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## Review Of "Law And Family In Late Antiquity: The Emperor Constantine's Marriage Legislation" By J. Evans Grubbs

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Review by: William Turpin

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## Book Reviews

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Judith Evans Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation*, New York: Oxford University Press, 1995. Pp. x + 390. \$60.00 (ISBN 0-19-814768-6).

Julian the Apostate described Constantine as “an innovator, and an overturner of ancient laws” (*Ammianus Marcellinus* 21.10.8). Even had he not done so, scholars would have had no difficulty in concluding that the first Christian emperor had a pivotal role in the shaping of Roman law. The legislation of Constantine is abundant, largely because Theodosius II chose it as the starting point for his *Codex Theodosianus*, which provides an unparalleled series of formal pronouncements, both edicts and epistles, on matters of law. But, as Evans Grubbs shows in this impressive and important book, Constantine's legislation has to be seen in context, not least in the matter of marriage, divorce, and the role of women in society.

At the core of the book are specific texts from the *Theodosian Code*, in which Constantine made decisions about key areas of the Roman law of marriage: he abolished Augustus's famous penalties on celibacy, he formalized certain practices connected with betrothal, he specified strict penalties for the crime of forcible abduction and marriage (*raptus*), he increased the penalties for marriage and cohabitation by women and slaves, and he made it more difficult for a marriage to be dissolved unilaterally. All of these measures have been seen, by one scholar or another, as instances of Constantine's Christianity in action. But Evans Grubbs concludes that Christianity is likely to have been a major factor only in the case of the law on divorce; she argues convincingly that most of the Constantinian innovation in the area of marriage was prompted not by religious ideology but by pressures from society as a whole.

Arriving at these conclusions is a significant achievement. The author places Constantine's legal decisions in their legal, social, and religious contexts, and displays both subtlety and impressive learning in the process. It is maddeningly difficult to make useful generalizations about such matters as religion and sexuality, especially for the ancient world, where almost any firm statement demands an immediate qualification. Evans Grubbs is an alert and judicious guide through such issues as whether or not pagan Romans tolerated sexual license (not as much as our focus on pagan elites tends to suggest) and whether a Christian suspicion of sexuality was imposed on Roman society or derived from it (probably the latter, though the intense focus on sexual matters in Christianity owes much to the church hierarchy). This summary of the argument cannot do it justice, of course; in pursuing her questions about Constantine the author has produced an important analysis of some of the key questions raised by the rise of Christianity and its relationship to Roman society.

Although her main focus is on family history and the impact of Christianity, Evans Grubbs also raises important issues of Roman law. Ludwig Mitteis suggested long ago (*Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* [1891; rpt. Hildesheim, 1963]) that as a legislator Constantine was particularly open to what he called *Volksrecht*, the legal conceptions of the peoples of Rome's eastern provinces. In *West Roman Vulgar Law: The Law of Property* (Philadelphia, 1951; idem, *Weströmisches Vulgarrecht: Das Obligationenrecht* [Weimar, 1956]), on the other hand, Ernest Levy argued that Constantine's distinctive contribution as a legislator was to incorporate "popular" but western legal concepts, the so-called "vulgar law." These categories are obviously rough-and-ready ones, and they are probably ideologically somewhat suspect nowadays as well. But the legal issues are real enough, and Evans Grubbs is right to confront them. She argues that Constantine's innovations in the law of marriage can be seen as part of what Levy saw as the rise of "vulgar law." Constantine, in other words, modified the law on marriage in response to the real-life experiences of "ordinary" citizens, being more willing than his predecessors to abandon the traditional principles of a Roman law that was out of touch with reality. Thus, though Julian may have been right that Constantine overturned the laws, he was far, the author concludes, from overturning custom.

My one reservation about this analysis is that the society pressures on Constantine's legislation perhaps require further investigation. Evans Grubbs is unwilling to accept the suggestion, made by Mitteis and others, that some of the pressure for change came from Roman citizens who were operating with "eastern" legal assumptions. One of the most compelling examples of this is the adoption by Roman law of a sort of male counterpart to the dowry, the *arrha sponsalica*. The traditional Roman law treated gifts from a prospective husband to his bride as simply that: gifts made of the groom's own free will and not recoverable in law should the marriage not take place. But in the Greek world such gifts were connected inextricably with the promise of marriage, and from the fourth century on Roman law came to recognize a right of recovery. The question of the precise ethnicity of the concept is a vexed one; *arrha* is a form of the Greek word *arrabōn*, which though certainly a Semitic word (compare Hebrew *ērābōn*), appears in Greek texts as early as the fourth century B.C. Whatever its origin, the *arrha* was clearly a fundamental part of the Greek conception of marriage: in the Byzantine legal texts it is seen as a formal part of getting engaged, and indeed the word is actually used as a synonym for "betrothal." The hybrid term *arrha sponsalica* does not appear in Roman legal sources until 380, but Constantine decided in a law of 319 that under certain circumstances gifts intended as part of the betrothal should be returned (*Cth.* 3.5.2). Evans Grubbs argues that eastern influence is unlikely, in part because Constantine in 319 was emperor only of the western half of the empire. I would suggest, instead, that the question of eastern influence is a more complicated one than this; there is no reason why "vulgar law" should not have contained elements of "Volksrecht." The Roman empire, as Evans Grubbs so admirably shows, was an extremely complicated place.

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