The Women of the *Codex* of Justinian: Access to Power and Women's Agency in Responses to Imperial Petitions

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Contents

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Abbreviations

Abbreviations of papyri follow Oates, J. F. (ed.) 2001: *Checklist of Editions of Greek, Latin, Demotic, and Coptic Papyri, Ostraca, and Tablets*, 5th ed., Oakville, Conn. An up to date list is available at https://papyri.info/docs/checklist [accessed 01/12/2021].

Abbreviations of classical authors and the titles of their works are taken from Hornblower, S., Spawforth, A., and Eidinow, E. 2012: *The Oxford Classical Dictionary*, 4th ed., Oxford.

References in the text to the *Codex* refer to the *Codex Justinianus*. Where multiple codices are discussed together, the full title is used to avoid confusion.

Unless otherwise stated, all dates in this thesis are CE.

CG.	*Codex Gregorianus*
CH.	*Codex Hermogenianus*
CIL.	*Corpus Inscriptionum Latinarum*, Berlin, 1862-.
CJ.	*Codex Justinianus*
Coll.	*Mosaicarum Et Romanarum Legum Collatio*
CT.	*Codex Theodosianus*
D.	*Digest of Justinian*
FV.	*Fragmenta Vaticana*
IG.	*Inscriptiones Graecae.* Berlin, 1924-.
IG. Bulg	*Inscriptiones graecae in Bulgaria repertae*, ed. Georgi Mihailov. 5 vols. Sofia, 1958-1970, 1997.
ILS.	*Inscriptiones Latinae Selectae*. ed. Dessau, Hermann. Three vols. in five parts. Berlin, 1892-1916.
Inst.	*Institutes of Justinian*
LGPN	*A Lexicon of Greek Personal Names*, Fraser, P. M., and Matthews, E. Eight vols. Oxford; New York, 1987- . Database available at http://clas-lgpn2.classics.ox.ac.uk/name# [accessed 01/12/2021].
SC.	*Senatusconsultum*
SEG.	*Supplementum Epigraphicum Graecum*, Leiden, 1923-.

TH. Arangio-Ruiz V. and Pugliese Carratelli G. 'Tabulae Herculanenses', *La Parola del Passato* 1, 1946, 379–85; 3, 1948, 165–84; 8, 1953, 455–63; 9, 1954, 54–74; 10, 1955, 448–77; 16, 1961, 66–73.

Trismegistos *Trismegistos: An interdisciplinary portal of the ancient world*, Depauw, M., and Gheldof, T. 2014: 'Trismegistos: An Interdisciplinary Platform for Ancient World Texts and Related Information', in Ł. Bolikowski, V. Casarosa, P. Goodale, N. Houssos, P. Manghi, and J. Schirrwagen (eds), *Theory and Practice of Digital Libraries -- TPDL 2013 Selected Workshops*, Cham, 40–52. Database available at http://www.trismegistos.org [accessed 01/12/2021].

Additional Information

Throughout this thesis, the term "enslaved person" is used in preference to "slave", as a way to separate the condition of being enslaved from the status of "being a slave". Similarly, "enslaver" or "individual who claimed people as property" is used in preference to "owner" or "master"/*dominus*. See P. Gabrielle Foreman, *et al*. "*Writing about Slavery/Teaching About Slavery: This Might Help*" community-sourced document, 2018. Available at https://docs.google.com/document/d/1A4TEdDgYslX-hlKezLodMIM71My3KTN0zxRv0IQTOQs/ [accessed 01/12/2021].

Abstract

This thesis focuses on over 600 replies – rescripts – to imperial petitions addressed to women found in the sixth-century *Codex Justinianus*, material that has hitherto been under-utilised as a source of evidence for the lived experience of Roman women. It provides a new quantitative and qualitative analysis of these rescripts in order to investigate the factors influencing the agency of Roman women. It identifies who these women were, what they petitioned about, and what the rescripts can tell us about their agency.

This thesis provides a new approach to the categorisation of the rescripts, focusing on the motivations of the petitioners themselves rather than on legal principles to demonstrate that women petitioned the emperor regarding one or more of four broad areas of concern: social or legal status, economic status, protection of family, and personal security. By identifying three dominant resources in the production of power and agency, it provides an in-depth analysis of the socio-legal position and economic strength of the women concerned, before analysing the ways in which women acted independently of male control.

This thesis argues that the women of the *Codex* were broadly representative of the property-owning non-elite, a section of society that rarely appears in elite literature but is well represented in papyri, and demonstrates the utility of the *Codex* as a source for Roman social history.

Declaration

No portion of the work referred to in this thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning

Copyright Statement

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Introduction

At some time in the mid-third century, a woman called Grattia Aelia submitted a petition to the emperor Gordian III in the hope of receiving assistance with a difficult legal problem that she was facing. The contents of that petition, and how she resolved the situation, are lost to us, and all knowledge of Grattia Aelia and her life would have passed unremarked, were it not for the fact that the emperor's response to her, and around 600 other women like her, is preserved in the sixth-century *Codex Justinianus*. These women are the focus of this thesis. Who were they, and what drove them to approach the emperor? Was Grattia Aelia typical of the women who used the imperial system of petition and response? Was her problem an unusual one, or were such concerns common among women like her? To answer these questions, this thesis brings the women themselves, their motives and their experiences, rather than law or the process of petitioning, to the fore to better understand what drove these women to engage with legal authorities.

For individuals living in the Roman Empire, like Grattia Aelia, who required legal assistance, support was available from a variety of sources. The elite could rely on bonds of *amicitia* and patronage to obtain support from others, and those with the financial capability could call upon the resources of professional lawyers. When the sub-elite, citizens of lower status with more meagre financial resources, ran into legal trouble, options were more limited.[1] However, these citizens were able to engage with legal authorities using systems of petition and response, described by Honoré as "a social service, as an element in the judicial process or as an instrument of law and government".[2] Presenting a petition to someone in a position of authority, whether the emperor in the imperial system or a local or provincial official, allowed access to the law for many for whom the financial or social obstacles to legal support would be otherwise unsurmountable.

[1] Connolly 2010:17.
[2] Honoré 1994:33.

How the imperial process of petitioning and its function in the Roman Empire worked in practice has been the subject of much study and debate, detailed discussion of which is beyond the scope of the present work, although aspects of this debate are introduced in the chapters that follow.[3] Nevertheless, the basic outline of the system can be summarised thus: written petitions were delivered in person to the emperor through an official known in different periods as the *procurator a libellis* or *magister libellorum*, and a written response was composed and published publicly. These replies, *rescripta*, assumed the force of law, and while no private petitions to the emperor are extant, lawyers often collected the replies to assist with the teaching of law.[4] There is debate as to the extent to which the emperor was personally involved in this process, but for the petitioners who received the rescripts, the fact that they were issued in his name was perhaps more important than who actually created them.[5] For the purposes of this thesis, therefore, references to "the emperor's reply" should be understood in this way.

When in 527 the emperor Justinian instituted the creation of the *Corpus Iuris Civilis*, discussed further below, the compilers of the *Codex* that bears his name collated around 2,500 of these private rescripts. The majority of this content was taken from two previous collections of rescripts, the *Codex Hermogenianus* compiled during the reign of Diocletian, containing rescripts dating entirely from 292-293, and the *Codex Gregorianus*, collecting rescripts from Hadrian to 291.[6] The entries in Justinian's *Codex* postdating the reign of Diocletian consist of replies to officials rather than individual petitioners, and as such, while of immense value in the study of Roman law, have limited value in determining the way ordinary people interacted with it.

There does not seem to have been any bias towards a particular group of petitioners,

[3] For an overview of the process, see in particular Williams 1974:93-98; Honoré 1994:33-53, Corcoran 1996:43-48; Connolly 2010:22-38; 55-62; Millar 1992:240-252.
[4] Honoré 1994:41; Corcoran 1996:48; Connolly 2010:37. There are, however, a number of epigraphic sources containing both petition and response that were submitted by groups rather than individuals. See Hauken 1998; 2004; Hauken *et al.* 2003.
[5] Cf. Connolly 2010:157. See also p.58, n.150.
[6] Corcoran 1996:26–28; Connolly 2010:39–42. See below, pp.19-21.

whether by social status, gender, or financial position, and just as we see in papyri from Egypt, women were regular users of these systems.[7] The sub-elite appear to have made the most use of the petition and response system and the very lowest members of free Roman society, the *egeni*, do not seem to appear in the *Codex*.[8] Roman law was intended to protect Roman structures of hierarchy, much of which was built on wealth and status, and with no property or status to speak of, the *egeni* had no need to appeal to the emperor. Enslaved persons could use the system only in exceptional circumstances although those who found their status as free persons challenged were frequent users of the system, reflecting the importance of legal status. While some consider these recipients to be *de facto* enslaved persons, I argue in Chapter 3 that their lived experience was in fact different to those who were truly enslaved.

The primary aim of this thesis is to provide a detailed quantitative and qualitative analysis of the rescripts addressed to women in the *Codex Justinianus*, considering how the problems the women faced affected their lives, and how their social position influenced the way they dealt with these problems. Previous studies of the rescripts and of imperial petition and response more generally, reviewed in Chapter 1, have often focused on the emperor's person and the purpose of the system as a means of displaying his power and influence, rather than the power and agency of the recipients. That is to say that these studies have often been top-down, although as will be shown, there have been a number of works which have gone some way to approaching the rescripts from a sociological perspective, albeit limited to particular periods or emperors.

This thesis develops these studies to better understand the motivations of the women who petitioned and place the rescripts they received within the context of their lived experience, rather than seeing the rescripts as purely legal texts. This thesis advances existing scholarship regarding the *Codex*, particularly in terms of the representation of

[7] Connolly 2010:1–5; Millar 1992:466–468. There is significant scholarship on women as petitioners in Egypt; see for example Bagnall 2004; Bagnall and Cribiore 2008; Pomeroy 1981; Parca 2002; Beaucamp 1992.
[8] See Chapter 4 *passim*, and pp.138-139 especially.

women, ties together a number of existing strands of research, finding links between otherwise separate areas of scholarship, and opens new avenues and methodologies of research into both Roman law and the status of women. It offers a new approach to this under-utilised body of texts, and complements an increase in interest in the *Codex* following the publication of the first reliable English translation in 2016, based on the previously unpublished manuscripts of Justice Fred H. Blume.[9]

Since the 1970s the study of women in antiquity has flourished and while this has often focused on literary depictions of elite women, "ordinary" women have increasingly become the focus of such works, using evidence from non-elite and non-literary sources, particularly papyri, but also including epigraphy and material culture.[10] This has allowed scholars to illuminate otherwise hidden aspects of women's lives, and to bring the lived experiences of these women to the fore. The interaction between Roman women and law has played a significant part in these studies, often focusing on what the law said women could or could not do as the centre around which women's identities revolved, setting out the formal legal position while at the same time suggesting ways women circumvented these rules. General treatments of "women in Roman law" or the "status of Roman women" have regularly selected individual rescripts to illustrate the intersection between law and reality, but these are often used as a means to underline a particular point of law under discussion, rather than to reconstruct the lived reality of the recipients.

Gardner's excellent *Women in Roman Law and Society*, one of the earliest works to broaden the scope of "Roman women" beyond the elite representations found in legal and literary sources, used a range of non-literary evidence to investigate how Roman

[9] Frier *et al.* 2016. On Justice Blume and his translation, see Kearley 2007; 2016. Scott's translation of the *Corpus Iuris Civilis* was criticised almost immediately after its 1932 publication for relying on outdated Latin editions and containing numerous errors; see Buckland 1933. Kearley (2014:33-34) provides a summary of the criticisms levelled at Scott's work while recognising its importance.

[10] Pomeroy's 1975 work *Goddesses, Whores, Wives, and Slaves* was the first general work to reflect modern feminist discourse, with many earlier works relying heavily on literary evidence written by elite men for elite men. Other important general works on women in antiquity include Foley 1981; Peradotto and Sullivan 1984; Skinner 1986; Clark 1989. See Pomeroy 1973 for an overview of the earlier bibliography on women in antiquity and her suggested undergraduate syllabus (pp.152-157), although here too the suggested primary source readings are entirely literary.

law affected the lives of real women, demonstrating both the structural inequality faced by Roman women and the diversity of women's lives in the Roman Empire.[11] In discussing topics including marriage, guardianship, children, and inheritance, Gardner referred to a total of twenty-four rescripts from the *Codex*, not all addressed to women. Similarly, Evans Grubbs' sourcebook *Women and the Law in the Roman Empire* made substantial use of papyri and inscriptions as a means to illustrate law in practice, and while she included sixty-four private rescripts, only thirty-six of these were actually addressed to women.[12] In both works the starting point is a legal principle the author wishes to elucidate, and this thesis therefore provides an alternative viewpoint, approaching the rescripts not from a law-first perspective but as a rich source of evidence for the ways in which women conceptualised their place in Roman society.

That is not to say that these authors and others have not recognised the value of the rescripts for this purpose. Indeed, Evans Grubbs in particular has published a number of articles and chapters in edited works in which she has used rescripts as a means to explore specific social issues, such as parent-child conflict, "mixed" marriages, and *pietas*, and her approach has significantly influenced the development of this thesis.[13] This thesis uses a similar approach, in which the lives of recipients are "reconstructed" from the often-short texts contained in the *Codex*, but expands the scope of earlier work to include the entire corpus. In this way, it is more easily possible to identify connections, patterns, and trends. Connolly's *Lives behind the Laws* has demonstrated the utility of taking such a broad view of an entire collection of rescripts, although that work is restricted to those rescripts contained within the *Codex Hermogenianus*, and therefore representative only of the two-year period 293-294. This thesis builds on the temporal scope of that work to include the rescripts outside the *Codex Hermogenianus*, providing an opportunity to identify change over time. By simultaneously limiting the scope to include only the women recipients, it also allows a more detailed examination of the concerns and motivations of the women who used the imperial system of petition and response.

[11] Gardner 1986a.
[12] Evans Grubbs 2002.
[13] Evans Grubbs 1993; 2005; 2010.

Access to power

Containing a single sentence, the emperor's reply to Grattia Aelia provides some indication as to the nature of her problem:

> Emperor Gordian to Grattia Aelia. If your husband has sold property belonging to you without your consent, then even though you sealed the purchase-instrument with your seal, induced to do so through fraud, such trickery cannot furnish protection to the purchaser if he is not rendered secure by usucaption or prescription of a long time. (CJ.4.51.2)
>
> *gord. a. grattiae aeliae. Distrahente marito rem iuris tui, si consensum non accommodasti, licet sigillo tuo venditionis instrumentum fraude conquisita signaveris, eiusmodi tamen commentum emptori usucapione non subsecuta vel longi temporis praescriptione non munito nullam praestitisse potest securitatem.*

The rescript was included within the *Codex* because for the compilers it succinctly made a useful point about Roman law: it was not possible to alienate the property of others without consent, and consent given through fraud rendered such a transaction void. The background to the case was irrelevant in their decision to retain the rescript, but if we read it not as a purely legal text but instead as a window into the lived experience of the recipient, this short text reveals something more. Grattia Aelia certainly had access to power – she was able to approach the most powerful individual in the empire – but her petition also reveals that she had another form of power: the ability to employ resources, whether economic, social, or physical, in order to pursue a desired outcome, in this case the recovery of her property.[14]

In a patriarchal society in which women were structurally excluded from political and most forms of public power, this ability to resist the will of others or to impose her own will upon them, and to make free choices about her course of action, illustrates that

[14] For definition of power in respect of agency, see Weber 1921 [2019:134].

Grattia Aelia and women like her possessed substantial agency. This thesis investigates the source of that agency, identifying what resources these women possessed and how they employed them in the production of power. We can consider the key feature of agency to involve the capacity of an actor for free thought and action, while remaining aware that those actions are constrained by structures embedded within the society the actor inhabits.[15] For women in the Roman Empire, these constraints were predicated on the view that women were legally and socially inferior to men, and the importance of these restrictions cannot be overstated, but the majority of the users of the system of petition and response came from the non-elite classes.[16] The consequences of legal restrictions aimed at the wealthy property-owning elite did not necessarily affect all women in the same way. Similarly, agency cannot be measured according to a single scale or standard; it is multi-faceted and dependent on any number of variables, the majority of which are invisible to us and different for every individual – access to education, health status, extra-familial support networks, and local cultural practices, for instance.[17] The scope of this thesis then is not what influenced *the* agency of Roman women in a broad sense, but rather those factors that influenced the agency of the individual women it discusses. Nevertheless, many of the insights it provides into the lives of these particular women are likely to reflect the experiences of the multitude of women who lived in the Roman Empire whose names and lives are lost to us.

If defining precisely what agency means is difficult, and factors beyond our understanding affected the agency of women in the Roman Empire, there are nevertheless some variables we can measure, or at least investigate. Access to or control of "enabling resources" is central to the ability to make choices,[18] and this thesis argues that three key resources are identifiable in the rescripts addressed to

[15] Giddens 1984:14-16; Kabeer 1999:437. How agency is defined, measured, interpreted, and its link to structure and power is subject to significant debate among social scientists. For an overview of the key arguments, see Emirbayer and Mische 1998; Hitlin and Elder 2007; Fuchs 2001. On women's agency in particular, see Evans 2013; Wilson 2008; Yount *et al.* 2016:3.
[16] See pp.123-126.
[17] Qutteina *et al.* 2019:33-37; Yount *et al.* 2019:2-3.
[18] Kabeer 1999:436–438.

women. Legal and social standing provided the structural basis for women to acquire other resources, while economic capacity, such as access to land, money, and enslaved persons, provided women with the capability to take independent action, as did freedom from male control, although this can only be partially determined in terms of *patria potestas*, guardianship, and spousal influence.[19] A fourth resource, that of personal safety and security, is more difficult to measure and is beyond the scope of this thesis, although discussed briefly in Chapter 2.[20]

Scope and limitations

The women whose lives this thesis discusses did not petition the emperor in isolation; the petition was unlikely to have been the only, or even final, act of resolving a dispute, and private dispute resolution and other extra-legal processes had a significant part to play in reaching a solution.[21] Whether the petition was a final attempt to resolve a long running dispute, or submitted at an early stage hoping to avoid further action, is often difficult to establish from the text of the rescripts, although there are some clues.[22] Many of the rescripts demonstrate that the petitioners had already interacted with other officials or had been involved in court cases before petitioning the emperor, and were using the system as a form of appeal, or in order to ensure the judgment of an official was enforced.[23] In many cases, the emperor's response directed the petitioner to another official, outlining the legal situation but otherwise not making any further judgment.[24] Such women might use that rescript to encourage their opponent to back down without necessarily invoking further legal processes, but analysis of how alternative dispute resolution affected the women of the *Codex* requires far more space than is possible in this thesis, which focuses on the resources acting on women's agency rather than the process of dispute resolution itself.

[19] The inclusion of enslaved persons as a "resource" here is not intended to dehumanise enslaved persons, but reflects the contemporary view in Roman society of enslaved persons as property.
[20] p.90.
[21] On dispute resolution in antiquity, see in particular Harries 1999:172-190; Czajkowski 2019:15-19. For Egypt, see most recently Kelly 2011:244-86; Gagos and Minnen 2004.
[22] Although Hobson (1993:200) has suggested petitions represent "a final stage" in the dispute process, Kelly (2011:265-86) has shown that, in Egyptian evidence at least, petitioners used the system at various stages of a dispute, for different purposes.
[23] For example, CJ.2.55.3 (Diocletian & Maximian, 290); CJ.3.6.1 (Gordian III, 239).
[24] See for example CJ.3.8.1 (Septimius Severus & Caracalla, 203); CJ.3.8.2 (Caracalla, 213).

One of the biggest challenges of this thesis comes from the fact that our sources are themselves incomplete – we have only one side of the process, and in most cases, the rescripts contain very little contextualising information about the recipient or their problem. While we can reconstruct likely scenarios, and speculate as to the motivation and background of the petitioners, these scenarios can only ever be interpretations – the reality of these women's lives were far too complex for us to understand at 2000 years' distance. However, it is possible to find similarities in other sources, such as papyri, epigraphy, or literary records, which can guide our interpretation, and while individual cases can provide only snapshots of the legal culture(s) of these women, we can begin to find patterns and trends in behaviour when we consider the *Codex* as a whole. Comparative analysis of other cultures and periods can also be helpful from a sociological or anthropological point of view, although we must also treat such comparisons carefully.

Another question this thesis raises, but does not have the space to answer, is to what extent the women who petitioned the emperor, most of whom lived in the eastern provinces, saw themselves as "Roman", or whether this was simply one identity among several. Until the promulgation of the *Constitutio Antoniniana* in 212, Roman law applied directly only to Roman citizens; afterwards Roman law, in theory at least, applied to almost everyone living in the Empire.[25] This does not mean, however, that Roman law was the only law in use either before or after 212, or that Roman law was used in the way it is outlined in legal sources. Detailed discussion of legal pluralism in the Roman Empire is beyond the scope of this work, but it must be borne in mind that the law as described in the *Corpus Iuris Civilis* is not necessarily the law that was followed by all citizens in all parts of the empire at all times.[26] While the Roman Empire consisted of diverse peoples, with varied traditions and legal cultures, and these legal cultures influenced the way individuals interacted with each other and with Roman law, the focus of this thesis is restricted to the way that the women who petitioned situated

[25] See also pp.100-101.
[26] For recent scholarship on legal pluralism in the Roman Empire, see Tuori 2007; Czajkowski 2019; Humfress 2013; Ando 2011; Alonso 2013.

their problems within Roman law. The women discussed in this thesis actively chose to invoke Roman law when they petitioned the emperor and whatever other identities these women possessed, for the purposes of resolving the problem concerned, they situated themselves within that legal framework.

Legal background and the creation of the *Codex*

Before we can begin to use this valuable source of information for women's lives and legal culture, it is essential to consider a number of factors: an awareness of how the sources were created, how they were promulgated and used in legal practice, and their later transmission are vital if we are to properly interpret the texts. While detailed discussion of the development of Roman law and discussion of the sources of and for Roman law is beyond the scope of this thesis, before moving on to the thesis proper I will first outline the background against which the *Codex* was created, to set the discussion that follows in its proper context.[27]

The need to reform the confusing mass of Roman law was well recognised as early as the late Republican period. According to Suetonius, Julius Caesar had intended to "reduce the civil law to a settled limit" while Livy, describing the creation of the Twelve Tables, suggested that by his day imperial law had grown into an "immense heap of law piled upon law".[28] The need for codification of Roman law only grew in importance as the empire expanded and the population who were subject to this law increased. In 438, the emperor Theodosius promulgated the *Codex Theodosianus*, intended to collect all imperial constitutions with edictal or general force issued since the reign of Constantine 100 years earlier.[29] The *Codex* was arranged by title, i.e. its subject, with the source texts divided where necessary across titles, although the dates and

[27] The bibliography on this topic is extensive. See in particular Robinson 1997; Jolowicz and Nicholas 1972:86-101; 353-373; Ibbetson 2015; Mousourakis 2012:1-84.
[28] Suet.*Jul*.44; Liv.3.34.6. As Tacitus (*Ann*.3.27) remarked, in the late republican period a great deal of contradictory (*multa et diversa*) legislation had been passed during the upheavals of the civil wars and their aftermath, and while much of this was later repealed, the volume of legislation created was slowed but not stopped.
[29] CT.1.1.5. Matthews 1993; Honoré 1986:133; Salway 2013; Harries 1998:63.

chronological sequence of the source texts were retained.[30] The process by which the compilers of the *Codex Theodosianus* collected constitutions of the emperors after Diocletian is largely unknown – although we know the names of the compilers, the text itself gives no further detail of precisely how they worked.[31]

The *Codex Theodosianus* was the first codification of imperial constitutions to receive "official" recognition and Theodosius forbade the unofficial reproduction of the work in 443 in a bid to ensure the text retained its authority without inaccuracies and unauthorised additions.[32] It was not, however, the first attempt to codify the constitutions of the emperors; the *Codex Theodosianus* was modelled on two Diocletianic codes – the *Codex Hermogenianus* and *Codex Gregorianus*. Neither the *Codex Hermogenianus* nor the *Codex Gregorianus* survive except as fragments and references in later works, the majority in the *Codex Justinianus*, and there is some debate as to whether either was an officially sanctioned collection.[33] Little is known of the creator of the *Codex Gregorianus*, which contains rescripts issued between the reign of Hadrian and 291, while the *Codex Hermogenianus*, containing rescripts dating entirely from 292-293, was created by Diocletian's *magister a libellis* Hermogenian, and appears to have followed the structure of the *Codex Gregorianus*.[34] The purpose is unclear; Connolly suggests that the *Codex Gregorianus* was intended to form the basis of a "library" of imperial responses and if this is indeed the case, it adds more weight to Turpin's view, based on references to the codes by both Theodosius and Justinian, that they were official in all but name.[35] The constitutions of the emperor had become the most important source of law but until they were codified, the job of finding an individual response in an imperial archive would have been beyond the reach of most lawyers and law students, raising a question of how widespread the knowledge of the content of these constitutions really was.[36] After the publication of the *Codex*

[30] CT.1.1.6.
[31] CT.1.1.6.2. See in particular Sirks 1993.
[32] *gesta senatus urbis Romae, 7;* Matthews 1993:19.
[33] Corcoran 2016:ciii; Harries 1998:66; Turpin 1987:620; Connolly 2010:41–42.
[34] Corcoran 1996:26–28; Connolly 2010:39–42; Harries 1998:65.
[35] Connolly 2010:39; Turpin 1987:624.
[36] Robinson 1997:114; Watson 1994:117.

Theodosianus there was to be no excuse for ignorance, as was stated explicitly: "We permit no one to be ignorant, actually or by pretence, of the constitutions of emperors".[37]

Despite Theodosius' successful compilation of the *Codex Theodosianus*, his original plans had been more wide-reaching, intending to create two codes; one a collection of all imperial constitutions currently valid in court and therefore potentially including contradictory statements, the other to create a definitive list of valid law, removing any contradiction.[38] His plan was not realised until a century later, when in 533 the emperor Justinian published his *Institutes* and *Digest*. Four years earlier, Justinian had published his own *Codex*, having used the Hermogenianic, Gregorian, and Theodosian codes as its models and as source of many constitutions. A second edition of Justinian's code was published in 534, which included the so-called "50 decisions", Justinian's resolution of a number of problematic divergences between classical jurists. It is this second edition, the *Codex Repetitae Praelectionis*, which forms the basis of the modern recreation of the *Codex Justinianus*.[39] With Justinian's project completed, Roman law had been reduced from a patchwork of varied sources, opinions and disagreement into a definitive body of work – now known as the *Corpus Iuris Civilis.*

The *Corpus Iuris Civilis* provides us with the single largest source of Roman law, and while it allows the modern historian of law or Roman society to access a huge range of Roman legal thought there are significant problems to be taken into account. The methods the compilers of the *Codex Theodosianus* and the *Codex Justinianus* used to pull together their source material are unclear; while they clearly used existing texts, where these texts came from, how they were chosen, and to what degree the final text resembles the original is unknown. Similar problems affect the *Digest* and *Institutes*; while there are control texts for the work of some jurists, the *Corpus Iuris Civilis* is for

[37] CT.1.1.2 (= CJ.1.18.12).
[38] CT.1.1.5; While many see the variance between the laws of 429 (CT.1.1.5) and 435 (CT.1.1.6) as an acceptance by Theodosius that his plan was unachievable and therefore marks a significant change of plan, for an alternative view – that the changes outlined in 435 were always intended - see Matthews 1993:30.
[39] Johnston 1999:22; Watson 1994:117–118.

the most part the only extant source.[40]

The question of to what degree the compilers of the *Corpus Iuris Civilis* changed the source texts has been debated for some time. In the late 19th and early 20th centuries, "interpolation hunting" became a significant pastime for many Roman legal historians and the *Corpus Iuris Civilis* was considered a deeply corrupted source of classical law.[41] However, this view has largely been replaced by one of cautious confidence in the general reliability of the majority. The general reliability has been argued on several fronts; Watson considers the preface to the *Codex Justinianus* to provide ample evidence that the compilers were not to make significant changes to the texts, and while he concedes there are interpolations contained within he argues that these take two distinct forms which are relatively simple to identify.[42] Johnston follows a similar line of argument and makes the additional point that there is significant evidence within the *Corpus Iuris Civilis* of respect for the jurists; there are many instances in the *Digest* where excerpts of a jurist are placed within a passage of another jurist in order to clarify a point and recorded as such, and if the compilers were not concerned with ensuring accuracy they are unlikely to have taken pains to ensure the original reference text was included. [43]

How far the texts refer to "real" cases, and to what degree they are hypothetical cases intended for study is an equally contentious question.[44] While the *rescripta* in the *Codex Justinianus* are, by their nature as replies to petitions or letters, clearly related to genuine legal cases or questions, the "facts" contained within them cannot necessarily

[40] With the noted exception of Gaius' *Institutes*, for the most part only fragments or brief quotations in later works are known, if we have any alternative source at all. Notably these include, but are not limited to, the *Fragmenta Vaticana,* the *lex Romana Visigothorum and lex Romana Burgundiorum.* Other minor sources of Roman law include the *Mosaicarum et Romanarum legum collatio,* the *apokrimata* of Septimius Severus*,* the *sententiae et epistulae Hadriani* and various epigraphic and papyrological sources. See Kaiser 2015.
[41] Robinson 1997:105–107; Corcoran 2016:cxi; Honoré 1998:ix.
[42] Watson 1994:120-122.
[43] Johnston 1999:17–22. See for example D.2.4.11, Paul, *Edict, book 4*: "yet Labeo says…"; D24.3.59, Julian, *Urseius Ferox, book 2*: "According to Sabinus, . . . and Gaius says the same."
[44] See particularly Johnston 1999:24–26.

be considered to be completely accurate.[45] Petitioners, while unlikely to include outright falsehoods in their petition to the emperor, would almost certainly have couched their requests in terms that were likely to receive a positive response or at the very least a response that would be more favourable to their case, and some elements of their petition were likely to have been embellished to paint themselves as a victim.[46]

There are, then, a number of problems and considerations that we must take into account when using Roman legal sources in general, and the rescripts in the *Codex Justinianus* in particular, as a source for the social history of those subject to Roman law. The *Corpus Iuris Civilis* was codified several hundred years after the lives of the women who form the basis for the detailed discussion in the following chapters, and this has implications for the way we read the cases it contains. We cannot always be certain that what we read today is what the recipients of the rescripts read, and the concerns of the women were far more complex than the often terse text of a rescript can reveal. Despite these problems, the *Codex* is a valuable source for Roman social history that with careful reading, and an awareness of its limitations, can offer significant insight into the lived experience of the recipients.

When an individual appealed to law, the purpose was not necessarily simply to identify the letter of the law which would allow them to "win", but rather to gain an understanding of the principles around which they might build a case. However, while law represents the motives and ideology of those who created it, human nature and individual circumstances mean that those who are subject to its power do not always act in expected ways. The legal sources can serve as a framework, around which further investigation of the methods by which citizens gained knowledge of the law, how they used that knowledge, and what impact it had on their daily lives, can be built. A wide range of other sources can be used to allow this structure to be built. Records of real court cases in papyri and literary sources, letters and petitions, particularly those found

[45] The emperor, or his chancery, recognised this, often using a variant of "if the facts are as you say" in their response; see also p.69; 170.
[46] See Kelly 2011:38-39; Bryen 2008:182, for discussion of "fictive" elements in Egyptian petitions.

on papyri, but also including, for example, the Vindolanda or Pompeian tablets, and in some cases epigraphic sources, can all be used to show "how real people [. . .] used the organs of law in the course of interpersonal disputes".[47] When these extra-legal sources are viewed in conjunction with, and compared against, the legal sources, we can start to ask questions to help us understand what knowledge the general populace had of the rules controlling their lives, and more importantly, how much that knowledge affected the decisions they made.

Summary of chapters

The thesis has two sections. The first section, Chapters 1 and 2, updates and enhances the work of Huchthausen in the 1970s, presenting the results of a new quantitative analysis of the entries addressed to women in the *Codex*. The second section focuses on an analysis of the ways women employed various resources – social, economic, and familial – as a source of power and demonstration of their agency. In both sections, by taking the perspective of the recipients themselves, rather than Roman legal schemata, as the starting point, the discussion places the women behind these short legal texts at the centre, helping to provide a window into their lived experience.

Chapter 1 describes the methodology used to identify the entries addressed to women and compares the proportion of entries addressed to women with that addressed to men. This analysis of the distribution of entries within the structure of the *Codex* reveals that representation of women in particular books of the *Codex* closely reflect some of the structural restrictions on women's agency in Roman law and culture. This chapter also demonstrates how the proportion of women as recipients changed as social conditions shifted under different emperors, while highlighting that we must be careful not to overstate the significance of these changes in a corpus that is often too small for us to consider statistically reliable. Importantly, this analysis suggests that the increase in representation we see under the reign of Diocletian and his co-emperors, a period that produced almost half of entries in the *Codex*, may not be as significant as

[47] Kelly 2011:6–7.

previously thought.

Chapter 2 focuses on the types of problems about which these women petitioned the emperor and how the rescripts have been categorised, both in the ancient world and by modern scholars. While categorisation according to legal principles is useful, the recipients of rescripts rarely possessed accurate knowledge of the complexities of Roman law and this chapter provides an alternative typology of rescripts, focusing instead on the motivations of the petitioners. This new typology demonstrates that the motivation behind the petitioners' approach to the emperor falls into one or more of four broad categories reflecting the resources involved in the production of power: concern for legal and social status, economic status, family status, or personal security. By highlighting the motives of the petitioners in this way, we can identify how access to these resources affected the agency of the women concerned, forming the basis for section two of this thesis.

The ability of the women of the *Codex* to engage with the social and legal life of their community depended on their possession of particular status markers, whether legally or socially constructed. Chapter 3 examines the evidence for possession of some of these status markers among the recipients of rescripts, and demonstrates that the divisions between enslaved and free and between freeborn and freed were not purely legal categories, but had a meaningful impact on the lives of individual petitioners. While this division was often difficult to distinguish in practice, this chapter challenges the view that enslaved people are represented in significant numbers in the *Codex*, arguing that the lived experiences of enslaved women and free or freed women whose status was questioned were significantly different. This chapter demonstrates that markers of social rank are rarely overt in the rescripts, with few recipients identifiable as members of the elite classes, and illustrates that the users of the imperial system of petition and response were largely involved in disputes with others of a broadly similar social position.

While Chapter 3 uses Roman legal divisions to place the recipients of rescripts within their broader social context, Chapter 4 reviews the evidence in the *Codex* for the

economic resources these women possessed. Although the wealth of the recipients is impossible to quantify in monetary terms, references to real property and enslaved persons are useful indicators of the likely economic power of the recipients. This chapter demonstrates that the majority of recipients were property owners, although this covers a broad range of individual circumstances. While there were some whose economic standing approached that of the elite, others were more vulnerable to minor changes in fortune. For these women, reduction to penury and its attendant loss of social standing was a constant possibility. The chapter then investigates how the recipients put their resources to economically profitable use, and suggests that in contrast to epigraphic and papyrological sources, there is very little evidence of occupational activity in the rescripts, although many women were involved with moneylending, albeit largely within the family. While this does not directly contradict the view that many women petitioned about "business matters", this chapter nevertheless demonstrates that we should be careful not to assume that all such financial disputes are evidence of business activity.[48] Rather, we should see this as an expression of their agency, putting their economic resources to use to achieve their goals.

Chapter 5 assesses how the women who received rescripts acted independently of men, investigating the evidence for the involvement of fathers, guardians or tutors, and husbands in the affairs of the women concerned. By identifying the paternal, guardianship, and marital status of the recipients, it is possible to demonstrate that the agency of these women was not significantly affected by the legally-mediated structural restraints placed upon them by a patriarchal society. It demonstrates that the majority of recipients of the rescripts were *sui iuris*, and provides further evidence that the role of *patria potestas*, while retaining an important part in Roman legal discourse, was of little practical consequence in terms of the agency of these women.

[48] Connolly 2010:76;93.

Part 1 - Quantitative Analysis

The high proportion of women recipients of rescripts in the *Codex* has often been remarked upon by legal and social historians, but there has been limited detailed analysis of how these rescripts are distributed, either within the internal structure of the *Codex* or temporally.[49] As will be shown below, there are 617 entries in the *Codex* addressed to named women, either singly or as part of a group. These entries represent 595 individual rescripts, around 25% of the total.[50] Outside papyrological and epigraphic evidence the lives of ordinary women are rarely seen in such numbers, and this figure itself is of obvious interest – it tells us that women were frequent users of the system of imperial petition and response and, when it came to choosing which rescripts to include, that the editors of the *Codex* had no objection to including rescripts addressed to women.

This raises a number of important questions. Does this seemingly high representation accurately reflect women's participation in third-century Roman legal culture more widely, or did participation change over time? About what kinds of problem did these women approach the emperor? Did they petition about the same kinds of problems as men, and what patterns of women's interaction with the system emerge? Were women more likely to petition about certain aspects of Roman law than others? In order to begin to answer such questions, the first part of this thesis offers a deep quantitative analysis of the rescripts in the *Codex* necessary to provide context for the more detailed investigation of some of the factors acting upon the agency of Roman women covered in later chapters.

[49] For discussion of the high proportion of women in the *Codex*, see for example Millar 1992:547; Corcoran 1996:105; Halbwachs 2016:445; Evans Grubbs 2002:3. Analysis of the temporal distribution of the rescripts addressed to women has largely been restricted to German scholarship; see Huchthausen 1974a; 1976a and Sternberg 1985. These works are discussed in more detail in Chapter 1.
[50] See Table 1.1 below, p.32.

Chapter 1 : Counting the Women of the *Codex*

This chapter will review previous quantitative studies of the rescripts, highlighting the challenges in quantifying the women of the *Codex*, and present the results of my own quantitative study of the rescripts, which complements and enhances the work of these earlier scholars. It will discuss the overall number of rescripts addressed to women, their relative proportion *vis-à-vis* rescripts addressed to men, and will show that the distribution of these rescripts in the *Codex* reflects some of the structural barriers women faced when attempting to engage with legal authorities. This analysis will demonstrate that women are not equally represented across the *Codex*, but that there are areas of law in which women seem to have been less involved than others. Their absence or underrepresentation reflects wider structural socio-legal inequalities in Roman society which reduced the ability of women to participate in certain areas of Roman legal culture. It will also be shown that while there is a trend towards increased representation of women in the *Codex* over the course of the third century, it is more difficult to determine whether this trend is a result of increased participation of women in legal affairs, changing socio-cultural standards, or is caused by a larger corpus of rescripts from which the compilers of the *Codex* could choose.

1.1 Counting the Women of the *Codex*

Honoré's *Emperors and Lawyers*, a study of the imperial petition and response system and style of the rescripts in both the *Codex* and other legal texts, was the first study in English in which the private rescripts produced between 193 and 305 were analysed in detail and ordered chronologically as a consistent body of work.[51] Honoré's purpose was not to set the rescripts within their socio-legal context; rather it was intended to identify changes to the distinctive style in the rescripts, identify the jurists responsible for their creation, and where possible to date more accurately, based on their style,

[51] Honoré 1981; 2nd revised edition 1994.

texts that lacked a consular year.[52] As a result, the petitioners are, if not ignored, incidental to the book's purported aims: the focus is on the style of language used, and even the substance of the law referred to in rescripts is rarely commented upon.[53] In this respect, to Honoré, much like the editors of the *Codex* themselves, it made no difference whether the petitioner was a man, woman, or group of individuals.

While Honoré's study of the rescripts was not intended to focus on the recipients and there are therefore no figures given for the number of women petitioners, Huchthausen produced a number of articles between 1973 and 1976 which discussed the recipients in some detail, with articles dedicated to soldiers, enslaved persons, and women.[54] In two articles concerned with women as recipients, she considered the geographical origin and social status of the women, and provided tables of rescripts, broken down by period, along with total numbers of rescripts for each period. These figures have been widely used by later scholars when discussing the representation of women in the *Codex*,[55] and led to a further study of the rescripts issued under Alexander Severus by Sternberg.[56] However, there are some discrepancies between Huchthausen's figures and those of Honoré, and I have therefore re-evaluated the rescripts in the *Codex*, in order to avoid reliance on any individual study and to collate data that previous studies may have overlooked.[57] This has been an important exercise; in addition to ensuring that the foundation of the present study is as accurate as possible in terms of the total volume of rescripts, previous studies were completed for very different purposes than the present work and by close reading of each rescript it has been possible to extract information that was not required for these previous

[52] Honoré's thesis has received significant criticism, most notably from Watson (1982) who considered the methodology highly problematic, and the overall thesis "unexciting" (p.414). See also Huchthausen 1983; Millar 1986. Honoré acknowledged the criticisms in his significantly revised second edition (1994:x-xi).
[53] Honoré does briefly outline the social context of the petitioners, see 1994:33-42.
[54] On women as recipients, see Huchthausen 1974a; 1976a. For soldiers see Huchthausen 1973 (not read), and 1974b; 1976b for enslaved persons.
[55] References to Huchthausen's work can be found in, for example, Arjava 1996:11; Bagnall 2004:55; Corcoran 1996:105; Gardner 1986a:29 n.71; Honoré 1994:34; misquoted in Connolly 2010:75.
[56] Sternberg 1985.
[57] According to Huchthausen (1983:579), a review by Sternberg (later published as Sternberg 1985) of the data in Honoré's first edition suggested an error rate of 1.5% for the reign of Alexander Severus.

studies. This allows a different perspective on the rescripts in the *Codex*, placing the recipients, rather than the law, at the centre. The full dataset used for this re-evaluation can be found in Appendix VII.

To collate my dataset, I identified all entries in the *Codex* which were addressed to private recipients, and compared this with Honoré's *Palingenesia*.[58] All rescripts are in Latin, with the exception of one in Greek, CJ.4.24.1 (Septimius Severus & Caracalla, 207). CJ.2.11.16 (Gordian III, 240), although substantively in Latin, also contains a quotation in Greek. Identification of the gender of the recipients of these rescripts was also completed at this stage. Those entries which contain a feminine name in the address are generally easy to identify in the rescripts – the addresses contain the name of the Emperor(s) (and Caesars) who produced the rescript followed by the name of the recipient in the dative case. For Latin-derived names, this presents little difficulty but the Greek and other non-Latin names can be more difficult to identify, and the gender of the petitioner is open to question in several rescripts.[59] A number of rescripts identified as addressed to women by Huchthausen and Sternberg are almost certainly

[58] An electronic copy of Honoré's dataset accompanied the second edition and was subsequently published online by Ernest Metzger ("Palingenesia of Latin Private Rescripts", *iuscivile.com*, 2016, available at http://iuscivile.com/materials/honore/rescripta/indices.shtml [accessed 01/11/2021]).

[59] Thus for example the recipient of CJ.8.8.3 (Diocletian & Maximian, 293) *Euodiae* is rendered as Euodias in Blume's translation, although the text of the rescript, regarding the production of the daughter of a certain Phillipus, gives no clue as to the gender of the petitioner. Blume (and Frier *et al.* (2016), following Blume's translation) appends "your wife" in parentheses but I see no basis for this interpolation. The name Euodias is not attested in LGPN or Trismegistos, while the feminine form Euodia appears forty-four times in LGPN and four in Trismegistos. Huchthausen also considers Euodia the most likely form, with the caveat "*Euodias [mann] auch möglich*" (1976a:83). Rhesa, in CJ.6.56.2 (Diocletian & Maximian, 294), is attested as a male Jewish name (Luke 3:27), but could equally be a feminine form of Rhesos. Again the text gives no real clues. A feminine form of the Thracian name Rhesos seems more likely (Huchthausen 1976a:56), particularly as the rescript was issued when Diocletian was in Nicomedia (Connolly 2010:195), close to the location of the river Rhesos (Hes. *Theog*. 340; Hom. *Il*. 12.21; Strab. 13.1.5). A further three names are excluded by Huchthausen: CJ.3.38.3 (*Epictae*) CJ.2.18.7 (*Euphratae*) and CJ.5.23.1 (*Didae*), but in all cases I have considered these within the list of female petitioners. Athenais can be masculine (Ἀθήναις) or feminine (Ἀθηναΐς). The feminine form is more common in LGPN (150 feminine attestations and twenty-seven masculine).

masculine and I have not included these in my total.[60] In all, there are 2661 entries in the *Codex* for the period between the reign of Hadrian, when the earliest entry in the *Codex* was produced, and the abdication of Diocletian in 305, in whose reign two of the source texts for the *Codex Justinianus* – the *Codex Gregorianus* and *Codex Hermogenianus* – were produced.[61] No personal rescripts appear in the *Codex Justinianus* after 305.[62]

It is necessary to distinguish between "entries" in the *Codex*, for which Honoré uses the term "constitution" in his first edition and "law" in the second, and rescripts.[63] In this thesis, the use of the term *entry* refers to the individual texts within the *Codex*; cited by book, title, and text, but excluding the introductory constitutions – the *Constitutiones Haec*, *Summa,* and *Cordi Nobis*, each so named for the first word of the text. A rescript, on the other hand, is the written response to a petition produced by the imperial chancery, and while there is naturally a great deal of overlap between the two terms they are not interchangeable. The results of this analysis can be seen in Table 1.1, below.

[60] Huchthausen renders *Leonidi* (CJ.8.53.2) as Leonis, which while attested in both feminine (Λεωνίς – seven attestations) and masculine (Λέωνις – two attestations) forms, is far less likely than the masculine Leonides with 230 attestations. The situation is less clear in two other cases, those of *Polemonidi* (CJ. 3.42.6), which Huchthausen considered the feminine Polemonis rather than masculine Polemonides, and *Glyconidi* (CJ.3.35.1), excluded by Huchthausen, which was considered by Sternberg to be the feminine Glyconis rather than masculine Glyconides. There are no entries in Trismegistos for any of these names, while Γλυκωνίς is attested twenty-five times in LGPN, and Γλυκωνίδης once. Eucratides (CJ.8.42.20), included by Sternberg, is only attested as a masculine name.

[61] The majority of entries in the *Codex* (c.85%) contain a subscript which contains the consular date; the dates of those subscripts which are *sine die et consule* were unavailable to the compilers (see *Const.Haec*.2), while other subscripts have been lost in the transmission of manuscripts. Most entries name the *Augustus* or *Augusti* and *Caesar* or *Caesares* under whom the rescript was produced and can therefore be assigned to particular reigns. See Corcoran 2009a; 2009b; 2016:cxli-cxliii and Lenski (2016, within Frier 2016:xciv-xcvi) for the subscripts and dating of entries in the *Codex*. Where dates are uncertain, I have generally followed Krueger's dating, unless later scholarship has been able to provide a more accurate date. See, for example, Corcoran and Salway 2012.

[62] Some later rescripts from other sources are known. From the *Fragmenta Vaticana*, FV.34 and FV.35, for example, were produced in the reign of Constantine.

[63] Honoré 1981:33; Honoré 1994:48.

Table 1.1 Entries and Recipients of Rescripts in the Codex by Gender

	Women	Men	Group including a named woman	Grand Total
Entries	611	2044	6	2661
Recipients of rescripts	589	1910	6	2505

While there are 2661 entries in the *Codex*, the corresponding number of recipients of private rescripts is 2505, and there are several reasons for this difference. First, the process by which the rescripts came to be included within the *Codex* means that an individual rescript may have been divided among two or more separate entries. When Eusebius, involved in a dispute about a brother's inheritance with the heir of his recently deceased sister, petitioned Diocletian at Tzirallum in May 293 he received a detailed response from the chancery, but the compilers of the *Codex* divided the rescript among three separate entries in the *Codex*, each intended to elucidate a different point of law.[64] Thus although Eusebius received a single reply, and we must, therefore, count him as a single recipient of a single rescript, we see three separate entries addressed to him in the *Codex.* There are 152 entries in the *Codex* in which a rescript has been divided in this way, representing seventy individuals.[65] There are also twenty-four further entries in the *Codex* which duplicate the text of a rescript, in full or in part. These account for twelve recipients of twelve rescripts.[66]

Other entries are not private rescripts; the *Codex* also contains a number of letters, edicts and judgments, which can be identified by the presence of certain stylistic features.[67] While in private rescripts the subscript contains the name of the recipient in the dative case, letters, *epistulae*, often contain the preposition *ad* and the name of the recipient in the accusative case, making them easy to identify.[68] In other entries,

[64] CJ.2.3.21, CJ.6.30.7, and CJ.6.53.6. An adapted version of CJ.6.30.7 also appears in the *Consultatio Veteris Cuisdam Iurisconsulti; Coll*. 6.19.
[65] See Appendix II.
[66] See Appendix III.
[67] See also Corcoran 1996 for detailed discussion of the style and substance of imperial pronouncements of all types from the period of the Tetrarchy. For the question of defining ancient letters more generally, see Gibson and Morrison 2007.
[68] For the style of letters, see Honoré 1994:45; Corcoran 1996:125. See for example CJ.9.9.19 (Diocletian, no date; *ad Pompeianum*); CJ.7.49.1 (Caracalla, no date; *ad Gaudium*).

although the recipient's name is in the dative, there is also an indication of the position the recipient held in the imperial administration, as in the case of Augurinus, proconsul of Africa or of Scyrio, a *rationalis* or comptroller, and so these can also be identified as official letters rather than rescripts.[69] On two occasions, the name of the recipient (again in the dative) is followed by a greeting, *salutem,* marking them as letters. [70] In six cases, the subscript contains the phrase *exemplum sacrarum litterarum*,[71] and in two others *pars ex epistula,*[72] clearly marking them as copies of or parts of imperial letters, while a further two contain the honorific address *carissime nobis,* "most dear to us".[73] There are fifty-one such letters in the *Codex*, all addressed to men, although it is possible that other entries which do not contain such identifying features may also be letters.[74] However, even if this is the case, the numbers are likely to be very small.

There are a number of other entries that are neither rescripts nor letters (see Table 1.2): six edicts (*edicta*), three out of court oral rulings (*interlocutiones de plano*) and four judgments (*sententiae*).[75] In these cases the subscript contains a form of the verb *dico*; in the present tense in edicts, and in the perfect tense elsewhere.[76] Entries that are not rescripts, entries that have been split, and all but the first instance of duplicates, have all been excluded from the figure given for total rescripts, but they do appear in the figure for total entries. Honoré, in his second edition, counts 2485 rescripts for the period 197 to 305 once duplicates, twins, and letters are excluded,[77] while my own calculation, which includes nineteen pre-197 rescripts excluded by

[69] CJ.3.31.1 (Antoninus Pius, 170; *Augurino procons. Africae)*; CJ.10.10.1 (Diocletian, 292; *Scyrioni rationali*).
[70] CJ.2.13.1 (Diocletian, 293; *Aristubulo salutem*) and CJ.12.33.1 (Septimius Severus and Caracalla, 203-209, *Antonio suo salutem*)
[71] CJ.9.2.8 and CJ.10.32.2 (both Diocletian, c.286-305); CJ.9.16.4 (Diocletian, 290) with recipient in the dative. Another three contain the same phrase with *ad* and an accusative addressee.
[72] CJ.8.40.17 (Gordian, no date) with name in dative, CJ.8.40.13 (Gordian, no date) with no name; the same phrase is also used in CJ.7.33.6 (Diocletian & Maximian, no date) with *ad* and accusative plus position.
[73] CJ.7.62.9 (Diocletian & Maximian, no date); CJ.9.2.11 (Diocletian & Maximian, no date).
[74] Honoré 1994:72n.1; 140n.5. See Appendix VII.
[75] Honoré 1994:28-29.
[76] See also Corcoran 2016:cvii; Corcoran 1996.
[77] Honoré 1994:vii. Honoré also refers to 2486 rescripts (p.50), but when the figures quoted on p.72 (1348, for the period to 282) and p.140 (1193, 282-305) are combined they agree with the total given in the introduction, and so this seems to be a typographical error.

Honoré, has 2504.[78] Honoré refers to 2635 total "laws" – i.e. entries – in the *Codex* although his Palingenesia actually contains 2639.[79]

Table 1.2 Type of Entry in the Codex

Type of entry	**No. of entries**
Oral ruling (*interlocutio de plano*)	3
Edict (*edictum*)	6
Judgment (*sententia*)	4
Letter (*epistula*)	51
Rescript (*rescripta*)	2597
Grand Total	**2661**

Although Huchthausen provided a list of rescripts addressed to women in her work, which does include duplicates, she does not provide a list of all recipients (i.e. men) and therefore it is difficult to make direct comparisons with my own data, or that of Honoré. There are a number of entries where my assessment of the gender of the recipient is at odds with Huchthausen; Huchthausen includes some rescripts I believe to be addressed to men, and excludes others which I believe are addressed to women.[80] Using the definitions provided above, it is not entirely clear whether Huchthausen's figure of 2493 rescripts, with 608 addressed to women, refers to entries or rescripts, nor is it always clear whether she took duplicate or split rescripts into account when calculating total numbers.[81] In the case of her total (i.e. including men) this corresponds closely with the total number of rescripts identified by both Honoré and my own study, whereas her number of rescripts to women is close to the total number of entries in my own work. For the most part the discrepancies are minor and have little bearing on the overall proportion of women petitioners, but they are noteworthy for the Diocletianic period,

[78] 2491 in first edition (1981:35). Honoré also counts two rescripts (*Palingenesia* 1012 and 1514/17/69) which I exclude, as they are not included in Krueger's edition. I include one entry (CJ.5.51.12, Diocletian & Maximian, 294) which is missing from the Palingenesia.
[79] Honoré 1994:48. In the first edition Honoré also counts 2639 (Honoré 1981:34) so this may be a typographical error.
[80] Three of Huchthausen's entries have addressees I believe were men, while there are fourteen rescripts addressed to women that she did not count. See n.60 above, and Appendix I.
[81] Although see 1974a:204, where the note "*94 = 91 Personen*" appears on the table. Huchthausen also highlights those entries which are *geminae*.

where her total number of entries is significantly lower than both my own and Honoré's.[82] Furthermore, the percentage of female petitioners she provides shows some minor errors in calculation, which cannot easily be explained.[83]

The work of Huchthausen and Honoré has, for different reasons, been highly influential in the study of the system of imperial petition and response. The data collected by both authors are cited by all later works on the subject, and their work has helped to demonstrate the utility of the *Codex*, not only for what it tells us about the substance of Roman law, but also what it tells us about the individuals who submitted and answered petitions. However, women rarely feature in the work of Honoré, with his focus on the authors and not the recipients, and Huchthausen, without the benefit of the resources now available to make storage and calculation of large amounts of data easier, was not entirely successful in providing an accurate and complete picture of the numbers of women who petitioned the emperor.

By re-evaluating the private rescripts in the *Codex* and with the benefit of being able to cross-check my own findings with those of both Honoré and Huchthausen, this new analysis augments the *Palingenesia* of Honoré by allowing more detailed study of the rescripts for their socio-legal content and places the recipient, rather than the author, at the centre. By isolating the rescripts addressed to women from those addressed to men we are able to identify with far more precision the kinds of legal problems that women faced and how they tackled them; this provides the necessary foundation for the more detailed qualitative study presented later in the thesis. I have been able to demonstrate that the number of entries addressed to women is slightly higher than

[82] Corcoran (1996:105) and Sternberg (1985:510 n.22) have also noted discrepancies between Huchthausen's figures and those of Honoré. Corcoran comments "the total of rescripts that she uses as a basis for her calculations looks rather low" and recalculates the figure using Honoré's total (i.e. men and women) and Huchthausen's number of women, adding rescripts outside the *Codex*, coming out with 29.18%, closer to my own figure of 28.3%.

[83] 1976a:55. Huchthausen gives a percentage of women petitioners for each of her four groups, but these percentages cannot be obtained from the figures she gives in her table with the exception of "Group A":
Group A: 89/463 = 19.2%. Figure given is 19.2%.
Group B: 85/462 = 18.9%. Figure given is 18.4%.
Group C: 94/500 = 18.8%. Figure given is 19.2%.
Group D: 340/1080 = 31.5%. Figure given is 31.1%.

Huchthausen suggested, and this provides a more secure foundation for the quantitative analysis in this chapter and the next. Although Huchthausen investigated the rescripts from a sociological perspective and highlighted areas of both continuity and change across different periods, her most detailed examination centred on the Diocletianic rescripts; the new analysis presented here allows us to broaden this scope. The relative proportion of women recipients of rescripts in individual books of the *Codex* has previously been overlooked, while this new examination of the rescripts allows us to identify the areas of Roman legal culture in which women are underrepresented, providing context for the detailed analysis of the legal culture of the individual recipients addressed in following chapters.

1.2 The Distribution of Rescripts within the *Codex*

The distribution of the rescripts addressed to women within the *Codex* provides information about the types of legal matters about which women petitioned the emperor, notwithstanding that we do not know, as mentioned in the introduction, what criteria were used to select the rescripts which appear in the *Codex* and so how representative they might be of the wider number of rescripts that were actually produced. As we saw above, of the 2505 individual recipients of private rescripts in the *Codex,* 589 – or 23.5% – were women.[84] However, this does not mean that women were able to engage with all aspects of law to the same extent. Later chapters explore in more detail the types of legal problems that the women in the *Codex* faced, but focussing only on the types of problem that we do see in the *Codex* means that we can overlook those areas of law women did not petition about. This section will therefore highlight some of the ways in which the nature of the *Codex* itself perpetuates the structural inequality inherent in Roman law and women's lack of engagement in certain areas of law. [85]

[84] The figure is 23.8% when the six rescripts addressed to groups of petitioners which are known to have includes a woman are counted.

[85] With the proviso, of course, that the rescripts selected for inclusion within the *Codex* do not represent all the rescripts that the emperor received, and simply because no rescripts from women are extant does not mean that women did not petition about such things.

The distribution of rescripts to women in each book of the Codex, illustrated in

Table 1.3 below, shows that the 589 rescripts addressed to women are not distributed uniformly throughout the *Codex*, but are concentrated in books two to nine, with 93% of the rescripts addressed to women appearing in these books.[86] This can be explained in part by the fact that the contents of the other books relate to aspects of law from which women were structurally excluded, such as the judiciary and administration of the state, and contain only 4% of all the private rescripts in the *Codex*.

Table 1.3 Private Rescripts by Book

Book	Women	Men	Grand Total	% Women recipients	Content of book
1	8	17	25	32.0%	Religious law, sources of law, imperial offices.
2	71	189	260	27.3%	Litigation, advocates and procurators, restoration of rights, arbitration.
3	52	144	196	26.5%	Trials, judges, undutiful wills, gifts, and dowries, usufruct and servitudes.
4	93	348	441	21.1%	*Condictio*, loans, debts, and interest, sale and purchase, alienation of property.
5	91	238	329	27.7%	Marriage, dowries, divorce, children, tutors and curators.
6	92	220	312	29.5%	Wills, inheritance, legacies, trusts.
7	69	215	284	24.3%	Manumission, *usucapio*, administration of lawsuits.
8	78	243	321	24.3%	Interdicts, pledges, *patria potestas*, emancipation of children, *postliminium*, gifts.
9	26	164	190	13.7%	Criminal law, adultery, fraud.
10	6	102	108	5.6%	Treasury law, *munera*.
11	1	20	21	4.8%	Trade, municipal law, treasury land.
12	2	16	18	11.1%	Imperial offices, rank, military law.
Total	**589**	**1910**	**2505**	**23.5%**	

The concentration of private rescripts in books two to nine is a direct result of the compilation process; while the *Codices Hermogenianus* and *Gregorianus* were the primary source of material in books two to eight, which are therefore dominated by private rescripts, the other books relied more heavily on later works including the *Codex*

[86] See also Appendix IV; Appendix VII.

Theodosianus, containing laws from the reign of Constantine to Theodosius II, in which no private rescripts are found.[87] While women are proportionally less well represented in those books, fewer private citizens, in general, are represented and so with a smaller corpus of rescripts, we must be wary of drawing conclusions from such limited data. Across books two to eight, however, the total number of private rescripts is high enough to limit the risk of distortion, and the relative proportion of men and women as recipients is relatively consistent, with women representing 21.1-29.5%, an average of 25.5%. These books are largely concerned with private law and the rescripts in these books will form the basis of the detailed discussions which will follow in later chapters.

Only in book nine does the proportion of men to women change dramatically, where although there are significant numbers of private rescripts, only 13.4% are addressed to women. Much of the book is dedicated to criminal law, or rather those offences which were covered by public law and prosecuted by *iudicia publica*. Here a distinction should be made between modern concepts of criminality – the kinds of "offences" that would be prosecuted under criminal law by, for example, the Crown Prosecution Service in England and Wales or the *Staatsanwaltschaft* in Germany – and the way Roman law defined crime under *ius publicum.*[88] Much of what would today be subject to prosecution by a representative of the state, such as theft, was not covered by Roman criminal law; these "offences" were *delicta privata*, prosecuted through a private action by the injured party, similar to a modern civil lawsuit.[89]

To give one example, Severa (CJ.5.12.11, Diocletian & Maximian, 293) petitioned the emperor because items that formed part of her dowry had been stolen. The entry is particularly short: "there is no doubt that your husband has a right of action for the theft of the things given as a dowry", and provides no indication of who might have stolen the items. We do not know whether Severa and her husband had conducted some kind of investigation into the theft, or whether there had been any witnesses, but

[87] For a detailed summary of the structure of the *Codex*, see Corcoran 2016:cxiii–cxvii.
[88] See D.48.1.1, Macer, *Criminal Proceedings*, book 1.
[89] Cf. p.90, below.

the fact that Severa had petitioned the emperor about the right to take action suggests that they had a suspect in mind and had perhaps already attempted to recover the items themselves.[90] As Severa was informed by the emperor, it was her husband who was able to bring charges, but these were civil charges for which he alone was responsible; if he chose not to take up his right of action, the thief would otherwise face no legal consequences. In contrast, today we might expect an alleged theft, if reported, to be investigated by the police, and the perpetrator, if found, subject to a (public) criminal prosecution and punished by the state.[91] If criminal charges were not brought or the defendant found not guilty, the victim of such a crime might instead bring a civil action, but the purpose of such action is not to seek punishment but to recover the value of the stolen property.[92] For Severa and her husband, only this second option was available – as far as Roman law was concerned the matter was entirely private.

Such private offences stand in contrast with *crimina publica*, those acts which could be seen to affect the safety and stability of the state, and so for which a public action could be brought (with some restrictions) by someone who may not necessarily have been directly affected.[93] Such acts included, as might be expected, treason, electoral corruption, and embezzlement, but also more personal offences such as parricide and adultery.[94] It is these *crimina publica* which are covered in book nine, and many of the recipients of private rescripts in this book were men who had been accused of a crime,

[90] That it was Severa who petitioned and not her husband is perhaps due to their misunderstanding of the status of dowries and which spouse had the responsibility to take action, rather than because her husband was not involved in the process. This is discussed in more detail in Chapter 5 (on page 192-196).
[91] In reality of course, this is a simplification, and whether the crime would in fact be investigated or charges brought would be dependent on a number of practical considerations – police resources, quality of evidence, and public interest, for example. While there was no state-sponsored police force in the Roman empire, locally administered groups fulfilling some policing functions did exist, most notably in Asia Minor and in Egypt, where Ptolemaic practices continued into the Roman period. On policing in the ancient world, see Bauschatz 2013, especially pp.1-8; Fuhrman 2012; Bagnall 1977; Nippel 1984. On crime and punishment in the *Codex*, see Chapter 2 (pp.90-95).
[92] Geldart and Yardley 2005:174.
[93] Macer's definition of criminal offences included "only those which arise from the statutes on criminal proceedings", listing a number of specific *leges* which fell into this category, including the *lex Julia* on treason. The distinction between *crimina* and *delicta* blurred over time, but during the third century, at least, the definition of Macer applied. See Arjava 1996:234; Riggsby 2016:310–311; Robinson 1995:46; Jolowicz and Nicholas 1972.
[94] Riggsby 2016:315-319.

or were themselves bringing accusations. While it would clearly be ridiculous to suggest that women were not capable of criminal behaviour, the lack of women in book nine is a result of legal restrictions on their ability to engage in *iudicia publica* rather than because they were not affected by crime.[95] Women were unable to bring criminal charges except under specific circumstances, and indeed several of the twenty-six rescripts addressed to women in book nine refer explicitly to the ability, or lack thereof, of women to bring accusations.[96] Here we can clearly see that the legal mobilisation of women was significantly restricted by the structural exclusion of women from this aspect of Roman legal practice. As a result, the *Codex* can only provide glimpses of how women dealt with the kinds of legal problems which were considered *crimina publica*.

Corinthia (CJ.9.1.12, Diocletian and Maximian, 293) had petitioned the emperor in respect of an accusation for an unspecified crime, to be told that she would first need to approach the governor for him to determine whether the accusation fell into a category which a woman was not prohibited to bring. This included prosecutions to avenge wrongs committed against their children, parents, or patrons,[97] and while we might think that such relationships would be obvious to everyone involved, and an approach to the governor rather unnecessary, there were clearly occasions when women attempted to bring prohibited claims. In one such case, Severianus (CJ.9.1.9, 239), against whom a woman wished to bring a prosecution for the death of her son, claimed that the woman was not, in fact, the mother of the man he was accused of killing and that she should, therefore, be prohibited from bringing the prosecution. Gordian reminded him that the judge in his case would be fully aware that she would

[95] Women were, of course, also victims of crime, discussed in more detail in Chapter 2 (pp.90-95).
[96] For women's ability to bring criminal prosecutions see D.48.2.1, Pomponius, *Sabinus, book 1*; D.48.2.2, Papinian, *Adulteries, book 1*. For those who were barred from prosecution more generally, see D.48.2.8, Macer, *Criminal Proceedings, book 2.* See also CJ.9.1.5 (Alexander Severus, 222), CJ.9.1.12 (Diocletian & Maximian, 293), CJ.9.9.1 (Septimius Severus & Caracalla, 197) and CJ.9.22.19 (Diocletian & Maximian, 294) for women who are unable to bring prosecutions, and CJ.9.1.14 (Diocletian & Maximian, 294) for a positive response.
[97] According to Pomponius, a woman could not bring a prosecution "unless she is pursuing the death of parents, children or patron or their family"; D.48.2.1, Pomponius, *Sabinus, book 1*. See Robinson 1995:46.

need to prove her relationship to the deceased before the case could proceed. [98]

Of course, we cannot know whether Severianus' accuser was the mother of his alleged victim or not, but rescripts such as these suggest that while knowledge of the prohibitions on women bringing criminal accusations was fairly widespread, some women were either not aware of this prohibition or attempted to bypass them regardless.[99] When women did bring such accusations, a counter-allegation that they were lying about their relationship to the deceased seemed to be an acceptable defence, whatever the truth of the matter. In other cases, the prohibition on women bringing accusations meant they had to rely on others to bring prosecutions, even when the accusation directly affected them or their children.

When Marcellina (CJ.9.1.5, Alexander Severus, 222) petitioned in respect of fraud committed against her children, she was told that because they had *tutores* and *curatores* it was for the tutors to decide whether to bring a prosecution, leaving the matter in the hands of men who may not have been of the same opinion as her. Her desire to help her children was overridden by the expectation that women should not involve themselves in something that men were better placed to deal with, even if those same men had very different motives and did not necessarily have her children's best interests at heart. To what extent Marcellina shared this expectation is impossible to say; although the fact that she petitioned suggests that she certainly considered it within her capability, for many women the weight of social pressure to leave such matters to men was greater than any desire they may have had to seek a solution themselves.

Even where women were directly affected by crimes for which public prosecutions

[98] The reference to *competens iudex* suggests the judge was probably a provincial governor, see Honoré, 1994:40.

[99] How many women attempted to bring criminal charges is difficult to determine; the fact that there was a formal process required to bring a criminal accusation means that a woman who attempted to bring a charge would almost certainly have been dismissed before any *inscriptio* was made, rendering such approaches invisible in our sources.

could be brought they were still barred from bringing suit in certain circumstances, a direct result of this structural gender inequality. Accusations of adultery, for example, could be brought only by men, as Cassia (CJ.9.9.1, Septimius Severus & Caracalla, 197) discovered when she petitioned Severus and Caracalla after her husband's alleged infidelity. Despite the fact that it was her own marriage which had been violated, the law did not consider the feelings of a wronged wife sufficient grounds to bring a prosecution, and she was informed that while if the situation were reversed her husband would have the right (*ius mariti*) to prosecute under the *lex Iulia de adulteriis coercendis*, the law did not afford this same right to women.[100]

In terms of Roman views of adultery, from both a legal and a social perspective, there was a considerable double standard as far as gender was concerned. While a husband had the right to bring an accusation against his wife, and was also obliged to divorce her if she was found committing adultery or risk being condemned for *lenocinium*,[101] no such legal protection was extended to a wife who was the victim of an adulterous husband. Furthermore, whether Cassia's husband's alleged offence was *adulterium* depended on the status of the woman with whom he had an affair: *adulterium* applied only to illicit relationships involving a married citizen woman, regardless of the marital status of the *adulter*, the male partner. If the female partner, *adultera*, was unmarried, strictly speaking his offence was *stuprum*, although there were certain classes of women with whom even married men could have sexual relations without falling foul of the law.[102]

[100] This right was only available to men in lawful marriages; a concubine could not be accused of adultery as if she were a wife, but her *quasi*-husband could bring an accusation as an *extraneus*, for which see p.44 below. D.48.5.14 (13) Ulpian, *Adulteries, book 2*.

[101] See CJ.9.9.11 (Alexander Severus, 226), in which Alexander confirmed to a certain Norbanus that "nobody doubts" (*nemini dubium est*) that a man who remains married to an adulterous wife could not bring a charge.

[102] Which classes of women were considered beyond the purview of the *lex Iulia* in regards to *stuprum* is debated but sexual relations with sex workers and the abuse of enslaved women were certainly beyond the scope of the law, although a man who had sex with an enslaved woman belonging to someone else still risked civil action by the enslaver. See McGinn 2003:194-196 for an overview of scholarly opinion on what categories of women were excluded, and ch.5 (pp.140-215) of the same work more generally for an overview of the law regarding *adulterium* and *stuprum*.

In practice, the two terms were often used somewhat interchangeably, including in the text of the *lex Iulia* itself, according to the jurists,[103] but irrespective of the term used the way Roman law conceived of extra-marital sexual relationships had a significant effect on the ability of wives of adulterous husbands to seek redress.[104] The focus in Roman law on the female participant in the adulterous relationship reflects the view that marriage was intended for the "production of legitimate children"; a married man might perhaps be socially castigated for his indiscretions, but as long as he did not have sex with the wrong woman, that is, married or otherwise respectable, he was legally above reproach.[105]

The rescript to Cassia is not clear about the circumstances of the *violatio*, or the status of the *adultera*, but in this case, it would be expected that in the first instance the husband or father of the *adultera* should bring the accusation; if a prosecution was not brought within sixty days of divorce,[106] an outsider, *extraneus*, could bring a prosecution, as long as it was brought within four months.[107] Realistically, Cassia's only option was to persuade a male relative to bring a prosecution or otherwise to divorce her husband without seeing him punished for his transgression;[108] for a woman who had taken the trouble to petition the emperor about the matter this no doubt seemed like a poor substitute, and demonstrates once again how in some areas of law, legal mobilisation was effectively restricted to men. Of course, Cassia's petition could have served another purpose; even if she already knew that the response would not be

[103] D.50.16.101.pr, Modestinus, *Distinctions, book 9*; D.48.5.6.1, Papinian, *On Adultery, book 1*.
[104] The inability of a wife to bring legal proceedings against her husband does not mean, however, that a husband's infidelity was not socially unacceptable; see McGinn 2003:144-145. For discussion of the terms used to describe the various parties within an adulterous relationship and the way Roman grammarians and legal authorities used such terms, see Treggiari 1991a:263-264.
[105] The definition of *adulterium* made specific exemptions for actresses and sex workers; there were women who unsuccessfully attempted to circumvent the law by registering for these professions, and women of high status were also prohibited from sex work for this reason. D.48.11(10).2 Papinian, *Adulteries, book 2*.
[106] Counting only *dies utiles*, those days on which public business could be conducted, rather than calendar days.
[107] D.48.5.30(29).1, Ulpian, *Adulteries, book 4*. See CJ.9.9.6 (Alexander Severus, 223). A later rescript of Constantine (CJ.9.9.29, 326) suggests that spurious allegations were commonly made by individuals not related to any of the parties involved, which Constantine acted to reduce, restricting prosecutions to "nearest and very close relatives".
[108] Strictly speaking, the *extraneus* did not necessarily need to be a relative as any male citizen could bring the accusation, but in practice a relative would be the most likely choice for a woman like Cassia.

positive, by petitioning the emperor she was exercising the power that she did have in order to bring embarrassment to her husband, potentially leading to social, if not legal, consequences.

Undoubtedly then there were many instances where women had suffered grave injustices, but the legal restriction on their ability to publicly prosecute criminal offences left them unrepresented; their desire for legal mobilisation was undermined by their lack of legal capacity. It is clear that women did petition the emperor hoping to bring public prosecutions, and indeed some had legal grounds to do so, but these few examples are exceptional; prosecution of criminal cases was an area of Roman law in which we can very clearly see that the gender of the petitioner affected their ability to take action. Many women petitioned the emperor despite these restrictions, hoping, perhaps, that an appeal to his benevolence might overcome the structural constraints on their agency, but if they received any positive response we do not see evidence of this in the *Codex.* For individual women, while there were no explicit structural or procedural constraints preventing them from petitioning the emperor about an aspect of criminal law, their ability to engage meaningfully in criminal prosecutions was severely curtailed by the structural gender inequality inherent in Roman criminal law, leaving them under-represented in book nine of the *Codex*.

We see a similar pattern of underrepresentation in the rescripts contained in book ten, but for a different reason. Largely concerned with treasury law, *munera*, and taxes, private rescripts make up 38% of all entries, yet only 5.6% of these were addressed to women, demonstrating that here too women were excluded from many of the aspects of law covered. Women, of course, still paid taxes, and while far fewer women than men were liable for public duties or *munera*, women are not totally absent from these laws; that some women sought to be excused from such duties is clear from the response of Diocletian to Marcia (CJ.10.42.9 and 10.52.5, no date) who was informed that women were liable for both *munera patrimonii*, imposed on properties as a

contribution to the cost of public works, and *munera personalia,* or personal duties.[109] According to Hermogenian, a *munus* was personal "if it regularly arises from bodily activity together with the conscientious exercise of the mental faculties", and patrimonial if "it particularly involves expense".[110]

While women were excused from those *munera* which involved bodily activity, *munera corporalia*, and were unable to carry out personal *munera* as *tutores* or *curatores* on account of their gender, the distinction between *munera personalia* and *patrimonii* was at times difficult to distinguish, and Marcia clearly viewed her responsibilities as particularly onerous, something that was not limited to women.[111] When a man called Nero petitioned the emperors Valerian and Gallienus (CJ.10.42.4, 253-260) to complain that a decree of the provincial governor making the provision of food for chariot horses a patrimonial *munus* was unfair, he was informed that "this decision did not seem to be inconsistent with reason". Nor was Longinus successful in his attempt (CJ.10.42.8, Diocletian & Maximian, 286-305) to be excused from certain *munera* that he considered *corporalia*, from which he was otherwise exempt; the emperor disagreed, informing him that there was no doubt that these duties were patrimonial. Such questions were no doubt common in a period where *munera* were becoming increasingly onerous for the curial classes, and there is no reason to suspect that when women were liable for *munera* they did not attempt to avoid responsibility for them in the same way as men.[112]

In any event, Marcia was informed that of the personal duties that were imposed on women, excusal was only granted to those women who "on the example of men", *exemplo marium*, had five surviving children, and from the *munera patrimonii* there was to be no excuse, even for women. However, Marcia is exceptional in the *Codex*;

[109] For women and *munera* see Arjava 1996:251-254; Evans Grubbs 2002:74-80.
[110] D.50.4.1.3, Hermogenian*, Epitomes, book one*.
[111] For exemption from *munera corporalia* see D.50.4.3.3, Ulpian, *Opinions, book two*. No definition of such *munera* is given.
[112] See Garnsey 1998:ch.1 (pp.3-27) for the declining appeal of local magistracies as a result of the burden of *munera*.

while a large number of rescripts in book ten relate to the excusal from *munera*, the vast majority were addressed to men, [113] as the burden for providing *munera* fell to women less frequently. Of course, we cannot be certain whether the lower frequency of rescripts addressed to women in this area of law was a result of status distinctions or simply one of degrees of wealth. Although the majority of women who used the imperial petition and response were property owners, women of higher status or with significant wealth who were more likely to be liable for the more burdensome *munera* represented only a small part of the population, and had more options available to them in managing their legal affairs. For women with fewer resources, any *munera* for which they were liable, likely *personalia* rather than *patrimonia*, were unlikely to be significant enough to make the time and expense of petitioning the emperor worthwhile, whereas wealthier women or women of a higher status could draw upon family or social connections to resolve their problems, and therefore did not necessarily need to use the system of imperial petition and response themselves.

While it is difficult to draw inferences from a single rescript, it is interesting that the single entry in the *Codex* under the rather unwieldy title *de mulieribus in quo loco munera sexui congruentia et honores agnoscant*, "In what places women should perform services and offices suitable to their sex", was addressed not to a woman, but a man, Claudius (CJ.10.64.1, Philip I, 244-249). Claudius was told that the woman about whom he petitioned, Malchaea, was liable for *munera* in her husband's city, and could not be compelled to perform *munera* in the city in which she was born, although *munera patrimonii* were still due in any place in which she owned property.[114] The relationship between Claudius and Malchaea is unclear. It is possible that Claudius was her husband; although the rescript refers to "her husband" in the third person, *maritus eius*, this is could equally be a result of the style of the secretary *a libellis* who composed it as evidence against such a relationship.[115] However, it is also possible that

[113] Of the 110 entries addressed to private individuals in book ten, eighty-six, or 78%, relate in some way to *munera*; the two entries addressed to Marcia are the only entries to women, 2.3% of the total.
[114] See also D.50.1.38.3, Papirius Iustus, *Constitutions, Book 2*.
[115] See Honoré 1994:121-125 for discussion of this secretary's style.

Claudius was her *procurator*, or manager of her property, and perhaps her freedman, guardian or both.[116] The reference in the rescript to owning property in multiple locations suggests Malchaea was a woman of significant wealth, and so less likely to manage such affairs herself. In some areas of Roman law then, women may be less visible in the *Codex* not because they were structurally excluded from such matters but because they were either not sufficiently affected by them to make petitioning worthwhile, or because those who were affected had alternative methods of resolving their legal difficulties.

While most women whose rescripts are preserved in the *Codex* faced difficulties with private individuals, others petitioned because they were in conflict or otherwise had some dealings with Roman bureaucracy. In addition to *munera*, much of book ten is concerned with taxes and the *fiscus*, the imperial treasury, and the seizure and later sale of property by the *fiscus* could lead to problems for those whose property was seized or who bought such property.[117] Of the four other rescripts to women in this book, three relate to auctions of property by the *fiscus*.[118] These three rescripts represent 18.8% of all the private rescripts dealing with the *fiscus*; significant enough to suggest that women were not substantially disadvantaged in their dealings with the *fiscus*, but nevertheless a lower proportion than in other matters, and perhaps suggestive that women may have been less able or willing to engage with Roman bureaucracy. Certainly in one case, CJ.10.3.3 (Gordian III, 239), a man, Crispus, had petitioned on behalf of his wife, who had purchased property from the *fiscus* and later faced a challenge to her ownership. The rescript does not make the nature of the challenge by the *fiscus* explicit, and Crispus was told that so long as his wife could prove ownership the treasury's attempt to claim the property was in vain,[119] but the rescript nevertheless reflects the very real concerns that he and his wife had regarding dealings

[116] See p.195.
[117] The *fiscus* could appropriate property for a number of reasons, including tax arrears, insolvency or the failure of an heir to avenge the death of a testator. The rights of the *fiscus* are considered in D.49.14.
[118] CJ.10.1.3 (Gordian III, 238-244); CJ.10.3.1 (Caracalla, 213); CJ.10.3.4 (Diocletian & Maximian, 290).
[119] Time limits for higher bids to be received were set, and once this time had passed no further bids could be made, see D.49.14.50, Paul, *Decrees, Book 3*. Another rescript, CJ.11.32.1 (Septimius Severus & Caracalla, no date), also confirmed that a purchaser had no reason to fear losing possession once the time limit had elapsed.

with bureaucracy.

In the case of Crispus and his wife, whether the actions of the *fiscus* were an error made in good faith or an example of dishonesty among treasury officials is of course impossible to determine, but another rescript, addressed to Agortia, CJ.10.3.1 (Caracalla, 213), certainly hints that property was sometimes sold without following the correct process; Agortia was a debtor of the *fiscus* and claimed her property had been sold without the required auction and outside the authority of the *procurator*.[120] Agortia was in a position to petition the emperor for help, but others, both men and women, could easily be intimidated by officials and find themselves unable to reclaim the property that was rightfully theirs. [121] The fact that it was Crispus and not his wife who had petitioned the emperor may suggest that dealing with bureaucracy was seen by the couple as something best handled by men, particularly if there was a suspicion of dishonesty, and this may explain the lower representation of women in such cases, although the total number of private rescripts regarding such matters is small and so we must be careful to draw too many conclusions from limited data. It may simply be the case that where women had a husband or male relative who could petition on their behalf, men generally took on this responsibility and in the few other cases we have of women petitioning about the *fiscus*, the women concerned did not have this support, a subject that is discussed in detail in Chapter 5.

How many of the rescripts addressed to men in the *Codex* were in fact of this type [i.e men petitioning on behalf of a woman] is impossible to determine, but there were some areas of law which excluded private citizens of any gender, making any comparison of the relative rates of engagement of men and women in these areas

[120] See also CJ.10.3.2 (Gordian III, 239) and CJ.2.36.3 (Diocletian & Maximian, 294).
[121] For further discussion of cases of collusion, bribery, and corruption in the *Codex*, see Corcoran 1996:239-244. On the corruption of Roman officials more widely see MacMullen 1988:149-167. There are also numerous allegations of corrupt officials, particularly tax collectors, in papyri; see for example SB 16 12678 (Karanis, 179), a petition to the *epistrategos*; SB 18 13260 (Herakleopolites, 328) a petition to the prefect. In both cases women petitioned to complain that tax collectors had forcibly taken property to pay taxes that were not due.

difficult. Books eleven and twelve, largely drawn from the *Codex Theodosianus,* relate to public law – taxes, rights of individual cities, and roles of imperial officials – and as such there are only thirty-nine private rescripts dated before 305, fewer than 8% of all entries in these two books.[122] The absence of women from these books is as closely linked to social status as it is to gender; while gender certainly prevented women from involvement in certain aspects of public life, many men were similarly prevented as a result of their status. As traditional social divisions between members of the senatorial, equestrian, and plebeian classes made way for increased differentiation between the *honestiores* and *humiliores* in the late second century, and the distinction between citizen and non-citizen faded after the promulgation of the *Constitutio Antoniniana*, attempts to disentangle restrictions on legal mobility based on social status from those based on gender become extremely difficult. As a result we should be careful that we do not overlook the impact of both status *and* gender when attempting to draw conclusions from the types of legal difficulties about which women did or did not petition the emperor.[123]

The analysis of the distribution of the rescripts addressed to women across the books of the *Codex* demonstrates that while focussing on the overall representation of women in the *Codex* is very useful, in that it highlights a general pattern of women's engagement with the process of petition and response, such a focus can obscure those areas of Roman law in which women were less active. Some of the reasons for the lower proportion of rescripts to women in these areas were structural and based entirely on gender: women were expressly prohibited from involvement in certain matters, such as criminal prosecutions, and social expectations dictated that other matters were not always appropriate for women. In other areas, the lack of engagement came not as a direct result of gender-based restrictions, but because those aspects of law were the preserve of administrators and officials, rather than private citizens.

This approach to the rescripts, using the structure of the *Codex* to identify areas of law

[122] In total there are 553 entries across both books, see Appendix VII.
[123] See Chapter 3.

in which women appear to be more or less represented, is not without limitations. The structure was shaped by Roman legal practice and represents a manifestation of the legal culture of its creators: lawmakers, jurists, and lawyers. For those who petitioned the emperor, the "law on the books" and the detail of specific laws or procedures was less important. In later chapters, the areas of law in which more women were more closely involved will be discussed in more detail, with a focus not on discrete legal categories but on the motives of the petitioners. Behind every rescript in the *Codex*, assigned to a particular book or chapter because of its utility to the editors, were real individuals who were more concerned with "law in action" and how they could use the law to protect their interests; the situations about which they petitioned the emperor rarely fell neatly into one legal category or another.

As a result, simply because a rescript was not included within the chapters relating to criminal prosecutions, for example, does not mean that the petition which prompted it did not contain elements which intersected with criminal law.[124] In addition, the rescripts we see in the *Codex* were selected by the editors, and do not represent every rescript ever issued. It could simply be coincidence that few of the rescripts about *munera* which were selected for inclusion in the *Codex* were addressed to women, or the editors themselves may have consciously excluded certain rescripts to women unless absolutely necessary, for reasons unknown to us. More women than men may have actually petitioned regarding public prosecutions, but if they rarely received more than a perfunctory reply, there would have been a smaller body of rescripts from which the editors could choose, leading to an under-representation of women in these books of the *Codex*. While we have no way of knowing if this is the case, and so any conclusions about the proportion of women in specific books of the *Codex* must be treated carefully, this analysis nevertheless demonstrates that women are represented in fewer numbers in exactly those areas of law in which we might expect to see fewer rescripts to women. That is to say that the proportion of rescripts addressed to women in the *Codex* is likely to be broadly representative of the proportion of women who

[124] See also Chapter 2, p.90.

actually petitioned the emperor and reflects the kinds of problems they petitioned about, even if not all rescripts are included within the *Codex*.[125] This proportion was not static, however, but changed over time, with both women's ability to petition and their wider agency in society influenced by the prevailing social conditions.

1.3 The Distribution of Rescripts by Period

While the distribution of rescripts within the *Codex* is, to a certain extent, influenced by the choices the editors made when compiling it and as a result is not always an accurate guide to the precise nature of petitioners' problems, identifying changes to this distribution over time is useful if we wish to gauge the effect of wider social changes on women's representation in the *Codex*. The majority of entries in the *Codex* are dated according to the consular year, and even where this is absent, the emperor in whose reign the rescript was produced is generally known.[126] This means that we can compare relative proportions of women petitioners and the types of problem about which they petitioned across different reigns or periods, allowing consideration of whether conditions for the legal mobilisation of women were more or less favourable during the reign of particular emperors, or particular periods.

Such an exercise is not without problems; in order to draw any meaningful conclusions we require a significant sample size which is simply not available for the majority of Imperial reigns.[127] Exactly how many petitions were answered on a daily basis is unknown, but if the thirteen rescripts of Septimius Severus and Caracalla, the so-called *Apokrimata* (P.Col.6.123, Tebtunis, 200), posted "in the *stoa* of the gymnasium of Alexandria" over a period of three days are demonstrative of the typical output of the chancery, even taking into account *dies nefasti* and *dies religiosi* when public business could not be conducted and courts did not sit, the annual production of rescripts must

[125] For the rescripts in the *Codex Hermogenianus*, Connolly (2010:75-77) also considers the proportion of women recipients to reflect the proportion of petitioners, based on a consistency with Huchthausen's figures for the period up to 292, and the proportion of women's petitions in Egypt.
[126] See n.61, above. There are 33 entries *sine die et consule*.
[127] See Appendix IV; Appendix VI.

have exceeded one thousand.[128]

Under Diocletian, at least, production may well have been much higher. Nine hundred rescripts of Diocletian, from a period of just two years, were collected in the *Codex Hermogenianus,* with as many as nine from a single day represented in the *Codex Justinianus*.[129] Bearing in mind the effects of the process of compilation of both the *Codex Hermogenianus* and, later, the *Codex Justinianus*, the number of rescripts actually produced must have been significantly higher.[130] Even if we accept that different emperors were more closely involved in the process of petition and response than others, and that the imperial chancery was more or less productive in different periods, the entries in the *Codex* can represent only a tiny proportion of all the rescripts that were produced.

With such small sample sizes, both in absolute terms and in terms of the proportion of rescripts produced, it is difficult to make firm judgments about conditions for petitioners, particularly women, during individual reigns. The compilers of the *Codex* were not concerned about the gender of the recipient of rescripts and if the rescript illustrated the point of law they wanted to illustrate, it would be included. That 50% of the rescripts produced under Decius, for example, were addressed to women is more likely a result of the fact there are only eight rescripts recorded for his reign, rather than because women suddenly had more opportunity to petition.[131] Those reigns which

[128] See Millar 1992:244-245; Williams 1974:92-93. As Millar points out, the output of rescripts was higher when the imperial court was settled and fewer rescripts were likely to have been produced while travelling. See also Connolly 2010, particularly pp.44-62.

[129] The nine produced on 28th December 293 are just one example. Of course, such daily volumes do not necessarily mean that this kind of output was the rule, or that these nine rescripts were not produced over a period of several days and just happened to be promulgated together. Similar daily volumes are not uncommon, see Connolly 2010:55-58; 175-205. Evidence from Egypt demonstrates the large volume of petitions received by the prefect during his *conventus*. A copy of an edict of the prefect Subatanius Aquila, P.Yale 1.61 (Arsinoites, 209), refers to the publication in Arsinoite of responses to 1804 petitions received over a period of two and a half days, and there is no reason to think that the emperor's chancery was not similarly busy. On this document and the prefect's *conventus* more generally, see Lewis 1981; Horstkotte 1996.

[130] It is of course possible that the *Codex Hermogenianus* contained all rescripts produced during 293-294, and that they were transmitted in their entirety into the *Codex Justinianus*, but this is highly unlikely.

[131] See Appendix IV; Appendix V.

produced a larger number of rescripts (or rather, where more of the rescripts that were produced were included in the *Codex*) are far more likely to reflect the wider population of petitioners than those reigns for which rescripts are rare.

To avoid these problems, grouping the rescripts by period, as in Table 1.4 below, provides a larger base from which to draw conclusions, helping to smooth any statistical anomalies from an individual reign.[132] As can be seen below, Diocletianic rescripts predominate in the *Codex* and these can reasonably be considered a consistent group – the majority date to the first decade of Diocletian's reign, with the larger part of those taken from the *Codex Hermogenianus*.[133] In all, 55.8% of the rescripts to women in the *Codex* were produced during the reign of Diocletian and his co-emperors, but of the remainder, attempts to group rescripts are problematic.

Table 1.4 Recipients of private rescripts in the Codex by period

Period	Recipients of private rescripts in the *Codex*			Women petitioners in period
	Women	Men/Group	Total	
Pre-Severan	3	18	21	14.3%
Severan	168	674	842	20%
Third Century Crisis	89	391	480	18.5%
Diocletian & Maximian	329	833	1162	28.3%
Grand Total	**589**	1916	2505	23.5%

Of the rest of the rescripts, largely taken from the *Codex Gregorianus*, only twenty-one are pre-Severan, three of those to women, a number that is too small for any meaningful analysis. The first significant group of rescripts – 28.5% of the total – comes from the Severan dynasty, and that the Severan age should provide the first period in which a significant number of rescripts were produced is no great surprise. While the

[132] Previous studies have also grouped the rescripts by period; Huchthausen (1974a; 1976a) in four bands: those from the reigns of Hadrian to Caracalla, those of Alexander Severus, those of the "*soldatenkaiser*", and finally, rescripts from the reign of Diocletian. Honoré uses the death of Probus to demarcate those of the "later Principate" and the "Age of Diocletian" (1994:71). Such divisions are not without their own problems, as will be discussed below.

[133] The rescripts from the *Codex Theodosianus* are from the years 293 and 294. See Honoré 1994:48; Huchthausen 1976a:55. For the rescripts of the *Codex Theodosianus* more generally, see Connolly 2010.

process of petition and response existed before this, the formal relationship of the jurists to the emperor which had begun to develop under Marcus Aurelius led to a flourishing of Roman legal thought, and by the Severan period the increased civil and legal responsibilities of the Praetorian Prefect had become so important that one of the two praetorian prefects was generally a lawyer.[134] Indeed, of the five great jurists whose works were later given authority by Valentinian III in the "Law of Citations" recorded in the *Codex Theodosianus* (CT. 1.4.3, 426), three – Paulus, Papinian, and Ulpian – were active during this period.[135] Both Papinian and Ulpian served as secretaries *a libellis,* overseeing the production of rescripts under Septimius Severus and Caracalla, while Paulus served as one of the lawyers on his council.[136] All three held the office of Praetorian Prefect, and their significant legal skill and influence served to enhance the output of the imperial chancery.[137]

While the style of the rescripts suggests there was significant continuity in terms of the operation of the chancery, the Severan period also includes the promulgation of the *Constitutio Antoniniana*. The wider impact of the *Constitutio Antoniniana* on the legal culture of those in the Roman provinces who had previously conducted business under a variety of local traditions is far beyond the scope of this work, but, as we will see in later chapters, the fact that Roman law now applied to everyone did not always mean that these traditions were forgotten.[138] As a result, although we might expect to see differences between the rescripts produced pre- and post-promulgation, the rescripts in fact show significant continuity, both in terms of subject and make-up of the

[134] de Blois 2001:144; Honoré 1982:3
[135] See Watson 1966.
[136] Honoré 1994:20-24.
[137] Honoré 1994:73; 1982:3; 23. Honoré identifies Papinian as his "secretary number 1" (1994:76-81), and Ulpian as "number 2"(1994:81-88).
[138] See for example Dolganov 2019; Alonso 2020; Ando 2011; Stolte 2001. For latest scholarship on the motivations for and implementation of the *Constitutio Antoniniana*, see Imrie 2018; de Blois 2014.

petitioners.[139]

The six years of Caracalla's sole reign, despite his reputation for preferring the life of a soldier over that of an emperor, generated forty-eight rescripts to women (of a total of 245), more than were produced in the previous eighteen years of Septimius Severus' reign, both individually and jointly with Caracalla.[140] There is no evidence to suggest that any of the earlier rescripts were addressed to non-citizen women and the proportion of women in the *Codex* immediately pre- and post-*Constitutio Antoniniana* certainly barely changed; 22% under the joint reign of Septimius Severus and Caracalla, 20.2% during Caracalla's sole reign, and 19.1% under Alexander Severus, so there is no indication that a sudden increase in the number of potential users of the imperial system was accompanied by increased opportunities for women to petition, or indeed that the new citizens of the Empire availed themselves of the opportunity to approach the emperor in much greater numbers. While there is an increase in the number of rescripts produced after 212, this can just as easily be ascribed to the start of Caracalla's sole reign and the fact that both Septimius Severus and Caracalla had spent the majority of the previous fifteen years away from Rome, and therefore less accessible to the majority of citizens, as to an increase in activity of the chancery.[141] The penetration of

[139] It is not possible to establish how many of the post-*constitutio Antoniniana* petitioners were "new" citizens. The *Codex* rarely records more than a single name, although the *Fragmenta Vaticana*, the Visigothic Epitome of the CG and the *Collatio* generally do include double names, including in some cases those rescripts duplicated in the *Codex*. The name Aurelius or Aurelia, found only once before the *constitutio Antoniniana,* appears in fewer than 5% of entries, the majority of those from the Diocletianic period, and so names cannot be an accurate guide to origin. Compare with Egypt, where Aurelius represents only 0.15% of names in the second century, rising to 9.56% in the third, or the epigraphic evidence from Asia Minor, suggesting the adoption of the name Aurelius/Aurelia was swift in many parts of the empire. Interestingly, many of the occasions where Aurelius is recorded in the *Codex* were rescripts to soldiers. For the evidence from Asia Minor, see Blanco-Pérez 2016; Kantor 2016:49-51. Data for Egypt taken from Trismegistos and includes only attestations that can be dated to a single century. Attestations from documents that cannot be accurately dated are unlikely to have a significant effect on the overall pattern, however.

[140] Hdn.4.3.4, Cass.Dio.78.17.

[141] Of those with a firm date, there are 187 rescripts in the *Codex* from the six years immediately after 212, an average of thirty-one per year, whereas the corresponding figure for the joint reign is 9.8. However, from 204/205 when the *Augusti* were in Rome there are forty-one, suggesting that in this period at least the chancery was probably much busier when it was in Rome. Although the chancery followed the emperor, and thus in principle anyone could use the system irrespective of location, the citizen population of the provinces was much lower than in Rome or Italy, and therefore the base of potential users was correspondingly lower. After the promulgation of the *Constitutio Antoniniana* this changed, as we can clearly see when we consider the volume of Diocletianic rescripts.

Roman law in the provinces among those who were previously non-citizens was not instantaneous, and the evidence from the *Codex* certainly suggests that these new citizens did not suddenly start taking advantage of the process of imperial petition and response in order to make sense of Roman law. However, we must bear in mind that the rescripts selected for inclusion in the *Codex* do not represent the totality of rescripts issued, and the absence of evidence in the *Codex* for increased rates of engagement with Roman law does not necessarily mean that new citizens did not petition the emperor.[142] New citizens, unused to the details of Roman law, may well have petitioned with problems that seemed trivial or simplistic to those who were well-versed in Roman legal culture, and the rescripts they received in response deemed unsuitable for inclusion in the *Codex*.

According to Herodian, Caracalla clearly had some skill as a judge when he set his mind to it,[143] although he was notoriously unpredictable – the murder of Papinian under his direction suggests that he was not entirely enamoured of the legal responsibilities of an emperor.[144] Many of the rescripts produced in his name could well have been produced under the direction of his mother, Julia Domna, who, according to Cassius Dio responded to petitions on his behalf while he was engaged with the Germanic tribes in 213,[145] another reason for the increase in numbers from 212. Her influence, and that of her sister, Julia Maesa, and nieces, Julia Mamaea and Soaemias, after her, is beyond the scope of this work, but if it is true that they made significant attempts to bring order and stability to imperial administration then the process of petition and response provided an ideal opportunity to show the emperor as both accessible to his subjects

[142] The scholarship on the impact of the *Constitutio Antoniniana* on local legal practice is vast, and discussion of legal pluralism both before and after its promulgation is largely beyond the scope of the present work. Recent works include Tuori 2007; Czajkowski 2019; Humfress 2013; Ando 2011.For discussion of the adoption of Roman law in Asia Minor, see Kantor 2016, and for Egypt, see Stolte 2001. Cotton (1993; 1999) illustrates the interaction between Roman, Hellenistic, and local law in pre-CA Judea, with more recent contributions on the "Babatha archive" from Meyer (2007), Hanson (2005) and Czajkowski (2017).
[143] Hdn.4.7.2; Cass.Dio.78.4.
[144] Papinian's relationship with Geta was alleged to be a significant additional factor in his murder; see Zos. 1.9.1-2; Hist.Aug. *Caracalla* 8.
[145] Cass.Dio.79.4.

and to be maintaining the principles of a good emperor. [146]

Following the brief reigns of Macrinus and Elagabalus, from which no rescripts addressed to women are found in the *Codex*, the work of the chancery continued unabated under Alexander Severus, producing eighty-seven rescripts in twelve years.[147] Despite his youth, Alexander's reign was noted for his devotion to the traditional legal responsibilities of an emperor, and the volume of rescripts produced suggests a close relationship with the chancery.[148] Alexander reigned under the considerable influence of his mother Julia Mamaea and his grandmother Julia Maesa, who were themselves closely associated with the above-mentioned jurists, particularly Ulpian, and this helps to explain the significant number of high-quality rescripts included within the *Codex* from his reign.[149] His assassination at the hands of his own troops in 235 signalled the end of the dynasty and the beginning of a pattern of military influence in imperial succession.

The period between the assassination of Alexander Severus in 235 and the accession of Diocletian in 284, the so-called "crisis" of the third century, when the empire was riven by internal disputes over succession and external threats from Sassanid Persia in the east, the Goths along the Danube, and Germanic tribes on the Rhine, produced 15.1% of all the entries addressed to women in the *Codex*. The lower total number of rescripts addressed to women in this period, only eighty-nine in close to fifty years, appears to

[146] Cass.Dio. 78.17. For the Severan empresses, see for example Levick 2007; Langford 2013.
[147] Although Macrinus was said to have been a just and legal-minded emperor his short reign was a turbulent one, dealing with external threats from the Parthians, Dacians, and Armenians, as well as internal ones, not least from Julia Maesa (Herodian 5.3-4). No rescripts survive from his reign, while if the date is correct CJ.2.18.8 was probably produced under Elagabalus, although the subscript assigns it to Caracalla. The Visigothic Summary of the *Codex Gregorianus* records a further rescript, addressed to a woman, *CG Visi* 13.14.1. Any other rescripts that may have otherwise have been included in *the Codex Justinianus* were presumably lost as a result of the *damnatio memoriae* of both Macrinus and Elagabalus.
[148] According to Herodian (6.1.6), Alexander's mother Julia Mamaea encouraged him to spend his time as judge in order that "he would have no opportunity to indulge in scandalous practices".
[149] For rescripts during the rule of Alexander, see Sternberg 1985; Honoré 1994:26-27. See Cass.Dio. 79.30.2-4, Hdn. 6, 1-2. Ulpian, having been recalled to Rome after banishment under Elagabalus, became praetorian prefect under Alexander Severus, until his murder by the Praetorian Guard just one year into Alexander's reign. That the young Alexander was influenced by one of Rome's greatest lawyers is clear from the fact that he referred to Ulpian in two separate rescripts: CJ.8.37.4 (222), and CJ.4.65.4 (222), in which he refers to Ulpian as *amicus meus* and *meus parens*.

be a direct result of this turbulent political situation, with only the longer reigns, by third century standards at least, of Gordian III, Philip I, and the joint reign of Valerian and Gallienus producing more than a handful of rescripts. While the influence of individual emperors on the production of rescripts is debated, it is notable that the reign of Gordian III was responsible for around 10% of all entries in the *Codex*.[150] Gordian, like Alexander, was very young when he became emperor, and with the empire *de facto* in the hands of the senatorial class, he is likely to have had little influence on the content of rescripts produced by his chancery.[151] It is certainly possible that some of the same chancery officials of Alexander's reign were still working during the reign of Gordian, and this continuity may well have led to the production of higher-quality rescripts that the later editors of the *Codex* were more inclined to include than those produced in less favourable periods.[152]

Despite the relatively high number of rescripts of Gordian surviving in the *Codex*, there is a significant reduction in the proportion of rescripts addressed to women, at just 15.2%, the lowest of any emperor with significant representation in the *Codex*. In a period of significant social upheaval and increasing differentiation between *honestiores* and *humiliores*, fewer women in particular seemed willing, or able, to approach the emperor with legal problems, particularly when he was away from Rome.[153] Regular conflict between emperor and usurper, not to mention the emperor's involvement in

[150] Honoré (1994:43-45) argues that the rescripts were written by the *a libellis* when instructed to do so by the emperor and then passed back to the emperor for execution, whereas Millar (1992:650-651) considers the emperor to have been more closely involved with crafting the responses themselves. Corcoran (1996:45-46) occupies a middle ground, arguing that some petitions would require little input from the emperor and would simply be approved by him once drafted while others would require his full attention. Based on the volume of rescripts produced, and the often simple legal principles referred to, this seems to me to be most likely, but it is also likely that different emperors were more or less involved, depending on their personal preferences.

[151] Ando 2012:109; Potter 2004:171–172.

[152] Honoré (1994:113) suggested continuities between the administrations based on the form and style of rescripts and proposed that the *magister a libellis* in this period ("number twelve") could have been a student of Modestinus, identified by Honoré as "secretary number eight", serving under Alexander. This "same" secretary also served under Philip, and it is notable that of the seven extant epigraphic records of rescripts, three belong to this period; one produced under Gordian and two under Philip. For epigraphic records of rescripts, see in particular Hauken 1998; 2004; Connolly 2010:29-38.

[153] Gordian was in Rome between 238 and 242 before travelling towards Syria in 242, and campaigning in Mesopotamia in 243 and 244. 75% (94% of those with a date) of rescripts addressed to him were produced in 242 or earlier.

foreign wars, no doubt reduced access to the emperor's court for all but the boldest petitioners. Of course, although the absence of evidence from the *Codex* suggests reduced engagement with the process of petition and response, even if the work of the chancery itself continued undisturbed throughout the period of the third century crisis, the maintenance of imperial archives also undoubtedly suffered, which may mask the true scale of the chancery's operation during this period.[154] Such problems, then, make analysis of the activity of the imperial chancery and the proportion of female petitioners problematic when we attempt to identify change across individual reigns, or even broader periods, which are themselves somewhat artificial.

The accession of Diocletian and Maximian in 284 saw an end to the anarchy of the preceding half-century. During the reign of Diocletian, a programme of administrative, financial, and military reforms was enacted, and while not all of them were successful, most notably the "Edict on Maximum Prices", the relative stability of the period led to more suitable conditions for the production of imperial rescripts.[155] The rescripts produced under the reign of Diocletian and Maximian,[156] 1161 in total, account for 46% of all private rescripts in the *Codex*, 28.3% of which were addressed to women. This increase in the proportion of women petitioners when compared with earlier periods is significant, but care must be taken not to conclude that this was purely a result of an improvement in the ability of women to petition. Huchthausen suggests the increase in the proportion of women under Diocletian was partly a result of increased independence of women and their involvement in business due to a shortage of men following the "wild years" of the soldier emperors, and partly the success of Diocletian's

[154] See particularly Ando 2012:ch.8 (pp.176-200); Connolly 2010:46.

[155] The character of the reforms of Diocletian and their role in bringing about stability are beyond the scope of the present work. For the reign of Diocletian generally, see Rees 2004; Southern 2015:239-258; Mitchell 2015:63-65. For the Prices Edict, see Rees 2004:42-45; Potter 2004:334-337. The most detailed examination of the role of the emperor and his correspondence during the Tetrarchic period is found in Corcoran 1996, particularly pp.254-263. For Diocletian's legal policy and its influence on the process of petition and response see Honoré 1994:181-185. For Diocletian and the recipients of rescripts, see Huchthausen 1976a; Connolly 2010:137-158; Corcoran 1996:95-122.

[156] The majority of the rescripts were issued in the Eastern provinces under Diocletian, although some rescripts of Maximian do appear in the *Codex*. See Corcoran 1996:34-35; Connolly 2010:66-67; Barnes 1982:48-49.

tax and administrative reforms.[157] The first of these arguments is impossible to assess without accurate demographic data,[158] and Huchthausen further suggests that the policies of Diocletian were deliberately intended to focus on the needs of the socially disadvantaged, including women and enslaved persons, but while his policies may have led to some benefits for these groups, it is unlikely that this was his explicit intention.[159] Connolly suggests that a higher proportion of rescripts addressed to women could also be a result of "female cooperation in towns and cities", and the circumstances for such cooperation were certainly likely to have been more favourable under Diocletian than in earlier periods, when travel to such cities was more dangerous. However, as Connolly herself notes, the concentration of rescripts to women in certain cities is equally likely to be an unintended result of the selection by Justinian's compilers, rather than large groups of women taking the opportunity of the emperor's presence in a city to petition.[160] We should not rule out the fact that as sample size increases, so too does the probability that it more accurately reflects the general population, and this may explain the apparent increase in responses to women.

If the 807 rescripts in the *Codex* taken from the *Codex Hermogenianus* and issued within the two-year period 293-294 are excluded from the calculation, we find that the proportion of women petitioners under Diocletian drops to 23.1%, a little higher than in earlier periods but not significantly so.[161] Conversely, the proportion of rescripts to women in 293-294 is 30.6%. Unless there was an influx of women petitioners during these two years, this suggests that those rescripts taken from the *Codex Hermogenianus* may be more representative of the wider population of petitioners than other rescripts, and therefore that the proportion of women recipients in the *Codex* as a whole is slightly lower than the proportion of women who petitioned. Of course, this may simply be a statistical anomaly; it could be the case that Hermogenian was more likely to select rescripts addressed to women for the *Codex* that bears his

[157] Huchthausen 1976a:70.
[158] See Scheidel 2009:138-145 for discussion of the difficulty in accurately determining Roman population and its demography.
[159] Huchthausen 1976a:75.
[160] Connolly 2010:77.
[161] 81/355 petitioners.

name, or simply that women in the eastern provinces were more likely to petition the emperor than those elsewhere.[162]

Nonetheless, this discrepancy demonstrates the difficulty faced when attempting to identify trends in the representation of women in the *Codex* over time; while some reigns produced large numbers of rescripts that have been transmitted in the *Codex*, others are less well represented, but this does not necessarily mean that women did not petition in large numbers, or at lower rates than in previous periods. While increasing representation of women in the reign of Diocletian appears significant, this may simply be a result of the much larger corpus of rescripts for the period. There are simply too many variables to assess change over time accurately; we might be able to see patterns, but they can be indicative only of general trends, and individual reigns can easily buck the trend. For those women who did petition the emperor, changes in the kinds of problems about which they petitioned will be discussed in Chapter 2, but the analysis presented here shows that while there was a broad tendency towards increased representation of women in the third century, it may not be quite as significant a change as has hitherto been believed.[163]

1.4 Conclusions

In this chapter, the results of a fresh quantitative analysis of the rescripts in the *Codex* have shown that while the broad view of women's representation in the *Codex*, that "almost a quarter" or "nearly a third" of recipients of rescripts were women, is accurate, it does not tell the whole story. While such statements are useful in demonstrating the value of the *Codex* as a source for the socio-legal history of Roman women, further qualifications are necessary, and this new assessment of the rescripts provides a firm base from which to approach some of the questions raised by this

[162] It may also have been the case that the compiler of the *Codex Gregorianus* was less likely to select rescripts addressed to women. For the position of women in Illyria, albeit in the period before Roman rule, see Stipčević 1977:168. For the status of women in Asia Minor, focusing largely on elite women, see Bain 2014, particularly ch.2; van Bremen 1996. On women's role in civic benefaction and religious life in the Greek east, see Boatwright 1991; Mantas 2000, Kearsley 1999.

[163] Cf. Corcoran 1996:105-6, who cautions that "the uneven chronological spread makes firm inferences hazardous."

seemingly high representation of women, complementing earlier studies of the rescripts and providing useful additional context. As we might expect, the proportion of women as recipients in each book of the *Codex* demonstrates that where women do not appear in great numbers this was largely due to the structural and social restrictions that were placed on women's agency. This affected their opportunity for legal mobilisation but the degree to which these restrictions affected women was not universal. The proportion of women represented in the *Codex* changed as social conditions made it easier, or more difficult, to act independently and while we must be careful not to overstate the degree of change it is clear that the ability of women to engage with the system of petition and response increased during periods of relative stability.

The fact that fewer rescripts appear in the *Codex* during a particular period does not mean that women did not continue to face the same kinds of legal problems, and attempt to resolve them, but rather that we simply have limited evidence. Before we can investigate the ways in which women dealt with these problems, and what factors affected the agency of the women in the *Codex*, the focus of later chapters of this thesis, it is necessary to understand what these problems were: what did the women of the *Codex* petition *about*; what were the motivations of the women when they approached the emperor; and how can these problems be meaningfully categorised in order to identify patterns and themes in the rescripts?

Chapter 2 : The Concerns of the Women of the *Codex*

As we saw in Chapter 1, the general shape of the *Codex* and the relative representation of women in each book allow us to get a sense of the areas of law in which women were most active, but the decisions made by the editors as to what title to assign a given rescript do not necessarily correspond to the way the petitioner themselves perceived their problem, and can actually serve to mask the true variety of legal problems they faced.[164] By moving the focus from the structure imposed by Justinian and his editors to individual rescripts, we can begin instead to classify the rescripts according to the concerns and interests of the petitioners themselves, decentring the legal and focusing on the social implications of the problems these women faced.

In this chapter I will first focus on the ways in which the rescripts have been categorised in both the ancient and modern world, demonstrating the difficulties inherent in any attempt to categorise them, before presenting the results of a new analysis of the rescripts which categorises these problems from the perspective of the women themselves. This analysis allows us to better understand the motivations of the petitioners in terms of the resources they were striving to protect, and will show that while the range of individual problems about which these women petitioned is broad, the majority of recipients were concerned with the protection of their economic status and maintenance and enhancement of their social standing. While much discussion of Roman women is focused on gender, this analysis demonstrates that although many women undoubtedly faced difficulties navigating a social system that privileged men, the problems about which these women petitioned the emperor were little different from those faced by men of similar economic and social status.[165]

2.1 Legal Categories

Attempting to identify the circumstances that led to a rescript being issued, that is, what legal troubles the petitioner had, in order to create a typology of the problems

[164] See pp.36-51.
[165] Cf. pp.15-17.

about which women petitioned the emperor, is somewhat more difficult than it might seem at first glance. The nature of the rescripts as individual texts and stripped of all context makes it difficult, if not impossible, to ever understand the true nature of an individual petitioner's problem.[166] Chief among these difficulties is the hand of the editors; are the replies we read in the *Codex* what the petitioners received, and can we ever really understand the nature of the petitioners' problems through the mediation of those editors? This section will highlight the ways in which the intervention of the jurists and editors of the *Codex* affects our ability to identify the central concerns of the petitioners, and will show that approaching the categorisation of the petitioners' problems from a strictly legal perspective, that is to say, using Roman legal categories, can obscure the motivations of the petitioner, and in doing so affect our own view of their reason for petitioning.

When Justinian initiated his grand project to codify Roman law, he gave the commission charged with creating the first *Codex* dispensation to make changes to the text of the rescripts they used, authorising them where necessary to cut out superfluous material, repetition and contradiction, remove laws that had fallen into desuetude, clarify meaning, and split constitutions, before inserting their contents into the most appropriate location of the new *Codex*.[167] We do not know, of course, what alterations the unknown compiler of the *Codex Gregorianus* had previously made to the rescripts he collected, or whether Hermogenian edited rescripts that he himself had produced before creating his own *Codex*, and hence the source material itself may have suffered from significant emendation before it even made it to this commission.[168] As we saw in the introduction, the *Codex* as we read it today is effectively a modern

[166] See p.17. Cf. Evans Grubbs 2005:94-95; Connolly 2010:45.
[167] *Const. Haec*. pr., cf. *Const. Summa*. 1. Corcoran 2016:xcviii-cxix; Connolly 2010:41-43.
[168] The rescripts written by Hermogenian himself were probably written with the creation of his *Codex* in mind and suffered from less emendation, although this can make the original purpose of the petitioner more difficult to extract from the deliberately legal language of the reply. See Corcoran 1996:56; Corcoran 2013:15-20; Honoré 1979:58-62. Of course, the same applies to the *Codex Theodosianus* but "private" rescripts (i.e. those addressed to private individuals) no longer had force of law from 398 (CT.1.2.11) and no private rescripts post-305 were included in either the *Codex Theodosianus* or *Codex Justinianus*.

recreation of the second edition of the *Codex*, or *Codex Repetitae Praelectionis*.[169] Under the direction of the jurist Tribonian, the editors of this second edition, using the earlier *codices* as their source material, further altered the content, form, and language of the rescripts they included.[170]

This is not to say that the *Codex* as it stands is an entirely modern invention, but the changes made by this commission, more than two centuries after the original rescripts were issued, leave us with rescripts that may well bear little resemblance to the original text the petitioners received. This has a significant impact on our ability to identify the true intentions of the original petitioner, something that is vitally important if we are attempting to categorise the types of problems about which the women petitioned. While the editors might have considered "superfluous prefaces", *praefationes supervacuae*, to be unimportant because they "contribute nothing to an enactment", their loss also removes important contextual detail which could otherwise shed more light on the petitioner's problems and the way they dealt with them.[171] While in most cases we have no evidence of what the editors might have removed, in a very small number of cases some traces do remain.

In February 286, a woman called Calpurnia Aristaeneta (CJ.3.29.4, Diocletian and Maximian, 286), who claimed that her son had squandered his property on lavish gift giving, petitioned the emperor Maximian in Milan, in the hope of having the property returned.[172] For the editors of the *Codex*, a rescript was of interest not because of the circumstances behind it, but because of the legal principle it demonstrated. The reply to Calpurnia was particularly useful in this respect as it was able to demonstrate more than one of these legal principles, and so the editors split the response between two titles.[173] The first entry, placed under the title *de inofficiosis donationibus*, simply

[169] p.21.
[170] On the creation of the second edition, see Corcoran 2008:76–77; Corcoran 2016; Harries 1999:24; Honoré 1978.
[171] *Const. Haec*, 2; *Const. Summa*, 1.
[172] Calpurnia's case is perhaps one of the most well-known examples of women petitioning the emperor, noted in, for example, Corcoran 1996:106; Evans Grubbs 2005:96; Elton 2006:204; Mitteis 1891:158.
[173] See p.32.

confirmed that the *praeses* would investigate the situation and, if what Calpurnia said was true, cancel her profligate son's transactions without any need for an action analogous to the *querela inofficiosi testamenti*.[174] Calpurnia was informed that as a minor, her son had been entitled to obtain *restitutio in integrum*, granted by the praetor to make good any losses suffered "through duress or cunning or youth or absence", and as his heir, this right passed to her.[175] The fact that Maximian referred to the *querela inofficiosi testamenti* in his response suggests that Calpurnia herself had alluded to it in her petition, and if this as the case, it is interesting that she had sufficient legal knowledge to suggest this action, but was seemingly unaware of her right to *restitutio*, although it might also suggest she composed her petition with the support of a more knowledgable adviser. When she petitioned the emperor, she had some idea of the way the law operated, but as we see in many other cases, this knowledge was not necessarily complete.[176]

The second entry, consisting of a single sentence and placed under the title *de donationibus*, simply confirmed that gifts could legally be made even if the beneficiary of the gift was absent (CJ.8.53.6, Diocletian and Maximian, 286).[177] If we were to read this entry alone, we would learn little about the situation and have no idea whether Calpurnia was the giver or recipient of the gift it concerned, let alone that she considered the gift to have been *inofficiosus*. Only by reading the two entries in tandem can we begin to understand more about the situation, and this only because the editors saw enough value in the rescript that they split it in two and used it under two titles. Had another rescript better illustrated the point about *restitutio* it is conceivable that the first entry could have been omitted entirely, and we would know even less about the situation. Of course, it is impossible to know how many of the other entries in the *Codex* have suffered such a fate.

[174] The *querela inofficiosi testamenti* was an action that allowed an heir who had been disinherited without reason to have the will set aside as "unduteous" and succeed under intestacy rules. See *D.*5.2, Berger 1953:665. Kaser 1968:301–303.
[175] D.4.1.1, Ulpian, *Edict, book 11;* D.4.1.6, Ulpian, *Edict, book 13.*
[176] How knowledge of law was acquired, its accuracy, and how this knowledge was demonstrated is beyond the scope of this thesis.
[177] D.39.5.10, Paul,*Sabinus, book 15.*

However, in Calpurnia's case, even when we read these two entries together we are still missing important contextual information about her petition and we would know nothing about Calpurnia's attitude to petitioning the emperor, were it not for the fact that the rescript she received was also recorded in an earlier legal work of unknown origin, the remnants of which are recorded in the fifth-century *Fragmenta Vaticana*.[178] The *Fragmenta Vaticana* retains the *praefatio* that the editors of the *Codex* evidently considered superfluous; a single sentence that provides no additional legal detail but does provide significant contextual information about Calpurnia's attitude to petitioning. In that text (FV.282, Diocletian and Maximian, 286) we learn that Calpurnia had not petitioned the emperor on just one occasion, but had petitioned previously, perhaps several times, about the same issue and had not been satisfied by the response. This time, a clearly exasperated Maximian responded "since, not being content with the rescripts which you had received in reply to your first petitions, you wished to petition again, you will take back a rescript according to law."

For Calpurnia, the process of petitioning the emperor was not a one-off event, the response to which was final and authoritative, but rather an opportunity that she could use to her own advantage.[179] She demonstrated significant audacity in the face of what for many women must have seemed a daunting situation, but her case, while very important in terms of highlighting the impact of the editing process, is exceptional.[180] The editors excised this very personal preface because it added nothing to the point of law the rescript illustrated, but in none of the few other cases of rescripts to women that appear in both the *Codex* and *Fragmenta Vaticana* do we see another such

[178] Harries 1999:21; Schiller 1978:50–52.
[179] See also CJ.8.43.1 (Caracalla, 212) to Apronius; he had previously petitioned, and now sought another rescript. In his case we do not have both rescripts, but it seems as if the first had not deterred his opponent.
[180] The *Fragmenta Vaticana* do not always provide evidence of excision, but often provide evidence for changes to the language of the rescripts (see *Const.Haec*.2) to suit the late-antique context. See, for example, FV.22 (Diocletian and Maximian, no date), which even in its fragmentary state diverges significantly in language, if not in substance, from the same rescript recorded as CJ.4.46.2 (Diocletian & Maximian, 194).

intimate view of the relationship between petitioner and emperor.[181] Any detail that has been lost in the editing process has the potential to significantly alter our interpretation of the situation, but in the majority of cases we simply have no idea how much is lost.

With the exception of Calpurnia's case, only CJ.8.53.4 (Probus, 280), addressed to Massicia, shows significant evidence of abridgement when compared to the rescript preserved in the *Fragmenta Vaticana, FV*.288 (Probus, 280).[182] While the additional material in the *Fragmenta Vaticana* provides clues to the way Massicia framed her petition and adds some background detail, it does not compare to the personal reaction of the emperor we see in the rescript to Calpurnia.[183] Of course, the few examples that occur in the *Fragmenta Vaticana* which show only limited emendation do not mean that the more than six hundred remaining rescripts in the *Codex* were not significantly emended. For most of the recipients in the *Codex*, all the evidence we have is those sections of the original rescript that, like Calpurnia's absent gift, the editors chose to include. We simply do not know what other material that could otherwise add immensely to our understanding of the ways women interacted with legal authorities has been lost; material that could tell us how many of the women petitioned repeatedly, how they viewed the process of petition and response, and their place and that of the emperor within that process.

[181] Rescripts to women appearing in both sources are:
FV.286 (Diocletian & Maximian, 290) = CJ.8.54.3 (Diocletian & Maximian, 290);
FV.288 (Probus, 280) = CJ.8.53.4 (Probus, 280).
FV.315 (Diocletian & Maximian, 18th February 291) addressed to Ulpia Rufina forms, with minor textual emendations, part of the response to Aurelius Proculinus (CJ.3.32.15, Diocletian and Maximian, 17th September 293). Whether this is evidence of a conscious "recycling" of a prior rescript, the hand of the editor, or simply the same secretary (identified by Honoré (1994:179 n.518) as Hermogenianus) repeating what is in effect a formulaic exposition of the law in two different rescripts is unclear.
CJ.4.46.2 (Diocletian & Maximian, no date) on the other hand contains a further two sentences which do not appear in FV.22 (Diocletian & Maximian, no date), a rare example of the *Codex* containing additional material not found elsewhere. Gradenwitz argues that based on vocabulary and the fact that the third sentence seems to contradict the first, these additional sentences were interpolated by the editors from another rescript of Diocletian. (Gradenwitz 1925:esp.491., and see also Corcoran 1996:15, n.54.)
[182] On the relationship between texts in the *Codex* and *Fragmenta Vaticana*, see in particular Honoré 1994:54; Corcoran and Salway 2012:77-78; Corcoran 2013:13; Connolly 2010:52.
[183] Massicia's case is discussed in Watson 1974:1124–64.

2.2 Categorisation of the Rescripts

i. Ancient Categorisation

Interpolation by the editors is not the only way in which they influence our reading of the rescripts in the *Codex*; their decision about where to include a rescript within the *Codex* does not always reflect the motivations of the petitioner, and cannot be relied upon if we wish to accurately categorise and contextualise a petitioner's problem. A couple of examples help to demonstrate this problem, and show how the interests of the editors can obscure the nature of the petitioner's dispute. In the first, a woman named Ulpia had petitioned the emperor after she was convicted of theft, and the rescript was included by the editors of the *Codex* under the title *de causis, ex quibus infamia alicui inrogatur*, "For what reasons infamy will be imposed on somebody" (CJ.2.11.8, Septimius Severus & Caracalla, 205).[184] As an illustration of the point of law in question in this title, the emperor's response is effective: those who are condemned for theft suffer *infamia,* and those on whose property stolen goods are found, while still punished, do not. Although it is clear that Ulpia had been condemned, without suffering the penalty of whipping, precisely why she had petitioned is unclear.[185] The reference to *infamia* and the editors' choice to include the rescript under this title suggests that Ulpia's primary concern was the effect of the condemnation on her *existimatio*, but this does not tell the whole story. The brevity of the rescript and the emperor's repeated use of the conditional *si,* demonstrating the principle that the response being given was valid only *if* what the petitioner said was proven to be true, make it difficult to establish the precise circumstances that led to her condemnation, and so while we know that Ulpia had been embroiled in some kind of criminal activity, her part in the theft is unclear.[186] It seems likely that she had been condemned via an

[184] CJ.2.11.

[185] According to the law of the XII Tables, the perpetrator was liable for a penalty equal to three times the value of the stolen goods. Only those condemned for *furtum manifestum*, that is, caught in the act of theft, were whipped, although this was later reduced to a penalty of four times the value of the goods. Those caught in the act at night or who defended themselves with weapons were put to death, but these harsh penalties were later relaxed by the Praetor. See *Gell.* 11.18.1; Gai.*Inst*. 3.189.

[186] The emperor and his chancery delivered rulings on points of law, but did not make decisions as to the guilt or innocence of a party involved. For the emperor's use of conditionals, see Corcoran 1996:60–61; Honoré 1994:38.

action for *furtum nec manifestum,* theft detected only after the commission of the theft rather than in the act itself, or possibly, although this action may already have been obsolete by Ulpia's time, *furtum conceptum*, what we might consider handling stolen goods.[187]

Having been branded with the legal status of *infamia* would have barred Ulpia from certain legal acts, chief among them not being able to appoint a *cognitor* to act on her behalf in a lawsuit, while according to the Julian marriage laws certain classes of men would be unable to marry her, and although such a status did leave her at greater risk of suffering torture and corporal punishment if she was accused of other crimes, it was otherwise unlikely to have been a significant problem.[188] These, however, are just the legal implications of *infamia*; the effects of shame and other stigma on Ulpia's ability to participate fully in her local society are completely unknown. The fact remained that she had been condemned for theft, and not even a rescript from the emperor may have removed the stain on her character in the eyes of her neighbours. While Ulpia was clearly concerned with her status, as the editors of the *Codex* recognised when they assigned the rescript to the chapter they did, she was not just looking for clarification of a legal point which in all likelihood would have little impact on her day to day life; she also was hoping the emperor would be moved to pity, telling us something about Ulpia's attitude towards her conviction and how she saw the role of the emperor. Ulpia, like many of the users of the system, was hoping not only to receive a decision about her legal status, but also to obtain the emperor's favour in respect of the condemnation, perhaps even a pardon.[189]

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[187] Gaius, *Inst*. 3.186;191. Sirks 2013:466–468. How the law on *furtum conceptum* developed and its application is rather vague but by Justinian's time the action for *furtum conceptum* was obsolete (Iust.*Inst*. 4.1.4), superseded by the action for *furtum nec manifestum*, and so any reference to *furtum conceptum* would have been altered by the editors to reflect contemporary laws. Sirks suggests that it was obsolete by the mid-second century. See also Daube 1937:69–73; Pugsley 1969:esp.146-147.

[188] Gardner 1986a:46; Knapp 2016:367–368; Leppin 2011:671-672; Buckland 1921:92–93; Greenidge 1894:170-176. Bond (2014), however, considers the impact of *infamia* to have been more significant, suggesting Gardner "dismisses these disabilities all too quickly" (2014:7 n.29).

[189] On petitioners' expectations of *beneficia*, see Mathisen 2004; Corcoran 2000:54-57; Millar 1992:537-549. While petitioners often received negative replies to such requests, that is not to say that the emperor did not on occasion demonstrate his *benevolentia* to petitioners, generally only in cases that did not infringe the rights of others.

We must also remember that the emperor only had Ulpia's side of the story and as we see in the evidence from Egypt, petitions were full of partisan rhetoric which painted petitioners as blameless parties to disputes, tormented by malicious adversaries, and with women in particular often characterised as "weak and helpless" in the face of a more powerful oppressor.[190] Ulpia no doubt used similar rhetoric in her petition; claiming that, whether true or not, while the stolen goods were found on her property she had nothing to do with the theft. Therefore not only was she hoping that the emperor would confirm that the sentence she had received would not involve loss of *existimatio*, but that he might also take pity on her and refer the case to be tried again, or even overturn the sentence completely. There are traces of this appeal to pity in the response; the emperor, while being careful not to pass judgment as to the veracity of Ulpia's claims, conceded that if she had indeed been unaware of the theft then the sentence she received was *durior,* "quite harsh". What he did not do, however, was overturn the judgment. While Ulpia had seen the process of petition and response as an appeal to the emperor's *benevolentia* and a potential opportunity to have her sentence reduced or annulled, this was not its function, nor was it the role of the emperor to overrule decisions made by other judges.[191]

This rescript demonstrates that if we wish to better understand and categorise the reasons women used the process of petition and response, we must look beyond the structure imposed upon the *Codex* by the editors. At first glance it seems easy enough to agree with the editors and consider Ulpia's concerns from the point of view of her status, but the rescript also reflects something of Ulpia's attitude to her condemnation, and of crime and punishment more generally.[192] Of course, no categorisation, whether imposed by the editors or by us, can possibly reflect the complexity of Ulpia's circumstances as she saw them. The disputes about which the petitioners sought

[190] See for example Pap.Choix 5 (Theadelphia, 127) in which Sarapous petitioned the *strategos*, appealing to him "in my [weakness] and helplessness" ([ἀσθενὴς] καὶ ἀβοήθητος). The petitioners of P.Amh 2.141 (Hermopolites, 350) and P.Oxy 1.71 (Ptolemais Euergetis, 305) both described themselves as γυνὴ ἀσθενὴς καὶ χήρα, a "weak and widowed woman". See also Hobson 1993:200; Harries 1999:184-186; Kelly 2011:56–58.
[191] Honoré 1994:38–40.
[192] Huchthausen (1974a:227) assigns the rescript to the category of *Strafrecht*, "criminal law".

assistance from the emperor were not necessarily easily resolved by reference to a single point of law; the problems that led to them were more complex, often touching upon a number of different points.

The case of Sopatra (CJ.2.18.1, Septimius Severus, 196) demonstrates how a single rescript, used by the editors of the *Codex* to demonstrate a specific legal principle, can actually shed light on a number of different aspects of the petitioner's case and illustrate how the title to which the editors assigned the rescript does not necessarily correspond with the experience of the recipient. Sopatra petitioned Septimius Severus after having taken legal action against her sons' *tutores* to have them removed and replaced, accusing them of managing her sons' affairs fraudulently.[193] This was evidently a common problem; according to Ulpian "every day tutors are charged with untrustworthiness" and indeed we see a number of rescripts which attest to this in the *Codex*.[194] While this mismanagement by the *tutores* was ultimately the source of Sopatra's legal troubles, it was not the legal case itself that she petitioned about, but rather the costs incurred in the prosecution of the case. Any individual who voluntarily involved themselves in the business of another without prior consent was liable to the *actio* for *negotiorum gestio*, to recover any proceeds or damages incurred as a result of improper management, but were themselves able to recover expenses incurred in such management under a counter-action, the c*ontrarium iudicium negotiorum gestorum.*[195] The editors of the *Codex* assigned the rescript to the title "concerning volunteer agency", *de negotiis gestis,* as it succinctly demonstrated the important principle that not all expenses fell within the scope of this *actio*.[196]

[193] The right to bring an accusation against an untrustworthy tutor or curator was public (D.26.10.1.6, Ulpian, *Edict, Book 35*) and was open to women, although restricted to those women "who take this step under the compulsion of duty and necessity, as for example, a mother" *quae pietate necessitudinis ductae ad hoc procedunt, ut puta mater* (D.26.10.1.7, Ulpian, *Edict, Book 35*).
[194] D.26.10.1pr, Ulpian, *Edict, Book 35*. Of nine entries in the *Codex* under the title *de suspectis* (CJ.5.43) four (CJ.5.43.1;3;4;7) are addressed to women. In two of these, the petitioner is the mother of the minor concerned. See also Chapter 5, p175.
[195] D.3.5.2, Gaius, *Provincial Edict. book 3*; D.3.5.44.pr, Ulpian, *Opinions, book 4*. The law relating to *negotiorum gestio* recognised that there were occasions where getting involved in another's business without consent was justified, and often conducted out of helpfulness or a sense of duty, particularly where the principal was absent and could not act for themselves or designate a procurator to act on their behalf. See Kaser 1968:192–194; Berger 1953:593–594; Buckland 1921; Lorenzen 1928:190–193.
[196] CJ.2.18.

In this case, the losses of Sopatra's sons had presumably been made good through the prosecution of the *tutores,* and Sopatra, acting on her sons' behalf, had incurred costs that she now hoped to reclaim.[197] The issue at stake as far as the emperor's chancery was concerned was whether Sopatra had acted as a *negotiorum gestor*, or whether her actions were simply those that were expected of a mother. This question must have arisen often, as while women could not legally act as tutors for their children, they nevertheless often found themselves compelled to act on their behalf where no male relative was available, or where those relatives were the very people against whom they were acting.[198]

When Herennia (CJ.2.18.11, Alexander Severus, 227) found herself in a similar situation, incurring expenses while managing her sons' affairs, she was told that she was indeed able to reclaim them in an action on *negotiorum gestio*, provided that any expenses beyond those which were expected by *materna pietas* had been paid "usefully and in an acceptable manner", *utiliter et probabili more*.[199] While there is perhaps an insinuation here that the emperor considered that some women in the same situation might incur more expenses than necessary, whether through ignorance or frivolity, it nevertheless demonstrates that women could and often did act on behalf of their children.[200] Sopatra was not as lucky as Herennia; the emperor informed her that as she

[197] Her sons were evidently still *impuberes* and therefore under *tutela*; had they been over the age of fourteen they could have brought an *actio rationibus distrahendis* or *actio tutelae* in which the tutor would need to provide an account of what he had done for the *pupillus.* Kehoe 2013:183; Saller 1994:185.

[198] As Alexander Severus told Otacilia, "the performance of the duty as guardian is the work of a man, and is unsuited to the weaker, feminine sex", (CJ.5.35.1, 224). Dionysia was given the same justification by Diocletian (CJ.2.12.18, 294), in very similar words: such an act was *ultra sexum*. Nevertheless, some women did take on this role from a practical, if not legal, position. For a number of examples from papyri, see Evans Grubbs 2002:254-260. By the end of the fourth century, widows could be appointed as guardians for their underage children if they promised not to remarry, provided there were no testamentary or statutory guardians; CJ.5.35.2 (Valentinian & Theodosius, 390). See also CJ.5.35.3 (Justinian, 530).

[199] If a *negotiorum gestor* paid out more than necessary, they could not claim the excess. D.3.5.24 (25), Paul, *Edict, book* 27.

[200] For discussion of women as tutors, see Gardner 1986a:146-152. In CJ.2.18.2 (Septimius Severus & Caracalla, 197) Rufina petitioned as *negotiorum gestor* after having taken a child who was not her own to Rome for the purposes of having a tutor appointed. The relationship between Rufina and the child is unknown, but there is a suggestion that the mother of the child had neglected their responsibility to find a tutor.

had paid the expenses *pro adfectione*, the action on *negotiorum gestio* was not permitted.[201]

These two rescripts, very similar in content, and likely a result of similar circumstances, each appear to have produced a different outcome, and were used by the editors of the *Codex* to illustrate two different legal points, both under the title *de negotiis gestis.* The only difference between the two cases, as far as we can tell from the rescripts, is that the rescript to Herennia suggests that she may have claimed in her petition to have paid the expenses with the express intention of reclaiming them, *recipiendi animo fecisse*.[202] Without the original petition, we do not know whether Herennia had indeed claimed such a thing; if she had, it suggests a level of legal knowledge that allowed her to influence, if not quite manipulate, the chancery. Knowing that a rescript from the emperor would help her case, suggesting in her petition that this was always her intention, even if it was not, was one way in which she might receive a more favourable response; how she might prove her intention was another matter. If Sopatra was more legally naive, and either did not know this rule, did not allude to it in her petition, or explicitly stated that she had spent the money as a *munus pietatis*, this could explain why the rescript to her did not qualify the emperor's response in the same way as the reply to Herennia.[203] Either way, while Sopatra may well have carried out this duty through love for her sons, it does not mean that the actions of the suspected guardians had not put her at a financial disadvantage. By petitioning the emperor, she was attempting to safeguard her financial security, and the reply she received demonstrates far more about her attitude towards her economic position than the single principle otherwise implied by the editors' choice of title.

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[201] See D.3.5.4, Ulpian, *Sabinus, book 65*: **"**it is right that he should be able to bring an action for unauthorized [*sic*] administration, unless he intended to make a gift of his services".

[202] See also CJ.2.18.13 (Alexander Severus, 230) and CJ.2.18.15 (Gordian, 239). What was considered to have been done out of affection evidently only went so far; in CJ.2.18.13, Aquila petitioned the emperor after the death of his wife. He was told that expenses incurred while nursing his sick wife could not be claimed, but that he could sue his father-in-law to have funeral costs repaid from the dowry, which had returned to his wife's father on her death.

[203] The other possibility is that Sopatra's rescript had originally contained a similar qualification to that found in Herennia's but that the editors removed it. That said, the rescript to Sopatra is the earliest in this title and later rescripts, such as that of Herennia, retained this condition, so the removal of a clause like this seems unlikely.

Most petitions touched upon a number of different legal points, which the emperor's chancery could unpick, but to the petitioner the subtleties of the legal system were often irrelevant. They did not see their problem as something that could be reduced to concrete legal principles, but rather a dispute with a neighbour or family member, which had a life outside of the formal legal world. Of course, these legal principles are exactly what we see in the *Codex*, precisely because that is what Justinian intended. Lawyers who later used the *Codex* needed to be able to apply the constitutions contained within to similar cases, and the background to the case and the preoccupations of the petitioners themselves were of no concern. This tension between rescripts as utilitarian texts for the recipient and as definitive sources of Roman law for lawyers makes any decision about how to categorise the problems they were intended to solve more difficult.

As these examples demonstrate, a single rescript can conceivably be categorised in several different ways. We can follow the decisions of the editors, and assign a category based on the organisation of the *Codex*, but this can leave us with the awkward problem of assigning two rescripts with very similar content to different categories. Equally, we could attempt to categorise rescripts based on the intention of the petitioners, but this too poses problems. We cannot possibly know what the petitioner actually intended without the text of their original petition, and in many cases it is likely that the petitioner themselves would have been unable to articulate their true intent in terms of discrete legal categories. They knew they wanted somebody to take action, or be told what action they themselves could take, but without an expert knowledge of the law, they could not possibly know what this action might be.

ii. Modern Categorisations

As we have seen, ancient categorisation of the rescripts according to legal principles, while very useful when approaching the rescripts as purely legal texts, presents a number of problems when our interests lie in the social implications of the kinds of problems women faced. Discarding these ancient categorisations entirely and assigning categories based on modern concepts is equally problematic; such an attempt

inevitably reflects the interests of our own society and not the society in which the rescripts were originally produced. Nevertheless, it does allow us to highlight broad themes within the rescripts and from the point of view of a social historian such categorisation cannot reasonably be avoided if we hope to reconstruct the socio-legal milieu of the petitioners, provided that while doing so we are aware of the aspects that influence our decision. The limited detailed analysis of the subject of rescripts, in English-language scholarship at least, attests to these problems.

While individual rescripts can shed significant light on the kinds of legal problems their recipients faced and have often been used as a source for Roman social history, in respect of the subjects they cover the rescripts in the *Codex* have rarely been examined as a complete corpus. As discussed in Chapter 1, Honoré, in his study of the rescripts issued between 193 and 305, focused on the style and language of rescripts, and not on the problems the petitioners actually faced, although he acknowledged that rescripts generally fell into the category of requests for favours or rulings on a legal situation.[204] In terms of what the petitioners hoped to receive in response to their petition, this is certainly true; after all, this was precisely what the system was for. It does, however, focus on the response rather than the petitioner, in that what may appear to be a response to a request for a favour may in fact have been intended by the petitioner to clarify the legal situation, and vice versa. It may be possible to categorise the rescripts according to the presumed intention of the petitioner, that is whether they requested a favour or legal ruling, but such an undertaking is of limited benefit when we consider that the rescripts have been edited in such a way that we cannot be sure about the petitioners' true intentions.[205] A typology that takes account of the substance of the disputes that led to the petitions, while acknowledging that we cannot always determine precisely what that substance was, is more useful. While there has been some focus on these aspects of the rescripts, such studies have often been limited in

[204] Honoré 1994:36-38, citing Coriat 1985. See pp.51-53.

[205] The problem of identifying a petitioner's true intention is not solved when we consider the few extant examples of petitions to emperors themselves. The villagers of Skaptopara (SEG 44.610 = IG.Bulg IV.2236 = CIL III.12336) or the *coloni* of Saltus Burunitanus (CIL VIII.10570 = ILS 6870) for example inscribed their petition and response to demonstrate they had the ear of the emperor and to avoid further abuses, and as Hauken (2004:11) says of the inscribed petitions "in contents and use ranged very wide [*sic*] and accordingly is hard or cumbersome to define".

scope.

In his discussion of the status and occupations of the Diocletianic petitioners, Corcoran observed that while some women petitioned regarding "basic matters of their legal capacity" or questions of status, most of the petitions were "straightforward civil disputes, or more narrowly, money and property matters".[206] Corcoran's work focused closely on what rescripts and other imperial pronouncements can tell us about the nature of government during the Tetrarchy rather than the effects of these pronouncements on the petitioners, and so detailed discussion of women as petitioners was beyond the scope of that work. While such observations are undoubtedly useful in the context of his work, they nevertheless provide little detail if we wish to investigate the social context of the petitioners' problems in more depth. Similarly, Connolly pointed out that women received rescripts "concerning, for example, property, their slaves, and business" and noting the particularly high proportion of women among the addressees in Heraclea, that many women petitioned about "contracts and business".[207] These categorisations do indeed reflect the motivation of many petitioners, but without further qualification, they risk oversimplifying the broad range of problems and experiences women faced. The work of Huchthausen, which influenced that of Corcoran and Connolly, contains the most detailed analysis of the types of problems about which women petitioned, and Huchthausen used this analysis to categorise rescripts by topic.[208]

In the first of two articles,[209] Huchthausen compared the rescripts issued from the reign of Hadrian to Caracalla with those issued during the "crisis" of the third century, using a seven-category typology, while the second article expanded the corpus to include those

[206] Corcoran 1996:107. Corcoran notes that half of the rescripts to women of the Diocletianic period were regarding "inheritance or business dealings", broadly in line with my own analysis (see p.84). Cf. Millar 1992:547.
[207] Connolly 2010:76;93. See Chapter 4, pp.152-161.
[208] Huchthausen's full list of categories: *Personenrecht* [personal law, referring to freedom]; *Familienrecht* [family law]; *Vormundschaftsprobleme* [guardianship problems]; *Geschäfte außerhalb der eigenen Familie* [transactions outside the family]; *Sakralrecht* [sacral law]; „*Strafrecht*" [criminal law]; *Verfahrensfragen* [questions of procedure]; *Staatsrecht* [constitutional law].
[209] Huchthausen 1974a.

rescripts issued by Diocletian and his co-emperors, with a slightly modified typology.[210] However, Huchthausen's work is not without its limitations, in part as a result of some of the issues discussed in Chapter 1 with regard to the identification of those rescripts which were addressed to women, and some minor discrepancies in calculation.[211] Huchthausen's categories, with minor modifications, were later also applied by Sternberg to the rescripts issued by Alexander Severus.[212]

According to Huchthausen, the majority of rescripts fell into one of four main categories: "personal status", largely restricted to questions of freedom, either of the petitioner or a member of their family; "family law", encompassing a broad range of topics from *patria potestas* to dowries, inheritance, and children; "guardianship problems", covering both the petitioners' own tutor or curator and those of the petitioners' children; and "business outside of one's own family", covering all manner of disputes from business transactions to property disputes.[213] In all, these four categories account for 92% of the rescripts in Huchthausen's corpus and have been widely cited by scholars when discussing the types of problems about which women petitioned the emperor. However, these rather broad categories approach the rescripts from a legal, rather than social, perspective, and while Huchthausen does provide sub-categories for her first three categories, allowing us to examine what women petitioned the emperor about in more detail, little further information is provided concerning the subject of those rescripts relating to extra-familial matters. It is this last category that is the most problematic, accounting for a little over quarter of her corpus.

Huchthausen's division between intra- and extra-familial disputes is useful, in that it may help identify differences in the way that women dealt with the two groups, but it is often difficult to determine from a single rescript whether the petitioner was in dispute

[210] Huchthausen 1976a.
[211] See pp.31-35. In Huchthausen 1976a:63, for example, table one shows a total of 89 rescripts for the period from Hadrian to Caracalla, yet adding the individual categories together comes to 90. Minor differences in categories between her two articles make it difficult to identify the source of this "extra" rescript, but it has little effect on the broader conclusions she draws.
[212] Sternberg 1985. Sternberg adds categories for requesting a guardian and requesting a change to guardian.
[213] Huchthausen 1974a:226; 1976a:63.

with a family member or a stranger.[214] While some legal problems exclude opponents outside the family by their very nature, those relating to *patria potestas*, or dowries, for example, others, such as inheritance disputes or debt matters are not so clear-cut. As a single example, when the creditors of Rufina's late husband attempted to exercise their rights in respect of a piece of land he had pledged to them, she petitioned the emperor, claiming that the land in question was actually her property, having been gifted to her by her husband prior to his death (CJ 5.16.13, Diocletian & Maximian, 286).[215] Because the legal principle that the rescript illustrated involved the validity of gifts between spouses, the rescript was placed by Huchthausen under her sub-category of "*Schenkung zwischen Ehegatten*", "Gift between spouses", which reflects the location of the rescript in the *Codex*.[216] However, while this is clearly an accurate representation of the legal content of the rescript, if we consider the dispute from Rufina's point of view the reason for petitioning was not necessarily to clarify the legality of her husband's gift, but rather it was a way to gain additional support in her attempt stop an outsider from seizing her property. That is not to say that Huchthausen's categorisation, or that of the editors, is not an effective one, but that the categories used align more closely with legal categories than the motivations of petitioners.

[214] Huchthausen assigns 143 rescripts, or 27.4% of her total, to the category "*Geschäft außerhalb der eigenen Familie"* (Huchthausen, 1976a:63). Including Sternberg's analysis of the Severan rescripts using the same categories (Sternberg, 1985:514) provides a total figure of 26.6%. Sternberg notes a decrease in extra-familial matters under Alexander Severus but considers the corresponding increase in "*Verfahrensfragen*" or procedural questions to account for this discrepancy (1985:515), suggesting extra-familial matters were consistent across all periods. This is broadly in line with my own analysis, which shows that 158 rescripts (25.6%) unambiguously involved an opponent outside the family. However, in a further 142 cases (23%) the rescript does not provide sufficient detail to establish whether or not the petitioner was a family member, and so such a category must be treated with some caution. See Appendix VII.

[215] The rescript she received informed her that whether the creditors had any right to the property depended on when her husband had made the gift; if it was (legally) made after he pledged the property then the land was subject to the debt. The gift would have to be shown to have been made legally, as gifts between husbands and wives were generally forbidden (D.24.1.1, Ulpian, *Sabinus, Book 32*). The act of pledging the property could be considered a revocation of the gift but this would need to be clearly shown (D.24.1.32.5, Ulpian, *Sabinus, Book 33*). If, however, the reverse was true, then the pledge could not be considered valid, as her husband could not pledge property given as a gift.

[216] Huchthausen, 1976a:80, labelled "*Schenkung Eheleute*" "Gift [between] spouses". In the *Codex* this rescript was placed under the title *De donationibus inter virum ex uxorem et a parentibus in liberos factis et de ratihabitione,* "Concerning donations made between husband and wife, and by parents to their children".

Another difficulty with Huchthausen's categories is that there can often be significant overlap between categories in the case of a single rescript, as we saw in the case of Sopatra.[217] A financial dispute about inheritance, for example, may also contain a challenge to the legal status of the petitioner or their adversary, or an allegation of crime.[218] A rescript requesting the restitution of losses suffered by a minor (*restitutio in integrum propter aetatem*) may be the result of mismanagement by guardians and therefore while we can consider it a financial dispute, it also tells us something about the legal consequences of possession of a certain status, in this case minority.[219] While this is not a problem when we look at an individual rescript, if we wish to survey the whole corpus, then assigning only a single category to each rescript can distort the true incidence of a particular type of problem.

As this section has highlighted, the ways in which rescripts have been categorised, both by the editors of the *Codex* and by modern scholars, suit different purposes, and any system we choose to categorise the rescripts can never be entirely objective, as our interpretation of a petitioner's motives is coloured by our own purposes, biases, and perspectives. In the next section of this chapter, I will present the results of my own categorisation of the rescripts, intended to overcome or at least mitigate some of the problems that we have seen above, and in the context of considering the types of problem about which women petitioned the emperor from both a social and legal perspective. Inevitably, in terms of the categorisations and themes this highlights, there are some parallels with those identified by Huchthausen, and it will show that the assertions of Corcoran and Connolly are broadly correct. However, by approaching the rescripts in the first instance from the point of view of the petitioner, and thinking about which resources they were seeking to protect, rather than immediately attempting to fit each rescript into a discrete legal category that may have had limited relevance to the petitioner, we can focus more clearly on the social implications of the

[217] This problem is acknowledged by Huchthausen; she assigns a number of rescripts to "family disputes" or "business outside the family" when they are equally relevant to her category of "*Strafrecht*" (criminal law); Huchthausen, 1976a:62.
[218] On status, see for example CJ.6.17.1 (Diocletian & Maximian, 293); CJ.3.8.2 (Caracalla, 213). For allegations of wrongdoing, see CJ.6.39.1 (Septimius Severus, 196); CJ.7.58.1 (Septimius Severus & Caracalla, 198-209); CJ.6.34.1 (Alexander Severus, 229).
[219] For example, CJ.2.24.1 (Caracalla, 215).

problems they faced. To the petitioners, who had real-life problems to solve, the intricacies of Roman law were less important, and if we are to better understand how they saw their problems, we need to move away from formal legal categories.

2.3 Motivations of the Petitioners

Broadly speaking, the motivations of the petitioners can be said to be driven by concern for one or more of four areas: concern for financial security, ensuring that their economic position in society was safeguarded and where possible improved; concern for social standing, maintaining status, and ensuring that status was recognised by others in a society that was highly stratified both legally and socially; concern for family stability, ensuring the effective maintenance of relationships with those who formed (or would form) part of a network of support, or severing those relationships which threatened that support; and concern for personal security, both of person and property, particularly important in a society with no organised police force. These concerns correspond closely with the resources involved in the maintenance or enhancement of power, and reflect the importance of these resources in the production of agency.

Based on my analysis of the 617 entries in the *Codex* addressed to women, which can be seen in Table 2.1, below, almost three quarters of the rescripts in the *Codex* related to financial security, while almost a third were directly motivated by questions relating to status. Some petitions cut across two or more of these categories, and it is often difficult to identify which aspect was more important to the petitioner, if indeed they were not all equally important. Rather than following the model of Huchthausen and assign each rescript to a single legal category, I have instead assigned one or more of these categories to each rescript, and as a result, the total number of rescripts in each category is higher than the number of entries in the *Codex*. This more accurately reflects the fact that these categories did not stand in isolation in terms of how they affected an individual petitioner's agency, and demonstrates how an individual's ability to obtain support from family members might affect their economic position, or how legal status affected their access to, and use of, economic resources.

A limited number of petitions may have been motivated by what may more accurately be described as administrative concerns, rather than a response to a specific threat, and in some cases the rescripts clarify points of law without specifying the cause of dispute but the majority of rescripts were produced in response to a petition which fell into one of these categories.[220] While these motivations are broad, they nevertheless provide a framework that allows more detailed analysis of the root cause of the individual's problem, and form the basis of the qualitative analysis of the rescripts in later chapters.

Table 2.1 Motivation of the Petitioners

Motivation	Total rescripts motivated by this aspect	Percentage of rescripts motivated by this aspect N=617
Financial Security	461	74.7%
Legal and Social Status	167	27.1%
Crime and Personal Security	47	7.6%
Family	34	5.5%
Other [a]	45	7.3%

[a] Rescripts which clarify points of law or refer to unspecified litigation, with no indication as to the root cause.

Categorising the rescripts according to such a schema alone is of limited benefit in identifying how women navigated their legal environment, and there is a difference between the motivation of a petitioner and the root cause of the problem: the specific event or events that spurred their mobilisation of the law. To understand the types of problem that Roman women faced more clearly, this root cause must also be taken into account. The root cause of each petitioner's problem can be categorised and sub-categorised, and here there is inevitably significant overlap with broader legal categories. There is a limit to the utility of increased granularity as ever more detailed categorisation of the rescripts leads eventually to every rescript forming a category of its own, and so I have restricted this subcategorisation to two tiers. While this means

[220] Some of the more administrative documents we see from Egypt, such as requests for guardians, could conceivably fit into one of the other categories, but such documents were generally proactive rather than reactive, that is to say that they were not produced in response to a particular dispute. While the *Codex* does not contain the responses to such petitions, there is no reason to think that women did not sometimes address them to the emperor.

that some detail is missed, it nevertheless allows us to identify the most common causes of dispute and allows for better comparison with other sources of evidence, particularly papyri.

Identifying motive and root cause can help illuminate the petitioner's problem in ways that assigning a single category cannot. As one example, Melitiana (CJ.7.16.33, Diocletian & Maximian, 294), as a freedwoman, was motivated by a desire to protect and ensure she retained her current status; while she was now free, her former enslaver or perhaps his heir was threatening to return her to servitude, claiming the manumission was invalid. Luckily for Melitiana, she was told by Diocletian that once her enslaver accepted the purchase price (presumably, although not necessarily from her *peculium*), her freedom could not be rescinded.[221] Notwithstanding the fact that there were some circumstances in which freedpersons could be returned to enslavement, the legal content of the rescript clearly relates to challenges to an individual's status as a free (or freed) person, and was assigned by the editors to the title *de liberali causa*, "concerning a case involving liberty".[222] While we can consider Melitiana's petition to have been motivated by a desire to protect status, the cause is more specific – the fact that her status was being questioned – and I have assigned other rescripts that were similarly caused by an individual's liberty being questioned to the same sub-category. That is not to say that the circumstances were the same in each case, but they clearly share common features, and thus it becomes easier to identify how many women in the *Codex* faced such challenge. If we were to look only at the titles in the *Codex*, or rely on a single categorisation, there is a risk that some may be overlooked.

The case of Zenonis (CJ.3.22.3, Diocletian & Maximian, 293), for example, has some similarities with that of Melitiana, in that she was also facing a threat to her free status, but here the rescript was placed under a different title, *ubi causa status agi debeat*, "where a case concerning personal status ought to be brought". Zenonis's rescript was used to illustrate the principle that cases such as hers were to be brought "in the forum of the defendant", that is, where Zenonis lived rather than her accuser, presumably her

[221] Gardner 1993:36–38.
[222] CJ.7.16.

ex-enslaver. In both cases, then, the women petitioned with different questions and the editors assigned the rescripts to different books of the *Codex*, telling us different things about the process, but the women's ultimate motive for petitioning was the same: they were defending their social status. In terms of root cause, both women faced accusations that they were not truly free, albeit for different reasons, and can be categorised together. I have followed this process for each of the entries addressed to women in the *Codex*, providing a much broader view of the types of legal problem they faced, and the next section of this chapter will outline the results of this analysis, and demonstrate the range of problems about which women petitioned.

i. Financial Security

Of the rescripts addressed to women, the majority, 74.7%, were motivated by a desire on the part of the petitioner to preserve their financial security. In some cases, this was because they perceived what they had was being threatened, that another individual wanted to take it away, whether they had a legal right to it or not. In others, petitioners saw opportunities to increase their financial security, and felt that their opponent was denying them these opportunities. The petitioners were up against a range of opponents; some were family members, particularly where inheritance was concerned, while others were neighbours, business partners, or other non-related individuals with whom the petitioner had some kind of commercial or other relationship of obligation. Such a high proportion of financially-motivated rescripts is to be expected when a significant proportion of Roman law related to the ways in which property was acquired, protected, transferred and disposed of. Gaius, with his tripartite division of the law, that of persons, things, and actions, dedicated two of the four books of his *Institutes*, later the model for the *Institutes* of Justinian, to the law of things and of obligations, and around three quarters of the fifty books of the *Digest* are dedicated to various financial and contractual matters.[223]

While Roman law imposed some restrictions on the agency of women in terms of the management of property, and as we will see in later chapters, there were restrictions

[223] Gai.*Inst*. 1.8; Gaius' structure was maintained by Justinian (*Inst*.1.3) in private law.

on the involvement of women in the affairs of others, most women seem to have found ways to work around the structural disadvantages they faced because of their gender, and these restrictions only rarely affected the day-to-day administration of their financial affairs.[224] The majority of problems about which women petitioned the emperor were caused not by specific legal restrictions on the agency of women, but by disputes with other members of society; often men, but in many cases women, too. This suggests that these problems were not directly related to gender *per se*, but to local tensions of a very similar sort to those we see in the Egyptian papyri, and this is reflected in the fact that the rescripts cover a broad range of financial problems, as shown in Table 2.2 below.

Table 2.2 Rescripts Concerning Financial Security

Subcategory	Number of rescripts	% of Category N=461	% of all entries N=617
Inheritance and wills	156	33.8%	25.3%
Property dispute	120	26.0%	19.4%
Debt	67	14.5%	10.9%
Dowry	43	9.3%	7.0%
Gifts	29	6.3%	4.7%
Agreements and Pacts	20	4.3%	3.2%
Restitution of rights	11	2.4%	1.8%
Contracts	6	1.3%	1.0%
Sale of property	4	0.9%	0.6%
Loans	3	0.7%	0.5%
Munera	2	0.4%	0.3%
Total	461		

Of the 461 rescripts motivated at least partly by financial concerns, around a third were related to inheritance disputes, accounting for more than quarter of all rescripts to women. As inheritance was one of the primary ways that women obtained property and wealth, and therefore increase their financial capacity, it is unsurprising that

[224] See in particular p.165; 183.

inheritance disputes feature so prominently in the corpus.[225] The range of rescripts that relate to inheritance is as varied as the women who received them and attempting to create a typology of inheritance matters is unfeasible, but many individual cases will be discussed in more detail in later chapters. The complexity of inheritance law was clearly a problem for many; questions about the validity of trusts and legacies, who was eligible to inherit under intestacy, the effect of the birth of posthumous children on a testament, and who was liable for the estate's debts were common.[226]

Beyond inheritance disputes, nearly a fifth of all rescripts addressed to women involved some kind of dispute over property. We will see in Chapter 4 that many of the women owned real property, including farms and estates, and the range of problems about which the women received rescripts was broad. Women commonly faced challenges to their possession of land and enslaved people, had trouble with property sale and purchase, and had questions regarding pledged property, as either pledger or pledgee, and this wide range of problems make it clear that these women played a prominent role in the economic life of their communities. The prevalence of debt amongst the recipients of rescripts is significant; women were both a source of credit, a demonstration of the economic strength of some of the women, and users of credit, demonstrating that women were able to obtain additional financial support when necessary, although this does not necessarily mean that the women concerned were otherwise financially struggling. Debt was used to finance property purchases and other endeavours that could be considered evidence of these women's commercial or business activities; although the rescripts rarely contain the kind of detail that provides firm evidence for these activities, and despite Connolly's assertion that many women petitioned about business matters, examples of women involved in trade or occupational activities are rare.[227]

[225] This wealth in the hands of women was itself an importance source of wealth for others, through inheritance from a mother; see Arjava 1998:148-9. For the prevalence of inheritance disputes in Egyptian evidence, see Kelly 2011:235.
[226] For trusts and legacies, see for example CJ.6.37.10 (Alexander Severus, 227); CJ.6.37.13 (Diocletian & Maximian, 286). On intestacy, CJ.6.55.2 (Diocletian & Maximian, 290); CJ.6.59.8 (Diocletian & Maximian, 294). On posthumous children, CJ.3.8.1 (Septimius Severus & Caracalla, 203); CJ.6.12.2 (Alexander Severus, 224); 6.20.11 (Diocletian & Maximian, 293).
[227] n.207 above.

Chapter 4 will focus in detail on the ways in which women employed their financial resources, but in short women were heavily involved in the economic life of Roman society; they owned property, both inherited and purchased, they were involved in agriculture, trade, and manufacture, and the challenges they faced were largely the same as those of men. As a point of comparison, the petitions we find in papyri are useful, and Kelly's analysis of disputes in Egyptian papyri shows a similar pattern to that which we see in the *Codex*. While Kelly's categorisation makes direct comparisons difficult, of the 568 petitions and 227 reports of proceedings studied, around a third were related to complaints about property or other financial matters, and 14.2% of the petitions in which the gender of the petitioner is known came from women.[228] Women were a named party, in most cases acting in their own names, in 20% of contracts from Tebtunis studied by Hobson, who also estimated that a third of property owners in Soknopaiou Nesos were women.[229] Clearly, women did not engage in the economy to the same degree as men, but this evidence suggests that the engagement of women in financial matters in the *Codex* is not exceptional. However, economic factors alone were not the only influence on women's agency, and the fact that almost a third of women represented in the *Codex* had petitioned about their social or legal status demonstrates that the protection of status was a fundamental concern for many of them.

ii. Social Standing and Legal Status

Economic position significantly affected the ability of women to act independently, but financial security and ability to engage in the economic life of society was only one of the structural factors that affected their agency, and almost a third of the women whose rescripts are represented in the *Codex* petitioned in respect of their social or legal status. While there were of course some legal and social restrictions on the agency of women simply because they were women, the reality was that for most women this was less important than it might appear from legal and literary sources. In referring to "the status" of Roman women we more correctly mean "statuses", that is to say that

[228] Kelly 2011:163-165. See also Bagnall 2004:54, who calculated that 26% of extant petitions in Egypt were written by women during the period 283-400. For women's petitions in late antiquity, see in particular Beaucamp 1992.
[229] Hobson 1984:378; Hobson 1983:315. See also pp.134-134.

gender was just one of a number of structural restrictions that affected social standing, many of which applied equally to men, and it is often difficult to unpick the consequences of gender from this intersection of statuses.[230] Some of these statuses conferred advantages that could consciously or otherwise be used to exert control over others, and so an individual's economic position was, of course, an important marker of status, in that those with better access to financial resources were able to use them to their advantage. For the purposes of categorisation, however, here I define status as the relative situation of an individual in respect of social or legal restrictions on their capacity to act independently, due to age, gender, social rank, or control by another individual. Like economic position, "gender" or "age", for example, are not themselves statuses, but socially constructed categories or status markers that allow arrangement of society according to normative standards, and used to mark boundaries between different status groups, each with different rights, privileges, and responsibilities.

In the case of the women represented in the *Codex*, some of these status markers could and often did change; an enslaved person could be freed, or a woman in the *potestas* of her father could become *sui iuris*. Others, such as being freeborn, were, barring exceptional circumstances, fixed, and many of the rescripts in this category demonstrate that the women concerned were motivated by the preservation of an existing status or advancement to a perceived "higher" status, while many others faced problems that were a direct consequence of the possession of a particular status marker. Later chapters will focus on the ways that the intersection of these socially and legally mediated statuses affected the agency of the women represented in the *Codex*, and how the women concerned navigated their place within this status-driven society, but some patterns in the types of concern about which the women petitioned can be highlighted here. Table 2.3, below, demonstrates the range of rescripts that were related to possession of one or more of these social or legal status markers, whether of the petitioner or a member of their *familia*.

[230] Of course, social standing and financial capacity are often linked; a wealthy freedwoman, for example, was more able to exercise her agency, in certain socio-economic spheres at least, than a free-born woman with limited resources.

Table 2.3 Rescripts relating to status

Subcategory	Number of rescripts	% of Category (N=167)	% of all entries (N=617)
Guardians and curators	56	33.5%	9.1%
Manumission	14	8.4%	2.3%
Patria Potestas	2	1.2%	0.3%
Personal Status	65	38.9%	10.5%
Enslavement	19	11.4%	3.1%
Total	167		

Because the *Codex* was intended to codify Roman law as it applied in the sixth century, there are no rescripts that relate to Roman citizenship, such an important status marker until the promulgation of the *Constitutio Antoniniana*, which the majority of rescripts post-date. Also notably absent from the *Codex*, in contrast to the papyri, are rescripts relating to the guardianship of women; by the time of Justinian the practice of *tutela mulierum* had been abolished, and in any case, during the period covered by the rescripts, the institution of *tutela mulierum* had become little more than a vestige of the past.[231] While evidence for the guardianship of women is absent, many women petitioned in relation to *tutores impuberum* and *curatores minorum*, both of the petitioners themselves and of their children. Many, like Sopatra, alleged maladministration by *tutores* and *curatores*, illustrating how legal restrictions on the agency of women and children, ostensibly for their own protection, could affect them financially, and demonstrating the way in which status and economic position were both closely linked to the ability of women to exercise their agency.

The rescripts in the *Codex* confirm that what Gaius referred to as "the principal division of the law of persons" still remained one of the most important markers of status: whether an individual was enslaved or free.[232] Challenges to the status of women like Melitiana and Zenonis are common, particularly in the context of financial disputes, as are questions relating to manumission of enslaved people, and this prevalence reflects

[231] See p.175, below.
[232] Gai.*Inst*.1.9.

the significance in Roman society of being able to act in one's own interests without being subject to the control of another. Few of the rescripts relate to the exercise of *patria potestas*, perhaps surprising given the importance placed on the role of the *paterfamilias*, but as Chapter 5 will demonstrate, there were a number of reasons why this should be the case.

As the rescripts in this category demonstrate, while the possession of certain status markers significantly affected the ability of women to exercise their agency, in most cases gender had less importance than might first be thought, and many of the status-related problems about which women petitioned were similar to those that men faced. Gender was not the primary aspect of social organisation, but one of a number of socially or legally determined factors that acted in different ways on different individuals at different times. That is not to say that women did not suffer checks to their agency simply because they were women, but whether women were more likely than men to face challenges related to these other aspects of their social standing is difficult to determine from the evidence in the *Codex* alone.

iii. Crime and Punishment

The third largest category, containing only forty-five rescripts, or 7% of the total, is the most problematic in terms of categorisation, and these rescripts will not be discussed in detail in later chapters, and so warrant a more detailed discussion here than the other categories discussed above. Broadly speaking, these rescripts are those that contain elements that today we might consider "crimes", but this raises a number of questions: how is crime defined, and would the women who petitioned the emperor recognise this definition? Even among modern criminologists, there are several possible answers to the first question, depending on who is asked, and whatever definition we choose it is clear that modern views on "crime" cannot easily be reconciled with Roman perspectives.[233]

[233] For an overview of criminologists' definitions of crime see, for example, McLaughlin and Muncie 2001:59–61; Newburn 2017:6–10; Walklate 2005:3–7; Treadwell 2006:9–16. For the problems with defining crime according to Roman law, see Harries 2007:1-7; Riggsby 2016, particularly 310-311.

A legalistic definition—that a crime is a crime if the law says it is a crime—is useful insofar as it reflects the prevailing attitudes of a particular jurisdiction, but presents a challenge when different jurisdictions treat the same act in different ways, and as laws change so too do the types of acts that are considered criminal. As we saw in the last chapter, Roman law distinguished between offences or injuries that could be prosecuted publicly and were subject to punishment by the state, perhaps the closest parallel in Roman law to criminal prosecution in modern terms, and those that were prosecuted privately.[234] However, restricting ourselves to what the Romans considered *crimina publica* excludes certain acts which would be considered crimes and prosecuted as such in most modern legal jurisdictions, such as theft or assault, and includes other acts that are not, such as adultery.[235] Likewise, extending our definition of crime to include deviant behaviour, those acts which while not necessarily proscribed by law transgressed prevailing social and moral codes, produces similar problems: what we see as transgression against contemporary *mores* was not necessarily viewed in the same way by those who petitioned the emperor, and vice versa.[236] If we consider crime to be those acts which were a threat to the safety and stability of the community, we must once again either fall back to a legalistic definition to establish what those threats were, or rather what Roman legal discourse identified as threats, or apply our own attitudes, shaped by modern discourses of crime and criminality.[237]

Many, or even most, of the individuals who petitioned the emperor about a dispute considered themselves to have been wronged in some way by their opponent, and in

[234] See Riggsby 2016; Riggsby 2010:195. Robinson 2007:3. As we saw in the last chapter (pp.39-41), because the right of women to bring public prosecutions for *crimina publica* was severely restricted; women are represented in very few rescripts in book nine of the *Codex*, which covers such prosecutions, but this does not mean that women were not the victim of what we would consider crime, nor that they did not petition the emperor about it.

[235] We might consider the killing of an enslaved person, for example, as murder, and expect prosecution to result, but if the perpetrator was not the enslaver then although the enslaver could bring a private action for the financial loss, the fact that the act involved the taking of a human life was legally irrelevant.

[236] Even today, adultery is illegal in many countries worldwide, including 21 states of the United States, even if prosecutions are rare; see Barnett 2019:104-106. India, for example, decriminalised adultery as recently as 2018 (Joseph Shine v. Union of India, 2018 SCC OnLine SC 1676).

[237] To what extent an act was a threat to the community underpinned Roman criminal discourse and the development of punishment; see Robinson 2007:3; Wiedemann 2002:70–72; Rüpke 1992:61–62. Hillyard and Tombs 2007.

some cases may have hoped, or explicitly asked, that their opponents were punished, as we see in some petitions from Egypt, but this does not mean that they saw their opponents' acts as "criminal" in the way that we would understand the term.[238] In most cases, the ultimate goal of the petitioner was to be returned to their previous financial or social status, beyond which any consequences for their opponent were largely insignificant.[239] Petitioners were protecting their own interests, recognising that without their intervention the state was largely indifferent to their opponents' alleged misdeeds. Without a central police force, and with an expectation that most interpersonal disputes should be dealt with privately, many of the kinds of everyday disputes between neighbours or family members which dominate petitions in the papyri were of limited interest to Roman legal authorities.[240]

These problems of definition, along with a formal legal system that showed little interest in the day-to-day lives of the majority of its citizens, makes identifying the kinds of disputes that might be described as criminal difficult. In this category, I have focused on those rescripts in which the petitioners' primary motivation seems to have been a desire to protect their personal security or that of a family member, the kinds of disputes that in a modern society, if reported to the relevant authorities, we would expect to be investigated and prosecuted by the state. This includes theft and robbery, fraud, violence against the person, murder, and kidnapping, and any use of the words "crime" or "criminal" reflects this definition unless explicitly stated otherwise.

Even when defining crime in this way, however, the very fact that Roman attitudes to these acts differed from our own often makes such cases difficult to detect, while our own view of the nature of a petitioner's problem does not necessarily correspond with theirs. Around half of all the entries relating to crime are a result of some kind of fraud,

[238] See, for example P.Oslo 2.22 (Theadelphia, 127): "I request that he may be brought before you to be appropriately punished". Some of these requests for punishment were a result of the formulaic nature of petitions, forming part of the rhetoric of dispute resolution, but they were certainly not universal. Similar requests for punishment can also be seen in some Ptolemaic documents; see Scheerlinck 2012:172–176; Parca 2002:291–293.
[239] Kelly 2011:189–194; Bagnall 1989:210–211; Hobson 1993:206.
[240] Riggsby 2010:195–196.

such as forgery of documents, and in these cases the motivation for the petitioner could well have been purely financial, although there were certainly occasions where intimidation was employed, even if it did not extend to actual physical violence.[241] I have nevertheless included economic crime within this category in order to show a more complete picture of crime involving women in the *Codex* and also to demonstrate how Roman legal discourse placed greater importance on the regulation of economic matters than the physical security of its people. As Table 2.4, below, shows, even financial crime represents only a tiny fraction of all the entries in the *Codex*, but this does not mean that such matters were not important, nor should we imagine that women were rarely the victims of crime or that when they were that they did not sometimes use the process of imperial petition and response to obtain redress.

Table 2.4 Rescripts Related to Crime and Personal Security

Type of crime	Total	% of category N=45	% of all entries N=617
Fraud, including forgery	21	46.7%	3.4%
Theft/Robbery	6	13.3%	1.0%
Kidnap	3	6.7%	0.5%
Murder or attempted murder	6	13.3%	1.0%
Violence and intimidation	2	4.4%	0.3%
Suicide of individual accused of crime	2	4.4%	0.3%
Noxal liability for crime	1	2.2%	0.2%
Procedural	4	8.9%	0.6%
Total	45		

Complaints about theft, robbery, and violence, so common within the papyrological

[241] See also P.Oxy.7.1020 (= P.Oxy.64.4435, Oxyrhynchos, 200-225), an incomplete document containing two rescripts of Septimius Severus and Caracalla regarding the restitution of rights of minors, *restitutio in integrum*. The second rescript refers to a case of fraud, to be referred to the prefect. This may have been addressed to a woman; the name appears in the dative case, Προκόνδῃ, corrected from Προκονδω. Hunt (1910:148) translates the name as Procunda, presumably considering the nominative form to be Προκόνδη (i.e a feminine name of the first declension) but the nominative form could also be the masculine Προκόνδης. The name is unattested in either LGPN or Trismegistos, so the gender cannot be identified with certainty, and Wartenberg (1997:151) argues for the masculine Τροκονδας, commonly found in Asia Minor.

evidence, are rare in the *Codex*.[242] Of the 568 Egyptian "dispute" petitions studied by Kelly, 133 contained claims of theft and 131 claims of violence, with a number of petitions containing both elements.[243] In total, 229 of the petitions in Kelly's corpus, or 40.3%, contain a claim of theft, violence, or both, suggesting that the process of petitioning local or provincial officials to deal with such problems was common, whereas only fourteen, or 2.3%, of the rescripts addressed to women in the *Codex* appear to involve similar concerns, a significant difference.[244] In the few instances in the *Codex* in which we can detect allegations of violence in the original petition, the violence was not in itself of any significant legal interest to the chancery; the responses are largely focussed on the legal mechanisms for the recovery of property or its value and the imposition of the relevant penalties, rather than on the punishment of offenders for their violence or as a mechanism of social control.[245]

Even when violence escalated to the extreme and resulted in murder, the evidence of the *Codex* suggests that individuals rarely used the imperial petition and response system in an attempt to obtain justice, but rather that petitioners focused on the procedural or economic implications of the murder of a relative.[246] Murder or

[242] Much has been written about violence in petitions; see Baldwin 1963, particularly 257-261; Bryen 2013a; Bryen 2008; Bryen 2013b; Bagnall 1989; Parca 2002. As Kelly (2011:9;74-75) suggests, accusations of violence in petitions must be handled carefully, as petitioners "had every reason to lie or exaggerate as much as they could get away with, in order to strengthen their strategic positions."

[243] Kelly 2011:163.

[244] Kelly's (2011:334-364) database contains another nineteen petitions in which there may have been an element of violence, and nineteen which may have involved theft, but the text is too fragmentary to make a definitive assessment.

[245] Beyond allegations of theft, other rescripts which give hints that the petitioner complained that they had been the victim of violence show similar detachment.

[246] Two titles of the *Codex* deal specifically with the law relating to murder. Four of the six private rescripts in CJ.9.16 (*Ad legem corneliam de sicariis*) were addressed to men accused of murder, and answer questions as to the nature of their crime. It was the intention, not the deed itself which made a murder: "he who kills a man, if he committed this act without the intention of causing death, could be acquitted; and he who did not kill a man but wounded him with the intention of killing ought to be found guilty of homicide [i.e. murder]" (D.48.8.1.3, Marcian, *Institutes, book 14;* cf. D.48.8.14, Callistratus, *Judicial Examinations, book 6:*). In both CJ.9.16.1 (Caracalla, 215) and CJ.9.16.4 (Diocletian & Maximian, 290) the emperor confirmed that those represented by the petitioners were not subject to the penalty for murder if they could prove that their acts were accidental. Homicide in self-defence was also not considered murder: CJ.9.16.2 (Gordian, 243) and CJ.9.16.3 (Gallienus, 265). CJ.9.17, *de his qui parentes vel liberos occiderunt*, contains a single rescript of Constantine (318), confirming that the infamous penalty of the sack (*poena cullei*) was to be applied to those guilty of parricide. See Carlà-Uhink 2017:31. D.48.9.9, Modestinus, *Encyclopaedia, book 12*; Suet.*Aug*. 33.1; Sen.*Clem*. 1.23.1; Sen.*Controv*. 5.4, Apul.*Met*. 10.8.

attempted murder appears in only seven of the entries, addressed to six different women, and even in these entries while an act of (alleged) murder was the root cause of the disputes in which the women found themselves embroiled, it was not the act itself that motivated the women to petition, but the consequences of the act.[247] While to us this may seem surprising or even callous, as we saw in cases of non-lethal violence the Roman legal bureaucracy was not intended to function as the state's criminal investigation and prosecution service.

Many other petitioners may have suffered violence and alluded to it in their petitions, but this focus on property in the responses has obscured the prevalence of such complaints. Furthermore, if the chancery showed any concern for the human impact of crime on the victim or the wider community, there is no evidence of it in the rescripts. This is of course as much a consequence of the function of the system itself and the purpose of Justinian's codification as it is insensitive handling of petitions by the jurists; the nature of a rescript as a legal text means that any compassion that may have been present in the emperor's reply has been stripped away by the editors, and as we have seen, the purpose of a rescript was to clarify a legal situation, rather than to take a position on the relative merits of a petitioner's case.[248] It is nevertheless striking that rescripts contain no hint that the chancery saw those who petitioned as vulnerable individuals who might need support.

2.4 Conclusions

As this chapter has demonstrated, the rescripts in the *Codex* provide evidence that petitioners used the imperial system of petition and response in an attempt to resolve a broad range of problems and concerns, but we must remember that the frequency of a given problem type is not in itself an accurate guide to the frequency of such problems

[247] Allegations of murder are also rare in papyri. As Baldwin (1963:259) points out, many reported assaults could well have been cases of attempted murder.

[248] There are occasional hints of compassion from the chancery, as we saw in the case of Ulpia (pp.69-71), and more obviously in CJ.8.47.5 (Diocletian & Maximian, 291), a rare example of the emperor's *indulgentia* in which Syra was told that while adoption by adrogation was impossible for women, she would nevertheless be permitted to have her stepson "as your own legitimate child, as though you had given him birth".

in society more generally, rather that it reflects the importance of the problem in Roman legal discourse. Just because we rarely see rescripts related to theft or violence, for example, does not mean that women were rarely the victims of theft or violence, or that they did not petition the emperor about them. The categories are also somewhat artificial; our view of the situation is based on incomplete data, and a petitioner's understanding of the situation was far more nuanced than we can possibly infer from the response to their petition. The priorities of the emperor's chancery when composing a reply were not necessarily the same as those of the petitioner; while the content of a rescript might suggest the primary motivation of the petition was purely financial, for example, the petitioner themselves may have had a different view, being motivated as much by a sense that they had been unfairly treated or that their character had been insulted, as by the financial impact.[249]

While each petitioner faced a different set of challenges and circumstances, the majority of the petitioners were motivated by financial considerations, demonstrating the importance of economic resources in the production of agency. Concern for social status, itself a resource influenced by and able to influence economic status, was also a significant motivation for the petitioners, and demonstrates that the forces acting upon the agency of women cannot be ascribed solely, or even largely, to the specific restrictions a patriarchal society placed on women, but on much wider structures of social organisation that affected every individual in the Roman world to a greater or lesser degree.

Part one of this thesis has demonstrated that a close quantitative analysis of the rescripts addressed to women in the *Codex* reveals a more nuanced picture of the representation of women than has been possible in previous studies. It has shown that while categorising the rescripts according to their content has some limitations, by focusing instead on the likely motivations of petitioners, and the resources they were protecting, we can begin to understand the ways in which women sought to exercise their agency and resist those who might try to impose their will on them. Part two of

[249] Cf. Harries 1999:184–186.

this thesis will focus closely on individual recipients of rescripts to examine some of the key themes identified as part of this new analysis: what the rescripts can tell us about the petitioners' legal status, their economic position, how women were influenced by or acted independently of men, and how they strove to protect their interests. It will show that the 589 women whose rescripts were included in the *Codex* were not a homogenous group we can call "Roman women", but represent a diverse population, each with different resources and systems of support which affected the ways in which they made sense of their position in law and life.

Part 2 - Qualitative Analysis

Chapter 3 : Legal and Social Status

As we saw in the analysis of rescript types in Chapter 2, almost a third of the women represented in the *Codex* petitioned the emperor in respect of their status, demonstrating how significant social position was in providing opportunities for these women to exercise their agency.[250] How individuals within a given community or section of a community identified and gauged social status is often difficult to determine. Status markers that might have been obvious to those within a particular social group can often be hidden to outsiders, and this is especially true of ancient cultures where modern views of status are intrinsically linked to the values and beliefs of the elite as mediated through the surviving evidence. The women of the *Codex* may well have defined themselves against measures that are all but hidden to us, but that were hugely important to the women concerned as they negotiated everyday life, making comparison of relative status among the women difficult. Nevertheless, it is possible to identify a number of markers through which Roman society was organised at a broader level, and these can be useful to identify to what extent particular women might have been constrained or otherwise by their inclusion within a distinct status group or groups. By examining a number of individual cases in detail, this chapter will demonstrate the ways in which these classifications affected the women in the *Codex* and how the women concerned were both defined and constrained by these markers, while illustrating that these status markers could be rather more ambiguous in reality than their ubiquity in Roman legal and elite discourse might suggest.

In Chapter 1 we saw that there were structural restrictions on women's ability to engage with certain aspects of Roman legal practice, such as criminal trials, due to their gender, but these restrictions affected all women equally; it was their very status as women that marked them out for exclusion from these areas of law.[251] Gender was only one of a complex web of status markers that affected the extent to which a given

[250] See pp.87-90.
[251] See pp.38-43.

individual was able to engage with the law, and it can be difficult to disentangle the effects of these multiple statuses on the agency of individual women. The women who petitioned the emperor were not a homogeneous group; the position of every petitioner was influenced by their particular social and economic circumstances and so any attempt to classify the women, whether by age, marital status, or financial position, for example, runs the risk of oversimplifying the impact of any one of these status markers on the lived experience of these women.

In part, status was closely linked to financial resources, as those with greater financial resources were more able to exert power and influence over others, and the importance of economic security for the women of the *Codex* will be discussed in detail in Chapter 4. While possession of financial resources was probably the most significant element involved in the process of enhancing the agency of a given individual, that individual could not fully participate in Roman legal culture without possession of certain status markers that were founded on legal principles. That is to say that the absence of these markers placed legal restraints on the capacity of an individual to engage their resources, whether economic, social, or physical, that might otherwise allow them to enforce their own will in the face of resistance.[252] Some of these status markers, such as gender or age, were considered to be based on natural conditions, whereas others, such as citizenship, were social constructs.[253] Possession of the three fundamental markers of status on which Roman society rested, *civitas*, *libertas*, and membership of *familia*, marked the difference between the *persona*, a human who may or may not have had legal rights and obligations, and an individual with *caput*, a civic and legal personality.[254] The impact of *familia*, more specifically the *potestas* of fathers, on the agency of the women of the *Codex* is discussed in detail in Chapter 5, and so here the focus will be on *civitas* and *libertas,* citizenship and freedom.[255]

[252] See Introduction, pp.15-17.
[253] As Gaius (*Inst*.1.189) suggests, children under the age of puberty required guardians, "because it is consonant with natural reason". Those under the age of twenty-five, were "weak and deficient in sense and subject to many kinds of disadvantage"; D.4.4.1, Ulpian, *Edict, book 11*.
[254] Gai.*Inst*.1.9 = D.1.5.3, in which enslaved people were considered within *ius personarum.* For enslaved persons as *personae* see Buckland 1908:3-5.
[255] Taylor 2016:350. See D.4.5, particularly D.4.5.11, *Paul, Sabinus, book 2*.

How the women of the *Codex* conceptualised their place within society, and how they were affected by the choices of others was significantly influenced by their legal status; whether they were citizen or non-citizen, and whether they were freed, freeborn, or enslaved, all had a part to play in determining how successful they were at imposing their own will on others or resisting such attempts by others. While we must be aware that the kinds of status divisions outlined in legal and literary sources can provide only a partial view and that the reality was often more complicated, this chapter will present the results of an analysis of the status of the women in the *Codex* and help to place the discussion in later chapters in the appropriate legal context.[256] It will demonstrate that the majority of users of the imperial system of petition and response were free citizens. It will argue, contrary to the views of other scholars, that enslaved women were structurally excluded from the system and that the isolated examples that do occur should not be taken as evidence that use by such women was officially sanctioned, nor that women who were claimed to be enslaved should be seen as directly comparable to legally enslaved women.[257] It will also show that there is little evidence that freedwomen were disadvantaged by their status, the lack of easily identifiable freedwomen in the *Codex* suggesting for most recipients such status was notional, rather than a genuine social or legal disability.

3.1 Legal Status

i. *Civitas*

The presence of the first aspect of *caput*, *civitas*, among the women of the *Codex* can be determined quite easily. Caracalla's bestowal of Roman citizenship on all free inhabitants of the empire in 212 means that all rescripts after this date were almost certainly addressed to Roman citizens. Only fifty-three of the rescripts to women pre-date the *Constitutio Antoniniana*, and it is unlikely that rescripts that explicitly referred to non-citizens would have been included in the *Codex*. This does not mean that *peregrinae* did not on occasion petition the emperor before 212, and any rescripts

[256] On social status and the problems inherent in attempting to define "class" in the Roman Empire, see in particular Garnsey 1970; Scheidel 2006; Garnsey and Saller 2015:132-136.
[257] See in particular Connolly 2010:77-79.

addressed to a *peregrina* would undoubtedly provide useful evidence for the interaction between citizens and non-citizens, and how disputes between them were resolved in Roman law.[258] Furthermore, we cannot rule out the possibility that some *peregrinae* petitioned in the mistaken belief that they were in fact citizens, but any rescript addressed to a known *peregrina* was unlikely to have had implications for the *ius civile*, and therefore would have had little relevance for the compilers of the *Codex*.[259] The question of citizenship is clouded somewhat by the existence of a number of responses to enslaved women who by their very nature could not have been Roman citizens.

ii. *Libertas*

The next aspect of *caput*, *libertas*, is perhaps the most important: "the principle division of people" wrote Gaius, was "that all men [*sc*. humans] are either free or slaves",[260] and as we shall see, while previous scholarship has often claimed that enslaved petitioners form a distinct sub-group of recipients of rescripts, there is in fact little evidence that truly enslaved people were customarily able to use the imperial system of petition and response.[261] The few examples that do appear possessed other resources akin to those of free individuals, and should be seen as exceptional. Analysis of the rescripts with reference to the two types of individual with *libertas*, the free-born and the freed,[262] demonstrates that in most cases it is not possible to identify any difference between

[258] Petitions from Egypt demonstrate the ways in which groups with different legal traditions, whether Roman, Greek, or Egyptian, interacted. There is a significant amount of scholarship relating to this evidence; for the most recent, focussing particularly on the interaction between local people and Roman law, see Kelly 2011:145-147; Alonso 2013; 2020:46-49. Similar evidence for non-citizens petitioning Roman officials comes from the Babatha and Salome Komaise archives, see Cotton 1993; Czajkowski 2017:45. While these petitions were addressed to local or provincial officials rather than the emperor, they nonetheless demonstrate the willingness of non-citizens to engage with Roman authorities and provide significant evidence for the interaction between Roman and "local" law.

[259] See Ando 2016:287. Among the *apokrimata* of Severus and Caracalla, thirteen rescripts published during their visit to Alexandria in 200 and preserved on papyri (SB.6.9526 = P.Col.123, Tebtunis, 200), there is an interesting rescript addressed to a woman called [Ma]thalge, referring to the ability of women to obligate themselves on behalf of others. Although [Ma]thalge was probably not a Roman citizen, the rescript implies that she was certainly aware that Roman law placed such restrictions on women and was concerned with how this affected her.

[260] Gai.*Inst*. 1.9 = D.1.5.3.

[261] See n.281, below.

[262] Gai.*Inst*.1.10; D.1.5.5, Marcian*, Institutes, book 1.*

these two groups in terms of the types of legal problem about which they received rescripts, suggesting that the supposed *macula servitutis*, "the stain of slavery", rarely served as a hindrance to the freedwomen in the *Codex* as they went about their daily lives.[263]

Enslaved Women

As it is not always possible to determine from the content of a given rescript whether an individual referred to in the text was also the recipient of the rescript, identifying instances of enslaved women as petitioners is particularly difficult. Of the women whose responses to petitions are recorded in the *Codex*, only three, appearing in four entries, can be clearly identified as being still enslaved at the time they petitioned, two of whom had actually been promised or were expecting manumission.[264] There are a further two entries in which the text of the rescript makes it unclear whether the enslaved women referred to in the text were also the recipients of the rescripts.[265] That there are so few rescripts to enslaved women is not surprising; enslaved people, lacking *libertas*, and therefore without full legal capacity,[266] could not directly engage in any meaningful way with Roman legal culture and as the imperial system of petition and response was intended to deal with legal questions it follows that they should have been excluded from the system in all but the most extraordinary circumstances.

Indeed, in the case of Firmina (CJ.7.13.1 & CJ.1.19.1, 290), Diocletian made it clear that an enslaved individual could not easily petition the emperor, and it was only her "example of commendable loyalty" to her murdered master which induced him to

[263] The concept of the *macula servitutis*, that a freedperson was forever tainted by their former status, is a prevalent one in scholarship relating to freedpersons, often associated with the legal restrictions placed on formerly-enslaved persons. See for example Mouritsen 2011:ch.2, particularly 12-13; Silver 2013. Vermote (2016:esp. 157-158) argues, however, that the *macula servitutis* was a stigma associated only with those who were still enslaved rather than representing a more widely-held social bias against freedpersons. The stereotype of the freedman in Roman literature, exemplified by Petronius' Trimalchio, demonstrates the discomfort of the elite to a perceived threat to their position, but for most of the population such distinctions of status were marginal.
[264] CJ.7.13.1 and 1.19.1 (Diocletian & Maximian, 290, both to the same individual). CJ.4.36.1 (Diocletian & Maximian, 293); CJ.7.4.13 (Diocletian & Maximian, 294) both involve questions of manumission.
[265] CJ.7.16.29 (Diocletian & Maximian, 294); CJ.7.16.34 (Diocletian & Maximian, 294).
[266] D.4.5.3.1, Paul, *Edict, Book 11*.

entertain her request.[267] This was clearly an exceptional situation, and the other rescripts to enslaved women suggest that the only other permissible reasons to allow an enslaved person to petition were when a promised manumission — for example in a testament — had not been honoured, or when there was some other question as to their status.[268] However, there were undoubtedly occasions where enslaved women were able to petition the emperor because they were living as if they were free, concealing the true status of some of the women in the *Codex*. This was not necessarily a deliberate attempt to mislead the chancery, but rather a result of a social environment in which the practical difference between enslaved and free was not always obvious, even to the individuals concerned.

Both Troila (CJ.7.16.29, Diocletian & Maximian, 294) and Hermione (CJ.7.16.34, Diocletian & Maximian, 294) appear to have been living as *contubernales* of their enslavers,[269] and to the outsider their relationships could well have appeared to have been *de facto* marriages.[270] The practice of manumitting enslaved women for the purposes of marriage was widespread, and if these women were to all intents and purposes living as free women, treated as such by their "husbands" and local society, then it is easy to see how they might have concluded that their legal position reflected their social position even if no formal manumission had been granted.[271] The fact that these two women considered themselves free, and that the compilers chose to include the rescripts in the *Codex* to demonstrate that concubinage was not in fact akin to legal marriage,[272] points to the possibility that there may have been a more widespread

[267] CJ.1.19.1. For detailed discussion of this case, see Evans Grubbs 2000.
[268] In fact Aurelia Dionysia (CJ.4.36.1, Diocletian & Maximian, 293) was living as if she were free, although the text of the rescript confirms that she was, legally at least, still of enslaved status.
[269] It is possible that Troila and Hermione were not the women referred to in the rescripts, but had petitioned about the enslaved women concerned.
[270] See Chapter 5.
[271] Women commemorated in epitaphs as "freedwoman and wife" are common; for discussion of these sources, see in particular Huemoeller 2020; Perry 2014:118-128.
[272] See also Chapter 5. The use of the term *concubinatus* in the rescript to Hermione is problematic; strictly speaking, *concubinatus* implied a relationship in which the two parties had *conubium* but lacked *affectio maritalis*, the intent to be married; an enslaved person had no *conubium*, and therefore could not be a *concubina*. *Contubernium* would be the more usual description of a relationship with *affectio maritalis* but without *conubium*; see Treggiari 1981:59; 77; 1991a:50-57. However, the usage of the two terms in the pre-305 rescripts suggests that *contubernium* was generally used to describe the relationship of a free third party with an enslaved woman.

belief that *contubernium* was in effect a kind of informal manumission, the misunderstanding becoming part of the legal culture among certain sections of the population, particularly those who were enslaved.[273]

Whatever the women believed, the circumstances of their living arrangements were irrelevant, and legally they both remained enslaved unless they were manumitted, but it is clear that it was the social position of these women, not their legal status, which provided them with an opportunity to petition. While the rescripts to both women are short and give no clues as to what situation prompted their petitions, it appears that Troila and Hermione were able to take advantage of opportunities that were denied to most enslaved persons; their own belief that they were, or should be, free was likely to have had its basis in a social reality in which they were largely indistinguishable from free women. Rather than providing evidence that enslaved women were regular users of the system of imperial petition and response, rescripts such as these are rather evidence that social reality did not always match legal ideals. These women were able to benefit, at least in part, from a higher social position than their legal status might otherwise allow.

In the case of Aurelia Dionysia, CJ.4.36.1 (Diocletian & Maximian, 293), while the double name in the subscript of the rescript suggests that she was free, the text makes it clear that her legal status was still that of an enslaved woman: she had not been manumitted, nor it seems had her enslaver made any promise to do so, in contrast with the few other rescripts in which enslaved women petitioned the emperor.[274] The circumstances of her petition indicate that despite her legal position, she had access to both social and financial resources that allowed her to present herself as being of higher social status, effectively circumventing the restrictions on her agency she faced

[273] The legal consciousness and legal culture of enslaved people (who had no legal personality) is beyond the scope of this thesis, but it does demonstrate that even those with restricted legal "rights" had a distinct legal culture, and misunderstandings about the law and their place within it could become embedded within sections of society.

[274] See also Buckland 1908:639-640; Corcoran 1996:110. Huchthausen (1992:11) believes that Dionysia was a recipient of *favor libertatis* (see n.283, below), and was declared to be free, although the text itself seems quite clear.

as an enslaved woman. Dionysia had given a third party a mandate to purchase her using her *peculium*, presumably with an agreement that she would then be manumitted by her new "owner", a form of manumission by way of fictive sale that was not in itself exceptional or legally doubtful.[275] However, such a sale was only valid if the vendor was aware, and had agreed, that the *peculium* was to be used in payment; if he was not aware then the transaction was void, as he was in effect receiving payment using his own property.[276]

In this case, Dionysia's original enslaver had not sanctioned the use of the *peculium*, and nor, it seems, had Dionysia been manumitted, and so the legal question at stake was whether he could sue for the purchase price, or demand the return of the enslaved Dionysia.[277] It is unclear whether Dionysia's petition was prompted by a particular challenge to her status from her original enslaver, or because she had not been formally freed by her new enslaver, who could be compelled to fulfil his obligation.[278] Either way, the very fact that Dionysia was able to petition the emperor as if she were a free woman, as the use of a double name suggests, tells us something of the way in which she likely perceived her status, and the resources she was able to exploit in order to overcome the restrictions of her true legal status. It seems likely that the person to whom Dionysia had given the mandate was someone that she knew well and clearly trusted, and so while we can only speculate as to the motive behind her actions, the possibility that she had a close personal relationship with him, perhaps as a family

[275] D.40.1.4, Ulpian, *Disputations, book 6*. See Roth (2010) for detailed discussion of the role of *peculium* in the manumission of enslaved persons. For the purchase of freedom using *peculium* more specifically, see Mouritsen 2011:159-180; Hopkins 1978:125-126; 159-160. Hopkins (1978:118) sees the purchase of freedom as occurring "frequently, even customarily", while acknowledging that the evidence is "circumstantial" (1978:128) although Perry (2014:57) suggests based on legal sources and the limited amount of evidence for self-manumission, that manumission of enslaved women using their *peculium* was rare. It may be the case that Dionysia received additional financial support from the man she mandated to purchase her; see Hopkins 1978:168-169 for financial support from men for the manumission of enslaved women in Delphi.

[276] See CJ.4.49.7, Diocletian & Maximian, 293. D.16.3.1.33, Ulpian, *Edict, book 30*.

[277] For the legal rule in question, see D.17.1.54, Papinian, *Questions, book 27*.

[278] D.2.4.10.pr, Ulpian, *Edict, book 5*. See also CJ.7.16.8 (Diocletian & Maximian, 286), in which a promised manumission of both mother and daughter was not entirely fulfilled. Veneria had been freed but her daughter had not; Diocletian confirmed that the "rector of the province" would urge her enslaver to fulfil the agreement.

member or *contubernalis*, cannot be ruled out.[279]

While Dionysia could not directly overcome the disadvantages that her legal status brought, being able to rely upon the support of someone of a higher social status, however lowly they may have actually been, allowed Dionysia to share in a social power that she did not otherwise possess. The backing of someone who was free and in a position to use that status to influence others in a way that she could not was a valuable resource that she could capitalise upon to enhance her own position. Likewise, Dionysia's access to a *peculium* of sufficient value to "purchase" herself gave her an advantage over many others in her position, allowing her to act with some independence; even if this independence was limited by her legal status and ultimately controlled by her enslaver, she nevertheless exploited this advantage to her own benefit. Of course, we can never know Dionysia's true motives, and any firm conclusions about her agency can only be speculative, but her case nevertheless demonstrates that absence of *libertas* was not in itself the primary restriction on enslaved persons' ability to use the imperial system of petition and response. The possession of *libertas* allowed an individual to employ other resources more easily, economic or social, in order to achieve their aspirations, and as access to these was ordinarily structurally denied to enslaved persons, it was especially difficult for them to exercise their agency. Manumission did not simply free an enslaved woman; by granting her access to the privileges that *libertas* offered, it changed her social status from that of an outsider to that of an active member of economic and civil society, opening additional opportunities to improve social and financial standing still further. It is therefore not surprising that those who were already members of that society should seek to defend their status when others sought to challenge their position.

[279] Kamen (2014) on the much earlier Greek practice of fictive sales, most commonly to a god (see also Sosin 2015), argues for an additional form of "secular" sale, and suggests that the majority of attested cases of such manumissions related to *hetairai*. There is a possibility then that Dionysia was a sex worker, and the third party was a client, although in the Greek cases described by Kamen payment was made by the clients, not the women.

Questioning Status

In many cases in the *Codex* we find free women whose status was questioned, again demonstrating that while from a strict legal perspective the difference between a free and enslaved individual was well-defined, the social reality was often very different. [280] These cases will be discussed further below, and they have often been considered evidence of the ability of enslaved women to petition the emperor, as indeed both Connolly and Huchthausen maintain, but I would argue that the term "enslaved women" should be used only to refer only to those who were, legally at least, still enslaved at the time they petitioned.[281] It is clear that in the majority of cases of questionable status, while the women concerned were claimed as enslaved, their position was not comparable with that of a truly enslaved woman; that is to say that they too had access to some, if not all, of the resources that were available to free women and were often living as if they were free, whereas such resources were ordinarily not available to enslaved women.[282]

As Diocletian's response to Firmina made clear, enslaved women were not the intended users of the system of petition and response, and so such women were clearly in a very different legal position to a woman like Firmina. To consider these recipients to be evidence of enslaved individuals petitioning the emperor may give the misleading impression that such an act was not exceptional; minimising the very real impact of slavery on the agency of enslaved people. For women who were in a position where their status was being questioned, the very possibility that they may have possessed

[280] Cf. Crook 1967:50. See also Corcoran 1996:109.

[281] Connolly (2010:77) includes twenty-one enslaved women (and forty-one men) from the rescripts in the *Codex Hermogenianus*, but her definition includes "freedwomen threatened with a return to slavery, free women considered by others as slaves, and free women held as slaves". Cf. Connolly 2004:242: "I must qualify my label 'slaves'. Those petitioners I call slaves are individuals contesting their servile status." Huchthausen (1976a:57) includes forty-one rescripts to enslaved individuals, both women and men, from the *Codex Justinianus*; this too includes those whose freedom was challenged. In discussing the recipients of rescripts, Corcoran uses "slaves and freedmen" as a discrete group (1996:107-114), while recognising that "such a petitioner . . . is not a true slave recipient" (*ibid*. 110).

[282] A similar case is also found in a number of wax tablets from Herculaneum (*TH.* 13-24), in which Petronia Justa, claiming to be free-born, was claimed as an enslaved woman by the wife of her mother's former enslaver, Calatoria Themis. In this case it was probably Justa who was bringing the case before the *praetor* to defend her status, as she was the *stipulator* of the *vadimonia,* although it is possible that Calatoria Themis had initiated it. See Crook 1967:48-50; Gardner 1986b; Lintott 2002:560-565; Metzger 2000 for detailed discussion of this case.

libertas seems to have been sufficient grounds for the chancery to accept their petition; the risk that a free individual might remain enslaved was significant enough to overcome the objection that an enslaved person, with no legal personality, should not petition the emperor. This was aligned with the principle of *favor libertatis*, the convention that where there was a question about the status of an individual they should remain free until the case was heard.[283] This is clearly demonstrated by the rescript of Diocletian to Quintiana (CJ.7.16.14, 293): "when preliminary matters in the suit have been settled, the man whose liberty is questioned is put in possession of liberty and in the meantime will be considered free".

We must remember, however, that the principle of *favor libertatis* was intended to prevent free people from suffering from slavery, rather than through any desire to allow enslaved people a legal avenue to challenge their enslavers without just cause. An enslaved individual who claimed they were free was required to prove their status in the domicile of their enslaver, placing the advantage firmly with the enslaver, while the reverse was true when a free individual was claimed as enslaved.[284] The outcome might be the same, they would remain free until the case was decided, but for the overwhelming majority of enslaved people, who did not have at least some basis to claim they were free and who lacked financial or social resources, access to any legal recourse was very limited indeed.

Rescripts relating to such challenges to status form the largest single body of entries related to the social standing of women, and demonstrate that while being free was the most basic legal indicator of status, perhaps even more so than gender, it was not something that was always seen as inviolable, nor was the distinction as clear-cut in reality as the legal sources might suggest. While many women, whether *ingenua* or

[283] The principle had its roots in the early Republic and was enshrined in the Twelve Tables, and was included in the *Digest* under the title *de diversis regulis iuris antiqui*; D.50.17.20, Pomponius, *Sabinus, Book 7.* Livy alluded to the law in the account of the death of Verginia at the hands of her father after she was claimed as enslaved by Marcus Claudius at the instigation of Appius Claudius (*Liv*. 3.44-48). The same story, without names or allusion to the law, is found in *Diod.Sic*. 12.24. There are numerous other references to the law in the *Digest*. See, for example, D.4.7.3.1. Gaius, *Provincial Edict, Book 4*; D.4.8.32.7, Paul, *Edict, Book 13*; D.40.4.16, Julian*, Digest, Book 36*.

[284] See CJ.3.22.3 (Diocletian & Maximian, 293) and CJ.3.22.4 (Diocletian & Maximian, 294).

liberta, could enjoy the benefits that being free could bring, others found that it was something that needed to be defended. To have one's status as a free Roman challenged was an insult to the honour of any free person, and the victim of such *iniuria* had recourse to law in order to secure punishment of the wrongdoer, who could receive a severe penalty if the allegations were proven to be false. As Nonna was told (CJ.9.35.9, Diocletian & Maximian, 294), "there is no doubt that those who call free persons slaves, for the purpose of slandering them, may be sued for malicious wrong", and the penalty for such accusations could extend to exile.[285] Despite these penalties, it is clear that many women did face threats to their free status, and turned to the emperor for support. Despite the legal distinction between enslavement and freedom, because in practical day-to-day terms this difference was often blurred, accusations of enslavement became a productive source of dispute in which individuals could seek to impose their dominance, whether real or imagined, over others.

Fifteen such cases occur in the *Codex*, and it is interesting that of the ten of these in which reference is made to the status of the petitioner, nine relate to women who claim to have been freeborn, rather than freed people whose manumission was questioned. Some of these women were of enslaved descent: the replies to both Potamon (CJ.7.14.9, Diocletian & Maximian, 286-294) and Paulina (CJ.4.19.17, Diocletian & Maximian, 294) make it clear that they were freeborn daughters of freed mothers, but the fact that such questions were raised of freeborn women once more demonstrates that status was not always obvious to the outsider.[286] The intent behind the challenges to these women's status may have been malicious; Nonna (CJ.9.35.9, Diocletian & Maximian, 294) was told she could sue a slanderer for *iniuria*, as was Corsiana (CJ.7.16.31, Diocletian & Maximian, 294), or it may have been made for

[285] For penalties, see D.40.12.39.1, Paul, *Views, Book 5*.

[286] The name Potamon (or perhaps Potamo) in CJ.7.14.9, with the dative *Potamoni* in the subscript, suggests the recipient was addressed to a man, but the text makes it clear that the recipient was a woman: *libertina matre procreatam ingenuis nasci natalibus*, "the (female) offspring produced by a freedwoman mother is freeborn". The name appears as *Pontamoni* in the *Summa Perusina* MS, and *Patamoni* in the Montpellier MS (Krueger 1877:300), and it is more likely that the name is corrupt than *procreatam*, which appears in this form across all MSS.

financial gain.[287] The accusation referred to in the rescript to Faustina (CJ.3.1.3, Alexander Severus, 224) was part of a broader dispute about property, and it seems that some individuals were not above falsely raising questions of status in an attempt to gain an advantage over their opponent.

Casting doubt on the status of an opponent could improve the chances of success in a court case; where the resources of the two parties were otherwise similar, raising questions as to the status of an opponent might be enough to provide a small advantage.[288] Such accusations might be difficult to refute, particularly in cases where enslaved persons had been manumitted at some point in the past but were unable to provide evidence of manumission, but in other cases the confusion came about because free women were in a social position which the local community saw as akin to enslavement. As we will see in Chapter 4, the majority of women in the *Codex* were members of the property-owning or merchant classes, although this clearly covers a wide range of circumstances and statuses.[289] The free women who were accused of being enslaved, however, do not fit neatly into this category, but rather represent the much larger segment of society containing wage-labourers and agricultural workers, often living at subsistence level.[290] It is the very fact that the women were engaged in work for hire that seems to have led to their confusion with enslaved persons, who

[287] *iniuria* referred not only to an unlawful act that causes bodily injury, but also offences against an individual's good reputation, see D.47.10. The *actio iniuriarum* could be brought only by the individual who was affected.
[288] For the influence of status on judges, see Johnston 1999:128-129, and for legal advantage of higher status more broadly, Garnsey 1968:7-11; 1970; Taylor 2016:356-359. While Taylor suggests that where the parties involved were of a similar status such advantages were lessened, minor differences in status that are not visible to us may have been more obvious to the parties concerned.
[289] See pp.131-137.
[290] Kehoe (2012:115) suggests 80-85% of the population fits this definition while Erdkamp (2012:246) claims 80%-90% is a "common estimate" of those working the land. Scheidel and Friesen (2009:84) calculate the percentage of the population with an income below subsistence level to be between 84% and 90%.

almost certainly carried out some of the same tasks as these women.[291]

These lines may have been blurred to the women themselves as well as their employers; Pompeia (CJ.7.14.2, Gordian III, 240) was told that "neither the expenses of support nor servile work" made a free woman a slave, and therefore such a woman could not be made a freedwoman through manumission. If Pompeia — or the woman about whom she petitioned — was an indigent worker,[292] perhaps lodging with enslaved persons, the fact that she was being fed and housed as if enslaved herself led to confusion as to her status. Maxima's (CJ.7.14.11, Diocletian & Maximian, 294) position was a little better, but in the emperor's reply, "your status is not prejudiced," there is a suggestion that in the eyes of her employer Maxima's labour put her in the same position as an enslaved worker. As a result, the employer had failed to pay her what was owed, perhaps considering that someone in Maxima's circumstances would find access to legal redress unobtainable, or that the risk of consequences was outweighed by the financial benefit of failing to pay.

We do not know whether the work that Maxima had done was the same as that which would otherwise be carried out by enslaved persons, but when it came to physical labour, legal differences were irrelevant – a free woman and an enslaved woman were practically indistinguishable when working the fields, or producing textiles, for

[291] Harper 2011:ch.4; Kehoe 2012:128; Scheidel 1996:3; Roth 2007:3. As Varro pointed out, *omnes agri coluntur hominibus servis aut liberis aut utrisque*, "all agriculture is carried on by men — slaves, or freemen, or both" (Varro.*Rust*. 1.17.2) Evidence for mixed workforces can also be found in an early second century letter from Egypt in which Eudaimonis wrote to her daughter-in-law to complain that she was having difficulty finding women to work alongside her and her enslaved workforce, because they were working for their own mistresses, ταῖς ἰδίαις κυρίαις ἐργάζονται (P.Brem 63.13-14 (Hermopolis, 116). Eudaimonis was unlikely to have been involved in the work herself; she was the mother of the *strategos* Apollonios, for whom see P.Bremen, and therefore of higher status than most recipients of rescripts in the *Codex*. See Hopkins 1978:108-109 for the advantages and disadvantages of free vs enslaved workforces.

[292] The text of the rescript does not make it clear whether Pompeia herself was the subject of the rescript.

example.[293] In an environment where the social boundary, if not the legal one, between free and enslaved was often indistinct, then, it is not difficult to see how this confusion might be exploited by an individual who wished to take advantage. Maxima's opponent used his higher status in order to gain an advantage over her and influence the outcome of their dispute in his favour, but while in his eyes Maxima was in a position of weakness she did not completely lack agency. While nothing she could do would fundamentally change the status difference between her and her opponent, by taking advantage of her status as a free woman she could use her ability to petition the emperor as an additional resource to wrest back some control of the situation, mitigating some of the consequences of this disparity.

Both Maxima and Pompeia may have been seen by their opponents as enslaved women but they were not, as far as we know, sold or otherwise alienated by their putative enslavers, after which proving free birth may have become even more difficult. Diogenia (CJ.7.16.16, Diocletian & Maximian, 293), on the other hand, was given as part of a dowry without her knowledge.[294] She was concerned that the existence of documents recording this transfer of ownership would make her status as a free woman more difficult to prove, but the emperor's reply was reassuring; the document could not affect her status, even more so because a minor could not give up their freedom without the approval of the council. Whatever her actual status, the very fact that she was concerned about it suggests that in the eyes of the local community she was perceived as enslaved, and her alienation in the dowry would only serve to confirm this perception. The ability to petition the emperor might have saved her from servitude, assuming that she could later prove her claims, but these examples of the lowest members of free society petitioning the emperor are exceptional. The women

[293] On enslaved women in agriculture, see Roth 2007:57-87. On free women working in agriculture see also Erdkamp 1999:571; Scheidel 1995; 1996. Contracts for the apprenticeships of weavers demonstrate that both free and enslaved children were apprenticed, although freeborn boys account for around 75% of the extant records in papyri (Laes 2015:476); see for example P. Oxy. 14.1647 (Oxyrhynchos, 175–199) and SB.18.13305 (Karanis, 271) in which enslaved girls were apprenticed; fathers contracted their sons – to the same weaver – in both P.Tebt. 2 385 (Tebtunis, 117) and SB.12.10984 (Tebtunis, 113). For the similarities between apprenticeship and the sale or pledging of children or their labour, see Vuolanto 2003:189-197.

[294] See also CJ.7.14.14 (Diocletian & Maximian, 294), addressed to Aristoteles, who was told the status of a free woman was not compromised by the fact she was given as a pre-nuptial gift, as if enslaved.

here were the lucky few, and nowhere else in the *Codex* do we see women from this group; the majority of women in their position lacked the capacity or resources to petition the emperor, and in similar situations perhaps found themselves condemned to servitude with little hope of proving their status.

For the women who petitioned the emperor, being able to demonstrate that they were free was of great importance, reflecting the social and legal disadvantages that enslaved status brought. However, the controversies over status that we see in the *Codex* suggest that while the law made a distinction between enslaved and free as if it were self-evident, the reality was that outside the elite strata of society the position of some enslaved and free individuals was sometimes difficult to distinguish, particularly where enslaved women had greater *de facto* freedom. This is not to say, of course, that this was the experience of the majority of enslaved people; many suffered significantly at the hands of their enslavers, and the life course for all enslaved persons was closely controlled by their relationship with their enslavers, but just as there were gradations of status within free society, so were there gradations within enslaved society.[295] The experiences of the very lowest free individuals, manual workers with little or no property to speak of, and enslaved people, especially those with relative independence and access to some *peculium*, could be rather similar.

None of this is to say that some women who were enslaved contrary to their true status as free women did not also suffer the same deprivations that enslaved women faced,[296] but contrary to Connolly's view that the free women who were threatened with enslavement represent women who were "probably of such low status that they are unlikely to have had such protection", it is more likely that the rescripts in the *Codex* instead represent only those who did in fact possess the resources, whether economic or social, to gain access to the chancery.[297] Many free individuals, particularly

[295] See Finley 1964, particularly 247-249.
[296] Or indeed, the reverse, that some enslaved women were fortunate enough to enjoy fulfilling lives. Nonetheless, while it is true that many enslaved persons were claimed to have had close, and often friendly, personal relationships with their enslavers, we must not lose sight of the fact that these were a minority and that the very structure of slavery was predicated on coercive control.
[297] Connolly 2010:77 n.42 on p.226.

those who were destitute and without the support of family, friends, or the local community, would have remained enslaved simply because they lacked the capacity to petition the chancery at all, leaving these women all but invisible in our sources.

There is a fundamental difference then between free individuals, whether free-born or formerly enslaved, who were defending themselves against claims that they were not free, and the very few truly enslaved individuals who were able to petition the emperor. The former group may have faced significant practical barriers to proving their free status,[298] but nevertheless petitioned in most cases from a position of freedom; that is to say that these were women who retained a sufficient degree of agency to be able to do so. For the latter group, on the other hand, freedom was a social status that they had never enjoyed. The opportunity to petition the emperor was for the most part beyond their capacity and only in the most exceptional case, such as that of Firmina, could an enslaved woman hope to gain such favour.

Suggesting that enslaved persons were able to petition the emperor is somewhat misleading; while there are indeed a small number of rescripts addressed to enslaved women, they account for less than half a percent of all women recipients, and should not be taken as anything other than exceptional.[299] The usual *caveat* when attempting to use the entries in the *Codex* to establish actual practice applies; we have only those rescripts the compilers chose to include. It is possible that enslaved women petitioned the emperor in greater numbers, and their problems were either immediately dismissed by the chancery or simply not chosen for inclusion in the *Codex*, but given

[298] Petronia Justa (n.282, above), with no documentation to prove her free birth, relied on the testimony of several witnesses who attested to her free-born status, while her opponent provided witnesses to the contrary. There is no record of the outcome and so we do not know if she prevailed, but this case demonstrates how such problems could involve a significant outlay of money and time to resolve. For many women, particularly those of low status, these costs may have been prohibitive.
[299] See n.281, above. Evans Grubbs (2000:86-87) also refers to "a few examples of rescripts to enslaved women" which are in fact addressed to free or freed women.

Diocletian's words to Firmina this seems unlikely.[300] What the rescripts described above confirm, however, is that for the women represented in the *Codex*, despite *libertas* being the fundamental marker of social status on which all other statuses depended, and which should have in most instances remained inviolable,[301] there was significant anxiety around the maintenance of this status.

Without *libertas* there could be no *civitas* or *familia*, and while Roman legal discourse might suggest that the formal reduction of a free individual to slavery, *capitis diminutio maxima*, was exceptional,[302] in practical terms without documented proof of status or support from outsiders, and the prevalence of informal forms of manumission in which an enslaver expressed a wish for an enslaved person to be freed without following appropriate legal protocol, some women were particularly vulnerable to those who would seek to exert their power over them.[303] Some, as we have seen, were claimed as chattels, while others were claimed as freedwomen with obligations to their patrons.

Freedwomen

The status of freedpersons in Roman law, being free citizens yet remaining distinct from those who were free-born, raises a number of questions. Were freedwomen, due to their earlier condition as enslaved women, more vulnerable to attacks on their status than free-born women? And if so, were freedwomen more or less likely to use the imperial system of petition and response than free-born women to deal with these attacks, or more generally? If the representation of freed petitioners in the *Codex* was higher than that in wider society, then this would suggest that the negative association

[300] In Egypt, too, very few petitions written by enslaved people survive (Kelly 2011:51). In P.Ryl.2.144 (Euhemeria, 38), Ision, describing himself as "slave of Chairemon the *exegetes*", παρὰ Ἰσίωνος δούλου Χ[α]ιρήμονος ἐξηγητοῦ, petitioned the *epistates* in respect of a theft and assault, but here it seems likely that he was acting on behalf of his enslaver. Some petitions written on behalf of enslaved people do show some concern for them as victims, as the case of Thermouthion demonstrates (*P.Oxy*. 50 3555, Oxyrhynchos,1st-2nd century). She petitioned the *strategos* after her "little handmaid" (θεραπαινίδιόν) Peina was injured in a road accident, and clearly had a close emotional attachment to the girl. Equally, these petitions demonstrate the desire of the enslaver to protect their own interests; in the case of Thermouthion, that she have somebody to take care of her in her dotage. See Kelly 2011:214.

[301] Mouritsen 2011:10-11.

[302] On *capitis diminutio maxima* as the greatest change to civil status, see D.4.5.11, Paul, *Sabinus, Book 2*.

[303] Mouritsen 2011:189. On informal forms of manumission, see also Buckland 1908:548-551. Gai.1.41; 44; Ulp.*Rules*.1.10.

with slavery that remained even once freed, the *macula servitutis*, was not merely an ideology of control that was restricted to the elite, but was widespread even at lower strata of society.[304] However, there are significant obstacles to identifying freedwomen in the *Codex*, making any direct comparison of the experiences of freedwomen and free-born women difficult, and therefore the answers to these questions cannot be determined easily.

Estimates of the proportion of enslaved people in Roman society vary significantly,[305] and as manumission rates are largely unknown any figure we attempt to place on the freed population can only be an estimate. [306] While studies of funerary inscriptions, mainly from Italy, have shown that freedpersons account for a significant majority of those commemorated, this is linked to epigraphic habit rather than a true reflection of population.[307] Differences in manumission practices over time and in different areas are also likely to have significantly affected the proportion of freedpersons and so whether freedwomen petitioned in greater or lesser proportions than free-born women is therefore unknown. Few rescripts outside those referring to women whose status was challenged explicitly mention that the petitioner was free-born, while only in those rescripts relating to manumission or the duties of a freedperson can we have any certainty that the petitioner was freed.[308]

[304] The most complete recent discussion of Roman attitudes towards freedpersons, and the ways in which Roman society contextualised and rationalised the difference between *servitus* and *libertas*, and how this affected the status of freedpersons is Mouritsen 2011, particularly Chapter 2.
[305] See for example Brunt (1971:124), who suggests a population of 3 million enslaved people in Italy in 225 BCE, c.40% of the population. Scheidel (2005:71), critiquing a number of studies (including Brunt's) that he considers to be based on flawed reasoning, suggests a much lower figure of 5-700,000, with a "computational mean" of 600,000. This would account for 15% of a population calculated at 4 million (Scheidel 2004:9). This proportion would of course change significantly over time and place; for Egypt, see Scheidel 2011:289-290; see also Hopkins 1978:99-102.
[306] Mouritsen 2011:120-123; Scheidel 2012:94; Bodel and Scheidel 2017:89-90.
[307] For an overview of the principle studies of freedpersons in epigraphy, see Verboven 2013:95-97. On proportions of freedpersons as a reflection of epigraphic habit, see Mouritsen 2005:29; 2011:133; Scheidel 2012:94. Jongman (2003:116-17) challenges this view based on evidence from membership of collegia (cf. Verboven 2013:96)
[308] For example, we know Sperata (CJ.5.28.1, Severus & Caracalla, 207) was freed because her guardian was assigned in testament of her patroness; Potamon (CJ.7.14.9, Diocletian & Maximian, 286-305) had been born after her mother had been freed (see also pp.109). In other cases, such as that of Hostilia (CJ.5.18.3, Caracalla, 215), the ambiguity of language in the rescript – Hostilia is described as *libera* – makes it difficult to be certain.

As enslaved persons — and by extension freedpersons — had no *paterfamilias*, any references to paternal family members in the rescripts strongly suggest free birth.[309] Of course, in a society where the distinction between free and enslaved was not always clear, there may have been instances where entire enslaved "families" were freed, and referred to each other using terms we would expect of a free-born family, and so it is possible that some of the women who appear to have been free-born may actually have been freed. Nevertheless, we can be relatively confident that references to paternal family members refer to a legal relationship, rather than a strictly social one.[310] In all other cases there is no indication of the status of the petitioner. Of 147 rescripts in which circumstances of birth can be identified with any degree of certainty, 125 (85%) appear to be free-born, while only ten (6.8%) are identifiable as freed.[311] This proportion of freedwomen appears low, subject to the caveats above, but of course, many of the 470 women for whom the rescripts give no indication could also have been freedwomen. The difficulty in identifying these women makes any meaningful comparison of the experiences of freed and free-born women impossible, and for any firm conclusions to be drawn we would require a much more definitive dataset.

Names may be of some help in identifying additional freedwomen among the recipients of rescripts, but we can make no firm assertions based on this evidence alone. In the majority of instances, the women in the *Codex* are addressed by only one name and so a detailed onomastic survey of the women to determine relative status is difficult, and elite women are particularly hard to identify.[312] Some names, such as

[309] Biological ties between enslaved persons were not dismissed entirely; an enslaved or freed father had no legal relationship with children who were born while he was enslaved, but he could not marry his own daughter after manumission "even where it is doubtful whether he is her father"; D.23.2.14.2, Paul, *Edict, book 35*. Children born in legal marriage after the manumission of the father were however in his *potestas*, "in the model of the free-born" *exemplo ingenuorum*, see CJ.8.46.8 (Diocletian & Maximian, 294).

[310] This is not necessarily the case in terms of maternal relationships. The rescript to Paulina (CJ.4.19.17, Diocletian & Maximian, 294) refers to her mother, who may, or may not, have been enslaved at the time of Paulina's birth.

[311] The remainder are those whose origin was questioned. See Appendix VII.

[312] Double or triple names are found in only thirty-two of the rescripts to women (thirty-six entries) in the *Codex*, and of those women, twelve bear the name Aurelia, suggesting, although not conclusively, non-elite free birth. Outside the *Codex*, sources generally preserve double names (Connolly 2010:80). Parts of the same rescript to Aurelia Agemacha appear in both FV.326 and CJ.3.6.2 (Diocletian & Maximian, 294) with the name Aurelia absent from the entry in the *Codex*.

Felicissima or Sperata, may suggest they were formerly enslaved persons, but these names are also attested regularly for free-born women, and we cannot therefore assume an origin for them.[313] The linguistic origin of names, too, is of little help.[314] In most cases we do not know where the rescript was issued, and therefore even before the *Constitutio Antoniniana* we cannot assume that any of the women with Greek names, for example, were formerly enslaved. After the promulgation of the *Constitutio Antoniniana* the origin of names becomes even less helpful for assessing status.[315] While some further analysis of the names of recipients may be fruitful, it suffices to say that the women who petitioned the emperor do not seem to have been restricted by the circumstances of their birth – both free-born and freed women petitioned in the hope of receiving assistance. It is also possible that freedwomen are less visible in the rescripts simply because they had patrons, their former enslavers, who were expected to offer the kind of guidance and support that women without a patron might otherwise obtain from the imperial chancery.[316] The small number of identifiable freedwomen in the *Codex* are only visible in those cases where there was a question over their manumission, or the duties owed to their patrons; there is no evidence to suggest that freedwomen otherwise suffered from any significant disadvantage as a result of their status when compared with their free-born neighbours.

Freedwomen faced some restrictions to their agency as a result of their status; they owed services, *operae*, and obedience, *obsequium,* to their patrons, but while a patron had recourse to the courts if they considered their freedwoman to be *ingrata*,

[313] See Kajanto 1965; Corcoran 1996:110. Some analysis of names has been carried out by Huchthausen (1974a:209-210), but while she draws some tentative conclusions, they cannot be seen as robust. Indeed, based on Kajanto's 1965 work she identifies a number of names which are "*nie serva oder liberta*", including Paulina, which is indeed never attested for enslaved or freedwomen in the epigraphic sources surveyed by Kajanto. However, as we saw earlier (p.109), one of the eight rescripts to women named Paulina related to a controversy over servile status. Likewise, Veneria is listed as "*Gelegentlich serva oder liberta*" yet of the three named in the *Codex*, two are explicitly identified as freedwomen, rather more than "occasionally".

[314] For similar difficulties with Egyptian evidence, see Kelly 2011:149.

[315] 59.5% of the names in the *Codex* are of Latin origin, and 36% Greek, with a handful of names of unknown origin; cf. Connolly 2010:80-88. These proportions do not significantly alter over time.

[316] For men petitioning on behalf of women, see Chapter 5 (pp.192-196).

ungrateful,[317] the legal restrictions largely served to maintain traditional distinctions of rank rather than placing freedpersons at significant disadvantage in their day-to-day activities. Freedmen were barred from holding local offices, and there were some restrictions on marriage to freedpersons, particularly for the senatorial classes, although there was no opprobrium attached to taking a freedwoman as concubine.[318] While the marriage of freedwomen to their patrons was acceptable and could serve to improve the status of a freedwoman, the reverse was true of *patronae* marrying their own freedmen.[319] Valeria (CJ.5.4.3, Severus & Caracalla, 196), petitioning about such a *coniunctio odiosa*, a "hateful union", was told that she was permitted to bring an accusation against the freedman concerned in order that he might be punished "congruent with the morals of our time". Whether Valeria was a relative of the *patrona*, disgusted by the thought of her marriage to a freedman and petitioning out of concern for family honour, or whether she was more concerned with protecting family wealth from a predatory freedman is unclear.[320] Such overtly negative attitudes towards freedpersons are, however, rare in the *Codex*, and there are few examples of freedwomen suffering from intolerance from outsiders as a consequence of their status.

In many ways, the status of a freedperson in relation to their patron was similar to that of a child, and indeed children and freedpersons are often discussed as a single class in

[317] For the duties of the freedperson, see in particular Mouritsen 2011:53-57; Verboven 2013:100-103. For *operae*, see D.38.1; CJ.6.3. For rights of the patron generally, see D.37.14, and for the *ingratus* freedperson in particular, D.37.14.1, Ulpian, *Duties of Proconsul, book 9*.
[318] D.23.2.16.pr, Paul, *Edict, book 35*; D.23.2.27, Ulpian, *Lex Iulia et Papia, book 3*; D.23.2.44, Paul, *Lex Iulia et Papia, book 1*. Imperial permission could however be sought for a senator to marry a freedwoman; D.23.2.31, Ulpian, *Lex Iulia et Papia, book 6.* There is significant scholarship on the marriage of senators and freedwomen; see in particular Treggiari 1991a:60-64. For concubinage see Rawson 1992:14; Treggiari 1981; Evans Grubbs 1993:127.
[319] Gai.*Inst*.1.19. On marriage between patrons and freedwomen see for example CJ.5.4.15 (Diocletian & Maximian, 286-305); CJ.6.3.9 (Caracalla, 225), "you have increased the dignity of your freedwoman by marrying her". The Augustan marriage legislation served to encourage marriage between patrons and their freedwomen for those who were not of senatorial rank; see Eck 2007:107; Mouritsen 2011:43-44. On *patronae* marrying freedmen, see D.23.2.13, Ulpian, *Sabinus, book 34*. Evans Grubbs 1993:130-134.
[320] A rescript to Hygia (CJ.5.6.4, Philip, 244-249) refers to a freedman marrying his natural son to the daughter of his patron. The freedman was also the woman's guardian, and such marriages were prohibited even for free-born guardians; see D.23.2.36, Paul, *Questions, book 5,* and CJ.5.6 more generally.

legal texts.[321] The *obsequium* of a freedperson echoes the piety owed by children to their parents, while there were restrictions on both children and freedpersons from bringing legal action against their parents or patrons.[322] The unequal relationship between freedperson and patron was therefore one which had the potential to cause disputes, as the boundaries, expectations, and obligations of a relationship that was fundamentally different to that of enslaved and enslaver, but no less hierarchical, were negotiated. Such disputes are rare in the *Codex*, suggesting that for the most part this negotiation led to accord between freedwomen and their patrons, although we must also consider that the greater resources and higher status of patrons could be used to suppress the agency of freedwomen, keeping such disputes private and effectively leaving them invisible in our sources.

There are few rescripts to freedwomen which relate directly to their responsibilities to their patron; in a terse response to Hermia (CJ.6.6.8, Diocletian & Maximian, 287) the emperor made it clear that "it is not lawful to refuse to be respectful in your conduct toward your patroness" but gives no indication of what it was about her conduct that was at question, or the circumstances which had led to her petition.[323] Whether there had been a particular incident in which Hermia refused to comply with her patroness's wishes because she saw them as unreasonable, or whether she considered the requirement to show her patroness particular deference objectionable more generally, the rescript demonstrates the kind of tensions that could arise between individuals

[321] For the patron as *quasi*-father see Mouritsen 2011:37-42.

[322] See D.37.15, *de obsequiis parentibus et patronis praestandis,* "The obedience to be offered to parents and patrons". A provincial governor had the authority to issue orders "for proper respect to be shown to parents, to patrons, and to the children of patrons", although physical punishment for failing to show respect was reserved for freedpersons; D.1.16.9.3, Ulpian, *Duties of the Proconsul, Book 1*. On restrictions on legal action, see D.2.4.4.1, Ulpian*, Edict, Book 5*.

[323] The abruptness of the entry suggests the original rescript has been significantly abridged, with additional text, which might otherwise provide more context, having been removed by the editors. According to Honoré (1994:149-150), negatives in *nec*, *neque*, or *ne* at the start of a rescript are common, and generally preferred to *non* by the secretary responsible for this rescript, suggesting that any excision has come from the end of the rescript.

whose relationship was founded on disparity of status.[324] While in the vast majority of cases, the relationship between freedpersons and their patron was unproblematic, for Hermia the expectation of "respectful conduct" to her patron meant that although she was free from servitude she was to some degree still under the authority of someone else, and how that authority was interpreted could be the source of disputes. Hermia's actions also affected her patron, and as we see in the case of Sulpicia (CJ.6.6.5, Gordian, 240), patrons also petitioned the emperor about disputes with freedpersons. The freedmen of Sulpicia's father were failing to show due respect to her, but as her father had been condemned it was clearly difficult for her to ensure they met their obligations, and an imperial rescript would help reassert her authority over them.[325]

A rescript to Veneria (CJ.6.3.12, Diocletian & Maximian, 293) demonstrates how the authority of a patron could be abused in order to attempt to dominate others. The sons of Veneria's former enslaver, to whom she owed *obsequium*, had abused their privileges by attempting to control her choice of abode, threatening her with re-enslavement if she did not comply.[326] It is unclear from the rescript where Veneria had chosen to live, and it is possible that she intended to move away from the town in which she had lived as an enslaved woman to return to her place of birth or other place that had significance for her, but this can only be speculation. The motives of the sons can only be guessed at, but it is likely that they considered her move away to be depriving them of services, and while such examples of significant discord in the patron/freedwoman relationship are rare in the *Codex*, the absence of similar rescripts

[324] *Obsequium* was also due to the children of a patron, D.37.14.1, Ulpian, *Duties of Proconsul, Book 9*. This applied even if the patron had been banished or condemned to the mines; see CJ.6.6.5 (Gordian, 240) in which Sulpicia was told that freedmen who failed to respect to the children of a patron who had been condemned would seem to bring punishment upon themselves. A similar rescript of Severus and Caracalla is described in D.37.14.4, Marcellus, *Institutes, Book 5*.

[325] The rescript gives no indication of the reason for Sulpicia's father's condemnation, nor the punishment applied. Presumably the freedpersons had shown no sign of this disrespect before their patron's condemnation and were taking advantage of Sulpicia's perceived weakness.

[326] Re-enslavement was rarely an acceptable punishment for ungrateful freedpersons, except in exceptional circumstances; until the reign of Nero it appears that banishment "to the Campanian coast, beyond the 100th milestone" (Tac.*Ann*.13.26) was the most common serious punishment for an ungrateful freedperson; see Mouritsen 2011:55-57. In CJ.2.30.2 (Valerian & Gallienus, 260) two women sought re-enslavement for a freedman who had also been their curator, and while the circumstances are unclear, the rescript suggests that the recipients had accused him of mismanagement of their affairs that may have amounted to fraud. If this was proven to be the case, the emperor told them, the *praeses* would not hesitate to "inflict a harsher punishment" on the freedman.

does not mean that abuses of power by patrons were themselves rare. The fact that Veneria was unable to bring legal action against the sons herself, and was therefore vulnerable to her opponents' attempts at intimidation, meant that without additional support her options were somewhat limited. Veneria's decision to petition the emperor, which in itself did not transgress the duty of *obsequium*, gave her the opportunity to gain a small amount of power to be used against her opponents, but her ability to resist the patron's sons' efforts to assert their dominance may have required more than a rescript from the emperor.

Despite the emperor's confirmation that a freedperson was free to choose their abode, and so her refusal was not itself ungrateful, if Veneria lacked support from other members of the community there was always a risk that her opponents might make further demands or accusations against which she could not easily defend herself. The emperor's confirmation that a freedperson could not be returned to enslavement *nisi ingrati probentur*, "unless they may be shown to be ungrateful", was a double-edged sword;[327] while Veneria was protected against the current accusation there was no guarantee that the sons of her enslaver would not make further accusations, and so her very status as a freedwoman left her in a position of vulnerability. Although re-enslavement was in fact unlikely and such a punishment was reserved only for the most extreme cases,[328] Veneria's petition to the emperor demonstrates that she saw it as a very real threat to her status, and reveals significant anxiety about her position as a free woman.

Analysis of the status of the women in the *Codex* reveals that while for the population who used the system of imperial petition and response the distinction between free-born and freed as they negotiated their day to day lives was less important than might first be thought, we must be aware of the limitations of our source material; while the rescripts demonstrate no sign of a wider prejudice against freedwomen, this does not mean that the *macula servitutis* did not have a significant effect on the lived experience

[327] CJ.6.3.12, Diocletian & Maximian, 293.
[328] Mouritsen 2011:56.

of some of these women.[329] As we have seen in the case of Veneria and Hermia, there were times when this veneer of parity wore thin; when the interests of freedwomen conflicted with those of free-born individuals, status differences that were otherwise negligible had the potential to rise to the surface, and freedwomen in particular became vulnerable to those of a higher status, and therefore more power: their former enslavers.

As the analysis of the legal statuses of the women whose rescripts were included within the *Codex* shows, there is little evidence that any one group, whether free-born or freed, was significantly advantaged or disadvantaged when it came to receiving a response to a petition to the emperor. The imperial system of petition and response was in theory at least available to all citizens, and members of any of these groups could, and did, petition the emperor. However, these seemingly simple dichotomies of free/unfree and freeborn/freed were not the only legal markers that influenced social status, and the place of the women of the *Codex* in the legally-defined hierarchy of rank also affected their relationships with others.

3.2 Social Rank

The traditional hierarchical division of Roman society, with the senatorial *ordo* or rank at its summit, and the *ordo* of equestrians just below, had developed along principles of wealth, family prestige, and civic duty, and these *ordines* constituted the elite of Roman society.[330] While membership of these *ordines* had long granted social status, power, and privilege, by the second century the distinction of elite and non-elite had developed a distinctively legal character, with members of the elite *ordines*, now including the decurions, being defined as *honestiores,* "more honourable".[331] The rest of the population were *humiliores*, or "more lowly", and the most significant legal

[329] See n.263 above.
[330] The literature covering the *ordines* is vast, see in particular Alföldy 1988:115-133; Kehoe 2011:153-154; Garnsey 1970; Mennen 2011:10-12. Davenport 2019, particularly ch.5 (pp.204-252) for discussion of the development of the *ordo equester* under Augustus. For development of the equestrian classes in the third century, see Mennen 2011.
[331] Precisely when this distinction was first made is unclear; see Garnsey 1970:153-172.

consequence of this differentiation was in terms of criminal punishment; for the same crime a *honestior* might be exiled while a *humilior* might be sentenced to the mines.[332] Physical punishment was reserved for *humiliores* and enslaved people: "men of higher status are not subjected to beating with rods".[333] Despite the clear importance of this status distinction in Roman criminal law, only in one case in the *Codex* is there a reference to physical punishment of a woman, that of Ulpia (CJ.2.11.8, Septimius Severus & Caracalla, 205), who as we saw in the last chapter had been condemned for *furtum* but "without the penalty of whipping".[334] The fact that she avoided physical punishment alone is not evidence that Ulpia was a *honestior*, and just as we saw in the case of freedwomen, identifying rank among the women of the *Codex* is particularly difficult.

There is, in fact, little evidence in the *Codex* of women of senatorial or equestrian status petitioning the emperor at all. That is not to say that they did not face legal problems, but their position in society gave them alternative options to resolve disputes without necessarily needing to approach the emperor directly.[335] There are only three women in the *Codex* who can positively be identified as being from these "elite" classes; the grandfather of Severiana (CJ.12.1.1, Alexander Severus, 222-235) was of consular rank and her father praetorian, and as the emperor's rescript confirmed, she retained the honour of her family after marriage, because she had married men who were "not of private, but distinguished" rank.[336] Beyond this detail, however, we know nothing more about the circumstances of her family background.

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[332] Robinson 2007:105-108. See for example D.48.19.38, Paul, *Views, Book 5*; such a differentiation was made for crimes as diverse as "corrupting a marriageable young woman" (D.48.19.38.3) and unsealing the will of a still-living individual (D.48.19.38.7).

[333] D.48.19.28.2, Callistratus, *Judicial Examinations, Book 6*.

[334] See p.69, above.

[335] The business of many elite women was transacted by freedmen and managers, as Jakab (2013:88-89) has demonstrated in the case of the moneylenders of Puteoli, and therefore it is possible that some of the male petitioners in the *Codex* were in fact agents of senatorial or equestrian women. See also *P.Oslo* 3.123 (Arsinoites, 22), in which a petition to the strategos was submitted by Dionysodoros, "agent of the estate of Antonia". Antonia owned substantial land, farmed by tenant farmers (see P.Oxy. 2.244, Oxyrhyncos, 23; P.Ryl. 2.140, Euhemeria, 36; P.Ryl. 2.141, Euhemeria, 37). While petitions to the emperor had to be submitted directly, members of the senatorial class could send *epistulae*, and receive advice in return. See also Millar 1992:469-477; Corcoran 1996:43-44; Hobson 1993:209.

[336] See D.1.9.8, Ulpian, *Fideicommissa, Book 6*.

Paulina (CJ.5.4.10, Diocletian & Maximian, 285) on the other hand had married into a senatorial family, but when she remarried a man of equestrian rank, *secundi ordinis,* she was no longer *clarissima*, returning to her previous status. The only other direct reference to *ordines* is in the rescript to Melitia (CJ.5.37.9, Alexander Severus, 230).[337] Here it is only the fact that her curators failed to provide an adequate dowry that gives a clue as to her rank as a *honestior*; the emperor told Melitia that they could be compelled to provide a dowry " which is becoming to a respectable person", *quod moderatum est honestae personae*.

There are few other clues to the rank of the women represented in the *Codex,* and in most cases, it is easier to identify the social group to which women did not belong, rather than that which they did. The rescript to Polla (CJ.2.19.6, Diocletian & Maximian, 294) suggests that she had been, in her opinion, coerced into making some kind of contract, exactly what is not stated, with someone of senatorial status.[338] If it was simply the rank of her opponent which compelled her to agree to the contract, she had no defence under which to argue the contract was invalid; she would also need to demonstrate that there had been some kind of threat involved. [339] Either way, in claiming that it was the status of her opponent that caused her fear, it is clear that Polla could not have been a member of the senatorial class, although she may have been a woman of reasonably high social standing.[340] While it may seem surprising that there are few women of this class represented in the *Codex,* there may, of course, be others who are not visible as a result of the nature of the enquiry or the activity of the compilers, but this is also a function of the rescript system itself; elite women had alternative methods of gaining legal advice. The process of petition and response, even

[337] Sternberg (1985:522) also posits a relationship between Otacilia (CJ.5.31.6 and CJ.5.35.1, Alexander Severus, 224) and the procurator Otacilius Octavius Saturninus, suggesting senatorial status, but this is purely speculative; as Sternberg himself admits, the name appears regularly across the empire.
[338] See also CJ.3.22.3 (Diocletian & Maximian, 293), in which Zenonis faced a challenge to her status by a man of senatorial rank. The rule that the case must be heard in the domicile of the defendant (i.e. Zenonis) still applied, despite her opponent's senatorial status.
[339] See *Digest* 4.2. Ulpian (D.4.2.5, Ulpian, *Edict, book 11*) quotes Labeo as stating that this was through not any kind of alarm, but of fear of serious evil: *non quemlibet timorem, sed maioris malitatis*
[340] Polla was a name rarely given to enslaved women, suggesting free birth, although a freedwoman cannot be ruled out, and if her name was a variant of the praenomen Paul(l)a, rather than the Greek Πόλλα (see Kajanto 1965:243-244), she may have been an equestrian.

if Honoré's description of a "free legal advice service" takes the point a little far, was used mainly by those who did not have access to alternative sources of formal legal advice, although of course they may have used alternative dispute resolution strategies, either legal or extra-legal, before petitioning the emperor.[341]

Analysis of the social position of the women whose rescripts appear in the *Codex,* demonstrates that the majority were *humiliores*, as might be expected in a society where this formed the largest social group.[342] Occasionally, as in the case of Polla, we get glimpses of women who attempted to use the system of petition and response to mitigate the power differential they encountered when faced with an adversary of significantly higher status, but the majority of disputes we find in the *Codex* involved individuals of a broadly similar social status. Nuances of social position among the *humiliores* are rarely obvious in the rescripts, however, and within local communities minor differences of status that might otherwise be imperceptible to outsiders were no doubt used to disparage and harass opponents, forming a significant part of the extra-legal life of these disputes.[343]

3.3 Conclusions

While social status was undoubtedly vitally important to the women of the *Codex* in terms of self-identification and even minor differences of status could be leveraged to gain an advantage over an opponent, the difficulty we face in identifying these gradations of status has implications for the way we interpret the rescripts. The legal status markers considered here are only one facet of the different social and legal elements that made up these women's position in the community, and as this chapter has shown, even status markers that appear to be unambiguously defined in law are far from straightforward to identify in the rescripts. While it could be argued that such analysis can therefore tell us little about the social position of the women in the *Codex*, it reveals that "hidden" markers of status, which are much more difficult for us to

[341] Honoré 1994:33. Of course, Honoré's comment should perhaps not be taken too literally.
[342] Scheidel 1996:41-42.
[343] See Connolly 2010:120-121.

identify, were likely to have had a significant effect on the way women approached their social and legal dealings and demonstrates the difficulty of an etic approach to social status. Our analysis is unavoidably viewed through the attitudes, assumptions, and preoccupations of the Roman elite, attitudes that did not necessarily accord with those of the individuals who are represented in the *Codex*, and were the product of a culture that was rarely interested in the concerns of those outside their ranks.

Nevertheless, the women represented in the *Codex,* in choosing to use the imperial system of petition and response, situated themselves within this legal culture, and so even if these markers of status were of limited importance in their day-to-day lives, the women both understood and valued these legal statuses as resources through which they could exercise power over others. There is little evidence for social mobility among the rescripts; most of the women who petitioned the emperor in respect of status did so in order to protect their current status or avoid being reduced to a lower status, rather than in an attempt to gain an improvement, and even in the case of the enslaved Firmina, who was no doubt hoping she might be freed, the motivation for petitioning was to protect her own life.[344] While the reward for reporting the murder of her enslaver was freedom, and this was no doubt in her mind when she petitioned the emperor, protection of what she had was ultimately more important than gaining an improved position. How individuals self-identified, and how others viewed them, did not always correspond to their true legal status, and in most cases where this occurred the true status of the woman concerned was in fact higher than it was perceived to be. Freedwomen in particular could find themselves victims of such circumstances, further demonstrating how status differences could be exploited and potentially used as weapons in a dispute.

[344] See pp.102-103. The details of the case are unclear but the rescripts suggest that the death of her enslaver was not initially thought to have been a result of murder. If Firmina knew that her enslaver had been murdered and not raised the alarm, and the matter was subsequently investigated at the instigation of another, she ran the risk of punishment under the *SC Silanianum*, which allowed for the questioning under torture of all slaves in the household. D.29.5.1, Ulpian*, Edict, book 50*; Evans Grubbs 2000: 83–85; Harries 2013: 55–57; Robinson 1981: 233–235; Brunt 1998: 142. Failure to provide assistance, whether by physically intervening to prevent the murder, or, as Hadrian describes (D.29.5.28-29, Ulpian*, Edict, book 50*), by "wailing so that those who had been in the house or nearby might hear" was a capital offence.

In most cases, the status of the recipients of rescripts appears to be broadly similar to that of their opponent, and in this respect accords with what we know of the local systems of petition and response in Egypt.[345] A rescript from the emperor was a valuable resource, but in a society where social standing and maintenance of traditional status hierarchies was valued, we should not expect to see those of lower status successfully using the system against their social "superiors". However, while it is clear that the women of the *Codex* were not a homogeneous group, we can nevertheless identify few significant differences in legal status among them. Most were free-born *humiliores*, but freedpersons or individuals of enslaved descent are represented in the rescripts in numbers that are substantial enough to suggest that they were not systematically disadvantaged by either the chancery or in society more generally.

In terms of legal status then, the women of the *Codex* were unremarkable. In terms of rank, too, the women represented the vast majority of citizens of the empire; they were neither of very high nor very low rank, and received no particular privilege or disadvantage from their position. Legal status and rank, in terms of resources that could be employed in the production of power and generation of agency, were of less significance than the economic resources of the petitioners. The very lowest free members of society are barely visible in the rescripts, perhaps understandable given the potential costs incurred in travelling to the emperor's court, the loss of income while travelling and waiting for a response, and the fact that with limited property these individuals rarely had need of formal legal processes, and would be unlikely to afford the costs of a subsequent court case in any case. As we shall see in Chapter 4, the petitioners were largely made up from the non-elite property-owning classes; those who while not necessarily wealthy (although some certainly were) had at least some financial means, and sought to use the system of petition and response to protect or improve their economic prospects.

[345] See Kelly 2011:123-167.

Chapter 4 : Economic Resources

As we saw in Chapter 3, the women represented in the *Codex* were largely representative of the majority of the free, non-elite, population of the Roman Empire. While the women, and the men of a similar position, had limited political power, and legal status, as *humiliores*, no better nor worse than most of the free population, where did they fit economically within this vast group? How did their financial position influence how they approached their legal troubles, and how did they use economic resources to overcome deficiencies in other aspects of social standing? This chapter will examine the evidence for the relative economic power of the women represented in the *Codex*, to show that although we cannot establish the wealth of these women in terms of whether they were "rich" or "poor", however these terms might be defined, the majority possessed economic resources that allowed them to exercise their agency in a way that was not possible for the truly destitute.

The individuals who are represented in the *Codex* have been described by Connolly as "middling sorts", and while this is broadly true if, as we saw in the last chapter, we take the term to refer to the ranks of non-elite individuals who were not *pauperes*, this designation was not used by the Romans.[346] Nor does it tell us a great deal about the relative economic position of the individuals concerned; the link between social rank and economic status was often a close one, but examples of freedpersons amassing significant wealth, for example, often exceeding that of members of the freeborn elite, are well known.[347] Discussing the recipients of rescripts in the *Codex Hermogenianus*, Connolly suggested that "analyzing [*sic*] petitioners based on wealth from income or property, occupation, education, standing in the local community, gender and marital status . . . was an unproductive approach" since the middling sort included "such a wide

[346] See Connolly 2010, xiii-xv. The term "middling sort" is most often used in historiography of class in seventeenth and eighteenth century England, when the term first appeared, although there is little agreement on its definition; see in particular French 2000:281-285; Hunt 1996:5-6.
[347] The power and wealth obtained by imperial freedmen like Pallas and Narcissus (Suet.*Claud*.28; Juv.1.105-109; Tac.*Ann*.12.53) represents the extreme, but the freedman as parvenu is a common trope in elite literature, exemplified by Petronius' Trimalchio. On elite attitudes to the wealth of freedpersons, see in particular Mouritsen 2011:109-118.

range of people that none of the other factors . . . predominates".[348] While, due to the limitations of the source material, such analysis is certainly difficult, for individuals of similar legal and social status, economic resources made a significant contribution to agency. Those with more wealth could employ these resources to encourage, influence, or intimidate others, and therefore analysis of the kinds of resources available to the women of the *Codex*, and their relative value, is worthwhile to understand the position of these women within this "middling" stratum of society.

4.1 Measuring the wealth of the women

Identifying the economic position of the women in the *Codex* presents significant difficulties. In most cases, the wealth of the individuals who received a rescript is impossible to identify, but some information can be obtained from the rescripts to build an overall picture of the economic position of the petitioners. Indicators of wealth include land ownership and claims to people as property, and although the value of such property is rarely explicitly stated in the rescripts and the fact that the women concerned chose to petition the emperor to protect their assets reflects a certain anxiety about their ability to retain them, references to property nonetheless indicate that most of the women represented in the *Codex* enjoyed a financial status that was significantly higher than the majority of the free population. The next section will present the results of the analysis of these economic indicators and demonstrate that while women owned a smaller proportion of real property than men, land nevertheless constituted the principal economic resource of many of the women in the *Codex*, and that these women played a significant role in the economic life of their local community. Even if the women did not manage the land themselves, it was nevertheless an integral part of the economy; a source of production that went beyond subsistence, as well as a source of tax revenue. It will also show that many of the women in the *Codex* were enslavers, claiming people as property, and while it is difficult to determine how the holdings of the women represented here compare with those of men and with the wider population of the Roman Empire, these holdings of

[348] Connolly 2010:138-139.

enslaved persons nevertheless demonstrate that these women possessed the kinds of resources that placed them in the middling classes; not necessarily wealthy, but above the majority of the population who lived at or around subsistence level.[349]

i. Real Property

Land ownership was the most significant indicator of economic status in the ancient world, and the importance of real property – land and the buildings and resources upon it – in Roman society is clear when considering the preoccupations of Roman legal discourse; a considerable proportion of Roman law related to how property was acquired, protected, transferred, and disposed of. References to land ownership in the *Codex* can therefore be a useful guide to the relative financial standing of an individual, even where the extent of that land ownership is difficult to establish. While some of the women in the *Codex* were undoubtedly part of the lower strata of the property-owning classes, with just enough land to provide for their families, for others land was a valuable resource that could both generate income in times of plenty and used as a source of security when circumstances were more difficult.

While many entries in the *Codex* refer to "property" without necessarily specifying the type, simply using the terms *res* or *bona*, many rescripts attest to a high degree of ownership of land and buildings, often agricultural, although it is rarely possible to determine the extent of such property. Nor do the terms used to describe the property always make it clear precisely what kind of land is involved - women are shown to own *praedia, fundi*, and *possessiones,* but these terms for types of rural properties are often interchangeable, even within the same rescript.[350] Forty women owned *praedia,* referring to estates of some sort, with another twenty-one owning *fundi*; more than

[349] On stratification of society and the proportion of inhabitants living at subsistence level, see Scheidel (2006), who argues that earlier models of stratification rely on over-simplified dichotomies of wealth and poverty, rather than recognising the huge range of economic realities among the non-elite.

[350] The term *possessio* is a problematic one, as it gives no indication as to the make-up of the property, while *praedium* is the more general term for an estate, mostly rural but can also include urban property, and *fundus* refers to an agricultural estate. The terms *fundus* and *praedium* are used to describe the same property in CJ.2.12.16 (Diocletian & Maximian, 293) and CJ.4.19.18 (Diocletian & Maximian, 294). See Buck 1983:9-16 for detailed discussion of various terms used to describe agricultural land.

10% of women represented in the *Codex*.[351] We should be careful not to draw too many conclusions from this figure; it is likely that many of the other women in the *Codex* also possessed similar property, but as their petition did not directly relate to such matters, the evidence is concealed. In other cases, references to inheritance may well have included land, but it is not always explicitly stated. Nor can we suggest that this figure is broadly representative of Roman society, dealing as we are with a specific sub-section of the population, the members of the middling classes who happened to be able to petition the emperor.[352] Property ownership naturally generated legal problems, and so these individuals were more likely to petition the emperor than others precisely *because* they owned property.

Comparison of the proportion of men and women in the *Codex* who petitioned regarding specific types of property can be a useful measure to determine if and how patterns of ownership differed by gender, but such a comparison is not without limitations. The nature of the evidence means that there are inevitably other entries in which such property is referred to indirectly and the type of property cannot be determined from the text, while differences in the types of problem about which men and women petitioned the emperor mean that we cannot be certain that what is represented in the *Codex* is reflective of the wider reality of property ownership. In Table 4.1, below, the number of entries in the *Codex* containing specific terms for real property are recorded by gender, and notwithstanding the obstacles outlined above, it raises some interesting points of comparison and provides further evidence that most of the women represented in the *Codex* enjoyed a comparatively high economic status.

[351] See Appendix VII.
[352] pp.123-126. See also pp.162-162.

Table 4.1 Property Types in the Codex

Type of property	Number of occurrences					
	Entries to women	% of entries to women n=611	% of property mentioned n=70	Entries to men	% of entries to men n=2044	% of property mentioned n=246
ager	1	0.2%	1.4%	16	0.8%	6.5%
domus[1]	4	0.7%	5.7%	21[2]	1.0%	8.5%
fundus	21	3.4%	30.0%	82	4.0%	33.3%
hortus	1	0.2%	1.4%	5	0.2%	2.0%
possessio[3]	1	0.2%	1.4%	40	2.0%	16.3%
possessio rustica	0	0.0%	0.0%	1	0.0%	0.4%
possessio rustica vel suburbana	1	0.2%	1.4%	0	0.0%	0.0%
praedium	35	5.7%	50.0%	74	3.6%	30.1%
praedium desertum	2	0.3%	2.9%	0	0.0%	0.0%
praedium rusticum	3	0.5%	4.3%	4	0.2%	1.6%
praedium rusticum vel suburbanum	1	0.2%	1.4%	3	0.1%	1.2%
Total	70	11.3%		246	12%	

[1] Where used in its primary sense of "house".
[2] In three cases the *domus* referred to was owned by the wife of the petitioner.
[3] In its sense of "landed property" or "estate".

Because men make up around three-quarters of recipients in the *Codex*, such terms are found far more frequently in entries addressed to men, as expected, but perhaps surprisingly the *proportion* of entries referring to real property is broadly consistent across genders, with a little over 10% of entries containing such references.[353] While this might suggest that men and women were equally likely to petition the emperor about property ownership, and therefore that property was equitably distributed by gender, as we saw in Chapter 2 the range of problems about which men might petition the emperor was much larger than that of women, and so women property owners are in fact overrepresented in the *Codex* in comparison to men. The extent of this is impossible to calculate but studies of other evidence, analysed below, demonstrate that women, particularly those of higher social status, held a substantial proportion of

[353] 11.3% of entries to women and 12% of entries to men contain explicit reference to real property, but this is distorted by those entries which refer to more than one type of property. However, such instances are few and have little effect on the overall impression of property ownership.

property, suggesting that this overrepresentation is not as significant as it might first appear.

Hobson has demonstrated that in the Egyptian village of Soknopaiou Nesos, women accounted for one-third of the registrants of property, a similar proportion as owners of property in records of house sales, and that in nearby Karanis two-fifths of those paying tax on private land were women.[354] Bagnall, using a broader set of evidence and suggesting that Hobson's figure "may be too high",[355] calculated that 14% of property was owned by women, although his figure for Karanis, at 17%, is closer to that of Hobson, and in Philadelphia even higher, at 25%.[356] Undoubtedly, there were regional differences in the land holding of women and any calculation from extant papyri can only be an estimate, but these figures nevertheless suggest a substantial amount of property was owned by women in Egypt. Evidence for other parts of the empire is less clear, but in a study of the division of wealth in Roman succession Pölönen argued that women received between 38% and 50% of their parents' estate,[357] *contra* Champlin, who suggested a "rough ratio of four to one."[358] As inheritance was the principal method by which property was acquired, the total proportion of property in the ownership of women could not have been much less than this. Arjava considered a figure of between 30% and 45% to be likely, and while inherited property did not necessarily always include land and there were other ways land could be acquired, the evidence of the *Codex* appears to support the general impression given by these sources of substantial ownership of real property by women.[359]

Although the overall numbers are too small for us to be sure they are entirely free of distortion, when we consider the types of property owned by men and women some evidence of difference does appear. While a similar proportion of property for both genders, 30% for women and 33.3% for men, is described as *fundi*, 58.4% of the

[354] Hobson 1983:314-315.
[355] Bagnall 1993:130.
[356] Bagnall 1992:138.
[357] Pölönen 2002:170-179.
[358] Champlin 1991:48.
[359] Arjava 1996:70-71.

property held by women is described as *praedia*, whereas only 32% of property held by men is described as such, a significant difference. Conversely, 16.3% of men's property is described using the nebulous term *possessio* to mean "estate" or "landed property," whereas the term is used for only 1.4% of women's property. Because of the lack of specificity of the term *possessio*, it is possible that the figure for men is an overestimate, but even if this is the case it nevertheless demonstrates a substantial difference in how the property of men and women was conceived. These differences are rather too great to be simply a case of the secretary who composed the rescript preferring one term over another, or changes at the hand of later editors, but it is difficult to identify any reason for these differences in the text of the rescripts.[360] As *praedium* describes both rural and urban property, whereas *fundus* is strictly rural, it may be the case that women were more likely to receive urban properties than rural, either as part of their dowry, ownership of which reverted to them on divorce or the death of their husband, or as part of an inheritance in which brothers, if any, were more likely to receive rural land than their sisters.[361] It is also possible that women were more specific about the language they used in their petitions to describe the property in question, but we have no way to know if this is the case. Whatever the impact of gender on land ownership, many of the women in the *Codex* possessed the kinds of holdings that placed them in the upper reaches of the middling classes.

Not all this land was necessarily always productive — both Atinia Plotiana (CJ.4.46.2, Diocletian & Maximian, 286-305) and Nepotiana (CJ.7.32.4, Diocletian & Maximian, 290) were owners of abandoned farms, *praedia deserta,* a term that does not appear in

[360] If this were the case, we would expect this preference for one term over another to be applied irrespective of gender.

[361] See Champlin 1991:113-120. In a detailed study of Theadelphian tax registers of the second century, Sharp (1999:182-184) highlighted that more than half of the vineyards and gardens listed were owned by women, while fewer women than men appear to have owned arable land (1999:167). Although the reasons for this are unclear, and it is possible that the women vineyard owners also owned arable land that is simply absent from the record, a difference in inheritance practices according to gender may account for this difference.

any entries addressed to men.[362] Uncultivated land was far from worthless if it could be brought back into cultivation, and Atinia Plotiana had purchased land from the imperial treasury, hoping that she might be able to make it profitable. For reasons that are not clear in the rescript it seems that she had later regretted her purchase and hoped to have the sale revoked, but this change of heart and the fact that the sale had been made to cover outstanding taxes in the first instance may give some indication of the quality of the land. We have no way to know whether the previous owner failed to pay the taxes because of financial difficulties unrelated to the land, despite it being otherwise productive, or whether the land was incapable of producing sufficient income to cover the taxes and expenses of cultivation, and thus abandoned, but Plotiana's regret suggests the latter. Plotiana may have discovered too late that the tax burden of the property outweighed any profit she might make, and what at first appeared to be a sound investment had become a liability. If this were the case, she was unfortunate; if the sale had been made according to the correct legal principles and with the permission of the governor, it could not be revoked.

Plotiana's purchase suggests that some individuals saw deserted land as an opportunity, and while she had obtained the land in a public auction, those who owned uncultivated land ran the risk of others attempting to take possession of it, threatening the economic security of the owner.[363] Nepotiana had failed to cultivate the land she owned and as a result had faced a challenge to her ownership. Although it is not made explicit in the text of the rescript, it is likely another individual, seeing that the land had been left vacant, had attempted to take possession and the legal point in question was whether she had forfeited her ownership by failing to keep the land cultivated. However, her failure to cultivate the land on account of an unspecified "fear" did not

[362] This is likely to be a result of an absence of evidence for men's ownership of unproductive land rather than evidence for such land being more likely to be in the hands of women, although we cannot necessarily rule out the possibility that the more productive parts of an estate were bequeathed to sons rather than daughters, and those which had not been cultivated or were otherwise barren left to daughters. See for example Apuleius (*Apol*.9) referring to the "most fertile fields belonging to the family estate" being given to sons.

[363] Possession of abandoned land (not ownership, although this could follow through *usucapio* – see p.142 below) was possible if it had been neglected or the owner had "been long absent from it"; D.43.3.37.1, Gaius, *Institutes, book 2*.

prejudice her, if she retained the intention to preserve ownership.[364] The legal situation is less important here than what this rescript tells us about Nepotiana's circumstances. Leaving the land uncultivated might suggest that her financial position was secure enough that the loss of income from the land would not leave her facing ruin, but this does not mean that the loss was not significant. The rescript suggests that she did not leave her land fallow by choice, but that local conditions had led her to abandon it temporarily, and this may have had an impact on her immediate financial position. If the land was at risk from enemy activity, for example, and cultivation was dangerous for her, the risks and the costs of cultivation outweighed any profits it might normally bring, and so her desire to maintain possession may have represented her hope for a more productive future after one or more lean years. Even though the land was not being cultivated, it nevertheless represented a precious economic resource that could enhance her social standing. Either way, Nepotiana's problems demonstrate that those who were land-rich were not necessarily cash-rich, and while she may have been facing immediate distress, the very fact that she owned such land at all means that she could certainly not be in the poorest section of society. Of course, for the landowners we see in the *Codex*, the value of the property did not lay only in the land itself; in addition to animals and farm equipment it often also included enslaved people,[365] and the next section will consider the evidence for the women of the *Codex* as enslavers.

ii. People as Property

As we saw in Chapter 3, enslaved and formerly enslaved persons formed a significant part of Roman society, and questions related to status are common in the *Codex* and other legal sources.[366] While that chapter focused on the social effects of enslavement, how the individuals concerned sought to define their status within a legal framework, and how the legal control of another affected their lives, in this section the focus will

[364] See D.41.2.3.7, Paul, *Edict, Book 54*. Some land was regularly deserted as a matter of course, as in the case of summer or winter pastures. See D.41.2.3.11, Paul, *Edict, Book 54*.
[365] For a comprehensive description of the types of farm equipment, *instrumenta*, described by jurists, see Buck 1983:16-21. White 1967:177-191 contains a catalogue of agricultural implements compiled from literary sources.
[366] See pp.87-90.

move to the economic significance of enslavement in the *Codex* and how enslaved people were valued as property. Although enslaved persons were granted personhood and it was recognised that their legal condition was not necessarily a natural state,[367] they were nonetheless considered as property in the category of *res mancipi*, which included land in Italy and beasts of burden.[368] *Res mancipi* could originally be alienated only by *mancipatio*, the traditional solemn form of alienation in front of at least five witnesses, with a sixth holding bronze scales, demonstrating the central position of such property in Roman ideology.[369] While the distinction between *res mancipi* and *res nec mancipi* was abolished by Justinian and the practice of *mancipatio* itself had fallen into desuetude long before the compilation of the *Codex*,[370] this kind of property remained an important source of wealth and it is unsurprising then that there are a significant number of rescripts addressed to enslavers.

The practice of enslavement was widespread in the Roman Empire, albeit with regional variation in terms of enslaved populations and social practice,[371] and while the status of recipients as enslavers does not mean that they were necessarily wealthy, it does suggest that they were far from the poorest members of society. Such was the pervasiveness of enslavement in Roman society that it is not always possible to identify the economic position of an enslaver simply by virtue of their status as an enslaver, but the size of holding can provide some indication.[372] Large holdings were suggestive of significant wealth and a symbol of status for the elite, serving to "express *potestas* in a society highly sensitive to gradations of status, esteem and authority", while lower

[367] D.1.5.4.1; Sen. *Ben*.3.22.4. See, however, Bradley (2000) on animalisation of enslaved people.
[368] Gai.*Inst*.1.120; 2.14a.
[369] Gai.*Inst*.1.119. Such property was the most important means of production in the peasant economy of early Rome; see Diósdi 1970:56-57. On *mancipatio*, see Kaser 1968:36-38. For *res mancipi* in the XII Tables, see Jolowicz and Nicholas 1972:137-140. For discussion of the nature and origin of *mancipatio*, see Tuori 2008.
[370] CJ.7.31.1 (Justinian, 531). While it has been argued that Constantine abolished *mancipatio* in an imperial constitution of 326 when the formal requirements of the mancipatory will, *testamentum per aes et libram*, were relaxed (CJ.6.23.15; 6.37.21, 339; for the problems with the date see Tate 2008:241-242), Nowak (2011) noted that this constitution does not in fact refer specifically to *mancipatio*, and suggests that it had fallen into disuse long before the reign of Constantine.
[371] Literature on this topic is substantial. On the Roman Empire as a slave society, the classic work is Finley 1980, though see also Harper and Scheidel 2018. On variation in practice across the empire see Bradley 1984:14-17; 1994:11-12; for Egypt, see Bagnall and Frier 1994:49.
[372] Bradley 1994:10-11; Harper 2011:40-60.

holdings were more often associated with poverty, *paupertas*.[373] This term is a relative one which must be considered in the context of elite discourse; it rarely describes the truly destitute and needy, the *egeni*, or even those who lived at or around subsistence level,[374] but rather those who had access to some economic resources and were mostly able to maintain a comfortable position, albeit one that was susceptible to occasional changes of fortune.[375] While these middling classes did not hold enslaved persons in the kinds of numbers we see in elite households, evidence from Egypt tells us that many individuals of more modest means did hold enslaved persons in smaller numbers. According to Bagnall and Frier, 21% of households in the *metropoleis* and 12% in villages held people in slavery, with most households holding only one or two, although the census returns used to calculate these figures have limitations that may obscure the true level of holding.[376] Other evidence, such as records of dowries and inheritance, and documents of sale, also suggests moderate holdings of enslaved persons by members of the middling classes in Egypt.[377] As we have seen above and in Chapter 3, the majority of recipients of rescripts in the *Codex* were also members of these middling classes, and this is reflected in the evidence for holdings of enslaved people in the *Codex*.

Thirty-one women represented in the *Codex*, 5.3%, can be firmly identified as enslavers and at least fifteen of those held multiple enslaved persons, although the size of their

[373] Bradley 1994:30. For enslaved persons as status symbols see Harper 2011:105-106; 333; Hunt 2018:55; Bradley 1994:14.
[374] Harper 2011:55; Bradley 1994:11. The *egeni* were those in the "lowest condition of poverty" (Amm. Marc. 14.6.25).
[375] See especially Harper 2011:55. As Martial (11.32.8) remarked, *non est paupertas, Nestor, habere nihil*, "it is not poverty, Nestor, to have nothing". A *pauper* might own "a boy slave or an older one or a maidservant". Similar distinctions between poverty and destitution were made by the Greeks, see for example Aristoph. *Pl*.550; Dem. 18.108.
[376] Bagnall and Frier 1994:70-71; 48-49, cf. Hombert and Preaux 1952:170. On the accuracy and completeness of using census data for demographic purposes, see Bagnall and Frier 1994:40-51. Bagnall and Frier point out that while holding of enslaved people was slightly higher in the *metropoleis*, other factors such as the complexity, size, and wealth of the household also had a significant effect on the rates of holding; see also Scheidel 2012:108, n.7.
[377] For enslaved people in dowries see for example P.Mich.5.343 (Arsinoites, 54); for inheritance, P.Oxy.14.1638 (Oxyrhynchos, 282) in which four enslaved persons, one a child of ten, were bequeathed by an individual of middling status (see also Bagnall 1993:123-124); P.Col.10.267 (Oxyrhynchos, 180-192), in which an unknown number of enslaved persons were manumitted. For sale see P.Oxy.41.2951 (Oxyrhynchos, 267); the sale of an enslaved woman, Nike.

holdings is impossible to determine.[378] However, rescripts often only mention enslaved persons when they are relevant to the problem about which the recipient petitioned, and it is therefore likely that a much higher proportion of the recipients than we can identify were in fact enslavers. In twenty-four of the cases, the women can be identified as enslavers because they petitioned in respect of manumission of enslaved persons, or because there was a dispute as to the true status of an individual they believed to be enslaved. While in Chapter 3 the rescripts were addressed to the women whose status was in question, in the cases discussed here the rescripts were addressed to those who were themselves questioning that status. Whatever the true status of the individuals concerned, these rescripts nevertheless provide evidence that the majority of petitioners were members of the enslaving classes, rather than those whose social position put them at genuine risk of enslavement, and considered enslaved persons as their own property. Disputes over ownership and the ways in which property and obligations were acquired through enslaved persons demonstrate the importance of enslaved persons as economic resources; the women who petitioned the emperor sought to maintain and improve their position, which could easily be threatened by the actions of the enslaved persons themselves or by third parties.

The landowning women described above would also have held people in enslavement, whether as agricultural workers or in the household, but in only one of these cases, CJ.8.14.5 (Diocletian & Maximian, 294), can a landowner also be confidently described as an enslaver based on the rescript itself. If the sixty-eight other landowners are assumed to be enslavers, a reasonable assumption based on the association between land ownership and enslavement, this increases the percentage of recipients of rescripts who were enslavers to 17%.[379] Even if this estimate of the proportion of women in the *Codex* who held people in slavery is a conservative one, it provides further evidence that the women represented in the *Codex* were members of that section of society who while not necessarily wealthy possessed the kinds of economic

[378] See Appendix VII. Holdings of multiple enslaved people can only be identified when a plural form is used in the text, and when an entry uses a singular form we have no way to tell whether the enslaver held others.

[379] While it is possible that some of the land-owning women were not enslavers, the likelihood is so small as to make little difference to the overall calculation.

resources that placed them at the higher end of the non-elite. In some cases, the rescripts suggest that the resources of these women were not insignificant.

One such woman was Caecilia (CJ.3.32.1, Septimius Severus & Caracalla, 210), and as the rescript was issued in York, a rare example of a recipient from beyond the Mediterranean basin. Given her name and the fact that the rescript was issued before the *Constitutio Antoniniana,* Caecilia must have been a Roman citizen, although we cannot be sure of her origin.[380] This in itself gave her a social status, in Roman terms at least, that was higher than most other inhabitants of Britannia; that is to say that she was part of a socially elite group *locally,* who had the privileges associated with citizenship, but was not necessarily a member of the *Roman* elite, a distinction that is an important to consider in the context of Chapter 3.[381] Regardless of her origin, she clearly possessed some financial resources, and the evidence of the rescript tells us that she employed these resources to further her economic position, but also that she faced a significant threat to her position on account of her possession of an enslaved person.

An enslaved person managed Caecilia's property, a frequent practice for many women, but the rescript suggests that there had been a question over Caecilia's possession of that enslaved person.[382] Possession, *possessio*, and ownership, *dominium* or *proprietas*, were not the same thing; a possessor was one who had both (physical) control of the thing and desire, *animus*, to be the owner, even if it was possessed without the owner's consent, but a "quiritary owner", *dominus ex iure Quiritium,* was the one who had the legal right to the thing, even if it was not in their physical possession.[383] In this case

[380] Caecilia may have been descended from an enfranchised local (i.e., British) elite family, but mixed marriages between veterans or citizen traders and local women were also common (Allason-Jones 2004:273-278; Scheidel 2007:423-424) and as citizenship depended on both parents being citizens, unless *conubium* had been specifically granted, status would follow that of the "lower" parent (Treggiari 1991a:45-49). Upon the completion of service, veterans were granted the right to *conubium* with non-citizen women through imperial constitutions, a copy of which was issued to the veteran on a bronze tablet, and their children granted citizenship; see Phang 2001:53-65; 2002; Scheidel 2007:419.
[381] pp.123-126.
[382] On business agents in Roman society, the most comprehensive study is Aubert 1994; See also Kehoe 2017 and 2013, with 2017:315-317 and 2013:106-107 in particular for enslaved persons as agents.
[383] D.41.2.3.1, Paul, Edict, book 54. See Kaser 1968:94; du Plessis 2015:185-190.

then, the quiritary owner was someone other than Caecilia, and who had attempted to regain possession through the action for *rei vindicatio*.[384] The legal question revolved around whether Caecilia was the possessor in good faith; that is whether Caecilia believed possession had been lawfully acquired, even though in fact some legal impediment had stopped her from acquiring quiritary ownership, or whether Caecilia had known that there was a fault in the transaction at the time it was conducted – this did not apply if she discovered the fault later.[385] This could occur, for example, because she had purchased the enslaved man in good faith from someone other than the quiritary owner, while if there had been some fault in the way an otherwise valid transaction had been conducted, she might be considered the owner *in bonis*, later described as a bonitary owner.[386] If she had been aware that there was a legal impediment, but had taken possession regardless, then her *possessio* was in bad faith. In a society where documents were not always used to record sales or prove legal title, or where such documents were lost or stolen, such situations could easily occur.

Precisely such a problem is found in a rescript addressed to Nepotilla (CJ.7.26.3, Alexander Severus, 224), which confirmed that she could obtain ownership through *usucapio* of a child born to a woman she had purchased and held in slavery, but who had later been shown to have been stolen. *Usucapio* allowed for the acquisition of ownership of property that had been possessed in good faith for a certain period, originally a year for movables and two for land,[387] and the rescript suggests that Nepotilla had faced no challenge to the ownership of the enslaved woman for quite some time after she took possession; the baby had been conceived afterwards and was

[384] See D.6.1.
[385] Nicholas 2008:123.
[386] In early law there was no protection for a possessor, but sometime in the late Republican period the praetor granted such protection for property *in bonis* (Gai.*Inst*.2.40). For the development of bonitary ownership see Borkowski and Du Plessis 2005:159-160; Capogrosso Colognesi 2016:531; Jolowicz and Nicholas 1972:263-267; although see also Diósdi 1970:166-179 for the view that this division was not a formal one recognised in Roman law. Bonitary ownership could be acquired if *res mancipi* had been acquired by simple delivery, *traditio*, as used for *res nec mancipi*, rather than the formal process of *mancipatio*; for detailed examples, see Jolowicz and Nicholas 1972:264-265; Nicholas 2008:123.
[387] XII Tables, *VI*.3. This applied to property in Italy; in the provinces longer periods applied until a rescript of Justinian harmonised the periods across the empire; CJ.7.31.1 (531).

now presumably at least one year old.[388] Under normal circumstances *usucapio* of a stolen item, *res furtiva*, was not possible and a baby conceived before the theft of the mother would follow the status of its mother as *res furtiva*,[389] although there was much discussion among jurists regarding the treatment of babies born to enslaved women, and if a good faith possessor was unaware of the theft before the birth usucapion does seem to have been possible.[390] In this case, we have no way of knowing when Nepotilla learnt of the enslaved woman's status but the text of the rescript, allowing her to acquire ownership of the baby, seems to confirm that she had remained unaware of the theft until after the baby was conceived and born.[391] If she had been aware of the theft beforehand, it is possible that Alexander Severus allowed her to keep the child as a demonstration of *indulgentia*, perhaps because Nepotilla claimed some genuine affection for the child, but this in fact infringed the rights of the owner.[392] A rescript to Quintilla (CJ.6.2.12, Diocletian & Maximian, 293) confirmed her right, as the quiritary owner, to the children of an enslaved woman she claimed had been stolen and who had given birth in the house of the thief.[393] Usucapion of the child, certainly by the thief as they could not be considered a good faith possessor, was not possible. Whatever the truth of either case, they starkly demonstrate how the maintenance of family ties among enslaved persons was at the mercy of their enslavers; the enslaved women themselves had no control over the fate of their children, who would eventually become a valuable part of the enslavers' household.[394]

Although these cases suggest theft was a common cause of dispute in terms of a

[388] D.41.3.3, Modestinus, *Encyclopaedia, Book 5*. See also CJ.7.30.2 (Alexander Severus, 231) in which Onesima faced action from the fisc regarding an enslaved person. Property owned by the fisc could not be acquired through *usucapio* (D.41.3.18, Modestinus, *Rules, book 5*), and she would therefore need to prove that he had not been born of an enslaved woman claimed by the fisc.
[389] Gai.*Inst*.2.45; 49; D.41.3.4.16-18, Paul, Edict, *Book 54.*
[390] D.6.1.17.1, Ulpian, *Edict, Book 16*; D.6.1.20, Gaius, *Provincial Edict, Book 7.* The apparent inconsistency among jurists regarding the usucapion of the children of enslaved mothers, and the status of such children as *fructus*, is discussed at length in Belovsky 2002.
[391] D.41.3.33, Julian, *Digest, book 44*; cf.D.41.3.44.2, Papinian, *Questions, book 23*.
[392] On *beneficium* see Mathisen 2004; Corcoran 1996:57-58.
[393] Whether the thief was the father of the child is uncertain, but it is certainly possible; the thief seems to have made no effort to conceal his possession of the enslaved woman and may well have "stolen" her as a consequence of some existing relationship.
[394] On the sale of enslaved children and the rupture of familial bonds, see Bradley 1978:246-248. On the value of enslaved children, see Laes 2008:esp.243.

possessor acquiring ownership through *usucapio,* there is no suggestion that this was the case for Caecilia, who may well have acquired the enslaved person in good faith through purchase or as part of an inheritance, but she was nevertheless facing a similar challenge to the ownership of what she considered her property. While the legal points the rescript makes about *vindicatio* and about the acquisition of property through enslaved people are of interest, the rescript is particularly useful here for what it also tells us about her economic situation.[395] While, as we have already seen, holding small numbers of people in slavery does not prove that the enslaver was wealthy, the rescript also tells us that the enslaved person in question had purchased additional enslaved persons on behalf of Caecilia. This was done using Caecilia's money, and although the number of enslaved persons purchased is not stated, it suggests that Caecilia was certainly in a comfortable financial position. There is also a suggestion in the emperor's reply that Caecilia's economic resources extended far beyond these enslaved people and that she may have owned a productive farm; if the case for *vindicatio* was ruled in favour of the plaintiff she was informed that she would be compelled to give up not only the enslaved persons, but also any fruits of their work, animals they had raised, and, as discussed above, any children born to them.[396] This may simply have been an explanatory statement added by the chancery, and not strictly related to Caecilia's circumstances, but it paints a picture of a prosperous woman on the fringes of empire who faced the prospect of significant financial loss, and who took advantage of the proximity of the *Augusti* to obtain a rescript that she hoped might help her retain the property she considered hers. It also reveals that women like Caecilia were not passive owners of land and enslaved persons but took an active part in the economic life of the local community. For the wealthier members of the community this was mediated through enslaved or free managers, as in the case of Caecilia, and provided a means to create significant income, allowing the women concerned to strengthen their economic position and social standing further.

[395] For acquisition of additional property through *possessio* of an enslaved person, see Gai.*Inst*.2.86;94. This only applied if the property was acquired with the consent of the enslaver. Obligations acquired in a similar way were also valid against the enslaver.

[396] As land is not explicitly referred to, Caecilia has not been included in the list of landowners in the previous section.

Ownership of land and enslaved persons were important markers of economic status by themselves, but how those resources were employed was more important in the generation of social standing. Even those women who were, economically at least, in the lower reaches of the middling classes were able to utilise their resources to create systems in which social benefits could be obtained.[397] Although many of the women in the *Codex* owned farms, women who were more directly involved in the cultivation of land and raising of livestock are rarely visible in the *Codex*. Such women have often been described as peasants, although the term is a problematic one in view of the way in which it tends to assimilate a wide range of circumstances and lived experiences, from those living at subsistence level to those with quite significant wealth.[398] Those at subsistence level who did not have the capability to accumulate excess resources had neither need nor opportunity to petition the emperor, instead dealing with disputes locally and often without recourse to legal structures. There is however limited evidence that some women of in the *Codex* were of a lower economic status, and these women can be seen as representative of the lower strata of the middling classes; they controlled some of the resources involved in production and the income produced, but were also dependent on wealthier members of the community for access to the land on which they worked.[399]

iii. Animals

For those women involved in agriculture, livestock was a valuable resource that could be used to demonstrate economic and social status. Ownership of animals suggests that their position was at least secure enough that they could pay for feed for the animals and either owned or leased land on which they could be kept and grazed but does not always mean that the owners were wealthy, as even the meanest household might own a single pig or donkey.[400] Some livestock, such as beasts of burden and draft

[397] See MacMullen 1974:1-27 on rural social relations.
[398] See in particular Grey 2011:26-33.
[399] On the economic position of tenants in Egypt, see Rowlandson 1996:224-228; for the relationship between landowner and tenant more generally, Kehoe 2007:93-129.
[400] Lewis (1999:130-133) suggests "even poor peasants would save and skimp in order to own at least one or two". For examples of sales of animals and their prices in Egypt, see P.Cair.Isid.83 (location unknown, 267–299); SB 18.13303 (location unknown, 1st century); P.Corn.13 (Oxyrhynchos, 311), P.Oxy.14.1708 (Oxyrhynchos, 311); P.Oxy.14.1707 (Oxyrhynchos, 204).

animals, was considered under the category of *res mancipi*, a reminder of their value and the central role agriculture played in Roman culture and indeed throughout the ancient world, while other animals, including sheep and pigs, were *res nec mancipi*. Although many of the petitioners in the *Codex* undoubtedly owned domestic livestock, whether for income, food, transport, or to work the fields, there are in fact very few references to problems with animals in the *Codex*, in marked contrast to the petitions from Egypt or cases described in the *Digest* where disputes about animals as property and as the cause of damage or injury are common.[401] For women of high enough status to employ managers to run their property, such problems were unlikely to come to their attention, and we would certainly not expect them to petition the emperor about them.

Only one entry to a woman, and two to men,[402] refer to animals, suggesting that the problems we see elsewhere were discounted by the compilers of the *Codex* because the kinds of questions they raised were better illustrated by other types of property, there being nothing legally distinctive about animals as property.[403] It may also be the case that they were not regularly addressed to the emperor at all, being better dealt with locally or by extra-legal means. Unlike in the case of the ownership of real property then, which we can often infer from the broader context of the rescript to provide an approximate view of the recipient's circumstances, the absence of any unambiguous evidence for ownership of animals or of farm equipment in the *Codex* makes it difficult to draw any firm conclusions about the economic position of the recipients based on this resource, and this hinders our understanding of those at the lower levels of the middling classes interacted with the imperial chancery and with others in their community.

The sole case of a woman who received a rescript about an animal may represent an

[401] For example, two copies of a petition of Aurelia Allous (P.Oxy.6.901 and P.Oxy.54.3771, Oxyrhynchos, 336) describe a dispute with a neighbour that turned violent after her pigs escaped into a dyke.
[402] CJ.4.26.10 (Diocletian & Maximian, 294), regarding the ownership of foals born to a horse in the *peculium* of an enslaved person; CJ.4.35.14 (Diocletian & Maximian, 294), a dispute over the purchase of horses.
[403] Animals were in the legal category of *res*, "things", Dig. 6.1.1.1, Ulpian, *Edict, Book 16*; D.21.1.pr, Ulpian, *Curule Aediles' Edict, Book 1*.

example of a woman who was part of the vast population who was engaged in agricultural work, less prosperous than many of those women who owned the kinds of rural property discussed above, but with some economic resources that placed her just above subsistence level. Sisola (CJ.4.23.1, Diocletian & Maximian, 290) had petitioned the emperor because she had loaned an ox which was later captured by enemy forces, and the borrower had failed to cover the loss as agreed, but it is difficult to identify her economic status with any certainty based on her ownership of this ox alone. It may have been the case that she owned many oxen and that while the loss of a single ox was a monetary loss she did not wish to incur, it had negligible effect on her wider financial circumstances. However, the fact that she petitioned the emperor about the situation demonstrates that her concerns went beyond the primary monetary value of the ox, as the loss also placed her ability to engage in other economically beneficial activities in the future at risk; without her ox, Sisola might struggle to cultivate her land or transport produce to market, leaving her financially vulnerable. Furthermore, the form of the loan also suggests that the original agreement had been established not on financial considerations but on mutual benefit and neighbourliness. While this does not rule out the possibility that Sisola was wealthy, those without access to reserves of cash or other resources were more likely to rely on this kind of non-monetary transaction to meet their needs.

The agreement Sisola had made with the borrower was *commodatum*,[404] a "loan for use", in which the borrower could make use of the ox for a limited time and was required to return it in the same condition it was borrowed.[405] Under the terms of *commodatum* a borrower was not culpable for the loss of or damage to the thing borrowed unless it had been caused by a failure to take care of the ox in the manner of a *bonus paterfamilias*, that is to say showing the diligence and prudency of a

[404] The *commodatum* was used for non-fungible items; the contract for a loan of fungibles was *mutuum*. The most detailed discussion of *commodatum* in English scholarship is found in Zimmermann 1996:188-205, and it receives little treatment in the *Digest*, which focuses largely on the responsibilities of the borrower; D.13.6. The paucity of discussion is perhaps a reflection of its lack of importance among the Roman elite as a form of borrowing, which was otherwise bound up in *amicitia*.
[405] D.13.6.1, Ulpian, *Edict, Book 28*.

"reasonable man".[406] Such a loan was gratuitous; the borrower did not pay for the use of the thing, nor could interest be charged,[407] an arrangement that benefitted the borrower but exposed the lender to significant risk, and so relied on trust and the careful consideration of the circumstances by the lender.[408] This means that *commodatum* was made most often between friends, neighbours, and family members, whose good character was known and who could be relied upon to return the thing borrowed. As such lending and borrowing was (and remains) a fundamental element of social relations,[409] many such loans were no doubt not conceived of by the participants as being legal contracts in any meaningful sense and were unlikely to have come to the attention of the emperor even when problems arose.[410]

Clear examples of *commodata* are rare in the *Codex*, and of the four entries under the title *de commodato*, "Concerning Loans for Use", three were addressed to women.[411] These numbers are too small to draw any conclusions as to whether women were more likely than men to agree such loans, or whether women were more likely to face difficulties when they did, but they certainly suggest that the social practice of lending for use was one in which women took an active part. In most cases when disputes did arise the value of the items would have been too low for formal action to be worthwhile, but when the value of the property was higher the character of these cases changed as legality was inserted into social practice, as we see in the case of Sisola.

In this case, Sisola had foreseen the risk to her economic security and extracted a promise from the borrower to indemnify her against any losses, including future

[406] D.13.6.18.pr, Gaius*, Provincial Edict, Book 9*; D.13.6.5.4, Ulpian, *Edict, Book 28*. On the qualities of the *paterfamilias*, see Saller 1999:184-189.
[407] If money was involved, the contract was *locatio conductio,* see D.19.2. Zimmermann 1996:338-383.
[408] The fact that such loans were more beneficial to the lender was noted by Ulpian, Dig. 13.6.5.3, *Edict*, *Book 28*.
[409] For modern studies of social interactions between members of the same community, including lending and borrowing, see for example Sahlins 1972; Unger and Wandersman 1985; Widegren 1983.
[410] See also Zimmermann 1996:189.
[411] CJ.4.23.

damage,[412] a sensible precaution in a border province where such incursions might be anticipated, and a demonstration of the way in which social norms could be strengthened by legal structures when required. This does not necessarily mean that Sisola conceived of this indemnity in legal terms, but that such an accommodation was part of the process of negotiation between her and the borrower regarding the terms of the loan. In making the agreement, Sisola had carefully considered how the loan might affect her economic circumstances, but if Sisola could not profit, other considerations must have also influenced her decision to agree. Based on the time-limited nature of a loan for use, it does not seem unreasonable to assume that the ox had been borrowed in order to plough a field or to transport goods, for example, tasks that the borrower could not otherwise complete without the use of livestock.[413] It is therefore likely that Sisola and her borrower were members of the same community, perhaps the same village or town, and in gratuitously lending her ox to her neighbour, the profit for Sisola was a social one; a means by which social ties were strengthened and obligations negotiated.[414] When the borrower reneged on their agreement they had strained these ties, and to avoid further damaging the relationship Sisola had likely attempted to come to a resolution that did not involve formal Roman jurisdiction before resorting to a petition to the emperor. With a rescript in hand, Sisola had an additional tool at her disposal in her attempt to induce the borrower to make good her losses, one which did not involve the time and expense of litigation and the potential damage to the reputation of both parties.

Although Sisola's economic status may have been humble, albeit higher than that of some of her neighbours, owning an ox was a benefit to the local community when fields needed to be ploughed or produce transported, and providing access to this resource was both a demonstration of her status and a way to enhance her social

[412] The emperor's response confirmed that the borrower had assumed the "danger of loss and chance of future damage", *periculum amissionis ac fortunam futuri damni.* The "future damage" may well be a reference to the possibility of damage caused *by* the ox while in the care of the borrower, although the usual term for such damage was *pauperies* rather than *damnum*; D.9.1. See Watson 1970; Zimmerman 1996:1096-1099.
[413] Pomponius gives the example of a horse lent to make a journey; D.13.6.23 Pomponius, *Quintus Mucius, book 21*.
[414] See Grey 2011:58-90.

standing at a very local level. The individual who borrowed the ox incurred a social debt, the obligation to help Sisola if she required assistance when it came to harvest time, for example, and the loan of the ox may well even represent the repayment of Sisola's own social debt to the borrower, this "balanced reciprocity" serving to strengthen social bonds.[415] These reciprocal ties of obligation even among more humble members of the community helped reinforce social cohesion and bring to mind the ties of *amicitia* and *clientela* more often associated with the elite, although it could be argued that such social ties among the non-elite were as much a product of necessity as they were an expression of cultural ideology.[416] For those of lower economic status, being able to lend to neighbours and borrow in return represented a resource that was not directly tied to the immediate financial circumstances of either party, allowing even those of humble means to demonstrate their beneficence without significant financial cost. Such actions served to share financial burdens and ameliorate some of the risks involved in agricultural production without recourse to the kinds of monetary loans that might otherwise lead to indebtedness of the sort we see in the archive of the Kronion family from Tebtunis in Egypt, who over the course of the early second century faced increasing pressure on their resources, eventually losing much of their family property to creditors.[417] While the example of Sisola is suggestive of access to the imperial chancery by an individual of lower economic status, if this was indeed the case, she stands as something of an exception to the rule that the recipients of rescripts were those who had sufficient resources to make an approach to the emperor worthwhile.

As we have seen, at least 11% of the women represented in the *Codex* owned land, and although the measure of such land is impossible to quantify, even if the property covered only a modest area this nevertheless demonstrates the significant role of

[415] Sahlins 1972:193-196; Thomas and Worrall 2002:309-315.
[416] On neighbours and social cohesion, see Unger and Wandersman 1985;140-144.
[417] The archive consists of around seventy documents, published as P.Kron, and demonstrates the central role of women in the management of the family property; see P.Kron 17 (Tebtunis, 140) for example in which Kronion's daughters Taorsenouphis and Tephorsais borrowed 372 drachmas from Didyme, a prominent landowner. The value of loans taken by the family increased over time and suggests a gradual decline in the economic position of the family, with debts increasing significantly after 138. The most recent study of the Kronion family archive is Langellotti 2020:31-55 but see also Takahashi 2012; Kehoe 1992:149-157; Lewis 1983:69-74.

women in the economic life of their communities. Ownership of land was the primary marker of financial status and provided social prestige commensurate with the size and value of the holding, but other indicators of economic position, such as movables, animals, or people claimed as property, also contributed to social standing. At least 5.3% of the women held others in enslavement but such was the centrality of enslavement in Roman society that this figure is likely to be a significant underestimate; enslaved persons were such a fundamental part of everyday life that they are invisible in the *Codex* except when directly affecting the fortunes of their enslavers, and as we have seen above many more of the women who petitioned almost certainly also held people in enslavement.[418] The same *caveat* applies to the ownership of animals and named movables, which are in fact almost entirely absent from the *Codex* except where used as security for loans.

In terms of ownership of specific property then it is difficult to determine the relative prosperity of the women in the *Codex*; while we can demonstrate they possessed the kinds of resources that would undoubtedly have placed them comfortably in the middling classes, we cannot easily measure what effect these resources had on their social standing. The principal source of women's financial resources was inheritance and dowries, and as we saw in Chapter 2 the largest single category of rescripts in the *Codex* related to questions relating to inheritance, demonstrating the leading role that transmission of property had for this section of Roman society. Ownership of these assets was a mark of social status, but they were not a fixed resource; as the rescripts show, many women actively used them to accumulate additional wealth, to support their other economic activities, or to assist their family members, and the focus of the next section of this chapter will be some of the ways women exercised their economic agency to further their financial interests.

[418] Bagnall and Frier 1994:49.

4.2 Profiting from Resources

i. Women in Business

Papyri, inscriptions, and material evidence all demonstrate the wide range of occupations that women outside the elite were involved with, and despite structural restrictions on their agency women were often involved in substantial business enterprises.[419] With little evidence for women's involvement in agriculture in the *Codex*, we might expect to see evidence of women who were directly engaged in production or trade, but in fact evidence for women's business activity is notable by its absence from the *Codex*.[420] As always with the *Codex*, the lack of evidence of involvement in trade and industry does not mean that none of the women who petitioned the emperor were businesswomen, but rather that the responses to their petitions do not make direct reference to the activities in which they were engaged. Furthermore, like Caecilia, some women employed managers to oversee their affairs, and the use of male representatives, whether enslaved or free, means that some of the men who received rescripts may have actually been dealing with the kinds of problem that would otherwise provide evidence for women's involvement in business.[421] The absence of firmly attested businesswomen in the *Codex*, then, further suggests that many recipients of rescripts were members of the upper reaches of the middling classes, more likely to conduct their business through representatives and whose chief source of wealth was inherited property. As we shall see, these women were able to use their financial resources as a source of capital through which loans and other investments could be made, rather than being directly involved in production.

There is however one area of business, maritime trade, in which women appear to be well represented in the *Codex* and this could be a profitable enterprise, although not

[419] A significant amount of scholarship has focused on women's occupations, although it is often limited to freedwomen and free members of lower classes due to the nature of the evidence. See in particular Larsson Lovén 2016; Holleran 2013; Groen-Vallinga 2013:304-309; Dixon 2001:113-124; Treggiari 1976;1979. For women in industry, see for example Setälä 2002 on women's role in brick production.
[420] Lack of evidence for business activities in Roman legal sources is not restricted to women; see Aubert 2016:622-623.
[421] See also p.124 n.335; Chapter 5, pp.192-196. A list of inscriptions featuring the *actores* of women can be found in Aubert 1994:195.

without significant risk. Of the four extant entries under the title *de nautico fenore*, "Regarding Nautical Loans" , two are addressed to women, and attest to the recipients' use of what must have been significant financial resources in pursuit of profit.[422] The *fenus nauticum* served to finance the import and export of goods by sea and was repaid only when the goods were safely delivered at the destination, a particularly hazardous venture due to the nature of sea travel and the risk of loss through shipwreck or piracy.[423] Unlike other forms of loan, the risk therefore lay almost entirely with the lender, but this was outweighed by the right to charge interest on the loan that was not restricted to the legal maximum of 12%, making such loans rather dishonourable, in the eyes of the elite at least.[424] This does not seem to have prevented women from talking part in such enterprise, however, and the evidence of the *Codex* suggests that the women involved were rather shrewd businesswomen.

Aurelia Juliana (CJ.4.33.4, Diocletian & Maximian, 286-305) had loaned money on the basis that the money and interest would be returned when the ship returned to Salona, the birthplace of Diocletian and an important city and trading centre; assuming that the loan was to be returned in the same place it was given, Juliana may well have been an active member of the mercantile community there. According to the rescript she received, she had loaned money for a voyage to Africa, but the ship had ventured off its planned course and picked up "unlawful" goods that were later confiscated by the *fiscus*. The debtor refused to repay their debt, on the basis that the goods had not been safely returned to Salona, and so Juliana petitioned the emperor. His response confirmed that because the loss of the cargo came "out of the debtor's rash avarice and unjust shamelessness", *ex praecipiti avaritia et incivili debitoris audacia*, rather

[422] CJ.4.33. The high proportion of women in this title has also been highlighted by Benke (2012:27) and Halbwachs (2016:452). The first entry in the title, a Greek constitution, has fallen out of the *Codex*; the content has been reconstructed by Krueger (1906:v).
[423] The classical name for such a loan was *mutua pecunia nautica* or *pecunia traiecticia*; the earliest use of *fenus nauticum* is found in the *Codex*. See Zimmermann 1996:181-186.
[424] It was only the cargo purchased with the loan that was at risk for the lender; the debtor was still responsible for the loss of the ship, in contrast with the later bottomry bond with which the *fenus nauticum* is sometimes associated (see Blicharz 2017:11-12). On interest rates, see D12.6.26.1-2; CJ.4.32.20 (Diocletian & Maximian, 286-305). Plutarch (*Cat.Mai*.21.6) demonstrates the elite distaste for usury, describing Cato the Elder profiting in "the most disreputable of ways" from his maritime enterprise.

than the danger of a storm at sea, it was unjust for her to bear the burden of his greed. While no doubt some wealthy individuals were cheated out of their investment as a result of the machinations of their debtors, and Juliana's debtor may well have considered her a target for fraud, she was clearly too sharp-witted to allow her interests to be challenged in such a way.[425] With a rescript from the emperor, Juliana would now be able to take action to reclaim the money. The selection of the rescript for inclusion in the *Codex* serves a useful function in terms of the law regarding maritime loans, but the rescript also tells us that Juliana was both willing and able to take the necessary action against those who might attempt to cheat her, and that she was clearly well-acquainted with the kinds of sharp practices that were employed by merchants, demonstrating her experience in business.

Aurelia Cosmiana (CJ.4.33.3, Diocletian & Maximian, 286) on the other hand, was a little less sure of the law as it applied to maritime loans. Like Juliana, she had provided a loan, and had specified that it was to be paid back *in sacra urbe*, Rome. However, she had acknowledged in her petition that the agreement that she had made with her debtor did not leave her liable for potential loss at sea, and so she was told that she could not charge more interest than the legally mandated maximum. Here then, despite the rescript's position in the *Codex*, Cosmiana's loan was not considered a true *fenus nauticum*, which was only applicable if the goods bought with the money loaned were carried "at the lender's peril," *periculo creditoris*. Whether this misunderstanding was down to lack of knowledge on Cosmiana's part, or a deliberate attempt to reap the benefits of a *fenus nauticum* in respect of interest without accepting the risk, is unclear. If the former, the debtor themselves may have used the promise of high interest to obtain the loan, knowing that once they arrived in Rome it would not be possible for Cosmiana to lawfully enforce the terms. For Cosmiana to have made the loan in the first instance demonstrates a clear desire to use her resources for profit, and while the rescript she received was not what she had hoped for she would not lose her initial investment, even if she could not charge the expected rate of interest.

[425] Fraudulently claiming a ship and its cargo had been lost had a long history; Livy (25.3.10) reports that during the Second Punic War public contractors falsely claimed ships had been lost, sometimes staging fake shipwrecks, and inflating the value of the lost cargo to obtain profit.

While both Juliana and Cosmiana were involved in financing maritime trade, the rescript to Antigona (CJ.4.25.4, Diocletian & Maximian, 293) suggests that she may have been the owner of a ship. The legal question revolved around whether a ship owner could be held liable on contracts entered into by a ship's captain while he was conducting business on their behalf, an important question considering that fulfilment of the role of a captain necessitated him making agreements and purchases on his own initiative, and in the owner's name.[426] The rescript confirmed that the ship owner was indeed liable under the *actio exercitoria*, just as the owner of a shop, for example, was liable for the contracts made by his manager.[427] Although the rescript does not explicitly state that Antigona herself was the ship owner concerned, the emperor's response that this applied "even if the captain was appointed by a woman", *et si a muliere magister navis praepositus fuerit*, certainly points to this conclusion.[428] That Antigona seems not to have known that she could be held liable for contracts of a captain she appointed might point to her inexperience in this business, and it is possible that she had inherited the ship rather than having made an active choice to invest in such a hazardous activity, but either way she was determined to use it to her benefit.[429] Whatever the circumstances, Antigona certainly possessed a valuable resource, and could expect to profit further.

It is striking that these examples of women involved in maritime trade are the only clear evidence in the *Codex* of women engaged in a distinct occupation, and while the text of the rescript to Antigona may suggest that ship owning was not a profession that was customarily held by women, there were certainly no legal restrictions on women

[426] See D.14.1.

[427] See also D.14.1.1, Ulpian, *Edict, Book 28*. This did not apply if the captain acted beyond the limits of his appointment, taking on a different cargo to that which was agreed, or accepting passengers when he was instructed to carry cargo, for example, D.14.1.1.12, Ulpian, *Edict, Book 28*.

[428] Connolly's (2010:106-107) suggestion that Antigona was a third party seeking damages does not seem likely.

[429] Cf. Benke 2012:27, who on the evidence of Suetonius (n.431, below) suggests that freedwomen were often associated with shipping and "learned the business of maritime trade as slaves." If this were so in Antigona's case, as an enslaved woman liability would have rested with her enslaver, which may explain her misunderstanding of the law now that she was free. Of course, she may have been well aware, but hoping that the emperor might offer a way to evade her responsibilities.

owning ships.[430] Indeed, according to Suetonius, Claudius granted women the *ius quattuor liberorum* on account of their involvement in supplying grain, and there are a number of examples in papyri and inscriptions of women engaged in business involving shipping.[431] Whether the high representation of women in the *Codex* reflects a wider trend of women's involvement in maritime business is not possible to determine, but it certainly appears that this was an industry that offered women the kind of opportunity for profit that was otherwise rare. While women of lower social classes were often found in service roles, running small businesses such as taverns and food stalls, or as doctors and midwives,[432] for women of higher social standing opportunities to exercise a trade beyond the household were restricted by perceptions of appropriate behaviour.[433] For women of financial means outside the social elite, maritime trade provided a way to put their resources to work, if not necessarily on an equal footing with men, then certainly in a way that allowed them to generate significant opportunity for profit and to improve social standing.

We must remember that much of the evidence for women's involvement in other business enterprises has undoubtedly been lost in the process of the creation of the *Codex*, and that many of the women who petitioned the emperor regarding financial disputes may well have been members of the commercial classes, whose business affairs cannot be reconstructed from the often-concise texts of the rescripts that

[430] D.14.1.1.16, Ulpian, *Edict, book 28*. A rescript to Aurelia Irenaea (CJ.4.32.19, Diocletian & Maximian, 286-294) also refers to nautical loans (*traiecticia*), although this may be a later interpolation.
[431] Suet. *Claud.*18–19. The women concerned were evidently wealthy, as this right was granted to those building ships of a capacity "not less than ten thousand measures of grain" and using them to transport grain to Rome for a period of six years, see Gai.*Inst*. 1.32c. In P.Tebt. 2.370 (Ptolemais Euergetis, 2nd century), Sarapias through her brother Dionysus (see BL 8.492) acknowledged she had loaded 19½ artabas of wheat; while the original publication suggests Sarapias was male, this is a commonly attested feminine name. See also SEG VIII.70 (Medamoud, 2nd/3rd century) a dedication to the goddess Leto by two sisters and their brother, described as ναύκληροι κα[ὶ] / [ἔμπο]ροι Ἐρυθραϊκαί, "shipowners and merchants of the Red Sea". The sisters used the title *matronae stolatae*, suggesting elite background.
[432] There is a great deal of literature relating to the occupations of Roman women, see for example Larsson Lovén 2016; MacMullen 1980; Treggiari 1976, 1979; Dixon 2001:113-132; Joshel 1992; Kampen 1981. On midwives, see Laes 2011; French 1986. For women as doctors, see Kampen 1981:116-117. Varga (2020:23, 25) noted that while the number of women attested in the occupational inscriptions of the Latin West was low, a high proportion of those women were involved in medical professions.
[433] Women involved in some occupations, such as those running taverns, were considered immoral and associated with prostitution; see Kampen 1981:112-114.

remain.[434] Nevertheless, although we cannot often detect the commercial activities of women in the *Codex*, and women could not act as professional bankers, these were not the only ways that women could use their financial resources to their benefit. In the case of Sisola we saw how even those of modest economic status could nevertheless turn what they had to their advantage, using their resources as a means of generating social capital among their peers, but the practicality of the *commodatum* as a mechanism for building networks of obligation was limited by its gratuitous nature, and as a result such loans are rarely visible in the *Codex* or elsewhere. Evidence for the involvement of women in the lending and borrowing of money is much more frequent, and around 12% of the recipients of rescripts were involved in money lending, as either creditors or debtors.[435] While the rescripts do not specify the value of such loans, they nonetheless provide evidence for substantial investment on the part of both lender and borrower, demonstrating both the financial substance of the women concerned and the degree to which women engaged with the local economy.

ii. Moneylending

The women of the *Codex* were embedded within a culture where financial support was just one aspect of cultivating relationships with others of a similar position; lending money to a friend or associate who was in temporary difficulty was a demonstration of both prestige and honour, and it bound the two in moral and social obligations as much as it did financial. These kinds of reciprocal relationships were rooted in traditions of *amicitia* and *clientela*, and while outside the elite the cultivation of patronage and displays of *beneficia* demonstrated by gift-giving and loans were of less concern than more practical issues, it nevertheless provided a model of "proper" behaviour that was emulated by the middling section of society.[436] The restriction on women acting as professional bankers did not stop them providing loans, and while Egyptian evidence suggests that women were less likely than men to appear as creditors in mortgage

[434] Aubert 2016:622-623.
[435] Seventy-three cases; see Appendix VII.
[436] For detailed discussion of the relationship between *amicitia* and loans, with particular focus on the elite, see in particular Dixon 1993; Verboven 2002:116-148. On reciprocity, albeit from an Athenian perspective, see Millett 1991:27-41.

agreements,[437] and fewer women appear in the *Codex* as creditors than as debtors, providing loans was one way in which the women concerned could put their resources to good use, with the possibility of improving their position even further.

In some cases, these loans were agreed between family members, but whether these were conceived of as formal loans, conducted according to Roman legal principles and with a genuine expectation of repayment, or whether they were manifestations of familial affection is sometimes difficult to establish. [438] Certainly, in the case of Pontia (CJ.8.13.17, Diocletian & Maximian, 293) the bonds of affection that may have persuaded her to provide a loan to her brother did not stop her from seeking legal redress to protect her financial interests when he failed to repay. Her brother had used the loan to buy land, and the rescript tells us that Pontia had petitioned because she hoped to claim possession, suggesting that the arrangement she had made was one driven as much by financial considerations as by a desire to support her brother. The emperor's reply was not what Pontia hoped to receive: unless the land had been specifically pledged to her she could not gain possession or ownership, and would instead need to bring an *actio in personam* against her brother to recover the value of the loan. Whether Pontia had already tried to recover the debt informally is unclear, and her petition to the emperor, rather than an escalation of conflict, may have been intended to avert such formal action, which would cost time, money, and place family harmony at risk.[439] Whatever the outcome, it is clear that Pontia's liquid resources were significant enough that her brother could call upon her support to purchase land, but whether this support was granted willingly is impossible to say.

Financial disputes between family members are particularly common in the *Codex*, and seem to confirm that, as Hobson suggests for Egypt, the economic role of women "derived quite directly from the female right to share in the property of her own

[437] Rowlandson 1996:200-201.
[438] Wherry, Seefeldt, and Alvarez 2019.
[439] In P.Fay. 135 (Euhemeria, 300-399) Agathos wrote to his father, Naph, urging him to pay what was owed, lest Agathos should need to "send soldiers after you, and you be put in prison until you pay". The use of "father" here may, however, be an honorific for an individual who was not biologically related, see Dickey 2004; Bagnall 1997:245-246; Horsley 1987:261.

family."[440] As we will see in later chapters, the property of women was often at risk from (male) family members, whether because they considered that a woman's share of family property was something that they had a right to use or because women were more vulnerable to exploitation.Pontia's actions, however, provide evidence that women could also actively act as financial patrons, using their resources to generate profit for themselves while providing a means of support to relatives and husbands. A loan provided by the husband of Livia (CJ.8.27.19, Diocletian & Maximian, 294) was made using Livia's money, suggesting that she was effectively bankrolling her husband's business interests, although it could also be the case that her husband was acting as her proxy in the transaction. Livia wanted to sell the property her husband had received as a pledge, but she had no right to do so unless she was his heir; if she was not there was a risk that her investment might be lost. In both cases, the women's petitions to the emperor demonstrate that they were aware of exactly where their money had gone and what property might be used to reclaim their interests, even if their understanding of their legal right to that property was deficient. They were not passive suppliers of funds but had an active stake in the success of the men's enterprises and they were not afraid to take action to recover their interests when the men concerned failed to meet their obligations.[441] In most cases, in the *Codex* the relationship between the creditor and debtor is unclear and so we cannot determine whether women were more likely to lend to their family members than to outsiders, or whether they were more likely to lend to other women outside their immediate circle.[442] Several examples in the *Codex*, however, attest to women's involvement in providing loans outside the family, where there was a greater opportunity to generate

[440] Hobson 1983:321.

[441] A further demonstration of the importance of women's financial support can be found in P.Mich.3.191, duplicated in P.Mich.192 (Oxyrhynchos, 60) in which Thermouthion loaned her husband 200 Drachmas, obtained from the sale of a house inherited from her father. The document also refers to Thermouthion returning 140 Drachmas from the sale to her mother Ploutarche in partial repayment of a loan that Ploutarche's father had borrowed from his wife.

[442] In a study of lending in rural Senegal, Perry (2002) has shown that women are an important source of credit for their families; "[W]omen most often lend their cash to their relatives - to a brother, a mother, a father, an uncle, and occasionally to a husband . . . because in doing so they fulfil a social obligation to help their natal families, maintaining bonds of reciprocity they can call on in future times of need." (2002:34). In early twentieth century Liverpool, many working-class women acted as moneylenders, with women accounting for 80% of registered moneylenders in 1924; see Fearon 2015.

profit from their resources, but the risks were concomitant with the opportunities.

Paula (CJ.4.10.11, Diocletian & Maximian, 294) had loaned money to the tenant farmers, *coloni*, of a local landowner and when they failed to repay the loan hoped to recover the amount from him. In contracting the loan with *coloni*, who were responsible for the taxes on the land they worked but did not own, Paula had made a significant miscalculation.[443] The very status of the *coloni* meant that they were unlikely to have possessed the kinds of resources to make them a particularly attractive credit risk, and without such resources any formal legal action against them to recover the principal would be unproductive, making Paula's decision to loan them money a curious one. She appears to have believed that the agreement made in the presence of the landlord's managers created an obligation for the landowner, but her agreement had been made with free individuals, however lowly their status may have been, and as they lacked the power to contract on their landlord's behalf, he was free from all responsibility.[444]

Paula's actions may have simply arisen out of naïveté, an example of the lack of experience in business matters that had long been used to justify the guardianship of women, even while it was accepted that this trope was often "more specious than true."[445] Whether Paula had simply seen an opportunity for profit, and genuinely thought that the landlord would make good her losses if the *coloni* did not pay, or whether she had hoped to use her position as a creditor to exert influence over the *coloni*, or even the landlord, is uncertain. The relationship between tenant and landlord was one in which the landlord held the advantage, providing access to the land on which the tenant worked but also in many cases providing loans for seeds or

[443] There is much debate regarding the origin of the colonate and its implications, and discussion of such is beyond the scope of the present work. The status, including economic power, of *coloni* varied by time and location. See in particular Sirks 1993; Mirković 1997; Jones 1958.
[444] Likewise, *coloni* could not be held liable for the debts of their landlord; see CJ.4.10.3 (Diocletian & Maximian, 286).
[445] Gai.*Inst*. 1.190. On guardianship, see Chapter 5.

livestock,[446] and contributing to a system of increased dependence and indebtedness of the tenant.[447] Whether Paula was attempting to disrupt that relationship in order to gain an advantage over a local rival or had simply been taken advantage of by the tenants, who saw an opportunity to receive loans on cheaper terms than their landlord might provide or to reduce their dependence on him, it seems that Paula had a reasonably high social standing, and her economic resources may well have approached those of the landlord. In her attempt to recover the debt directly from the landlord, and her later petition to the emperor when this approach failed, Paula demonstrated that she was not intimidated by his status, as we might expect if he was of vastly higher status than her.[448] Her willingness to provide a loan to his tenants points to a desire to profit from her position of economic strength, and even if this attempt was ultimately unsuccessful, it nevertheless places Paula within the ranks of the upper middling classes. As Paula was informed by the emperor, it was her own lack of judgment and "excessive credulity" that led her to loan money to individuals who had limited means to repay, but we should not necessarily see this single example of a failed venture as evidence that she was inexperienced in business.

4.3 Conclusions

The economic position of the women in the *Codex* was a significant factor in their ability to engage with the socio-economic life of their community and Roman society more broadly, and while the lack of concrete detail in the rescripts makes it difficult to assess wealth in terms of specific amounts, it is nevertheless possible to identify evidence for substantial property ownership among the women represented in the *Codex*. More than 11% of the rescripts addressed to women directly refer to specific types of real property, a similar proportion as those addressed to men, and while this

[446] For land tenancy, see Kehoe 2007:95-109. On the relationship between tenant and landlord and the provision of loans by landlords in particular, see Rowlandson 1996:221-228; 274-275. In the lease agreement P.Oxy 6 910 (Pakerke, 197), for example, Teos leased five arouras of land for a period of four years from Hierakion, who also loaned seven artabas of seed corn for the first year, a "concealed 40 per cent return".

[447] Discussion of the development of the colonate in late antiquity, the influence of tax reform, and to what extent the status of *colonus* was a legal or social one, is beyond the scope of the present work, but see in particular Kehoe 2007:163-191; Mirković 1997; Sirks 1993; Grey 2007.

[448] We do not know whether this approach had been made personally by Paula, or through an intermediary.

does not mean that property ownership was equally distributed between men and women, if women owned property at significantly lower rates than men we would expect there to be a greater discrepancy between these figures. Direct evidence for holding of enslaved persons is less clear, but there are nevertheless indications that many women whose rescripts are represented in the *Codex* were members of the enslaving classes of society, although the size of their holdings is not quantifiable.

Women of lower economic status, whose property, if any, was tied more closely with meeting their immediate needs, had less reason to petition the emperor, and the kinds of concerns they faced were of little legal interest. Furthermore, the nature of the imperial system of petition and response, with petitioners required to submit their petitions in person, means that unless they happened to live close to wherever the chancery happened to be at the time, access was restricted to those petitioners who could afford the time and expense of travelling. For the less wealthy or less able to travel – women directly involved in agriculture, for example – this was not always possible. This does not mean that they did not sometimes take the opportunity to petition the emperor, but women like Pompeia and Maxima who made a living through work for hire, must be seen as the exception rather than the rule.[449]

The trope of women as "light-minded" and "unskilled in business" was certainly just that; papyrological, material, and epigraphic evidence all tell us that many women were in fact actively involved in trade and industry, but it is surprising that there is little evidence of this in the *Codex*. We cannot know how many of the women in the *Codex* were involved in trade or business, and how many were living off inherited wealth, but the prevalence of rescripts relating to inheritance matters, which as we saw in Chapter 2 account for around a quarter of all the rescripts to women, provides further evidence that many, if not most, of the women represented in the *Codex* were members of the property-owning classes. The fact that inheritance and the transmission of property features so heavily in Roman legal and literary sources is a reflection of its importance

[449] See pp.111-111.

in Roman society, but we must remember that these sources were written for and by those who owned sufficient property to make such concerns relevant; for the women of the *Codex* to petition the emperor tells us that they must therefore have been part of this group.

The evidence we have seen in this chapter does not mean that we should describe the women of the *Codex* as wealthy, but rather that they were members of the middling strata of society, possessing sufficient economic resources to raise them above the position of the majority of the free inhabitants of the empire, who struggled to make a living beyond subsistence. As we saw in the last chapter, the majority of the women in the *Codex* were non-elite, and so their economic resources were perhaps the most significant source of social standing. However, their position was not always secure, and many of the rescripts in the *Codex* demonstrate a clear desire among the recipients to protect themselves from those they perceived as stronger, whether economically, physically, or socially. A petition from the emperor might help to improve their position, but as we shall see in Chapter 5, there is little evidence that the women who received rescripts relied on the support of men, whether family members, guardians, or husbands, before approaching the emperor.

Chapter 5 : Relationships with Men

Chapter 3 demonstrated that the majority of the women in the *Codex* were *humiliores*, that is that they were free, non-elite citizens, and while there were some areas of Roman law in which women faced gender-based restrictions, for the most part their status allowed them to exercise significant agency in dealing with their social and legal affairs. In Chapter 4, we saw that many women possessed economic resources that allowed them to take a full and active part in the economic life of their local community, using those resources to both demonstrate and enhance their social standing. Legal and social status, and economic resources, were not the only sources of power available to women. In Egypt, we often see women who petitioned with the support of husbands or family members, and there is no reason to think that this may not have applied to the petitioners in the *Codex*.[450] This chapter will investigate the ways in which the agency of women was affected by their relationships with fathers, guardians, and husbands. It will first examine the evidence for the ways in which women in the *Codex* were affected by *patria potestas* and guardianship, before examining the evidence for the marital status of the petitioners, and demonstrate that while women could at times find themselves unable to act without the approval of certain men, for the most part the women represented in the *Codex* appear to have acted independently.

One of the most striking aspects of the rescripts is how infrequently husbands and fathers, or indeed any other male relatives, are actually referred to in the responses as active participants in the process of petition and response. In only one case, the rescript of Marcus Aurelius and Lucius Verus to Sextilia (CJ.2.12.2, 161), does a response suggest that recommended action should be taken through a male relative. Sextilia was told that she could respond to her adversary's appeal through her husband, but this should not be taken as a suggestion that the emperors thought Sextilia could not represent herself, but rather that her husband could represent her if she so chose,

[450] See for example P.Harrauer 34 (Soknopaiu Nesos, 147) and Chr.Wilck 365 (Arsinoite, 46-47). On petitions submitted on behalf of others, see in particular Kelly 2011:219-242.

subject to the customary formalities.[451] This does raise the question of how far the rescripts in the *Codex* represent the legal culture of the women who petitioned, how much was mediated through men, and whether women chose to petition without male support even where it was otherwise available.

Based on his study of petitions from Egypt, Kelly argues that women who petitioned alone generally fall in to one of two "ideal types".[452] The first is made up of those women who had no male relative to "champion their interests" – that is, those whose male relatives were no longer alive – while the second group consists of women who had significant business interests and were accustomed to managing their own affairs.[453] If this also applied to the women who petitioned the emperor, then the lack of obvious male support evident in the rescripts is unsurprising. However, the fact that there is limited evidence of the direct influence of men in the rescripts does not necessarily mean that the women who are represented did not have a husband or family member in the background, assisting or directing them with their petition. One of the fundamental questions about the women in the *Codex*, therefore, is whether the women had male relatives they could call upon for support; not only to draft and submit the petition but also to help navigate the complexities of their social and legal position more widely. By identifying the position of the women of the *Codex* in respect of fathers and husbands, we can better understand how these women took control of their own affairs, and exercise their agency without the intervention of men.

[451] *potes per maritum tuum . . . appellationi adversariae respondere*. Women could not, however, represent their husbands due to the limitation on the intercession of women as a result of the *Senatusconsultum Velleianum* (see D.16.1; CJ.4.29.) Dionysia, in CJ.2.12.18 (294), was told in no uncertain terms that "the defence of others is a function of the male sex and is outside the sphere of women". Women could not represent other people with the exception of their parents, and then only if the parents were unable to represent themselves through illness or age, and they "have nobody [*quemquam qui; sc*. a man] who may act", see D.3.3.41 Paul, *Edict*, *book 9*. Despite this restriction, some women do seem to have attempted to represent their husbands, or at least been present in court when their husbands were not. A response of Severus and Caracalla to Saturninus (CJ.2.12.4, 207) confirmed that Saturninus was entitled to a retrial due to his absence in the original case, and the fact that his wife had been present and accepted the decision was irrelevant.

[452] Kelly 2011:235-237.

[453] Kelly 2011:242.

5.1 Men and Limits to the Agency of Women

As we saw in Chapter 3, there were three fundamental markers of legal status on which Roman society rested: *civitas*, *libertas*, and place within *familia*.[454] While both citizenship and freedom were fundamentally important in terms of creating the basis upon which women could engage with Roman law and society, they were not uniquely Roman concepts, and as such, posed fewer problems of assimilation for the diverse legal cultures of the Roman Empire than the third, *familia*. Status within a *familia*, that is to say whether an individual was *alieni iuris* and subject to the *potestas* of another, such as their *paterfamilias*, or was *sui iuris* and not subject to the *potestas* of another, had great significance on the ability of an individual, whether a man or woman, to exercise their agency.[455] The privileged position of the *paterfamilias* in Roman law was such that an individual *in potestate* could not in most cases own property, anything which was acquired becoming the property of the *paterfamilias*, and could not marry without the approval of the *paterfamilias*.[456] For many of the citizens enfranchised under the *Constitutio Antoniniana*, the power of the *paterfamilias* over even adult children, who may themselves have had children, was far greater than the power of their fathers under local custom.

Such power ended only upon the death of the *paterfamilias* or upon emancipation, when an individual *in potestate* became *sui iuris*.[457] For men, this meant that they themselves became *paterfamilias*, but boys under the age of fourteen and girls under twelve required a *tutor impuberis*, a (male) guardian to conduct their affairs. When this *tutela* ended, the *curator minoris* provided guidance and protection for men under twenty-five, since "persons of this age are weak and deficient in sense and subject to many kinds of disadvantage"; women, and girls over twelve, required a *tutor mulieris* in

[454] See p.100.
[455] Gai.*Inst*.1.48 = D.1.6.1.
[456] The rights mentioned here are not exhaustive; a vast amount has been written about the *paterfamilias* and his role in Roman law and society, for which see in particular Saller 1986; 1994:102-132; Lacey 1992; Crook 1967; for late antiquity, see Arjava 1998; for the impact on women in particular see Gardner 1986a:5-11.
[457] Adoption was also possible, but here the individual passed from the *potestas* of one *paterfamilias* into the *potestas* of his new *paterfamilias*, rather than becoming *sui iuris*.

perpetuity, who would be required to give authorisation for certain acts.[458] Although women across the empire had traditionally been subject to varying degrees of control by men even before the universal grant of citizenship, there was significant variation in practice and such laws and customs were often specific to a particular community or region.[459] With the *Constitutio Antoniniana,* Roman law added an additional layer of complexity to this patchwork of tradition, and for many women the legal ability to exercise their agency changed, for better or worse, but as we shall see, they were in practice less restricted by this requirement than might first appear.

i. Women and their Fathers

The next section will focus on how *patria potestas* affected the status of women in the *Codex*. It will show that the majority of women who petitioned the emperor were *sui iuris*, and that the influence of fathers on their daughters' affairs, particularly in the case of adult daughters, was negligible.[460] Fathers barely figure as active participants in the rescripts; there is not a single case where a petitioner was told that action should be taken through her father, which we might expect if the women were in his *potestas*.[461] This is perhaps not as surprising as it might seem at first glance. By the age of twenty, around half of Roman women would almost certainly have lost their father and almost all would have lost their paternal grandfather; the evidence from the *Codex* suggests that the majority of women who petitioned had no living male ascendant, and were therefore *sui iuris*.[462] Of the sixty-five rescripts which unambiguously refer to the

[458] Cf. p.89 for the frequency of rescripts regarding guardianship.
[459] On the role of the *kyrios* in classical Greece, see in particular Schaps 1979:48-60; for Hellenistic Egypt, see Pomeroy 1990:119-121.
[460] On *patria potestas* as something of an archaism with limited importance in reality, see for example Watson 2001:26-29; Saller 1986:19. As Arjava (1998:148-149) argues, while many individuals were indeed free from *patria potestas*, others, particular those of the "upper and middle classes" who had not yet inherited property, were still financially reliant on their fathers whether *sui iuris* or not (cf. Watson 2001:28). An individual *in potestate* who inherited from his mother would see the property pass to their *paterfamilias* unless she had made the child's emancipation a condition of her will and while such conditions were not uncommon (see Champlin 1991:125-126) the continued practice of *patria potestas* served to maintain the patriarchal control of property.
[461] See D.1.6-7; Gai.*Inst*. 1.55. The scholarship relating to *patria potestas* is plentiful; see for example Lacey 1992; Saller 1994:114-132; Watson 2001:23-30; Mousourakis 2012:88-91; Gardner 1986a:5-11; Evans Grubbs 2002:20. For *patria potestas* in late antiquity, see especially Arjava 1998.
[462] Saller 1986:15; Saller 1994:121 and see ch.3, particularly pp.58-65 for simulated demographic tables. See also Hin 2008:198-199; 220-223 for similar calculations for the Republican period.

father (or grandfather) of the recipient, the father was dead in forty-four cases (68%) while in a further ten rescripts, the responses refer to tutors or curators, and we can assume that in these cases too, the father of the petitioner was dead.[463] Of course, in many cases we simply do not know anything about the fathers of the women who petitioned unless explicitly mentioned, but the fact that the women petitioned about a wide variety of problems that fathers might otherwise be expected to deal with suggests that the influence of fathers, if still alive, on the legal concerns of these women was minimal. Furthermore, as the majority of rescripts addressed to women relate to financial matters, and women (and men) who were *in potestate* could not legally own property, we should not expect fathers to be represented in substantial numbers.

There are only six clear cases of women explicitly described as having been in the *potestas* of their father, and in at least three of those, the father had since died, leaving the petitioner *sui iuris*.[464] Only in a single case (CJ.2.26.2, Gordian III, 238) do we find a woman, Serena, who was still demonstrably in the *potestas* of her father at the time she petitioned, and even here, she petitioned because she claimed to have been emancipated only for her father to later claim that the emancipation was without effect. This had understandably caused some tension between father and daughter, and the proconsul had already ruled in her father's favour. Despite the opposition of her father, Serena was still able to petition the emperor, suggesting that his legal control over her affairs did not stop her from taking independent action, although she may have had assistance from elsewhere to submit the petition. The reference in the rescript to the proconsul and the fact that her case would be reviewed by "he who governs your province," *is qui provinciam regit*, suggests she was domiciled in a senatorial province, yet the rescript was issued in the early months of Gordian III's reign

[463] It is possible that the fathers of these women were still alive and the women had been emancipated. Even if emancipated, their father could still be their *tutor legitimus*, as we see in the case of Aphrodisia, CJ.2.20.5 (Diocletian & Maximian, 293). References to grandfathers are assumed to mean paternal grandfathers, i.e. those in whose *potestas* the petitioners would be.

[464] Of course, the majority of the free-born women who petitioned would have been in the *potestas* of their father at some point, but it is difficult to establish whether the majority of the women were *sui iuris* or not at the time of petitioning. Freedwomen, of course, had no *pater*, and remained in the guardianship of their patron.

when he was in Rome.[465] Whether this assistance came from a relative, her husband, or someone else with whom she had a personal connection is impossible to say. While women may not have been prohibited from delivering a petition in person, it may not always have been considered socially acceptable, and many women would have relied upon men to physically approach the chancery even if the content of their petition was entirely their own.[466] There are also a number of cases where rescripts were addressed to men who had clearly petitioned on behalf of their wives or family members, and these will be discussed later in this chapter.[467]

Although we cannot be sure, then, whether Serena travelled to Rome herself to deliver her petition or whether a representative delivered it on her behalf, she was nevertheless able to engage with the process of petition and response even while in her father's *potestas*, demonstrating that though she was not *sui iuris* she did not entirely lack legal agency. The fact that Serena continued to press her case to the emperor suggests she not only knew the benefits of being *sui iuris* but also that she had a significant desire to be legally independent.[468] Moreover, it suggests that there was no restriction on women who were *alieni iuris* from petitioning the emperor, although whether this only applied to petitions which were directly concerned with the application of *patria potestas* is more difficult to determine.[469] Serena's use of the process of petition and response was both a demonstration of her agency, such as it was, and a reaction against what she perceived as a threat to that agency, and can be seen as an attempt to invoke the *potestas* of the emperor over her father.

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[465] Ando 2012:109; Potter 2004:171–172.

[466] There is no evidence to suggest that petitions could be delivered by someone with no link to the case or the petitioner, although little is known about the process by which petitions were physically delivered. See Williams 1974:93-98; 1980:284-287.

[467] See p.192, below.

[468] Tension between fathers and their daughters, and attempts by fathers to reassert control over their daughter's affairs, can also be found in papyri. In BGU.7.1578 (Philadelphia, 3rd century), a veteran involved in a property dispute with his daughter, who was in his power (ταύτης γὰρ ὑποχειρίας μοι οὔσης κατὰ τὸν νόμον, line 9), complained to the Prefect. Although not Roman citizens, the account of the legal dispute between Dionysia and her father Chaeremon in P.Oxy.2.237 (Oxyrhynchos, 186) after he attempted to end her marriage, gives an indication of just how damaging such cases could be to family relationships. For these cases, see especially Dolganov 2019; Kreuzsaler and Urbanik 2008.

[469] As we saw in Chapter 3 (pp.101-114), enslaved people, who were also *in potestate*, in this case of their *dominus*, could not usually use the system except where their enslaved status was questioned.

Unfortunately for her, the importance of *familia* meant that although the emperor did not dismiss Serena's claim, he would not release her from her father's power without due process being followed.

A comparable situation can be seen in the rescript addressed to Colonia (CJ.8.48.4, Diocletian & Maximian, c.293-304), who petitioned in an attempt to force her grandfather to emancipate her. The response of Diocletian neatly demonstrates the limit to the *beneficium* of the emperor, telling her that it was not "our [i.e. the emperor's] custom to bestow benefits on anyone to the injury of another".[470] In most situations the chancery could not be expected to be certain whether a petitioner was *in potestate* or not, and there were undoubtedly occasions where a petitioner who was *in potestate* received a response that was valid only if they were *sui iuris*, but it is striking that rescripts rarely make any reference to the response being conditional on the status of the recipient. In only one rescript (CJ.2.2.3, Diocletian & Maximian, 287) does the chancery appear to have given a conditional response which acknowledges the possibility; Roxana was told that children in paternal power were not permitted to sue their father, but that such action was not prohibited *if* she was emancipated.[471]

We must also bear in mind that *patria potestas* was a peculiarly Roman institution,[472] and it is by no means clear to what degree those who became citizens only after the *Constitutio Antoniniana* understood and engaged with the practice, nor how common emancipation was among these citizens.[473] In Roman law and practice, emancipation from *patria potestas* took the form of a fictive sale, *mancipatio*, and subsequent

[470] A child *in potestate* could not force their *paterfamilias* to emancipate them (D.1.7.31, Marcian, *Rules, book 5*) and the rights of a *paterfamilias* were generally inviolable even by the emperor. According to Papinian, Trajan did force a father to emancipate his son, whom he was mistreating (D.37.12.5, Papinian, *Questions, Book 11*) but here the father's failure to uphold his duty of *pietas* outweighed his *potestas*. For the reluctance of the emperor to infringe the rights of others more generally, see Honoré 1994:37.
[471] D.2.4.6, Paul, *Views, Book 1*. On conditionals in rescripts, see Corcoran 1996:61-62; Honoré 1994
[472] According to Gaius "this right [i.e. *patria potestas*] is peculiar to Roman citizens, for there are hardly any other men who have such authority over their children as we have" (Gai. *Inst*. 1.55). See also Dixon 1992:47; Arjava 1996:28.
[473] Evidence from Egypt suggests that knowledge of the concept of *patria potestas* was widespread, but local interpretations of what this meant did not necessarily accord with Roman legal principles; see Arjava 1998:155-159; 1996:74. Likewise, Saller (1986:11) points out that most extant evidence relates to "the Latin-speaking west of the empire".

manumission, *manumissio*, conducted three times for sons and once for daughters and grandchildren.[474] After the final sale the child was again manumitted and subsequently left their father's *familia*, becoming *sui iuris*. While as we saw in Chapter 4, *mancipatio* was an ancient formula, for those new citizens who had limited knowledge of Roman legal practice, whether an emancipation had been conducted according to legal principles and was therefore strictly valid was not always obvious.[475] How emancipation might have been recorded is also unclear; although *mancipatio* was conducted under the auspices of a magistrate, how documents relating to emancipation were recorded and stored, if indeed any records were made, is uncertain, and so providing evidence that a legitimate emancipation had taken place was not necessarily straightforward, as we saw in the case of Serena.[476] This had the potential to cause problems even for those who had been legitimately emancipated; emancipation fundamentally changed the ability of these women to own property and so disputes about the ownership of property were common, with women sometimes struggling to demonstrate that property obtained after emancipation belonged to them and not to their father.

When Lenilla's father (CJ.7.71.3, Valerian & Gallienus, 259) assigned all his property to creditors, she was concerned that her own property might be confiscated as if it belonged to him, demonstrating that while emancipation broke the legal connection between a father's property and their emancipated child, it did not always protect women from association with their fathers' affairs. Although by the fourth century emancipation of adult children by their fathers seems to have been a fairly regular occurrence, it is difficult to establish how frequent it was in earlier periods and in all areas, and it may well have been the case that a woman with a living father was generally assumed to be *in potestate*, unless there was evidence to the contrary.[477] Although emancipation was a formal act made before witnesses, in the absence of

[474] Gai.*Inst*. 1.132. See Gardner 1998:10-12.
[475] See p.138.
[476] Under Justinian the process changed and an oath made before a competent magistrate was sufficient for a father to release his child from *potestas* (*Inst*. 1.12.6), leaving little trace of the earlier process in the *Corpus Iuris Civilis*.
[477] Saller (1986:16) argues that "it was used only in special or extreme circumstances, that it was not normal practice". For the increasing prevalence of emancipation in the fourth century, see Arjava 1998:161-162.

easily accessible records it was no doubt difficult for an outsider to determine whether a given individual was *sui iuris* without the decision of a judge. If the proportion of adult women with living fathers was low, but of those only a small proportion were emancipated, then an assumption by her father's creditors that Lenilla was *in potestate* was not necessarily an unreasonable one.[478] It is unclear from the text of the rescript whether Lenilla's father was still alive, or whether he had died after assigning his property to the city; either way, the issue was with property she claimed to have acquired while he was still living.

The emperor's response, that it was necessary to conduct an investigation of her father's property, for which she would require the assistance of the *praeses*, further demonstrates that proving status was not always straightforward, and hints that the creditors may have had reason to be sceptical of claims such as Lenilla's. From the perspective of the creditors, it was good business sense to attempt to recover as much property as possible, and faced with the possibility of losing family property it is not inconceivable that some women might have chosen to make false claims of being *sui iuris* in an attempt to protect family property. Other women, particularly those for whom *patria potestas* was not a traditional part of legal culture, may have struggled to comprehend how the practice affected their situation and this could also lead to disputes, particularly where it conflicted with local practice.

The rescript received by Maronia (CJ.8.46.2, Caracalla, 215) suggests that she was involved in a dispute over the ownership of property that she considered hers, but the source of the dispute is unclear from the text. The response of the emperor, which confirmed that property she "owned" while *in potestate* actually belonged to her father, seems to be a straightforward interpretation of the legal rules, but nevertheless demonstrates that the ways individuals conceived of how it worked in practice was not so clear. The date of the rescript, only three years after the *Constitutio Antoniniana*, raises the possibility that Maronia and her father were newly enfranchised citizens and suggests that confusion about the applicability of *patria potestas* to a woman, who

[478] See n.462 above.

according to local law may well have otherwise been free to own property, may have formed the origin of the dispute.[479] Prior to the *Constitutio Antoniniana*, if a peregrine father and his children obtained citizenship, the children did not automatically pass into his *potestas* unless the emperor had granted this specifically, and this occurred only if the emperor considered it to be in the best interests of the children.[480] For Latins the situation was different, and according to Gaius, the children of those obtaining Roman citizenship *per honorem* did pass into the power of their father.[481] While any children born to a father in a valid Roman marriage after the promulgation of the *Constitutio Antoniniana* would naturally be in his power, the effect on the status of existing children is much more difficult to determine. If existing children did indeed fall under their father's power, in the manner of Latins, this had profound implications for the property their children had earlier acquired, and this could lead to precisely the kind of legal problem in which Maronia found herself embroiled.[482]

Although the rescript suggests that at the time of petitioning Maronia was *sui iuris*, how she came to be *sui iuris* is unclear. The reference to property that she "had while in the power of [her] father" does not entirely preclude the possibility that he was still living, and that she had been emancipated rather than becoming *sui iuris* upon his death.[483] Her dispute may well have been with her father, who saw an opportunity to obtain property that she had acquired for herself, or, like Lenilla, it may have been his creditors or heirs who hoped to recover property. If Maronia and her father were long-

[479] The subscript of the rescript has no location but Caracalla was travelling between Macedonia and Alexandria in 215, suggesting Maronia and her father were resident in an Eastern province. While Maronia could be a feminine variant of the Greek Maron, it is possibly of Hebrew origin (see Honigman 2004:293); the name is not found in LGPN, although the masculine Maronios appears in IG.V(1) 1349 (Laconia, Imperial period) accompanied by an inscribed menorah.
[480] Gai.*Inst*.1.93.
[481] Gai.*Inst*.1.95. Gonzalez and Crawford (1986), on the evidence of the *Lex Irnitana*, suggest that *patria potestas* was practiced by those with Latin citizenship, and that the relevant clauses of the *Lex* simply reasserted this existing relationship when they obtained "full" Roman citizenship. Hanard (1987:176) suggests that these clauses refer not to a parallel *legal* practice, but that *potestas* in this context should be taken in its general sense of 'power' and not in the specialised technical sense of *patria potestas* it would have in a Roman context.
[482] Discussing the impact of the *Constitutio Antoniniana* on private law in the East, Alonso (2020:48-49) describes the introduction of *patria potestas* as "potentially a rather traumatic one" for reasons very similar to those we see in the case of Maronia.
[483] See BGU.7.1578 (p.169 n.468, above) in which the property dispute stemmed from property given to a daughter in power prior to marriage; see also Arjava 1998:156-158.

standing citizens, it may be that the rescript simply demonstrates her ignorance of Roman family law. Whatever the true circumstances, Maronia's petition to Caracalla nevertheless gives us a glimpse into the kinds of legal confusion that undoubtedly occurred when individuals found themselves attempting to reconcile Roman and local practices in the immediate aftermath of the *Constitutio Antoniniana*. A given individual might not always choose to follow local practice, or always appeal to Roman law, but rather invoke elements of whichever tradition was the most advantageous to them in their particular circumstances, in the hope that they might prevail over their opponent.[484] For Maronia, *patria potestas* had a significant effect on her ability to exercise agency, but by choosing to petition the emperor in an attempt to maintain her position she had perhaps inadvertently given her opponent the advantage. Caracalla's rescript serves as a stark reminder of the importance of the rights of the *paterfamilias* in Roman law, even if it was not always enforced in practice.

Questions relating to *patria potestas* were important to some of the women who petitioned, but beyond these few examples, there is little firm evidence that many of the women represented in the *Codex* were in the *potestas* of their father, or that *patria potestas* had any significant impact on their daily lives.[485] This lack of evidence and a demographic landscape in which most adult women had lost their father does not mean, however, that there were not significant numbers of women across the empire affected by *patria potestas*, rather that women who were *in potestate* had little need for the imperial system of petition and response. Unable to own property in their own right, it was their *paterfamilias* who was responsible for managing family property, and in most cases familial *pietas* prevented women from acting against his wishes, leaving these women all but invisible in the *Codex*. Furthermore, strict observance of the fundamental principles of *patria potestas* as the jurists described them was not universal across the whole empire and all strata of society. We cannot always assume, therefore, that simply because women appear to have petitioned as if they were *sui iuris* that this was in fact strictly the case, or indeed whether the petitioners conceived of *patria potestas* in the same way as Roman jurists.

[484] On "forum shopping" see in particular Humfress 2013; Czajkowski 2019.
[485] See also Evans Grubbs 2005.

The fact that most of the petitioners were *sui iuris*, or acting as such, does not mean that they could not count on their father for support, if he was still living, or that he could not otherwise influence their approach to legal matters, but any influence he may have wielded did not come as a result of *patria potestas*. Women who were *sui iuris* were not always entirely free to conduct business as they wished; according to Roman law, they still needed the authority of a man to conduct certain legal transactions, and unlike *patria potestas* the idea that women required assistance or authorisation from a man to conduct business was not uniquely Roman.[486] Once again, however, the evidence in the *Codex* as it relates to guardianship suggests that the women represented in the rescripts were largely free from such restrictions, and this is likely to reflect the situation for women more generally, although the interaction between Roman law and local practice often makes the reality more difficult to establish. The next section will look at the evidence for guardianship and curatorship in the *Codex*, and how these practices affected the women concerned.

ii. Women and their Guardians

In order to transact certain business, such as the alienation of *res mancipi*, which we saw in Chapter 4, and the making of a will, Roman women over the age of twelve who were not in their father's power required the authorisation of a *tutor mulieris*, or if under twelve, a *tutor impuberum*.[487] Although women, unlike men, with certain exceptions nominally remained *in tutela* for life, in practice this seems to have had little effect on their capacity in day-to-day life, and this is reflected in the lack of evidence for guardianship in the *Codex*. By the time of Justinian the practice of *tutela mulierum* had been abolished, and in any case, during the period covered by the rescripts, the

[486] Gai.*Inst*. 1.144-145; Ulp.*Ep*.16.11 = FIRA^2 2.276.
[487] For *res mancipi*, see p.138. The requirement for a *tutor impuberum* applied equally to girls under twelve and boys under fourteen.

institution of *tutela mulierum* had become little more than a vestige of the past.[488] There was no legal requirement for a guardian's authorisation to petition the emperor, and as Gaius had written towards the end of the second century, the apparent need for a guardian was "more specious than true" since, as we saw in Chapter 4, adult women actually contracted their own business, with the men acting as putative guardians often forced to give authorisation against their will.[489] Clearly, the law did not reflect reality.

Only thirty-three rescripts refer directly to the guardians of the petitioner, and in most cases refer to a *curator minoris* rather than *tutor mulieris.* By the beginning of the fourth century, the requirement for *puberes* under twenty-five years old to have a *curator minoris* had been extended to include women, as had long been the requirement for men. The rescripts in the *Codex* were produced during a period in which the reality (if not necessarily the law) was that restrictions on adult women's ability to transact business without the *auctoritas* of a tutor were gradually being eroded, leaving only women under twenty-five still under some measure of putative male authority.[490] The most significant responsibility of a tutor was the granting of his *auctoritas* for the alienation of property that was *res mancipi*, and so any petitions that women sent to the emperor regarding *tutela mulierum* were likely to have been motivated by financial considerations rather than a threat to their social standing.

[488] The primary legal source of evidence for *tutela mulierum* is Gai. *Inst.*2.80. In papyri from Egypt, where the practice seems to have continued longer, there are several examples of women petitioning the prefect to request a guardian; see for example P.Oxy.4.720 (Oxyrhynchos, 247); P.Mich.3.165 (Oxyrhynchos, 236); CHLA.11.503 (unknown location, 219); P.Oxy.12.1466 (Oxyrhynchos, 245); P.Oxy.34.2710 (Oxyrhynchos, 261). See P.Ryl.2.120 (Hermopolis, 167) for a request for guardian, addressed to Archias, "priest and exegetes" for a single transaction in the absence of the author's regular guardian; for a similar request see also P.Oxy.1.56 (Oxyrhynchos, 203). SB.3.6223 (Alexandria, 198) is a record of guardian being granted by the prefect. There is no reason to think that when women had access to the emperor they would not have used the opportunity to request a guardian of their choice, as indeed they did when requesting guardians for children, see for example CJ.5.31.3 (Caracalla, 215); CJ.5.31.5 (Alexander Severus, 223). Any evidence for such requests, or indeed any rescripts referring to *tutela mulierum*, were of course ignored by the editors of the *Codex* as no longer relevant. FV.325 (Diocletian & Maximian, 293/294), confirming that a woman is able to appoint a procurator without the authority of her tutor (*mulier quidem facere procuratorem sine tutoris auctoritate non prohibetur*) is the latest reference to *tutela mulierum*. Nor is there reference to *tutela mulierum* in the *Codex Theodosianus* (see Evans Grubbs 2002:24; Dixon 1985:149)

[489] Gai.*Inst*. 1.190. See pp.152-161. See also Halbwachs 2016:448-449; Arjava 1997:28; Saller 1994:181.

[490] The agnatic *tutela* of women had been abolished by Claudius (Gai.*Inst*.1.171).

There may have been occasions where women petitioned the emperor for exemption from *tutela*, perhaps through appeals under the *ius trium liberorum*, as we see in a number of third century documents from Egypt that show women claiming the right to transact business without a guardian under this law, or demonstrating that they already had this right.[491] However, as in the case of *tutela mulierum*, references to *ius trium liberorum* were ignored by the editors of the *Codex* as it no longer had any relevance, the rights it afforded having being granted to all in 410 by Honorius and Theodosius.[492] Only two extant rescripts to women in the *Codex* refer to the law, one addressed to a certain Marcia (CJ.10.52.5, Diocletian & Maximian, 286-305) in relation to exemption from *munera*,[493] and one (CJ.5.37.12, Gordian III, 241) in which Octaviana was informed that even the fact she had "an abundance of children", *fecunditatem liberorum*, did not exempt her from the need for a *curator* if she was under twenty-five years old. Octaviana certainly seems to have been aware of the *ius trium liberorum* and the possibility to avoid *tutela mulierum* even if she was unaware that the requirement for a *curator* still applied. Her case is an exceptional one; the fact that *tutela mulierum* had fallen into desuetude and the *ius trium liberorum* had been repealed by the time the *Codex* was compiled means that a significant body of evidence for the ways in which women negotiated their relationship with *tutores* and the implications of *tutela* is otherwise missing from the *Codex*. It is often difficult to distinguish between the different forms of *tutela* and *cura* in a rescript, especially where the text refers to the actions of "your tutor or curator" and we have no way to know which kind of guardianship the woman concerned was actually subject.[494] While a rescript may appear to refer to *cura minoris* this could well be the result of Justinianic interpolation and the

[491] See for example P.Oxy.12.1467 (Oxyrhynchos, 263); P.Col.7.179 (Karanis, 300) P.Mich.12.627 (Philadelphia, 298). A number of inscriptions also record the fact that women held the right; see Evans Grubbs 2002:39-43.
[492] CJ.8.58.1 = CT. 8.17.3, Honorius and Theodosius, 410.
[493] This rescript was split between two entries, for the rest of the rescript, see CJ.10.42.9.
[494] See for example CJ.5.43.7 (Gordian III, 240); CJ.5.62.5 (Alexander Severus, 222-224); CJ.2.28.2 (Diocletian & Maximian, 294).

erasure of references to *tutela mulierum*.[495] We cannot use the lack of evidence in the *Codex* to demonstrate conclusively that the need for a guardian did not apply to the women in the *Codex*, either in law or in practice, but the text and content of the extant rescripts, which demonstrate women acting independently, provide further confirmation that even if these women had guardians there was little practical restriction on their agency.

The reality for many women was that social, cultural, and economic conditions were more likely to influence their behaviour than legal rules, and the impact of local practices and traditions is often difficult to trace in the rescripts. In many parts of the empire, husbands traditionally took on the role of guardian, and although this was forbidden under Roman law, it is likely that many husbands acted as *de facto* guardians, with varying degrees of practical influence. For those who had been recently enfranchised this may have caused some confusion as to the position of a husband, and the legal status of husbands in relation to their property could well have been the reason Artemisia (CJ.5.34.2, 225) petitioned Alexander Severus. The date of the rescript, within a generation of the *Constitutio Antoniniana*, suggests that local practices and expectations of a husband's role as guardian continued to hold sway, and for many women the choice of husband as guardian no doubt seemed both logical and convenient. Whether Artemisia petitioned because she hoped for her husband to be appointed her *curator*, perhaps in preference to a relative, is unknown. As we shall see, some husbands did act dishonourably with respect to their wife's property, and her petition may well have been in fact an attempt to lessen his hold over her.

5.2 Marital Relations

The women represented in the *Codex* were in most cases able to act independently of their fathers. Although evidence for *tutela mulierum* is absent, it is clear that most of

[495] Sperata (CJ.5.28.1, Septimius Severus & Caracalla, 207) petitioned with reference to a *tutor* assigned to her in the will of her former enslaver; the legal point here was that her enslaver, as a woman, could not actually assign a *tutor*, but if the *tutor* had managed Sperata's property, she could nevertheless sue in the action on *negotiorum gestorum.* What is not clear from the text of the rescript is whether Sperata and her enslaver considered this *tutor* to have been a *tutor mulierum*; the editors of the *Codex* perhaps being able to exploit that ambiguity.

these women managed their own affairs, but this does not mean that they always acted without support or guidance from men. If the majority of adult women had lost their father, then husbands were the most likely source of practical support for these women beyond their *familia*. While the Roman practice of marriage *cum manu*, in which a woman passed from the *potestas* and *familia* of her father to that of her husband, had largely faded by the first century BCE, we should not overlook the influence of husbands, as both a positive and negative force.[496] This is an area that has not previously been explored in detail, and due to the nature of the rescripts it is difficult to determine whether the recipient was married or not at the time of petitioning, let alone whether their husband influenced the content of that petition. In around 70% of cases in the *Codex* we have no way to identify marital status,[497] but the next section of this chapter will demonstrate that the remaining rescripts provide evidence for how marital status affected the ability of the women concerned to exercise agency, and what influence husbands may have had in the way they chose to deal with disputes.

Unless husbands are specifically mentioned in a rescript, we must "read between the lines" of the rescript to determine whether the woman was married. Clearly, some types of legal problem give the biggest clues; rescripts regarding dowries suggest that the women who petitioned were, or had been in the past, married, but we cannot always assume that a dowry referred to in the rescript was that of the petitioner.[498] References to children of the petitioner also help determine marital status; while no doubt some children were *spurii*, that is to say they were not born into the *potestas* of

[496] On marriage *cum manu*, see Treggiari 1991a:16-32.
[497] On similar problems identifying married individuals in papyri, see Huebner 2019:40-45.
[498] The rescript from Alexander Severus to Sabina, quoting a response of Ulpian (CJ.8.37.4, 222), refers to the right of a woman to exact a stipulation from her husband to bequeath a portion of her dowry. While it is likely Sabina had asked whether she was able to bequeath her own dowry, it is by no means certain. Her petition could just have easily have been sent as a result of a denied bequest to her, and this highlights the difficulty in drawing conclusions from the rescripts. Only when the rescript is unambiguous can we have any degree of certainty about the detail.

their natural father,[499] often because one or both parents were enslaved, the nature of rescripts as legal texts means that most children mentioned were likely to have been born within legitimate Roman marriages.[500] However, in many cases that do not relate to dowries or children, we simply do not know the marital status of the women at the time they petitioned.

Of the 575 women who petitioned singly, the text of the rescripts gives no indication of the marital status of 419 of them (72.9%).[501] Two women were enslaved, and therefore legally unable to marry, although as we saw in Chapter 3, this does not mean that they did not live in marriage-like relationships or that they had no support from men, whether enslaved or free.[502] Of the remaining 154 women, assuming that the named recipient of the rescript was also the subject, while we can state with some degree of certainty that they had been married at some point in the past, it is difficult to identify whether they were married at the time of their petition. Only when the husband is directly involved in the case in some way can we be fairly certain of their status. The results of this analysis of marital status can be seen in Table 5.1, below.

[499] See D.1.5.23, Modestinus, *Encyclopaedia, book 1*; [Ulpian],*Tit.*4.2. A *spurius* suffered no social ignominy, although they could naturally not inherit from their (natural) father in intestacy, and a mother or sibling could inherit from them in intestacy only after applying for *bonorum possessio*. While they could become decurions, a legitimately-conceived candidate was given preference. See D.38.8.4, Ulpian*, Rules, Book 6*; D.50.2.3.2, Ulpian, *Duties of the Proconsul, book 3*; D.50.2.6, Papinian, *Replies, book 1*.
[500] On the nature of illegitimacy and the various terms used to describe it in Roman society, see Rawson 1989; Youtie 1975; Watson 1989. Some of the rescripts relate to questions as to the status of children, suggesting the "marriage" of the parents may have not been *iustum matrimonium,* but these generally relate to children born of previously enslaved persons. Bagnall and Frier (1994:155-156) estimated that 3-5% of children in census returns were illegitimate, although Rawson (1966), based on her study of the status of children in the epitaphs of *CIL* VI, suggests that around a third of the children were legitimate.
[501] See Appendix VII.
[502] See p102.

Table 5.1 Marital Status of the Women of the Codex

Marital Status		Number	% of *Codex* (n=575)	% of known status (n=156)
Known Status	Married	111	19.3%	71.2%
	Betrothed	1	0.2%	0.6%
	Divorced	9	1.6%	5.8%
	Iniustum matrimonium	4	0.7%	2.6%
	Widowed	26	4.5%	16.7%
	Enslaved (no *conubium* possible)	2	0.3%	1.3%
	Unmarried	3	0.5%	1.9%
	Total	156	27.1%	-
Unknown Status		419	72.9%	-
	Total	575	-	-

In three cases, the women were almost certainly unmarried when they petitioned, and in all three, the women were unable or unwilling to comply with conditions in a testament that compelled them to marry a particular individual to obtain a legacy. Despite not fulfilling the terms of the legacies, they petitioned in the hope that they might still inherit. Cassia (CJ.6.25.2, Caracalla, 213) was unwilling to marry her maternal cousin, apparently considering him to be so unsuitable as a husband that she would effectively be a spinster.[503] Her petition was no doubt a colourful one; she had suggested that as far as she was concerned the marriage her mother had specified was unseemly, *turpis*, but Caracalla disagreed, telling her that he considered the mother's condition to be commendable, *probabilis*. Whether Cassia eventually married her cousin to obtain the legacy is unknown, but this rescript does suggest the two women had a surprising degree of agency in a society in which women often had little influence in the choice of marriage partner. This decision was normally reserved for a father, if he was living, but here is no hint of any other male relative's involvement in the case. Although a guardian had some influence on how women managed their financial affairs, he did not take the place of a *paterfamilias* and had no legal authority over a ward's person, and so while he might express a preference as to their marriage partner she could not be compelled to accede. Here then, Cassia's mother took on this role,

[503] See also Evans Grubbs 2005:108-109.

and may well have intended Cassia to marry her cousin in order to keep property within the extended family, here in its modern sense of blood relations, rather than the Roman *familia*.[504] In regions where cousin marriage is widely practiced today, it serves to "secure socio-economic and emotional connections between the households of siblings" and if Cassia was otherwise without support, these connections could protect her and her property from outsiders.[505]

In Saturnina's (CJ.6.45.1, Caracalla, 211) case, it was her intended husband who was the cause of the problem, but luckily for her this meant that she was still able to inherit despite not fulfilling the condition of the legacy. The rescript does not make clear the relationship of Saturnina to either testator or intended husband, nor what fault caused the condition to fail, but she seems to have taken care to inform the emperor that she would otherwise have been happy to marry him. Licinia (CJ.6.46.4, Alexander Severus, 226) was less fortunate. Like Saturnina, she seems to have been happy to marry, in this case her cousin, in order to obtain the legacy, but when he died before they could marry the condition failed, leaving her unable to claim the legacy. The very fact that in all three cases a legacy had been left on the condition that the recipient married a man of the testator's choice attests both to the importance placed on choice of husband, and the lack of agency that many women had in this decision. While all three women could have ignored the testators' wishes without legal consequences, the social approbation that might follow and the risk of losing what may have been a substantial legacy served to reinforce the social practice, certainly among the higher social classes, that women were expected to marry, and that this should be a man chosen for them.

Only in thirty-nine cases (6.8%) can we say with any degree of certainty that the

[504] Although Shaw and Saller (1984:438) argue that parallel cousin marriage, that is, marriage to the child of a parent's same-sex sibling, was uncommon among Romans, claiming that "Parallel-cousin marriage does make sense as a strategy to prevent fragmentation of a consolidated family estate. Roman aristocrats, however, patently did not hold estates of this kind". However, even if "aristocrats" did not practice cousin marriage, this does not rule out the practice among lower classes of society or those from non-Roman cultural backgrounds. The purpose of close-kin marriage, the most extreme example being that between siblings in Egypt, is much debated; see for example Rowlandson and Takahashi 2009; Remijsen and Clarysse 2008; Hopkins 1980; Shaw 1992; Parker 1996; Huebner 2007.
[505] Shaw and Raz 2015:9. On the prevalence of consanguineous marriage in modern societies, see Bittles 2015.

women were still married at the time they petitioned, and even here there are some cases that may, in fact, relate to widows or divorcées.[506] If women generally petitioned because they had no male (blood) relative available we need to ask why these women, rather than their husbands, petitioned the emperor. In four cases the answer is quite simple: the petitions contained accusations or complaints against their husband. Domnina's husband (CJ.3.32.3, Alexander Severus, 222), along with her mother, had conspired to sell property she owned without her consent, as had the husband of Grattia Aelia (CJ.4.51.2, Gordian III, 238-244). In Grattia Aelia's case, the husband was accused of trickery in persuading her to authorise the sale with her seal, but the petition itself, or rather the legal action it concerned, was directed against the purchaser, rather than her husband.

There is also evidence that the emperor did not always take the petitions of married women at face value. Popilia (CJ.4.29.5, Alexander Severus, 224) accused her husband of pledging her property for a debt without her consent, presumably because the lender was now attempting to recover the property. Under the *senatusconsultum Velleianum*, if the lender knew that the pledge came from Popilia but still contracted with her husband then the agreement was void, and her property was protected.[507] The question for the emperor was whether she and her husband had connived to mislead the lender in the hope of later invoking the protection of the *senatusconsultum Velleianum*; if this was the case, clearly Popilia's husband would have been unable to petition without risking incriminating himself. Whether many women petitioned in their own names to attempt to hide the true circumstances, that they had in fact been willing partners in the deception ascribed to their husbands, is impossible to determine. What is clear is that the emperor and his advisors certainly considered this to be possible and we cannot discount the possibility that some of the replies to

[506] The status of the other 72 of the "married" women in Table 5.1 is more ambiguous, and while they can be said to have been married at some time, there is no internal evidence in the rescripts that they were still married at the time they petitioned. Bagnall and Frier suggest 55% of women in Egypt were married at any given time (1994:115). While we might expect a significant proportion of divorced or widowed women to remarry, Pudsey (2012:174) suggests it was often "advantageous to remain unmarried in order to protect the children's property".
[507] D.16.1.2, Ulpian, *Edict, book 29*. On the *SC Velleianum*, see Crook 1992; Gardner 1986a:75-76; 234-235; Dixon 2001:82-88.

women actually disguise the actions of men, using their wives as intermediaries.[508] In all, there are ten cases in which women petitioned the emperor either as a result of deceit on the part of husbands, as we have seen above, or through a genuine fear that actions of the husband had left them liable for his debts.[509] In these cases, it is understandable that women who otherwise had husbands who could petition on their behalf nevertheless approached the emperor in their own name.

Many of the rescripts in the *Codex* refer to questions about the status of the dowry of the petitioner and we can therefore confidently assert that these women were married.[510] The ownership and profit from a dowry remained the property of the husband as long as the marriage continued,[511] but the right of a woman (or her father, or heirs) to reclaim the dowry upon divorce or death of her husband occasionally caused conflict even before the dissolution of the marriage. Often this dispute was with the family of the wife, perhaps explaining why the petition was submitted in the name of the wife rather than the husband. Women were keenly aware that the dowry would ultimately support them and their children on the death of their husband, a common concern in a society where women were often married much younger than men.[512] Although the dowry was the property of the husband, women had a vested interest in ensuring it was received from their family and subsequently managed correctly, and several rescripts attest to this. Dasumiana's father (CJ.5.11.5, 293) had promised by stipulation, presumably when the marriage was agreed, that he would pay a dowry to

[508] D.16.1.2.5, Ulpian, *Edict, book 29*: "relief is only granted to them if they have not been guilty of deceit . . . because relief is given to those who have been deceived, not to those who deceive". The *Digest* cites "a Greek rescript of Severus" with very similar content to that addressed to Popilia, suggesting that the concern, if not necessarily the reality, that women often interceded in their husband's affairs for fraudulent reasons was a common one.

[509] CJ.3.32.3 (Alexander Severus, 222); CJ.4.12.1 (Diocletian & Maximian, 287); CJ.4.12.2 (Diocletian & Maximian, 287); CJ.4.29.4 (Alexander Severus, 223); CJ.4.29.5 (Alexander Severus, 224); CJ.4.29.10 (Philip I, 244); CJ.4.51.2 (Gordian III, 238-244); CJ.7.73.1 (Caracalla, 211-217); CJ.7.73.3 (Caracalla, 213); CJ.8.27.19 (Diocletian & Maximian, 294). A number of petitions from Egypt document similar misbehaviour on the part of husbands; see Kelly 2011:236.

[510] See for example CJ.3.29.6 (Diocletian & Maximian, 286); CJ.5.11.5 (Diocletian & Maximian, 293); CJ.5.12.11 (Diocletian & Maximian, 293); CJ.5.12.12 (Diocletian & Maximian, 293); CJ.5.12.14 (Diocletian & Maximian, 293); CJ.5.17.1 (Alexander Severus, 229); CJ.6.20.5 (Gordian III, 239); CJ.6.20.7 (Philip I, 246); CJ.6.20.10 (Diocletian & Maximian, 293); CJ.6.20.12 (Diocletian & Maximian, 294); CJ.7.8.7 (Gordian III, 238-244).

[511] D.23.3.7, Ulpian, *Sabinus, book 31*.

[512] The fundamental study of the age of Roman women at marriage is Shaw 1987; see also Saller 1994:67-68; Parkin 1992:123-125; Bagnall and Frier 1994:111-117; Weaver 1972:182-184.

Dasumiana's husband, but died before the payment was made. Dasumiana petitioned the emperor to ascertain how she could recover it from the estate, to be told that the right of action lay with her husband, not her. Juliana (CJ.7.8.7, Gordian III, 238-244) was more interested in ensuring the value of the dowry was not diminished by her husband, who had manumitted enslaved persons who had been received as part of the dowry. The emperor was clear that the enslaved persons were legally the property of her husband and his manumissions were therefore legally valid, so she could not question the status of the freedpersons. In both cases, the women's right to act in the interest of their dowry was limited by their marital status, but that had not stopped them attempting to take action.

The case of Severa, (CJ.5.12.11, Diocletian & Maximian, 293) is of particular interest in demonstrating how women sometimes took on the responsibility for recovering a dowry when this would otherwise be the responsibility of their husband. A single sentence is all that remains, "there is no doubt that your husband has a right of action for those things which you claim had been given as a dowry and were [later] stolen", but this appears to suggest that Severa was appealing on behalf of her husband, a reversal of what we might expect. We must be mindful, however, of the fact that parts of the original rescript may have been excised from the entry by the compilers, and this could simply be the remnant of a longer response to Severa's petition, which may have contained a clause informing her that she had no right of action herself. Severa's ability to reclaim the dowry was again subordinated to her husband's legal ownership of it, but either way, when the dowry was stolen, Severa did not simply leave it to her husband to regain the property, but took action herself to protect her interests.

It is clear then that many women who otherwise had husbands who might be expected to petition on their behalf actually demonstrated a significant amount of agency when protecting their property. In total, thirty-one of the married women, a little under 80%, petitioned regarding financial matters, higher than the proportion in the *Codex* as a whole.[513] Despite the expectation that husbands should be the protector of their wives'

[513] 74.7% of all rescripts, see p.82.

property during their marriage, not all men could be trusted to do so, and it fell to the women themselves to take whatever action was necessary.[514] We should be careful of drawing firm conclusions from this data, but women who were married seem more likely to have approached the emperor about financial matters than other legal problems, which their husbands might deal with. Equally, married women may have been more ready to petition regarding financial matters precisely because they were married, the perceived protection of their husbands leaving them less open to intimidation by their opponents. Unmarried or widowed women, on the other hand, may have been dissuaded from petitioning in the first place as a result of such intimidation, although as we see in petitions from Egypt, alluding to such intimidation in a petition could also be used as a means to arouse sympathy in the recipient.[515]

i. Widows and Divorcées

Of those women whose marital status can be determined, very few can explicitly be identified as either divorced (nine) or widowed (twenty-six), a total of 6% of petitioners. It would be surprising if this statistic matched the reality; in a society with a high mortality rate, where women married younger than men, we would expect the overall proportion to be much higher. Census returns in Egypt suggest that while married women accounted for 50% of adult women, nearly 36% of women were widows or divorcées.[516] Although remarriage after the death of a spouse was common, evidence from Egypt suggests that this was more likely for men than women, and that for women over the age of thirty-five remarriage becomes the exception rather than the rule.[517] Without any indication of the age of the recipients of rescripts it is difficult to compare the women of the *Codex* with the equally incomplete census data, but as a whole the *Codex* does not reflect this pattern and it is likely that a substantial proportion of the women whose status is unknown, as well as those we know to have

[514] Artemisia (p.178, above) was told that "a husband ought to show concern for his wife's property".
[515] See n.190.
[516] Hanson 2000:151-152, cf. Bagnall and Frier 1994:123-126. Hanson identified 104 "putative widows or divorcées" from a total of 290 women whose status was identifiable, a total of 35.9%. For widows and divorcées in particular, see also Pudsey 2012:159.
[517] Bagnall and Frier 1994:126-127; cf. Hanson 2000 151-153.

been married at some point, were actually widows or divorcées. Indeed, if we take those women whose status is identifiable, the proportion who were divorced or widowed rises to 22.4%, much closer to the figure calculated by Hanson for Egypt.[518]

Of course, the limited information about the marital status of the women in the *Codex* makes any conclusions about the relative proportion of widows and divorcées speculative, and focussing only on formal marital status obscures the social reality for many women. Although the majority of women were married at some point in their life, this does not mean that there was not a significant proportion of women who were not married, for a number of reasons.[519] Marriage in the Roman world did have legal implications, particularly for the propertied and higher social classes, in terms of the legitimacy of children and the transmission of paternal and dotal property, but assuming the spouses had the legal capacity to marry, *conubium*, it was otherwise a strictly personal affair, based upon the mutual desire to be married and to stay married.[520] Divorce was straightforward, and there was little social opprobrium placed on those who divorced, except where it was the result of adultery.[521] As Treggiari has noted, however, the lower social classes may have found divorce more difficult in view of the husband's duty to return the dowry. While as we saw in Chapter 4, most women whose rescripts are represented in the *Codex* were members of the middling classes, with property interests to protect, we must also ask whether some women did not "marry" in the strictest sense at all, but remained in "marriage-like" relationships, without the legal implications of *iustum matrimonium*.[522] Whether this distinction affected their ability to conduct their affairs on their own terms, or meant that unlike legally-married women they had less male support, is difficult to determine.

[518] Hanson 2000:151; cf.Bagnall and Frier 1994:118–121.
[519] On being "single" in the ancient world, see Huebner and Laes 2019. In particular, see the contributions from Huebner (2019) on Roman Egypt, and Pyy (2019) on single women in Augustan thought, demonstrating the tension between the need for young widows to protect themselves from rumour and the ideal of the *univira*.
[520] Treggiari 1991b:33.
[521] On the process for initiating divorce, see Treggiari 1991b:34-38; Treggiari 1991a:446-458. On social attitudes to divorce, see Treggiari 1991b:38-46; Gardner 1986a:260-261; Arjava 1988.
[522] Cf. Laes 2019:6.

ii. *Iniustum matrimonium*

Not all women had either the desire, *affectio maritalis*, or, as we have already seen in the cases of Troila and Hermione, the legal capacity to marry, and in four cases, the status of the petitioners' marriage is legally unclear or otherwise irregular.[523] The responses to three of these women related to questions as to whether their children were free, with the inference that one or both parents were, in fact, enslaved. Basilina (CJ.8.50.16, 293) had at some time been captured by the enemy and had given birth to children while in captivity, the father of whom was also enslaved. In recognition of the fact that she had been a free woman before capture, her children were to be considered free, although as they were *spurii*, they would be *sui iuris*.[524] Of course, it is impossible to determine the circumstances of their birth: she would certainly have been considered enslaved by her captors and therefore we cannot know whether the relationship with the father was consensual or whether she considered herself married, albeit in a non-legal union.[525] Either way, she did not have the support of her "husband", but the fact that she had been ransomed suggest that she was not entirely lacking support.

Some women, by virtue of their former status as enslaved women, did not necessarily have family to support them when they faced difficulties. Flora (CJ.6.17.1, 293) petitioned when both she and her son faced a challenge to their status after the death of her son's father, presumably by his family, who considered her son to be enslaved. For her son to claim the father's inheritance, as the response suggests, he would need to demonstrate that he was legitimate, and the fact that Flora chose to petition the emperor makes it likely that this was the case, or at least that Flora considered it to be so. There was clearly some controversy relating to the relationship between Flora and the boy's father, and based on the accusations by his family that the boy was enslaved, it is likely that he was Flora's enslaver. If he had freed Flora for the purpose of marriage

[523] CJ.8.50.16 (Diocletian & Maximian, 293); CJ.7.16.29 (Diocletian & Maximian, 294); CJ.6.17.1 (Severus Alexander, 293); CJ.5.18.3 (Caracalla, 215); CJ.9.9.18 (Valerian & Gallienus, 258).
[524] See also D.49.15.25, Marcian*, Institutes, book 14*, referring to a rescript of Septimius Severus and Caracalla which stated that if parents were captured together, and a child born in captivity returned with the mother alone, the child would be considered *spurius*.
[525] Buckland 1908:291. See also n.538 below. See *Digest* 49.15 for the legal status of captives and *postliminium*.

the question would revolve around whether the boy was born after this manumission and commencement of the marriage; if so, the child was a free citizen and in his father's *potestas*. Even if the family accepted that Flora had been freed before his birth, by claiming that the deceased had lacked *affectio maritalis* and did not intend to marry her, the relationship would appear to be *concubinatus*, not *iustum matrimonium*, and the boy would therefore be considered free, but *spurius*.[526] If they claimed Flora had not been freed at all, the boy followed her status as an enslaved person, and in both cases he could have no claim to the inheritance. We have no way to know the truth of the matter, and the informal nature of Roman marriage and the difficulty outsiders could face in determining the true nature of a relationship means that the man's family could quite easily claim that the relationship was in fact *concubinatus*. Flora clearly disagreed, and irrespective of the legal situation she certainly considered her relationship with the boy's father to have been a marriage. Socially, if not legally, she saw herself as a widow, and the fact that she was almost certainly of servile descent meant that with the exception of her young son, she had no family. Whether there were other members of the household, free-born or freed, who could help her in her legal troubles is unknown.

The situation was reversed for Hostilia (CJ.5.18.3, 215), whose husband turned out to have been enslaved. The fact that she claimed not to have known this when she married demonstrates just how difficult it could be to differentiate between free and enslaved people, as we saw in Chapter 3.[527] Not all such relationships were based on deceit; the mother of Theodora (CJ.7.20.1, 290) had also apparently become embroiled in a relationship with an enslaved man, this time in the full knowledge that he was not free, suggesting that while those engaging in such relationships were guilty of *stuprum*, it was not always easy to establish the truth. How common such cases of enslaved men claiming to be free and living with free women were is impossible to determine, but for the middling and elite classes, the damage of such a relationship to a woman's reputation makes it unlikely that this was a very common practice, but certainly not

[526] See Treggiari 1994(RM):19-57.
[527] See pp.106-114 above.

unknown.[528] A rescript of Septimius Severus and Caracalla quoted in the *Digest* refers to a woman prosecuted for adultery, who freed and instituted an enslaved man heir in her will. According to the rescript the man had also been accused of adultery, although no verdict had yet been given, and while it is not made explicit in the rescript it is clear that this was the man with whom she had committed adultery.[529] Until a verdict in his case was reached, the manumission could not be valid, but the woman's institution of the man as heir nevertheless demonstrated that the relationship was what we might consider a serious one.[530] A woman convicted of adultery stood to lose a significant portion of her dowry on divorce, and she would not be able to remarry without her new husband being charged with *stuprum*, and so it is possible the relationship between the two continued in some way even after her prosecution and divorce.[531] For the lower classes, such concerns were no doubt less important, and as we saw in Chapter 3 it was often difficult to distinguish between the free poor and enslaved, so any discussion of Roman marriage can only reasonably apply to its practice among the middling and elite classes.

Perhaps unsurprisingly, given that women were unable to bring charges of adultery against their husbands, there are few rescripts addressed to women who had suffered at the hands of adulterous husbands. We saw in Chapter 1 that Cassia had limited legal recourse against her husband when he had "violated" their marriage, and the only other rescript addressed to a woman that refers to prosecution for adultery is a brief statement of law that offers little insight into the circumstances.[532] There were, however, some problems that women faced as a result of devious "husbands" that were of concern to the emperor. Theodora (CJ.9.9.18 and CJ.5.3.5, Valerian & Gallienus, 258) had married, or was betrothed to, a man whom she had later

[528] See Evans Grubbs 1993, especially 125-126.
[529] Enslaved persons would for other crimes be punished by their enslaver, rather than face criminal trials, but they could be accused of adultery; D.48.1.5, Ulpian, *Adulteries, book 3*. The *adulter* and *adultera* could not be tried at the same time, see CJ.9.9.8 (Alexander Severus, 224), and it was usual for the *adultera* to be prosecuted first; D.48.5.2, Ulpian, *Disputations, book 8*; D.48.5.5, Julian, *Digest, book 86.*
[530] The woman may have instituted the man as heir before she was prosecuted, and of course we have no way to know how long she lived after her prosecution.
[531] D.48.5.30(29).1, Ulpian, *Adulteries, Book 4*. On the penalties for adultery, see McGinn 2003:140-144.
[532] CJ.9.9.8, see above, n.529.

discovered was already married. Leaving his wife "at home [. . .] in the province" he had wooed Theodora with promises of gifts, perhaps expecting that the distance between wives would protect him from discovery. Theodora was concerned not only about the gifts she had been promised but also her own property that he had taken by him under pretence of marriage, suggesting her motivation was as much about the financial loss as it was the personal outrage. Although her property could be recovered, she could do nothing about the promised gifts, the emperors asking "how can you effectually claim them, when you were betrothed only in name?". Was she the victim of an ancient con artist, who used his charms to exact money from innocent women, perhaps deliberately targeting those with few relatives to support them? There is a hint that he might face criminal charges for his actions, as Theodora was told that an "appropriate accuser" could accuse him of *stuprum*, but she was no doubt concerned that she might suffer a similar prosecution. Luckily for her, she was protected by her ignorance of his true status. He was not the only man to attempt such debauchery. Sebastina (CJ.5.5.2, Diocletian & Maximian, 285) petitioned regarding another potential bigamist, being told that "a competent judge [the governor of the province] would not suffer such things to go unpunished", although the relationship between her and the man concerned is unclear due to the brevity of the rescript.[533] Due to the circumstances of the relationships, these women lacked the support of a husband, and while we cannot consider them to be widows or divorcées in the strictest sense they were in a similar social position.

As this section has demonstrated, while Crook's oft-quoted phrase "if you lived together 'as' man and wife, you were" may have been true socially, this must be qualified with the *caveat* that legally speaking this was still dependent on both parties possessing *conubium*, and this was not always the case.[534] This distinction had significant effects on inheritance and the status of children, but women did not have to be legally married to have the practical support of men with whom they were in relationships. Nevertheless, in terms of the demonstration of agency of the women of

[533] It is not clear from the text whether Sebastina was the first wife, the second, or even the mother of one of the women.
[534] Crook 1967:101. For use of this phrase, see e.g. Rawson 1989:19; Laes 2019:2.

the *Codex*, the rescripts demonstrate that there was little practical difference between legally-married women, widows, divorcées, and those who were involved in more informal marriage-like relationships. This suggests that male partners in particular did not have a significant impact on the ability of women to petition, and indeed the overwhelming majority of the recipients appear to have acted alone, although of course this may be a consequence of the process of codification. Even if most women petitioned independently of men, this does not mean that all women were in a position to do so, or indeed wished to do so.

5.3 Hidden women

As we have seen, one of the fundamental questions about the women of the *Codex* is the extent to which the women represented were acting on their own, and how far their actions were mediated through men, whether relatives or otherwise. There is no evidence to suggest that women themselves were unable to submit petitions directly to the imperial chancery, but how the system worked on a practical level remains unclear and it is possible that while women could submit petitions in their own name, prevailing *mores* meant that in practice the chancery was not a suitable environment for a woman.[535] A male relative, freedman, or other agent working on behalf of the petitioner could therefore have submitted the petitions, ostensibly in the name of a woman, and the nature of the responses means that it is difficult to identify such cases in the *Codex*. [536] However, it is possible to identify a number of rescripts addressed to men who had actually petitioned on behalf of women, although a distinction should be made between those men who petitioned about problems where the petitioner had a specific financial or legal interest in the outcome, and those where the petitioner had no direct interest.[537] Where such cases have been identified, there are often indications that there were other factors that stopped the women from approaching the emperor themselves.

[535] On the process for submitting petitions, see Williams 1974; Corcoran 1996:43-44.
[536] Cf. p.152; p.124 n.335. It should be remembered, however, that these women were high status and can not necessarily be seen as representative of the women in the *Codex*. Eutychianus, the recipient of CJ.2.18.16 (Gallus & Volusianus, 252) managed the business affairs of his sister.
[537] I have found nineteen rescripts that explicitly show that the man concerned was petitioning on behalf of a woman. An exhaustive search of the 2661 entries in the *Codex* may highlight other examples.

The daughter of Claudius (CJ.8.50.7, Diocletian & Maximian, 291) was prostituted by the woman who paid her ransom after being captured, and when she subsequently escaped and returned to her father it was Claudius, not the girl herself, who petitioned to complain.[538] She could not have been expected to submit a petition herself; it was clearly not safe for the girl to leave the protection of her father, and leaving the house would risk discovery by the procuress who had attempted to sell her. While Diocletian's response, that the girl's chastity needed to be protected from this "most vile", *foedissima*, and "disgraceful", *flagitiosa*, woman, may well have been somewhat hyperbolic and reflective of elite attitudes towards sex workers, it nevertheless suggests that the girl was unmarried, and perhaps rather young.[539] In this case then the daughter's age, and the fact that she was probably still in the *potestas* of her father, had a considerable influence on the fact that she did not petition in her own right. We might expect to see other examples of fathers petitioning on behalf of daughters, but this does not seem to be the case; of the nineteen clear cases I have identified where men were acting on behalf of women, Claudius is the only father who petitioned. Athenius (CJ.7.56.2, Gordian III, 239) petitioned on behalf of his granddaughter, who was presumably in his *potestas*, after judgment in a case was rendered against her coheir, but the rescript tells us nothing about her age or status.

Several men petitioned on behalf of sisters and one on behalf of his mother.[540] In the case of Demetrianus (CJ.9.47.9, 222-224), his mother, apparently the daughter of a decurion, was unable to petition because she had been sentenced to the mines, a punishment that was reserved for *humiliores*, rather than because there were any

[538] D.49.15. Anyone who paid a ransom for a captive had a lien on the captive until the ransom was repaid (see Buckland 1908:311). Purchasing enslaved women from enemy forces for the purposes of prostitution was common, and the woman concerned may not have known at the time that Claudius's daughter was a free citizen or considered the risk worth taking. For discussion of the coercion of women in sex work, see especially McGinn 2004:55-61.

[539] The age of the women who do appear in the *Codex* is almost always impossible to determine. There are thirty-five responses to women who appear to be minors, i.e. under twenty-five years old, or petition in relation to transactions carried out as minors, but only one who was perhaps *impubes* (CJ.5.59.2, Diocletian & Maximian, 294).

[540] For brothers petitioning on behalf of sisters see CJ.2.21.2 (Gordian III, 238); CJ.3.37.4 (Diocletian & Maximian, 294), it is possible the recipient is a woman in this case; CJ.9.9.13 (Gordian III, 240).

other obvious restrictions on her capacity to petition. Unable to petition herself, it was left to Demetrianus to deliver her from her fate, a situation born of necessity as much as filial devotion. Less clear is the reason that Alexander (CJ.2.21.2, Gordian III, 238) petitioned on behalf of his sister. [541] The rescript, related to her intestate father's inheritance which she had failed to claim, tells us that she had five living sons, which exempted her from *tutela mulierum* on account of *ius trium liberorum*. Alexander may have been acting instead as her *curator minoris* as the rescript refers to the possibility of restitution of rights, available only to those who were still under twenty-five, but the emperor's conditional response, "*if* the benefit on account of age is still available," makes no claim as to her actual age. While it is certainly possible that she might have married at a young age and given birth to five still living children before the age of twenty-five, this does not seem likely.[542]

This may be an example of the continuation of local practice whereby women acted through guardians even when not strictly necessary under Roman law, as we see in Egypt where women continued to act with *kyrioi* when a tutor was not formally required.[543] It could also have been a practical solution, in which Alexander was better able to approach the chancery than his sister, but there is another possibility, which demonstrates the difficulty of using the rescripts to recreate the circumstances of an individual dispute. Assuming that Alexander and his sister were full siblings, if Alexander had inherited his father's estate under intestacy there were significant implications for his own financial security should his sister sue for restitution of rights. If Alexander was concerned that his sister might be able to claim part of his inheritance, this places the rescript in a new light; he was not supporting his sister in her claim, but had petitioned the emperor in an attempt to stop her from reducing his own share. The rescript as it stands may contain only part of the response he received, and omit that part of the rescript that referred to action he might be able to take to defend his

[541] Although attributed to Alexander Severus, the consular date indicates it was issued under Gordian III.
[542] On factors affecting fertility rate see Parkin 1992:111-133; Frier 1994. As Shaw (1987:33) argues, while some Roman women did marry very young, outside the elite most married in their late teens and early twenties, cf. Saller 1994:37.
[543] Arjava 1997.

inheritance.

As we saw in Chapter 1, the relationship of Claudius (CJ.10.64.1, Philip I, 244-249) to Malchaea, about whom he petitioned in respect of liturgies, is completely obscure.[544] Malchaea's membership of a liturgical class suggests she was of a higher social status than the majority of petitioners, and Claudius could well have been a freedman who conducted business on her behalf, perhaps her *tutor mulieris*, who petitioned to clarify her liturgical responsibilities. Like Alexander, he could actually have petitioned against Malchaea, concerned that she was trying to shirk her responsibility to the community of her birth. Such examples demonstrate that what may first appear to be cases of men supporting women could in fact show the opposite, and we must be careful not to assume that when men petitioned on behalf of women that they necessarily always had their best interests in mind. The motives of many of the petitioners, whether men or women, can often only be guessed.

Antiochianus (CJ.6.35.3, Alexander Severus, 222) had petitioned the emperor concerning the inheritance of the children of his (female) maternal cousin, whose father was allegedly murdered by enslaved persons. By opening the will before questioning the enslaved persons under torture, the children risked forfeiting the inheritance as unworthy, and it would pass to the *fiscus*.[545] As the inheritance came from outside his own *familia*, Antiochianus had no direct financial stake in the outcome, so there was clearly some other reason for his petition. Why did his cousin or her children not petition themselves? The heirs are explicitly referred to in the rescript as over the age of pupillage, meaning he was not acting as *tutor impuberum,* and as we do not know the gender of the children it is unclear whether he was acting as their

[544] See p.114, above.

[545] Inheriting an estate or legacy, or in the case of an enslaved person, testamentary freedom, could be compelling motive for murder, and so an heir who failed to seek vengeance for murder was barred from inheriting; the implication being that not only were they an undutiful heir who was allowing the murderer to go unpunished, but that they may also have had some part to play in the murder. See also CJ.6.35.1 (Septimius Severus & Caracalla, 204); D.34.9.21, Paul, *Views, book 5*. If the heir was over twenty-five, there was even the risk of the heir being prosecuted for not avenging murder: see CJ.6.35.6 (Alexander Severus, 229).

curator minoris or *tutor mulierum*.[546] Of course, if his cousin, the wife of the murdered man, was still alive there is no reason to suppose that she had not asked him to submit the petition on her behalf. As a woman grieving a murdered husband, it is perhaps understandable that she might not feel able to approach the emperor herself, although this does not explain why she did not petition in her own name.

It is likely that a number of the responses addressed to men in the *Codex* were similarly submitted on behalf of women, but the process of editing has left these women invisible in the rescripts except where the text explicitly informs us that this was the case. The paucity of such examples and the high number of rescripts that were addressed directly to women suggest that even if the physical act of visiting the chancery was restricted to men, which would be surprising, women were for the most part actively involved in the process of creating the petition, and there is nothing to suggest that their petitions were drafted by men and their names simply appended.[547]

5.4 Conclusions

As we saw in Chapter 3, the social standing of women could often be affected by their relationship with men. For women of the elite, maintaining the rank of their family was dependent on the rank of the men they married; for Severiana, her marriages to men of high rank, *clarissimi*, ensured that she "retained the honour of her family", *claritatem generis retinetis*, while Paulina lost her rank when she married a man of equestrian status.[548] For most women, such considerations were irrelevant. Husbands could be a source of significant practical and emotional support, but we also see cases in the *Codex* in which husbands were the cause of significant problems. Family members, too, provided women with support, and from a legal perspective the most important member of any family was the *paterfamilias*, but as this analysis has demonstrated, it is clear that neither marital status nor the *potestas* of a father had

[546] Had the original petition not been clear about the age of the heirs, we would expect a conditional response: "if the heirs are minors then x applies, otherwise y applies", rather than a firm statement about their age: *quia non eo tempore pupilli fuerunt.*
[547] The practicalities of submitting a petition are unclear, see p.11.
[548] See p.123.

much influence on whether or not the women in the *Codex* approached the emperor to resolve disputes. For those women who were *sui iuris*, although relationships with guardians could often be fractious, such problems were more often caused by financial maladministration than by genuine attempts to stop the women concerned from exercising their agency.

Nor do we see much unambiguous evidence that the petitions themselves were influenced by men. Some of the petitioners may have had no choice but to approach the emperor alone; when Grattia Aelia petitioned Gordian accusing her husband of fraud, it is hard to see how the same husband would have facilitated the submission of that petition. On the other hand, just because a woman had the capacity to submit a petition herself did not mean she would necessarily want to do so, and we must remember that for every woman who did submit a petition in her own name, there were undoubtedly many more who were prevented from doing so by men, and these women remain invisible in our evidence.

Chapter 6 : Conclusions

This thesis has offered a new and detailed analysis of the rescripts addressed to women in the *Codex Justinianus*, a source for investigating women's lives in the Roman Empire that has hitherto received little attention as a cohesive collection. The thesis has updated the work of earlier scholars, particularly that of Huchthausen, building a more complete picture of the entries addressed to women and providing more detailed analysis of the motivations of the petitioners. It has linked these motivations with the resources involved in the production of power and agency, and in so doing, has contributed to our understanding of the lives of the women who received rescripts, allowing us to place their lived experiences at the centre of the discussion. Each woman had a different reason for petitioning the emperor: perhaps having tried other options they saw no alternative; petitioning may have been a first step in evaluating their legal position; or a petition may have simply been one of a number of options they considered, each deployed in different circumstances. Like Grattia Aelia, their access to power was dependent on their ability to engage their resources in pursuit of a desired outcome. While the rescripts in the *Codex*, taken in isolation, cannot possibly provide evidence for all the factors influencing the agency of the women who received them, much less the agency of Roman women more broadly, they nevertheless provide a rich source of evidence for the ways in which social status and economic position were intrinsically linked to the ability of women to take independent action. By shifting the focus of study of the rescripts in the *Codex* from the law itself to the motivations of the petitioners, this thesis has allowed us to better understand how women in the Roman Empire made sense of - and lived with - law and legal institutions, providing a new and valuable perspective.

The quantitative analysis in part one of this thesis provided a more accurate foundation from which to investigate the factors affecting the agency of the women, and has highlighted a number of rescripts addressed to women that have previously been overlooked in earlier studies. The systematic approach to counting the women of the *Codex* employed here means that we are now able to more confidently identify changes to representation of women across different periods. It has highlighted that

the higher proportion of rescripts to women under Diocletian and his co-emperors should not necessarily be attributed solely to wider changes in society, but in fact to a higher representation of women in the *Codex Hermogenianus* than other source texts. The reasons for that higher representation are unclear; although changes in society may of course be the ultimate cause, it could equally be due to the way the chancery operated under Hermogenian or the way the rescripts were issued and compiled, and suggests that a more detailed study of the circumstances of its creation may further strengthen our understanding of women's lives in this period.

This thesis has also provided an alternative typology of rescripts, focusing on the motivations of the petitioners, rather than discrete legal categories. It has demonstrated that many of the concerns about which women approached the emperor reflect the concerns we find in papyri, supporting the much larger body of scholarship that has focused on the papyrological evidence. A similar proportion of women of the *Codex* owned property as those represented in papyri, suggesting a comparable social position. This demonstrates that although the recipient of petitions was different, in most cases the motivation for using the system of petition and response was broadly consistent across the empire. It also highlights some important differences which can be linked to the urgency with which petitioners acted. Petitioners facing immediate threats of violence, for example, seem not to have used the imperial system for resolution, perhaps considering a local response more likely to resolve the matter quickly. The absence of rescripts related to violence in the *Codex* masks the very real threat that many women faced, and this absence has significant consequences for our understanding of the factors affecting women's agency. Extending the scope of studies of violence against women beyond papyri or literary depictions may help to close this gap in future research.

The second section of this thesis identified the key resources possessed by women in the production of agency, without which women faced significant barriers to taking independent action to maintain their interests. In answering the question "who were the women of the *Codex*?" it has demonstrated that while the women were not a homogeneous group, they broadly represent the middling section of society. This thesis

countered suggestions that enslaved persons were users of the system, demonstrating that there is very little representation of enslaved persons among the recipients of rescripts, and that those women who found their status questioned were in most cases free, or living as such. This thesis provided an analysis of the economic position of the recipients, demonstrating that while many women owned some property they were not necessarily wealthy, often facing significant threats to that property, and that the protection of resources was of primary concern for the majority. By analysing the status of women with respect to guardianship, *patria potestas*, and marriage, this thesis has shown that their legal and social status allowed them to conduct their affairs largely free from the influence of men, although we must also remember that the women in the *Codex* were only those who were able to petition the emperor. Many other women undoubtedly faced restrictions to their agency at the hands of fathers, husbands, or other members of the community.

While the framework of this thesis has used the resources the women represented in the Codex possessed as a means to investigate their agency, the texts also provide significant opportunities for further study. Full comparison of the kinds of problems women faced, and how they dealt with them, with those faced by men, lay beyond the scope of the thesis. More detailed investigation of the status and economic resources of men would allow us to identify whether the findings in this thesis apply also to the men who received rescripts, and further our understanding of the impact of gendered structural restrictions on women's agency. Similarly, there are further aspects of the rescripts that merit analysis to help further our understanding of the lived experience of the recipients. A thematic approach to the rescripts, focusing on inheritance matters, for example, might reveal additional insights into the way women understood the law as it applied to their personal circumstances. Many of the recipients were mothers, and much could be gained from a deeper understanding of how their role as mothers affected their agency, the problems they faced, and how this compares to Roman ideals of motherhood.

This thesis has demonstrated that women's knowledge of law, as another element in the production of power, was varied. Some women seem to have had a good grasp of

the fundamental principles of law but were more limited when it came to the finer details, while others seemingly petitioned the emperor from a position of almost total ignorance, although how far we can accept this as genuine ignorance and how much was feigned is impossible to know. Women did what they thought was right in their circumstances, using their knowledge to guide them in decisions and making use of the shared knowledge of their communities. Some women, however, showed a greater degree of understanding of the difference between legality as conceived by the community in which they lived and legality as intended by formal law. Rather than demonstrating an ill-defined understanding of basic legal principles, they show a higher degree of legal literacy, often referring to specific laws or sources of law and in some cases suggesting they were aware of some of the detail behind these laws.

This knowledge of law influenced their actions in making sense of their situation, and it reveals some of the choices they made in deciding when to turn to the formal institutions of law and when to deal with disputes locally. While there were many cases in which the disputants were forced to involve authorities to resolve a dispute there were almost certainly more occasions where disputes were resolved informally within the community without involving the formal mechanisms of law. Family members made agreements, individuals reached compromises, and cases were settled in ways that did not always follow the strict rule of law, although evidence for these is naturally difficult to come across. Only when the parties involved changed their minds or reneged on a promise does evidence of these cases appear in the *Codex*. In addition to providing further evidence for the ways in which women demonstrated their knowledge of the law these rescripts help to illuminate the points of stress in the intersection between local legality and formal law.

There was of course no such thing as a "typical" Roman woman, but as a window into the lives of the non-elite, the rescripts in the *Codex* offer a view of the lived experience of this large part of the population that is often difficult to find outside papyri. The rescripts to women in the *Codex* represent only a tiny proportion of the women who petitioned the emperor, and fewer still of the whole body of women who faced threats to their position but who did not have the advantage of proximity to the emperor. For

those women who are represented, however, this thesis demonstrates very clearly that the view of Roman women as less capable than men was not reflected in reality. These women acted in defence of their interests and those of their families, and their appeal to the emperor was not an expression of powerlessness, but of often-significant legal agency. These women may have had no *potestas*, but they certainly did not lack power.

Bibliography

Unless otherwise stated, text and translations of Latin and Greek literary works have been taken from the Loeb Classical Library.

The Latin text of the *Codex* is taken from Krueger, P. (ed.) 1906: *Corpus Iuris Civilis*., Vol. 2: *Codex Iustinianus, Editio Stereotypa Octava*.

Translations of the *Codex Justinianus* taken from unpublished manuscripts of Justice Fred. H. Blume, published online. Kearley, T. G. 2008: 'Second Edition | Blume and Justinian | Annotated Justinian Code | George H. Hopper Law Library | University of Wyoming', available at http://www.uwyo.edu/lawlib/blume-justinian/ajc-edition-2/ [accessed 01/12/2021].

Translations of other works consulted:

Birks, P., and McLeod, G. 1987: *Justinian's Institutes*, Ithaca, N.Y.

Gordon, W. M. and Robinson O.F. 1988: *The Institutes of Gaius: With the Latin Text of Seckel and Kuebler*, London.

Watson, A. 1998: *The Digest of Justinian*, Rev. English language ed., Philadelphia.

Secondary literature

Adams, C. 2007: *Land Transport in Roman Egypt*, Oxford.

Alföldy, G. 1988: *The Social History of Rome*, D. Braund and F. Pollock (trans.), Baltimore.

Allason-Jones, L. 2004: 'The Family in Roman Britain', in M. Todd (ed.), *A Companion to Roman Britain*, Malden, MA, 273–287.

Alonso, J. L. 2013: 'The Status of Peregrine Law in Egypt: "Customary Law" and Legal Pluralism in the Roman Empire', *The Journal of Juristic Papyrology* 43, 351–404.

Alonso, J. L. 2020: 'The Constitutio Antoniniana and Private Legal Practice in the Eastern Empire', in K. Czajkowski, B. Eckhardt, and M. Strothmann (eds), *Law in the Roman Provinces*, Oxford, 44–64.

Ando, C. 2011: *Law, Language, and Empire in the Roman Tradition*, Philadelphia.

Ando, C. 2012: *Imperial Rome AD 193 to 284: The Critical Century*, Edinburgh.

Ando, C. 2016: 'Legal pluralism in practice', in P. J. du Plessis, C. Ando, and K. Tuori (eds), *The Oxford Handbook of Roman Law and Society*, Oxford, 283–293.

Arjava, A. 1988: 'Divorce in later Roman law', *Arctos* 22, 5–19.

Arjava, A. 1996: *Women and Law in Late Antiquity*, Oxford; New York.

Arjava, A. 1997: 'The guardianship of women in Roman Egypt', in B. Kramer, W. Luppe, H. Maehler, and G. Poethke (eds), *Akten Des 21. Internationalen Papyrologenkongresses: Berlin, 13.-19. 8. 1995*, Stuttgart, 25–30.

Arjava, A. 1998: 'Paternal power in late antiquity', *The Journal of Roman Studies* 88, 147–165.

Aubert, J.-J. 1994: *Business Managers in Ancient Rome: A Social and Economic Study of Institores, 200 B.C.-A.D. 250*, Leiden.

Aubert, J.-J. 2016: 'Law, business ventures and trade', in P. J. du Plessis, C. Ando, and K. Tuori (eds), *The Oxford Handbook of Roman Law and Society*, Oxford, 621–634.

Bagnall, R. S. 1977: 'Army and police in Roman Upper Egypt', *Journal of the American Research Center in Egypt* 14, 67–86.

Bagnall, R. S. 1989: 'Official and private violence in Roman Egypt', *The Bulletin of the American Society of Papyrologists* 26, 201–216.

Bagnall, R. S. 1992: 'Landholding in Late Roman Egypt: The Distribution of Wealth', *The Journal of Roman Studies* 82, 128–149.

Bagnall, R. S. 1993: *Egypt in Late Antiquity*, Princeton, N.J.

Bagnall, R. S. 1997: 'Korr. Tyche. 10', *Tyche: Beiträge Zur Alten Geschichte, Papyrologie Und Epigraphik* 12, 245–258.

Bagnall, R. S. 2004: 'Women's petitions in late antique Egypt', in D. Feissel and J. Gascou (eds), *La Pétition à Byzance*, Paris, 53–60.

Bagnall, R. S. 2021: 'A century of women's history from the papyri', in R. Ancona and G. Tsouvala (eds), *New Directions in the Study of Women in the Greco-Roman World*, Oxford, 95–122.

Bagnall, R. S., and Cribiore, R. 2008: *Women's Letters from Ancient Egypt, 300 BC-AD 800*, Ann Arbor; New York.

Bagnall, R. S., and Frier, B. W. 1994: *The Demography of Roman Egypt*, Cambridge.

Bain, K. 2014: *Women's Socioeconomic Status and Religious Leadership in Asia Minor: In the First Two Centuries C.E.*, Minneapolis.

Baldwin, B. 1963: 'Crime and criminals in Graeco-Roman Egypt', *Aegyptus* 43, 256–263.

Barnes, T. D. 1982: *The New Empire of Diocletian and Constantine*, Cambridge, Mass.

Barnett, L. D. 2019: *Societal Agents in Law: Quantitative Research*, Cham.

Bauschatz, J. 2013: *Law and Enforcement in Ptolemaic Egypt*, Cambridge; New York.

Beaucamp, J. 1992: *Le statut de la femme à Byzance (4e-7e siècle)*, 2 vols, Paris.

Belovsky, P. 2002: 'Usucapio of stolen things and slave children', *Revue Internationale Des Droits de l'Antiquité* XLIX, 57–99.

Benke, N. 2012: 'Gender and the Roman law of obligations', in T. A. J. McGinn (ed.), *Obligations in Roman Law*, Ann Arbor, MI, 215–246.

Berger, A. 1953: *Encyclopedic Dictionary of Roman Law*, Philadelphia.

Bittles, A. H. 2015: 'The prevalence and outcomes of consanguineous marriage in contemporary societies', in A. Shaw and A. Raz (eds), *Cousin Marriages*, New York ; Oxford, 33–45.

Blanco-Pérez, A. 2016: 'Nomenclature and dating in Roman Asia Minor: (M.) Aurelius/a and the 3rd Century AD', *Zeitschrift Für Papyrologie Und Epigraphik* 199, 271–293.

Blicharz, G. 2017: 'Pecunia traiecticia and project finance: the decodified legal systems and investments in risky ventures', *Teoria e Storia Del Diritto Privato* 10, 1–23.

de Blois, L. 2001: 'Roman Jurists and the Crisis of the Third Century', in Impact of Empire (Organization) and L. de Blois (eds), *Administration, Prosopography and Appointment Policies in the Roman Empire*, Amsterdam, 136–153.

de Blois, L. 2014: 'The constitutio Antoniniana (ad 212): Taxes or Religion?',

Mnemosyne 67, 1014–1021.

Boatwright, M. T. 1991: 'Plancia Magna of Perge: Women's roles and status in Roman Asia Minor', in S. B. Pomeroy (ed.), *Women's History and Ancient History*, Chapel Hill, 249–272.

Bodel, J. P., Scheidel, W., and Brown University (eds) 2017: *On Human Bondage: After Slavery and Social Death*, Chichester, West Sussex; Malden, MA.

Bond, S. 2014: 'Altering Infamy: Status, Violence, and Civic Exclusion in Late Antiquity', *Classical Antiquity* 33, 1–30.

Borkowski, J. A., and du Plessis, P. J. 2005: *Textbook on Roman Law*, 3rd ed., Oxford.

Bradley, K. 1994: *Slavery and Society at Rome*, Cambridge.

Bradley, K. 2000: 'Animalizing the Slave: The Truth of Fiction', *The Journal of Roman Studies* 90, 110–125.

Bradley, K. R. 1978: 'The Age at Time of Sale of Female Slaves', *Arethusa* 11, 243–252.

Bradley, K. R. 1984: *Slaves and Masters in the Roman Empire. A Study in Social Control*, Bruxelles.

van Bremen, R. 1996: *The Limits of Participation: Women and Civic Life in the Greek East in the Hellenistic and Roman Periods*, Amsterdam.

Brunt, P. A. 1971: *Italian Manpower, 225 B.C.-A.D. 14*, London.

Brunt, P. A. 1998: 'Marcus Aurelius and slavery', *Bulletin of the Institute of Classical Studies* 42, 139–150.

Bryen, A. Z. 2008: 'Visibility and violence in petitions from Roman Egypt', *Greek, Roman, and Byzantine Studies* 48, 181–200.

Bryen, A. Z. 2013a: *Violence in Roman Egypt: A Study in Legal Interpretation*, Philadelphia.

Bryen, A. Z. 2013b: 'Histories of Violence: Notes from the Roman Empire', in R. Campbell (ed.), *Violence and Civilization: Studies of Social Violence in History and Prehistory*, Oxford; Oakville, 125–151.

Buck, R. J. 1983: *Agriculture and Agricultural Practice in Roman Law*, Wiesbaden.

Buckland, W. W. 1908: *The Roman Law of Slavery: The Condition of the Slave in Private Law from Augustus to Justinian*, Cambridge.

Buckland, W. W. 1921: *A Text-Book of Roman Law from Augustus to Justinian*, Cambridge.

Buckland, W. W. 1933: 'Scott, S.P., The Civil Law (Book Review)', *Tulane Law Review* 7, 627–632.

Carlà-Uhink, F. 2017: 'Murder Among Relatives', *Journal of Ancient History* 5, 26–65.

Champlin, E. 1991: *Final Judgments: Duty and Emotion in Roman Wills 200 B.C.-A.D. 250*, Berkeley; Los Angeles; Oxford.

Clark, G. 1989: *Women in the Ancient World*, Oxford.

Colognesi, L. C. 2016: 'Ownership and Power in Roman Law', in P. J. du Plessis, C. Ando, and K. Tuori (eds), *The Oxford Handbook of Roman Law and Society*, Oxford, United Kingdom, 524–536.

Connolly, S. 2010: *Lives behind the Laws: The World of the Codex Hermogenianus*, Bloomington, IN.

Connolly, S. D. 2004: 'Access to Law in Late Antiquity: Status, Corruption, and the Evidence of the Codex Hermogenianus', Unpublished Doctoral Thesis, Yale, available at https://www.proquest.com/docview/305110721?, accessed 17/06/2021.

Corcoran, S. 1996: *The Empire of the Tetrarchs : Imperial Pronouncements and Government, AD 284-324*, Oxford.

Corcoran, S. 2008: 'Justinian and His Two Codes Revisiting P. Oxy. 1814', *Journal of Juristic Papyrology* 38, 73–111.

Corcoran, S. 2009a: 'After Krüger: observations on some additional or revised Justinian Code headings and subscripts', *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte. Romanistische Abteilung* 126, 423–439.

Corcoran, S. 2009b: 'New subscripts for old rescripts: the Vallicelliana fragments of

Justinian Code Book VII', *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte. Romanistische Abteilung* 126, 401–422.

Corcoran, S. 2013: 'The Gregorianus and Hermogenianus assembled and shattered', *Mélanges de l'École française de Rome - Antiquité* 125–2, available at http://mefra.revues.org/1772, accessed 12/03/2021.

Corcoran, S. 2016: 'The Codex of Justinian : the life of a text through 1500 years', in Justinian, B. W. Frier, S. Connolly, S. Corcoran, M. Crawford, J. N. Dillon, D. P. Kehoe, *et al.* (eds), F. H. Blume (tran.), *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text: Based on a Translation by Justice Fred H. Blume. Volume 1: Introductory Matter and Books I-III*, Cambridge, xcvii–clxv.

Corcoran, S., and Salway, B. 2012: 'Fragmenta Londiniensia Anteiustiniana: Preliminary Observations', *Roman Legal Tradition* 8, 63–83.

Cotton, H. 1993: 'The Guardianship of Jesus Son of Babatha: Roman and Local Law in the Province of Arabia', *Journal of Roman Studies* 83, 94–108.

Cotton, H. M. 1999: 'The languages of the legal and administrative documents from the Judaean desert', *Zeitschrift Für Papyrologie Und Epigraphik* 125, 219–231.

Crook, J. A. 1967: *Law and Life of Rome*, London.

Crook, J. A. 1992: 'Feminine Inadequacy and the Senatusconsultum Velleianum', in B. Rawson (ed.), *The Family in Ancient Rome. New Perspectives*, London, 83–92.

Czajkowski, K. 2017: *Localized Law: The Babatha and Salome Komaise Archives*, Oxford.

Czajkowski, K. 2019: 'The Limits of Legal Pluralism in the Roman Empire', *The Journal of Legal History* 40, 110–129.

Daube, D. 1937: 'Some Comparative Law - Furtum Conceptum', *Tijdschrift Voor Rechtsgeschiedenis / Revue d'Histoire Du Droit / The Legal History Review* 15, 48–77.

Davenport, C. 2019: *A History of the Roman Equestrian Order*, Cambridge.

Dickey, E. 2004: 'Literal and Extended use of Kinship Terms in Documentary Papyri',

Mnemosyne 57, 131–176.

Diósdi, G. 1970: *Ownership in Ancient and Pre Classical Roman Law*, Budapest.

Dixon, S. 1985: 'Polybius on Roman Women and Property', *The American Journal of Philology* 106, 147–170.

Dixon, S. 1992: *The Roman Family*, Baltimore.

Dixon, S. 1993: 'The Meaning of Gift and Debt in the Roman Elite', *Echos Du Monde Classique: Classical Views* 37, 451–464.

Dixon, S. 2001: *Reading Roman Women: Sources, Genres, and Real Life*, London.

Dolganov, A. 2019: 'Reichsrecht and Volksrecht in theory and practice: Roman justice in the province of Egypt (P. Oxy. II 237, P. Oxy. IV 706, SB XII 10929)', *Tyche: Beiträge Zur Alten Geschichte, Papyrologie Und Epigraphik* 34, 27–60.

Eck, W. 2007: *The Age of Augustus*, 2nd ed., Malden, MA.

Elton, H. 2006: 'The Transformation of Government Under Diocletian and Constantine', in D. S. Potter (ed.), *A Companion to the Roman Empire*, Malden, MA, USA, 193–205.

Emirbayer, M., and Mische, A. 1998: 'What Is Agency?', *American Journal of Sociology* 103, 962–1023.

Erdkamp, P. 1999: 'Agriculture, underemployment, and the cost of rural labour in the Roman world', *The Classical Quarterly* 49, 556–572.

Erdkamp, P. 2012: 'Urbanism', in W. Scheidel (ed.), *The Cambridge Companion to the Roman Economy*, Cambridge ; New York, 241–265.

Evans Grubbs, J. 1993: '"Marriage More Shameful Than Adultery": Slave-Mistress Relationships, "Mixed Marriages", and Late Roman Law', *Phoenix* 47, 125.

Evans Grubbs, J. 2000: 'The Slave who Avenged her Master's Death', *The Ancient History Bulletin = Revue d'Histoire Ancienne* 14, 81–88.

Evans Grubbs, J. 2002: *Women and the Law in the Roman Empire a Sourcebook on Marriage, Divorce and Widowhood*, London; New York.

Evans Grubbs, J. 2005: 'Parent–Child Conflict in the Roman Family: The Evidence of the Code of Justinian', in M. George (ed.), *The Roman Family in the Empire: Rome, Italy, and Beyond*, Oxford : New York, 93–128.

Evans Grubbs, J. 2010: 'Promoting Pietas through Roman Law', in B. Rawson (ed.), *A Companion to Families in the Greek and Roman Worlds*, Chichester, West Sussex, UK ; Malden, MA, 377–392.

Evans, M. 2013: 'The Meaning of Agency', in S. Madhok, A. Phillips, and K. Wilson (eds), *Gender, Agency, and Coercion*, London, 47–63.

Fearon, P. 2015: 'A "social evil": Liverpool moneylenders 1920s–1940s', *Urban History* 42, 440–462.

Finley, M. I. 1964: 'Between slavery and freedom', *Comparative Studies in Society and History* 6, 233–249.

Finley, M. I. 1980: *Ancient Slavery and Modern Ideology*, London.

Foley, H. P. 1981: *Reflections of Women in Antiquity*, New York ; London.

French, H. R. 2000: 'Social Status, Localism and the "Middle Sort of People" in England 1620-1750', *Past & Present* 166, 66–99.

French, V. 1986: 'Midwives and maternity in the Greco-Roman world', in M. R. Skinner (ed.), *Rescuing Creusa. New Methodological Approaches to Women in Antiquity*, Lubbock, Tex., 69–84.

Frier, B. W. 1994: 'Natural fertility and family limitation in Roman marriage', *Classical Philology* 89, 318–333.

Frier, B. W. 2016: 'Revising Justice Blume's translation of Justinian's Codex', in B. W. Frier, S. Connolly, S. Corcoran, M. Crawford, J. N. Dillon, D. P. Kehoe, N. E. Lenski, *et al.* (eds), F. H. Blume (tran.), *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text: Based on a Translation by Justice Fred H. Blume. Volume 1: Introductory Matter and Books I-III*, Cambridge, lxxix–xcvi.

Frier, B. W., Connolly, S., Corcoran, S., Crawford, M., Dillon, J. N., Kehoe, D. P., Lenski, N. E., McGinn, T. A. J., Pazdernik, C. F., and Salway, B. 2016: *The Codex of*

Justinian: A New Annotated Translation, with Parallel Latin and Greek Text Based on a Translation by Justice Fred H. Blume, F. H. Blume (tran.), Cambridge, United Kingdom.

Fuchs, S. 2001: 'Beyond Agency', *Sociological Theory* 19, 24–40.

Fuhrmann, C. J. 2012: *Policing the Roman Empire: Soldiers, Administration, and Public Order*, Oxford; New York.

Gagos, T., and Minnen, P. van 1994: *Settling a Dispute: Toward a Legal Anthropology of Late Antique Egypt*, Ann Arbor, Mich.

Gardner, J. F. 1986a: *Women in Roman Law & Society*, London.

Gardner, J. F. 1986b: 'Proofs of Status in the Roman World', *Bulletin of the Institute of Classical Studies* 33, 1–14.

Gardner, J. F. 1993: *Being a Roman Citizen*, London; New York.

Gardner, J. F. 1998: *Family and Familia in Roman Law and Life*, Oxford.

Garnsey, P. 1968: 'Why Penalties Become Harsher: The Roman Case, Late Republic to Fourth Centruy Empire Note', *Natural Law Forum* 13, 141–162.

Garnsey, P. 1970: *Social Status and Legal Privilege in the Roman Empire*, Oxford.

Garnsey, P. 1998: *Cities, Peasants and Food in Classical Antiquity: Essays in Social and Economic History*, Cambridge.

Garnsey, P., and Saller, R. P. 2015: *The Roman Empire : Economy, Society and Culture*, 2nd ed., Berkeley.

Geldart, W., and Yardley, D. C. M. 2005: *Introduction to English Law*, 11th ed., Oxford.

Gibson, R. K., and Morrison, A. D. 2007: 'Introduction: What is a Letter?', in R. Morello and A. D. Morrison (eds), *Ancient Letters: Classical and Late Antique Epistolography*, Oxford ; New York, 1–17.

Giddens, A. 1984: *The Constitution of Society: Outline of the Theory of Structuration*, Cambridge.

González, J., and Crawford, M. H. 1986: 'The Lex Irnitana: A New Copy of the Flavian

Municipal Law', *The Journal of Roman Studies* 76, 147–243.

Gradenwitz, O. 1925: 'Vat. 22 und Cod. Just. 4, 46, 2', *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte. Romanistische Abteilung* XLV, 488–491.

Greenidge, A. H. J. 1894: *Infamia, Its Place in Roman Public and Private Law*, Oxford.

Grey, C. 2007: 'Contextualizing Colonatus: The Origo of the Late Roman Empire', *The Journal of Roman Studies* 97, 55–175.

Grey, C. 2011: *Constructing Communities in the Late Roman Countryside*, Cambridge.

Groen-Vallinga, M. J. 2013: 'Desperate Housewives? The Adaptive Family Economy and Female Participation in the Roman Urban Labour Market', in E. Hemelrijk and G. Woolf (eds), *Women and the Roman City in the Latin West*, Leiden ; Boston, 295–312.

Halbwachs, V. 2016: 'Women as Legal Actors', in P. J. Du Plessis, C. Ando, and K. Tuori (eds), *The Oxford Handbook of Roman Law and Society*, Oxford, 443-455.

Hanard, G. 1987: 'Note à propos des leges Salpensana et Irnitana. Faut-il corriger l'enseignement de Gaius?', *Revue Internationale Des Droits de l'Antiquité* XXXIV, 173–179.

Handley, E. W., Wartenberg, U., and Brown, P. G. M. 1997: *The Oxyrhynchus Papyri. 64*, London.

Hanson, A. E. 2000: 'Widows too young in their widowhood', in D. E. E. Kleiner and S. B. Matheson (eds), *I, Claudia. 2: Women in Roman Art and Society*, Austin (Tex.), 149–165.

Hanson, A. E. 2005: 'The Widow Babatha and the Poor Orphan Boy', in R. Katzoff and D. M. Schaps (eds), *Law in the Documents of the Judaean Desert*, Leiden ; Boston, 85–103.

Harper, K. 2011: *Slavery in the Late Roman World, AD 275-425*, Cambridge, UK; New York.

Harper, K., and Scheidel, W. 2018: 'Roman Slavery and the Idea of "Slave Society"', in N. Lenski and C. Cameron (eds), *What Is a Slave Society?*, Cambridge ; New York,

86–105.

Harries, J. D. 1998: ‘How to Make a Law-Code’, *Bulletin of the Institute of Classical Studies* 42, 63–78.

Harries, J. 1999: *Law and Empire in Late Antiquity*, Cambridge; New York.

Harries, J. 2007: *Law and Crime in the Roman World*, Cambridge; New York.

Harries, J. 2013: ‘The Senatus Consultum Silanianum: Court Decisions and Judicial Severity in the Early Roman Empire’, in P. J. du Plessis (ed.), *New Frontiers*, Edinburgh, 51–70.

Hauken, T. 1998: *Petition and Response: An Epigraphic Study of Petitions to Roman Emperors, 181-249*, Bergen.

Hauken, T. 2004: ‘Structure and themes in petitions to Roman emperors’, in D. Feissel and J. Gascou (eds), *La pétition à Byzance*, Paris, 11–22.

Hauken, T., Tanriver, C., and Akbiyikoglu, K. 2003: ‘A New Inscription from Phrygia, a rescript of Septimius Severus and Caracalla to the coloni of the Imperial Estate at Tymion’, *Epigraphica Anatolica* 36, 33–44.

Hillyard, P., and Tombs, S. 2007: ‘From “crime” to social harm?’, *Crime, Law and Social Change* 48, 9–25.

Hin, S. 2008: ‘Counting Romans’, in L. De Ligt and S. J. Northwood (eds), *People, Land, and Politics: Demographic Developments and the Transformation of Roman Italy 300 BC-AD 14*, Leiden, 187–238.

Hitlin, S., and Elder, G. H. 2007: ‘Time, Self, and the Curiously Abstract Concept of Agency’, *Sociological Theory* 25, 170–191.

Hobson, D. 1983: ‘Women as Property Owners in Roman Egypt’, *Transactions of the American Philological Association* 113, 311–321.

Hobson, D. 1984: ‘The Role of Women in the Economic Life of Roman Egypt: A Case Study from First Century Tebtunis’, *Echos Du Monde Classique: Classical Views* 28, 373–390.

Hobson, D. W. 1993: ‘The impact of law on village life in Roman Egypt’, in B. Halpern

and D. W. Hobson (eds), *Law, Politics and Society in the Ancient Mediterranean World*, Sheffield, 193–219.

Holleran, C. 2013: 'Women and Retail in Roman Italy', in E. Hemelrijk and G. Woolf (eds), *Women and the Roman City in the Latin West*, Leiden ; Boston, 313–330.

Hombert, M., and Préaux, C. 1952: *Recherches Sur le Recensement Dans l'Egypte Romaine*, Bruxelles.

Honigman, S. 2004: 'Abraham in Egypt: Hebrew and Jewish-Aramaic Names in Egypt and Judaea in Hellenistic and Early Roman Times', *Zeitschrift Für Papyrologie Und Epigraphik* 146, 279–297.

Honoré, A. M. 1982: *Ulpian*, Oxford.

Honoré, T. 1978: *Tribonian*, London.

Honoré, T. 1979: '"Imperial" Rescripts A.D. 193–305: Authorship and Authenticity', *Journal of Roman Studies* 69, 51–64.

Honoré, T. 1981: *Emperors and Lawyers*, London.

Honoré, T. 1986: 'III. The Making of the Theodosian Code', *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte: Romanistische Abteilung* 103, 133–222.

Honoré, T. 1994: *Emperors and Lawyers*, 2nd, completely revised ed., Oxford.

Honoré, T. 1998: *Law in the Crisis of Empire, 379-455 AD: The Theodosian Dynasty and Its Quaestors with a Palingenesia of Laws of the Dynasty*, Oxford.

Hopkins, K. 1978: *Conquerors and Slaves*, Cambridge ; New York.

Hopkins, K. 1980: 'Brother-Sister Marriage in Roman Egypt', *Comparative Studies in Society and History* 22, 303–354.

Horsley, G. H. R. (ed.) 1987: *New Documents Illustrating Early Christianity. Volume 4: A Review of the Greek Inscriptions and Papyri Published in 1979*, Grand Rapids, Michigan; Cambridge, U.K.

Horstkotte, H. 1996: 'Die 1804 Konventseingaben in P. Yale 61', *Zeitschrift Für Papyrologie Und Epigraphik* 114, 189–193.

Huchthausen, L. 1973: ‘Soldaten des 3. Jahrhunderts u.Z. als Korrespondenten der kaiserlichen Kanzlei’, in H. L. Scheel (ed.), *Altertumswissenschaft Mit Zukunft. Dem Wirken Werner Hartkes Gewidmet*, Vol. 1973, 2 vols, Berlin, 1973:19–51.

Huchthausen, L. 1974a: ‘Herkunft und ökonomische Stellung weiblicher Adressaten von Reskripten des Codex Iustinianus (2. und 3. Jh. u. Z.)’, *Klio* 56, 199–228.

Huchthausen, L. 1974b: ‘Kaiserliche Rechtsauskünfte an Sklaven und in ihrer Freiheit angefochtene Personen aus dem Codex Iustinianus’, *Wissenschaftliche Zeitschrift Der Wilhelm-Pieck-Universität Rostock* XXIII, 251–257.

Huchthausen, L. 1976a: ‘Zu kaiserlichen Reskripten an weibliche Adressaten aus der Zeit Diokletians (284–305 u. Z.)’, *Klio-Beiträge Zur Alten Geschichte* 58, 55–86.

Huchthausen, L. 1976b: ‘Zum problem der „freiheitsbegünstigung” (favor libertatis) im römischen recht’, *Philologus* 120, 47–72.

Huchthausen, L. 1983: ‘Indizienbeweis?’, *Klio* 65, 577–579.

Huchthausen, L. 1992: *Frauen Fragen Den Kaiser: Eine Soziologische Studie Über Das 3. Jh. n. Chr.*, Konstanz.

Huebner, S. R. 2007: ‘“Brother-Sister” Marriage in Roman Egypt: A Curiosity of Humankind or a Widespread Family Strategy?’, *Journal of Roman Studies* 97, 21–45.

Huebner, S. R. 2019: ‘Single Men and Women in Pagan Society: The Case of Roman Egypt’, in S. R. Huebner and C. Laes (eds), *The Single Life in the Roman and Later Roman World*, Cambridge ; New York, 37–56.

Huebner, S. R., and Laes, C. 2019: *The Single Life in the Roman and Later Roman World*, Cambridge.

Huemoeller, K. P. D. 2020: ‘Freedom in Marriage? Manumission for Marriage in the Roman World’, *Journal of Roman Studies* 110, 123–139.

Humfress, C. 2013: ‘Thinking through Legal Pluralism: “Forum shopping” in the Later Roman Empire’, in J. Duindam, J. D. Harries, C. Humfress, and H. Nimrod (eds), *Law and Empire: Ideas, Practices, Actors*, Leiden, 225–250.

Hunt, A. S. 1910: *The Oxyrhynchus papyri. Vol.7*, London.

Hunt, M. R. 1996: *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780*, Berkeley.

Hunt, P. 2018: *Ancient Greek and Roman Slavery*, Newark, UK.

Ibbetson, D. 2015: 'Sources of Law from the Republic to the Dominate', in D. Johnston (ed.), *The Cambridge Companion to Roman Law*, Cambridge, 25–44.

Imrie, A. 2018: *The Antonine Constitution: An Edict for the Caracallan Empire*, Boston.

Jakab, É. 2013: 'Financial Transactions by Women in Puteoli', in P. J. du Plessis (ed.), *New Frontiers*, Edinburgh, 123–150.

Johnston, D. 1999: *Roman Law in Context*, Cambridge, U.K. ; New York.

Jolowicz, H. F., and Nicholas, B. 1972: *Historical Introduction to the Study of Roman Law*, 3rd ed., Cambridge, UK.

Jones, A. H. M. 1958: 'The Roman Colonate', *Past & Present*, 1–13.

Jongman, W. M. 2003: 'Slavery and the growth of Rome: the transformation of Italy in the second and first centuries B.C.E.', in C. Edwards and G. Woolf (eds), *Rome the Cosmopolis*, Cambridge ; New York, 100–122.

Joshel, S. R. 1992: *Work, Identity, and Legal Status at Rome: A Study of the Occupational Inscriptions*, Norman (Okla.).

Kabeer, N. 1999: 'Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment', *Development and Change* 30, 435–464.

Kaiser, W. 2015: 'Justinian and the *Corpus Iuris Civilis*', in D. Johnston (ed.), *The Cambridge Companion to Roman Law*, Cambridge, 119–148.

Kajanto, I. 1965: *The Latin Cognomina*, Helsinki.

Kajava, M. 1994: *Roman Female praenomina: Studies in the Nomenclature of Roman Women*, Roma.

Kamen, D. 2014: 'Sale for the Purpose of Freedom: Slave-Prostitutes and Manumission in Ancient Greece', *The Classical Journal* 109, 281.

Kampen, N. B. 1981: *Image and Status. Roman Working Women in Ostia*, Berlin.

Kantor, G. 2016: 'Local Law in Asia Minor after the Constitutio Antoniniana', in C. Ando (ed.), *Citizenship and Empire in Europe 200-1900: The Antonine Constitution after 1800 Years*, Stuttgart, 45–62.

Kaser, M. 1968: *Roman Private Law*, R. Dannenbring (tran.), Durban.

Kearley, T. 2016: 'Justice Fred H. Blume and the translation of Justinian's Codex', in B. W. Frier, S. Connolly, S. Corcoran, M. Crawford, J. N. Dillon, D. P. Kehoe, N. E. Lenski, *et al.* (eds), F. H. Blume (tran.), *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text: Based on a Translation by Justice Fred H. Blume. Volume 1: Introductory Matter and Books I-III*, Cambridge, lxxv–lxxviii.

Kearley, T. G. 2007: 'Justice Fred Blume and the Translation of Justinian's Code', *Law Library Journal* 99, 525–554.

Kearley, T. G. 2014: 'The Enigma of Samuel Parsons Scott', *Roman Legal Tradition* 10, 1-37.

Kearsley, R. A. 1999: 'Women in Public Life in the Roman East: Iunia Theodora, Claudia Metrodora and Phoebe, Benefactress of Paul.', *Tyndale Bulletin* 50, 189–211.

Kehoe, D. 2012: 'Contract labor', in W. Scheidel (ed.), *The Cambridge Companion to the Roman Economy*, Cambridge ; New York, 114–130.

Kehoe, D. P. 1992: *Management and Investment on Estates in Roman Egypt during the Early Empire*, Bonn.

Kehoe, D. P. 2007: *Law and the Rural Economy in the Roman Empire*, Ann Arbor.

Kehoe, D. P. 2011: 'Law and Social Formation in the Roman Empire', in M. Peachin (ed.), *The Oxford Handbook of Social Relations in the Roman World*, Oxford : New York, 144–163.

Kehoe, D. P. 2013: 'Law, Agency and Growth in the Roman Economy', in P. J. du Plessis (ed.), *New Frontiers*, Edinburgh, 176–191.

Kehoe, D. P. 2017: 'Agency, Roman Law, and Roman Social Values', in D. P. Kehoe and

T. A. J. McGinn (eds), *Ancient Law, Ancient Society*, Ann Arbor, 105–132.

Kelly, B. 2011: *Petitions, Litigation, and Social Control in Roman Egypt*, Oxford ; New York.

Knapp, R. 2016: 'Legally Marginalised Groups - the Empire', in P. J. du Plessis, C. Ando, and K. Tuori (eds), *The Oxford Handbook of Roman Law and Society*, Oxford, United Kingdom, 362–373.

Kreuzsaler, C., and Urbanik, J. 2008: 'Humanity and inhumanity of law: the case of Dionysia', *Journal of Juristic Papyrology* 38, 119–155.

Krueger, P. (ed.) 1877: *Corpus Iuris Civilis.*, Vol. 2: Codex Iustinianus, Editio Stereotypa., Berlin.

Krueger, P. 1890: *Collectio Librorum Iuris Anteiustiniani III*, Berlin.

Krueger, P. (ed.) 1906: *Corpus Iuris Civilis.*, Vol. 2: Codex Iustinianus, Editio Stereotypa Octava., Berlin.

Lacey, W. K. 1992: 'Patria Potestas', in B. Rawson (ed.), *The Family in Ancient Rome: New Perspectives*, London, 121–144.

Laes, C. 2008: 'Child Slaves at Work in Roman Antiquity', *Ancient Society* 38, 235–283.

Laes, C. 2011: 'Midwives in Greek Inscriptions in Hellenistic and Roman Antiquity', *Zeitschrift Für Papyrologie Und Epigraphik* 176, 154–162.

Laes, C. 2015: 'Masters and Apprentices', in W. M. Bloomer (ed.), *A Companion to Ancient Education*, Hoboken, NJ, 474–482.

Laes, C. 2019: 'What's in a Single? Roman Antiquity and a Comparative World Approach', in S. R. Huebner and C. Laes (eds), *The Single Life in the Roman and Later Roman World*, Cambridge ; New York, 3–34.

Langellotti, M. 2020: *Village Life in Roman Egypt: Tebtunis in the First Century AD*, Oxford.

Langford, J. 2013: *Maternal Megalomania: Julia Domna and the Imperial Politics of Motherhood*, Baltimore (Md.).

Leppin, H. 2011: 'Between Marginality and Celebrity: Entertainers and Entertainments

in Roman Society', in M. Peachin (ed.), *The Oxford Handbook of Social Relations in the Roman World*, Oxford : New York, 660–677.

Levick, B. M. 2007: *Julia Domna: Syrian Empress*, London.

Lewis, N. 1981: 'The Prefect's Conventus: Proceedings and Procedures', *The Bulletin of the American Society of Papyrologists* 18, 119–129.

Lewis, N. 1999: *Life in Egypt under Roman Rule*, Atlanta, Ga.

Lintott, A. W. 2002: 'Freedmen and slaves in the light of legal documents from first-century A.D. Campania', *Classical Quarterly* 52, 555–565.

Lorenzen, E. G. 1928: 'Negotiorum Gestio in Roman and Modern Civil Law', *Cornell Law Review* 13, 190–210.

Lovén, L. L. 2016: 'Women, Trade, and Production in Urban Centres of Roman Italy', in A. Wilson and M. Flohr (eds), *Urban Craftsmen and Traders in the Roman World*, Oxford : New York, 200–221.

MacMullen, R. 1974: *Roman Social Relations, 50 B.C. to A.D. 284*, New Haven.

MacMullen, R. 1980: 'Woman in Public in the Roman Empire', *Historia: Zeitschrift Für Alte Geschichte* 29, 208–218.

MacMullen, R. 1988: *Corruption and the Decline of Rome*, New Haven, Conn; London.

Mantas, K. 2000: 'Public and private', *Polis: Revista de Ideas y Formas Políticas de La Antigüedad Clásica* 12, 181–228.

Mathisen, R. 2004: 'Adnotatio and Petitio: The Emperor's Favor and Special Exceptions in the Early Byzantine Empire', in D. Feissel and J. Gascou (eds), *La pétition à Byzance*, Paris, 23–32.

Matthews, J. 1993: 'The Making of the Text', in J. Harries (ed.), *The Theodosian Code: Studies in the Imperial Law of Late Antiquity*, London, 19–44.

McGinn, T. A. J. 2003: *Prostitution, Sexuality, and the Law in Ancient Rome*, Oxford; New York.

McGinn, T. A. J. 2004: *The Economy of Prostitution in the Roman World: A Study of Social History & the Brothel*, Ann Arbor.

McLaughlin, E., and Muncie, J. (eds) 2001: *The Sage Dictionary of Criminology*, London.

Mennen, I. 2011: *Power and Status in the Roman Empire, AD 193-284*, Leiden ; Boston.

Metzger, E. 2000: 'V. The Current View of the Extra-Judicial Vadimonium', *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte. Romanistische Abteilung* 117, 133–178.

Metzger, E. 2016: 'Palingenesia of Latin Private Rescripts', *Iuscivile.Com*.

Meyer, E. A. 2007: 'Diplomatics, Law and Romanisation in the Documents from the Judaean Desert', in J. W. Cairns and P. J. du Plessis (eds), *Beyond Dogmatics*, Edinburgh, 53–82.

Millar, F. 1986: 'A New Approach to the Roman Jurists', *Journal of Roman Studies* 76, 272–280.

Millar, F. 1992: *The Emperor in the Roman world (31 BC - AD 337)*, 2nd ed., London.

Millett, P. 1991: *Lending and Borrowing in Ancient Athens*, Cambridge ; New York.

Mirković, M. 1997: *The Later Roman Colonate and Freedom*, Philadelphia.

Mitchell, S. 2015: *A History of the Later Roman Empire, AD 284-641*, 2nd ed., Malden, MA.

Mitteis, L. 1891: *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs: mit Beiträgen zur Kenntnis des griechischen Rechts und der spätrömischen Rechtsentwicklung*, Leipzig.

Mouritsen, H. 2005: 'Freedmen and Decurions: Epitaphs and Social History in Imperial Italy', *Journal of Roman Studies* 95, 38–63.

Mouritsen, H. 2011: *The Freedman in the Roman World*, Cambridge.

Mousourakis, G. 2012: *Fundamentals of Roman Private Law*, Berlin, Heidelberg.

Newburn, T. 2017: *Criminology*, 3rd ed., London; New York.

Nicholas, B. 2008: *An Introduction to Roman Law*, Revised., Oxford.

Nippel, W. 1984: 'Policing Rome', *The Journal of Roman Studies* 74, 20–29.

Nowak, M. 2011: 'Mancipatio and its life in Late-Roman law', *The Journal of Juristic*

Papyrology 41, 103–122.

Parca, M. G. 2002: 'Violence by and against women in documentary papyri from Ptolemaic and Roman Egypt', in H. Melaerts and L. Mooren (eds), *Le Rôle et Le Statut de La Femme En Égypte Hellénistique, Romaine et Byzantine*, Leuven, 283–296.

Parker, S. 1996: 'Full Brother-Sister Marriage in Roman Egypt: Another Look', *Cultural Anthropology* 11, 362–376.

Parkin, T. G. 1992: *Demography and Roman Society*, Baltimore, Md.

Peradotto, J., and Sullivan, J. P. (eds) 1984: *Women in the Ancient World: The Arethusa Papers*, Albany.

Perry, D. 2002: 'Microcredit and Women Moneylenders: The Shifting Terrain of Credit in Rural Senegal', *Human Organization* 61, 30–40.

Perry, M. J. 2014: *Gender, Manumission, and the Roman Freedwoman*, Cambridge.

Phang, S. E. 2001: *The Marriage of Roman Soldiers (13 B.C.-A.D. 235): Law and Family in the Imperial Army*, Leiden ; Boston.

Phang, S. E. 2002: 'The Families of Roman Soldiers (First and Second Centuries A.D.): Culture, Law, and Practice', *Journal of Family History* 27, 352–373.

du Plessis, P. 2015: 'Property', in D. Johnston (ed.), *The Cambridge Companion to Roman Law*, Cambridge; New York, 175–198.

Pölönen, J. 2002: 'The division of wealth between men and women in Roman succession (ca. 50 B.C.-A.D. 250)', in P. Setälä, R. Berg, and R. Hälikkä (eds), *Women, Wealth and Power in the Roman Empire*, Roma, 147–179.

Pomeroy, S. B. 1981: 'Women in Roman Egypt. A preliminary study based on papyry', *Reflections of Women in Antiquity*, 303–322.

Pomeroy, S. B. 1973: 'Selected Bibliography on Women in Antiquity', *Arethusa* 6, 125–157.

Pomeroy, S. B. 1975: *Goddesses, Whores, Wives and Slaves: Women in Classical Antiquity*, New York.

Pomeroy, S. B. 1990: *Women in Hellenistic Egypt: From Alexander to Cleopatra*, Detroit.

Potter, D. S. 2004: *The Roman Empire at Bay: AD 180-395*, London ; New York.

Pudsey, A. 2012: 'Death and the family: widows and divorcees in Roman Egypt', in M. Harlow and L. Larsson Lovén (eds), *Families in the Roman and Late Antique World*, London; New York, 157–180.

Pugsley, D. 1969: 'Furtum in the XII Tables', *Irish Jurist* 4, 139–152.

Pyy, E. 2019: 'Tracing Roman Ideas on Female Singleness: Virgil's Aeneid', in S. R. Huebner and C. Laes (eds), *The Single Life in the Roman and Later Roman World*, Cambridge, 147–164.

Qutteina, Y., James-Hawkins, L., Al-Khelaifi, B., and Yount, K. M. 2019: 'Meanings of Women's Agency: A Case Study from Qatar on Improving Measurement in Context', *Journal of Arabian Studies* 9, 33–51.

Rawson, B. 1966: 'Family life among the lower classes at Rome in the first two centuries of the Empire', *Classical Philology* 61, 71–83.

Rawson, B. 1989: 'Spurii and the Roman View of Illegitimacy', *Antichthon* 23, 10–41.

Rawson, B. 1992: 'The Roman family', in B. Rawson (ed.), *The Family in Ancient Rome: New Perspectives*, London, 1–57.

Rees, R. 2004: *Diocletian and the Tetrarchy*, Edinburgh.

Remijsen, S., and Clarysse, W. 2008: 'Incest or Adoption? Brother-Sister Marriage in Roman Egypt Revisited', *Journal of Roman Studies* 98, 53–61.

Riggsby, A. M. 2010: *Roman Law and the Legal World of the Romans*, Cambridge ; New York.

Riggsby, A. M. 2016: 'Public and Private Criminal Law', in P. J. du Plessis, C. Ando, and K. Tuori (eds), *The Oxford Handbook of Roman Law and Society*, Oxford, United Kingdom, 310–321.

Robinson, O.F. 1981: 'Slaves and the Criminal Law', *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte: Romanistische Abteilung* 98, 213–254.

Robinson, O. F. 1995: *The Criminal Law of Ancient Rome*, London.

Robinson, O. F. 1997: *The Sources of Roman Law: Problems and Methods for Ancient Historians*, London ; New York.

Robinson, O. F. 2007: *Penal Practice and Penal Policy in Ancient Rome*, Oxford; New York.

Roth, U. 2007: *Thinking Tools: Agricultural Slavery between Evidence and Models*, London.

Roth, U. 2010: 'Peculium, freedom, citizenship: golden triangle or vicious circle? : an act in two parts', in U. Roth (ed.), *By the Sweat of Your Brow: Roman Slavery in Its Socio-Economic Setting*, London, 91–120.

Rowlandson, J. 1996: *Landowners and Tenants in Roman Egypt: The Social Relations of Agriculture in the Oxyrhynchite Nome*, Oxford; New York.

Rowlandson, J., and Takahashi, R. 2009: 'Brother-Sister Marriage and Inheritance Strategies in Greco-Roman Egypt', *Journal of Roman Studies* 99, 104-139.

Rüpke, J. 1992: 'You Shall Not Kill. Hierarchies of Norms in Ancient Rome', *Numen* 39, 58–79.

Sahlins, M. D. 1972: *Stone Age Economics*, Chicago.

Saller, R. 1986: 'Patria potestas and the stereotype of the Roman family', *Continuity and Change* 1, 7–22.

Saller, R. P. 1994: *Patriarchy, Property and Death in the Roman Family*, Cambridge.

Saller, R. P. 1999: 'Pater Familias, Mater Familias, and the Gendered Semantics of the Roman Household', *Classical Philology* 94, 182–197.

Salway, B. 2013: 'The publication and application of the Theodosian Code', *Mélanges de l'École Française de Rome-Antiquité* 125, available online at http:// https://journals.openedition.org/mefra/1754 [accessed 10/11/2017].

Schaps, D. M. 1979: *Economic Rights of Women in Ancient Greece*, Edinburgh.

Scheerlinck, E. 2012: 'Inheritance disputes and violence in women's petitions from Ptolemaic Egypt', *Papyrologica Lupiensia* 20–21, 163–176.

Scheidel, W. 1996: 'The Most Silent Women of Greece and Rome: Rural Labour and

Women's Life in The Ancient World (II)', *Greece and Rome* 43, 1–10.

Scheidel, W. 2004: 'Human mobility in Roman Italy. I: The free population', *The Journal of Roman Studies* 94, 1–26.

Scheidel, W. 2005: 'Human Mobility in Roman Italy, II: The Slave Population', *Journal of Roman Studies* 95, 64–79.

Scheidel, W. 2006: 'Stratification, Deprivation and Quality of Life', in M. Atkins and R. Osborne (eds), *Poverty in the Roman World*, Cambridge, 40–59.

Scheidel, W. 2007: 'Marriage, Families, and Survival: Demographic Aspects', in P. Erdkamp (ed.), *A Companion to the Roman Army*, Oxford, UK, 417–434.

Scheidel, W. 2009: 'Population and demography', in A. Erskine (ed.), *A Companion to Ancient History*, Oxford ; Malden (Mass.), 135–145.

Scheidel, W. 2011: 'The Roman slave supply', in K. Bradley and P. Cartledge (eds), *The Cambridge World History of Slavery*, Cambridge, 287–310.

Scheidel, W. 2012: 'Slavery', in W. Scheidel (ed.), *The Cambridge Companion to the Roman Economy*, Cambridge, 89–113.

Scheidel, W., and Friesen, S. J. 2009: 'The Size of the Economy and the Distribution of Income in the Roman Empire', *The Journal of Roman Studies* 99, 61–91.

Schiller, A. A. 1978: *Roman Law: Mechanisms of Development*, The Hague ; New York.

Shaw, A., and Raz, A. 2015: 'Introduction', in A. Shaw and A. Raz (eds), *Cousin Marriages*, New York ; Oxford, 1–32.

Shaw, B. D. 1987: 'The Age of Roman Girls at Marriage: Some Reconsiderations', *The Journal of Roman Studies* 77, 30–46.

Shaw, B. D. 1992: 'Explaining Incest: Brother-Sister Marriage in Graeco-Roman Egypt', *Man* 27, 267–299.

Shaw, B. D., and Saller, R. P. 1984: 'Close-Kin Marriage in Roman Society?', *Man* 19, 432–444.

Silver, M. 2013: 'Macula servitutis: the selective stain of Roman slavery', *Hephaistos: New Approaches in Classical Archaeology and Related Fields = Kritische*

Zeitschrift Zu Theorie Und Praxis Der Archäologie, Kunstwissenschaft Und Angrenzender Gebiete 30, 53–61.

Sirks, A. J. B. 2013: 'Furtum and manus / potestas', *Tijdschrift Voor Rechtsgeschiedenis* 81, 465–506.

Sirks, B. 1993: 'IX. Reconsidering the Roman Colonate', *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte. Romanistische Abteilung* 110, 331–369.

Skinner, M. R. (ed.) 1986: *Rescuing Creusa: New Methodological Approaches to Women in Antiquity*, Lubbock, Tex.

Sosin, J. D. 2015: 'Manumission with Paramone: Conditional Freedom?', *Transactions of the American Philological Association* 145, 325–381.

Southern, P. 2015: *The Roman Empire from Severus to Constantine*, 2nd ed., London.

Sternberg, T. 1985: 'Reskripte des Kaisers Alexander Severus an weibliche Adressaten', *Klio* 67, 507–527.

Stipčević, A. 1977: *The Illyrians: History and Culture*, Park Ridge, N.J.

Stolte, B. 2001: 'The Impact of Roman law in Egypt and the near East in the Third Century AD: The Documentary Evidence. Some Considerations in the Margin of the Euphrates Papyri (P.Euphr.)', in L. de Blois (ed.), *Administration, Prosopography and Appointment Policies in the Roman Empire*, Amsterdam, 167–179.

Takahashi, R. 2012: 'The Kronion Family's Loans', *Ancient Society*, 71–88.

Tate, J. C. 2008: 'Codification of late Roman inheritance law: fideicommissa and the Theodosian Code', *Tijdschrift Voor Rechtsgeschiedenis / Revue d'Histoire Du Droit / The Legal History Review* 76, 237–248.

Taylor, T. S. 2016: 'Social Status, Legal Status and Legal Privilege', in P. J. du Plessis, C. Ando, and K. Tuori (eds), *The Oxford Handbook of Roman Law and Society*, Oxford : New York, 349-362.

Thomas, J. P., and Worrall, T. 2002: 'Gift-giving, Quasi-credit and Reciprocity', *Rationality and Society* 14, 308–352.

Treadwell, J. 2006: *Criminology*, London.

Treggiari, S. 1976: 'Jobs for Women', *American Journal of Ancient History* 1, 76–104.

Treggiari, S. 1979: 'Lower Class Women in the Roman Economy', *Florilegium* 1, 65–86.

Treggiari, S. 1981: 'Concubinae', *Papers of the British School at Rome* 49, 59–81.

Treggiari, S. 1991a: *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian*, Oxford.

Treggiari, S. 1991b: 'Divorce Roman style : how easy and how frequent was it ?', in B. Rawson (ed.), *Marriage, Divorce, and Children in Ancient Rome*, Oxford, 31–46.

Tuori, K. 2007: 'Legal Pluralism and the Roman Empires', in J. W. Cairns and P. J. du Plessis (eds), *Beyond Dogmatics: Law and Society in the Roman World*, Edinburgh, 39–52.

Tuori, K. 2008: 'The magic of mancipatio', *Revue Internationale Des Droits de l'Antiquité* 55, 499–521.

Turpin, W. 1987: 'The purpose of the Roman law codes', *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte: Romanistische Abteilung* 104, 620–630.

Unger, D. G., and Wandersman, A. 1985: 'The importance of neighbors: The social, cognitive, and affective components of neighboring', *American Journal of Community Psychology* 13, 139–169.

Varga, R. 2020: *Carving a Professional Identity the Occupational Epigraphy of the Roman Latin West*, Oxford.

Verboven, K. 2002: *The Economy of Friends: Economic Aspects of Amicitia and Patronage in the Late Republic*, Bruxelles.

Verboven, K. 2013: 'The Freedman Economy of Roman Italy', in S. Bell and T. Ramsby (eds), *Free At Last!: The Impact of Freed Slaves on the Roman Empire.*, London, 94–114.

Vermote, K. 2016: 'The macula servitutis of Roman freedmen. Neque enim aboletur turpitudo, quae postea intermissa est?', *Revue Belge de Philologie et d'histoire* 94, 131–164.

Vuolanto, V. 2003: 'Selling a freeborn child: rhetoric and social realities in the Late Roman world', *Ancient Society* 33, 169–207.

Walklate, S. 2005: *Criminology: The Basics*, Abingdon.

Watson, A. 1982: 'Honoré, T., Emperors and Lawyers (Book Review)', *Tijdschrift voor Rechtsgeschiedenis/Revue d'Histoire du Droit/Legal History Review* 50, 409–414.

Watson, A. 1966: 'The Law of Citations and Classical Texts in the Post-Classical Period', *Tijdschrift Voor Rechtsgeschiedenis/Legal History Review* 34, 402–409.

Watson, A. 1970: 'The Original Meaning of Pauperies', *Revue Internationale Des Droits de l'Antiquité* 17, 357–367.

Watson, A. 1974: 'Rescripts of the Emperor Probus (276-282 A. D.)', *Tulane Law Review* 48, 1122–1128.

Watson, A. 1994: 'Prolegomena to establishing pre-Justinianic texts', *Tijdschrift Voor Rechtsgeschiedenis* 62, 113.

Watson, A. 2001: *Society and Legal Change, 2nd Edition*, Philadelphia.

Watson, P. 1989: 'Filiaster: Privignus or "Illegitimate Child"?', *The Classical Quarterly* 39, 536–548.

Weaver, P. R. C. 1972: *Familia Caesaris: A Social Study of the Emperor's Freedmen and Slaves*, London.

Weber, M. 2019: *Economy and Society: A New Translation*, K. Tribe (ed.). K. Tribe (tran.), Cambridge, Massachusetts.

Wherry, F. F., Seefeldt, K. S., and Alvarez, A. S. 2019: 'To Lend or Not to Lend to Friends and Kin: Awkwardness, Obfuscation, and Negative Reciprocity', *Social Forces* 98, 753–775.

White, K. D. 1967: *Agricultural Implements of the Roman World*, Cambridge.

Widegren, Ö. 1983: 'The General Principles of Sociability: Developing Sahlins' Theory of "Primitive Exchange"', *Sociology* 17, 319–338.

Wiedemann, T. 2002: *Emperors and Gladiators*, London.

Williams, W. 1980: ‘The Publication of Imperial Subscripts’, *Zeitschrift Für Papyrologie Und Epigraphik* 40, 283–294.

Williams, W. 1974: ‘The Libellus Procedure and the Severan Papyri’, *Journal of Roman Studies* 64, 86–103.

Wilson, K. 2008: ‘Reclaiming “Agency”, Reasserting Resistance’, *IDS Bulletin* 39, 83–91.

Yount, K. M., Cheong, Y. F., Maxwell, L., Heckert, J., Martinez, E. M., and Seymour, G. 2019: ‘Measurement properties of the project-level Women’s Empowerment in Agriculture Index’, *World Development* 124, 104639.

Yount, K. M., VanderEnde, K. E., Dodell, S., and Cheong, Y. F. 2016: ‘Measurement of Women’s Agency in Egypt: A National Validation Study’, *Social Indicators Research* 128, 1171–1192.

Youtie, H. C. 1975: ‘Ἀπάτορες. Law vs. custom in Roman Egypt’, in J. Bingen, G. Cambier, and G. Nachtergael (eds), *Le Monde Grec. Pensée, Littérature, Histoire, Documents. Hommages à Claire Préaux*, Bruxelles, 723–740.

Zimmermann, R. 1996: *The Law of Obligations: Roman Foundations of the Civilian Tradition*, Oxford.

Appendix I: Entries in the *Codex* overlooked by Huchthausen/Sternberg/Honoré

Entry	Recipient	Missing from
CJ.2.4.26	Dionysiade	Huchthausen
CJ.2.18.7	Euphrata	Huchthausen
CJ.3.31.3	Epicta	Huchthausen
CJ.3.34.12	Valeria	Huchthausen
CJ.3.38.2	Euphrata	Huchthausen/Sternberg
CJ.4.24.6	Trophima	Huchthausen/Sternberg
CJ.5.17.1	Avitiana	Huchthausen/Sternberg
CJ.5.23.1	Dida	Huchthausen
CJ.6.6.8	Hermia/Hermias	Huchthausen
CJ.6.24.10	Asclepiada	Huchthausen
CJ.6.50.3	Hermagora	Huchthausen/Sternberg
CJ.7.16.31	Corsiana	Huchthausen
CJ.7.72.8	Aelida (Aelis?)	Huchthausen
CJ.8.13.15	Basilis	Huchthausen
CJ.5.51.12	Quintilla	Honoré

Appendix II: Rescripts split across multiple entries

Names in brackets indicate a variant in name in the subscript.

1	*Achilleo*	CJ.2.4.36; CJ.6.23.14; CJ.6.42.29
2	*Aemilianae*	CJ.6.55.7; CJ.8.46.8
3	*Alexandro*	CJ.10.32.5; CJ.10.62.4
4	*Apro Evocato*	CJ.8.1.1; CJ.8.10.3; CJ.8.52.1
5	*Asclepiodoto*	CJ.5.30.2; CJ.5.31.9; CJ.5.31.9
6	*Hymnodae*	CJ.2.19.9; CJ.2.20.6; CJ.2.31.2; CJ.2.31.2; CJ.4.44.8 (*Aureliae Euodiae*)
7	*Aurelio*	CJ.7.62.11; CJ.10.40.7
8	*Aurelio Asterio*	CJ.3.31.8; CJ.6.59.4; CJ.7.16.27
9	*Aurelio Cyrillo*	CJ.4.48.6; CJ.4.49.16
10	*Aurelio Dionysio*	CJ.2.3.8; CJ.7.4.5 (*Dionysio*)
11	*Aurelio Eusebio*	CJ.4.49.8; CJ.4.52.3
12	*Aurelio Gerontio*	CJ.3.21.1; CJ.4.50.7; CJ.7.72.9
13	*Aurelio Herodi*	CJ.4.14.3; CJ.6.2.4
14	*Austronio mil.*	CJ.3.32.6; CJ.4.34.3
15	*Bianori*	CJ.5.1.1; CJ.9.12.3
16	*Calpurniae*	CJ.3.29.4; CJ.8.53.6
17	*Candiano mil.*	CJ.2.22.1; CJ.4.13.1 (*Candido mil.*)
18	*Capitolinae*	CJ.5.16.17; CJ.8.42.11
19	*Claro*	CJ.3.32.18; CJ.8.43.2
20	*Claudianae*	CJ.6.31.5; CJ.6.58.6
21	*Crispino*	CJ.6.9.2; CJ.6.55.1 (*Crispinae*)
22	*Daphenae*	CJ.4.48.3; CJ.8.56.1
23	*Daphno*	CJ.5.28.5; CJ.7.4.10
24	*Decimo Caplusio*	CJ.2.40.3; CJ.4.49.5
25	*Domitio Aphobio*	CJ.2.25.1; CJ.4.51.4; CJ.8.42.18
26	*Egi Crispino*	CJ.4.2.10; CJ.4.49.12
27	*Euelpisto*	CJ.4.10.7; CJ.9.33.3
28	*Euploio*	CJ.5.36.4; CJ.5.42.2
29	*Eusebio*	CJ.2.3.21; CJ.6.30.7; CJ.6.53.6
30	*Festo*	CJ.8.13.8; CJ.8.26.1
31	*Firminae*	CJ.1.19.1; CJ.7.13.1 (*Firmino*)
32	*Flaccillae*	CJ.2.3.12; CJ.3.42.4
33	*Florentino*	CJ.3.28.8; CJ.6.30.2 (*Florentino mil.*)
34	*Gaio*	CJ.5.59.3; CJ.7.26.9
35	*Hadriano*	CJ.6.24.8; CJ.6.26.5

36	*Hylae*	CJ.5.36.3; CJ.5.62.11
37	*Isidoro*	CJ.2.21.4; CJ.2.24.4
38	*Laurinae*	CJ.2.32.2; CJ.7.2.11
39	*Liciniae*	CJ.4.10.4; CJ.5.74.1
40	*Longino*	CJ.2.34.1; CJ.2.36.1
41	*Marcello*	CJ.4.27.1; CJ.4.35.9
42	*Martiali*	CJ.1.18.5; CJ.2.3.20
43	*Messiae*	CJ.3.20.1; CJ.8.1.2
44	*Muciano mil.*	CJ.2.52.3; CJ.3.32.4 (*Muniano mil.*)
45	*Nicagorae*	CJ.6.34.2; CJ.7.64.7
46	*Olympiadi*	CJ.6.42.27; CJ.8.53.23
47	*Otaciliae*	CJ.5.31.6; CJ.5.35.1
48	*Philadelpho*	CJ.6.8.1; CJ.7.9.3
49	*Pomponio mil.*	CJ.4.39.6; CJ.7.10.3 (*Pompeio mil*.)
50	*Praesentino*	CJ.5.51.2; CJ.5.56.1
51	*Proculo*	CJ.7.8.1; CJ.8.25.1
52	*Quintiano*	CJ.6.26.6; CJ.6.49.4
53	*Quintiano Et*	CJ.4.39.3; CJ.8.41.1
54	*Sabiniano*	CJ.3.28.20; CJ.5.12.17
55	*Septimio*	CJ.8.16.5; CJ.8.17.5
56	*Severae*	CJ.6.34.1; CJ.7.45.4
57	*Severo mil.*	CJ.4.38.9; CJ.7.26.8 (*Severo*)
58	*Socrati*	CJ.3.36.24; CJ.6.20.16
59	*Sopatro*	CJ.3.32.28; CJ.6.59.9
60	*Soteri*	CJ.2.32.1; CJ.2.45.2
61	*Stratonicae*	CJ.2.40.4; CJ.4.6.11; CJ.5.42.3
62	*Syro*	CJ.3.42.2; CJ.9.2.2; CJ.9.35.1
63	*Theodotae*	CJ.2.40.2; CJ.3.28.16; CJ.2.29.1; CJ.5.71.8
64	*Valenti*	CJ.2.1.3; CJ.3.9.1
65	*Valerio*	CJ.6.2.10; CJ.7.32.6
66	*Vitali*	CJ.6.11.1; CJ.6.24.3 (*Vitali mil*.)
67	*Ziparo*	CJ.4.5.8; CJ.8.41.6
68	*Zotico*	CJ.5.55.1; CJ.6.6.1
69	*Rhesae*	CJ.6.56.2; CJ.8.44.29 (*Rheso*)
70	*Marciae*	CJ.10.42.9; CJ.10.52.5

Appendix III: Duplicate entries in the *Codex*

Theodotiano	CJ.2.6.4; CJ.6.19.1
Antoniano	CJ.5.59.1; CJ.8.37.7 (Antonino)
Capitoni	CJ.2.3.11; CJ.4.47.1
Domno	CJ.4.16.6; CJ.7.72.7
Sallustio	CJ.2.18.9; CJ.8.37.3 (Hadriano)
Hilaro	CJ.4.30.1; CJ.8.32.1
Iuliano	CJ.4.1.5; CJ.6.42.20
Iulio et Zenodoro	CJ.6.54.8; CJ.11.31.2
Nicae	CJ.2.3.10; CJ.5.14.1
Polydeucae	CJ.4.31.6; CJ.5.21.1
Sebastiano	CJ.2.12.11; CJ.5.61.1
Theodotiano	CJ.2.4.38; CJ.6.31.3

Appendix IV: Entries in the *Codex* by book

Book	Post-305		Pre-305		Total
1	336	92.8%	26	7.2%	362
2	75	21.7%	270	78.3%	345
3	98	32.0%	208	68.0%	306
4	111	19.7%	453	80.3%	564
5	119	25.7%	344	74.3%	463
6	157	32.2%	331	67.8%	488
7	127	29.0%	311	71.0%	438
8	109	24.1%	343	75.9%	452
9	114	35.0%	212	65.0%	326
10	194	62.0%	119	38.0%	313
11	234	90.7%	24	9.3%	258
12	277	93.3%	20	6.7%	297
Total	1951		2661		4612

Appendix V: Entries in the *Codex* by emperor

	Gender of recipient			
Emperor	F	M	Group	Total
Pre-Severan				
Antoninus Pius		11		11
Hadrian		1		1
Marcus Aurelius	1	1		2
Marcus Aurelius & Lucius Verus	2	4		6
Pertinax		2		2
Severan				
Caracalla	48	199		247
Elagabalus		1		1
Septimius Severus	4	17		21
Septimius Severus & Caracalla	37	129		166
Severus Alexander	85	362	2	449
Crisis				
Aurelian	1	4		5
Carinus & Numerian	2	7		9
Carus, Carinus & Numerian	2	16		18
Claudius Gothicus		2		2
Gallienus		6		6
Gordian III	42	232		274
Maximinus I		3		3
Philip I	18	59	1	78
Probus	1	3		4
Trajan Decius	4	4		8
Trebonianus Gallus & Volusianus		2		2
Valerian & Gallienus	21	61		82
Tetrarchy				
Diocletian & Maximian	343	918	3	1264
Grand Total	611	2044	6	2661

Appendix VI: Rescripts in the *Codex* by emperor

Emperor	Gender of recipient			
	F	M	Group	Total
Pre-Severan				
Antoninus Pius		10		10
Hadrian		1		1
Marcus Aurelius	1	1		2
Marcus Aurelius & Lucius Verus	2	4		6
Pertinax		2		2
Severan				
Caracalla	48	190		238
Elagabalus		1		1
Septimius Severus	4	16		20
Septimius Severus & Caracalla	35	124		159
Severus Alexander	81	341	2	424
Crisis				
Aurelian	1	4		5
Carinus & Numerian	2	7		9
Carus, Carinus & Numerian	2	16		18
Claudius Gothicus		2		2
Gallienus		6		6
Gordian III	42	226		268
Maximinus I		3		3
Philip I	18	58	1	77
Probus	1	3		4
Trajan Decius	4	4		8
Trebonianus Gallus & Volusianus		2		2
Valerian & Gallienus	19	59		78
Tetrarchy				
Diocletian & Maximian	329	830	3	1162
	589	1910	6	2505

Appendix VII: Database – list of contents only

For data, please see separate excel file: 8308860_Appendix_VII.xlsx

VII.a Women of the *Codex*
VII.b All Pre-305 Entries
VII.c Post-305 Entries
VII.d Entries per book