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Soazick Kerneis, ed. *Une histoire juridique de l'Occident (IIIe-IXe siècle). Le droit et la coutume*. Paris: Presses universitaires de France, 2018. xi + 478 pp. €33.00 (pb). ISBN 978-2-13-058782-8.

Review by Gregory I. Halfond, Framingham State University.

With the fiftieth anniversary of the publication of Peter Brown's seminal *The World of Late Antiquity* now only a few years away, it is only appropriate that the historical field that Brown and others helped to define and popularize begin to take stock of its contributions, conclusions, and even its limits as a conceptual model.[1] This past year saw the completion of the long-awaited *Oxford Dictionary of Late Antiquity*, and other bulky tomes surveying the social, political, and religious history of the period likewise have claimed substantial library shelf-space over the past decade.[2] The publication of a lengthy Nouvelle Clio volume devoted to the legal history of Western Europe between the third and ninth centuries offers an excellent opportunity to survey the fruits of a veritable scholarly renaissance in the study of late antique legal sources, institutions, and practices.

However, this particular subfield does not lend itself easily to synopsis or to efforts to define a scholarly *status quaestionis*. In the introduction to a recent issue of the journal *Early Medieval Europe* devoted to the common theme "The Transformation of Law in the Late and Post-Roman World," Conrad Leyser astutely observed, "The history of law in late Antiquity and the early Middle Ages used to offer a repository of certainty. It is now a field in productive turmoil." [3] Kerneis' volume cannot help but reflect this uncertainty, while still striving to offer a coherent introduction grounded in a common legal-anthropological approach. Additionally, while the contributors consciously work within the framework of Brown's "Long Late Antiquity," the assumptions of historical continuity that traditionally have underpinned this paradigm are frequently and rigorously challenged. On the central question of the barbarian impact on the Western Empire, for instance, Kerneis advocates in the place of traditional "Romanist" or "Germanist" positions a model of "reciprocal acculturation" (p. 436).

While a multi-authored work, Kerneis supplies not only the book's introduction and conclusion, but also is the author or co-author of three out of eight chapters. So, although individual chapters naturally reflect the views and style of the individual contributors, internal consistency is a virtue of the volume, with the contributors sharing a common recognition that diversity and pragmatism necessarily complicate any consideration of the Roman normative legal legacy. As Alexandre Jeannin observes in chapter five, echoing the conclusions of other contributors, this legacy ought not to be assessed simply in terms of the continuity (or lack thereof) of a classical model over many centuries, a model which to a certain extent presupposes progressive decadence;

rather, it is equally instructive to survey the pragmatic claims to *romanitas* by post-imperial legal practitioners seeking to assert their own authority and legitimacy (pp. 275-6).

Also commendable is the contributors' acknowledgement of, and engagement in, the ongoing debates that confound efforts to offer any sort of definitive survey. Jean-Pierre Poly, for example, in his chapter on the *Leges barbarorum* (chapter four), reasserts his long-held contention that the origins of the Frankish *Pactus legis Salicae* lie in the fourth century, while conceding that this is far from a universal consensus (pp. 220-1).<sup>[4]</sup> Similarly, Christophe Archan in chapter six reviews at length Patrick Wormald's much-debated assertion that early medieval law codes were more expressions of authority than practical, enforced legal instruments, surveying more recent studies that challenge or complicate Wormald's thesis (pp. 335-7).<sup>[5]</sup>

A first chapter by Aude Laquerrière-Lacroix sets out clearly the volume's shared conception of late imperial law as a "Droit vivant, pragmatique et concret, caractérisé par des continuités, des adaptations mais aussi des ruptures substantielles et terminologiques" (p. 15). Kerneis, in chapter three, nevertheless cautions against viewing Roman law through the rubric of a pure legal pluralism, in which distinct legal systems coexisted within the same political/physical space: "...ce que l'Empire romain montre à voir, c'est l'influence d'une domination qui tente d'accommoder des formes normatives coutumières, d'abord de façon prudente puis, plus nettement, par un ordonnancement construit autour d'une hiérarchie des valeurs où le *ius* avait valeur de norme supérieure" (p. 185).

In the post-Roman West, the contributors maintain that a "legal consciousness" persisted despite the collapse of the imperial regime. In regards to legal practice, Poly argues in chapter four that a Roman/barbarian binary is too simplistic: "Le rapport des droits dans chaque royaume n'était pas binaire...mais ternaire: d'un côté la loi romaine sous ses deux espèces, dans le code et dans la pratique populaire, de l'autre les normes coutumières orales des groupes gentiles; entre les deux les édits royaux qui s'efforçaient à la conciliation" (p. 247). Regarding the so-called barbarian codes, Poly and Kerneis argue in their discussion of custom (chapter seven) that the codes ought not be seen either as unadulterated written repositories of tribal custom, or, conversely, as "avatars vernaculaires du droit romain" (p. 362). Rather, they were "textes pratiques," which sought to reconcile contemporary conditions and practices, and whose earliest examples reflect the military context in which they were composed. Aram Mardirossian, in his discussion of ecclesiastical law in chapter three, similarly is cautious about assuming simplistic distinctions between legal traditions, rightly noting the overlap between secular and religious legislating in the barbarian kingdoms. While the precise relationships between specific regional churches and associated royal regimes remains very much a matter of specialist debate, Mardirossian's assertion that in the *regnum Francorum* royal and ecclesiastical institutions existed in a state of mutual dependence is surely correct (p. 111). One can see a clear reflection of this codependency in a legal context in the frequent repetition of the formula *canones et leges* in Merovingian-era sources.

While a book of limited accessibility to a non-specialist readership—lengthy technical and etymological discussions of vocabulary (e.g. pp. 366-71) are particularly daunting—its willingness to challenge popular views and paradigms is both notable and stimulating, particularly within the context of a summary work. While not all readers necessarily will be persuaded by all of the contributors' arguments, their discussions offer a compelling case against a straightforward continuity in legal thought and practice over the course of a "Long Late Antiquity."

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## NOTES

[1] Peter Brown, *The World of Late Antiquity. AD 150-750* (London: Thames and Hudson, 1971). It is notable that several contributors to the inaugural issue of the *Journal of Late Antiquity* (2008) question some of the central assumptions and “orthodoxies” associated with the model.

[2] Oliver Nicholson, ed., *The Oxford History of Late Antiquity* (Oxford: Oxford University Press, 2018). In English alone, summary and reference tomes published within the last decade include Philip Rousseau, ed., *A Companion to Late Antiquity* (Chichester: Wiley-Blackwell, 2009); Susan Ashbrook Harvey and David G. Hunter, eds., *The Oxford Handbook of Early Christian Studies* (Oxford: Oxford University Press, 2008); Scott F. Johnson, ed., *The Oxford Handbook of Late Antiquity* (Oxford: Oxford University Press, 2012); Douglas Boin, *A Social and Cultural History of Late Antiquity* (Chichester: Wiley Blackwell, 2018); Josef Lössl and Nicholas J. Baker-Brian, *A Companion to Religion in Late Antiquity* (Chichester: Wiley Blackwell, 2018). During this same decade Peter Brown himself published a tenth-anniversary edition of his own summary effort, *The Rise of Western Christendom. Triumph and Diversity, A.D. 200-1000* (Chichester: Wiley-Blackwell, 2013).

[3] Conrad Leyser, “Introduction: The Transformation of Law in the Late and Post-Roman Worlds,” *Early Medieval Europe* 27, no. 1 (2019): 5-11, at 5. Such productivity is reflected in *Une histoire juridique’s* bibliography of secondary literature, which runs to no fewer than fifty-two

pages, but which unfortunately is available only online: <https://www.puf.com/sites/default/files/UnehistoirejuridiqueOccidentBiblioligne.pdf>.

[4] Jean-Pierre Poly, “*La corde au cou: les Franks, la France, et la Loi Salique*,” in *Genèse de l’État moderne en Méditerranée. Approches historique et anthropologique des pratiques et des représentations. Actes des tables rondes internationales tenues à Paris (24–26 septembre 1987 et 18–19 mars 1988)* (Rome: École française de Rome, 1993), pp. 287–320; Idem, “Le premier roi des Francs. La loi salique et le pouvoir royal à la fin de l’Empire”, in *Auctoritas, Mélanges offerts à Olivier Guillot*, eds. Giles Constable and Michel Rouche (Paris: Presses de l’Université Paris-Sorbonne, 2006), pp. 97–128; Idem, “Warriors’ Bond and Legal Books. The Lex Salica between Barbarian Custom and Roman Law,” *Clio et Thémis* (2016), <http://www.cliothemis.com/Freedom-warriors-bond-legal-book>. Published too late to be cited by Poly here, but offering an alternate perspective on the code’s origins, is Karl Ubl, *Sinnstiftungen eines Rechtsbuchs: Die Lex Salica im Frankenreich* (Ostfildern, Germany: Thornbecke, 2017).

[5] Patrick Wormald, “*Lex Scripta and Verbum Regis: Legislation and Germanic Kingship from Euric to Cnut*,” in *Early Medieval Kingship*, ed. Peter Sawyer and Ian Wood (Leeds: University of Leeds, 1977), pp. 105–38.

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