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Women and Law in Classical Greece

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WOMEN AND LAW IN CLASSICAL GREECE. By *Raphael Sealey*. Chapel Hill: The University of North Carolina Press. 1990. Pp. ix, 202. Cloth, \$24.95; paper, \$10.95.

Classical scholars never tire of reminding us that one must know why a document was written before one can accurately interpret it. Since most historical documents were intended to persuade, not to provide unbiased evidence for future historians, a knowledge of who was to be persuaded, and of what, can tell us whether an ancient source should be taken at face value. The same caveat should also be applied when reading modern works concerning the status of women in the ancient world. The survival of only a small amount of direct evidence makes scholarship of any aspect of ancient civilization difficult, since the scholar must of necessity make educated guesses about vital but unknown facts in order to reconstruct the society. Looking critically at the author's point of view is especially important for a topic as politically charged as the status of women.

Women and Law in Classical Greece presents the undisputed outlines of the legal position of women in ancient Greece. The picture drawn is bleak by modern standards. For example, in classical Athens, a woman's consent to marriage was not necessary (p. 33). A woman had no legal authority to handle transactions in property worth more than a certain minimal amount, nor could she make a will (p. 37). Throughout her life, a woman was legally under the care of a male guardian (*kyrios*) — her husband or her nearest male relative — who handled nearly all legal transactions for her, including giving her in marriage, providing a dowry, litigating on her behalf in the courts, and handling all but the smallest monetary transactions (pp. 36-38, 154). Perhaps most shocking to modern readers are the rules governing an heiress (*epikleros*), the daughter of a man who died leaving no sons. The heiress was by law given in marriage to her nearest male relative, along with the property of the deceased (p. 29). If the male relative (who might be as close in consanguinity as an uncle) was already married, he could divorce his wife and marry the heiress (p. 29). The heiress was thus treated as part of the estate and went to the heir.

Given these restrictions, classical scholars agree that the status of women in the ancient world (especially in classical Athens) was inferior to that of modern Western women. But they have long disagreed on how modern society should interpret the historical evidence. Some scholars argue that there was little connection between legal and social status, and that classical women's social status was actually much higher than a modern reading of the laws indicates.¹ Other scholars

1. See, e.g., A. GOMME, *The Position of Women in Athens in the Fifth and Fourth Centuries*

concede the circumscribed social roles of women, but interpret the evidence to show that women still in many ways led full lives.² Scholars on the other side of the debate paint a much bleaker picture of the life of women in the ancient world.³ This latter perspective, recently taken up by feminist scholars, portrays Athenian women as having no political or legal rights, and a social position scarcely distinguishable from that of slaves.⁴

In evaluating these texts, the reader should take into account the objectives of the various scholars. Much of feminist scholarship desires to expose "the nearly universal and extraordinarily enduring character of women's oppression,"⁵ which comes from a sexist ideology that "permeates our history and society."⁶ Scholarship pursued to further this goal has two consequences. It may lead scholars to investigate areas traditionally ignored by classicists.⁷ But it may also color conclusions drawn from ambiguous evidence, since scholarship showing the oppression of women as a permanent feature of Western culture lends support to feminist assumptions.⁸

On the other hand, the lack of an acknowledged political agenda does not mean that traditional classical scholars are free from bias. Even assuming political neutrality, one must recognize that these scholars are persons who have found ancient civilizations worthy of a lifetime of study. One would not expect to find many harsh critics of classical civilization among their numbers.⁹

B.C., in *ESSAYS IN GREEK HISTORY AND LITERATURE* 89 (1937). Professor Gomme gives as an example the society of the Arabian Nights, in which "women have (practically) no legal rights and are socially confined, yet are the equals of men," at least in matters of love. *Id.* at 90.

2. See, e.g., H. KITTO, *THE GREEKS* 232-35 (rev. ed. 1957) (noting that women were likely to have gone to the theater and to have received some education in the home); W. LACEY, *THE FAMILY IN CLASSICAL GREECE* 176 (1968) (Women "enjoyed a life not much narrower and not much less interesting than women in comparable classes of society elsewhere.").

3. See, e.g., Gould, *Law, Custom and Myth: Aspects of the Social Position of Women in Classical Athens*, 100 *J. HELLENIC STUD.* 38 (1980).

4. See, e.g., E. CANTARELLA, *PANDORA'S DAUGHTERS* (rev. ed. 1987); E. KEULS, *THE REIGN OF THE PHALLUS* (1985).

5. E. DUBOIS, G. KELLY, E. KENNEDY, C. KORSMEYER & L. ROBINSON, *FEMINIST SCHOLARSHIP* 88 (1985).

6. *Id.* at 102.

7. Consider, for example, the comprehensive study of vase paintings that give evidence regarding male Greek sexual attitudes toward women in E. KEULS, *supra* note 4.

8. Scholarship demonstrating the oppression of women in classical Athens also serves other goals. One author sees the exclusion of women's voices from public life in classical Greece as an early example of the power of speech as an instrument of domination. See Elshtain, *Feminist Discourse and Its Discontents: Language, Power, and Meaning*, in *FEMINIST THEORY: A CRITIQUE OF IDEOLOGY* 127, 130-31 (N. Keohane, M. Rosaldo & B. Gelpi eds. 1982).

9. For example, Professor Gomme's assertion that an unprejudiced reading of certain Greek poets would not reveal "anything remarkable about the position of women in Athens except perhaps the special honour paid to them," to the modern reader seems to be the product of amazingly rosy inferences drawn from the evidence. A. GOMME, *supra* note 1, at 94. Professor Keuls finds the roots of bias among traditional scholars in "the near-monopoly that men have held in the field of Classics . . . and . . . a misguided desire to protect an idealized image of

Thus, both camps — feminist and traditional scholars — consider ancient Greece to be a surrogate society for addressing contemporary issues. Traditional scholars use ancient Athens and its dazzling accomplishments as an example of the heights to which a civilized society can rise and as a model to which modern society can aspire. Feminist scholars, however, are just as determined to use Athens as a different kind of model for the modern world — a model of an opulent and cultivated society, like our own, that is ultimately based on the oppression of women. The feminists believe that tarring Athens with the same brush as modern society will better expose the faults of modern society. As expected, gaps in the historical record may be filled very differently by these groups.

Professor Sealey, a historian at the University of California at Berkeley, seems at first glance to fit into the party of traditional scholars. His earlier writings discuss ancient Greek political structures, not the status of women.¹⁰ Furthermore, in this volume he takes issue with several inferences drawn by some feminist scholars (pp. 166-68), which he considers to be overstatements of the legal disabilities of women in ancient Athens. Sealey implicitly asserts that these feminist authors draw incorrect inferences because of their political biases.¹¹ On the other hand, the reader of *Women and Law in Classical Greece* will find few signs of the ancient-civilization worship characteristic of some traditional scholars. Moreover, Sealey directs his complaints against what he considers these feminist scholars' poor scholarship, not their politics. Thus, Sealey seems to occupy something of a middle ground in the debate.

That women in ancient Greece faced a variety of legal disabilities is uncontroversial. But the inferences Sealey draws from these uncontroversial facts (pp. 151-60) differ in many ways from those of both the feminist scholars and earlier traditional scholars. In comparing ancient Greek societies, Sealey finds the similarities of the laws more important than the differences. One of these similarities is that women had at least some limited legal rights.¹² He asserts that the legal disa-

Athens." E. KEULS, *supra* note 4, at 1. Professor Pomeroy asserts that the traditional scholars' admiration for the Athenians makes them "reluctant to believe that the Athenians might not have treated their wives the way cultivated gentlemen in the twentieth century treat theirs." S. POMEROY, *GODDESSES, WHORES, WIVES, AND SLAVES: WOMEN IN CLASSICAL ANTIQUITY* 59 (1975).

10. See, e.g., R. SEALEY, *THE ATHENIAN REPUBLIC: DEMOCRACY OR THE RULE OF LAW?* (1987); R. SEALEY, *A HISTORY OF THE GREEK CITY STATES, CIRCA 700-338 B.C.* (1976).

11. "A catalogue of errors soon becomes tedious, especially when they spring from a single root. Let it suffice to say that feminist indignation is out of place in the study of ancient Greece." P. 168.

12. For example, Sealey finds evidence in one Athenian forensic speech that women had the power to draw up documents to record debts and to be witnesses to legal documents. Sealey concludes that women were not always treated as passive objects, but that they had at least a rudimentary legal personality. P. 40.

bilities imposed on Greek women stem from two cultural standards common to all ancient Greek societies: women's inability under Greek customs to bear weapons and the Greeks' interest in protecting the legal status of their citizens' children. He proposes that women's inability to litigate for themselves stems from the origin of litigation as a replacement for self-help — since women were incapable of self-help without the aid of a man who could bear weapons, they were not allowed to use Greek society's replacement for self-help: litigation (p. 152). Sealey explains the lack of the need for a woman's consent to marriage as a protection to the legitimacy of citizens' children. Since Greek law severely disabled illegitimate offspring, the Greek city-state was unwilling to invalidate a marriage on such trivial (to the Greeks) grounds as the lack of consent of the parties. According to Sealey, children, and the orderly inheritance of property by children, simply mattered more to the Greeks than the legal rights of their wives (pp. 259-60). Sealey's explanations, although by no means an exoneration of the mores of the ancient Greeks, offer quite a contrast to those of Professor Keuls, a feminist scholar. She asserts that the Athenians, alone among the ancients, attempted to establish nothing less than a phallocracy — a rule of the phallus — and that the legal disabilities of women necessarily resulted from that attempt.¹³

Sealey reaches his conclusions after surveying the legal condition of women of several Greek cities. This survey is unusual in several respects. First, the author devotes a lengthy chapter to a comparison of the law of ancient Gortyn, a rather obscure Cretan city, with the better-known laws of the Athenians (pp. 50-81). Scholars' interest in Gortyn arises principally from the discovery in the nineteenth century of a nearly complete fifth-century legal code inscribed on a wall (p. 50). Professor Sealey's elaborate analysis of the provisions of the Gortynian Code relating to women gives crucial evidence regarding the legal condition of women of the classical period in a city other than Athens. Sealey also abandons the usual chronological approach, in which Homeric society is discussed first and Hellenistic society last. He begins by discussing the society about which most is known — ancient Athens (pp. 12-49) — and then proceeds to those about which less and less is known — Gortyn (pp. 50-81), Sparta (pp. 82-88), Hellenistic cities (pp. 89-95), and finally Homeric Greece (pp. 110-50). This device allows the narrative to flow more smoothly and puts off the most speculative conclusions until the reader has acquired a more sure foundation. The author also includes a chapter on the status of women in the Roman world (pp. 96-109), which allows the reader to make comparisons between the two cultures.

Although this is a historical study, not a legal text, much of the material discussed will seem familiar to a lawyer without classical

13. E. KEULS, *supra* note 4, at 1-2.

training. Sealey relies on the usual source of Athenian law: the forensic speeches of the fourth century. Because these speeches were valued as exemplars of rhetoric, not as legal documents, only one side of the case is usually preserved, and the verdict is rarely known.¹⁴ The lawyer will find reading Sealey's paraphrases of these speeches similar to reading only one party's brief in a modern lawsuit. Sealey's analysis of the Code of Gortyn will also seem familiar to modern lawyers as an example of statutory interpretation.

Scholars of comparative law will be especially interested in this volume. Sealey's discussions about the legal status of women in ancient Greece inevitably lead to more general discussions about Greek law. For example, the reader learns in some detail the Greek system of property and inheritance when reading about whether women could be said to own property and whether they could devise or inherit it.

Despite this volume's considerable virtues, it suffers from two apparently conflicting vices: Professor Sealey knows both too little and too much law. As a historian, rather than a lawyer, he sometimes struggles with legal concepts and misses obvious parallels with the common law that would be illuminating to a lawyer. On the other hand, as a modern beneficiary of the 2500 years of legal development since the height of classical Greece, he knows much more law (or at least has quite a different understanding of the law) than the Greeks whom he studies.

The first criticism, that the author knows too little law, is especially relevant to legally educated readers, who would benefit from analogies to modern law. This criticism can best be illustrated by looking at Sealey's treatment of a woman's dowry in Athenian law. Customarily, the father of the bride supplied a dowry to go with his daughter upon marriage (p. 26). Since women were unable to conduct transactions for property worth more than a certain minimal value (p. 37), the husband administered the dowry (p. 26). The husband was required to return the dowry, however, if the marriage ended and the wife returned to her father's house (p. 26). Moreover, a husband's creditors could not reach his wife's dowry (p. 26). Thus, the wife can be viewed as having a property interest in the dowry, although she could not directly control it (p. 48). This concept of attenuated ownership troubles Sealey, and he spends several pages deriving and differentiating theories of "positive" and "negative" ownership, the latter of which apparently means no more than the right to exclude others from the property (pp. 47-48). Since the dowry was excluded from all except the husband, Sealey concludes that the wife had a negative ownership interest in the property (p. 48). To a lawyer, of course, the concept of ownership as a bundle of rights, one of which is the right to

14. See K. FREEMAN, *THE MURDER OF HERODES AND OTHER TRIALS FROM THE ATHENIAN LAW COURTS* 14-30 (1946).

exclude, is hardly novel and is certainly unworthy of lengthy explication. Furthermore, Sealey's description of the dowry is closely analogous to the common law concept of the equitable trust.¹⁵ An analysis of the similarities and differences between the Greeks' use of the dowry and the equitable trust would have been helpful to lawyers.¹⁶

On the other hand, the author's detailed legal analysis can be taken as evidence that the author knows too much law, or at least has too modern a conception of legal meaning. The dowry discussion again provides a useful example. Professor Sealey's analysis of the laws pertaining to the dowry leads him to conclude that the purpose of the laws was to require the husband to administer the dowry for the wife's benefit. Such purposive analysis comes naturally even to those without legal training, so deeply embedded in the modern mind is this urge to discover the legal principles behind statutes. But such theorizing may be anachronistic in describing the Greek legal system, which lacked the conceptual framework of modern systems.¹⁷ Classical Greece, unlike ancient Rome and modern America, had no legal experts. Orators such as Lysias and Demosthenes, hired by the litigants to write their speeches, were the closest equivalent; the orators, however, were experts in rhetoric, not law, and a litigant delivered the orator's speeches to the jury himself.¹⁸ The jurors heard the facts and the law from the litigants and made up their minds.¹⁹ The modern practice of interpretation of statutes by judges or professors (or the ancient Roman practice of interpretation by jurists) was unknown to the Greeks. Thus, neither a legal expert nor any real legal analysis stood between the Athenian code and the jury. The formal, systematic thinking about the law that we take for granted apparently did not take place in classical Athens.²⁰

Thus, it is unlikely that the dowry laws had a single overarching purpose behind them — many contradictory purposes probably existed simultaneously, with no one controlling. No doubt a clever litigant could have argued that the purpose of the dowry statutes was to provide support for the wife. But the opposing litigant could have permuted the same or related statutes into a contradictory theory — say, that the dowry was an enticement from the woman's family to

15. According to Sealey, an Athenian woman was owner of her dowry because "[o]ther persons . . . were not allowed access to her property, but her *kyrios* [her husband or other male guardian] . . . had authority to administer her property for the specific purpose of her upkeep and the protection of her interests." P. 48. The husband seems similar to a trustee in this analysis, and the wife, an equitable owner.

16. Another parallel from the common law, equally ignored in the text, is the early English practice of entailing land given to a daughter to protect her from the unfettered discretion of her husband. See A. SIMPSON, *A HISTORY OF THE LAND LAW* 209 (2d ed. 1986).

17. See J. DAWSON, *THE ORACLES OF THE LAW* 113 (1968).

18. See K. FREEMAN, *supra* note 14, at 17-20.

19. *Id.* at 20.

20. See J. DAWSON, *supra* note 17, at 113-14.

induce the man to marry. Who was to say which theory represented the true statutory purpose? With no restraint on the jury from legal professionals who might impose an accepted interpretation or who might refuse to allow the action, the interpretation of every litigant would have a chance of being accepted by the jury. And every jury verdict would be equally valueless to the next jury. A statutory purpose is meaningless in such a system.

This modern tendency to assume that deep principles underlie statutes may be considered a bias, more subtle than the political biases discussed earlier, but similarly harmful in effect. This bias will cause a scholar to impose order where none, or little, really exists. Sealey is doubtless aware of the inherently unformed nature of classical Greek law. But because he does not take care to distinguish between Greek law and his legal analysis of it, he runs the risk of confusing the modern reader, who might suppose that his analysis is simply a rediscovery of what the Greeks themselves actually thought.

Sealey is more successful in making useful comparisons between Greek and Roman law. Since early Roman and Greek societies evolved under similar economic conditions, he believes that differences in the legal status of women must spring from something particular to the societies (p. 96). Sealey asserts that the laws of the Greeks had an underlying unity: women in ancient Greece were always under the authority of a *kyrios* (a male guardian or master). This power might be transferred from a father to a brother or other male relative, but every woman was subject to the authority of a *kyrios* throughout her life (p. 107). By contrast, male authority over women in Roman society varied from almost complete control to no more than a formal ability to ratify women's wishes, depending on the legal relationship between the man in authority and the woman under his power.²¹

Thus, the legal disabilities imposed by the Greeks were generally common to all Greek societies, but different from the disabilities imposed by the Romans. Professor Sealey considers this to be evidence that the disabilities imposed by the Greeks came from the common sources in Greek culture described above — women's inability to bear arms and the Greeks' overriding concern for their children's legitimacy.²² By contrast, the legal disabilities of Roman women came from the patriarchal structure of Roman families, with the father wielding enormous power over all his lineal descendants, both male

21. For example, a daughter was subject to *patria potestas* (p. 107), which gave her father nearly unlimited power, including the power to put her to death (p. 98). But a woman who had become independent (*sui iurus*) was subject only to *tutela* — the control of her tutor (p. 107) — whose function was to give formal ratification of the woman's legal transactions (p. 105). Since in later Roman law, the woman had the power to choose her own tutor (p. 105), his control must have been very mild indeed, or she would have got rid of him. *Patria potestas* and *tutela* were both restrictions on the legal capacity of women, but they had little else in common.

22. See *supra* notes 12-13 and accompanying text.

and female. When this power was no longer threatened (for example, when the father died), the Romans more readily allowed greater liberty to children of both sexes. Thus, the power of the father in Roman society was ironically a source of some equality between the sexes (p. 158).

Overall, this book is well-written and engaging.²³ It is a scholarly work, however, and Sealey assumes at least a modest knowledge of classical civilization and an interest in following his close reasoning. One learns little of the general form of Athenian democracy, for example, which is important for making sense of the laws he discusses. Someone looking for a general overview of either the law or the status of women in ancient Greece will do better to look elsewhere.²⁴ Sealey is generous with his source material, giving detailed synopses of Athenian forensic speeches and the Gortynian Code. The level of detail of his analysis demands close attention from the reader, but in the end the reader is rewarded either by being more firmly persuaded or by being made fully aware of the limitations of the analysis.

Sealey has accomplished the difficult task of avoiding the excesses of both the feminist and the traditional scholars. His conclusions are well-reasoned and objective; his inferences appear to be drawn neither from a personal disdain for the Greeks' treatment of women nor from an overzealous worship of their culture. Even feminist scholars who are unpersuaded by Sealey's conclusions would do well to test their own theories against the analysis of ancient law provided in this well-written volume.

—*Craig Y. Allison*

23. I have one quibble over orthography. Sealey follows the pernicious innovation of Hellenizing the spelling of common Greek proper names which are better known to Westerners in their Latin form (e.g., Sokrates, Perikles, and Klytamestra). Using these less familiar spellings distracts the reader from the writing in much the same way as writing "night" phonetically as "nite." Cf. W. STRUNK & E. WHITE, *THE ELEMENTS OF STYLE* 74-75 (3d ed. 1979). It also insinuates into the mind of the lay reader the unlovely thought that the author is showing us that he knows how to read Greek.

24. See, e.g., S. POMEROY, *supra* note 9; K. FREEMAN, *supra* note 14.