

YUKI KONTANI, *Eunuchs and Castrated Men in Byzantine Law and Society, 527–1056* (New Approaches to Byzantine History and Culture). Cham: Palgrave Macmillan 2025. xiii+302 pp. – ISBN 978-3-032-07358-7

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YUKI KONTANI wants ‘to offer a new perspective on the history of eunuchs in the Byzantine Empire’ through a comprehensive analysis of Byzantine legal sources from the reign of Justinian I (527–565) until the end of the Macedonian dynasty (1056). Her book comprises an introduction with a bibliography of secondary sources, seven chapters with a bibliography of primary and secondary sources at the end of each chapter, a conclusion with a bibliography of secondary sources, two appendices, and an index.

KONTANI examines the issue of the sex and gender of eunuchs in Byzantine law. At her book’s heart lies a fundamental question: are eunuchs regarded as ‘infertile men’? This question has sparked intense historiographical debate and divergent interpretations. To summarise the main positions: KUEFLER refers to ‘the unmanliness of eunuchs’. He also refers to ‘the sexual ambiguity’ (p. 32) and the ‘ambiguous gender status of eunuchs’ (p. 35); RINGROSE views eunuchs as a third gender; according to SPADARO, castration in Christian Byzantium created a third sex (*un terzo sesso*); in SIMON’s view, castration creates an intermediary (*Mittelding*) between men and women; TOUGHER sees eunuchs as part of gender fluidity; MESSIS, too, regards them as a fluid category between men and women; I view them as a third sex divided into several genders.¹

The introduction provides a general historiographical overview of eunuchs of Byzantium, starting with EDWARD GIBBON. According to KONTANI,

1. MATHEW KUEFLER, *The Manly Eunuch. Masculinity, Gender Ambiguity, and Christian Ideology in Late Antiquity*. Chicago 2001, p. 98; KATHRYN M. RINGROSE, *The Perfect Servant. Eunuchs and the Social Construction of Gender in Byzantium*. Chicago 2003; MARIA DORA SPADARO, *Gli eunuchi nell’impero bizantino*. In: *Comportamenti e immaginario della sessualità nell’ alto medioevo* (Settimane di Studio della Fondazione Centro Italiano di Studi sull’Alto Medioevo). Spoleto 2005, pp. 535–565, here p. 558; SHAUN TOUGHER, *The Eunuch in Byzantine History and Society*. London 2008; DIETER SIMON, *Lobpreis des Eunuchen* (Schriften des Historischen Kollegs, Vorträge 24). Munich 1994, p. 8; CHARIS MESSIS, *Les eunuques à Byzance, entre réalité et imaginaire* (Dossiers byzantins 14). Paris 2014; GEORGES JABLONSKI-SIDÉRIS, *Les anges du Palais. Eunuques, trisexuation et pouvoir à Byzance (IV^e–VII^e siècle)*, 2 vols. Turnhout 2025.

castrati are a subset of the broader category of the ‘infertile men’: ‘Eunuchs in the sense of castrated men were typically classified as a category of infertile men’ (p. 28). In an earlier article, she wrote: ‘*spado* referred to impotency in general and *castratus* (a castrated man) was a subordinate category of *spado*’.² Between the article and the book, KONTANI has shifted her position from viewing *castrati* as a subcategory of impotence to viewing them as a subcategory of ‘infertile men’. We are therefore no longer dealing with the same concept. The book asserts that in Roman-Byzantine law, eunuchs were considered men, that is to say of the male sex. I agree that *castrati* could be considered a subcategory of infertile people but not ‘infertile men’. Indeed, legal sources do not use the word ‘men’ when referring to *castrati*. Furthermore, the Justinian Code (C. 7.7.1.5) distinguishes three categories of slaves: *masculis*, *feminis*, and *eunuchi*, which shows that eunuchs are neither ‘men’ nor ‘women’. Above all, Hadrian’s rescript states that *castrati* ‘have lost their manliness’ (*qui uirilitatem amiserunt* D. 48. 8. 4. 2.). It is therefore clear that under Roman and Byzantine law, *castrati* are not considered men. For SPADARO, castration removes the male sexual organs and so, under Roman law, the eunuch is irrevocably ‘other’ (*altro*).³ KONTANI writes: ‘The term *spado* can be used in a broad sense to refer to infertile men who lack the capacity to become biological fathers for a variety of reasons, irrespective of whether or not they have undergone castration’ and cites as sources D. 1.7.2, 21.1.6, 23.3.39.1 (p. 29). However, none of these three sources mentions *spadones* or *castrati* as ‘men’.

According to KONTANI, Theophilos’ *Paraphrasis Institutionum* defines ‘*spadōn* as a non-castrated infertile man’ (p. 30). In fact the source refers to *spadones* οἵτινες, ‘those who’. We encounter the same translation problem with the *thlibiai* and the *kastratoi*. According to KONTANI: ‘He then states that *thlibias* is a man who has his testicles accidentally crushed by his nurse or mother, and *kastratos* is a man whose genital organs have been mutilated’ (p. 30). But we do not know what Theophilos, who never uses the word ‘man’ in his paragraph on eunuchs, meant exactly by ‘those who’. The most economical interpretation is that he distinguished among eunuchs who are *spadōnes*, *kastratoi*, *thlibiai*, and οἵτινες may simply refer to eunuchs in general. KONTANI correctly points out that Theophilos’ definition of the *spadōn* differs from that of the Digest, but does not point out that Theophilos provides details of a medical nature: he says about the *spadones* that

2. YUKI KONTANI, Castration under Roman Law: A Study of the Codification during the Reign of Justinian I (527–565). *Ancient Society* 48 (2018) pp. 305–331, here p. 310.

3. SPADARO, *Eunuchi nell’impero bizantino*, p. 549.

they cannot produce children (παιδοποιεῖν) because of a πάθος or ψῶξις (chill) affecting their genitals. The word *pathos* can refer to an illness or a malformation.⁴ This addition proves that jurists under Justinian relied on the expertise of physicians – and Byzantine doctors regarded *castrati* as a third sex (*genos*) and not as ‘men’.⁵ Contrary to what KONTANI suggests, *castrati* cannot be regarded as ‘infertile men’.

The author points out that Byzantine legal sources on *castrati* in general emphasise their infertility and do not distinguish between eunuchs castrated in childhood and eunuchs castrated after puberty (p. 30). She notes the continuity of vocabulary between Justinian’s legislation and the *Basilica* but observes also an evolution. In the *Basilica*, Latin words are replaced by Greek words and the word *eunouchos* tends to replace *spadōn* to designate ‘infertile men in general’. The word *ektomias* is also used to designate a ‘castrated man’. I would have liked to see quotations in Greek of the *Basilica* here; one must refer to a table on page 111 entitled ‘Justinianic concerning eunuchs in the *Basilica*’ to see the *Basilica*’s transposition in Greek of the Latin terms used in Justinian’s legislation.

In her second chapter, ‘The Law of Justinian and the Law of Leo III’, KONTANI notes that the provisions concerning eunuchs in the legislation of the sixth century were not included in the *Ecloga* promulgated in 741. The chapter begins with a history of the legislation of Justinian, which would have been more appropriately presented in the previous chapter. KONTANI, who takes up HUMFRESS’ proposal, emphasises the Christianization of the Roman laws within this legislation (p. 42).⁶ However, she glosses over the issue of the Digest a little too quickly and sweeping (pp. 45–46). BONFANTE had raised the question of whether the compilers had altered the texts of the Roman jurists concerning eunuchs; therefore the Digest would reflect Justinian’s views on eunuchs. I have shown that this was not the case: these texts are indeed those of jurists who did not have a Christian

4. Theophili Antecessoris Paraphrasis Institutionum, éd. J. H. A. LOKIN – ROOS MEIJERING – BERNARD H. STOLTE – N. VAN DER WAL, tr. ALEXANDER F. MURISON. Groningen 2010, pp. 92–95 (1, 11, 9).

5. GEORGES SIDÉRIS, Les débats sur l’eunuchité et la nature physiologique des eunuques à Byzance (IV^e–XII^e siècle). In: EVA PIBIRI – FANNY ABBOTT (eds.), Féminité et masculinité altérées. Transgression et inversion des genres au Moyen Age (Micrologus Library 78). Florence 2017, pp. 145–206; JABLONSKI-SIDÉRIS, Anges du Palais, vol. 1, pp. 89–142.

6. CAROLINE HUMFRESS, Law and Legal Practice in the Age of Justinian. In: MICHAEL MAAS (ed.), The Cambridge Companion to the Age of Justinian. Cambridge 2005, pp. 161–184, here pp. 167–168.

approach. On eunuchs their content is not Christian,⁷ yet it became one of the foundations of the Byzantine law on eunuchs. The Christianisation of the laws concerning eunuchs under Justinian I was limited.

KONTANI presents two very useful tables on ‘eunuchs and infertile men’ in the Digest and then in the *Code, Institutes, and Novels* of Justinian I (pp. 47–48). She quotes D. 24.1.60.1: for Hermogenianus at the end of the third century sterility (*sterilitas*) could constitute grounds for divorce. But KONTANI does not ask the question, ‘how did a magistrate before the Justinian’s legislation establish a man’s sterility?’. It is likely that he resorted to a medical examination.

The author rightly links the importance of eunuchs at the imperial court to Justinian’s interest in limiting the very high price at which eunuch slaves were sold. She lists the various legal provisions concerning eunuchs, with the differences between *spadones* and *castrati*, under Justinian about betrothal, marriage, divorce, adoption, appointment of a posthumous heir, tutelage, inheritance, institution of eunuch *apocrisarii* in convents (p. 50).

KONTANI explains the absence of new imperial legislation in the seventh century by the weakness of imperial power and the weight of Justinian’s legislation as an ideal. She approaches the eighth-century *Ecloga*, probably promulgated at the end of the Leo III’s reign, highlighting its continuity with Justinian’s legislation. This code makes a ‘selection’ (*eklogē*) from existing legislation in order to retain only the provisions that may be useful to judges across the empire. But the Isaurian emperors introduced new laws and incorporated vocabulary from the Old Testament in accordance with the biblical model (pp. 56–58).

The author mentions a few imperial eunuchs from the seventh to mid-eight centuries. She does not make use of chamberlains’ seals or inscriptions, which would considerably increase the number of known imperial eunuchs. She mentions Gregory as eparch in 652, even though he was a eunuch, but the word *eparchos* is a later interpolation, he was probably *praepositus*.⁸ She refers to the eunuch *koubikouarios* Andrew under Constans II but does not specify that he was described by his enemy – Sergios, a Byzantine soldier – as ‘neither man nor woman’ (οὐκ εἶ ἀνὴρ, οὐδὲ γυνή), which clearly

7. PIETRO BONFANTE, Un influenza orientale nel diritto romano. Rendiconti della R. Accademia Nazionale dei Lincei, Classe di scienze morali, storiche e filologiche IV.4 (1928) pp. 273–286; JABLONSKI-SIDÉRIS, *Anges du Palais*, vol. 1, pp. 197–198.

8. JABLONSKI-SIDÉRIS, *Anges du Palais*, vol. 2, p. 164.

shows that an eunuch was not regarded as a male.⁹ KONTANI notes the absence of laws on eunuchs in the *Ecloga*, even though imperial eunuchs were very present in the 7th century, and offers two explanations. Firstly, the *Ecloga* is a compendium of the Justinianic Corpus that only contains the most important laws and practical clauses for life of the ordinary men in the empire, while the eunuchs were only a small group concentrated in Constantinople. Secondly, the author hypothesises that, due to the rise of the Paphlagonian eunuchs, the judges would have assimilated the eunuchs to men (pp. 63–64). KONTANI notes, however, an innovation in *Ecloga*: the practice of mutilating the penis as a form of punishment for bestiality (E. 17. 39).

The third chapter is entitled ‘Penal Mutilation and Mutilation of the Penis’. KONTANI elaborates at length on the law in the *Ecloga* which stipulates that those convicted of bestiality will suffer *kaulokopēsis*. She defines this term as ‘the cutting off of a penis or male genitals’ (E. 17.39). The author presents a useful table of mutilation penalties in the *Ecloga* that affect the tongue, the hand, the eyes (blinding), the nose, and the penis. KONTANI notes that penal mutilations existed in the Roman Empire before Justinian I, but his Novels show a notable increase in these measures. KONTANI infers from this that penal mutilation became a relatively common practice. In particular NJ 142.1 punishes with castration men who have castrated other men. Furthermore, the emperor allows the *praetor plebis* in Constantinople and both the civil and military governors to impose punishments of mutilation. But KONTANI also notes that NJ. 134.13 limits the severity of mutilations, prohibiting the amputation of both hands or both feet. She puts forward an important interpretation of Justinian’s motives behind this law: judges tended to apply heavier penalties than those provided for by law or the emperors (p. 79). Malalas and Procopius report cases under Justinian of penis mutilation as punishment for acts of pederasty, that is, male homosexuality (p. 83). According to KONTANI, it was probably the urban prefect who pronounced these sentences, suggesting that judges could impose genital mutilation in place of the death penalty (p. 85). KONTANI revisits penile mutilation for bestiality in the *Ecloga* and links the spread of bodily mutilations, including castration, for political reasons, in the 7th–8th centuries, to their presence in the *Ecloga* as well as the influence of Leviticus 18-20 and an interpretation of Matthew 5:30 on the removal of the offending limb.

In her fourth chapter, ‘Legal Reform and Codification Projects of the Mace-

9. Theophanes, ed. CARL DE BOOR, vol. 1, pp. 348–350 (AM 6159).

donian Dynasty', KONTANI examines the question of eunuchs in the *Prochiron*, the *Eisagoge*, the *Sixty Books/Basilica*, the Novels of Leo VI, composed during the reigns of Basil I and Leo VI, to which is added a private law book compiled by a certain Symbatios shortly after the reign of Leo VI, and the Epitome. KONTANI notes that while the concept of 'cleansing the ancient laws' (*anakatharsis tōn nomōn*) is associated with the legislative project of the Macedonians, it is in fact already present in the Ecloga of the Isaurians. The Macedonian compilations were modelled on the Isaurian Ecloga but, after the victory of the iconophiles in 843, it was necessary for the Macedonian Orthodox emperors to purify the laws of iconoclastic influence and reappropriate the Roman (Justinianic) law in Greek translation. KONTANI emphasises the weight of the imperial eunuchs under the Macedonians and their importance in Philotheos's Kletorologion. She puts forward their possible influence on the laws, particularly in the Novels of Leo VI, and presents a very useful table of the provisions on eunuchs in Justinianic laws, as recorded in the *Basilica* (p. 111).

KONTANI then goes on to analyse three Novels of Leo VI. Her fifth chapter is intitled 'The Imperial Position on castration: NL. 60'. She first recalls the Roman and Byzantine legislation on castration before Justinian's Novel 142. This applies the *lex talionis*. It provides castration not only for those who perpetrated such acts but also for those who profit from castration and commission it, or provide a site for castration. If they survived they were to be sent to Gypsus and their property was to be confiscated for the public treasure. If they were women, they were to be punished by exile and confiscation of property. The Novel also mentions the case of castration for medical reasons. Slaves who have been made eunuchs due to illness will also become free. KONTANI cites an extremely high mortality rate associated with castration: three survived out of ninety (p. 121). MESSIS, however, has rightly pointed out that in Justinian's Novel 142, the enormous mortality rate due to castration is an excessive number, completely out of touch with reality. I have myself demonstrated, based on the prices of eunuchs, that the mortality rate was probably a quarter, or a third maximum.¹⁰ KONTANI notes that Justinian acted to abolish castration in Abasgia.

Canon 8 of the Council of Constantinople (861) convened under the patriarch Photios introduces church punishment related to the crime of castration. Any bishop, priest, or deacon found guilty of making another in-

10. MESSIS, *Eunuques à Byzance*, p. 98; JABLONSKI-SIDÉRIS, *Anges du Palais*, vol. 1, p. 217.

dividual a eunuch, either by his own hand or by ordering it done, shall be deposed. If the perpetrator is a lay person, he or she shall be excommunicated, with the exception of castration for medical reason (p. 132). For KONTANI, canon 8 suggests the Church's growing interest in controlling the increasing number of castrations being performed in the empire. She rightly considers the possibility that the castration operation was carried out or commissioned at that time by a significant number of clerics, which would have led the Church to act. She sees a possible cause, but not the only explanation, in the influence of the conflict between Photios and Ignatios on this canon. Canon 8 inspired Leo VI's Novel and there might be a link with the fact that the eunuch patriarch Ignatios was celebrated as a saint from the reign of Leo onward. KONTANI analyses Photios's critique of eunuchs and notes that they are described as androgynous, but does not conclude that, for Photios, they are not men: she prefers to speak of stereotypes. Photios refers to the *genos* of eunuchs, while KONTANI speaks of the 'race of eunuchs'. The use of the word 'race', applied to eunuchs, would have required a semantic study. *Genos* also has the meaning of 'sex' in Greek, particularly as applied to eunuchs since the second century, which is consistent with the term androgynous also used by Photios (p. 138). Photios would therefore not be employing a negative stereotype but would be stating his conception of eunuchs as a distinct sex, shaped by the order (*taxis*) that reigned at the imperial court, which since the fourth century had differentiated between men, women, and eunuchs. Photios and the Council would remind that castration is not just a surgical operation but entails the creation of a new creature neither male nor female.

For KONTANI, the causes of the promulgation of NL 60 were, on the one hand, the tendency under the Macedonians and the 'cleansing of the ancient laws' to mitigate the harshness of punishment for those who castrated others, replacing the talion with a more humane punishment. On the other hand, Leo VI took into account the increase in the number of castrations in the empire and the continued use of eunuchs by the Imperial Court. KONTANI's demonstration is entirely convincing. She notes the contradiction between the prohibition of castration, except for medical reasons, and legal or political punishments, and the use of eunuchs by the imperial Court. In my view, it is more than a contradiction; it is a hypocrisy of Byzantine imperial law, which Leo VI sought to confront, a question we will encounter with the novel on adoption.

The sixth chapter is intitled 'Eunuchs as Disabled People: Adoption by Eunuchs in NL.26'. KONTANI says that Theophilos defines eunuchs as

‘impotent men’ (p. 159), but Theophilus does not define eunuchs as men. He never uses the word ‘man’ in his paraphrase on eunuchs and adoption. He says that marriage takes place between a man and a woman. Yet, *castrati* cannot marry, they are not ‘men’ but ‘eunuchs’, and natural eunuchs (*spadones*) who prove incapable of fathering children five years after their marriage can have it annulled, and they pass from the statute of ‘man’ to that of ‘eunuch’. It should be noted that the text of the Institutes does not use the word ‘man’ either. Therefore it is not a coincidence that Theophilus does not use the word ‘man’ when referring to eunuchs.¹¹

There is yet another important point. KONTANI quotes Theophilus who speaks of ‘those that are prevented from begetting children by some derangement or chillness troubling the genital organs’ and says: ‘Our answer is that neither a *castratus* (= *kastratos*) nor a *thlibias* (= *thlibias*) can adopt either an independent person by order of a magistrate. For to those to whom nature has denied the power of begetting children, the law, following in the steps of nature, has also denied it, for such persons are beyond the hope of begetting children’ (p. 159).¹² KONTANI writes: ‘Consequently, Theophilus viewpoint that castrated men were unable to adopt due to irremediable impairment of their capacity to procreate was established as the prevailing explanation for the denial to *kastratos* of the opportunity to benefit from the adoption system’. She does not explain, however, Theophilus’ reference to nature and fails to realise that Theophilus introduces causes that are of a medical nature and therefore fall under the expertise of a doctor. At this point, an analysis based on Roman-Byzantine medical sources is lacking. This medico-legal methodological approach was initiated by DALLA.¹³ It is all the more justified in a methodological approach to Byzantine law that links it to its cultural, political, and social context. In fact, Byzantine physicians believed that castration altered the nature of the *castrati*. In this regard, they were in agreement with Hadrian’s rescript.¹⁴ Therefore, the question of ‘nature’ and ‘nature’ of eunuchs was important to Theophilus and probably to later jurists who made use of his commentary.

KONTANI notes that the *Basilica* (B. 33. 1. 59) likely take up Theophilus’

11. Theophili Paraphrasis Institutionum, 1, 10 pr. and 10, 1, pp. 66–69 (marriage), 1, 11, 9, pp. 92–95 (adoption); Institutiones, ed. PAUL KRÜGER, 16th edn. Berlin 1954, 1, 11, 9, p. 5.

12. Theophili Paraphrasis Institutionum, 1, 11, 9, pp. 92–93.

13. DANILO DALLA, L’incapacità sessuale in Diritto Romano (Seminario Giuridico della Università di Bologna 76). Milan 1978.

14. JABLONSKI-SIDÉRIS, Anges du Palais, vol. 1, pp. 110–142.

commentary on I. 1. 11. 9, then quotes the English translation of the passage of the *Eisagoge* on eunuchs and adoption: ‘neither woman nor eunuch can adopt’, and deduces, rightly, that the editor of the *Eisagoge* did not consider any distinctions between the categories of ‘eunuchs’ and instead likely used the term *eunouchos* as equivalent to *castratus* in I. 1. 11.9. KONTANI makes here a very important analysis regarding the evolution of the legal status of eunuchs, but does not push the analysis to its logical conclusions. Either the *Eisagoge* considered that the *spadones* were not eunuchs or the *Eisagoge* aligned the status of *spado* (natural eunuch) with that of *castratus* which constituted a retreat from the right to adopt for the *spadones*. In the latter case the *Eisagoge* led to concluding a legal development begun under Justinian, which tends to bring the status of *spadones* closer to that of *castrati*, and to consolidate the status of eunuchs as a specific category alongside men and women.

KONTANI then moves on to an analysis of NL 26 and 27, which allow to eunuchs and women to adopt. This is an important part of the book. The author rightly points to the influence of the court eunuchs on Leo VI’s decision to allow eunuchs to adopt. Regarding this privilege position of imperial eunuchs with Leo VI, I have recently introduced a new element compared to the existing historiography: I have shown that the ‘Narrative of the Construction of Hagia Sophia’, which links Emperor Justinian, eunuchs and angels, is in fact a promotion of Leo VI and the imperial eunuchs.¹⁵ KONTANI highlights the profound change introduced by Leo in the Roman-Byzantine legal tradition and legislation. First, Leo VI introduced a major change in the concept of *patria potestas*. Before Leo’s novels the power of an adoptive father over his adopted child was limited (p. 169). Now adoption is no longer based on *patria potestas* but on the will of the adoptee. The parental relationship is given priority. Leo introduced a profound change in the conception of the hierarchical relationship between parents and children, one based more on social aspects: mutual will, affection, mutual benefit and well-being, rather than the formal legal authorisation of the father. Leo speaks of eunuchs in general terms, rather than of different categories of eunuchs, thus echoing the *Eisagoge*. KONTANI emphasises the modification of the conceptions of *patria potestas* in the novels of Leo VI and the influence of the Church’s establishment of the blessing of adoption, and the connection with baptism, on this modification and the

15. GEORGES SIDÉRIS, Quelques remarques sur les anges eunuques dans le ‘Récit sur la construction de Sainte-Sophie’. *Travaux et mémoires* 25.2 (2021) pp. 721–737.

adoption laws of Leo VI. Uncertainty remains for KONTANI regarding the consequences of the laws on adoption and *patria potestas*. If we link the two laws on adoption to the fact that Leo, in NL 25, states that only a man (*arrēn*) has complete power over a child, we can deduce that adoption by a woman or a eunuch grants only limited power over the adoptee or that Leo modified the content of the *patria potestas*, but this is not explicitly stated in either law. Another important development was that the concepts of imitation of nature and *potestas* underwent a reduction in significance. Leo's legislation considered eunuchs as disabled people and *castrati* are emphasised as miserable victims who should be relieved from suffering. KONTANI shows that in the later Byzantine period NL 26 was often transmitted with Theophilos' commentary, but that the novel tended to be increasingly accepted. She highlights another important change concerning inheritance. Eunuchs could now pass on their wealth to their children. We know that the fortune of an imperial eunuch could be considerable. Furthermore, a eunuch could count on the support of his adopted son. Therefore, from the reign of Leo VI onward, a eunuch had the opportunity to found a powerful family.

The seventh chapter is intitled 'Prohibition of Eunuch Marriages in NL. 98'. KONTANI first points out that the Digest recognises the validity of the marriage of a *spado* (natural eunuch) but not that of a *castratus*. All the sources show that a *kastratos* could not marry. The author shows that the reputation of chaste cohabitation between a eunuch and a woman was called into question by canon 5 of the Council in Trullo, which prohibited cohabitation between a eunuch cleric and a woman because a eunuch could also succumb to temptation. KONTANI analyses a remarkable point. The Epitome is a private law book compiled in 913–914 and then revised in 921 from the *antecessores* and *scholastikoi* sources by the *protospatharios* Symbatios (p. 189). Epitome 23.37 specifies that a *spadon* and a *thlibias* can contract a marriage. The validity of the marriage for a *thlibias* contradicts NL 98, which prohibits marriage for eunuchs. The author of Epitome 23.37 is referring probably to D. 23.3.39.1 for the *spadones*. But the marriage of the *thlibiai* has no legal precedent. For KONTANI, either this is a personal interpretation of Symbatios or – and this is in her opinion the more plausible scenario – the compiler referred to a text by earlier *antecessores* or *scholastikoi* which is not preserved in other legal texts. But for KONTANI there is an other point. She points out the ambiguity surrounding the definitions of *spadones* and *eunouchoi* in the *Basilica* scholia. Therefore, the validity of the marriage of the *thlibiai* may stem from the assimilation

of the *thlibiai* to the *spadones*. However, we have no evidence to enable us to date this assimilation, it can be before or after the reign of Leo VI.

KONTANI then discusses NL 98 on the prohibition of marriage for eunuchs (p. 192). With regard to the institution of marriage the novel introduces two new provisions: the blessing of marriage within the Christian rite and the assertion that marriage is based on procreation. Consequently, the marriage of a eunuch and a woman is not only illegal but also contrary to God's will because the marital union is designed by God with the intention of multiplying the human race and this goes against nature. The marriage of a childless couple is different from that of a eunuch and a woman because the couple hoped to have children, whereas for a eunuch this is impossible. According to Kondani, this provision can be explained by the marital circumstances of Leo VI during the period 893–900, when he was first married to Theophano and then to Zoe Zaoutzaina and had no male offspring. NL 98 does not distinguish between the *spadones*, the *kastratoi* and the *thlibiai*, as Theophilos' commentary on the Institutes does. For KONTANI the term *eunouchos* can be identified with *kastratos* and *thlibias* in Theophilos' commentary.

KONTANI identifies an important argument in the law to justify the abnormality of a eunuch's marriage: 'It is emphasised that eunuchs have lost sexual desire for females and have become unsuspecting guardians of the nuptial bed (*hē eunē*)'. She points out the surprising fact that NL 98 does not draw on previous legislation and puts forward a convincing hypothesis. This would suggest that NL 98 was drafted as a stand-alone piece of legislation and was enacted 'with the intention of establishing totally new rules on the marriage of eunuchs, rather than modifying a particular old provision' (p. 194). KONTANI then asks a highly pertinent question that demonstrates sound methodology: 'why Leo VI issued the new legislation that prohibited the marriage of eunuchs?' (p. 195). She suggests that illicit marriages involving eunuchs took place for various reasons (ignorance of the laws, or failure to enforce them), especially since Justinian's legislation did not provide for any punishment for those involved in such a marriage. But this information had reached Leo VI, perhaps through petitions from the eunuchs themselves. Leo therefore felt the need to legislate. But it is also possible that NL 26 on adoption prompted Leo to reflect on the issue of marriage and its Christianisation, 'redrawing a line between men who are permitted to get married and eunuchs, who are not' (p. 196). NL 98 for the first time penalises those who have been involved in an illicit marriage, not only the eunuch who married and committed fornication, but also

the priest who performed the ceremony. KONTANI hypothesises that the punishment for fornication originated in E. 17. 20 collected in B. 60.37.82 which states that ‘an unmarried man who fornicates shall be beaten with six blows’. KONTANI asks the question: ‘ why NL 98 inflicted the penalty for fornication on eunuchs who had dared to enter into matrimony’. KONTANI sees in this measure the influence of the *Prochiron*, which condemns remarriages, based on the canons, as well as the influence of the Church Fathers and the canons that punish illicit marriages and fornication.

But there is another possibility. Since the reign of Theodosius I, any imperial eunuch who engages in sexual relations has been sentenced to death for fornication. It is possible that Leo VI, from a Christian perspective, extended the charge of fornication to all eunuchs engaged in sexual relations.¹⁶ KONTANI then analyses Leo VI’s description of the nature of *castrati*. According to Leo, through castration eunuchs have lost what makes them men, they have no desire for women and are the trustworthy guardians of the bed. Here KONTANI responds to CHARIS MESSIS’s argument that this passage serves a purely rhetorical function.¹⁷ For KONTANI, whilst this passage may be rhetorical in nature, it nonetheless conveys the understanding that Leo and the recipients of this novel had of eunuchs. The legislator distinguishes eunuchs from other men, offering two traditional features of eunuchs: the loss of desire for women, an aspect that has its roots in the medical writings of Hippocrates, Aristotle and Galen, and the role of trustworthy guardians of the bed, a trait of eunuchs already found in Justinian I’s law on *apocrisarii*. KONTANI points out that Christian writers since the fourth century and Canon 5 of the Council in Trullo have cast doubt on the chastity of eunuchs, yet NL 98 presents the absence of carnal desire among eunuchs as a certainty. KONTANI draws on LAIOU’s analysis, according to whom the Byzantine Church generally regarded sexual desire as a natural trait of man. In this respect, Leo VI might suppose that eunuchs had a different nature of men. I fully agree with this analysis, and I have shown that this conception dates back to Gregory of Nazianzus under Theodosius I.¹⁸ KONTANI also puts forward a very interesting hypothesis. The reference to the chastity of eunuchs may also stem from suspicions of relationships – perhaps intimate ones – between eunuchs and empresses

16. JABLONSKI-SIDÉRIIS, *Anges du Palais*, vol. 1, pp. 208, 415.

17. MESSIS, *Eunuques à Byzance*, p. 103 n.30 : ‘Léon parle à propos des eunuques d’une race particulière et insolite, mais cela est plutôt une apostrophe rhétorique et ne signifie pas la reconnaissance d’un troisième sexe de la part de la loi’.

18. JABLONSKI-SIDÉRIIS, *Anges du Palais*, vol. 1, pp. 273–280.

under Basil I and Leo VI. The law would therefore also serve to exercise control over the chamberlains and their moral obligations. KONTANI puts forward another highly pertinent hypothesis: the law is said to set out an ideal standard of conduct for eunuchs, not only on the part of the legislator but perhaps also on the part of eunuchs themselves. Here, KONTANI opens up some very interesting avenues for further research into the reign of Leo VI, the Macedonian dynasty, and the eunuchs. She writes about the phrase *καὶ ξένον τι γένος ὑπάρχουσιν μήτε τῇ ἐξ ἀρχῆς προβαλλούσῃ φύσει, μήτε, τῇ μετὰ ταῦτα μεταπλασάμενη κακοτεχνία συνοικειούμενοι*: ‘this would entail that eunuchs were accepted as a different category from men, as long as they remained single’ (p. 208).

KONTANI clearly concludes that ‘NL. 98 makes the position of eunuchs in law more explicit than set out in Justinian law resolving the ambivalence surrounding the character of eunuchs (...) the legislator redrew a distinction between men and eunuchs’ (p. 208), which means that, according to Leo VI and NL 98, eunuchs are not men. According to KONTANI, Leo VI wanted eunuchs and his imperial eunuchs to embody an ideal of celibacy and chastity. I fully agree with the author’s analysis.

The eighth chapter, ‘Two Decisions of Basil II on property of Eunuchs’, analyses the late-eleventh-century reworking of the novel of Basil II issued in January 996 which ‘permitted the “poor” to reclaim their lands that had been alienating following the enactment of the novel of his great grandfather Romanos I in 934, without reimbursing the powerful for the prices or improvements made’ (p. 218). This reworking mentions the *protovestiaros* eunuch Philokales (p. 221). Ultimately, the author concludes that, although Basil II stripped the powerful eunuch Basil Lekapenos of all his property and offices, Philokales was not targeted by the emperor because he was a eunuch: ‘the novel of Basil II indicates the emperor’s wariness regarding the conduct of his officials, including eunuchs’ (p. 224).

KONTANI discusses Basil II’s exclusion of eunuchs from parental inheritance in the *Peira* and the *Tipoukeitos*. For her, the law is an innovation and reflects the views of Basil II. His decision is based on the illegality of castration. KONTANI puts forward a subtle and very interesting hypothesis. The law was motivated by ‘the increasing visibility of eunuchs originating from within imperial territory and their interrelationship with native families’ (p. 236). This means that Basil II sought to curb the growing power of the Byzantine native eunuchs. The eunuch John the *orphanotrophos* had

two brothers who were eunuchs, and he promoted his brother, Michael IV, and his nephew, Michael V, to the imperial throne.

The last chapter is entitled ‘Conclusion: Rejection and Acceptance – Eunuchs in Roman and Byzantine Law’. Surprisingly, KONTANI classifies *castrati* as ‘infertile men’ (p. 246), even though she has clearly demonstrated that for Leo VI and his officers *castrati* were ‘creatures’ and therefore not men. She points out that the legislation of Leo VI marked a turning point compared to that of Justinian, as eunuchs were regarded as victims, which granted them the right to adopt. Furthermore, Basil II restricted the ability of *castrati* to inherit by invoking the ban on castration. *castrati* are therefore not viewed in the same way as natural eunuchs. One would therefore expect the contemporary term ‘infertile men’ to be reserved for natural eunuchs and not for *castrati*. In fact, Leo’s view of *castrati* is exactly that of Byzantine physicians, who regarded *castrati* as a third sex (*genos*). Other key points in the book include the Christianisation of the laws and the biblical influence concerning eunuchs, castration and penal mutilation, from the time of the Isaurians onward, the influence of canon law, the retention of ancient laws in private law books, the significance of the socio-political context – particularly the influence of imperial eunuchs who had been born in the empire – and what the author calls the emperors idealised conception of eunuchs as devoid of sexual desire. The increasing political power of eunuchs from within the imperial territories and their familial connections with their native families, as exemplified by the case of Basil Lekapenos, led Basil II to restrict inheritance rights for *castrati*.

The book includes an Appendix on ‘the first case of castration of a member of the imperial family in the seventh century’ (p. 255). The author examines the case of the castration in 641 of a son of Martina. A second Appendix (p. 261) examines eunuchs in the *Basilica* scholia. KONTANI provides a very useful table of the ‘fragments related to eunuchs’ (pp. 264–265). She writes about a scholion on B. 38.1.18 (= D. 27.1.18): ‘It seems that the author of this fragment was trying to explain what kind of sex other than men could die on the battlefield. Consequently, his interpretation reveals an intriguing fact: There was a possibility that a eunuch could be considered a distinct sex by some legal professionals, regardless of whether or not D. 27.1.18, a fragment of the third-century Ulpian, was originally written with that intention.’ (p. 269). It is clear that the author of the scholion regarded eunuchs as belonging to a specific sex and for him it was already the case

in Ulpian's time. Yet KONTANI draws no conclusions from this significant observation, even though it calls into question the view of eunuchs as 'infertile men'.

In sum, YUKI KONTANI has written an important book on the legal status of eunuchs during the Middle Byzantine period. Her work opens new avenues of research and is sure to spark debate. It is essential reading for anyone studying eunuchs in Byzantium.

Keywords

sex and gender in Byzantium; eunuchs