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Law and Empire in Late Antiquity

This is the first systematic treatment in English by an historian of the nature, aims and efficacy of public law in late imperial Roman society from the third to the fifth century AD. Adopting an interdisciplinary approach, and using the writings of lawyers and legal anthropologists, as well as those of historians, the book offers new interpretations of central questions: what was the law of Late Antiquity? How efficacious was late Roman law? What were contemporary attitudes to pain, and the function of punishment? Was the judicial system corrupt? How were disputes settled? Law is analysed as an evolving discipline, within a framework of principles, by which even the emperor was bound. While law, through its language, was an expression of imperial power, it was also a means of communication between emperor and subject, and was used by citizens, poor as well as rich, to serve their own ends.

JILL HARRIES is Professor of Ancient History in the University of St Andrews. She is the author of *Sidonius Apollinaris and the Fall of Rome* (1994) and, with Brian Croke, of *Religious Conflict in Fourth-Century Rome* (1982). She is co-editor, with Ian Wood, of *The Theodosian Code: Studies in the Imperial law of Late Antiquity* (1993).

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Preface

This book should be sub-titled ‘travelling hopefully’. Its route has been planned in the light of long-standing preoccupations of my own, with some help from friends. The Theodosian Code has long been used as evidence for late Roman history, without much attention being granted, at least by historians writing in English, to the status of that evidence. The conference on the Theodosian Code held at the University of St Andrews in 1990 and the resulting publication, edited by myself and Ian Wood, were a start in that direction. This book takes some points further, in particular in relation to how imperial law was made, and how and whether it worked as intended. This enquiry will entail a re-examination of what we are to make of the rhetoric of the laws: if a certain scepticism over government pronouncements is in order now, there can surely be a case made for subjecting imperial legal propaganda and its motives to similar scrutiny. But we should not focus only on the centre, where imperial law originated; its reception and use by the citizens of the wider Empire is of equal importance. Two perspectives must, therefore, be used, that of the legislator, and that of those who used the law for their own purposes.

In order to arrive at the end of this journey at all, many attractive by-ways have been, regretfully, ignored. I have nothing to say about ‘vulgar law’ – except that the concept requires a re-examination I shall not attempt. Nor can I take account of the distinctive culture of Jewish Law. I also omit discussion of the formation of canon law, and the influence of imperial law-making procedures on the quasi-legislative activities of Church Councils. There is also, I suspect, something to be done on Christian attitudes to the Mosaic Law as part of the evolution of late antique legal culture in general. All these are projects for the future. I have restricted the main focus of the study to the period between Diocletian and the death of Theodosius II in 450 – thus giving a central role to the Code of Theodosius, rather than that of Justinian – although I stray outside it as far as Hadrian (117–38) in one direction and Justinian (525–65) in the other.

viii Preface

I first became interested in law in its social and cultural context in the 1980s, inspired in part by my then colleague, John Richardson's, researches on the law of the Roman Republic. By the end of the decade it was clear that the Theodosian Code, long neglected by Roman lawyers, was a potential growth-industry among late antique historians. The conference at St Andrews was a recognition of this and I owe much to all who participated in it and to those who contributed to the subsequent publication. I am especially grateful to Boudewijn Sirks, Simon Corcoran, Judy Evans Grubbs, Peter Heather, David Hunt, Geoffrey Rickman and Michael Whitby for their help at the time and academic inspiration since, and to Ian Wood, who brought his formidable mediaeval talents to the joint-editorship of the published version. John Matthews, a star contributor to the conference, will, I am sure, in due course produce a significant study of the Theodosian Code; his support and help over the years have been invaluable and, without him, this book would not have been possible.

Progress was much accelerated in the last two years by the kindness of various benefactors. In 1995, the Principal of the University of St Andrews allowed me to plan for 'thinking time'; I hope the product may be some return for his astringent encouragement. The Leverhulme Trust made generous provision for my teaching replacement at St Andrews for a year of Research Leave in 1996–7. For the first part of that year I had the privilege of holding a Visiting Fellowship at All Souls College, Oxford and place on record here my profound gratitude to the Warden and Fellows of the College, who provided the ideal combination of academic stimulus, material opulence and contemplative *quies* for the pursuit and completion of inter-disciplinary research. Individual acknowledgements for conceptual and bibliographical assistance with matters legal are due to Peter Birks and Stephen Cretney and to my fellow-visitors, Greg and Joy Parr, and, on the anthropological side, to the Warden of All Souls, and to David Parkin. Thinking was also assisted in entirely non-academic ways by four grey squirrels and the unrivalled beauty of the trees of Beechwood and Iffley Turn.

I am also grateful to many colleagues for their help with, and criticism of, various chapters of this book, as variants of them saw the light of day in the shape of papers delivered in Oxford, Cambridge, Cardiff, Milton Keynes and the University of South Carolina at Columbia. Among them, I would especially thank Chris Kelly, whose forthcoming work on (the absence of) corruption in Late Antiquity will be very relevant to some suggestions offered here; also Peter Garnsey, Keith Hopkins, Geoffrey Greatrex, Kate Cooper and Conrad Leyser, Richard Miles, Janet Huskisson and Andrew Lintott. Special thanks are due to Gillian Clark, for

reading most of this manuscript and various offshoots, and for her sensitive criticism and useful suggestions throughout. Ralph Mathisen and Hagith Sivan gave their all to achieve the great social and academic success of the conference on the Shifting Frontiers of Law in Late Antiquity at Columbia, SC, in March 1997 and I owe much to them both.

Books cannot, of course, exist without publishers. Pauline Hire agreed a version of this project several years ago, and has waited patiently for it since. I am grateful to her and the publishing staff of Cambridge University Press for their hard work.

There are two scholars the influence of whose work is paramount in this book. Fergus Millar shaped our concept of the ‘responsive’ early Roman emperor and the implications of his thesis for analysis of late imperial rule are far-reaching. Tony Honoré, through his publications on the Theodosian Code and the late Roman quaestors, has shown how imperial legal texts were created; no less significant is his wisdom on legal culture, as reflected also in his studies of Gaius, Ulpian, imperial lawyers and Tribonian. If this book has any merits, they are due to the stimulus of the insights of both and their unstinting generosity in sharing them with me.