

‘Cherchez la femme!’ Heresy and Law in Late Antiquity*

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Introduction. ‘Cherchez la Femme’?

In 1864 the French novelist Alexandre Dumas included the following line, spoken by a police detective, ‘Monsieur Jackal’, in the theatrical adaptation of his novel *The Mohicans of Paris*: ‘There is a woman in all cases: as soon as someone brings me a report I say “look for the woman!”.’¹ In popular culture, the saying ‘*cherchez la femme!*’ is usually used to insinuate that whatever the problem is, a woman will lie behind it.² I am more interested, however, in the original context of Dumas’ phrase: the prosecution of legal cases and the workings of the criminal law. More specifically, what do we find if we ‘look for the woman’ in Late Roman (fourth and fifth century) legal and heresiological writings? In a 1998 essay Nicola Lacey, Professor of Law, Gender and Social Policy at the LSE, explores ‘the unspeakable subject of sex’ in relation to the present-day criminal law of England and Wales.³ Lacey’s article pivots around three, fundamental, issues which I am going to develop as framing devices for our Late Roman material. First, Lacey is interested in how criminal law ‘speaks’ through the construction of specific legal categories and classifications;⁴ in what follows, I will focus on how Roman imperial law ‘spoke’ through the construction of legal categories such as ‘orthodoxy’ and ‘the heretic’. Second, Lacey is concerned with what she terms ‘the relationship between sexual

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¹ Alexandre Dumas, *Théâtre complet XXIV Les Mohicans de Paris* (Paris, 1889), 103: ‘[M Jackal] Il y a une femme dans toutes les affaires; aussitôt qu’on me fait un rapport, je dis: « Cherchez la femme ! ».’

² Dumas did not, of course, invent the trope of ‘...bad things begin with a woman’. As Jennifer Eyl points out, ‘One can think of numerous literary and mythological examples: Eve in Genesis 3, Hesiod’s Pandora and Helen of Troy...’: ‘Optatus’s Account of Lucilla in Against the Donatists, or Women Are Good to Undermine With’, in *A Most Reliable Witness. Essays in Honor of Ross Shepard Kraemer*, ed. Susan Ashbrook Harvey, Nathaniel DesRosiers, Shira Lander, Jacqueline Pastis and Daniel Ullucci (Providence RI, 2015), 155-164 at 159.

³ Nicola Lacey, ‘Unspeakable Subjects, Impossible Rights: Sexuality, Integrity and Criminal Law’, *Canadian Journal of Law and Jurisprudence*, 11.1 (1998), 47-68.

⁴ Ibid, 50: ‘In this paper, rather than focussing on specific features of the criminal process, I shall address the question of how criminal law itself constructs the wrong of rape.’

offences and the sexed body’;⁵ I am interested in how individual, sexed, bodies were turned into legal subjects through Late Roman trial processes. Finally, Lacey interrogates the extent to which ‘shifts in cultural attitudes’ influence ‘coercive legal rules’;⁶ in this paper, I am concerned primarily with the extent to which significant shifts in early Christian heresiological discourse influenced Late Roman (imperial) lawgivers.

Roman (state) legislation against heretics first appears in the fourth century CE. The main sources for this legislation are Book Sixteen of the *Codex Theodosianus*, a collection of imperial constitutions promulgated by the Emperor Theodosius II in 438AD and Book 1 of the *Codex Iustinianus*, first promulgated by the Emperor Justinian in 529AD with a second edition in 534AD, together with relevant *Novellae* (‘new’ imperial constitutions issued after 438 and 534AD).⁷ As we shall see, the imperial constitutions excerpted in Book Sixteen of the *Theodosian Code* are overwhelmingly concerned with men and power relations between men: there are only three explicit (gendered) mentions of women in the sixty-six excerpts from imperial constitutions included in Book Sixteen Title Five, ‘On Heretics’. Yet women feature more prominently than men in fourth- and fifth-century CE accounts and records of anti-heresy trials.⁸ I am interested in exactly *how* and *why* women appear in these trial accounts, always in relation to the male voices of the text. My argument is that fifth-century records of heresy trials should be understood as part of

⁵ Ibid, 49.

⁶ Ibid, 66.

⁷ *Theodosiani libri xvi cum constitutionibus sirmondianis* ed. Theodor Mommsen (Berlin, 1905) [*Codex Theodosianus* (hereafter: *CTh*) and post-Theodosian *Novellae*]; *Corpus Iuris Civilis* ii, ed. Paul Krüger (Berlin, 1877) [*Codex Iustinianus* (hereafter: *CI*); *Corpus Iuris Civilis* iii, eds. Rudolf Schöll and Wilhelm Kroll (Berlin, 1895) [Justinianic *Novellae*]. ‘Imperial constitution’ is the collective term for all types of authoritative communications written in the name of the emperor(s). In the extant late Roman evidence, these acts of communication usually took the (original) form of letters. For further discussion see Simon Corcoran, ‘State correspondence in the Roman Empire: Imperial communication from Augustus to Justinian’, in *State Correspondence in the Ancient World from New Kingdom Egypt to the Roman Empire*, ed. Karen Radner (Oxford, 2014), 172-209.

⁸ Comparisons could be drawn here with early Modern witchcraft prosecutions. See further Clive Holmes, ‘Women: Witnesses and Witches’, *P&P*, 140 (1993), 45-78 and more broadly, Gilbert Geis, ‘Lord Hale, Witches, and Rape’, *British Journal of Law and Society*, 5 (1978), 26-44, together with Gilbert Geis, ‘Revisiting Lord Hale, Misogyny, Witchcraft and Rape’, *Criminal Law Journal* 10 (1986), 319-329.

a much broader, developing, regime of Christian ecclesial power, rather than as concrete applications of imperial anti-heresy laws.

The paper divides into three main sections. Part I, ‘Heresy becomes a woman’, gives a brief overview of early Christian heresiology and explores Virginia Burrus’ argument that the ‘gendered’ nature of heresiological rhetoric shifted during the mid-fourth century CE.⁹ Part II explores late Roman legislation and the construction of ‘legal subjects’ (in the sense referred to by Lacey), focusing mainly on Book Sixteen of the *Codex Theodosianus*.¹⁰ Finally, Part III turns to the celebrated account, crafted by Pope Leo I, of anti-Manichaean trials at Rome (443 CE). Leo’s account carefully and self-consciously draws upon – and manipulates – gender norms and expectations, using the Manichaeans’ confessions of ‘unspeakably’ foul sexual acts to convict them in the legal fora of this world and the next. As we shall see, Leo I did not simply seek to apply imperial law through his 443/4 anti-Manichaean campaign; he sought to influence its subsequent development.

I. Heresy becomes a woman.

As I sat on a mountain, he who speaks these things said, I saw an animal in the air, fighting with another animal on the ground. I felt great joy because the flying one prevailed upon the earthly one. But after a while the animal on the ground turned upon the flying one, and seized it and overpowered it. The wise will understand that this story concerns every heretic who is of two minds. For it is no wonder that a pagan [‘a hellene’] or a heretic who has no faith is in the church. Indeed the birds themselves are often in the church – look, there is the peacock and the Nile goose. If the heretic

⁹ Virginia Burrus, ‘The Heretical Woman as Symbol in Alexander, Athanasius, Epiphanius and Jerome’, *HThR* 84.3 (1991), 229-48. For discussion of later developments, see John Arnold, ‘Heresy and Gender in the Middle Ages’, in Judith Bennett and Ruth Karras, eds, *The Oxford Handbook of Women and Gender in Medieval Europe* (Oxford, 2013), 496-510.

¹⁰ Jill Harries, *Law and Empire in Late Antiquity* (Cambridge, 1999) gives an overview of late Roman law and practice, including who made (imperial) law and an explanation of its predominately responsive, yet at the same time proactive, nature. On the rhetorical nature of late Roman imperial law, see the classic study by Wulf Eckart Voß, *Recht und Rhetorik in den Kaisergesetzen der Spätantike. Eine Untersuchung zum nachklassischen Kauf- und Übereignungsrecht* (Frankfurt, 1982),

and the pagan spread out their hands and lift them up hypocritically, behold the birds themselves often do this, spreading their wings.¹¹

Shenoute of Atripe, the leader of a large monastic community known today as the ‘White Monastery Federation’ situated across the Nile from Panopolis, Upper Egypt, addressed the words above to a church assembly, sometime during the late-fourth or early- to mid-fifth centuries CE. Using the striking imagery of two fighting creatures, Shenoute recounts a prophetic vision (‘As I sat on a mountain ... I saw an animal ...’) in order to teach the fundamental lesson that heretics and pagans are a constant danger from within. Like any expert rhetorician, Shenoute flatters his audience whilst expounding his message in no uncertain terms: ‘The wise [that is, of course, you and me] will understand that this story refers to every heretic who is of two minds’. For Shenoute, as for Late Roman legislators and (most) authors and compilers of Late Antique heresiological manuals, the heretic was the two-faced ‘other’ who lurked hypocritically within the Church.¹² At what point, however, should we understand Shenoute’s rhetorical universe as intersecting with concrete individuals and groups in early fifth-century Upper Egypt? Where the text says, ‘look, there is the peacock and the Nile goose’, should we imagine Shenoute pausing in his speech and pointing to real birds inside the church (or perhaps to painted images of birds on the church walls)? When he refers to the heretic and the pagan who ‘spread out their hands and lift them up hypocritically’, should we likewise imagine Shenoute pausing and pointing to ‘real’ heretics and pagans engaged in the act of prayer within the Church? In other words, should we understand the birds in the church – and by analogy Shenoute’s pagans and heretics – as ‘real’, embodied, beings or as rhetorical constructs?¹³

¹¹ Shenoute of Atripe (c.347-c.465), ‘As I Sat on a Mountain’; ed and trans by David Brakke and Andrew Crislip, *Selected Discourses of Shenoute the Great: Community, Theology, and Social Conflict in Late Antique Egypt* (Cambridge, 2015), 39-53 at 39-40.

¹² For further discussion of whether heresy always, necessarily, implies ‘insider status’ in Late Antique heresiological discourse see Peter Schadler, *John of Damascus and Islam. Christian Heresiology and the Intellectual Background to Earliest Christian-Muslim Relations* (Leiden, 2018), 20-48.

¹³ For a summary of the debate over the physical presence of peacocks and Nile geese in Shenoute's church (and in Coptic churches today) see Stephen Emmel, ed, *Shenoute's Literary Corpus*, Corpus Scriptorum Christianorum Orientalium 599 Subsidia 111, Vol. II (Louvain, 2004), 611.

Until twenty or so years ago, finding the heretic in late Roman texts was relatively straightforward; by which I mean that Arians, Pelagians, Nestorians and the like could exist without quotation marks around their names. To return to Shenoute, the unnamed heretics in the discourse ‘As I Sat on a Mountain’ have tended to be identified as Origenists, a group that flourished in learned monastic environments and was subjected to ‘a savage witch-hunt’ (as Peter Brown termed it) by Theophilus, Patriarch of Alexandria in 400CE.¹⁴ In 1992, however, Elizabeth Clark’s monograph, *The Origenist Controversy: the Cultural Construction of an early Christian debate*, effectively challenged the idea that Origenists could be understood as a distinct group with a distinct theology.¹⁵ Clark instead sought to reconstruct the polemical use of the label ‘Origenist’ (now to be understood within quotation marks) in theological debate and discourse. This awareness that talking about heresy necessitates a heightened rhetorical sense, alongside a subtle appreciation for processes of identity construction, is now standard in late antique studies.¹⁶ Twenty first-century scholars tend to approach late antique heresiological handbooks – works such as Irenaeus of Lyon’s *Adversus haereses*; Epiphanius of Salamis’ *Panarion* (‘medicine-chest’); the *Refutatio omnium haeresium* attributed to Hippolytus; Theodoret of Cyrhus’ *Haereticarum fabularum compendium*; or Augustine’s *De haeresibus* – as lessons in

¹⁴ Peter Brown, *Power and Persuasion in Late Antiquity: Towards a Christian Empire* (Madison Wisconsin, 1992), 138. On Theophilus of Alexandria’s anti-Origenist campaigns see now Krastu Banev, *Theophilus of Alexandria and the First Origenist Controversy. Rhetoric and Power* (Oxford, 2015). On Shenoute see further Hugo Lundhaug, ‘Shenoute’s Heresiological Polemics and its Context(s),’ in *Invention, Rewriting, Usurpation: Discursive Fights over Religious Traditions in Antiquity*, ed. Jörg Ulrich, Anders-Christian Jacobsen and David Brakke (Frankfurt am Main, 2012), 239-261.

¹⁵ Elizabeth Clark, *The Origenist Controversy: The Cultural Construction of an Early Christian Debate* (Princeton N.J., 1992).

¹⁶ Virginia Burrus, *The Making of a Heretic. Gender, Authority and the Priscillianist Controversy* (Berkeley, 1995); Virginia Burrus, ‘“In the Theater of this Life”: The Performance of Orthodoxy in Late Antiquity’, in *The Limits of Ancient Christianity. Essays on Late Antique Thought and Culture in Honor of R.A. Markus*, ed. William Klingshirn and Mark Vessey (Ann Arbor, 1999), 80-96; Averil Cameron. ‘How to Read Heresiology’, *Journal of Medieval and Early Modern Studies*, 33.3 (2003), 471-492; Kimberley Stratton, ‘The Rhetoric of “Magic” in Early Christian Discourse: Gender, Power and the Construction of “Heresy”’, in *Mapping Gender in Ancient Religious Discourses*, ed. Todd Penner and Caroline Vander Stichele (Leiden, 2007), 89-114; Young Richard Kim, *Epiphanius of Cyprus. Imagining an Orthodox World* (Ann Arbor, 2015); Andrew Jacobs, *Epiphanius of Cyprus: A Cultural Biography of Late Antiquity* (Oakland, 2016); and Todd Berzon, *Classifying Christians. Ethnography, Heresiology, and the Limits of Knowledge in Late Antiquity* (Oakland, 2016).

identity-construction, rather than as windows onto the lived experiences of ancient Christian communities.

The ‘Late Antique Cultural Turn’ of the 1990s and 2000s also meant taking both women and gendered identities seriously.¹⁷ As Judith Lieu observed in 2013: ‘It has become ever more evident that the question of women belongs to the inner logic or deep grammar of the church’s self-understanding.’¹⁸ In late first-century and early second-century Christian literature, accusations of sexual deviance, demonic influence, and promiscuity were frequently used to identify and mark out the kinds of ‘false teachers’ against which 2 Timothy 3: 6 warned: the *heterodidaskaloi* who worm their way into households and ensnare weak women who are weighed down with sins and led astray by diverse lusts.¹⁹ In contrast to the weak females of 2 Timothy 3: 6, Tertullian, writing in second-century Carthage, paints a picture of headstrong, brazen, women acting in official roles within heretical communities:

The destruction of discipline is to them [sc. heretics] simplicity, and attention to it they call affectation. They are in communion with everyone, everywhere. Differences of theology are of no concern to them as long as they are all agreed in attacking the truth. They are all puffed up. They all promise knowledge. Their catechumens are perfect before they are instructed. As for the women of heretics, how forward they are! They have the impudence to

¹⁷ As argued by Elizabeth Clark, ‘The Lady Vanishes: Dilemmas of a Feminist Historian after the “Linguistic Turn”’, *ChH* 67 (1998), 1-31, and Elizabeth Clark, ‘Holy Women, Holy Words: Early Christian Women, Social History, and the “Linguistic Turn”’, *J ECS* 6 (1998), 413-30. See also Dale Martin, ‘Introduction’, in *The Cultural Turn in Late Ancient Studies: Gender, Asceticism, and Historiography*, ed. Dale Martin and Patricia Cox Miller (Durham N.C., 2005), 1-21.

¹⁸ Judith Lieu, ‘What did Women do for the Early Church? The Recent History of a Question’, in Peter D. Clarke and Charlotte Methuen (eds), *The Church on its Past (Studies in Church History 49)*; Woodbridge, 2013), 261-281 at 280.

¹⁹ See further Jennifer Knust *Abandoned to Lust: Sexual Slander and Ancient Christianity* (New York, 2006), 143. Writing in the fourth-century CE, Jerome interweaves 2 Timothy 3: 6 with his fourth-century depiction of ‘Manichaean orgies’, during which the ‘Manichaean Elect ... shut themselves up alone with silly women, and between intercourse and embraces ... enchant them with suggestive quotations from Virgil’ (Jerome, *Ep.* 22.13.3, quoted according to Harry Maier “‘Manichee!’: Leo the Great and the Orthodox Panopticon”, *J ECS* 4 (1996), 441-460 at 452.

teach, to argue, to perform exorcisms, to promise cures, perhaps even to baptise.²⁰

The heretics' way of life is a straight inversion of what Tertullian wants his readers to accept as a normative, orthodox, way of life. True Christian communities, according to Tertullian, are structured hierarchically, with men on top.

Christian writings from the late first-century onwards make the ideological connection between women and heresy seem 'natural', albeit in different ways and to differing effects. More specifically, Stratton comments: 'women's sexuality serves in [early Christian] discourses to locate types of Christianity on the scale of "orthodoxy" and "heresy": their sexualized bodies symbolically measure the presence of "heresy" like thermometers determining the presence of a fever.'²¹ As Virginia Burrus pointed out in her classic 1991 essay, 'The Heretical Woman as Symbol in Alexander, Athanasius, Epiphanius and Jerome':

the historical study of women in ancient heretical movements is doubly problematic. For the heresiological sources are not only written from the point of view of a self-identified orthodoxy, but are also written by men who utilize the figure of the heretical female as a vehicle for the negative expression of their own orthodox male self-identity. Moreover, we – men and women alike – are the cultural heirs of those very orthodox men who forged the portrait of the heretical woman in the fire of their polemical rhetoric, Far from being critical and objective readers of the ancient sources, we easily resonate with the myriad of symbolic associations generated by the figure of the female heretic.²²

The point of Burrus' article is not to unravel a series of enduring, historically-static, images of 'the heretical woman'. Rather, she argues convincingly for a distinct, Late Antique, development in Christian anti-heretical discourse.²³ According to Burrus, whilst the earliest Christian heresiological discourse is gendered in numerous ways

²⁰Tertullian, *De praescriptione* 41.2-8, quoted according to Berzon, *Classifying Christians*, 67.

²¹ Stratton, 'The Rhetoric of "Magic"', 111.

²² Burrus, 'The Heretical Woman as Symbol', 230.

²³ *Ibid*, 231-232. See also Nicola Denzey, *The Bone Gatherers. The Lost Worlds of Early Christian Women* (Boston, 2007), 184-185.

(as we have seen above) ‘the *topos* of heretic remains neutral as regards gender for the first three centuries.’²⁴ The rise of a new kind of imperial Christianity under the Emperor Constantine, however, contributed to the development of a new kind of male, orthodox, ecclesiological, self-image.²⁵ Doctrinal and ecclesiological uses of ‘the heretical woman’ *topos* developed accordingly. During the course of the fourth-century, heresy literally becomes a woman.

Athanasius, Bishop of Alexandria, writing in exile during the 350s CE against the teachings of the presbyter Arius, gives us what Burrus refers to as ‘the earliest full-blown development of the figure of the heretical woman’.²⁶ In the opening passage of the first of his *Three Orations against the Arians*, Athanasius writes:

The so called Arian heresy, being crafty and unscrupulous, and considering that her older sisters, the other heresies, have been publicly labelled as such, pretends to wrap herself in the words of Scripture, like her father the devil, and forces her way back into the Church’s paradise, so that, having given herself Christian form, she might deceive someone into thinking about Christ by the most persuasive of fallacies, for she has no sound reason. And she has already misled some of the foolish, so that they are not only corrupted in what they hear, but even take and eat in the manner of Eve.²⁷

According to Athanasius’ rhetoric, the ‘so called Arian heresy’ is a daughter of the devil, to be identified with the serpent from the garden of Eden. All followers of Arius thus effectively become Eve. Athanasius’ feminised idea of heresy as seductive, manipulative, deceptive, irrational and immoral may seem so natural to us today that it is easy to forget that, as Burrus argues, this was an image first developed systematically in the course of the fourth century CE.²⁸ We could multiply the

²⁴ Burrus, ‘The Heretical Woman as Symbol’, 231-2 fn.6.

²⁵ For a comparison with how the figure of ‘the temptress’ is used to construct ‘exemplary male figures’ in Late Antique Rabbinic discourse, see Jordan Rosenblum, ‘The Night Rabbi Aqiba Slept with Two Women’, in *A Most Reliable Witness. Essays in Honor of Ross Shepard Kraemer*, ed. Susan Ashbrook Harvey, Nathaniel DesRosiers, Shira Lander, Jacqueline Pastis and Daniel Ullucci (Providence RI, 2015), 67-75.

²⁶ *Ibid.*, 235.

²⁷ Athanasius, *Three Orations against the Arians*, 1.1-10, quoted from Burrus ‘The Heretical Woman as Symbol’, 236.

²⁸ The *systematic* development of a ‘feminised’ idea of heresy from the fourth century CE onwards was also grounded within ancient biological theories: ‘The female proclivity for error is written into ancient ideas of human

examples. Epiphanius, a late fourth-century Bishop in Cyprus, famously structured his catalogue of heresies, the ‘Panarion’ or ‘medicine chest’ (written 374-6AD), into eighty sections: one heresy for each of the eighty concubines referred to in the Song of Solomon 6:8.²⁹ Heretical groups, according to Epiphanius, are adulterous concubines who have falsely taken Christ’s name, in contrast to the Catholic church, which is the dove of the Song of Solomon, the perfect one, the one true virginal ‘bride of Christ’.³⁰ As Epiphanius bluntly states in Chapter 79 of the *Panarion*: ‘Do not believe a vulgar woman; for every heresy is a vulgar woman (πᾶσα γὰρ αἵρεσις φαύλη γυνή).’³¹ Hence from the fourth-century onwards, as Denzey suggests: ‘Women emerged within church ideology not as living individuals, but as symbols of licit and illicit Christian communities.’³² We turn now from one field of late Roman knowledge construction: the heresiological, to another field of late Roman knowledge construction: the legal.

II. Constructing legal subjects.

This section begins with a brief note on women and Roman law, before turning to the *Codex Theodosianus* (438 CE) and the ‘unprecedented ecclesiastical Book XVI’.³³ Going beyond the question of what Book Sixteen of the *Codex Theodosianus* can tell us about women and (institutionalized) Christianity, I am more concerned with how religion is constructed as a distinct sphere of imperial legal discourse in Book Sixteen, and how women are placed (or not) within that discourse. We will then narrow our focus again to *Codex Theodosianus* Book Sixteen, Title 5, *de*

biology and fetal gestation: to be born female is to have ceased developing in the womb. Women are essentially “failed” or “underdeveloped” men’ (Eyl, ‘Optatus’s Account of Lucilla’, 160.)

²⁹ *Song of Solomon*, 6:8: ‘There are threescore queens, and fourscore concubines, and maidens without number. My dove, my perfect one, is only one, the darling of her mother, a chosen one to her that bore her.’ See Epiphanius, *De Fide*, 2.4 – 7.2: *The Panarion of Epiphanius of Salamis. Books II and III (Sects 47-80, De Fide)*, trans. by Frank Williams (Leiden, 1994), 639 - 644. For a detailed discussion of Epiphanius’ *Panarion* and related works see Jacobs, *Epiphanius of Cyprus*, 20-21 and 176-220.

³⁰ Epiphanius, *De Fide* 7.1: *The Panarion of Epiphanius*, 644.

³¹ Epiphanius, *Panarion* 79.8, quoted according to Eyl, ‘Optatus’s Account of Lucilla’, 160.

³² Denzey, *The Bone Gatherers*, 184.

³³ Quotation from Simon Corcoran, ‘The Gregorianus and Hermogenianus assembled and shattered’, *Mélanges de l’école française de Rome* 125 (2013), 10. Online at: <mefra.revues.org/1772>, accessed 1 February 2019.

haereticis, in order to explore how, exactly, imperial legislators constructed heretics as legal subjects in the fourth and fifth centuries CE.

First, women and Roman law. As the analytical legal philosopher Leslie Green puts it ‘gender is a social category superimposed upon a sexed body’.³⁴ The entire structure of Roman law was premised on the concept of *patria potestas*, the power of the father.³⁵ Recent demographic research, however, has shown that Roman fathers tended to marry late and die early. Add to this the fact that daughters and sons were usually expected to inherit equally and in comparison with other historical legal systems we can see that elite Roman women were in a strong position relative to both the Roman law of succession and property.³⁶ Elite late Roman women, as Clark observes, ‘could, for example, retain their own property separate from their husband’s, serve as guardians to their children, and [under certain scenarios] initiate divorce.’³⁷ The major fault line running through Roman jurisprudence was not gender, but wealth and social status. In David Daube’s memorable words: ‘The have-nots, the vast majority of citizens, were right out of it.’³⁸ According to a constitution issued by the Emperor Constantine in 326AD, adultery committed by a respectable freeborn woman of high social standing reflected on society as a whole and hence should be punished; but adultery committed by a woman of low social standing reflected on no one but

³⁴ Leslie Green, ‘Gender and the Analytical Jurisprudential Mind’, *University of Oxford. Legal Research Paper* no. 46 (26 August, 2015), 8. Online at <<https://ssrn.com/abstract=2650448>>, accessed 1 February 2019. Green is here quoting the summary of ‘his view’ given by Joanne Conaghan, *Law and Gender* (Oxford, 2013), 18-22.

³⁵ John Crook, ‘Patria Potestas’, *The Classical Quarterly* 17 (1967), 113-122 at 122, argues that the Roman legal concept of *patria potestas* needs to be divided into three distinct, analytical, categories: ‘sacral headship; power over the persons and lives of members of the family ... [what Crook terms] “gubernatorial” headship; and property headship. For the extent and intensity of each of these ... within the family differs from society to society.’ On the late Republic early Empire see also Richard Saller, ‘Patria potestas and the stereotype of the Roman family’, *Continuity and Change* 1 (1986), 7-22; for the later Empire, see Antti Arjava, ‘Paternal Power in Late Antiquity’, *The Journal of Roman Studies* 88 (1998), 147-165.

³⁶ For further discussion see Joëlle Beaucamp, *Le Statut de la Femme à Byzance (4-7 siècles)*, 2 vols (Paris, 1990-1992); Antti Arjava, *Women and the Law in Late Antiquity* (Oxford, 1996); and Caroline Humfress, ‘Gift-Giving and Inheritance Strategies in Late Roman Law and Legal Practice’, in *Donations, Strategies and Relations in the Latin West and Nordic Countries*, ed. Ole-Albert Rønning, Helle Sigh and Helle Vogt (London, 2017), 9-27.

³⁷ Elizabeth Clark, ‘Ideology, History, and the Construction of “Woman” in Late Ancient Christianity’, *JECs* 2.2 (1994), 155-184, at 171.

³⁸ David Daube, *Roman Law: Linguistic, Social and Philosophical Aspects* (Edinburgh, 1969), 72.

herself.³⁹ It was not worth pursuing a woman for a public crime that epitomized her lack of civil standing and respectable *mores*, if the woman in question was already deemed to have none.

As Judith Evans-Grubb has demonstrated, some (limited) fourth- and fifth-century imperial legislation was concerned with regulating both the reputations of elite Christian women and their property.⁴⁰ In the *Codex Theodosianus* there are three laws relating to Christian women and celibate lifestyles excerpted in Book Nine, Title 25; two laws relating to widows and perpetual virgins (not necessarily Christian) in Book Thirteen, Title 10; and one law ordering that the property of ‘religious’ men and women who die intestate should go to their church or monastery, if they die without heirs or other claims on the inheritance.⁴¹ Behind this legislation lie much broader shifts in patterns of elite, female, patronage, as Clark argues: ‘The Church became a primary outlet for female patronage, just at the moment when some older avenues of patronage were closing to aristocratic women.’⁴² Under the early Empire, elite women had acted as local benefactors and patrons, engaging in civic acts of euergetism alongside elite men. Under the later Roman empire, however, ‘local benefaction tended to give way to the linkage between patronage and the holding of high governmental offices which were, of course, closed to women.’⁴³ The wealth of (some) elite women, including those such as the super-rich ‘aristocrat-turned-ascetic’ Melanias, was re-directed to charitable and religious causes, via (male) Christian ecclesiastics.⁴⁴ Hence the need for the imperial legislators to step in and regulate the extent to which the property of female ascetics and ‘religious’ women could – and could not – be transmitted outside their (elite) families.

³⁹ *CTh* 9.7.1 and *CI* 9.9.28.

⁴⁰ Judith Evans Grubbs, ‘Virgins and Widows, Show-girls and Whores: Late Roman Legislation on Women and Christianity’, in *Law, Society and Authority in Late Antiquity*, ed. Ralph Mathisen (Oxford, 2001), 220-241, which also analyses the handful of laws relating to lowest-status women and Christianity.

⁴¹ *Ibid.*, with additional discussion of relevant imperial legislation in the Post-Theodosian *Novellae* and the *CI*.

⁴² Clark, ‘Ideology, History, and the Construction of “Woman”’, 179.

⁴³ *Ibid.*

⁴⁴ On Melania the Elder and her granddaughter Melania the Younger see Catherine Chin and Caroline Schroeder, eds, *Melania: Early Christianity through the Life of One Family* (Oakland, 2017). Clark, ‘Ideology, History, and the Construction of “Woman”’, 180, goes on to suggest that: ‘It is perhaps the Church Fathers’ emotional and financial dependence on such women ... coupled with their misogynistic constructions of “woman” that gives an unpleasant edge to their diatribes against rich women.’

As noted above, I am less concerned here with Late Roman imperial legislation relating to women and the Christian Church and more interested in how gender played a role in constructing the new legal category of ‘the heretic’ during the fourth and fifth centuries CE.⁴⁵ Promulgated in 438CE by the Emperor Theodosius II, the *Theodosian Code* comprises sixteen Books. Each Book contains discrete excerpts from imperial constitutions dating back to 312 CE, arranged chronologically under thematic rubrics (*tituli*). The fifth-century imperial commissioners who compiled and ordered the *Theodosian Code* based their ordering of the material in Books One to fifteen on earlier Roman legal precedents (mainly the *Praetors’ Edict* and *Commentaries*, in addition to two late third-century private compilations of imperial constitutions).⁴⁶ There was no Roman law precedent, however, for how to order the legal material in Book Sixteen. Theodosius II’s editorial team thus had to come up with the eleven Title headings which structure the contents of Book Sixteen *ex nihilo*. My argument here is that just as fourth- and fifth-century Christian theologians and ecclesiastics set about constructing a specific idea of ‘the heretic’, so too did fourth- and fifth-century Imperial legislators. In the case of the imperial legislators, however, this was part of a much broader fifth-century reframing of the category of ‘religion’ itself.

Book XVI of the *Theodosian Code* is broadly concerned with ensuring correct relations between the human and the divine. Roman emperors had long styled themselves as responsible for overseeing and maintaining this relationship. In Book Sixteen of the *Codex Theodosianus*, however, it is not correct human relations between humans and gods, plural, that need to be overseen and maintained, but rather relations between humans and (the Christian) God, singular. The imperial constitutions excerpted under the first and last Titles of Book Sixteen stress that the only relationship which now matters is the one to be maintained with the Supreme Christian God.⁴⁷ Titles Two and Three focus accordingly on the experts and specialists responsible for maintaining good relations with the Christian God: bishops

⁴⁵ On the later fifth- and sixth-centuries see Caroline Humfress, ‘A New Legal Cosmos’, in Marios Costambeys and Peter Linehan, eds, *The Medieval World*. Second edition (London, 2018), 653 – 673.

⁴⁶ For a more detailed discussion see Caroline Humfress, ‘Ordering Divine Knowledge in Late Roman Legal Discourse’, in *COLLeGIUM: Studies across Discipline in the Humanities and Social Sciences* 20 (2016), 160-176.

⁴⁷ *CTh* 16.1: *de fide catholica* (on the catholic / universal faith) and *CTh* 16.11: *de religione* (concerning ‘religion’).

and clerics of the institutional church, as well as monks.⁴⁸ Title Four concerns those ‘who argue about religion’ (*de his qui super religione contendunt*) and thus threaten the safety and prosperity of the empire, as do heretics (Title Five: *de haereticis*); apostates (Title Seven: *de apostatis*), Jews, Caelicolists and Samaritans (Title Eight: *de Judaeis, Caelicolis, et Samaritanis*) and pagans (Title Ten: *de paganis, sacrificiis, et templis*). Title Six deals with those individuals who threaten human-divine relations by the incorrect performance of sacred rituals.⁴⁹ Title Nine acknowledges that maintaining ‘correct’ relations with the Christian God also means adjusting (certain) human hierarchies, hence the rubric: ‘No Jew shall have a Christian as a slave’ (*ne Christianum mancipium Judaeus habeat*). An important touchstone for defining what counts as orthodox, throughout Book Sixteen, is the male ‘Catholic’ episcopate. Hence *CTh* 16.1.2 (the famous constitution ‘Cunctos Populos’, issued by Theodosius I at Thessalonica on February 27 380CE and addressed to the people of Constantinople) states that ‘Catholic’ Christians are to be defined as those who follow the faith of the Apostle Peter as practiced by Damasus, Bishop of Rome and Peter, Bishop of Alexandria; everyone else is to be judged ‘demented and insane’.⁵⁰ This strategy of defining orthodoxy in terms of being in communion with named bishops is highlighted in later Justinianic law: the compilers of the 529 *Codex* placed *CTh* 16.1.2 at the head of Book 1, so that *CTh* 16.1.2 became *CI* 1.1.1.

Within the precisely marked out legal terrain of Book Sixteen of the *Codex Theodosianus*, women are referred to explicitly in only nine out of a total of two hundred and one discretely excerpted imperial texts. These nine excerpted texts can be loosely grouped into three categories: women, trade and employment; women and the institutional Christian church; and women and heretics. We will briefly examine each in turn.

The first category, of women, trade and employment, contains only two excerpted constitutions. *Codex Theodosianus* 16.2.10 (probably promulgated in

⁴⁸ *CTh* 16.2: *de episcopis, ecclesiis, et clericis* (concerning bishops, churches and clerics) and *CTh* 16.3: *de monachis* (concerning monks).

⁴⁹ *CTh* 16.6: *ne sanctum baptismum iteretur* (holy baptism not to be repeated).

⁵⁰ For a careful and nuanced discussion of this complex imperial constitution see Neil McLynn, ‘Moments of Truth: Gregory of Nazianzus and Theodosius I’, in *From the Tetrarchs to the Theodosians. Later Roman History and Culture, 284-450 CE*, ed. Scott McGill, Cristiana Sogno and Edward Watts (Cambridge, 2010), 215-240 at 215-18.

320AD) exempts clerics who engage in trade from certain extraordinary tax payments and extends the indulgence ‘to their wives, children and slaves’ and ‘to males and females equally’. *Codex Theodosianus* 16.8.6 (issued in 339), on the other hand, refers to a specific situation where a group of Christian women had been dismissed from their jobs in an imperial weaving establishment because they had converted to Judaism. The text states that these women can be reemployed, but any Jew who leads a Christian woman astray will be subjected to capital punishment.

Our second group of constitutions from Book Sixteen is concerned with women in relation to ecclesiastics, ascetics and the institutional Church. *Codex Theodosianus* 16.2.20, which was addressed to Damasus, Bishop of Rome and read in Rome’s Churches on July 30 370CE, states that ecclesiastics, ex-ecclesiastics and ‘continents’ are not to frequent the houses of widows and female wards. Clerics can receive nothing whatsoever by gift or testament from these women, unless they are related to them. A law from two years later extended this prohibition to bishops and virgins and the principle was reaffirmed by a further constitution, promulgated fifty years later at Ravenna, which adds that it is not seemly for clerics to be tarnished by association with a so-called ‘sister’ (the broader context here is perhaps the phenomenon of ‘household churches’).⁵¹ *Codex Theodosianus* 16.2.27 (given at Milan on June 21 390CE) is the only constitution included in Book Sixteen which seems to refer to a female rank within the institutional church: ‘deaconess’. According to Mommsen’s critical edition, the text states that no woman younger than sixty years and without the requisite number of children at home can be joined to the association of deaconesses, ‘according to the precept of the Apostle’.⁵² The woman must first arrange for the guardianship of any minor children and entrust suitable persons with the management of her property (over which she maintains certain legal rights). After she has joined the association of deaconesses, a woman is not allowed to sell any of her jewels and ornaments for the benefit of religion, but must transfer all her property, in writing, to her children, next of kin or whomever she freely chooses; she is

⁵¹ *CTh* 16.2.22 (Given at Trier on December 1 372) and *CTh* 16.2.44 (Given at Ravenna on May 8, 420). For further discussion see the special issue of *JECS* ‘Holy Households: Space, Property and Power’, guest edited by Tina Sessa, *JECS* 15 (2007), and Kim Bowes, *Private Worship, Public Values, and Religious Change in Late Antiquity* (Cambridge, 2008).

⁵² Mommsen, *Codex Theodosianus* I.ii, 843: ‘Nulla nisi emensis sexaginta annis, 'cui votiva domi proles sit', secundum praeceptum apostoli ad diaconissarum consortium transferatur’.

forbidden, however, from designating any church, cleric or pauper as her heir(s).⁵³ The constitution ends by stating that women who shave their heads are to be kept away from the doors of churches and bishops are responsible for enforcing this.⁵⁴ Once again, two traditional Roman concerns emerge from our second group of constitutions: first, there is an attempt to prevent women from alienating family property by transferring it to extraneous persons or institutions (here, Christian clerics, churches and the poor). Second, we see a concern with maintaining social reputations: the legislators are concerned with promoting the image of male clerics as continent and chaste, in addition to reinforcing traditional Roman values concerning what counts as ‘seemly’ female behaviour.

Turning now to Book Sixteen, Title Five, *de haereticis*, the emphasis throughout is on excluding named heretical groups from specific legal rights which, the emperors insist, have been granted to Catholic Christians and the Catholic church alone. These include rights to assemble in public; various bundles of rights relating to ‘ecclesiastical’ property; the right to hold ecclesiastical offices and to teach the faith; and various kinds of exemptions from taxes and other compulsory burdens. The imperial legislators refer to named heresies as pestilences, poisons and contagions and to the ‘polluted minds’, ‘madness’ and ‘depraved desires’ of heretics in general.⁵⁵ The Manichaeans, in particular, are singled out for their ‘inveterate obstinacy’ and ‘pertinacious nature’.⁵⁶ Nonetheless, the vast bulk of imperial constitutions excerpted under Book Sixteen, Title Five, are pragmatic: they are concerned with cutting back the capacities of heretics as legal actors. For example, a constitution issued at Rome

⁵³ Ibid: ‘Nihil de monilibus et superlectili, nihil de auro argento ceterisque clarae domus insignibus sub religionis defensione consumat, sed universa integra in liberos proximosve vel in quoscumque alios arbitrii sui existimatione transcribat ac si quando diem obierit, nullam ecclesiam, nullum clericum, nullum pauperem scribat heredes.’

⁵⁴ *CTh* 16.2.27 was (partially?) repealed two months later by *CTh* 16.2.28, a result of lobbying at the Imperial Court.

⁵⁵ *CTh* 16.5.6, 1, given at Constantinople on January 10 381; 16.5.15, given at Stobi on 14 June 388; 16.5.20, given at Rome on 19 May 391; 16.5.40, 2, given at Rome on 22 February 407; 16.5.41 pr, given at Rome on 15 November 407; 16.5.44, given at Ravenna on 24 November 408; 16.5.52, 5, given at Ravenna on 30 January 412; 16.5.62 and 16.5.64, given at Aquileia (probably) on 6 August 425; and 16.5.65, pr, given at Constantinople on 30 May 428.

⁵⁶ *CTh* 16.5.7, 1 given at Constantinople May 8 381 and 16.5.35 given at Milan on May 17, 399. *CTh* 16.5.65 gives a list of twenty-three named heresies and refers to the Manichaeans as ‘those who have arrived at the lowest depth of wickedness’.

on February 22 407AD and addressed to the Prefect of the City confirms that Donatists and Manichaeans, Phrygians and Priscillianists are to have ‘no customs and no laws in common with the rest of mankind’; such heresy is to be considered a public crime, ‘since whatever is committed against divine religion redounds to the detriment of all’.⁵⁷ Section two of the text orders that ‘the aforesaid persons’ are to have their goods confiscated; their property cannot be transmitted to any of their kin if they are also heretics; they cannot take or receive gifts, buy or sell, make contracts, nor can they leave a valid will. These penalties were subsequently extended to all heretics, leading to a host of legal questions and complications: What was to happen if a child had been born into a heretical sect, but subsequently became a Christian? Who was legally responsible for an orthodox daughter’s dowry, if her paterfamilias was a heretic? Naturally, we also find those labelled as ‘heretics’ attempting to devise schemes to get around the imperial laws.⁵⁸

Book Sixteen, Title Five of the *Codex Theodosianus* contains sixty-six discrete excerpts from imperial constitutions, and the female gender is explicitly mentioned in only three of these. Two constitutions from the early fifth-century, both issued at Ravenna, deal with heretics who are accommodated in private urban houses or on rural estates: both male and female property owners are to be punished if the heretics have been protected with their knowledge and connivance.⁵⁹ The third instance where women are mentioned explicitly in Book Sixteen, Title Five, concerns the Manichaean heresy. *Codex Theodosianus* 16.5.7, given at Constantinople on May 8 381, explicitly states that no Manichaean man *or woman* can give or receive gifts, legacies or inheritances and that Manichaeans are deprived of all right to live under

⁵⁷ *CTh* 16.5.40, pr and 1 (Mommsen, *Codex Theodosianus* I.ii, 867): ‘Quid de Donatistis sentiremus, nuper ostendimus. Praecipue tamen Manichaeos vel Frygas sive Priscillianistas’ meritissima severitate persequimur. Huic itaque hominum generi nihil ex moribus, nihil ex legibus sit commune cum ceteris. Ac primum quidem volumus esse publicum crimen, quia quod in religionem divinam committitur, in omnium fertur iniuriam’, *The Theodosian Code and Novels and the Sirmondian Constitutions*, trans. Clyde Pharr et al (Princeton N.J., 1952), 457. As noted by an anonymous reviewer, the ‘Priscillianists’ referred to here are probably not the followers of the Spanish ascetic Priscillian but rather ‘Montanists’ or ‘Phrygians’ and followers of Priscilla: see Theodor Mommsen, Jean Rougé, Roland Delmaire and François Richard, *Les Lois religieuses des empereurs romains de Constantin à Théodose II (312—438), vol. 1: Code Théodosien XVI. (Sources chrétiennes, 497)* (Paris, 2005), 484.

⁵⁸ Caroline Humfress, ‘Citizens and Heretics. Late Roman Lawyers on Christian Heresy’, in Eduard Iricinschi and Holger Zellentin, eds, *Heresy and Identity in Late Antiquity* (Tübingen, 2008), 35–56.

⁵⁹ *CTh* 16.5.52 (given at Ravenna on 30 January 412) and 16.5.54 (given at Ravenna on 17 June 414).

Roman law; the final clause states that this law is valid not only for the future but also for the past. Taking these three constitutions together, we can see that women are only referred to explicitly in Book Sixteen, Title 5 of the *Codex Theodosianus* in connection with property rights and the diminution of legal capacity.

It is worth pausing here in order to stress what should, by now, have become obvious: heresy is not ‘gendered’ in the imperial legal rhetoric of the *Theodosian Code*. In accordance with what we have already seen, Curzon concludes: ‘The Laws of the Theodosian Code, like the heresiologies, use the rhetoric of madness, insanity and uncontrollability to describe and denounce the heretics.’⁶⁰ In direct contrast to fourth- and fifth-century heresiologies, however, there are no gendered references to heresy or heretics in the *Codex Theodosianus*. Heretics are demented, polluted and infected with pestilence, but they are not seductive temptresses, vulgar ‘women’, or weak-minded whores.⁶¹ This does not mean, however, that Late Roman gender norms were irrelevant to the prosecution of heresy as a crime or to the construction of ‘the heretic’ as a legal subject. According to the legal philosopher Leslie Green, gender is not relevant to analytic jurisprudence (the question of ‘what law is’), nor is gender necessarily relevant to specific problems within normative and special jurisprudence (the question of ‘what the law of x says’).⁶² Citing H. L. A. Hart, however, Green goes on to argue that ‘we cannot understand law “separately from everything else” in society ... to understand law we need to understand its relations to coercive power and to social morality.’⁶³ Hence in order to understand the relationship between gender, law and heresy we must go beyond imperial law and begin to explore its connections with other, Late Roman, coercive power regimes.

III. Late Antique Heresy Trials: Pope Leo and the Manichaeans of Rome (443/4 CE).

⁶⁰ Berzon, *Classifying Christians*, 92.

⁶¹ This point also stands for the anti-Manichaean rescript issued by the Emperor Diocletian to Julianus, proconsul of Africa, probably in 302CE; text in Salvatore Riccobono et al., ed, *Fontes iuris Romani anteiustiniani II* (Florence, 1968), 580-581.

⁶² Green, ‘Gender and the Analytical Jurisprudential mind’, 28: ‘Gender is relevant to several problems in normative jurisprudence, and to some problems in special jurisprudence. Gender is not relevant to general jurisprudence; and that is why it gets little mention there.’

⁶³ *Ibid*, 27-28.

In the Winter of 443 Leo, Bishop of Rome from 440 to 461, preached two sermons concerning denunciations and legal prosecutions against Manichaeans.⁶⁴ Both of these sermons have been preserved in a ninth-century manuscript, as part of a collection that was probably compiled by Leo himself between 440 and 445.⁶⁵ According to Leo's *Sermon* 16.5, the surrender of Carthage to the Vandals had led to an influx of refugees into the City of Rome; hiding amongst these refugees, according to Leo, came the Manichaeans.⁶⁶ Leo had already warned his audience against the heretic lurking within and exhorted them 'to make known to your priests the Manichaeans, wherever they are hiding.'⁶⁷ Leo explains that this act of 'supreme piety' will not only 'be to your advantage before the tribunal of the Lord', but would also 'be added to the sacrifice of your alms' in the here and now.⁶⁸

Two late fourth-century imperial constitutions, *Codex Theodosianus* 16.5.9 (given at Constantinople on June 20 382) and *Codex Theodosianus* 16.5.15 (given at Stobi on June 14 388), had ordered the Praetorian Prefects of the East, Florus and Trifolius, to appoint investigators and open the courts in order to receive formal denunciations of Manichaeans and other (associated?) groups, without the 'odium' usually attached to informants.⁶⁹ Leo, however, seems to have taken this obligation upon himself. In his *Sermon* 16, preached at Rome during December 443, Leo describes how he instigated a public investigation (*inquisitio*), together with other

⁶⁴ Leo, *Sermon* 9 (probably preached in 443, shortly before *Sermon* 16) and *Sermon* 16 (preached during the December Fast of 443). On Leo's other anti-Manichaean *Sermons* (24, 34, 42, and 76) and his *Letter* 7 (addressed to the bishops of Italy, and dated 30 January 444) see Maier, "'Manichee!': Leo the Great", and Hendrik Schipper and Johannes van Oort, eds, *Sermons and Letters Against the Manichaeans. Selected Fragments* (Corpus Fontium Manichaeorum Series Latina I; Turnhout, 2000), who also include Leo's *Letters* 8, 15, 15a and *Sermon* 72.

⁶⁵ For a detailed discussion of the complex manuscript transmission of Leo I's sermons see *Sancti Leonis Magni Romani Pontificis Tractatus Septem et Nonaginta*, ed. by Antoine Chavasse, CCSL 138 (Turnhout, 1973), L-CCI.

⁶⁶ For the broader history relating to Manichaeans at Rome see Samuel Lieu, *Manichaeism in the Later Roman Empire and Medieval China: A Historical Survey* (Manchester, 1985), 164-168.

⁶⁷ Leo, *Sermon* 9.4, Schipper and van Oort (eds), *Sermons and Letters*, 25.

⁶⁸ Ibid. See also Maier, "'Manichee!': Leo the Great", 450, who discusses the wider context of 'Leo's exhortations to the faithful of Rome and the bishops of Italy to enter into a campaign of denunciation and betrayal'.

⁶⁹ See also *CTh* 16.5.62, issued at Aquileia (probably) on 6 August 425 and addressed to the Prefect of the City of Rome, which orders that Manichaeans, heretics, schismatics, astrologers and every sect that is an enemy of the Catholics is to be banished from 'the very sight of the City of Rome, in order that it may not be contaminated by the contagious presence of the criminals' (trans. Pharr, *The Theodosian Code*, 462). The touchstone for orthodoxy adopted in this constitution is communion with Pope Celestine I.

bishops, presbyters and members of the Roman senate.⁷⁰ Manichaean leaders, both male and female (Leo specifies *electi* and *electae*) were summoned to this tribunal for questioning and ‘when they had disclosed many details about the perversion of their teaching, and the customs of their festivals, they made known that crime also, of which it is shameful to speak.’⁷¹ The only concrete information that Leo includes about this crime is that it concerned a girl ‘of at most ten years’, who confessed to an ‘unspeakable act’ committed against her by an adolescent boy. We are told that corroborating confessions were secured from the two women who, according to Leo, had raised the girl expressly for this purpose; from the accused youth who had committed the act; and from the Manichaean bishop who was accused of presiding over the ‘foul crime’. For the lurid details, Leo refers his audience to the *acta* of the trial itself:

But lest we offend chaste ears by speaking of this too openly, let the records [*acta*] of the trial suffice, from which we learn most fully that in that sect no modesty, no decency, and no moral purity at all can be found. In this sect lying is the law, the devil is their religion, and dishonour their sacrifice.⁷²

I am interested in two specific aspects of Leo’s account. First, the *dramatis personae*:. The accused are a girl aged ten years at most, together with the two women who raised her, an adolescent boy, and a male member of the Manichaean Church hierarchy. The gender cues here are, of course, crucial. The girl is specifically said to be ‘at most 10 years’ because anything less than 11 or 12 years, the legal age at which girls could marry, would have scandalized a Roman audience. The two women are deliberately presented as perverting the archetypal female role of motherhood: they

⁷⁰ Leo, *Sermon 16.4* (Schipper and van Oort, eds, *Sermons and Letters*, 26). Bronwen Neil, translator of *Leo the Great* (Abingdon, 2009), 32 notes that Leo’s tribunal ‘was made up of both secular and ecclesiastical judges, and presided over by the bishop himself.’ Susan Wessel, *Leo the Great and the Spiritual Rebuilding of a Universal Rome* (Leiden, 2008), , 121-126, stresses Leo’s ability to exploit connections with Rome’s senatorial aristocracy.

⁷¹ Ibid: ‘Qui [sc. the Manichaean Elect] cum de perversitate dogmatis sui et de festivitatum suarum consuetudine multa reserassent, illud quoque scelus, quod eloqui verecundum est, prodiderunt’: *Leo the Great*, trans. Bronwen Neil (Abingdon, 2009), 77.

⁷² Ibid: ‘De quo ne apertius loquentes castos offendamus auditus, gestorum documenta sufficient, quibus plenissime docetur nullam in hac sectam pudicitiam, nullam honestatem, nullam reperiri penitus castitatem, in qua lex est mendacium, diabolus religio, sacrificium turpitude’: *Leo the Great*, trans. Neil, 77.

raised the girl, Leo tells us, for the sole purpose of prostituting her for the sake of religion. The Manichaean bishop, on the other hand, perverted his (male) episcopal duty of care by presiding over the ‘foul crime’. Second, Leo is deliberately playing here with what can be spoken and what cannot: the girl was interrogated, she spoke in reply and her answers were recorded in the trial *acta*. Leo tells his congregation, however, that they must go and read the acts of the proceedings themselves if they wish to learn the details. The girl ‘speaks’ in Leo’s account and yet she is silent; the crime itself, however, is literally unspeakable.

The only direct reports of late antique anti-heresy trials that I am aware of, beyond those included in the *acta* of church councils or regional synods, involve sexual crimes being committed against underage girls. In Chapter 46 of his heresiological manual, *De haeresibus*, Augustine of Hippo refers to having read the *acta* of a trial held before an imperial tribune at Carthage in the 420s.⁷³ The accused include a girl named Margarite, ‘not yet twelve years old’ and a Manichaean ‘nun’ named Eusebia. Both Margarite and Eusebia claimed to have been forced to have sexual intercourse with wheat scattered beneath them, so that the ejaculated semen could be caught and baked into bread that was then to be eaten as if it was the eucharist.⁷⁴ Why this stress on ‘sexual offences and the sexed body’ (to borrow Nicola Lacey’s phrase) in the context of early fifth-century anti-Manichaean trials, when there are no traces of sexual crimes as a marker of heretical behaviour in Book Sixteen Title 5 of the *Theodosian Code*?

The answer is probably obvious. Fourth- and early fifth-century legislation against heretics was primarily concerned with regulating legal rights and property ownership, rather than corporeal bodies. Leo I, however, took on the task of discovering Manichaeans in the flesh. At *Sermon* 16.5, Leo singles out the women in his audience:

you women especially must withdraw from their acquaintance and fellowship lest you fall into the devil’s snares while lending a careless ear to the delight of fabulous stories. The devil knows that man was first seduced by the mouth

⁷³ Augustine, *De haeresibus* 46. 9-10, ed. Roel Vander Plaetse and Clemens Beukers CCSL XLVI (Turnhout, 1969), 283-345 at 314-315.

⁷⁴ *Ibid.* (Augustine includes the pun: *hoc non sacramentum, sed exsecramentum*), which Leo I may have borrowed (see Schipper and van Oort, eds, *Sermons and Letters*, 26 at n.6 and 27 at n.7).

of a woman, and that he threw everyone out of the happiness of paradise through female gullibility; now he lies in wait for your sex with more certain cunning, so that he may strip of their faith and their honour those whom he can lure to himself through the servants of his deception.⁷⁵

The aim of exhorting women, in particular, was to encourage their denunciation of the Manichaeans in their midst:

I offer this advice to you too, dearly beloved, begging you that if any of you know where they live, where they teach, the places where they gather, and in whose company they find protection, make it known out of faithfulness to our concern ... Let those who think such people are not to be brought forward be found guilty of silence in the judgement of Christ, even if they are not stained by assent.⁷⁶

There is a certain symmetry to Leo's argument here: As the devil seduced the first man via the mouth of a woman, so must women's mouths now denounce Manichaeans, so that women in turn are not 'found guilty of silence in the judgement of Christ.' Leo's exhortation to the women of Rome was part of a much broader ecclesial power-regime: 'expressing the watchfulness of the redeemed, Leo's hearers transform themselves into subjects of the church'.⁷⁷ Leo's account of the 443 anti-Manichaean hearings at Rome was carefully crafted so that women of true Christian

⁷⁵ Leo, *Sermon 16.5* (Schipper and van Oort, eds, *Sermons and Letters*, 26): 'ab amicitia vestra penitus abdicare, vosque praecipue, mulieres, a talium notitia et conloquiis abstinete, ne dum fabulosis narrationibus incautus delectatur auditus, in diaboli laqueos incidatis. Qui *sciens* quod primum virum mulieris ore seduxerit, perque femineam credulitatem omnes homines a paradisi felicitate deiecerit, vestro nunc quoque sexui securiore insidiatur astutia, ut eas quas sibi potuerit per ministros suae falsitatis illicere, et fide spoliet et pudore': *Leo the Great*, trans. Neil, 77-78.

⁷⁶ Leo, *Sermon 16.5* (Schipper and van Oort, eds, *Sermons and Letters*, 28): 'Illud quoque vos, dilectissimi, obsecrans moneo, ut si cui vestrum innotuerit ubi habitent, ubi doceant, quos frequentent, et in quorum societate requiescant, nostrae sollicitudini fideliter indicetis ... et qui tales non prodendos putant, in iudicio Christi inveniantur rei de silentio, etiam non contaminantur assensu': *Leo the Great*, trans. Neil, 78.

⁷⁷ Maier, "'Manichee!': Leo the Great", 459. On Leo's specific 'ecclesial power regime' see also Michele Renee Salzman, 'Leo's Liturgical Topography: Contestations for Space in Fifth-Century Rome', *JRS* 103 (2013), 208-232.

faith would turn themselves into, what Maier terms, ‘willing objects of ecclesial constraint’.⁷⁸

In the *Codex Theodosianus* there is no trace of the highly ‘gendered’ anti-heresy polemic that we otherwise find in contemporary Christian writings, including those of Pope Leo I. Nonetheless, to cite Leslie Green one more time: ‘to understand law we need to understand its relations to coercive power and to social morality.’⁷⁹ Leo’s 433-4 anti-Manichaean hearings certainly showcase his connections with Rome’s senatorial aristocracy, but they are far from being a straightforward example of procedural overlap between the ecclesiastical and the secular legal spheres. Instead, the case of Leo I and the Manichaeans of Rome draws attention to the complex relations between imperial law and the distinctive ecclesial power-regime developed by Leo himself. Leo I did not seek to apply Roman law in his 443/4 anti-Manichaean campaign; rather, he sought to influence it.

The preamble to *Novel* 18 of the Emperor Valentinian III, given at Rome on 19 June 445 and addressed to the Praetorian Prefect Albinus, explains:

For what things are obscene to tell and to hear have been revealed by their very manifest confession in the court of the most blessed Pope Leo, in the presence of the most August Senate! Thus even the man also who was said to be their bishop both betrayed with his own voice and wrote out all the secrets of their crimes.⁸⁰

Prompted by the revelations uncovered before Leo’s papal tribunal, Valentinian’s *Novel* 18 goes on to confirm existing imperial legislation against the Manichaeans,

⁷⁸ Maier, “‘Manichee!’: Leo the Great”, 454. According to Leo’s *Letter* 7 (444 CE, addressed to the Bishops of Italy) and his *Letter* 16 (447, addressed to Turibius, Bishop of Astorga in Spain) the hearings continued into 444, until the City of Rome had been cleansed of all Manichaeans. Leo’s *Letter* 7 states that those Manichaeans who refused to convert were ‘made subject to the laws of the Christian Princes’ and ‘punished with a perpetual exile by the civil judges (*per publicos iudices*),’ Schipper and van Oort, eds, *Sermons and Letters*, 47.

⁷⁹ Green, ‘Gender and the Analytical Jurisprudential mind’, 28.

⁸⁰ Val III. *Nov.* 18pr (Mommson, *Codex Theodosianus* II: 104, lines 5-8): ‘Quae enim et quam dictu audituque obscena in iudicio beatissimi papae Leonis coram senatu amplissimo manifestissima ipsorum confessione patefacta sunt? adeo ut eorum quoque qui diceretur episcopus et voce propria proderet et omnia scelerum suorum secreta perscriberet’ (*The Theodosian Code*, trans. Pharr, 531). This *Novel* is transmitted as ‘Letter 8’ within Leo’s corpus: see Schipper and van Oort, eds, *Sermons and Letters*, 48-50.

but also adds an explanatory sentence to its final enactment clause: imperial bureaucrats are to apply the full force of the law, ‘for it does not appear that anything too severe can be decreed against those persons whose unchaste perversity, in the name of religion, commits crimes that are unknown and shameful even to brothels’.⁸¹ A papal ecclesiastical judgment was thus ‘lent the force of an imperial law’, but the impact of Leo’s anti-Manichaean tribunal went beyond the enforcement of its sentence.⁸² In Valentinian III’s *Novel* 18 Roman imperial legislation equated heretics with sexed bodies and sexual deviancy, for the first time in (extant) Imperial legislative rhetoric.

The fact that reports, both written and oral,⁸³ of Pope Leo I’s anti-Manichaean trials can be shown to have directly influenced Roman legislative rhetoric is important. But there is a broader point to be stressed here. If we want to understand the broader relationship between heresy and law in the late and post-Roman West we need to focus on concrete individuals (such as Leo I) and the specific kinds of ecclesial power-regimes and socio-cultural attitudes that they operated within and upon, rather than relying on a grand narrative of ‘the Christianization of Roman law’. As Nicola Lacey concludes with reference to modern criminal law: ‘Though lawyers are inclined to lose sight of this obvious fact, the most important conditions for sexual equality and integrity lie in cultural attitudes rather than coercive legal rules.’⁸⁴

⁸¹ Val III. *Nov.* 18.4 (Mommsen, *Codex Theodosianus* II: 105, lines 25-26): ‘Neque enim aliquid nimium in eos videtur posse decerni, quorum incesta perversitas religionis nomine lupanaribus quoque ignota vel pudenda committit’ (*The Theodosian Code*, trans. Pharr, 531).

⁸² Quotation from Wessel, *Leo the Great*, 3, and see also 121-126.

⁸³ The Imperial household may have resided in Rome from late 439/40 onwards, having relocated from Ravenna (Wessel, *Leo the Great*, 16). Oral reports of Leo’s hearings against the Manichaeans probably reached imperial ears, in addition to written *acta* of the proceedings. We also know that the *acta* were quickly circulated beyond Italy: In 445 Leo sent *Acts on the Manichaeans*, ‘which apparently meant the account of the Roman process’, to Turibius of Astorga (Schipper and van Oort (eds), *Sermons and Letters*, 19).

⁸⁴ Lacey, ‘Unspeakable Subjects,’ 66.