

Maria Nowak: *Bastards in Egypt. Social and Legal Illegitimacy in the Roman Era*. Leuven: Peeters 2020 (*The Journal of Juristic Papyrology Supplements* 37). X, 353 p., 4 ill., 1 table. € 78.00. ISBN 978-90-429-4268-4.

“*Bastards in Egypt*”, published in Leuven in 2020 by Peeters Publishers supported by the National Science centre grant no. 2015/17/D/HS3/00376, is the result of an in-depth study conducted by Maria Nowak. It presents some outcomes of a larger project, which also includes the ‘Roman Bastards Database’ (www.romanbastards.wpia.uw.edu.pl), an online reference containing over 1800 individuals described with terms and other markers indicating that they were born out of wedlock. Part of this research was carried out in Heidelberg thanks to an Alexander von Humboldt-Stiftung scholarship, as the author points out in the opening acknowledgments.

As stated in the subtitle, the book addresses the issue of the social and legal illegitimacy of children in Roman Egypt by reconstructing the Roman notion of bastardy and how it evolved between the imperial and late Roman periods in Roman Egypt up to Constantine the Great. Nowak’s research focuses on the question whether ‘illegitimate’ or ‘extramarital’ children in the Roman era formed a homogenous group, or whether they were subdivided into classes of individuals born of various situations, which then resulted in different legal standings.

The ‘Roman era’ which forms the chronological framework of the research begins with the Roman conquest of Egypt and extends to the end of Constantine’s reign. Although from a formal point of view the discussion begins in 30 BC, documents are scarce for the first hundred years of Roman rule in Egypt. Taking this into account, the sources from the Ptolemaic period are discussed repeatedly to provide a better understanding of the phenomena in the Roman period. The main sources on which the entire research is conducted are papyri; additional informations can be drawn from the corpus of Roman legal texts, in Greek and Roman literature and from inscriptions.

After an Introduction (pp. 3–17), the book is divided into five chapters.

The primary question addressed in the first chapter (“Terminology”, pp. 19–102) is whether the terms recognised in the literature as referring to

illegitimacy were indeed used to mean ‘born out of wedlock’ in the sources pre-dating the early fourth century CE. The subchapters discuss the Latin and Greek terms applied to children born out of wedlock and attested in the papyri, in order to prove that none of them could be identified as a direct reference to such children. An analysis of jurisprudential sources, papyri, and inscriptions proves that a semantic difference undoubtedly existed between the terms *naturales* and *spurii filii*. However, the *status libertatis* of the children or their mothers seems to depend on the kinship relationship, or lack thereof, rather than being a reason for this terminological differentiation. The term *naturalis* indicates a blood relationship with another family member (not necessarily the father), which determined rights or obligations. The term *spurius*, in turn, refers only to the rights, legal standing, and obligations of the child itself. It is too narrow to merely denote a ‘child of an unknown father’. It was, however, applied only in the situations where there was a need to stress the lack of an agnatic kinship.

In the papyri the term ἀπάτωρ was used to describe a person who was practically – not only legally – fatherless, thus with a narrower meaning than *spurius*. This can be argued by comparing them to descriptions of persons whose fathers were not legally recognised, such as slaves, but nonetheless were supplied patronyms for naming purposes. The term ἀπάτωρ became widespread in Egypt as a substitute for filiation only a century after the beginning of the Roman rule and was employed to refer to people with no patronym in all second-century archives, which size provides us with a sufficiently extensive sample. The term seems to have been originated in the administrative milieu, but was quickly adopted for private use.

In the second chapter (“Fatherless children who had fathers”, pp. 103–134) the author examines a group of people existing within the social landscape of Roman Egypt (and the Roman Empire in general), whose name included the patronym, but who did not legally have fathers, and were thus recognised as *sine patre* under the law.

The first subchapter (pp. 103–120) discusses after a short introduction the *status libertatis* of the children born to a free mother and an enslaved father under Roman law with special focus on the *lex* mentioned in Gaius inst. 1.86 (the *senatus consultum Claudianum* is discussed in the first chapter). After an analysis of the texts that prove the application of the rule of maternal status acquisition in the province of Egypt to children born to peregrine women, the question about the introduction of this rule in Egypt only by

Romans is addressed. Nowak concludes that the sources from Ptolemaic Egypt and the comparative material are insufficient to reconstruct a pattern for the acquisition of *status libertatis* by free-unfree unions before the Roman era. It is not possible to exclude that the problem of status would have been regulated differently depending on place and time, or even that it would have been left to the discretion of the parties involved. Since that status acquisition was not coherent, the Romans had a good reason to introduce a uniform rule of *ius gentium*. The analysed material allows the author to conclude that children born to free peregrine mothers and an enslaved father belonging either to a Roman or peregrine owner would have been treated as fatherless, exactly as they were under Roman law.

The second subchapter (pp. 120–133) is devoted to other ‘extramarital’ children, and in particular to the children of soldiers (who could not marry during their time of service in order to ensure the *disciplina militaris*) or of incestuous couples. Nowak rightly points out that while incest among Romans was forbidden and resulted in the illegitimacy of the union and its offspring, among non-Romans it was tolerated as a sexual practice and did not result in the illegitimacy of the offspring. This situation appears to be attested even after the so-called Edict of Caracalla (or *constitutio Antoniniana*), which in AD 212 granted full Roman citizenship to all free inhabitants of the empire.

In the third chapter (“The fatherless and their status”, pp. 135–180), the author examines the acquisition of a status by the fatherless. In this case, the term refers both to those who were fatherless in the legal and social sense, as well as those individuals discussed in the second chapter who were fatherless in the legal sense despite having fathers who were acknowledged at the social level. Before the enactment of the Edict of Caracalla, the inhabitants of the Roman Empire were not a homogenous group governed by a single set of laws, but were divided into Romans and peregrines. In Roman Egypt, the latter group was further divided into ἀστοί and Αἰγύπτιοι. Such a division was not exclusive to Egypt, since local citizenship was recognised by Romans throughout the Roman world. Each group was to follow different sets of rules in matters concerning family, personal status or succession, but even within those groups certain issues (e.g. marriage) could be handled in various ways. Rules were often based on past traditions and applied on a case-by-case basis. ‘Peregrine’ rules were applied by Roman officials in Egypt, even if they opposed the basic principles of Ro-

man law (as in the case of the incest ban), yet they were not equally applied in every case. Nowak thinks that in order to establish the rules applying to status acquisition, it is necessary to examine separately each group of fatherless individuals. This procedure allows to determine whether there were separate sets of rules governing *status civitatis*, or whether there existed a uniform pattern.

After referring the rules governing the status acquisition of the fatherless children born to Roman mothers (with a section on the Latin onomastics of such individuals), Nowak examines the same problem within non-Roman population for all groups of peregrines in Egypt. An analysis of the *Papyrus Cattaoui*, dossier of Marcus Valerius Turbo, leads the author to the conclusion that the rules were based on (or similar to) the Roman *ius gentium*. The reconstruction is supported by principles governing the local citizenship acquisition by other groups of persons.

Status acquisition may have been one of the legal points which the Romans wished to make uniform under *iuris gentium regula*. Nowak finds a handful of arguments in favour of this interpretation. In regard to ἀστοί (and Alexandrians), the rule of status acquisition from the lesser parent certainly applied to the unions of a Roman and an ἀστός or ἀστή: their children became *peregrini cives*, not *peregrini Aegyptii*. Similar conclusions could be reached in regard to freedmen of ἀστοί. An analysis of the *Gnomon of idios logos* allows to argue that standing of both citizens and freedmen of ἀστοί in private law was similar or even the same in regard to marriages and wills, as confirmed by some sources from outside of the *Gnomon*.

A separate section (pp. 162–165) is devoted to the status of fatherless in Antinoopolis, which had a special place among the Egyptian πόλεις. While Antinoopolis was organised like the other πόλεις, it also enjoyed certain privileges (it had, for instance, a βουλή); its citizens enjoyed not only the usual privileges of ἀστοί, such as exemption from λαογραφία, but also some additional benefits, such as a special alimentation fund granted by Hadrian. According to Nowak, this special status of the city suggests that rules of the admission to its citizenship were not that restrictive, and allow for admission of fatherless children of female citizens. A handful of sources discussed in this section confirm this reasoning.

The following subchapter is devoted to the presence of the fatherless in the metropolite, χάρτοιχοι, and gymnasial orders (pp. 165–179). The analysis

of sources provided there confirms the admission of the fatherless to the metropolitan group, speaks against their presence in the gymnasial group, while the case of the *κἀτοιχοι* remains uncertain.

Also there Nowak concludes that the membership in the group was based on the Roman rules of status acquisition. Yet, these rules did not imitate *ius civile*, the law applied to Romans themselves, but were rooted in *ius gentium*. Based on other evidence and indirect arguments, one may assume the same for *κἀτοιχοι*. The Antinoopolitans instead constituted a special group governed by particular rules: the admission to local citizenship mirrored rules of Roman citizenship. The rules governing οἱ ἀπὸ τοῦ γυμνασίου remain puzzling, as it is difficult to ascertain the goal of the classification as such. Its function may not be simply fiscal, yet it cannot have been a *status civitatis*. For this group both the admission of fatherless individuals and the application of Roman rules are doubtful.

The fourth chapter (“Mixed unions”, pp. 181–245) deals with the social and legal standing of children resulting from ‘mixed unions’. First of all, Nowak collects the case studies for inter-marriages and their children in Ptolemaic Egypt, illustrating that no firm assumption could be made for intermarriages between the Hellenes and Egyptians (pp. 181–186). After that, after scrutinising the meaning of ‘mixed union’ in Roman legal sources and in the papyri (in part the *Gnomon of idios logos*), she puts forward that, while incestuous unions were both forbidden and punished by law, the only legal consequence of mixed marriages was reflected in the acquisition of *status civitatis* by the children. Then, the author examines a handful of papyri illustrating how Roman law rules on the status acquisition by children of mixed unions between Romans and non-Romans operated in regard to the *connubium*. In the section about ἀστοί Nowak exposes how the principle of following the status of the lesser parent was also applied to the children of ἀστοί. There was, however, a notable exception for the citizens of Antinoopolis, who enjoyed the privilege of ἐπιγαμία with anyone. The general rule, however, worked in both directions: offspring of ἀστοί and Romans became ἀστοί, while those born to couples consisting of a local citizen and an Egyptian followed the status of the latter. In the case of children born to ἀστοί and Romans, the acquisition of status by the offspring of mixed unions in the πόλεις was regulated according to the Roman model. The children simply became ἀστοί. In the rest of the chapter the author deals with the children born to *peregrini cives* from Egypt and other

provinces. She discusses the special case of the freedmen of Alexandrians, who may be not allowed to marry female Egyptians. Then she turns to the citizens of Antinoopolis, who could not only legally marry Egyptians, but also transfer their status to children born in such unions. Finally, the issue of the offspring of the Antinoite mothers and their non-citizen male partners and the status of children born of Egyptians of privileged fiscal statuses are presented. Their status acquisition was governed by the very same *deterioris parentis* rule. A useful table illustrates the status acquisition of the children of mixed unions in all the discussed groups.

After discussing the practical problems which can arise mostly in the inheritance law that could affect children born of mixed unions, Nowak concludes that it is highly likely that ‘mixed unions’ were neither discouraged nor penalised in Egypt. As far as Roman authorities were concerned, such unions were considered marriages. She also concludes that the offspring of such unions were neither described nor recognised as ἀπάτορες or *spurii*. These conclusions offer further evidence that the Romans did indeed impose their own rules and standards of status acquisition onto the various groups in Egypt.

In the fifth and final chapter (“Constantine’s laws on *naturales*”, pp. 247–308), the author examines some constitutions issued by Constantine the Great which, among others, seriously restricted rights of children born of non-marital unions. These laws were transmitted to us as fragments in the *Theodosian Code* and as references in constitutions issued by other emperors.

Laws issued by further emperors help to reconstruct better the contents of Constantine’s legislation on *naturales*. A constitution by Valentinian I of AD 371, which survived as the fourth text under the same title of the *Codex Theodosianus*, regulated testamentary succession of *naturales* too. The emperor granted to *filiii naturales* the right to acquire one twelfth of paternal estate in testamentary succession or *inter vivos*, if there were legitimate children or grandchildren or parents, and one quarter, in the absence thereof. Introducing this rule, Valentinian explained that the laws of Constantine pertaining to *naturales* should be kept in force, but those concerning testamentary succession needed to be tempered. This means that both of the first two constitutions in this title excluded paternal testamentary succession of all bastards, if there were legitimate children. Very likely, it also limited shares which such offspring could obtain from their fathers, if *legitimi* did not exist.

A text ascribed to the emperor Zeno refers to Constantine too. Zeno suggested that Constantine might have allowed men to make their extramarital sons legitimate by marrying their mothers (Cod. Iust. 5.27.5). It seems justified to assume that such law might have been issued together with the prohibitions of making *naturales legitimi* by their high-ranked fathers. It would be a *lex specialis* to the *legitimatio per subsequens matrimonium*.

Finally, one more constitution deals directly with children born out of wedlock. In his *edictum* addressed *ad populum* Constantine prohibited free women to have intercourses with their own slaves (Cod. Theod. 9.9.1 = Cod. Iust. 9.11.1). The children born of such unions, too, faced severe consequences for their parents' infractions. Although Constantine maintained the rule that children of free women and their slave partners followed the *status libertatis* of their mothers, they were not allowed to acquire anything of their mothers' property. This is similar to the rulings preserved in the laws under title 4.

In other words, Constantine allowed *legitimatio* by marriage, yet excluded some couples, or rather certain fathers, from this privilege. He further generally limited the capacity of children born out of wedlock to profit from testamentary succession, and in certain situations ruled it out completely. The emperor also prohibited children fathered by their mother's slaves to acquire anything of their mothers' estates. As the result, testamentary freedom which was otherwise an important principle of the Roman law of succession, was seriously limited. The laws seem surprising for one more reason. An extramarital child never carried a stigma of bastardy under the Principate.

Earlier, between the second and the third century a series of ameliorations had been introduced in the standing of bastards. Hadrian may have introduced some changes in AD 119 (BGU V 1210, ll. 99–100, BGU I 140 = M. Chr. 373 = Sel. Pap. II 213) and by the *senatus consultum Tertullianum* of the same year. There followed an improvement of bastards' standing due to the *senatus consultum Orfitianum* in AD 178. All these were of general character and probably mark a wider trend of generic recognition of blood kinship (just as in the case of emancipated sons).

The papyri do not only attest the application of the changes previously mentioned in the legal practice of Roman Egypt, but also provide new data. In documents dated to the second century and first half of the third

one, individuals openly described in their identification clusters as of extra-marital origin are attested as holding functions such as *πρεσβύτεροι*, *ἀρχέφοδοι*, tax collectors, etc. These numerous examples suggest a relatively high social and financial standing. It certainly shows that such men were no pariahs within their communities.

Several fatherless individuals are attested in the corn archive from Oxyrhynchos, dated to AD 268–271. Although fatherless individuals were not entitled to the corn dole, they could apply for it as a reward for services to the city, and in the special group, *ὁμόλογοι*. This group seems to have been created particularly to cover such individuals.

The author observes that not only marital and out of wedlock children came closer in terms of social life, legal practice, and, eventually, law, but also that the same is true for the unions which produced them. This development seems to be on a grander scale than only Egyptian or provincial. The growing vicinity between marriage and non-marriage is visible in a discussion on the applicability of the *accusatio adulterii*. While it is difficult to distinguish between the original text of the *lex Iulia de adulteriis coercendis* and later additions, it is easier to trace interpretative tendencies of the *lex Iulia* that developed in later Principate. We can note that the definition of *adulterium* was extended to deeds committed with and by women who were not legally married, as such as fiancées, underage girls or wives who had been held captive and later regained their freedom and thus revived their legally dissolved marriage.

At some point jurists and emperors started extending the *accusatio adulterii* to misdeeds which were not technically *adulterium* as defined under the Augustan *lex Iulia*. They resembled adultery in so far as they were committed by women in heterosexual, monogamous and stable relationships. In this frame, the author examines a case referring to *ius offendendi* of a betrayed husband. It is transmitted in a collection of legal cases P. Aktenbuch (= BGU IV 1024–1027), which illustrates blurring boundaries between marriage and non-marriage in popular perception.

The analysis of Constantine's legislation suggests he took steps against both informal families and non-marital unions on a wider scale.

Nowak tries to identify the possible reasons for this legislation outside the explanations traditionally given by historiography, going so far as to look into Constantine's private life. In her view, Constantine's laws should be

classified as means of social engineering, meaning they were aimed specifically at changing the social reality: they started the new policy towards the family and the popular perception thereof, but certainly they do not express the spirit of their times. They were inspired by Augustus' laws, which protected and promoted the marriage and were also intended to prevent *commixtio sanguinis* among the Roman elites. Nonetheless, the author concludes that it would be a mistake to interpret Constantine's constitutions as strictly based on Iulian laws. The fifth and last chapter is followed by an extensive bibliography (pp. 309–337) and a source index (pp. 339–353).

The book provides the comprehension of what illegitimacy meant in both legal thought and practice and discusses the wider problem of imposing coherent rules of the status acquisition on the provincials by Romans. Finally, it returns to the laws of Constantine on *naturales* and provides a new explanation of these laws. Although Nowak's monograph deals primarily with Roman Egypt, the conclusions reached in the first and last chapters are relevant to other parts of the Roman Empire. Nowak studies terminology, descriptions, rules concerning status acquisition, and laws of succession. In examining the question of illegitimacy, she sheds light on the wider problem of status acquisition in Roman Egypt.

Many of the results proposed in the research are insightful and appear also plausible. In addressing the issue of the social and legal situation of the bastards in Egypt, the book finally fills a gap in the reference literature, where the topic had never been addressed as a whole in a unified research perspective.

Nowak's decision to study the subject on the basis of papyrological evidence is to be applauded and her aims have been fully successful. The book demonstrates the vitality of the school in which the Polish scholar was trained and the seriousness of the studies conducted in Germany under Andrea Jördens's expert guidance. The monograph is distinguished by its solidity of structure, mastery of research method, clarity of exposition, independence and balance in the ability to make judgements and giving opinions. In conclusion, Maria Nowak's book will certainly constitute a milestone in studies on the social and legal position of bastards in Roman Egypt.

Mario Varvaro, Università degli Studi di Palermo
Dipartimento di Giurisprudenza
Professore ordinario
mario.varvaro@unipa.it

www.plekos.de

Empfohlene Zitierweise

Mario Varvaro: Rezension zu: Maria Nowak: Bastards in Egypt. Social and Legal Illegitimacy in the Roman Era. Leuven: Peeters 2020 (The Journal of Juristic Papyrology Supplements 37). In: Plekos 24, 2022, S. 193–202 (URL: <https://www.plekos.uni-muenchen.de/2022/r-nowak.pdf>).
