I Ask You to Give Me a Guardian:
Female Guardianship and the Influence of Christianity upon it in Late Antiquity.

Lydia Schriemer

A thesis submitted to the University of Ottawa in partial fulfillment of the requirements for the PhD in Religious Studies

Department of Classics and Religious Studies
Faculty of Arts
University of Ottawa

© Lydia Schriemer, Ottawa, Canada, 2024

For the little girl who thought everyone had a PhD.

ACKNOWLEDGEMENTS

Thank you, first of all, to my formidable supervisor, Richard Burgess. It's been a long and winding journey since the "toilet tours" and "fish-tail gammas" of first and second year, but I could not have hoped for a better guide and mentor over the last eleven years. I'm grateful also to St. Andrews University and to my momentary co-supervisor, Caroline Humfress, for the warm (virtual) welcome into the Institute of Legal and Constitutional Research during the pandemic.

Thank you to each and every one at uOttawa and St. Andrews who has made this dissertation a possibility. Special thanks are due the professors of my courses (Adele Reinhartz, Emma Anderson, Lori Beaman, and Pierluigi Piovanelli), the readers of my initial proposal (Richard, Caroline, Marie-Pierre Bussières, and Geoffrey Greatrex), my comprehensive exam committee (Geoffrey and Theodore de Bruyn), and my defence committee (Adele, Geoffrey, Pierluigi, and Benjamin Kelly (York U)). This is a much better work because of your input.

To the wonderful friends and colleagues whom I was lucky enough to meet along the way: I am so fortunate that there are too many of you to list on two short pages. I am especially indebted to Heather and Sandra for their brilliant grant-writing advice; to Catherine for her logistical guidance and support; to Molly, Tessa, and Lex for their kind and capable (if somewhat sassy) editing; to John, Madeline, and Phoebe for our regular beverages and camaraderie; to George, Joey, Nicole, and Cinnamon for our travel companionship and thesis commiserations; to Fred for the life advice and many pep talks; and to my sisters for their ongoing love and emotional support. Thank you also to my colleagues at LAC for your flexibility and understanding as I finished this

dissertation. I wouldn't have been able to do this without all your support and encouragement, and I'm deeply grateful.

I am very lucky to have been able to teach over the last few years of this degree, and I'm thankful for the mentorship of Richard, John, Raj Bhola, and Anne Vallely as I learned how to stand at the front of a classroom and to balance being a dedicated and invested professor while also maintaining work-life boundaries and a semblance of sanity. The ability to teach and to meet so many wonderful students have made all the hard moments worthwhile. To my students: I'm so proud of you all, and I can't wait to see more of your successes in the future.

The greatest support throughout all of this came from my lovely wife, Lex. Beginning with lunchtime visits in the department many years ago, they have been my rock, despite having to endure my many piles of library books, unorthodox schedules, inordinate printing budget, endless stress, and all the other random oddities that come with doing a doctoral degree. They've been a most long-suffering and gracious editor, especially for anything I've written in French. Of course, Clementine and Cassandra had a huge role to play too. From Sunday morning cartoons together (Cat TV), to chewing at the corners of my drafts (and only a few of the aforementioned library books), they were my most steadfast writing companions. Between the three of them, I feel truly loved.

Last, but certainly not least, I gratefully acknowledge the financial support of the Social Studies and Humanities Research Council of Canada, the Province of Ontario, the University of Ottawa, and Library and Archives Canada.

Gratias omnibus ago.

ABSTRACT

While previous scholars have claimed that the Roman *tutela mulierum* or guardianship over adult women disappeared in the fourth century CE, Late Antique Greek-language contracts continue to reference both the presence of a guardian and the explicit absence of a guardian (originally an exception known as the *ius liberorum*). This erroneous perception of the decline and disappearance of guardianship is a result of overreliance on the normative legal texts, namely the Theodosian and Justinianic Codes. Similarly, scholarship has seen a tendency to ascribe any and all fourth century changes to Christian influence. This perspective has recently become more nuanced, and the period is now understood to be one of both religiously motivated change, for example, in standards of morality and sexuality, and of continuity, for example, in law and contractual habits.

Employing theoretical and methodological frameworks from the sociology of law and gender studies, this dissertation seeks to analyze and track the evolution of guardianship throughout the Roman Empire, to better understand how and why it evolved as it did, not only in theory, but also in practice. It consists of two parts: Using primarily legal source material, Part I establishes a foundational understanding of Roman family hierarchy (Ch. 1), general categories of Roman guardianship (Ch. 2), and the effects of citizenship on legal and contractual habits (Ch 3). Using contracts and other documentary texts with at least one female signatory, Part II investigates contracts from the century after universal enfranchisement (Ch 4), as well as from the remainder of Late Antiquity (Ch. 5) to trace and analyse the practice of guardianship throughout the period.

This dissertation concludes that while the *tutela mulierum* and guardianship over adult women experienced an evolution throughout Late Antiquity, it was not caused by the rise of Christianity or by any Christian influence. Rather, this evolution, towards husbands as guardians

or at least participants in their wives' contracts, stemmed from a long-term Roman tendency towards a breakdown of the absolute power of the *patria potestas* and the prioritization of the nuclear and cognate family over agnate family in financial and inheritance legislation. This, combined with the influences of Hellenistic and local law following the *Constitutio Antoniniana,* led to a clear shift in the contractual agency of various categories of women, specifically unmarried women and widows, who could act without any male participation or oversight at all. Married women, on the other hand, operated with the assistance of their husbands.

Nonetheless, there is also evidence for continuity. A form of guardianship or male oversight did persist throughout Late Antiquity, as did an exemption, despite the fact that the responsibilities of the *tutor* were generally combined with the various other roles and responsibilities of the husband. Women continued to have male involvement in their contracts; guardianship did not fully disappear; and women's legal position or agency was not significantly bettered, either as a result of changes to guardianship or as a result of religious change.

In sum, then, this dissertation is the first *longue durée* study of the *tutela mulierum* which takes both the classical and Late Antique evidence into account. As such, it not only advances knowledge by providing an analysis of the entire life span of the practice of adult female guardianship in Rome, but also provides transferable insights into the long-term evolution of other Roman legal practices, as well as into the effects of the widespread adoption of Christianity on Roman law.

TABLE of CONTENTS

ACKNOWLEDGEMENTS ..... **III**

ABSTRACT ..... **V**

TABLE OF CONTENTS ..... **VII**

NOTES ON ABBREVIATIONS, TRANSLATIONS, DIGITAL SOURCES, AND TECHNICAL TERMINOLOGY ..... **X**

GENERAL INTRODUCTION **1**

0.1. DEFINING THE TOPIC 2
0.2. HISTORIOGRAPHICAL CONTEXT 7
0.3 THEORY AND METHOD 10
0.3.1. Sociology of Law 11
0.3.2. Legal Pluralism 13
0.4. THE SOURCES 20
0.4.1. Legal Sources 21
0.4.2. Papyrological Sources 37
0.4.3. Christian Sources 45
0.4.4. A Combination of Sources 47
0.5. OUTLINE AND PLAN 48

PART I **50**

PART I: INTRODUCTION **51**

CHAPTER 1: *PATRIA POTESTAS* IN CLASSICAL ROMAN LAW **56**

1.1. THE EXTENT OF *POTESTAS* 56
1.1.1. Potestas and Adoption 58
1.1.2. The Ius Vitae Necisque 59
1.1.4. The Financial Implications of Potestas 63
1.2. FREEDOM FROM *POTESTAS* 70
1.3. MARRIAGE AND *POTESTAS* 73
1.3.1 The Act of Marriage 74
1.3.2. Potestas after Marriage 75
1.3.3. Potestas and Divorce 82
1.4. PATERNAL POWER OUTSIDE OF ROME 83
1.4.1. Greek Paternal Power 84
1.5. CONCLUSION 87

CHAPTER 2: GUARDIANSHIP IN CLASSICAL ROMAN LAW **88**

2.1. *Tutela Impuberum* 90
2.2. *Cura Minorum* 98
2.3. *Tutela Mulierum* 102
2.3.1. The Evolution of the Tutela 110
2.3.2. The Reason(s) for the Tutela 123
2.4. Other Forms of Roman Guardianship 127
2.5. Non-Roman Guardianship 129
2.5.1. Greco-Egyptian Guardianship 130
2.6. Conclusion 133

CHAPTER 3: THE *CONSTITUTIO ANTONINIANA* AND ROMAN LAW IN THE PROVINCES 135

3.1. The Edict 135
3.2. The Effects of the Edict 138
3.2.1. Citizenship and Law in the Provinces before 212 139
3.2.2. Citizenship and Law in the Provinces after 212 146
3.3 Women and Citizenship 164
3.3.1. Roman Citizenship for Women before 212 164
3.3.2. Hellenistic Citizenship for Women 165
3.3.3. Roman Citizenship for Women after 212 166
3.4. Conclusion 167

PART I: CONCLUSION 171

PART II 174

PART II: INTRODUCTION 175

CHAPTER 4: THE EFFECTS OF THE *CONSTITUTIO ANTONINIANA* ON GUARDIANSHIP IN THE PROVINCES 179

4.1 Paternal Power in the Papyri 181
4.1.1. Paternal Power before the Constitutio Antoniniana 181
4.1.2. Paternal Power after the Constitutio Antoniniana 183
4.2 The Guardianship of Women in the Papyri 189
4.2.1. The Positive Formula 190
4.2.2. The Negative Formulae 192
4.2.3. Guardianship in the Papyri before the Constitutio Antoniniana 195
4.2.4. Guardianship in the Papyri after the Constitutio Antoniniana 199
4.4. Conclusion 230

CHAPTER 5: THE EARLY CHRISTIAN WOMAN AND GUARDIANSHIP IN THE FOURTH TO SEVENTH CENTURIES 233

5.1. Late Antique Guardianship in the Law 236
5.1.1. The Tutela Mulierum in Law 237
5.1.2. The Ius Liberorum in Law 244

5.2. Late Antique Guardianship in Practice 248
5.2.1. The Evolution of the Negative Formulae 249
5.2.2. The Evolution of the Positive Formulae 270
5.3. Decline and Disappearance or Evolution? 281
5.4. Conclusion 285

PART II: CONCLUSION 287

GENERAL CONCLUSION 290

APPENDICES 297

A NOTE on METHODOLOGY, DATA COLLECTION, and DIGITAL PAPYROLOGY . 298
Appendix 1: Negative Formula Types and their Temporal Distribution 300
Appendix 2: Roman Guardianship and Exemptions from it before 212 304
Appendix 3: Dative guardianship in the Provinces before and after 212 307
Appendix 4: Negative Formulae between 212 and 300 311
Appendix 5: Guardians in the Papyri after 300 317
With a Guardian 318
Without a Guardian 319
Unclear Reference to a Guardian 324
Appendix 6: Positive Formulae from the Third Century BCE to the Seventh Century CE 325
Appendix 7: Other Guardians or Assistance for Women 326
Appendix 8: *P. Lond.* V 1724 336
Appendix 9: *P. Münch.* I 11 and *P. Coll. Youtie* II 92 341
P. Münch. I 11 341
P.Coll. Youtie II 92 347
Appendix 10: *P. Lond.* V 1731 351
Appendix 11: *P. Sakaon* 69 356

GLOSSARY 358

BIBLIOGRAPHY 361

NOTES on ABBREVIATIONS, TRANSLATIONS, DIGITAL SOURCES, and TECHNICAL TERMINOLOGY

Throughout this thesis, papyri are abbreviated following J.F. Oates et al. (eds), *A Checklist of Editions of Greek and Latin Papyri, Ostraca and Tablets* (Atlanta, 2023), available online at papyri.info/docs/checklist. Journals are abbreviated according to J. Marouzeau (ed.), *L'année philologique: Bibliographie critique et analytique de l'antiquité gréco-latine* (Paris, 1924-), available online at http://www.annee-philologique.com/files/sigles_fr.pdf.

When quoted verbatim, papyrological texts follow the most recent digital edition on papyri.info, inclusive of digital edits. They maintain all papyrological notation and are not standardized or corrected. Papyri are cited using the most authoritative print reference (as per the check list) which is recognized by papyri.info and Trismegistos.

Consonantal and vocalic 'u', respectively, are distinguished in Latin transcriptions following modern North American conventions.

Except where otherwise noted, translations are my own.

Technical terms, including more obscure Latin words or phrases, are defined in the Glossary which can be found on pages 359 through 361.

GENERAL INTRODUCTION

> Wives, submit yourselves unto your own husbands as unto the Lord. For the Husband is the head of the wife, even as Christ is the head of the Church: and he is the savior of the body. Therefore, as the church is subject unto Christ, so the wives be to their own husbands in everything.[1]

Early Christian literature portrays the ideal woman as meek, submissive, and subservient to her husband. At the same time, early Christianity quickly came to place a large emphasis on the salvific power of virginity. As these holy virgins, and, specifically as ascetics or monastics, women seem to have had a great deal of legal independence – after all, they had no husbands to act as their guardians and were not under the control of their parents. They could live in communities, in their family homes, or apparently on their own. This meant that, for the first time, marriage was not the only life path available to the average respectable woman.

Together, these images of submissive wife and independent ascetic suggest that the women of Late Antiquity (third to seventh centuries[2]) simultaneously had both less and more agency than the Roman women before them. This thesis thus focuses on women's legal status, specifically on guardianship, to understand whether this practice was indeed affected by the rise of Christianity, or whether guardianship's evolution throughout Late Antiquity was a result of some other influence(s). While the few other studies which have been done on the topic of adult female guardianship prioritize legal sources, the following thesis highlights women's contracts, which capture concrete moments of legal and financial action in their lives. In this way, I situate myself within the trend of feminist scholarship which seeks to resituate historical women in their own

[1] Ephesians 5:22-24, Trans. RSV.
[2] These and subsequent dates are CE unless otherwise noted.

social contexts. To understand why this is valuable, it is first necessary to give some historical, historiographical, and theoretical background.

0.1. Defining the Topic

Classical legal scholars tell us that under Republican Roman law (509 – 27 BCE), adult women had been subject to the *tutela mulierum*, a type of guardianship which consigned them to the care and legal authority of a consanguineous male *tutor* or guardian, with the goal of protecting agnate family property.[3] Husbands were expressly forbidden from being guardians for their wives because of the fear that this would have enabled husbandly incursions on the wife's independent finances, and thus on the finances of her family. As time went on, the *tutela* remained in force, but a variety of exceptions were created so that a large proportion of married adult women were legally able to function without such a guardian.

The most well-known of these exceptions was the *ius liberorum*. It was introduced by Augustus in his *Lex Iulia de maritandis ordinibus* (18 BC) and *Lex Papia Poppaea* (9 CE).[4] Both laws focused on marriage and the production of legitimate children, as well as the financial, political, and legal benefits that a prodigious parent could expect to acquire. For women, one of these advantages was an exception to the *tutela*, known as the *ius liberorum*, or the right of children. Previously, the only way for a woman to be exempted from the *tutela* was for her to be

[3] I use the Latin *tutela mulierum* to refer only to this specific type of Roman guardianship; I use the umbrella term 'guardianship' to refer to all types of adult female guardianship generally or when the specific legal terminology for the act is not known, as in the late antique variation. The definitions of technical terminology such as this can be found in the Glossary on pages 359 to 361.

[4] Neither have survived in their original form, so our knowledge of their contents come from citations in the jurists and the codes. There have been efforts at reconstruction, but none are well accepted or commonly used.

selected to serve as a vestal virgin.[5] Now, however, the *ius* granted free women with three legitimate children, and freedwomen with four, freedom from male oversight.

The *tutela* itself is attested in Roman law at least as late as the 320s and the last extant reference to the *ius liberorum* appears in 528.[6] Even before these dates, the role of a guardian had been changing and evolving, with women beginning to rely almost solely on their husbands to fill the role, something which had been specifically forbidden by the original Roman law, and the exception underwent a gradual evolution. Whatever changes there may have been, however, they were not happening in a vacuum, and they did not happen overnight. These changes also do not inherently indicate that guardianship declined.

Nevertheless, scholars have taken the silence of the laws to mean that adult female guardianship not only declined but vanished entirely. For example, Arjava claims that while "guardianship was a recognized institution in the Roman empire at the beginning of the fourth century," it is "difficult to establish when exactly the *tutela* vanished."[7] This problem arises from the fact, I would suggest, that neither the *tutela* nor the *ius* actually disappeared!

With his claim, Arjava situates himself in a long tradition of legal scholarship which presupposes the decline and abolition of the *tutela* by assuming that the question should be "when" it disappeared rather than "whether" it disappeared. Other anglophone scholars generally have a similar perspective. Evans Grubbs, for example, comes to comparable conclusions, although she

---

[5] Aullus Gelius *Noctes Atticae* 1.12; Gaius *Institutes* 3.114; This exception was not so gendered as it might initially seem since *Flamen Dialis* were also exempted from the *potestas* of their *pater familias*.

[6] The date which is normally given for the last extant reference to the *ius liberorum* in law is 410 (*CTh* 8.17.3), instead however, we see Justinian abolishing the rights which accrue to a woman with three children in a 528 law (*CJ* 8.58.2), which must therefore be the last extant reference.

[7] Arjava (1996) 120. For example, Taubenschlag (1955) 172; assumes without any explanation or evidence, "the abolition of the institution of guardianship of women by imperial legislation." Despite his normally extensive and evidence-based footnotes, this claim is slipped in without reference. His general discussion on the guardianship of women is quite brief and seems to be lacking a solid understanding of the complexities of Roman law and legal development. In other places, his characterization of the *tutela* is downright misleading.

allows for the fact that the "*tutela mulierum* may never have been actually abolished by law."[8] No matter how recent the paper, there is no scholarly consensus on the date of the 'disappearance' of either the *tutela* or the *ius*.[9]

On the other hand, Beaucamp, like Arjava, situates her research on the legal abilities of late antique women in the context of a broader discussion on Christian influence, but she comes to the exact opposite conclusion: that guardianship persisted throughout Late Antiquity. She devotes approximately seventy pages of her seminal two-volume work to guardianship in the fourth to seventh centuries, as well as seventeen pages in a later stand-alone paper. She does not rule out the possibility of Christian influence on the form that guardianship took in later centuries and acknowledges an element of continuity, although she does not address guardianship as it existed before the fourth century.[10] While there is always the need to define the temporal boundaries of a project, the fourth century has appeared and re-appeared as a fixed point of change for women and guardianship (among many other topics), to the detriment of a more *longue durée* and holistic perspective.

The only two monographs written on the *tutela*, one by Casado Candelas in 1972 and the other by Zannini in 1976, focus primarily on the classical *tutela*, but do so largely because of the absence of available source material. Writing some fifty years ago, and in Spanish and Italian respectively, both trace the history of the *tutela* throughout Roman law. Where Zannini prioritizes questions about the reason for the *tutela*'s existence and explanations for its evolution, Casado

[8] Evans Grubbs (2002) 45; "Because *tutela mulierum* had disappeared two centuries before Justinian…" (2002) 24; "It faded into desuetude by the end of the fourth century" (2002) 45.
[9] A discussion of guardianship in Roman legal history generally is present in other modern languages as well. While these works focus on guardianship, they all tend to prioritize the West, the classical legal period, and the theoretical and literary evidence over the East, later law, and lived experience. See Casado Candelas (1972); Zannini. (1976); Rupprecht (1986).
[10] Beaucamp (1990), (1992), (2002).

Candelas proposes the novel idea that the *tutela* persisted longer than previously thought. When he was writing some fifty years ago, he had only one papyrological text to corroborate his hypothesis: *P. Coll. Youtie* II 92. It is perhaps unsurprising that his suggestion did not gain much traction, given his lack of evidence and the relative isolation of Spanish scholarship. He could not have been more correct. More than fifty years later, we now have many more published contracts and similar legal documents which show that the legal concepts of guardianship and of exemptions from it, were in force later than the fourth and fifth century dates mentioned above.

Meet Casado Candela's Martha from *P. Coll. Youtie* II 92: "Martha daughter of Menas by my mother Thekla, seller of salt fish, herself also originating from the city of Antinous, acting without a husband-guardian, but providing a signatory on her own behalf…"[11] This quotation from a 569 loan agreement draws attention to the fact that adult female guardianship and exemptions from it were still contractual facts of life even in the Roman Empire of the latter half of the sixth century. And Martha is not the only such woman to have a guardian or to claim exemption from one. Where Arjava claims that "a few isolated instances [of the *ius trium liberorum*] appear even up to 389," we have papyrological and even legal evidence for the *ius* well beyond this date,[12] and well beyond the late fourth or early fifth century end-dates suggested by other scholars.[13] Mentions of guardianship, too, persist. After all, why would women continue to claim exemption from a defunct legal category? And, if guardianship did not disappear in the fourth century - and Martha is a testament to the fact that it did not - what can we say about the form of guardianship that persisted throughout Late Antiquity?

---

[11] *P. Coll. Youtie* II 92.
[12] Arjava (1996) 120, (1997).
[13] Casado Candelas (1972); Dixon (1984); Tellegen (2015). For the classical *tutela*, see Casado Candelas (1972) and Zannini (1976). Neither author treats late antique guardianship, but both are valuable for the work they have done on the earlier form, which is a necessary component of a comparative study such as mine.

On the other hand, towards the end of my temporal boundaries, we see heiresses, for example, giving large donations to the church without so much as a mention of a guardian, sometimes even against their family's wishes. Widows too now seem universally able to act independently irrespective of age or number of children.[14] Given the freedom with which some of these early Christian women disposed of their property, it is evident that whatever the state of guardianship was, women, or at least some categories of women, had a heretofore unseen level of agency. How can this freedom be reconciled with the guardianship which evidently still persisted?

This dissonance and these questions emerged from my MA thesis. In it, I examined laws, contracts, and letters which involved women and concluded that late antique changes to women's position and way of life could not be ascribed to the rise and influence of Christianity.[15] The one area in which I was not able to come to such a firm conclusion was exactly this question of the guardianship of adult women. While scholarship on guardianship had identified key moments of change, decline, and even potential disappearance, a meaningful discussion as to why this evolution occurred or what supposedly happened to the practice was sorely lacking. Moreover, the narrative of disappearance in English scholarship especially did not match what I was seeing in the papyrological sources. In addition, I realized that a comprehensive and up-to-date study of the *tutela mulierum* throughout its entire lifespan and including all relevant source types had not been completed in any language.

In this thesis, I thus propose to offer a *longue durée* examination of the evolution of guardianship throughout the classical period of Roman law and into the seventh century. Along the way I shall answer the following questions: What happened to adult female guardianship in

[14] Sheridan (1996); Beaucamp (2002); Cooper (2007).
[15] Schriemer (2019).

Late Antiquity? Did the *tutela mulierum* really end? What caused things to change as they did? How much of what we see in the later centuries is "Roman" at all? And, of course, what was the role of Christianity in all of this, if any?

0.2. Historiographical Context

Late Antiquity saw the definitive emergence of Christianity in the Roman Empire. For this reason, it was often described as a period fraught with violence, turbulence, and drastic change. That picture has become more nuanced over the last generation or so because of the ground-breaking work of Peter Brown, which demonstrated that the period was a dynamic one, involving both continuity and change.[16] With respect to gender studies and research into women's lives, it is now also clear that the rise of Christianity resulted in much continuity, although it also led to marked change in certain areas, particularly in ideals of morality and sexuality.

The unfortunate historiographical prioritization of the Classical period over later ones, combined with the rise of Christianity, and later of Islam, in the Mediterranean world, means that much of the historical scholarship on these centuries has been done through a religious lens. As a result, when the women of the early Christian world were studied at all, it was generally from this religious perspective and with the assumption that changes in women's social or legal position could also be attributed to Christianity, that these changes were generally positive for women, and that they offered them further choice or agency in their daily lives.

While valid, this viewpoint has often led scholars to assume that the majority of the social changes which occurred in this period can and ought to be attributed to religious influence, rather than questioning if the new religion fundamentally changed the society it was born into or whether

[16] Brown (1971).

it was instead an already evolving society uniquely positioned to allow for the religion's inception and rapid spread. In other words, there is a tendency to gloss over the remarkable thread of socio-legal continuity which permeated every aspect of late antique society and its effects on the lives of people from this time period.

The field of Late Antique Studies takes up these critiques. However, it only emerged as a valid period of historical study in its own right in the 1970s and 80s with the works of Peter Brown.[17] Simultaneously, the historical study of women in their own right emerged from the women's liberation movement of the 1960s and from the third wave of feminism in the 1970s and 80s.[18] As a result, we see the some early feminist scholars, like Sarah Pomeroy, beginning to study women in a classical context as early as the 1970s. More soon followed in her footsteps, with the 80s and 90s producing a wealth of scholarship on the Roman woman.[19] By the late 80s and early 90s, key theorists like Judith Butler and Joan Scott advocated for critical discussions of gender and specifically for the usefulness of gender when writing history.[20] These two young fields of Gender Studies and Late Antique Studies came together as the study of women and gender in Late Antiquity around the beginning of the 1990s, with Joëlle Beaucamp providing a masterful two-volume overview of Byzantine women.[21] Some years later, in 1997, Liz James edited the first critical volume on gender in Late Antiquity: *Women, Men and Eunuchs: Gender in Byzantium.*

[17] Brown (1971); Brown (1988). Brown owed much to the work of A.H.M Jones, specifically his *The Later Roman Empire, 284 to 602: A Social, Economic and Administrative Survey* which was had been the standard prior to the publication of the Brown's *The World of Late Antiquity*. s

[18] De Beauvoir (1949); Scott (1986); Butler (1999); Stefaniw (2020).

[19] Gardener (1986), (1998); Beaucamp (1990), (1992); Clark (1993); Arjava (1993), (1996); James (1997); Evans Grubbs (1995), (2002); Rowlandson (1998); Bagnall and Cribiore (2006). Notably, the majority of book length studies on women in the classical and late antique periods were, until the early 2000s, written by women.

[20] Scott (1986); Butler (1999).

[21] Beaucamp (1990), (1992); note, however that Beaucamp still choses to use "Byzance" rather than "l'antiquité tardive" in her title, perhaps an early indication of the growing disconnect between American and continental scholarship on this period which is often furthered by linguistic boundaries.

The combined study of women and gender in late antique law is, of course, the newest of all these fields of inquiry and began to emerge only as recently as the early to mid 90s. Classical law had been prioritized in scholarship in much the same way as Classical history or Archaeology had been. When mentioned at all, it was usually characterized by three distinct negative trends: the so-called decline in Classical juristic output, the dilution of Roman law in the provinces following the *Constiutio Antoniniana*, and the rise of Christianity as a legal force. All of this was seen to taint and weaken the purity and creativity of classical Roman law.

This perspective has now been critically evaluated by scholars, and the evolution of Roman law, including law relating to women, appears to be a much more even balance of continuity and change than previously understood.[22] In fact, the sole monograph which has been published on the specific topic of women in late antique law in English was published by Finnish scholar, Antti Arjava, in 1996. While he admirably seeks to cover the entire breadth of legal scenarios that a late antique woman might have faced, he focuses more heavily on the impacts of Christianity and the lasting impression of Roman law on the medieval West, at the expense of an equal exploration of legal practices in the contemporary East. He also relies primarily on traditional legal texts to give an impression of what ought to have been happening, rather than what was actually happening when women interacted with the law in Late Antiquity. These tendencies are not his alone. Evans Grubbs gives 476 as guardianship's end date, choosing to prioritize the West and again, including primarily prescriptive legal texts.[23] Other volumes on Roman law, which happen to include mentions of women, have similar tendencies.

[22] Beaucamp (1990), (1992); Arjava (1996); Evans Grubbs (1999).
[23] Evans Grubbs (2002), 23-50.

In all of these young fields, impressive efforts have been and are still being made to include new perspectives, to research more than just the great men and battles, and to re-examine old assumptions. However, by limiting their scope in this way – to defined historical periods, weighty legal sources, and the theoretical versus the realistic – the threads of continuity which persisted in women's interactions with the law in Late Antiquity are still being obscured.

It is in this complex historiographical context, that my research on the existence, form, and function of adult female guardianship in Late Antiquity is situated. As a result, scholarship on adult female guardianship in the late antique legal context is more limited than even general scholarship on women in late antique law. In the key studies mentioned in Section 0.1 above, the guardianship of adult women is simply assumed to have "faded into desuetude by the end of the fourth century",[24] but there is shockingly little research on why or how this decline and disappearance occurred, or indeed on whether it even occurred at all. Therefore, since Arjava concluded that "the most significant individual change [to women's legal position in Late Antiquity] seems to be the disappearance of the *tutela mulierum*," my research on its continuity has the potential to cause serious upheaval in our understanding of women's legal rights in Late Antiquity.[25]

0.3 Theory and Method

In the pages which follow, I intend to draw on a variety of different theories and methods. My approach is an interdisciplinary one, bringing together gender studies frameworks[26] and legal sociological theory[27] in order to study women in law in the context of their society and of

[24] Evans Grubbs (2002) 45.
[25] Arjava (1996) 261.
[26] de Beauvoir (1949); Butler (1999); Scott (1986), (1992); James (1997); Barber (1997) 185-199; Rowlandson (1998); Wilfong (2002), (2007); Mathieson (2014); Schroeder (2018); Stefaniw (2020).
[27] Crook (1967); Donovan (2008); Pölönen (2006), (2016) 8-20; Riggsby (2010); Tuori (2016).

contemporary legal and social change. My perspectives can be distilled down to two general points 1) the law itself, however it is defined, and references to the law can be used to understand the society that created it and 2) women are valid objects of historical investigation but ought not to be taken outside of their own social contexts or studied in a genderless vacuum.

0.3.1. Sociology of Law

In the historical application of what are essentially modern disciplines, it is quite common to run into difficulties with the theory but also, as in our case, with the methodology. The methodology is key, because it is precisely the methodology and the origin of the data that differentiates legal anthropology from the study of law, and the sociology of law from political science. Ethnographies, surveys, and personal interactions, which are the primary methods of data collection for modern anthropologists, are simply not an option for scholars of Roman law – for obvious reasons – so these elements of method and data collection have to be set aside here. Doing anthropology and sociology in a historical context requires a new approach.

The crux of the issue can be found in the origins of the data. For the historian, the sources are largely textual, whereas, for the modern sociologist or anthropologist, data comes from personal interactions. The goal for the anthropological historian is thus to recreate, as far as possible, that personal approach, based on individual interactions, and focusing heavily on the general populace, not just the elites. For much of Roman history, this would not have been even remotely possible except with the assistance of archaeology, but from 30 BCE to the 640s CE the presence of Egypt in the empire provides us with myriad sources, detailing the daily transactions of the general populace. In addition, because Imperial and late antique Roman law was heavily casuistic, that is, contemporary appellants attempting to extrapolate more general legal rules based

on case law, it is naturally informed by actual events experienced by real people and thus can also contribute to the pool of available source material for an anthropological study.[28]

Papyrologists have long followed a more sociological approach, in both legal and non-legal contexts. Not only is papyrology inherently related to anthropology through its close ties to archaeology, but papyri lend themselves far more easily to a personal and individualized type of history than do legal and juristic sources. Even so, Roman legal historians have rarely utilized the wealth of available papyrological material, and conversely only a few papyrological studies exist which bring the papyri firmly into the sphere of Roman legal history. Many such studies already exist for the Ptolemaic period, but, because of the relatively recent appreciation of Late Antiquity as a valid field of study, interdisciplinary scholarship of this sort is still in its infancy.

The choice to follow a sociological approach dovetails reliably with a scholar's perspective of the empire. Tuori has suggested that there are two possible scholarly vantage points, that of the centre, which is interested in governance, power, and politics, and that of the periphery, which is increasingly focused on lived experiences and social history.[29] Scholars such as Domingo prioritize the perspective of the centre and while they "admire the new offers of contemporary socio-legal scholarship," they chose to situate their work in a long tradition that prioritizes (classical) Roman law as the foundation of our modern, western legal culture and as a source book for new conceptions of law on both a national and international scale.[30] Scholars who focus on the periphery tend to prioritize sociological perspectives in line with their prioritization of social history over the political. In terms of the law, the former is focused on those who make the laws

[28] While the rescript system could certainly also take on a casuistic nature, prior to codification court cases often consisted of extrapolation from and generalization of prior case law. Crook (1967); Pölönen (2006), (2016) 8-20; Donovan (2008); Riggsby (2010); Tuori (2016).
[29] Tuori (2007); on the view from the centre see Corcoran (2000).
[30] Domingo (2018) viii.

and the latter on those who use them. Harries has suggested that a holistic view which combines the views of both the centre and periphery would result in a more dynamic understanding of the role of law. Subsequent scholars have followed her suggestion with success.[31]

While these concepts are rarely referenced explicitly in papyrology, scholars of juristic papyrology especially have already been engaging with ideas of the centre alongside those of the periphery for some time, often using the views of the centre as seen through the law, and later the law codes, as a starting point and going on to compare and contrast the views and actions of the periphery as seen through the papyri.[32] These different perspectives provide a multi-faceted, even pluralistic, image of what the law was really like for the people of the period.

0.3.2. Legal Pluralism

The concept of legal pluralism, of multiple systems of normative orders operating within the same geographic or political space, is a relatively new one in both the studies of law and of history. While neither Beaucamp nor Arjava wrote at a time when the idea of legal pluralism was well understood in the context of Late Antiquity, their studies, especially those of Beaucamp, recognize the chasm that must have existed between "The Law" and reality in such a complex, multi-ethnic, and repeatedly colonialized society.[33] Since the 1970s and 1980s, forward-thinking legal scholars have been adopting the now well-established principle of legal pluralism on which to base their research. Historians inevitably followed suit, albeit rather more slowly.[34] Early scholars such as Mitteis and Mommsen assumed that the *Constitutio Antoniniana* – an edict which granted

[31] Harries (1999); Riggsby (2010); Kelly (2011).
[32] Taubenschlag (1955); Gagos and van Minnen (1994); Dillon (2012); Keenan (2014); Nowak (2015); Humfress (2015) 97-118; Alonso (2016) 56-69.
[33] Mélèze Modrezejewski (1981); Rupprecht (1986); Beaucamp (1992); Arjava (1996); Vandorpe and Waebens (2010). For a summary of the relationship between ideas of colonialism, indigenous law, and legal pluralism, see Schriemer (forthcoming a).
[34] Roberts (2005); Tuori (2007); Humfress (2007), (2013a), (2013b); Ando (2016) 283-293.

citizenship to nearly all inhabitants of the empire in 212 – brought an abrupt conclusion to the use of non-Roman legal practices. They also assumed that the legal framework of the empire was entirely homogeneous after 212. Scholars in recent decades, however, have been steadily exploring the flaws in this "Mommsenian unitary model".[35]

While the extension of citizenship in 212 may have been more or less universal, a concurrent universal application of the *ius civile* cannot be observed in the source material, particularly when the papyri are taken into account. There have been a number of efforts to explain why law does not appear to strictly follow citizenship in this case. Among these are the hypotheses of a more gradual and voluntary assimilation of Roman law; of local laws being "leftovers on their way to extinction;" or even of a "decline" of provincial jurisdiction as arbitration became more popular.[36] Others suggest, correctly I think, that the complete and immediate assimilation of Roman law by the new citizens was perhaps not the Roman goal and that such a concept is merely a product of the nationalistic, centralist, and colonialist tendencies of nineteenth- and twentieth-century scholarship.[37] Still, others have suggested that it is impossible to satisfactorily answer the question of provincial legal assimilation with the source material that is available from this period.[38] Finally, Corcoran keenly noted that whatever the intentions of the imperial centre, they simply lacked "the necessary machinery to control either officials or the population at large."[39]

Simply by recognizing that something else was going on with adult female guardianship than was technically required by the Roman law of the day, my research implicitly subscribes to the notion of legal pluralism. Legal pluralism is understood to be "a concept of comparative law

[35] Tuori (2007) 39.
[36] Tuori (2007).
[37] Galsterer (1986) 24; Yiftach Firanko (2009); Capogrossi Colognesi (2009).
[38] Crook (1967); Jolowicz and Nicholas (1972); Tuori (2007).
[39] Corcoran (2000) 297.

used to describe situations where several legal systems may apply" and is now often "linked with legal anthropology and indigenous law."[40] On the later point, it borrows from ideas of post-colonialism to capture the unique relationship between the law that existed in a place prior to colonization and the law imported by the colonizers.[41] Reflecting hesitancy to expand the definition of law, a similar concept of normative pluralism, in which several normative orders (including law) may have influence, has also been proposed.[42]

By beginning with an understanding that the reality of people's experience with the law may have been affected by local law, the church, Roman law, or any other number of normative factors, I hope to be able to examine equitably the major normative orders which may have played a part in the legal experiences, abilities, and choices of the women of Late Antiquity. This starting point further allows for the understanding that each person's interaction with or understanding of law might be different, depending on their individual contexts – familial, social, religious, geographic, linguistic, and so on. It is for this reason, that case studies will feature so heavily when we come to the late antique chapters of this thesis: as we shall see, while there were similarities in people's experiences, there was no "norm".

By beginning with such an understanding of legal pluralism, the differences between the prescriptions of Roman law and the legal practices of Roman citizens cease to be a failure of 'Romanization' but rather an avenue to understand more about the social forces at play in this period. Including juristic papyri as a key source type can help provide a much more nuanced answer about reality, including the effects of citizenship on legal and contractual practices in the provinces. The question of the timing, extent, and nature of Roman legal influence throughout the

[40] Tuori (2011) 331.
[41] Roy (2008) 315-357; Tamanaha (2021) 55-96.
[42] Twining (2010) 473–517.

empire is a difficult one for all provinces except Egypt. From Egypt, at least, we have not only a wide variety of extant evidence from the late antique period, but also extensive evidence from the Egyptian, Ptolemaic, and earlier Roman periods, which can contribute to comparative legal studies. What these studies have shown is that the ancient Mediterranean world did not understand state law to be universal; Greek and Egyptian legal systems co-existed in the Ptolemaic period and continued to be present throughout the Roman period, well beyond 212. In many cases, these three legal traditions fused and evolved into the legal practices we see in Late Antiquity. Nothing akin to the traditional ideas of sweeping Romanization and wholesale assimilation can be seen on the ground (certainly not in the same overwhelming way Hellenization can). Instead, multiple systems of law or 'normative orders' seemed to function simultaneously, in bespoke combinations, as each individual accessed the legal system. Only a few areas of law saw widespread change after 212, namely the system of guardianship for adult women, as well as contractual formulae and certain aspects of family hierarchy.[43]

Still, Late Antiquity was not a monolithic whole, and what may have been the case in the third century was more than likely not the case by the sixth. Taubenschlag, for instance, suggests that while legal unity was not immediate after 212 or necessarily imposed from the centre at this point, by Justinian's reign in the sixth century, Roman law was more universally applicable and obeyed.[44] Others, such as Nowak, Humfress, and Richardson, occupy more of a middle ground and outline a transitional period which lasts into the fourth century, showing new citizens becoming familiar with Roman law and selectively adapting both Roman and local customs to fit their personal situations and new legal realities.[45] Finally, scholars like Schiller argue the other

[43] Yiftach Firanko (2009); Taubenschlag (1955); Keenan (2014); Capogrossi Colognesi (2009); Bannon (2017) 66-83; Wolf (2015) 59-84.
[44] Taubenschlag (1955).
[45] Nowak (2015); Humfress (2007), (2013a); (2013b); Richardson (2015) 44-58.

extreme, that only local legal customs persisted in practice and that the codes had little effect on the actions of citizens in the provinces.[46] The principle of pluralism can help to explore the nuance of these arguments further in the future.[47]

However, the concept of legal pluralism is not universally accepted, either by scholars of pure legal theory or by those of legal history. The primary argument against the acceptance of this view is founded in the modern legal-centralist understanding that law is a negotiated order at the state level. It posits that by including either local or global negotiated orders within the category of law, scholars risk effacing the analytical power of the law and, in fact, risk losing the understanding of what law is altogether. In not quite so many words, this argument suggests that if we expand the definition of law to include the local, and reject law's "link to domination," we risk diluting law to a meaningless catchall phrase.[48] This argument is rather tautological, and thus not terribly convincing.

Legal historians have, for the most part, avoided becoming involved in the more philosophical debates on the precise definition of 'law' itself, though they clearly operate from a particular internal definition of their own. While a 'true' definition of law remains universally elusive, just like a definition of 'religion,' it is at least necessary to set out a working definition for this project. Cicero suggested that "law is the distinction between things just and unjust, made in agreement with that primal and most ancient of all things, Nature" (*de legibus* II.5). Many subsequent philosophers have tackled the problem with almost as many resulting definitions, but their contributions can be roughly divided into two groups: substantive and functional. The substantive defines law according to external qualifiers (a rule given by an authority) and the

[46] Schiller (1978).
[47] Tuori (2007), (2016).
[48] Roberts (1979), (2004), (2005); Tuori (2007), (2016).

functional by intended effect (distinguishing between just and unjust). The unspoken definitions employed by legal historians of the past seem to fall overwhelmingly into the first category, although there is a gradual shift towards functional definitions as the theory of legal pluralism gains popularity among Roman legal scholars.[49]

The difficulty in applying such functional definitions of law is mirrored by the difficulty scholars have in choosing terminology when dealing with legal pluralism. There is an inherent desire (which I recognize in myself as well) to reserve the term "law" for that which meets the substantive definition of 'rules pronounced by an authority', that is, in a Roman context, *constiutiones*, *rescripta*, *edicta*, and so on. Those instances when the topic of interest meets a functional definition but not a substantive one, has resulted in the academic use of terminology such as 'legal custom,' 'local tradition,' 'legal remnants,' 'provincial influence,' 'vulgar law' or even Mitteis' "Volksrecht."[50] This inevitably leads to a less than subtle value judgement and the creation of legal hierarchies which prioritize law (defined substantively) as more authoritative and more legitimate than 'legal customs' (defined functionally). In an effort to move away from these

[49] Pölönen (2006); Donovan (2008); Humfress (2013a), (2013b); Pölönen (2016) 8-20; Ando (2016) 283-293; Tuori (2016).

[50] Nicholas (1962); Jolowicz and Nicholas (1972); Tuori, (2007); Mousourakis (2012); Schriemer (forthcoming a). On the idea of local legal "custom" as law, see initially Mélèze Modrzejewski (1970) 317–376. This theory was formulated as a response to Wolff's idea that, despite their clear and frequent use, Greco-Egyptian practices could not rightfully be called "law" in the Roman period because Roman authorities could reject them at will in favour of Roman law. This position remains difficult to support with the wealth of papyrological evidence available to us now; Wolff and Rupprecht (2002). While Alonso (2013) finds it difficult to support the idea of "legal custom" lending weight or legitimacy to peregrine law in the first two centuries of the common era, he notes that from the mid-third century onwards, custom can be found to be a legitimate source of law in the absence of the jurists. He notes *Digest* 1.3.32 as a key piece of evidence for this shift. Despite this, he concludes "It was law, because law in Rome was not merely normative force, but also authority; and tradition, for the Roman mind, carries authority, even when it is an alien tradition. This is what the application – not occasional, but consistent – of the peregrine law demonstrates. Its occasional rejection in the name of certain basic Roman values (notably in the precedents invoked in the petition of Dionysia, which we shall see in Section 3.2.1) shows that, unsurprisingly, it did not carry the same authority as Roman law: Unlike normative force, authority comes in grades, because it is not an absolute, dogmatic category, but a crossroad between the social, the political and the legal" (403).

implicit value judgements, and to recognize the prejudices that underly such terms, some scholars are now choosing to employ terminology such as 'indigenous law' or 'folk law'.[51] Papyrologists have long noted this issue, referring instead to 'native law' or even simply 'Greek', 'Egyptian' or 'Greco-Egyptian' law.[52] I intend to refer to it as indigenous law, or more descriptively as Hellenistic law, particularly when I refer specifically to the law at use in Egypt during the Ptolemaic and Roman periods.

In addition, Christianity, which is broadly implicated in the study of late antique law, is seldom discussed in the context of legal pluralism.[53] In a forthcoming paper, I argue that the relationship between Roman and Canon law mirrored the earlier relationship between Roman and indigenous law, and served to perpetuate the pluralist and functional style of law which was common throughout the third century and throughout the entirety of Late Antiquity as well.[54] Not surprisingly, the simultaneous application of religious law is still well understood by many, and, helpfully, certain aspects of modern life still reflect some of this plurality.

This is particularly helpful because, beyond difficulties of nomenclature, scholars have also found it difficult to conceptualize how pluralist legal systems actually functioned.[55] Modern legal systems have clearly defined spheres of influence, so that, while they often overlap geographically speaking, there is seldom any confusion about jurisdiction. Municipal authorities legislate on matters such as parking regulations or noise restrictions, while federal authorities enact laws about immigration and murder. However, in some areas, the boundaries can be blurred. A modern marriage is a perfect example of this. In Canada, the definition of marriage is federally regulated,

[51] Pölönen (2006), (2016) 8-20; Donovan (2008) 85-86.
[52] Taubenschlag (1955); Yiftach-Firanko (2009); Keenan (2014); Schriemer (forthcoming b).
[53] Humfress (2013a), (2013b).
[54] Schriemer (forthcoming b).
[55] Ando (2012) 83-85.

while marriages themselves are recorded provincially. However, religion can play a significant role. Officiants can either be religious figures ("registered marriage officiants") or judicial figures ("civil marriage officiants"). In Ontario, a legal marriage can be performed by a religious marriage officiant following the calling or publication of banns or by a civil or registered marriage officiant following the issuing of a marriage licence. Neither is more legally binding than the other, and both achieve the same goal.[56] The reasons why a couple would choose one over the other are varied and often deeply personal or even logistical given their unique circumstances. The term "forum shopping" attempts to capture the many personal, traditional, and regional considerations behind such a choice.[57] Only by thinking beyond the narrow confines of modern legal theory and being aware of our modern legal context and biases can we attempt to engage in a meaningful way with the legal systems of the ancient world.

0.4. The Sources

Scholars of late antique Roman law have been unanimous in their understanding that the *tutela mulierum* underwent a period of decline and then disappeared in or around the fourth century. What seems to have prompted this assumption, or at the very least confirmed it, is the complete absence of any explicit mention of the *tutela* in either the *Theodosian Code* or the *Justinianic Code*. What we also do not have is a record of any law which abolished the practice. This has been interpreted to mean that this form of guardianship simply faded out of use. What this understanding of the *tutela* does not account for is the existence of papyri which occasionally show that women after the fourth century continued to function with the help of guardian, and, both more curiously and more frequently, those

[56] *Civil Marriage Act* (S.C. 2005, c.33); *Ontario Marriage Act* (R.S.O. 1990, c. M.3); While both marriage via the calling of banns and via provincial marriage licence require the couple to sign a "record of solemnization of marriage", this is, as its name suggests, only a record of solemnization, not a marriage contract. As with Roman contracts, Canadian legal marriage is contracted verbally, in the presence of witnesses, through a series of set questions and answers and then recorded in writing afterwards.
[57] Humfress (2013b).

which explicitly record the absence of a guardian. While the legal texts are silent on the exact form of guardianship in Late Antiquity, they will be useful to establish what the *tutela* and other types of legal power were and how they worked throughout Rome's legal history before Late Antiquity.

0.4.1. Legal Sources

These legal texts can be divided into three main categories: laws, jurisprudence, and forensics. In this context, the law category includes the obvious *Codex Theodosianus* and the *Codex Justinianus*, the lesser-known *Codices Gregorianus* and *Hermogenianus*,[58] as well as the *Twelve Tables*, and other non-codified laws. Law could still be created in various ways. Early ways of making law, like *leges*, *plebiscita*, and *senatus consulta,* persisted in the imperial period. In addition, we now see imperial constitutions or *constitutiones*, included in these codes. *Constitutiones*[59] could consist of *edicta*, *mandata*, or *rescripta*. An *edictum* was a more general, universal proclamation from the emperor or a magistrate, while a *mandatum* was a letter of instruction to a governor or some lower magistrate. Both were common in Late Antiquity. *Rescripta*, earlier known as *subscriptiones*, were official responses to individual petitions and could be addressed to a singular private person, a group of people, or an official.[60] It is noteworthy that both *mandata* and *rescripta*, while usually written in response to a

[58] The *Codex Gregorianus* was compiled by Gregorius, about whom we otherwise know nothing. He seems to have gathered laws from the reign of Hadrian to the reign of Diocletian in chronological order and published a first version of his codex sometime after 291. There was at least one subsequent revision to reflect laws promulgated as late as 293. This code is not one which was officially commissioned but may have been intended as a sort of aide memoire for an official in the exercise of his duties. The *Codex Hermogenianus*, on the other hand, was written by the then *magister a libellis* Hermogenian, began where the Codex Gregorianus ended. Organized chronologically, it covers only the years 293 and 294. A first version was published in 295. This compilation is unique in that Hermogenian was involved in the process of creating the laws he then compiled. As a result, it consists almost solely of eastern laws, though a few western constitutions were later added, possibly when Hermogenian went to work in the western court. Corcoran (2004); Sperandio (2005); Salway (2006); Connolly (2010); Kaiser (2015) 120-121.

[59] "Constitutions have a standard form. First, there is an inscription indicating to whom the law is addressed, complete with that person's title, and declaring that it is from the emperor (most of whose lengthy title is usually omitted). Next is the *praefatio* or *prooimion* (preface), which provides the rationale for the law—the problem it addresses. The body of the law […] follows. […] The substance of the law is followed by an *epilogus* or *epilogo* (epilogue), to the addressees, instructing them on how, and to whom, the contents of the law should be made known, and when it should take effect. At the end of each constitution is a subscription […] showing the date the law was issued." Kearley (2010) 380-381.

[60] On the rescript system, see Connolly (2010).

singular specific case, would go on to be used much as case law is today, as precedent for similar scenarios.[61]

The jurisprudential category includes the writings of the jurists – the *responsa prudentium.* Key sources here are Gaius's *Institutes*, Paul's *Sententiae*, Ulpian's *Epitome*, and of course, Justinian's *Digest* and *Institutes*, which compiled the writings of not only these three jurists, but also of many others. The lines between the three categories of legal texts becomes blurred with sources like the *Collatio* and the *Fragmenta Vaticana*, which contain both law and jurisprudence, and with barbarian codes, which, while incredibly helpful, also reflect the later culture in which they were compiled. Similarly, a recounting of court cases, as in Cicero or even in the papyri, contains not only forensic argumentation but also reference to laws, jurisprudence, and case law. Of all of these legal sources, I primarily draw on Gaius' *Institutes*, the *Theodosian Code*, and the *Corpus Iuris Civilis,* which are discussed below in more detail.

The majority of the Roman jurisprudence which survives today has been handed down to us not in the original texts but in the compendia that are Justinian's *Digest* and *Institutes*. While this work is extremely valuable, and we shall make frequent and repeated use of this text, it is worth noting at the outset that the image presented in the *Digest* may not be complete or even truly representative of the legal landscape in the late Republic and early Empire. Naturally, it was composed to meet the needs of its own legal environment in the sixth century. This, combined with the fact that the entire text is composed of a medley of citations taken out of their original contexts and melded together into something intelligible to sixth-century readers is important to

[61] Harries (1999) 6-55.

remember. Nevertheless, the *Digest* remains one of the most valuable sources we have for studying this period of Roman law.

The reason jurists can be relied on so heavily for this study can be found in a fifth-century law of Valentinian III, which is generally referred to as the *Law of Citations*. It was included in both the *Codex Theodosianus* and the *Codex Justinianus* and privileged the work of five specific jurists above all others: Ulpian, Papinian, Paul, Gaius, and Modestinus. In a courtroom, if a law was up for interpretation, the explanations provided by these five jurists alone were used to clarify its meaning.[62] The practicalities of such a strategy aside, if a Roman court considered these specific jurists authoritative, they are ideal for our purposes, because we can be confident that their interpretations reflect the contemporary legal understanding.

The following are the key legal sources used in this thesis:

0.4.1.1. Twelve Tables

The original ten tables were traditionally regarded as having been published and finalized in 451 BCE, with the last two added a year later, in 450. No complete copy exists, but, because they were copied and quoted at length throughout Roman legal texts, Gothofredus was able to make a first restoration in the seventeenth century. Moreover, Dirksen's nineteenth-century version accounted for the discovery of new material and serves as the basis for most modern editions, including the two which I have used: Schöll's 1866 edition for the Teubner series and Lambert Mears' side-by-side 2004 Latin/English version.[63]

---

[62] *CTh* 1.4.3 (426); *P. Oxy*. XV 1814; If they disagreed, the majority view prevailed, and in case of a tie, Papinian's view took precedent. This "counting heads" strategy, rather than choosing the best option, has been seen by many as an indication of a decline of part of creative jurisprudence. It contributes to the debate about the vitality of Roman law in the classical period vs stagnation and copying in the late antique period. Honoré (1998) 250; Watson (2000), 4-8; Corcoran (2008) 96-99; Kaiser (2015) 119-120; Čoláková (2021).

[63] Lambert Mears (2004); Du Plessis (2016) 49-51.

0.4.1.2. The Epitome of Ulpian (Tituli ex Corpore Ulpiani)

This epitome was originally attributed to the jurist Ulpian; however, there remains much debate about the author of the text that it epitomized. Some do consider Ulpian the original author, while others trace the original text back to an anonymous author who was dependant on Gaius, or even to an unspecified fourth-century compilation. In addition, it survives as an appendix to a tenth-century manuscript of the *Lex Romana Visigothorum*. The original epitome likely dates to about 320, with several later additions. The edition I have used is Schulz's from 1926.[64]

0.4.1.3. Sententiae *of Paul*:

A work of this name does not survive in its entirety, but the surviving fragments are attributed to Paul and have survived in the *Lex Romana Visigothorum*, in the *Digest*, and in the *Fragmenta Vaticana* and *Collatio.* Since the text appears to date to the third century, while Paul lived and wrote in the second, this work is now generally understood to be an aggregate of Paul's original writings. At the very least, we can be confident that such a work existed in at least the fourth century, because it is cited specifically in a law of Constantine in 327/328, who accords the *Sententiae* legal validity, an opinion which is later repeated in the *Law of Citations* (426). I have primarily relied upon the edition in *FIRA* II.[65]

0.4.1.4. Fragmenta Vaticana

This collection of legislation and jurisprudence was likely first produced in the West (perhaps at Rome) around 320. The author is unknown, and the contemporary name of the collection has been lost. It survives only partially – as the name suggests – in a Vatican palimpsest, rediscovered in the nineteenth century. It is organized by subject matter and contains imperial constitutions, likely from the *Codices*

[64] *FIRA* II 261-301; Schulz (1926); Jolowicz and Nicholas (1972) 458; Robinson (1997) 64.
[65] *CTh* 1.4.2, 1.4.3.5; *FIRA* II 317-417; Jolowicz and Nicholas (1972) 457; Robinson (1997) 63-64.

Gregorianus and *Hermogenianus*, and well-cited excerpts from the writings of Ulpian, Paul, and Papinian on topics such as sales, guardianship, and dowries. I have relied on the edition in *FIRA* II.[66]

0.4.1.5. Collatio Legum Mosaicarum et Romanarum

This is a personally commissioned (i.e. not official) comparison of Mosaic and Roman law by an unknown author. It was likely composed in Rome, sometime between 392 and 438 and featured a combination of the Septuagint (specifically legal prescriptions from the Pentateuch), imperial legislation, and jurisprudence. I have used Mommsen's 1890 edition as it appears in the *Collectio* III.[67]

*0.4.1.6. Gaius' Institutes (*Institutiones*)*

One of the most useful of all the jurisprudential sources for the period before 212 is Gaius' *Institutes*.[68] In fact, it is really only thanks to the discovery of his *Institutes* in the nineteenth century that we have a fairly full picture of how *patria potestas* and guardianship were supposed to function in this period. Prior to this discovery, we had only the excerpts of Gaius, which were preserved in the *Digest* and used to inform Justinian's *Institutes*, as well as a Visigothic *Epitome*, which omitted book four entirely.

One of the most famous, if not the most famous, of the Roman jurists, Gaius lived and wrote in the mid to late second century. We know very little about him, not even the rest of his name. Gaius, who self-identifies as a member of the Sabinian school, must have studied in Rome. We have no mention of him in contemporary texts, but his inclusion in the *Law of Citations* alongside Ulpian, Papinian, Paul, and Modestinus solidifies his contemporary standing, despite his sparse biography. He wrote a wide variety of legal works, although few survive anywhere other than in the *Digest* and *Institutes*, even in fragmentary form. The only exception is the *Institutes*, a

[66] *FIRA* II 461-540; Robinson (1997), 64-65; Kaiser (2015) 122.
[67] *FIRA* II 541-589; Mommsen (1890); Frakes (2011); Kaiser (2015) 122-123.
[68] Zulueta (1967) 1-11; Schiller (1978).

four-book explanation of Roman law from a second-century perspective. Excitingly, this is a second-century scholar discussing contemporary legal issues, which is rare in the study of Roman law.

A nearly complete version of Gaius' *Institutes* was re-discovered in 1816 by Niebuhr in a palimpsest housed in Verona. He deciphered only enough to conclude that the erased text, now obscured by the letters of Jerome, was a juridical one; he thought Ulpian. This discovery was then published a year later by Savigny who for the first time posited that these could in fact be Gaius' *Institutes*.[69] Another year later, Goeschen and Bekker, followed by Hollweg, went to Verona to attempt to transcribe this document, whatever it was, in a more complete form. This first edition, which did not include the entirety of the ancient text, was published in Berlin in 1820. Following this, Blume attempted to transcribe the more difficult passages with the aid of various chemical reagents in an effort to render the text more legible. Unfortunately, this ultimately had the opposite effect, but his new, expanded edition was published in 1824.

Between 1824 and 1866, several new editions were produced, each attempting to improve on what was previously done. In 1866, Studemund, with the assistance of Mommsen and Krueger, produced an *Apographum* (an exact copy of the manuscript), which was published in Berlin in 1874, and *Supplementa*, published in 1884. This *Apographum* and *Supplementa* remain the basis for the majority of modern editions of Gaius' *Institutes*. They also mark the last edition for which an editor was able to consult the physical Verona manuscript, which is now virtually illegible and imminently irreparable as a result of the repeated, and sometimes overly enthusiastic, use of chemical reagents to aid in the reading of the erased text. Still, several re-editions, also by

[69] "Der verfasser desselben ist nach dieser probe noch nich zu bestimmen, Niebur vermuthet auf Ulpian; ich bin … geneigt, vielmehr die Institutionen de Gaius zu erwarten." Savigny (1817) 172.

Studemund and Krueger followed in the next three decades or so. Photographs of the manuscript were published in Leipzig in 1909 but did not result in a new re-edition.

The Verona manuscript presents us with a text of Gaius's *Institutes* which is nearly complete and un-emended, which is incredibly rare for both literary and legal sources from this period. The date of this copy of the *Institutes* cannot be firmly established, but the current consensus seems to be that this is a fifth-century text. The letters of Jerome, which were written over the text of the *Institutes*, have been dated to the eighth century. In one section, the parchment was reused a second time for the letters of Gennadius, rendering the text of the *Institutes* underneath it all the more difficult to read. In other places, sheets are missing, page order has been mixed up, and passages remain simply illegible. Gordon and Robinson estimate that about one twelfth of the entire text of the *Institutes* is still missing, owing to the missing folios and the sections which were impossible to decipher. Huschke's more conservative estimate of one tenth falls to only one thirteenth, when the text is cross referenced with quotations from Gaius found in other sources, such as the *Collatio* and the *Corpus Iuris Civilis*.[70]

In 1898, a fifth-century palimpsest was discovered in the library at Autun which contained a paraphrase of the *Institutes*, but it did little to fill the gaps of the Verona text. In 1927, papyrus fragments of the fourth book were discovered in Oxyrhynchus (*P. Oxy.* XVII 2103), and eleven years later, further papyri came to light in Cairo.[71] Unsurprisingly, given the rareness of late Latin papyri, these texts have been dated quite early. For example, the Oxyrhynchus fragments are dated to the late third or fourth century, and the Cairo fragments are dated to the fourth or fifth centuries. Useful for filling in some of the illegible parts of the Verona manuscript, these fragments also

[70] Zulueta (1967) 4-7.
[71] For the Cairo papyri, now in Florence, see *PSI* XI 1182, also in *FIRA* II 195.

attest to the fact that it is not a forgery and is generally corruption-free, despite some claims to the contrary.[72]

As a source for legal history, Gaius's *Institutes* are unparalleled. Free from the usual corruptions and emendations which often entered ancient texts as they were copied throughout Late Antiquity and the Middle Ages, the *Institutes* gives us a glimpse into the legal world of the second century. Remarkably, it does so through the pen of a legal scholar who was respected, quoted, and mimicked for centuries by the Romans themselves. Beyond the testimony of the *Law of Citations*, the sheer volume of Gaius' jurisprudence, which was reused in both Justinian's *Digest* and his *Institutes*, illustrates the late antique consensus that he was a formidable scholar who did valuable work. For us, these second-century dates combined with the late antique confidence in his scholarship allow us to use Gaius'*Institutes* as a source, largely unencumbered by discussions of later legal evolutions, differences between the East and West, relevance, or authority.

From an internal perspective, Gaius' habit of noting when other juridical schools disagree with his interpretation serves to enhance his value and trustworthiness. It is worth commenting on the aim of the *Institutes*. While we draw on them today to write history, both legal and social, that was not Gaius' intention when he wrote the text. For him, this was a legal textbook, an explanation of the fundamentals of the Roman legal system, which by necessity contained some contemporary commentary and/or historical context. This means that he was trying to capture how he thought the law ought to operate, not necessarily how it did operate either in the second century or earlier. This caveat aside, the *Institutes of Gaius* remain one of our most valuable sources for Roman law

[72] Schulz (1926) 162-164; Zulueta (1967) 6; Schiller (1978) note 20. There are some few instances in which glosses or short explanatory notes have been inserted into the text, likely by a careless scribe, but nothing like the wholesale emendation and re-writing which have been proposed. Studemund (*Apographum*, xx) notes that such insertions can be found at 1.53, 2.160, 3.56, 3.113, 3.126, 3.146, 3.196, 4.112.

in and before the early imperial period and will be used heavily in the chapters that follow. I have depended on the two-volume edition and translation by Zulueta from 1946, which itself owes much to Krüger's 1874 and 1884 editions.[73]

0.4.1.7. Theodosian Code

A code theoretically provides an image of the law at the time that it was compiled. For the *Codex Theodosianus* (*CTh)*, this was 438. It becomes apparent very quickly from reading the *CTh* itself, however, that it cannot be seen as a snapshot of a single moment. Rather it is a selective overview of the law in the period leading up to its compilation, as seen and filtered through the lens of law and society at the moment it was compiled. The codification project was commissioned by Theodosius II in 429, and, after a two-stage compilation and editing process, its sixteen books were completed and promulgated only a decade later. It contains laws which were originally promulgated between the years 312 to 437. More specifically, it set out to be a comprehensive collection of all the general laws issued by and after Constantine: *omnes constitutions, quas Constantinus inclitus et post eum divi principes nosque tulimus edictorum viribus aut sacra generalitate subnixas.*[74]

The exact process of compilation which was envisioned to achieve this lofty goal is not entirely clear, nor was it particularly uniform. We know that many laws were omitted from this codification, and that those that were included were often sub-divided by specific subject matter, emended, abbreviated, and even completely rewritten. Extraneous material was omitted.[75] There is also little

[73] Zulueta (1958), (1967); Part I, which contains the text, notes, and translation, was reprinted in 1958, and Part II, which contains a commentary, in 1967.

[74] *CTh* 1.1.5-1.1.6; Of note is the choice to begin this compilation with Constantine, ostensibly the first Christian emperor, and certainly the first to give laws on Christianity, either explicitly or implicitly.

[75] *CTh.* 1.1.6.; Matthews (2010) 29-41; Corcoran (2010) 97-119; The compilers were given the power to emend, rewrite and even add text to enhance the clarity of the law. In addition, not all laws from the given focus period were included in the *CTh.* As a result, we have laws (some 240, according to Corcoran) from the *CTh.*'s focus period which are omitted by its compliers, and which do make a later appearance in Justinian's code. These omissions seem to have centered around specific emperors such as Licinius who had been legitimate and were later declared usurpers. There has been quite a lot of scholarship, beginning with the great German legal historians of the late nineteenth and early

balance or uniformity in origin. For example, there is an over reliance on western sources for laws which originally dated to the mid- to late- fourth century, but after this point eastern sources take precedence.[76] Scholars believe the compilers drew not only on state archives in Rome, Constantinople, and Ravenna, but also on private legal collections, something which must have contributed both to the lengthy editorial process and to the inconsistency of the actual contents of the code. Additionally, the original contexts and wording of the original laws cannot be considered to have been entirely preserved, so for historical purposes the version of the laws within the text are more likely to be an accurate depiction of legal norms at the time of compilation than at the time that the law was originally written.

Moreover, the original text of the code is not preserved in its entirety in any extant source, so the reconstruction necessary for the creation of modern editions has proven quite difficult. Books 1 through 5 are sparsely attested in only one incomplete manuscript of the *CTh*.[77] Modern editors have therefore relied on other sources to reconstruct what these books may have said. For example, portions of the *CTh.*, including books 1 through 5, were preserved in a sixth-century Visigothic code, the *Breviary of Alaric*, which has been extensively used to compile the modern editions where the manuscript tradition of the *CTh* itself is lacking.[78] The *Justinianic Code* has also been used to reconstruct some of these gaps, because of its frequent reuse of constitutions from the *CTh*. However, because of the significant editorial intervention which occurred during the compilation of the *Justinianic Code*,

twentieth centuries, about the technicalities of how law was promulgated, recorded, and accessed even before the codes and in the codification process. The dating has also presented as also been a matter of debate specifically as it pertains to the code and potential corrections, both ancient and modern, on the basis of other ancient texts such as the *fasti consulares*. Seeck (1889) 1-58; (1919); Ando (2000); Matthews (2000); Sirks, (2010) 45-67.

[76] Seeck (1919) 2; Honoré (1998) 141-142; Matthews (2000) 284-285.

[77] Turin palimpsest – *T* - was destroyed in a library fire in 1904.

[78] The manuscript tradition for the *Breviary* is vast, complex, and varied. As Croke notes, "there are some complete versions, some incomplete ones, abbreviated versions and partially abbreviated ones." (2010, 226). MSS *A*, (C. 29 inf, Ambrosian Library, Milan) which is our source also for the *Gesta Senatus* (by which the code was promulgated in the West), has been heavily used in the reconstruction of especially the *CTh* 1, because it contains the full text of the code for 1.4.1 to 1.16.6. Matthews (2000) 87.

such reconstructions remain tenuous. Nevertheless, both are particularly important for these first five books, much of which would have otherwise remained lost.[79]

On the other hand, there is fairly good manuscript support for books 6 through 16. These books rely primarily on two manuscripts, *R* and *V*, as well as a handful of other more fragmentary texts which preserve their contents. The *Breviary* and the *Justinianic Code* continue to be used to clarify areas of confusion. The manuscript tradition of the *Sirmondian Constitutions* and the *Novels* is much more secure, and, as they were transmitted whole, they lack the issues of emendation and interpolation which plague the text of the *CTh*.

This means that the modern editions that we now use, and on the basis of which modern language translations are made, are thus the result of considerable modern scholarly compilation and reconstruction. We thus cannot be entirely sure that our modern versions actually do reflect the original text of the code. Additionally, while the laws included in the *CTh.* can give a general impression of the legal milieu at the time that they were first promulgated, their collection, abbreviation, and emendation for inclusion in the code also reflect the needs of the compilers and the realities of the society in which they were compiled. For this reason, assumptions or conclusions based on the absence of legal evidence should made cautiously, as any number of reasons could explain the absence from a law or topic from the modern editions of the *CTh*.

Finally, as with the majority of historical sources, the laws also privilege the upper classes. Where the laws are the result of a direct petition or appeal, the petitioner or appellant must have had the means to pursue the application to the imperial court. Otherwise, the degree of wealth assumed in many of these laws also suggest a primarily wealthy, upper-class audience. This does mean that, as a source

[79] For a fuller explanation of the reconstruction of each book, see Matthews (2000) 101-118.

text, it should be read with all these caveats in mind. It is best viewed in conjunction with other legal sources, which can help to contextualize both the texts themselves and the society in which they were first promulgated and then codified.

I have primarily used Mommsen and Meyer's 1905 edition, and my understanding has been informed by Pharr's 1952 English translation, which I have also read.

0.4.1.8. Corpus Iuris Civilis

The *Corpus Iuris Civilis* is a three-part (and later four-part) legal compendium commissioned by the emperor Justinian in 528 and completed in 535.[80] It consisted of four parts which were intended to capture all contemporarily relevant legislation and jurisprudence.[81]

0.4.1.8.1. *Digest*

The first of these four parts is the *Digesta* or *Digest* (or *Pandects*). These fifty books contain a compilation of jurisprudential texts from some of the most famous classical Roman jurists who wrote and worked between the reigns of Augustus and Diocletian. Spearheaded by Tribonian, a jurist and *magister officiorum* in Justinian's court, the project began in 530 and was completed in 533. The goal was to distill the vast amounts of extant legal opinion at the time into something that was definitive, consistent, comprehensive, and – crucially – up to date. As a result, much interpolation occurred, and in many instances the *Digest* should be read as a window into sixth-century Roman law, rather than as the exact opinion of any specific second-century jurist cited as a source. Uniquely, there exists a nearly complete, contemporary, Latin and Greek manuscript of the *Digest*, the *Codex Florentinus Digestorum*,

[80] Constitution *Haec quae necessario* (528) announced the plans for a new code. Constitution *Deo Auctore* (also knowns as *de Conceptione Digestorum*) (530) gave Tribionian the plan of the *Digest*. "The constitutions *Tanta* (*Dedoken* in Greek) and *Cordi* mark the successful completion of the *Digest* and the second code…"; Pugsley (291); Jolowicz and Nicholas (1972) 478-500; Humfress (2005); Frier (2016) lxxv-clxiv.

[81] *Constitutio haec, Constitutio summa, Constitutio cordi* - the three introductory constitutions which called for the initial edition, which then gave it the force of law, and which gave the second edition the force of law.

which seems to have influenced most, if not all, of the extant medieval Latin manuscripts. It dates to between 533 and 557.[82] As such, it forms the basis for modern editions.

I have used Krüger's 1908 *editio minor*.

0.4.1.8.2. *Codex*

The second part is the *Codex Justinianus* (*CJ*), also known as Justinian's Code, which was a twelve-book codification of extant laws in the tradition of the previous three codes, albeit a more comprehensive one. In fact, Justinian explicitly states that these earlier codes, supplemented by subsequent legislation, were to provide the source material for this codification. It was organized according to thematic titles within twelve books, but within each title, the laws were listed in chronological order. Like the *CTh*, the *CJ* also underwent a "cut-and-paste" style of creation, with editorial liberties taken vis-à-vis abbreviations, standardization, rewriting, and context. Legal words and concepts were switched out for up-to-date, contemporary equivalents. Especially where we do not have another, different attestation to the same original juridical text, it can be remarkably difficult to identify with certainty the presence of an interpolation. As the *CJ*'s constitutions date from the preceding four centuries, changes such as these can hardly be surprising.[83] Law changed a great deal over those 400 years, and the compilers of the code were tasked to include only what laws they saw necessary and to emend and revise where needed to ensure conformity to contemporary legal understandings.[84]

There were two original editions of the *CJ*. The first was not preserved after the appearance of the second, and, as a result, is poorly attested. The second, which appears to be quite different

[82] F = Biblioteca Medicea Laurenziana, Florence; http://www.bml.firenze.sbn.it/it/PDF/pandette.pdf; Honoré (2010); Kaiser (2015) 127-133.
[83] The sources of the code were to be the earlier Codices Gregorianus, Hermogenianus, and Theodosianus, as well as *constitutiones* promulgated after the completion of the *CTh*. This means that the laws on which these compilers were drawing has an original date as early as the second century.
[84] Frier (2016) lxxix – xciii; Kaiser (2015) 134-136.

from the first, provides the basis for our modern text of the *CJ*. The manuscript tradition of the code is not so old or so comprehensive as that of the *Digest*. While there does exist a late antique manuscript, the Verona Palimpsest, it is a fragmentary one, and is supported only by contemporary, smaller, fragmentary manuscripts.[85] The majority of the extant Latin manuscript tradition from the Middle Ages is unfortunately riddled with inconsistencies, corrections, and omissions. The Greek constitutions, for example, did not survive the Latin western manuscript tradition, and had to be recreated by the modern editors largely on the basis of eastern Church law or other summaries.[86]

In addition to the interpolation and editorial liberty which occurred in the codification process, the *CJ*'s transmission through the medieval West also saw dates, place names, headings and especially subscriptions treated with little care. Additionally, the contents of the Greek constitutions were largely omitted in western, Latin copies of the code. As a complete version of the *CJ* does not survive in the Greek/eastern manuscript tradition, the contents of the Greek constitutions have had to be reconstructed from sources like the *Basilica*, which lack headings and subscriptions. Krüger worked to address these issues in his primary 1877 edition (*editio maior* and *minor*), by drawing on wide variety of both Greek and Latin sources such as the *Epitome Codicis* (a later, abridged version of the *CJ*) and the *Basilica* (with its scholia), in an effort to fill in missing information or correct corrupted information wherever possible. Still, the editors of Frier's edition note that what exists today likely remains corrupted, particularly in terms of dating.[87]

Thus, like the *CTh*, the modern editions of the *CJ* may not actually reflect the original text of the code. Additionally, while the laws included in the *CJ* may be able to give a general

[85] Verona Bibl. Cap. LXII (60), Biblioteca Capitolare, Verona; sixth century. Epitome Codicis, c. 1050; A full explanation of the manuscript tradition of the codex can be found in Krüger's *Editio Maior* (1877).
[86] Such as the *Basilica*, a ninth-century, Greek law code commissioned by Basil I and completed by Leo VI.
[87] Lenski (2016: xciv -xcvi) notes that the Frier edition makes use of much of the recent scholarship on this point to inform their edition but directs readers to the ever-evolving *Project Volterra* website, which contains the most up-to-date comments on especially the later constitution.

impression of the context in which they were first promulgated – if we can correctly identify their date and location – their subsequent collection, abbreviation, and emendation for inclusion in the *CJ* means that they likely better reflect the legal context in which they were compiled as opposed to that in which they were first written.

I draw entirely on Frier's 2016 edition, which is a minor improvement on Krüger's 1877 version, and translation, and which owes much to Justice Blume's unpublished translation.

0.4.1.8.3. *Institutes*

The third part of the *Corpus Iuris Civilis*, the *Institutiones,* or *Institutes*, which was intended as a textbook for law students. It consists of only four books, and while it too contains selections from the jurists, it exists in a more abbreviated and educational format than the fifty-book *Digest*. The jurists and their works are not cited as they are in the *Digest*, but readers are frequently referred to the *Digest* for further information on a topic. It was also published in 533 and came into effect at the end of that year.[88] With it came a law which re-defined legal education and limited training material to these three works, which could be taught at only one of two sanctioned law schools, either in Beirut or Constantinople. Fragmentary manuscripts date from as early as the end of the sixth century, but the majority of the complete manuscript tradition dates from the tenth century onward. Exceptionally, there exists an almost complete record of a contemporary Greek introductory course on the *Institutes* (from 533 to 534) written by a man named Theophilus, who was one of the compilers of the *Institutes* itself. Not surprisingly this has also contributed a great deal to modern editions.[89]

I have used the 1921 edition of Krüger's *Institutiones Iustiniani*.

[88] *CJ* 1.17.2.
[89] *Constitution Omnem* (533); Kaiser (2015) 126-127.

0.4.1.8.4. *Novels*

The fourth part of the corpus is the *Novellae* or the *Novels*. Envisioned already in the *Constitutio Cordi*, the law which gave the second version of the *CJ* legal force, the *Novels* were intended to act as an addendum to the Code. Given their later date, the majority of the *Novels* were written in Greek, which was the primary language of the eastern empire, although a few were in Latin, which remained the language of law and high-level bureaucracy. A few were even written bilingually.[90] The *Novels* consist of the constitutions which Justinian and his successors passed in the years after the publication of the second edition of the *CJ*. They have not been codified, and as a result, most of the constitutions which were included in the *Novels* have suffered very little editorial intervention. It is unclear if (and how) a collection of these new laws was officially maintained, but a number of personal collections were created in an effort to keep everything up to date.[91]

Some of these larger collections have been transmitted to us *en masse*. The most famous of these is the *Collectio CLXVIII Novellarum*, which contains an unsurprising 168 Novels, of which nearly all are in Greek, and of which 156 were drafted by Justinian, four by Justin II, and three by Tiberius II, along with three Praetorian edicts (a proclamation issued by a praetor in the normal course of his duties). As it is the most complete, it forms the basis of modern editions. In the manuscript record, Greek and Latin *Novels* are generally preserved separately, although the *Authenticum* (a sixth-century, bilingual teaching collection adapted for use in Italy) contains 134 constitutions and provides a standard and interlinear Latin translation of the Greek. Finally, the *Epitome Juliani* includes 122 constitutions. It is witness to one previously unattested constitution and further serves to provide subscriptions which are

[90] *Novels* 111 and 112 are bilingual, and *Novel* 7 contain both a Greek and a Latin law.
[91] Pragmatic Sanction, (554); Kearley (2010) 379.

otherwise missing. Like the *Authenticum,* it was also created for Latin-speaking students of Roman law.[92]

I have relied on *Corpus Iuris Civilis* vol. 3: *Novellae* as edited by Schöll and Kroll in 1912.

0.4.2. Papyrological Sources

The class of sources known generally as the 'papyri' are those which contain text written in ink on moveable material. Rather unintuitively, this could include anything written on an ostracon (a piece of pottery), on parchment, on fabric, and – of course – on papyrus. The papyrological texts used here are all written on papyrus. As source material, the papyri offer a unique and unparalleled glimpse into the legal world of Late Antiquity. They contain the entire array of written material, from legal compendia to personal letters, and from imperial petitions to school children's exercises. They exist in vast numbers from Egypt especially because the dry and sandy climate is perfect for their preservation. In fact, they exist in such vast numbers, that museums, libraries, and universities have large inventories of papyri which have not yet been published. New volumes of new papyri and re-editions of old papyri are published regularly.

0.4.2.1 The Contracts

Within the papyri, there is a subcategory known as 'documentary papyri'. These are non-literary texts, including things like receipts, personal letters, tax rolls, and contracts, which are written on papyri. A large proportion of them are related in some way to legal or financial transactions. While they rarely provide a summary or prescription of the legal expectation for a specific transaction or situation, they do provide a view of how people interacted with the law and legal categories in their day-to day lives. Of course, not all types of papyrological documents are useful in this context, but contracts, which make up a significant proportion of the entire papyrological corpus,

[92] Kearley (2010) 377-397.

are particularly valuable. With respect to their purpose and implicit bias, contracts had and still have a particular and specific role to play in social and financial interactions, which affects how they recount the details of a transaction. Their role was, to state it simply, to accurately record the legally pertinent details of the transaction in order to protect the parties on both sides of the agreement from any future litigation or other unexpected conflict regarding the contracted matter. In this regard, their factuality is paramount.

Not all contracts are relevant to the question of adult female guardianship, however, because not all contracts contain women actors. In the following pages, I focus on contracts and other documentary papyri in which one (or both) of the parties is a woman. This can look different: sometimes women sign on their own, with or without the help of a guardian; sometimes they have another man write on their behalf because they (and their guardian) are illiterate; and other times they are represented by their husbands, who note that they are signing on their wives' behalf. Sometimes – rarely – there is no mention of a man at all.

The practice of written contracts was a longstanding one in both the Hellenistic world and in Egypt. In both the Greek and Egyptian legal systems - unlike in the Roman - a binding contract was made using the written word. Nevertheless, many Hellenistic and Egyptian people were not literate, so the act of drawing up a contract generally involved a scribe. Under Ptolemaic administration, acts could be drawn up by notaries and deposited in government archives, and a modified version of the archival system appears to have existed in the Roman era too. In these contracts, the parties (or their representatives if they were illiterate) generally wrote their own subscription, an abridged summary of the contents of the agreement, usually accompanied by some form of identification or signature. Many contracts thus contain multiple hands, generally at least three: the scribe who wrote the body, the first party, and the second party.

Roman contracts were oral and included a very specific, formulaic series of questions and answers called the *stipulatio*. In these cases, the written contract acted as a record, but it was solely that, a record. In and of itself, it was not binding. Written contracts made by Romans thus contain a mention of the *stipulatio* being asked and answered, as well as witnesses (usually seven), who could attest to the fact that the questions had been asked and answered correctly and that what was recorded in the paper contract had actually happened and was thus legally binding.

This was all happening at the level of the average person. While a scribe was generally employed to write up the contract (if needed), other legal input appears not to have been common in the Roman period. In fact, by the later centuries of Late Antiquity, people were going to whoever could write to have their contracts drawn up. These people usually signed their names, so we can see that local officials, soldiers, and clergy were common late antique scribes. Gone were the days of having a contract drawn up at a notary's office. This, in turn, leads to a little more flexibility in composition in the late antique contracts compared to those of the Ptolemaic or early Roman periods.

Despite the unique factuality of contracts, there remain the issues of publication, interpretation, translation, and modern context. The general understanding of a papyrological text can owe a great deal to the editor's assumptions. Something as simple as the title given to papyrus when it is published can lead scholars astray for several generations. This occurs particularly when a text is lacunose, when it lacks an immediately evident social or legal context, or when the editor does not have the background to understand the entirety of the available context. For example, a text we shall discuss in more detail later on, *P. Oxy.* XII 1467, was first published in 1916 by Grenfell and Hunt under the title "Petition for *ius trium liberorum."* This led generations of scholars to assume that women had to petition for the rights of the *ius*, rather than that it was a

right which was automatically received once sufficient children were born. Because of this, there is an increasingly frequent habit in scholarship of re-editing previously published papyri on the basis of a new understandings and treating perceived errors (beyond the most obvious of orthographic ones) with caution.

0.4.2.2. Digital Papyrology

The management of such a large and ever-growing corpus of evidence presents a challenge, and, as a result, I have consulted primarily published Greek contracts which are available on Trismegistos or papyri.info (primarily through the *Duke Databank of Documentary Papyri)*. This, out of necessity, has ruled out unilingual Coptic or Arabic documents because most of them are outside of my temporal boundaries, as well as the majority of undigitized texts, though published texts that exist only in print publications have been included in the interest of completeness. These came to light through their inclusion in secondary source material, or through my reading of print papyrological volumes.

Digital papyrology is, surprisingly, not a new field. Discussed as early as the 1970s both at conferences and in print, the use of digital computing methods for papyrological research has been envisioned almost as long as computers have been available for academic and personal use. These methodologies are varied and include everything from imaging software like Hierax,[93] which allows for the manipulation of papyrological images for increased legibility, to language learning models like Ithaca, which assist with the reading and editing of particularly lacunose inscriptions.[94]

[93] Hierax is available in open-source code at https://hierax.ch/
[94] Assael et al. (2022) 280–283.

Throughout all of this, there has been an emphasis on open source and open access tools and on sharing innovations between the fields of papyrology and epigraphy.[95]

Moreover, the wide variety of metadata made available with the advent of digital papyrology presents exciting new opportunities. Not so long ago, papyri were published individually in print volumes only, with no real method of comparison or tracking besides the slog of reading — and remembering — them all, which few could do. In addition, published papyrological series usually reflect a specific find spot: the *P. Oxy.* series contains papyri found at Oxyrhynchus, for instance. While the provenance of each individual text is noted when known, the organization of the published material itself can make geographical comparisons more difficult. Additionally, within each volume, texts are usually grouped by genre. Literary texts, and even texts by specific authors, are grouped together, as are documentary texts, letters, legal documents, and religious ones. Except in the case of new excavations, however, most of these documents have often been sitting in storage, uncatalogued, since the mass excavations of the nineteenth and twentieth centuries. There is often no longer any knowledge of the exact find spot or even exact documentary context – much of the historical context of these documents has been lost in the attempt to manage their sheer volume. Additionally, publishing bias towards known literary authors, earlier periods, and more complete texts has meant that the choice of content for any given volume of papyri has more to do with modern preferences and information management than with history.

[95] What follows is but a sampling of the many, many studies which were done, and continue to be done, on digital methodologies: Glickman (1970) 153–68; Kleve (1975) 201–203; Johnson (1994) 618–620; Baumann et al. (2011) 28-36.

Digital tools allow us to correct some of this. While contexts can be impossible to recreate and issues of publishing and preservation bias remain, tools like Trismegistos and papyri.info allow scholars to gain a more holistic view of the papyrological corpus. Using metadata in addition to the digital text, find spot, creation spot, date, language, material, author, people mentioned, and much more, is now relatively easy to track and compare – not to mention the ease with which the entire digital corpus of papyri can be searched for key words or phrases. The addition of high-quality digital images to some of these online texts also affords scholars the ability to consult the original text for themselves, without having to order photographs or pay the airfare to see them *in situ*. In some instances, where copyright allows, modern language translations are also included. All of these aspects enhance the accessibility of papyrological material for both specialist and non-specialist alike. [96]

The advent of accessible digital papyrological methodologies can be a double-edged sword, however. History is not, and will never be, a quantitative field. Nor, despite its many efforts, will papyrology. While we have vastly more papyri than we do any other written source from Antiquity, they remain statistically insignificant, given their often vast temporal and geographical spread. A shift from three documents which attest to a particular practice in the fifth century to six such documents in the sixth, can optimistically be framed as a doubling in the popularity of that practice. In reality, however, the numbers are so low that preservation, excavation, publication,

[96] Over the course of this degree, I completed two courses in order to further understand the technical capabilities of both papyri.info and Trismegistos: a fourteen-week Digital Papyrology Seminar hosted by the Institute of Papyrology at the University of Heidelberg and taught by Mike Sampson and a full week, intensive workshop hosted by the Institute of Classical Studies, University of London and Department of History and Cultures, Alma Mater Studiorum Università di Bologna on the topic of EpiDoc XML, digital papyrology and epigraphy run by Gabriel Bodard and Irene Vagionakis. These courses provided a strong foundation in Leiden+ and EpiDoc XML, as well as an intimate understanding of the functionalities of the two aggregators. It also gave me the opportunity to participate in a mass effort towards further digitization of papyrological texts during the Covid-19 lockdown, when print text were largely unavailable.

and digitization biases, as well as low initial levels of literacy are as likely to explain the fact that there exist three more documents in one one-hundred-year span than another.[97]

Similarly, search functions are only as rigorous and infallible as the scholars who design them. A search in either papyri.info or *Trismegistos* for the word κυρίου in the genitive in the documentary papyri from the second to the seventh century will return not only the desired phrases, μετὰ κυρίου and χωρὶς κυρίου, but also later uses of κυρίου as an honorific and as one of the emperor's key titles, which figures in both imperial texts, and, very frequently, in dating formulae on documents like contracts, both of which are commonly in the genitive as well.[98] Therefore, a graph of all of these search hits would tell us very little about the prevalence of guardianship in Late Antiquity, unless further filtering work is done. Conversely, such a search will not return desired instances of the word if it is split by a line break, misspelled, or concealed by a lacuna. Perhaps obviously, it also cannot return hits on texts which have not yet been added to the respective databases. In other words, it will never be entirely comprehensive. Thus, while digital methodologies can certainly be very helpful tools, they cannot be used while excluding older search methods. [99]

0.4.2.3. Use of Egyptian Sources

This use of papyri as the key source type for the late antique period does mean that I am situating myself primarily, though not entirely, in Egypt when it comes to the documentary material. Modern Roman historians have baulked at the suggestion of using Egyptian material to study the Roman period, claiming that Egypt was unique, a special province, and therefore different from

[97] See Bagnall and Cribiore (2006) for a discussion of the unsuitability of statistical analysis on such low numbers of documents given the vast temporal and geographical spread.
[98] The term comes to be used as an honorific similar to "My Lord", and thus appears in the salutation of letters, in front of men's names, in the emperor's titles (and thus also regnal dates), and, of course, in the titles of Jesus Christ.
[99] Reggiani (2017); Reggiani (2018).

the rest of the empire and its legal system. They argue that it is unwise to generalize, especially when the conclusions are based on what they consider to be a wholly distinctive place. This assumption too has seen challenges in recent years, with more scholars, such as Tuori and Humfress, agreeing that Egypt is distinctive primarily for the abundance of its extant source material, and not because it was particularly different from the other provinces. Although law and its application varied in time and place, "Egypt was not a special case but rather a part of the general legal development of the Roman Empire in which rules made in the center were used and recognized."[100] On this basis, I, too, understand Egypt to be a province that is legally unique solely because we do have this vast amount of papyrological evidence, and not because the province itself was considered to be special in some other way amongst the other provinces of the empire.

The evidence we have is distinctive in its own right, however. Unlike the symbolic or stylized representations of literary texts, the proscriptive and universal implications of legal sources, or the didactic and moral messaging of Christian texts, the contractual papyri are focused not only on the facts of one particular moment, but also on that moment as it related to only a handful of people, at most. The individualized, localized, and very specific nature of the contents of each contract means that they do not lend themselves to a generalizing approach. This is not an insurmountable issue. The specific, individualized nature of these documents allows me to problematize existing historical or legal generalizations. While one example to the contrary of a generalization could be written off as an exception, the presence of even a few more has the effect of proving the generalization incorrect. What these sources do not legitimately allow, however, is the construction of a new generalization; the examples are simply too few and too localized on their own. This type of evidence thus lends itself well to micro- or case- studies which can inject

[100] Tuori (2007) 52. See also Humfress (2007); Bryen (2011) 9; Meyer (2015) 85-96.

much needed humanity and individuality into the historical record. This method allows the historian to highlight the stories of specific people, while situating them and their stories within the existing historical narrative.

0.4.3. Christian Sources

In contrast to the wealth of documentary papyri with references to guardianship, there are almost no Christian sources which speak specifically about guardianship or even mention a guardian. In the pages which follow, I refer to one such rare source: the *Passion and Life of Susannah*.[101] What makes Susannah's *vita* relevant is her young age and the fact that her father leaves a will, appointing her not one, but two guardians. Her *vita* contains unique mentions of paternal power, inheritance legislation, guardianship, majority, marriage, and financial autonomy.

The text is a late antique one, generally dated to somewhere between the fourth and seventh centuries, though the correct date likely lies more towards the middle of that range.[102] It was originally written in Greek and set in early fourth-century Syria Palaestina. It, like many other texts of this kind, had a didactic purpose and was written several hundred years after its narrative setting. Both have an effect on how we can use and understand Susannah's story. While it is certainly a fascinating text to read, when it comes to its use as a source for writing history, it poses two key challenges.

First, the goal of this text is to transmit a message and teach a lesson, not necessarily to portray reality. As a didactic text, it is a part of a long history of Christian hagiography, some based on historical fact, and others comprising a purely fictional narrative. There are similarities among

[101] *Acta Sanctorum*, vol 6, 153-159, (*Bibliotheca Hagiographica Graeca* 1673-1673b); Susana is also mentioned in the *Menologion of Basil* II (c. 1000), *Vat. gr.* 1613 (AASS Sept 6.151-160) where her martyrdom for preaching the Gospel is commemorated; Bodnaruk (2024).
[102] Bodnaruk (2024) 423, n.5.

them all. Women tend to travel, to ultimately shun their sexuality, to pursue asceticism, to overcome temptation, and often to be mistaken for a man, only for a dramatic reveal at the end of the story. Susannah ticks all those boxes. Her shunning of sexuality was to avoid marriage, while other hagiographic heroines, like Mary of Egypt, left behind a life of gratuitous licentiousness. The genderfluidity in Susannah's story mirrors that of the stories of Pelagia, Thecla, Eugenia, Mary of Egypt, and others. Given these similarities, intertextual influences seem likely. As we also have no independently verifiable source for Susannah's actual existence, reading her *Life* as history is not possible. However, the author of her story did exist, and their impression of their own world and the world that they imagined for Susannah, can contribute to our historical understanding of guardianship.[103]

Second, the text has multiple temporal and geographical contexts, which need to be unravelled if we are to use it as a historical source. While the narrative situates itself in, at least, early-fourth-century Palestine, the author of the story is anonymous but almost certainly lived two centuries later. Given their geographical knowledge of the area, it is reasonable to conclude that the author likely lived near where the story was situated. We do not know enough about the places they mention, such as the monastery of Philip in Jerusalem, to tie those places to the temporal context of either the author or the story. We do, however, know a great deal more about the evolution of socio-legal practices between the fourth and sixth centuries, so portrayals of guardianship, paternal power, or female agency which seem out of place in a fourth-century

[103] A very great deal of scholarship has been done on the subject of women's *vitae*, gender fluidity and expression in Early Christianity, women's roles in the church, and so on. The following studies only brush the surface of the available scholarship on these topics but have been formative in my understanding of Susannah's *Life*: Castelli (1991) 29–49; James (1997); Clark (2002) 33-48; Cooper (2007) 165–189; Brown (2008); Efthymiadis et al. (2011) 35-94; Cohick and Hughes (2017); Bodnaruk (2021) 419–436.

context may well shed light on how these concepts were understood in the sixth. Afterall, a story always reflects the cultural background and understanding of its author.

It seems necessary here to highlight the fact that despite the strong presence of Christianity in the society upon which the latter half of my thesis focuses, it is not my primary subject of investigation. I do not envision this thesis as a study of how early Christianity understood guardianship or familial hierarchies of power, nor of the allegorical connections which could be drawn between the relationship of spouses and that of Christ and his church. Rather, since I shall examine how/whether social and legal forces, potentially including Christianity, may or may not have affected guardianship as it evolved throughout the centuries that make up Late Antiquity, Christianity will feature only when (if) necessary to explain that evolution.

Beyond simply asking whether (and when) Christianity had an effect on Roman law, the question is rather, if Christianity did have an effect on the law – and at some point it clearly did – to what extent did that change affect women in their daily lives? In this context, the question also becomes one of influence. Did Christianity influence the form or function of Roman guardianship, or, more likely, did the society that already had a firm paradigm for understanding women as legally inferior, give rise to a similar attitude in religion? Sources such as Susannah's *vita*, while more challenging to use, can add an interesting layer to our understanding of guardianship in this period.

0.4.4. A Combination of Sources

All of these source types, the legal, the papyrological, and the hagiographical, can work together to present a balanced and realistic view of guardianship throughout Late Antiquity. The various legal sources allow for a *longue durée* perspective on the theoretical evolution of guardianship as well as an overview of key moments of change in imperial understandings of its importance. The

papyrological sources contribute a more holistic perspective on how guardianship was used in the empire, was adopted by new citizens, and evolved throughout time and space. Crucially, they also allow us to view the social contexts in which guardianship existed and to compare its changes to key socio-political changes. Finally, the Christian sources allow for a more specific analysis of how the Christian movement conceptualized guardianship.

0.5. Outline and Plan

Having situated ourselves within the synchronic and diachronic fields of scholarship, discussed the conceptual frameworks, and set out the source material, it remains only to provide an overview of the subsequent chapters.

The thesis which follows is divided into two parts. The first, titled "The Legal Background: Paternal Power, Guardianship, and the *Constitutio Antoniniana*", addresses the significant classical forms of guardianship and male oversight over women over the span of three chapters. Chapter 1, "*Patria Potestas* in Classical Roman Law," returns to first principles and explains the *patria potestas*, and exemption from it, as the basis for all guardianship in Roman law. Chapter 2, "Guardianship in Classical Roman Law," establishes a baseline legal understanding of not only the classical guardianship of women, but also of other types of guardianship that could be found in the Mediterranean world in the classical period and links their existence to inheritance legislation and financial concerns. Chapter 3, "The *Constiutio Antoninitana* and Roman Law in the Provinces," explains the universal enfranchisement of 212 and illustrates its effect on provincial legal habits through the use of documentary papyri. Having established a concrete understanding of what Roman guardianship was and why it existed in the first place, I then turn to the question of what happened to late antique guardianship and to the *tutela mulierum* specifically in Part II.

Part II, "Decline and Disappearance? Guardianship in the Late Antique Documentary Papyri", focuses on the period after Roman citizenship was given to all inhabitants of the empire over the span of two chapters. Chapter 4, "The Effects of the *Constitutio Antoniniana* on Guardianship in the Provinces," discusses the third-century evolutions of law, *patria potestas*, and especially adult female guardianship in the context of new provincial citizenship. Finally, Chapter 5, "The Early Christian Woman and Guardianship in the Fourth to Seventh Centuries," establishes the state of adult female guardianship in the fourth to seventh centuries, and answers the questions, "what happened to the *tutela mulierum* in Late Antiquity?" and "why?"

PART I

THE LEGAL BACKGROUND:

Paternal Power, Guardianship, and the *Constitutio Antoniniana*

Part I: Introduction

Mulieres omnes propter infirmitatem consilii maiores in tutorum potestate esse voluerunt.[1]

A variety of forms of guardianship existed under Roman law, but the two most common of these were the guardianship of adult women and the guardianship of children. While we as modern scholars take great care to differentiate between the guardianship of minors and that of adult women, the Roman jurists did not. In fact, Gaius discusses the ins and outs of the *tutela mulierum* and the *tutela impuberum* together throughout his explanations of emancipation, succession, and patronage. As a result, it seems appropriate in a thesis on adult female guardianship to seek to understand the legal institutions which underpinned guardianship generally, before narrowing in on the *tutela mulieum* and the guardianship of adult women.

While these Roman forms of guardianship were considered universal (i.e. applicable to everyone), at least until the reign of Augustus, this did not mean that all Roman women and children had guardians. Far from it, in fact, because only those women and children who were *sui iuris* would have needed a guardian. A person who was *sui iuris*, was one who, for whatever reason, was no longer subject to *patria potestas*, the all-encompassing authority a father had over his extended family. Both women and children, and even many adult men, would have been *in potestate.* This meant that they would not have been able to own property of any sort or marry without the permission of their *pater familias*. It is commonly understood that his authority was so

[1] Cicero *Pro Murena* 12.27, "It was the will of the ancients that all adult women be in the power of a guardian on account of their laxity of judgement."

extensive that he could sell or even kill his wife and children under law. This paternal authority did not extend to public law, however, so a son *in potestate* could still run for office and vote in his own name.[2]

Like much of Roman law, the practice of *patria potestas* prioritized the agnate family, namely those persons who were related to each other through the male line. A *pater familias* thus had *potestas* over not only his sons and daughters, but also over the children of his sons and their children, and so forth. A person *in potestate* could be referred to as either a *filius familias* or a *filia familias*. *Filii* and *filiae familias* were legally *alieni iuris*, under the authority of another (as opposed to *sui iuris*, under their own power). The status of daughters depended on the type of marriage they contracted. If a woman married *sine manu*, it meant that, legally, she was not under the *potestas* of her husband (or his father if he himself was still *in potestate*), but retained her prior status, either *in potestate* of her father or grandfather or *sui iuris*. If she was married *in manu*, she was considered *in manu mariti*, that is, in the hand of her husband (or of his *pater familias* if the husband was no *sui iuris*).

There were two ways out of a father's authority, perhaps even three or four ways for women. First, if a *pater familias* died or lost his legal status, his children who had been *in potestate* became *sui iuris* automatically. Sons then became the *patres familias* of their own branches of the family. Second, as far back as the *Twelve Tables*, sons could also be emancipated if their fathers formally sold them three times; it is unclear whether or not this also applied to daughters either formally or in practice. Third, as I already mentioned, women could exchange their father's authority for that of their husband or his father if they contracted an *in manu* marriage. Fourth and

[2] *Digest* 1.6.9, "Filius familias in publicis causis loco patris familias habetur, veluti ut magistratum gerat, ut tutor detur. See Jolowicz (1937) 118-120.

finally, vestal virgins were *sui iuris* and free from any other legal oversight.[3] It was also possible for a person to enter into the *potestas* of another man via adoption, although the process varied depending on whether the adoptee was previously in the *potestas* of another or *sui iuris*.[4]

All this to say, if a person (man, woman, or child) was *in potestate*, they already had someone who was responsible for their every legal move, so they were not obliged to have a guardian. An adult male who became *sui iuris* either upon the death of his father or through emancipation also became the *pater familias* of his own family line. A woman or child who became *sui iuris*, however, required a guardian. This guardian was called a *tutor*, and this form of guardianship was called either *tutela mulierum* (for women) or *tutela impuberum* (for children).[5] As a result, the institutions of guardianship were, from a legal perspective, highly dependant on the institution of *patria potestas*. If *patria potestas* changed or evolved, legal institutions dependant upon it (or dependant upon exemption from it) must also have been affected.

Accordingly, we shall begin our exploration in Chapter 1 with an overview of *patria potestas* and its evolution until the early third century. Since *patria potestas* was essentially the foundation upon which all other familial relationships were constructed in Roman law, it will be essential to form an understanding of the practice and its evolution in relation to guardianship more broadly. This is especially important because the relationship between the *patria potestas* and the *tutela mulierum* has not previously been discussed in the context of the late antique evolution of guardianship.

---

[3] This was true also of the *flamines diales*, for men, but since *sui iuris* adult men were already free from any form of legal oversight, it is less remarkable than the guardian-less vestal virgins.

[4] See Jolowicz (1937) 118-120; Riggsby (2010); for a brief introduction of *patria potestas* as it relates to guardianship.

[5] Originally, the only group of women excepted from the *tutela* were the vestal virgins.

In Chapter 2, I shall focus on the legal developments in guardianship which occurred prior to the issuing of the *Constiutio Antoniniana* in order to provide a solid basis for a comparative examination of the late antique evidence. Whereas the first section of Chapter 2 will focus on Roman guardianship generally in order to demonstrate the relationship of guardianship to inheritance structures, the second section will focus on the origins, purpose, and evolution of the *tutela mulierum* specifically. It is here that I shall discuss the evolution of the Classical *tutela* and the associated *ius trium liberorum*, as well as the theories which have previously been put forward about their practice, purpose, and gradual change.

In Chapter 3, we shall turn to the *Constitutio Antoniniana*, what it was, why it happened, and what its effects were. This discussion of the edict which granted citizenship to almost all inhabitants of the Roman world in 212 will provide us with the opportunity to engage with the question of the effects of the citizenship on conceptualizations of law in the minds of the third-century Romans. We know that Roman culture and law did not spread to all new citizens at equal speed, to the same extent, or with the same accuracy. Both before and immediately after 212, we see a pluralistic legal environment in which people were actively forum shopping. That means the types of agreements, as well as the chosen legal system(s) and methods employed in any given contractual situation, were the ones judged most suitable for the situation by the relevant parties and may not have overlapped, in whole or in part, with the Roman system of law, even after 212.[6] By understanding how the inhabitants of the empire understood and interacted with Roman law

[6] There is always the question of whether a historian can rightly refer to modern categories of social, or in this case, legal, analysis. An insight from Mario Talamanca, drawn out by José Luis Alonso serves to guide my use of these theories, ideas, and categories: "Modern categories, *stricto sensu*, those that do not exactly correspond to the ones explicit or implicit in the Roman legal discourse, may only be employed with the awareness that they were not known to the historical agents and therefore cannot have had any influence on the. In other words: we may use them to describe a historical phenomenon, but not to explain it." Talamanca (1990) 12–13; Alonso (2013) 364.

more broadly from the third century onwards, we shall have a solid basis for the more focused investigation into late antique guardianship in Part II.

Chapter 1: *Patria Potestas* in Classical Roman Law

> Item in potestae nostra sunt liberi nostri quos iustis nuptiis procreauimus, quod iustis propilum civium Romanorum est; fere enim nulli alii sunt homines qui talem in filios suos habent potestatem qualem nos habemus.[1]

Patria potestas was a broad and sweeping power over descendants which was vested in fathers. It initially conferred on the *pater familias* two extensive types of power, power over the physical persons under his authority and power over family wealth generally. *Patria potestas* was far more than simply a means of disciplining family and controlling wealth, however. Structured as it was, the *potestas* formed the basis of the Roman family, defined kinship units, established inheritance structures, and conceptualized private ownership.[2] Changes to any of these areas may thus be reflective of a fundamental change in the form or function of the *potestas*.[3] In order to be able to recognize this change and evolution, it is necessary to first establish what the *patria potestas* looked like in traditional Roman law.

1.1. The Extent of *Potestas*

The existence of *patria potestas* apparently preceded the *Twelve Tables*, which in fact contains certain loopholes and fail-safe measures designed to curb the power of the *pater familias*, but we have no extant legal sources from this earlier period, so we know almost nothing about its earliest forms.[4] Much of what we know about the practice comes from the comprehensive summary of

[1] Gaius *Institutes* 1.55, "Likewise, in our power also are those of our descendants begotten in legal marriage. This right is unique to Roman citizens, for there are few others who have such power over their sons as we have."
[2] Dumont (1990) 475-495; Saller (1994); Gardner (1998); Vial-Dumas (2014) 307-329.
[3] The *patria potestas* and the structure of the Roman family unit has even been linked to the wellbeing of the Roman Empire. Jean Bodin (1962: 26ff), an influential sixteenth-century jurist, equated the breakdown of paternal authority in Roman families with the decline of the Roman Empire itself. This argument is taken up more recently by Shaw (2001).
[4] *Twelve Tables* IV.

patria potestas provided by Gaius in his *Institutes.* This can be further supplemented by selections from the *Digest* as well as some constitutions, contracts, court cases, and the like.[5]

Patria potestas vested in a father or patriarch the power of life and death over his descendants and absolute authority over any and all family property. He alone had ownership rights under civil law. A son might manage property for his father, but it was not technically his and would always revert to his father. Persons under this type of authority included not only the patriarch's own children, but also his grandchildren (and great-grandchildren), and, depending on the type of marriage that was contracted, also his own wife and the wives of his sons. This paternal power was considered unique in the ancient world because it extended past puberty, past the legal age of majority, and even past marriage.[6]

Not everyone a Roman man fathered would have been subject to his *potestas*. Gaius is very clear that the *Lex Minicia* states that for a Roman citizen to beget children who would be considered *filii* or *filiae familias*, he needed to have contracted a valid marriage. Essentially, he had to have married someone with whom he had the right of *conubium*.[7] Children born outside of this sanctioned type of civilly recognized marriage were not subject to the *potestas* of their biological father and were legally considered *spurii fillii*, or fatherless.[8] Exceptions could be made in the case of error about status, too, and Gaius spends considerable time on this. If either spouse was mistaken about the citizenship or legal status of the other – for instance, if a Roman woman married a man she thought was also a citizen and they had a child together – the law allowed the

[5] The term *pater familias* is used in different ways in the literature. Here we are specifically speaking about the legal term which is associated with *patria potestas*. However, *pater familias* was also used to refer to the head of a household, in contrast to a *mater familias*, who was the woman of the house. Saller (1999) 182-197; Zabłocka (2016).
[6] Gaius *Institutes* 1.136.
[7] Gaius *Institutes* 1.56-57.
[8] Gaius *Institutes* 1.64.

husband to attain the status of citizen and, along with it, *potestas* over their mutual child.[9] In all other instances in which the parents of a child did not have the same citizenship status, the law specified that the child retained the condition of the mother (slave, freed, and so on) and that the child was not subject to *potestas*.[10]

1.1.1. *Potestas* and Adoption

It was also possible to be adopted into the power of another, and, to this end, Roman law recognized two forms of adoption. If the adoptee was a *pater familias* in his own right, that is, if he was *sui iuris*, the adoption required the approval of a magistrate in a *comitia*, a gathering of the people. This type of adoption was called *adrogatio*. In order to gain the necessary approvals, Gaius tells us that both the adoptee and the adopter were questioned about their willingness to proceed with the adoption. If all was well, the magistrate could then formalize the adoption, which consisted of noting whether the adoptee was to have the position of son (or daughter), or of some more remote relation such as grandson, or even great-grandson. If the adoptee had descendants of his own who were in his power, that authority transferred to the adopter.[11]

Since the second form of adoption was the more accessible of the two, it must have been the more common. Because *adrogatio* required the consent of the *comitia*, it could only be done at Rome. If an adoption was processed in the provinces, it was the second form, which was called,

---

[9] Gaius *Institutes* 1.65-75.

[10] Gaius *Institutes* 1.87; Treggiari (1991) 44-49.

[11] Gaius *Institutes* 1.97-99, 103, 107; adoption functioned rather differently in this period than it does today. Rather than simply acquiring a child for the creation or expansion of a family, the Roman system allowed a man to legally acquire a *filius* or *filia familias* of any age, that is, he could add someone in his *potestate*, without necessarily including them in his family or home life This person did not necessarily hold the social position of actual son or daughter, though, but they were legally eligible to inherit upon their adoptive father's death. This was a way of providing oneself with a secure, legally supported heir. If immediate inheritance was not the goal, or the adopter wanted to leave the door open for a potential biological son or daughter, the adoptee could be recognized as a grandson or even a great-grandson.

not surprisingly, *adoptio*. This adoption was formalized by a high-ranking magistrate, such as the praetor, the proconsul, or a legate (*legatus*), depending on where the adoption occurred. While it seems that women were initially able to be adopted by *adrogatio*, Gaius refers to a recent imperial decision that stated that now women could only be adopted via *adoptio*.[12] Equally, it seems that there was some confusion about whether *sui iuris* minors could be adopted by *adrogatio* or only by *adoptio*, though at the moment that Gaius was writing his *Institutes* in the second century it was permitted, with some conditions. Finally, since adoption was understood to bring one person under the power of another, women were unable to adopt, by either form, since they were legally incapable of wielding the *patria potestas* in the first place.[13]

1.1.2. The *Ius Vitae Necisque*

Patres familias originally had the power of life and death over the descendants in their authority. This power was referred to as *ius vitae necisque* and seems to have allowed a father, contrary to the normal laws against homicide, to put to death a child who had, in some serious way, harmed the family unit or the father's authority. Situations such as a wife or daughter caught in adultery or a son caught sleeping with a stepmother might have warranted such a drastic form of familial discipline.[14] This right also forms the basis for a father's ability to choose whether or not to accept a newborn child into his family or to have it exposed, since an exposed infant would have likely

---

[12] Adoption of women must have been common enough to prompt the following statement by Paul in his *Sententiae* (2.26.1), *capite secundo legis Iuliae de adulteriis permittitur patri tam adoptive quam naturali adulterum cum filia cuius cumque dignitas domi suae vel generi sui deprehensum sua manu occidere.* "Under the second chapter of the Julian law, the adoptive as well as the natural father is permitted to kill with his own hand an adulterer caught in the act with his daughter in his own house or in that of his son-in-law, no matter what his (i.e. the adulterer) rank may be." The impression here is that both adopted and natural children were held to the same legal standard. As we shall see in the next section, and then again with the discussion of marriage and adultery, the rights of a father to avenge familial injustice, or *iniuria*, were closely tied to his *potestas*, and not necessarily to parentage.

[13] Gaius *Institutes* 1.100-107.

[14] *CJ* 8.47.10; *Digest* 48.9; Papinian *Collatio* 4.8.1; Caesar *de Bello Gallico* 1.16, 6.19. See also Baumann (1996) 32; Benke (2012) 286-288; Gaughan (2010) 23-52.

been raised by someone else, sold into slavery, or, rarely, left to die.[15] This right was abolished, and infanticide was established as a crime in 374.

In practice, however, even before 374, the *ius vitae necisque* seems not to have been frequently taken advantage of, beyond perhaps the choice to accept or expose an infant. While the *ius* remained a technical aspect of the law well into the imperial period, we have little concrete evidence for its use. This has led some scholars, notably Shaw, to argue that the practice was outdated, fossilized, and rarely, if ever, the basis for concrete action at a time at which we have the sources to attest to it.[16] Benke suggests that this position likely results from an "exaggerated skepticism towards the literary evidence" which do continue to mention the *ius vitae necisque*.[17] However, we also have non-literary sources which continue to mention the practice, as in *P. Oxy.* VI 744, which dates to 17 June 1 BCE, where a father writes that an unborn child is to be cast out if it is a girl.[18] We do continue to read about both *patria potestas* and *ius vitae necisque* in both legal and literary contexts, although it appears to be a limited right and not an absolute one.[19] It remains important to note, however, that the appearance of a legal phenomenon in either the literary or the legal sources is no guarantee that this phenomenon manifested itself in practice regularly or even at all. If it was indeed just a fossil of archaic Roman law, however, it retained a curious level of importance in both the popular imagination and in the law throughout the Republic and into the Empire.

---

[15] *Digest* 40.4.29; Harris (1986) 81-95; Israelowich (2017) 213-229. At page 93, Harris equates the two entirely and limits this *ius vitae necisque* to only the choice to accept a newborn child or not.
[16] Harris (1986) 81-95; Shaw (2001) 53-77.
[17] Benke (2012) 288, 298-299.
[18] Israelowich (2017) 213-229.
[19] *P. Oxy.* I 37 (49 CE); Dionysius of Halicarnassus 2.15.2; Cicero *de Legibus* 3.19.

1.1.2.1. The Ius *and Adultery*

In addition, legal practice regularly evolved, particularly as Rome's borders expanded. The *ius* was indeed no exception, as it was modified considerably throughout the Republic and early Empire. The first of these evolutions can be found in Augustus' law against adultery: the *Lex Iulia de adulteriis coercendis.* This law specifically provided that *alieni iuris* daughters, i.e. women who were still in their father's *potestas*, who were caught in adultery could be killed for the crime by their fathers specifically (not their husbands).[20] By linking punishment to the women's *alieni iuris* status, which was clearly tied to the *patria potestas*, Augustus was re-introducing or re-emphasizing an ancient right alongside his re-introduction of ancient *mores*.[21]

The practice must have remained in use, or at the very least part of the legal discussion, because, by the time of Hadian, fathers were warned against killing a son who had brazenly committed the crime of adultery with his stepmother.[22] Finally, by Constantine's reign, killing done by a *pater familias* was finally classed as parricide.[23] That the murder of a son or daughter

[20] See Dionysius of Halicarnassus 2.25.6; Pliny *Naturalis Historia* 14.14.89-91. A husband was, on occasion, permitted to kill his wife (for adultery and drunkenness), but this did not have to do with the *ius vitae necisque*, and instead saw the husband acting as an extension of the law. Aulus Gellius *Noctes Atticae* 10.23.5, In adulterio uxorem tuam si prehendisses, sine iudicio inpune necares […], "If you should catch your wife in adultery, you can kill her without a trial without fear of punishment." See also Westbrook (1990) 551-554, (1999) 208; Israelowich (2017) 216-217.

[21] See the section on marriage and adultery below. There is some suggestion by Benke (2012: 289) that this Augustan legislation captured an awkward moment of tension between a growing criminal law system and the traditional rights and responsibilities of a *pater familias.* If this was the case, Augustus's reiteration of paternal rights with respect to adultery committed by *alieni iuris* descendants, not only makes it clear that the *ius vitae necisque* persisted into imperial period, but also that contemporary law makers saw an ongoing place in their legal system for this right.

[22] *Digest* 48.9.5.

[23] Parricide is the technical, and notably legal, term for the murder of blood relations. Originally, according to the *Lex Pompeia* (*Digest* 48.9), fathers were simply not able to be guilty of the crime, but in 318 Constantine added them to the list and finally penalized the flagrant misuse of this power of life and death. See *CJ* 9.17.1; *CTh* 9.15.1; *Institutes* 4.18.6 and *Digest* 48.9. Nevertheless, since the *Digest* go on to speak about the right reserved for *patres familias* to kill an adulterous daughter along with her paramour, it does suggest that in certain circumstances even late antique law preserved this *ius vitae necique*, albeit in a much more limited way. (*Digest* 48.5.20-22). Paul also notes that if a father who is *alieni iuris* himself catches his daughter in adultery, he is not permitted to put her to death, because that is a right preserved for the *pater familias.* Paul also lets us know that he disagrees with that restriction "…permitti

by a father had not been classified as parricide before this date speaks volumes about the persistence of this aspect of paternal power. Finally, our last extant legal reference to the phrase *ius vitae necisque* can be found in a 323 law of Constantine, which notes that despite this seemingly all-encompassing power over life and death, the ancients did not allow a *pater* to "rob his children of their freedom."[24]

The right of a father over the life of infants, namely the decisions whether or not to expose a child, was eventually also removed, but it seems not until the reign of Valentinian, Valens, and Gratian. While this law was initially issued in Rome, its inclusion in the *CJ* indicates its continued acceptance throughout the East as well.[25] Thus, while we do see a gradual diminution of the absolute power of *patres* throughout the first four centuries of the empire. In the first two-and-a-half centuries, the practice seems to have continued both in the law and likely in some practical way. While fathers did clearly retain a degree of power over the actions of their descendants, by the third century the codes show that in egregious instances of misbehaviour on the part of children, magistrates could be employed to enforce the will of the father, rather than the father's enforcing it for himself.[26] Along with this gradual loss of physical power came further restrictions. Originally, fathers were permitted to sell their children, but that power too was restricted by Diocletian and Maximian at the end of the third.[27] Constantine clarified that impoverished parents

---

tamen ei debet, ut occidat" (*Sententiae* 2.26.2). Thus, while killing a son or daughter without cause might have been classed as parricide after Constantine, there were certainly instances in which it seems to have been permitted, and even sanctioned.

[24] C*Th* 4.8.6.pr; *CJ* 8.46(47).10.

[25] *CTh* 5.7.2, 8.51.2, 9.14; *CJ* 9.16.7, 8.51.2; issued in Rome on 7 February 374.

[26] *CJ* 8.46.3-4; Gaughan (2010) 42-52.

[27] *CJ* 4.43.1 (294); Gaius *Institutes* 1.162. This resulted in a situation called *capitis minutio* which is a legal degradation or change of status, in this case on the part of the child being sold. Since, however, children could be freed from *patria potestas* by being sold three times, this degradation of status was not permanent. According to the *Twelve Tables*, this provision was to prevent blatant abuse of power on the part of a father. The restrictions on selling and pledging children continued to increase throughout Late Antiquity, as we shall see in subsequent chapters.

continued to be able to sell children whom they were unable to provide for, so long as they did so immediately after birth. [28]

Patria potestas also gave the *pater familias* more than just control over the lives and deaths of his descendants, it also gave him final decision-making power over their persons. One of the major life decisions this affected was marriage. Strictly speaking, while a valid Roman marriage required nothing more than the consent of the involved parties, the consent that was legally important here was that of the *patres familias*, more than that of the betrothed. If the fathers did not approve, the wishes of the bride and groom were of little importance.[29] Since Roman marriage was governed by civil law, here too a son or daughter had few rights of their own if they were *in potestate*. If a valid marriage was conducted, a son *in potestate* might receive a wife in an *in manu* marriage. But that authority was not his to retain. Instead, it was vested in his father.

1.1.4. The Financial Implications of *Potestas*

Beyond corporeal control over his children, a *pater familias* was also in charge of the entirety of the family property (or most of it, at the very least). Any property his descendants came into would have been his to control and use. Because this right to all family property was vested in the father through the *patria potestas*, it became necessary to define exactly what sort of legal rights those *in potestate* actually had. In the first place, *potestas* only governed descendants in the world of private law, not public law. This means that a *filius familias* could run for public office, hold the full gamut of magisterial offices, act as a judge, or even be a guardian for someone else, all without his father's

[28] *CJ* 4.43.2.

[29] *CTh* 3.5.2.pr, 3.7.1; *CJ* 5.4.7, 5.4.12, 5.4.25; *Digest* 23.2.2; *Institutes* 1.10.pr; *Novel* 22.19; See also Corbett (1930) 53-67; Treggiari (1982); Arjava (1996) 29.

approval or input.[30] The *filius* and *filia familias* also had the basic rights of citizenship: *conubium* and *commercium*.

1.1.4.1. Potestas *and Citizen Rights*

The right of *conubium* allowed Romans, including *filii* or *filiae familias,* to legally contract a civil marriage. This right was not unencumbered by the *patria potestas,* however, because not only did the marriage of *alieni iuris* children require the permission of the fathers of the respective spouses, the children of that marriage also came under the authority of the husband's *pater familias*, the children's paternal grandfather. A similar paradigm applied in the case of an *in manu* marriage. Rather than coming under the direct authority of her husband, a wife who married with this type of marriage would have had a legal position similar to her eventual daughters. As such, she would also have come under the authority of her husband's *pater familias.* We shall cover *manus* marriage in more detail at the end of this chapter.

Commercium refers to the right of a Roman citizen or peregrine to transact business, make contracts, buy and sell property, and be a legal witness. A son in his father's power could legally act in all of those situations covered by the right of *commercium*, except that he could not make a will. This makes logical sense if you consider that since he could not own property in his own right, he would have had no property of his own to bequeath. When a son did make a contract, or when he bought property, which he could do, the actual ownership of that property or the contractual obligation or right was vested in his father, rather than in himself. Likewise, if he stood to inherit property, that property passed to his father.[31] Curiously, however, if a son borrowed

[30] *Digest* 36.1.14; Cf.1.7.3, 1.6.9; Jolowicz and Nicholas (1972) 118-120.

[31] Gaius *Institutes* 2.86, Adquitur autem nobis non solum per nosmet ipsos, sed etiam per eos, quos in potestate, manu manipiove habemus. "Our possessions are gained not only through ourselves, but by those we have *in potestate*, *in manu*, or *in mancipium*." See also Sherwin-White (1973) 33; Roselaar (2012).

money, that obligation was not passed on to this father; the *filius familias* "could be debtor, but not creditor."[32] He also could be sued independently, though rarely could he sue in his own right.[33] The same is true for a non-citizen.

Roselaar has suggested that the distinction between *res mancipi* and *res nec mancipi* was a key factor in *commercium*, something which she says is often ignored by modern scholars.[34] The transfer of *res mancipi* could only be actioned through a process called *mancipatio*. We shall discuss this in more detail below, but for now, it suffices to say that this was a process of Roman law under which only Roman citizens with full rights were protected in terms of property ownership and transfer. The transfer of *res nec mancipi* did not require such a process, and ownership could be transferred simply by handing over the property in question with the intent to transfer ownership. In other words, the transfer of *res nec mancipi* was not explicitly governed by Roman law and was open to all. Roselaar suggests that *commercium* only applied to the ability to dispose of *res mancipi* and did not seek to limit or control the transfer of *res nec mancipi*. Understood thus, *sui iuris* Roman women can be said to have had limited *commercium* rights. They could, with the correct approvals, dispose of *res nec mancipi*, make legally binding contracts, and generally conduct business. A woman could not, however, act as a witness.

While a *pater familias* would also have been ultimately responsible for all contractual obligations entered into by his *alieni iuris* descendants, it was not quite so simple a process. However, the system of *actiones adiecticiae qualitatis* provided a loophole. Fathers did not have to accept liability for something which affected them negatively, so Roman law built in a type of

[32] See *Digest* 50.17.133 for the logic behind this differentiatio; Cf. Poste (1904) 40.
[33] *Digest* 44.7.39. In certain rare instances, a *filius familias* could initiate a lawsuit. See Poste (1904) 41ff for further explanation.
[34] Roselaar (2012) 382. See the Glossary for a definition of *res* (*nec*) *mancipi*.

fail-safe which protected both the authority and rights of the father and contractual obligation. The act of *noxae deditio* allowed both *patres* and slaveowners to hand over their son or slave to the injured party instead of paying reparations or following through on negative contract. Gaius explains that this was the case since it would have been *iniquum* for a son to cause his father loss.[35]

1.1.4.2 Potestas *and* Peculia

This discussion of *commercium* and of contractual obligation implies that a son would have had money and/or property at his disposal, even if it was not technically his under the law.[36] This was indeed the case. Here again, the position of *alieni iuris* individuals mirrored that of slaves. Like a slave, a son or daughter *in potestate* could be given a *peculium*, namely money or other property which they could manage as if it was their own, though it was not, strictly speaking, actually their property.[37] Much of the existing scholarship, and indeed even legislation on the *peculium,* focuses on its relationship to slaves, slavery, and manumission, but studies on the *peculium* in the Republic and as a sub-category of the right of *commercium* remain lacking. Thus, there is little that can be said about how the *peculium* would have functioned specifically for a citizen son or daughter who was still *in potestate* before the time of Augustus.

In theory, a *pater familias* could take this money or property back as he pleased, but in practice this does not seem to have occurred often.[38] Arjava suggests that the lack of evidence for fathers taking back *peculia* is significant and reflects the fact that social norms likely prevented fathers from taking back a child's *peculium* as a method of discipline or control.[39] As we have

[35] Gaius *Institutes* 4.75; Benke (2012) 287.
[36] Gaius *Institutes* 2.87, 2.90.
[37] *Digest* 2.14.28.2, 34.4.31.3, 39.5.7, 41.2.14.pr, 42.8.12, 46.2.34.pr; Jolowicz and Nicholas (1972) 239, 256-258; Kirschenbaum (1987); Gardener (1993) 55-62; Arjava (1996) 41, (1998) 148-153.
[38] *Digest* 4.4.3.4, 34.4.31.3; *CJ* 5.18.7. Kaser (1938) 85-87, (1971) 344; Crook (1967 b) 119-120; Saller (1987) 396-397.
[39] Arjava (1996) 43, (1998) 153-154.

already seen, what was technically allowed by the law did not always (or perhaps even often) match the realities of daily life. Just because a father technically had a certain legal right, does not mean that it would have been common or even socially acceptable for him to act on that right. In this case, a lack of evidence may indeed suggest that reality simply did not mirror the prescription of the law.

There is another possible explanation. We do lack evidence specifically of *patres* who took back their *peculium*, but we also do not read about the threat of such an action. If the *peculium* was used as such a disciplinary measure, as Arjava suggests it might have been, we cannot expect to find evidence of that in the written sources. Conversations centering around the idea of "do this, or I will take your money" would likely have been held in person and would not have left a written trace. Thus, since we cannot expect extant documents to have captured such threats, it is hard to estimate whether this right was raised with the intended coercive effects or whether it was simply a relic of an earlier legal and social culture.

Despite the litany of sweeping paternal rights we have just identified, scholars are now careful to differentiate between current understandings of these rights and the earlier scholarly image we had of the Roman family as a large, extended family unit ruled by a long-lived and all-powerful grandfather. Scholars today point out that while the law did indeed allow for such a situation in practice because of the relatively low life expectancy and the older age of men at marriage and thus also at childbirth, men simply did not live long enough to collect several

generations of descendants under their power.[40] This logistical consideration aside, the law also evolved to allow the adult *filius* and *filia familias* more control over their own finances.

As with much of Roman law and society, the early Empire (and, of course, Late Antiquity) saw a number of changes to the practice of *potestas*. The major change was in the handling of finances. As the situation of the empire changed, the law added to the list of *peculia* (property held by people who were in *potestas*), which according to either the goodwill of the *pater familias* or according to normative law, was theirs to administer independently. The result of this is that while the person of the *filius* or *filia* and much of their property and wealth remained under the control of their *pater familias*, there were certain kinds of property or wages which the law guaranteed would be in their sole control.[41] Importantly, there were now a variety of ways to come into such individual property beyond simply relying on the goodwill and generosity of a *pater familias.*

The most famous of these *peculia* was the *peculium castrense*, wages earned as a result of military service. This *peculium* was extended to soldiers by Augustus, and it meant that men who

[40] Hopkins (1965) 309-327, (1966) 245-264; Frier (1982) 213-251; Saller (1986). 7-22, (1987) 82; Cantarella (2003) 281-298. Key to note is that while women seemed to marry quite young (in their mid- to late- teens depending on cultural and class differences), men often waited until their late twenties or even early thirties to marry. This is quite late given that Frier defines the average life expectancy of this period to be about twenty-five years. Saller nuances this figure by explaining that this probably meant that "approximately one-third of babies born did not survive the first year, and half did not live to age 10. Of those who did reach 10, about one in three then lived to 60, and only one in seven to age 70" (1986) 12. In practice, this means that of the children who reached puberty, the average life expectancy was much higher. Of course, this would also have differed by geographical region and class.

[41] The *peculium* of a *filius* or *filia familias* is similar to the *peculium* of a slave. In theory both *peculia* were the property of the father or owner, but in practice the child or slave could use these funds independently, as they saw fit. Rather than viewing this situation as consisting of a type of middleman investing or managing someone else's money, it would be more accurate to view this as a type of allowance, much like young children receive today. The existence and amount of the allowance is up to the goodwill of the parents, but after the allowance is received, a child can do almost anything with it. The fact that young children receive an allowance does not suddenly mean that they are of age or that their parents are no longer responsible for them or any liabilities they might incur. That the Roman *peculium* worked very similarly can be demonstrated in that slaves could and often did use their *peculium* to purchase their own freedom, paying it back to their master as if it was their own. If the Romans has viewed a *peculium* as money being managed by a son or slave for the *pater familias* or owner, such a transaction would have made no sense at all.

were involved in military service now had money which they could earn and manage on their own and which had not come from their father.[42] Later on, Constantine introduced a new type of *peculium*, the *peculium quasi castrense*. Constantine further extended the principle of Augustus' *peculium castrense* to include wages earned from other forms of imperial service, particularly from bureaucracy and administration, which began to be referred to as *militia* around the same time. This meant that *alieni iuris* sons retained legal and practical control over not only their military earnings, but also over their wages from the civil service. Strictly speaking, many citizen soldiers were not *sui iuris* and therefore their wage was – in a strict legal sense – not actually their own. In practice, wages earned by an *alieni iuris* son through military or administrative service were treated as their own. Not surprisingly, women were rarely, if ever, able to access these two forms of *peculia*.[43]

However, while these new forms of *peculia* largely only applied to men, women also were regularly granted a *peculium* by their *pater familias.*[44] It is unlikely that every daughter received a *peculium* (we do not know whether every son did either), but the situation for daughters must have been more complex since they would have also received a dowry at marriage, and thus may not really have needed that *peculium* after marriage as much as their brothers. Nevertheless, we do have significant enough evidence for daughters, both married and unmarried, receiving a *peculium* that Arjava concludes that this must have been a "common phenomenon."[45]

---

[42] *Digest* 49.17.11; The jurist, Macer, defines the *peculium castrense* as including "anything a soldier acquired which he could not have acquired had he not served as a soldier." This implies that the *peculium* could be extended to not just pay, but also spoils of war and donatives. See further Warner (2021).

[43] Jolowicz and Nicholas (1972) 428-429.

[44] *Digest* 6.1.65.1, 13.1.19, 13.6.3.4, 15.1.1, 27. pr, 23.3.9.3, 24, 33.8.6.4, 34.4.31.3, 37.7.8, 39.5.31.2; *Fragmenta Vaticana*. 255, 294; Arjava (1996) 43.

[45] The datable evidence, particularly that from the *CJ*, is a tad later than the period in question in this chapter (293/294). However, given the wealth of mentions in the *Digest* (above note), it seems likely that the practice was ongoing in the second century and the beginning of the third as well, if not earlier. *CJ* 4.12.3, 5.18.7.

This evolution in the *peculium* is telling in and of itself. While the Roman family had previously been studied rather extensively from a legal point of view, it is only in the last three decades or so that historians have begun to meld legal and non-legal evidence in an effort to paint a more comprehensive and holistic picture of Roman society.[46] At the same time, what we know of the law in Rome is highly theoretical and does not always accurately reflect the contemporary social reality, which can present some difficulty. The law does, however, seem to be shaped – if in a rather delayed sense – by social change. This is precisely why these changes to the *peculium* are so important. They represent a shift in family finances which must have begun far earlier, with sons pushing back against their father's legal right and practical ability to garnish their wages, particularly military ones.

1.2. Freedom from *Potestas*

While those *in potestate* gradually gained more financial autonomy over time, it was also possible to be free from *potestas* once and for all. This could occur in only a handful of different ways. The first of these was emancipation, namely a series of *mancipationes* and *manumissiones*. The act of emancipation effectively severed nearly all legal ties between an individual and their agnate relatives. Although it was originally likely designed as a method of checking the father's otherwise essentially limitless power, the *Twelve Tables* allowed that a son who had been sold (and remancipated) three times should be free from *potestas*. This provision was then later used, through a symbolic sale in triplicate, to formally emancipate descendants from *potestas*. Upon

[46] Saller (1986) 7-22.

emancipation, the newly freed person attained the status of *sui iuris* and became the *pater familias* of his own family line.[47]

While this act of emancipation could apply to both sons and daughters, the legal process seems to have been a little different. There is some question about whether a daughter would have needed to be sold the full three times, or only once.[48] If only once, it is also unclear why this difference in ritual may have arisen. Whatever the formula being used, it seems that it was not possible to compel a father by any legal means to emancipate his children. The choice was his own, and there is no discernible pattern to its usage, though this may be in part to our lack of extant source material.[49] Worth noting, too, is the fact that since men often married slightly later on in life than women and had children later, and the issue of emancipation may not have been a pressing one for many adult men, especially when Rome was at war, and many citizen men were dying at a generally younger age. For women, emancipation from their fathers did not come with the legal and financial freedom that it did for men. *Sui iuris* women, whatever their age, were subject to an additional form of guardianship, the *tutela mulierum*, which I shall address in detail in Chapter 2.

The second of these ways in which children might find themselves out of paternal power was simply through the death of the *pater familias*. This depended on the exact relationship of the *pater* to the person in question, however. If speaking of a literal father and daughter, his death

---

[47] Gaius *Institutes* 1.163; Jolowicz and Nicholas (1972) 119; As emancipation could break family ties in a legal sense, so too could adoption create these ties. As we saw above, two forms of legal adoption existed, depending on whether the adoptee was *in potestate* (*adoptio*) or *sui iuris* (*adrogatio*).

[48] Gaius *Institutes* 1.137, states that a wife *in coemptio* (a type of *manus* marriage), could be released through only one process of *mancipatio/manumisso*, just like a daughter *in potestate.* Similarly, by the time that Gaius is writing, a grandson only needed to mancipated and manumitted once, like the women. "quod in filio faciunt tres mancipationes, hoc facit una mancipatio in nepote." 1.135a.

[49] Gaius *Institutes* 1.137; *Digest* 1.7.31, 30.114.8, 36.1.23; *CJ* 8.48.3, 8.48.4. Papinian mentions one instance under the emperor Traian in which a father was successfully compelled to emancipate his son. *Digest* 37.12.5. See below on the difference between a daughter *in potestate* and a wife *in manu* in terms of this question. Gaius *Institutes* 1.137.

would have rendered her *sui iurus*. If speaking of a grandfather and granddaughter, his death would have rendered the son/father *sui iuris* and would have transformed him into the *pater familias* of his own family line. In a similar situation, if the son/father predeceased the grandfather, then the granddaughter would be *sui iuris* upon the death of her grandfather. While this may seem inordinately complex, the exact people who stood to be emancipated upon a man's death were carefully defined by inheritance legislation.[50]

In fact, the entirety of this complex system of family organization is focused on exactly two things: who gets whose money and how to keep that money within the family. Because of this, any changes to inheritance legislation may well have had deep reverberations in terms of civil law. Family money, and the correct management of said money, was at the root of much of Roman legislation on the family, including *patria potestas* and, as we shall see in the next chapter, guardianship. As we move on to a discussion the changes that occurred in both of these institutions throughout Late Antiquity, it will be important to keep these different levels of influence in mind:

[50] These rules, which also can be found as far back as the *Twelve Tables* (450 BC) largely dealt with intestate succession, that is inheritance needing to be disposed of in the absence of a will. For these purposes, the Romans defined relationship by degrees. The closer a person was to the deceased in terms of degree of relationship, the greater his or her intestate rights. A child was one degree removed from his father, and two degrees from his paternal grandfather and his sibling. Paternal aunts and uncles were three degrees removed, and cousins four degrees. Key to this system, though, is that women could only ever be the end points in a relationship, but never the mid-points. This is because Roman law initially considered women to belong to their birth family only, and not to their marital family. These relatives who could be traced back to a single forefather through the male line only were called agnates. Where this related to the *patria potestas* is in the categorization and prioritization of potential heirs. *Sui heredes* were the default heirs. They can be easily defined as the people who became *sui iuris* as a result of the man's death, namely sons, daughters, or even grandchildren on occasion. They would split the inheritance equally, regardless of their gender. Children who had been emancipated prior to their father's death were not included in this category. Additionally, women could not have *sui heredes* at all, since no one was made *sui iuris* on their death. And, if *sui heredes* did not exist, the inheritance then devolved upon the nearest agnate, which explains why women's heirs were generally their nearest agnate relative. This nearest agnate relative would usually have been a woman's father if he was still alive (one degree), or siblings (two degrees), but in a small family paternal uncles might stand to benefit as well. As we shall see in the next chapter, this seems to be the basis for the original form of adult female guardianship, to protect the finances of the agnate family by supervising a woman in her major financial transactions. See Jolowicz and Nicholas (1972); Riggsby (2010) 157-184.

did *patria potestas* change and affect guardianship? Or did the systems of inheritance shift, affecting the practice of both systems?

The third and final (practical) way to get out from under *patria potestas* was to become a priest or priestess. But not just any priest or priestess, however. Specifically, priests or *Flamines Diales* (of Jupiter) and vestal virgins lost all legal ties to their agnate family upon assuming their respective roles.[51] As we shall see in the next chapter, the vestal virgins were unique among Roman women in that they could exercise a great deal of legal agency in a way that other women could not, at least not for many centuries. At the same time, the price they paid for this was a thirty-year vow of chastity, the threat of being buried alive if they broke that vow, and a lifetime devoted to tending a sacred fire and learning and performing certain rituals. We shall return to the topic of vestal virgins in the next chapter when we discuss guardianship.

1.3. Marriage and *Potestas*

Related to and deeply intertwined with the idea of *patria potestas* is the concept of *manus*.[52] *Manus* was a type of control, much like *potestas* or guardianship, which was exercised over some married women. These women could be either *alieni iuris* or *sui iuris* at the point of their marriage. *Manus* did not depend on the legal status or independence of either spouse, but on the type of marriage that was contracted or, curiously enough, on certain actions taken by wives during the marriage

[51] Gaius *Institutes* 1.128-131. There were other ways in which a person might find themselves technically outside of their father's power. If a person lost Roman citizenship for whatever reason, his descendants would become *sui iuris*. Similarly, if a son *in potestate* ceased to be a Roman citizen, he would also find himself outside of the institutions of *patria potestas*. Furthermore, if a person is captured in war and becomes an enemy slave, all provisions of *patria potestas* are temporarily suspended, until such a time as he can make an escape, at which point he resumes his role as either the *pater* or *fil*ius *familias*. Finally, Gaius records that long ago, when Rome was establishing colonies in Italy "in Latinas regiones," sons who were sent to help establish these colonies were no longer considered to be *in potestate*, because they were considered citizens of the new colony, not Rome. As time progressed, qualifications for Roman citizenship expanded, but we can quite clearly see that the practice of *patria potestas* was tightly joined to citizenship. We shall discuss this further with question of the effects of the *Constitutio Antoniniana* in Part II.

[52] Gaius *Institutes* 1.108-115.

itself. Since not all marriages resulted in the wife's being *in manu*, it is necessary to say a few words about Roman marriage generally, before turning to the specifics of an *in manu* marriage.

1.3.1 The Act of Marriage

Women generally married, at least for the first time, in their mid- to late-teens, though there is evidence that some were indeed married in their early teens. Marriageable age depended on regional and class differences. Marriage was usually arranged by the parents of the future spouses, if they were alive, or by a guardian. A marriage was generally a political, strategic, or financial matter, not an emotional one. A *sponsalia* or betrothal often preceded marriage, and these would have been arranged by the parents or *tutores* of the young people. These agreements could be solidified very early on in a child's life, as early as seven years old for girls. While the consent of the betrothed was ostensibly required for the marriage to go ahead, in reality, they had very little say in the matter. Until the popularization of ascetic lifestyles under Christianity everyone was expected to marry, so for many accepting familial arrangements would have been the path of least resistance. [53]

It is true that many marriages may not have been organized in quite so orderly a way. Increasing legislation on abduction or *raptus* marriage suggests that at least some young people were taking matters into their own hands and eloping (to use a modern term) against the wishes of the bride's *pater familias*. We have no evidence of any legislation against abduction marriage prior to the fourth century, when Constantine introduced laws which strictly opposed the practice.[54] While *raptus* may have actually been a legitimate way for two young people to take their futures into their own hands, in practice it was seen as undermining the authority of the family and the

[53] Arjava (1996) 34; Hersch (2010).
[54] Evans Grubbs (1989) 59-83; Beaucamp (1990) 107-121; Arjava (1996) 37-39.

father. Like situations of pre-marital sex, a woman's consent meant nothing to the law if her father or guardian was not agreeable. A willing young woman running off with her lover was still considered 'abducted,' simply because of her legal incapacity and status as *alieni iuris*. Prior to Constantine, abduction marriages could be legitimized by retroactively obtaining the consent of the family.

When conducted in an orderly way and arranged according to social expectations (or when legitimized), marriages were often accompanied by a marriage contract which functioned much like a modern-day pre- (or occasionally post-) nuptial agreement. Because women typically received some of their family's property as a dowry, the exact financial agreements of her marriage were also carefully set out in the law as well as in these types of private contracts. Although Roman law required nothing more than the consent of the spouses and their *patres* or *tutores* for a marriage to be valid and legally binding, contracts were often drawn up to record the specifics of the dowry, the existence of any marital gifts, and the plans for this property in the event of a divorce. Naturally, this practice was usually limited to those marriages for which the marital assets made the trouble and expense of crafting a contract worthwhile. Where contracts do exist, therefore, their evidence is often skewed towards the wealthier, upper classes. Unfortunately, marriage documents do not survive in significant numbers anywhere except in Egypt, and thus are not terribly informative for our understanding of Roman law in the period before 212. We shall turn to marriage contracts and other documentary texts like these in Part II, when we examine the late antique changes to *patria potestas* and guardianship.

1.3.2. *Potestas* after Marriage

While the process of marriage itself was heavily influenced by *patria potestas*, paternal power did not end there. Marriage was not mentioned above as one of the ways of becoming free from

potestas. This is because marriage was not the key legal turning point for the late Republican or early Imperial Roman women that it was in the Greek world or in the later periods.

1.3.2.1 Manus *Marriage*

While a Roman woman could marry without *manus*, and thus retain her pre-marital legal status as either *sui iurus* or as a *filia familias*, she could also marry with *manus*, and this meant that she and all her property would have come under the authority of her new husband (or even of his father, if he was still *in poteste* himself). There were three ways that this *in manu* marriage could occur, by *confarreatio*, by *coemptio*, and by *usus*. *Usus* came into play if a woman cohabited with a man, presumably someone she considered her husband, for a full year.[55] If a woman wanted to retain her *sine manu* status, the *Twelve Tables* suggested that she simply absent herself from her husband's house for three consecutive nights once per year. Gaius notes that *usus* had, by his time, both fallen out of use and been partially legislated away.[56]

Confarreatio, the second type of *in manu* marriage, was largely confined to the patrician class. It was a complex religious ceremony involving the offering of a spelt cake to Jupiter Farreus, various formulae, and the presence of ten witnesses. Despite being an intricate, formal affair, the practice likely persisted because the priesthoods of Jupiter, Mars, and Quirinus, as well as the duties of the "ritual king" (*rex sacrorum*) were only open to those men who had been born into a *confarreatio* marriage and who had themselves been married in such a way. A woman who was in this type of marriage was not automatically freed from her father's *potestas* but was instead transferred into the *manus* of her husband or of his *pater familias*.[57] The practice was limited in

[55] Much like a common-law marriage in Canada.
[56] Gaius *Institutes* 1.110-111.
[57] Gaius *Institutes* 1.112; As well, it was nearly impossible to get a divorce in this type of marriage, which may have contributed to its general unpopularity.

the early Empire, and likely died out completely by the point at which Christianity had become popular.[58]

Coemptio, the third type of *in manu* marriage, was a type of sale or *mancipatio* by which the husband "purchased" his bride in front of a minimum of five witnesses and a "balance holder" (*libripens*). This is referred to as matrimonial *coemptio* and resulted in an *in manu* marriage. *Coemptio* also played a role in divorce for an *in manu* wife, as it successfully broke her legal ties to her husband. Fiduciary *coemptio*, on the other hand, was a similar process through which a woman would convey herself to a male third party to initiate the process of obtaining a new guardian or to gain the ability to write a will. The entire *coemptio* process was dependant on old Roman fundamentals of manumission. In it, a woman would essentially sell herself to someone who then remancipated her to the person who would be the new guardian. For that person to formally become her guardian, he then manumitted her by the form of *vindicta* and thereby becomes her fiduciary guardian. It was also possible for a woman to make only a fiduciary *coemptio* with her husband, and not a matrimonial *coemptio*, in order to avoid the *in manu* marriage, but Gaius does not go so far as to say that this was specifically necessary for the husband to be considered as his wife's *tutor* or guardian.[59]

Like a daughter *in potestate*, a woman subject to *manus* by either matrimonial or fiduciary *coemptio* could be released by a process involving only one *mancipatio* and a subsequent manumission (whereas *alieni iuris* men would have required three).[60] This would result in a *sui*

[58] The legal power of this type of *manus* marriage (which likely outlasted the other simply out of religious need) was constrained by laws of Augustus and Tiberius. Gaius tells us that there was a *senatus consultum* of the consuls Maximus and Tubero, which had limited the transfer of *potestas* from a father to husband in the context of a *confarreatio* marriage. He simply states that a wife who is *in manu* by means of this type of marriage, was not free from the *potestas* of her father. Gaius *Institutes* 1.136; Tacitus *Annals* 4.16.

[59] Gaius *Institutes* 1.113-115b.

[60] Čoláková (2021).

iuris woman who was eligible for the *tutela mulierum*.[61] It is worth noting, however, that at least by the time that Gaius was writing, *coemptio* was seen as a woman "conveying herself" not as a woman being sold by another.[62] This process of self-conveyance for the purposes of obtaining a particular person as guardian will be discussed further in Chapter 2.

The process of *coemptio* was also the legal method by which women were able to draw up a will. The need for this was abolished by Hadrian, who gave women the ability to compose a will without jumping through additional legal hoops.[63] After this, a woman who was above the age of twelve was able to make a will as a man, provided that, if she was *in tutela*, she obtained the approval of her *tutor*. However, in practice, women were able to compel all but *patres-tutores* and *patroni-tutores* to give their assent to their will in court. These two groups of *tutores* retained additional rights over their wards which other *tutores* did not. As a result, Gaius suggests that a woman's will remained valid even without her guardian's approval and even without going to court, as long as the guardian in question was not a freewoman's father or a freedwoman's patron.[64]

In all these cases, at least originally, the woman's legal ties to her agnate family were broken, and she took a legal place equivalent to that of her husband's daughter, with all of the

---

[61] Sons *in potestate* had to be mancipated and manumitted a total of three times, but grandsons and women were only subject to one round of *mancipatio* and manumission. The reason for this is that the three-fold process is mentioned in the *Twelve Tables*, but specifically only in the case of sons, not wives, daughters, or grandchildren. The Romans thus had the latitude to simplify the process for those unmentioned groups of people. Gaius *Institutes* 1.132, 137.

[62] Gaius *Institutes* 1.114.

[63] Gaius *Institutes* 1.115. Olim etiam testamenti faciendi gratia fiduciaria fiebat coemptio: Tunc enim non aliter feminae testamenti faciendi ius habebant, exceptis quibusdam personis, quam si coemptionem fecissent remancipataeque et manumissae fuissent; sed hanc necessitatem coemptionis faciendae ex auctoritate divi Hadriani senatus remisit. "Formerly a fiduciary coemption took place for the purpose of acquiring power to make a will, for women, with some exceptions, did not then have testamentary capacity unless they had made fictitious sales of this kind, and after having been resold, were manumitted; but the Senate, at the suggestion of the Divine Hadrian, abolished this necessity of making a fictitious sale."

[64] Gaius *Institutes* 1.112, 118-122.

rights that that guaranteed to her husband or his *pater familias*.[65] One key legal difference between a wife *in manu* and a daughter *in potestate* is that the wife could compel her husband to remancipate her to anyone she chose, in line with her ability to compel her husband to release her from his *manus* in the case of divorce; the daughter would have had no such ability.[66] Despite these three seemingly well-defined categories, we do see that *in manu* marriage of any sort gradually becomes less and less popular throughout the Republic. The Augustan and Tiberian changes to the *confarreatio* suggest that *in manu* marriage was well and truly on the way out. Certainly, by the time that Gaius is writing in the second century, this practice of *in manu* marriage had become obsolete.[67]

Lest all this be interpreted incorrectly, however, it is necessary to emphasize that marriage in the late Republic and early Empire was not the turning point in a young woman's (or a young man's) life that we might understand it to be. Rather, emancipation from paternal power was the key shift in both financial ability and family affairs. This emancipation might indeed have happened at marriage from time to time, but it was not tied to any fixed milestone nor guaranteed at all. In Part II, we shall see how this changes over time as marriage and coming of age begin to

---

[65] In this regard, *manus* marriage looked much like *patria potestas* since the husband or his *pater familias* had the power of life and death over the wife as well as over her property (though a technical distinction was made between the wife's property and the husband's since her property would have been expected to return to her natal family upon her death.) See Livy *ab Urbe Condita* 39.18; Tacitus *Annals* 13.32; Gaius *Institutes* 2.98 "…sive quam in manum ut uxorem reciperimus, eius res ad nos transeunt." "If we […] receive a wife in our hand; the entire property of any of said persons passes to us." Augustus and Tiberius limited the comprehensiveness of this breaking of ties with the agnate family in the context of *confarreatio* marriage, in the context of changes to the priesthood. After this point, *confarreatio* (and we can assume *manus* marriage generally) amounted to a change in family only for religious purposes, (i.e. a woman married in such a way assumed her husband's household gods), but her legal position in her birth family remained unchanged. If the only type of *manus* marriage with any extraneous purpose saw a downgrade in legal effect, it does suggest that the Romans of the period considered the entire process tedious and unnecessary.

[66] Gaius *Institutes* 1.137; Benke (2012) 290.

[67] He kindly introduces his section on different types of *manus* marriage with the words, "Olim itaque tribus modis in manum conveniebant, …" Gaius *Institutes* 1.110. This *olim* gives us the sense that this was long in the past, and that here he was explaining an ancient mode of marriage with which many of his readers may not have been familiar.

be emphasized in a very Greek fashion, and as family structures gradually evolve to prioritize the nuclear family rather over the agnate or patrilineal family.[68]

1.3.2.2. Paternal Power and the Husband

This discussion of marriage helps to illustrate that while adult sons *in potestate* might find themselves dealing regularly with their father and his all-encompassing civil power, that would likely not have been the case for adult daughters. Since women were generally married by their late teens or early twenties at the latest, these daughters would have left their family home, moved in with their husbands and potentially their husbands' family. There, even if married *sine manu*, they would have lived their lives under the daily authority and control of their husband and in-laws. In such a context, the *pater familias* would technically have had authority over his daughter, but practicalities of daily life would necessarily have limited his control to certain major legal moments.

1.3.2.2.1. Adultery

One of these potential moments was captured in the *lex Iulia de adulteriis coercendis*, a law promulgated by Augustus which entitled a father to kill an adulterous daughter along with her paramour. While this right was carefully restricted to very specific circumstances, Augustus also established adultery as a criminal act, with accompanying public court appearances, to ensure that an adulterous woman could be penalized regardless of her legal status.[69] The key specification in in the *lex Iulia de adulteriis coercendis* was that the daughter be *alieni iuris*. A father could not kill a daughter who was *sui iuris*, but he could kill a daughter who was *in potestate.* A father who was *in potestate* himself could also not kill his daughter for adultery; that right belonged then to

[68] Vial-Dumas (2014) 320-321; for example, the first century *Lex Claudia* ended the default agnate guardianship of adult, *sui iuris* women, and Hadrian finally allowed women to write a will without having to jump through a complicated series of legal hoops to avoid agnate claims to the estate.
[69] See Benke (2012) 284-308.

his father, who had authority over the both of them. This distinction brings the power that a *pater familias* technically had over his descendants into sharper focus.[70]

Some scholars disagree that this power to kill an adulterous woman was based on the *pater*'s *ius vitae necisque*, but the jurists clearly had a different view of the matter.[71] Combining both Papinian and Ulpian's legal expertise on the matter, *Digest* 48.5.21-22 reads: "Patri datur ius occidendi adulterum cum filia quam in potestate habet: itaque nemo alius ex patribus idem iure faciet: sed nec filius familias pater. (Sic eveniet, ut nec pater nec avus possint occidere) nec immerito: in sua enim potestate non videtur habere, quinon est suae potestatis."[72] This is specifying that a man who is himself a *filius familias* cannot exercise these rights over his own descendants. The right of life and death remains vested in, and only in, the *pater familias.* Paul presents a similar image of the situation "Filius familias pater si filiam in adultero deprehenderit, verbis quidem legis prope est, ut non possit occidere: permitti tamen ei debet, ut occidat."[73] Here however, we get a comment, an insight into the legal mind of the late second/early third century. Paul notes that while the law restricts this power over life and death to a *pater familias,* the direct father of a woman caught in adultery ought to have this right himself.

Augustus' decisions about adultery reflect the Roman legal concept of *iniuria.* Gaius notes that a man could suffer *iniuria*, or insult, not only through himself, but also through his children

---

[70] *Digest* 48.5.21, 48.5.22.

[71] McGinn (1998) 202.

[72] "A father is granted the right to kill an adulterer along with a daughter whom he has *in potestate*, therefore no other [kind] of father may lawfully do this, including a father who is a son *in potestate* [himself]. (Thus it will happen that neither a father nor a grandfather may be able to kill) nor is this unreasonable, since a man who does not have himself *in potestate* seems not to have others *in potestate.*"

[73] Paul *Sententiae* 2.26.2, "If a son *in potestate*, who is a father, should surprise his daughter in the act of adultery, it is required by the words of the law that he cannot kill her; however, he ought to be able to do so." See also Paul *Collatio* 4.12.2; Benke (2012) 290-292.

in potestate or a wife *in manu.*[74] This becomes clear, not necessarily in adultery, but in a related instance which we might treat as sexual harassment. If a man attempted to seduce a woman, this was considered *adempta pudicitia*, or a removal of her virtue/chastity, something which fell under the legal umbrella of *iniuria*, or injury. In this type of a situation, it was not only the woman who could take legal action against her would-be lover, but also her father, her husband, and, at one point, even her fiancée could claim that they were insulted. An offence against the body or chastity of a woman was also considered an offence against the men who had a stake in that body or that chastity.[75]

Adultery would have been treated in much the same way. It affected the family, and therefore it was a concern of the broader family. Considering that fathers possessed (an already somewhat limited) power over the life and death of their descendants, Augustus' legislation was simply outlining the exact situations in which the exercise of this power would not result in sanctions upon the father. Augustus is simply saying that this is one of the instances in which it would have been appropriate to act in accordance with the right, provided, of course, that the daughter was *in potestate* or *in manu*, and provided that the father had caught her in the act, either in his home or in her husband's. Retribution also had to be immediate. No delay was permitted.[76]

1.3.3. *Potestas* and Divorce

Divorce is another of these key moments in which we can see the *patria potestas* at work. This is because, in theory, a *pater familias* was able to compel the divorce of his *alieni iuris* children.[77]

---

[74] Gaius *Institutes* 3.221. See also *Digest* 47.10.1.3-9; Benke (2012) 287.

[75] *Digests* 47.10.1.2-9, 47.10.9.4, 47.10.15.24, 47.10.18.2; Ortner (1978); Dixon (1982); Joshel (2002) 174; Benke (2012) 297.

[76] Benke (2012) 289.

[77] *CJ* 5.4.11, 5.17.5; *Digest* 24.1.32.19, 43.30.1.5; Paul *Sententiae* 2.19.2, 5.6.15; *Fragmenta Vaticana* 116; Arjava (1996) 44, 117-192. *Manus* on the other hand, had little legal effect in the case of divorce. Gaius notes that there was

Certainly, we read about politically motivated divorces among the very upper classes - think for instance of Livia, the wife of Augustus – but these seem to originate with the husbands, more so than the fathers. It is also hard to know how far this political game of marriage and divorce reflects the reality of the majority of the population. In practice, however, the famous case of Dionysia in 186 shows that there were often other issues at play, and *patria potestas* did not always take precedence over the wishes of a couple. In such cases, not only the written (and later codified) law was important, but precedent too served as a basis for later legal decisions much as it does in Canadian law today.[78]

1.4. Paternal Power Outside of Rome

The rest of the Mediterranean seems to have treated paternal power rather differently than the Romans did. Gaius highlighted as much in the quotation which introduced this chapter. That being said, because family and its legal and social structures are such a key part of society, we do not tend to see rapid change in them.[79] When we do see change, it often takes considerable time, several generations even, and generally has some sort of catalyst. As we shall see in Part II, the decades and centuries after the *Constitutio Antoniniana* did see considerable evolution in family structure and familial hierarchies. In some cases, we can see this evolution beginning to occur earlier, too. In those cases, it seems clear that the impetus for this was the interaction between Roman law and customs and the law and customs of the peoples that Rome had conquered.

---

one significant difference, legally, between a wife *in manu* and a daughter *in potestate*. A wife is able to demand a divorce and therefore remove herself from the *manus* of her husband on her own terms, whereas a daughter had no agency with respect to her father's *potestas*.

[78] *P. Oxy.* II 237; see also section 3.2.1.

[79] Saller (1986: 15) even questions why, if his model is correct, and only a small number of upper-class men were actually *in potestate*, the practice of *potestas* even continued at all.

To be able to understand this phenomenon of legal syncretism, it is helpful to know a little about the customs and laws of the peoples that Rome had conquered. By and large, very few other peoples had an institution similar to the Roman *patria potestas.* All seem to have had their own specific version of paternal power, but almost none of these powers were as sweeping and pivotal as the Roman. Gaius writes that the Galatians had a very similar institution, but his mention of it unfortunately represents almost the entirety of our knowledge on the subject.[80] For the large majority of the other peoples and nations who were conquered by Rome, we have almost no information at all, except where their legal systems had been influenced by Greek law.

1.4.1. Greek Paternal Power

We can, thankfully, say a little more about the Greek legal system, which by the beginning of the Roman Empire had pervaded a large majority of the eastern Mediterranean, thanks to Alexander the Great and his successor generals. Nowhere can this be better seen than in Ptolemy's Egypt. After Alexander's death, one of his generals, Ptolemy, had succeeded in obtaining Egypt as his kingdom. He and his son installed a typically Greek administration with Greek laws, Greek power structures, and Greek systems of record-keeping and appeal. Notably, these were originally designed to apply only to the Greeks in Egypt (though the Ptolemies thought of Greek identity much differently than the Romans thought of Roman citizenship.)

It is common, particularly in evaluations of the *patria potestas* in the earlier periods of Roman history, to compare it to the Athenian system. Whereas in the Republic, a Roman father had full power over the people in his family regardless of their age as well as full ownership of all family property, an Athenian patriarch had significantly less power. He was the guardian, or

[80] Gaius *Institutes* 1.55; Ceasar also alludes to the fact that Gallic men had the power of life and death over their wives and children: "Viri in uxores, sicuti in liberos, vitae necisque habent potestatem." (*de Bello Gallico* 6.19).

κύριος, over his own wife, in a system somewhat similar to *manus*, and over his minor children. Unlike the *patria potestas*, this guardianship did not give the father the power of life or death over his descendants beyond the initial decision to accept or expose an infant. Similarly, nothing like the *noxae deditio* existed in the Greek system.[81]

Guardianship over children came to an end at their majority.[82] Not only was his guardianship more limited in scope, so were a father's rights to family property. Greek fathers did not have full ownership rights over all the family property. Instead, adult children and even wives, to some extent, could own property in their own right, manage it themselves, and dispose of it at will. This represents a considerable difference in family finances, and a considerable difference in the aims and goals of paternal oversight in the Greek and the Roman systems. While the Roman father could dispose of his own property as he pleased, including in his will, Athenian law required that family property be left to the legitimate heirs, thus further protecting the financial interests of the children over the power of the father.[83]

1.4.1.1. Greco-Egyptian Paternal Power

Under the rule of the Ptolemies, Egypt seems to have adopted a legal system very similar to that of Athens, about which we know a considerable amount. A modified version of this system remained in use for non-Romans in Egypt after the Roman conquest, since only Roman citizens were expected to adhere to Roman law. Conquered nations were expected to continue relying on their own systems of law. In Egypt, this was usually referred to in Roman legal texts and court

[81] Crook (1967) 113-122.

[82] Something which often coincided with their marriage in the case of young women. Although the sources to not exist to prove it, it seems likely that in practice, women were under their father's guardianship until their marriage and then under their husband's.

[83] There has been considerable effort devoted to hypothesizing why Greece and Rome may have come to have such different manifestations of paternal power and familial organization. See Crook (1967 b) 114.

documents as the "Law of the Egyptians" even though it was neither a codified legal system, nor particularly Egyptian in nature. Instead, after the Roman conquest, the indigenous law used in Egypt by non-Roman inhabitants was a Greco-Egyptian hybrid.[84] Unfortunately, we do not have as comprehensive an explanation of how paternal power would have worked in this Greco-Egyptian system of law as we do for the Roman system in the *Digest* and Gaius' *Institutes*, and as a result, we are left dependant on documents like contracts and wills to give us a glimpse of how the system operated in practice.

There appears to have been less of a clear distinction between paternal power and guardianship in the Greco-Egyptian system, especially for women. The contracts support the idea that women were always required to operate with male supervision in Greek law, something which had not been required in the Egyptian system.[85] After marriage, their guardian was usually their husband, if he was living, but could also be a son. Before marriage, fathers frequently appear in the role of κύριοι, as do brothers, and occasionally undefined kin. [86] The use of the term ἐπίτροπος, which is generally understood to refer to a guardian of an underage person in the Greek system, appears both in the context of orphans[87] and in instances in which the ἐπίτροπος is said to be the father himself.[88] Thus, it is difficult to differentiate exactly where paternal power ended and guardianship began. Additionally, since the word ἐπίτροπος is only rarely used in the context of female wards, the use of κύριος for women of presumably all ages further complicates the issue. As a result, we shall examine the state of Greco-Roman oversight in Egypt in more detail in the

[84] Taubenschlag (1955: 6-7) and Mélèze Modrzejewski (1970: 331-334) propose that there was, in fact, a formal codification of this law of the Egyptians in the late first or early second century. More recently Yiftach-Firanko (2009: 555) has posited that this law was universally applicable to all non-Romans in Egypt at this time. As Bryen (2011: 24) rightly notes, however, there is woefully little evidence to support such a claim, and codification was not an impulse we see in this early period.
[85] Schriemer (2019) 62-63.
[86] Schriemer (forthcoming a).
[87] *P. Mich.* V 232.
[88] *P. Ross. Georg*. II 11.

following chapter, in the context of guardianship, and again in Part II, as we turn to a discussion of the changes that occurred after 212.

1.5. Conclusion

The traditional Roman *patria potestas* thus granted fathers a great deal of control over their family and, importantly, their family's assets. Family *in potestate* had a legal status equivalent to slaves; they could not own property and could even be killed by the *pater familias*, although some limits were later put in place. While initially there were mechanisms to transfer this power from father to husband through *in manu* marriage, this practice fell out of favour by the end of the Republic, meaning that most wives remained in their father's *potestas* even after marriage. If neither in the *potestas* of their father nor in the *manus* of their husband, women were considered *sui iuris*, namely in their own power. This independent status could be gained by both men and women of any age through the death of the *pater familias*, through emancipation, or by becoming a priest or priestess.

Despite the variations of paternal oversight recognized around the Mediterranean in the first three centuries of the empire, Arjava's concludes that "we have every reason to believe that in Late Antiquity *patria potestas* was recognized as a fact of life throughout the empire."[89] Nevertheless, he goes on to note the many changes which did, in fact, occur, with the result that the *patria potestas* of the later Empire looked nothing like that of the Republic and Principate. Since the entire institution of guardianship is predicated on the existence of a *sui iurus* status, the evolution and ongoing function of the *patria potestas* has wide reaching implications for our understanding of guardianship throughout Late Antiquity. We shall return to this point in Part II, after we have established an understanding of guardianship in classical Roman law.

[89] Arjava (1996) 50.

Chapter 2: Guardianship in Classical Roman Law

> Nam ex his personis quae neque in potestate neque in manu neque in mancipio sunt quaedam vel in tutela sunt vel in curatione, quaedam neutro iure tenentur.[1]

We shall begin this chapter by introducing in more detail all the different types of guardianship that Gaius mentions. We shall discuss what sorts of legal situations required guardianship, how a person received a guardian, who was eligible to be a guardian, and what sort of powers or responsibilities a guardian had. While this chapter will begin by addressing other forms of Roman guardianship such as the *tutela impuberum* and the *curatio minoris,* both of which applied to minors, its primary focus will be on adult women and the *tutela mulierum*, the form of guardianship which applied specifically to *sui iuris* women. Finally, in the last half of this chapter, we shall explore how the *tutela mulierum* related to money, inheritance concerns, and family structures, as we examine how and why it evolved throughout the Republic and into the early Empire. Looking ahead to Chapter 3 the chapter will conclude with an introduction to other types of adult female guardianship, which will serve as a necessary background to understanding the effects of the *Constitutio Antoniniana* on guardianship in the provinces in Part II.

According to Gaius, guardianship was an ancient Roman legal institution which dated at least as far back as the *Twelve Tables*.[2] Guardianship as a general legal practice is described in the *Institutes* as follows: "Est autem, ut Servius definit, ius ac potestas in capite libero, ad tuendum

[1] Gaius *Institutes* 1.142, "For some of these persons who are not in paternal power, nor in marital power, or formally owned are under guardianship or curatorship, others under neither."
[2] Gaius *Institutes* 1.142-200.

eum qui propter aetatem se defendere nequit, iure civili data ac permissa"[3] By *libero* in Servius' definition we ought to understand that this practice applied only to those individuals who were *sui iuris,* as mentioned in the excerpt from Gaius' *Institutes* found at the beginning of this chapter. For the remainder of my discussion of Roman guardianship in Part I, therefore, I shall take this legal liberty for granted since a discussion of guardianship would not have been applicable to an individual who was not *sui iuris*. While such a statement may seem obvious now, the relationship between the *patria potestas* and guardianship will be one of the keys to explaining the evolution of the *tutela mulierum* in the Late Antiquity, so it warrants refection and reiteration here: only *sui iuris* individuals had guardians. *Alieni iuris* individuals were under the control of their *pater familias* who inherently fulfilled all the responsibilities (and more) which were contained within the role of guardian.

All this is to say that, if a person was freed from *patria potestas* by one of the methods mentioned in the previous chapter, usually by the death of the *pater* or by emancipation, they may have still required a form of legal supervision for specific actions or contexts, the majority of which were financial. Three general categories of *sui iuris* individuals required guardians or *tutores*: children who were underage, regardless of their sex; adult men who were considered incapacitated; and adult women, regardless of their age. Only *sui iuris* adult men who were considered to be in full possession of their faculties were generally free to conduct their own affairs independently. Because of this, Roman law recognized a variety of different kinds of guardianship, the formats and foundations of which were very much intertwined.

[3] *Institutes* 1.13.1; "Moreover, as Servius defines it, [guardianship] is a right and power over an independent person conferred or authorized by the civil law for the protection of one who is incapacitated from self defense on account of age."

2.1. *Tutela Impuberum*

The first category of *sui iuris* individuals who required a guardian were those who were underage, regardless of their sex. For boys, this meant those who were younger than fourteen and for girls those who were younger than twelve. This form of guardianship was known as the *tutela impuberum*, or quite literally the guardianship over those who had not yet reached puberty. [4] Because these wards were underage, this type of guardian had a wide variety of responsibilities and a corresponding number of checks and balances in law. A man could acquire the role of a guardian of a minor in several different way. Each, of course, had its own specific designation: a *tutor testamentarius* was one appointed by a *pater familias* in his will. Since the death of a *pater familias* rendered his children *sui iuris* and, thus, in need of guardian if they were underage, this was a common way for wealthy children in particular to obtain a guardian.[5] A *tutor legitimus* was one given by established law, the default guardian, if you will. In the absence of a *tutor* appointed by testament or in the courts, the law established who would be the default guardian. If a father emancipated an underage child, he became their *tutor*; the same principle applied to a manumitted slave.[6] If a Roman man manumitted a slave who was underage, he became their *tutor* according to law.[7] Finally, if a *pater familias* died without a will and/or without appointing a *tutor* for his *in potestate* children, the responsibility fell to the child's nearest male agnate relative. In this case, the *tutor* was the person whom the law also identified as the child's intestate heir. [8]

---

[4] Saller (1994) 181-203; Schilardi (2013); Chevreau (2017) 189-202; Medina (2019).

[5] See Gaius *Institutes* 1.154 on dative versus optative testamentary guardians. In essence, guardians personally appointed by testament are referred to as *dativi* and while a guardian which resulted from a ward being given the ability to choose their own guardian in a will was a *tutor optivus*.

[6] Gaius *Institutes* 1.166-172.

[7] On guardianship by patrons and the rationale for it see: *Institutes* 1.17; Gaius *Institutes* 1.165.

[8] *Institutes* 1.15; This is identified in the *Twelve Tables* as the "default" guardian. The inclusion of the father and former master here is also in line with inheritance legislation. In essence, a *tutor legitimus* was the person who stood to inherit the property of a child if they passed without a will, i.e. underage. It was obviously in the *tutor*'s best interest to safeguard the property of the child, but there was also a clear conflict of interest in their duty to safeguard the person

Other less common types of guardians also existed. A *tutor dativus*, or dative guardian, was one which was appointed by a magistrate.[9] This might be in the case of a conflict of interest or even legal action between the child and their normal guardian or in the case where none of the other types of guardianship were applicable, for whatever reason. A dative guardian might be appointed for a limited time only, if their role was solely to manage a situation in which a child's usual *tutor* was unable to represent them for whatever reason. In Rome during the Republic, the urban praetor and the tribune of the plebs were responsible for appointing *tutores* according to the *Lex Atilia*. As the empire expanded, this power was also extended to provincial governors (*praesides*) by the *Lex Iulia et Titia* and eventually to the governors of cities as well by the emperor Claudius.[10] Naturally, the emperor also held this power. Finally, a *tutor fiduciarius* was far rarer. With respect to underaged children, this type of guardianship arose from the process of emancipation. The guardian could be either the *pater familias* who had manumitted the child, provided that he was remitted back to the father after the third *mancipatio*, or the other party in the emancipation if no remittance occurred.[11]

A *tutor legitimus*, specifically, would have been the minor ward's intestate heir and it is likely for this reason that we have so many laws about the wellbeing and marriageability of wards throughout their guardianship. While a guardian would indeed have had a vested interest in the preservation and management of his ward's estate, he may not have had such an interest in the

---

of the child, since they would stand to gain personally if the child died before they reached majority. This conflict of interest also extends to marriage, as we shall see below.

[9] The distinction between *tutores testamentarii* and *tutores dativi* was clarified only by the time of the *Institutes* 1.20.1; Gaius *Institutes* 1.154 refers to guardians appointed in a will as *dativi* and clarifies that a guardian whose choice was left up to the ward on a will was a *tutor optivus*. This notion of choice was more common in the context of the *tutela mulierum* than of the *tutela impuberum,* and we know nothing about the demographic of minor wards who might have been allowed to choose their own guardian. Sherman (1913) 127.

[10] *Institutes* 1.20 also notes that a constitution of Justinian allows for *tutores* and *curatores* to be assigned by "*defensores* of the city, acting in conjunction with the holy bishop, or by other public persons, namely magistrates, or, in the City of Alexandria, by the judge…".

[11] Gaius *Institutes* 1.166a-167; Sherman (1913) 127; see Chapter 1 for a more detailed explanation of emancipation.

well-being of the ward himself. The issue is even more complex when dealing with a *pupilla*, a girl, because of the question of marriage, which brings with it further financial implications. Inheritance laws also help to explain the age at which the *tutela impuberum* ceased, as well as the de facto choice of the nearest agnate relative as guardian. In early Roman law, majority was understood to have been attained at puberty, which was later legally defined as fourteen years of age for boys and twelve for girls.[12] Gaius notes, however, that there was some conflict among the different juristic schools about exactly this point. The puberty milestone was universally agreed upon, but Sabinus and Cassius and the rest of Gaius' school argued that puberty was individual and, in legal contexts, should depend on the child's physical development and ability of generation, rather than on a set age. The other school of jurists thought age should be the sole marker, "sed diversae scholae auctores annis putant pubertatem aestimandam, id est, eum puberem esse existimant qui XIIII annos expleuit."[13]

The reason that this distinction was thought worthy of mention by these jurists can again be traced back to money and inheritance. If a young man fathered a child, the *tutor*, who would have previously been the nearest agnate relative and thus also the young man's heir, would have been displaced from his position of *sui heredes* (i.e. default heir) by the child, who would have been the nearest agnate relative. In layman's terms, the ability to produce a closer heir was the marker by which the end date of the *tutela impuberum* was chosen. However, some men were unable to produce children, and others, like soldiers, were forbidden to marry, and thus could not

[12] *Institutes* 1.22.pr.

[13] Gaius *Institutes* 1.196, "The other school hold that puberty is to be exclusively measured by age, that is to say, that it should be attained on the completion by a male of his fourteenth year."

produce legitimate children.[14] Since a minor was not in the legal position to make a will, the rules for intestate succession always applied. Male puberty marked the point at which another heir could be either begotten or assigned. Thus, the nearest agnate lost his status as sole heir of his ward's property and along with it, the role of guardian when the ward was capable of begetting or birthing children.

The role of *tutor* was also theoretically non-optional. As a *publicum munus*, it was a civil obligation for anyone who was nominated to it, either by virtue of family relationship or by virtue of being named in a will or by a magistrate. In practice, however, there were a number of situations which could exempt a man from holding the role or could put an end to ongoing tutelage. Exemptions could be offered if the proposed *tutor* was very old, already had too many other wards, lived too far away to make it practical, was engaged in politics at a high level, was an enemy of the *pupillus* or his late father, or was appointed in bad faith, among others. Of course, the *tutor* was required to be a Roman citizen with full rights, that is male, of full majority and *sui iuris*, so this also exempted anyone who was under guardianship themselves, who was a slave (either of Rome or another state), who had otherwise lost their citizen status in some way, or who was prevented by disability from functioning publicly on their own behalf.[15] As this suggests, women, even those of full majority, were not able to be guardians over their own children, at least not until the reign of Justinian, as we shall see, on the grounds that they were generally under some type of oversight themselves and did not have full citizen status.

[14] Paul *Sententiae* 3.4a.2, Spadones eo tempore testamentum facere possunt quo plerique pubescent, id est, anno decimo octavo. "Impotent men can make a will at the time that most are pubescent, that is eighteen years old." The reason why a set age may have been favoured is to account for nuances of this kind.
[15] *Institutes* 1.22.

Guardianship could be ended in a variety of ways too. The most obvious of these is the maturation of the *pupillus*. The *tutela impuberum* was a time-limited form of guardianship which naturally expired upon the ward's attaining majority. Of course, it also ended automatically with the death of either party, if the citizenship or legal status of either party changed, or if a time limit expired for a *tutor* who had originally been assigned by the court for a specific action or limited time.[16] It could also end upon application to the magistrates for a number of reasons, such as the advanced age of the *tutor*, a legal conflict between the *tutor* and the *pupillus*, or even the official removal of a *tutor* because of his mistreatment of his ward or their property.[17]

While we know very little about how emancipation worked in the Republic and early Empire, it seems unlikely that fathers would have regularly emancipated their underage children, and so this type of guardianship, the *tutela impuberum*, would have usually applied to children whose fathers (*pater familias*) had died, leaving them *sui iuris* and in need of a *tutor*.[18] This *tutor* would therefore have been responsible for managing the affairs and property of the child, who, alongside their new *sui iuris* status, would have likely inherited property from the deceased father. As time went on, the legal guidance provided to a *tutor* was that the estate of the *pupillus* had to remain intact, all debts had to be settled, and his wealth had to be safeguarded and, if possible, invested.[19] These rules existed to protect the estate from the designs of the *tutor*. A ward or *pupillus* would have needed his guardian's approval to sell any of his property, to enter into any form or contractual agreement, or to interact in the legal sphere. In theory, he could have acquired property independently, since the law did allow a *pupillus* to better his financial position, but in practice

[16] i.e. if either suffered *capitis deminutio*; *Institutes* 1.15, 1.20.1-2; Gaius *Institutes* 1:158-164.
[17] *Institutes* 1.25.
[18] We know very little about emancipation generally until the late antique period, when it seems that children were routinely freed from *potestas* upon attaining their majority. Gardner (1998) 10–24, 104–113. For Late Antiquity, Arjava (1998) 161–162; Vuolanto (2015a) 488.
[19] *Institutes* 1.24; Curzon (1981) 50 – 54; Chevreau (2017) 193-194.

purchases of this sort must often have occurred under the guardian's supervision as well. Nevertheless, a guardian's authorization was always required to accept an inheritance, despite the fact that this held no risk and would almost certainly have improved the ward's financial standing.[20] Ultimately, the responsibility of a guardian was simply to ensure that their wards were not taken advantage of and did not squander their (family's) money. This meant that wards could ameliorate their financial position freely since the guardian was only there to ensure that they did not worsen it, but they could not assume obligations or alienate property without the approval of their *tutor*.[21]

Beyond the financial aspect, since children subject to this form of guardianship were young, the *tutor* would also have been responsible for raising and safeguarding them until their majority. While the logistics of the arrangements which could be made for this are not at all clear, the *tutor* was also expected to arrange for his ward's education and generally to set them up for life in a manner befitting their social station. While this might seem to have been a rather large responsibility, the *tutor* could have at least expected the ward's estate to pay for their upkeep and education, so while he would not have been paid, he at least should not have incurred any expenses personally.[22] If this was not forthcoming, a *tutor* could also sue his ward to recover his expenses. In certain cases, the responsibility could also be shared with a co-guardian.[23]

If a guardian did not perform this duty correctly and instead took advantage of his ward, he could be liable for damages. To help prevent this, dative guardians, assigned by the court,

---

[20] Gaius *Institutes* 2.80-82 (on alienating property), 3.107 (on contracts), 2.83 (on acquiring property). *Institutes* 1.21.
[21] Gaius *Institutes* 2.83.
[22] We see a number of laws addressing the fraudulent treatment of (particularly female) wards by their *tutor*. On the prohibition of marriage between a *pupilla* and her *tutor* (or *curator*) or her guardian's son see: *CJ* 5.6.1-8.l, 5.7.1. On the financial see *CTh* 3.17; 3.30; *CJ* 5:37-38.
[23] *Institutes* 1.24.1.

underwent a process of vetting, to ensure their reliability and suitability for the position. Both *tutores legitimi* and *dativi* were required to swear that they would carry out their duty faithfully and responsibly. In support of this, they deposited a security with the magistrates, a *satisdatio rem pupilli salvam fore*. The security acted as a guarantee for the ward that their guardian would be held materially responsible in the event that they mismanaged the property. *Tutores testimentarii* were not subject to either public vetting or oath taking as they had been personally chosen by the *pater* and thus should reasonably have been a close, trusted friend or family member and subject to personal vetting. Nevertheless, if all these measures failed to ensure that the guardian acted responsibly and honestly, legal action could be taken against the *tutor*.[24]

There were a number of these legal checks and balances and corresponding legal actions in place, which reached back to the *Twelve Tables*.[25] Therefore, a *tutor* could not enrich himself in any direct way through his ward, including by charging a fee for his authorizations, marrying his female ward, or making decisions which befitted his own property rather than that of the ward. Over time, *tutores* were required by law to perform inventories and to account for the ward's property, particularly upon entering and leaving the position. If he failed to do so, or failed to manage the property actively and well, it was possible to bring an *actio tutela e dolo* against him for fraud or an *actio tutela e culpa* for negligence. A guardian was suspended from his duties for the duration of the legal proceedings.[26] While the *Institutes* note that "no person below the age of puberty can bring an accusation against his *tutor*", they also clarify that accusations of this sort are "open to all" and that "even women" such as the ward's mother, nurse, grandmother, sister or female friend could bring such an accusation on behalf of a minor.[27] Thus, while a *pupillus* or

[24] *Institutes* 1.24.
[25] *Institutes* 1.26.pr.
[26] *Institutes* 1.26.7.
[27] *Institutes* 1.26.3-4.

pupilla could not bring an *actio* themselves, their family members, of any gender, could. This granted yet another level of supervision. Nevertheless, the ongoing nature of legislation on the types of transactions permitted to a *tutor* and the level of accounting required by him suggests that avaricious *tutores* were common, despite the efforts to check any self-serving actions.

While women could bring an *actio* on behalf of their *sui iuris*, *in tutela* children or family members, they could not normally be the child's guardian themselves.[28] Since, as we shall see in more detail in the later half of this chapter, women could not even function in the legal sphere without their own guardian, women could also not be appointed as the guardians of someone else in classical Roman law. The restriction was only relaxed in the context of mothers as guardians of their own fatherless children and then only in the late fourth century, as we shall see.[29] Lest we get lost in the minutiae of the legal prescriptions, however, it is worth dwelling for a moment on the topic of mothers. In the Classical period of Roman law, mothers had no legal claim to their children. If the father died, the mother was not the *de facto* legal guardian. Although there is later evidence for a general shift towards a desire to keep a widow with her children, we only have one such piece of evidence from the period before 212.[30] Nevertheless, mothers did have a legal responsibility to apply for *tutores* for their children, if they had not been assigned one in their father's will and if there was no other eligible *tutor legitimus*. While mothers had no legal right to their children, they were seen to have had a moral responsibility towards them, particularly while they were still minors.

[28] *Digest* 26.1.16, 18.
[29] *CTh* 3.16.4; *CJ* 5.35.2; Nicholas (1962) 91; Arjava (1996) 91.
[30] *CIL* XIII 2056; See Humbert (1972) 68; Arjava (1996) 89.

2.2. *Cura Minorum*

Towards the end of the Republic, Roman lawmakers recognized that puberty was not the best indicator of a young person's ability to manage their own property. Rather than extending the *tutela impuberum* for a few more years, they adapted the early *Lex Plaetoria* to fill this need. The law was originally put in place to protect *sui iuris* youth under the age of twenty-five from being taken advantage of financially.[31] Throughout the imperial and the late antique period, the *cura minorum* (also known as the *curatio minoris*) began to function very much like a second stage of guardianship. Twenty-five came to be considered *perfecta aetas,* the true age of majority, and youths between the ages of twelve/fourteen and twenty-five would have required a *curator*. The major legal difference between the *cura* and the *tutela impuberis* is that a transaction conducted without the approval of a *tutor* would have been entirely invalid, while a transaction which lacked the approval of a *curator* could be deemed valid. In issues involving the *Lex Plaetoria*, the praetor would have been required to intervene and make a judgement about individual transactions' validity.

This type of guardianship was designed to supervise and advocate for both male and female young adults in certain financial transactions. This meant that young women who were between the ages of twelve and twenty-five and men who were between the ages of fourteen and twenty-five were subject to the *cura*. [32] The financial aspect inherent to this guardianship presumes, too, that all the wards subject to this oversight must have initially been *sui iuris*, and then have had the means to operate independently of their fathers or husbands. *Curatores* could not formally be appointed by will, but if this did occur, they could be confirmed by the magistrates. Neither men

[31] The *Lex Plaetoria* dates to about 200 BC, and while we do not know the specifics of the law, it seems to have allowed legal action to be brought against anyone who took advantage of someone under twenty-five.
[32] Gaius *Institutes* 1.197-198; There emerges a "blurring of the distinction between *curator* and *tutor*" in later Roman law and practice. Nicholas (1962) 95.

nor women were legally obliged to have a *curator* for the majority of actions, though the court would appoint one in the context of legal proceedings or another high-stakes situation. A *curator* was responsible to a certain extent for the property of the young person, but not their continued maintenance, upbringing, or education as the *tutor* was. A young person had the ability to manage their affairs in their own name, but with the *curator*'s supervision and approval. Reasonable transactions which did not seem likely to negatively affect assets of the young person were supposed to be approved as a matter of course. Compared to the responsibilities of a tutor, the authority of a *curator* was approval-based, rather than particularly administrative or hands on.[33]

The purpose of a *curator* was ostensibly to ensure the financial security of a young person in the face of potentially seasoned or unscrupulous businessmen. In fact, a transaction conducted with a person who was under the age of twenty-five was liable to be reversed upon application to the court if the young person felt that by virtue of their years and lack of judgement, they had entered into a transaction that had worsened their financial position. This suggests that young people would have been risky people to do business with as they could apply to have any decision that did not work out well for them reversed. Scholars have argued that people must have feared or avoided dealing with people under the age of twenty-five.[34] In practice, the *cura* was meant to add a level of security for both parties by including a person of full majority to review the transactional decisions of the young person so that they could not be reversed later to the detriment of the other party. The effect thus seems to have been as much providing a level of security for people doing business with young people as ensuring financial literacy and security for the young people themselves.

[33] *Institutes* 1.20, 23-26; Gaius *Institutes* 1.197-200; *CJ* 2.18.6, 2.18.24.
[34] This largely on the basis of Plautus' *Pseudolus* I.3.69; Jolowicz (1937) 250-252.

On occasion, however, both men and women who were younger than twenty-five were permitted to manage some of their own affairs without a *curator*. Caracalla introduced the concept of *venia aetatis* by which women who were at least eighteen years old and men who were at least twenty years old could apply for an exemption from the *cura* under certain conditions.[35] Constantine specified that men of honourable character who were twenty years of age or more could apply to the court for the privileges of full majority if they wished to manage an inheritance. Women who were at least eighteen and of honest morals and sound mind could also apply for the right to conduct business as men did, with the exception that they would have had to specifically apply to the court if they wanted to alienate land.[36] As we shall see later as well, the law seems not to have penalized those who chose to operate without a *curator* despite being under age, provided that their affairs were well-managed.[37]

The use of a *curator* is thus generally envisioned in the absence of *patria potestas* and very often in relation to orphans. This means that a young, *sui iuris* girl would have been under a *tutor* (*impuberis*) until she was twelve, then under both a *curator* (*minoris*) and a *tutor* (*mulierum*) until she turned twenty-five, and then under only a *tutor* (*mulierum*) again. While there is very little evidence for use of *curatores* for women in the papyrological evidence,[38] we have evidence that suggests that when it was used, both the *cura* and the *tutela* were considered applicable at the same time. The women in *P. Vind. Bosw.* 6 (16 Jan 250) both claim the exemption from the *tutela*

[35] *CJ* 2.44.1-2.
[36] *CJ* 2.44.2; …ut etiam ipsae in omnibus negotiis tale ius habebeant, quale mares habere praescripsimus, ita tamen, ut praedia sine decreto non alienent. "… so that in all business they (women) may also have such rights as we have ordered that men have, as long as they do not alienate landed property without judicial decree."
[37] *CJ* 2.12.14; it seems to have been the case of transactions or actions done without a *curator* were not inherently invalid as they might have been if the if the person was *in tutela impuberum*.
[38] There are more for young men, but even these appear to number no more than 175.

because of fertility (*ius liberorum*) and have *curatores* who are not their husbands. [39] At he same time, we also see women with both the *tutela* and the *cura*, as in a young woman's will of 264.[40] This shows that in at least a few upper-class, provincial minds in the middle of the third century, the application of the *tutela* was relevant despite the fact that these two women were minors and had *curatores*. This understanding of the relationship between the *tutela* and the *cura* has not been explored in scholarship, likely because of the lack of legal evidence on the topic. The general assumption, while never stated outright, seems to be that the two were not considered applicable concurrently.

While the supervision of a *curator* would not have been affected by the *ius trium liberorum*, the concurrent and subsequent *tutela* might have been. A woman who managed to have three children before she turned twenty-five would have qualified for the *ius trium liberorum* before ever being solely subject to the *tutela*.[41] Neither the *tutela* nor the *ius* had any sort of age cut-off, as far as we are aware. So the level of agency a woman had between the ages of twelve and twenty-five could have varied considerably according to her personal circumstances and fertility. Since the *cura* took on an expanded role from the third century onwards and what limited evidence we have is largely papyrological, we shall return to this topic in Part II.

---

[39] *P. Vind. Bosw.* 6, ταῖς β χωρὶς κυρίου χρημ(ατιζούσαις) κατὰ τὰ Ῥωμ(αίων) ἔθη τέκ(νων) δικαίῳ […] μετὰ κουράτορος; "...to the two women, acting without a guardian according to Roman law by the right of children […] with a *curator*…"

[40] *P. Princ.* II 38, μετὰ κυρίου Αὐ(ρηλίου) Ἑρμ[ίν]ου τοῦ κ[α]ὶ Ἀχιλλέως Εὐδαίμονος εὐθηνιάρχ(ου) τῆς αὐτῆς Ἑρμοῦ πόλ(εως) καὶ κουράτορος Αὐ(ρηλίου) Οὐαλερίου Λόγ'γου [οὐετρ]ανοῦ ἀπὸ τῆς αὐτῆς [Ἑρμ]οῦ πόλ(εως), "with her guardian, Aurelius Herminos, also known as Achilles, son of Eudaimon, eutheniarch of the same city of Hermopolis, and with her *curator*, Aurelius Valerius Longus, veteran, of the same city of Hermopolis."

[41] On the fact that at the need for a *curator* was not affected by the *ius*, see, *CJ* 5.37.12 (241) and *P. Vind. Bosw*. 6 (250). Note however that this distinction may not always have been preserved so neatly in practice, as in *CPR* VI 73.

2.3. *Tutela Mulierum*

While male children escaped the *tutela impuberum* at the age of fourteen and were able to act independently (with the oversight of their *curator minoris*) upon reaching the age of majority, *sui iuris* women above the age of twelve simply received a new type of guardian, again referred to as a *tutor*, or, in Greek, a κύριος, as well as a *curator*. The *tutela mulierum* or the *tutela perpetua*, as it was often aptly referred to, was a form of perpetual guardianship for adult women. While the responsibilities of the *tutor* were different for minors and for adult women, the way in which a both minors and women could acquire a *tutor* were very much the same. As with minors, an adult woman who was emancipated by her *pater familias* had him as her *tutor legitimus*.[42] As with the *tutela impuberum*, a *tutor testamentarius* could be assigned to a woman in the will of her *pater familias*. However, a *pater* could also write his will in such a way as to give a newly *sui iuris* woman the right to choose her own *tutor*, known in this case as a *tutor optivus*. If no guardian was assigned by testament and the woman was not given the right to choose her own, her nearest agnate relative, and thus her intestate heir, was the default *tutor legitimus*, as in the case of minors. This system of agnate guardianship over adult women was eventually abolished by the emperor Claudius. In the absence of a suitable testamentary or agnate guardian, or in the case of a conflict of interest with her current guardian, a woman could also be assigned a *tutor dativus*, or dative guardian, by the courts.

The difference between the guardianship of a minor and that of an adult woman was captured by Ulpian: "Pupillorum pupillarumque tutores et negotia gerunt et auctoritatem interponunt; mulierum autem tutores auctoritatem dumtaxat interponunt."[43] This distinction does

[42] Gaius *Institutes* 1.172.
[43] Ulpian *Tituli ex corpore* 11.25: "The guardians of minor male and female wards both manage their ward's affairs and give their authorization, the guardians of women, however, only give their authorization."

prompt questions about the sorts of situations a in which woman might find herself which would have required her *tutor*'s authorization, if she was otherwise free to manage her affairs as she pleased. Like children *in tutela impuberum*, women would also have needed their guardian's consent to sell *res mancipi*, namely Italian land, slaves, or cattle. They also would have needed his approval to make a will, give a dowry (for themselves or another), manumit a slave, or assume any sort of obligation (such as a guarantee for a loan).[44] These restrictions represented the most important aspects of property, at least before Roman expansion and before the *Constitutio Antontiniana* really rendered the difference between Italian and non-Italian land moot in 212. Curiously enough, women themselves were classed as *res mancipi*.[45]

Gaius explains, "Nunc admonendi sumus neque feminam neque pupillum sine tutoris auctoritate rem mancipi alienare posse; nec mancipi vero feminam quidem posse, pupillum non posse."[46] Fundamentally, someone who had a guardian could not alienate or make decisions about *res mancipi* on their own. This excerpt also notes that while women were free to dispose of *res nec mancipi* on their own, minors needed their guardian's permission to alienate any type of asset. Ulpian provides a further elaboration: "Tutoris auctoritas necessaria est mulieribus quidem in his rebus: si lege aut legitimo iudico agant, si se obligent, si civile negotium gerant, si liberata suae permittant in contubernio alieni servi morari, si rem mancipii alienent. Pupillis autem hoc amplius

[44] Strictly speaking, women generally were unable to make a true will until the reign of Hadrian. Gaius, *Institutes* 1.144-192, 1.178, 1.190-192, 2.80-85, 2.112-113, 2.118-122, 3.176; Ulpian *Tituli ex corpore* 1.17, 11; *Fragmenta Vaticana* 1, 45, 110, 259; *Fragmenta Dosith.* 15; *Lex Irnita.* 28; See also Gardner (1986) 14-22; Arjava (1996) 112-123; Arjava (1997); Frier and McGinn (2004) 455.

[45] Gaius *Institutes* 1.116-123.

[46] Gaius *Institutes* 2.80, "Now we must note that neither women nor minor wards are able to alienate *res mancipi* with auth the authorization of their *tutor*, but that while a woman is able alienate *res nec mancipi* [without such authorization], a minor ward is not able to do so."

etiam in rerum nec mancipii alienatione tutoris auctoritate opus est."[47] Not only was *res mancipi* of importance, essentially any situation in which a woman could stand to endanger significant family property required approval.

It is interesting to note here, that the patron of a freed person (i.e. the former master or mistress) retained a legal bond to their freed person, which placed the patron in the same legal position as the nearest agnate of a freeborn person. As we saw earlier, the position of patron-*tutor* had similar extended rights as that of father-*tutor*. This means that a freedwoman's patron would be her guardian as well as her intestate heir. Since a freedwoman who cohabited with a slave also became a slave of her partner's master, the patron who allowed such a situation to proceed was essentially losing both a client and the client's money.[48]

Gaius also notes that there was a *magna differentia* between *res mancipi* and *res nec mancipi* and distills several juristic squabbles about the finer points of the definition.[49] Generally speaking, he says, Italian land and property, as well as slaves and draught animals were *res mancipi*, and most other things were not.[50] As Rome expanded, and a wealthy citizens came to own considerable property outside of Italy, this definition must have seemed rather limited and even archaic. In a concrete sense, then, the approval of a guardian was needed if someone subject to either form of *tutela* wanted to sell or otherwise alienate valuable, high-status pieces of property, at least in the Republic. Ulpian's elaboration that approval was also necessary to initiate a trial, to

[47] Ulpian *Tituli ex corpore* 11.27; "Women require the approval of their guardian in these things: if they bring suit by statute or in a statutory trial, if they obligate themselves, if they conduct a civil transaction, if they allow their freedwoman to remain in cohabitation with the slave of another, (or) if they alienate *res mancipi*. For minor wards, moreover, their guardian's approval is also required for the alienation of *res nec mancipi.*" See Frier and McGinn (2004: 453-453) for further comment on the types of situations which required the consent of the *tutor*.

[48] *Institutes* 1.17-18; Paul *Sententiae* 2.21a.6; which records a *senatus consultum* from 52 on the guardianship of freedwomen.

[49] Gaius *Institutes* 2.18.

[50] Gaius *Institutes* 2.14-17.

conduct a transaction covered by civil law, supervise freedwomen's sleeping arrangements shows that the issue at hand here was financial in nature as well.

While minor males were in guardianship only until they were physically able to produce a closer heir than their guardian, women could never produce such an heir and were thus subject to a life-long form of guardianship. As odd as it may seem to the modern reader, a woman's children were not agnatically related to her, and thus initially had no succession rights. This meant that puberty and the ability to bear children was not as significant a financial milestone for women as it was for men. The nearest agnate relation, who would have been both the woman's guardian and her heir, retained his interest in her property beyond puberty and regardless of number of children she had.[51]

How did one become or receive a *tutor mulierum*? Well, Gaius helpfully begins his explanation with the ways in which a person (whether minor or adult woman) might receive a guardian. It is here that the close relationship between guardianship and inheritance again emerges. As we saw above, a man could appoint guardians in his will (*tutores testimentarii*) for his children *in potestate*, and he could do the same for his wife *in manu* and for any adult woman who was *in potestate* and who would have become *sui iuris* at his death. In the absence of such a will, the woman's nearest agnatic relative[52] became her default guardian (*tutor legitimus*), just as it was for minors. [53] The reasoning behind this is again abundantly clear if we look at contemporary inheritance legislation. The nearest agnate was the de facto intestate heir to the property, and so would have had a vested interest in its preservation and management. Changes to this system of

[51] Čoláková (2021) 27-52.
[52] Agnates are people who are related exclusively by the male line. So, a woman's paternal aunt would be an agnate, but her son would not. People who are related through the female line are referred to as *cognati*. Cf. Gaius *Institutes* 1.156.
[53] Gaius *Institutes* 1.155.

agnate guardianship begin to happen as early as the first century. At some point, men were also formally allowed to leave the choice of this testamentary guardian to their wives, by including in their wills the phrase "to my wife, I allow the selection of her own guardian."[54] As with the *tutela impuberum*, a testamentary guardian who was nominated by name in the will of the deceased man was known as a "dative guardian." One who was left up to the choice of the widow was called an "optative guardian."[55]

As with minors, there were a number of restrictions and provisions in place to ensure that a *tutor* did not take advantage of his ward. In this regard, women had a great deal more agency than their minor counterparts. A *tutor* could not marry his adult female ward either, unless they had been betrothed before the *tutor* took on the role, the woman was at least twenty-five years old, or they had received special dispensation from the emperor. By the end of Augustus' reign, a woman was also able to undertake legal action to change her *tutor*, and if her *tutor* was unwilling to approve a reasonable transaction, she could take him to court to compel him to consent.

It seems that Ulpian's distinction between these two types of guardianship was not wholly accurate in practice, however, since while *tutores legitimi* were initially able to transfer guardianship over a woman to someone else, they were not permitted to transfer guardianship of a minor male because it was not considered *onerosa*, or a difficult task.[56] In his commentary on the *Institutes of Gaius*, Poste insightfully notes that such transfers of guardianship were not permitted in later Roman law. By that point guardianship had come to be regarded as a duty rather than a right because the *tutela* had evolved to serve the interests of the ward, not the ward's

[54] Gaius *Institutes* 1.150, In persona tamen uxoris quae in manu est recepta est etiam tutoris optio, id est ut liceat ei permittere quem velit ipsa tutorem sibi optare, hoc modo: "Titiae uxori meae tutoris optionem do.
[55] Gaius *Institutes* 1.154.
[56] Gaius *Institutes* 1.168.

property, and by extension the guardian who stood to inherit the ward's property.[57] The implication here is that familial financial claims gave way, over time, to personal financial interests.

Guardianship functioned a bit differently if you were a freed person rather than freeborn, but the practice was still tied to inheritance.[58] If a slave woman was freed, her former owner, now her patron, would be her guardian as well. In the event that the former owner was a woman, one of her male children could be guardian. The reasoning for this was that according to Roman law, a former owner and their family were the woman's intestate heirs and therefore it would have been in their best interest to help or even require the woman to preserve her property. This patron-*tutor* was also called a *tutor legitimus* like any other guardian whose role was described in the *Twelve Tables*. However, Gaius lets us know that this type of guardianship was not actually mentioned in the *Twelve Tables* specifically, but its form and function resulted from interpretation and extrapolation of those laws. The reason he gives ties guardianship back to inheritance yet again. "eo enim ipso, quod hereditates libertorum libertarumque, si intestate decessissent, iusserat lex ad patronos liberosue eorum pertinere, crediderunt veteres voluisse legem etiam tutelas ad eos pertinere, quia et agnatos, quos ad hereditatem vocavit, eosdem et tutores esse iusserat."[59] Again, the financial aspects and the links to early inheritance legislation emerge.

---

[57] *Digest* 27.1; *Institutes* 1.25; *Fragmenta Vaticana* 202; Gaius *Institutes* 1.168; Poste (1904) 104; Arjava (1996) 113; there exist many exemptions and minute regulations on who was or was not permitted to be a guardian or curator, all of which point to the burden of this oversight, especially for underage people.

[58] *Institutes* 1.17; here patronage, guardianship, and inheritance legislation are explicitly linked as a reason for guardianship functioning in this way. As the law had established that patrons were the intestate heirs of their freedpersons, and as agnate guardianship was normally based on principles of intestate succession, these patrons also became the guardians of their freedpersons. The one exception was in the case of a Roman woman who freed her slaves. She was their intestate heir, but she could not be their guardian, since women could not be guardians or hold any level of legal responsibility over another in the classical system. (Note however that women *could* own slaves, as they were a type of *res mancipi* which we read that women needed their guardian's consent to alienate and/or manumit.).

[59] Gaius *Institutes* 1.165, "for the fact that the statute gave the succession of a freedman or freedwoman, when they die intestate, to the patron and the patron's children, was deemed by the lawyers of the Republic (veteres) a proof that

It was possible, however, for some woman to change their guardian. Gaius notes that this was done through *coemptio*, a fictitious sale outlined in the *Twelve Tables*. Two forms of *coemptio* existed, marital and fiduciary *coemptio*. Marital *coemptio*, such as a *in manu* marriage, brought the woman under the authority of her husband, in the same legal position as any joint daughter. Fiduciary *coemptio* occurred when a woman transferred ownership of herself to a male third-party for the purpose of breaking an existing legal or familial bond. If she wished to change her *tutor*, she could make a *coemptio* (which did require her old *tutor*'s consent) with an unspecified man who could then remancipate her to her new *tutor*. He would then manumit her, and thus legally become her *tutor*, much as was the case with freedwomen.[60]

Incidentally, fiduciary *coemptio* was also how women initially obtained the right to make a will, as it theoretically broke agnatic ties upon which the principles of intestate inheritance depended. Gaius says: "Olim etiam testamenti faciendi gratia fiduciaria fiebat coemptio: Tunc enim non aliter feminae testamenti faciendi ius habebant, exceptis quibusdam personis, quam si coemptionem fecissent remancipataeque et manumissae fuissent; sed hanc necessitatem coemptionis faciendae ex auctoritate divi Hadriani senatus remisit.[61] The exemptions he mentions to this practice of coemption for testamentary reasons are presumably those for whom the agnatic bonds had already been broken. We could think of the vestal virgins, for example, who had the explicitly stated right to make a will since their agnatic connections were broken when they

---

it intended to give them the guardianship also, because the Tables, when they call agnates to succeed to the inheritance, likewise confer on them the guardianship." (Translation Poste (1904) 102.)

[60] Gaius *Institutes* 1.114-115b.

[61] Gaius *Institutes* 1.115, "Before, a fiduciary *coemptio* occurred in order to be able to make a will, for women, with some exceptions, did not have the right to make a will unless they had made a *coemptio,* and were manumitted after being re-sold; but the Senate, at the suggestion of the divine Hadrian, abolished this necessity of *coemptio*." On agnate ties being cut by *coemptio*, see further Gaius *Institutes* 1.136, and section. 1.3.2.1. above.

ascended to the priestesshood.[62] Čoláková notes that others who had no agnatic ties, such as freedwomen and women who had been formally emancipated, were probably also implicated in this exemption.[63] Freedwomen could make a will with their patron-*tutor*'s approval, but again, as he was her intestate heir, the conflict of interest is immediately obvious. The *Lex Papia Poppaea*, which introduced the *ius liberorum*, released freedwomen with at least four children from the obligation to obtain their *tutor*'s permission to make a will.[64]

While this may at first glance seem to be a rather comprehensive list of situations and rigorous system of never-ending supervision, it is clear, even early on, that *sui iuris* adult women had more agency over their affairs than did their minor counterparts. While the two systems of guardianship were quite similar, both were heavily focused on the protection of family finances, and both depended on the wards being independent from *patria potestas*, this is where the similarity ends. Women were able to dispose of, or acquire, *res nec mancipi* on their own, while children could not. Women could also receive payments, discharge debts, appoint managers for their property, and even engage in limited litigation independently, while children had to wait until majority to perform any of these actions. Finally, women could also switch *tutores*, something which minors had no legal basis to attempt.[65] As time goes on, these small freedoms that women enjoyed expanded further.

---

[62] Aullus Gellius *Noctes Atticae* 1.12.9, Virgo autem Vestalis, simul est capta atque in atrium Vestae deducta et pontificibus tradita est, eo statim tempore sine emancipatione ac sine capitis minutione e patris potestate exit et ius testamenti faciundi adipiscitur. "Moreover, once the Vestal virgin is selected, led into the atrium of Vesta and brought before to the pontiffs, at that very moment, she leaves the control of her father without a formal emancipation and without loss of civil rights, and she acquires the right to make a will."

[63] Čoláková (2021) 32-33. On freed women see below. On emancipation breaking agnatic ties, see Gaius *Institutes* 1.162-163, 3.19-21.

[64] Gaius *Institutes* 3.43-44.

[65] Gaius *Institutes* 2:80-85; Ulpian *Tituli ex corpore* 11.25; *Fragmenta Vaticana* 325, 327.

2.3.1. The Evolution of the *Tutela*

Having just explained exactly what the *tutela mulierum* was and what sort of legal situations it covered, we shall now turn in more detail to the question of why the *tutela* existed and what purpose it served. In doing so, we shall explore how the *tutela* changed over time, as exceptions like the *ius trium liberorum* were instituted. Finally, we shall explain how and why these changes contributed to the evolution or so-called decline of the *tutela* in the two centuries between Augustus and the *Constiutio Antoniniana*. Once again, we can turn here primarily to the jurists. Not only does the second-century Gaius provide us with a detailed explanation of how guardianship was meant to function in Roman law, but he also offers some insightful, second-century commentary on questions like 'why do women need a guardian?', 'what happens when a woman and her guardian disagree?', and 'what effect did legislative changes have on the practice of guardianship?" We shall now turn to this text and the questions it prompts in more detail, drawing on other relevant sources to broaden the picture where necessary.

As we saw above, the *tutela mulierum* was an ancient institution dating back at least as far as the *Twelve Tables*. Like the majority of similar social or legal institutions, it, and women's legal ability generally, did not remain static and unchanged over the following six and a half centuries. A number of pieces of legislation or moments of legal evolution had an effect on how the *tutela* changed and evolved even before Late Antiquity. An early aspect of change which had implications for the *tutela mulierum* was the fact that *in manu* marriage gradually became less and less popular. As we have already seen, *in manu* marriages placed women under the *potestas* of their husbands. But, as the popularity of this type of marriage waned, more women remained under the *potestas* of their father who was statistically more likely to die sooner than their husband, leaving the women *sui iuris* and under the oversight of a *tutor*. Practically speaking, then, the

increasing popularity of *sine manu* marriages, would have meant an increase in the number of women who were *sui iuris* and who were under the *tutela mulierum.*

2.3.1.1. Ius Trium Liberorum

One of the most well-known changes to the *tutela mulieurum* came in the form of Augustus's *Lex Iulia de maritandis ordinibus* (18 BCE) and *Lex Papia Poppaea* (9 CE) which introduced among other things, the *ius liberorum*.[66] Both laws focused on marriage, the production of legitimate children, and the financial, political, and legal benefits that a prodigious parent could expect to acquire. These laws introduced significant exceptions to early Roman inheritance legislation and to familial oversight, including an exception from the *tutela*. At the time of the *Twelve Tables*, the only way for an *alieni iuris* to be exempted from the *tutela* was for her to be selected to serve as a vestal virgin.[67] Now, however, the *ius* granted *sui iuris* women, for the first time, an opportunity for freedom from the *tutela mulierum*. The cost? Only three legitimate, live-born children for freewomen and four for freedwomen.

While the majority of scholarly attention in the *ius* has centered around exactly this aspect of freedom from the *tutela*, it is vital that we do not neglect or forget the rest of the law. It is an often-neglected fact that the *ius liberorum* was originally a sort of 'omnibus bill' containing a variety of financial privileges for both eligible mothers and fathers. In the context of inheritance, these laws granted both men and women with sufficient children a variety of other financial benefits, including the ability to bequeath more than 10% of their estate to their spouse.[68] Men

[66] Neither has survived in its original form, so our knowledge of their contents comes from citations in the jurists and the codes. There have been efforts at reconstruction, but none is well accepted or commonly used. See McGinn (1998) 70-104.

[67] Aullus Gelius *Noctes Atticae* 1.12; Gaius *Institutes* 3.114; This exception was not so gendered as it might initially seem since *Flamenes Diales* were also exempted from the *potestas* of their *pater familias*.

[68] Ulpian *Tituli ex corpore* 15, 16; *CTh* 8.17.1-3.

with more children could be prioritized in political elections over those with fewer.[69] As we saw above, freedwomen were also given the ability to write a will, with or without their patron-*tutor*'s agreement. Therefore, not every subsequent reference to the *ius* in the codes corresponds to a freedom from *tutela*, nor does the general awarding of one privilege previously contained in the *ius* mean that all other privileges were similarly awarded.[70] The legal context of these laws, as incomplete as they may be, can shed a great deal of light on the how Augustus and the first-century Romans understood the *tutela* and its relationship to other legal institutions such as marriage and inheritance. This will also allow for a more comprehensive and nuanced understanding of the *ius* in later law as well.

The *Leges Iulia et Papia Poppaea* (as they have come to be known) have been understood in different theoretical ways, and it is here that we come to a dark side of the modern reception of Roman law. Ancient scholars, including Gaius, Ulpian, and Paul, and more modern scholars such as the esteemed Gothofredus and even Mommsen dealt with them in surprising detail, discussing their financial, legal, and relational impact.[71] In the mid-twentieth century, however, it was proposed that this more financial understanding was incorrect, and that the aim of both laws ought to be understood as "purely eugenic and demographic in its conception."[72] One such argument is that these laws focused on correcting a "failure to reproduce" among the senatorial and equestrian classes while also maintaining the "racial purity of the senatorial order." Field further suggested

[69] Aullus Gellius *Noctes Atticae* II.15.4-8; Tacitus *Annals* XV.19; Pliny *Letters* VII.16.
[70] Dixon (1984); Kelly (2017).
[71] *CJ* 6.51; Gothofredus (1653); Mommsen (1887); Jörs (1894); Last (1934) 434-456; Csillag (1976).
[72] Field (1945) 399.

that the financial aspects of these laws were solely to encourage compliance to this legislation, the penalty rather than the purpose.[73]

Like other benefits in Roman law, the *ius* could indeed be awarded to someone who did not meet the criteria. It could be earned by having three children if you were a free person, or four, if you were a freed person, but it could also be awarded at the discretion of the emperor, as in the example of Livia. Augustus was clearly aware of the need for a higher birthrate. If Rome wanted to continue to expand her borders, and yes, the types of women who might be taken in marriage by a senator were restricted, but, contrary to earlier suggestions, this was not a systematic program of state-sponsored eugenics.

The *Lex Iulia* did specifically restrict the types of women that a senator might marry. This was far from being a racial issue, however. Senators were only forbidden from marrying women who worked as actresses, theater workers, or prostitutes; skin colour, ethnicity, or race were of no concern, so long as the woman was respectable and enjoyed the right of *conubium.*[74] Subsequent legislation supports the argument that respectability rather than race was the issue. A law from the same year, the *Lex Iulia de pudicitia et de cooercendis adulteriis*, which we encountered in the previous chapter, continued to focus on the behaviour and morality of the women who might not have otherwise been considered respectable, at least in Augustus's eyes.

---

[73] Field (1945) 403. In a remarkable comment, he notes "For the *ius* soon developed from a right to be earned into a privilege to be bestowed, at first apparently by the senate, but soon by the emperor, much as in Hitler's Reich a deserving Jew may be transformed by decree into an honorary Aryan" (408). This article, published in 1945, attempts to equate Augustus's innovations, of which Field clearly does not approve, with Hitler's program of eugenics and racial purity. With the hindsight of almost eighty years, modern scholars tend to see the two as very different. Field, too, seems aware of this fact, almost as if the Hitler references and otherwise loaded vocabulary were added to provoke general interest or gain a publisher, rather than for scholarly import.

[74] This is the beginning of this restriction which we see partially repealed under Justin when Justinian wanted to marry Theodora.

It is clear that the early Empire did see a general decreasing interest in marriage among the Roman aristocracy. It is also evident that constant and repeated wars and expansion drew many young men away from Rome as soldiers, for whom marriage, and thus also procreation, was forbidden. With a general uninterest in marriage and men being siphoned from Rome, the birthrate, across all classes, must have been rather low. In this context, it would not seem unusual to want to broaden the pool of potential recruits, but this was likely a secondary reason or a happy side effect. Taken as a whole, Augustus' reforms speak clearly to a moral reform, a return to the old ways of sexual chastity, marriage, and large families. This, in turn, is what the *ius trium liberorum* rewards: marriage and a handful of legitimate children, not racial purity.

We have very little concrete information on how the *ius trium liberorum* actually functioned prior to 212, so scholars have relied on a few later sources to attempt to understand the process. The most commonly cited of these sources is *P. Oxy.* XII 1467, which was first published in 1916 by Grenfell and Hunt with the title "Petition for *ius trium liberorum*." The text, which is kept in the British Museum, can be dated securely to 263 on the basis of an internal date. It contains a petition from a woman named Aurelia Thaisous, also known as Lolliane, to the prefect of Egypt concerning her status as an independent and guardian-free woman.

The text is well-known and as such has been published in a variety of sourcebooks and papyrological collections, as well as part of individual papers.[75] Throughout these publications, it is generally interpreted in one of two ways. The first of these understands this text to say that women who had three children also had to be literate in order to qualify for the *ius.* In addition, this interpretation presumes that the *ius* was not automatically awarded, but that women would

[75] Source books: Rowlandson (1998) 193; Parkin and Pomeroy (2007) 307; Keenan et al. (2014) 186-187; Papyrological collections: *Jur.Pap.* 14; *Sel.Pap.* II 305; *FIRA* III 27; *New Docs.* II, 30; Pestman, (1994) 65; Papers: Kelly (2017).

have had to apply for this status and the associated rights by means of a petition such as this one. The majority of scholars, beginning with Grenfell and Hunt themselves, subscribe to this interpretation.[76] They refer to this petition as an illustration of the means "by which the right was secured."[77] Subsequent publications say that women "had to apply" for the right,[78] that "it was not automatic,"[79] and even that women had to "submit proof of their childbearing to the authorities so that their right to act without a *tutor* would be officially registered."[80] The second interpretation, which did not initially receive much attention when it was first proposed in German in the early decades of the 1900s, understands this to be a petition of record for a right which was otherwise automatically acquired when a couple had sufficient children.

Only in the last few years has the first interpretation been questioned in English scholarship, most recently by Benjamin Kelly.[81] He argues that both the supposed literacy prerequisite and necessity of petitioning for the *ius* were, in fact, the result of inaccurate interpretations of this text. He carefully examines this petition within its legal and papyrological context, and shows that, to begin with, "the mention of literacy is … a red herring" because the

[76] Meyer (1920) 34; Youtie (1973) 616–617, (1981) 199; Pomeroy (1988) 721; Sheridan (1996) 130–131, (1998) 198; Rowlandson (1998) 193; Turner (2007) 146; Vandorpe and Waebens (2010) 420–421.
[77] Grenfell and Hunt (1916) 196.
[78] Gardner (1986) 20.
[79] Sheridan (1996) 130.
[80] Evans Grubbs (2002) 38. Similar claims are made by Sheridan (1996) 130-131 and Vandorpe and Waebens (2010) 420. If this was indeed the case, it must completely change our understanding of how guardianship and the *ius* functioned. As a rule, petitioning was costly and took time, and was therefore generally limited to people who had both to spare. Geographical limitations and proximity to the appropriate officials would also have limited who could have applied. In addition, if these rights were not automatic, scholars suggest that men could have interfered in the application process or even prevented it entirely, in order to retain control over the woman's finances.
[81] Building on an early challenge of Grenfell and Hunt's initial interpretation by Solazzi, Burger, and Roos: Burger (1921) 303–306; Roos (1923) 418–420; Solazzi, (1957) 230–231; Kelly notes that Solazzi, Burger, and Roos's interpretation "sank almost without a trace," particularly in English scholarship, while the few scholars who do mention their work have done so in tangentially related topics and in primarily continental languages. Cf. Sijpesteijn (1965) 176–177; Haensch (1994) 506; Fayer (2005) 593.

papyri simply contain too many cases of illiterate women who record that they do have the *ius*.[82] He goes on to argue that this petition was not a petition for the *ius*, since that was automatic, but rather a petition to record that Lolliane already had the *ius.* He suggests that, in a world of high infant mortality and low administrative oversight, this may have been a way for her to ensure that she would retain or prove her guardian-free status in case a child died or her status was challenged.

Kelly's revival of this second interpretation is convincing for a number of reasons. In the first place, it would be odd for this text to be the only evidence for such a petition, if it was indeed necessary to obtain the *ius*. Given the vast number of references to the *ius* elsewhere in the papyri, more women would have needed to apply. This, in and of itself, proves very little, however, since the preservation of such documents from two thousand years ago is anything but uniform and reliable. More convincingly, however, we have other similar petitions which were intended to "create a public record of forensically relevant facts […] by people who foresaw that sooner or later they could possibly become involved in litigation."[83] These parallels, which had not yet been discovered when this interpretation was first raised by Solazzi, Berger and Roos, allow Kelly to fully work out his argument.

The petition also includes internal evidence for this interpretation which Kelly surprisingly does not address in great detail, but which Burger and Roos do at least both mention.[84] A close reading of the text itself makes it quite clear that the petition is not actually an application for the *ius* but rather it is a request that this petition be kept in the prefect's archives. This further aligns this text with the other known petitions of record. Unfortunately, the first lines of the text are

[82] Kelly (2017) 107.
[83] Kelly (2016) 409, (2017) 110. He uses Ptolemaic texts to further inform his understanding of later Roman legal practices.
[84] Burger (1921) 304–305; Roos (1923) 415–420; Solazzi, (1957) 231.

lacunose, so we may also be missing the tell-tale παρετέθη, or equivalent, to mark this as a παράθεσις, or record.[85] Finally, despite the fact that it would enhance his argument, Kelly also does not discuss the fact that both men and women with the *ius trium liberorum* had access to a wide variety of financial benefits, of which freedom from the *tutela* was only one. If, as so many scholars have assumed, it was necessary to apply for the *ius* in the context of the *tutela*, surely it would also have been necessary to apply for the *ius* in the context these other benefits, but we have no such extant documents either. So, since this is the only document to support the application theory in the context of the *tutela* and since we also have no other such petitions, from either men or women who are seeking to apply for the *ius* in any other legal context, the idea that women were required to apply for the *ius* before exercising those rights seems improbable, especially given the number of women we see referencing the *ius* in their legal documents.

This conclusion can be borne out by juristic evidence as well. Although we know exactly how to apply for a *tutor*, the jurists make no mention of an application process for the *ius*. This itself makes the need for an application unlikely, since the *ius* persisted in law until at least 410, as we have a series of laws addressing applications to the emperor for extraordinary grants of the *ius* in the context of spousal inheritance rights.[86] Even more convincingly, the *Sententiae of Paul* notes exactly that: "matres tam ingenuae quam libertinae cives Romanae, ut ius liberorum consecutae videantur, ter et quater peperisse sufficit, dummodo vivos et pleni temporis pariant."[87] *Sufficit* is the key word here. While application could be made for the *ius* to the emperor by a couple who did not meet the minimum threshold of children, for those who did have the required

[85] On various understandings of the *parathesis*, see Alonso (2010) 20, note 36.
[86] *CTh* 8.17.1 (396); *CTh* 8.17.2-3, *CJ* 1.19.6, 8.57.2, 8.58.1 (410), *CTh* 8.17.4 (412).
[87] Paul *Sententiae* 4.9.1; "In order to be regarded as having acquired the *ius liberorum*, it is sufficient for freeborn mothers as well as freedwomen who are Roman citizens to have given birth three or four times respectively, so long as they give birth to live children and at full term." (Translation Kelly (2017) 110-111).

number of children, no application was necessary. The births themselves were sufficient to obtain the benefit.

2.3.1.2. Changes to the Agnate System of Guardianship

After the innovation of the *ius*, which pioneered a break with agnatic oversight and strictly controlled systems of familial inheritance, the rights of the agnates over adult women soon took another hit. The first-century *Lex Claudia* abolished the default agnatic guardianship of girls and women but allowed for the continued guardianship of boys by agnates. The text of the law is not extant, since Gaius refers to it only in passing. [88] As far as we can tell, agnate guardianship itself was not abolished, but rather the *de facto* right of the nearest agnate relative to be a woman's guardian on the basis of his intestate claim to her property. In Egypt, at least, we continue to find instances of agnates acting as guardians, but not at the expense of cognates as in the Greek system.[89] After this change, only the *tutores* of two classes of women retained more than nominal control: the patron-*tutor* of a freedwoman, and the father of an emancipated adult daughter. As we saw above, *tutors* could be changed, and they could be compelled in court to give their consent.

A 472 law of Leo cites a Constantinian law which reintroduced a form of agnate guardianship at least for underage women. The Constantinian law is extant only in the *CJ*, likely because of the fragmentary nature of the *CTh* 3.17-18 which appear to have contained laws on guardianship. In the *CJ* form, it reads "Constitutione divae memoriae Constantini lege Claudia sublata, pro antiqui iuris auctoritate salvo manente agnationis iure tam consanguineus (id est frater) quam patruus ceterique legitimi ad pupillarum feminarum tutelam vocantur."[90] At the very least,

[88] Gaius *Institutes* 1.171.

[89] Taubenschlag (1955) 129.

[90] *CJ* 5.30.3, "Because the constitution of Constantine of divine memory has repealed the *Lex Claudia*, the right of agnates is restored according to the authority of ancient laws, so that a consanguineous person, namely a brother, as well as a paternal uncle or other legally eligible person are called to the guardianship of minor females."

we can be sure that the agnatic guardianship of minor women was reintroduced with Constantine, confirmed by Leo, and accepted as late as Justinian's codification efforts. Likely, there was also a period from Constantine onwards during which the agnate guardianship of adult women was also accepted, but we cannot be sure how long that period was.[91]

The differences between the *tutela impuberum* and the *tutela mulierum*, even at this early point in Roman law are notable. That the law imposed a more comprehensive guardianship on minors than on women suggests a legal acceptance of women's intellectual and legal capacity. This is supported by Gaius' own rejection of the *levitas animi* reasoning, combined with his report that women were, by his day, able to take their guardians to court to force them to provide their consent. Nevertheless, their mutual origin in the early Roman system of inheritance, their joint treatment by Gaius, and their similar focus on the property and finances rather than on personal wellbeing, support the idea that the entire system of guardianship was centered around preserving agnate family wealth. This explanation is helpful for our understanding of the early Roman conception of the relationship between guardianship and inheritance. Clearly, they were understood to be closely entwined and inherently related, not just on a conceptual level, but on a practical one, at least early on. Our recognition of this should signal the importance of the Claudian changes to agnate guardianship for the evolution of the *tutela*.

2.3.1.3. The Rise of the Cura Minorum

Scholars have suggested that the final legal change to the guardianship of women in the Classical period was the gradual adoption of the *curator minoris* as another type of guardian for both men and women. As mentioned above, the *cura* was in place to supervise and advocate for a minor in financial transactions to avoid a youth's being taken advantage of by more seasoned or nefarious

[91] On the likely interpolation in *CJ* 5.30.3, see section 5.1.1.

businesspeople. Arjava argues that while we cannot prove ancient fertility rates or demography, the reconstructions which we do have suggest that by the age of twenty-five, women were usually married and had generally given birth to at least three children.[92] As a result, he posits that the *cura* is the key to why attestations to the *tutela* plummet in the fourth century: if women were under the *cura* until they were twenty-five, and if they already qualified for the *ius* prior to turning twenty-five, then they never would have needed a *tutor* or κύριος at all. This would naturally lead to a stark drop in attestations to the *tutela* and to *tutores* in the papyri and presumably also the law – or so his argument goes.

However, Arjava makes two faulty assumptions, one stated, and the other unstated. First, he assumes that third-century citizens clearly understood the difference among all the different types of Roman guardianship or legal oversight (*tutela impuberum, cura minorum*, *tutela mulierum*, and *patria potestas*) as well as the associated formulae and put these nuances into practice in their contracts. While he claims that this is the case, he quickly goes on to state that "we can hardly take it for granted that every citizen in Egypt understood the distinction."[93] This actually seems to be nearer to the truth. For all the papyri that seem to distinguish between a κύριος and a κουράτωρ (*curator*) or a κουράτωρ and an ἐπίτροπος (the Greek guardian of a minor), there are also papyri which clearly confuse the technical differences of these three and even paternal power. We also cannot be confident that the differences between the Roman styles of oversight and the Greek were well understood, or that the κύριοι or ἐπίτροποι that we do see equate exactly to the version of guardianship that Gaius explained.

[92] Bagnall and Frier (1994) 75-110, 135-159; see also Parkin (1994) 67-133; Saller (1994) 9-69; Arjava (1997) 29.
[93] Arjava (1997) 29.

Second, and more critically, he assumes that a woman could not have had both a *curator* and a *tutor* at the same time. His understanding of legal oversight of women is incredibly linear, with the end of *patria potestas* leading to the *tutela impuberum* (ἐπίτροπος), then to the *cura minorum* (κουράτωρ) at the age of twelve, and then to the *tutela mulierum* (κύριος) at the age of twenty-five. There is no evidence that the process was ever quite so tidy, and, in fact, we do have evidence of women who claimed both a κύριος and a *curator* and of minors who claim a κύριος.[94] Whether or not these instances followed the prescriptions of the law, they remain relevant. If even a portion of the population believed that a woman could or should have a *curator* and a *tutor* at the same time, then Arjava's argument, that the *curator* replaced the *tutor* for women aged twelve to twenty-five and which is related specifically to the papyri rather than the law, cannot stand.

Additionally, a technicality of law further complicates Arjava's tidy progression of oversight. A provision in the law, known as the *venia aetatis*, allowed for certain women older than eighteen years of age to operate without a *curator* as if they had already attained the age of majority.[95] To avail themselves of this innovation, men had to be at least twenty years old and women at least eighteen, reflecting a new, and decidedly modern understanding of adulthood. In addition, this was a benefit available only upon petition to the emperor, making it accessible only to those with significant enough financial means to warrant the trouble of the application. A poor eighteen-year-old woman from the edge of the empire would not have found this an easy or

[94] *P. Graux* 17; see also Schriemer (forthcoming a).

[95] This was a provision of Severus and modified by Constantine. *CTh* 2.16.2; 2.17.1, 2, 4.4.3.pr; *CJ* 2.44.1-3; *Digest* 4.4.3.pr. The West had a similar, if not the same, provision recorded in Cassiodorus, *Variae* 7.40, "Atque ideo, si id tempus constat elapsum, quo ad hanc veniam accedi iura voluerunt, nos quoque probabilibus desideriis licentiam non negamus, ut in competenti foro ea quae in his causis reverenda legum dictat antiquitas, sollemniter actitentur, ita ut alienandis rusticis vel urbanis praediis constitutionum servetur auctoritas." Trans. Lafferty: "Wherefore, if it is evident that you have reached that age at which you can lawfully petition for *venia aetatis*, in solemn accordance with ancient custom concerning these matters, we shall not deny your request, and further provide that you shall have authority over the alienation of your property, whether it be in the country or city."

accessible option to take advantage of. It is unlikely, then, that many young women would have been operating under the permissions of the *venia aetatis*.

At the same time, and despite this benefit which implies that the curatorship was universal and inflexible for the majority of young people under twenty-five years of age, it seems that minors were not always expected or required to operate with their *curator*. As long as they were making decisions which were objectively in their own best financial interest there was leeway. As we saw earlier, financial or legal decisions which were made without consulting a *curator* could not be overturned simply on that basis. The emperor Gordian confirmed to a disgruntled legal opponent that the consent or approval of a *curator* was not needed if a woman's affairs were well-managed, and a curator's absence was not grounds for a mistrial, particularly since she was married and her husband was mandated to act on her behalf.[96] This seems to be an extension on the original usage of the *curator*, which was as a type of mentor or overseer who was appointed upon request for a single transaction to ensure that the minor was treated fairly.

As we shall see in Part II, there is little papyrological evidence for Arjava's hypothesis and little evidence that the *cura*, especially of women, was ever well-understood or adopted by the masses of new citizens after 212. While the supervision of a *curator* would not have been directly affected by the *ius*, the subsequent tutelage may have been. This means that a woman who had three children before she turned twenty-five would have qualified for the *ius trium liberorum* before ever being subject solely to the *tutela*. Children or no children, she would have had a *curator* until she came of age. There was no fertility-based exemption.[97] Nevertheless, the suggestion that

[96] *CJ* 2.12.14.
[97] That the need for a *curator* was not affected by the *ius* see, *CJ* 5.37.12 (241) and *P. Vind. Bosw*. 6 (250). Note however that this distinction may not always have been preserved so neatly in practice, as in *CPR* VI 73. Arjava (1997) n.20 mentions that the two women who have κύριοι, or *tutors*, in this text are "obviously … younger than 25."

different types of authority and supervision influenced the *tutela* is an avenue which we shall explore further in Part II in relation to the nuclear family and marriage.

2.3.2. The Reason(s) for the *Tutela*

Having seen how the *tutela* evolved over time, and what prompted it to do so, we are now well placed to discuss the question: "what was the reason for this adult female guardianship?" As with almost everything else in early Roman law, the two axes of influence here seem to be blood and money. Nevertheless, academics and legal scholars, both ancient and modern, have proposed a variety of other reasons as to why the *tutela mulierum* was initially conceptualized as it was and why it persisted as long as it did. Of course, the original purpose of the practice in the *Twelve Tables* may also have been very different than the second-century-BCE or the second-century-CE justification for the practice. The most commonly accepted theory regarding the original purpose of all forms of guardianship is the one which was introduced at the beginning of this chapter: that guardianship was originally intended to safeguard family property, specifically agnate family property. This seems abundantly clear in the context of the guardianship of the insane person and especially the spendthrift.

Were women categorized as similarly needing oversight in that they were not thought able to reliably make the best possible decision for their property? The idea of feminine fragility and flightiness can be seen throughout Roman history. Cicero, in his *pro Murena*, gives us the first extant example of female incompetence being used as a rationale for the *tutela*. It certainly was not the last. Whether Cicero himself subscribed to the logic he used while defending Murena, he gives a picture of a much-modified form of the *tutela* , in which women managed both their own

property and their guardians.[98] However, if women really did have as much legal freedom as he portrays as early as the second century BCE, we must ask ourselves why such an institution would have continued to exist in Roman law at all. Practicalities, aside, this early rhetoric was picked up and came to play a large part in later jurisprudence and scholarship on women in the legal sphere.[99]

Gaius, for instance, seems to take a very similar line when he tells us that "veteres enim voluerunt feminas, etiamsi perfectae aetatis sint, propter animi levitatem in tutelea esse."[100] He does not record whether he or second-century Roman society agreed with this evaluation of the feminine disposition, but the following section is rather revealing. Gaius goes on to note that while a brother and sister might both be provided with a *tutor* in their father's will, the son would become independent once he reached the age of majority, where as the daughter would remain under the control of her *tutor* until she gave birth to three children, as required in the *ius trium liberorum* of the *Lex Iulia* and the *Lex Papia Poppaea.* He concludes, however, that "even our ancestors" thought that the vestal virgins ought to be free, because of their priestly role.[101] That "etiam veteres" here suggests that he, and Roman society generally, may not have agreed with their ancestors' opinion about the reason for women's guardianship, but that on the topic of the vestal virgins, at least, they could agree.

Ulpian goes on to suggest that it was rather a feminine ignorance of legal and financial matters that led to the *tutela*: "Tutores constituuntur tam masculis quam feminis. Sed masculis quidem impuberibus dumtaxat propter aetatis infirmitatem, feminis autem tam impuberibus quam

---

[98] Cicero, *pro Murena* 12.27, hi invenerunt genera tutorum quae potestate mulierum continerentur. "These men (the jurisconsults) have invented kinds of *tutores* which might be bound by the power of women."
[99] Du Plessis (2017) 165-172.
[100] Gaius *Institutes* 1.144, "For according to our ancestors, women who are of age also ought to be in tutelage, on account of their flightiness."
[101] Gaius *Institutes* 1.145, "loquimur autem exceptis virginibus Vestalibus quas *etiam veteres* in honorem sacerdotii liberas esse voluerunt, itaque etiam lege XII tabularum cautum est."

puberibus, et propter sexus infirmitatem et propter forensium rerum ignorantiam.[102] To be sure, this must have been true for some women (and likely also some men), but given Gaius' report that women were taking their *tutores* to court as well as constitutions which advised women not to attend court (as they must have been doing to prompt such an imperial response) and the myriads of contracts and business agreements composed by women, we must be wary of such a generalizing explanation. Given the modern understanding of women's intelligence and ability, as well as the contemporary indications that Roman women actually managed their money and their *tutores* just fine, the question of the purpose of these institutions bears further examination. Of note is the similarity of the *tutela mulierum* to the *tutela impuberum* and the reliance of both on the *patria potestas*. This suggests that something more integral and not at all related to the feminine disposition was initially at play with guardianship, namely a society-wide effort to centralize and control familial finances for the wellbeing of the family rather than the independence of the individual.

In this understanding, the *tutela* originally formed part of an early Roman system of family law in which inheritance and wealth were centred around the agnate family. The thinking is that, in this system, the *tutela* allowed a woman's agnate relatives to supervise her major financial transactions in order to preserve family property which they might expect to inherit upon her death. In this way, women could be conceptualized in the same way as the spendthrift and the insane person – both were judged to need protection from their financial impulses, not because they could not handle their own finances, but because the risk of misuse was high. Where the spendthrift might squander away his generational wealth, a woman might use it for her marriage, her children,

[102] Ulpian *Tituli ex corpore* 11.1 (*FIRA* II 259-301), "guardians are appointed for males as well as females, but only for pre-pubescent males, because of their young age, while they are appointed for both pre- and post- pubescent females, on account of weaker sex and on account of their ignorance about legal matters."

or even her husband's family. In both cases, the agnate family lost wealth.[103] As we have already seen, however, guardianship underwent several changes in the first two centuries of the common era which in themselves suggest that such familial financial concerns were no longer the primary reason for the practice. Most notable of these changes are the creation of the *ius trium liberorum* by Augustus and the abolition of the agnate guardianship of girls and women by Claudius.

Dixon suggests, at least partially correctly, I think, that the changes to the form and usage of the *tutela* were related to moments of Roman economic changes, particularly those centered around the family and inheritance. Her primary argument is that the reason for the *tutela 's* "decline was the general shift in the accepted direction of property transmission from traditional agnatic affiliations."[104] Initially, at least, she seems to be correct. There does seem to be a correlation between the evolution of the *tutela* and the changing inheritance models and gradual prioritization of the nuclear family over the agnate family.

It is necessary that any convincing explanation of the purpose and evolution of the *tutela* not only take into account the structural modifications but also the changes in rhetoric and reasoning surrounding the practice. The explanation based in inheritance rights can do just that. As the financial- and inheritance-based reasons for the *tutela mulierum* disappear, we see a concurrent rise in rhetoric about female legal incompetence. Rather than finding this inverse correlation between the rhetoric and the *tutela* puzzling as Dixon does, we can instead see this as a simple shift in the popular reasoning for the *tutela.* Previously, women would have been subject to the *tutela* to ensure that their family property would remain intact for their heirs (who would have been their guardians). Now, because that financial reasoning is no longer relevant as a result

[103] Schulz (1951) 180-190; Nicholas (1962); Nicolas and Jolowicz (1972); Zannini (1976) 8; Dixon (1984) 343-344; Gardner (1986) 14-22; Evans Grubbs (2002) 24.
[104] Dixon (1984) 344.

of changing inheritance structures, the Romans needed another reason to support this institution, beyond simply the *mores maiorum*. The rhetoric of female *infirmitas* played exactly that role. If women could not be relied upon to make reasonable and well thought out decisions, then they ought to be under the tutelage of someone who could.[105]

The fundamental question we have now is whether these reasons can also explain why the *tutela* continued to evolve as it did after 212 or whether we should we be looking elsewhere for answers. To help answer that question, we shall turn, in the next section, to some other forms of adult female guardianship which were practised in the Roman world on the eve of the *Constiutio Antoniniana* and which may have had a role to play in the types of guardianship which evolved thereafter.

2.4. Other Forms of Roman Guardianship

Two other notable forms of guardianship existed in Roman law, the guardianship of the mentally unstable and of the spendthrift. These are particularly important to mention here because they demonstrate the close link between family finances and guardianship. In early Roman law, the *curator* of a *furiosus*, or insane person, would have been the nearest agnate relative, who would also have been his intestate heir. Since a person had to be of sound mind to write a binding will, there was no getting around the rules of intestate succession. As Benincasa and Nowak note, "if concern for a [*furiosus*] person occurs in the sources, it is always related to the possession of property." [106] Unlike the situation with the *tutela impuberum*, the wellbeing of the ward seems to have been of less concern. It is only with Justinian that we see care for their personal wellbeing

[105] Zannini (1976) 67-69; Dixon (1984); du Plessis (2017) 165-172; Morrell (2020).

[106] Benincasa and Nowak (2024) 56. It is perhaps worth noting that throughout their chapter, Benincasa and Nowak repeatedly draw links between the guardianship of *furiosi* and of adult women. This link is a little odd because the *cura furiosi* aligns more accurately with the guardianship of young people, the *cura minorum*. Nevertheless, there is a great deal here that suggests that perhaps Nowak is now working on the guardianship of women.

expressed in law.[107] In this context too, a *curator* could not be appointed in the will of a *pater familias*. If a *furiosus* or *furiosa* was *alieni iuris* until the death of their *pater familias*, they would not have needed a *curator* to manage their finances, because, theoretically at least, they would not have had any. It is only after their father's death, when they become *sui iuris*, that a *curator* would have been necessary. By the classical period, such a *curator* was generally appointed by the magistrates.[108]

Curatores could also be assigned to otherwise sound-minded men who were deemed to be spendthrifts (*prodigi*). While we have little information about exactly how this worked, Gaius explains that the *Twelve Tables* allowed for a magistrate to assign a guardian to an adult man who was deemed to be wasting his property. Not surprisingly, this guardian was also usually the nearest agnate relative.[109] *Curatores* could also be appointed by the magistrates for those who had a temporary need, for those with a physical impairment such as blindness or deafness, or even for unborn children in the absence of their father.

These other categories of guardianship show that legal supervision was not necessarily linked to a person's age or gender, but to their ability to manage money well. The specific inclusion of a spendthrift as someone who merited a guardian re-iterates that the entire system of *potestas*

---

[107] *Novels* 115.3, "neglect of the mentally challenged" was listed among the legitimate reasons for disinheritance.
[108] *Digest* 26.3.1, 27.10.16 pr.
[109] Gaius *Institutes* 3.106, furiosus nullum negotium gerere potest, quia non intellegit, quid agat. ("An insane person is not able to conduct any legal transaction because he does not understand what he is doing."); *Digest* 27.10.1 (Ulpian) relates a prodigal (prodigo) to an insane person, noting that the qualifications for such a diagnosis were as follows: … qui neque tempus neque finem expensarum habet, sed bona sua dilacerando et dissipando profundit. ("who limit their expenses neither by time nor by space but squander their own property by wastefulness and extravagance"). Both of these, the prodigal and the insane person were under the supervision of a guardian only until such a point as they retained their sanity. On whom the guardian should be, see *Digest* 27.10.13 (Gaius); Antoninus Pius changed the law to allow sons to function as the guardians of their insane or spendthrift fathers, something which Ulpian records had been thought *indecorum* (*Digest* 26.5.12). See also Nicholas (1962) 96; Frier and McGinn (2004) 445-446; Nowak and Benincasa (2024).

and guardianship was intended as a means to safeguard family property. That being said, the guardianship of spendthrifts or mentally ill persons operated on a case-by-case basis, was male-centric, and not intrinsically tied into the social fabric of the family. For these reasons, they will not be discussed in any detail here, since the focus of this thesis is specifically on the guardianship and legal status of women. Nevertheless, their brief mention here serves to support the perspective that the *tutela mulierum* and guardianship generally were at least originally established as means to control and safeguard property within the agnate family.[110]

2.5. Non-Roman Guardianship

As far as we know, the majority of Mediterranean peoples retained some sort of legal oversight over their adult women. However, Gaius notes that "Apud peregrinos non similiter ut apud nos in tutela sunt feminae; sed tamen plerumque quasi in tutela sunt; ut ecce lex Bithynorum, si quid mulier contrabat maritum auctorem esse iubet aut filium eius puberem."[111] As in Bithynia, the guardianship of adult women existed throughout the Greek East, but the exact nature of this guardianship seems to have varied from place to place, at least where we have the written sources that discuss it at all. While the logistics and comprehensiveness of the oversight differed, most women in the Mediterranean world seem to have remained legally accountable, theoretically at least, to a male relative. Unfortunately, we do not have contemporary jurisprudence or law codes to provide an explanation of how paternal authority and guardianship functioned in Hellenistic and

[110] This conclusion is borne out by Arjava (1996: 112) who notes that "as daughters could inherit a considerable estate, it was in her brothers', uncles', and cousins' personal interest to see that she did not alienate property which would after her death revert to the family. That is why the nearest agnatic male relative automatically became the guardian (*tutor legitimus*), unless the father had appointed someone else in his will. He goes on to note that this applied solely to guardianship in the early and middle Republic, as the form and function of the *tutela mulierum* changed significantly towards the end of the Republic and into the early Empire.

[111] Gaius *Institutes* 1.193, "In other countries, although they are not under the same system of tutelage as in the Roman empire, women are generally subject to a quasi tutelage; for instance, the law of Bithynia requires that the contract of a woman be sanctioned by her husband or by a son above the age of puberty."

early Roman Egypt. There is no Greco-Egyptian version of Gaius. Nevertheless, because of the wealth of papyri, we can decipher aspects of these two legal categories, paternal power and the guardianship of adult women, which seem to have been largely intertwined.

2.5.1. Greco-Egyptian Guardianship

As in the ancient Greek-speaking world generally, the guardian of an adult woman in Hellenistic and Roman Egypt (332 BCE - 212 CE) was called a κύριος, and the guardianship he exercised was focused on the preservation of familial and personal property rights. From the papyrological evidence, it seems that Egypt did generally follow Greek legal norms, which meant that woman's guardian was first her father and then the husband, and that his involvement was required for all financial transactions which were publicly recorded. It seems too, that, in this style of guardianship the guardian's consent was assumed and that it was his assistance with or witnessing of the legal transaction which was emphasized. [112] This is quite different than in the Roman system, where, at this point at least, the guardian was never the husband, and where obtaining consent from a guardian could be as tedious a process as taking the guardian to court. In the absence of a father or a husband, a woman could also have a brother, son, or other kinsman as her guardian.[113] Hellenistic women were also more limited than their Roman counterparts in the types of legal and financial transactions they could access. For example, where the provisions of the *Twelve Tables* were inventively utilized to allow Roman women to make a *coemptio* to write a will, Greek and Hellenistic women could not make a will at all.[114] These differences begin to soften as Hellenistic and Roman legal spheres come to overlap in the Roman East.

[112] Pomeroy (1975); Sealey (1990); Lefkowitz and Fant (2016); Kaltsas (2017) 149; Yiftach (2020).
[113] Schriemer (forthcoming a) 4-5.
[114] Benincasa and Nowak (2024) 59.

As mentioned in Chapter 1, the "Law of the Egyptians" which begins to emerge in official documents in the second century seems to have differed somewhat from what we understand to be strictly Greek law.[115] For example, a practice of written and unwritten marriages, with significant legal implications for women and children, becomes apparent in the papyri, especially from the second century. Although we do not know a great deal about how these types of marriage functioned, it seems that there was a degree a similarity between these written and unwritten marriages and the earlier types of Roman *in manu* marriage. Like an *in manu* marriage, a written marriage transferred a wife out of her father's power and into her husband's familial structure for the purposes of financial control and inheritance. Children of written marriages could thus also expect to inherit from both parents and were therefore also in a different legal position from the children of unwritten marriages. As a result, children of unwritten marriages occupied a legal place similar, but not entirely identical, to that of a person *in potestate*. Their finances were entirely dependent on their father, and they were under his control until his death. While they seemingly could own money in their own right, they did not have the right to make a will and, unsurprisingly, their intestate heir was their father.[116]

For daughters, this meant that in theory, any dowry or personal property remained under the control of her father, despite her age or marital status. However, we have one contemporary Greco-Egyptian jurist whose understanding is meaningful for later conceptions of family structure especially. *P. Oxy.* II 237 records correspondence about a case from the 130s in which a jurist explains that a daughter of an unwritten marriage, who was thus under the control of her father,

---

[115] Bryen (2011) note 29 cites as examples: *P. Oxy*. IV 706 = *Chrest. Mitt*. 81 (115-17); *P. Oxy*. XL 3015, 2-3 (post AD117); *P. Tebt*. II 488 (121-2); *Stud. Pal*. XX 4 = *Chrest. Mitt*. 84 (124) and notes that there are slightly earlier examples of this phrase in private documents: *BGU* IV 1148 (13 BCE), contract; *BGU* IV 1118 (14 BCE), sale of a garden; *P. Oxy*. IV 795 (81-96 CE), marriage contract.

[116] See, for example, *CPR* I 18 = *Stud. Pal*. XX 4 = *Chrest*. *Mitt*. 84 = *Jur*. *Pap*. 89 (124); on written and unwritten marriages, see Wolff (1939); Yiftach-Firanko (2003); Dolganov (2020) 38-39.

could be considered to have been freed or emancipated from this paternal power if she has formally been given away in a written marriage of her own, with a marriage contract and a dowry. As we shall see in the late antique papyri, this conception of paternal power over women ending with their marriage is one which persists.

At the same time, the indigenous Egyptian law of the Roman period, from about 30 BCE to 212 CE, did not exist in a vacuum. That both the marriage and the type of parental control mentioned above bear more of a resemblance to the Roman system than they do to earlier Greek or Egyptian legal systems is hardly surprising. Dolganov points out that there was actually a considerable degree of Roman influence on indigenous law in this period, especially as the use of precedents and case law developed in the second century. While ostensibly referencing the "law of the Egyptians", the majority of cited precedents were mediated through the lens of a Roman court or a Roman judge.[117] In some of these precedents, we see that where Greek law seemingly allowed a father to force the divorce of his daughter, ancient Roman conceptions of morality prioritized the desires of the couple. *Affectio maritalis* was stronger than paternal power in this Romanized system of indigenous law.[118] Even so, this apparent indigenous system of paternal power did not translate well to guardianship. Whereas in the Roman system, guardianship was based on the absence of paternal power – i.e. only a *sui iuris* person could have a guardian – the Greco-Egyptian system seems to have been based more on majority and marriage than on the presence or absence of an additional layer of parental control.

[117] Dolganov (2020) 38-39.
[118] On the power of a father to divorce a daughter in Attic law, see Lewis (1977). On Roman hesitancy to use the *patria potestas* to disturb a happy marriage, see Ulpian in *Digest* 43.30.1.5. This concept was also formalized in law in *CJ* 5.17.5 (294) and 5.17.12 (534).

That the word κύριος was used to refer to a variety of types of guardianship throughout the Hellenistic East could and did cause some confusion, since it was also the word later used to translate the Latin *tutor*, in the specific contexts of both the *tutela impuberum* and the *tutela mulierum*. To clear things up, when Romans wrote a contract in Greek and wanted to make it obvious that they were referring to the Roman *tutela mulierum* and not the Greek form of guardianship, they often included the phrase κατὰ τὰ Ρωμαίων ἔθη, "according to Roman law."[119] After 212, this clarification falls out of use, and it becomes next to impossible to ascertain what type of guardianship the creators of a contract had in mind when they wrote it, or if they themselves could even distinguish the form they intended.

2.6. Conclusion

The *tutela mulierum*, as we have seen, was but a part of the larger Roman system of familial and financial control. Like the *patria potestas* upon which they depended, the *tutela impuberum*, the *tutela mulierum*, the *cura minorum*, and the *cura furiosi* and *prodigi,* the original goal of all of these legal institutions was the safeguarding of property within the agnate family, as defined by inheritance law. While family property and inheritance rights remained a key concern in the guardianship of minors, we see juristic rhetoric about the *tutela mulierum* beginning to shift. Women are said to be legally incapable (Ulpian) or flighty (Gaius) in order to justify the *tutela* exactly as women seem to gain more and more individual agency. As practical financial restrictions fall away, some other legal justification was needed to explain the requirement for guardianship, and so we see an increasing emphasis on female impulsiveness and lack of control, qualities which are shared by children, the insane, and spendthrifts. Nevertheless, women gain

[119] For example, see: *P. Freib*. II 8 (144); *P. Hamb*. I 101 (218-222); *P..Harr.* II 227 (221); SB XVI 12950 (230/1); *P. Oxy.* X 1274 (3rd century); *P. Oxy.* XXXIV 2723 (3rd century); *PSI* XII 1238 (244), *P. Vind. Bosw*. 6 (250).

more financial agency. The *ius liberorum* granted freedom from guardianship for women with three or more children in the first century, while by the second century, most women with a guardian could take him to court to make him consent anyway. *Ius* or not, women thus generally had the ability arrange their own affairs as they pleased. A few decades after Augustus's *ius*, Claudius abolished the default agnate guardianship of women, and, while Constantine seems to have brought it back at least partially, this is a key clue that the legal priority was beginning to shift towards the nuclear family and the individual. The subsequent rise of the *cura minorum* for young people under the age of twenty-five suggests that guardianship was shifting from an agenda of power to one of protection.

Chapter 3: The *Constitutio Antoniniana* and Roman Law in the Provinces

In orbe Romano qui sunt ex constitutione imperatoris Antonini cives Romani effecti sunt.[1]

In order to understand the legal context of Late Antiquity, it is first necessary to understand how Roman law spread to all the provinces. In this regard, the Roman legal landscape looked rather different in the third century than in the centuries which led up to it. The main cause for this is an obscure edict of the emperor Caracalla.[2] We have no original copies of the edict, nor do contemporary authors discuss it in any meaningful detail, but we know it gave Roman citizenship to most, if not all, the inhabitants of the Roman empire.[3] With this mass enfranchisement came a widespread, but nuanced and gradual, change in legal practice, and, eventually, also in codified law, which affected women, paternal power, and, of course, guardianship.[4]

3.1. The Edict

It all began on 4 February 211. The Roman emperor Septimius Severus died in York in Britain. He left behind him his wife, Julia Domna, and two sons, Caracalla, who was twenty-five, and Geta,

[1] *Digest* 1.5.17, "Those who were in the Roman world became citizens by the constitution of the Emperor Antonine [Caracalla]."

[2] The ancient authors who do mention it, are not at all clear about who the author of the edict was. John Chrysostom (*Homilies on the Acts* 48) says Hadrian, Justinian (*Novel* 78.5) Antoninus Pius, and Aurelius Victor (*De Caesaribus* 16.12) Marcus Aurelius. See also Cassius Dio 78.9.5; *Digest* 1.5.17; Augustine *De civitate Dei* 5.17.

[3] The word ἀστή, or Greek citizen woman, had been used as a descriptor by Hellenistic women for several centuries. While "citizen" in the republican Roman definition has been used in reference to adult (although not *sui iuris)* men only, the third century impression – and hence my use of the word – was more inclusive. Men, women, and children became Romans and acquired the rights of Romans under the law. See section 3.3. for a further discussion of women and Roman citizenship status.

[4] In the pages which follow, I shall specifically discuss the effects of the *Constitutio Antoniniana* on provincial legal texts and practice, but not scholarship on the text of the *constitutio* or the theories behind why Caracalla decided to promulgate such a document.

who was three years younger. Both were already *augusti*, Caracalla since 197 and Geta since 209. Septimus Severus had evidently hoped that his two sons would succeed to the imperial throne together. He had named them consul together in both 205 and 208, and he had given both boys largely equivalent titles (although only Caracalla was *pontifex maximus*). As expected, then, upon Severus' death the two young men began a joint rule, and imperial pronouncements were issued in both their names. But all was not well between the brothers. In December, both Caracalla and Geta were invited to visit their mother, unattended (albeit for different reasons), in order to reconcile. Unfortunately for Geta, soldiers stood at the ready and murdered him in his mother's arms. The plot and the unaccompanied visit were Caracalla's doing. In the aftermath of the murder, he rushed out, proclaiming that he had "escaped a great danger" which had killed his brother. Geta was declared a public enemy and suffered *damnatio memoriae*. Following this successful fratricide, Caracalla set out to solidify his position by propaganda and a violent purge. Anyone who had supported Geta was murdered. His legitimate claim to the throne was solidified through horrific violence.[5] As Caracalla spun this story that he had been saved from Geta's plot, he attributed his salvation to the favour of the gods and called for a universal religious thanksgiving.

It is in this context in which Caracalla promulgated the edict that we now refer to as the Antonine Constitution, the Edict of Caracalla, or, in Latin, the *Constitutio Antoniniana*.[6] Unfortunately, we have only one piece of textual evidence for the exact contents of this edict, that comes from a rather fragmentary papyrus, *P. Giss*. 40. In fact, the *Constitutio Antoniniana* is only one of three edicts relating to citizenship and identity/belonging that were copied down together by the author of *P. Giss.* 40, perhaps as some sort of a study aide. This means that the papyrus does

[5] Cassius Dio 78.9.5; *Digest* 1.5.17; Herodian 4.4.3-7, 4.5.7, 4.6; *Historia Augusta* 3.3-4.9; See also Buraselis, (2007); Ando (2012) 48-75.

[6] There is no evidence of what the edict was called in the ancient world.

not contain the original edict or even a "certified copy" of any of the three edicts contained on it. Because of the numerous lacunae in the text, there remains some debate about its dating, and even about the exact identity of the conspiracy it mentions Caracalla surviving.[7] The scholarly consensus now seems to have settled on a mid-212 date, largely because the effect of the edict can be seen in various provinces by early 213, although that date is not accepted by all.[8]

Why include this story of succession, fratricide, and third-century imperial edicts here? The *Constitutio Antoniniana* is particularly famous because it granted citizenship to almost all the free inhabitants of the Roman empire.[9] We shall soon see that this situation and this story had lasting consequences for women and for adult female guardianship. In order to understand why, it is necessary to examine the effects of the edict, intended or otherwise, on the broader legal sphere.

---

[7] "A certified copy would have indicated that it was copied and checked, usually from an official source, and that it had been witnessed. In the case of imperial edicts, official copies usually are preceded by an official letter of the prefect instructing that the edicts be posted in public." Bryen (2016) 17. The papyrus was republished as *P. Giss. Lit.* 6 in 1994 by P.A. Kuhlmann, but the original 1910 publication by Meyer in the first volume of the *Giessen papyri* is still generally the reference of choice among specialists and non-specialists alike. Other commonly cited editions are Heichelheim (1940) 10-20 and Oliver (1989) 495–510; An edition including a proposed reconstruction which references these earlier editions, accompanied by an English translation, commentary and images can be found in Imrie (2018) 139-153.

[8] Millar (1962) based on a reading of Cassius Dio and the Giessen papyrus, proposes a date in the second half of 214. He suggests that the danger referenced in the edict was not the Getan conspiracy, but a shipwreck that occurred when Caracalla was crossing the Hellespont in the summer of 214 and proposes that the purpose of the edict was to raise money for the military, a theory which has been widely discussed, but not altogether accepted. He also argues that it is clear from the papyrological sources that the *Constitution Antoniniana* was already in effect by at least 215/216, but that such evidence is lacking for 212/213 and 213/214 since we continue to see papyri with both *Aurelii* and non-*Aurelii*. He assumes that the appearance of the *nomen* Aurelius can be neatly equated with citizenship and its absence with non citizenship. This argument is also based on the assumption that news of the edict traveled quickly and that these new naming conventions were adopted *en masse* immediately, which seems unlikely. In support of the earlier, generally accepted date of 212, see Gilliam (1965) 90-92; Hermann (1972) 519-530; Barnes (2012) 51-52; Van Minnen (2016) 211-213; Imrie (2018) 44. Their argumentation is extensive, but of particular interest is a link between *P. Giss.* 40, col 2, lines 306 and *CJ* 10.61.1 which clearly dates the shared edict to July 11, 212. This constitution appears again, albeit further paraphrased, in *Digest* 50.2.3.1. A quotation of the same lines in *P. Oxy*. XXXVI 2755 is similarly dated.

[9] Everyone became "Roman" through this edict. While strictly speaking, only free, adult, males could be Roman citizens according to the classical understanding, this edict conferred "citizen status" on women and minors. Distinctions of gender and age in relation to citizenship seem to have borne little weight in Late Antiquity. See section 3.3 for more on women and citizenship.

3.2. The Effects of the Edict

This universal enfranchisement was a rather remarkable innovation on Caracalla's part, because before this point, Roman citizenship had been fairly exclusive and restricted. A person could gain Roman citizenship in one of five primary ways: by being born to Roman parents with citizen status, whether they be free or freed; by being manumitted by a master who was a Roman; by completing a full, twenty-five-year term of military service; by being a member of a community upon which the Romans bestowed citizenship *en masse*; or, finally by receipt of a personal grant of citizenship which was given primarily to worthy individuals of high status. Particularly among non-elites in the provinces, then, Roman citizens were quite rare, even by the beginning of the third century. This is significant, because Roman citizens had a number of exclusive rights and responsibilities: they could vote and run for office, make use of the Roman legal system, take advantage of lesser punishments and milder methods of interrogation, appeal to the imperial courts, pay taxes, serve in the military, and so on. [10]

Given these benefits and the previously restricted nature of Roman citizenship, a universal grant of citizenship must have been significant moment for both the new citizens and for the Roman state itself. Caracalla claims that the edict was intended to have religious consequences and that the catalyst for this bold move was rooted in his religious devotion. Specifically, the edict says that in the wake of "the plot against him," Caracalla wanted to join all the inhabitants in the empire together in their religious rites of thanksgiving for his safety.[11] Rome had a civic religion, and by making everyone citizens, Caracalla was creating a larger group of adherents to follow Roman civic rules and rituals, in which all citizens were required to participate for the wellbeing

[10] Bryen (2011) 9-10; Lavan (2019) 21-54.
[11] *P. Giss.* 40 col. 1.

of the state.[12] Modern scholars have not been terribly convinced by this reason, and they have debated various more practical reasons from the financial, to the military, to the egotistical.[13]

While there is a thriving field of scholarship devoted to the reasons for the edict and the exact wording and intent of the edit, I am more interested in the effects of the edict, intended or otherwise.[14] So what were these effects? On the one hand, it is unclear whether the comprehensive religious thanksgiving that Caracalla envisioned actually happened. On the other hand, everyone, or almost everyone, did receive Roman citizenship, though, and that had a fairly widespread affect, as we shall soon see. Curiously Caracalla's universal grant of citizenship seems to have received little mention from contemporary writers. What the great German legal scholar Mitteis suggested should have been a tremendous innovation for the empire seems not to have been received as such, at least in the literary sources of the period.[15]

3.2.1. Citizenship and Law in the Provinces before 212

A considerable proportion of the people living in the provinces prior to 212 were thus peregrines, that is, not Roman citizens. Because of the way the Roman legal system and the general socio-legal culture of the Mediterranean world worked, this also means that they were not expected, or in some cases not allowed, to participate in society or the legal sphere as a Roman would have

[12] *Pax deorum,* or the peace of the gods, could only be achieved by the correct practice of these religious rules and rituals by the citizenry of Rome. If the gods were pleased, Rome fared well, if not, Rome fared poorly.
[13] Imrie (2018).
[14] *P. Giss.* 40 has produced more secondary scholarship than any other piece of documentary papyrus, and this does not seem likely to change any time soon, as books, papers, chapters, and theses continue to be written about it, and about the *Constitutio Antoniniana* generally. For an overview of scholarship on the topic see Sasse (1962) 109-149, (1965) 329-366; Welles (1971) 35-54; Modrzejewski (1990) 478 – 490; Bryen (2016); Imrie (2018).
[15] Mitteis (1891); Bryen (2011); Humfress (2013a) 73-101; Humfress (2013b) 225-250; Alonso (2013) 43, 351-404; du Plessis (2016).

been.[16] Gaius, the second-century jurist, explains the link between citizenship and law was conceptualized and how the whole system was supposed to have worked:

> "Omnes populi qui legibus et moribus reguntur partim suo proprio, partim communi omnium hominum iure utuntur. Nam quod quisque populus ipse sibi ius constituit, id ipsius proprium est vocaturque ius civile, quasi ius proprium civitatis, quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur. Poplus itaque Romanus partim suo proprio, partim communi omnium hominum iure utitur." [17]

What Gaius is describing is a world in which every people had their own system of laws separate and distinct from the Roman system, although in certain instances natural law may have prevailed such that these systems may have overlapped or agreed with each other. [18]

When Rome expanded across the Mediterranean world and conquered its various peoples, they, by and large, left individual, local systems of administration and law intact. They installed an upper-level administration, collected taxes, and so on, but at a local level, the legal order was left very much alone. Alonso explains how this seems to have worked: in Egypt, the pre-Roman administrative and legal system, appears to have been integrated into the Roman administrative structure despite the apparent lack of, or at least papyrological silence about, a local court system for non-Romans. In the absence of a parallel, peregrine court system, at least at the upper level, we see the Roman courts endorsing and even upholding the so-called Law of the Egyptians, even

---

[16] *Lex Flavia Municipalis* 91; Gaius *Institutes* 4.103-105; Garnsey (2004) 133–155; Ando (2012) 28, 82-84; Lavan (2016) 3–46.

[17] Gaius *Institutes* 1.1, "All peoples who are governed by laws and customs observe partly their own specific laws and partly the common law of all men. For the laws which a people establish for themselves is specific to them, and is called their civil law, because it is the particular law of that civitas (state), while the law that natural reason establishes among all men is followed by everyone, and is called law of nations, because it is law that is observed by all nations. Thus, the Roman people observe partly their own civil law and partly the law common to all men."

[18] Bryen notes that this desire to draw connections between peoples, citizenship, and law is a relatively new impulse for the Romans. He states "…it seems that at the very least there is a link between the "laws of the Egyptians" and this relatively new way of thinking about law that arises contemporaneously at Rome: law is linked to discrete peoples and "their" history as discrete peoples. The Egyptians are a discrete people. It follows that they must have had their own *ius civile*. And if they did not, one must be found for them…" (2011: 24-25).

when it conflicted with basic Roman legal principles, and remarkably even when a case included a Roman. On occasion, the Roman administration even adopted aspects of the pre-Roman system themselves. Nevertheless, the entire system seemed to function on a case-by-case basis, in which the provincial governor had the final say. The exact legal foundation for this system is still debated. Thankfully we concern ourselves, not with the justification for this plural system, but with its effects. [19]

The systems of law at play in various regions of the empire after the *Constitutio* depended to a great extent on the legal system which had been in place for that city, region, or people prior to their conquest by the Romans. For much of the East, thanks to the post-Alexandrian administrations, this meant that Hellenistic law, at least to some extent, played a role. We are fortunate to have a text from Egypt which catalogues the intersection of Roman and peregrine law, specifically in the context of citizenship. Known as the *Gnomon of the Idios Logos*, the text as we now have it is a much edited and emended version of an earlier Augustan era text. These various iterations of the *Gnomon* served as manuals or legal reference books for the *Idios Logos*, originally a Hellenistic administrative position responsible for royal property and income which persisted into the Roman period with similar responsibilities. The text was meant to be a living document with the most up-to-date rulings and opinions on relevant topics in an abbreviated form for, as it proclaims, ease of mastery. Emendations and new additions to the text of the *Gnomon* can be traced

[19] νόμος τῶν Αἰγυπτίων; *P. Oxy.* II 237; *P. Oxy.* IV 706; *P. Oxy.* XLII 3015; *P. Tebt.* II 488; *Stud. Pal.* XX 4. Known as the petition of Dionysia and used also in numerous other scholarly contexts, *P. Oxy.* II 237 is also one of the most enlightening sources we have on the question of how this "law of the Egyptians" might have worked in practice, given the presence of Roman law and the seeming lack of alternative courts systems. Note that, in this temporal context, "Egyptian" could, on occasion, refer not solely to ethnic Egyptians, but to all the non-Roman inhabitants of the province, be they ethnically Greek, Egyptian, or otherwise. The opposite "law(s) of the Romans" is also found quite often, particularly in the context of the *ius trium liberorum*, as we shall see in the following chapters. See Taubenschlag (1955) 1-55, esp. note 14; Wolff (1960); Yiftach-Firanko (2003); Cotton (2007) 235-255; Yiftach-Firanko (2009) 542-543, 550-552; Alonso (2013); Mélèze Modrzejewski (2014) 259-271.

back to decisions of earlier *Idioi Logoi*, to *constitutiones*, to *senatus consulta*, to provincial edicts, and even the decisions of earlier administrators in the same position.[20] In it we see a variety of distinct descriptors for citizenship, ethnicity, and/or legal status: Roman, Egyptian, ἀστή/ἀστός, (namely a female or male Greek citizen from the city of Alexandria, Naukratis, Ptolemais, or Antinoopolis), and even freedman. We see that a Roman was not permitted to marry an Egyptian, nor could a freedman from an Alexandrian master; that a child of a Greek woman and an Egyptian man followed their father's status; and that Romans, even in Egypt, could not marry their siblings.[21]

These local systems of law were loosely equated with citizenship or at least residency in a particular city or territory, even after the Roman conquest. So, if you came from Alexandria, you used a Greco-Egyptian style of law; if you were from Jerusalem, Jewish law; if you were from

[20] We know of the *Gnomon* from *P. Oxy.* XLII 3014, a less complete version, and *BGU* V 1210, a later, revised, and fuller version. The *P. Oxy.* text dates to the first century generally and the *BGU* text to sometime after 149, that is, from before the *Constitutio Antoniniana*. Cf. Riccobono (1950).

[21] *BGU* V 1210 – 70-72 (#23); 109-110 (#38); 133 (#49); 137 (#52)
70 κγ οὐκ ἐξὸν Ῥωμαίοις ἀδελφὰς γῆμαι οὐδὲ τηθίδας, ἀδελφῶν
71 θυγατέρας συνκεχώρηται. Παρδαλᾶς μέντοι ἀδελφῶν συν-
72 ελθόντων \τὰ/ \ὑπάρχοντα/ἀνέλαβεν.
-
109 λη οἱ ἐξ ἀστῆς καὶ Αἰγυπτίου γενόμενοι μένουσι μὲν Αἰγύπτιοι, [ἀ]μ-
110 φοτέρους δὲ κληρονομοῦσι τοὺς γονεῖς.
-
133 [μ]θ ἀπελευθέροις Ἀλεξαν[δρέω]ν οὐκ ἐξὸν Αἰγυπτίαν γῆμαι.
-
137 νβ Ῥωμαίοις ἐξὸν Αἰγυπτίαν γ[ῆμα]ι.
Trans. Rowlandson (1998: 175-177):
"23. Romans cannot marry their sisters or aunts, but it is granted them to marry their brother's daughter. Pardalas (a former administrator of the private account [i.e. *idios logos*]), indeed, confiscated the property of siblings who married.
38. Children born to an *aste* and an Egyptian man remain Egyptian and inherit from both parents.
49. Freedmen of Alexandrians cannot marry Egyptian women.
52. Marriage between Romans and Egyptians is not allowed."

Athens, Athenian law. No matter that these cities had been conquered. [22] What this meant, though, is that if you were a Roman citizen, you used Roman law. Certainly, things could become complicated if you were a Roman citizen but also of, say, Judea or Egypt. St Paul is a famous example of someone who held both Roman and local citizenship and drew on one or the other to fit his needs, but he is far from the only example of someone with dual citizenship in this period.[23] Dual citizenship had been a matter of legal discussion since even before the imperial period. Cicero had stated that according to civil law, it was not possible to possess two citizenships simultaneously.[24] Nevertheless, this soon changed, as we can see from the fact that Roman citizens from the province of Cyrenaica (bequeathed to Rome in 96 BCE) were told by Augustus that they were not exempt from their local civic contributions, i.e. local taxes, despite their status as Roman citizens. An excerpt from this edict is enlightening:

> εἴ τινες ἐκ τῆς Κυρηναϊκῆς ἐπαρχήας πολειτήαι τετείμηνται, τούτους λειτουργεῖν οὐδὲν ἔλασ<σ>ον ἐμ μέρει τῷ τῶν Ἑλλήνων σώματι κελεύω, ἐκτὸς τ[ο]ύτ{ι}ων οἷς κατὰ νόμον ἢ δόγμα συνκλή<του ἢ> τῶι τοῦ πατρός μου ἐπικρίματι ἢ τῶι ἐμῶι ἀνεισφορία ὁμοῦ σὺν τῆι πολειτήαι δέδοται.[25]

---

[22] On the difficulty of applying the principle of personality of law prior to the *Constitutio Antoniniana* and on the enforceability of even local law based on this principle, see Taubenschlag (1955) 1-55; Mélèze Modrzejewski (2014) 169-183; Kacprzak and Nowak (2018) 13-54. Note especially that this principle is anachronistically applied by scholars to the early Imperial provinces and actually harks back only to the seventh century "barbarian" kingdoms of the West where we first find it in the *Lex Ripuaria* (in Beyerle and Buchner (1954)). This concept does have a basis in classical legal literature, but it is not as clearly defined, nor are the laws delineated and applied in a consistent way based on ethnicity. Livy notes "the Hernici had shown how greatly this was to be desired when, granted the choice, they had preferred their own laws to Roman citizenships" (*ab Urbe Condita* 9.45.6-8); Pliny too, supports the principle of multiple legal frameworks for conquered peoples, "It is always safest, I think, for the law of any given citizen community to be observed" (*Epistulae* 10.113); See also Carrié (2008) 269-312; Ando (2016) 78-81, 254-277.

[23] People holding multiple citizenships seem not to have been terribly abnormal in this period, provided that citizenship is loosely defined; Alonso (2013) 351-404; Heller (2019) 65-72; Ando (2021) 306-307.

[24] Cicero *Pro Balbo* 28.1, Duarum civitatum civis noster esse iure civili nemo potest. "By civil law, noone of our citizens can be a citizen of two states."

[25] *SEG* 9.8 (*FIRA* I 68) I 56-62; Trans. Oliver (1989: 46–47): "If any individuals from the province Cyrenaica have been honoured with citizenship, I order that they, nonetheless, contribute to the local corporal liturgies as Greeks; except for those who, by a law, a decree of the Senate or a decision of either my father or myself, have been granted immunity together with Roman citizenship." Cf. Blanco-Perez (2020) 8.

Here, in clear wording, Augustus establishes that a person may retain obligations from dual citizenship. It was now possible, with imperial sanction, to be both a Roman citizen and a citizen of another *polis* or local community simultaneously.

We have another, later inscription which further clarifies how Roman and local citizenship continued to work in concert with one another in the lead up to the *Constitutio Antoniniana*. A second-century man named Julianus from Banasa in Mauretania Tingitana (modern day Sidi Ali bou Djenoun, Morocco) was given citizenship and had the exact terms of his and his family's citizenship memorialized on a bronze tablet, now known as the *Tabula Banasitana*. The *Tabula*, which was discovered in 1957, contained copies of three letters all dated to the latter half of the second century (168 to 177). The first of these was from Marcus Aurelius and Lucius Verus (161 to 169) conferring citizenship on Julianus and his family in response to an earlier petition. It does not contain a precise internal date, but the original editors suggest that it must have been written in the years 168 or 169. The second, from Marcus Aurelius and Commodus (177 to 180), records the citizenship of another Julianus, likely the son of the Julianus mentioned in the first letter. It too does not contain a precise date but given internal evidence and the date of the third letter, must date to the early months of 177. Finally, the third letter is an "authenticated extract of the imperial *commentarius*" precisely dated to 6 July 177 which confirms and validates the citizenship given to the Julianus of the second letter.[26]

In this inscription we read that Julianus's Roman citizenship was given to him "*salvo iure gentis sine diminutione tributorum et vect[i]gallium populi et fisci*."[27] This grant of citizenship

[26] *IAM* 2.1, 94 = *AE* 1961, 142; Seston and Euzennat (1971) 468–490; for further commentary and notes see Oliver (1972) 338.

[27] Trans. Bryen (2016): "without prejudice to the law of his tribe and without any loss in tribute or taxes due to the people or the fisc." The Tabula Banasitana (*AE* 1971.534) was originally published in Seston and Euzennat (1971)

was important enough to Julianus and his family to record on bronze – which was not a cheap way of preserving a record – but also specifically did not change their tax rate or socio-financial obligations *and* continued to allow him to operate under his own local, indigenous system of law. This mirrors the edict to the Cyrenaicans and supports the argument that, prior to 212, Roman citizenship was considered important, something worth memorializing to be sure, but not necessarily homogenizing. The importance that Julianus placed on his new status as a Roman citizen also suggests that citizens were not terribly common in his part of the empire, either, and the mention about taxes tells us that the state had little to gain financially from enfranchisement. Both of these points can help us understand the social milieu in which everyone was suddenly a citizen.

We do not have many examples of how these multiple citizenships functioned in practice. One example we do have, *P. Oxy.* II 237, contains a second-century petition sent by a woman named Dionysia to the prefect of Egypt as part of an extensive dispute between her and her father.[28] In it, we learn that Dionysia and her father, Chairemon, were embroiled in a series of lawsuits, initially about financial matters. When Chairemon first lost the case, he attempted to force Dionysia to divorce her husband in an effort to gain control of her finances through a more round about means. But Dionysia was happy in her marriage and refused to divorce.

Chairemon again took her to court, and since neither of the two were Roman citizens, he established the existence of local, Egyptian caselaw which permitted fathers to force the divorce of even happily married children. It seems that up until the point of the relationship breakdown and Dionysia's initial legal win, they had generally made an attempt to follow Roman legal

468–490; On the Tabula Banasitana and specifically the phrase "salve iure gentis", see also: Sherwin-White (1973b) 86–98; Bryen (2016) 29-43; Blanco-Perez (2020) 4-17.

[28] Based on internal dates, the text must date to sometime after 27 June 186.

principles throughout their dealings. But when Chairemon lost in his initial financial claims, he revised his strategy and decided to draw on precedents from the so called "law of the Egyptians" to support his argument that he should be able to force his daughter's divorce.

Armed to the teeth with precedents from Roman courts, Dionysia then established that, Egyptian law or not, Roman magistrates generally took the wishes of the couple into account and did not compel unwilling adult children to divorce at the whim of their fathers. This line of argumentation was successful, and she was not obliged to divorce. [29] Notably in this situation, Dionysia and her husband protested against the application of Egyptian law using an opposite Roman legal argument, so it may not precisely reflect the "normal" Roman handling of a case where both parties agreed to the application of a singular legal framework. Still Dionysia's case is our only clear piece of evidence for a situation in which a Roman court refused to consider customary/local law in favour of Roman law. This interaction between father and daughter can also be seen as yet another step towards the legal prioritization of the nuclear family and marriage over the wishes of a *pater familias* and the finances of the extended agnate family. Not only was the court flexible enough to move between Roman law and the "Law of the Egyptians", it also privileged case law and the principle of bodily autonomy for women over the ancient right of *patria potestas.*

3.2.2. Citizenship and Law in the Provinces after 212

A large proportion of the early scholarship on the *Constitutio Antoniniana* was conducted in Italian and German, and, for the most part, these scholars had quite a positivist and centralist perspective on citizenship and law generally, with regard to both modern and ancient law. Roman law was

[29] *P. Oxy.* II 237; this text also contains a reference to the "law of the Egyptians" being read out, which has led particularly Yiftach-Firanko (2009) to suggest that it was a comprehensive, "manual" of peregrine law. On the Case of Dionysia, see Lewis (1970) 251-258; Kreuzaler and Urbanik (2008) 119-155; Bryen (2011) 17-19; Alonso (2013).

considered by them to be the primary method of "Romanization" and an integral means by which Rome extended its influence and control over conquered people. In the anglophone world, which generally saw less early modern scholarship in Roman law, the field has been largely guided by the early work of A. N. Sherwin-White who published the second edition of his immensely influential *The Roman Citizenship* in 1973. His view, and the view of many others before and after him, was also of a gradual and relentless "Romanization" of the empire, accompanied by a steady expansion of citizenship throughout the first and second centuries, all of which finally culminated in the *Constitutio Antoniniana*. He also initially envisioned an inverse correlation between the expansion of citizenship and the meaning, practical usage, and status associated with that citizenship, an interpretation which heavily influenced a generation of scholars.[30] Although Sherwin-White's perspective changed somewhat with the publication of the *Tabula Banasitana*, the timing of the second edition of his monograph means that the *Tabula* and its implications for the study of citizenship in the second and third centuries make only a sparse appearance in his second edition and are thus assumed to support his earlier views on citizenship in the period leading up to 212.[31]

Subsequently, and in light of the *Tabula Banasitana*, scholars have come to question the extent of imperial influence. Scholars such as Clifford Ando and Myles Lavan have shown that Sherwin-White's early reductionist views of Roman citizenship and of the spread of *Romanitas* in

[30] Sherwin-White (1973a). It was first published in 1939, though the second edition varies little from the first beyond a few additions: a new chapter five, a new third part, and some alterations to the appendices; it was not a comprehensive revision. His understanding of the link between enfranchisement and the effects of citizenship, and his place in the larger debate is beautifully captured by the following sentence: "There is no reason to hold, as some historians do, that the Roman Citizenship has lost its substantive importance even before the whim of Caracalla transformed it into a universal and hence insignificant badge." See also Sherwin-White (1972) 53-54.

[31] Sherwin-White (1973a) contains mentions of the *Tabula*, but the general conclusion is still that "the Roman status is being steadily reduced in significance…" (311-394, at 312).

the second century were in need of revision. They argue that Roman citizenship was in fact still quite rare in the provinces even towards the end of the second century and the beginning of the third, rarer perhaps in the East than in the West, but rare none the less. Informed by principles of legal pluralism and a desire to, in Ando's words, "demonstrate the limits of global generalizations," current scholars now focus on various individual aspects of life traditionally associated with citizenship: naming conventions, cultic and civic rituals, law and legal practice, and even belonging. In so doing, they show that a shift in or expansion of citizenship cannot necessarily be taken as a sign of or a precursor to social change. Just because these new citizens were suddenly all Romans did not mean that they were necessarily going to start acting as if they were culturally Roman overnight. In fact, once this mass enfranchisement occurred, anything that these new citizens did would have to be considered "Roman" anyway, since they were now Romans. [32]

If there is little mention of the *Constitutio* in the literary sources, if citizenship likely preserved earlier legal privileges, and if wholesale "Romanization" was not the imperial goal, how can we say with certainty that this universal enfranchisement actually had any effect at all? In fact, in the century immediately after the *Constitutio*, Roman law does not show any major changes. As Mitteis rightly noted, however, Roman law was not always, or even often, mirrored by the day-to-day use of the law. This is where the documentary sources can finally come into play, things like contracts, bills of sale, marriage documents, wills, leases, loans, and so on. Because we have a relatively large volume of these types of texts, from an extended period of time, we are able to refer to them for a more *longue durée* examination into how citizenship and changes to citizenship became apparent in a more regular and practical part of people's everyday lives. Papyrologists have long discussed the effects of both the Roman conquest and Caracalla's enfranchisement on

[32] Lavan (2016) 3-46; Ando (2016); Lavan and Ando (2021) 285-311; Besson (2017) 199-220.

the papyrological evidence, particularly the legal and contractual texts. While the majority of papyri are, of course, geographically limited, the discovery of particularly legal papyri from elsewhere in the empire helps to support the current understanding that Egypt as a province seems unique because of its wealth of sources and should not be understood to have fostered a particularly unique socio-legal environment. As Ando notes, "In particular, the discovery of legal documents on papyrus in the Judean desert and middle Euphrates utterly collapsed any argument bracketing the Egyptian evidence as somehow unique to a single province."[33] Although understandings of law and its application undoubtably varied throughout time and place, "Egypt was not a special case but rather a part of the general legal development of the Roman Empire in which rules made in the centre were used and recognized."[34]

Thus, while the papyri can show that citizenship had a number of effects both inside and outside the contractual space, I shall focus here on two types of changes that are visible in the majority of contracts composed by Roman citizens both before and after 212: the adoption of Roman names and the Roman oral contract, known as the *stipulatio*.[35]

3.2.2.1. New Names in the Papyri

One of the most widespread ways in which we can see the effects of the *Constitutio Antoniniana* in the papyri (and beyond) is in naming conventions. The Romans initially had a tripartite name with a *praenomen*, *nomen gentilicum*, and *cognomen* (like Gaius Julius Caesar), whereas in Egypt, and in much of the Greek-speaking East, for example, people usually identified themselves by means of a singular name in the nominative along with a patronymic or matronymic in the genitive,

[33] Ando (2012) 76-77; see also Cotton, Cockle and Millar (1995) 214-235.
[34] Tuori (2007) 52; Humfress 2007; Meyer (2016) 85-96.
[35] Overviews of the long-term effects of the edict can be found in Buraselis (2007); Heckster (2008); Ando (2016), (2012).

and frequently also their place of origin: So-and-so, son of so-an-so, from such-and-such a town. After 212, we see citizens beginning to identify themselves with the traditional Roman names, using, as was customary, the *praenomen and nomen* of the person who gave them citizenship, a practice which can be traced back to much earlier Roman law. In this case, we see (M.) Aurelius or Aurelia as a nod to the emperor Caracalla, whose official name was Marcus Aurelius Antoninus.[36]

The result is particularly noteworthy for two reasons. First, these new citizens rarely used the by-then fossilized Roman *praenomen*, Marcus, alongside the *nomen*, Aurelius. And secondly, they did not necessarily stop using their former naming system just because they started using the Roman one as well. For men, this meant that their Greek name acted as their *cognomen.* For women, this clearly looked quite different than the Roman numerical naming system of the late Republic or early Empire. These new citizen women seem not to have been referred to as for example, Julia Maior and Minor, or Secunda, Tertia, or Quarta.[37] Instead, a mixture of the two naming systems became quite common, in which the new citizens referred to themselves by Aurelius or Aurelia, followed by their earlier names. Of course, this is all happening in Greek too; we do not see a shift towards Latin at this stage at all.

[36]For a summary of the naming practices in Egypt throughout the Hellenistic period and into the Roman period, see Taubenschlag (1955) 626-627 and Heller (2019) 66-68; This is not to suggest that the Roman or Greek systems of naming or identification were fixed or static, or that the introduction of all these new citizens had, in itself, a major effect on naming conventions. Salway notes that the Roman system of names underwent significant evolution from a bipartite naming system at the beginning of Rome's history through the well-known tripartite system of the late Republic and early Empire and significant change in the Late Antiquity, and back to a single name with a relevant descriptor a millennium and a half later. See Salway (1994); Buraselis (1996) 55-63; Rizakis (2011). 253–62; Blanco-Pérez (2016) 271–93. See also Gilliam (1965) 83 for a study on shifts in naming conventions in the military around 212 which confirms a spike in Aurelius as *nomen gentilicum* in the years directly after 212.

[37] Salway (1994) 126.

The papyri can show how naming conventions evolved over time. *P. Oxy.* LXVII 4586 provides a representative example of how Greco-Egyptian men and women commonly identified themselves in legal and quasi-legal settings in the early second century. This text contains a cession agreement between Philoxena who identifies herself as the daughter of Heron and The[--], and Taonnophris, the daughter of Petemennophris and Esersoïs. Both women are accompanied by their guardians: Taonnophris by a priest of Ammon named Pamunis son of Pamunis from the town of Nesmimis, and Philoxena by her husband Ammonius son of Ammonius, also from Nesmimis. [38] So here we see women being identified by their own names, and by the names of their parents. The guardians, who play an important role in this contract, are identified by name, by occupation, and again by both of their parents. Everyone is also identified by their hometown. This is quite different from how Roman citizens identified themselves even in the papyri before 212: in Latin we see things like "Q. Iulius Priscus, miles" and "C. Arruntius Valens, suboptio," which stands to reason since many of the citizens in the provinces were so because they or their fathers were or had been soldiers. [39] In Greek, we see something similar, Γαΐῳ Ἰουλίῳ Μαρ[τ]ιάλι [οὐετ]ρανῷ[40] or "Φλαουίῳ Ἀπίωνι καὶ ὡς χρηματίζει ἐν ἀγυιᾶι"[41] or even Ἰουλίᾳ Τερτίᾳ.[42] Even if someone or someone's family had received citizenship prior to the *Constitutio*, they could, and often still did, make use of ethnic names, as we can see with "Claudius Apelles alias Isidorus." We know of

[38] *P. Oxy.* LXVII 4586, Lines 1-7: παρὰ Τ[αοννώ]φριος Πετεμεννώφρι[ο]ς μητρὸς Ἐσ̣ε̣σόιτος μ[ετὰ] [κυρίου] [Πα]μο̣ύ̣νιος Π̣αμο̣ύ̣νι[ος] μητρὸς [..] μ[.....] [ἀπὸ] [κώμης] Ν̣ε̣σμ̣ε̣ίμεως ἱερέως Ἄμμωνος καὶ τ̣ῶν συννάων θεῶν μ̣εγίστων καὶ παρὰ Φι̣λ̣ο̣ξένης Ἥρω[νος] μητρ̣ὸς Θε[.....] μετὰ κυρ[ίο]υ τοῦ ἀνδρὸς Ἀ[μ]μωνίου [Ἀμμ]ωνίου μητρὸς Α̣[.....]ος ἀπὸ τῆ[ς] αὐ̣τ̣ῆς κ̣[ώμης] [.]; Trans. *P. Oxy.* I 67: From Taonnophris daughter of Petemennophris, her mother being Esersoïs, with her guardian Pamunis son of Pamunis, his mother being …, from the village of Nesmimis, priest of Ammon and the associated most great gods, and from Philoxena daughter of Heron, her mother being The-, with as guardian her husband Ammonius son of Ammonius, his mother being A-, from the same village."

[39] *P. Lond*. II 229.

[40] *BGU* II 578 (Veteran, 14 July 189).

[41] *P. Oxy*. III 504 (early second century); Trans. Grenfell and Hunt: "(with) Flavius Apion, however he is styled in the street."

[42] *BGU* III 717 (15 July 149 – Julia the fourth).

Isidorus from a lease agreement from 261. From his *nomen*, Claudius, we can surmise that he and his family were not one of the newly enfranchised citizens, but that they have gained this citizenship through military service. While he did also have a proper Greek *cognomen*, he retained his ethnic name, Isidorus and identified himself using both in this lease.[43]

After 212, naming practices for the new citizens worked similarly. In *P. Vind. Bosw*. 6, which is a bill of sale drawn up by four siblings and dating to 250, we see the first generation of these new Roman citizens identifying themselves using the Roman system alongside their Greco-Egyptian names and their patronymics and geographic identifiers:

> [Αὐρ(ήλιοι) Ἀ]χιλλιανὸς ὁ καὶ Μάξιμ[ος] κα[ὶ] Ἑρμεῖνος ὁ καὶ Θέων καὶ Δημητρία ἡ καὶ Τινοῦτις καὶ Χαρῖνα ἡ καὶ Ἀρτεμιδώρα αἱ δύο χωρὶς κυρίου χρηματίζ(ουσαι) τέκνων δικαίῳ κατὰ τὰ Ῥω[μαίων ἔθη εἰδυῖ]αι γράμματα, οἱ δ Ἑρμοῦ [το]ῦ καὶ Μαξίμου γυμν[ασια]ρχήσαντος καὶ ἀρχιερατεύσαντος γενομένου βουλευτοῦ Ἑρμοῦ πόλεως τῆς μεγάλης ἀρχαίας καὶ λαμπρᾶς καὶ σεμνοτάτης ἀναγραφόμενοι ἐπὶ [Φρουρίῳ λιβὸς με]τὰ κουρᾶτορος τοῦ Ἑρμ[είνο]υ τοῦ καὶ Σαπρίωνος [Αὐρηλ]ίου Διοσκόρου τοῦ καὶ Μενχήους, συμπαρόντος ταῖς θηλείαις τῇ μὲν Δημητρίᾳ τῇ καὶ Τινούτι τοῦ ἑαυτῆς ἀνδρὸς Αὐρηλίου Ἀπόλλωνος [τοῦ καὶ Ἀρείου ἐξη]γητ(εύσαντος) καὶ ἀρχιερ[ατ(εύσαντος) βουλ(ευτοῦ) τ]ῆς αὐ(τῆς) πόλεως, τῇ δ[ὲ] [Χαρίνᾳ] τῇ καὶ Ἀρτε[μι]δ[ώρ]ᾳ Αὐρ(ηλίου) Θέωνος Ἑρμείνου.[44]

They use the *nomen*, Aurelius, with *cognomina* alongside aliases. They are also identified by their father, Hermes, who is not given a Roman name, but who was formerly gymnasiarch of Hermopolis, as well as chief priest, and councillor of the same city. Their mother does not feature at all in this document. The two sisters, Demetria and Charina, are explicitly said to be acting

[43] *P. Oxy*. LXVII 4595=SB 12 11081. We see similar aliases being used earlier in Egypt's history, as Egyptians became Hellenized and took on new Greek names.

[44] *P. Vind. Bosw*. 6; Trans. Keenan (2014): "We the undersigned are Aurelii Achillianos alias Maximus and Herminos alias Saprion and Demetria alias Tinoutis and Charina alias Artemidora, the two women acting without guardian by the right of children according to the Roman custom and able to write, all four being children of Hermes alias Maximus, former gymnasiarch, chief priest, and councilor of the great, old, illustrious, and most respectable city of Hermopolis, registered in the western Fort District. Herminos alias Saprion is accompanied by his curator Aurelius Dioskoros alias Menches; for the women, Demetria alias Tinoutis is assisted by her husband Aurelius Apollon alias Areios, former exegete and chief priest, and councillor of the same city, while Charina alias Artemidora is assisted by Aurelius Theon son of Hermeinos." See Keenan (2014) 4.3.1 for a short discussion of the text.

without a guardian as part of their formal identification. A few lines down, we read that the younger brother, Herminos, is under the age of twenty-five and requires a *curator*, Dioskoros, who is also identified by the name Aurelius and an alias. No parentage or occupation is recorded for him. Despite their claim to the *ius trium liberorum*, the women are recorded as being assisted by their husbands. Again, we have Roman name, alias, and for one of them, his civil occupations: exegete, chief priest, and councillor of Hermopolis.

Seeing all this, how can we explain why some information was provided for some people but not for others, even within the same contract? Take Hermes, for instance, who is not recorded with a *nomen*; did that mean he was not a citizen? It is improbable that the father, Hermes, had already died, that his death had preceded the *Constitutio Antoniniana*, and thus that he was not made a Roman citizen by the *Constitutio*. Given the age of Herminos who could have been born at the earliest in 226 considering that he still needed the assistance of a *curator*, Hermes must have lived until at least 226 and would have received citizenship from Caracalla in the Edict. Given his upper-class positions in the city of Hermopolis and the citizen status of his children, it is unlikely that he was omitted from the universal enfranchisement somehow. So, we have to assume that he was indeed a citizen, but that the fact was simply irrelevant to the contract because it did not help with the identification of his children.

The same logic could apply to the question of why Demetria's husband is identified by his roles in the city, exegete, chief priest, and councillor, but Herminos' *curator* and Charina's guardian are rather sparsely identified – nothing beyond their names. We are not even told who Charina's guardian is in relation to her. The presence of three of these people in the contract was common, though only the *curator* was formally required in Roman law, but their identification was less important than their existence. Who their parents were, what their jobs were, and so on,

were likely just not relevant. I would hazard a guess that Demetria's husband's descriptors were not actually relevant either but may have been included as a mark of status and pride, not unlike today's "have you met my son-in-law, the doctor?" Likely this son-in-law had taken over the positions of chief priest and councillor from Hermes, so this must have been a double mark of pride and family status. It seems, then, that information was included where it was thought necessary for legal reasons or for the proper identification of the parties, or, less reliably, when it served some other purpose for the authors of the text. This attitude of adding what is legally necessary and socially pertinent continues to be visible in contracts from the next four centuries.

In another contract, *P. Graux.* II 18, from almost a full hundred years after the *Constitutio*, we again see Roman names being used, in most cases alongside the individual's Greco-Egyptian names as well as their patro- and matronymics. In this text we have a woman, "Αὐρη[λί]ας Ταπαῖτος Πατ[ερμου]θίου [μη(τρὸς) Ταισᾶτος ἀπὸ κώμης Φιλα]δελφίας τῆς Ἡρακλείδο[υ μ]ερίδος", acting alone to purchase a house and a courtyard from five siblings:

> Αὐρηλίων Γούνθου καὶ Αταρι χω[ρ]ὶς κυρίου χρη(ματιζούσης) τέκ[νων δικαίῳ καὶ . . . . . μετὰ κυρίου τοῦ ἀν]δρὸς αὐτὴς Αὐρηλίου Νεμεσίωνο[ς Ἰ]ουλίου μη(τρὸς) Θεοδώ[ρας καὶ Ταύητος καὶ Σαμ]βαθοῦτ[ος ἀφη]λιξ αι δύο μετὰ κυρίου τοῦ [προ]κιμένου [α]ὐτῶ[ν ἀδελφοῦ Αὐρηλίου Γούνθου τῶν πέντε τέκνων Παπνου]θίου μη(τρὸς) Τα[νίλ]λας τ[ῶν πάντων ἀπὸ κώμης A-ca.?- τῆς Ἡρακλείδου μερίδος.[45]

Here we have Roman names followed by ethnic names as *cognomina*, with patronymic and matronymic, and a very specific place of origin. In the case of the men, their occupation is not specified, but for the women, their guardianship status is, and in a way that does correspond to the Roman system. Again, we see the inclusion of what was legally necessary, the Roman names and

[45] P. *Graux.* II 18 (307), "Aurelia Tapais, daughter of Patermouthios and Thaisas her mother, from the village of Phildelphia of the Herakleite district; Aurelios Gounthos, Aurelia Ataris, acting without a guardian according the right of children, Aurelia [...] with her husband Aurelios Nemesion son of Julius and Theodora his mother as guardian, Aurelia Taues, and Aurelia Sambathous, minors, with their aforementioned brother Aurelius Gounthos all five, children of Papnouthis and Tanilla, all from the village A[...] of the Herakleite district."

guardianship status, and only such identifiers as thought necessary to comprehensively identify the parties involved, to the exclusion of all others.

While these are only very few examples, a read-through any volume of post-212 papyri or a search through papyri.info or Trismegistos will reveal that the practice of adopting Romen *nomina* in formal legal spaces was near universal almost immediately following enfranchisement. The widespread adoption of Roman names in legal contexts such as these contracts shows that the new citizens considered their citizenship relevant and important. They understood the edict to mark a moment of change and engaged with it by adopting and using these new names – but only in a legal context: a similar change in naming conventions is not attested in, for example, contemporary personal letters.[46] So rather than a new Roman name and identity completely displacing the old, there was a sense of symbiosis – two identities and systems working together for the benefit of the individual and depending heavily on social context – rather than one superseding the other.

This change in naming conventions has been used to establish a sort of chronology or trajectory of the spread of citizenship after 212. An overview of the third- and fourth-century sources reveals a significant number of people with the name (*nomen gentilicium*), Aurelius/Aurelia. As we have already seen, virtually all of these people owe their citizenship to Caracalla. If these people had received their citizenship in 212, they could not have been citizens previously, and this in an of itself is a major issue with Sherwin-White's idea that citizenship had already been widespread before 212. In addition, the large number of people who relied on their

[46] A survey of the letters in Bagnall and Cribiore (2006) shows that the names of the authors and the addressees of the letters, regardless of their gender, are recorded only as their personal names, possibly with patronymic and place of residence. There is no evidence for Roman names becoming common, even in the addresses on the reverse of letters or when referring to an official. There has also been the suggestion that religious contexts may also have seen a similar choice in the use of personal names used alone. "…in the personal relationship established with the divinity, the Greek personal name may be preferred." Heller (2019) 67; for a fuller discussion of this hypothesis, see Campanile (2004) 75-77.

own local naming conventions – in Egypt, a single name accompanied by a patronymic and sometimes a matronymic and place of residence – even after gaining citizenship, suggests that a similar convention may have existed for citizens before 212 depending on the context, thus hampering the efforts to quantify citizenship in various regions on the basis of naming conventions alone.

Scholars now suggest that citizenship was not as widespread as Sherwin-White had believed. Lavan notes that no more than a third of the inhabitants of the empire could have had citizenship prior to 212. However, it is important to remember that this generalized figure reflects a variety of different areas and provinces, some of which, like Rome and Italy, would have had a much higher proportion of citizens, leaving other locations, like Egypt and the East, with significantly lower proportions. Further attempts have been made to quantify the Roman citizen populations of specific provinces, but the numbers again vary widely depending on the province and even with regard to specific locations within a province, and so generalized, empire- or even province-wide proportions are neither forthcoming nor helpful. [47]

3.2.2.2. New Contract Types in the Papyri

Since we cannot accurately quantify the types and ratios of the different citizenships at play across the empire, it is hardly surprising that we also run into difficulty equating citizenship with exact legal frameworks, despite Gaius's explanation that each different citizen had their own system of law to follow in the first two centuries. After 212, however, we do see some new citizens adopting some Roman legal practices and categories as well, though as is the case with names, Roman legal practices were not adopted universally nor technically correctly (according to Roman law). Just like the naming conventions, the adoption of Roman contractual practices, categories, and

[47] Lavan (2016) 3-46, (2019a) 27-69, (2019b) 21-54, (2020) 129-165.

formulae also varied after 212. One key contractual area in which we also see change, is in the moment and method which rendered a contract valid and binding. In Latin, this is called the act of *stipulatio*. The *stipulatio* was an oral question, asked by the stipulator, or lender, to the promisor, or borrower, summarizing the agreement and confirming that the borrower was in agreement. An oral affirmative response to the question rendered the contract binding.

Gaius again tells us how this was supposed to work:

> Verbis obligatio fit ex interrogatione et responsione, veluti: "dari spondes?" "Spondeo." "Dabis?" "Dabo." "Promittis?" "Promitto." "Fidepromittis?" "Fidepromitto." "Fideiubes?" "Fideiubeo." "Facies?" "Faciam." Sed haec quidem verborum obligatio, "dari spondes?" "Spondeo", propria civium Romanorum est; ceterae vero iuris gentium sunt, itaque inter omnes homines, sive cives Romanos sine peregrinos, valent. Et quamuis ad Graecam vocem expressae fuerint, veluti hoc mondo. 'Δώσεις; Δώσω· Ὁμολγεῖς; Ὁμολογῶ· Πίστει κελεύεις; Πίστει Κελεύω· Ποιήσεις; Ποιήσω·', etiam hae tamen inter cives Romanos valent tamen, si modo Graeci sermonis intellectum habeant. Et e contrario, quamuis Latine enuntientur, tamen etiam iter peregrinos valent, si modo Latini sermonis intellectum habeant. At illa verborum obligatio, 'dari spondes?' 'spondeo', adeo propria civium Romanorum est, ut ne quidem in Graecum sermonem per interpretationem proprie tranferri possit, quamuis dicatur a Graeca voce figurata esse.[48]

As can be seen, the exact wording of the question or even the language in which it was asked did not matter, as long as the questions and answers corresponded and were in a language both parties

[48] Gaius *Institutes* 3.92-93; Trans. Zulueta: "A verbal obligation is created by question and answer in such forms as: "Do you solemnly promise conveyance?" "I solemnly promise conveyance." "Will you convey?" "I will convey." "Do you promise?" "I promise." "Do you promise on your honour?" "I promise on my honour." "Do you guarantee on your honour?" "I guarantee on my honour." "Will you do?" "I will do." Now the verbal obligation in the form *'dari spondes?' 'spondeo'* is peculiar to Roman citizens; but the other forms belong to the *ius gentium* and are consequently valid between all men, whether Roman citizens or peregrines. And even though they are expressed in Greek, in such words as 'Δώσεις; Δώσω· Ὁμολγεῖς; Ὁμολογῶ· Πίστει κελεύεις; Πίστει Κελεύω· Ποιήσεις; Ποιήσω·', they are still valid between Roman citizens, provided they understand Greek. Conversely, though expressed in Latin, they are sill valid between peregrines, provided they understand Latin. But the verbal obligation '*dari spondes?' 'Spondeo'* is so far peculiar to Roman citizens that it cannot properly be put into Greek, although the word is said to be derived from a Greek word." Cf. *Institutes* III 15.

understood. Furthermore, the agreement was not required to be put into writing in any form to be considered binding. [49]

This was not the case for Greek contracts. Both the Greek and the Egyptian systems understood contracts to be valid as written, though at least the Greek system did recognize the validity of oral contracts as well. Extensive demotic and Greek contracts from the Ptolemaic period and the first two centuries of the Roman period attest to the long and practised written contractual habit in Egypt.[50] As we can see in *P. Oxy.* LXVII 4586, mentioned above, the identity of the writer was, in this tradition, of foremost importance, because his writing of the document rendered it binding.[51] After 212, however, to account for the change in citizenship and the expansion of Roman law, we see a small addition to the normal Greek contracts, which records that the 'formal question' had been asked and properly responded to. These contracts, and evidently also the 'formal question,' do remain in Greek, because, as Gaius notes, the obligation is binding regardless of the language used by the contracting parties.

A well-preserved lease from 261 shows us how this could work in practice: Κλαύδιος Ἀπελλῆς ὁ καὶ Ἰσίδωρος μεμίσθωμαι τὴν γῆν καὶ ἀποδώσω πάντα ὡς πρόκειτα[ι] καὶ ἐπερωτηθεὶς ὡμολόγησα.[52] Here, in the subscription, as well as in the body of a contract written almost fifty

[49] Gaius' description and this discussion refers specifically to contracts in the first three or four centuries of the common era. On the action of the *stipulatio* see Zimmerman (1996) 68-94; Yiftach-Firanko (2009) 541-560.

[50] Taubenschlag (1955); Pestman (1994); Yiftach-Firanko (2009) 554; Mélèze Modrzejewski (2014).

[51] *P. Oxy.* LXVII 4586, ll. 35-38, Παμοῦνις [Π]αμούνιος ἐπιγέγραμμαι αὐτῆς κύριος καὶ ἔγραψα ὑπὲρ αὐτῆς μὴ ἰδυιης γράμματα; ll. 44-48: Ἀμμωνις Ἀμμω[νίο]υ ἐπιγέγραμμαι τῆς γυναικὸς κύριος καὶ ἔγραψα ὑπὲρ αὐτῆς μὴ ἰδυείης γράμματα. Ll. 35-38: "I, Pamunis son of Pamunis, am registered as her guardian, and I wrote on her behalf because she does not know letters." Ll. 44-48: "I, Ammonius son of Ammonius, am registered as guardian of my wife, and I wrote on her behalf because she does not know letters." Many such lines can be found throughout the papyri of both Ptolemaic and Roman Egypt prior to 212; for example, *P. Mich.* XI 605.

[52] *P. Oxy.* LXVII 4595=*SB* 12 11081, "I, Claudios Apelles, also called Isidorus, have taken the land on lease, and I shall deliver everything as aforesaid, and on being asked the formal question, I gave my assent." For further discussion on the contents of this contract, see Rowlandson (1996).

years after the *constitutio*, we see a leasor noting that he gave his assent when the 'formal question,' the *stipulatio* question, was asked. Notably, this leasor was one Claudius Apelles, not an Aurelius somebody, so his or his family's citizenship would have pre-dated the 212 universal grant. For new citizens, the process looked much like this, too. *P. Mich.* XI 606 records a loan of money from new citizens Aurelius Hieron to Aurelius Kaëtis of 152 silver drachmae in 224, which was to be returned, interest free, after one year. The agreement was one which would not have been out of place a century earlier, save for the short addition: "καὶ ἐπερωτηθείς ὡμολόγησε."[53]

Service contracts show much the same thing. In them, one (usually) man agrees with another to perform a specified service, sometimes for the state as a type of liturgy and sometimes as a private agreement. In these texts, it is not altogether uncommon to see the stipulation modified to suit the needs of such a contract. *P. Oxy*. XXXVI 2769 gives a representative example: κύριον τὸ ὁμολόγημα δισσὸν γραφὲν πρὸς τ[ὸ ἑκάτερο]ν ἔχειν μον[α]χὸν καὶ ἐπερωτήσαν[τ]ες ἀλλή[λους ὡ]μολόγησαν. In this text, which dates to 3 June 242 and again involves two new citizens, Aurelius Philosarapis, who was himself nominated "for the liturgy of *sitologia*",[54] makes an agreement for Aurelius Sarapion to actually do the work associated with the office. They record that they had *both* asked each other the formal question and had *both* responded affirmatively, the one promising to do the work he had been contracted to do and the other to pay him as he had promised. [55]

P. Dura 26 shows that the inclusion of a *stipulatio* clause into an otherwise Greek contract was not a phenomenon limited to Egypt nor to the contracts of Caracalla's new citizens. This text

[53] *P. Mich.* XI 606, "and when formally questioned, he (Kaëtis) responded affirmatively."
[54] He keeper of the imperial granary, a mid-ranking official in Egypt.
[55] *P. Oxy.* XXXVI 2769 ll. 29-31, "The agreement, written in duplicate so that each may have one copy, is valid and having questioned each other they agreed." Cf. *P. Oxy.* XIV 1627, XXXVII 2859, XLIII 3095, LI 3622, LV 3796, LXVII 4597; *P. Mich.* XI 604; *PSI* VIII 873; *BGU* IV 1062; among others. For a discussion and other service contracts from after 212, see Simon (1965) 85.

which dates to 26 May 227 records the sale of land, a vineyard specifically, near Dura Europos, at the junction of the Euphrates and the Chabur, by a Roman veteran named Iulius Demetrius. It too contains a record of the formal question and response, but here we have also the list of witnesses, some of whom signed in Greek and some in Latin.[56] The existence of papyri such as this one, which mirror what we find in the Egyptian sources, further validates the now more common interpretation that, while we do have significantly more evidence for Egypt, that is exactly what makes it unique, not some special position it may have held within the empire, a possibly different socio-legal environment, or any other unsupported hypothetical difference.

Frequently these clauses were included in documents which did not technically require them, such as wills or even petitions. Even for transactions such as sales or leases, which we saw immediately above, the *stipulatio* was not strictly required, since these were contracts which were mutually or consensually agreed upon and property changed hands in both directions. Thus, there was no debtor or promisor to answer the question, nor a stipulator to properly ask it, because the exchange was mutual. No Roman court would have expected the *stipulatio* in such a transaction. Nonetheless, its addition into such contracts suggests that Greek scribes were adding it and that the new citizens were asking each other these questions for many, if not most, of their contracts, regardless of the legal necessity, out of an overabundance of caution and in an effort to ensure that they were doing what was necessary to make their contracts as binding as possible by all available means, even if they did not understand the details or the legal premise of the whole procedure. While this can speak to the adoption of Roman law as a means to ensure the legitimacy and validity

[56] *P. Dur*. 26 = *P. Dura* 101, ll, 27-28: πίστει ἐπηρώτησ[εν] ὁ ἠγορακὼ[ς] κα[ὶ] πίστει ὡμολόγησεν Ὀταρναῖος ὁ πεπρ[α]κώς. See also *FIRA* III 138; *CPL* 344; Welles (1937) 261-284; Cavenaile (1958) "ce document appartient à un type de contrat dévéloppé par les Romains. Le scribe avait certainement l'intention de produire un document romain; il inclut en effet la *stipulatio*, mais en'insérant, là ou on la trouve dans les documents égyptiens, après la validation; il omet la *mancipatio*." (430).

of legal and contractual acts after 212, it can also speak to the anxiety of the new citizens and the (hardly surprising) general lack of knowledge about Roman legal nuances.

By the sixth century, it had become very clear even to the emperor that the *stipulatio* was not serving its original purpose but instead causing a "general fear." Given the legal context and Justinian's solution, presumably this fear was that if the formula had been uttered incorrectly (on purpose or by accident) by either party, the entire transaction could be voided. Justinian instead adopts a principle much more in keeping with the Greek understanding of written contracts:

> …nos qui nuper legibus a nobis scriptis multa vitia stipulationum multasque ambages scrupulososque circuitus correximus, cur non et in huiusmodi scriptura totam formidinem veteris iuris amputamus, ut, si quis haec scripserit vel unum ex his, adquiescere eis compellatur et ea ad effectum omnimodo perducere?[57]

That this corresponds to what had been the earlier practice in Greek law, ought not to come as a surprise, since, after 212, the *stipulatio* had not really been understood, but simply inserted into contracts wherever and whenever the scribe thought best, without a real grasp of when Roman law actually demanded it.

3.2.2.3. Elements of Continuity

It is also worthwhile to note the areas in which we do not see change: in this case, the language, which remains Greek, not Latin, and the general formulation of the contracts, which remains Hellenistic-style, albeit with some translated Roman formulae and names added.[58] In addition, Greek names persist alongside the new Roman ones, and, as well shall see, so do Greek styles of

[57] *CJ* 2.55.4.7; Trans. Frier: "…We, in laws recently enacted by us, have corrected the many faults of stipulations and their many circumlocutions and captious verbosity, why not also curtail the general fear of the ancient law in connection with such writing, so that a man who *writes* these (words) or one of them is compelled to abide by them and to carry them into effect in every way?" Cf. *CJ* 6.23.25; 8.37.11 for the aforementioned "recently enacted laws", and 4.20.20 for the remainder of the constitution.

[58] Taubenschlag (1955) 436-347.

guardianship. While there are certainly other aspects of later legal practice that could be discussed in this chapter, the two examples of naming conventions and the *stipulatio* discussed above reveal both the fundamental aspect of personal identity and the very basis of contract law and so give a representative impression of how people were actually interacting with the law in this period. The question remains, though, whether the *Constitutio* had meaningful effects, that is, whether anything actually changed practically for the new citizens, beyond merely legal box-ticking, like including a legal name where necessary or recording that a question was answered.[59] The question of what kinds of deeper changes the *Constitutio Antoniniana* actually caused in the provinces is a complex one, which requires both a review of earlier, more complete Roman citizenship grants and a discussion of modern legal theory.

We turn first to a discussion of imperial citizenship grants, beginning with the sole extant attestation to the text of the *Constitutio Antoniniana* itself, the Giessen papyrus (*P. Giss.* 40). The papyrus is extremely fragmentary, and there has been much debate about its reconstruction, in an effort to understand more about the content and wording of this edict.[60] Imrie and Blanco-Pérez suggest that lines 7 to 9 of the Giessen papyrus can be reconstructed as follows:

7 δίδωμι τοῖς συνάπα-
8 [σιν -ca.?- κατὰ τ]ὴν οἰκουμέ̣νη̣ν π[ολιτ]είαν Ῥωμαίων, μένοντος
9 [τοῦ δικαίου τῶν πολιτευμ]άτω̣ν, χωρ[ὶς] τῶν [δε?]δ̣ει̣τικίων.[61]

[59] Bryen (2016).
[60] Imrie (2018) 3.
[61] Blanco-Pérez (2020: 4) uses the text of *P. Giss.* 40 as archived on papyri.info, and I have copied his restoration here. Note that the reconstruction of these lines has been much debated. See Imrie (2018: 139-140), who provides the same reconstruction in his primary text, for a summary of other suggested restorations. See pages 146-150 for his reasoning for proposing this reading.

In this reading, the μένοντος clause mirrors the Latin "*salvo iure gentis sine diminution tributorum et vect[i]gallium populi et fisci"* of the *Tabula Banasitana*, with the implication that, like the *Tabula*, Caracalla's grant of citizenship also did not remove the new citizens from their local legal and financial frameworks. New citizens could thus continue to draw on the systems of law which they had always used and were still expected to contribute financially both to their community and to the Roman state.[62]

As we have already seen, such wording had not always featured in citizenship grants or Roman civil rewards. In earlier periods, exemptions from both Roman and local fiscal obligations were not unusual and often came hand in hand with citizenship grants. Cicero, in fact, made the point that a man could not be a citizen of two polities, that is, could not have civic obligations in two different spaces.[63] So, if a man became a Roman citizen, it was not entirely unexpected that he might be exempted from local obligations as he took on Roman ones. This idea was overturned, specifically for citizens in Cyrenaica because of apparent abuse of the system, by the emperor Augustus in 7. In the second century, the two Juliani in the *Tabula Banasitana* continued this pattern, and so, it seems, did Caracalla's new citizens in the third century. After 212 we see citizens continuing to contribute to their local communities, much as they had before, while also contributing to imperial finances as Roman citizens. Thus began a period of symbiotic dual citizenship, which outlived the empire, at least in the West.[64]

---

[62] Contrary to earlier periods of Roman history, non-citizens were subject to a variety of taxes by the third century. Cassius Dio (*Historia Romana* 78.9.5), the only contemporary author to suggest a practical reason for Caracalla's having given everyone citizenship, suggest that it was, in fact, to expand the body of taxpayers. However, even he, notes that non-citizens paid tax, albeit not the majority of them. See Imrie (2018) 51-80.

[63] Cicero, *Pro Balbo* 28.1.

[64] Blanco-Perez (2020) 17.

3.3 Women and Citizenship

The place of women in the question of citizenship is a tricky one, not least because the concept of citizenship has meant many different things at different times and in different geographical contexts. Citizenship in the ancient world was not conceptualized in the same way as citizenship is today, so it is necessary to tease out some of these nuances to ensure a consistent and uniform understanding of the word "citizen" when it is used here.[65]

3.3.1. Roman Citizenship for Women before 212

In Roman law, prior to 212, citizenship – being a *civis* – was restricted to Roman men. It came with not only legal rights and responsibilities (*ius civile*), but also political and religious ones. Among others, these were military service, liability to specific taxes, the right of appeal, the right of priesthood, the rights of *commercium and conubium*, the ability to run for and hold political office, and, of course, the right to vote.[66]

Roman women had access to a limited number of these. They had the rights of *commercium* and *conubium*. They could be priestesses. They could be taxed and appeal to the courts. On the other hand, they could not vote, contribute military service, or run for office. Women thus cannot be said to have been full Roman citizens. Nevertheless, there is the issue of what to call the wives, daughters, and mothers of Roman citizens. They were Romans in that their legal status was different from that of non-Romans, Latins, or Italians. The Romans themselves dealt with this in various ways: Pliny refers to the Roman citizenship given by Trajan to a freedwoman as *ius Quiritium* in contrast to the *civitas Romanus* given to a freedman.[67] Evidently, the Romans themselves also had some difficulty with the exact vocabulary to use when referring to Roman

[65] Andreea (2017) 110.
[66] Ando (2011) 2-4; Chatelard and Stevens (2016) 28.
[67] Pliny *Epistulae* 10.6.1

women. Their legal status was that of a citizen, but practically they could and did not do most actions associated with classical Roman citizenship. They thus held citizen status and could be given citizenship but were not *cives* in the strict Republican definition of the word.

At the same time, however, the term *civis Romana* is used by Cicero, for example, who speaks about the need to make a Greek priestess of Ceres into a Roman citizen so that her rituals could also be conducted *pro populo*, for the benefit of the Roman people. The phrase also appears in Livy and in Gaius's *Institutes*.[68] And, as time went on, there are more and more examples of women being given Roman citizenship, with none of the terminological acrobatics employed by Pliny. For example, the *Lex Irnitana*, gives citizenship to men who had served as magistrates, along with their entire family "parents, wives, and legitimate children."[69] Finally in the *Tabula Banasitana* discussed above, the wife and children of both Julianus the father and Julianus the son were given Roman citizenship. In fact, the sentence used for Julianus II's family cannot be clearer: "uxori filiisque eius civitatem Romanam […] dedimus."[70]

3.3.2. Hellenistic Citizenship for Women

The Greeks evidently defined citizenship somewhat differently than the Romans did, as they did not initially limit citizenship to men. In the Hellenistic period, and among Hellenistic people,

---

[68] Cicero *Pro Balbo* 55; Livy *abe urbe condita* 38.36.5; Gaius *Institutes* I. 29, 30, 32, 56, 66-68, 70, 71, 74, 75, 77, 78, 80, 84, 84, 88, 90-92; II, 142; See also Safran 2010; Chatelard and Stevens (2016) 39-40.

[69] *Lex Irnitana* 21.38-45, R(ubrica). Quae ad modum civitat[em] Romanam in eo municipio consequantur. Qui ex senatoribus decurion[ib]us conscriptisue municipii Flaui Irnita ni magistratus, uti h(ac) l(ege) [co]mprehensum est, creati sunt erunt, ii, cum eo honore abierint, cum parentibus coniungibusque ac liberis, qui legitimis nuptis quaesiti in potestate parentium [fu]er[i]nt, item nepotibus ac neptibus filio [n]atis, qui quaeve in potestat[e par]entium fuer[i]nt, ciues Romani sunto, dum ne plures cives Romani sint, quam quod ex h(ac) l(ege) magis[t]ratus creare oportet. Trans. Gonzalez and Crawford: "Rubric. How they may acquire Roman citizenship in that municipium. Those among the senators, decuriones or conscripti of the Municipium Flavium Irnitanum who have been or are appointed magistrates, as is laid down in this statute, when they have left that office, are to be Roman citizens, along with their parents and wives and any children who are born in legal marriages and have been in the power of their parents, likewise their grandsons and granddaughters born to a son, who have been in the power of their parents, provided that no more may become Roman citizens than the number of magistrates it is appropriate to appoint under this statute."

[70] *Tabula Banasitana*, lines 14-21. "We have given Roman citizenship to his wife and children."

citizenship was conceptualized as an identity, related to geographical space, kinship, and active "membership in a political community."[71] Critically, women could be citizens under this paradigm. As a result, we see such Hellenistic citizen women referring to themselves as ἀστή, the feminine equivalent of ἀστός, or citizen, in the papyri. As such, citizenship in most of the eastern empire differed conceptually from the early Roman definition of citizenship.

3.3.3. Roman Citizenship for Women after 212

After 212, women and children were included in the category of Roman citizen. This is reflected in the fact that women, too, took on Roman names, albeit a bipartite rather than a tripartite one. The contemporary understanding of Roman citizenship seems to have been similar to what we see for Julianus II's wife. In fact, a Greek contract from 224 shows that both men and women understood that they had gained the same Ῥωμαίων πολιτεία, or 'citizenship of Rome'.[72]

Of course, male and female citizens continued to have different rights and responsibilities, but the stark exclusivity and gendered differences actually began to fade. Military service was no longer limited to citizens anyway. Eventually, too, women also became liable to the *munera* and could take on the role of guardian for their children – both roles linked with citizenship. Influenced by the Hellenistic understanding of citizenship, Roman citizenship came to be something women could have, and do, too. As a result, while the word "citizen" may not have been appropriate to use of women in the Republican period or even perhaps in the first century, its use is appropriate for women of the second century and beyond according to contemporary Latin and Greek usage.

[71] Karolewski (2010) 8; Andreea (2017) 111.
[72] *SB* XVI 12527 (224).

3.4. Conclusion

All these observations can contribute a great deal to our understanding of the legal milieu of the third century, and beyond. Before 212, Roman law and legal precedent were already part of the world of law in the provinces. For many non-citizens, local, informal methods of dispute resolution may have sufficed, but citizen or not, if a case escalated, you could expect to find yourself in front of a Roman judge, as was the case with Dionysia and her father. Since Roman courts functioned empire-wide as an appellate court or court of second instance for all inhabitants of the empire, regardless of citizenship, Roman legal norms and case law ended up trickling down, even before 212. This was a matter of logic. If any of us were going to court and we were presented with a number of options on how to proceed, we would likely pick the one that we thought made our case the most likely to succeed. The same would be true if we sold a house – we would want to make sure that the contract was as watertight as possible to avoid the possibility of litigation.

And that is exactly what seems to be happening here, both before and after 212, except that after 212, people included their Roman legal name and a phrase about having been asked a question (which we have no way of knowing was ever actually asked or answered) because they were told that the Roman law was picky about these sorts of thing. It is about protecting themselves and their property and making the choices that set themselves up in a strong legal position. As we saw above, the fact that Dionysia's father initially lost arguing Roman law, and then tried to come back arguing Greco-Egyptian law which was disallowed shows that the choices a person made from this legal smorgasbord were important. While the *Constitutio* may have changed the legal structures that people employed, or the formulae they used, it fundamentally did not change how they interacted with the legal structures.

At the same time, the *Constitutio* also did not cause a wholesale "Romanization" in the legal or contractual habits of the new citizens. They took on various Roman aspects, like names or the *stipulatio*, to be sure, but this does not seem to have erased or subsumed their former identities and practices. Additionally, while some of these Roman practices were adopted, there is little evidence to suggest that the new citizens understood the finer details of how the Roman system was different from what they had been accustomed to before. This led to a gradual combination of Roman and Hellenistic practices so that not was Roman law affecting the new citizens, but the new citizens were in turn affecting the subsequent Roman law.

This point can and has helped scholars understand Roman law conceptually too. The *Constitutio* has traditionally been understood as a key turning point in Roman law and citizenship, the point after which all the inhabitants of the empire turned, more or less immediately, to the Roman system of law. When you look at the papyri, however, you can see that what actually happened was rather different: existing, co-existing, and even intertwining systems of law and legal practice were adapted to fit an individual's specific needs, much as they had been previously. The issue at hand runs more deeply than simply a comparison of theory and practice, of ideology and reality. What is important to understand here is that while the law itself may be intended to be viewed or used in a certain way, it is inevitably shaped by the way people understand it, and how and when they chose to interact with it in their daily lives, in court, or in legal documentation. This, in turn, shapes the creation of future law.

Those like Julianus, who were made citizens in the first or second century, considered this fact significant to their identity, but, contrary to earlier scholarship, grants of citizenship whether individual or communal did not remove and may not have even been intended to remove the new citizen from their local civil, legal, or social contexts. You could be a Roman and a Greek or a Jew

or an Egyptian simultaneously. The *Constitutio Antoniniana* seems to have functioned similarly. Despite their new citizen status, we do not see deep, widespread, and rapid "Romanization" among these newly enfranchised inhabitants of the empire. Instead, we see a more individualized and contextualized adoption of Roman law, names, and legal categories. This shows that even after 212, Roman citizens had the ability to choose how they created agreements or navigated conflicts. As long as the person on the other side agreed, they did not necessarily have to use the Roman legal system, but they could, if they wished to, in part or in full.

These facts also reveal one reason why the *Constitutio* received so very little attention in the contemporary literary sources: in a world already marked by this type of egalitarian pluralism and forum shopping, Roman citizenship and the associated access to Roman civil law and to Roman courts of the first instance was just another tool in the legal toolbox of the provincial citizens. Evidently, that was not the sort of things the historians thought worthy of recording, since they were all elite Roman citizens themselves, not new provincial citizens.

In addition, while Roman laws may have been made, and edicts may have been regularly promulgated, the extent to which the emperor and the court actually expected them to be followed by everyone in the empire, or even communicated to everyone throughout the empire, is unclear. As far as we can tell, the bureaucratic infrastructure to make this happen simply did not exist, particularly from the third century onwards. Distance, isolation, and low literacy levels would have been further barriers to the wholesale, top-down imposition of Roman law and legal or social identity throughout the provinces both before and after the *Constitutio Antoniniana*. So, while the centre may have envisioned a hierarchical structure in which indigenous law persisted only where and when it benefited the centre, the people who actually used this system, chose the legal path that they thought would benefit them. While the decisions of the centre may have affected their

choices, their choices in turn could affect the centre through the creation of precedent and even the persistent use of non-Roman legal structures, to the extent that they were eventually acknowledged by the centre through codified law.

Thus, when we look at legal documents, court cases, petitions, and laws from the third and fourth centuries and beyond in the following chapters, we have to remember that our modern understanding of law and citizenship does not map neatly onto the ancient understanding of law and its practical pluralism. This understanding of the effects of the *Constitutio*, of the possibility for multiple legal frameworks to co-exist in the same space in a non-hierarchical manner, and of the preservation and even integration of local practices into Roman law will serve as a theoretical foundation for our examination of the *tutela mulierum* in the centuries following the *Constitutio Antoniniana*.

Part I: Conclusion

Almost everyone in the early Roman world was under somebody's legal and financial control or influence. Independence was the exception, rather than the norm for all but the heads of families, or *patres familiae*. They exercised paternal power, *patria potestas*, over their children and their descendants. Depending on whether he, his sons, and his grandsons had a *in manu* marriage or not, he may have also had legal authority over his wife, his daughters-in-law, and grand-daughters-in-law. Equally so, he could lose control over his daughters and grand-daughters if they contracted a *in manu* marriage. A person under this paternal power was considered *alieni iuris*. This control was initially not unlike the absolute control envisioned for slaves, and indeed the *Twelve Tables* seems to have conceptualized the relationship between a *pater* and his family and a master and his slaves very similarly. Like slaves, those *in potestate* could be emancipated, but unlike slaves they could also gain an independent status at the death of their *pater*. If someone was emancipated, or when they became the top of their own paternal family tree, they became *sui iuris,* that is, under their own control.

What happened next depended on the age and gender of a newly *sui iuris* person. Boys under the age of fourteen and girls under the age of twelve were given a guardian to help them manage their affairs. This was a *tutor impuberum*, a guardian of minors. Women above the age of twelve were assigned a *tutor mulierum*, a guardian of women. Both had a similar initial goal, to protect agnate family money, but adult women did have more independent financial agency than minors of either gender. As time went on, both forms of guardianship underwent changes, all of which can be related in some ways to a lessening of the importance of the agnate family. Augustus instituted an exception to guardianship, which allowed women with sufficient births to be rid of

her *tutor*. Apparently, women had been taking their *tutores* to court already anyway, so functionally this must not have been a significant change. It is significant that this became part and parcel of a larger *ius liberorum* which also gave the nuclear family enhanced inheritance rights. Then Claudius abolished agnate guardianship altogether. Finally, the *cura minorum* became popular for *sui iuris* young people under the age of twenty-five, regardless of gender. Quite specifically, this was not intended to protect family wealth, but to protect individuals and provide stability to financial transactions made with young people.

This picture of *potestas* and the *tutela mulierum* that we have seen throughout Chapters 1 and 2 reflects the Roman legal milieu before the *Constitutio Antoniniana*. At the same time, however, as we saw in Chapter 3, most people in the Empire did not use, or did not have to use, Roman law before 212. The Roman empire was a legally pluralistic one, which means that non-Romans could continue to use their own legal systems, or they could choose to integrate (some) Roman law or legal practices. Prior to 212, this use of Roman legal principles by non-Romans was by-and-large limited to case law and casuistry, as with Dionysia, and generally did not extend to contracts.

Once almost all the inhabitants of the empire gained citizenship in 212, however, provincial contracts began to look more Roman, so we can say with certainty that some aspects of Roman law were spreading to the provinces quite quickly. On the other hand, the flexibility of legal pluralism also did not disappear overnight, and the new citizens did not always comprehend the nuances and intricacies of the finer point of Roman law. As a result, the contracts of the new citizens often contained aspects of both Greek and Roman legal influence, many of which persisted in contractual practice well beyond the third century. Importantly, Roman citizenship was no longer something that was conceptualized as being solely male as it was in the Republic, but

women too could be Roman citizens according to contemporary understandings, which again were influenced by Hellenistic conceptions of citizenship.

Looking ahead to Part II, the *tutela mulierum* was part of a larger Roman system of identity and financial and familial control which cannot be examined in a vacuum, either in its heyday or throughout its so-called decline. Even in the early period discussed here in Part I, we have seen that as the structure of the family and the rights to family property gradually changed, the *tutela* was forced to change as well. Thus, the question that scholars are asking about changes to guardianship in Late Antiquity need to be much broader. Any proposed answer to why the *tutela* changed/evolved/disappeared in Late Antiquity must also be able to account for related changes to family structure, inheritance legislation, the *patria potestas*, the *ius liberorum*, and the quotidian use of guardianship.

In Chapters 1, 2, and 3, we have therefore established an understanding of the *tutela mulierum* itself, as well as its immediate legal context, family hierarchies, and its broader legal context, the Roman legal system. All of these areas experienced key moments of change in the first three centuries of the Empire which affected adult female guardianship in the empire for centuries to come. Having thus set the stage with a solid understanding of the existing Roman legal categories of *patria potestas* and *tutela mulerum* and a socio-legal summary of the effects of the *Constitutio*, we can now turn to the late antique evidence to discover what happened to the *tutela* from the third century onwards.

PART II

DECLINE AND DISAPPEARANCE?
Guardianship in the Late Antique Documentary Papyri

Part II: Introduction

Rogo, domine, des mihi auctorem Aurelium Plutammonem e lege Iulia Titia et e senatus consulto.[1]

Reading through the Roman law textbooks provided to undergraduates in both Law and Classics today, we can see an assumption that the *tutela*, and every other Roman legal institution, was adopted wholesale by the new citizens of the empire immediately after they were granted citizenship by the *Constitutio Antoniniana*. What these textbooks do not account for is a transitional period, one in which the new citizens first learn about their citizenship, then learn its various legal implications, and finally decide to adopt some – but not all – of these new systems. Importantly, while "Romanization" is often discussed in exactly this context, in reality the empire simply did not have the bureaucratic machinery necessary to ensure that distinctly Roman culture and law was transmitted to all these new citizens.

Nor did Roman culture and law spread to all new citizens at equal speed or to the same extent or accuracy. The upper classes, with their more established cultural and legal ties to the centre, would seem to have had a more or less swift and accurate understanding of the complex intricacies of the Roman legal system in which they were now allowed or expected to partake. At the very least, they could have afforded the services of a legal advisor or benefited from shared knowledge amongst their social groups. The lower classes, on the other hand, would not have had

[1] *P. Oxy.* 4 720, "I ask you, my lord, to give me as guardian Aurelius Ploutammon in accordance with the lex Iulia et Titia and the decree of the senate." Rowlandson (1998) 140a.

as easy access to this knowledge and may also have not felt that they needed it. Two assumptions in the study of contracts in both the ancient and modern world underlie these suppositions: First, that contracts were only created when the cost of the property, the complexity of the arrangement, or the imminent possibility of a challenge to the agreement warranted the expense and trouble of drawing up a contract, having it witnessed, and filing it with the authorities. And second, that the type of agreement, the chosen legal system(s), and methods employed in any given contractual situation were the ones judged most suitable for the situation by the relevant parties and may not have overlapped, in whole or in part, with the Roman system of law, even after 212.

Recognizing the deep ties between *patria potestas* and the *tutela mulierum*, Chapter 4 will focus on the question of paternal power and guardianship in the period immediately after the *Constitutio*. We shall first discuss *patria potestas* to understand how the new citizens interacted with this legal concept, whether it persisted in a distinctly Roman way in the midst of similar local understandings of family hierarchy, and what that meant for institutions that were dependent on it, like the *tutela mulierum.* Then we shall turn to the topic of adult female guardianship and how it was adopted and practised by the new citizens.

As was the case with *patria potestas,* the majority of Mediterranean societies in this period had a fairly uniform understanding of women's place in the family. Women generally remained under the legal control of their father or their husband, although the legal nuances of this control could vary considerably. As we have already seen, however, Rome permitted various exceptions to this guardianship of adult women, which was a notable difference. Chapter 4 will conclude with three case studies of Greek legal papyri which have one or more female signatories. This will help us understand the effects of mass enfranchisement on adult female guardianship and on the general position of women in the legal sphere. We shall discuss how often guardians were mentioned (or

not), the types of formulae used, and whether it is possible to securely identify Roman legal influence in these legal texts which continue to be written in Greek and in much the same way that they had always been.

Since the *tutela* itself is absent from mainstream legal texts after the early fourth century, scholars have viewed this absence as a sign that it was abolished or simply fell out of use in the fourth or at the latest by the fifth century. A search through the papyri for formulae which were common in earlier centuries, however, tells a rather different story of women who still mentioned guardians in their contracts. Chapter 5 will tell that story, focusing on the practice of adult female guardianship between the fourth and the seventh centuries. Joëlle Beaucamp noted some thirty years ago that the guardianship of adult women remained an active and common part of Mediterranean society throughout Late Antiquity. When she wrote her seminal two-volume work in the early 1990s, she noted that the majority of the scholarship which had previously been done on the question of female guardianship was old and did not take into account the material that had been uncovered in this century. She also observed that scholars generally wrote about and treated the situation in Egypt in the fourth to the seventh centuries only in terms of codified Roman law, but that they did not recognize that what they were describing was not at all consistent with the papyri.[2] Despite that pointed critique, this practice of prioritizing the evidence of the law or of jurisprudence over that of the documentary papyri has persisted both actively and passively among scholars. The two scholars who did look at guardianship in the papyri before Beaucamp focused primarily on compiling an exhaustive list of papyri from these centuries that mention women's guardians, and not on an analysis of the documents they collected.[3] Chapters 4 and 5 will expand

[2] Beaucamp (1992) 193.
[3] Sijpesteijn (1965), (1982); Sijpesteijn and Worp (1976).

beyond the superficial creation of lists, into questions of continuity, agency, and socio-legal change.[4] (Such lists can also be found in the appendices, however, and have been included – and updated – in the interest of comprehensiveness and continuity in scholarship.)

Given their relative silence from the fourth century onwards, the legal sources which we saw in Part I will serve only as background material for Chapters 4 and 5. Instead, the primary focus of our attention will be papyri, specifically contracts, written in Greek, which contain references to a woman as one of the contracting parties.[5] These contracts can be broken down into four general categories: contracts with a formula identifying the presence of a guardian, contracts with a formula specifically mentioning the absence of a guardian, contracts with no mention of a guardian at all, and contracts which are too lacunose to securely identify in which of the three preceding categories they belong. Finally, once we have established what happened to citizenship, paternal power, and adult female guardianship in Late Antiquity, I shall then be able to ask why this this happened, what factors were at play, and whether we ought to credit Christianity with any of this.

[4] As Sheridan (1996) began to do.
[5] Modern scholarship on guardianship in this period is incredibly sparse. What exists is either quite general or only tangentially related. As a result, the balance of sources in Part II is weighted much more heavily towards the primary sources than it was in Part I.

Chapter 4: The Effects of the *Constitutio Antoniniana* on Guardianship in the Provinces

...καὶ παρὰ Αὐρηλίας Ἀπολλωνίας τῆς καὶ ⟦[.]αι⟧ Ἁρποκρατιαίνης Πο̣υ̣πλίου ἀστῆς ὡς ἐν Πτολεμαίδι τῆς ἐν Θηβαίδι τὸ πρὶν χρηματιζούσης Ἀπολλωνίας τῆς καὶ Ἁρποκρατιαίνης Π[ο]υ̣πλίου μητρὸς Ἀπολλωνίας ἀπ᾽ Ὀξυρύγχων πόλεως μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη Μάρκου Αὐρηλίου Ἀμμωνίου τοῦ καὶ Γεμεινᾶ καὶ ὡς χρηματίζει καὶ παρὰ τοῦ ταύτης υἱοῦ.[1]

The *tutela mulierum*, as we have established in Part I, is fundamentally dependent on the concept of *patria potestas*. In the Roman legal system, most women (and men) would have been under the *potestas* of their father. Similarly, women could be *in manu mariti*, that is, in the hand of their husband, a legal position not dissimilar to being under his *potestas*. If, however, the father died or the woman became emancipated, she became *sui iuris*, that is, under her own power. In that case, she would have needed a guardian, a *tutor mulierum*, without whom she could not have made the majority of significant financial decisions, specifically those relating to *res mancipi*. After Augustus, a *sui iuris* free woman could be rid of her guardian if she had given birth to three children; a freed woman needed four. This was the *ius trium liberorum*, or the right of children, which we have also already encountered in Chapter 2. As can be seen, the entire need for a guardian

[1] *P. Oxy.* XXXIV 2723; Trans. Parson with my revisions: "…and from Aurelia Apollonia also called Harpocratiaena, daughter of Publius, citizen, from Ptolemais-in-the-Thebaid formerly styled Apollonia also called Harpocratiaena daughter of Publius, mother Apollonia, from the city of the Oxyrhynchi, acting with the guardian assigned to her according to the customs of the Romans, Marcus Aurelius Ammonius also called Geminas, and however he is styled, and from her son." These are the opening lines of a third-century *synchoresis* contract. The text was never finished and there are blank at lines 14 and 16, which explains why we do not have a precise date. The use of "Aurelia" and "Aurelios" and the double identifiers suggest that this dates to a period immediately following the *Constitutio*. The original editor notes that, given the omissions and blanks, this is likely a draft or a duplicate of a completed and fully actioned contract. Nevertheless, even these few lines capture beautifully the period of transition after 212 in which a very new citizen, Apollonia, navigates her identity and the new Roman categories of guardianship.

for women and thus also her eligibility for the *ius* pre-supposes the existence of the *patria potestas* and a woman's freedom from it.

After the *Constitutio Antoniniana*, the legal environment of the empire shifted, as we saw. The conclusions of the previous chapter provide the framework for reviewing the changes to first the *patria potestas* and then the *tutela* and the *ius.* We begin this with an understanding that the period after 212 did not see a wholesale acceptance or imposition of the entirety of Roman law. Instead, multiple legal frameworks continue to exist, much as they had done before, which the new citizens drew on differently depending on their different situations and circumstances. The key difference is that after 212 we see more, though not all, people deciding that Roman law and Roman legal categories, even if not well understood, were a preferable choice in their situations. Because of the immense number of people now interacting with Roman law who had significantly more experience with other legal traditions, we see that Roman law itself begins to shift and evolve in ways that are compatible with these other legal practices and traditions.

In this chapter, we shall begin by reviewing the evidence for paternal and parental power after the *Constitutio* to establish whether we can see a significant shift in the understanding or exercise of paternal power in the rest of the third century. We shall specifically seek to answer these two questions: how was the concept of *patria potestas* understood by the new citizens after 212, compared to what came before? And what did that mean for legal systems, like the *tutela*, that were dependent on it? We shall then turn to the question of guardianship and its appearance and evolution after 212. Although we do not see a sudden spike in papyrological references to adult female guardianship after 212, we do see a rise in references to the exemption, the *ius liberorum*, which is a category unknown in the Greco-Egyptian system. The questions here are, was the Roman form of guardianship universally adopted in place of the earlier Greco-Egyptian

form? And did guardianship really decline and "disappear" in the third and fourth centuries as modern scholarship suggests? If not, can we explain what happened to make scholars think it did?

4.1 Paternal Power in the Papyri

Since the very existence of the *tutela mulierum* was predicated on the existence of, and the exemption of some women from *patria potestas*, it is necessary to establish how this Roman concept of paternal power was received and adopted in the provinces following the *Constitutio Antoniniana.*

4.1.1. Paternal Power before the *Constitutio Antoniniana*

We know surprisingly little about the precise legal dynamics of families in the provinces before 212 and in the decades immediately afterwards. We depend on the laws and the writings of the jurists to understand the norms of Roman legal practice, but in the absence of such texts for provincial, Hellenistic practice, we must turn to the papyri. Even there the evidence is sparse. The famous case of Dionysia and her father in 186, which we discussed in the previous chapter, shows that while the Hellenistic system did recognize some type of paternal power over at least adult daughters, it was not nearly as absolute as the *patria potestas* is made out to have been, although, as we saw, even *potestas* had its limitations in Roman law by this date. Regrettably, we simply do not have the source material to say much more than this.

Although minor children do not make much of an appearance in the documentary papyri, we can say something about how the overall family hierarchy worked in the Hellenistic world compared to the Roman world. From the papyri, we can see that the Greco-Egyptian system of family hierarchy, at least on the surface, looked quite similar to the contemporary Roman one: women and fatherless minors were generally assisted by men in the legal and financial space. The death of a father in the Hellenistic system meant that both wife and children would receive a

guardian. This was usually a κυρίος for adult women and an ἐπιτρόπος for minors of either gender, although this appears not to have been a hard and fast rule.[2] These seem not to have taken on all the powers of the deceased husband/father.

Children were also under a form of paternal power. As we saw with Dionysia, fathers could theoretically claim rights much like those of the early *patria potestas*, such as giving their children in marriage and unilaterally ending their marriages. As in the classical Roman world, Hellenistic children could also be adopted, which would have brought them under the authority of their adoptive father. Unfortunately, while there are references to a person's adoptive status prior to 212, our first extant adoption contract comes only from 335. In the absence of contracts, it is difficult to get a sense of how frequent a practice it was, or how exactly it worked, although Tirla has that suggested the practical acceptance of a child would have been sufficient for the "inheritance of wealth, perpetuation of family name and care of elderly parents."[3] Evidently, this is no help in understanding how paternal power worked either before or immediately after 212.

In the Greco-Egyptian world at least, and even before Greek legal influence, husbands had featured in their wives' contracts. Demotic contracts, which could be made in the purely Egyptian tradition without a guardian, still featured spouses (of both genders) in quitclaims, alongside anyone else who may have had a claim to the property, like a son or a mother. In the Greek system, marital finances were mixed, and husbands were customarily the legal representatives of their wives and also their guardians. They were also the guardian of their minor children, who do not feature in the papyri much at all, either in contractual or other types of contexts. These ideas of

[2] Taubenschlag (1938) 353-377; Méleze Modrzejewski (2014), 140-142.
[3] Heubner (2013) 182; Tirla (2021) 969, on the written adoption contracts.

guardianship seem to have persisted among the Hellenized population of Egypt and became fairly universal among both Greeks and Egyptians under the Roman administration, prior to 212.

Despite some superficial similarities, the two systems – Roman and Hellenistic - were not equivalent, even though the new citizens may have seen and treated them as such. For instance, whereas Roman law originally allowed a woman's guardian to challenge her wishes, the Greco-Egyptian system seemed to expect guardians, κυρίοι, to support their ward's decisions, regardless of their age. More crucially, there does not seem to have been a form of paternal power that was entirely distinct from the concept of guardianship. That is to say, it appears that Hellenistic paternal power was equated with guardianship, so fathers and guardians appear in contracts in similar roles. It is not entirely clear where and when guardians were expected to act or where fathers had specific rights or powers, but based on papyrological evidence we can surmise that in the contractual space, at least, both of their involvement was required for any significant financial transaction.[4]

4.1.2. Paternal Power after the *Constitutio Antoniniana*

A widespread adoption of the full Roman *patria potestas* by the new citizens after universal enfranchisement does not seem to have occurred. A nearly ninety-year-old study by Taubenschlag on the *potestas* in the papyri notes that there were scattered efforts to adopt Roman terminology for paternal power, but that the nuances and technicalities of the *potestas* were not ever well understood or adopted.[5] More recently, Alonso showed that while there was occasionally an effort to use terms associated with *potestas*, both individual citizens and the administration "ignore the lack of legal capacity that these terms should carry: hence theoretical *potestate subiecti* are treated

[4] *BGU* III 907, Κύριος καὶ ἐπίτροπος κατά τοὺς νόμους; Cf. Taubenschlag (1955) 131, note 4 (paternal power is called ἐξουσία); Hunter (1994), especially chapter 1 for a summary of how guardianship worked in Classical Athens, and by extension in the Hellenistic world. For an overview of our understanding of guardianship in the Greco-Egyptian system see: Taubenschlag (1955); Arjava (1996), (1997); Rowlandson (1998); Keenan (2014).
[5] Taubenschlag (1916) 177-230.

as owners of their own property, and even registered as such."[6] We thus see somewhat of a change in terminology in the papyri, but there is no evidence of a corresponding change in practice. Minors continue to own property in their own name and to accept inheritances[7]

The term ὑποχείριος appears to have been used to for someone subject to *potestas*, but it is only attested eleven times, nine in the third century and two in the fourth.[8] The term also appears with the phrase κατὰ τοὺς νόμους/κατὰ νόμους or in the slightly different form ὑπὸ τῇ χειρὶ κατὰ τοὺς Ῥωμαίων νόμους, for which there is a tad more evidence. Both ὑπὸ τῇ χειρί and ὑποχείριος have alternatively been translated as "subject to guardianship" by their editors, but this is not consistent with a review of the internal evidence of the texts: none appears to be a minor with a guardian, rather, in many texts it is clear that the ὑποχείριος or ὑποχειρία is acting with their father and is under his power. [9]

The difficulties here cannot be terribly surprising. The Greek system already included a system of paternal power, albeit a much more limited one than *patria potestas*. Children could and did own property in their own name, but they were represented or accompanied by their fathers in financial transactions until they reached the age of majority. Even if the nuances of *potestas* were fully understood by the new citizens after 212 – and there is no evidence they were – there was also no practical way to implement it for everyone, since children with living fathers already owned property, made their own contracts, and so on. For minors, on the other hand, this might not have

[6] Alonso (2010) 47-48.
[7] Taubenschlag (1916) 223-229.
[8] This is two more than when Alonso wrote: *SB* I 5692, *SB* XVIII 13322; *BGU* VII 1578, *P. Diog*. 18; *P. Harris* I 68; *P. Gen.*[2] I 44; *P. Oxy.* XIV 1703; *SB* XX 14681, *P. Oxy*. XIV 1642; *SB* XXIV 15913; and *P. Panop.* 28. Three of these are in the feminine: *BGU* VII 1578, *SB* VII 14681, and *P. Panop*. XXVII 3
[9] See, for example, *P. Oxy*. IX 1208, *SB* XVIII 13322, *P. Oxy*. XIV 1642, *SB* XX 14681.

been so hard. Fathers already supported their children, so it would have been more straightforward to add this ὑπὸ τῇ χειρὶ formula to a contract.[10]

This is almost impossible to prove, however, since as Arjava notes that it is difficult to ascertain whether a child who is mentioned as being under their father's power is an adult or, in fact, a minor, which often seems to be the case. If the majority of the mentions of an individual's being under paternal power relate to minors, this could be chalked up to the fact that younger children were more likely to have had a living father, or, more likely, to the fact that, after 212 *patria potestas* was interpreted as applying to or being relevant to minors only, however the term 'minor' was defined, simply because of the practical limitation of applying it to adults who had already been functioning with full rights. [11] This must have remained the case as time went on as well.

In the papyri, we see minor children in the power of their fathers and adult children owning property independently, but we do not have corresponding evidence for the emancipation which ought to have proceeded these states.[12] Similarly, as we shall see, we continue to have a wide variety of adult women operating with a guardian as well as those claiming the *ius trium liberorum*, both of which imply either their father's death or their own emancipation – again, something which we simply do not have any evidence for.[13] In fact, the majority of (married) adults were not functioning as if they were *in potestate*. Arjava suggests that this is because it was "clearly

[10] We do, however, continue to see the pre-212 guardianship formulae used for fathers of minor children: *SB* I 5692. We also see this new formula used in the context of a young woman owning property, something which they would not have been able to do if they were true *in potestate: SB* XX 14681.
[11] *P. Oxy.* II 237; Arjava (1996) 48-52.
[12] Alonso (2010).
[13] Taubenschlag (1916) 229; *CJ* 8.47 contains more elaborations on exactly how *potestas* was envisioned working in Late Antiquity. Here too, there is an acknowledgement that potestas had evolved since the Republic.

common to emancipate children when they married or reached adulthood."[14] This, in itself, would be a remarkable innovation, if we actually had evidence for widespread emancipation, but we do not.

Against Arjava's claim is a constitution of 426 which discusses property obtained from a spouse by a person *in potestate*. Not only does it establish that the centre recognized that married people were *in potestate* frequently enough (and well into the fifth century) to prompt a constitution on the father's rights to interspousal transfers of property, but it also serves to further limit the financial control of the *pater familias* over the family members in his power. While this constitution does mention that emancipation was an ongoing practice, it does not express that it was the norm or expected prior to marriage for either men or women.[15]

What may be noteworthy, however, is the change in vocabulary when referencing the *maritus*, the husband, and the *uxor*, the wife. The husband is noted to be "*non emancipatus*" while the wife is simply said to be "*in potestate*". The different vocabulary used for the different genders may suggest there was a gendered difference to emancipation and *potestas*. Whether men were expected to be emancipated at one point and women were just assumed to be *in potestate* until marriage, we cannot be sure, but that may have been the understanding behind this constitution.

---

[14] *CTh* 8.18.2 (319); Arjava (1996) 50; Fathers "shall not have the licence or the power to alienate such property, so that when a father is induced to emancipate his children by the fact that they have arrived at legal age, and he wishes to see his own children as heads of households…" Cf. Vial-Dumas (2014).

[15] *CTh* 8.19.1, Cum venerandae leges vetuerint patribus iure potestatis adquiri, quidquid eorum filiis avus, proavus proavia a linea materna venientes quocumque titulo contulissent, hoc quoque convenit observari, ut, quidquid vel uxor marito non emancipato vel maritus uxori in potestate positae quocumque titulo vel iure contulerit sive transmiserit, hoc patri nullatenus adquiratur, atque ideo in eius tantum, cui delatum est, iure durabit; "Since the venerable laws forbade that a father, by the right of his power, should acquire any property bestowed by any title upon his children, by their grandfather, grandmother, great-grandfather, or great-grandmother on their mother's side, the following regulation shall also be observed, namely that under no condition shall a father acquire any property that by any title or right a wife has transferred or left to a husband who is not emancipated or a husband to a wife, who is under paternal power. Therefore, such property shall remain exclusively in the ownership (right) of the person on whom it was bestowed."

Either way, all we can be sure about here is that at least in the law, *patria potestas* persisted well into Late Antiquity, and that the centre accepted that it was possible for a married couple to still be *in potestate.* It is easy to understand why *potestas* could have been considered to have ended at majority for both genders, but why upon marriage? For women, at least, this has a straightforward answer – husbands.

Under Roman law, if a minor was emancipated or if their father passed away and they became *sui iuris*, they received a *tutor* until puberty, and then a *curator* until the age of twenty-five. *Institutes* 1.23 specifies the point at which young people would receive these guardians in a unique way: Young men would receive a *curator* at puberty and young women at a marriageable age. For ease, this is averaged out as fourteen-years-old, but there is no discussion of the emancipation or legal status of the young person receiving the *curator*. The *Institutes* also does not include a discussion about which category of young people could receive *curatores*, which gives the impression that everyone could have one. It seems thus that *curatores* were not restricted only to those who were *sui iuris*, but were given to the general population who were between the ages of fourteen and twenty-five.[16] As financial norms had also evolved to allow *alieni iuris* people de facto control over their own finances through the expansion of the concept of the *peculium*, young people *in potestate* would likely also have needed someone to validate their transactions, although we cannot be sure if this ended up being their father or a third-party *curator*. This too, is another indication of the changes that *patria potestas* saw in these centuries.

Finally, the increase in different types of *peculia*, beyond simply a small allowance given to a slave or *alieni iuris* person, had already prompted an evolution in the practice and reach of *potestas*, even before the *Constitutio*'s influence. Sons had come to have a considerable amount of

[16] *Institutes* 1.23.

financial freedom, initially, because the *peculium* had been expended to include wages received from military service and then because of legislation protecting the financial independence of the *filius familias* as it related to his military and later administrative income.[17] The increase in the value of the *peculium* and in those finances that were not under the control of the *pater familias* may have contributed to the idea that the *cura* ought to be universal for everyone under the age of twenty-five, especially given the many prohibitions and cautions surrounding doing business with underaged people. In addition, we see the emergence of *materna potestas*, which is a new and unique addition to the concept of parental power and has implications for guardianship later on. We shall explore the expansion and limitations of women's power in this regard in the following chapter, since it becomes far more common in the later centuries of the empire.[18]

Despite the fact that Arjava states that "we have every reason to believe that in Late Antiquity *patria potestas* was recognized as a fact of life throughout the empire,"[19] we have no reason to believe that it functioned even remotely like the classical *potestas.* In fact, we have plentiful evidence to show that it was quite a different thing altogether. Vial-Dumas goes so far as to refer to it as a decline or a weakening and states that "this change [to *potestas*] was actually completed before Justinian; he merely recognized it."[20] Thus, although the *patria potestas* continues to be mentioned in the laws, we would be woefully amiss to treat it as if it had not evolved at all since the early Empire. In many respects, we seem to have adults acting as if they

[17] *Digest* 47.2.52; Valiño Arcos (2008) 1-9.
[18] *CTh* 3.17.4 (390) allows widows, provided that they promise not to remarry, to act as guardian for their children. Taubenschlag (1955); Beaucamp (1992),163-171, 276; Arjava (1996) 76-110.
[19] Arjava (1996) 50.
[20] Vial-Dumas (2021) 313, on the ability of an *alieni iuris* person to have intestate heirs, a complete upheaval of the system of *inheritance* defined through *patria potestas*.

were not *in potestate*.[21] This conclusion has meaningful implications for our understanding of institutions dependent on *potestas* too. If the majority of adults were, either functionally or technically, *sui iuris*, then something like the *tutela mulierum*, which applied only to *sui iuris* women originally, would suddenly have been opened up to almost every adult woman. Rather than an independent woman being an exception with an established legal protocol, she would have become the norm. Was that actually the case? We shall attempt to answer that question in the rest of this chapter.

4.2 The Guardianship of Women in the Papyri

Women show up in the surviving papyrological contracts in a variety of different roles over time. They are the buyer, the seller, the lender, the debtor, the creditor, an interested or helpful family member, and so on. They are not generally witnesses, scribes, or legal representatives. Turning to the documentary papyri, then, we have three main scenarios which we see reflected in a variety of contractual formulae throughout the entirety of Late Antiquity: in the first a woman specifically says she is acting with a *tutor* or κύριος; in the second, she explicitly mentions that she is acting without one; and in the third there is no mention of a *tutor* or κύριος at all.

Of these three, the second scenario has attracted the most scholarly attention, since the first is incredibly common and the third equally rare. Of interest for us, too, are the many examples of the second scenario in which women claim the *ius*, through the addition of a "negative formula", that is, one which includes some version of the words χωρὶς κυρίου, or "without a guardian".

[21] Interestingly, while we have little evidence to support narrative of straightforward continuity in the East, western legal systems, among the Visigoths and the Burgundians, for instance, do continue to discuss *patria potestas*. Cf. Arjava (1996) 50-51; Vial-Dumas (2014).

Nevertheless, we shall begin with first scenario, in which women identify the presence of a guardian using a "positive formula", including the words μετὰ κυρίου, "with a guardian".

4.2.1. The Positive Formula

Guardianship formulae, whether positive or negative, usually appear in the first lines of a text, where the contracting parties are identified, as well as in the subscription, in which the contents of the contract are summarized and the *stipulatio* is recorded. They make up part of a woman's legal identity and help to establish the validity of the contract.

The positive guardianship formula that was used following the *Constitutio* is identical to the formula used for the Hellenistic-style contracts as far back as the third century BCE and throughout the history of Greek guardianship in Egypt. Prior to the *Constitutio*, and since the rise of Hellenistic administration in Egypt, Greco-Egyptian contracts contained a guardianship formula consisting of the woman's name, any relevant patronymics and matronymics, as well as social or geographical identifiers for the woman and/or her parents and family. This identification is often followed by the phrase, "μετὰ κυρίου τοῦ ἀνδρός", which itself is followed by the husband's name, patro- and matronymics, and relevant identifiers.[22] While the majority of adult, married Greco-Egyptian women appear to have had their husbands as their guardian, the reference to the woman's husband was frequently switched out for a reference to her father, "μετὰ κυρίου ἐμοῦ τοῦ πατρός"[23]

[22] *P. Oxy.* LXVII 4586. Early 3rd century. For more Greek contracts with husbands as guardians, see also: *CPR* XVIII 13 (231 BCE); *SB* XXII 15531 (latter half of the second century BCE); *P. Mich.* V 298 (first half of the first century CE); *P. Oxy.* XXXIV 2720 (41-54); *PSI* XII 1322 (118-119); *P. Hamb.* I XIV (209-210).

[23] *P. Mich.* V 314, first century. For more Greek contracts with fathers as guardians, see also: *P. Strasb. Gr.* II 88 + *ZPE* 150 (2004) p. 216 (19) (105 BCE); *P. Lips.* I 27 (123); *PSI* XII 1223 (131); *P. Flor.* I 1 (153); *P. Oxy.* XXXIV 2709 (206).

or even to her son, "μετὰ κυρίου τ̣οῦ υἱοῦ"[24] or brother, "μετὰ κυρ(ίου) τοῦ ἀδελφοῦ".[25] On occasion, we also see the descriptor, συνγενοῦς, used to note that the *tutor* is a kinsman, but presumably not a husband, father, brother, or son.[26]

What we see after 212 looks very much the same as before. The formulae remain the same, Greek remains the contractual language of choice, and we continue to have fathers, husbands, brothers, and sons acting in these guardianship roles. Certainly, some contracts do not mention the relationship of the guardian to the woman at all, hardly surprising if this was a dative guardian or someone who was unrelated. Otherwise, however, contracts with guardians from after 212 remain virtually indistinguishable from those beforehand, despite such a momentous legal change as universal enfranchisement.

As time went on, however, brothers and sons featured less prominently in these formulae. As we saw earlier, too there is a small attempt among only a handful of contracts to attempt to distinguish when a woman was specifically operating μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη, that is, "with a guardian who had been given to her according to Roman law".[27] In these, husbands and fathers are overwhelmingly absent, but whether that can be attributed to the "Roman-ness" of the contracts or to the fact that dative guardians were given when there was no obvious alternative, is not immediately clear. Otherwise, however, the guardianship that existed, and the women's lived experience of the *tutela mulierum* in the Roman provinces had always

[24] *P. Oxy.* XIV 1648, late second century. For more Greek contracts with sons as guardians, see also: *BGU* I 183 (85); *P. Ryl. Gr*. II 174 (112); *P. L. Bat.* VI 21 (122); *P. Oxy.* XLI 2962 (154).
[25] *P. Wisc.* II 54 (116); eEarlier on in the text Isarous mentions her brother again and there she specifies that he, Eudaimonos, is "ὁμοπατρίου καὶ ὁμομητρίου ἀδελφοῦ", that is, her brother from the same mother and father, a statement which is relatively common in the guardianship formulae when brothers make an appearance. See also: *BGU* IV 1103 (13 BCE); *P. Lond.* III 1168 (44 CE); *BGU* XI 2020 (124); *P. Paris* 17 (153).
[26] μ[ε]τὰ κυρίου τοῦ συνγενοῦς; *BGU* II 619 (155)
[27] *P. Oxy.* XXXIV 2723 (first half of the third century, but after news of the *Constitutio* reached Egypt). A good number of attestations of a Roman dative guardian also exist in the Greek papyri from before 212. Interestingly, husbands and fathers are overwhelmingly absent from all of these examples, which suggest a dative guardian.

included husbands. While this may not have been entirely in line with the form of the *tutela* envisioned by Gaius, it was what was actually happening in much of the empire, and after 212, it was what Roman citizens considered to be their method of guardianship.

There has been very little scholarship specifically on the positive formula, whereby a woman identifies that she is transacting with the assistance of a guardian. In fact, in his short paper on the topic, Arjava notes that "women who actually have a guardian" after the *Constitutio* have "hitherto escaped general attention." [28] Whatever his other errors about guardianship, he is not wrong about this.

4.2.2. The Negative Formulae

On the other hand, we do have a number of studies on the texts and on the specific formulae which are used when women function without a guardian in the papyri. The first two of these, published by Sijpesteijn in 1965 and by Sijpesteijn and Worp in 1976, provide an introduction to the negative formulae. Sijpesteijn then took the opportunity to update the list again in 1982, when he edited the fifteenth volume of the Michigan papyri. Almost ten years later, Beaucamp returned to the question and devoted ten pages of her chapter on guardianship to a thorough discussion of the same formulae. She particularly takes issue with the earlier understanding that these references to the absence of a guardian point to the continued existence of the *ius trium liberorum*. Her argument is that the formulae used vary and that explicit mention of children (τέκνων δικαίῳ) or the law of the Romans (κατὰ τὰ Ῥωμαίων ἔθη) eventually drops out. She suggests instead, that at an uncertain date the absence of a guardian became tied to the absence of a husband rather than to motherhood.[29] A few years later in 1996, Sheridan published an updated list of women without guardians, but she

[28] Arjava (1997) 27.
[29] Beaucamp (1992) 197 – 207.

does not speak to the nature of guardianship or the exemption, choosing rather to focus on the social class of the women who claimed the exemption.

Beaucamp and Sheridan adopted a lettering system to identify different negative formulae which I have also followed in the interest of continuity. Each formula type is given a letter, A, B, C, and so on. Misspellings and variations in word order are generally included in the category of the original, "correct" type. Abbreviations are common and do not affect type. Beaucamp identified and labelled Formulae A through M, and Sheridan added Formulae N, O, and X. [30] I have proposed a revision to Formula O based on a new reading of the text, and added an additional Formula P to account for a formula which was previously misidentified as Formula A.

Sheridan's Formula O, originally defined as χωρὶς κυρίου χρηματίζουσα κατὰ Ῥωμαίων, was added to the list on the basis of the published edition of a single papyrus, *P. Hamb.* I 100. However, Hagedorn has since proposed that a) there is a previously unread τά in front of Ῥωμέων and b) we should understand that ἔθη was omitted by the scribe in error. The τά which was omitted in the *editio princeps* is abundantly clear in available photographs and ought to be accepted. [31] Given the scribe's difficulty with the spelling Ῥωμέων, it is also entirely possible that the scribe was not particularly familiar with any version of the *ius* formula and did simply forget the ἔθη, but this is less secure. As a mention of children is also missing, this remains a unique formula, and therefore Sheridan's Formula O has been redefined to include the τά and the possibility of an ἔθη.

---

[30] Sijpesteijn. (1965) 180-187; Sijpesteijn and Worp (1976) 44-45; Sijpesteijn (1982) 158-169; Beaucamp (1992) 193-267; Sheridan (1996) 117–131.

[31] Sheridan (1996); D. Hagedorn, via the Papyrological Navigator; Digital photograph available here: https://digitalisate.sub.uni-hamburg.de/recherche/detail?tx_dlf%5Bid%5D=36309&tx_dlf%5Bpage%5D=1&cHash=d607f10ad856e5a6b8ce733f8022e21d

As more papyri are published, we may see that a version without ἔθη is actually more common than we currently think, and the possibility may need to be removed.

Having said that, I have also proposed the addition of a new Formula, P: χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων ἔθη. Puzzlingly, this formula is not accounted for by either Beaucamp or Sheridan, and the latter even categorizes papyri containing formula of this type as type A (*BGU* III 717, for example). This is clearly an error, given the lack of any mention of the right of children in that text. If Hagedorn's understanding of *P. Hamb.* I 100 is correct, and its scribe intended the addition of an ἔθη at the end of the phrase, Formulae O and P may be proven to be functionally identical. For the moment, however, it is necessary to account for both possibilities. The following negative formulae have thus been established:[32]

> A – χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων ἔθη τέκνων δικαίῳ (in any order, including but not limited to χωρὶς κυρίου χρηματίζουσα τέκνων δικαίῳ κατὰ τὰ Ῥωμαίων ἔθη, χρηματίζουσα χωρὶς κυρίου κατὰ τὰ Ῥωμαίων ἔθη τέκνων δικαίῳ, or χρηματίζουσα χωρὶς κυρίου τέκνων δικαίῳ κατὰ τὰ Ῥωμαίων ἔθη)
>
> B – χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίους ἔθη τέκνων δικαίῳ
>
> C – χρηματίζουσα χωρὶς κυρίου τέκνων δικαίῳ κατὰ τοὺς νόμους
>
> D – χωρὶς κυρίου χρηματίζουσα τέκνων δικαίῳ or χρηματίζουσα χωρὶς κυρίου τέκνων δικαίῳ
>
> E – χρηματίζουσα τέκνων δικαίῳ
>
> F – χωρὶς κυρίου χρηματίζουσα δίκαιον τέκνων ἔχουσα
>
> G – (τῶν) τέκνων (τὸ) δίκαιον ἔχουσα
>
> H – δίκαιον παίδων ἔχουσα
>
> I – χωρὶς κυρίου χρηματίζουσα
>
> J – χωρὶς (τοῦ) κυρίου (αὐτῆς/ἑαυτῆς) ἀνδρὸς χρηματίζουσα
>
> K – ἄνευ κυρίου αὐτῆς ἀνδρὸς χρηματίζουσα
>
> L – ἄνευ κυρίου ἀνδρὸς πραγματεύουσα
>
> M – ἄνευ ἀνδρὸς χρηματίζουσα

[32] See also Appendix 1.

N – ᾗ συνκεχώρηται χωρὶς κυρίου χρηματίζειν[33]
O – χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων <ἔθη>[34]
P – χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων ἔθη
X – too fragmentary to restore into one of the above categories.

A list of contracts which contain these negative guardianship formulae can be found in Appendices 2 and 4. While the interest of these previous scholars centred primarily around the identification and cataloguing of the negative formula types, it is also necessary to expand to our purview if we are to be able to say something about the evolution of guardianship over time.

4.2.3. Guardianship in the Papyri before the *Constitutio Antoniniana*

In the sections which follow, I shall thus turn first to the formulae, both positive and negative, which can be found prior to the *Constitutio* before discussing those which can be seen in the papyri afterwards.

4.2.3.1. Non-Roman Guardianship in the Pre-212 Papyri

The Greco-Egyptian woman had a great deal more freedom than the Roman woman in terms of her legal and financial transactions. She was able to own, acquire, and alienate property in her own name, although in many cases the involvement of the κύριος was expected.[35] Instead of dealing with *potestas*, emancipation, *manus* marriages, *curatores*, and various other guardians, the Greco-Egyptian woman, whether adult or minor, married or unmarried, had a κύριος, who was normally

[33] This addition by Sheridan is tenuous as a new formula type. In its one attestation *P. Oxy*. XLI 2959; the entire phrase reads: παρὰ Φλαυίας Διονυσίας καὶ ὡς χρηματίζει ᾗ συνκεχώρηται χωρὶς κυρίου χρηματίζειν. There could be an argument instead for understanding this to be Formula I. It may also be worth noting that versions of this verb appear with positive guardianship formulae, though in quite a different order, in the first century BCE. The entire phrase as it appears here is anomalous.
[34] See Appendix 2, for further notes on *P. Hamb.* I 100.
[35] Taubenschlag (1955) 174-176.

her husband or father. Marriage simply meant the transfer of authority, of *potestas* or *auctoritas*, from the father to the husband.

The positive guardianship formula had appeared in documentary papyri like contracts, loans, and petitions since the third-century BCE, and not just in the context of adult women, but also in the context of minors of both genders. We also see a variety of people acting as these guardians. Sometimes their relationship to the ward is not specified, but other times we learn that it could be a husband, a father, or even a son.[36] In looking at instances of the phrase diachronically, we can see that while it was introduced in the third century BCE with the Alexandrian conquest and used during the Ptolemaic period, it was not until the Roman conquest of 30 BCE that the presence of guardians in documentary papyri began to increase.[37] And increase it does! In the first and second centuries CE, we see a sharp increase in the use of positive guardianship formulae, which subsequently begin to fall off just before 212. Two notable drops in attestation occur specifically in the mid 160s and the 190s.[38]

There was, however, no exception similar to the Roman *ius trium liberorum*.[39] Nevertheless, it is virtually impossible to distinguish the contract of a Hellenistic woman from that of a Roman woman in the provinces because of the continuity in language and terminology. The sole exception is when the contract references the *ius*.

---

[36] *P. Lond*. VII 1986; *CPR* XVII 21. Cf. Hunter (1994).

[37] Remember that before the Roman, only ethnically Hellenic women were obliged to use a guardian, and only where the infrastructure existed for them to be able to do so.

[38] See Appendix 6 for a graph of the attestations of Greek positive guardianship formulae in the documentary papyri.

[39] *P. Oxy.* VI 907. See Taubenschlag (1955) 138, 167; Paternal power / guardianship of orphan girls ends at marriage. Further, *CTh* 3.1.3 (362) repeals a constitution of Constantine which allowed the husbands of minor women to consent to her selling property. (i.e. acting as a curator-type situation.)

4.2.3.2. Roman Guardianship in the Pre-212 Papyri

There are only very few examples of documentary papyri from before 212 in which we can be sure that the guardianship mentioned is the Roman *tutela mulierum.* This is because, as we saw, the positive formulae remained virtually unchanged whether it was used in the context of a Greco-Egyptian or a Roman citizen, making it hard to tell exactly what type of guardianship was intended. There is, however, one context in which we can be quite sure: dative guardianship.

4.2.3.2.1. Pre-212 Dative Guardianship

Some of the earliest references to Roman guardianship in the Greek papyri appear as positive formulae with an additional clause, explaining that the guardian was given to a woman according to Roman law: μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη. This is the dative guardianship which we first saw in Chapter 2 – a *tutor* who was appointed by a Roman magistrate according to Roman law, presumably for a Roman woman. There are only six such papyri which contain dative guardians and date to before the *Constitutio*, so the practice was evidently not a common one. [40] It seems likely that the women who had their guardians appointed in this way were Roman citizens, but for the majority of these texts, there is as yet no way to prove that.

4.2.3.2.2 Pre-212 Negative Formulae

Prior to 212 we also have ten with papyri women who refer to the fact that they were operating without a guardian. Of these ten, eight explicitly claim to be doing so according to Roman law, that is, by the right of the *ius liberorum*.[41] The formula by which they do so is relatively consistent, though not perfectly so. The most common is Formula A: some combination of the words χωρὶς

[40] As in Appendix 3: *P. Oxy.* II 273 (95); *P. Daris.* 31 (100-150); *P. Graux*. II 28 (136-138); *P. Col.* VIII 219 (140); *P. Frieb*. II 8 (20 Feb 144); *SB* I 4415 (144); See also Taubenschlag (1955) 171-175; Mélèze Modrzejewski (1974) 263-292; Arjava (1997) 26; Rowlandson (1998). On Latin contracts with similar appointed *tutores* see Sanders (1942), 94-98.

[41] The eight are: *PSI* VI 704; *P. Hamb*. I 100; *P. Oslo* II 31; *P. Freib*. II 9; *BGU* XI 2070, III 717; *SB* VI 9573; *P. Oxy*. XI 1451. The remaining two are *P. Oxy.* XLI 2959 and *P. Mil. Vogl*. VI 269.

κυρίου χρηματίζουσα τέκνων δικαίῳ κατὰ τὰ Ῥωμαίων ἔθη, that is, a woman "who is operating without a guardian by the right of children (*liberorum iure*), according to the of the Romans". We also see an instance of Formulae N (ᾗ συνκεχώπρηται χωρὶς κυρίου χρηματίζειν), O (χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων <ἔθη>), P (χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων ἔθη), and D (χωρὶς κυρίου χρηματίζουσα τέκνων δικαίῳ),[42] as well as an unusual early example in *P. Mil. Vogl*. VI 269.[43] The inclusion of these reference to Roman law and to Roman legal rights in the context of the legally pluralistic society which preceded the *Constiutio* is significant, because it shows both an awareness of the differences in the two systems and a desire to distinguish between the two.

With the sole exception of *P. Mil. Vogl.* VI 269, which is an anomaly, all these early examples have traditionally been understood to involve provincial Roman women as the contracting party, rather than Greek or Greco-Egyptians, since the *ius* was applicable only to citizens who were also subject to both *patria potestas* and the *tutela mulierum*. As noted above, this can be hard to confirm solely through the use of onomastics. Regardless, most of these contain explicit references to Roman law, so the exact nature of the women's status, while an interesting point, is not of vital importance to a study of the persistence of guardianship practices throughout

[42] See Appendix 2 for further discussion on the categorization of these formulae.

[43] The one outlier, in which the woman in question is a Greek citizen, and certainly not a Roman one, is an early contract, which dates to 124 and is thus our oldest example of the negative formula usually associated with the ius. Both attestations of the small formula in this text are lacunose and have been restored by the editor. The woman in this case, Φιλωτέρα Ἰτο̣λεμαίου, identifies herself as ἀστή, that is, a Greek citizen of a Hellenized Egyptian city, so she seems not to be a Roman citizen. Interestingly, we have only χωρὶς κυρίου here, and not the full formula "χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων ἔθη τέκνων δικαίῳ" which is normal to see before 212. As it is currently emended, this text is an outlier, both temporally and legally, since is the only example of a simple χωρὶς κυρίου formulae without any further elaboration. Since it is our only example of such a phrase occurring in a non-Roman legal context, and given its fragmentary nature, we can continue with the understanding that exemption from guardianship in the papyri was a generally Roman innovation.

later centuries.[44] In sum then, references to the *ius trium liberorum* are rare indeed in the papyri before universal enfranchisement and are generally confined to citizen women's contracts or the contracts of women who felt that in some way they were entitled to use or were best served by Roman law.

4.2.4. Guardianship in the Papyri after the *Constitutio Antoniniana*

After the *Constitutio*, we see the new citizens figuring out how to navigate and use the legal systems they had previously known from within the legal context of their new Roman citizenship – and this is not without complications. Contracts remained in Greek, and there was little change in key terminology or formulae. For example, in the context of adult female guardianship, we continue to see only the term κύριος, which had been used to refer to the Hellenistic guardian, but which was now also used to refer to the Roman-style *tutor*. Nuances and distinctions were/are thus easily blurred, both for the third-century citizen and for the modern scholar.

[44] Scholarly and contemporary juridical discussions about the *ius* generally in both a legal and a gendered context reiterate that it was something applicable to only citizens, something which mirrors the early twentieth century understanding of the relationship of citizenship to law, but which may not accurately reflect contemporary practice. Regardless, each of these contracts, with the exception of the curiously emended *P. Mil. Vogl*. VI 269 from 124, contain reference to Roman law explicitly, so the exact nature of the women's status, while an interesting point, is not of vital importance to a study of the persistence of guardianship practices throughout later centuries. See Ellart (2019) for a discussion of whether these women were actually citizens, and if not, for the mechanisms through which they were accessing what Evans Grubbs (2002: 38) refers to as an innovation purely directed at Roman citizens. Ellart examines a theory espoused by Taubenschlag (1938, 1951, 1952, 1955), that several Roman legal institutions were adopted by some peregrines before they were extended citizenship, namely the *bonorum possessio*, the *lex (P)Laetoria*, and of course the *ius liberorum.* He even goes so far as to state that "In the Roman practice as well as in that of the peregrines, women who may claim the *ius liberorum* are exempt from guardianship" (1955: 177). He does go on to discuss the need for an application, which as we saw in Kelly (2017), has no real evidentiary backing and, given the lack of evidence provided for either claim, further casts doubt on the idea that the *ius* was accessible to peregrines generally speaking. Ellart similarly concludes that we cannot tell from the information that we have, *P. Hamb* I 16 and *P. Stras.* III 150 about these women whether they were actually Roman citizens, whether they erroneously believed themselves to be citizens, or whether they were non-citizens simply making use of Roman legal categories. If the later, he proposes that they must likely have been in an upper-class context, as Sheridan (1996) has suggested.

4.2.4.1. The Positive Formulae

After 212, we now see μετὰ κυρίου used also a translation for the Latin *cum tutori,* that is, in reference to the Roman *tutor mulierum.* In the absence of a specific reference to Roman law, it can therefore be hard to know how to understand the term κύριος. Contracts remained in Greek, which means that the formula used exactly the same words both before and after 212. We continue to have fathers, husbands, brothers, and sons acting in these guardianship roles, for a while, although attestations to fathers, brothers, and sons as guardians generally disappear by the latter half of the third century. Fathers and sons are last attested in 249 and 256/257 respectively.[45] A single instance of a brother as guardian, in *P. Graux*. II 17, 18, and 19, brings that practice into the fourth century, but as the women in question are minors, this may not even be an instance of the *tutela* at all. The next latest, surer, example of a brother as a guardian is from 231, some eighty years earlier.[46] So brothers and sons stop appearing as guardians in the papyri shortly before fathers do, but all by about 260. As a result, when there is a stated relationship between a woman and her κυρίος from 260 onwards, he is her husband, something which was not at all Roman in nature.[47]

Attestations to the μετὰ κύριου formula generally remain common in the century or so after the *Constitutio*, despite the fact that even for *sui iuris* women without the *ius*, a guardian would not have been required for the majority of contracts. On this point, Arjava argues that since the goal of the *tutela* had been to protect a family's *res mancipi* – as we saw in Chapter 2 – the Roman style of guardianship must have seemed illogical after 212. He rightly notes that *res mancipi* includes Italian land, but not provincial, so that in theory these new citizen women could "freely sell farms and houses but not slaves and animals [… and] donate the family estate without their

[45] *SB* VI 9298; *P. Strasb. Gr.* V 392.
[46] *BGU* VII 1657.
[47] Taubenschlag (1955) 175. See Appendices 5 and 6.

guardian but not bequeath it", which must have seemed an absurd distinction, at least to those who understood it. Practically speaking, it seems that not many of the new citizens did understand the nuances of *res mancipi* and *res nec mancipi*, because references to guardians are frequently included where they are not needed, namely in contracts for *res nec mancipi*. The overall lack of an initial distinction between Roman and Greek guardianship is a key indicator that the new citizens were conflating the two right from the beginning and that popular conceptions of guardianship in the provinces after 212 did not map neatly onto a technical, legal understanding of the Roman *tutela mulierum*.

4.2.4.1.1. Dative Guardianship

For most instances of the positive formula, then, we are obliged to question: is this the guardian figure that had existed in the Greek papyri of Egypt for the last five hundred years or is it the Roman guardian, equivalent to the *tutor* of the *tutela mulierum*? Most of the time, we cannot tell, especially since the guardians are still usually the women's husbands, as they had been before 212.

In some cases, however, albeit very few, we can be quite sure which system was being followed because of the addition of a formula signaling dative guardianship according to Roman law: μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη, that is, "with a guardian given to her according to Roman law". As we saw above, this dative guardianship had existed in the papyri in small numbers before 212, and it continued to exist in the papyri following the *Constitutio* as well, although only for a short time. [48] We see it in two contexts: first, in petitions that request that a woman be assigned a guardian and second, in positive guardianship formulae.

[48] *P. Daris.* 31 (100-150); *P. Frieb*. II 8 (144); *SB* XVI 12950 (230/231); *P. Hamb.* I 101 (218-222); *P. Harr.* II 227 (221); *P. Oxy*. II 273 (95); *P. Oxy*. X 1274 (226-275); *P. Oxy*. XXXIV 2723 (first half of 3rd); *PSI* 1238 (244).

4.2.4.1.1.1. Petitions for a Dative Guardian

As Gaius notes, and Justinian re-confirms, a *tutor* could be assigned to a person according to the *Lex Atilia*, if in Rome, or the *Lex Iulia et Titia*, if in the provinces. And we do see women writing to the prefect to request that they be assigned a guardian according to these guidelines. Interestingly, there is a high degree of Latin and Greek bilingualism present in texts with these requests.[49] Our first example is an Oxyrhychite petition from Aurelia Ammonarion which dates to 247. The relevant line reads: *rogo, domine, des mi[hi] auctorem Aurel(ium) Ṗ[lutammonem] e̩ lege Iulia Titia e̩t e̩ ṣ(enatus) c̣(onsulto).* The body of this petition was written in Latin, but Ammonarion and Ploutamon's subscriptions were added in Greek. The decision of the prefect, which was to appoint Ploutammon as Ammonarion's guardian, was then recorded in Latin below the subscription.[50] Another text from Oxyrhynchus, also from 236, follows this same pattern of bilingualism, as does an extremely lacunose text from 212 of unknown origin.[51]

We also have a similarly small number of examples dative guardianship petitions which are predominantly Greek, rather than Latin. *P. Oxy.* XII 1466 from 245 contains in two lines of Latin, which provide the address to the prefect and the same question that we just saw ("rogo, domine,..."). After that, the text contains a Greek translation of the earlier Latin line, as well as the subscriptions of Aurelia Arsinoe and her proposed guardian, Aurelius Herminus. The decision of

[49] Gaius *Institutes* 1.185-187; *Institutes* 20; *P. Mich.* III 165 (236); *P. Oxy.* XII 1466 (245); *P. Oxy.* IV 720; *P. Oxy.* XXXIV 2710 (261); *P. Oxy.* IV 720 (247); Mélèze Modrzejewski (1974) 263-292; Taubenschlag (1955) 171-175; Rowlandson (1998).

[50] *P. Oxy.* IV 720 = *Chrest. Mitt.* 324 = *ChLA* IV 269 = *FIRA* III 24 = *CPL* 205 (Jan 5 247). "I ask you, my lord, to give me Aurelios Ploutamon as guardian according to the Julian-Titian Law and the sentaus consultum." See also Rowlandson (1998) 190-191; Sijpestejn (1981) 107-110; Sanders (1933) 169-175.

[51] *P. Mich.* III 165 = *ChLA* V 290 = *CPL* 203 (Nov 20 236); Cf. *ZPE* 190 (2014) 231-232, (with photos); *ChLA* XI 503 (219).

the prefect is also recorded in Greek here.[52] A slightly later and somewhat fragmentary text, also from Oxyrhynchus, seems to have been written the same way, since we have again the telltale note, ἑρμηνεία τῶν Ῥω[μαϊκ]ῶν, or "translation of the Latin."[53] Both of these predominantly Greek texts also contain a location note, which suggest that these were official copies of the original petitions, which had been archived and could be found, in the case of the Michigan text, at Sheet 94, vol. 1 of the official register.[54]

Given the very small number of such petitions which survive, as well as their relatively uniform date and provenance (Oxyrhynchus, mid-third century), we cannot assume that petitioning for a guardian was terribly common in Egypt for very long after 212, Nevertheless, this impression may well be affected by preservation bias, since the majority of these petitions would have been

---

[52] *P. Oxy.* XII 1466 = *ChLA* XL 1361 = *CPL* 204 (21 May 245): Valerio Firmo praef(ecto) Aeg(ypti) ab Aurelia Arsinoe. rogo, domine, [des mihi auctorem e lege Iulia et Titia et ex s(enatus) c(onsulto) Aurel(ium)]
Erminum. (ἔτους) β Παχὼν κς. κόλ(λημα) ρδ τ(όμος) εἷς ἑρμηνεία τῶν Ῥω[μαϊκῶν·]
(hand 2) Οὐαλερίῳ Φίρμῳ ἐπάρχῳ Αἰγύπτου πα[ρὰ Αὐρηλίας Ἀρσινόης. ἐρωτῶ, κύριε, δοῦναί μοι]
5κύριον ἐπιγραφόμενον κατὰ νόμον Ἰούλιον κ[αὶ Τίτιον καὶ δόγμα συγκλήτου Αὐρήλιον Ἑρμεῖνον. ἐδόθη]
πρὸ ιβ καλανδῶν Ἰουνίων Αὐτοκράτ[ορι Φιλίππῳ Σεβαστῷ καὶ Τιτιανῷ]
ὑπάτοις. Αὐρηλία Ἀρσινόη Σαραπίωνος ἐ[πιδέδωκα αἰτουμένη τὸν Αὐρήλιον Ἑρμεῖ-]
νον κύριόν μου ἐπιγραφῆναι. Αὐρήλιος Τιμα[γένης - ca.11 - ἔγραψα ὑπὲρ αὐτῆς]
μὴ εἰδυίης γράμματα. Αὐρήλιος Ἑρμεῖνος Διονυ[σίου εὐδοκῶ τῇ αἰτήσει. (ἔτους) β Παχὼν κς]
10(hand 3) εἰ μὴ ἔχεις ἑτέρου κυρίου δίκαιον ὃν α[ἰτεῖ κύριον δίδωμι.(?)]
--
Trans. Rowlandson (1998, no. 140b): 1 (Latin) To Valerius Firmus, prefect of Egypt, from Aurelia Arsinoe. I ask you, my lord, [to give me as a guardian according to the lex Iulia et Titia and the decree of the senate Aurelius] Herminos. Year 2, Pachon 26. Sheet 94, vol. 1
3 (Greek) Translation of the Latin: To Valerius Firmus, prefect of Egypt, from [Aurelia Arsinoe. I ask you, my lord, to give me] 5 as a guardian according to the lex Iulia et [Titia] [Aureius Herminos. Presented] on the 12th day before the Kalends of June in the consulship of the Emperor Philippus Augustus and Titianus. I, Aurelia, Arsinoe daughter of Sarapion, [have presented this petition, requesting that Aurelius Hermi]nos should be appointed my guardian. I, Aurelius Tima[genes ?, son of … wrote for her as she is illiterate. I, Aurelius Herminos son of Dionysios, consent to the petition. Year 2, Pachon 26.] 10 Unless you have the right to another guardian, [I grant you the guardian] for whom [you ask].

[53] *P. Oxy*. XXXIV 2710 (17 May 261). Here we do not have the Latin section, the subscription, or the decision of the prefect, but the body of the Greek translation mirrors that of *P. Mich.* III 165.
[54] These official copies came with a citation to the original, which sadly does not seem to have been preserved.

filed in the archives of the prefect, presumably in Alexandria, whence we have very few extant documents. Given their brevity, it is also difficult to draw many conclusions about the women in them. They are all new citizens, and they are all more comfortable in Greek than in Latin, though the level of their comfort in Latin and in Greek seems to have varied. Ammonarion, at least, seems to have written her own subscription, while Arsinoe had someone write on her behalf because she was illiterate. Literacy and education were generally reserved for the upper classes in this period, especially among women. Here, these women's very ability to have a petition drafted and delivered to the prefect from Oxyrhynchus suggests that they had at least a semblance of wealth and mobility.

4.2.4.1.1.2. Functioning with a Dative Guardian

The second context in which we see dative guardianship is in some of the μετὰ κυρίου formulae themselves. We have a group of women in this period who are not only just acting with guardians, but who are specifically acting with guardians who had been given to them according to Roman law: "μετὰ κυρίου τοῦ δεδομένου μοι κατὰ τὰ Ῥωμαίων ἔθη." All but one of the texts which mention a dative guardian date to after 212, again with one earlier exception.[55] We have at least ten attestations of women who had been appointed guardians in this way between 212 and 298, but no further attestations of such a formula beyond the end of the third century.[56]

That the phrase, κατὰ τὰ Ῥωμαίων ἔθη, was included in either the positive and the negative formulae shows that there was an awareness of the differences between Greek and Roman styles

[55] *SB* III 6016 – This text from 154 has a similar phrase, but the woman in question is identified as an ἀστῇ and her guardian was appointed καθ' ὑπόμνημα πρυτάνεων, that is, according to the degree of the magistrates, which seems in keeping with Greco-Egyptian practices in this period, i.e. her guardian was not appointed according to Roman law. There are over fifty years between this text and the next instance of a text which contains a dative guardian. Taubenschlag (1955: 173, especially note 14) shows that the practice of asking for a guardian to be appointed has its roots even in Ptolemaic documentation (*Ent*. 22 (218 BCE)).

[56] *P. Oxy*. XXXIV 2723 (early third century, after 212); *P. Harris* II 227 (221); *BGU* IV 1084 (222); *P. Fay*. 94 (222-235); *SB* XVI 12527 (224); *SB* XVI 12950 (230-231); *PSI* XII 1238 (144); *P. Oxy*. XLII 3049 (247); *P. Oxy*. X 1274 (third quarter of the third century); *SB* XXVI 16479 (255); *P. Oxy*. XLIX 3499 (298).

of guardianship. However, more frequent inclusion of this reference to Roman law in the negative formula than in the positive also shows that Roman guardianship, even dative guardianship was accepted as something familiar, which could and did meld easily with existing Hellenistic concepts of family structure. We shall now turn to a contract in which a woman operates with a dative guardian to understand further how this process might have actually functioned.

4.2.4.1.1.3. Case Study – *P. Oxy.* X 1274

In this text we find an intriguing inheritance situation involving a dative guardian.[57] Aurelia Aristous was a widow, and her husband had recently died. Evidently, the pair had had a single son, Aurelius Dionysus, also known as Apollonius, who was named as the sole heir to his father's estate. In the text which follows, Aristous gives a man named Aurelius Heraclides, also known as Lucius son of Lucius, the mandate to register the sizable inheritance with the magistrate in Alexandria, as was required by law. Aristous herself appears in the contract with a dative guardian who was "given to her according to Roman law."

Αὐρηλία Ἀριστοῦς θυγάτηρ Αὐρηλίο[υ] Ἡρώδου Ἀπίωνος γυμνασι-
αρχήσαντος βουλε[υτοῦ τ]ῆς Ὀξυρυγχειτῶν πόλεως μετὰ κυρί[ο]υ
τοῦ δεδομένου μοι κα[τὰ] τὰ Ῥωμαίων ἔθη Μάρκου Αὐρη[λί]ου Νει[κ]ο-
κλέους Ζωίλου γυμ(νασιαρχήσαντος) τ[ῆς αὐ]τῆς π[ό]λεω[ς] Αὐρη[λ]ίῳ Ἡ[ρ]ακλ[εί]δῃ τῷ
κ[αὶ]
Λουκίωι Λουκίου καὶ ὡς χρηματίζεις χαίρειν. ἐπεὶ ἀπευκταίας μ[ο]ι
καταγγελείσης φάσ[ε]ως περὶ τελευτῆς τοῦ μακαρείτου μου ἀνδ[ρὸς]
Ἀχιλλίωνος τοῦ καὶ Ἀπολλωνίου Ἀπολλωνίου ὄντος ἐν ᾗ ἦν ἐπικε-
χειρισμένος βασιλικῇ γραμματείᾳ Ἀλεξανδρέων χώρας, ὁμολογῶ
ἀποσυνεστακέναι σε κατὰ ταῦτά μου τὰ γράμματα κατελθεῖν εἰς Ἀλεξάν-
δρειαν καὶ ἀπογράψασθαι παρὰ τῷ κρατίστῳ τῶν οὐσιακῶν ἐπι-
τρόπῳ ἐξ ὀνόματός μ[ου ὑ]πὲρ τοῦ ἀμφοτέρων ἐμοῦ τε καὶ τοῦ αὐτοῦ
ἀνδρός μου υἱοῦ κ[αὶ] [κλ]ηρονόμου Αὐρηλίου Διονυσίου τοῦ καὶ Ἀπολλω-
νίου γυμνασιάρχου τῆς αὐτῆς πόλεως ἔτι ὄντος ἐντὸς τοῦ Λαιτωρίου
νόμου τὴν ὕπαρξιν αὐτοῦ πᾶσαν οὖσαν τιμήματος δουκηναρίας.
ἀπὸ δὲ ταύτης τῆ[ς] ὑποστάσεως δηλῶ ὀφείλειν τὴν ἄνδρα μου
ἐμοὶ μὲν ἀπὸ τῆ[ς προσε]νεχθείσης αὐτῷ ἐπ' ἐμοὶ γ[α]μουμένῃ
αὐτῷ προοικὸς [ἔν τε κοσ]μαρίοις χρυσοῖς καὶ ἱματίοις καὶ ἄλλοις

[57] The text is generally dated to the third century by *P. Oxy.* X, and somewhat more precisely to 250 to 275 by subsequent editors. See Trismegistos: www.trismegistos.org/text/31728.

[σ]υντιμήσεῳς [ἀργυρίου ταλάν]των δ[ύο] καὶ δραχμῶν τρισχειλί-
ων με[- ca.10 -]..ια προ. [.]ιο̣νια. [. .]. . . [.] ἐ̣ν [σ]υντιμήσει
δραχμῶ[ν. . . χιλί]ων πεντακοσίων [. . . . .]. . ἔχρη ἀπὸ
[τ]ῆς ἰδίας [- ca.31 -] ταλά[ντ]ω[ν]
δύο κα[ὶ δραχμῶν - ca.22 -]. . ὑπ[α]ρχόν-
των μο̣[ι - ca.31 - τάλαντα]
τρία καὶ δ[ραχμὰς -ca.?- [58]

First of all, we can draw a number of conclusions about Aristous' legal position from the text. With her husband dead, she presumably lost her former guardian, since the vast majority of women's guardians were now their husbands. Given that she mentions only one child and one heir, we can assume that they did not have any further children and that she did not qualify for the *ius liberorum.* Since there is no mention of a will and as she and Apollonius have to go to the trouble of having the inheritance registered, there was likely no will through which a testamentary guardian could have been appointed for her. Thus, a guardian must have been appointed for her by the prefect. She has also made the choice to reference her guardian in this mandate, although strictly speaking he would not have been legally necessary here, since she was not affecting her own financial status in any way.

[58] 4. Ζωΐλου papyrus 6. L. μακαρίτου 12. Υἱου papyrus 14. Ὑπαρξιν papyrus 15. Ὑποστασεωσ papyrus 17. L. προικὸς 17. Ἱματιοισ papyrus 18-19. L. τρισχιλί |ων 21. Ἰδιαῳ papyrus 22. ὑπ[α]ρχον papyrus

Trans. *P. Oxy*. X: Aurelia Aristous daughter of Aurelius Herodes son of Apion, ex-gymnasiarch, senator of the city of Oxyrhynchus, with the guardian given to me in accordance with Roman custom, Marcus Aurelius Nicocles son of Zoïlus, ex-gymnasiarch of the said city, to Aurelius Heraclides also called Lucius, son of Lucius, and however you are styled, greeting. In consequence of the lamentable news announced to me concerning the death of my blessed husband Achillion also called Apollonius, son of Apollonius, while at his post of *basilicogrammateus* of the territory of the Alexandrians, I agree that I have by this bond appointed you to go down to Alexandria and register with his excellency the *procurator usiacus* in my name on behalf of the son of myself and my said husband, and his heir, Aurelius Dionysius also called Apollonius, gymnasiarch of the said city, who is still subject to the (P)Laetorian law, all his (Achillion's) property, valued at two hundred thousand sesterces. And out of this estate I declare that my husband owes me from the dowry which was brought to him upon my marriage with him consisting of gold ornaments and clothing and other objects valued at two talents and 3000 drachmae of silver ...

Her son, Dionysus, on the other hand, appears to be under the age of twenty-five, as his mother says that he is "still subject to the (*P*)*Laetorian Law*", which was the law which instituted the *cura minorum for* young people under the age of twenty-five. For children below the age of fourteen, we would expect to see a reference to their minor status or to a guardian (*tutela impuberum*). It is thus reasonable to assume that he was between the ages of fourteen and twenty-five. Unfortunately, there has been insufficient scholarship on children/minors in the papyri to be any more precise. On the other hand, since her son needed a *curator*, we can be fairly sure that Aristous herself did not, that is, she must have been over the age of twenty-five herself.

The exact management of the inheritance is not terribly clear in the text itself. This mandate is for Lucius to go down to Alexandria and register the inheritance in Aristous' name but on behalf of her son. Nowhere is there a mention of Aristous entering into this inheritance with her son, although Ulpian had established that she certainly had the right to, given that she and her husband shared a mutual child.[59] Although the text becomes increasingly more lacunose from about line 19 until it breaks off at line 25, we do have what seems to be the beginning of a list of claims against the estate. So, while she does not seem to be entering into the inheritance of the estate with her son, Aristous does claim back her dowry, which is a rather paltry sum (2 talents and 300 drachmas) compared to the entire estate (200,000 sesterces or about 33 talents and 200 drachmas).

[59] Ulpian *Tituli ex corpore*, 15-16: Vir et uxor inter se matrimonii nomine decimam capere possunt. Quod si ex alio matrimonio liberos superstites habeant, praeter decimam, quam matrimonii nomine capiunt, totidem decimas pro numero liberorum accipiunt. 2. Item communis filius filiave post nominum diem amissus amissave unam decimam adicit ; duo autem post nominum diem amissi duas decimas adiciunt. 3. Praeter decimam etiam usumfructum tertiae partis bonorum eius capere possunt, et quandoque liberos habuerint, eiusdem partis proprietatem; hoc amplius mulier, praeter decimam, dotem <capere> potest legatam sibi. "A husband and a wife can take a one tenth share from each other in the marriage. But if they have surviving children from another marriage, they receive as many tenth shares as children, in addition to the tenth share taken in the name of marriage. 2. Likewise, a shared son or daughter who died after their naming day adds one tenth share; two dying past their name day adds two tenth shares. 3. In addition to the tenth, either can take usufruct of a third of the estate, and when they have children, ownership of the same part; and further, a woman, in addition to the tenth, can take the dowry which is left to her."

Interesting too, is the statement that Lucius would be registering in Aristous' name on behalf of Apollonius. From this text it is very clear that Lucius has a mandate from Aristous herself. He is not legally bound to Apollonius in any way, despite the fact that he is being sent to essentially do the paperwork and pay the taxes necessary for Apollonius to collect his inheritance. That he was claiming the inheritance on behalf of another was not, in and of itself, unusual; the law did allow for exactly such a thing.[60] Importantly, however, it also specifically permitted women to make such a claim to the benefit of minors who were legally unable to do so for themselves.[61] Thus, what we see here is likely Aristous claiming the inheritance on behalf of her minor son, through her own legal representative. While not unusual in the later centuries of Late Antiquity, this is quite an early instance of a mother taking on such a managerial, or even guardianship, role for her child.

While scholars generally agree that women were able to act as guardians of their minor children after 390,[62] Gagliardi has proposed that the practice was in place significantly earlier than that date, as early as the second century. While his argument relates specifically to prepubescent children, as does most of the jurisprudence on the matter, this does appear to be what is happening in Aristous and Apollonius' case.[63] Since we do not know Apollonius' age, and since he does not make the claim for himself, we may be justified in assuming that either he is a minor and his mother is acting as his guardian, or he is at least fourteen and his mother is functioning as a *curator* to help manage his property. Unfortunately, between the lacunae and lack of detail in the papyrus, we cannot decide between the two with any certainty.[64] Nevertheless, we have here an early

[60] *Digest* 37.1.7.
[61] *Digest* 37.7.1.
[62] *CJ* 5.35.2
[63] *Digest* 37; Gagliardi (2017) 221-242.
[64] Beaucamp (1992) 172-190 on *P. Sakaon* 37 (284) which has a mother acting as guardian for two minor children (ἀφήλικες). She is identified by the phrase διὰ κηδεστρίας τῆς μητρός.

example of a woman taking on a role which had hitherto been forbidden to them. As we move further into the late antique evidence, we shall see that mothers take on increasingly more power and responsibility with regards to their children, first informally and then even in law.[65]

4.2.4.2. The Negative Formulae

Having seen how the *ius* was equated to Roman citizenship in the papyri from before the *Constitutio*, it would be logical to expect to see a rather significant uptick in the frequency in which references to the *ius* appear after 212. This would be entirely correct. A much larger proportion of women in the empire, and certainly in Egypt, now had the right to claim the *ius* than previously. And claim it they did. References in the Greek papyri to women who explicitly state that they are operating without a guardian jump after 212, not just as a raw number, but also as a percentage of the overall references to guardians.[66] And, it is because of exactly this unique element that we are able to say that anything had actually changed at all with regard to guardianship after the *Constitutio*.

After 212, we begin to see the inclusion of the *ius* formula in Greek contracts written by the new citizen women. For the next more than half a century, these new citizens continued to use primarily Formula A (χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων ἔθη τέκνων δικαίῳ) with its specific reference to Roman law, much as the provincial Roman citizens had done in the decades before 212. The transition to population-wide comfort with Roman identity and law evidently took time, and while that transition was ongoing, the *ius* remained novel and its Roman-ness therefore

[65] Beaucamp (1992) 172-191; Arjava (1996) 89-94.
[66] See Appendices 1, 2, 4, and 5.

noteworthy. Formulae which reference Roman law, namely Formulae, A, B, O, and P, are attested only as late as 305/306[67]

By the last quarter of the third century, however, Formula D (χωρὶς κυρίου χρηματίζουσα τέκνων δικαίῳ) had taken over as the most common formula. It first appeared in the years immediately after the *Constitutio* but was not initially as frequently used as Formula A.[68] However, once everyone had access to Roman law, and was comfortable with that fact, there was no longer the need to emphasize which system was being used. There was now one system for everyone, even if that system itself was pluralistic in practice. Once we move into the fourth century, we generally see an exemption formula which does not mention law but does continue to specify the right of children (τέκνων δικαίῳ). We also begin to see some variation within the individual contracts themselves: where a longer formula, like B (χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίους ἔθη τέκνων δικαίῳ) or D (χωρὶς κυρίου χρηματίζουσα τέκνων δικαίῳ), was used in the identification section at the beginning of a contract, the more abbreviated, Formula I (χωρὶς κυρίου χρηματίζουσα) was sometimes used in the subscription at its end.[69] By the fourth century, it must have been obvious that if a person claimed exemption from guardianship, they did so in accordance with established law and because of the *ius liberorum.* Since there was no other exemption and because Roman law had become normalized at this stage, there would have been no reason to elaborate.

As other legal norms and formulae did, we can see that this χωρὶς κυρίου formula evolved over time beyond simply the disappearance of references to Roman law. If we break this evolution

[67] *P. Sakaon* 59-60 (305/306); Although Formula C contains a reference to law, it's not specifically Roman law – in any case, the last attestation of C in *P. Vindob. G.* 16712 is dated to 320.
[68] *P. Oxy*. XII 1463 (215).
[69] For example: *P. Sakaon* 59-60; *SB* VI 9219, XVI 12289.

down chronologically, we can identify five main, key changes from the beginning of the formula's use in Egypt in the first and second century to the Arabic conquest of Egypt in the seventh century. First, as we already saw, the references to the "law of the Romans" (κατὰ τὰ Ῥωμαίων ἔθη) generally disappear by about the end of the third century. Second, references to the right of children (τέκνων δικαίῳ) also disappear by the end of the fourth century. Third, from the end of the fifth century, we see a new addition to the formula, the word husband (ἀνδρός) leaving us with women who have or do not have a "husband-guardian". Fourth, around the same time, the word χωρίς is occasionally replaced by ἄνευ, as in Formulae K, L, and M, and the wording generally seems to become much looser and more flexible. Fifth and finally, we even see the word κύριος dropping out in the seventh century, leaving us with Formula M (ἄνευ ἀνδρὸς χρηματίζουσα), something quite different than what we started out with. We shall return to the last four of these changes in the following chapter.

4.2.4.2.1. Demographics

In addition to her discussion of these formulae, Sheridan's paper also includes a small analysis which shows that that a large percentage of women who claimed the *ius* are from the bouleutic class.[70] She suggests that this was at least in part because the process and expense of claiming the *ius*, which would have been a barrier to women from lower classes or who were less well off.[71] As we already saw in Chapter 2, however, there has been some scholarly discussion about how women obtained both a guardian and gained access to the benefits of the *ius*. We have established, using *P. Oxy.* XII 1467 which was originally titled "Petition for *ius trium liberorum*", that there actually was no need to apply for the *ius*, rather that it was automatically acquired once the requisite number

[70] Sheridan (1996: 129) defines women of the bouleutic class as women whose male family members are defined in the contracts as *bouleutai*, i.e. members of the town council. On these town councils, see Bowman (1971).
[71] Sheridan (1996) 126-131.

of children had been born.[72] Given this, there is no evidence that any sort of expense or effort was required for women of any class to claim the *ius* and operate independently of a guardian, either before or after 212. As a result, Sheridan's claim that bouleutic women with the *ius* are proportionally over-represented in the documentary papyri because of the expense and trouble of the application process for the *ius* cannot be correct.

How then are we to explain the relatively higher rate of bouleutic women who claim the *ius*? In fact, it is far more likely that we simply see more upper class, wealthy women making contracts and entering into financial agreements as the centuries progress and therefore also more of this demographic claiming that they could do so without a guardian. The real differentiator here may not have been gender, but socio-economic class. Those who did not have money, or at least not enough of it to engage in transactions of sufficient value to warrant the expense and trouble of drawing up a contract, will simply not be reflected in the extant papyrological evidence.[73]

It may be worth highlighting at this stage that, as we already saw in Chapter 2, the rights contained in the *ius liberorum* far exceeded this exemption from guardianship for women. Men and women both gained significant financial benefits by having children, particularly in the area of inheritance. If application for the *ius* had been necessary, we would expect to see applications in these other contexts too, not just in the context of guardianship. We see nothing like this, however, only applications to the emperor for the *ius* in the context of too few children. The right could be, and was, also granted as a favour to otherwise ineligible couples.[74] Otherwise, the births

[72] *P. Oxy.* XII 1467 = *Jur. Pap.* 14 = *Sel. Pap.* II 305 = *FIRA* III 27.
[73] Burger (1921); Roos (1923); Taubenschlag (1955); Solazzi (1957); Kelly (2017); against this see Grenfell and Hunt (editio princeps), 196; Gardner (1986) 20; Pomeroy (1988) 721; Sheridan (1996) 126-131; Rowlandson (1998) 193; Evans Grubbs (2002); Vandorpe and Waebens (2010) 420-421; Arjava and Beaucamp generally avoid the question of how the *ius* was obtained.
[74] *CTh* 8.17.2-3; *CJ* 8.58.1.

themselves were sufficient to obtain the *ius*; no application was necessary. The mention of literacy here is also misleading, since at no point was literacy a prerequisite for the *ius* for either men or women in any context. There are repeated examples of women who have others writing for them because they "do not know letters," but who simultaneously claim the *ius*. Certainly, literacy must have been an asset to Lolliane, particularly if she was in a situation in which she was concerned about the preservation of her rights, and it may have assisted in her establishing herself as an upper-class woman, worthy of the prefect's attention, but her ability to read and write made no difference to her rights.[75]

Between 212 and 300, we have at least ninety-three references to the negative formulae, most of which refer to women with the *nomen* Aurelia.[76] The women who are using this formula are therefore new citizens, and they refer very specifically to the fact that they are claiming the right of children and that this was a Roman practice. Now initially this sudden spike, compared to the ten references which exist from before 212, may sound like an increase in agency or legal autonomy, at least for the new citizens with sufficient children, but we must be cautious with such a generalized conclusion. As Ellart notes about the guardian-less women before the *Constitutio* and Sheridan about those of the third and fourth centuries, socio-economic class likely played some part here, though perhaps not exactly in the way that at least Sheridan imagined. As mentioned above, these contracts were generally drawn up for the wealthier strata of the population. The sense of agency that we see from some of these women may thus have had more to do with their wealth and connections than with a novel degree of freedom granted to all women. At the same time, it is hard to say what type of agency lower-class women may have enjoyed,

[75] From 263 – See Chapter 2 a more in-depth discussion of this papyrus and the debate on the method by which women obtained the *ius*.
[76] See Appendices 4 and 5.

since they figure only minimally in written documentation. Presumably there remained a gendered aspect to agency at each level of society, but a wealthy woman certainly had more direct freedom, ability to travel, and legal agency than even a man of worse means.[77]

It should also be noted that this evidence for the adoption of the *ius* is not limited to Egypt. We have inscriptions from Asia Minor and Macedonia which also speak about women operating independently through the right of children. Unfortunately, there is simply so much less evidence from most of the rest of the empire because of the inhospitable conditions for the preservation of documents that it is much more difficult to get a similarly detailed picture. From the evidence we do have, however, we can say with confidence that the *tutela* and the *ius* were adopted in some form empire-wide after 212,[78] although we know substantially more about how they functioned in Egypt.

4.2.4.2.2. Case Study – *P. Graux.* II 17, 18 and 19

An interesting series of three papyri from 307 shows us what the evolution of guardianship looked like at the turn of the century from a practical point of view. These three texts are incomplete and fragmentary and record the sale of the same house. All three are marked with the word ἀντίγραφον, below an incomplete date; they are copies all of which seems to have been written in the same hand, likely all at once. The three texts are not identical, however. *P. Graux.* II 17 is a "declaration d'aliénation" or cession document, while 18 and 19 are copies of the *parathesis* request, the request to record the transaction with the archives. Because they are copies, they are lacking a full date (17, 18, 19), the subscriptions of the parties (18), the address (17, 18, 19), and the eventual

[77] Sheridan (1996) 126-131; Ellart (2019) 364-398.

[78] τέκνων δικαίῳ; Asia Minor: *TAM* III 383, 482, 669, 705, 714; *SEG* XLI 1270; Macedonia: *SEG* XLII 610.

subscription of the *bibliophylax* who would have signed the originals once they had been sent to him. [79]

Despite the incomplete date in the text, we can narrow it down with some precision here. All three texts record the consul as: ὑπατείας τοῦ δεσπότου ἡμῶν Μαξιμίνου τοῦ ἐπιφανεστάτου Καίσαρος, or "In the consulship of Our Lord Maximinus, the most noble Ceasar." Cuvigny, the original editor of the texts, notes that the unusual reference to only one consul can be explained by the execution of the first (prior) consul, Severus, which must have occurred in the fall of 307. She thus proposes that that these texts must have been composed sometime in December to allow for the news of Severus' death to make it from Ravenna to Philadelphia. Other papyri show a similar shift to mentioning only one consul at the end of 307, e.g. *P. Mert.* I 31; *P. Col*. VII 138. While Cuvigny suggests that Severus was executed on 27 December, the shift to one consul in these two papyri, both of which are securely dated to 24 December 307, suggests this cannot be the case.[80]

What makes these three texts and the transaction they record so interesting for us is the fact that they involve five women: the buyer, Aurelia Tapais, and four of the five sellers, Aureliae Atares, Atreas, Taues, and Sabbathous. Aurelius Gounthus, the fifth seller, is the brother of the latter four women. All three of the texts, the piece of property in question, and the buyer, Tapais, are from Philadelphia. *P. Graux.* II 17, which mirrors the contents of 18 and 19 as far as we can

[79] These three texts are considered part of the Archive of Aurelia Tapais. For the translation and meaning of *parathesis*, see Alonso (2010) 17, note 22: "It appears in our sources not only for the registration of Katochai in the debtor's folium, but also for the registration of property, even when it is not provisional: for the prevailing but misleading assumption that *parathesis* means provisional registration." This against Cuvigny (1995) who understands the *parathesis* to be a provisional before an eventual *apographe*, or full registration. It was common in this period to use a *parathesis* as a method of recording a transaction or and agreement.

[80] Cuvigny (1995) 49-56; Cf. Bagnall (1987b) 149. Burgess (2014: 86) shows that the date normally given for Severus' execution (16 Sept 307) is an invented one and argues for March to April 307 instead.

tell, is the least lacunose of the three copies and is thus presented here. Of particular interest are lines 4-15, which give the names and identifiers of the six parties to this transaction:

[ὑπα]τείας τοῦ δεσπότου ἡμῶν Μαξιμίνου τοῦ ἐπιφανεστάτου
Καίσαρ[ο]ς —
vac. ?
ἀ(ντίγραφον) παρὰ Αὐρηλίων Γούνθου καὶ Αταρι χωρὶς κυρίου χρη(ματιζούσης) τέκν[ων]
δικαίῳ καὶ Ἀτρεας μετὰ κυρίου τοῦ ἀνδρός μου Αὐρηλίου
Νεμεσίωνος Ἰουλίου μη(τρὸς) Θεοδώρας καὶ Ταύητος καὶ Σαμβ[α]-
θοῦτος ἀφηλιξ αι δύο μετὰ κυρίου τοῦ προκιμένου ἡμῶν
ἀδελφοῦ Αὐρηλίου Γούνθου τῶν πέντε τέκνων Παπνου-
θίου μη(τρὸς) Τανίλλας τῶν πάντων ἀπὸ κώμης Α[....]
τῆς Ἡρακλείδου μερ(ίδος)· τον ὑπάρχοντα ἡμῖν καὶ μὴ ἀπο-
γεγραμ(μένον) ὑπὸ ἡμῶν ἐν κώ(μῃ) Φιλαδελφίᾳ τῆς αὐτῆς
μερ(ίδος) οἰκίδιον μικρὸν μονόστεγον καὶ αὐλὴν ἐπιδίδο-
μεν ἐξοικονομοῦντες Αὐρηλίᾳ Ταπαϊτι Πατερμουθίου
μη(τρὸς) Ταεισᾶτο[ς] ἀπὸ τῆς προκιμένης κώ(μης) Φιλαδελφίας
τιμῆς ἀργυρίου ταλάντου ἑνὸς καὶ δραχμῶν ἐννακοσίων
(hand 2) Αὐρήλιοι Γοῦνθος καὶ Αταρις καὶ Ἀτρεᾳ
[κα]ὶ Δαυητι καὶ Σαμβαθοῦς . . . . αι. [. . .]
[.] ἐξυκονομοῦνται τῇ Αὐρηλίᾳ Ταπ[αϊτι]
[τὸ πρ]ογίμενον οἰκείδιον καὶ αὐλὴ[ν -ca.?-]
Traces 3 lines[81]

[81] 6. ϊουλιου papyrus 7. l. ἀφηλίκων 7. l. τῶν 10. l. τὸ 10. l. ὑπάρχον 13. ταπαϊτι papyrus 15. l. ἐνακοσίων 17. l. Ταύης 18. l. ἐξοικονομοῦνται 19. l. [πρ]οκείμενον 19. l. οἰκίδιον

In the consulship of our lord Maximian, the most noble Ceasar
A copy
From Aurelios Gounthos and Aurelia Atares, who is acting without a guardian according to the right of children, and Aurelia Atrea, with my husband Aurelios Nemesion, son of Iulios and of mother Theodora, as guardian, and Aurelia Taues and Aurelia Sabbathous, minors, both with our aforementioned brother, Aurelios Gouthos, as guardian, all five the children of Papnoutis and of mother Tanilla, all from the village A[….] of the district of Herakleides; We hand over and deliver a small on-storey house with a court yard belonging to us and not registered to us in the village of Philadelphia of the same district to Aurelia Tapais, daughter of Patermouthis and of mother Taisas, from the

We can see a variety of guardianship situations emerging in this text, none of which maps neatly onto the apparent expectations of Roman law or the earlier Greek system, and all of which problematize the neat picture of adoption, decline, and disappearance which scholars have painted of the *tutela*. We have the first of the women sellers, Atares, who claims the *ius* using Formula D at line 4 and who does not mention her husband, about whom we know nothing other than that he must once have existed. The negative formulae do not usually contain names or identifiers, which makes sense considering that there is no guardian who needs to be identified. As we have already seen, husbands did occasionally feature in contracts even when their wives claimed the *ius* but we have nothing similar to that here, so we cannot say anything at all about Atares' husband except that she must have had one at one point and that together they must have had at least three children. We can assume that she is at least twenty-five years old as she has no *curator* to assist her in this agreement, but as we have already seen, *curatores* could be done away with if the individual in question was managing their property well, which, given the whole family's involvement in this transaction, Atares seems to have been doing.

Another married sister, Atreas, on the other hand, notes that her husband is her guardian using a very typical Hellenistic formula and includes his name: μετὰ κυρίου τοῦ ἀνδρός μου Αὐρηλίου Νεμεσίωνος Ἰουλίου μη(τρὸς) Θεοδώρας (line 5-6). There is no mention of Roman law here, but as we saw above, there is a great deal of continuity with earlier Greek contractual styles, not to mention the husband-guardian, which would have raised a few eyebrows among the second-century jurists.

---

aforementioned village of Philadelphia for the price of one talent and 900 drachmas of silver. I Aurelios Gounthos, Aurelia Atares, Atrea, Taues, and Sabbathous sell to Aurelia Tapais the aforementioned small house and courtyard.

The last two sisters, who have their brother, Gounthos, as guardian are characterized as ἀφῆλιξ, that is, they are minors (lines 6-8).[82] What exactly that means is a little unclear in the third century. At some point, the term does come to refer to a person under twenty-five years old which was by this point the Roman age of majority. So, Gounthos may be playing the role of a *curator* here, even though that is not the term that is used. It is impossible to say. This uncertainly serves to highlight the complexity of the situation. If these two sisters were, in fact, prepubescent minors with their older brother as guardian, we can presume that their father, Papnoutis, was dead. This is not only apparent from their young age and the fact they are wards of their brother, but also from the fact that all five siblings are jointly selling a house, which must have come into their joint possession through inheritance. There is no mention of a mother, beyond the matronymic. If she was still alive, she was not involved in the transaction, likely because she had an adult son to take on the guardianship role over his sisters. Additionally, this marks the latest instance in the papyri of a brother's being identified as a κύριος.

Finally, the buyer, Tapais, does not mention a guardian at all, neither the presence nor the absence of one. There could be a few reasons for this: on the one hand, the triplicate and unfinished nature of these papyri tells us that these were personal copies of the various versions of the paperwork for Tapais's own records. Given that she uses the negative formula to note that she is operating without a guardian according to Roman law in *P. Mich.* XII 627 and *P. Wisc. II* 58-59, the omission of any mention of it here could very well be the result of these just being copies for her own reference.[83] She knows she has the *ius*, so why waste papyrus saying so? However, some

[82] *P. Brem.* 39; Lewis (1979) 117-120 on a rescript about a woman who pursued a court case with her husband rather than her *curator*. The Romans envisioned the curatorship persisting even after marriage, though that did not always happen as we can see in *CJ* 2.12.14, while the Greco-Egyptians seemed to envision either majority or marriage as marking the point at which a woman transitioned from having an ἐπίτροπος to having a κυρίος.
[83] *P. Mich.* XII 627 and *P. Wisc.* II 58-59 (5 April 298).

scholars have cast doubt on the fact that the Tapais of *P. Graux.* II 17, 18, and 19 and the Tapais of *P. Mich.* XII 627 and *P. Wisc. II* 58-59 are one and the same. [84] If Tapais cannot be shown to have the *ius* elsewhere, this could alternatively be an early introduction to or indeed resurrection of women contracting agreements with no mention of a guardian at all, as had been the case before Hellenistic administration– all likely pointing to the fact that she did not need one, for whatever reason, and therefore did not include one in the text.

These texts highlight the complexity and variety of guardianship in the provinces eighty-five years after the *Constitutio*. The uniqueness of these three documents comes from the four different situations presented: one woman who does not mention a guardian at all, another claiming the *ius*, another mentioning a husband-guardian, and two more with their brother as κύριος, where we might have expected to see an ἐπίτροπος or at least a *curator*. In this way, the Roman categories of guardianship, and individual's freedom from them, are acknowledged, at the same time also preserving the Greco-Egyptian tradition of composing contracts with your significant other and/or guardian. Looking at each woman involved in this transaction, we see this strong legal synergy, a sign of the cooperation and integration of both Roman and Hellenistic legal norms in the period following the *Constitutio Antoniniana.*

4.2.4.4. Helper Phrases

Alongside the adoption of "the right of children" in the post-212 Greek papyri, we also see the emergence of something new: "helper phrases". The most common of these is the phrase μετὰ

[84] The other three documents *P. Mich.* XII 627 and *P. Wisc.* II 58-59 (5 April 298) in this archive mention that Tapais was χωρὶς κυρίου χρηματιζούσῃ κατὰ τὰ Ῥωμαίῳν ἔθη τέκνων δικαίῳ, that is "acting without a guardian, according to the Roman *ius liberorum*" and using the still very common Formula A. One small caveat to this conclusion is that because of lacunae where we would expect to find the name of Tapais' father, the comment has been raised that the names of the fathers in these texts may not be the same and therefore that this Tapais who claims the *ius* in these three other texts might not be the same woman as the Tapais in *P. Graux.* II 17-19. While we cannot be sure, it remains that the Tapais in our three texts does not mention any male involvement and so was very likely in possession of the *ius.*

συνεστῶτος, which is generally followed by a (man's) name and identifiers and which means "with the help of ...". It appears to refer to another form of legal assistance, one not otherwise defined in Roman law and not previously seen in a Greco-Egyptian contractual context. These phrases often appear alongside negative guardianship formulae, however they can also be found in documents which either mention the presence of a guardian using the positive formula, or which do not mention a woman's guardian at all. Attestations of these phrases first emerge in the late third century, are most common in the fourth century, and are rarer, but still present, throughout the fifth and sixth centuries.[85]

The exact wording of these phrases also varied considerably, another indication that they did not represent a standardized legal formula. In fact, we see other participles, beyond συνεστώς, used to express the presence or assistance of a male (generally), who otherwise had no other legally necessary role in the contract. Beaucamp suggests that συνεστώς and, for example, συμπαρών are comparable and should be considered as synonyms, along with other similar participles. As Late Antiquity progressed, the vocabulary used for helpers becomes increasingly more varied. [86] We shall return to this topic in Chapter 5.[87]

Nevertheless, the appearance of such phrases directly after the *Constitutio* and their addition into contracts alongside guardianship formulae, suggests there is a connection between these helpers and guardians as early as the third century, something which deserves further examination. We shall therefore now turn to the three different guardianship-related contexts in which these helper phrases appear: 1) following a negative formula, 2) in addition to a positive

[85] See Appendix 7.
[86] Beaucamp (1992) 252, 436-440; These alternatives become more common in the fourth century than in the third, see, for example, *P. Abinn* 63 (350).
[87] A broad survey of some of the ways in which a woman could be assisted in her contracts can be found in Appendix 7.

formula, and 3) in the absence of either of those two formulae. The last of these is the most peculiar and raises the most questions.

4.1.4.4.1. Helper phrases with Negative Guardianship Formulae

First of all, we have versions of the negative formula accompanied by a helper phrase: χωρὶς κυρίου χρηματιζούσης κατὰ τὰ Ῥωμαίων ἔθη τέκνων δικαί[ῳ] μετὰ συνεστῶτος Αὐρηλ(ίου) Διογέν[ου]ς Σαραπάμμωνος.[88] Formulae A and D are by far the most common in this context, which, although they are also the most common formulae in this period, also suggests that the rise of this helper phrase was directly related to the Roman right of children. Here the purpose and logic seem straightforward, as a number of scholars have noted. These women must have been in the habit of contracting agreements with their husband under the Greco-Egyptian system, but with the introduction of the *ius*, they did not need, and perhaps thought that they could no longer use, their former guardian in that way. As a result, they added a few words after the guardianship clause to specify that they were still relying on his assistance, even though he was not legally a guardian.[89]

4.2.4.4.2. Helper Phrases with Positive Guardianship Formulae

We also have attestations of the συνεστῶτος phrase alongside the mention of a husband guardian as in *Chrest. Mitt.* 361: μετὰ συνεστῶτ[ο]ς [τ]οῦ κυρίου αὐτῆς ἀνδρὸς, that is, "with the assistance of her husband-guardian."[90] These are less common, and we have no extant third century texts

[88] *P. Oxy.* XXXI 2566 (13 June 225); See also *P. Strasb. Gr.* 6 575 (3rd – fragmentary); *P. Lips.* II 151 (246-247).

[89] Arjava (1997: 29-30) notes that "If the above conclusions are correct, it follows that people in Roman Egypt did not give up guardianship of women because they thought male support unnecessary as such, but because they had no other choice, according to imperial law." This seems patently incorrect. As we have discussed at length already, Roman law was not imposed wholesale on the new citizens directly after enfranchisement. Rather, they now all had access to the Roman legal system, which many of them did begin to adopt, at least in part, quite early on. Contractual formulae and correctness seem to have been a key aspect of this early adoption, likely in an effort to ensure that the contract was as solid as possible and actually legally binding. On these phrases generally, see also: Sijpesteijn *P. Mich. 15*, 158-171; Taubenschlag (1955) 172-173; Beaucamp (1992) 251-257, 436-440.

[90] *Chrest. Mitt.* 361 (355).

with this kind of phrasing. However uncommon, though, their appearance helps to confirm that assistance was just that, assistance, and not an effort to circumvent the rights of the *ius liberorum*.[91]

4.2.4.4.3. Helper Phrases with no Guardianship Formulae

Thirdly, these phrases could and did also appear on their own, in instances where we might normally have expected to see a κύριος phrase, whether positive or negative. For example: Αὐρηλία Βησοῦς Σαραπίωνος μητρὸς Σαραπιάδος ἀπ᾽ Ὀξυρύγχων πόλεως μετὰ συνεστῶτος Αὐρηλίου Θέωνος τοῦ καὶ Ἀσκληπιάδου.[92] Or μετὰ συνεστῶτος ἐμοῦ τοῦ ἀνδρὸς,[93] There are no mentions of guardians here, almost as if the helper phrase were standing in the place of the guardianship formula itself. As Beaucamp notes, this type of helper phrase - without any reference to a guardian - is often accompanied by a verbal (rather than participial) version of the phrase in the subscription of the contract, just as the guardianship formulae are normally repeated in the subscription.[94] The helper here is fully identified, just as a guardian would have been, and the placement of the phrase and references to the συνεστῶτος are exactly where we might expect the κύριος phrase to have been found.

Why then has this woman chosen to name a helper but not a guardian? Interestingly, this contract records the lease of a house, which is not something which would, strictly speaking, have required the presence of a guardian, whether or not Aurelia Besous actually had one.[95] Lack of legal need could be one reason for the lack of a guardian, while more practical reasons could be at

[91] *Chrest. Mitt.* 361 (355); *Stud. Pal.* XX 117 (411). See also Beaucamp (1992) 254-255.
[92] *P. Oxy.* VI 912 (30 Aug 235), "Aurelia Besous, daugher of Saraoion and of mother Sarapias from the city of Oxyrhynchus with Aurelius Theon, alias Aslepiades, as helper."
[93] *P. Amh.* II 72 (16 June 246), "with the assistance of my husband."
[94] *P. Oxy.* XIX 2231, Αὐρήλιος Σερῆνο[ς] [ἐ]πικεκλημένος Λεωνίδης συνέστην αὐτῇ καὶ ἔγραψα ὑπὲρ αὐτῆς μὴ εἰδυίης γράμματα. Cf. Beaucamp (1992) 252.
[95] *P. Oxy.* VI 912 (Aug 30, 235); For further texts with a συνεστῶτος but no mention of a guardian, the *tutela*, or the *ius*, see: *SB* 20 15188 (after 28 March 212); *P. Col.* VIII 233 (Jan – Feb 232 or 264); *PSI* 10 1128 (3rd); *P. Oxy.* VI 912 (235); *P. Amh.* II 72 (16 June 246).

play in the decision to include a helper phrase. For example, in *P. Oxy.* XIX 2231 we see that Aurelius Serenus, who assisted Aurelia Thermouthion, notes that he wrote for her because she did not know how to write. That certainly would be cause for assistance. Thermouthion, however, may also have had another reason for needing his help. We shall explore her situation in the following case study.

4.2.4.4.4. Case Study - *P. Oxy*. XIX 2231

The text for this case study is a notification of succession from 241 in which we find a woman, Aurelia Thermouthion, presenting herself as the legal Roman heir to her recently deceased daughter, Techosis. We learn from the text that Techosis's father, presumably Thermouthion's husband, had already died. There is no reference to a guardian at all, but she was accompanied by Aurelius Serenus, also known as Leonides, who subscribed the document on her behalf. They both come from Oxyrhynchus, but beyond that, their relationship is not specified beyond two variants of the ambiguous συνίστημι. There is no other male assistance beyond his; in fact, there is no mention of a guardian at all, either in a positive or a negative formula, just the helper phrase, and an equivalent subscription.

(hand 3) π̣[α]ρ̣ε(τέθη).
(hand 1) Αὐρηλίοι[ς Θέω]νι ἀγορα-
νομήσαν̣τι κ̣[αὶ] Δι[ο]σκου-
ρ[ί]δῃ τῷ κ̣[α]ὶ Πτολεμαίῳ
ἀμφοτέροις βουλ(ευταῖς) βιβλ(ιοφύλαξιν)
παρὰ Αὐρηλίας Θ[ερμου]θ̣ίου
χρηματιζ̣ούσης μητ[ρ]ὸς
Τ[α]πιώμι[ο]ς ἀ[π᾽] Ὀξ̣[υρύγ]χων
πόλεως μ[ε]τὰ [σ]υ̣νεστ[ῶ-]
τος Αὐρηλίου Σερήνου ἐπικε-
κλημένου Λεωνίδου
ἀπὸ τῆς αὐτῆς πόλεως.
ἧς πεποίημαι παρὰ
Δομιττίῳ Φλίππ[ῳ] ἐ-
πάρχῳ οὐιγ̣ού̣λ̣ῳν σ̣τρα-
τηλάτῃ, διακατοχῆς

Ῥωμαϊκῆς κληροȣομί-
ας τῆς θυγατρός μου Ṭε-
χώσιος Πλοȣτάρχου
ἀπὸ τῆς αὐτῆς πόλεως
τετελευτηκυίης [ἀ]τέ-
κνου καὶ ἀδιαθέτο[υ]
με[τ]ὰ τὴν τοῦ πατρὸς
αὐτῆς τελευτ[ὴ]ν ἐπ᾽ ἐμοὶ
κατὰ τοὺς νόμους κ̣λ̣ηρο-
νόμῳ, ἀντίγραφο̣ν [ἐ]ρμη-
νευθὲν Ἑλλη̣νικο̣ῖς γράμ-
μασι κατὰ τ[ὸ] δυνατὸν ἐπι-
φέρ[ο]υσ̣α ὑμῖν ἐ̣ν δ[υσ]ὶ
ἀντιγράφοις ἐπ̣ιδ[ίδω-]
μι τὸ ὑπόμνημα π̣ρ[ὸς]
τὸ τ[ὴ]ν δέο̣[υ]σ̣αν π̣α̣[ρά-]
θεσιν γενέσθ[αι] καὶ ὀ[μνύ]ω
τὸν Ῥ[ω]μ̣α̣[ίοις] ἔ[θιμο]ν
ὅρκον μ[ὴ ἐψεῦσ]θ̣αι. [(ἔτους)] δ
Αὐτοκράτ[ο]ρ[ο]ς Κ̣[αί]σ[αρο]ς
Μάρκου Ἀντωνίου Γ̣ορδ̣ιανοῦ
Εὐσεβοῦς Εὐτυχοῦς Σεβαστοῦ
Τῦβι ς̣. (hand 2) Αὐρηλία Θερμού-
θιον ἐπιδέδωκ̣α
κ̣α̣ὶ ὤμοσα τὸν ὅρκον.
Αὐρήλιος Σερῆνο[ς ἐ]πι-
κεκλημένος Λεωνίδης
συνέστην αὐτῇ καὶ
ἔγραψα ὑπὲρ αὐτῆς μὴ
εἰδυίης γράμματα.
(hand 4) Αὐρήλ(ιος) Διοσκουρίδης
βιβλ(ιοφύλαξ) σεσημ(είωμαι).[96]

[96] Apparatus: 15. BL 6.106: ὀχὶ (l. οὐχὶ) τ̣ότ̣ε ο̣[ὖ]ν prev. ed. 17. ρωμαϊκησ papyrus 21. l. τετελευτηκυίας 46. l. εἰδυίας

Trans. *P. Oxy.* XIX, with my translation for BL 6.106 reading in line 15: (Hand 3) Entered in the register. (Hand 1) To Aurelius Theon, ex-*agoranomus*, and Aurelius Dioscurides also called Ptolemaeus, both senators and keepers of the archives, from Aurelia Thermuthion, styled after her mother Tapiomis, of the city of Oxyrhynchus, acting with Aurelius Serenus surnamed Leonides of the same city. I submit to you in two copies a copy, translated into Greek to the best of my power, of the (claim to a) deed of succession to the Roman inheritance of my daughter Techosis, daughter of Plutarchus, of the same city, who died after her father without children and intestate, leaving me as her heir in accordance with the laws, which claim I have made before Domitius Philippus, *praefectus vigilum* (and) *magister militum*; and I present this memorandum in order that the proper entry may be made ; and I swear the oath customary with Romans that I have not made a false statement. The 4th year of the Emperor Caesar Marcus Antonius

This is a request by Thermoution to be recognized as an intestate heir. As we saw with Aurelia Thaisous, aka Lolliane, in *P. Oxy.* XII 1467, this is a petition of record, a *parathesis*.[97] It seems that she had previously pursued the question by means of a διακατοχή, that is, an *agnitio bonorum possessionis*, with the prefect of the watch, Domitius Philippus, who, she says, is currently the *stratelates*, and that the decision had gone in her favour.[98] Her memo here thus does not ask to be recognized as her daughter's heir, but notes the fact as a *fait accompli*, simply asking for it to be recorded. Additionally, she states that her claim to her daughter's property was made on the basis of Roman law, engaging with Roman magistrates and Roman legal categories. While much of Roman history saw intestate inheritances pass to the nearest agnate relative, which by definition was never a woman, the law had changed in about 130. Another innovation from the time of Hadrian – in addition to a woman's ability to make a will – the *Senatus Consultum Tertullianum* allowed women to inherit as *legitimi* from their children who died intestate. Initially this right was limited and dependent on a number of qualifications: the most important for us here being that the mother needed to have the *ius liberorum.* She also was not first in line. The children of the deceased, if any, stood to inherit first, then their father, their siblings, and then their mother.[99]

The *SC Tertullianum* is often cited together with the *SC Orfitianum* (of 178), which gave children the right to inherit in the first place from their intestate mothers. Together, these two laws mark a pivotal change in the conceptualization of the family. Agnate relationships were truly

---

Gordianus Pius Felix Augustus Tybi 6. (Hand 2) I, Aurelia Thermuthion, have presented and sworn the oath. I, Aurelius Serenus surnamed Leonides, was associated with her and wrote on her behalf, as she is illiterate.
(Hand 4) I, Aurelius Dioscurides, keeper of the archives, have signed.'

[97] Further on the uses of the *parathesis*, see Alonso (2010) 17.

[98] *Digest* 37.1, 38.15.5.pr; Taubenschlag (1955) 42, 183, 211-217; Gagos and Heilporn (2001) 175–185; Aubert (2013) 17-20.

[99] Paul *Sententiae* 4.9-10; *CJ* 6.55.11, 6.56.1-4; This changed under Justinian who abolished the need for a certain number of children and who ranked mothers with siblings, rather than below them, for the purposes of inheritance. Cf. *CJ* 6.56.7, 8.58.2, *Institutes* 3.3.3-3.3.4; *Digest* 38.17.

deprioritized, while cognation and the nuclear family became increasingly important for inheritance law. Subsequent emperors continued to strengthen the rights of cognates. Since the *patria potestas* meant that any inheritance a child received while *alieni iuris* became part of the property of their father, which would have defeated the purpose of bequeathing property to the child in the first place, there was further legislation limiting the rights of the fathers to such *bona materna*.[100] These innovations can be grouped with the *peculia* and together seen as an ongoing deterioration of the financial chokehold that *patria potestas* had on *alieni iuris* children.[101]

The reference to having had this document translated into Greek suggests something about Thermouthion's linguistic abilities. She would hardly have written a document in Latin only to have it translated into Greek. Instead, she was probably more comfortable in the Egyptian language, which at this point was written in Demotic.[102] This document thus highlights the remarkable cultural melting pot that was the empire of Late Antiquity. Thermouthion likely spoke primarily Egyptian, as her names suggests, rather than either Greek or Latin. Nevertheless, she had her legal papers translated into Greek, in which she was not literate, to submit as a Greek *parathesis*, all the while citing Roman inheritance law. It was not only Thermouthion's life that had this level of multiculturalism and mutual influence either: this type of syncretic relationship appears over and over again throughout the legal sphere.

As we can see above, Thermouthion had the help of Aurelius Serenus, who notes that he wrote for her because she was illiterate. On the surface, this alone may seem like a plausible reason for a woman to have assistance with a legal or financial document, particularly given the gender

[100] *CTh.* 8.18.1,3; *CJ* 6.60.4.
[101] Arjava (1996) 98; Gardner (2011) 361-376.
[102] Demotic was becoming increasingly rarer by the third century, though we have evidence of its persistence until the end of 452; Cruz-Uribe (2018) 6–8.

gap in literacy and education in the ancient world. Many women could not read or write or even sign their own name. They would have needed a literate person to do so on their behalf, something which is very common in the papyri, for both men and women. In Thermouthion's case, Greek was also likely not her mother tongue. But this alone cannot be the reason why the helper phrase appears in this contract. Plenty of illiterate women composed documents with someone's help without including a helper phrase and there are helpers who appear in contracts where a woman's literacy is not commented on or where the woman herself or a third party, such as a scribe, composes the contract or adds the subscription. The help referred to must be more significant than scribal. Thermouthion can corroborate that.[103]

This document is only a memorandum, so it is not entirely surprising that we do not see a guardian mentioned. As we read through the text, however, the complexity of the situation becomes clear. Thermouthion is a widow and mother to a single daughter. She thus does not have – could not have – the common "husband-guardian." Given the death of both her husband and her daughter (which assumes that she must have been married, given birth, and raised her daughter to an age that her death was remarkable), she is likely far older than the twenty-five years needed to be rid of a *curator*. Additionally, her navigation of the Roman inheritance process suggests that she has far more than a passing familiarity with Roman law. As a result of all of this, she transacts with a helper. No male assistance or supervision are defined by law, she has no husband and is presumably above the age of majority, so she includes a reference to the male support she did have.

[103] Beaucamp (1992: 254) also corroborates this conclusion. She notes that while husbands, husband-guardians, and other men do sometimes write for the for the women they are assisting (*P. Lond.* III 978; *Chrest. Mitt.* 361; *P Lips* 28, 29), we also see women who write for themselves but who are nevertheless assisted by their husbands (*P. Stras.* VI 555, VII 672) or women for whom a third party, other than the "helper," writes (*CPR* VII 14; *P. Abinn* 62; *P. Stras* III 142, *SB* XII 10784)

While this could be an early instance of a woman's doing away with guardians altogether once she becomes a widow, in Thermouthion's case a Roman *tutor* would not technically have been needed – as she was bettering her position and not alienating *res mancipi*. The inclusion of the helper phrase here may be a reflection of a similar scenario: a Greco-Egyptian woman who was used to conducting her transactions with her κυρίος, who knew that this request did not require a *tutor* (he was dead anyways), and who therefore avoided the technical vocabulary associated with guardianship but employed a new phrase to include a man in the contract nonetheless, since she needed his practical help and, in this case at least, his linguistic ability.

4.2.4.4.5. Implications of Helper Phrases

These helper phrases thus seem not to have risen to the level of legal formula, i.e. a "technical term." We also have no legal reasoning for their sudden inclusion, and there is no discernible pattern to their use. Unlike both the positive and negative formulae, helper phrases appear in contexts outside of the regular identification of contracting parties and seems, at least in those cases, to mean quite literally that some person was assisting another, without having any specific legal connotation.[104] Because of this, it seems unlikely that this was a formalized legal category of assistance; more likely it was an effort on the part of the signatories to record fully the parties who participated in the making of the contract, particularly if the person giving the assistance was the one writing or signing on behalf of the signatory.

The rise of these phrases directly after the *Constitutio* and their regular use in conjunction with the negative formulae and when no guardians were mentioned, suggests that for new citizens, at least, increased autonomy may not have been a direct result of citizenship and the resulting expansion of the *ius*, since there is a trend to include what are often male family members in

[104] *P. Bouriant* 26.

women's contracts, albeit informally. This cannot surprise us since the goal of a contract was security. It would have been in everyone's best interest to ensure that the contracting parties were knowledgeable or had the help of someone who knew what was going on. This may not have been a case of the "local menfolk" deciding that their women needed their assistance even if they could no longer be their guardians.[105] Rather, someone, male or female, without much knowledge of the law or unaccustomed to such documents could ask for assistance from a more learned person. It was not necessarily a husband or the would-have-been guardian; and as we shall see in the next chapter, it was not even necessarily a man.

Of course, a Roman guardian, or reference to one, was not needed in every financial or contractual situation – perhaps some of the women in contracts that do not mention guardians recognized that legal nuance, but still wanted some assistance. If this is indeed why some women appear in contracts alone, with no mention at all of guardianship and only sometimes with helper phrases, it would be remarkable. First of all, this would mean that the nuances of *res mancipi*, the details of exactly what fell under the purview of a Roman guardian, were well understood by at least some of the population. It would then be difficult to make the argument that women were including references to the *ius* everywhere out of ignorance or an overabundance of caution, when, in fact we have evidence of the exact opposite. Second, if that is the case and if the details of guardianship were well known by at least some of the new citizens, the relatively early date of *P. Oxy.* VI 912 (30 Aug 235), shows that this knowledge had spread throughout the empire quite quickly, and Thermoution shows that this was not just among men, and not just among the very upper classes of cities like Alexandria.

[105] Arjava (1997) 30. "In other words, Roman law exempted these women from guardianship but their local menfolk, and perhaps the women themselves too, still considered it best to have a male assisting them."

4.4. Conclusion

The three case studies we have seen capture moments in time when the first generations of provincial citizens were discovering how best to navigate their own legal world. In the first contract, Roman inheritance law was prioritized by a woman acting entirely without a guardian, but with male assistance as recorded in a helper phrase. Her contract allows us to see that some women who were conducting transactions in which a Roman guardian was not strictly needed might have chosen to include a συνεστῶτος phrase, since they were accustomed to involving their Greek-style guardians in all major financial transactions, not just in the ones involving *res mancipi*. This suggests that the nuance of when a Roman guardian was or was not needed was initially understood by at least some of the new citizens. By comparing the low number of helper phrases to the relatively higher number of texts with guardianship formulae, either positive or negative, we can also suppose that the details about when a guardian was actually needed in a Roman woman's contract was not a distinction which was widely understood.

In the second contract, we see women, particularly widows, taking on a new role in the family as inheritance legislation evolves. They come to be able to inherit from their children who can now also inherit from them, and they begin to represent their children in the legal and financial spheres. While this is not formulated in law until 390, our contract, and a number of others, suggest that the practice began far earlier. Despite this evolution in her own power, the widowed mother herself has a strictly Roman-style dative guardian, who was assigned to her by a magistrate. Her guardianship and the method by which her son's inheritance is claimed is textbook Roman law, with the exception of her hands-on involvement in the entire process and her son's seeming lack of a male guardian.

Similarly, Roman categories like guardianship and freedom from it were both acknowledged and ignored in the third contract. We see one sister who claimed the Roman exemption, and two more who had a potentially Roman *tutor* or *curator*, while a fourth sister preserved the Hellenistic tradition of composing contracts with her husband as her guardian. Additionally, as we have established, only a *sui iuris* woman needed a guardian, and then only for certain types of transactions, specifically those which involved *res mancipi*. Critically, provincial land was not *res mancipi* so its alienation technically did not require a guardian's approval. The number of extant documents relating to the sale of Egyptian land which do reference guardians, such as *P. Graux.* II 17, 18, and 19, suggests that this was not a nuance of the law which was well-understood or adopted.

So, while the new citizens clearly embraced the idea of the *ius* in large numbers alongside, say, the adoption of Roman names, the inclusion of helper phrases shows that for many of them, their perception of family responsibility and guardianship had not necessarily changed all that much. Just because the *ius* formula was adopted in a widespread way, does not necessarily mean the legal nuances behind it were understood or accepted, either. Taken together, these changes do suggest that while these new citizens understood their citizenship to be important and recognized the link between citizenship and law, they also remained attached to their Greco-Egyptian identity and legal habits.

Therefore, guardianship, however it was personally or locally understood over time, continued to exist for a large number of women, and even those who claimed the exception often still relied on male assistance as they had previously done. This in turn served to modify the understanding and use of guardianship in the following centuries. Since we can clearly see that a technically accurate version of the *tutela mulierum* never really took root in the provinces, it would

be entirely unrealistic to expect it to have persisted unchanged and uninfluenced throughout the subsequent centuries of Late Antiquity. Instead, what we see is a hybrid, a Greco-Roman type of adult female guardianship which itself continues to evolve and develop alongside other social and legal developments throughout the fourth to seventh centuries. We shall turn to this evolution in the following chapter to understand whether the *tutela* really did decline and/or disappear.

Chapter 5: The Early Christian Woman and Guardianship in the Fourth to Seventh Centuries

₽ Αὐρηλία Τσώνη θυγάτηρ Ῥαχὴλ ἐκ πατρὸς Ἄπα Δίου ὁρμωμένη ἀπὸ Συήνης μετὰ καὶ τοῦ κυρίου αὐτῆς ἀνδρὸς Αὐρηλίου Ἰσακίου υἱοῦ Κωσταντίου τοῦ καὶ συνενοῦντο καὶ συνευδοκοῦντος αὐτῇ…[1]

Throughout Late Antiquity, we do see some clear changes to the practice of adult female guardianship as it is described in the papyri. Notably, however, and in contradiction to earlier scholarly conclusions, guardianship and an exemption from it do persist throughout the late antique contracts, despite the opacity of the codes. Is this the *tutela mulierum* of the Republic or even of the second century CE? No, clearly not, and, upon reflection, we could hardly expect it to be. A great deal had changed over those centuries, legally, administratively, socially, and economically, such that by the fourth century the Roman empire was quite a different place from the empire that Gaius had described in his *Institutes* some two centuries earlier. There is no denying that along with all these other changes, guardianship changed too. The question is then: How did it change? And why?

As we discussed in the introduction, the current scholarly hypothesis in the English-speaking world is that guardianship declined and disappeared in the third or fourth century. Arjava spends only ten pages in his 1996 book on the topic of guardianship and concludes that "if there was a single law which abolished the guardianship of women, it should probably be placed in the first half of the fourth century."[2] He does not account for the absolute lack of evidence for any

[1] *P. Lond.* V 1724 (578-582, Syene), "Aurelia Tsone, daughter of Rachel and of her father Apadios setting out from Syrene with her husband, Aurelius Isak son of Constantinus, who is also her guardian and who consents and who is joined with her in agreement…"
[2] Arjava (1996) 118-123, at 118.

such law, as well as the continuity of references to guardians in the papyri beyond the first half of the fourth century, albeit in reduced numbers.

That the question of the *tutela*'s end is not such a simple one can be shown by the varied and unsupportable conclusions Arjava himself has drawn. His 1997 paper on guardianship from only a year after *Women and Law* contains the statement, "Clearly the Roman guardianship of women must have appeared a strange institution in the third century but, as far as we know, the Romans did nothing to remove the anomaly." [3] Here he himself seems unconvinced by his own theory of the *tutela* being abolished by a specific law in the early fourth century. In the same paper he also makes sweeping claims about the end of the *ius*, saying that references to it disappear "in the second quarter of the fourth century." He further states that evidence for women acting with guardians "dries up" in the mid-third century, and that "between 235 and 300 there are only four or five documents where a κύριος is present and none from the ensuing decades."[4] We have already seen through *P. Graux.* 17 to 19 that neither position can be upheld.

On the other hand, he is not entirely wrong when he says that "women who actually have a guardian" after the *Constitutio* have "hitherto escaped general attention." A glance at his and my bibliography will show that far more scholarship has been done on the topic of the exemption from guardianship than on those women who do actually have guardians after the *Constitutio*, particularly in the English-speaking world. Nevertheless, we have Beaucamp, whom Arjava

[3] Arjava (1997) 25.

[4] Arjava (1997) 27; He cites a number of influential scholars to defend his position, including Taubenschlag (1955) and Beaucamp (1990), (1992). Ironically, both Taubenschlag and Beaucamp have elsewhere written about the continuity of guardianship into the later centuries of Late Antiquity. Arjava (1997) is based on the short section on guardianship in Arjava (1996). The research is somewhat expanded, but the general claims that guardianship disappeared and did so incredibly quickly and incredibly early are untenable. The "four or five texts" that he believes can be dated between 235 and 300 are *PSI* XII 1238 (244); *P. Oxy*. XLII 3049 (247); *P. Princ.* II 38 (c. 264); *P. Grenf.* II 69 265; and *P. Oxy.* XLIX 3499 (end 3rd?) which is lacunose. He suggests that the published edition of a sixth text, *Stud. Pal.* XX 71 (268/270) has been misleadingly restored.

himself cites extensively and who spends some fifty pages (plus appendices) on the topic of guardianship and provides concrete examples of both positive and negative guardianship formulae from the fourth century onwards.[5] Specifically, she lays out and examines four separate, secure instances of women who composed contracts with the help of a guardian between the fourth to the seventh centuries.[6] Clearly, then, there are examples of the *tutela* from the fourth century and beyond which are accepted by scholars. This clarification complicates the neat picture of the decline, disappearance, and abolition of the *tutela*, which Taubenschlag, Arjava, and others have painted, as does the fact that women can also be shown to continue to claim exemption from guardianship up until the seventh century.

The narrative of decline and disappearance has been enhanced by several unfortunate trends in scholarship. Very little has been written about the legal status of women within the empire (East or West) in this period, particularly in English, and discussions of women's lives, status, or agency generally end (and occasionally begin, as with Beaucamp) with the fourth century. This gives an artificial and inaccurate impression of an abrupt shift or break in continuity at this point in history. However, as scholars have already shown for many other areas of life, this period was instead one of continuity.[7] Evolution and change occurred, to be sure, but this too was built on what had come before. I thus propose that this well-established theme of continuity is true also for women's guardianship, and for their legal status and agency generally. As a result, a secondary

[5] Beaucamp (1992) 193- 247.
[6] *BGU* IV 1049; *Chrest. Mitt.* 361; *Stud. Pal.* XX 117; and *P. Lond.* V 1724. Beaucamp (1992: 194-197) declines to accept *Stud. Pal.* III 230 and *P. Vat. Aphrod*. 5 as per annex 1. *SB* XIV 12021 is lacunose in the key formula, and she find the proposed reading of the positive formula too uncertain to sustain; all that can be certain here is the mention, whether presence or absence, of a husband. On the other hand, she believes that there is a reference to a *tutor* in *SB* VI 9261, but as it is also lacunose in the key formula, she also did not include it in her discussion.
[7] On the general idea of continuity see, Brown (1971); on religious continuity see Frankfurter (1998), (2018); Dijkstra (2011) 389-436; on legal practice, see Keenan et al. (2014); on urban spaces see Cortese and Fioratto (2022); and on family see Vuolanto (2015b).

question will be one of terminology: since a type of adult female guardianship clearly continued to exist throughout Late Antiquity, what are we to call this guardianship which evidently persisted at least in practice? Is it still *tutela mulierum*? And can the exemption still rightly be called the *ius liberorum*? Or has guardianship evolved enough to warrant being called something different entirely? If so, is there evidence in the papyri for what we should call it?

5.1. Late Antique Guardianship in the Law

Like virtually every other aspect of the Roman legal system, guardianship also evolved throughout the imperial period and beyond. As we have seen, the *Lex Claudia* abolished agnate guardianship for free women in the around the middle of the first century. This was a significant shift since the *Twelve Tables* had initially established the agnate relationship and guardianship as a fundamental aspect of both family and financial structure. Freedwomen remained under the guardianship of their patron, despite that practice's also having its foundations in the agnatic relationship structure. It was common, therefore, after this point for a father or husband to appoint *tutores* by testament. If that had not been done, a woman or minor could apply for a dative guardian.

After this point, and after Gaius's summaries and the few extant legal fragments, it is difficult to trace the changes and evolution until we get to 212. We then see an uptick in provincial citizens adopting particularly the *ius* and presumably also the *tutela* along side it. After that point, we can begin to track the evolution of the practice in the papyri. What we end up seeing is that there seems to be a marked change in frequency and the formulae that occur between the latter half of the third century and the beginning of the fourth century, but even before this, Greek papyri which mention a guardian of any type had been on the relative decline. We can see a rather drastic decrease in the presence of women with guardians, a decrease in the number of women being appointed guardians, and even a relative decrease in the number of women who claim the *ius* or

explicitly mention that they are acting without a guardian. Before we proceed to a closer look at the papyrological evidence for guardianship, we shall discuss its legal evolution.

5.1.1. The *Tutela Mulierum* in Law

In terms of late antique legal sources on the *tutela*, indeed, the fourth century seems a pivotal moment. There are no apparent mentions of the *tutela mulierum* in strictly legal texts after about the first quarter of the fourth century, though the imperfect and incomplete preservation of the first books of the *Codex Theodosianus* must at least be mentioned as a caveat here. It may be more correct to say that if there were multiple mentions in the *CTh*, we have only one. For whatever reason, the compilers of Justinian's code chose not to include any constitutions on the adult female guardianship, so we are unable to work backwards from the *CJ* to reconstruct the early books of the *CTh* on this point either.

Our one mention of the *tutela mulierum* in the *CTh* is in a law of Constantine from 326. In and of itself, this is quite a late mention of what appears to be a reference to the *tutela mulierum*: "in feminis tutelam legitimam et consanguineus patruus non recuset."[8] As it is from the initial missing books at the beginning of the *CTh,* this constitution has been restored on the basis of the *Breviary* of Alaric (3.17.2). In its original form, there must have been more to this law, but frustratingly it has not survived either in the *Breviary* or elsewhere in the *CTh*. On the other hand, Arjava suggest that Gaius states that the *Lex Claudia* had actually only abolished the statutory guardianship of minor women (1.157), however only a few lines later (1.168-171), he makes it clear that it was only the necessity of agnatic guardianship specifically which had been abolished, and this included guardianship over both minor and adult women.[9]

[8] *CTh* 3.17.2, "Even a consanguineous uncle (i.e. paternal) shall not refuse statutory guardianship over women."
[9] Gaius *Institutes* I,157, 168-171; Arjava (1996) 116-117.

Additionally, *CTh* 3.17.2 is also cited in the *CJ* in a law of Leo I which dates to 469 or 472: "Constitutione divae memoriae Constantini lege Claudia sublata, pro antiqui iuris auctoritate salvo manente agnationis iure tam consanguineus (id est frater) quam patruus ceterique legitimi ad pupillarum feminarum tutelam vocantur."[10] Because of this, we have two sources to contribute to our understanding of the original Constantinian law: the *Breviary* and the *CJ*.

Arjava has noted that the piecemeal method of collation for the codification of the *CJ* combined with emendation and revision in the pursuit of standardization means that the word *pupillarum* may well be a later addition. Certainly, from a grammatical perspective, the combination of *pupillarum* and *feminarum* is unexpected, unless there was originally something at play here other than the guardianship of a minor female. This combination is especially noteworthy because the word *pupilla* usually appears alone and unmodified in the *CJ*. There is nothing to gained by emphasizing the innate femininity of *pupilla*.[11] The implication is that Constantine's law originally read "…ad feminarum tutelam…", and that *pupilla* was a later interpolation, at a time when the law no longer governed the guardianship of adult women, only minor women. Given the papyrological evidence on the persistence of agnatic guardianship, this does not seem unlikely.

The odd and redundant inclusion of the word "feminarum" in addition to "pupillarum" here suggests that there may be other instances of interpolation in the *CJ* which could hide original, later references to adult female guardianship within especially the first five books of the *CTh*. Here too, the date of the original "feminarum" is uncertain. Certainly, as we saw just above, the *Breviary*

[10] *CJ* 5.30.3, "Because the constitution of Constantine of divine memory has repealed the *Lex Claudia*, the right of agnates is restored according to the authority of ancient laws, so that a consanguineous person, namely a brother, as well as a paternal uncle or other legally eligible person are called to the guardianship of minor females."
[11] See, for example *CJ* 5.31.7, 5.36.1, 5.37.11; Arjava (1996) 116-117.

can confirm that Constantine's law speaks about the guardianship of adult women (*feminis*). Frustratingly, we cannot tell whether Leo's law originally included "feminarum" alone or if the addition of the "pupillarum" was also original to Leo's law. It could have been, but it also (perhaps more likely) could have been added by the compilers of the *CJ* in their standardization efforts. This question has serious implications for the dating. If Leo's law contained "feminarum" alone, without the inclusion of the "pupillarum" this would push our latest legal reference to the *tutela mulierum* back by over a century, since *CJ* 5.30.3 dates to 469 or 472, and *CTh* 3.17.2 to only 326. Unfortunately, there do not appear to be any other obvious instances of exactly this kind of interpolation related to the *tutela mulierum* in the *CJ*, although others may be better concealed.

Nevertheless, the word *tutela* is widely present throughout both the *CTh* and the *CJ*, but specifically in the context of *pupillae* and *pupilli*, or minor wards of both genders. This is thus the *tutela impuberum* which we saw in Chapter Two. Mentions of the *tutela* also frequently appear alongside references to the *cura minorum*, to further emphasize that legislation on guardianship referred only to minors (however they were defined) and not adults. Because of this, it is often not clear whether a codified law in either code initially referred to the *tutela impuberum*, or whether it actually referenced the *tutela mulierum* in its original form but was emended, edited out, and/or interpolated at codification. If and when there are Greek laws in the *Corpus Iuris Civilis*, we often see ἐπίτροπος used for the *tutor impuberum* by the jurists and, of course, κουράτωρ used for the *curator*.[12] Unfortunately, Greek laws or jurisprudence are quite rare, particularly from before the sixth century, so we are generally left to decide whether the *tutela* or *tutor* in question is *impuberum* or *mulierum* from context clues.

[12] The Greek has ἐπίτροπος or κουράτωρ, which makes differentiation easier. Modestinus *Excusationum* 1, 3, in *Copus Legum,* 124-125, 136,

Otherwise, the *Fragmenta Vaticana* contains our latest, secure, legal references to the practice.[13] While a law of Diocletian from 293 is usually considered to be the latest strictly legal reference to the practice by those who are unconvinced by Constantine's 326 law, this interpretation neglects the fact that the *Fragmena Vaticana* themselves were collected for practical legal use.[14] Compiled around 320, they suggest that the law continued to discuss and accept the guardianship of adult women under the paradigm of the *tutela mulierum* well into the first half of the fourth century. Evidently, the *tutela mulierum* must have remained legally relevant enough for the compiler to consider constitutions on it to be a useful inclusion in their collection. Thus, whether one finds the *CTh* 3.17.2 example convincing or not, the latest attestations of the *tutela mulierum* in Roman law can be dated to the 320s.

5.1.1.1 Alternatives to the Tutela

It is in this context that we again turn to the *cura minorum*. Taubenschlag notes that while having a *curator* was common enough for young *sui iuris* men and women in the first three centuries of the empire, the practice became the default in the third century. The overwhelming popularity of *sine manu* marriage by this time also meant that young women would have become *sui iuris*, if not by emancipation, then by the death of their fathers, rather than their husbands, which would have resulted in independent women who were much younger than in the early days of the *tutela*. The provincial practice of emancipation at marriage or an otherwise young age meant that the majority of adults were not *in potestate*, a fact which may have helped to solidify the the *cura minorum* as the default form of oversight.[15] Additionally, the expansion of the *peculium* to include military and

[13] *Fragmenta Vaticana* 1, 45, 110, 229, 259, 264, 325, 326, 327.

[14] *Fragmenta Vaticana* 325, "Divi Diocletianus et Constantius Aureliae Pantheae. Actor rei forum sequi debet et mulier quidem facere procuratorem sine tutoris auctoritate non prohibetur. Si quam itaque habes actionem, experiri magis iure quam adversus ea quae pro tuo statu statuta sunt quaecumque postulare debes. Proposita V id. Nov. Heracleae Augg. U et IIII conss."

[15] Taubenschlag (1955); Beaucamp (1992); Arjava (1996) 115-116.

administrative wages meant that young men would more frequently have had their own money to spend, regardless of whether they were *in potestate* or not. This would have changed things, not only for young men, but also – and perhaps more so – for young women. While women did not earn a *peculium* as a soldier or bureaucrat, they too must have been affected by the changes in family and oversight structures. Whereas it had once been the case that a young, *sui iuris* woman was under the control of a *tutor impuberum* until puberty and then a *tutor mulierum*, now a young woman would have received a *curator* between the ages of twelve and twenty-five, in addition to the *tutor mulierum.* This meant more male oversight in more areas for more women. That being said, many young provincial women would likely have had living fathers into at least their early teenage years and so would have been under his *potestas*, whatever that looked like at this stage, until they were apparently emancipated at marriage. Even after marriage, these women would have required a *curator* until their twenty-fifth birthday, by which point many women would have successfully met the three-child requirement of the *ius*.[16]

However, what should have happened and what did happen were two very different things, as we can see from a response of the emperor Gordian III to a petition from a certain Sabinianus in 241. He says, "Non hoc minus sententia adversus te lata iuris ratione substitit, quod adversaria tua minor viginti quinque annis constituta causam suam marito sine curatore agendam mandavit. Minoribus etenim aetas in damnis subvenire, non in rebus prospere gestis obese consuevit."[17] Apparently, every *sui iuris* young person was supposed to have a *curator*, but it seemed that they did not always have to be used. Nevertheless, *curatores* feature widely in the legal sources of the

[16] Arjava (1997) 29-30 (esp note 18); Bagnall and Cribiore (2006) on demographics.

[17] *CJ* 2.12.14; Trans. Frier: "by legal reasoning, the decision rendered against you is not any the less valid because your adversary, a woman less than twenty-five, mandated conduct of her case to her husband without (consulting) her *curator*. For their age normally helps those under twenty-five when they are harmed but it does not hinder them when their affairs are managed well."

later centuries, so even if they were occasionally pushed to the side in favour of the husband's right to assist his wife, the practice was still quite common and generally accepted throughout the empire. Another complication can be seen in references to *curatores* in contracts. It seems that, in practice, the categories of *tutor* and *curator* were considered relatively similar and, in fact, that their boundaries were quite porous. Both appear not infrequently in the papyri, and as with the *tutela*, the day-to-day references to the *cura* and the *curator minoris* raise questions about the new citizens' understanding of these categories. For example, we have a young woman who has both a κύριος and a κουράτωρ, which is not unexpected, but we also have young women who were under the age of twenty-five operating with only a κύριος and not a *curator* in sight. We shall see two of these in our case studies at the end of the chapter. Clearly the entire system was relatively flexible and not everyone understood exactly how these categories were meant to work or if there even was any real imposition or policing of them.[18]

By 315 we have another law which specifies that "a husband, (even) without a mandate, should have full power of representation in his wife's (judicial) affairs."[19] This, together with the earlier law privileging the husband over the *curator*, demonstrate a slow but relentless move towards the prioritization of the nuclear family in all aspects of law and finance. This too, likely had a role to play in the evolution of guardianship – but that is a story that belongs in the fourth century. Thus, while the *cura minorum* does not entirely explain the evolution of the *tutela* and of adult female guardianship in Late Antiquity, it and its adoption may provide one piece of the puzzle and offer a few hints at another, to which we shall return in more detail in the final chapter.

[18] *P. Princ*. II 38 (woman who has both); *CPR* VI 73, two sisters with κυρίοι and not a *curator*; *P. Graux*. 17-19 (two sisters with their brother as their κυρίος, and no *curator* despite mentioning that they are underaged.)
[19] *CJ* 2.12.21, 2.44.2.

5.1.1.2 Women as Guardians in Law

One indication of the growing prioritization of the nuclear family and of the increasing rights of women is the fact that from at least 390 the law began to allow women to be guardians for their own minor children, as had been the case in Hellenistic law.[20] *CTh* 3.17.4 specifically states that widows who reached the age of majority could take on the *tutela impuberum* over their children, provided they officially declared that they did not intend to re-marry. This stands in stark contrast to *CJ* 5.35.1, from 224, which states that "Managing a tutelage is a duty reserved for males, such a responsibility being beyond (the capacity of) the gender of womanly weakness."[21] Evidently, the question had already been raised (by a certain Otacilia, the recipient of this rescript) in the early third century, but it took until the end of the fourth for the right of guardianship to be confirmed for women in the law. Presumably, women were either actively seeking this ability or were already taking on the responsibilities relating to guardianship in the meantime.

Returning to *CTh* 3.17.4, there is no discussion of whether the woman herself might have had a guardian, which is noteworthy since the law clearly stated that those *in tutela* themselves could not be the *tutor*/*tutrix* of another.[22] The implication is that, having reached the age of majority, and having been both married and widowed, the woman in question would clearly have neither a *curator* nor a husband-guardian. On the other hand, if a woman who had made such a declaration and had been officially accepted as the *tutrix* of her children, then later received a proposal of marriage, she did not have to give up the role. Instead *CTh* 3.17.4.2 stipulates that her new husband would be held liable if she neglected or defrauded the property of her children from

[20] *CTh* 3.17.4, *CJ* 5.35.2 (390); Méléze Modrzejewski (2014) 328-329.
[21] *CJ* 5.35.1 (Trans Frier); "Tutelam administrare virile munus est, et ultra sexum feminae infirmitatis tale officium est."
[22] *CJ* 5.30.5.

her first husband. Again, husbands are evidently envisioned as having substantial power over their wives' financial affairs.

5.1.2. The *Ius Liberorum* in Law

The *ius* continues to figure in law significantly later than the *tutela mulierum*, and while interpretations of the later instances may be more nuanced than scholars have previously accounted for, it too seems to have disappeared from law codes over the course of Late Antiquity, only this time in the early fifth century. The *ius liberorum*, specifically as the exemption from the *tutela mulierum*, is often seen to have caused not one, but two key moments of social change in the application of the *tutela*.

The first change occurred at its origin, when Augustus declared that the birth of sufficient children would exempt a woman from guardianship. This marked the first non-religious exemption to the *tutela* and fundamentally changed the Roman legal view on guardianship. Nevertheless, as we saw in chapter 2, the *ius liberorum* did not just grant women freedom from guardianship, it also granted couples – i.e. both men and women – various financial privileges, including the right to inherit more than a tenth share from their spouse. The *ius* is thus noteworthy for its revision of contemporary inheritance law as well as guardianship practices.

Beyond a shadow of a doubt, as an exemption from *tutela*, the *ius* was a novel innovation in the wider Mediterranean legal sphere too. Most other peoples had some form of oversight or legal control over their adult women, and none of them offered an exemption. As a result, when Roman law began to spread across the empire, this exemption, and the general idea that an adult woman could function entirely independently, spread too. At the same time, it also had the unintended consequence of linking guardianship to marriage, as there was no way to be free from it except for by a fruitful marriage.

The second moment of change caused by the *ius* is widely regarded as a law of 410, which is said to have abolished it entirely. The law exists in both the *CTh* and in the *CJ*, although in the former it was split into two. [23] The latter is most commonly cited in this context, since on first reading, it does suggest a major shift in the way that the *ius* was conceptualized. Before we turn to the text of the law, it is important to remember that for both the inheritance and the guardianship provisions, the *ius* was self-executing, meaning that no paperwork was required as long as the couple met the requirements of the law. However, like anything else, people could, and evidently did, petition the emperor for the *ius* if they did not meet the requirements to gain it automatically. And there must have been many such petitions, because 8.17.3 suggests that the imperial office no longer wished to be overwhelmed with such requests:

Idem aa. Isidoro praefecto Urbi.
Nemo post haec a nobis ius liberorum petat, quod simul hac lege detulimus. Et cetera.
Dat. prid. non. Sept. Varane v. c. cons.[24]

Read alone, this does indeed sound like the *ius liberorum* was not abolished per se but that its rights were given to everyone and that all women were free to do away with their guardians, with the result that all adult women would not have needed a guardian.

However, it is not as straightforward as this, because the *tutela* is not the context of this law. Rather the inheritance provisions between spouses are, as 8.17.2 shows us:[25]

Impp. Honorius et Theodosius AA Isidoro praefecto Urbi.
In perpetuum hac lege decernimus inter virum et uxorem rationem cessare ex lege Papia decimarum et, quamvis non interveniant liberi, ex suis quoque eos solidum capere testamentis,

[23] *CTh* 8.17.2-3; *CJ* 8.58.1
[24] The same Augustuses (Honorius and Theodosius II) to Isidore, the prefect of the city. After this, nobody shall petition us for the *ius liberorum*, because we bestow immediately by this law. Etcetera. Given on the fourth of September in the consulship of Varanes, *clarissimus*. (4 Sept. 410). On this, *CJ* 8.57.2 reads similarly.
[25] *CTh* 8.17.2 and 8.17.3 were promulgated on the same day, from the same place, and to the same person, so they likely were originally part of the same constitution, before the editors of the *CTh* got a hold of them.

nisi forte lex alia minuerit derelicta. Tantum igitur post haec maritus vel uxor sibi invicem derelinquant, quantum superstes amor exegerit.[26]
Dat. prid. non. Sept. Varane v. c. cons.

At the same time the order is evidently backwards. Theodosius states that husbands and wives can inherit from each other without limit, regardless of the number of children they have had, and then that there was no longer a need to petition for this inheritance benefit, as it was bestowed universally by this law. Combined with a third portion of the same law which only appears in the *CJ*,[27] the law appears to be attempting to streamline and optimize the system of petitions to the emperor.

This, in fact, harks back to a law only a few years earlier, from 396, in which Arcadius allowed everyone to petition for the *ius*, if they did not meet the standards to be granted it automatically through the birth of sufficient children: "*sancimus, ut sit in petendo iure liberorum sine definitione temporis licentia supplicandi, nec inplorantum preces aetas vel tempus impediat, sed sola miseris ad poscendum auxilium sufficiat desperatio liberorum*."[28] Evidently the response must have been overwhelming, as only years later, the need to petition was entirely abolished. Nevertheless, the remainder of the law, with its focus on inheritance suggests that this case was not particularly concerned with freedom from the *tutela* or other rights and privileges that this may have brought women specifically. Far from it. Instead, this is yet another change to prioritize the

[26] The Emperors Honorius and Theodosius II, Augustuses, to Isidorus the prefect of the city. We decree that by this law the rule of the tenth between husband and wife from the *Lex Papia* shall be abolished for ever, and although they have not brought forth progeny, they may also take the full amount of each other's estate, unless another law happens to diminish their portion of the estate. Therefore, from now on, husbands and wives shall leave to each other as much as their current love requires. Given on the fourth of September in the consulship of Varanes, *clarissimus*. (4 Sept. 410). *CJ* 8.57.2 reads similarly.
[27] *CJ* 1.19.6.
[28] *CTh* 8.17.1; "We allow that there shall be the right of supplication by petition for the *ius liberorum* without time limit, and neither age not time shall impede the requests of the petitioners, but their despair of having children alone shall be enough to request help."

finances of the nuclear family and to reduce the limitations of the Augustan laws. Whether the freedom from the *tutela* was implicated in all this is unclear – it is certainly never mentioned.

However, it would still be incorrect to say that the *ius* was completely abolished at this point, since certain other benefits that it contained appear to have maintained their legal weight after this date – that is to say, we cannot take this law of 410 as a blanket abolition of all of the rights and benefits which had been collected under the title *ius liberorum* or for which the three to four children was a prerequisite. The *SC Tertullianum*, for example, gave women with the *ius liberorum* the right to inherit from their intestate children.[29] This qualification on inheritance - that only mothers with the *ius* could inherit from their intestate children - remained in place after 410 and was only abolished in 528 by Justinian.[30] This, together with the *ius*'s inclusion in the *CJ* (8.58) at all, implies that it continued to have legal meaning into the sixth century. Whether it had any meaning for the *tutela* after 410, or even up to 410, remains to be seen.

What is remarkable, however, is that specific references to the right of children (δικαίῳ τέκνων) in the negative guardianship formulae in the papyri disappear by around 389, just before the point at which imperial lawmakers see fit to invite everyone to apply for the benefit in the context of inheritance.[31] The sweeping terms used in the 410 law also give pause. There is no reference to *sui iuris* status and no mention of age, though marital status can be assumed, given the topic. Given the context of inheritance, it might be reasonable to think that this would generally

[29] *Institutes* 3.3 dates the *SC Tertullianum* to the reign of Hadrian and the consulships of Tertullus and Sacerdos, but scholars have debated this. Cf. Digest 36.8.11; 38.17.2; Ulpian *Tituli ex corpore* 26.8, Paul *Sententiae* 4.9; Further on dating, see Meinhart (1966) 100-141, (1969); Frier and McGinn (2004).

[30] *CJ* 8.58.2, "Illam iniuriam, quae contra matrem defuncti vel defunctae prateritis fiebat temporibus, pro iustitiae ratione amputamus et legitima iura, quae ex Tertulliano senatus consulto ei praestantur, omnimodo eam habere sancimus, licet tres liberos ingenua vel libertina quattuor minime pepererit." "In accordance with justice, we curtail the wrong committed in the past against the mother of a deceased male or female child and allow that she has as default the legal rights granted to her by the *SC Tertullianum* even though she has not borne at least three children if she is a free-born woman, or four if a freedwoman."

[31] See Appendix 1.

involve older people, but the number of laws on the inheritance rights of unborn children, among other topics, are a reminder that death and inheritance were not only the purview of independent adults. Young adults, too, stood to gain from a universal expansion of the rights of the *ius liberorum*. So, were these inheritance rights associated with the *ius* really given to *everyone*, as the law says? Did that include people who were *in potestate?* Or perhaps just all married people, regardless of their legal independence? In that case, was marriage now the true legal differentiator instead of *sui iuris* status or even full majority? Let us turn again to some papyri to get a sense of how this all might have actually functioned.

5.2. Late Antique Guardianship in Practice

A return to our primary source material, both documentary and, on rare occasion, literary, provides us with three overarching categories of women to consider when answering these questions. These include (1) women who specifically mention they are working with the support of a guardian, (2) those who specifically mention that they are operating without a guardian, and (3) those who do not mention the presence, absence, or existence of a guardian at all. In the decades immediately after the *Constitutio*, guardianship in the papyri seems to have been a syncretic hybrid of the pre-212 Hellenistic and Roman forms of adult guardianship. In practice, the new citizen women's experience with guardianship never seems to have been a traditional Roman one. In fact, the papyri suggest that, as the centuries passed, women's experience with guardianship came to be quite different than before. In the following sections, we shall discuss the nature of guardianship from the fourth century onwards in order to better understand its relationship to the old Roman *tutela mulierum* that Gaius describes, as well as how modern scholars came to the narrative of 'decline and disappearance'.

5.2.1. The Evolution of the Negative Formulae

As we saw in the previous chapter, the negative formulae underwent a general evolution in the centuries following the *Constitutio*, with five key moments of change. The first of these was the disappearance of the phrase κατὰ τὰ Ῥωμαίων ἔθη by the end of the third century, with the conclusion that such a phrase must have become redundant in the post-212 period, when everyone was Roman.

Returning to a key question raised in the previous chapter, then, we must ask ourselves, why claim exemption from a legal category - the *tutela* - which apparently no longer existed? What was the legal or even practical basis for the inclusion of such negative formulae in the papyri? And what can we learn about the type of guardianship from which they were claiming exemption given how these formulae evolve?

To answer these questions, we shall turn to the four remaining changes to the negative formulae. The first of these sees the references to the right of children (τέκνων δικαίῳ) also disappearing by the end of the fourth century. Second, from the end of the fifth century, we see a new addition to the formula, the word ἀνδρός, or husband, leaving us with women who do not have a "husband-guardian" (χωρὶς κυρίου ἀνδρός). Fourth, around the same time, the word, χωρὶς, is occasionally replaced by ἄνευ, as in Formulae K, L, and M, and the wording generally seems to become much looser and more flexible (ἄνευ κυρίου ἀνδρός). [32] Fifth and finally, we even see the word κύριος dropping out entirely in the seventh century, leaving us with Formula M (ἄνευ ἀνδρὸς χρηματίζουσα), something quite different than what we started out with in the early third century.[33]

[32] *P. Lond.* V 1731 (585), V 1855 (493); *P. Münch.* I 11(586); This seems to be a specifically regional shift, as all three texts which contain this formula come from Syene. None the less, all three do contain the κυρίου (αὐτῆς) ἀνδρὸς combination which otherwise characterizes the negative formulae from around the same period.

[33] *PSI* VII 773 ἄνευ ἀνδρὸς χρηματίζοὺ[σα] (5 Jul 611); *Stud. Pal.*[2] III.83 ἄνευ ἀνδρὸς χρηματίζ(ουσα) (7th century); no regional links apparent here.

5.2.1.1. The Right of Children

Arjava has made broad claims about the end of the *ius*, saying that references to it disappear "in the second quarter of the fourth century"[34] and that the negative formulae which survive past 325 are "likely mere obsolete survivals, preserved by ignorant people or conservative scribes."[35] However, as we have seen, the negative guardianship formulae, which had only ever been used to claim the *ius*, continue to be present in the Greek papyri into the seventh century. Arjava evidently assumes that once the mentions of Roman law and the explicit reference to the right of children fall out, the negative formulae no longer refer to the *ius liberorum*. Once these mentions of Roman law and children fall out of the negative formulae and we are no longer left with an explicit and unambiguous reference to the *ius* or the *tutela*, the assumption seems to be that all other traces of the Roman practice are gone too, and that adult female guardianship has been entirely abolished.

But how then are we to explain texts from later centuries that claim an exemption from guardianship or ones which contain even the positive formula? Are they "mere obsolete survivals" as Arjava believes? I would argue not. The ongoing evolution of the negative formula suggests that the phrase was a living one, that is, not a fossilized formula from a bygone legal age. Additionally, the evolution of the phrase to specifically include husbands shows that since the practice of guardianship had evolved to involve primarily married women with their husbands as guardians, the exemption too evolved to reflect this change.

5.2.1.1.1. Case Study – *P. Charite* 8 (= *Stud. Pal.* XX 98 – 27 May 348)[36]

In this text, which is our latest example of a negative formula which includes both a mention of the κυρίος and of the τέκνων δικαίῳ, we have a woman named Aurelia Charite. Immediately, we

[34] Arjava (1997) 27.
[35] Arjava (1996) 120.
[36] Also in Harrauer (2010) 206.

learn that she is from Hermopolis, she is *clarissima*, which is quite normal, and that she is literate, which is not a particularly common inclusion in the initial identification section of a contract. Following this, we see that she claims the *ius*, through the right of children, without any mention of a husband at all. Like most papyrological documents that refer to guardians from this period, this is not one in which a guardian would have actually been required according to Roman law, that is, it does not see the alienation of *res mancipi*, nor is Charite making a will or giving a dowry. This fact has led scholars, such as the second editor of this text, Worp, to refer to these types of unnecessary inclusions as "Status-Sucherei" or status-markers, the implication being that the formula was included not for legal reasons, but as a marker of status. There is no clear evidence of this being a status marker, rather, it seems more likely that the nuances of the *tutela mulierum* were not well understood, and guardians were generally included when and where they would have been in the Hellenistic contracts.

Αὐρηλία Χαρ[ίτ]η Ἀμαζονίου ἀπὸ
Ἑρμοῦ πόλεω̣[ς τ]ῆ̣ς λαμπροτά̣τη̣ς
εἰδυεῖα γράμμ[ατα] χωρὶς κυρίου χρηματίζ̣(ουσα)
δικαίῳ τέκ̣νῳ[ν] Φλ(αουίῳ) Δωρατιανῷ
ἱππῖ Μαύρω[ν σ]κουταρίων τῶν ἐν
τῇ (αὐτῇ) Ἑρμοῦ π[όλει] δ̣ιᾳ̣κειμένων ὑπὸ
Ἀλμεσιανὸ̣[ν] πραιπόσιτον χαίρειν.
ἀπέσχον πᾳ̣[ρὰ] σοῦ τὴν κατ᾽ ἢ ἡμι-
σαν τῆς σπ̣ο̣[ρ]ᾶς ὧν ἐγεώργησάς
μου ἀρουρῷν δέκα ἐπι ἡμισίᾳ
ἀντὶ τῶν φόρων περὶ μὲν Ἄμμω-
νος ἀρουρῶν τριῶν, ἐν δὲ τῷ
ἕλει ἐπὶ τῆς Νεκρικῆς δ̣ιῴρυ̣[γ]ο̣ς
ἀρουρῶν ἑπτὰ γενήμ̣ᾳτος τ[ῆ]ς
εὐτυχοῦς ζ ἰνδικτίονο[ς ἐκ πλή-]
ρους, τῶν δημοσίων παν[τοίων]
τελεσμάτων ὄντων πρ[ὸς ἐμὲ]
τὴν γεοῦχον. ἡ ἀποχὴ κ[υρία καὶ]
ἐπερωτηθεῖσα ὡμολόγ̣[ησα.]
ὑπατείας Φλαυίου Φιλίπ[που τοῦ]
λαμπροτάτου ἐπάρχου τ[οῦ ἱεροῦ]
πραιτωρίου καὶ Φλαυίου Σαλ̣ι[ᾶ τοῦ]

λαμπροτάτου μαγίστρο[υ ἱππέων]
Παῦνι β. (hand 2) Αὐ(ρηλία) Χαρίτη [πεπλή-]
25 ρωμαι ὡς πρόκ[ειται][37]

This text makes up a part of an entire archive in which we can identify Charite's hand, and perhaps even the hand of her mother, Demetria. In our text, the second hand which appears on lines 24 and 25 has been identified as Charite's own.[38]

We also know a great deal more about Charite from the remainder of her archive. Worp has estimated that she was likely born around 300, based on the date at which she began to pay tax, as captured in *P. Charite* 13. Our text is the latest securely dated reference to her so we can only say with confidence that lived until at least 348. By this point, her father had been long dead (since Sept 316). About her husband, we are less sure. We do know that she was married (*P. Charite* 2-3). It appears that her husband was likely a man named Aurelius Adelphius, son of Adelphius, although this is never clearly confirmed in any of the texts of the archive. Whoever he was, he was a gymnasiarch and a member of the bouleutic class. If her husband was Adelphius, it would seem that Charite outlived him by many years, since the papyri that mention him end in the 320s and hers continue to 348. This may explain why he is not mentioned here in *P. Charite* 8, since when she wrote this text, she would have been a widow. She also appeared to have had

[37] 3. l. εἰδυῖα 5. l. ἱππεῖ : ἵππι papyrus 8. l. ἐ<μὲ> 8-9. l. ἡμί|σ<ει>αν 10. l. ἐφ' 10. l. ἡμισείᾳ 15. ἴνδικτιονο[σ papyrus 20. φλαυΐου papyrus 22. φλαυΐου papyrus

Trans. *P. Charite* 8: Aurélia Charité, Tochter des Amazonios, aus dem sehr strahlenden Hermupolis, der Schreibkunst mächtig, ohne Vormund auftretend aufgrund des ius liberorum, an Flavius Doratianus, Reiter der im vorerwähnten Hermupolis lagernden Mauri scutarii unter dem Befehl des praepositus Almesianus, gegrüßt. Ich habe von Ihnen die mir zukommende Hälfte der Einsaat empfangen statt der Pacht für die zehn Aruren, die Sie von mir auf Halbpartbasis bebaut haben, d.h. drei Aruren bei Ammonos, und sieben Aruren im Bruchland bei der Totengracht von der Ernte der glückhaften 7. Indiktion, vollständig, unter der Bedingung, daß die staatlichen Steuern von allerlei Art auf mich, die Landeigentümerin, drücken. Diese Quittung ist bestimmend, und in der Beantwortung der formellen Frage habe ich bejahend geantwortet. Im Konsulat des Flavius Philippus, vir clarissimus, praefectus praetorio und des Flavius Salia, vir clarissimus, magister equiium am 2. Payni.
(2.Hd) Mir, Aurélia Charité, wurde vollständig bezahlt, wie oben beschrieben wurde.

[38] *P. Charite* 1, 6-7.

several children. From this text and *P. Charite* 33, we learn that she claimed the *ius liberorum* which would lead us to conclude that she had had at least three, although only two can actually be identified in the papyri with any degree of certainty. It is entirely possible, therefore, that she and her former husband had petitioned for the special application of the *ius*.[39]

As we can see in Appendix 1, the negative formulae also evolved over time, but it is truly difficult to capture all such possible evolutions by only looking for mentions of guardians. For example, *P. Coll. Youtie* II 83, which dates to 12 Dec 353 includes the Formula E, χρηματίζο[υ]σα τέκ[ν]ων δικαίῳ. While there is no mention of the presence of absence of a guardian, this is the second half of the more common Formula D, χωρὶς κυρίου χρηματίζουσα δικαίῳ τέκνων, which we find in *P. Charite* 8. It is ironic that the truly last reference to the "right of children" in the identification section of a papyrological text does not even mention the guardian at all.

In all these changes, it seems relevant to highlight certain key points. As we saw in the previous chapter, sons and fathers disappear as guardians by the latter half of the third century. A single instance of a brother as guardian, in *P. Graux.* II 17, 18, and 19, brings that practice into the fourth century, but as those women are minors, this may not even be an instance of the *tutela* at all. The next latest, surer, example is from 231, some eighty years earlier.[40] So brothers and sons stop appearing as guardians in the papyri, a little before fathers do, but all by about 260. While we might say that this is the result of the *Constitutio Antoniniana*, its result was that husbands became the standard guardian, something which was not at all Roman in nature. The positive formula which named a husband persisted alongside the much more frequent negative formulae with references to the right of children for almost another 100 years, until about 350. After this date,

[39] Worp (2005).
[40] *BGU* VII 1657.

references to either the positive formula, with or without a husband, and the negative formula, now often with reference to a husband, become much rarer. There are almost no references to guardians at all in the fifth century, but the numbers do pick up a little in the sixth and the seventh.[41]

This drop, might, on the face of it, look significant. However, as we discussed in the introduction, the number of texts we are dealing with here are enough to give an impression of what was happening with guardianship, but far too few to get statistically significant figures, especially in a vacuum. It is enlightening here to look at the relative number of texts with mentions of κυρίοι in comparison to the total number of published Greek documentary papyri from any given period. A search through the Duke Databank of Documentary Papyri (DDBDP) for Greek papyri – obviously documentary – from 300 to 400, yields 3017 hits. From the years 400 to 500, however, the number drops by almost 79% to 645. Then, from 500 to 600 this number more than doubles to 1315. From 600 to 700, the number goes up again, to 2046. Thus, while the fifth century certainly does seem to have fewer references to guardians, there are also far fewer published papyri. On the one hand, some of this can be attributed to preservation and modern publication bias, since late antique papyri have historically not been prioritized. On the other hand, the myriad of crises and upheavals across the empire, from the barbarian invasions of the fourth and fifth centuries to the Justinianic Plague from 541-549, created social unrest and a general decline in documentary writing across the empire.

In this context, it might be reasonable to think of language as having played a role in the drop in attestations to guardians or the *ius* in the papyri, especially since, in terms of women's letters, a study by Bagnall and Cribiore also found a marked decease in the number of Greek letters

[41] See appendices 2, 4, and 5.

written by women from the fourth century onwards. They are able to explain this change not as one linked to writing and preservation, but to language. In fact, they find that in the fourth century, women by and large cease to write letters in Greek and begin instead to overwhelmingly use Copic for their personal communication. Since that study was so conclusive, the issue of language is one that warrants examination here. One of the difficulties of looking at literacy, language use, and bilingualism, however, is that fact that we are dependent solely on written sources. This can hardly be surprising. As mentioned before, however, these sources have an inherent bias towards a wealthier, higher-class group of people.

Another difficultly comes from the scribal nature of ancient society. We frequently see contracts which were written by a person unrelated to the transaction because the signatory "did not know letters". We also see contracts translated from one language to another to ensure that all the parties know what is being said,[42] and even letters which request that the letter be read and translated to the recipient.[43] Unless it is made clear in the contents of the letter itself, then, it is nearly impossible to know what the author or signatory of a document knew of language, reading, or writing. A signature on a document is thus not necessarily a guarantee that the signatory knew that language at all, whether to speak, read, or write.[44]

Nevertheless, Egypt in particular seems to have been a highly bilingual environment since the Ptolemaic period. With the conquest of Alexander the Great, we see language linked to law

[42] *P. Oxy.* LXIII 4397; '"and when all the terms had been read and translated to them and had satisfied them, they subscribed by agency of Pamouthios at their request because they are illiterate' (it is not necessary to specify that "illiterate" here clearly means illiterate in Greek!)" (Trans and comments Fournet (2020) 21.) Contracts could evidently be written in either Latin or Greek, but other languages seem not to have been an option, although Bilingual Greek/Coptic contracts show that people might prefer to identify themselves and sign their names in a language they did know.
[43] Bülow-Jacobsen and McCarren (1985) 71–79.
[44] Wipszycka (1996) 107–129; Torallas Tovar (2010) 28.

and to the legal oversight of women.[45] To be sure, there was a period of little to no written Egyptian output between the end of Demotic script and the beginning of Coptic, but the very fact that there was a resurgence of the Egyptian language in Coptic in the third century, means that we can say with certainty that the language was in common and regular oral use even when we have no written record of it. The rise of Coptic as a script for the Egyptian language has traditionally been linked to the rise of Christianity, in terms of both its inception and its spread. The Church provided a need for written material beyond the official, public sphere, where necessity dictated that Greek persist. As the church was the great equalizer – for men at least – there came to be a need for a written language for people who did not know Greek. Coptic – what had been the solely oral Egyptian language tradition – thus became the primary language of the church in Egypt, with the majority of key Christian literary texts being translated from Greek into Coptic, and others being written directly in Coptic.[46] What has received rather less attention until recently is the use of Coptic in other spheres of life and in other genres of texts.

Coptic was also used in documentary and epistolary texts. While we have only one Coptic letter from the third century, we have many more from the fourth century onward.[47] Letters are the second most common genre of Coptic texts after the religious. [48] The bilingual nature of the

[45] For example, Apollonia, who was a Hellenized Egyptian businesswoman attested in the Dryton archive, conducted her business independently as an Egyptian woman according to former legal norms until a Greek notary's office opened in her town, at which point she was accompanied in contracts by her Greek husband with the very standard positive formula, including a mention to her husband. See Clarysse (2010) 53.
[46] Torallas Tovar (2010) 30-35.
[47] Fournet (2020) 9-10, note 21.
[48] It was quickly picked up outside of religious contexts too. Letters from Kellis attest to the fact that in the mid-fourth century, Coptic began to be used for personal letters too. As a source type, the relative volume of private letters remains stable around ten percent of the total volume of Greek documentary papyri from the late Hellenistic period (second century) through the Roman period, and into Late Antiquity (fourth century). Beginning in the fifth century, however, and carrying on into the sixth and seventh, the overall relative number of personal letters drops by a couple of percentage points. What is striking however is that women's letters, which had made up about one percent of the total number of Greek documentary papyri over the previous five or six centuries, now drops to about one tenth of a percent of the total number of Greek papyri. Whereas Greek personal letters as a whole see a modest reduction in relative numbers – personal letters written by women in Greek drop by ninety percent. Bagnall and Cribiore characterize this

contexts in which some of these early letters are found suggests that their authors were not only bilingual, but on some level tailoring their language choices to the genre and social context of the document they needed to write. For example, the corpus of texts from the late third to late fourth centuries which was found in a secular context in the Dakhleh Oasis demonstrates that legal, financial, or administrative documents were generally, if not always, written in Greek, but that private letters could be written in either Greek or Coptic with no apparent rationale for the choice of language. This split suggests a public/private divide that was tied to language. While Greek could be used for private communication, Coptic was not yet suitable for official matters. Fournet notes exactly this, saying that "during the first three centuries of its history, Coptic was limited exclusively to nonregulated written exchanges."[49]

As far as we can tell, the use of Coptic for documentary texts begins with a hybrid type of document: a Greek-style loan receipt presented in the form of a letter. *P. Kellis* VII 123 dates to between 355 and 380 and takes the form of a letter, while also including the key aspects of a Greek loan: the amount received, the amount due, and the mention that this document is a guarantee of payment.[50] Nevertheless, there is very little evidence of further legal or even quasi-legal texts like this in Coptic for the next almost 200 years.[51] In the first half of the sixth century, however, things

---

as "women simply [disappearing] as writers of letters in Greek after the fourth century." At the same time, Coptic begins to be used as a letter-writing language. From the fourth century onward, women's letters seem to make up about one percent of the overall Coptic documentary papyri as well – and women also feature significantly as the addressees of Coptic letters written by men too, both within and especially outside of monastic contexts. In the volume of letters from Kellis, for example, four or five of the total of thirty-five letters were written by women, and most of the remaining twenty-nine or thirty were addressed to women by travelling male family members. In monastic contexts the numbers shift somewhat but are still significant. See Bagnall and Cribiore (2006) 19-21.

[49] Fournet (2020) 3. See Choat (2006) 178-185 and *P. Kellis* VII for a list of third to fifth century Coptic texts.

[50] *P. Kellis* VII, 123 (355-380); Fournet (2020)19-20. This is a one-of-a-kind example, and very early comparatively speaking.

[51] MacCoull (1997: 351) refers to this as the "paucity of pre-conquest Coptic (documentary) documents." She blames this phenomenon on preservation bias, and the early archaeological tendency to push through to the classical material without a care for the upper, later layers. Fournet (2020: 24-25) does not accept that this is sufficient to explain why only texts of a legal nature are lacking. There also seems to be no law forbidding the use of other languages like Coptic in legal contexts, and bilingual or fully vernacular papyri from elsewhere in the eastern empire support the jurists'

change. We begin to see legal documents written in Coptic as well as bilingually in both Coptic and Greek in the century leading up to the Arab conquest, and that tendency persisted and even grew thereafter once Arabic replaced Greek as the state language.[52] The use of Coptic for legal texts does not become common until after the conquest, however, and thus cannot contribute to the decrease in the number of attestations to guardians in the Greek contracts.

5.2.1.2. Without a Husband

One of these negative formulae, Formula J, which rose to popularity around the fourth century, includes the word ἀνδρός in the negative formula, that is χωρὶς κυρίου ἀνδρός or "without a husband-guardian". [53] Much has been made of the appearance of the word ἀνδρός and of husbands in a supervisory role over their wives. Beaucamp and others both before and after her understand it as a major shift and seek to understand what prompted the change. The jurist, Modestinus, in *Digest* 27.1.1 notes: "*Non licet curatorem esse sponsum sponsae, ut ait senatus: quod si talis datus erit, excusabitur*."[54] While he is here referencing a *curator*, the earlier discomfort of having a woman under the legal control of her husband – as a result of the decline of *in manu* marriages from the early Empire, most women were not– seems to have spread to modern scholars.

Because this shift towards prioritizing a husband as a woman's legal representative correlated chronologically with the widespread rise of Christianity in the Roman Empire, modern

---

conception that an obligation can be made by the oral answer to the formal question, no matter the language used, provided the two parties understand each other. *Institutes* 3.15.1; *Digest* 32.11. pr, 45.1.1.6. Fournet (2020: 39-48) argues that in the context of language usage in the Roman legal sphere, Egypt is unique in that it retained Greek and Latin as the sole legitimate legal languages throughout almost the entirety of the Roman occupation. He posits that this is a result of significant dialectical variation in Coptic, which would have rendered it less universally precise in the way that Greek or Latin could be, as well as the artificial nature of Coptic as a written language.

[52] Fournet (2020: 77, 146) suggests that there are only about fifteen reliably datable Coptic legal texts prior to the Arab conquest, and that true contracts which saw a legitimate and permanent transfer of property appear only after the Arab conquest. He goes on to propose that the growing role of clergy in legal settings helped to advance the use of Coptic in the broader legal environment.

[53] See appendices 1 and 5.

[54] *Digest* 27.1.1.5, "It is not permitted for a husband to be the *curator* of his wife (as the senate has decreed) if he should be so appointed, he should be released."

scholarship came to be focused on the role that Christianity may have played in this change, given the rhetoric of feminine submission that was so common in the church. However, the appearance of husbands as guardians or legal representatives of their wives is not as significant a shift as it is made out to be. We have a long history of exactly this kind of formula in the positive guardianship form and around the Hellenistic world. Positive formulae with husbands acting as guardians were common in Greek contracts as far back as the third century BCE and throughout the history of Greek guardianship in Egypt: "μετὰ κυρ[ίο]υ τοῦ ἀνδρός".[55]

What then of women who did not have husbands? Widows[56] figure prominently in early Christian literature and narratives, where they seem to hold a new and unique, quasi-public place within the church. At least some of this must be because of the enormous amount of material support provided by these widows to the church and its clergy and associated institutions, such as monasteries and hospitals. Women such as Melania the Elder, Magna of Ancyra, Paula, Fabiola, and more figure prominently in the writings of the Church fathers for their charitable giving and financial support.[57] Beaucamp notes how frequently widows show up in the papyri in comparison to married or single women and also describes the documentary context as both a financial and a charitable one.[58] Two questions which have been discussed rather frequently in previous scholarship on widows in early Christianity are: what was the legal basis that allowed these women

[55] *P. Oxy.* LXVII 4586. Early third century BCE. For more Greek contracts with husbands as guardians, see: *CPR* XVIII 13 (231 BCE); *SB* XXII 15531 (latter half of the second century BCE); *P. Mich.* V 298 (first half of the first century CE); *P. Oxy.* XXXIV 2720 (41-54); *PSI* XII 1322 (118-119); *P. Hamb.* I XIV (209-210).

[56] Kuefler (2015: 44, note 3) says that the Latin term vidua, 'widow', could also mean 'divorcee', that is, it referred to any woman who no longer had a husband. It not entirely clear how this was captured in the Greek.

[57] Pellasius re: Melania the Elder (Palladius, *Historia Lausiaca* 54.1–2); and Magna of Ancyra (Palladius, *Historia Lausiaca* 67.2); Jerome re: Fabiola and Paula (Jerome, *Epistulae* 77.6,). Cf. Cooper (2001) 53–64; Brown (2012) describes several Christian churchmen who depended on the patronage of rich women, using the examples of Priscillian, bishop of Avila (pp. 211–16), Rufinus of Aquileia (pp. 276–80), both briefly, and that of Jerome at much greater length (Chs 16–17).

[58] Beaucamp (1985); she does not go into great detail in *Le Statut de la femme* (1990/1992) either, unfortunately, and only speaks to the restrictions on their agency and the types of legal or social protections they could rely upon.

to unilaterally dispose of family property? And how did they come into that property in the first place?[59] The answers to both questions seem to be closely intertwined. All of the changes already identified for the late antique woman appear to have been magnified in the context of widows. Not only had they already lived the life expected of them, but they had also proceeded through all the established categories of legal supervision. Now, with less pressure to remarry, more rights over their children and marital property, the lessening of male absolute male authority, and greater power over their own finances, including inheritances, dowries, and gifts, widows were in an enviable position.

As we have already established, what we see after 212 looks very much the same as before. The formulae remain the same, Greek remains the contractual language of choice, and fathers, husbands, brothers, and sons continue to act in these guardianship roles. Certainly, some contracts do not mention the relationship of the guardian to the woman at all, hardly surprising if this was a dative guardian or one unrelated. Otherwise, however, contracts with guardians from after 212 remain virtually indistinguishable from those beforehand, despite such a momentous legal change as universal enfranchisement. As time went on, however, brothers and sons featured less prominently in these formulae. As we saw earlier, there is also a small attempt among only a handful of contracts to attempt to distinguish when a woman was specifically operating μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη, that is, "with a guardian who had been given to her according to Roman law".[60] In those, husbands and fathers are overwhelmingly absent, but whether that can be attributed to the "Roman-ness" of them or to the fact that dative guardians were provided when there was no other obvious individual defined in law or custom, is not

[59] Kuefler (2015) 28-29.
[60] *P. Oxy.* XXXIV 2723 (first half of the third century, but after news of the *Constitutio* reached Egypt). A good number of attestations of a Roman dative guardian also exist in the Greek papyri from before 212. Interestingly, husbands and fathers are overwhelmingly absent from all of these examples, which suggest a dative guardian.

immediately clear. Otherwise, however, the guardianship that existed and women's experience with it in the Roman provinces had always included husbands, despite the fact that this was not line with the Classical Roman *tutela*. After 212, having husbands included in this way was what Roman citizens (at least the new ones) considered to be their method of guardianship. To illustrate this, we shall take a closer look at our last example of a husband who is clearly identified as a guardian.

5.2.1.2.1. Case Study – *P. Münch* I 11 (7 October 586) and *P. Coll. Youtie* II 92 (15 May 569)[61]

P. Münch. I 11, a late sixth-century text from the Archive of Patermouthis (which we saw above) shows us a woman named Aurelia Tapia selling part of a house in Syene (modern-day Aswan, in upper Egypt). We see that she is operating alone, χωρὶς κυρίου αὐτῆς ἀνδρὸς χρηματίζουσα, that is "without a husband-guardian", and actually, some lines further, we are given some additional information. The other half of the house, belongs, or rather once belonged, to Iakobos whom she refers to as "ἀποιχομένου μου ἀνδρός", my dearly departed husband.[62] Reading other family documents in this archive, we learn that her husband had died at least three years earlier. In June 583, a dispute by her children about her husband's estate was settled, meaning that Iakobos must have died sometime before that date.[63]

Although Tapia herself was not mentioned in the estate settlement, she says that the half of the house in our contract had been registered to her and the other half to her husband. In fact, in a similar sales contract of hers, from three years before, 30 May 585, we read that that her husband had recently died and again that she and he had joint shares in a house – seemingly the same house

[61] See Appendix 9 for the Greek text and an English translation of both, as they are too lengthy to include here.
[62] Iakobos is referred to in this way elsewhere as well. *P. Münch* I 12 (590-591) uses the same phrase to refer to him in the context of his and Tapia's daughter, Koko, and in *P. Münch* 9 and *P. Lond.* V 1734 (30 May 585) she describes herself as the γαμετὴ τότε Ἰακώβου, or the "former wife of Jacobus" so we can be confident that he was indeed dead.
[63] *P. Münch* 7 and *P. Lond.* V 1860 (23 June 583).

we see here again in *P. Münch* I 11.[64] The situation is thus that she had evidently come into full possession of this house that she had shared with her husband, and then sold 50% of it in May 585 to her daughter and son-in-law, and the other 50% in October 586 (our text) to a man named Kyriakos. Presumably this was (a part of) her share of the estate of her husband, or perhaps, since she is not mentioned in the settlement, it was her dowry and dotal gift which were returned to her management on the death of her husband.

Here too, we can learn something about guardianship. Although there are negative formulae in all of her contracts, Tapia only had two children with Iakobus, Ioannes and Kako. While she did have an earlier daughter, Tsone, whom we shall meet later, with her first husband, it is not at all clear that the *ius* allowed for three or more children borne from different marriages. Remember, the *ius* was something that couples were granted together, and which consisted of further rights and privileges than the exception from the *tutela.* We see more of both of Tapia and Iakobos' two children in the settlement of Iakobos's estate. In fact, in that settlement, although Kako is the one with the legal claim on her father's estate and although she is mentioned, the settlement is drawn up between Kako's husband, Patermouthis, and her brother, Ioannes.[65] His signature at the end of the rather lengthy settlement is also made in both of their names, and he promises to ensure that his wife accepts and holds to the terms of the agreement.[66] Thus, while

---

[64] *P. Münch* 9 and *P. Lond.* V 1734 (30 May 585).

[65] Αὐρήλιος Πατερμοῦθις υἱὸς Μηνᾶ μητρὸς Τσίας ναύτης ἀπὸ τῆς αὐτῆς Συηνιτῶν πόλεως ποιούμενος τοὺς λόγους καὶ κυρίως πράττων καὶ διαλυόμενος ἰδίᾳ αὐθεντίᾳ ὑπέρ τε ἑαυτοῦ καὶ ὑπὲρ Κ[α]κῶτος τῆς εὐγενεστάτης, αὐτοῦ μὲν συμβίου, ἀδελφῆς δὲ τοῦ προγεγραμμένου Ἰωάννου, …
Trans. Porten: "…Aurelios Patermouthis, son of Menas and of mother Tsia, a sailor from the same Syrene, speaking and acting validly and settling on his own authority on both his own behalf and on behalf of Kako the most generous, who is his spouse and also the sister of the aforementioned Ioannes…"

[66] προσομολογῶ ἐγὼ ὁ προγεγραμμένος Πατερμοῦθις, ποιούμενος μὲν τοὺς λόγους καὶ κυρίως πράττων ὑπέρ τε ἑαυτοῦ καὶ ὑπὲρ Κακῶτος τῆς αὐτοῦ συμβίου, ἑτοίμως δὲ ἔχειν ἰδίῳ μου κινδύνῳ καὶ πόρῳ τῆς παντοίας μου ὑποστάσεως παρασκευάσαι τὴν αὐτοῦ ἐλευθέραν ____ στέργειν καὶ ἐμμένειν διηνεκῶς τῇ δυνάμει τῶν παρουσῶν διαλύσεων καὶ μηδὲν παρασαλεύειν ἐξ αὐτῶν τὸ σύνολον.

legally the inheritance is Kako's, the law seems not to have objected to husbands simply functioning in their wives' name, whatever the reasoning for it.[67] Here, both Tapia's lack of three or more children and Patermouthis' actions on behalf of his wife serve to further support the idea that guardianship and legal authority had come to be intertwined with marriage by this time. Simultaneously, papyri like these and like *P. Charite* 8 above have led scholars to envision a world in which, from the mid-fourth century onward, the χωρὶς formula came to be a synonym for widow.[68] If guardianship was a synonym for marriage, freedom from it simply meant a marriage which had run its course.

A second sixth-century contract complicates that picture somewhat.[69] It is a loan document dated 15 May 569, and it records that a woman named Martha, a salted-fish seller, received a loan of nine gold carats and put up her fifteen-year-old sister Prokla as security for the debt. Interestingly, the text tells us that this loan is an effort to get Prokla out of a similar situation, in which their late father, Menas, had given Prokla as the guarantee for a loan of one solidus. Using the nine gold carats she borrowed, Martha paid off her father's loan and freed Prokla from that situation, only to turn around and put her up as security for the new loan. Martha identifies herself by a patronymic and a matronymic, and notes that she has no guardian, using the then-common formula, χωρὶς κυρίου ἀνδρὸς. There is no mention of widowhood or a husband, and, if she had

---

Trans. Porten: "I, the aforementioned Patermouthis, acknowledge also, speaking and acting validly for both myself and for Kako my spouse, that I am ready, at my own risk and and by means of every kind of property of mine to cause my own wife to embrace and abide in pertetuity by the authority of the present settlements and to undermine none of them at all."

[67] If, as Bagnall and Cribiore (2006) suggested, there was a gendered difference in bilingualism by this period, this may have also been a reason for husbands to manage the contracts on their own, since they had a better grasp of the language. Having said that, the scribal nature of Egyptian society combined with the low levels of literacy throughout Egyptian history, mean that even someone who was not functional in Greek at all would likely not have had a difficulty in getting a document written for them in Greek – although by this period t would have had to have been signed on their behalf by someone who did.

[68] Beaucamp (1992) 193-266; Arjava (1996) 147-149.

[69] *P. Coll. Youtie* II 92. (aka *P. Cair. Masp*. I 67023) See also *FIRA*^{2} III 12 (1943) Keenan (2014) 271. See Appendix 9 for the Greek text and an English translation, as it too is too long to include here.

male assistance of any sort, it was not recorded in the contract. In fact, Martha herself acts as if she were the guardian of her sister, an action which we see from more and more women in these later centuries, particularly in the absence of a living father, although usually that role was taken on by the mother, not by a sister.[70] Not only is this contract interesting for the purpose of discussing a novel instance of women's agency, but it is also a very pertinent reminder that legal practice did not always follow the prescriptions of the law. Putting up children as pledge for a loan - as Prokla was - had been forbidden by a 556 *Novel* of Justinian, some thirteen years earlier.[71]

Unfortunately, we do not know anything concrete about Martha's marital status, but we can surmise that she was unmarried, since by this point husbands are regularly mentioned in contracts in both the positive and negative formulae. Widowed women were "without a husband-guardian", so we see them showing up in the papyrological record more frequently. They had to manage their own affairs, precisely because they did not have a living husband to do so on their behalf. The same must have been true of otherwise unmarried women who did not have a living father. Supporting this theory, the aforementioned *Novel* (134.9) groups widows and never-married women together for forensic purposes in stark juxtaposition to married women who are encouraged to respond to lawsuits through their husbands.[72] Since Martha noted that her father had passed away, we can be sure that she was not under the supervision or control of her father either. Thus, while she had more agency, she also became responsible both for her sister and for the family debts.

That being said, the argument that all women without a husband-guardian (i.e. who use the negative Formulae J, K, or L) must have been widows rests on the fact that none of the women

[70] Beaucamp (1992) 182.
[71] *Novels* 134.7.
[72] *Novels* 134.9.

who note the absence of a *tutor* using the husband-guardian wording can be shown to have a living husband, while some, like Tapia, can clearly be shown to be widows on the basis of internal evidence or other, related texts. However, if we return to the contracts of the previous centuries, we can quickly see that even when the *ius* was explicitly referenced, husbands were rarely, if ever, mentioned, except in something like the συνεστῶτος phrase. If women were exempt from their guardianship, the husband or other guardian's inclusion in the contract was not needed. So just because a living husband is not mentioned or cannot be proven in a text, does not mean that we can necessarily assume what the woman in question did not have a husband at all. In addition, nothing in the formula suggests that only widows could function independently, as the accounts of families of heiresses protesting their large – clearly independent – donations to the church can corroborate. In fact, law of 370 forbade clergy from calling on widows and minor wards (*pupillae*) and nullified donations and bequests to the church by such women, citing familial concerns. Two years later, this prohibition was further expanded to explicitly include bishops and virgins (*virgines*).[73]

So, if guardianship did come to be equated with marriage, as it seems to have been, divorced women, widows, and even unmarried women, like consecrated virgins or monastics, must not have felt that this legal category applied to them. The key variable seems thus not to have been widowhood, per se, but the more generalized absence of a husband. This, along with changes to family structure and to other legal institutions like the *patria potestas,* could also have contributed to why we have so few mentions of guardianship in the later centuries.

Other contracts support this hypothesis. *P. Oxy.* VI 913 records a mid-fifth century lease of land by a couple from an unnamed landlady. The landlady's name is lacunose, so all we know

[73] *CTh* 16.2.20, 16.2.22. Cf. Arjava (1996), 117, 158-160.

that she is the daughter of "Daniel of blessed memory" and that she was from Oxyrhynchus. Given that the two renters, a man, Harmiysis, and a woman, Taor, do not share the same parents and are renting this land and agreeing to work it together, we can conclude that they were probably married. Interestingly neither the nameless landlady nor Taor make any mention of a guardian. In Taor's case, since the agreement is being conducted with her husband, there would simply have been no need, as we already saw with Patermouthis and Kako. The anonymous landlady's situation is a little more complex. From the "of blessed memory" descriptor, we know that her father, Daniel, had passed away. This means that, at the very least, she was not under the authority of her father. Given that there is no reference to a husband, she may very well be unmarried, as we have supposed that Martha was. In addition, the fact that she owns this land, which is clearly surplus to her own needs as she is able to rent it out, suggests that she is of comfortable means, perhaps even an example of the late antique "heiress", who figures so prominently in the early Christian sources.

5.2.1.2.2 Case Study – *P. Lond.* V 1731 (585) [74]

The question of the legal status of a fully-adult, never-married woman in this period is a curious one. Socially, this had not really been a question in the classical Roman era, and indeed, not until the rise of monasticism and female congregations would this question have come to the forefront. There is an obvious difficulty. Initially older ascetic women who lived alone or in a family home, may not have had property to dispose of, meaning that we shall find no trace of them in the contracts or in the law. Younger women were less likely to have been *sui iuris*, and if they were, certainly had a *curator* or some form of male representation. The prohibitions on alienating

[74] *P. Lond.* V 1731 (585) = *FIRA* III, 61-66; see Appendix 10 for the Greek text and an English translation as they are too lengthy to include here.

property at a young age mean that they too are unlikely to feature frequently in contracts at all.[75] Later, with the establishment of religious communities such as Shenoute's famous white monastery, the question must have become more practically relevant.

The legal status of these monastic women is not altogether clear to begin with, either. Were they legally considered to have broken from their families as the vestal virgins were, or did they maintain all the legal ties with their families which would have allowed them to inherit intestate and for their relatives to inherit from them? Did they remain under the paternal authority of their fathers or did this transfer to a male monastic superior, or even to Christ, their symbolic lord and husband? Regrettably, we have very little evidence for the legal structures and assumptions underpinning the place of the monastery in a social network of nuclear families.[76] The law is also generally silent on the matter, although a *Novel* of Justinian (134.9) groups widow and neve-married women together when speaking about legal protections and rights. Both, it says, have the right to defend themselves in court, either personally or by appointing a representative.[77]

The papyri provide only few further details. While monastics frequently wrote letters, they only infrequently figure in contracts, likely as a byproduct of a vow of poverty. We thus have very few contracts which suggest that the signatory was a religious woman. The one we now turn to comes, again, from the archive of Patermouthis, which describes a uniquely litigious family! This text records a legal dispute between the nun, Aurelia Tsone, and her mother, Tapia, about a sum

[75] *CTh* 3.1.3, 3.30.3, 3.32.1; *CJ* 5.37.22, 5.72.4. Originally there was a near ban on the sale of property by people under the age of twenty-five unless they petitioned for and received the consent of the court for the transaction. Constantine allowed for the husbands, presumably over the age of twenty-five, of women who were under the age of twenty-five for validate a transaction in the absence of court approval, something which Julian repealed (*CTh* 3.1.3, 362). Additionally, this speaks to the privileged position that husbands came to enjoy with respect to the property of their wives.

[76] Cooper (2007); Vuolanto (2015b).

[77] *Novel* 134.9; Si vero vidua sit aut non a principio viro coniuncta, liceat similiter mulieri aut per se aut per quos voluerit, propria iura proponere secundum legem. "If she should be a widow or a woman who has not been married, she is similarly permitted to assert her own rights either by herself or through the person she appoints."

of four solidi. Tsone was the daughter of Tapia by her first husband, Menas, whom she divorced when Tsone was young. After the divorce, Tsone was meant to stay with her mother, and as a result her father paid a total of four gold solidi for her maintenance until adulthood. However, when Tapia met her second husband, Iakobos, she (apparently) threw Tsone out, who ended up being raised by her father after all. When Tsone reached legal age (τῇ ἐννόμῳ ἡλικίᾳ) she brought a suit against her mother to recover the money. In return, Tapia claimed that the four solidi she received from Menas were not for the maintenance of Tsone, but rather were her dowry which Menas returned to her during this divorce. This seems unlikely to have been true, since Tapia did eventually, through this contract, pay Tsone the four solidi.[78]

What is remarkable here is that we have one woman (Tapia) whom we know to be a widow who is said to be operating without a guardian while we have another (Tsone) who is of legal age and has no male representation or assistance beside the soldier who wrote on her behalf because she was not literate. The placement of the word μοναχή, or female monastic, in Tsone's identification clause hints at the reason. Female monastics had the ability to function independently – where they could own any property worth the paperwork, at least. The inclusion here of μοναχή, instead of a guardianship formula of any kind, shows that the important point had truly become the presence or absence of a husband in a woman's life overall, not just the male presence with respect to a singular contract.

There are other appearances of the word μοναχή in the papyri which can confirm this, albeit not many. One of these comes from *P. Oxy.* XLIV 3203 in which we find two sisters, Theodora

[78] Martinez (2007) 7-11; see also Beaucamp (1992) 209-210; Arjava (1996); Rowlandson (1998) 79-80, 148; Wipszycka (2002) 396.

and Tahyris, who are described as μοναχαί leasing out a property they own jointly.[79] In their case, another modifier is added: μοναχαὶ ἀποτακτικαί the meaning of which has been variously explained, but most likely refers to anchorite monastics who were celibate and able to own property, engage in commercial transactions, and often even live in the general community – in contrast to cenobitic monastics who could not do any of those things.[80] In any case, these women were certainly able to involve themselves in the financial sphere with as much independence as, if not more than, than a *sui iuris* woman who possessed the rights of the *ius liberorum*.[81]

Although the term μοναχή has been generally understood to refer to a nun, literally a female monastic, Worp has cast doubt on this being the sole meaning of the word. He suggests that by itself the word could instead mean "alone" or "single" as an identification marker for an adult who was not married, widowed, or divorced.[82] These two contracts lend some credence to that suggestion. The unmodified instance of the word in Tsone's case may simply refer to an unmarried adult woman, where a modified instance of it, such as in the case of Theodora and Tahyris, may specify a monastic. If this is the case, it would demonstrate that adult, unmarried women as well as widows and divorcées had free and unsupervised use of their own property, while married women were expected to have their husband's agreement for a transaction, if he was not already managing the transaction himself.

[79] 3 Ἀυρηλίαις Θεωδώρ[α] [καὶ] Ταύρι{ν} ἐκ πατρὸς Σιλβανοῦ [ἀ]πὸ τῆς λαμπρᾶς καὶ λαμπροτάτης [Ὀ]ξυρυγχιτῶν πόλεως μοναχαῖς ἀποτακτικαῖς... "Aurelia Theodora and Aurelia Tahyris, of father Silvanus from the famous and most illustrious city of Oxyrhynchus, apotactic/anchorite nuns."
[80] For ἀποτακτικός see *P. Herm. Rees* 9.2n; and *P. Oxy*. 44, page 183 on the difference between Eremitic and cenobitic monastics and their ability to own and manage property.
[81] Luijendijk (2015) 57-68.
[82] Worp (2005) 145-152.

5.2.2. The Evolution of the Positive Formulae

Unlike the negative formulae, the positive formula does not undergo multiple changes over the course of Late Antiquity. In fact, it stays much the same as it always had been in the Greek contracts of Ptolemaic and Roman: μετὰ κυρίου τοῦ ἀνδρός. Husbands were the most common guardians, but we also see unrelated dative guardians being assigned to women by the court right up until the end of the third century: "μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη."[83] However, attestations to the basic positive formula drop substantially throughout the last half of the third century, and are considerably much rarer from the fourth century onwards, even when taking into account the lower overall number of published documentary papyri from this period as described above.[84] At the same time, helper phrases become more elaborate and much more common. Can this shift be ascribed to the new citizens finally understanding the nuances and limitations of the *tutela*, and then mitigating these limitations by developing something new that was rooted in both the Roman and the Hellenistic systems? The case studies which follow will help to answer this question.

5.2.2.1. Case Study – P. Sakaon *69 (14 Jan 331)*[85]

This contract is a lease from Theadelpheia from January 331. In it, woman named Aurelia Rufina leases out a piece of property to Aurelius Sakaon. She herself is referred to as λαμπροτάτη, the Greek form of *clarissima*, which at this period was used to describe a daughter or a wife of a man of the senatorial class. While this is, on its face, remarkable enough, since such women are not exactly common in the papyri given the preservation bias against the wealthier (and damper) portions of the province, this transaction also involved Rufina's husband: διὰ τοῦ ἀνδρὸς Κλαυδίου

[83] *P. Oxy.* XLIX 3499 (298).
[84] See Appendices 5 and 6.
[85] See Appendix 11 for the Greek text and an English translation as they are too lengthy to include here.

Λαμβαδίου τοῦ καὶ Οὐιηνίου βουλευτοῦ Ἀλεξανδρίας, i.e. "Claudius Lambadius, also known as Vienius, a member of the bouleutic class in Alexandria." His name, his class, and place of origin, combined with his wife's rank, suggest that they were a well-placed, upper-class couple who probably had an understanding of Roman legal and social categories.

The lease itself is a fairly typical one. Agricultural land suitable for grain-growing was rented out for a period of five years, for rent in kind, due annually. Additionally, Sakaon agrees to take on the maintenance of the property, and any associated public responsibilities (like taxes), which would normally fall to the landowner. It is short and to the point, but does include the necessary line recording the *stipulatio*, or oral question and response which was required to formalize all Roman contracts.

On the other hand, there is no mention of a guardian here at all. Despite the fact that Rufina is clearly identified as the landowner, we see neither a positive nor a negative formula in this contract. However, this does not stop Rufina's husband from being present; in fact, he manages the whole transaction by himself. Instead of a guardian's role, he takes on the role of a property manager or mandated official. The lease is conducted through him on behalf of his wife; he asks the *stipulatio* question of the renter on her behalf and leaves a subscription attesting to her ownership and his active involvement in the transaction itself. This type of scenario, combined with legal evidence like Constantine's law which allowed husbands to approve their wives' otherwise forbidden transactions[86] or Gordian's law allowing husbands to act with and for their wives without the involvement of a *curator*,[87] shows how malleable the whole system of supervision, oversight, and representation had become.

[86] *CTh* 3.1.3.
[87] *CJ* 2.12.14.

By specifically transacting in his wife's name, the division of marital property is specifically maintained, while the management of the property is simultaneously left to the husband. Husbands show up in the late antique papyri supporting their wives in financial and legal transactions in more ways than guardianship, much as they had always done since the spread of Greek administration in Egypt. This idea of husbands as legal representatives was thus not a new one, certainly not in the Greek system and by this point, not in the Roman one either. Intestate inheritance guidelines, court practice, and really the entire Roman legal system as a whole had shifted to prioritize the finances of the nuclear family over the those of the agnate family. Thus, it is hardly surprising that husbands continued to play a role in guardianship too. At some point, the marriage and the guardianship of adult women appear to have become conflated. An analysis of the types of women who claim exemption from guardianship can tell us a little bit more about the kinds of women who required guardians in this period.

5.2.2.2. Case Study – The Passion and Life of Susannah

Since our documentary evidence for the contractual habits or abilities of unmarried, adult women who were categorized as monastics, consecrated virgins, or even ascetics is so limited, it can be helpful to turn to other types of evidence. Much of the other available evidence is literary in nature, and certainly also Christian. One such text which can shed light on the actual practice of guardianship in these centuries outside of Egypt is the *Passion and Life of Susannah*.[88] The text is late antique, generally dated to somewhere between the fourth and seventh centuries, though the correct date likely lies more towards the middle of that range.[89] It was originally written in Greek and set in early fourth-century Syria Palaestina. As we saw in the introduction, this text and other

[88] *Acta Sanctorum* vol 6, 153-159, *(Bibliotheca Hagiographica Graeca* 1673-1673b); Susana is also mentioned in the *Menologion of Basil* II (c. 1000), *Vat. gr.* 1613 (AASS Sept 6.151-160) where her martyrdom for preaching the Gospel is commemorated; Bodnaruk (2024).
[89] Bodnaruk (2024) 423, n.5.

didactic and commemorative narratives like it pose difficulties. As a didactic text, it follows the narrative trends and tropes of other such texts, and as literature it was written in a time period almost two centuries removed from the narrative setting. Because of this, we cannot necessarily read it for an understanding of its fourth-century setting, but rather for its interpretation of fifth- or more likely sixth-century life.

The protagonist, Susannah, was the only child of a Roman *sacerdos* and a Jewish mother. She was raised by her mother in the Jewish tradition, and both parents died while she was still a minor, leaving her the stereotypical orphaned heiress, ripe for Christian influence. What makes Susannah's case unique and helpful for us, however, is the fact that we learn that her father had left a will, appointing her not one, but two guardians. Since their death was apparently unexpected, Susannah's parents had not established concrete plans for her future. In her father's will, her independence and her full possession of the parents' estate were linked to her marriage, but unusually a partner appears not to have been chosen for her. Some time before her fifteenth birthday, however, the point at which she could legally marry, she converted to Christianity under the influence of a priest named Silvanus. She then declined to marry and declared her intention to stay a virgin, dedicate herself to God, and to enter into her inheritance despite that fact.[90] This appears not to have been much of a legal issue for her. The guardians who had been appointed to her were not able to legitimately impede her, and she then began an adult life in full possession of herself and her fortune.

If Susannah's story is indeed contemporary to that of Tsone, the picture seems a realistic one: she was supervised by a guardian until she was of legal and/or marriageable age and was then supposed to attain full legal and financial agency. However, she did not marry, but still evidently

[90] Hillner (2003) 129–145; Cooper (2007) 165–89; Chin and Schroeder (2018); Bodnaruk (2024).

had her full legal and financial agency, just like Tsone. We can theorize then that as the nuclear family remained a legal and social priority, dedicating oneself to chastity and to God was seen in some way as breaking the family bonds and forming a new family with no male ties – a familiar trope which can be traced back to the vestal virgins. Although we have no legal evidence on the topic of monastic women's agency, the papyri and Susannah's *Vita* suggest that, practically speaking, the legal status of vocational women was seen to be separate from family: in the absence of a husband, or a potential husband, these monastic women needed no guardian.

Finally, the discussion of Susannah and likely also Tsone's young "legal age" brings us back to the discussion of *curatores.* The existence of the *cura minorum* and the associated shift of the age of majority to twenty-five has been used to explain why we see fewer κυρίοι in the later texts.[91] The argument is that since most women likely had three children before the age of twenty-five by the time the *cura* ended, there would not have been many women left who actually needed guardians. Women who were *sui iuris*, above the age of twenty-five, and mother to fewer than three children would have been rare. Unfortunately, this cannot explain all of the changes we see in these centuries. Yes, there is a relative and significant decrease in the number of references to the presence or absence of a κύριος from the fourth century onwards, even when considered in relation to the decrease in the overall number of documentary papyri. Unfortunately, this is not mirrored by a similar increase in the rates of *curatores* in the papyri, which would have been necessary to see, if we are to believe, as Arjava does, that *curatores* displaced *tutores* for the majority of women in Late Antiquity.[92] Such a thing may have happened in legal theory, but we have little evidence for it in the papyrological sources. On the other hand, we do have evidence

[91] Arjava (1996); Keenan (2014) 177.
[92] Arjava (1996), 115-116.

that at least some new citizens understood that a woman could (and should) have both a *curator* and a *tutor* between the ages of twelve and twenty-five [93] There is assimilation and conflation between the *tutela* and the curatorship in that the rules and regulations which had applied to the *tutela* also came to apply to the *cura*, namely methods for appointment, security, removal, and termination.[94]

At the same time, we have very few examples in the papyri of women who have *curatores*. One example, albeit fairly lacunose, comes from *P. Oxy.* IX 1205, where we find two people, of whom at least one is a woman manumitting three Jewish slaves for the sum of fourteen talents of silver, paid by the synagogue. The woman, whose name we do not know, is operating "μετὰ κουράτορος", that is "with her *curator*." Notably, there is no reference to a guardian, whose approval would technically have been necessary for this transaction, since slaves were considered *res mancipi*. Other than the examples which we have just seen and discussed, the majority of the attestations to curatorship in the documentary papyri (where we can be sure of the gender of the ward) have young men as the ward, not young women.[95]

We can learn something of the evolution in social understanding of these words through the evolution of both of these words: κύριος and *curator/*κουρατώρ. Previously both were treated as technical terms which were only used in contexts where a child, man, or woman was operating in the legal sphere with the assistance and approval of their guardian. In later centuries, however, the papyri show that both take on a more titular function. That is, both words continue to be used throughout Late Antiquity, but κύριος is used as the title "Lord" in the context of *the* Lord, in the

[93] *P. L. Bat*. II 6 has a woman who has a *curator* but also claims the *ius*.
[94] Buckland (1921) 172.
[95] For example: *P. Oxy.* XIV 1637 (256-261) has a brother with a κουράτωρ, while his sister has an ἐπιτρόπος: [ὁ] [μὲν] [Ἀμ]μωνιανὸς μετὰ κουράτορος [...] ἡ δὲ Ἡρακλειδίαινα μετ' ἐπιτρόπ[ου]; *P. Oxy.* LIV 3756 (325), records that a certain Philemon, who has a *curator* as a result of the death of his father, Boccas, is being sued by the newly appointed guardian (κυρίος) of his late father's former female ward to recover the ward's property.

context of the emperor, and even in the context of a husband, e.g. my lord. On the other hand, the word *curator* is used in a non-technical sense, to mean a caretaker or overseer, both before 212 and then from the fourth century onward again.[96] These titles thus seem to evolve to refer less to a specific legal position or role related to guardianship, and more to the general responsibilities or duties that the men in these roles traditionally had. They simply become more generalized and lose their specific legal nuance, while morphing into more of a deferential title.

5.2.2.3. Case Study – P. Lond. *V 1724 (578-582)*[97]

This text is one of the latest, if not the latest, instance of the standard positive guardianship formula in the Greek papyri of Roman Egypt, and one of the four texts identified by Beaucamp as late instances of husband-guardianship in the papyri.[98] It belongs to the Patermouthis archive, which relates largely to Syene. The document is a bill of sale for a third of a house by two sisters, one married and the other a minor. They are selling their share in their great-grandfather's house, which they had inherited from him, to a well known, well-off couple, Patermouthis, son of Menas, and his wife Kako, daughter of Iakobos and Tapia, all of whom we have already met above.

The elder sister, Aurelia Tsone, acts with her husband: μετὰ καὶ τοῦ κυρίου αὐτῆς ἀνδρὸς Αὐρηλίου Ἰσακίου υἱοῦ Κωσταντίου τοῦ καὶ συνενοῦντος καὶ συνευδοκοῦντος αὐτῇ. This is a traditional guardianship formula which would not have been out of place in the first few decades after the *Constitutio Antoniniana*. We have the μετὰ τοῦ κυρίου beginning the phrase, followed by the identification of her husband αὐτῆς ἀνδρὸς Αὐρηλίου Ἰσακίου υἱοῦ Κωσταντίου. The only unusual part here is the word υἱοῦ, or son. This is redundant in a naming formula, as the genitive alone expresses a patronymic. However, in these later centuries, we do see an increase in "son of"

[96]For example: *P. Ant.* III 188 (sixth to seventh century), κ̣υ̣ρ[ά]τορος το̣ῦ θείου οἴκου τῶν Πλακιδίας. "the caretaker of the divine household of Placidia."
[97] See Appendix 8 for the Greek text and an English translation as it is too lengthy to include here.
[98] Beaucamp (1992) 194-197.

or "daughter of" being spelled out in full or even of parents being specifically identified as mother or father. This further indicates that there was a degree of flexibility in contractual language at this point, which mirrors what we see in the guardianship formulae and helper phrases. The appearance of this phenomenon here, together with the unusual καί which follows the μετά illustrate the fact that this could not have been just a "notarial relic" that was added here out of custom or tradition, by a "conservative scribe."[99]

Additionally, however, and supporting this conclusion, is the following: καὶ συνενοῦντος καὶ συνευδοκοῦντος αὐτῇ. For συνενοῦντος we should instead read συναινοῦντος. Together, these participles show the husband consenting to the transaction and agreeing with his wife's decision. This impulse was far from new and not particularly unique. Both συναινοῦντος and συνευδοκοῦντος appear in other contracts in this period, as do a variety of other συν-compounds, such has the helper phrases which we saw in the previous chapter.[100] The word συνευδοκοῦντος appears, for example, in the late third/early fourth century text *SB* XXIV 16320 immediately following a negative guardianship formula: [χωρὶς κυρίου χρηματιζούσης] τέκνων δικαί[ῳ] κατὰ [τὰ Ῥωμαίων ἔθη μετὰ συνεπιπαρόντος καὶ συνευδοκ]ο̣ῦ̣ντος.[101] We see similar usage and phrasing in pre-Roman contracts, and not just in situations where husbands approve their wives' contracts, but rather, for example, where both a man and a woman join in agreeing to a marriage contract or in cession agreements to jointly abrogate a claim to a property that is being sold.[102]

---

[99] Arjava (1996) 118, 120.
[100] συναινοῦντος appears in similar contracts from this period in the context of both women (*P. Münch* I 15 + *P Lond.* V 1855 (fifth century); *P. Cair. Masp*. II 67161 (sixth century); *P. Herm.* 35 (seventh century)) and occasionally men (*P. Bagnall* 33 (fifth century)). συνευδοκοῦντος also appears in other contracts in the context of women (*SB* XXVI 16320 (3rd century); *SB* XXIV 16320 (3rd-4th century); *P. Abinn* 62 (4th century); *Stud. Pal.* XX 117 (fifth century); *P. Vat. Aphrod*. 14 (sixth century).
[101] *SB* XXIV1 6320.
[102] *BGU* IV 1171 (first century BCE); Cf. Schriemer (2019) 48-51.

The use here of these συν-compounds serves to show that even at this late date the joint nature of the transaction continued to be related to the roles of guardian and husband. In other contracts, where we see συν-compounds on their own, without a mention of a guardian, and sometimes without even the explicit mention of a husband, we can continue to understand that the person on the other side of the συν-compound often had a legal interest in the property, whether as a guardian, a spouse, or potentially as an heir, or a personal interest in supporting one of the parties, whether as a parent or a spouse.

Another contract from Aphrodito serves to support this understanding.[103] *P. Mich.* XIII 662 contains a similar helper phrase and a similar familial and financial context. The dating of the text is uncertain, partially because no regnal year is mentioned, only an indiction, or tax cycle, but it comes from the first half of the seventh century, specifically from 615, 630, or 645. In it, we have a woman named Aurelia Eudoxia entering into an agreement with Aurelius Menas. There is no standard guardianship formula, but her husband does play a role. Again, he is introduced by συν-compounds: καὶ συνενοῦντο[ς] κ[αὶ συμπειθομ]ένου ταύτη τῇ παρούσῃ ἐμ[ῇ πράσει ἀνδ]ρὸς {αὐτῆς} ἐμ[οῦ Ἀνουφίου υἱοῦ Ἰσακίου].[104] This similarity compared with the first case study in this chapter, with or without the specific mention of a guardian, suggests that husbands continued to play a supervisory and an approbatory role in their wives' contracts, regardless of whether they were still referred to as a κυρίος or not.

Returning to *P. Lond.* V 1724, the younger sister in our case study, Tsia, is characterized as ἀφῆλιξ, which by this point means someone under the age of twenty-five and likely also unmarried. She is represented by a man named Ioannes, also known as Kattas, who was a monk in

[103] *P. Mich*. XIII 662 (first half of the seventh century) in *P. Mich.* 13 = The Aphrodite Papyri in the University of Michigan Papyrus Collection (1977).
[104] "...and with the consent and agreement to this my current sale {of her} of my husband, Anouphis, son of Isaac..."

a monastery at Pampane, about 250 km north of Syene.[105] The Greek phrase used here is: ὁ καὶ ἀναδεχόμενος τὴν γνώμην καὶ τὴν πίστιν τῆς ἀφήλικος Τσέρης. There is no mention of any type of guardian, but as she was under the age of twenty-five and there is no evidence of a living father, Kattas must have been functioning as her *curator*. This phrase illustrates the creativity of contractual activity in the later period. Traditional, set formulae and legal titles are falling out of use and being replaced by participles of more colloquial verbs like ἀναδέχομαι, which speaks to a newfound flexibility in contractual language.

Examples of this new flexible language can be found throughout Late Antiquity, especially in the fourth, fifth, and sixth centuries, but primarily only in the context of male helpers. There is only one other instance of such a female representative or guarantor, in *P. Oxy.* LVIII 3938 of 601, where a woman named Justina acts as a guarantor for a couple who owe three solidi.[106] This itself is an innovation. Our only two extant references to women performing this role of "helper" with a more traditional helper phrase are from 391 and 568 and help to establish that women also began to take on new oversight roles in the papyri throughout Late Antiquity.

The first example, *P. Strasb.* III 142 (391), records a woman getting a divorce from her husband, μετὰ συνεστῶτος αὐτῆς μητρὸς, that is, with her mother's assistance.[107] This is one of

[105] The original editor of the text, Bell, suggested that the monk who was acting on behalf of Tsia could have been the girl's great-uncle, based on association with a Ioannes son of Patechnoumios in *P. Lond*. V 1729. However, that Ioannes has also been identified with Ioannes also known as Paptsios in *P. Münch* 13.26, so the two proposed aliases, Kattos and Paptsios, seem unlikely.

[106] *P. Oxy*. LVIII 3938 (7 Mar 601), "μετ' ἐγγυητρί[ας] [τῆ]ς καὶ ἀναδεχο[μ](ένης) αὐτοὺς εἰς ἀπόδοσιν τῶ[ν] [ἐξῆς] δηλουμένων τριῶν νομισμάτων ἐμοῦ Ἰ[ο]υστίνας θυγατρὸς ἐμοῦ Θέκλας ἐκ [πατρ]ὸς Δ[α]μιανοῦ" Trans. *P. Oxy.* LVIII, "with, as guarantor who undertakes the responsibility for them in respect of the repayment of the three solidi mentioned below, me, Justina, daughter of me Thecla by father Damianus..."

[107] *P. Strasb.* III 142 (16 Oct 391); The spelling error here, namely the use of the masculine participle rather than a feminine, suggests a formula or phrase not often used by women. The agnatic, early Roman guardianship which had existed to ensure the preservation of a family's fortune had long since disappeared, and it was undoubtedly in the best interests of a family for a mother to continue to play a significant role in her children's lives and finances after the death of the husband, something which is later confirmed by the law. See also Evans Grubbs (2002) 215.

the later examples of this specific helper phrase and demonstrates well the beginning of a late antique pattern of mothers taking over what were traditionally masculine roles in relation to their children, including guardianship and contractual assistance. Evidently the phrase had become somewhat fossilized, because the masculine συνεστῶτος is not correct in this context; rather we would expect to see the feminine genitive participle, συνεστώσης. In the absence of a husband, and with respect to family property and minor children, mothers had a rather surprising influential agency throughout this period, and we see the seemingly rigid container of the law and contracts shifting to reflect that.

The second example of a woman recorded in this role come from *P. Cair. Masp.* II 67158, which dates to 568. This text uses the appropriate feminine form of the participle: μετὰ συνεστώσης καὶ συνευδοκούσης καὶ συνπει[θ]ομέ(νης) [αὐτῷ τῆς αὐτοῦ γαμετ]ῆς Αὐρηλίας Τικολλο(ύ)θου. Here a wife is taking on a supportive and approbatory role in her husband's contract. This example is particularly interesting because of the use of the two other participles, συνευδοκούσης and συνπειθομένης, which had been used in this type of contractual context before Roman legal influence. The entire phrase harks back to Demotic and early Hellenistic Greek contracts in which spouses, both male and female, assisted and approved any significant transactions relating to property to which they may both have had a legal claim. [108]

This evolution of contractual vocabulary for the oversight of minors and for other legal representatives suggests that something else may also have been going on other than guardianship in these contracts. A return to συν-compounds, including the συνεστῶτος phrase and those similar to it, further suggests that the presence of helpers is linked less to legal oversight or even support

[108] *P. Cair. Masp.* II 67158 (April 28, 568). For earlier examples see *BGU* IV 1129 (Apr 7 13 BCE) which has a woman joining in approving the sale of land: ὁ Πρώταρχ(ος) συνευδοκ(ούσης) καὶ τῆς γυναικ(ὸς). See also Pestman (1961), (1995) 79-87; Keenan (2014) 276-294; Schriemer (2019) 48-51.

and more to their potential rights in the property, as in the Demotic and early Hellenistic contracts.[109] Additionally, *P. Mich.* XIII 662 serves to illustrate that husbands continued to function as the guardians of their wives and that their approval was required to alienate property. Was a *tutor mulierum* required in this contract, strictly speaking? In fact, no, because the property for sale was not *res mancipi* because it was not Italian land. As we have established, guardians were only needed for *sui iuris* women and only for transactions involving *res mancipi*. But now, even more than before, the distinctions between *res mancipi* and *res nec mancipi* serve even less of a purpose, as by this point, the West had fallen, and despite Justinian's reconquest and various sparse western territories, Italy was not a key part of the empire.

5.3. Decline and Disappearance or Evolution?

Interestingly, what we do not see discussed in scholarship is the decline and disappearance of *patria potestas*, which did see a shift as the typical and prioritized family structure evolved. If guardianship evolved because *potestas* shifted, can we say anything about why paternal power changed and evolved as it did?

Vial-Dumas suggests yes. Though not specifically related to the question of guardianship, his article on Byzantine marriage clarifies the influences behind the shift in family structure towards a prioritization of the nuclear family over the agnate family of the Roman Republic.[110] Whether we can say that the prioritization of the nuclear family caused a shift in the practical application of the *patria potestas*, or whether a shift in understandings of *potestas* allowed for the shift in family structure is not entirely clear. There are certainly more factors at play here, and, as is usually the case in historical contexts, causation cannot be easily attributed to solely one factor.

[109] Méléze Modrzejewski (1994) 328-329.
[110] Vial-Dumas (2021) 35-64 on the marital family.

On the other hand, as we saw in Chapter 1, scholars have long noted that the powers ascribed to the *potestas* had waned in practical usage since the *Twelve Tables*. With his wealth of experience in both Greco-Egyptian and Greco-Roman papyri as well as Greek and Roman law, Taubenschlag goes so far as to say that "*patria potestas* is in the historical era nothing else but a kind of guardianship."[111] The texts he cites to support this claim range in date from the first to the third centuries. By the fourth century, then, this understanding of paternal authority as nothing more than yet another type of guardianship was thoroughly conflated with other types of male control and/or supervision. Since paternal authority over an unmarried woman was understood in practice to transfer to a husband, the next logical step in this legal evolution was the conflation of the types of legal control or supervision over married women.[112]

As the *potestas* waned, fathers maintained and acquired legal powers outside of it. For example, a law of 371 says that emancipated, or *sui iuris*, women who were under the age of twenty-five could not enter into a marriage without their father's consent.[113] We also see a shift in terminology, from *in potestate* to *in sacris* in a 408/409 law on a marriage.[114] The phrase is translated "in his power" by Frier *et al.*, but this power cannot be exactly equated with the powers of the *patria potestas*, since the same law goes on to suggest that a girl could be both *sui iuris* and *in sacris* simultaneously. The law also suggests that this new paternal power ended at twenty-five in order to mirror the *cura*. These many and ongoing references to young women under the age of

[111] Taubenschlag (1955) 131 and note 4.
[112] Taubenschlag (1955) 130-132; *BGU* 667 (221-222).
[113] *CJ* 5.4.18.
[114] *CJ* 5.4.20, "In coniunctione filiarum in sacris positarum patris expectetur arbitrium: si sui iuris puella sit intra quintum et vicesimum annum consituta, ipsius quoque exploretur adsensus. Si patris auxilio destituta, matris et propinquorum et ipsius quoque requiratur adultae iudicum." Trans Frier, "The decision of a father shall be awaited regarding the marriage of daughters in his power (*sacra*). If the girl is *sui iuris* and less than 25 years old, her consent shall be ascertained as well If she is deprived of her father's assistance, the views of her mother, near relatives, and herself too, if she is an adult, shall be solicited."

twenty-five who are emancipated and who are nevertheless subject to paternal oversight show that the strict categories of *alieni iuris* and *sui iuris* from the Republican and Classical periods no longer held the same meaning by the end of this period.[115] Instead, the family was arranged differently, and power was vested in ways that were simply incompatible with the old Roman *patria potestas*.

As we emphasized in the previous chapter, the social fabric of the empire underwent significant changes throughout Late Antiquity, as did legal categories of oversight and control. These could not have occurred in a vacuum nor were they otherwise divorced from the normal evolution and progress of society or law. In as much as social, political, legal, and religious evolution did occur, it was linked to and based on what came before. There was real continuity in all these areas. The persistence of the exemption formula in the contracts can attest to that. At the same time, the marked drop in women who are operating with a guardian is evident from the relatively fewer attestations we have. So, what is the reason for the shift away from the positive guardianship phrase, and can the earlier addition of ἀνδρός to the phrase offer us any clues as to what might have been going on?

The decline in mentions of guardians, and – although hard to quantify – the seeming reduction in the relative number of contracts made by women can plausibly be attributed to the fact that, if a woman was married, a contract would normally be made by her and her husband, acting as a couple or be handled entirely by the husband. In the latter instance, we have no way of knowing whether the wife was mentioned all the time, or only a small proportion of the time. This understanding runs parallel to the tendency we have identified in law, for women to hand over the

[115] Benincasa and Nowak (2024) 56.

management of legal cases to their husband. Presumably then, any paperwork which needed to be signed at the end, as with Patermouthis and Kako, would also be handled by the husband.

What does this mean for our understanding of the negative formula? Would it be right to continue to equate the negative formula with the *ius liberorum* even after the τέκνων δικαίῳ phrase drops out in the mid-fourth century? I would argue both yes and no. As the *ius liberorum* continues to exist both theoretically and practically in other areas, and as the exemption from guardianship no longer relates to the number of children born in a marriage, the negative formula cannot be said to be referencing the contemporary *ius*. Nevertheless, they are an evolved aspect of the *ius* themselves. As we have discussed, no other Mediterranean people conquered by the Romans had such a practice of allowing women to do away with male oversight and operate independently in the legal and financial spheres. When Roman law was extended empire-wide after the *Constitutio Antoniniana*, this exemption came with the rest of Roman ideas about paternal power, male oversight, and female ability, thus introducing the then novel idea of an exception to male oversight over women. Practically, too, the production of children is easily equated to marriage, as a woman must have been married to birth the number of legitimate children necessary to obtain the *ius*. Therefore, we still ought to recognize the elements of continuity in the late antique form and acknowledge that, despite the changes, this is but an evolved, temporally, socially, and legally appropriate version of the exemption introduced by Augustus.

Regarding terminology for guardianship, we have an equally nuanced situation. We have seen an increasingly more Hellenistic legal environment, centuries during which the guardianship of adult women received no attention in Roman law and for which we have no centralized, normative text describing the practice from a Roman perspective, and considerable Hellenistic influence on the practice of guardianship itself, as well as more organic changes. It can thus seem

misleading to refer to the guardianship which persisted as the *tutela mulierum.* At the same time, the clear adoption of at least some of the Roman concepts of guardianship in the decades after the *Constitutio Antoniniana* and the persistence of the *ius trium liberorum* and related formulae throughout Late Antiquity suggest that it is incorrect to say that the *tutela* just disappeared and that what we have after the fourth century is something different altogether.

5.4. Conclusion

From the mid-third century onwards, attestations to women's guardians become rarer (as do references to guardians generally), but they do not disappear altogether, and, in fact, they increase with a peak in the sixth century. The comparative rareness of guardians in the papyri from the fourth century onwards can be ascribed to a combination of changes to the *patria potestas*, conflation of the roles of *tutores* and *curatores* for independent women under the age of twenty-five (or eighteen), the equation of husband with guardians for women older than twenty-five (or eighteen), and the many social and geopolitical changes which occurred in the fifth century and affected writing culture.

Similarly, the form that this guardianship and the associated formulae take in Late Antiquity is undoubtedly different from the late Republic or early imperial, *tutela mulierum*. This should not come as a surprise. Very few things, were, in the fifth, sixth, or seventh centuries, identical to their first century forms. In this case, guardianship changed and evolved so drastically in the period right after the *Constitutio*, because the basic legal category upon which it was dependent was not widely adopted in any technical sense throughout the empire, which essentially rendered the category of *sui iuris* women, who technically qualified for a guardian according to Roman law in the first place, an endangered, though not entirely extinct, legal species. Thus, what declined and disappeared throughout Late Antiquity was *not* male supervision over women in the

legal or financial spaces but a very specific type of supervision which had been dependent on an already disappearing type of absolute male power.

Throughout all of Late Antiquity, husbands remain a constant in their wives' contracts, whether as a guardian, an agent, or a "helper." This appears to have become the new normal, in which the role of the husband encapsulated all previous forms of male supervision for married women. For unmarried or widowed adult women, this meant the freedom to act on their own, something they either noted using a negative formula, a descriptor like μοναχή, or simply glossed over entirely.

The persistence of the negative formulae gives a clear indication that, however guardianship in this period comes to be defined, it is rooted in and influenced by a version of guardianship which allowed exemptions. As far as we are aware, no non-Roman system of adult guardianship offered such exemptions, and so the practice we see in the papyri from the fourth century onwards must be rooted, directly or indirectly, in the Roman system of guardianship. So, while the *tutela* seems to have indeed disappeared from the law codes, it clearly had not disappeared from the legal toolbox of Roman citizens.

Part II: Conclusion

It is unrealistic to expect that any legal system would not change or evolve over the course of several centuries, especially if those centuries saw as much socio-political change as Late Antiquity did. Similarly, scholars looking for the first-century form of guardianship in the fifth would not find it there any more than they would find a first-century emperor, taxation system, or bureaucracy. Rather than attempting to establish and defend a rather arbitrary and inaccurate end date for the Republican and early Imperial forms of guardianship, we have been better served by tracing the evolution of guardianship throughout the intervening centuries and noting elements of continuity and discontinuity. This has allowed us to understand what exactly happened with guardianship in Late Antiquity – that it changed and became less common in the papyrological record but did not entirely disappear.

What then are we to call this guardianship which evidently persisted? Working in a Greek space, in centuries in which the practice received no attention in law and for which we have no centralized, normative text describing the practice from a Roman perspective, it seems disingenuous to refer to it as the *tutela mulierum,* a truly Roman term. At the same time, the clear adoption of at least some of the Roman concepts of guardianship in the decades after the *Constitutio Antoniniana,* as well as the persistence of the *ius trium liberorum* and existence of subsequent, related negative formulae throughout Late Antiquity suggest that it would be incorrect to say that the *tutela* just disappeared and that what we have after the fourth century is something different altogether.

The forms of guardianship and exemptions from it which persisted in the Greek contracts after 212 and through the seventh century bear a remarkable similarity to what came before in both

law and contract. There is no evidence of a break in continuity or of the rise of a wholly new style of guardianship. There is certainly no end to guardianship of adult women and no vacuum to be later filled by indigenous legal practices. The reality of what occurred with guardianship from the fourth century onwards is much more complex and demonstrates aspects of both continuity and change. This also leads us to two quite distinct and more specific conclusions about female agency in this period.

First, while the Roman *ius trium liberorum* may initially appear to have provided women of majority age with greater agency following the *Consitutio Antoniniana*, both the persistence of Hellenistic-style husband guardians and the emergence of the helper phrases suggest that there was an ongoing social recognition of the husband as his wife's legal representative and aide. As we have seen, this social practice was soon accepted and even mirrored by the law. So while we have no extant law which specifically abolishes the *tutela mulierum* or provides for the exact type of guardianship which we have seen was in use in the later centuries, the developments mirror an increasing emphasis on the nuclear family over the agnate family, a phenomenon which had begun as early as the first century CE.[1] Furthermore, the persistence of the exception shows that the form of guardianship in use in the fifth, sixth, and seventh centuries was an amalgamation of the Greek and Roman styles of guardianship that had come together after the *Constitutio.* The ongoing changes to this formula show that the formula was a living one, being used and adapted to fit the needs of the population and was not simply a fossil from bygone legal era, as Arjava suggested.

Second, because husbands had come to play such a large role, contractual autonomy became closely intertwined with marital status. Rather than being tied to fertility, a woman's

[1] Specifically with the *Lex Claudia* and then the inheritance rights between mothers and children which essentially recognized that focus.

ability to enter into financial agreements on her own appears to have been linked to the presence of a living husband. Widows appear in the contracts on their own and not just without a guardian or assistance – they even show up as the guardians over their under-age children. We have seen that unmarried women who were not under their father's *potestas* must have had similar abilities.

Finally, women theoretically had a relatively great deal of legal freedom in imperial Rome and throughout Late Antiquity, and the papyri give us many examples of women in Roman Egypt acting autonomously or even on occasion, acting on behalf of others (something which was later permitted in the laws themselves). Mutual Greek and Roman legal influence combined with a hands-off approach from the centre resulted in surprising flexibility for women in the legal sphere. The overwhelming reliance on husbands as guardians was a carry-over from the pre-212 Greek style of guardianship, not a Christian innovation, and the ongoing instances of women who specifically note that they are acting without guardians attest both to the continuity of the practice of guardianship, and to the endurance of the Roman exception which allowed certain categories of women over the age of majority to function independently with increasingly more extensive legal abilities and rights.

GENERAL CONCLUSION

Αὐρηλίᾳ Ὡριγενείᾳ θυ(γατρὶ) Καλλινίκου μητρὸς Νόννας γ[ε]ου[χού]σῃ [.....] [μετὰ] [παρόντ]ος καὶ συνευδοκο[ῦν]τ[ος] τ[οῦ] κυρίου ἑαυτῆς ἀνδρὸς Φλαουίου Ὡριγενίου β(ενε)φ(ικιαρίου) τάξεως ἡγεμονίας ἐπαρχίας Ἀρκαδίας υἱοῦ Σαραπίωνος γεουχοῦντος...[1]

This early fifth century quotation neatly captures the state of guardianship in Late Antiquity. Aurelia Horigeneia is selling a piece of property, and her husband-guardian (κυρίου ἑαυτῆς ἀνδρὸς), Flavius Horigenes, is present (παρόντος) and joins her in approving the transaction (συνευδοκοῦντος). A husband-guardian has been standard in the Greek contracts since the third century BCE, throughout the Hellenistic and Roman periods and well after the *Constitutio Antoniniana* caused the adoption of this phrase to refer to the *tutela mulierum*. The helper phrase is one which primarily emerges after the *Constitutio* and takes a variety of forms, most of which include some type of συν-compounds. It persists in contracts throughout Late Antiquity, even when no guardian is mentioned at all and even in men's contracts.

In contrast to this clear picture of continuity, scholars have been emphatic that the *tutela mulierum* ended, even if they cannot quite agree on when. As we saw in the General Introduction, Arjava, for example, concluded that "the most significant individual change [to women's legal position in Late Antiquity] seems to be the disappearance of *tutela mulierum*."[2] He goes on to paint quite a rosy picture of the agency and freedom that this afforded women from the fourth century onwards. It is hardly surprising, then, that I was not able to come to a conclusion on the effects of

[1] *Stud. Pal.* XX 117 (9 Dec 411): "Aurelia Horgenia, daughter of Kallinikos of mother Nonna, a land owner [……..] with her own husband-guardian, Flavius Horigenes, a *beneficarius* of the praesidial office of the province of Arcadia, son of Sarapion, a land owner, present and jointly assenting…"
[2] Arjava (1996) 261.

widespread Christianization on guardianship during my MA thesis. The conclusions of modern scholarship were contradictory at best and entirely misleading at worst. If, as we have seen, the practice of adult female guardianship did not end when it was said to have, as we have seen that it did not, then there can be no explanation which will satisfactorily account for its end.

This conundrum of scholarship led to the five main questions which I set out to address in this thesis: What happened to adult female guardianship in Late Antiquity? Did the *tutela mulierum* really end? What caused things to change as they did? How much of what we see in the later centuries is "Roman" at all? And, of course, what was the role of Christianity in all of this?

To answer these questions, I set out a *longue durée* examination of adult female guardianship, accompanied by forays into the legal systems (the *patria potestas* and the *cura minorum*) and events (the *Constitutio Antoniniana)* which may have had some effect or influence on its evolution over time. By taking a broader perspective of guardianship which accounted for various legal influences, differences in legal theory and practice, and the legally pluralistic society of Late Antiquity, we were simply able to paint a more holistic picture of the *tutela mulierum* throughout time, from the Republic to the fall of Egypt. This diachronic perspective highlighted not only the Roman changes to the *tutela* before Late Antiquity, but also the effects of Hellenistic legal practices on Roman law more generally in the centuries after the *Constitutio Antoniniana*. By not choosing to end or begin this study in the fourth century, we were able to tease out the threads of continuity not only of the Roman but also of the Hellenistic guardianship practices. These methodological and theoretical decisions allowed for a unique understanding of the guardianship of adult women in Late Antiquity which otherwise would have been (and heretofore has been) missed.

In Chapter 1, we saw that *patria potestas* was the basis for all forms of guardianship. Women and children who were *in potestate* could not own property and had their *pater familias* operating on their behalf in all legal or financial situations. Only *sui iuris* women, those who had been freed from paternal power by emancipation or the death of their *pater*, were eligible for a *tutor*. As a result, the *tutela mulierum* was liable to be considerably influenced by any changes to the concept or practice of *patria potestas*. In Chapter 2, we saw how guardianship was initially conceptualized in Roman law – as a form of protection and oversight over agnate family property, which might have been squandered by those less capable, like children, women, the mentally ill, and spendthrifts. In Chapter 3, we saw that the *Constitutio Antoniniana* had a fairly widespread effect on the legal and contractual habits of the new citizens. Chapter 4 showed that, by and large, Roman legal categories, like the *tutela mulierum* and the *ius trium liberorum*, were adopted and integrated into existing contractual practice by the new citizens, but that these citizens may not always have understood their precise legal nuances, like the complex relationship of the *tutela* to *patria potestas* or the limitation of the *tutela* to transactions involving *res mancipi*. Finally, in Chapter 5, we saw that guardianship persisted in law later than previously thought, showed up in the papyrological record throughout Late Antiquity, and evolved alongside changes to the conceptualization of family and paternal power.

Throughout all of this, I have established that at no point does the practice of Roman guardianship in the provinces actually follow the stated expectations of Roman law in any reliable way. Citizens could employ localized versions of the law (indigenous law) which seemed most likely to serve their immediate needs, regardless of the inclusion of those local versions within the Roman legal codes. It cannot then come as a surprise that, although we have no evidence of a law which abolished the practice of the *tutela mulierum* in any century and only minimal evidence of

the exemption in the law, what we do have are contracts which continue to refer to both the presence and absence of guardians into the seventh century.[3] To be sure, there are fewer attestations in the papyri from the first half of the fourth century onwards, and fewer, if any, mentions in the law proper after the 330s. The fact that there are any at all, even in the papyri, means that we cannot say that the *tutela mulierum* just disappeared. It did not. Women still used guardians. Women also continued to find it appropriate, even necessary, to mention that they were working without a guardian.

The evolution of the *tutela mulierum* began with the creation of the *ius liberorum* by Augustus. Not only did this give women the opportunity to operate independently of a guardian, but it also made it possible for both men and women to inherit far more than a tenth share from their spouse, thus beginning the prioritization of nuclear family wealth over agnate family wealth. The *Constitutio Antoniniana* had its effects too. The new citizens brought with them slightly different understandings of paternal power, guardianship, and the nuclear family which ended up influencing Roman law. As the *patria potestas* lost some of its power throughout the imperial period and since children frequently came to be emancipated at majority or marriage throughout Late Antiquity, most adult women would have been *sui iuris.* This, combined with the use of the *cura minorum* for people under the age of twenty-five and the demographic estimates that suggest that most women would have had three births by that age, suggests that most women over the age of twenty-five would have been free from the *tutela* anyways.

On the other hand, guardians were only ever needed for specific types of transactions, namely ones which involved *res mancipi*, that is, Italian property, slaves, and animals, as well as for the giving of dowries and the writing of wills. In practice, this must have seemed odd – if a

[3] See Appendix 4.

woman needed a guardian for the sale of a cow but not to sell an entire estate outside of, say, the city of Oxyrhynchus. Thus, we see a world in which the only women who would, strictly speaking, have needed to function with a guardian would have been those who were married but did not have three children, and only for transactions involving slaves and animals. This must have been a truly small percentage.

As overt references to guardians were becoming less common in the papyri, husbands were gaining more rights as their wives' legal representatives. Husbands did not need a mandate to appear in court on behalf of their wives, and, if the husband managed her affairs well, a woman's *curator* could be ignored altogether. This, combined with the persistent practice of husbands as guardians in the contracts (something which would have certainly raised eyebrows under the old agnate system of guardianship) led to the eventual equation of adult women's guardians with their husbands. As a result of this, the exemption also shifted and became equated with the absence of a husband rather than the existence of children.

The Roman *tutela mulierum* as it was theoretically conceptualized in the jurists did not reflect the reality of the late antique citizens; instead, *patria potestas* was changing, and this had a ripple effect on the *tutela* in that if almost all women were emancipated at marriage, then, in essence, every woman would have needed a guardian. This led to exactly what we see in the papyri: a world in which adult women made contracts with their husbands and minor women functioned with a *curator* or a husband. When women did not have a husband, or did not expect to ever have a husband, but were over the age of majority and emancipated, they operated alone. If they had been married before and lost a husband, they noted his absence. If not, they noted their unmarried status.

It is clear then that adult female guardianship persisted throughout Late Antiquity, albeit in a form which resembled Hellenistic guardianship at least as much as, if not more than, Roman guardianship. At the same time, the *ius liberorum* introduced an exception to guardianship, a concept which was unique to the *tutela mulierum* and unheard-of in any other legal system. Such exceptions, too, persisted throughout Late Antiquity, both in the negative formulae, and in the contracts of women who simply operated alone, like monastics and widows. Husbands did take on a new and considerably expanded role with respect to their wives' finances – at least so it seems from the perspective of Roman law. However, from the perspective of Hellenistic law, not much had changed since husbands had always been their wives' legal and contractual representatives.

The answer to the question of whether the *tutela mulierum* ended is one of pedantic definition. The form of guardianship practised in the fifth, sixth, and seventh centuries had undeniable ties to the *tutela*, but it certainly was not the practice that Gaius described in his *Institutes* in the second century. But then again, did any legal practice in the sixth century look the way Gaius described it in the second? (No, it did not). So, evolution and change in the practice of guardianship alone is insufficient to claim that the *tutela* ended or that something else took its place. Moreover, the absence of the *tutela* in the law, certainly by the fifth century, suggests that it had been subsumed into the paradigm of marriage and was obsolete in any other format. However, rather than saying the *tutela* ended, we can instead say that the responsibilities of the *tutor* were combined with the various other roles and responsibilities of the husband.

In sum, then, women in Late Antiquity continued to have male involvement in their contracts in the form of husbands rather than overt guardians. Nevertheless, it is impossible to conclude that Christianity played any role in this fact. As we have seen, the long history of husbands as guardians in the contracts preceded Christian rhetoric on submissive wives, and the

shift towards husbands as their wives' legal representatives began before the widespread social acceptance of Christianity. Thus, as much as Christianity is held up as a positive innovation for women, in this instance, it seems to have had no effect at all.

APPENDICES

--

Appendix 1 – Negative Formula Types and their Temporal Distribution

Appendix 2 – Roman Guardianship and Exemptions in Egypt before 212

Appendix 3 – Dative Guardianship in the Provinces before and after 212

Appendix 4 – Negative Formulae between 212 and 300

Appendix 5 – Guardians in the Papyri after 300

Appendix 6 – Positive Formulae from the Third Century BCE to the Seventh Century CE

Appendix 7 – Other Guardians or Assistance for Women

Appendix 8 – *P. Lond.* V 1724

Appendix 9 – *P. Münch.* I 11 and *P. Coll Youtie* II 92

Appendix 10 – *P. Lond.* V 1731

Appendix 11 – *P. Sakaon* 69

--

A Note on Methodology, Data Collection, and Digital Papyrology

The majority of the following papyrological data was collected in a digital format, using Trismegistos and papyri.info. Because of the Covid-19 pandemic, the field of digital papyrology has seen a concerted effort towards an expansion of digital papyrological skills, resources, and training.[1] Nevertheless, not every print publication is available digitally, and those that are rarely include the original commentary or translations. Data collection thus began with the digital but was supplemented by a more traditional, manual review and collection of information.

In addition, the search functions of databases and aggregators also have limitations. Lacunae, misspellings, line breaks, and digitization errors all contribute to skewed results. The appendices which follow are not the result of any one search of these databases, but of many repeated searches with a variety of terms, restrictions, and manual filtering, all designed to mitigate the issue of false positives and false negatives in the final results. This was followed by a manual review of the data and the addition of any missing results.

It would be remis of me not to note a methodological difficulty at this point. The discussion and cataloguing of texts which contain positive or negative formulae or helper phrases is facilitated and made much easier by these databases. However, texts, written by women, which do not have any mention of guardians or assistance, and which do not contain any clearly gendered formula are far more difficult to handle, and even to find, since it is nearly impossible to search for the absence of something. For this reason, although I have made every effort to be comprehensive, I

[1] I myself was fortunate to be able to attend a Seminar in Digital Papyrology, offered online by the Universität Heidelberg and taught by Mike Sampson from the University of Manitoba in the Summer of 2020, as well as the ENCODE London and Bologna EpiDoc Workshop offered online by Gabriel Bodard from the University of London (UK) in the Spring of 2021. The skills and experience gained during these workshops have been of immeasurable value for this dissertation and I am grateful to the instructors for sharing their knowledge.

have chosen not to provide statistical comparisons throughout time. The small volume of material, along with preservation bias and collection error would render any such numbers statistically insignificant.

--

Where I have cited papyrological texts, I have used the edition of papyri.info. The rationale for this is that papyri.info currently serves as a platform to propose and publish new or amended readings of a text, which are then collected and published (with a delay) in the *Berichtigungsliste der Griechischen Papyrusurkunden aus Ägypten* (*BL*). The digital editions on papyri.info thus often reflect the most recent, peer reviewed version of the text. If a text was not digitized on papyri.info or when a digital version contained obvious digitization errors, I referred to the authoritative print edition.

Appendix 1: Negative Formula Types and their Temporal Distribution

The following negative formulae have been identified by P. J. Sijpesteijn, Joëlle Beaucamp and Jennifer Sheridan.[1] I have proposed a revision to Formula O based on a new reading of the text and added an additional Formula P to account for a formula which was previously misidentified as Formula A. Following this list, I have plotted the relative temporal spread of each formula to visually establish their evolution through time.

A – χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων ἔθη τέκνων δικαίῳ (in any order, including but not limited to χωρὶς κυρίου χρηματίζουσα τέκνων δικαίῳ κατὰ τὰ Ῥωμαίων ἔθη, χρηματίζουσα χωρὶς κυρίου κατὰ τὰ Ῥωμαίων ἔθη τέκνων δικαίῳ, or χρηματίζουσα χωρὶς κυρίου τέκνων δικαίῳ κατὰ τὰ Ῥωμαίων ἔθη)

B – χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίους ἔθη τέκνων δικαίῳ

C – χρηματίζουσα χωρὶς κυρίου τέκνων δικαίῳ κατὰ τοὺς νόμους

D – χωρὶς κυρίου χρηματίζουσα τέκνων δικαίῳ or χρηματίζουσα χωρὶς κυρίου τέκνων δικαίῳ

E – χρηματίζουσα τέκνων δικαίῳ

F – χωρὶς κυρίου χρηματίζουσα δίκαιον τέκνων ἔχουσα

G – (τῶν) τέκνων (τὸ) δίκαιον ἔχουσα

[1] Sijpesteijn (1982: 158-169) is the third of his publications on women using such formulae. Beaucamp (1992: 198-199) subsequently identified and labelled Formulae A through M, and Sheridan (1996: 125) added Formulae N, O, and X. Formula X is specifically for those formulae which can be identified as being a negative formula but cannot be securely placed into one of the other categories due to their fragmentary nature. This is a particularly valuable category to have, as instances of the negative formula, no matter how lacunose, attest to its continued use.

H – δίκαιον παίδων ἔχουσα

I – χωρὶς κυρίου χρηματίζουσα

J – χωρὶς (τοῦ) κυρίου (αὐτῆς/ἑαυτῆς) ἀνδρὸς χρηματίζουσα

K – ἄνευ κυρίου αὐτῆς ἀνδρὸς χρηματίζουσα

L – ἄνευ κυρίου ἀνδρὸς πραγματεύουσα

M – ἄνευ ἀνδρὸς χρηματίζουσα

N[2] – ᾗ συνκεχώρηται χωρὶς κυρίου χρηματίζειν

O[3] – χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων <ἔθη>

P[4] – χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμαίων ἔθη

X – too fragmentary to restore into one of the above categories.

[2] This addition by Sheridan (1996) is tenuous as a new formula type. In its one attestation, *P. Oxy*. XLI 2959, the entire phrase reads: παρὰ Φλαυίας Διονυσίας καὶ ὡς χρηματίζει ᾗ συνκεχώρηται χωρὶς κυρίου χρηματίζειν. There could be an argument instead for understanding this to be Formula I. It may also be worth noting that versions of this verb appear with positive guardianship formulae, though in quite a different order, in the first century BCE. The entire phrase as it appears here is anomalous.

[3] See Appendix 2, note on *P. Hamb.* I 100 for an explanation of and rational for the changes to Formula O in comparison to the formula initially proposed by Sheridan: χωρὶς κυρίου χρηματίζουσα κατὰ Ῥωμαίων.

[4] Puzzlingly, this formula is not accounted for by either Beaucamp (1992) or Sheridan (1996), and the latter even categorizes formulae of this type as type A (*BGU III* 717, for example), despite the clear lack of any mention of the right of children. In effect then, Sheridan's Formula O is redundant, and all formulae which have been categorized as O and some of which have been categorized as A, should actually be categorized as Formula P.

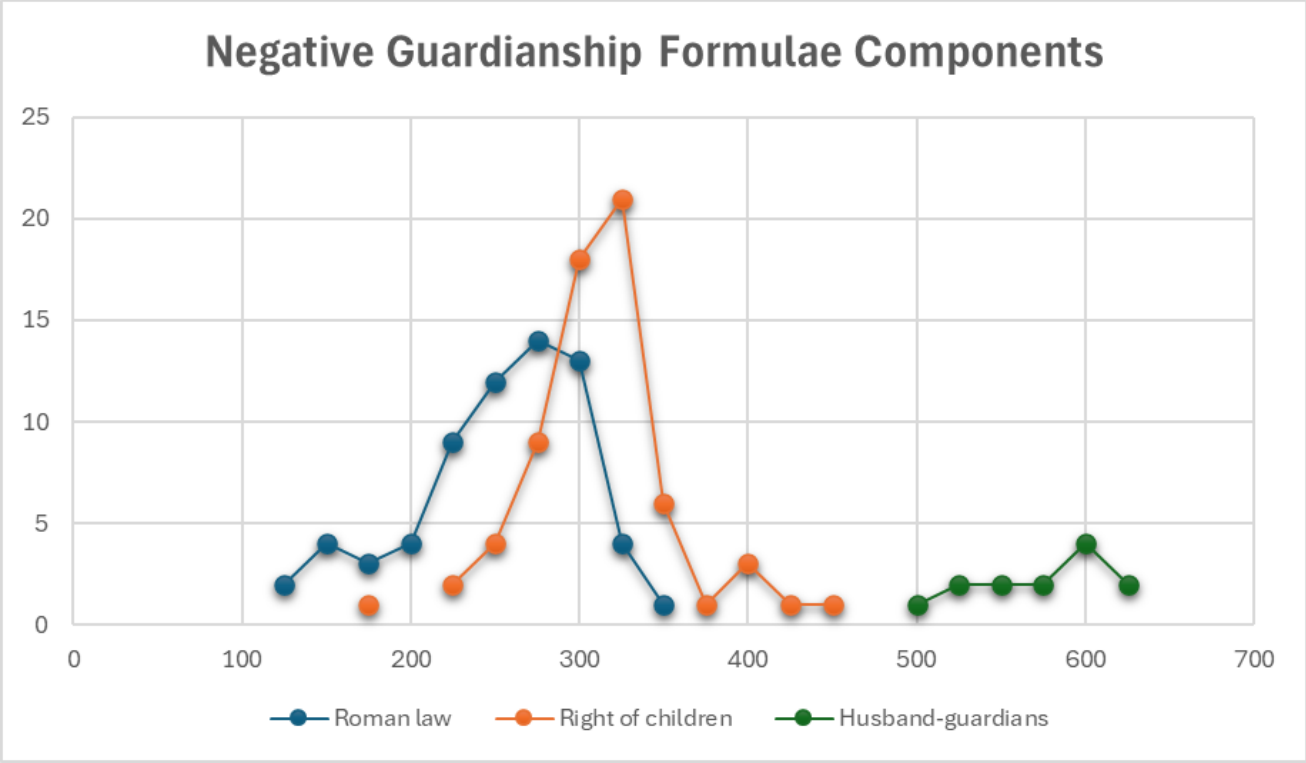

Figure 1. Temporal spread of negative guardianship by key component: 1) mentions of Roman law as in Formulae A, B, C, O, and P; 2) mentions of only the *ius liberorum* as in Formulae D, E, F, G, H, and I; and 3) mentions of the absence of a husband or husband-guardian as in Formulae J, K, L, and M. The seven papyri which are too lacunose to place into one of these three groups have been omitted.

The replacement of Formulae A, B, C, O, and P by formula versions without reference to Roman law is reflective of the universal enfranchisement of 212, after which there was no longer a need for inhabitants of the Roman empire to specify which legal system was being used. All inhabitants were now citizens, and that meant that the law that they used could now be considered Roman, even if it differed from more traditional Roman legal practices. As a result, references to Roman law no longer added any information and could be omitted.

By the end of the third century, then, Formula D becomes the most common, with similar formulae like E, F and G appearing occasionally. All cited the right of children. Formula I marked a first step in the direction of omitting the right of children from the formula, but it usually appears

in texts with a prior use of a formula which did mention the right of children (See *SB* VI 9219 or *P. Sakaon* 59).

At about the same time as these formulae without a reference to Roman law become common, we also see the introduction of helper phrases (see Appendix 7). The appearance of the formulae E, G, H without any reference to a guardian, but with a reference to a helper or a (deceased) husband suggests that, when these formulae were in use, the important parts of the phrase were considered to be the right of children and the absence or presence of a man, not that that man was formally the woman's *tutor*. This attitude persists throughout the fourth century and, from what few sources we have, appears to continue into the fifth century as well.

By the beginning of the sixth century, we see another change. Formula J now becomes the most common. It has no reference to Roman law and no reference to children. Instead, it equates the guardian to a husband, something we see in the positive formula throughout the entirely of both the Greek and the Roman periods. Formulae K, L, and M display a change in wording: the χωρὶς is switched out for ἄνευ. This does not change the meaning at all, but it does point to the fact that Formula J cannot be considered a fossilized relic of a bygone legal age. Only living formulae continue to change as they are used. In fact, Formula M drops any reference to a guardian altogether; this woman is simply "acting officially without a husband".

Appendix 2: Roman Guardianship and Exemptions from it before 212

The chart below shows the attestations of negative guardianship phrases, namely those which specifically note the absence of a guardian, in the Egyptian documentary papyri prior to 212. In most of these cases, whenever a woman claimed the *ius liberorum* and stated that she was operating without the presence of a guardian was we can confirm that she was indeed a Roman citizen. There are a few outliers which prevent wholesale generalization, but the use of negative formulae is primarily linked to claims of the *ius liberorum* by Roman citizens. This practice becomes significantly more widespread in the years immediately following universal enfranchisement but disappears once the novelty of Roman citizenship wears off.

A similar chart was produced most recently in 1996 by Sheridan, who drew on and updated earlier lists produced by Sijpesteijn and Beaucamp.[1] The list below, as well as those in Appendices 4 and 5, includes papyri listed by Sheridan as well as papyri which have been published since 1996, as well as a few which she and her predecessors omitted. I have maintained her lettering system, as introduced in Appendix 1, but updated and modified it based on newly published papyri and on new readings of older papyri.

Date	Formula	Woman's name	Type of transaction	TM number	Reference
99	N	Φλαυία Διονυεία	Refund request	16523	*P. Oxy.* XLI 2959
2nd	A	Σεμπρωνίας Θερμουθαρίου	Sale of land	27807	*PSI* VI 704

[1] Sijpesteijn (1982); Beaucamp (1992); Sheridan (1996).

2nd	χωρὶς κυρίου χρηματίζουσα κατὰ τὰ Ῥωμέων <ἔθη>[2]	Νουμίσσια Ἰουλίνα	Contract (too fragmentary to be more specific)	28705	*P. Hamb.* I 100
124	Φιλωτέρᾳ Πτολεμαίου ἀστῆι χω̣(ρὶς)[κυρίου][3]	Φιλωτέρᾳ	Lease of land	12434	*P. Mil. Vogl.* VI 269
138-161	A	[…]	Division of land	21515	*P. Oslo* II 31
138-161	A	[…]	Power of attorney	11203	*P. Freib.* II 9 / *SB* III 6292
142-144[4]	[- ca.30 - ἄνευ κυρί]ου χρηματίζειν κατὰ τ[ὰ τῶν][Ῥωμαίων ἔθη - ca.25 -][5]	Τερτ[τία Δρούσιλλα]	Judicial proceedings	26951	*BGU* XI 2070 / *SB* V 7516 / *P. Berl. Frisk* 2
149	P	Ἰουλία Τερτία	Confirmation of receipt	9315	*BGU* III 717
173-174	A	Πετρωνία Γαία	*Apographe* for a house	14268	*SB* VI 9573

[2] Sheridan (1996); suggests this to be a new formula type, type O; however, Hagedorn has proposed that a) there is a previously unread τὰ in front of Ῥωμέων and b) that we should understand that ἔθη was omitted by the scribe in error. The τὰ which was omitted in the *edition princeps* is abundantly clear in the photographs and ought to be accepted. Given their difficulty with the spelling Ῥωμέων, it is entirely possible that the scribe was not particularly familiar with any version of the *ius* formula and did simply forget the ἔθη. As a mention of children is also missing, this remains a unique formula, and therefore Sheridan's Formula O has been redefined as in Appendix 1. This may also be best categorized under the newly defined Formula P, proposed by me in Appendix 1. Digital photograph available here: https://digitalisate.sub.uni-hamburg.de/recherche/detail?tx_dlf%5Bid%5D=36309&tx_dlf%5Bpage%5D=1&cHash=d607f10ad856e5a6b8ce733f8022e21d

[3] This contract makes no reference to Roman law or to Roman citizenship. Other than the mention of the absence of a guardian, which is stereotypically Roman, the contract is markedly Hellenistic. There is no use of Roman names, instead Philotera identified in the Greek way, and is referred to as an ἀστή, or a Greek citizen woman. The brevity of her identification may be attributed to the fact that she is the addressee of the document and not its author. Nevertheless, while a provision which would have allowed her to operate independently under Greek law, we cannot say with certainty that she is doing so under Roman law either.

[4] On the date see also Maehler (1970) 263-271; *BL* 6, 1976, p. 21.

[5] This text has been restored by the editor as an entirely unattested formula. The restored ἄνευ is much more likely to be a χωρὶς, which would render this as a version of Formula A, although it is not clear whether there is the space necessary for a restoration involving τέκνων δικαίῳ in the approximately twenty-five-character lacuna after ἔθη.

175	D[6]	E[…..] Τρουννία	Epicrisis	21852	*P. Oxy.* XII 1451
182	A	Λογγινία Νεμεσίλλα[7]	Receipt for part payment of inheritance	9541	*BGU* VII 1662
182-183 (214-215)	A	lacunose, alias Κοπροῦτος	Petition	13171	*P. Stras.* III 150
209 (Sept 30)	A	Ἀντωνίᾳ Θερμουθαρίῳ	Sale of part of a house	11373	*P. Hamb.* I 15
209 (Oct 7)	A	Ἀντωνίᾳ Θερμουθαρίῳ	Petition about part of a house	11374	*P. Hamb.* I 16 / *Sel. Pap.* II 325
212 (Mar 4)	A	Στατωρίας Φιλοξένας	Sale of a slave	16567	*P. Oxy.* XXXVI 2777
212, (Aug 6)[8]	[χρηματιζού]σῃ χωρὶς κυρίου κατὰ τὰ Ῥωμαί[ων] [ἔθη] [τέκ]νων δικαίῳ[9]	Τρεβελλία Θαιεάρειον	Lease of land	9417	*BGU* III 920

[6] Sheridan (1996) assigns this text to Beaucamp's type E formula. However, given the late date of both the other extant type E texts (*P. Oxy. Hels.* 44 of 324 and *P. Coll Youtie* II 83 of 353) as well as the presence of a significant lacuna of approximately 15 characters immediately preceding χρηματίζουσα τέκνων δικαίῳ, this is more likely to be a lacunose version of Formula D instead.

[7] Λογγινία Νεμεσίλλα also appears in *BGU* VII 1575 and 1609. There is no mention of a guardian in either, she simply acts "διὰ Ἡ[ρ]ακλείδου Διογένους". Whether he is a related man managing her property or whether he is a paid property manager or even a slave is unclear. All we know about him is his name, his father's name, and that he was from Philadelphia while Longinia Nemesilla was "Ῥωμαίας καὶ Ἀντινοείδος", namely from Rome and Antinoopolis

[8] This text has also been dated to 180-181; in any case, it is characteristic of a pre-Antonine constitution text.

[9] This can be understood to be a variant of A, with the participle in the dative rather than in the normal genitive. Normally, the entire identifying phrase of the author of the contract is dependent on the preposition παρὰ, which takes an accusative. Here, however, the recipient of the text, whose name thus appears in the dative, is said to be operating without a guardian.

Appendix 3: Dative guardianship in the Provinces before and after 212

Together with the texts in Appendix 2, the texts below represent the earliest secure examples of Roman guardianship in the documentary papyri. Because these texts contain dative guardians, or Roman guardians specifically assigned by a Roman magistrate according to Roman law, we are able to differentiate between Greek guardianship and its Roman equivalent. As *SB* XVI 12527 clearly shows, a Roman dative guardian is usually linked to a Roman citizen woman, though this can not always be proven, either because of lacunae or because of the absence of a bi-partite Roman name.[1] Together, these texts demonstrate a basic social awareness of the Roman system of law and of the link between citizenship and law. Additionally, they establish the norm of referring to Roman law where it differs from the Hellenistic, which we see again with the *ius liberorum* after 212 CE.

Phrase	Name	Date	Reference	TM number
μ[ε]τὰ κυρίου τοῦ δεδ[ομ]ένου αὐτῇ κατὰ τὰ [Ῥω]μαίων ἔ[θ]η	Ἰουλία Ἡρακλᾶ	95	*P. Oxy.* II 273	20544
[μετ]ὰ κυρ̣ίο̣υ τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίω̣ν ἔθη	Μεμμία Τύχη	100-150	*P. Daris.* 31	26730
μετ[ὰ] [κυρίου] [τοῦ] [δεδομένου] αὐτῇ καθ’ ὑπόμ[νημα] ὑπόμνημα	T [….]	136-138	*P. Graux.* II 28	21651

[1] *SB* XVI 12527 mentions that a man and his wife had both taken Roman citizenship in the context of establishing their pre-Roman identities: [πρὶν] [δὲ] [ἢ] [λα]βεῖν τὴν Ῥ̣ω[μαίων] [πολιτείαν].

[πρυτανέων][οῦ] χρόνος ἐν πρυ[τανείῳ][---]				
[μετὰ] [κυρίου] [τοῦ] δεδομένου μοι κ[ατὰ] [τὰ] [Ῥωμαίων] [ἔθη]	[…]	140	*P. Col.* VIII 219	17629
μετ[ὰ] κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη Λουκίου Ἀρουντίου Λόγγου	Ἰουλίας Δημαρίου	144 (Feb 20)	*P. Frieb.* II 8	20007
μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη τοῦ υἱοῦ Μάρκου Σεντίου Ἀκύλα	Ἰουλίας Ἀφροδοῦτος	144 (Feb 20)	*P. Frieb.* II 8	20007
μετὰ κυρίου τοῦ δεδομ[έ]νου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη	Στατίας Πετρωνίας	144	*SB* I 4415	13931
μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη	Αὐρηλία Ἀπολλωνία ἡ καὶ Ἀρποκρατίαινα	200-250	*P. Oxy.* XXXIV 2723	30395
[ἡ] [δεῖνα] [...] εὐδοκῶ τοῖ[ς] προκιμένοις Μᾶρκος Αὐρήλιος Σε[ρῆ]νος ὁ καὶ Δῖος καὶ ὡς χρηματίζω ἐπιγέγραμ[μαι] τῆς μητός μου κατὰ τὰ Ῥωμαίων ἔθη κύρ[ιο]ς ὡς πρόκιται	[…]	218-222	*P. Hamb.* I 101	21055

μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων [ἔθη]	Διδύμη	221 (Nov 27-Dec 26)	*P. Harr.* II 227	11454
μετὰ κυρ[ίω]ν τῶν δοθέντ[ων] αὐτῶν κατ᾽ αἰτή[σεις] [διὰ] [τοῦ] ἐνάρχου ἐξηγητ[οῦ] τὰς καὶ συνκα[ταχω]ριζομένας ἐν [τῷ] [ἀρχείῳ]	Αὐρηλία Ἀνογειρις and Αὐρηλία Νεμεσοῦς	222-235	*CPR* VI 73	15795
[μ]ετὰ κυ[ρίου] [το]ῦ δοθέ[ντος] [---]	[...]	222-235	*CPR* I 75	22308
μετὰ κυρίου τοῦ δεδο(μένου) τοῦ [---]	Αὐρηλία Τυραννὶς	222-235	*P. Fay.* 94	10937
[μετὰ] [κυ]ρίου τ[οῦ] [δεδομένου] [αὐτῇ] [κατὰ] ἔθη Μάρκου Αὐρηλ[ίο[υ]	Δημητρία Διονυσι	224	*SB* XVI 12527	16260
μετὰ κυρί[ο]υ τοῦ δεδομένου μοι κα[τὰ] τὰ Ῥωμαίων ἔθη Μάρκου Αὐρη[λί]ου Νει[κ]οκλέους	Αὐρηλία Ἀριστοῦς (Δημητρία)	225-275	*P. Oxy.* X 1274	31728
[μετὰ] [κυρίου] [τοῦ] δεδομένου μοι κατὰ <τὰ> Ῥωμαίω[ν] [ἔθη]	Κύριλλα Ἡρακλείδου	230-231	*SB* XVI 12950	14682

μετὰ κυρίου τοῦ δ[ο]θ(έντος) αὐτῇ κατὰ νό[μους]	Ἀκάθη	234-235	*Stud. Pal.* XX 29	18697
μ[ετὰ][κυρίου][τοῦ][---] [δεδομένου] μοι κατὰ τὰ Ῥωμαίων ἔθη	Αὐρηλία Σινθῶνις	244	*PSI* XII 1238	13866
μετὰ κυρίου τοῦ δεδομένου αὐτῇ κατὰ τὰ Ῥωμαίων ἔθη	Αὐρηλία Ἀμμωνοῦς	247	*P. Oxy.* XLII 3049	16447
[μετὰ] [κυρίου] [τοῦ] [δεδο]μένου κατὰ <τὰ> Ῥωμαίω[ν] [ἔθη]	[...]	255	*SB* XXVI 16479	97177
[μετὰ] [κυρίου] [τοῦ][δεδομένου] [αὐ]τῇ κατὰ τὰ Ῥωμαίων ἔθη	[…]	298	*P. Oxy.* XLIX 3499	15655

Appendix 4: Negative Formulae between 212 and 300

There was a considerable rise in the number of negative guardianship formulae attested in the papyri after 212, which seems to mirror the increase in the number of citizens who were able to claim the *ius liberorum* as a result of the *Constitutio Antoniniana*. Between 212 and about 300, we primarily see formulae with either a reference to Roman law or to the *ius liberorum* (τέκνων δικαίῳ) or both.

Date	Formula	Woman's name	Type of transaction	TM number	Reference
212-225	A	[...]	Sale of part of a house	31828	*P. Oxy.* XIX 2236
212-225	A	Αὐρηλία Ἄρτεμεις	Sale of a slave	9821	*CPR* I 140
212 (after)	A	[...]	Census declaration	14867	*BGU* I 131[1]
212-265	A	[...]	Request for a guardian	30636	*PSI* XII 1258
215	D	Αὐρηλία Ἄρτεμεις	Application	21865	*P. Oxy.* XII 1463
218	I	[...]	Receipt for loan	9531	*BGU* VII 1650
219-220 (223-224)	A	Φλαυία Μαρκέλλη	Landowner list update	21861	*P. Oxy.* XII 1460
223-235	A	[...]	Purchase of land	22299	*CPR* I 63

[1] = *SB* XX 14327*;* See also *BL* IV, page 3.

224	X	[...]	Oath	19321	*P. Baden* 24
225	A	Αὐρηλία Εὐδαιμονὶς	Bill of sale	20372	*P. Oxy.* VI 909
225	A	Αὐρηλία Ἀπολλωνάριον	Acknowledgement of debt	16889	*P. Oxy.* XXXI 2566
225-275	I	Αὐρηλία Σαρ[.....]	Purchase of part of a house	31841	*CPR* I 3
226	A	Αὐρηλία Ταῶς	Receipt	18696	*Stud. Pal.* XX 29(ro)
226 (242)	A	Αὐρηλία [...]	Lease of a house	21222	*P. Köln. Gr.* III 150
227	A	Αὐρηλία Ταῶς	Contract (too fragmentary to be more specific)	18695	*Stud. Pal.* XX 28[2]
228-229	A	Αὐρηλία Ἀρητοῦς	Loan	16464	*P. Strasb. Gr.* VII 732
234	A	Αὐρηλία Ἡρακλεία	Sale of a slave	20018	*PSI* III 182
236	A	Αὐρηλία Ἰερακιαίνη	Request for registration	17475	*PSI* IX 1067
245	D	Αὐρηλία Σύρα	Census declaration	9451	*BGU* IV 1069
246-267	D	Αὐρηλία Δημητρία	Manumission	78449	*P. Lips.* II 151
247 (4 Jun)	A	Αὐρηλία Γερμανία	Sale and cession	17391	*P. Gen.* II 116
247-248	A	Αὐρηλία Σαραπιὰς	Declaration	17295	*P. L. Bat.* II 2[3]
249	A	Αὐρηλία Μεειθοῦς	Sale of a house	21786	*P. Oxy.* X 1276

[2] = *SB* I 5832.
[3] = *P. Vindob. Bosw.* 2.

249-250	D	Αὐρηλία Σαραπιάς	Petition	15702	*P. Turner* 41
250	A	Αὐρηλίαι Δημητρίᾳ καὶ Χαρίνᾳ	Sale of land	17299	*P. L. Bat.* II 6[4]
250-299	A	Αὐρηλία Κυριλλοῦς	Manumission	31283	*BGU* I 96
250-299	A	Αὐρηλία Γεμελλείνα	Receipt for rent	30656	*P. Berl. Möller* 6[5]
256	A	Αὐρηλία Ἀρτεμιδώρα	Sale of a house	22324	*P. Lips.* 3
256-261	D	[...]	Division of land	21948	*P. Oxy.* XIV 1637
257	D	Αὐρηλία Κοπρία τῇ καὶ Κυρίλλᾳ	Sale of land	9833	*CPR* I 176
257	A	Αὐρηλία Σαραπιάς	Sale	22468	*P. Oxy.* XLVII 3354
257	A	Αὐρηλία Σαραπιάς	Sale of property	21789	*P. Oxy.* X 1277
259-260	I	Αὐρηλία Ἰσιδώρα	Petition	21367	*P. Mich.* XI 615
260	A	Αὐρηλία Πετρωνία	Declaration	15636	*P. Oxy.* XLIX 3476
260-261	A	Αὐρηλία Διοσκουρίαινα	Return of a dowry	20886	*P. Coll. Youtie* II 67
263	I[6]	Αὐρηλία Θαϊσοῦς	Petition	21868	*P. Oxy.* XII 1467
265	I	Αὐρηλία Ἡρακλεία	Lease of land	13534	*P. Tebt.* II 378
266	D	Αὐρηλία Ἀρσινόη	Registration	17596	*PSI* VIII 940
266	A	Ἰουλιάνα, ματρώνα στολάτα	Purchase of land	19515	*P. Ryl. Gr.* II 165

[4] = *P. Vindob. Bosw.* 6.
[5] = *SB* IV 7343.
[6] Variant: χωρὶς κυρίου χρηματίζειν.

267	D	Αὐρηλία Θαϊσοῦς	Sale of land	21876	*P. Oxy.* XII 1475
271	D	Αὐρηλία Λιβουκὴ	Contract	14738	*SB* XVII 13305
271 (after)	A	Αὐρηλία [...]	Sale contract	18479	*P. L. Bat.* XXV 54
271-272	A	Αὐρηλία Σαραπιάς	Sale of a house	18722	*Stud. Pal.* XX 72[7]
271-272	A	Αὐρηλία Ἰουλία	Declaration	316266	*PSI* XVI 1627
272 (c.)	A	Αὐρηλία Ἀμμωνοῦς	Declaration	16506	*P. Strasb. Gr.* VII 671
274	A	[...]	Sale and cession	15654	*P. Oxy.* XLIX 3498
275 (281)	E/E	Αὐρηλία Ἰουλία	Declaration of purchase	21584	*P. Oxy.* IX 1199
275-299	X	[...]	Sale of part of a house	31513	*P. Laur.* III 74
275-299	C	[...]	Loan	30366	*P. Strasb. Gr.* VII 636
276	C	Αὐρηλία Κορνηλία	Receipt	18723	*SB* XXII 15604
279	A	Αὐρηλίας Ῥοδίνη	Sale of a slave	16988	*P. Strasb. Gr.* IV 264[8]
279-280	D	[...]	Request for *parathesis*	16217	*SB* XVI 12242
279-280	D	[...]	Request for *parathesis*	16218	*SB* XVI 12243
282	D	Αὐρηλία Σαραπιάς	Loan of money	10425	*P. Cair. Isid.* 93
282	X	Αὐρηλία Ταρπαησις	Division of inheritance	21949	*P. Oxy.* XIV 1638

[7] = *CPR* I 9.
[8] = *Pylon* I (2022), 37-60, 2.

283	A	[...]	Sale of part of a house	20908	*P. Cornell* 12
285-304	A	Αὐρηλία Ἀπία	Receipt for deposit	21991	*P. Oxy.* XIV 1714
289	I[9]	Αὐρηλία Τιτανεία	Sale	9134	*BGU* I 94[10]
289	C	Αὐρηλία Ἰσιδώρα	Division of inheritance	16788	*P. Strasb. Gr. I* 29 + P. Strasb. Gr. VI 555.
291	D	Αὐρηλία Τειηους	Lease of three cows	47137	*P. Michael* 22
293	D	Αὐρηλία Κυριλλοῦς	Sale of a slave	22325	*P. Lips.* 4
293	D	Αὐρηλία Κυριλλοῦς	Sale of a slave	22326	*P. Lips.* 5
293	D	Αὐρηλία Κυριλλοῦς	Sale of a slave	16806	*P. Strasb. Gr.* VI 594
293-304	A	Ἀθηνοδώρα	Contract	20283	*SB* XXIV 16320
295	C	Αὐρηλία Εὐστόργις	Will	22342	*P. Lips. 29*
296	D	Αὐρηλίας Ταπάμμον	Petition	15810	*P. Oxy. Hels. 26*
297	D	Αὐρηλία Ἑλένη	Application	78591	*P. Oxy. LXV 4489*
298	A	Αὐρηλία Ταπαεῖς	Sale of a house	13721	*P. Wisc.* II 58
298	A	Αὐρηλία Ταπαεῖς	Sale of a house	13722	*P. Wisc.* II 59
298	A	Αὐρηλία Ταπαεῖς	Declaration	12292	*P. Mich.* XII 627
298-299	D/D	[...]	Contract	128681	*P. Jena* II 1
3rd	A	Αὐρηλία Σευθαρίον	Declaration	31241	*BGU* III 863

[9] In the subscription only.
[10] *BL* I 18-19.

3rd	A	[...]	Declaration about rent	1317	*SB* V 8940
3rd	D	Ἀντωνία Νεμεσίλλη[11]	Request to open a will	31210	*P. Lond.* II 171b
3rd	A	[...]	Loan of money	30851	*SB* XIV 11598
3rd	A	[...]	Payment	30418	*P. Strasb. Gr.* VI 575
3rd	A	Αὐρηλία	Sale of a house	32149	*SB* XVI 12537

[11] Her husband has died, but she still claims the *ius* and cites the right of children.

Appendix 5: Guardians in the Papyri after 300

Both the explicit presence and absence of a guardian are tracked below, as the mention of either serves to show that the guardianship of adult women remained an aspect of contract creation and a legal status worthy of note. The evolution of the negative formulae especially throughout these centuries also demonstrates that the formula was not fossilized or obsolete, but instead that it was a living one, with which contracting women and/or their scribes interacted in a meaningful way.

After problematizing various search strings for papyri.info and Trismegistos, the one used here searched for the word κύριος in any case, the search was then delimited by the genitive, which represented 77.8% of attestations (out of a total of 13,539), subsequently, this was further narrowed by instances of the genitive which were immediately preceded by a preposition, which allowed us to find the regular positive and negative formulae. Through trial and error and manual review, searching in this way allowed us to capture secure instances of both the positive and negative guardianship formula, while only being slightly affected by titles, direct address, dates, or other constructions in which the word κύριος was used, such as dates dependant on the emperor's regnal year. The use of the word κύριος in these other contexts is a distinctly Late Antique phenomenon.

Unlike Beaucamp and others, I have also chosen to track and account for unclear references to guardians. Since I prioritize an understanding of the continuity and extent of guardianship over tracking, comparing, and analysing the types of formulae used throughout time, the presence of even lacunose guardianship formulae remains valuable. They are an additional attestation to the existence of the practice and can offer generalized support for the argument that guardianship persisted throughout Late Antiquity, even through they might not be able to add much to a discussion of what it looked like or how it functioned.

With a Guardian

Date	Formula	Woman's name	Type of transaction	TM number	Reference
307	μετὰ κυρίου τοῦ ἀνδρός μου Αὐρηλίου Νεμεσίωνος μετὰ κυρίου τοῦ προκιμένου ἡμῶν ἀδελφοῦ Αὐρηλίου Γούνθου	Αὐρηλία Ατρεας Αὐρηλίαι Ταύητος καὶ Σαμβαθοῦτος	Sale	11295	*P. Graux* II 17
307	[.....] [μετὰ] [κυρίου] [τοῦ] [ἀν]δρὸς αὐτὴς Αὐρηλίου Νεμεσίωνο[ς] μετὰ κυρίου τοῦ [προ]κιμένου [α]ὐτῶ[ν] [ἀδελφοῦ] [Αὐρηλίου] [Γούνθου]	Αὐρηλία Ατρεας Αὐρηλίαι Ταύητος καὶ Σαμβαθοῦτος	Sale	11296	*P. Graux* II 18
307	[...?...] μετὰ κυρίου τ[οῦ] [ἀνδρὸς] [αὐτῆς] [Αὐρηλίου] Νεμεσίωνος [μετὰ] [κυρίου] [τοῦ] [προκιμένου] ⳨αὐ̣τ̣ῷ̣ν ἀδ̣λ̣[φοῦ] [Αὐρηλίου] [Γούνθου]	Αὐρηλία Ατρεας Αὐρηλίαι Ταύητος καὶ Σαμβαθοῦτος	Sale	11297	*P. Graux* II 19
308	[.] [μετὰ] [κυρίου] [τοῦ] [ἀνδρ]ὸς Αὐρηλ̣ί[ου] [...?...]	Θερμοῦθις	Contract	22606	*P. Nekr.* 41[1]
342	[με]τὰ κυρίου κύριος ἐπιγραφομένου τοῦ [συν]όντος αὐτῇ ἀνδρὸς Αὐρ[η]λίου Ἀθα[νασίου]	Αὐρηλία Ἡσύχιον	Sale of land	9447	*BGU* IV 1049
355	μετὰ συνεστῶτ[ο]ς [τ]οῦ	Αὐρηλία Τηρουτήρου	Manumission of slaves	23522	*Chrest. Mitt.* 361[2]

[1] =*P. Bodl.* I 169.
[2] = *P. Oxy.* IV, pages 202-203; *BL* VII, 123; Bagnall and Worp (1978); *BASP* 15, 235-236 (no 2).

	κυρίου αὐτῆς ἀνδρὸς Αὐρηλίου Δωροθέου				
411[3]	[μετὰ] [παρόντ]ος καὶ συνευδοκο[ῦν]τ[ος] τ[οῦ] κυρίου ἑαυτῆς ἀνδρὸς Φλαουίου Ὡριγενίου β(ενε)φ(ικιαρίου) τάξεως ἡγεμονίας ἐπαρχίας Ἀρκαδίας	Αὐρηλία Ὡριγενεία	Sale	18740	*Stud. Pal.* XXI 117
578-582	μετὰ καὶ τοῦ κυρίου αὐτῆς ἀνδρὸς Αὐρηλίου Ἰσακίου υἱοῦ Κωσταντίου τοῦ καὶ συνενοῦντος καὶ συνευδοκοῦντος αὐτῇ[4]	Αὐρηλία Τσώνη	Sale	19740	*P. Lond.* V 1724

Without a Guardian

Date	Formula	Woman's name	Type of transaction	TM number	Reference
3rd - 4th	G	Αὐρηλία Σιλβανεία	Loan agreement	31906	*P. Lips.* I 12
300-325	A	N/A	Loan agreement	33294	*P. Aberdeen* 180
300-325	D[5]	Αὐρηλία Δημητρία ἡ καὶ Ἀμμωνία	Registration	97191	*SB* XXVI 16818
First half of 4th[6]	A	N/A	Sale of inheritance	31905	*CPR* I 227

[3] There is some debate about this date; See Bagnall and Worp (1978) 287-288, (2004) 132; Beaucamp (1996).
[4] Tsone's minor sister is also represented in this transaction, but her representative is not given the title of κουράτωρ or κυρίος: "καὶ Ἰωάννης ὁ καὶ Καττᾶς λεγόμενος αὐλιζόμενος ἐν τῷ μοναστηρίῳ Παμπάνης, τὰ νῦν δὲ ἐν τῇ Συήνῃ εὑρεθεὶς ὁ καὶ ἀναδεχόμενος τὴν γνώμην καὶ τὴν πίστιν τῆς ἀφήλικος Τσέρης ἀδελφῆς τῆς προκ[ειμ]έ[ν]ης Τσώνης." Such non-formulaic indications of women or minors with legal representation may also contribute to the impression of a decline of guardianship.
[5] The text is extremely fragmentary, but given the legible δικ for δικαίῳ, it is certainly a negative formula and not a positive one. The editor has restored the formula as Formula D, which is a reasonable choice given the space and the date.
[6] Beaucamp (1992) 199 dates it to the first half of the fourth century, with suggested dates of 332 or 340.

4th	D[7]	N/A	Sale	33365	*P. Erl.* 76
4th-5th	D	N/A	Contract	45383	*SB* XXIV 15967
300	A D	Αὐρηλία Διδύμη Αὐρηλία Ἡράκλεια	Contract	17454	*SB* IV 7338[8]
300	D	Αὐρηλία Σερηνίλλα	Receipt for rent	10320	*P. Cair. Isid.* 112[9]
300	A	N/A	Contract	21256	*P. Laur.* IV 154
300	D	Αὐρηλία Θ̣ερμουθᾶρις	Lease	10533	*P. Col.* VII 179[10]
300-301	D	Αὐρηλία Σερηνίλλα	Petition	15764	*P. Oxy.* XLVI 3302
305	A[11]	Αὐρηλία Εὖς	Purchase of land	15827	*CPR* VII 14
305	B	Αὐρηλία Ἄρτεμις	Sale	13075	*P. Sakaon* 59[12]
306	D I	Αὐρηλία Τιτανιανὴ; Αὐρηλία Ἄρτεμις; Αὐρηλία Ἀμμώναριον Αὐρηλία Τιταιανὴ	Sale	13077	*P. Sakaon* 60[13]
307	D	Αὐρηλία Ἀτάρις	Sale	11295	*P. Graux* II 17
307	D	Αὐρηλία Ἀτάρις	Sale	11296	*P. Graux* II 18
307	D	Αὐρηλία Ἀτάρις	Sale	11297	*P. Graux* II 19
309	D, I	Αὐρηλία Πτολεμαίς	Sale of property	14568	*SB* XVI 12289

[7] Beaucamp (1992) notes that this could also be restored as Formula E. The text is quite fragmentary.
[8] = *P. Berl. Möller* 1, *BL* III 29, VII 29, VIII 63, XIII 196.
[9] = *SB* V 7625.
[10] = *SB* VIII 9835.
[11] This could also be restored as Formula D, according to Beaucamp (1992: 199 and annex 1) but given the space, and the need for a συνεστῶτος phrase here because of the following genitive name, the A seems much more likely.
[12] = *P. Thead*. 2.
[13] = *P. Thead.* 1.

314	D	Αὐρηλία Ṭάϊς τῇ καὶ Τεχωσαρίον	Loan of money	16831	*P. L. Bat.* XIII 7[14]
318	D	N/A	Sale	17431	*SB* X 10728, 8
319	D	Αὐρηḷία Ἀλέκα	Receipt for taxes	10540	*P. Col.* VII 185
319	D, G, I	Αὐρηλία Διονυσία τῆς καὶ Ἀμελία	Purchase of land	17874	*SB* VI 9219
320	C	--	--	--	*P. Vindob. G* 16712[15]
322	D[16]	N/A	Contract	18158	*SB* XIV 11611, 2
324	E[17]	Αὐρηλία Ἄριλλᾳ	Contract	15823	*P. Oxy. Hels.* 44
324-325	F	Αὐρηλία Δημητρία ἡ καὶ Ἀμμωνία	Contract	17445	*SB* XVI 12673
325	\συνορᾷ γὰρ ἡ σὴ ἐμμέλια ὡς καὶ τέκνων δικαίῳ γεγένηται τὸ γύναιον.[18]/	Ἑλένη(?)	Judicial proceedings	15267	*P. Oxy. LVI* 3758[19]
325	D	Αὐρηλία Ταṣία	Lease	11455	*P. Haun.* III 55
331-347	D[20]	Αὐρηλία Χαρίτη	Loan	15611	*P. Charite* 33

[14] = *P. Select.* 7.
[15] This text is not published but is mentioned in Beaucamp (1992) 199 and in *P. Mich. XV* page 167.
[16] The papyrus breaks off in the middle of the word τέκνων, so there is no way of knowing from the text itself whether this is Formula D or a fragmentary version of Formula A. The date suggests that this is D, since Formula A was not common after the first few years of the fourth century.
[17] See Appendix 3 for the expanded formula with the συνεστῶτος phrase.
[18] This entire phrase was inserted above the regular line of text.
[19] This text is identified by Sheridan (1996: 123, #100) as a one of her newly discovered instances of a negative guardianship formula. However, she gives no formula type in her chart; in fact, it is the one blank in the entire thing. No explanation is provided for that omission. The name she lists, Ἑλένη, appears once in *P. Oxy.* LIV 3758. The text also contains no standard guardianship formulae. On the other hand, there are two mentions, in the narrative of the proceedings, of the *ius liberorum*. These appear to relate to Helene, in the context of establishing that since she possessed the *ius* she was free to bequeath her jewelry to whomever she pleased.
[20] There is an approximately 12-character lacuna on line two, following the negative guardianship formula. It is thus possible that the formula here is something other than D, but there doesn't appear to be enough space to restore formula A. It is more likely that the lacuna contained the full Roman name of Anoubion, who appears on the following line and perhaps a reference to some type of assistance.

336-337	I[21]	N/A	Procura	18218	*P. Matr.* 5
337-350	G	Αὐρηλία Νόννα ἡ καὶ Πολυέτιον	Sale	10055	*P. Abinn.* 64
348	D	Αὐρηλία Χαρίτη	Receipt	15564	P. Charite 8[22]
350	H	Αὐρηλία Νόννα	Judicial proceedings	16868	*P. Abinn.* 63[23]
353	E[24]	Αὐρηλία Ἀμμωνία ἡ καὶ Ζωὶς	Donation	20898	*P. Coll Youtie* II 83
388	G	Αὐρηλία Ταψάϊς	Copy of a settlement	17601	*PSI* VIII 951
389	G	Αὐρηλία Κολλεῦθις	Loan	20090	*BGU* III 943
426	I	Θεωνο[..]	Lease	112445	*P. Oxy.* LXXI 4830
430	I[25]	Αὐρηλία Διδύμη	Lease	22058	*P. Oxy.* XVI 1957
493	K[26]	Αὐρηλία Θελπωρίνη	Sale	15323	*P. Münch.* I 15 + *P. Lond.* V 1855 fr. 1-10 descr.
506	J	N/A	Contract	16309	*SB* XVI 12864[27]

[21] The papyrus is damaged on the right side, so the formula may extend after the χρηματίζουσα, as in Formula D or F.
[22] = Harrauer (2010) 206; *Stud. Pal.* XX 98.
[23] = *Chrest. Mitt*. 96; *P. Bouriant* 20; *Sel. Pap.* II 263; *FIRA* 3[2] 172; *Chartae Latinae Antiquiores* XVII 661.
[24] While Beaucamp (1992); identifies this as Formula E, it contains an interesting emphasis on only *two* children as well as a deceased husband: χρηματίζο[υ]σα τέκ[ν]ων δικαίῳ τοῖς ἐμοῦ τ̣[έκνοι]ς Αὐρηλίοις Παύ[λ]ῳ καὶ Διονυσίῳ ἀμφοτέροις ἐκ παρτὸς τοῦ ἀπ̣ογ[ενο]μ̣ένου μου συμβ[ίο]υ Ηρ[...]ς ; Is Ammonia free of a guardian because of her two children or is she free of the guardian because her husband passed away?
[25] This is the only instance of Formula I which is not preceded by Formula D. Nevertheless, all other instances of Formula I are from the early fourth century. In this instance, the text has Formula I twice, rather than both Formula D and then Formula I.
[26] Beaucamp (1992: 202) notes that Formula K could also be read here instead of Formula L, although she does choose to like this text under Formula L. A review of the images of the papyri suggests that Formula K is as likely a reading as Formula L, and perhaps the more logical choice, since Formula L is not found elsewhere in the papyri.
[27] = *P. Lond.* III, p. 61, no. 867. On the reading of the formula, see Sijpesteijn (1976), (1982); Worp (1984) 136-138; Beaucamp (1992) 201. Sijpesteijn (1976 and 1982) claimed that this text included a συνεστῶτος phrase and reference to a husband, which would have significantly disrupted the theory that the negative formulae is linked to the absence of a husband in this period.

525	J	N/A	Contract	19365	*P. Flor.* III 323
531	J	Αὐρηλία Οὐρανία	Loan	41001	*Stud. Pal.* XX 139
536	J	Αὐρηλία Μαν’νοῦς	Contract	41304	*P. Grenf.* II 85
569	J	Αὐρηλία Μάρθα	Loan	20901	*P. Coll. Youtie* II 92
570	J	Αὐρηλία Τεκρομπία	Account	18911	*P. Cair. Masp.* 2 67156
580-581	X[28]	N/A	Contract	41060	*BGU* I 317
584-585	X	N/A	Contract	244033	*AnalPap.* 23-24, p. 169
585	J	Αὐρηλία Ταπία	Conveyance	15317	*P. Münch.* I 9
585	K	Αὐρηλίᾳ Ταπίᾳ	Receipt	19746	*P. Lond*. V 1731
586	K	Αὐρηλία Ταπία	Sale	15319	*P. Münch.* I 11
7th	M	Θεοφανία	Receipt	41104	*Stud. Pal.* III 83
608	J	Αὐρηλία Μᾳ[ροῦς]	Compromissum / Agreement	41363	*SB* 24 15899
611	M	Ἀναστασία	Contract	17656	*PSI* VII 773
615	J[29]	N/A	Compromissum / Agreement	41364	*SB* I 5271

[28] Beaucamp (1992: 201) suggests restoring the lacunose formula as either Formula J or K, but the editors have restored it as Formula I, the difference being the presence or absence of the word ἀνδρὸς. Because the size of the lacuna here is unknown, given that the two pieces of the papyrus are completely separate, it is difficult to say whether there would or would not be space for a restoration involving the word ἀνδρὸς.
[29] Beaucamp (1992: Annex 1) restores this as Formula J.

Unclear Reference to a Guardian

Date	Formula	Woman's name	Type of transaction	TM number	Reference
304	D[30]	[….. Δημητρία?] ἡ καὶ Ἀμμωνία	Marriage contract	17298	*SB* XXVI 16502[31]
377	[...] [μετὰ][κυρίου] [ἐμοῦ] [το]ῦ ἀνδρὸ[ς] Ἀὐρηλίῳ Ἰῳάννου [τοῦ]Δώρου[32]	[...]	Contract	15514	*SB* XIV 12021[33]
6th to 7th	[….] [μετὰ] [κ]υρίου [...?...] [Ἀ]νδρέο[υ] [τοῦ] [εὐ]λαβεστάτου	Εἰρήνη, χήρα	Contract	41141	*Stud. Pal.* III 239[34]
575-625	[Αὐρηλία] [...?...] [τοῦ] [...?...] [μετὰ] [κυρίου] [...?...] προκ(ειμένου)	N/A	Sale	35906	*P. Vat. Aphrod.* 5[35]
7th-8th	[...?...] μετὰ κυρί[ου] [...?...]	N/A[36]	Deed of surety	41032	BGU III 752[37]

[30] The formula is entirely a restoration. However recent editors have surmised that the text belongs in the archive of Demetria, also known as Ammonia. The name, and presumably much of the text has been restored based on that conclusion. Nevertheless, the appearance of a negative formula in a marriage contract which later states that the marriage is undertaken in the hope of children, is distinctly odd. If, indeed, a negative formula should be understood here, D is a reasonable choice.

[31] = *Anal. Pap.* XIII 81-90; *P. L. Bat.* II 5; *BL* III 101.

[32] The formula is quite lacunose, but, given the rest of the text where the author is identified as someone's daughter, as well as the inclusion of the named husband, this must have been a contract written by a woman who was accompanied by her husband/guardian.

[33] Restored twice with the positive formula, but Beaucamp is not convinced by the reading of these two previous scholars (1992: 193-194).

[34] Beaucamp (1992: 193, annex 1) is not convinced by the restoration of the positive formula here and indeed, the appearance of a widow with a guardian in this period would be odd. However, we do not have anything similar to compare it against, either way.

[35] = *Études coptes XIV*, 132, no. 50; Beaucamp (1992) does not find the positive formula to be a secure reading (193 and annex 1), a fact which is hardly surprising given its fragmentary nature.

[36] Very lacunose, no named women in the contract.

[37] This reading is tenuous at best. The text was re-edited in 2018 in *ZPE* 206 194-198 where this line now reads: [-ca.13 -] ϙυμεγωρι[.]α [.]οντρ. . .

Appendix 6: Positive Formulae from the Third Century BCE to the Seventh Century CE

The positive formula which appeared in a woman's contracts to specify that she was working with a guardian did not change much throughout the entire period of Greek language administration in Egypt, from Ptolemy's takeover to the Arab invasion almost a millennium later. The following graph gives a breakdown of the relationship between guardian and ward, where it is known, in the 1524 instances of a positive guardianship formulae in the Greek documentary papyri. Contracts in which the relationship is uncertain or unknown, either because it is simply not mentioned or because of lacunae, are not represented here in the interest of clarity.

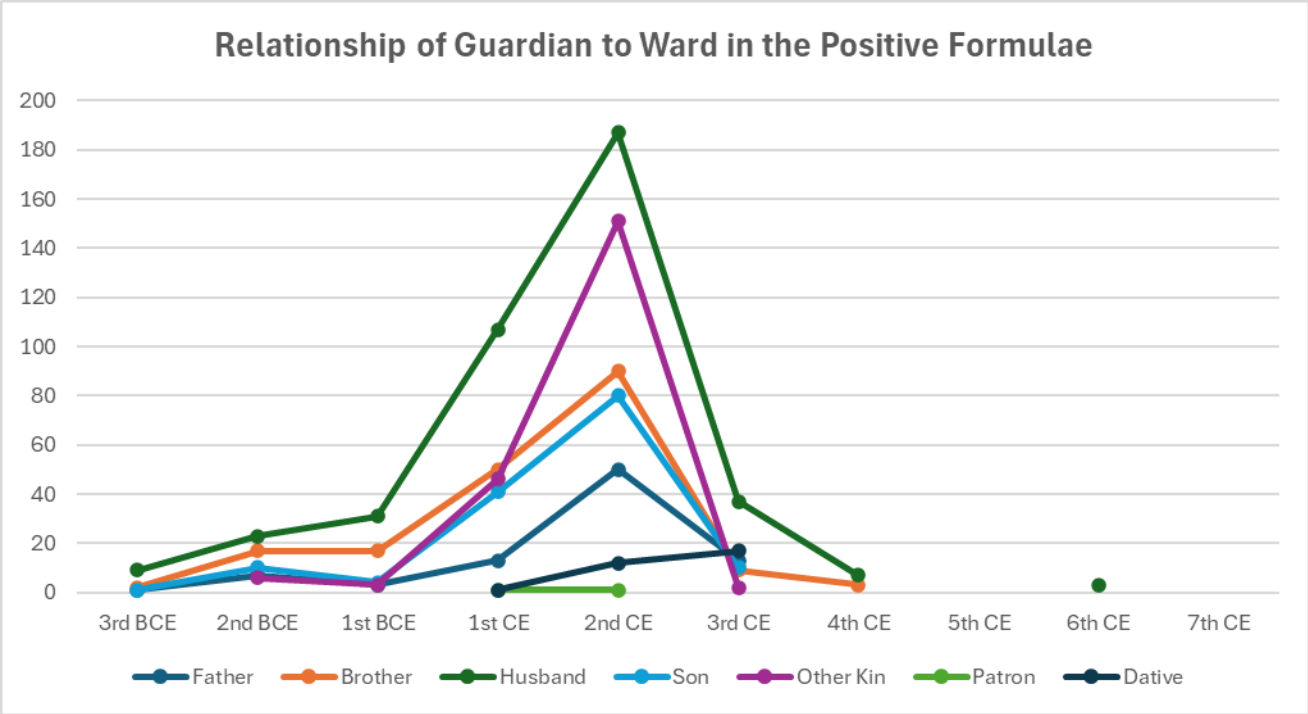

Figure 2. The relationship of a woman to her guardian from the third century BCE to the seventh century CE, where securely known. Because of uncertainties in dating, the data has been graphed by century, rather than by absolute date.

Appendix 7: Other Guardians or Assistance for Women

Not all Late Antique Roman women needed a κυρίος, and in the centuries after 212 very few transactions would have actually required one. Even when that was well understood, however, there appears to have been a tendency to include especially husbands in women's contracts in some role, if not as the guardian, then in some other way. Sometimes they are said to be present, other time jointly agreeing, and other times managing the entire transaction on behalf of their wives. This became prevalent not long after 212, when many women gained the rights of the *ius liberorum* alongside their citizenship. Although the first generation of new citizens adopted the guardian-less contract, just over sixty-feve years later we see a new addition to the contracts which reveals societal discomfort about women making contracts entirely on their own. From the end of the third century onwards, although they still claimed the right of children, their husbands were now recorded in the contracts in what we have been referring to as helper phrases.

Beyond this, women could also have a *curator* or ἐπιτρόπος if they were minors. After 212, however, the distinctions are not always clear, and κυρίοι also appear with minors as in *P. Graux.* II 17-19. To make the situation even more complicated, women could also mandate someone else to manage their affairs for a specific situation. The mandated man could be her husband or a blood relative, but he did not have to be. In court cases, for example, women were often accompanied by their husbands as well as lawyers, and sometimes an entire case is managed on a woman's behalf and in her absence. This could also extend to other situations in which the woman had a legal say, as we have already seen with Patermouthis and Kako's inheritance dispute in *P. Münch*. 7 and *P. Lond.* V 1860.

All these types of male oversight or involvement appear in the documentary papyri in various ways. None of them is as clearly formulaic or defined as either the positive or negative κυρίος phrases, and therefore are also less easy to define. The following is thus not an exhaustive list of all the documentary papyri which have a supporting man (or very occasionally woman) attached to a woman signatory or legal actor, but it does aim to be a reasonable overview of the various types of ways in which this support or assistance might appear in the papyri over time.

Date	Relevant Greek Phrase	Woman's name	Type of transaction	TM number	Reference
289	[καὶ][ἡ] [ἀδ][ελ]φὴ τῶ[ν] [δύο] [ἀδελφῶν] [Α]ὐρηλία Ἰσ[ιδ]ώρα εἰδυῖ[α] [γ]ράμματα χρη(ματίζουσα) [χωρὶς] [κυ]ρίου τέ[κ]νων δ[ι]καίῳ κατὰ τοὺς νόμους συν[εσ]τῶτ[ός] [μοι] [τοῦ] [ἀν][δ]ρός μου [Αὐρ(ηλίου)] [Ἑ]ρμ[ί][ου] [τ]οῦ καὶ Ὀλυμπίου […] Αὐρ(ήλιος) [Ἑρ]μείας συνπάριμι τῇ συμβίῳ μου	Αὐρηλία Ἰσιδώρα	Division of property	16788	*P. Stras. Gr.* VI 555[1]
289/290	Ἰσιδώρ̣α οἱ ̣τρῖς Ἑρμαίου τοῦ καὶ Ἰουλιανοῦ γενομένου βουλ(ευτοῦ) τῆς (αὐτῆς) πόλ(εως) συνεστῶ(τός) [μοι] [τοῦ] [ἀνδρός] [μου] [Αὐρ(ηλίου)] [Ἑρμίου] [τοῦ] [καὶ] [Ὀλυ]μπίου	Αὐρηλία Ἰσιδώρα	Division of property	16509	*P. Stras. Gr.* VII 672
293	[Αὐρηλίᾳ] [Κυριλλοῦτι] [Ἰέρακος] [ἀπὸ] [τῆς] [α(ὐτῆς)] [Ἑρ]μοῦ πόλεως ἀναγραφομένη ἐ[πὶ] [τ]οῦ α(ὐτοῦ) ἀμ[φόδου] χωρὶ[ς]	Αὐρηλία Κυριλλοῦς	Sale of a slave	22325	*P. Lips.* 4[2]

[1] This is the earliest known secure instance of the συνεστῶτος phrase.
[2] = *Chrest. Mitt.* 171.

	[κ]υρίου χρηματιζού[σῃ] τέκνω[ν] [δικαίῳ] [συνεστῶτος] [αὐτῇ] [τοῦ] ἀνδρὸς αὐτῆ[ς] Αὐρ(ηλίου) Ἑρμείου τοῦ [κ]αὶ Κρο[νίου]				
293	παρὰ Αὐρ(ηλίας) Κυριλλοῦτος Ἱέρακος ἀπὸ τῆς αὐτῆς Ἑρμοῦ π[ό]λεως ἀ[ν]αγρα(φομένης) ἐπ᾽ ἀμφόδου τοῦ αὐτ[ο]ῦ χωρὶς κυρίου χρη(ματιζούσης) τέκ[ν]ων δικ[αίῳ] [σ]υνεστῶ[το]ς αὐτῇ τοῦ ἀνδρ[ὸς] αὐτῆς Αὐρ(ηλίου) Ἑρμείου τοῦ καὶ Κρονίου	Αὐρηλία Κυριλλοῦς	Sale of a slave	22326	*P. Lips.* 5
293	Αὐρ(ηλία) [Κυρι]λλοῦς Ἱέρακος ἀν[αγραφομένη] [ἐπ᾽] [ἀμ]φ[όδ(ου)] Φ[ρο]υρίου Ἀπ[ηλ(ιώτου)] [χωρὶς] [κυρίου] [χρη(ματίζουσα)] [τέκνων] [δικαίῳ] συνεσ[τῶτος] τοῦ ἀν[δρὸς] [αὐτῆς] [Αὐρ(ηλίου)] [Ἑρμ]είου τοῦ καὶ Κρονίου	Αὐρηλία Κυριλλοῦς	Sale of a slave	16806/ 16807	*P. Stras.* VI 594
295	[Αὐρηλία] [Εὐστόργις] [... ?...] [οὐλὴ] [.....]ῳ ἀριστερῷ χρηματίζ(ουσα) χωρὶς κυρί[ο]υ τέ[κνων] [δικαίῳ] [κατὰ] [τὰ] [Ῥωμαίων] [ἔθη] [.....] [ἀναγρα(φομένη)] [ἐν] [τ]ῇ λα[μπ]ροτάτῃ Ἑρμοῦ πόλει ἐπ᾽ ἀμφόδου φρουρ[ί]ου λιβὸς μετὰ συνεστῶτος [ἐμαυτῇ] [Αὐρηλίου] Τριαδέλφου [Ἑρμοφίλου] […] Αὐρ(ήλιος) Τριάδελ[φος] Ἑρμοφίλου σ[υμ]πάριμι αὐτῇ καὶ ἔγρ[αψα] [ὑπὲ]ρ αὐτῆς {μης} μὴ εἰδυίης γράμματα.	Αὐρηλία Εὐστόργις	Testament	22342	*P. Lips.* 29[3]

[3] = *Chrest. Mitt.* 318.

298	τὰ γραφέντα ἡμῖν [ὑπὸ] [Αὐρηλίου] [Ἰσιδώρου] [ἐπιτρόπου]	Θαήσιος	Judicial proceedings	44881	*P. Panop. Beatty* 1
End 3rd	καὶ Μυρωνοῦτος τῆς καὶ Πτολέμας διὰ τοῦ ἀνδρὸς Θέωνος, παρόντων Ἀπο[λ]λωνίου Ἰσχυρίωνος	Μυρωνοῦς τῆς καὶ Πτολέμα	Judicial proceedings	16559	*P. Oxy.* XXXVI 2768
300	[Αὐρηλία] [Διδύμη] [ἡ] [καὶ] [..]σα Ἱέρακος χωρὶς κυρίου χρη(ματίζουσα) τέκνων δικαίῳ κατὰ τὰ Ῥωμαίων ἔθη μετὰ συνεστῶτος τοῦ ἑαυτῆς ἀνδρὸ[ς] [Δι]δυμάρχου τοῦ καὶ Διοσκορίδου τῶ[ν] ἐν Λύκων τῇ λαμπρᾷ π[όλει] [καὶ] [Αὐρηλία] [Ἡράκλεια] [.....] [ὁ]μοίως χωρὶς κυρίου χρη(ματίζουσα) τέκνων δικαίῳ μετὰ συνεστῶτος	Αὐρηλία Διδύμη Αὐρηλία Ἡράκλεια	Contract	17454	*SB* IV 7338[4]
305	[μετὰ] [συνεστῶτο]ς Σόιτος Ἀμανῆτος μη(τρὸς) Κολλεύθι[ο]ς ἀπὸ [τῆς] [αὐτῆς] [πόλεως][5]	Αὐρηλία Εὖς	Purchase of land	15827	*CPR* VII 14
309	[χωρὶς] [κυρίου] χρηματίζουσα τ[έκνων] [δικα]ίῳ παρόντος καὶ εὐδοκο[ῦ]ντος τῇδε τῇ πράσι τοῦ συνόντος [α]ὐτῇ ἀ[νδρ]ὸς Αὐρηλίου Γεροντίου	Αὐρηλία Πτολεμαίς	Sale	14568	*SB* XVI 1228
314	διὰ τοῦ ἀν[δ]ρὸς Αὐρηλίου Ἀπ[.....] [τοῦ] καὶ Διοσκόρου	Αὐρηλία [....]	Judicial proceedings	14121	*SB* VI 9192
318	ὑπ[ὸ] τῇ χειρὶ κατὰ τοὺς Ῥωμαίων [νόμους][6]	Αὐρηλίας Ἀλεξάνδρας	Sale	17431	*SB* X 10728

[4] =*P. Berl. Möller* 1; *BL* III 29, VII 29, VIII 63, XIII, 196.
[5] Rather lacunose, and second instance of the phrase in this text is even more lacunose but is preceded by a secure negative guardianship formula.
[6] This appears to be an interesting instance of *patria potestas*, which is not terribly common in the papyri at this time. See Alonso (2010) 46-48.

320	Αὐρελία Δημητία χρηματίζουσα χωρὶς κυρίου τέκνων δικαίῳ κατὰ τούς νόμους [συνεστὼς] Αὐρήλιος Ἑρμῆς (her husband)	Αὐρελία Δημητία	Sale	N/A	*P. Vindob. G.* 16712[7]
324	ἡ δὲ Ἄριλλα χρημ[ατί]ζουσα τέκνω[ν] [δι]καίῳ μετὰ συνεστῶτος τοῦ ἀνδρὸς Αὐρηλίου Ἀμμωνίου	Αὐρηλία Ἄριλλα	Contract	15823	*P. Oxy. Hels*. 44
325	περὶ πραγμάτων διαφερόντων τῇ ἐπιτροπευομένῃ	N/A	Judicial proceedings	15267	*P. Oxy.* LIV 3758
331	Αὐρ(ηλία) Τεκῦσις διῄρημαι ὡς πρόκ(ειται).[Αὐρ(ήλιος)] [Σιλβα]νὸς συνέστην τῇ συμβια μου καὶ ἐγρψα ὑ(πὲρ) αὐτῆς γράμμ(ατα) μὴ ἰδυειᾳ. Αὐρηλία Ἰσίας διῄρη[μα]ι ὡς πρόκειται.[Αὐρ(ήλιος)] [Πεκῦ]σις Πινουτίωνος συνέστην τῇ συμβίῳ μου καὶ ἔγραψα ὑπ[ὲ]ρ αὐτῆς γράμμα[τα] [μ]ὴ ἰδια. [Αὐρ(ήλιος)] [Συρίων] Ὡρίωνος διῄρ[η]μαι ὡς πρόκειται. Αὐρ(ηλία) Κλεαῦτις δ[ι]ῄρημ[αι] ὡς πρόκ(ειται). Αὐρ(ήλιος) Ἱέραξ ἔγρ(αψα) ὑ(πὲρ) αὐτ(ῆς) γράμ(ματα) μὴ ἰδ(υίας)	Αὐρηλία Τεκῦσις Αὐρηλία Ἰσίας [brother] Αὐρηλία Κλεαῦτις	Contract	22757	*P. Lond.* III 978
339	[Ταῆσις] [καὶ] [Ἡραὶς] [---] [ἀπὸ] [κ]ώμης Καρανίδος πρὸς κληρονόμους Ἀτισίου δι᾽ ἐντολικαρίου Νείλου τοῦ παρόντος ἐντυχάνουσιν	Ταῆσις Ἡραὶς	Judicial proceedings	14649	*SB* XVI 12692[8]

[7] Cited in *P. Mich.* XV 167, no. 86a and Beaucamp (1992) 438.
[8] =*P. Col.* VII 175; *SB* V 8246; *FIRA* III[2] 101.

350	συνεστῶτος τῇ Εὐστοργίῳ καὶ σ̣υν[ε]υδ̣οκοῦντος τ[ῇ]δε τῇ διαιρέ[σ]ει τοῦ συμβίου αὐτῆς Αὐρηλίου Κουε̣ρῆτος Ἀπολλῶτος	Αὐρηλία Εὐστοργίον	Contract	10054	*P. Abinn.* 62
350	Αὐρηλία [Ν]όννα θυγά[τη]ρ Ἠλι δίκαι[ο]ν παίδων ἔχουσα Αὐρη[λί]α̣ [Εὐστοργίῳ] [ἀδελφῇ] [μου] συνπ̣[α]ρ̣όντος κ̣αὶ το[ῦ] ἀ̣ν̣[δρός] σου Αὐρηλίου Φέου Ἀπολλωνίου	Αὐρηλία Νόννα	Judicial proceedings	16868	*P. Abinn.* 63[9]
350-399	ὑ[πὲ]ρ Ὀλ[υ]μπιανῆς [θυγ]α̣τρὸς Διονυσί[ο]υ ἀπὸ πριμιπιλαρίων μετὰ Κάστορος \κουράτορος/ βουλευ[τ]οῦ τῆς λαμπρᾶς Ἑρμο[π]ολειτῶν πόλεως.	Ὀλυμπιανῆ	Judicial proceedings	33701	*P. Lips.* 41[10]
355	Αὐρηλία Τηρουτήρου Πασμῆτος μητρὸς Τσενπαχνούμεως ἀπὸ Ἐλεφαντίνης πόλεως μετὰ συνεστῶτ[ο]ς [τ]οῦ κυρίου αὐτῆς ἀνδρὸς Αὐρηλίου Δωροθέου Σερήνου	Αὐρηλία Τηρουτήρου	Contract	23522	*Chrest. Mitt.* 361[11]
368	Αὐρήλι[ος] [Ἀθη]ν[όδωρος] [δημ]όσιος ἰατρ[ὸς] [ἀ]πὸ Ἑρμοῦ πόλεως τῆς λαμπροτάτης τὸν λόγον [ποιούμε]νος ὑπὲρ Σαραπιᾰ́ν[η]ς Παξά[μο]υ [.]	Σαραπιαίνα	Judicial declaration	22344	*P. Lips.* 33[12]
381	[Α]ὐρήλιοι Τεεὺς Παήσιος μητρ[ὸ]ς Θαήσιος ὡς (ἐτῶν) ξ, οὐλὴ γόνατ[ι] ἀριστερῷ [ἀπὸ] κώμης Ἄρεως τοῦ Ἑρμουπολείτου μετὰ συνεστῶτος οὗ ἑκο[ῦσ]α ἐμαυτῇ παρήνεγκα τοῦ καὶ	Αὐρηλία Τεεὺς	Contract	22341	*P. Lips.* 28[13]

[9] *CHLA* XVIII 661; *CPL* annex 4; *FIRA* III[2] 172; *Sel. Pap*. II 263; *Chrest. Mitt*. 96.
[10] = *Chrest. Mitt*. 300.
[11] = *P. Oxy*. IV, pp 202-3; *BL* VII 123; Bagnall and Worp (1978) 235-236, no. 2.
[12] = *Chrest. Mitt.* 55; *FIRA* III 175; *ChLA* XII 525; *CPL* Annex 5; *Meyer Jur. Pap*. 88; BL XII 98; *BL* XIII 121.
[13] = *Chrest. Mitt.* 363.

	γράφοντος ὑπὲρ ἐμοῦ μὴ εἰδυίης γράμματα [Αὐ]ρηλίου Προ[ο]ῦτος Κουλῶτος κωμάρχου ἀπὸ τῆς αὐτῆ[ς] κώμης Ἄρεω[ς]				
390	(H)atre[te] mandato ḍe Matrona [...] [Nilammon] [?] [d(ixit)] [ὑπὲρ] [Μελι]τίου βουλευτοῦ τῆς Ἑ]ρμ[ο]υ[πο]λιτῶν · ἀν[τ]ίδικος Ματρώνα. Ḍ[orot]ḥẹụ(s) [a]d(vocatus) d(ixit) ἔστηκεν ḍιὰ Ἀτρῆτος κατ᾽ ἐντολήν, ἣν εἰ κελεύσειας ἀναγνώσομαι.	Αὐρηλία Ματρώνα	Judicial proceedings	22350	*P. Lips.* 38[14]
391	Α[ὐ]ρηλία [Ἀλ]λοῦς Ὀννωφ[ρ]ίου μετὰ συνεστώτος αὐ[τῆ]ς μητ[ρ]ὸς Αὐρ[η]λία Ἄπινα ἀπὸ κώμη[ς] Νέστευ τοῦ Ἀρσινοίτου νομοῦ [15]	Αὐρηλία Ἀλλοῦς	Divorce	13169	*P. Stras. Gr.* III 142[16]
392	[Αὐρήλιοι] [Ἰωάννης] [.][ος] μητρὸς Διογενίδος καὶ Ἰαῦλος καὶ Χαιρήμων καὶ Θεοδ[ώ]ρα καὶ Θεόνιλλα, [οἱ] [τέ]σσαρες ἐκ πατρὸς Ἀλεξάνδρου μητρὸς [τῆς] [δεῖνα] [,] [μετὰ] [συνεστώτων] [τῇ] [μὲν] [Θεο]δώρᾳ Αὐρηλίου Φιλουμένου Θεογνώστου, τῇ δὲ Θεονίλλᾳ Αὐρηλίου Σιλβ[αν]οῦ Λεονίδου, οἱ πάντες ἀπὸ τῆς λαμ(πρᾶς) καὶ [λαμ(προτάτης)] [Ὀξυρυγχι(τῶν)] [πόλ(εως)]	Αὐρηλία Θεοδώρα Αὐρηλία Θεονίλλα	Contract	18959	*PSI* VI 698

[14] = Chrest. Mitt. 97; *ChLA* XII 520; *CPL* (1958) annex 7; *BL* I (1922) 207. This is a bilingual Latin/Greek contract.
[15] The person providing the assistance here is her mother, Apina! As seen in the body of the thesis, women do not play this supporting role very frequently. The incorrectly gendered συνεστώτος here shows that the μετὰ συνεστώτος phrase had fossilized to some extent.
[16] = *SB* V 8024.

411	Αὐρηλίᾳ Ὡριγενείᾳ θυ(γατρὶ) Καλλινίκου μητρὸς Νόννας γ[ε]ου[χού]σῃ [...?...] [μετὰ][παρόντ]ος καὶ συνευδοκο[ῦν]τ[ος] τ[οῦ] κυρίου ἑαυτῆς ἀνδρὸς Φλαουίου Ὡριγενίου β(ενε)φ(ικιαρίου) τάξεως ἡγεμονίας ἐπαρχίας Ἀρκαδίας υἱοῦ Σαραπίωνος γεουχοῦντος	Αὐρηλία Ὡριγενεία	Sale	18740	*Stud. Pal.* XX 117[17]
493	[Αὐρηλία] [Θελπωρί]νῃ ἐκ π[ατρὸς] Μάρκου μ[ητ]ρὸς Κυριακῆς ἄνευ κ[υρί]ου ἄνδρος πραγματεύουσ[α] [---]ρ[..]αμενου μετὰ συνα[ινοῦντ]ος αὐτῇ τοῦ καὶ ὑπ[ογράφοντος]	Αὐρηλία Θελπωρίνη	Sale	15323	*P. Lond.* V 1855 + *P. Münch.* I 15
498	Κῦρος ἐντολεὺ[ς] Εὐχ[αρι]σ[τί]ας τῆς [κ]οσμιωτάτης	Εὐχαριστία	Judicial proceedings - charge	16125	*BGU* XII 2173
Early 6th	Εὐρέθεια μονάζουσα βραδέως ὑπογράφουσα ἀδελφὴ τῶν προγεγραμμένων Φοιβάμμωνος καὶ Κύρου καὶ Μεντεσια ἐκ τῶν αὐτῶν γονέων ὑπὲρ ἄλλου ἐνάτου μέρους ἀπὸ τοῦ τρίτου μέρους τῆς αὐτῆς οἰκίας μετὰ συνεστῶτος τῆς προειρημένης Μεντεσίας οὗ ἑκοῦσα ἐμαυτῇ παρηεγκα τοῦ καὶ βεβαιοῦντος	Εὐρέθεια	Contract	35821	*P. Prag.* I 42
524	[---] [θυγατὴ]ρ τοῦ τῆς μακαρίας μνήμης Ἰσιδώρου μη(τρὸς) Ἀντωνίας ὁρμωμένης ἀπὸ κώμης [Ἀφροδίτης] [τοῦ] [Ἀνταιοπολίτου] νομοῦ βραδέως ὑπογ[ρ]αφων συν[εστῶτος] κ[αὶ] συνευδοκοῦντος καὶ	N/A	Consultation	15685	*P. Vat. Aphrod.* 14

[17] = *SB* I 5160.

	συμπιθομέ̣νο̣υ [ἐπὶ] [ταύτῃ] [τῇ] [ὁμολογίᾳ] [Φλαουί]ου Σαμουηλίου Κο̣λλού[θο]υ				
566	Αὐρ[ηλί]α Ἀ̣θ̣[αν]ασία, θυγάτηρ τοῦ ̣τῆς μακαρίας μνήμης Κύρο(υ), μητρὸς Ἀλεε̣τ, παρόντος αὐτῇ καὶ συναινοῦντος καὶ πειθ[ομ]ένο[υ] [εἰ]ς τοῦτ[ο] [τ]οῦ ἰδίο(υ) [α]ὐ̣τῆς συμ[β]ίο(υ) Φλαυΐ̈ο(υ) Κόνωνος υἱο(ῦ) Ἐπανακίο(υ),	Αὐρηλία Ἀθανασία	Contract	18917	*P. Cair. Masp.* II 67161
569-570	[Α]ὐ̣ρηλίᾳ Λ [---] [θυγάτηρ] [τοῦ] [τῆς] [εὐλαβοῦς] [μνήμης] [---], ἐ̣κ μητρὸς Τ[εκ]ύ̣σιας, μ[ετὰ] [συνεστῶτος] [ἐμοῦ] [---] παρόν̣τ̣ο̣ς [καὶ] συνευδο[κοῦντος] [αὐτῇ][18]	N/A	Divorce	18439	*P. Cair. Masp.* III 67311
570	Αὐρηλία Τ̣εκρο[μπία] θ̣[υγάτη]ρ [Σ]ερήνου, ἐκ μητρὸς Θ[ερμ]ο̣(υ)θία[ς], [ἀν]θυλοπρ[άτ]ισσ[α][,] [ὁρμω]μέ̣νη ἀ[πὸ] [ταύτ]ης τῆς καλλι[πό]λ(εως) Ἀ[ν]τιν̣ο̣έ̣[ω]ν, [χωρὶς] [κ]υρ̣ίο̣υ ἀ̣ν̣δ[ρ]ὸς χρηματίζ̣ο̣υ̣σ̣[α], ἐ̣κ δὲ θ̣α̣τ̣έρου μέρους Αὐρηλία Μ[α]ρ̣ία [θυγ]άτ[η]ρ ἄπα Μια τοῦ [τῆς] εὐλ̣[α]βο̣ῦ̣[ς] [μνήμης] [ἀ]πογενο[μ]έ̣[νου] δι[α]κ̣ό̣ν̣[ου] [,] [ἐκ] [τῆς] [π]ρογεγραμμ[ένης] [Τεκρ]ομπίας αὐ̣[τοῦ] [συ]μβ̣ίο̣υ γαμετῆς καὶ ταύτης μητρός, [ἀπὸ] [τ]ῆ̣ς ᾳ̣ὐτῆς πόλε[ως], μετὰ σ̣υ̣[νεστῶτο]ς καὶ [σ]υ[νευδο]κοῦ̣ντος κ̣ᾳ̣ὶ [συμπει]θομέν̣[ου] ᾳ̣ὐτῇ ἐπὶ ταύτ̣η τῇ [κοι]ν̣ῇ ἐγγράφῳ	Αὐρηλία Τεκρομπία Αὐρηλία Μαρία	Account	18911	*P. Cair. Masp.* II 67156

[18] The identity of the supporting person is not clear. Given the nature of the contract – a divorce – it is unlikely to be her husband.

	ὁμολογίᾳ ἐ[μ]οῦ παρόντο[ς] [Δα]νιη[λίο]υ υἱοῦ Ἡρακλείδου, ἐπιστ[άτου] [ἀνθυ]λοπρ[α]τῶν, ἀνδρ[ὸ]ς Μαρί[ας] [,] [ὁρμωμ]ένου καὶ α[ὐτ]οῦ ἀπ[ὸ] τῆς αὐτῆ[ς] Ἀντ[ινοέων] πόλ(εως).				

Appendix 8: *P. Lond.* V 1724

Sale of a one-third share in a house – Syene – 578-582 CE

-- -- -- -- -- -- -- -- -- --
[καὶ Ἰωάν]ν̣ης ὁ̣ καὶ Καττᾶς λεγόμ[ενος αὐλιζόμενος ἐν τῷ̣ μοναστηρίῳ]
[Παμπά]ν̣ης, τὰ νῦν δὲ ἐ̣ν̣ τῇ̣ [Συήνῃ εὑρεθεὶς ὁ καὶ ἀναδεχόμενος]
[τὴν γνώμην] καὶ τὴν πίστιν τ[ῆς ἀφήλικος Τ̣σ̣ί̣α̣ς ἀδελφῆς τῆς προγεγραμ-]
[μένη]ς Τ̣σ̣ώ̣νης ἐκ τῶν αὐτ[ῶν γονέων οἱ καὶ ἐξῆς ὑπογραφέα παρέ-]
χοντ̣ε̣ς τ̣ὸ̣ν ὑ̣πὲρ αὐτῶν ὑπογρ[ά]φ[οντα καὶ μάρτυρας τοὺς ἐξῆς μαρ-]
τ̣υρ[οῦντα]ς τ̣α̣ύτῃ τῇ̣ βεβαίᾳ̣ πράσει vac. ? Αὐρηλίῳ Π̣ατερ-
μ̣ο̣υ̣θίῳ υἱῷ̣ Μηνᾶ κ(αὶ) τῇ̣ τούτου εὐνουστάτῃ συμβίῳ Αὐρηλίᾳ̣ Κακὼ
θυγατρὶ Ἰακώβου ἐκ μητρὸς Ταπίας ὁρμωμένοις ἀπὸ τῆ̣[ς]
αὐτῆς Συήνης χαίρ(ειν). ὁμολογοῦμεν ἡμεῖς οἱ προγεγραμμέ[νοι]
Τσώνη καὶ Ἰωάννης ὑπὲρ ὀνόματος Τσίας τῆς κ(αὶ) Τσέρης
λεγομένης διὰ τὸ νέον τῆς ἡλικίας διὰ ταύτης ἡμῶν
τῆς ἐγγράφου ὠνιακῆ̣ς ἀσφαλείας ἑκο̣ύ̣ντες καὶ πεπεισμέν̣ο̣ι
ἄνευ παντὸς δόλου καὶ φ̣ό̣β̣ο̣υ̣ καὶ βίας καὶ ἀπάτης κ(αὶ) ἀνάγκης
καὶ συναρπαγῆς καὶ οἱασδήποτε κακο̣ν̣ο̣ίας καὶ κακ[ο]ηθείας
καὶ παντὸς ἐλαττώματος καὶ φαύλο̣υ̣ διανο̣ήματος καὶ
πάσης νομίμου περιγραφῆς ἅμα δὲ ὁμνύμεν[ο]ι κατὰ τῆς ἁγίας
καὶ ὁμοουσίου Τριάδος καὶ νίκης καὶ διαμονῆς τῶν γαληνοτά(των)
καὶ τροπαιούχων ἡμῶν δεσπο(τῶν) Φλαυΐων Τιβερίου καὶ Αἰλίας
Ἀναστασίας τῶν αἰωνίων Αὐγούστων καὶ Αὐτοκρατόρων
πεπρακέναι ὑμῖν σήμερον καὶ καταγεγραφηκέναι νόμῳ
πράσεως καὶ αἰωνίᾳ̣ κατοχῇ̣ καὶ παντὶ πληρεστάτῳ
δεσποτείας δικαίῳ τὸ ὑπάρχον ἡμῖν μέρος οἰκίας ἀπὸ τῆς
οἰκίας λεγομένης Πατεχνουμίου τοῦ προπάππου ἡμῶν
ἐ̣ν̣ ᾧ̣ τῷ̣ αὐτῷ̣ μέρει οἰκίας ἐν μὲν πρώτῃ στέγῃ κελλίον
ἓν ἐν τῷ̣ πυλῶνι νεῦον ἐπὶ βορρᾶ καὶ τὸ ἐπάνω αὐτοῦ
συμπόσιον νεῦον ἐπὶ βορρᾶ εἰς τὴν παραδρομίδα τοῦ
πεσσοῦ, ἐν δευτέρᾳ̣ στέγῃ καὶ τὸ μικρὸν δῶμα ἐπάνω
τοῦ αἰθρίου νεῦον ἐπ᾽ ἀπηλιώτην εἰς τὴν μικρὰν αἴθραν
καὶ τὸ τρίτον μέρος ἡμῶν ἀπὸ τ[ο]ῦ̣ ἄ̣λ̣λ̣ου μικροῦ δώματος
ἐπάνωθεν τοῦ ἀκκουβίτου Ἰακώβου Πασαράϊτος, σοῦ δὴ πατρὸς
Κακὼ καὶ σοῦ δὴ Παθερμουθίου πενθεροῦ, καὶ τὸ τρίτον μέρος
ἀπὸ πάντων τῶν συγκυρούντων χρηστηρίων τοῦ τε προθύρου
καὶ πυλῶνος καὶ πεσσοῦ κ(αὶ) ἡμικλιβάνου πρὸς τὴν μέχρι νῦν

κρατήσασαν νομήν τε καὶ δεσποτείαν, γείτονες δὲ τῆς
ἁπάσης οἰκίας ἀφ᾽ ἧς πεπράκαμεν ὑμῖν τὸ αὐτὸ ἡμῶν
μέρος εἰσὶν οὕτως· νότου ἡ οἰκία Δίου Κελώλ, βορρᾶ ἡ δημοσία
λαύρα εἰς ἣν ἠνέῳκται ἡ αὐθεντικὴ κύρα, λιβὸς ἡ οἰκία Δίου
Τακαρῆς, ἀπηλιώτου ἡ οἰκία Πατερooῦτος οἷοι δ᾽ ἂν ὦσι γείτονες
πάντῃ πάντοθεν ἐκ τετραγώνου καὶ τετραπλεύρου, καθὼς
ὑπηγορεύσαμεν ἡμεῖς οἱ ἀποδόμενοι ἐν στόματι τιμῆς
τῆς πρὸς ἀλλήλους συμπεφωνημένης καὶ συναρεσάσης
ἐπὶ συμφώνοις ἀπαραβάτοις χρυσοῦ νομισματίων
δέκα ζυγῷ Συήνης, γί(νεται) χρ(υσοῦ) νο(μισμάτια) ι ζυ(γῷ) Συήν(ης), vac. ? ἥνπερ τὴν
ἐγκειμένην τελείαν τιμὴν αὐτόθι ἀπεσχηκότες παρ᾽ ὑμῶν
τῶν ὠνουμένων διὰ χειρὸς εἰς χεῖρα ἡμῶν ἀριθμῷ κ(αὶ)
σταθμῷ πλήρει καὶ βεβαιώσωμεν ὑμῖν τὴν πρᾶσιν
πάσῃ βεβαιώσει διὰ παντὸς καὶ ἀπὸ παντὸς τοῦ ἐπελευ-
σομένου ὑμῖν κινδύνῳ ἡμῶν καὶ πόρῳ τῆς μετρικῆς
ἡμῶν ὑποστάσεως τῆς καὶ ἐνεχομένης εἰς ἀποσόβησιν
καὶ καθαροποίησιν ταύτης ἡμῶν τῆς παρούσης
βεβαίας πράσεως καὶ ἐφ᾽ ᾧ ὑμᾶς ἀπεντεῦθεν τοῦ αὐτοῦ
τρίτου μέρους κυριεύειν καὶ δεσπόζειν καὶ πωλεῖν καὶ μετα-
πωλεῖν καὶ οἰκεῖν καὶ κατοικεῖν καὶ οἰκοδομεῖν καὶ ἐποικο-
δομεῖν, κτᾶσθαι, χρᾶσθαι παντὶ ἀρέσκοντι ὑμῖν τρόπῳ
ἀνεπικωλύτως καὶ ἀνεμποδίστως τινὸς τῶν ἐκ ὀνό-
ματος ἡμῶν ἢ κατὰ γένος ἀγχιστεύοντος μὴ δυνησομένου
καιρῷ πώποτε ἢ χρόνῳ ἐπιφυῆναι ὑμῖν ἢ δίαιταν
καθ᾽ ὑμῶν κινῆσαι διὰ τὸ ἡμᾶς δεδέχθαι καὶ πεπλη-
ρῶσθαι τῆς ἐγκειμένης τιμῆς. εἰ δὲ ὅπερ ἀπει ἀσθενή-
σωμεν περὶ τὴν ἀποσόβησιν καὶ καθαροποίησιν ταύτης
ἡμῶν τῆς βεβαίας πράσεως ἐφ᾽ ᾧ ἡμᾶς ἐπιγνῶναι
τὴν ἐγκειμένην τιμὴν ἐν διπλῷ μετὰ καὶ τοῦ
ἐπάναγκες ἐρρῶσθαι τὴν παροῦσαν βεβαίαν πρᾶσιν
ἥνπερ ἐθεμην ὑμῖν κυρίαν οὖσαν καὶ βεβαίαν καὶ ἀρραγῆ
καὶ ἀσάλευτον καὶ ἔννομον ἀπανταχοῦ προφερομένην
μεθ᾽᾽ ὑπογραφῆς τοῦ ὑπὲρ ἡμῶν ὑπογράφοντος κ(αὶ) τῶν
ἐξῆς μαρτυρούντων καὶ εἰς τὰ προγεγραμμένα πάντα
ἐπερωτηθέντες οὕτως ἔχειν ὡμολογήσαμεν καὶ ἀπε-
λύσαμεν. ⁋ (hand 2) ⁋ Αὐρηλία Τσώνη θυγάτηρ Ῥαχὴλ ἐκ πατρὸς
Ἄπα Δίου ὁρμωμένη ἀπὸ Συήνης μετὰ καὶ τοῦ κυρίου αὐτῆς
ἀνδρὸς Αὐρηλίου Ἰσακίου υἱοῦ Κωσταντίου τοῦ καὶ συνενοῦντος
καὶ συνευδοκοῦντος αὐτῇ καὶ Ἰωάννης ὁ καὶ Καττᾶς λεγόμενος
αὐλιζόμενος ἐν τῷ μοναστηρίῳ Παμ̣π̣άνης, τὰ νῦν δὲ ἐν τῇ Συήνῃ

εὑρεθεὶς ὁ καὶ ἀναδεχόμενος τὴν γνώμην καὶ τὴν πίστιν τῆς ἀφήλικος
Τσέρης ἀδελφῆς τῆς προκ[ειμ]έ[ν]ης Τσώνης ἐκ τῶν αὐτῶν γονέων
πεπρακέναι ὑμῖν σήμερον τὸ [ὑ]πάρχον ἡμῖν μέρος οἰκίας ἀπὸ οἰκίας
γενομένης Πα\τε/χνουμίου τ[οῦ] πρ[οπάππ]ου ἡμῶν καὶ πεσχήκαμεν τὴν τελείαν
τιμὴν ἐν χρυσοῦ νομισματίοις δέκα καὶ στοιχεῖ ἡμῖν πάντα τὰ ἐγγεγρ-
αμμένα ὡς πρόκ(ειται). Ἰωάννης Ἀβρααμίου ἐλάχ(ιστος) πρεσβύτερ(ος) τῆς τοῦ Θεοῦ
ἁγίας ἐκκλησί(ας) Συήνης [ἀ]ξ[ιω]θεὶς ἔγραψα ὑπὲρ αὐτῶν ἐν
δημοσίῳ τόπῳ γράμματα [μ]ὴ εἰδότων. ⁋
(hand 3) ⁋ Φλ(αύιος) Διῷψ Ἀλ[ε]ξάνδρ[ου στρ(ατιώτης)] ἀριθμοῦ Σήνης μαρτυρῶ. †
(hand 4) † Φλ(αύιος) Ἀτρῆς Πέτρου στρ(ατιώτης) λεγ[(εῶνος)] Σ[υ]ή[ν]η[ς] καὶ ἀπὸ βικαρ(ίων) μαρτυρῶ. †
(hand 5) ⁋ Φλ(αύιος) Ἰωσὴφ Ἑρμεία στρα(τιώτης) [ἀριθμοῦ] Συήνης μαρτυρῶ.
(hand 6) ⁋ Φλ(αύιος(?)) Ἀτρῆ Μάρ[κ]ο(υ) ἀγουταλιο ἀριθμοῦ Συήνης μαρτυρῶ. ⁋
(hand 7) ⁋ Φλ(αύιος) Μακάριος υἱὸς Ακ. . . στρ(ατιώτης) [ἀριθμ(οῦ)] Συήνης μαρτυρῶ
τῇ πράσει ἀκούσας παρὰ τῶν θεμένων.
(hand 8) ⁋ Φλ(αύιος) Μουσαῖος Ἰωάννο[υ . . . . ἀρι]θ[μ(οῦ)] Συήνης μαρτυρῶ.
(hand 1) ⁋ δι’ ἐμοῦ Θεοφίλου ἐλα(χίστου) [δια]κό(νου) ἐγένετο. ⁋[1]

--

[⁋ In the … year of the reign of our most divine master and greatest benefactor, Flavius Tiberius Minor Constantine, the eternal Augustus and Emperor, on (month) *x* (day) *y*, in the … indiction, in Syene.

[⁋ Aurelia Tsone, daughter of Rachel, whose father is Apa Dios, of Syene, with her husband, Aurelius Isakos, son of Konstantios, as guardian, who consents and agrees with her, [and Ioan]nes, also cal[led] Kattas, [who lives in a monastery of Pampa]ne, but who is currently [in Syene, and who answers for the will] and good faith [of the minor Tsia, sister of the aforementioned] Tsone, from the same [parents. He provides a signature below] signing on their behalf, [also with witnesses bearing wit]ness [below] to this guaranteed deed of sale. To Aurelius Patermouthis, son of Menas, and to his most kindly wife, Aurelia Kako, daughter of Iakobos, whose mother Tapia, both originating from this Syene, greetings.

We, the aforementioned Tsone and Ioannes, acting in the name of Tsia, also known as Tsere, on account of her youth, acknowledge by this, our written guarantee of purchase that willingly and convinced without guild or fear or force or deception or compulsion or deceit or any sort of malice

[1] 6. corr. ex αυρηλιᾳ 7. υϊω papyrus 8. ϊακωβου papyrus 10. ϊωαννησ papyrus 11. corr. ex λεγομενουσ 12. l. ἑκόντες 18. φλαυϊων papyrus 20. corr. ex 25. l. πυλῶνι 30. ϊακωβου papyrus 30. πασαραϊτοσ papyrus 33. l. πυλῶνος 37. corr. ex 37. l. θύρα 44. ὑμων papyrus 48. ὑμιν papyrus 57. ὑμιν papyrus 59. l. ἀπεί<η> 64. l. ἐθέμεθα 66. μεθ’’ papyrus 71. l. συναινοῦντος 72. ϊωαννησ papyrus 77. l. <ἀ>πεσχήκαμεν 79. ϊωαννησ papyrus 83. *BL* 12.108 : βικαρ(ιανῶν) prev. ed. 84. ϊωσηφ papyrus 85. l. αὐγουστάλιο(ς) 86. υϊοσ papyrus 87. ϊωαννο[υ papyrus

or maliciousness or any defect or mean intention or any circumvention of the law, at the same time swearing by the holy and consubstantial Trinity and the victory and permanence of their serenities to whom trophies are dedicated, our masters the Flavians Tiberius and Aelia Anastasia, the eternal Augustans and Emperors, that we have sold to ou today, and transferred in accordance with the law of sale and for eternal possession and every most complete right of ownership our shares in a house called the house of Patechmounios, our great-grandfather.

This share of the house includes: on the first floor, on room facing north in the gateway; on the living room above it facing north towards the gallery of the stair on the second floor; and the little terrace above the courtyard facing east towards the little courtyard; and our one-third share of the other little terrace above the bedroom of Iakobos, son of Pasaraei, your father, Kako, and your father-in-law, Patermouthios; and the one-third share of all the related appurtenances, consisting of the vestibule, the gateway, the stair, and the half share of an oven in accordance with the retention and ownership which have hitherto held it.

The boundaries of the entire house of which we have sold you this share of ours are as follows: on the should is the house of Dios, son of Kelol; on the north is the public street into which the main door opens; on the west is the house of Dios son of Takares; on the east is the house of Pateröous; or whatever may be the boundaries everywhere on every side at the four corners and on the four sides, just as we the sellers have asserted orally. The price, mutually agreed upon and approved in inviolable concord, is gold, ten solidi in the weight of Syene, that is ten gold solidi in the weight of Syene, which complete, established price we have received here from you, the buyers, in full from your hand to our hand, in number and weight complete.

And we will guarantee to you the deed of sale with every warrantee always and against anyone who intends to bring suit against you, at our risk and by means of our modest assets which are als encumbered for intimidating him and cleansing this, our present guaranteed deed of sale.

We acknowledge that you hereafter control and own this same one-third share and that you may sell and resell it, dwell in, settle in, build, build upon, acquire, and use it in anyways you please, unimpeded and without hinderance by anyone in our name or by close kin from our family, so that no one will be able, on any occasion or at any time to challenge you or initiate arbitration against you because we have received and been paid the set price in full.

But if – and may it not happen – we should be too weak concerning the intimidation (of a claimant) and cleansing of this our guaranteed deed of sale, we acknowledge that we are liable for double the set price.

And moreover, we recognize the compulsory strengthening of the present guaranteed deed of sale, this very one which we have drawn up for you, as being valid and guaranteed and unbreakable and unshakable and lawful wherever brought forward, with the signature of the one signing on our behalf and of the witnesses below.

And, having been questioned about all that is written above, we have agreed to it, and executed (the sale). ₽

(2nd hand) ⳨ We, Aurelia Tsone, daughter of Rachel, whose Father is Apa Dios, originating from Syene, with her husband as guardian, Aurelius Isakios, son of Kostantios, consenting and agreeing with her, and Ioannes, also called Kattas, who lives in the monastery of Pampane but is currently in Syene answering for the will and good faith of the minor Tsere, sister of the aforementioned Tsone, from the same parents, have sold to you today our share of a house that belonged to Petechnoumios, our great-grandfather, and we have received the full price in gold, ten solidi and everything written herein is agreeable to us, as we said before.

I, Ioannes, son of Abraamios, the most humble priest of God's Holy Church of Syene, having been asked, wrote on their behalf in a public place since they are not literate.

(3rd hand) ⳨ I, Flavius Diops, son of Alexandros, [a soldier] of the regiment of Syene, bear witness. †

(4th hand) † I, Flavius Hatres, son of Petros, a soldier of the legion of Syene and a former vicarious, bear witness. †

(5th hand) ⳨ I, Flavius Ioseph, son of Hermeias, a soldier of the regiment of Syene, bear witness.

(6th hand) ⳨ I, Flavius Hatres, son of Markos, *augustialis* of the regiment of Syene, breat witness.

(7th hand) ⳨ I, Flavius Makarios, son of AK…, a soldier of the regiment of Syene, bear witness to the deed of sale having heard it from the contracting parties.

(8th hand) ⳨ I, Flavius Mousaios, son of Ioannes, … of the regiment of Syene, bear witness.

(1st hand) ⳨ Done by me, Theophilus, the most humble [dea]con. ⳨

Appendix 9: *P. Münch*. I 11 and *P. Coll. Youtie* II 92

P. Münch. I 11

Sale of half of a house – Syene – 7 Oct 586

recto

☩ βασιλείας τοῦ θειοτάτου ἡμῶν δεσπότου Φλαυίου Μαυρικίου Τιβερίου τοῦ αἰωνίου —
Αὐγούστου Αὐτοκράτορος καὶ μεγίστου εὐεργέτου ἔτους πέμπτου καὶ ὑπατείας τοῦ αὐτοῦ
δεσπότου ἡμῶν ἔτους τρίτου Φαῶφι δεκάτῃ τῆς πέμπτης ἰνδικ(τίονος) ἐν Συήνῃ / /.
☩ Αὐρηλία Ταπία θυγάτηρ Τσίου ἐκ μητρὸς Μαριὰμ ἄνευ κυρίου αὐτῆς ἀνδρὸς —
χρηματίζουσα ὁρμωμένη ἀπὸ Συήνης ἡ καὶ ἐξῆς ὑπογραφέα παρέχουσα —
τὸν ὑπὲρ αὐτῆς ὑπογράφοντα καὶ μάρτυρας τοὺς ἐξῆς κατ᾽ ἐπιτροπὴν αὐτῆς —
προσμαρτυροῦντας τῇδε τῇ ἐγγράφῳ καὶ βεβαίᾳ πράσει ☩· · vac. ? Φλαυίῳ Κυριακῷ
υἱῷ Μηνᾶ στρατιώτῃ καβαλλαρίῳ ἀριθμοῦ Συήνης χαίρειν. ὁμολογῶ ἐγὼ ἡ προγεγραμ-
μένη Ταπία διὰ ταύτης μου τῆς ἐγγράφου πράσεως ἑκοῦσα καὶ πεπεισμένη
ἄνευ παντὸς δόλου καὶ φόβου καὶ βίας καὶ ἀπάτης καὶ ἀνάγκης καὶ συναρπαγῆς —
καὶ κολακίας καὶ μηχανῆς καὶ πάσης κακονοίας καὶ κακοηθείας καὶ
πανουργίας καὶ ἐλαττώματος παντός, vac. ? ἑκουσίᾳ δὲ γνώμῃ καὶ ἀδόλῳ προ-
αιρέσει καὶ εἰλικρινεῖ συνειδήσει καὶ ὀρθῇ διανοίᾳ κατὰ τήνδε τὴν ἁπλῆν
ἔγγραφον ἀσφάλειαν πεπρακέναι σοι σήμερον καὶ καταγεγραφηκέναι
νόμῳ πράσεως καὶ αἰωνίᾳ κατοχῇ καὶ παντὶ πληρεστάτῳ δεσποτείας —
δικαίῳ τὸ ὑπάρχον μοι ἥμισυ ὁλόκληρον μέρος οἰκίας, οἵας ἐστὶν διαθέσεως —,
ἀπὸ ἐδάφους ἕως ἀέρος, οὐ καὶ τὸ ἄλλο ἥμισυ μέρος ἀνήκει Ἰακώβου τοῦ —
ἀποιχομένου μου ἀνδρός, vac. ? ἔτι μὴν καὶ συμπεπρακέναι σοι τὰ ὑπάρχοντά
μοι ἡμίσους μέρη ἀπὸ ταν ὅλων χρηστηρίων τοῦ τε προθύρου καὶ πυλῶνος —
καὶ πεσσοῦ καὶ αἰθρίων καὶ κλιβάνου ἁπαξαπλῶς πρὸς τὴν γεναμένην πρώην
πρᾶσιν ἐπ᾽ ὀνόματός μου κ(αὶ) τοῦ ἀναπαυσαμένου ἀνδρὸς Ἰακώβου, διακειμένην

τὴν αὐτὴν οἰκίαν ἐπὶ τὴν Συήνην περὶ τὸ νότινον μέρος τοῦ φρουρίου καὶ
περὶ λαύραν τοῦ δημοσίου καμηλῶνος τῆς βασταγῆς Φιλῶν καὶ τῆς οἰκίας —
Ἀβρααμίου Παχυμίου. vac. ? γείτονες δὲ τῆς ἁπάσης οἰκίας, ἀφ᾽ ἧς πέπρακά σοι αὐτὸ
τὸ
αἱροῦν μοι ἥμισυ μέρος ἀπὸ τοῦ κελλίου ἐν πρώτῃ στέγῃ νεύοντος εἰς βορ᾽ρᾶν
εἰς τὴν δημοσίαν ῥύμην καὶ ἀπὸ τοῦ ἐπάνω αὐτοῦ συμποσίου ἐν δευτέρᾳ στέγῃ νεύοντος
—
εἰς λίβα εἰς τὸ πλάτος τοῦ πεσσοῦ καὶ ἀπὸ τοῦ ὑποπεσίου ἤτοι χρῆρε ἐν πρώτῃ στέγῃ
καὶ ἀπὸ τοῦ νοτίνου συμποσίου ἐν τρίτῃ στέγῃ νεύοντος εἰς βορ᾽ραν εἰς τὸ κοινὸν
αἴθριον καὶ ἀπὸ τοῦ ἐπάνω αὐτοῦ ἀέρος ἕως ἀέρος κ(αὶ) ἀπὸ τοῦ ἀπηλιωτικοῦ μεγάλου
δώματος ἕως ἀέρος κ(αὶ) τὸ ἥμισυ τῶν ἁπάντων χρηστηρίων ἀπὸ θεμελίων
ἕως ἀέρος νότου ἡ τυφλὴ καὶ στενὴ ῥύμη καὶ ἡ οἰκία Ἀβραμίου Παχυμίου,
βορ᾽ρᾶ ἡ ῥύμη δημοσία, ἀπηλιώτου ἡ οἰκία Ἀβρααμίου Παχυμίου, λιβὸς —
ἡ οἰκία Ἀλλάμονος Πατεχνουμίου, vac. ? οἷοι δ᾽᾽ ἂν ὦσει γείτονες πάντη πάντοθεν,
καθὼς καὶ ἐν στόματι ὑπηγόρευσα. κ(αὶ) οὐδὲν ἐμοὶ τὸ σύνολον ὑπολέλειπται
ἄπρατον ἀπὸ τοῦ προδεδηλουμένου ἡμίσους μέρους οἰκίας κ(αὶ) τῶν ἁπάντων
χρηστηρίων ἀπὸ θεμελίων ἕως ἀέρος, vac. ? περιελθὸν εἰς ἐμὲ ἀπὸ δικαίας —
ἀγορασίας παρὰ Ἰωάννου τοῦ καὶ Παπτσίου κἀκείνου ἀπὸ γονικῆς διαδοχῆς
πρὸς τὴν δύναμιν τῆς παλαιᾶς πράσεως, vac. ? τιμῆς τῆς πρὸς ἀλλήλους —
συμπεφωνημένης καὶ συναρεσάσης χρυσοῦ κεφαλαίου δοκίμου νομισμάτων
πέντε ζυγῷ Συήνης, γί(νεται) χρ(υσοῦ) νο(μίσματα) ε ζυγῷ Συήνης, ἥνπερ τὴν τελείαν
καὶ ἀξίαν
τιμὴν αὐτόθι ἀπεσχηκυια παρὰ σοῦ Κυριακοῦ τοῦ ὠνουμένου διὰ χειρὸς
εἰς χεῖρά μου ἐξ οἴκου σου ἐπὶ τὴν Συήνην ἀριθμῷ καὶ σταθμῷ πλήρη ἐν τῇ
ἐνεστώσῃ ἡμέρᾳ. vac. ? κ(αὶ) βεβαιῶ σοι τὴν πρᾶσιν πάσῃ βεβαιώσει ἀπὸ παντὸς
διὰ παντὸς τοῦ ἐπελευσομένου σοι ἢ ἀντιποιησομένου. τὸν δὲ ἐπελευσόμενόν σοι
ἢ ἀντιποιησόμενον ἐκστησουσα ἐγὼ ἡ πεπρακυῖα καὶ καθαροποιήσω σοι
ἰδίοις μου ἀναλώμασι καὶ δαπανήμασι κ(αὶ) τὸν περὶ πράσεώς τε καὶ βεβαιώ-
σεως νόμον πρὸς τῷ σὲ Φλαύιον Κυριακὸν τὸν πριάμενον ἀπεντεῦθεν
κυριεύειν καὶ δεσπόζειν καὶ διοικεῖν καὶ οἰκονομεῖν καὶ οἰκοδομεῖν

καὶ πωλεῖν καὶ χαρίζεσθαι κ(αὶ) μεταπωλεῖν κ(αὶ) ἀλλαγὰς ποιεῖν κ(αὶ) τέκνοις καὶ
ἐγγόνοις καταλεῖψαι καὶ πάντα περὶ αὐτοῦ ποιεῖν τε καὶ πράττειν ἀκωλύτως
τε καὶ ἀνεμποδίστως, κ(αὶ) μὴ ἐγκαλεῖν σοι μήτε ἐγκαλέσειν μηδ᾽ ἕτερόν τινα τῶν
ἐξ ἐμοῦ ὀνόματος ἐν τῷ νῦν κ(αὶ) ἐν μηδενὶ καιρῷ κατὰ μηδένα τρόπον
ἀφορμην μηδεμιᾷ, μηδενὸς δὲ τῶν κληρονόμων μου ἢ τέκνων ἢ ἐγγόνων
ἢ τῶν τῷ γένει μου ἀγχιστευόντων πρὸς πατρὸς ἢ πρὸς μητρὸς δυνησομένου
ἐνάγειν σοι ἢ ἐγκαλεῖν ἢ δίαιταν κινῆσαι κατὰ σοῦ ταύτης ἕνεκεν τῆς ὑποθέσεως —,
τὸν δὲ τολμήσαντα ἐγκαλεῖν σοι ἢ ἀντιπεῖν σοι ἢ παραβῆναι ἢ παρασαλεῦσαι
ταύτην τὴν πρᾶσιν μηδὲν μὲν ὠφελησειεν, παρέξει δὲ λόγῳ προστίμου
παραβάσεως τὴν προγεγραμμένην τιμὴν ἐν διπλῷ καὶ μηδὲν ἰσχύειν
κατὰ τῶν ἐγγεγραμμένων ταύτῃ τῇ πράσει, ἀλλὰ πρὸς τῷ αὐτὸν ἄκοντα
ἐμμένειν αὐτῇ ὡς ἐν δημοσίῳ ἀρχείῳ γεγενημένῃ διὰ τὸ ἐμοὶ ἀνάγκης —
μὴ ἐπικειμένης ἢ βίας ἢ ἀπάτης ἢ δόλου τινός, ἀλλὰ διὰ τὸ ἐμοὶ οὕτω
δεδόχθαι πεπρακέναι σοι τὸ προκείμενον ἥμισυ μέρος οἰκίας κ(αὶ) τὸ
ἥμισυ ἀπὸ τῶν συγκηρούντων χρηστηρίων, κ(αὶ) ἀπεσχηκέναι με παρὰ σοῦ
τὴν τελείαν κ(αὶ) ἐγκειμένην τιμὴν ἐν χρυσοῦ νομισματίοις πέντε ζυγῷ Συήνης
καὶ ταύτην ἐκθέσθαι σοι τὴν πρᾶσιν πρὸς ἀσφάλειαν κυρίαν οὖσαν καὶ
βεβαίαν καὶ ἀρ᾽ραγῆ καὶ ἀσάλευτον κ(αὶ) ἔννομον ἀπ(α)νταχοῦ προφερομένην
καὶ ἐμφανιζομένην μεθ᾽ ὑπογραφῆς τοῦ ὑπὲρ ἐμοῦ ὑπογράφοντος —
κατ᾽ ἐμὴν ἀξίωσιν, κ(αὶ) ἐπερωτηθεῖσα κατὰ πρόσωπον ὡμολόγησα κ(αὶ) ἀπέλυσα ☩.
(hand 2) ☩ Αὐρηλία Ταπία θυγάτηρ Τσίου ἐκ μητρὸς Μαριὰμ ἀπὸ Συήνης ἡ προκειμένη πέπρακα
τὸ ὑπάρχον μοι ἥμισυ μέρος ὁλόκληρον οἰκίας ἀπὸ ἐδάφους ἄχρι ἀέρος σὺν παντὶ αὐτοῦ
τῷ δικαίῳ καὶ ἀπέσχον παρὰ σοῦ τὴν προγεγραμμένην τελείαν τιμὴν ἐν νομισματίοις
πέντε ζυγῷ Συήνης, καὶ βεβαιώσω σοι ταύτην τὴν πρᾶσιν πάσῃ βεβαιώσει καὶ στοιχεῖ μοι πάντα
τὰ ἐγγεγραμμένα ὡς πρόκειται. Φλ(αύιος) Θεόδωρος Ἀβρααμίου στρ(ατιώτης) ἀριθμοῦ Συήνης ἀξιωθεὶς ἔγραψα —
ὑπὲρ αὐτῆς γράμματα μὴ εἰδυίης †. (hand 3) ☩ Φλ(αύιος) Ἀβραὰμ Μουσαίου στρα(τιώτης) λεγ(εῶνος) Συήνης —

μαρτυρῶ τῇ πράσει ἀκούσας παρὰ Ταπίας τῆς καὶ θεμένης. —

(hand 4) † Φλ(αύιος) Κόμες Ἰσὰκ στρα(τιώτης) ἀριθ(μοῦ) Συήνης μαρτυρῶ τῇ πράσει ἀκούσας παρὰ τῆς θεμένης ☩.

(hand 5) ☩ Ἴσακος Ταείονος ἀρχιδιάκ(ονος) τῆς ἁγίας Μαρίας Συήνης μαρτυρῶ

τῇ πράσει ἀκούσας παρὰ του θεμένης †.

(hand 6) ☩ Φλ(αύιος) Ἄπα Δῖος Πραιποσιτος στρα(τιώτης) ἀριθμοῦ Συήνης μαρτυρῶ τῇ πράσει ἀκούσας παρὰ τῆς

θεμένης ☩. (hand 7) ☩ Φλ(αύιος) Κῦρος ἔκδικος Ἀπόλλωνος εὑρεθεὶς ἐν Συήνῃ μαρτυρῶ ταύτῃ

τῇ πράσει αἰτηθεὶς παρὰ τῆς θεμένης ☩ ☩ ☩.

(hand 8) † δι᾽ ἐμοῦ Μάρκου Ἄπα Δίου ἐγράφη.

verso

(hand 1?) ☩ πρᾶσι(ς) ἥμισυ μέρ(ους) οἰκί(ας) ἀπὸ θεμελίων ἕως ἀέρος πραθ(έντος) π(αρὰ) Ταπίας θυγ(ατρὸς) Τσίου μη(τρὸς) Μαριὰμ χηρεούσ[ης]

ἀπὸ Συήνης τιμ(ῆς) χρ(υσοῦ) νο(μισματίων) ε ζ(υγῷ) Σ[υήνης.][1]

--

(Recto)

In the fifth year of the reign of our most divine master, Favius Maurice Tiberius, the eternal Augustus, Emperor, and the greatest benefactor, and in the third year of the consulship of our said master, on the tenth of Phaophi in the fifth indiction, in Syene.

[1] r.1. φλαυϊου papyrus r.2. υπατειασ papyrus r.3. ϊνδικ papyrus r.5. υπογραφεα papyrus r.6. υπερ papyrus r.6. υπογραφοντα papyrus r.7. · papyrus r.7. φλαυϊω papyrus r.8. υϊω papyrus r.11. l. κολακείας r.16. υπαρχον papyrus r.17. l. ἧς r.17. ϊακωβου papyrus r.18. υπαρχοντα papyrus r.19. l. τῶν r.19. corr. ex πυλονοσ r.21. ϊακωβου papyrus r.25. βορ᾽ραν papyrus r.26. corr. ex συμποσιον r.27. l. ὑποπεσσίου : υποπεσιου papyrus r.28. βορ᾽ραν papyrus r.32. βορ᾽ρα papyrus r.33. δ᾽᾽ papyrus r.33. l. ὦσι r.34. υπολελειπται papyrus r.35. l. προδεδηλωμένου r.37. ϊωαννου papyrus r.37. corr. ex παππιου r.37. l. καὶ ἐκείνου r.41. l. ἀπέσχηκα : απεσχηκυϊα papyrus r.44. corr. ex σου r.45. l. ἐκστήσω r.45. πεπρακυϊα papyrus r.46. ϊδιοισ papyrus r.47. φλαυϊον papyrus r.53. l. ἀφορμῇ r.55. υποθεσεωσ papyrus r.56. l. τολμήσοντα r.56. l. ἀντιπ<οι>εῖν r.57. l. ὠφελήσειν r.57. l. παρέξει<ν> r.58. ϊσχυειν papyrus r.60. l. ἐμὲ r.61. corr. ex r.63. l. συγκυρούντων r.66. αρ᾽ραγη papyrus r.67. υπογραφησ papyrus r.67. υπερ papyrus r.67. υπογραφοντοσ papyrus r.74. ειδυϊησ papyrus r.77. ϊσακοσ papyrus r.77. Παείονος prev. ed. r.78. l. τῆς r.79. l. Πραιποσίτου v.83. l. χηρευούσ[ης]

† Aurelia Tapia, daughter of Tsios, of Mother Mariam, acting without her husband as guardian, coming from Syene, and providing a signatory to sign below for her, and witnesses to also witness this written and guaranteed bill of sale, according to her instructions below † to Flavius Kyriakos, son of Menas, a cavalry soldier, of the regiment of Syene, greetings.

I, the aforementioned Tapia, acknowledge by this, my written bill of sale, that I willingly and convinced without any guile or fear or force or deception or compulsion, or deceit, of flattery, or contrivance or malice or maliciousness or baseness or any defect, but of my own free will and guileless resolve and clear conscience and sound understanding, according to this single written contract have sold to you today and transferred by the law of sale, for permanent possession, and with every most complete right of ownership the entire half share of a house, in the condition that it is in, from the foundation to the sky, of which the other half share which belonged to Iakobos, my late husband. Moreover, I have also sold you my half of all the amenities, namely the vestibule, the gateway, the stair, the courtyard, and the oven, entirely in accordance with the former deed of sale in my and my late husband Iakobus' name.

This same house is located in Syene in the southern part of the fort, in the street of the public camel yard of the transportation service from Philae and of the house of Abraamios, the son of Pachymios. My half share consists of a room on the first floor, facing north towards the public road; and a living room above it, on the second floor, facing west towards the landing of the stair; and the space at the bottom of the stairs, namely the entryway on the first floor; the southern living room on the third floor, facing north towards the common courtyard, the roof terrace above it, up to the sky; the eastern large terrace, up to the sky, and a half of all the amenities from the ground to the sky. The extent of the house of which I have sold you is, on the south, the blind and narrow alley and the house of Abraamios son of Pachymios, on the north, the public road, on the east, the house of Abraamios son of Pachymios, on the west, the house of Allamon son of Patechnoumios, or what ever the boundaries are, everywhere, on every side, just as I have stated orally.

And I have retained nothing of this half share do the house and all its amenities, from the ground to the sky, which came into my possession though rightful purchase from Ioannes, also called Paptsios, through a sale long ago, and which had come into his possession through inheritance.

Today, I have received the full and adequate price mutually agreed upon and approved, a sum of real gold, five solidi in the weight of Syene, that is, five gold solidi of Syene weight from you, Kyriakos, the buyer, in full, from your hand to my hand, and from your property in Syene, in complete number and weight.

And I guarantee the bill of sale to you with every permanent guarantee against anyone who wants to bring suit against you or contest it. The man who intends to bring suit against you of contest, I, the seller, shall drive out and remove for you at my own expense and cost, according to the law of sale and guarantee, so that you, Flavius Kyriakos, the buyer, may hereafter control, own, administer, manage, build, sell, give, resell, exchange, and will it to your children and descendants and do everything about it and act without concern or hinderance.

And I guarantee that I will not sue you, nor will anyone else sue you in my name, now or in the future, in any way or on any pretext. None of my heirs, children, or descendants or those closest to my family on my father's or my mother's side of the family will be able to bring an action against you, sue you, or bring you to arbitration on account of this transaction. And anyone who does sue or contend with you or violate or undermine this bill of sale, he shall pay the double the aforementioned price as penalty for this breech.

Also, nothing shall prevail against what is written in this bill of sale and it must be followed as if it was registered in a public archive, even if unwillingly, because I have decided to sell you the aforementioned half of a house and its amenities without compulsion, force, deception, or guile, and have received from you in full the established price, five gold solidi of Syene weight.

I have also drawn up for you this bill of sale as your guarantee, which is valid and guaranteed and unbreakable and inviolable and lawful wherever presented with the signature of my signatory, who signed on my behalf and at my request. And having been asked the formal question in person, I agreed and delivered the property.

(2nd hand) † I, the aforementioned Aurelia Tapia, daughter of Tsios, of mother Mariam, from Syene, have sold my half share of a house in its entirely from foundation to the sky, eith ever right, and I have received from you the full price of five gold solidi of Syene weight, and I will guarantee to you this bill of sale with ever guarantee and everything written here in is agreeable to me, as I said before. I, Flavius Theodoros, son of Abraamios, soldier of the regiment of Syene, was asked to, and did, write on her behalf, because she is illiterate. †

(3rd hand) † I, Flavius Abraam, son of Mousaios, soldier of the legion of Syene, bear witness to the deed of sale, having heard it from Tapia, who is also the seller.

(4th hand) † I, Flavius Komes, son of Isak, soldier of the regiment of Syene, bear witness ot the deed of sale, having heard it from the seller. †

(5th hand) † I, Isakos, son of Taeion, archdeacon of the Church of St. Maria in Syebe, bear witness to the deed of sale having heard it from the contracting party. †

(6th hand) † I Flavius Apadios, son of Praipositos, soldier of the regiment of Syene, bear witness to the deed of sale, having heart it from the contracting party. †

(7th hand) † I, Flavius Kyros, public defendor of the city of Apollonopolis, having found myself in Syene, bear witness to this deed of sale, having been requested by the contracting party. †††

(8th hand) † Written by me, Markos, son of Apadios.

(Verso)

(1st hand?) Deed of sale of a half share of a house, from ground to sky, sold by Tapia, a widow, the daughter of Tsios, of mother Mariam, from Syene. Price: five gold solidi of Syene weight.[2]

[2] Translation loosely based on Porten (1996) 522-525.

P.Coll. Youtie II 92[3]

Contract pledging sister in return for a loan – Antinoopolis – 15 May 569

[☩ βασιλε]ί[ας] κ̣αὶ [ὑ]π̣α̣τ̣είᾳ[ς τοῦ] θ̣ε̣ι̣ο̣τ̣[ά]τ̣ου ἡμῶν δ̣ε̣σ̣[πότο]υ̣
Φ̣λα[υί]ο̣υ Ἰουσ̣τίνο̣υ τοῦ αἰωνίου Αὐγούστου Αὐτοκράτορος ἔ̣τ̣[ου]ς
[τ]ετάρτου Παχὼν εἰκὰς ἀρχῆς τρίτης ἰνδικ(τίονος) ἐν Ἀντι(ν)ό(ου) πόλε(ι) τῇ λ̣α̣μ̣π̣[ρ]ο(τάτῃ)
Φλαυ̣ίῳ Ἑλλαδίῳ τῷ̣ λαμπροτάτῳ σκρινιαρίῳ τῆς κ̣α̣τ̣ὰ
[Θ]ηβαίδα λαμπρᾶς δουκ̣ικῆς τάξ̣εως, υἱῷ τοῦ τῆς ἀρίσ̣τ̣ης
[μ]̣νήμης vac. ? ὁρμωμένῳ ἀ̣π̣ὸ τῆς Π̣α̣ν̣ο̣πολιτ̣ῶ̣ν
[κ]αλ̣[λ]ιπόλεως, παρ᾽ ἐμοῦ παρούσης Μάρθας, θυγατρὸς Μηνᾶ
[ἐ]κ μητρὸς Θέκλας, τ̣αριχο̣πρατίσ̣σης, ὁρμωμένης καὶ αὐτ̣ῆ̣[ς]
[ἀπ]ὸ τῆς Ἀ̣ν̣τ̣ι̣νό(ου) πόλεω̣ς, χ̣ω̣ρὶς κ̣υ̣ρ̣ί̣ο̣υ ἀνδρὸς χ[ρ]ημ̣ατιζο̣ύ̣σης, π̣α̣ρ̣ε̣χ̣ο̣ύ̣[σης]
[δὲ ὑ]πογραφέα ὑπὲρ ἑ̣α̣υτῆς καὶ μ̣ά̣ρτυρας τ̣[ο]ὺς ἑ̣ξ̣ῆ̣ς ὑ̣πογράφοντ̣[ας]
[τῇ] π̣α̣ρούσ̣α̣ ὑποθηκ̣ιμαίᾳ συγγραφῇ ἐ̣π̣ὶ τοῖς ἐφ̣ε̣ξ̣ῆς δ̣ηλ[ο]υ̣[μένοις]
[συ]μφώνο̣ις ἐφ᾽ αἷς περιέχει διαστολαῖς ἁπάσ̣α̣ις, χαίρ(ειν). τ̣ο̣ῦ̣ ἐμ̣ο̣ῦ̣ π̣α̣τ̣ρ̣[ὸς]
τ̣ῇ ἐ̣σ̣χ̣ά̣τ̣η περ̣ι̣π̣ε̣π̣τωκότ̣ο̣ς π̣ε̣ν̣ί̣α̣, καὶ ε̣ὐ̣π̣ό̣ρ̣η̣σ̣ε̣. . . . υ. . . . ε̣[-ca.?-]
τ̣[.]. [.]. . . τ̣αυτ⟦ο⟧\η/ πάλαι ὄντος πρὸ τ̣ο̣ῦ̣ τὸν ἑαυτοῦ βίον ἀπολειτ̣ο̣υ̣ρ̣γ̣ῆ̣σ̣α̣ι,
Μηνᾶ ὀνόματι ἐπιλεγομένο[υ] Περιχύτου, καὶ ἐξ ἀ̣ν̣[ά]̣γκ̣ης ὑποτεθ̣ε̣ι̣κ̣[ό]̣τ̣[ος]
τότε τὴν ὑποδεεστέρ̣α̣ν̣ μου ὀρφανικὴν ἀδελφὴν καλ̣ο̣υ̣μ̣(ένην) Πρόκλαν τῷ̣
λαμπρο(τάτῳ) κυρίῳ Νόν[ν]ῳ εἰς χ̣ρ̣υ̣σ̣οῦ̣ νο̣μισμάτιο̣ν ἓν ἀ̣κολ̣ο̣ύ̣θ̣ως τῷ̣
γεναμ(ένῳ) π̣α̣ρ̣᾽ αὐτοῦ τηνικαῦτα τῷ̣ λαμπρο(τάτῳ) ἀ̣ν̣δ̣ρὶ ὑποθηκιμαίῳ γραμματίῳ,
καὶ μετὰ τὴν αὐτοῦ ἀποβίωσιν ἐν ταύταις π̣ε̣[ρ]ιποιήσασα τέως ἐκ τοῦ ἐμοῦ
ἐργοχείρου τὸ ἥμισυ τοῦ προειρημένου ἑνὸς ν̣ο̣μισμ(ατίου) ἀ̣ν̣αδέδωκα τῷ̣
εἰρημ(ένῳ) ἀ̣ν̣δ̣ρί, βουλομ̣ένη ἀναλυτρώσασθαι τ̣ὴν ἐμὴν κ̣αταπονουμ̣ένην
ἀδελφήν, ἐγὼ ἡ προγεγραμμ(ένη) Μάρθα, καὶ μὴ εὐπορήσασα τῆς τούτου
συ̣μ̣π̣λ̣[ηρώ]σεως, εὐτυχήσασα δὲ τὴν σὴν λαμπρό(τητα) τῇ εἰς Θ(εὸ)ν ἀγάπῃ
κεκι̣ν̣[ημέ]̣νη̣ν̣, π̣α̣ρ̣α̣κλήσεις ἀ̣υ̣τῇ προ̣σ̣ήγαγο̣ν̣ τὴν λοιπ̣ά̣[δα]

[3] Also published as *P. Cair.Masp.* I 67023; *FIRA* III 12; *Jur. Pap.* 12.

ταύτην ἐκδανίσασθαι εἰς ἀναλύτρωσιν τῆς αὐτῆς ὀρφανικ(ῆς) ἀδελφῆς,
κατὰ τοῦτο ὁμολογῶ ἐγῶ ἡ αὐτὴ Μάρθα διὰ χιρὸς ὑμῶν εἰς χῖρ́ας μου
ἀνειληφέναι καὶ δεδαν[ῖ]σθαι παρ᾽ ὑμῶν ἅμα τὰ γενόμε(να) τῇ ἀσφαλείᾳ
χρυσοῦ κεράτια ἐννέα ζ(υγ)ῷ δημο(σίῳ) Ἀντι(ν)ό(ου), γί(νεται) χρ(υσοῦ) κερ(άτια) θ ζ(υγ)ῷ δη̣(μοσίῳ) Ἀντι(νόου), καὶ τῇ θέσε[ι]
τῆς πίστεως καὶ ἀσφαλείας καὶ ἀποδόσεως καθαρᾶς καὶ ἀποκρότου
ὑποτίθημι ὑμῖν ἐντεῦθεν ἤδη καὶ ὑπεθέμην ἐνεχύρου λόγῳ καὶ ὑποθήκης
δικαίῳ τὴν εἰρημέ(νην) μου ἀδελφὴν Πρόκλαν, ἐτῶν δεκαπέντε οὖσαν πλέον
ἢ ἔλαττον, ἐπὶ τῷ ταύτην εἶναι ἐν τῷ ὑμετέρῳ οἴκῳ ἐξυπηρετοῦσαν πάσαις
δουλικαῖς ὑμῶν ὑπηρεσίαις τε καὶ χρείαις ἀναποστήτως ἐλευθ[ερ]ικῶς καὶ
ὑποτακτικῶς καὶ ὑπηκόως, ἀδόλως πάντα πράττουσαν δίχα π[ά]σης
ἀποφυγῆς καὶ κλοπῆς καὶ οἱασδήποτε ῥαδιουργίας, κινδύνῳ ἐμῷ καὶ πόρῳ
εἰς ταῦτα πάντα μέχρι ἐπίλυσεως τοῦ προκ(ειμένου) χρέους τῶν ἐννέα κερατίων χρυσοῦ,
τρεφομένην μέντοι καὶ ἀμφιαζομένην, γενέσθαι ταύτην παρ᾽ ὑμεῖν
ἀκαταφρονήτως ἄχρι τῆς τουτῶν ἀποδόσεως, καὶ εἰς ὑμῶν ἀσφάλ(ειαν) πεποίημαι
τοῦτο τὸ φιλικὸν γραμμάτι(ον) ἐπὶ πᾶσι τοῖς ἐγγεγραμμέ(νοις), καὶ ἐξεδόμην, καὶ
ἐπερ[ωτηθ(εῖσα)] ὡμολ(όγησα).
(hand 2) † Αὐρηλία Μάρθα θυ[γάτ]ηρ Μηνᾶ τοῦ Περιχύτου ἡ προγεγρ[α]μμέ(νη) ἐθέμην ταύτην τὴν ὑποθήκην Πρόκλας τῆς ἐμῆς
ἀδελφῆς ἀντὶ τῶν ἐννέα κερατίων χρυσοῦ, καὶ ἀποδῶσω [ὡς] πρόκ(ειται). Αὐρηλις Β[ί]κτωρ Ἰωάνν[ου] ἀπὸ Ἀντινό[ου] πόλεως ἔγρ[αψα]
ὑπὲρ αὐτῆς γράμματα μὴ ῥαδί(ως) εἰδυίης (hand 3) † Αὐρ(ήλιος) Κολλοῦθος Καλλινίκου σὺν Θ(εῷ) νοτάρ(ιος) μαρτυρ(ῶ) τῇ ὑποθήκ(η) ἀκούσας
παρὰ τῆς θεμένης. †[4]

--

[4] 2. ϊουστινου papyrus 4. φλαυϊω papyrus 5. [θ]ηβαΐδα papyrus 5. υϊω papyrus 10. ϋπερ papyrus 10. ϋπογραφοντ[ασ] papyrus 11. l. παρούση 11. ϋποθηκιμαια papyrus 15. ϋποτεθειμ[ο]τ[οσ] papyrus 16. ϋποδεεστεραν papyrus 18. l. γενομ(ένῳ) 18. ϋποθηκιμαιω papyrus 18. l. γραμματείῳ 25. l. ἐκδανείσασθαι 26. l. χειρὸς 26. ϋμων papyrus 26. l. χεῖράς 27. l. δεδαν[εῖ]σθαι 27. ϋμων papyrus 30. ϋποτιθημι papyrus 30. ϋμιν papyrus 30. ϋπεθεμην papyrus 30. ϋπὸθηκησ papyrus 32. ϋμετερω papyrus 33. ϋμων papyrus 33. ϋπηρεσιαισ papyrus 33. l. ἀναποστάτως 34. ϋποτακτικωσ papyrus 35. l. ῥαδιουργίας 37. l. ὑμῖν : ϋμειν papyrus 38. ϋμων papyrus 39. l. γραμμάτει(ον) 40. ϋποθηκην papyrus 41. l. Αὐρήλι<ο>ς 42. ϋπερ papyrus 42. ειδυϊησ papyrus 42. ϋποθηκ papyrus

In the reign and consulship of our most divine lord Flavius Iustinus, the eternal Augustus and Emperor, in the fourth year, on the twentieth of Pachon, at the beginning of the third indiction, in the most illustrious city Antinoopolis, to Flavius Helladius, the most illustrious secretary of the illustrious ducal staff in the area of the Thebaid, son of […] of excellent memory, originating from the fair city of the Panopolites, from me, here present, Martha, daughter of Menas by my mother Thekla, salt-fish seller, also originating from the city of Antinous, acting without a husband - guardian but providing a signatory for herself and witnesses, whose subscriptions immediately follow, to the present contract of pledge on the agreed upon conditions as set forth below, on all the terms contained in it, greetings.

After my father fell into the utmost poverty, although he was well off(?) [. . .] long since, before he had completed his life's service – Menas by name, nicknamed "the Bath-attendant" – he, of necessity then made a pledge of my orphan sister, younger than me, called Prokla, to the most illustrious lord Nonnos for one gold solidus pursuant to the deed of pledge made by him at that time to the most illustrious gentleman, and after his death, in these things I spared no effort, until I repaid by my manual labor the half of the aforesaid one solidus to the same gentleman, in the desire to redeem my overworked sister.

Since I did not have the means to repay it in full, I, the abovementioned Martha, was blessed that Your Illustriousness was moved by the love of God and by my entreaty to His love to lend the remaining amount for the redemption of the same orphan sister.

Accordingly, I, the same Martha, acknowledge that I have received from your hand into my hands and have borrowed from you, as per this deed of security, nine gold carats by the public standards of Antinoopolis – namely 9 gold carats of Antinoopolitan weight. By the deposition of this guarantee and surety and full and unfailing repayment, I pledge to you now on the spot and have pledged as security and by right of pledge, my aforementioned sister Prokla, who is approximately fifteen years old, upon the condition that she reside in your household, performing all your servile offices and requirements unremittingly, willingly, submissively and obediently, doing all things sincerely and without any attempt at flight or theft or any manner of recklessness whatsoever, at my own risk and my resources being at stake entirely to this end, until the settlement of the aforesaid debt of the nine gold carats. She, however, will be fed and clothed by you and is to reside with you respectfully until the repayment of the debt. For your security I have drawn up this amicable deed based upon all the prescribed terms and issued it, and in answer to the formal question I gave my assent.

(2nd hand) † I, the aforementioned Aurelia Martha, daughter of Menas the Bath-attendant, have deposited this pledge of Prokla my sister fort the nine gold carats, and I shall repay as mentioned above. I, Aurelius Victor, son of Ioannes, of Antinoopolis, wrote on her behalf since she cannot write easily.

(3rd hand) † I, Aurelius Kollouthos son of Kallinikos, notary, by God's will, bear witness to the pledge, having heard it from its depositor.[5]

[5] Translation inspired by *P. Coll. Youtie* II 92 and Keenan (2014) 271-273.

Appendix 10: *P. Lond.* V 1731

A settlement between a single woman, potentially a nun, and her mother for four solidi – Syene – 20 September 585

recto

₽ βασιλείας τοῦ θειοτάτου ἡμῶν δεσπότου Φλαυίου Τιβερίου Μαυρικίου τοῦ αἰωνίου Αὐγούστου

Αὐτοκράτορος καὶ μεγίστου εὐεργέτο(υ) ἔτους τετάρτου καὶ ὑπατείας τοῦ αὐτοῦ δεσπότου

ἡμῶν ἔτους δευτέρου vac. ? Θὼκ κγ vac. ? τῆς τετάρτης ἰνδικτίονος · ἐν Συήνῃ.

Αὐρηλία Τσώνη θυγάτηρ Μηνᾶ ἐκ μητρὸς Ταπίας μοναχὴ ὁρμωμένη ἀπὸ Συήνης

ἡ · καὶ ἑξῆς ὑπογραφέα παρέχουσα τὸν ὑπὲρ αὐτῆς ὑπογράφοντα καὶ μάρτυρας

τοὺς ἑξῆς κατ᾽· ἐπιτροπὴν αὐτῆς καὶ αἴτησιν προσμαρτυροῦντας ταύτῃ τῇ παρούσῃ

ὁμολογίᾳ τῆς ἀμεριμνείας vac. ? Αὐρηλίᾳ Ταπίᾳ θυγατρὶ Τσίου ἐκ μητρὸς Μαριὰμ

ἄνευ κυρίου αὐτη ἀνδρὸς χρηματίζουσα ἰδίᾳ μου μητρὶ ὁρμωμένῃ ἀπὸ τῆς αὐτῆς

Συήνης χαίρειν. ἐπειδήπερ πρώην ὁ μακάριός μου πατὴρ Μηνᾶς ἔσχεν σε

εἰς νομίμου γάμου κοινωνίαν καὶ μετὰ τὴν γέννησίν μου ἔτι νέας οὔσης

κατὰ διαβουλικὴν καὶ σατανικὴν ἐνέργειαν ἀπεχωρίσθης ἀπ᾽ αὐτοῦ, · δεδωκότος

δέ σοι τοῦ προειρημένου μου πατρὸς Μηνᾶ χρυσοῦ νομισμάτια τέσσερα καὶ μετὰ τὸ

προβεβηκέναι με τῇ ἐννόμῳ ἡλικίᾳ ἐπεξῆλθόν σοι ἐνάγουσα ἕνεκα

τῶν αὐτῶν τεσσάρων νομισμάτων λέγουσα ταῦτά σοι δοθῆναι περὶ τῆς

ἐκ παιδιώθην ἀναγκαίας μου τροφῆς. διὰ τὸ οὖν τραφῆναί με ὑπὸ τοῦ

πατρός μου ἐκβληθεισαν δὲ ὑπὸ σοῦ γενομενης καί <σε> κολλᾶσθαι ἑτέρῳ ἀνδρὶ ·

ταῦτα ἐπεξῆλθον σοι ζητοῦσα λαβεῖν, · vac. ? σοὶ δὲ ἀμφιβάλεις λέγουσα εἶναι

τὰ αὐτὰ τέσσερα νομίσματα ὑπὲρ ἀπολύσεως μου καὶ προικός, · καὶ πολλῶν

λεχθέντων καὶ ἀντιλεχθέντων καὶ δοκιμασθέντων ὕστερον δὲ ἔδοξεν ὥστε

ἐμὲ τὰ αὐτὰ τέσσερα νομίσματα δέξασθαι διὰ τὸ ὡς προειρήται ἀνατραφῆναί με

ὑπὸ τοῦ προειρημένου μου πατρὸς καὶ ἐφ᾽ ᾧ ἐμὲ μὴ δέξασθαι μήτε λαβεῖν ὑπὲρ σοῦ

μήτε ἐνάγειν σοι ἢ · τοῖς κληρονόμοις σου ἐν τῷ νῦν καὶ ἐν μηδένι καιρῷ κατὰ μηδένα

τρόπον ἀφορμῇ μηδεμίᾳ· ὅθεν ἐλήλυθα εἰς ταύτην τὴν ἔγγραφον ἀμεριμνείαν
ἐξ ἧς ὁμολογῶ μηκέτι μηδένα λόγον ἔχειν πρὸς σὲ μήτε πρὸς τοὺς μετὰ σὲ κληρονόμους
μήτε ἐνάγειν μήτε ἐγκαλεῖν ἢ · δίαιταν κινῆσαι κατὰ σοῦ ταύτης ἕνεκεν τῆς ὑποθέσεως
καὶ μήτε δοῦναι μήτε λαβεῖν ὑπὲρ σοῦ μήτε ἄλλος τις ὑπὲρ ὀνόματος μου ἐπελεύσεσθαί
σοι ἢ τοῖς κληρονόμοις σο(υ) ἢ τέκνοις ἢ · ἐγγόνοις σου·· εἰ δὲ συμβαίη με κατὰ σοῦ ἐπεξελθεῖν
ἔν τινι καιρῷ ἢ τοῖς κληρονόμοις σου περὶ οἱουδήποτε πράγματος ἐφ᾽ ᾧ ἐμὲ παρασχεῖν
λόγῳ προστίμο(υ) παραβάσεως χρυσοῦ ὀγγίαν μίαν ἔργῳ καὶ δυνάμει ἀπαιτουμενα ἐκ τῆς
ἐμῆς μετρικῆς ὑποστάσεως καὶ μηδὲν ἰσχύειν κατὰ τῶν ἐγγεγραμμένων ταύτῃ
τῇ παρούσῃ ὁμολογίᾳ τῆς ἀμεριμνείας ἀλλὰ πρὸς τῷ ἄκοντα ἐμμένειν αὐτῇ ὡς ἐν δημο-
σίῳ ἀρχείῳ γεγενημένῃ διὰ τὸ ἐμοὶ ἀνάγκης μὴ ἐπικειμένης ἢ ἀπάτης ἢ δόλου τινὸς
ἀλλὰ διὰ τὸ ἐμὲ οὕτω δεδόχθαι καὶ πεπληρῶσθαι τὰ προγεγραμμένα νομισμάτια τέσσερα
καὶ ταυτα ἐκθέσθαι σοι τὴν ἔγγραφον ἀσφάλειαν ἥτις κυρία ἔσται καὶ βεβαία καὶ ἀρραγη
καὶ ἀσαλευτον καὶ ἐννομον ἁπανταχο(ῦ) προφερομενην καὶ ἐμφανιζομενην μεθ᾽ ὑπο-
γραφῆς τοῦ ὑπὲρ ἐμοῦ ὑπογράφοντος κατὰ παράκλησιν ἐμὴν καὶ ἀξίωσιν καὶ τῶν
ἑξῆς μαρτυρούντων καὶ ἐπερωτηθεῖσα κατὰ πρόσωπον ταῦθ᾽· οὕτως καλῶς ἔχειν
ποιεῖν ὡμολόγησα καὶ ἀπέλυσα. ⁋ (hand 2) ⁋ Αὐρηλία Τσώνη θηκάτηρ Μηνας μητρὸς Ταπίας
μοναχὴ ἀπὸ Συήνης ἡ προκ(ειμένη) ἐθέμεν ταυτα τὴν ὁμολογίαν καὶ στοιχεῖ ημιν πάν-
τα τὰ ἐνγεγραμενων ὡς πρόκ(ειται). Φλ(αύιος) Ἰωάννις Ἀβρααμίου ἀκτουαρης ἀριθμοῦ
Συήνης ἀξιωθὶς ἔγραψα ἠπὲρ αὐτῆς γράματα μὴ εἰδηείης. ⁋
(hand 3) ⁋ Παθερμούθις Σερήνου ἐλάχ(ιστος) πρεσβ(ύτερος) Συήνης μαρτυρῶ. ⁋
(hand 4) ⁋ Φλ(αύιος) Ἀλλάμων Δίου στρα(τιώτης) ἀριθμοῦ Συήνης μαρτυρῶ. ⁋
(hand 5) ⁋ Φλ(αύιος) Παείων Δίου στρα(τιώτης) ἀριθμοῦ Συήνης μαρτυρῶ. †
(hand 6) ⁋ Ἴσακος Ταείονος ἀρχιδιάκο(νος) τῆς ἁγίας Μαρίας Συήνης μαρτυρῶ.
(hand 7) ⁋ Παπνούθις Αἰῶν διάκο(νος) ἐκκλ(ησίας) Συήνης μαρτυρῶ. ⁋
(hand 8) † Φλ(αύιος) Διόσκυρος Ἰωάνου κεντυρ(ίων) ἀριθμ(οῦ) Συήνης μαρτυρῶ.

(hand 9) † Φλ(αύιος) Ἑρμίας Ἰωαννης στρα(τιώτης) ἀριθμοῦ Συήνης μαρτυρῶ. †

(hand 1?) † δι’ ἐμοῦ Μάρκου Ἄπα Δίου ἐγράφη. ⁋

verso

50 (hand 10?) † ὁμολογί(α) ἀμεριμνεια γεναμ(ένη) π(αρὰ) Τσώνης θυγατρὸς Μηνᾶ μοναχῆς ἀπὸ Συήνης vac. ? πρὸς Ταπίαν

τὴν μητέρα.[1]

--

(recto)

⁋ In the fourth year of the reign of our most divine master Flavius Tiberius Maurice, the eternal Augustus, Emperor, and the greatest benefactor, and in the second year of the consulship of our same master, Thoth 23, in the fourth indiction, in Syene,

Aurelia Tsone, daughter of Menas, from mother Tapia, a nun, coming from Syene and providing the signatory below who signs on her behalf, and the witnesses below, who signs according to her instructions and request and bearing additional witness to this acknowledgement of assurance,

To Aurelia Tapia, daughter of Tsios, of mother Mariam, operating by herself, without her husband as guardian, my own mother, coming from the same Syene, greetings.

Inasmuch as my late father, Menas, formerly held you in the shared state of lawful matrimony and after my birth, when I was still young, through a devilish and satanic influence, you were divorced from him, and since my aforementioned father, Menas, had given to you gold, four *solidi*, and after I had grown up to lawful age, I proceeded against you bringing action on account of the same four *solidi* – saying that these had been given to you for my essential maintenance from childhood –

[1] r.2. ὑπατειασ papyrus r.3. l. Θὼθ r.3. ἴνδικτιονοσ papyrus r.3. · papyrus r.5. · papyrus r.5. ὑπογραφεα papyrus r.5. ὑπερ papyrus r.5. ὑπογραφοντα papyrus r.6. κατ’· papyrus r.7. l. ἀμεριμνίας r.8. l. αὐτῆς r.8. ἴδια papyrus r.10. corr. ex γαμιμου r.11. l. διαβολικὴν r.11. · papyrus r.12. l. τέσσαρα r.12. corr. ex τω r.15. l. παιδιόθεν, *BL* 3.98 : ̣ ̣ διας (?) prev. ed. r.15. ὑπο papyrus r.16. l. ἔκβλητον r .16. ὑπο papyrus r.16. l. γενέσθαι r.16. · papyrus r.17. · papyrus r.17. l. σὺ r.17. l. ἀμφιβάλλεις r.18. l. τέσσαρα r.18. ὑπερ papyrus r.18. · papyrus r.19. ὕστερον papyrus r.20. l. τέσσαρα r.21. ὑπο papyrus r.21. ὑπερ papyrus r.22. · papyrus r.23. l. ἀμεριμνίαν r.24. corr. ex εχω r. 25. · papyrus r.25. ὑποθεσεωσ papyrus r.26. ὑπερ papyrus r.26. corr. ex επελευσθαι r.27. · papyrusr.29. l. οὐγκίαν r.29. l. ἀπαιτουμένην r.30. ὑποστασεωσ papyrus r.30. ἴσχυειν papyrus r.31. l. ἀμεριμνίας r.33. l. τέσσαρα r.34. l. ταύτην r.34. l. ἀρραγὴς r.35. l. ἀσάλευτος r.35. l. ἔννομος r.35. l. προφερομένη r.35. l. ἐμφανιζομένη r.35. μεθ’’ papyrus r.35. ὑπο papyrus r.36. ὑπερ papyrus r.36. ὑπογραφοντοσ papyrus r.37. ταυθ’· papyrus r.38. l. θυγάτηρ r.38. l. Μηνᾶ r.39. l. ἐθέμην r.39. l. ταύτην r.39. l. μοι r.40. l. ἐγγεγραμμένα r.40. ἴωαννισ papyrus r.40. l. ἀκτουάριος r.41. l. ἀξιωθεὶς r.41. l. ὑπὲρ r.41. l. γράμματα r.41. l. εἰδυίας r.45. ἴσακοσ papyrus r.46. l. Αἴονος r.47. ἴωανου papyrus r.48. l. Ἰωάννου : ἴωαννησ papyrus v.50. l. ἀμεριμνίας

and because I had been fed by my father when I had been cast you by you and you attached yourself to another husband, I proceeded against you, seeking to retrieve them.

But you disputed it, saying that these four *solidi* were "my dowry" in the divorce. And after much had been said and denied and examined, we later decided that I should receive the same four solidi because I had been reared, as aforementioned, by my said father. And I acknowledge that I have not received or accepted anything on your behalf, and that I may not bring action against you or your heirs now or on ay condition, in any way, or on any pretext.

Therefore, I have come to this written assurance by which I acknowledge that I no longer have a claim against you or against your heirs after you, and that I may not bring action or initiate arbitration against you on account of this case and that I may not give or accept anything on you behalf and that no one else will bring suit against you or your heirs or children or descendants in my name.

But if it turns out that I proceed against you on some occasion, or against your heirs concerning any property whatsoever, I acknowledge that I will provide as penalty for the violation, one ounce of gold to be exacted by judgement and authority from my modest assets, and nothing shall prevail against what is written here in this present acknowledgement of assurance, moreover, I shall abide by it, even unwillingly, as if it had been deposited in a public archive, because I have decided thusly, with no compulsion, deception, or guile, and the aforementioned four solidi have been paid in full

And I have drawn up for you this written guarantee, which is valid and warranted and unbreakable and unshakable and lawful wherever it is brought forward and displayed with the signature of the one signing on my behalf, according to my entreaty and request, and of those bearing witness below.

And having been questioned in person, I have acknowledged - and executed this agreement a – that this is good to do.

(2nd hand) ⳿ I, Aurelia Tsone, daughter of Menas, of mother Tapia, a nun from Syene, as aforementioned, have had this contract drawn up and everything written herein is satisfactory to my as said above.

I, Flavius Ioannis, son of Abraamios, the *actuarius* of the regiment of Syene, having been asked, wrote on her behalf because she does not know letters. ⳿

(3rd hand) ⳿ I, Patermouthis, son of Serenos, the most humble priest of Syene, bear witness. ⳿

(4th hand) ⳿ I, Flavius Allamon, son of Dios, a soldier of the regiment of Syene, bear witness. ⳿

(5th hand) ⳿ I, Flavius Paeion, son of Dios, a soldier of the regiment of Syene, bear witness. †

(6th hand) ⳿ I, Isakos, son of Taeion, the archdeacon of Saint Maria of Syene, bear witness.

(7th hand) ⳿ I, Papnouthis, son of Aion, a deacon of the Church of Syene, bear witness. ⳿

(8th hand) † I, Flavius Dioskuros son of Ioanes, a centurion of the regiment of Syene, bear witness. †

(9th hand) †I, Flavius Hermias, son of Ioannes, a soldier of the regiment of Syene, bear witness. †

(1st hand?) † Written by me, Markos, son of Apadios. ⲣ

(Verso)

(10th hand?) † Acknowledgement of assurance done by Tsone, daughter of Menas, a nun from Syene, for Tapia, her mother. [2]

[2] Translation based on Porten (1996) 513-517.

Appendix 11: *P. Sakaon* 69

A lease agreement for land – Theadelphia – 14 Jan 331.

Αὐρηλίᾳ Ῥουφίνᾳ ἡ <λ>αμπροτάτῃ δι-
ὰ τοῦ ἀνδρὸς Κλαυδίου Λαμβαδίου
τοῦ καὶ Οὐιηνίου βουλευτοῦ Ἀλεξαν-
δρίας.
(hand 2) παρὰ Αὐρηλίου Σακαῶνος Σαταβοῦ-
τος μητρὸς Τερμουτίου ἀπὸ κώμης
Θεαδελφίας. βούλομαι μισθώσασθαι
παρὰ σοῦ τὰς ὑπαρχοῦσαν σοι περὶ τὴν
αὐτὴν κώμην Θεαδέλφιαν σιτικὰς
ἀρούρας δέκα ἕξ, ἢ ὅσας ἐὰν ὦσι, ἐπὶ
χρόνον ἔτη πέντε ἀπὸ τῆς ἤδη
γενομένης ὑπ᾽ ἐμοῦ σπορᾶς τοῦ ἐνε-
στῶτος ἔτους πέμπτης ἰνδικτίονος
ἐκφορ<ί>ου τοῦ παντὸς κατ᾽ ἔτος ἕκα-
στον πυροῦ ἀρταβῶν τριάκοντα,
καὶ ἐπιτε<λέ>σω τὰ τῶν ἀρουρῶν ἔρ-
κα πάντα ὅσα καθήκι, ἅμα καὶ
τὰ τημοσία χώματα ὑπὲρ τῶν
ἀρουρῶν ποιήσομαι, τῶν δὲ τη-
μοσίων τελεσμάτων πάντων
[ὄ]ντων πρὸς σαὶ τὴν καιοῦχον,
καὶ μετὰ τὸν χρόνον παραδώσω
τὰς ἀρούρας ἀπὸ συνκομιτῆς
καθὼς κἀκὼ παρέλαβον. ἡ μί-
σθωσις κυρία, καὶ ἐπερωτηθεὶς

ὡ<μ>ολόγησα. ὑπατείας Ἰουνίου

Βάσσου καὶ Φλαυίου Ἀβλαβίου

τῶν λαμπροτάτων, Τῦβι ιθ.

(hand 3) Αὐρηλεία Ῥουφίνα δι’ ἐμοῦ τοῦ ἀν-

30 δρὸς μεμείσθωκα ὡς πρόκιτε.[1]

--

To Aurelia Rufina, *clarissima*, through her husband, Claudius Lambadios, also known as Vienius, councillor of Alexandria.

(Hand 2) From Aurelius Sakaon son of Satabous and of mother Thermouthion. I want to rent from you your property around the village of Theadelphia, 16 arouras of land suitable for grain, or whatever it should be, for a period of five years, from this year’s sowing which I have already done in the fifth year of the indiction, at a yearly rent of thirty *artabas* of wheat, paid in kind.

And I will do all the appropriate yearly work on the plot, and maintain the canal infrastructure related to the land, and perform all the public expectations which are on you as the landowner.

At the end of the lease, I will surrender the property to you just as I received it.

The lease is binding, and having been asked the formal question, I agreed.

In the consulship of Junius Bassus and Flavius Ablabius, *clarissimi*, 19 Tybi.

(Hand 3) I, Aurelia Rufina, through me, her husband, have leased as abovestated.

[1] 1. l. τῇ corr. ex αμβροτατη 8. l. ὑπαρχούσας 14. corr. Ex 16-17. l. ἔρ |γα 17. l. καθήκει 18. l. δημοσία 19-20. l. δη |μοσίων 21. l. σὲ l. γεοῦχον 23. l. συνκομιδῆς 24. l. καὶ ἐγὼ 28. corr. Ex 30. l. μεμίσθωκα l. πρόκιται

GLOSSARY

Actiones adiecticiae qualitatis – six Roman legal actions or remedies (*actio exercitoria*, *actio institoria*, *actio tributoria*, *actio de peculio*, *actio de in rem verso*, and *actio quod iussu*) which could be initiated against a person in specific cases of legal injury under the *ius civilie*.[1]

Agnate relative – a person who is related to another solely through the male line.

Agnitio bonorum possessionis – "a formal request addressed to a magistrate, the praetor in Rome, or the governor in the provinces, to obtain possession of an inheritance as a successor according to praetorian law. The petitioner had to prove his kinship to the deceased, to make [...] a declaration of acceptance of the inheritance, and to pay the inheritance tax."[2]

Alieni iuris – the state of being under the control or authority of another person, like a *pater familias*.

Bouleutic – an adjective referring to a category of upper-class of Greek/Hellenistic people whose men were members of the council (Boule), i.e. a councillor of a Greek city.

Cognate relative – a person who is related to another by blood, either through the male or the female line.

Ius civile – Roman civil law which specifically referred to the law of Rome as it was applicable to Roman citizens.

[1] De Ligt (1999) 205-226.
[2] Aubert (2013), 17-20.

Ius liberorum – an Augustan benefit offered to free parents of three or more children or freed parents of four or more children. Among other advantages, couples who had gained the *ius* were permitted to inherit more than a tenth of their spouse's estate, and women specifically gained freedom from their *tutor mulierum*. The three or four children required to gain the *ius* was later used as the basis by which mothers could gain the right to inherit from their intestate children.

Filius/Filia familias – a son (*filius*) or daughter (*filia*) who was subject to patria potestas and thus under the control of a *pater familias.*

Mancipatio – a specific type of formal sale which required five citizen witnesses and the object being sold to be present. It makes up part of the process of manumission and *noxae deditio*.

Manus (*in*/*sine*) – a way of categorizing Roman marriage depending on whether the wife entered into the legal control of her husband (*in manu*) or not (*sine manu*).

Noxae deditio – the surrender through *mancipatio* of an *alieni iuris* person to a plaintiff by a *pater familias* who could not or did not want to pay damages himself.

Pater familias – a father who had authority over his descendants according to *patria potestas*.

Patria potestas – a comprehensive system of paternal power and authority in Classical Roman law which was originally linked to inheritance legislation.

Peculia – property held by people who were in *potestas*, which did not strictly belong to them but to their *pater familias*.

Res mancipi – a category of important property in Classical Roman law. Important property includes Italian land and houses, slaves and animals. Strictly speaking, this also includes *alieni iuris* free or freed people. It is the opposite of *res nec mancipi*.

Res nec mancipi – a category of less important property which includes clothing, household items, and non-Italian land and houses. It is the opposite of *res mancipi*

Sitologia – the office of granary keeper in Roman Egypt.[3]

Stratelates – the Greek term for a general. It also become an honorary term relating to the military in Late Antiquity.

Stipulatio – a standard, oral question and answer which was the only way to make a legally binding contract in Classical Roman law. Classical Roman contracts were oral, where Greek ones were written.

Sui iuris – the state of being under one's own control, that is, not subject to *patria potestas*.

[3] Aly (1950) 289-307.

BIBLIOGRAPHY

Alonso (2010): Alonso, J.L. 2010. “The Bibliotheke Enkteseon and the Alienation of Real securities in Roman Egypt,” *JJP* 40, 11-54.

Alonso (2013): Alonso, J.L. 2013. “The Status of Peregrine Law in Roman Egypt: ‘Customary Law’ and Legal Pluralism in the Roman Empire,” *JJP* 43, 351-404.

Alonso (2016): Alonso, J.L. 2016. “Juristic Papyrology and Roman Law,” in P.J. Du Plessis, C. Ando, and K. Tuori (edd), *The Oxford Handbook of Roman Law and Society*. (Oxford) 56-69.

Aly (1950): Aly, Z. 1950. “Sitologia in Roman Egypt,” *JJP* IV, 289-307.

Anagnostou-Canas (2004): Anagnostou-Canas, B. 2004. “La valeur des précédents judiciaires dans l'Égypte romaine : État de la question,” *Droit et Cultures* 47, 47-65.

Anastasiadis and Souris (2000): Anastasiadis V.I. and G. A. Souris. 2000. *An Index to Roman Imperial Constitutions from Greek Inscriptions and Papyri: 28 BC to 284 AD*. (Berlin).

Ando (2000): Ando, C. .2000. *Imperial Ideology and Provincial Loyalty in the Roman Empire.* (Berkeley).

Ando (2008): Ando, C. 2008. *The Matter of the Gods: Religion and the Roman Empire.* (Berkeley).

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

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

Ando (2016): Ando, C. 2016. *Citizenship and Empire in Europe 200-1900: The Antonine Constitution after 1800 years*. (Stuttgart).

Ando (2016): Ando, C. 2016. “The Rites of Others,” in J. Edmondson and A. Keith (edd), *Roman Literary Cultures: Domestic Politics, Revolutionary Poetics, Civic Spectacles*. (Toronto) 254-277.

Ando (2016): Ando, C. 2016. “Legal Pluralism in Practice” in P. J. du Plessis, C. Ando, and K. Tuori. (edd), *The Oxford Handbook of Roman Law and Society*. (Oxford) 283-293.

Ando (2021): Ando, C. 2021. “Romans, Aliens, and Others in Dynamic Interaction,” in M. Lavan and C. Ando (edd), *Roman and Local Citizenship in the Long Second Century CE*. (Oxford), 285-311.

Ando and Rüpke (2006): Ando, C. and J. Rüpke. 2006. *Religion and Law in Classical and Christian Rome*. (Stuttgart).

Andreea (2017): Andreea, S. 2017. “The Case of Multiple Citizenship Holders in the Graeco-Roman East,” in L. Ceccet and A. Busetto (edd), *Citizens in the Greco-Roman World: Aspects of Citizenship from the Archaic Period to AD 212*. (Leiden) 110-131.

Arjava (1993): Arjava, A. 1993. “Women in the Christian Empire: Ideological Change and Social Reality,” in E.A. Livingstone (ed), *Studia Patristica XXIV*. (Louvain) 6-9.

Arjava (1996): Arjava, A. 1996. *Women and Law in Late Antiquity*. (Oxford).

Arjava (1997): Arjava, A. 1997. “The Guardianship of Women in Roman Egypt,” *Pap.Congr.* XXI, 25–30.

Arjava (1998): Arjava, A. 1998. “Paternal Power in Late Antiquity,” *JRS* 88, 147-165.

Assael et al. (2022): Assael, Y. et al. 2022. *Restoring and Attributing Ancient Texts Using Deep Neural Networks*. (England).

Aubert (2013): Aubert, J-J 2013. “Remains of an *agnitio bonorum possessionis*: P. Duk inv. 466,” in R. Ast, et al. (edd), *Papyrological Texts in Honor of Roger S. Bagnal*l. (Durham) 17-20.

Bagnall (1987a): Bagnall, R.S. 1987. “Church, State, and Divorce in Late Roman Egypt,” in R.E. Somerville and K.L. Selig (edd), *Florilegium Columbianum: Essays in Honor of Paul Oskar Kristeller* (New York) 41-61.

Bagnall (1987b): Bagnall, R.S. et al. 1987. *Consuls of the Later Roman Empire*. (Atlanta).

Bagnall and Cribiore (2006): Bagnall, R. S. and R. Cribiore. 2006. *Women’s Letters from Ancient Egypt, 300 BC – AD 800*. (Ann Arbour).

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

Bannon (2017): Bannon, C. J. 2017. “Rivers, Rights, and "Romanization",” in D. K. Kehoe and T. A. J. McGinn (edd), *Ancient Law, Ancient Society*. (Ann Arbor) 66-83.

Barber (1997): Barber, C. 1997. “Homo Byzantinus?,” in L. James (ed), *Women, Men and Eunuchs: Gender in Byzantium*. (New York) 185-199.

Barnes (2012): Barnes, T. D. 2012. “The Date of the *Constitutio Antoninian*o Once More,” in P. Pferdehirt and M. Scholz (edd), *Bürgerrecht und Krise. Die Constitutio Antoniniana und ihre innenpolitischen Folgen.* (Mainz) 51-52.

Baumann (1996): Baumann, R.A. 1996. *Crime and Punishment in Ancient Rome*. (New York).

Baumann (2011): Baumann, R. et al. (2011), *Integrating Digital Papyrology, in Digital Humanities*. (Stanford).

Beaucamp (1985): Beaucamp, J. 1985. “La Référence au veuvage dans les papyrus byzantins,” *Pallas* 32, 149-157.

Beaucamp (1990): Beaucamp, J. 1990. *Le statut de la femme à Byzance (4e – 7e siècle) I. Le droit impérial*. (Paris).

Beaucamp (1992): Beaucamp, J. 1992. *Le statut de la femme à Byzance (4e-7e siècle) II*. *Les pratiques sociales*. (Paris).

Beaucamp (2002): Beaucamp, J. 2002. "Assistance judiciaire aux femmes et rôle du mari d'après les papyrus byzantins," in H. Melaerts and L. Mooren (edd), *Le rôle et le statut de la femme en Égypte Hellénistique, Romaine et Byzantine*. (Leuven) 23–40.

Beaucamp (2010): Beaucamp, J. 2010. *Femmes, patrimoines, normes à Byzance*. (Paris).

Benincasa and Urbanik (2016): Benincasa, Z. and J. Urbanik. (edd). 2016. *Mater Familias: Scritti Romanistici Per Maria Zablocka*. (Warsaw).

Benincasa and Nowak (2024): Benincasa, Z. and M. Nowak. 2024. "Outline of the Legal Situation of Persons with Mental Disabilities (furiosi) in Roman Law," in M. Domanski and B. Lackoronski (edd), *Models of Implementation of Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD): Private and Criminal Law Aspect* (Oxford) 47-60.

Benke (2012): Benke, N. 2012. "On the Roman father's right to kill his adulterous daughter," *History of the Family* 17, 284-308.

Besson (2017): Besson, A. 2017. "Fifty years before the Antonine Constitution: Access to Roman Citizenship and Exclusive Rights in Citizens in the Greco-Roman World," in L. Cecchet and A. Busetto (edd), *Citizens in the Graeco-Roman World: Aspects of Citizenship from the Archaic Period to AD212.* (Leiden) 199-220.

Besson (2020): Besson, A. 2020. *Constitutio Antoniniana : L'universalisation de la citoyenneté romaine au 3e siècle*. (Basel).

Berthelot and Price (2019): Berthelot K. and J. Price. 2019. *In the Crucible of Empire: The Impact of Roman Citizenship upon Greeks, Jews, and Christians.* (Leuven).

Blanco-Pérez (2016): Blanco-Pérez, A. 2016. "Nomenclature and Dating in Roman Asia Minor: (M.) Aurelius/a and the 3rd Century AD," *ZPE* 199, 271-293.

Blanco-Pérez (2020): Blanco-Pérez, A. 2020. "Salvo iure gentium: Roman Citizenship and Civic Life before and after the Constitutio Antoniniana," *Al-Masāq*, 32.1, 4-17.

Bodin (1962): Bodin, J. 1962. *The Six Books of the Commonweale.* (Cambridge).

Bodnaruk (2021): Bodnaruk, M. 2021. "Intersecting Inequalities: The Representation of Religious, Gender, and Sexual Identities in the Life of Pelagia," *Review of Ecumenical Studies* 13.3, 419-436.

Bodnaruk (2024): Bodnaruk, M. "Transgender Materialism: Gender and Sexuality in the Passion and Life of Susanna," *Journal of Late Antiquity* 17.2, 422-450.

Bowman (1971): Bowman, A.K. 1971. *The Town Councils of Roman Egypt*. (Toronto).

Brown (1971): Brown, P. 1971. *The World of Late Antiquity: AD 150-750.* (New York).

Brown (1988): Brown, P. 1988. *The Body and Society: Men, Women, and Sexual Renunciation in Early Christianity*. (New York).

Brown (2008): Brown, P. 2008. *The Body and Society: Men, Women and Sexual Renunciation in Early Christianity*, 2nd Edition. (New York).

Brown (2012): Brown, P. 2012. *Through the Eye of a Needle: Wealth, the Fall of Rome, and the Making of Christianity in the West, 350–550 AD*. (Princeton).

Bryen (2011): Bryen, A. 2011. "Tradition, Precedent, and Power in Roman Egypt," *Columbia Law School Scholarship Archive*, 1-44.

Bryen (2016): Bryen, A. 2016 "Reading the Citizenship Papyrus" in C. Ando (ed), *Citizenship and Empire in Europe 200-1900: The Antonine Constitution after 1800 years*. (Stuttgart), 29-43.

Bryen (2017): Bryen, A. 2017. "Dionysia's Complaint: Finding Emotions in the Courtroom," *Greek, Roman, and Byzantine Studies* 57, 1010-1031.

Buckland (1921): Buckland, W.W. 1921. *A Textbook of Roman Law from Augustus to Justinian*. (Cambridge).

Bülow-Jacobsen and McCarren (1985): Bülow-Jacobsen, A and V.P. McCarren. 1985. "*P. Haun*. 14, *P. Mich.* 679 and *P. Haun.* 15: A Re-Edition," *ZPE* 58, 71-79.

Buraselis (1996): Buraselis, K. 1996. "Stray Notes on Roman Names in Greek Documents," in A. Rizakis (ed), *Roman Onomastics in the Greek East: Social and Political Aspects.* (Athens), 55-63.

Buraselis (2007): Buraselis, K. 2007. *ΘΕΙΑ ΔΩΡΕΑ: Das göttlich-kaiserliche Geschenk: Studien zur Politik der Severer und zur Constitutio Antoniniana.* (Vienna).

Burger (1921): Burger, A. 1921. "Review of Meyer, *Jur.Pap*.," *Zeitschrift für vergleichende Rechtswissenschaft* 39, 269-311.

Burgess (2014): Burgess, R.W. 2014. *Roman Imperial Chronology and Early-Fourth-Century Historiography: The Regnal Durations of the So-called* Chronica urbis Romae *of the Chronograph of 354.* (Stuttgart).

Butler (1999): Butler, J. 1999. *Gender Trouble: Feminism and the Subversion of Identity*. (New York).

Cameron (1989): Cameron, A. 1989. "Virginity as Metaphor: Women and the Rhetoric of Early Christianity," in A. Cameron (ed), *History as Text: The Writing of Ancient History*. (London) 184-205.

Campanile (2004): Campanile, M.D. 2004. "Asiarchi e archiereis d'Asia: titolatura, condizione giuridica e posizione sociale dei supremi dignitari delculto imperial," in Labarre, G. (ed), *Les cultes locaux dans les mondes grec et romain.* (Lyon) 69-79.

Cantarella (2003): Cantarella, E. 2003. "Fathers and Sons in Rome," *The Classical World* 96.3, 281-298.

Capogrossi Colognesi (2009): Capogrossi Colognesi, L. 2009. *Diritto e potere nella storia di Roma* (Bologna); (Trans. L. Kopp. 2014. *Law and Power in the Making of the Roman Commonwealth*. (Cambridge).)

Carrié (2008): Carrié, J.M. 2008. "Developments in Provincial and Local Administration," in A. Bowman, P. Garnsey, and A. Cameron (edd), *The Cambridge Ancient History*, Vol. 12 (Cambridge) 269-312.

Casado Candelas (1972): Casado Candelas, M.J. 1972. *La tutela de la mujer en Roma*. (Valladolid).

Castelli (1991): Castelli, E. 1991. "I Will Make Mary Male: Pieties of the Body of Gender Transformation of Christian Women in Late Antiquity," in J. Epstein and K. Straub (edd), *Bodyguards: The Cultural Politics of Gender Ambiguity*. (London) 29-49.

Cavenaile (1958): Cavenaile, R. 1958. *Corpus Papyrorum Latinarum*. (Wiesbaden).

Chatelard and Steven (2016): Chatelard, A. and A. Stevens. 2016. "Women as Legal Minors and their Citizenship in Republican Rome," *Clio: Women, Gender, History* 43, 24-77.

Chevreau (2014): Chevreau, E. 2014. “L’évolution de la tutelle romaine à travers le mécanisme de l’excusatio tutelae,” *Fundamina* 20.1, 139-149.

Chevreau (2017): Chevreau, E. 2017. *The Evolution of Roman Guardianship through the Mechanism of* excusatio tutelae. (Trieste).

Chin and Schroeder (2018): Chin, C.M. and C.T. Schroeder (edd). 2018. *Melania: Early Christianity through the Life of One Family*. (Oakland, CA).

Choat (2006): Choat, M. 2006. *Belief and Cult in Fourth-Century Papyri.* (Turnhout).

Clark (1986): Clark, E.A. 1986. *Ascetic Piety and Women’s Faith: Essays on Late Ancient Christianity*. (Lewiston).

Clark (1991): Clark, E.A. 1991. “Sex, Shame, and Rhetoric: Engendering Early Christian Ethics,” *JAAR* 59, 221-247.

Clark (1993): Clark, G. 1993. *Women in Late Antiquity: Pagan and Christian Lifestyles*. (Oxford).

Clarysse (2010): Clarysse, W. 2010. “Bilingual Papyrological Archives,” in A. Papaconstantinou (ed), *The Multilingual Experience in Egypt from the Ptolemies to the Abbasids*. (London) 47-72.

Cohick and Hughes (2017): Cohick, L.H and A. Brown Hughes. 2017. *Christian Women in the Patristic World*. (Grand Rapids).

Čoláková (2021): Čoláková, D. 2021. “Legal Position of Women in the Roman Law of Succession – Analysis of D.5.2.28,” Весник правне историје II, 27-52.

Connolly (2010): Connolly, S. 2010. *Lives Behind the Laws: The World of the Codex Hermogenianus*. (Bloomington).

Cooper, K. 1996. *The Virgin and the Bride: Idealized Womanhood in Late Antiquity*. (Cambridge, MA).

Cooper (2001): Cooper, K. 2001. "The Widow as Impresario: Gender, Authority, and Legendary Afterlives in Eugippius' Vita Severini," in W. Pohl and M. Diesenberger (edd), *Eugippius und Severin: Der Autor, der Text und der Heilige.* (Vienna) 53–64.

Cooper (2007): Cooper, K. 2007. "Poverty, Obligation, and Inheritance: Roman Heiresses and the Varieties of Senatorial Christianity in Fifth-century Rome," in K. Cooper and J. Hillner (edd), *Religion, Dynasty and Patronage in Early Christian Rome, 300-900*. (Cambridge) 165-189.

Cooper (2007): Cooper, K. 2007. *The Fall of the Roman Household*. (Cambridge).

Cooper (2013): Cooper, K. 2013. *Band of Angels: The Forgotten World of Early Christian Women*. (London).

Corbett (1930): Corbett, P.E. 1930. *The Roman Law of Marriage.* (Oxford).

Corcoran (2000): Corcoran, S. 2000. *The Empire of the Tetrarchs: Imperial Pronouncements and Government, AD 284-324*. (Oxford).

Corcoran (2004): Corcoran, S. 2004. "The Publication of Laws in the Era of the Tetrarchs," in A. Demandt et al. (edd), *Diokletian und die Tetrarchie.* (Berlin) 56–73.

Corcoran (2008): Corcoran, S. 2008. "Justinian and his Two Codes: Revisiting *P. Oxy.* 1814," *JJP* 38, 73-11.

Corcoran (2010): Corcoran, S. 2010. "Hidden from History: The Legislation of Licinius," in J. Harries and I. Wood (edd), *The Theodosian Code: Studies in the Imperial Law of Late Antiquity, Second Edition*. (London) 97-119.

Corcoran, S. 2016. "The Codex of Justinian: The Life of a Text through 1,500 Years," in B.W. Frier (ed), *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text.* (Cambridge) xcvii-clxxxvi.

Cortese and Fioratto (2022): Cortese, A. and G. Fioratto. 2022. *Urban Spaces between the Roman Age and Late Antiquity*. (Regensburg).

Cotton, Cockle and Millar (1995): Cotton, H., W. Cockle, and F.G.B. Millar. 1995. "The Papyrology of the Roman Near East: A Survey," *JRS* 85, 214-235.

Cotton (2007): Cotton, H.M. (2007) "Private International Law or Conflict of Laws: Reflections on Roman Provincial Jurisdiction," in R. Haensch and J. Heinrichs (edd), *Herrschen und Verwalten:Der Alltag der römischen Administration in der Hohen Kaiserzeit.* (Cologne) 235-255.

Cribiore (2002): Cribiore, R. 2002. "The Women in the Apollonius Archive and their Use of Literacy," in H. Melaerts and L. Mooren (edd), *Le rôle et le statut de la femme en Égypte hellénistique, romaine, et byzantine.* (Leuven) 149-166.

Croke (2010): Croke, B. 2010. "Mommsen's Encounter with the Code," in J. Harries and I. Wood (edd), *The Theodosian Code: Studies in the Imperial Law of Late Antiquity.* 2nd Edition. (London) 217-239.

Crook (1967a): Crook, J.A. 1967. "Patria Potestas," *The Classical Quarterly* Vol. 17.1, 133-122.

Crook (1967b): Crook, J.A. 1967. *Law and Life of Rome*. (Ithaca).

Cruz-Uribe (2018): Cruz-Uribe, E. 2018. "The Last Demotic Inscription," in K. Donker van Heel, F. A. J. Hoogendijk, and C. J. Martin (edd), *Hieratic, Demotic and Greek Studies and Text Editions: Of Making Many Books There Is No End: Festschrift in Honour of Sven P. Vleeming.* (Leiden) 6-8.

Csillag (1976): Csillag, P. 1976. *The Augustan laws on Family Relations*. (Budapest).

Curzon (1981): Curzon, L.B. 1981. *Roman Law*. (London).

Cuvigny (1995): Cuvigny, H. 1995. *Papyrus Graux 2* : *9-29.* (Geneva).

de Beauvoir (1949): de Beauvoir, S. 1949. *Le Deuxième Sexe*, *Tome I et II*. (Paris).

de Ligt (1999): de Ligt, L. 1999. "Legal History and Economic History: The case of the actiones adiecticiae qualitatis," *Tijdschrift voor Rechtsgeschiedenis* 67, 205-226.

Dijkstra (2011): Dijkstra, J.H.F. 2011. "The Fate of the Temples in Late Antique Egypt," in L. Lavan and M. Mulryan (edd), *The Archaeology of Late Antique 'Paganism'*. (Leiden) 389 –436.

Dillon (2012): Dillon, J.N. 2012. *The Justice of Constantine: Law, Communication, and Control*. (Ann Arbor).

Dixon (1984): Dixon, S. 1984. "Infermitas Sexus: Womanly Weakness in Roman Law," *Tijdschrift voor Reschtsgeschiedenis* 52, 343-371.

Dolganov (2020): Dolganov, A. 2020. "Nutricula Causidicorum: Legal Practitioners in Roman North Africa," in K. Czajkpwski and B. Eckhardt (edd), *Law in the Roman Provinces*. (Oxford) 358-416.

Domingo (2018): Domingo, R. 2018. *Roman Law: An Introduction*. (London).

Donovan (2008): Donovan, J. 2008. *Legal Anthropology: An Introduction*. (New York).

Dumont (1990): Dumont, J-C. 1990. "L'imperium du pater familias," in Adreau, J. and Bruhns, H. (edd), *Parenté et stratégies familiales dans l'Antiquité romaine*. (Paris) 475-495.

du Plessis (2017): du Plessis, P.J. 2017. "Once more on the Perpetual Guardianship of Women," in U. Yiftach and M. Faraguna (edd), *Ancient Guardianship: Legal Incapacities in the Ancient World.* (Trieste) 165-172.

du Plessis, Ando and Tuori (2016): Du Plessis, P.J., C. Ando, and K. Tuori (edd), 2016. *The Oxford Handbook of Roman Law and Society*. (Oxford).

Efthymiadis et al. (2011): Efthymiadis, S. et al. 2011. "Greek Hagiography in Late Antiquity (Fourth Seventh Centuries)," in S. Efthymiadis (ed), *The Ashgate Research Companion to Byzantine Hagiography*. (Surrey) 35-94.

Ellart (2019): Ellart, C. S-M. 2019. "The Ius liberorum of non-Roman Citizens of Egypt: Some notes on an old Taugenschlag's hypothesis," *Archiv für Papyrusforschung und verwandte Gebiete* 65.2, 364-398.

Evans Grubbs (1989): Evans Grubbs, J. 1989. "Abduction marriage in Antiquity: A Law of Constantine (*CTh* 9.24.1) and its Social Context," *JRS* 79, 59-83.

Evans Grubbs (1999): Evans Grubbs, J. 1999. *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation*. (Oxford).

Evans Grubbs (2002): Evans Grubbs, J. 2002. *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood*. (London).

Fayer (2005): Fayer, C. 2005. *La familia romana: aspetti giuridici ed antiquari II Sponsalia, matrimonie, dote*. (Rome).

Field (1945): Field, J.A. 1945. "The Purpose of Lex Iulia et Papia Poppaea," *The Classical Journal*, 399-403.

Frakes (2011): Frakes, R. 2011. Compiling the *Collatio Legum Mosaicarum et Romanarum* in Late Antiquity. (Oxford).

Frankfurter (1998): Frankfurter, D. 1998. *Religion in Roman Egypt: Assimilation and Resistance*. (Princeton).

Frankfurter (2018): Frankfurter, D. 2018. *Christianizing Egypt: Syncretism and Local Worlds in Late Antiquity.* (Princeton).

Frier (1982): Frier, B. 1982. “Roman Life Expectancy: Ulpian’s evidence,” *Harvard Studies in Classical Philology* 86, 213-251.

Frier and McGinn (2004): Frier, B.W. and McGinn, T.A. 2004. *A Casebook on Roman Family Law*. (Oxford).

Frier (2016): Frier, B.W. et al. (edd). 2016. *The Codex of Justinian: A New Annotated Translation with Parallel Latin and Greek Text*. 3 Vols. (Cambridge).

Fournet (2020): Fournet, J-L. 2020. *The Rise of Coptic: Egyptian versus Greek in Late Antiquity*. (Princeton).

Gagliardi (2017): Gadliardi, L. 2017. “The Mother as Guardian of her Children in Rome and in the Oriental Provinces of the Empire,” in U. Yiftach and M. Faraguna *Ancient Guardianship: Legal Incapacities in the Ancient World*. (Trieste), 221-242.

Gagos and Heilporn (2001): Gagos, T. and Heilporn, P. 2001. “A New *agnitio bonorum possessionis*,” in T. Gagos and R.S. Bagnall (edd), *Essays and Texts in Honor of J. David Thomas.* (Durham) 175-185.

Gagos and van Minnen (1994): Gagos, T. and P. van Minnen. 1994. *Settling a Dispute: Towards a Legal Anthropology of Late Roman Egypt*. (Michigan).

Galsterer (1986): Galsterer, H. 1986. “Roman Law in the Provinces: Some Problemes of Transmission,” in M.H. Crawford (ed), *L’impero romano e le strutture economiche e sociali delle province* (Como) 13-27.

Garnsey (2004): Garnsey, P. 2004. “Roman Citizenship and Roman Law in the Late Empire,” in S. Swain and M. Edwards (edd) *Approaching Late Antiquity: The Transformation from Early to Late Empire*. (Oxford) 133–155.

Gardner (1986): Gardner, J.F. 1986. *Women in Roman Law and Society*. (London).

Gardner (1993): Gardner, J.F. 1993. *Being a Roman Citizen*. (London).

Gardner (1998): Gardner, J.F. 1998. *Family and Familia in Roman Law and Life*. (Oxford).

Gardner (2011): Gardner, J.F. 2010. "Roman 'Horror' of Intestacy?" in B. Rawson (ed), *A Companion to Families in the Greek and Roman Worlds*. (Oxford) 361-376.

Gaughan (2010): Gaughan, J.E. 2010. *Murder was not a Crime: Homicide and Power in the Roman Republic*. (Texas).

Gaudemet (1957): Gaudemet, J. 1957. La formation du droit séculier et du droit de l'église aux IVe et Ve siècles. (Paris).

Gilliam (1965): Gilliam, J.F. 1965. "Dura Rosters and the *Constitutio Antoniniana,*" *Historia: Zeitschrift für alte Geschichte* 14, 74-92.

Glickman (1970): Glickman, R.J. 1970. "The Computer and Research in Papyrology: Some Basic Considerations in System Planning," *Pap.Congr.* XII, 153-168.

Gothofredus (1563): Gothofredus, J 1653. *Fontes Quatuor Iuris Civilis.* (Lyon).

Grenfell and Hunt (1916): Grenfell, B.P. and A.S. Hunt. 1916. *Oxyrhynchus Papyri. XII.* (Oxford).

Haensch (1994): Haensch, R. 1994. "Die Bearbeitungsweisen von Petitionen in der Provinz Aegyptus," *ZPE* 100, 487-546.

Harris (1986): Harris, V.W. 1986. "The Roman Father's Power of Life and Death," in R.S. Bagnall and V.W. Harris (edd), *Studies in Roman Law in Memory of A. Arthur Schiller*. (Leiden) 81-95.

Harries (1999): Harries, J. 1999. *Law and Empire in Late Antiquity*. (Cambridge).

Harries and Wood (2010): Harries, J. and I. Wood (edd). 2010. *The Theodosian Code: Studies in the Imperial Law of Late Antiquity*, 2nd Edition. (London).

Heckster (2008): Heckster, O. 2008. *Rome and its Empire: AD 193-284*. (Edinburgh).

Heichelheim (1940): Heichelheim, F. M. 1940. "The Text of the *Constitutio Antoniniana* and the Three Other Decrees of the Emperor Caracalla Contained in Papyrus Gissensis 40," *JEA* 26, 10–22.

Heller (2019): Heller, A. 2019. "Greek Citizenship in the Roman Empire: Political Participation, Social Status, and Identities," in K. Berthelot and J. Price (edd), *In the Crucible of Empire: The Impact of Roman Citizenship upon Greeks, Jews and Christians*. (Leuven) 55-72.

Hermann (1972): Hermann, P. 1972. "Überlegungen zur Datierung der *Constitutio Antoniniana*," *Chiron* 2, 519-530.

Hersch (2010): Hersch, K.H. 2010. *The Roman Wedding: Ritual and Meaning in Antiquity*. (Cambridge).

Heubner (2013): Heubner, S.R. 2013. *The Family in Roman Egypt. A Comparative Approach to Intergenerational Solidarity and Conflict.* (Cambridge).

Hillner (2003): Hillner, J. 2003. "Domus, Family, and Inheritance: The Senatorial Family House in Late Antique Rome," *JRS* 93, 129–145.

Holum (1982): Holum, K. G. 1982. Theodosian Empresses: Women and Imperial Dominion in Late Antiquity. (Berkeley).

Honoré (1994): Honoré, T. 1994. *Emperors and Lawyers*. 2nd Edition. (Oxford).

Honoré (1998): 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 (1965): Hopkins, K. "The Age of Roman Girls at Marriage," *Population Studies* 18, 309-327.

Hopkins (1966): Hopkins, K. 1966. “On the probable age structure of the Roman Population,” *Population Studies* 20, 245-264.

Humbert (1972): Humbert, M. 1972. *Le remariage à Rome : Étude d`histoire juridique et sociale*. (Milan).

Humfress (2005): Humfress, C. 2005. “Law and Legal Practice,” in M. Maas (ed), *The Cambridge Companion to the Age of Justinian.* (New York) 161-184.

Humfress (2007): Humfress, C. 2007. *Orthodoxy and the Courts in Late Antiquity*. (Oxford).

Humfress (2013a): Humfress, C. 2013. “Laws’ Empire: Roman Universalism and Legal Practice,” in P.J. du Plessis (ed), *New Frontiers: Law and Society in the Roman World*. (Edinburgh) 73-101.

Humfress (2013b): Humfress, C. 2013. “Thinking Though Legal Pluralism: ‘Forum shopping,’ in the Later Roman Empire,” in J. Duindam et al. (edd), *Law and Empire: Ideas, Practices, Actors*. (Leiden) 225-250.

Humfress (2015): Humfress, C. 2015. “Patristic Sources,” in D. Johnston (ed), *The Cambridge Companion to Roman Law* (Cambridge) 97-118.

Hunter (1994): Hunter, V. J. 1994. *Policing Athens: Social Control in the Attic Lawsuits, 420-320 BC.* (Princeton).

Imrie (2018): Imrie, A. 2018. *The Antonine Constitution: An Edict for a Caracallan Empire*. (Leiden).

Israelowich (2017): Israelowich, I. 2017. “The extent of the ‘patria potestas’ during the High Empire: Roman Midwives and the decision of ‘non tollere’ as a case in point,” *Museum Helviticum* 74.2, 213-229.

James (1997): James, L. 1997. *Women, Men, and Eunuchs: Gender in Byzantium*. (New York).

Johnson (1994): Johnson, J.H. 1994. "Computers, Graphics, and Papyrology," *Pap.Congr.* XX, 618-620.

Johnston (2015): Johnston, D. (ed). 2015. *The Cambridge Companion to Roman Law* (Cambridge).

Johnston (1999): Johnston, D. 1999. *Roman Law in Context.* (Cambridge).

Jolowicz (1937): Jolowicz, H.F. 1937. "Case Law in Roman Egypt", *Journal of the Society of Public Teachers of Law* 14, 1-16.

Jörs (1894): Jörs, P. 1894. *Die Ehegesetze des Augustus.* (Marburg).

Joshel (2002): Joshel, S.R. 2002. "The body female and the body politic: Livy's Lucretia and Verginia," in L. McClure (ed), *Sexuality and Gender in the Classical World: Readings and Sources*. (Oxford) 163-187.

Jolowicz and Nicholas (1972): Jolowicz, H. F. and Nicholas, B. 1972. *Historical Introduction to the Study of Roman Law.* 3rd Edition. (Cambridge) 119-120.

Kacprzak and Nowak (2018): Kacprzak A. and M. Nowak. 2018. "Foundlings in the Greco-Roman World: Status and the (Im)possibility of Adoption," *Tijdschrift voor Reschtsgeschiedenis* 86, 13-54.

Kaiser (2015): Kaiser, W. 2015. "Justinian and The Corpus Iuris Civilis" in D. Johnston (ed), *The Cambridge Companion to Roman Law.* (Cambridge) 119-148.

Karolewski (2010): Karolewski, I.P. 2010. *Citizenship and Collective Identity in Europe.* (London).

Kaser (1938): Kaser, M. 1938. "Der Inhalt der patria potestas," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 58.1, 62-87.

Kaser (1971): Kaser, M. 1971. *Das römische Privatrecht* I. (München).

Kaltsas (2017): Kaltsas, D. 2017. 'The False Guardian: An Interpretation of P. Eleph.Wagner 1', in U. Yiftach and M. Faraguna (edd), *Ancient Guardianship: Legal Incapacities in the Ancient World.* (Trieste) 147–163.

Katzoff (1972): Katzoff (1972): Katzoff, R. 1972. "Precedents in the Courts of Roman Egypt," *ZSS* 89, 256-292.

Katzoff (1980): Katzoff (1980): Katzoff, R. 1980. "Sources of Law in Roman Egypt: The Role of the Prefect," *ANRW* 2.13, 807-844.

Katzoff (1981): Katzoff (1981): Katzoff, R. 1981. "On the Intended Use of *P.Col.* 123," *Pap.Congr. XVI*, 559-573.

Kearley (2010): Kearley, T. G. 2010. "The Creation and Transmission of Justinian's Novels," *Law Library Journal* 102.3, 377-397.

Keenan (2014): Keenan, J. G. et al. (edd). 2014. *Law and Legal Practice in Egypt from Alexander to the Arab Conquest: A Selection of Papyrological Sources in Translation with Introductions and Commentary*. (Cambridge).

Kehoe and McGinn (2017): Kehoe, D.K. and T.A.J. McGinn. 2017. *Ancient Law, Ancient Society.* (Ann Arbor).

Kelly (2011): Kelly, B. 2011. *Petitions, Litigation, and Social Control in Roman Egypt*. (Oxford).

Kelly (2016): Kelly, B. 2016. "Petitions with Requests for Registration from Roman Egypt," in R. Haensch et al. (edd) *Recht haben und Recht bekommen in Imperium Romanum: Das Gerichtswesen der Römischen Kaiserzeit und seine dokumentarische Evidenz.* (Warsaw) 407-456.

Kelly (2017): Kelly, B. 2017. "Proving the Ius liberorum: *P.Oxy.* XII 1467 Reconsidered," *Greek, Byzantine, and Roman Studies* 57, 105-135.

Kirschenbaum (1987): Kirschenbaum, A. 1987. *Sons, Slaves, and Freedmen in Roman Commerce*. (Jerusalem).

Kleve (1975): Kleve, K. 1975. *New Methods in the Study of Greek Papyri from Herculaneum*, *Pap.Congr.* XIV, 201-203.

Krawiec (2002): Krawiec, R. 2002. *Shenoute and the Women of the White Monastery: Egyptian Monasticism in Late Antiquity*. (Oxford).

Kreuzaler and Urbanik (2008): Kreuzaler C. and J. Urbanik. 2008. "Humanity and Inhumanity of Law: The Case of Dionysia," *JJP* 38, 119-155.

Kuefler (2015): Kuefler, M. 2015. "The Merry Widows of Late Roman Antiquity: The Evidence of the Theodosian Code," *Gender & History* 27.11, 28–52.

Lafferty (2013): Lafferty, S.D.W. 2013. *Law and Society in the Age of Theoderic the Great.* (Cambridge).

Lambert Mears (2004): Lambert Mears, T. 2004. *The Institutes of Gaius and Justinian: The Twelve Tables and CXVIIIth and CXXVIIth Novels, with Introduction and Translation.* (Clark, NJ).

Last (1934): Last, P. 1934. "The Social Policy of Augustus," *CAH*, 434-456.

Lavan (2016): Lavan, M. 2016. "The Spread of Citizenship 14- 212 CE: Quantification in the Face of High Uncertainty," *Past and Present* 230, 3-46.

Lavan (2019): Lavan, M. 2019. "The Foundation of Empire? The Spread of Roman Citizenship from the Fourth Century BCE to the Third Century CE," in K. Berthelot and J. Price (edd), *In the Crucible of Empire: The Impact of Roman Citizenship upon Greeks, Jews and Christians*. (Leuven) 21–54.

Lavan (2020): Lavan, M. 2020. “Quantifying the Spread of Roman Citizenship in the Province of Asia in the Second Century CE,” *Chiron* 50, 129-65.

Lavan and Ando (2021): Lavan M. and C. Ando. 2021. *Roman and Local Citizenship in the Long Second Century CE*. (Oxford).

Lefkowitz and Fant (2016): Lefkowitz, M.R. and M.B Fant. 2016. *Women’s Life in Greece and Rome: A Sourcebook in Translation*. (Baltimore).

Lenski (2016): Lenski, N. and B.W. Frier. 2016. “Revising Justice Blume's translation of Justinian's Codex and Note on the Dating of Constitutions,” in B.W. Frier et al. (edd), *The Codex of Justinian: A New Annotated Translation with Parallel Latin and Greek Text*. (Cambridge) lxxix-xcvi.

Lewis (1970: Lewis, N. 1970. “On Paternal Authority in Roman Egypt,” *RIDA* 17, 251-258.

Lewis (1977): Lewis, N. 1977. “Aphairesis in Athenian law and custom,” *Symposion 1977*, 161-178.

Lewis (1979): Lewis, N. 1979. “ 'ΑΦΗΛΙΞ before and after the Constitutio Antoniniana,” *BASP* 16, 117-120.

Luijendijk (2015): Luijendijk, A.-M. 2015. “Twenty Thousand Nuns: The Domestic Virgins of Oxyrhynchos,” in G. Gabra and H. N. Takla (edd), *Christianity and Monasticism in Middle Egypt: Al-Minya and Asyut*. (Cairo) 57-68.

MacCoull (1997): MacCoull, L.S.B. 1997. “Dated and Datable Coptic Documentary Hands before A.D. 700,” *Muséon* 10, 349–66.

Maehler (1970): Maehler, H. 1970. “Neue Dokumente zum Drusilla-Prozess,” *Pap.Congr.* XII, 263-271.

Malaerts and Mooren (2002): Malaerts, H and L. Mooren (edd). 2002. *Le rôle et le statut de la femme en Égypte hellénistique, romaine et byzantine.* (Paris).

Mantovani (2018): Mantovani, D. 2018. *Les juristes écrivains de la Rome antique: les oeuvres des juristes comme literature*. (Paris).

Martinez (2007): Martinez, M.J.A. 2007. "A Nun's Dispute with Her Mother in P. Lond. V 1731," *Pap.Congr.* XXV, 7-11.

Mathieson (2014): Mathieson, E. 2014. *Christian Women in the Greek Papyri of Egypt to 400 CE*. (Turnhout).

Mathisen (2001): Mathisen, R. 2001. *Law, Society, and Authority in Late Antiquity*. (Oxford).

Matthews (2000): Matthews, J. 2000. *Laying Down the Law: A Study of the Theodosian Code*. (New Haven).

Matthews (2010): Matthews, J. 2010. "The Making of the Text," in J. Harries and I. Wood (edd), *The Theodosian code: Studies in the Imperial Law of Late Antiquity.* 2nd Edition (London), 19-44.

McGinn (1998): McGinn, T.A. 1998. *Prostitution, Sexuality, and the Law in Ancient Rome*. (Oxford).

Medina (2019): Medina, M.H. 2019. *Origen y evolución de la tutela impuberum. Protección procesal a través de la actio rationibus distrahendis y la accusatio suspecti tutoris*. (Spain).

Meinhart (1966): Meinhart, M. 1966. "Die Datierung des SC Tertullianum, mit einem Beitrag zur Gaiusforschung," *Zeitschirft für Savigny Stiftung: Romanistische Abteilung* 83.1, 100–141.

Meinhart (1969): Meinhart, M. *Die Senatusconsulta Tertullianum und Orfitianum in ihrer Bedeutung für das klassische römische Erbrecht*. (Cologne)

Mélèze Modrzejewski (1970): Mélèze Modrzejewski, J. 1970. "La règle de droit dans l'Égypte Romaine," *Pap.Congr.* XII, 317-376.

Mélèze Modrzejewski (1974): Mélèze Modrzejewski, J. 1974. " À propos de la tutelle dative des femmes dans l'Égypte romaine," *Pap.Congr.* XIII, 263-292.

Mélèze Modrezjewski (1981): Mélèze Modrezejewski, J. 1981. "Le mariage et la condition de la femme mariée dans l'Égypte grecque et romaine," *Annulaire de l'École pratique des hautes études,* 299-316.

Mélèze Modrezjewski (1990): Mélèze Modrzejewski, J. 1990. *Droit imperial et tradiations locales dans l'Egypt romaine.* (Aldershot).

Mélèze Modrzejewski (2014): Mélèze Modrzejewski, J. 2014. *Loi et coutume dans l'Égypte grecque et romaine*. (Warsaw).

Metzger (2005): Metzger, E. 2005. *Litigation in Roman Law.* (Oxford).

Meyer (1920): Meyer, P. 1920. *Juristische Papyri: Erklärung von Urkunden zur Einführung in die Juristische Papyruskunde.* (Berlin).

Meyer (2016): Meyer, E.A. 2016. "Writing in Roman Legal Contexts," in D. Johnston (ed), *The Cambridge Companion to Roman Law* (Cambridge), 85-96.

Millar (1962): Millar, F. 1962. "The Date of the Constitutio Antoniniana," *Journal of Egyptian Archaeology* 48, 124-131.

Mitteis (1891): Mitteis, L. 1891. *Reichsrecht und Volksrecht in den östlischen Provinzen des römischen Kaiserreichts*. (Leipzig).

Mommsen (1887) Mommsen, T. 1887-1888. *Römisches Staatsrecht,* 3 Vols. (Leipzig).

Mommsen (1890): Mommsen, T. 1890. *Collectio librorum iuris anteiustiniani III: Fragmenta Vaticana, Mosaicarum et Romanarum legum collatio*. (Berolini).

Monnickendam (2018): Monnickendam, Y. 2018. "Late Antique Christiam Law in the Eastern Roman Empire: Towards a New Paradigm," *Studies in Late Antiquity* 2.1, 40-83.

Montserrat (1996): Montserrat, D. 1996. *Sex and Society in Greco-Roman Egypt*. (New York).

Mousourakis (2012): Mousourakis, G. 2012. *Fundamentals of Roman Private Law*. (Berlin).

Morrell (2020): Morrell, K. 2020. "Tutela Mulierum and the Augustan Marriage Laws," *Eugesta* 10, 89-116.

Mullen and James (2012): Mullen, A. and P. James. 2012. *Multilingualism in the Graeco-Roman Worlds.* (Cambridge).

Nicholas (1962): Nicholas, B. 1962. *An Introduction to Roman Law*. (Oxford).

Nowak (2015): Nowak, M. 2015. *Wills in the Roman Empire: A Documentary Approach*. (Warsaw).

Olivier (1972): Oliver, J. H. (1972) "Text of the Tabula Banasitana, AD 177," *AJP* 93, 336-340.

Oliver (1989): Oliver, J. H. 1989. *Greek Constitutions of Early Roman Emperors from Inscriptions and Papyri*. (Philadelphia).

Oudshoorn (2007): Oudshoorn, J.G. 2007. *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives: General Analysis and Three Case Studies on Law of Succession, Guardianship and Marriage.* (Leiden).

Papaconstantinou (2010): Papaconstantinou, A. (ed). 2010. *The Multilingual Experience in Egypt from the Ptolemies to the Abbasids*. (London).

Parkin (1994): Parkin, T.G. 1994. *Demography and Roman Society*. (London).

Parkin and Pomeroy (2007): Parkin, T.G. and A.J. Pomeroy. 2007. *Roman Social History: A Sourcebook*. (London).

Pestman (1961): Pestman, P.W. 1961. *Marriage and Matrimonial Property in Ancient Egypt: A Contribution to Establishing the Legal Position of Women*. (Leiden).

Pestman (1994): Pestman, P.W. 1994. *The New Papyrological Primer.* 2nd Edition. (Leiden).

Pölönen (2006): Pölönen, J. 2006 "The Case for a Sociology of Roman Law," in M. Freeman (ed), *Law and Sociology*. (Oxford) 398-408.

Pölönen (2016): Pölönen, J. 2016. "Framing "Law and Society" in the Roman World," in P.J. du Plessis, C. Ando, and K. Tuori (edd), *The Oxford Handbook of Roman Law and Society*. (Oxford) 8-20.

Pomeroy (1975): Pomeroy, S.B. 1975. *Goddesses, Whores, Wives, and Slaves: Women in Classical Antiquity*. (New York).

Pomeroy (1988): Pomeroy, S.B. 1988. "Women in Roman Egypt: A Preliminary Study Based on Papyri," *ANRW* II 10.1, 708–723.

Porten (1996): Porten, B. *et al.* 1996. *The Elephantine Papyri in English: Three Millennia of Cross-Cultural continuity and Change*. (Leiden).

Poste (1904): Poste, E. 1904. *Gai Institutiones: or Institutes of Roman Law by Gaius.* (Oxford).

Préaux (1959): Préaux, C. 1959. "Le Statut de la femme à l'époque hellénistique, principalement en Égypt," *Recueils de la Société Jean Bodin* 11, 139-143.

Rapp (2005): Rapp, C. 2005. *Holy Bishops in Late Antiquity: The Nature of Christian Leadership in an Age of Transition*. (Berkeley).

Rawson (1986): Rawson, B. (ed). 1986. *The Family in Ancient Rome: New Perspectives*. (London).

Rawson (1991): Rawson, B. (ed). 1991. *Marriage, Divorce, and Children in Ancient Rome*. (Canberra).

Reggiani (2017): Reggiani, N. 2017. *Digital papyrology I: Methods, Tools and Trends*. (Berlin).

Reggiani (2018): Reggiani, N. 2018. *Digital Papyrology II: Case Studies on the Digital Edition of Ancient Greek Papyri.* (Berlin).

Riccobono (1950): Riccobono, S. 1950. *Il Gnomon dell'Idios Logos*. (Palermo).

Riccobono (1957): Riccobono, S. 1957. *Stipulation and the Theory of Contract*. (Trans. J. Kerr Wylie.) (Amsterdam).

Richardson (2015): Richardson, J. 2015. "Roman Law in the Provinces," in D. Johnston (ed), *The Cambridge Companion to Roman Law.* (Cambridge) 44-58.

Riggsby (2010): Riggsby, A.M. 2010. *Roman Law and the Legal World of the Romans*. (Cambridge).

Rizakis (1996): Rizakis, A.D. (ed). 1996. *Roman Onomastics in the Greek East: Social and Political Aspects*. (Athens).

Rizakis (2011): Rizakis, A.D. 2011. "La diffusion des processus d'adaptation onomastique : Les Aurelii dans les provinces orientales de l'Empire," in M. Dondin–Payre (ed), *Les noms de personnes dans l'Empire romain : Transformations, adaptation, évolution.* (Bordeaux), 253–262.

Roberts (1979): Roberts, S. 1979. *Order and Dispute: An Introduction to Legal Anthropology*. (London).

Roberts (2005): Roberts, S. 2005. "After Government? On Representing Law without the State," *The Modern Law Review* 68.1, 1-24.

Robison (1997): Robinson, O.F. 1997. *The Sources of Roman Law: Problems and Methods for Ancient Historians*. (London).

Roos (1923): Roos, A.G. 1923. "Animadversiones in papyros nonnullas graecas," *Mnemosyne* 51, 415-420.

Roselaar (2012): Roselaar, S.T. 2012. "The Concept of Commercium in the Roman Republic" *Phoenix* 66.3/4, 381-413.

Rowlandson (1996): Rowlandson, J. 1996. *Landowners and Tenants in Roman Egypt.* (Oxford).

Rowlandson (1998): Rowlandson, J. et al. (edd). 1998. *Women and Society in Greek and Roman Egypt: A Sourcebook*. (Cambridge).

Roy (2008): Roy, A. 2008. "Postcolonial Theory and Law : A Critical Introduction," *Adelaide Law Review* 29. 2, 315-357.

Rupprecht (1986): Rupprecht, H.-A. 1986. "Zur Frage der Frauentutel im Römischen Ägypten," in G. Wesener (ed), *Festschrift Fur A. Kranzlein*. (Graz), 95–102.

Safran (2010): Safran, M. 2010. *Civis Romana: Women and Civic Identity in Livy, Auc I*. (Princeton).

Saller (1986): Saller, R.P. 1986. "Patria Potestas and the Stereotype of the Roman Family," *Continuity and Change* 1, 7-22.

Saller (1987): Saller, R. 1987. "Men's Age at Marriage and its consequences in the Roman Family," *Classical Philology* 82, 21-34.

Saller (1994): Saller, R.P. 1994. *Patriarchy, Property and Death in the Roman Family*. (Cambridge).

Saller (1999): Saller, R.P. 1999. "Pater familias, Mater familias, and the Gendered Semantics of the Roman Household," *CPh* 94, 182-197.

Salway (1994): Salway, B. 1994. "What's in a Name? A Survey of Roman Onomastic Practice from c. 700 BC to Ad. 700," *JRS* 84, 124-145.

Salway (2006): Salway, B. 2006. "Equestrian Prefects and the Award of Senatorial Honours from the Severans to Constantine," in A. Kolb (ed), *Herrschaftsstrukturen und Herrschaftpraxis. Konzepte, Prinsipien und Strategien der Administration im römischen Kaiserreich*. (Berlin) 111-135.

Sanders (1933): Sanders, H.A. 1933. "A Bilingual Request for Appointment of a Guardian," *Aegyptus* 13, 169-175.

Sanders (1942): Sanders, H.A. 1942. "The Appointment of a Guardian by the Prefect of Egypt," *American Journal of Archaeology* 46.1, 94-98.

Sarris (2006): Sarris, P. 2006. *Economy and Society in the Age of Justinian.* (Cambridge).

Sasse (1962): Sasse C. 1962 "Literaturübersicht zur Constitutio Antoniniana (Teil 1)," *JJP* 14, 109-149.

Sasse (1965): Sasse C. 1965 "Literaturübersicht zur Constitutio Antoniniana (Teil 2)," *JJP* 15, 329-366.

Savigny (1817): von Savigny, F. C. 1817. "Neu entdeckte Quellen des Römischen Rechts" *Zeitschrift für geschichtliche Rechtswissenschaft* 3, 129-172.

Schilardi (2013): Schilardi, A.O. 2013. *Studi sulla tutela impuberum*. (Bari).

Schiller (1978): Schiller. A.A. 1978. *Roman Law: Mechanisms of Development*. (The Hague).

Schulz (1926): Schulz, F. 1926. *Die Epitome Ulpiani de Codex Vaticanus Regnae 1128*. (Bonn).

Schulz (1951): Schulz, F. 1951. *Classical Roman Law*. (Oxford).

Schriemer (2019): Schriemer, L. 2019. *New Beliefs, New Lives? The Roles, Rights, and Responsabilities of Early Christian Women in Late Antique Egypt*. Masters Thesis. (Ottawa).

Schriemer (forthcoming a): "Guardianship, Female Agency, and Legal Autonomy after the *Constitutio Antoniniana*," in Hillner, J. and M. Moser (edd), *Women and Justice: Female Agency in Late Antique Legal Cultures.* (Liverpool), xx-xx.

Schriemer (forthcoming b): "The Bishops shall oppose the Provincial Governor: The Relationship between Roman Law and other Late Antique Institutions," in Gemeinhardt, P. and R. Edwards (edd), *Institutions and Institutionality in Late Antiquity.* (Berlin), xx-xx.

Scott (1986): Scott, J. 1986. "Gender: A Useful Category of Historical Analysis," *American Historical Review* 91, 1053-1075.

Scott (1992): Scott, J. 1992. "Women's History," in P. Burke (ed), *New Perspectives on Historical Writing*. (University Park, PA) 42-66.

Sealey (1990): Sealey, R. 1990. *Women and Law in Classical Greece*. (Chapel Hill).

Seeck (1889): Seeck, O. 1889. "Die Zeitfolge der Gesetze Constantins," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 10, 177-251.

Seeck (1919): Seeck, O. 1919. *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr. – Vorarbeit zu einer Prosopographie der christlichen Kaiserzeit.* (Stuttgart).

Seston and Euzennat (1971): Seston, W. and M. Euzennat. 1971. "Un dossier de la chancellerie romaine: La Tabula Banasitana. Étude de diplomatique." *Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres*. 115 (3), 468–490.

Setälä (2002): Setälä, P. et al (edd). 2002. *Women, Wealth, and Power in the Roman Empire.* (Rome).

Shaw (2001): Shaw, B. 2001. *Raising and Killing Children: Two Roman Myths*. (Netherlands).

Sheridan (1996): Sheridan, J.A. 1996. "Women without Guardians: An Updated List," *BASP* 33, 117–131.

Sheridan (1998): Sheridan, J.A. 1998. "Not at a Loss for Words: The Economic Power of Literate Women in Late Antique Egypt," *TAPA* 128, 189–203.

Sherman (1913): Sherman, C. P. 1913. "The Debt of Modern Law of Guardianship to Roman Law," *Michigan Law Review* 12, 124-131.

Sherwin-White (1972): Sherwin-White, A.N. 1972. "The Roman Citizenship: A Survey of its Development into a World Franchise," *Aufstieg und Niedergang der Römischen Welt* 1.2, 23-58.

Sherwin-White (1973a): Sherwin-White A.N. 1973. *The Roman Citizenship.* 2nd Edition. (Oxford).

Sherwin-White (1973b): Sherwin-White, A.N. 1973. "The Tabula of Banasa and the Constitutio Antoniniana," *JRS* 63, 86-98.

Sijpesteijn (1965); Sijpesteijn, P.J. 1965. "Die ΧΩΡΙΣ ΚΥΡΙΟΥ ΧΡΗΜΑΤΙΖΟΥΣΑΙ ΔΙΚΑΙΩ ΤΕΚΝΩΝ in den Papyri," *Aegyptus* 45, 171-189.

Sijpesteijn (1981): Sijpesteijn, P. J. 1981. "Small Notes on bilingual Papyri," *ZPE* 42, 107-110.

Sijpesteijn (1982): Sijpesteijn, P. J. (ed). 1982. *Michigan Papyri XV.* (Zutphen).

Sijpesteijn (1985): Sijpesteijn, P.J. 1985. "A Female Tax Collector," *ZPE* 61, 71-73.

Sijpesteijn 1986): Sijpesteijn, P.J. 1986. "Another Female Tax Collector," *ZPE* 64, 121-122.

Sijpesteijn (1987): Sijpesteijn, P.J. 1987 "A Female βουλευτής," *BASP* 24, 141-142.

Sijpesteijn and Worp (1976): Sijpesteijn, P.J. and Worp, K.A.. 1976: Papyri aus den Giessener Papyrussammlunden," *Aegyptus* 56, 19-46.

Simon (1965): Simon. D. 1965. Studien zur Praxis der Stipulationsklausel. (Munich).

Sirks (2010): Sirks, B. 2010. “The Sources of the Code,” in J. Harries and I. Wood (edd). *The Theodosian code: Studies in the Imperial Law of Late Antiquity.* 2nd Edition. (London) 45-67.

Solazzi (1957): Solazzi, S. 1957. “Ius liberorum' e alfabestismo: a proposito di P.Oxy. 12. 1467,” *Scritti di diritto romano II.* (Naples) 229–237.

Sperandio (2005): Sperandio, M. U. 2005. Codex Gregorianus: origini e vicende. (Napoli).

Stefaniw (2020): Stefaniw, B. 2020. "Feminist Historiography and Uses of the Past,” *Studies in Late Antiquity* 4.3, 260–283.

Swain and Edwards (2004): Swain, S. and M. Edwards (edd). 2004. *Approaching Late Antiquity: The Transformation from Early to Late Empire*. (Oxford).

Talamanca (1990): Talamanca, M. 1990. *Istituzioni di diritto romano.* (Milano).

Tamanaha (2021): Tamanaha B.Z. 2021. *Legal Pluralism Explained: History, Theory, Consequences*. (Oxford).

Taubenschlag (1916): Taubenschlag, R. 1916. “Die Patria potestas im Recht der Papyri,” *ZRG* 37, 177–230.

Taubenschlag (1938): Taubenschlag, R. 1938. “La compétence du κύριος dans le droit gréco-égyptien,” *Archives d'Histoire du Droit Oriental*, 293-314.

Taubenschlag (1948): Taubenschlag, R. 1948. *The Law of Greco-Roman Egypt in the Ligth of the Papyri: 332BC-640 AD*. (New York).

Taubenschlag (1951): Taubenschlag, R. 1951. “The Roman Authorities and the Local Law in Egypt before and after the Constitutio Antoniniana” *JJP* 5, 121-141.

Taubenschlag (1952): Taubenschlag, R. 1952. "Die römischen Behörden und das Volksrecht." *ZSS* 69, 102-127.

Taubenschlag (1955): Taubenschlag, R. 1955. *The Law of Greco-Roman Egypt in the Light of the Papyri: 332 BC - AD 640*. (New York).

Tellegen (2015): Tellegen, O. 2015. "Tulela Mulierum," in R. Rodriguez Lopez and M. Jose Bravo Bosch (edd), *Mulier: Algunas historias e insituciones de derecho romano*. (Madrid) 407–417.

Tirla (2021): Tirla, K. 2021: "Adoption Practices in Late Antique and Byzantine Egypt," *Pap. Congr.* XXIX, 968-976.

Torallas Tovar (2010): Torallas Tovar, S. 2010. "Linguistic Identity in Roman Egypt," in A. Papaconstantinou (ed), *The Multilingual Experience in Egypt from the Ptolemies to the Abbasids*. (London) 17-46.

Treggiari (1982): Treggiari, S. 1982. "Consent to Roman Marriage: Some Aspects of Law and Reality," *Echos du monde classique: Classical News and Views* 16.1, 34-44.

Treggiari (1991): Treggiari, S. 1991. *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian*. (Oxford).

Tuori (2007): Tuori, K. 2007. "Legal Pluralism and the Roman Empires," in J.W. Cairns and P.J. du Plessis (edd), *Beyond Dogmatics: Law and Society in the Roman World*. (Edinburgh) 39-52.

Tuori (2011): Tuori, K. 2011. "The Disputed Roots of Legal Pluralism," *Law, Culture, and the Humanities* 9, 330-351.

Tuori (2016): Tuori, K. 2016. *The Emperor of Law: The Emergence of Roman Imperial Adjudication*. (Oxford).

Turner (2007): Turner, E. 2007. “Roman Oxyrhynchus,” in Bowman, A.K. et al. (edd), *Oxyrhynchus: A City and Its Texts*. (London) 141-154.

Twining (2010): Twining, W. 2010. “Normative and Legal Pluralism: A Global Perspective,” *Duke Journal of Comparative and International Law* 20, 473-517.

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

Vandorpe and Waebens (2010): Vandorpe, K. and S. Waebens. 2010. “Women and Gender in Roman Egypt: The Impact of Roman Rule,” in K. Lembker, M. Minas-Nerpel, and S. Pfeiffer (edd), *Tradition and Transformation: Egypt under Roman Rule.* (Leiden) 415-435.

Vandorpe (2002): Vandorpe, K. (2022) “Apollonia: A Businesswoman in a Multicultural Society,” in H. Malaerts and L. Mooren (edd), *Le rôle et le statut de la femme en Égypte hellénistique, romaine et byzantine*. (Paris) 325-336.

Van Minnen (2016): Van Minnen, P. 2016. “Three Edicts of Caracalla? A New Reading of P. Giss 40,” *Chiron* 46, 205-221.

Valiño Arcos (2008): Valiño Arcos, A. 2008. “Filius in Potestate, Castrense peculium y Furtum: Notas a propósito de la Incapacidad Patrimonial de los Sometidos,” *Revista General de Derecho Romano* 11, 1-9.

Vial-Dumas (2014): Vial-Dumas, M. 2014. “Parents, Children, and Law: Patria Potestas and Emancipation in the Christian Mediterranean during Late Antiquity and the Early Middle Ages,” *Journal of Family History* Vol 39.4, 307-329.

Vial-Dumas (2021): Vial-Dumas, M. 2021. “The Matrimonial Family in Byzantine Imperial Law: An Overview from Late Antiquity until the Tenth Century AD,” *Journal of Legal History* 42.1, 35-64.

Vuolanto (2015a): Vuolanto, V. 2015. *Child and Parent in Roman Law*. (Oxford).

Vuolanto (2015b): Vuolanto, V. 2015. *Children and Asceticism in Late Antiquity: Continuity, Family Dynamics, and the Rise of Christianity*. (London).

Warner (2021): Warner, J.H. 2021. “Bureaucrats, Corruption, and the Fmilia: the Peculium Quasi Castrense in the Later Roman Empire,” a paper given at *SCS 2021*.

Watson (2000): Watson, A. 2000. *Law Out of Context*. (Athens).

Weiss (1912): Weiss, E. 1912. “Recitatio und Responsum im römischen Provinzialprozess: ein Beitrag zur Gerischtsgebrauch,” *ZSS* 33, 212-239.

Welles (1937): Welles, C.B. 1937. “Dura Papyrus 01. Purchase of a vineyard on the Chabur by a Roman veteran in AD 227,” *Archives d’histoire du droit oriental* 1, 261-284.

Welles (1971): Welles, C.B. 1971. “Another look at P.Giss 40 I: A Review Article,” *Études de Papyrologie* 9, 35-54.

Westbrook (1990): Westbrook, R. 1990. “Adultery in Ancient Near Eastern Law,” *Revue Biblique* 97, 551-554.

Westbrook (1999): Westbrook, R. 1999. “Vita Necisque Potestas,” *Historia: Zeitschrift für Alte Gaschichte* 48.2, 203-223

Westbrook (2003): Westbrook, R. (ed). 2003. *A History of Ancient Near Eastern Law.* 2 Vols. (Leiden).

Wilfong (2002): Wilfong, T.G. 2002. *Women of Jeme: Lives in a Coptic Town in Late Antiquity*. (Ann Arbour).

Wilfong (2007): Wilfong, T. 2007. “Gender and Society in Byzantine Egypt,” in R.S. Bagnall (ed), *Egypt in the Byzantine World, 300-700*. (Cambridge) 309-327.

Wipszycka (1996): Wipszycka, E. 1996. *Études sur le christianisme dans l’Égypte de l’antiquité tardive*. (Rome).

Wipszycka (2002): Wipszycka, E. 2002. L'Ascetisme féminin dans l'Égypte de l'Antiquité Tardive : Topoi littéraires et formes d'ascèse," in H. Melaerts and L. Mooren (edd), *Le rôle et le statut de la femme en Égypte Hellénistique Romaine et Byzantine*. (Leuven) 355-396.

Wipszycka (2009): Wipszycka, E. 2009. Moines et communautés monastiques en Égypte. (Warsaw).

Wolf (2015): Wolf, J.G. 2015. “Documents in Roman Practice,” in D. Johnston (ed), *The Cambridge Companion to Roman Law.* (Cambridge) 59-84.

Wolff (1933): Wolff, H.J. 1933. “Zur Stellung der Frau in klassischen römischen Dotalrecht,” *ZSS* 53, 297-371.

Wolff (1939): Wolff, H.J. 1939. *Written and Unwritten Marriages in Hellenistic and Post-Classical Roman Law*. (Haverford).

Wolff (1960): Wolff, H.J. 1960. “Plurality of Laws in Ptolemaic Egypt,” *Revue international des droits de l’Antiquité*, 191-223.

Wolff and Rupprecht (2002): Wolff, H.J. and H.-A. Rupprecht. 2002. *Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats*. (München).

Worp (2005): Worp K. 2005. “On the Aureliate of Clergy and Monks,” *ZPE* 151, 145-152.

Yiftach-Firanko (2003): Yiftach-Firanko, U. 2003. *Marriage and Marital Arrangements: A History of the Greek Marriage Document in Egypt, 4th Century BCE to 4th Century CE*. (Munich).

Yiftach-Firanko (2009): Yiftach-Firanko, U. 2009. “Law in Graeco-Roman Egypt: Hellenization, Fusion, Romanization,” in R.S. Bagnall (ed), *The Oxford Handbook of Papyrology*. (Oxford) 541-560.

Yiftach-Firanko (2015): Yiftach-Firanko, U. 2015. "Family Cooperation in Contracts: Patterns and Trends," *DIKE* 18, 97-141.

Yiftach (2020): Yiftach, F. 2020. “Law in Ptolemaic and Roman Egypt,” in E.M. Harris and C. Mirko (edd), *Oxford Handbook of Ancient Greek Law.* (Oxford) 22-32.

Youtie (1973): Youtie, H.C. 1973. “Αγραμματοσ: An Aspect of Greek Society in Egypt,” in *Scriptiunculae II.* (Amsterdam) 611-627.

Youtie (1981): Youtie, H.C. 1980. “ὑπογραφεύς: The Social Impact of Illiteracy in Graeco-Roman Egypt,” in *Scriptiunculae Posteriores 1*. (Bonn) 179-199.

Zannini (1976): Zannini, P. 1976. *Studi sulla tutela mulierum.* 2 vols. (Turin).

Zimmerman (1996): Zimmerman, R. 1996. *The Law of Obligations.* (Oxford).

Zulueta 1958: de Zulueta, F. 1958. *The Institutes of Gaius: Part I Test with Critical Notes and Translation.* (Oxford).

Zulueta 1967: de Zulueta, F. 1967. *The Institutes of Gaius: Part II Commentary.* (Oxford).