her the fourth part of his own property [*Justinian Code*, 528 C.E.]

On Adultery

Although it is established by the contents of certain documents that you are consumed with the lust of immoderate desire, still, as it has been ascertained that you confined yourself to female slaves, and did not have intercourse with free women, it is clear that by a sentence of this kind your reputation suffers rather than that you become infamous [291 C.E.]

If any woman is discovered to have a clandestine love affair with her slave, she shall be subject to the capital sentence, and the rascally slave shall be delivered to the flames. All persons shall have the right to bring an accusation of this public crime. . . . [*Theodosian Code*, 326 C.E.]

STUDY QUESTIONS

1. What were some of the unusual legal protections offered to women in later Roman society?
2. What aspects of Roman law demonstrate that Rome was, at base, a patriarchal society?
3. How were men and women treated differently in cases of adultery?
4. What caused Rome's willingness to extend certain protections to women? What factors did Augustus suggest? Can you think of other factors?
5. How did women's conditions in Rome compare with those in other classical societies, such as China and India? How did the evaluation of women compare to that of Aristotle, in classical Greece (Chapter 19)?