

# Review

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Prolegomena zu den spätantiken Konstitutionen. Nebst einer Analyse der erbrechtlichen und verwandten Sanktionen gegen Heterodoxe. By Peter Riedlberger. Stuttgart-Bad Cannstatt: frommann-holzboog. 2020. 898 pp. ISBN 978-3-772-82886-7.

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Late antique legal sources offer us a wealth of information on the functioning of late antique society. However, a thorough understanding of the legal sources does not come easy to ancient historians as it requires a particular expertise in the practice of legal phrasing and its meaning. Peter Riedlberger (R. from here onwards), the author of the book under review, possesses the indispensable philological and juridical expertise to offer his readers a learned interpretation of late antique legal sources. To R., late antique legislation and legal practice are strongly intertwined, which consequently also calls for a meaningful embedding in the historical context of society. That is not to say, though, that R. considers his book to be an historical analysis, as he emphasizes that he regards it to be an exploration that takes history and law as being interwoven into account (“rechtsgeschichtliches,” 225).

The aim of R.’s study is twofold. On the one hand, he lays out his view on the functioning of late antique law, while on the other hand he presents a thorough and detailed case study on inheritance laws concerning four specific heterodox groups, i.e. Apostates, Manichaeans, Eunomians and Donatists. While the case study takes up the most substantial part of the book (chapters two through seven), the reader should not be mistaken in assuming that the first part (chapter one) – R.’s vision on late antique law – should merely be considered the introduction of the book. Apart from a general introduction to late antique legislation, it also offers a critical analysis of the historiography of modern scholarship over the past centuries.

Both for scholars and students who are experienced in the field of late antique law as well as those who are starting to familiarize

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themselves with it, this first chapter is of great value as it addresses several issues that are vital for understanding the late antique legal system and its link to society. The author starts out with explaining the meaning of the different sources of law, most importantly the imperial rescripts and constitutions (consisting of letters, edicts and on occasions orations), but then moves to several questions and issues that scholarship still has to come to terms with in regards to the period of the fourth through the sixth centuries. Three of these issues stand out. First, can we speak of a unity of law with emperors both in the eastern and western half of the empire? Were they issuing laws for their own half of the empire that were thus only valid for their own dominion or were their laws supposed to be binding to the entire empire? As R. shows, even though some laws might have been addressed to specific officials in one half of the empire such as the praetorian prefect, there is no clear evidence for a separation between East and West in terms of validity of imperial laws. This conclusion confirms the argument made by Lucy Grig and Gavin Kelly in the introduction to their 2012 volume *Two Romes. Rome and Constantinople in Late Antiquity*, in which they observe that the separation that scholars in recent decades have been inclined to make between East and West might be more of a modern overemphasizing than a historical reality. Second, even though we have a fairly large corpus of late antique legal sources, quite often, as R. reminds us, we are in the dark about the specific reason for the issuing of a law. It is important to keep this in mind as scholars have developed a tendency to attempt to link a law to a particular historical situation, as a confirmation of that historical situation. This, however, might lead to cherry-picking. Third, R. spends a considerable section on the concept of “*generalitas*” as applied to the laws in the *Codex Theodosianus* (185–211). The reason for this extensive section is the question of why we come across so many references to laws in other types of sources that have not found their way into the official legal *codices*? R. presents an overview of previous explanations but concludes that these laws did not make it into the *Codex Theodosianus* because they failed to meet a set of so-called “*generalitas*”-criteria. Laws that met such criteria contained, for instance, the notion that the content was to be applied to all inhabitants of the empire (often announced via governors), or they contained the word “*generalitas*,” or were meant to be valid “*in aevum*” or “*in perpetuo*.” In this section, R. concludes that his examination of the laws confirms that the compilers of the *Codex Theodosianus* had been careful and conscientious in making their choices for inclusion of the laws that indeed ended up in the

compilation. Ultimately, R. takes a positivist approach to the imperial compilation in that he assumes that it presents a fairly complete and representative legal collection, except perhaps for the first five books. In this first chapter, as well as throughout the entire book, R. does not shy away from criticizing interpretations of modern scholars, which in some cases have been considered long-term accepted readings of some laws or of the understanding of the late antique legal system in general. In these instances, R. is always in careful explaining his own thought process and steps that have led him to in some cases even opposite interpretations.

The second part of the book consists of the case study of inheritance laws for the Apostates, Manichaeans, Eunomians and Donatists, which starts off with chapter two as an introduction on the emergence of a variety of sanctions against heretics. Furthermore, the reader also becomes familiar with the larger context of inheritance in late antiquity (264–406). The author continues his focus on the laws that address the rights of the aforementioned heretical groups to make a will and/or to inherit (so-called *Erbrechtliche Sanktionen*). These laws started to appear from AD 381 onwards and mentioned specific groups. However, by 428 inheritance laws had changed to the extent that they started to address heretics in general and no longer by names of specific groups. R. calls into question the traditional explanation of this shift that has regarded this as an expression of a sort of symbolic expulsion from society, as a marginalization of the heterodox groups. If these groups distanced themselves from society by way of their faith, then the imperial government's reaction was to distance itself from them by way of legal sanctions. The author aims to offer a new interpretation of this shift by a careful and in-depth analysis of the legal sources.

In what follows, R. presents each of the four heretical groups separately and discusses all the laws from the *Codex Theodosianus* pertaining to these groups. In these extensive philological and contextual analyses R. shows an impressive command of the source material. He is not only able to show connections within the late antique legal corpora but also between the laws and other types of sources. In other words, in this way R. demonstrates how the laws are firmly embedded in and part of a broader late antique discourse on ecclesiastical affairs and theological disputes.

As far as chapters three through six are considered, R. has opted for a different order of discussion than the perhaps expected chronological order in which laws against the specific heterodox groups under review – Apostates, Manichaeans, Eunomians, and Donatists – were published. Instead, R. has chosen the order

Manichaeans, Donatists, Eunomians, and Apostates, which makes more sense to him based on the content and frequency of the laws as well as the prominence of the groups within society. First, the case of the Manichaeans is presented, because, as R. argues, they were the first group to have been affected by extensive legal sanctions. Theodosius II appears to have regarded them as the worst of all the heterodox groups, which led him to forbid their rights to set up a testament or to inherit from others. R. considers this to be a sign not so much of a symbolic degradation, but more as an attempt to break the flow of their wealth. Ultimately, it remains difficult for us to establish to what extent the Manichaeans were visible in society and thus considered a real threat to religious unity and stability.

Second, R. analyses the Donatists whom he considers to play a key role in the history of religious controversies and imperial interferences. In addition, he also sees the way in which they were treated in inheritance laws as a sort of model, even though it is not until 404/405 that Donatists are explicitly mentioned in these laws. Although technically the conflict between the Donatists and the Catholics was more an argument over the right religious behavior and rituals than a doctrinal clash, modern scholarship has drawn the schism of the Donatists into our discussions over heterodoxy. Central to the discussion was the meaning of the baptism in a heretical church and whether one should or could be rebaptized by the right church. Key to R's exploration of this issue is the edict that called for unity in the church as presented in C.Th. 16.5.38 of February 12 in the year 405, together with C.Th. 16.6.3 and C.Th. 16.6.4, that were issued on the same day in which rebaptism was condemned. Whereas scholars such as Peter Brown consider these laws as a sign that Donatists were now considered heretics by the imperial court, R. calls for a different interpretation. In his opinion, the condemnation of rebaptism led to the consequence that those who had themselves baptized again were regarded as heretics, and thus not all Donatists were to be seen as heretics. Nevertheless, Donatists were more and more presented as heretics from this moment onwards. Furthermore, R. investigates if and how the (re)actions of the emperors could be matched with the wishes of the catholic bishops of North Africa, especially after the publication of a set of strict anti-Donatist regulations in C.Th. 16.5.54 of June of 414. While scholars such as Erika Hermanowicz and Noel Lenski assume that the emperor Honorius had committed himself to supporting the African bishops, R. believes that was not quite the case. In his conclusion on the inheritance laws that contained serious restrictions for the Donatists, R. argues that for the African

bishops the inheritance constraints were a means to the end of making it more difficult for Donatists to function within the African communities, while for the emperor these restrictions were part of his larger empire-wide policies on heretical movements.

Thirdly, R. examines the case of the Eunomians, which he regards as a test case for the model presented by the Donatists in which the role of the imperial ruler is explicitly taken into consideration. The Eunomians – followers of Eunomios – represented a highly intellectual movement in the eastern half of the empire, which was also considered to be a group that adhered to a radical form of Arianism. Though most of the sources about the movement come from Constantinople, it becomes clear from R.'s examination that it remains difficult to analyse them. The first law against them was issued in 381 and inheritance sanctions did not appear until 389, when their leader Eunomios had already been exiled for years (since 383). While most historical and literary sources (in particular Philostorgus, Synesius of Cyrene and Theodoret) come from the period 360–383, the legal sources are mostly to be dated to 381–415. This might sound puzzling to us, as there seems to have been a delayed legal response to the movement as their leader had already been banned from society. Furthermore, the legal sanctions seem to have been constantly changing, depending on which emperor was on the throne. In other words, as R. demonstrates, the sanctions against the Eunomians seem to have been particularly impacted by the political situation. Ultimately, though, one might argue that in comparison to the Manichaens, the Eunomians seem to have been slightly better off, which R. explained as a “Modell einer staatlichen Zurückhaltung bei der Sanktionierung häretischer Laien” (684).

As the fourth group, the Apostates are discussed. It is obvious that this is the most difficult group of the four to investigate, both because this was not a clearly defined group and because of the lack of ancient source material. While the emperor Julian the Apostate was the most famous exponent of the Apostates, after his short rule the evidence seems to quickly fade on other Apostates as well. Nevertheless, they seem to have presented a problem to local and imperial authorities, as they openly practiced their own type of rituals and cults which called for an imperial reaction. Notably, while inheritance sanctions seem to have been part of a larger program of sanctions for Manichaeans, Donatists and Eunomians, in the case of the Apostates inheritance sanctions appear to have been more or less the only sanctions.

R. ends his book with a discussion of inheritance laws against heretical groups post-428 with particular attention to C.Th. 16.6.65

of May of 428, which can be considered as the most extensive law against heretics (765–783).

Overall, R.'s study is an amazing "Fundgrube" for anyone interested in late antique law with a particular curiosity about imperial legal dealings with heretical groups. R. offers meticulous analyses of the laws which quite often bring out elements that scholarship so far has not realized, which is a wonderful accomplishment. Furthermore, R. is also to be praised for the extensive and valuable cross references throughout the entire book which yet again demonstrate the intricacies of late antique law, which call for our continued and perhaps in some cases renewed attention.

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