# Aliens, Ambassadors, and the Integrity of the Empire

CLIFFORD ANDO

In 321 B.C.E., a Roman army led by both that year's consuls was trapped near Caudium, in a defile named the Caudine Forks, the result of a clever strategem devised by the Samnite general Gaius Pontius. According to Livy, writing some three hundred years later, the Samnites had made no plan to capitalize on their good fortune, and so they sent to Pontius's father, Herennius Pontius, to seek his advice. "Let them all go unharmed," he said. The messenger who returned with that advice was promptly sent back. "All right," said Herennius, "kill every single one of them." Unable to decide whether his father had lost his mind, the son had his father brought to the camp, where he gave the same two pieces of advice and justified each. But what would happen, he was asked, "if they are sent away unharmed and conditions are imposed upon them as conquered, in accordance with the law of war (ut et dimitterentur incolumes et leges iis iure belli victis imponerentur)?"[1] That practice neither makes friends nor

1. Livy 9.3.11. I provide the full title of works in Greek and Latin at first citation. Thereafter I employ the abbreviations found in P. G. W. Glare, ed., *Oxford Latin Dictionary* (Oxford: Clarendon Press, 1982), and H. G. Liddell, R. Scott, and H. S. Jones, eds., *A Greek-English Lexicon,* 9th ed. (Oxford: Clarendon Press, 1968). Other abbreviations employed for collections of ancient sources and reference works include *ILS* = H. Dessau, ed., *Inscriptiones Latinae Selectae* (Berlin: Weidman, 1892–1916); MRR = T. R. S. Broughton, *The Magistrates of the Roman Republic* (New York and Atlanta: Scholars' Press, 1951–1986); and *RS* = M. Crawford, ed., *Roman Statutes* (London: Institute of Classical Studies, 1996).

Clifford Ando is professor of Classics, History, and New Testament and Early Christian Literature at the University of Chicago <cando@uchicago.edu>. For questions and conversation he thanks audiences at McMaster University and the University of Pennsylvania and in Los Angeles, as well as David Tanenhaus and readers for the *Law and History Review.* Unless noted otherwise, all translations are by the author.

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removes enemies, replied the father. Their humiliation will rankle them until they avenge it.

Gaius Pontius rejected his father's advice; and when the Romans had tried and failed to escape the defile and sued for peace, he offered their envoys the following terms. The Roman army should abandon its arms and all its equipment; the Romans should each pass under the yoke, with only the clothes on their backs; "the other conditions of the peace would be equal for conquered and conqueror; if the Romans would depart Samnite territory and remove their colonies, then Roman and Samnite should live thereafter each under his own laws, according to an equal treaty."[2] According to Livy, in subsequent negotiations with the consuls themselves, Pontius was told that the consuls could not make a treaty *iniussu populi,* without the command of the people, who were sovereign, nor without the fetial priests and other solemn ceremonies.[3] This, according to an editorial comment by Livy himself, proves that the *pax Caudina,* the Caudine peace, was made not by treaty but *per sponsionem,* by guarantee. To that point I shall return.

The army having been released and returned to Rome, the Senate took up the problem of what to do next. Spurius Postumius, one of the two consuls, offered the following opinion: insofar as he and his fellow officers and magistrates had offered the Samnites nothing other than a guarantee, the Samnites were owed nothing other than the guarantors. Their actions had, after all, been performed *iniussu populi;* hence nothing they had enacted was binding on the people. After some further debate, the grateful Senate and populace voted to surrender Postumius and the other guarantors.

2. Livy 9.4.3–4: "alias condiciones pacis aequas uictis ac uictoribus fore: si agro Samnitium decederetur, coloniae abducerentur, suis inde legibus Romanum ac Samnitem aequo foedere uicturum . . . . "

3. Cf. Sallust *Catilina* 29.2–3, discussing the *senatus consultum ultimum*: "Itaque, quod plerumque in atroci negotio solet, senatus decrevit, darent operam consules, ne quid res publica detrimenti caperet. Ea potestas per senatum more Romano magistratui maxuma permittitur: exercitum parare, bellum gerere, coercere omnibus modis socios atque civis, domi militiaeque imperium atque iudicium summum habere; aliter sine populi iussu nullius earum rerum consuli ius est." Consider, too, the extraordinary argument that erupted over the actions of Cnaeus Manlius Vulso in 187, when he sought a triumph for a victory won over the Galatians, but in a campaign not authorized by the "people" (Livy 38.45.3–7): "Cupientem transire Taurum aegre omnium legatorum precibus, ne carminibus Sibyllae praedictam superantibus terminos fatalis cladem experiri uellet, retentum, admovisse tamen exercitum et prope ipsis iugis ad diuortia aquarum castra posuisse. Cum ibi nullam belli causam inueniret quiescentibus regiis, circumegisse exercitum ad Gallograecos, cui nationi non ex senatus auctoritate, non populi iussu bellum inlatum. Quod quem umquam de sua sententia facere ausum? Antiochi, Philippi, Hannibalis et Poenorum recentissima bella esse; de omnibus his consultum senatum, populum iussisse, saepe legatos ante missos, res repetitas, postremo, qui bellum indicerent, missos. 'Quid eorum, Cn. Manli, factum est, ut istud publicum populi Romani bellum et non tuum priuatum latrocinium ducamus? . . . '"

In accordance with Roman doctrine or, more precisely, a set of rules they called "fetial law," whose status as law is discussed below, the formal surrender of citizens to foreign peoples was performed by a college of priests called the fetials.[4] These led Postumius and his colleagues to the Samnites' assembly and before the tribunal of Pontius. There the fetial Aulus Cornelius Arvina made the following address:

> Whereas these men, without the authorization of the Roman people, the Quirites, offered guarantees that a treaty would be struck, and in so doing have inflicted an injury, for this reason, so that the Roman people might be freed from an impious crime, I surrender these men to you.[5]

"As the fetial spoke," continues Livy, "Postumius drove his knee into the other's thigh as hard as he could and said in a loud voice that he was a Samnite citizen and that he had violated the sanctity of an ambassador, in contravention of *ius gentium,* the law of nations: thereby might the Romans wage war all the more justly (*eo iustius bellum gesturos*)."[6]

Pontius the Samnite was, needless to say, disgusted. Haranguing the Romans before he sent them away—including the guarantors—he remarked, *et semper aliquam fraudi speciem iuris imponitis*: "You always cloak deceit with some semblance of legality." Was this manipulation what Aulius Cornelius and the other fetials meant by "the law of nations?" "Let the gods believe that Postumius was a Samnite and not a Roman citizen and that the sanctity of an ambassador had been violated by a Samnite!" This, he concluded, was a mockery of religious scruple, which old men and consulars should have been ashamed to bring to the light of day.[7]

4. On the protection of ambassadors in fetial law, see T. R. S. Broughton, "Mistreatment of Foreign Legates and the Fetial Priests: Three Roman Cases," *Phoenix* 41 (1987): 50–62. On fetial law generally, see E. Samter, "Fetiales," *Realencyclopädie der classischen Altertumswissenschaft* (Stuttgart 1909), 2.2:2259–65, and P. Catalano, *Linee del sistema sovrannazionale romano* (Turin: G. Giappichelli, 1965), 3–48. The fetials are most famous for their role in declaring war and striking treaties, on which see J. Rüpke, *Domi militiae: die religiöse Konstruktion des Krieges in Rom* (Stuttgart: F. Steiner, 1990), and A. Zack, *Studien zum "römischen Völkerrecht": Kriegserklärung, Kriegsbeschluss, Beeidung und Ratifikation zwischenstaatlicher Verträge, internationale Freundschaft und Feindschaft während der römischen Republik bis zum Beginn des Prinzipat* (Göttingen: Duehrkohp & Radicke, 2001).

5. Livy 9.10.9: "'quandoque hisce homines iniussu populi Romani Quiritium foedus ictum iri spoponderunt atque ob eam rem noxam nocuerunt, ob eam rem quo populus Romanus scelere impio sit solutus hosce homines uobis dedo.'"

6. Livy 9.10.10.

7. Livy 9.11.7. See also Lactantius *Divinae Institutiones* 6.9.2–4 (drawing on Cicero *De re publica* 3.20a): "Vel si iustitiam sequi volet, divini tamen iuris ignarus gentis suae leges tamquam verum ius amplectetur, quas non utique iustitia, sed utilitas reperit. cur enim per omnes populos diversa et varia iura sunt condita, nisi quod una quaeque gens id sibi sanxit

## Systems of Law; Networks of States

Livy's description of the negotiations of 321 both exemplifies themes and habits iterated elsewhere in Roman historical narrative and reifies numerous assumptions behind the practice of diplomacy in the Roman world. Foremost among the latter, it would seem, are that the sanctity or inviolability of diplomats is guaranteed by *ius gentium,* the law of nations, and that diplomacy takes place between sovereign states—in Livy's terms, ones that live each by its own laws and capable of striking a treaty on equal terms.[8]

The recognition of sovereignty itself has often rested upon a further set of conditions, not least that the states in question be homologous with respect to their governing principles and institutions and that those institutions should at the very least survey their land and census their people and adjudge their status.[9] At the same time, while the maintenance of a system of sovereign states might be said to rest crucially upon its members' desire to live at peace with one another, the fundamental connection between ideologies of sovereignty and territorial integrity has historically functioned to demand that member states account for all lands and all people. Systems of states do not tolerate unallocated territory. Inherent, therefore, in theories of diplomacy and international law as they relate to each other are two related contradictions, potential, at least, and often actualized: that states should recognize the legitimacy of other states, however internally ordered—but they must first be capable of recognizing that other state *as* a state; and that diplomacy and international law, while theorized as tools of peace, are often deployed in the service of war and self-aggrandizement.

Livy's narrative illustrates several of the difficulties that might arise in the maintenance of any system of diplomacy and sovereign states so ordered. Foremost among these, perhaps, is the status of *ius gentium* and its relationship to the laws of the individual parties to any given diplomatic

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quod putavit rebus suis utile? quantum autem ab iustitia recedat utilitas, populus ipse Romanus docet, qui per fetiales bella indicendo et legitime iniurias faciendo semperque aliena cupiendo atque rapiendo possessionem sibi totius orbis comparavit. verum hi iustos se putant, si contra leges suas nihil faciant . . . . "

8. Livy 9.11.9–12.

9. G. Mattingly, *Renaissance Diplomacy* (Boston: Houghton Mifflin, 1955), 15–29; David J. Bederman, *International Law in Antiquity* (Cambridge: Cambridge University Press, 2001), 18. Consider, e.g., Servius on *Aeneid* 4.682, quoting Cato *Origines* bk. 4 fr. 80 Peter: "POPULUMQUE PATRESQUE URBEMQUE TUAM 'patres' id est senatum; 'urbem tuam' quam tu extruxisti. et quidam hoc loco volunt tres partes politiae conprehensas, populi, optimatium, regiae potestatis: Cato enim ait de tribus istis partibus ordinatam fuisse Carthaginem"; and cf. Cicero *Rep.* 2.42.

negotiation. What if the Samnites did not recognize the distinction between a surrender and a guarantee, or did not accept the necessity that a fetial priest rather than the state's highest elected magistrate strike a treaty? Writing some two centuries after Livy about an analogous problem, namely, the situation of aliens within Roman law and in particular their use of verbal obligations, Gaius would acknowledge that "there is only one circumstance under which an alien can incur obligation by using this word," namely, *spondeo,* "I promise," and that was when either the emperor asked the *princeps* of a foreign people regarding peace a question in this form: "Do you promise that there will be peace?" or when the emperor was asked for a like stipulation. "But this argument is overly subtle," decided Gaius, "because, if something takes place in violation of the agreement, there is no action on the stipulation, but recourse is had to the law of war."[10]

More importantly as regards this particular incident, what if Samnite law did not confer citizenship on Postumius? Who, then, did strike the Roman ambassador? This last question is not wholly captious: Cicero would argue, regarding a later, similarly unsuccessful attempt to surrender a Roman general to an enemy who had forced him to sign a treaty, that "surrender and gift have no meaning without acceptance,"[11] and therefore that the general in question retained his citizenship. But others disagreed, including the great jurist of the generation before Cicero, Quintus Mucius Scaevola (consul 95 B.C.E.), and the fact that a law was later passed conferring—or confirming?—his citizenship, suggests that a view other than Cicero's prevailed at the time.[12]

The particularities of Roman and Samnite law on citizenship and prisoners of war to one side, Livy has also allowed Gaius Pontius to draw attention to one of those themes of Roman tellings of Roman history mentioned

10. Gaius *Institutiones* 3.94 (translation after Zulueta): "Unde dicitur uno casu hoc uerbo peregrinum quoque obligari posse, uelut si imperator noster principem alicuius peregrini populi de pace ita interroget: PACEM FUTURAM SPONDES? uel ipse eodem modo interrogetur. quod nimium subtiliter dictum est, quia si quid aduersus pactionem fiat, non ex stipulatu agitur, sed iure belli res uindicatur."

11. Cicero *Topica* 37; see also Cicero *Pro Caecina* 98 ("Quem pater patratus dedidit aut suus pater populusve vendidit, quo is iure amittit civitatem? Ut religione civitas solvatur civis Romanus deditur; qui cum est acceptus, est eorum quibus est deditus; si non accipiunt, ut Mancinum Numantini, retinet integram causam et ius civitatis") and *De oratore* 1.181 ("P. Rutilius, M. filius, tribunus plebis, iussit educi, quod eum civem negaret esse, quia memoria sic esset proditum, quem pater suus aut populus vendidisset aut pater patratus dedidisset, ei nullum esse postliminium").

12. Pomponius *Ad Q. Mucium* bk. 37 frr. 319–320 = *Dig*. 49.15.5 and 50.7.18. The general in question is Hostilius Mancinus: in addition to the sources already cited, see Livy *Periochae* 55; Appian *Iberika* 79–80; Florus 1.34.5–7; Velleius 2.1.3–5; and further *MRR* 1:484.

above, namely, their insistence that their actions—and in particular their wars—be just or, depending on one's perspective, that they be cloaked in a semblance of legality.[13] (Another, less often remarked upon, perhaps, is the consistent voicing within Roman historical narrative of precise and biting denunciations of Roman conceits by foreign voices.[14]) But as the story of Spurius Postumius shows, Roman appeals to *ius gentium* could be anything but just and their consequences anything but legalitarian debate. So, for example, the Romans presented their decision to raze the city of Corinth in 146 B.C.E. not as a lesson to the Greeks about the consequences of abusing their "freedom," but as punishment for the harm done Roman ambassadors there the year before.[15] Likewise, when the Veneti tried in 56

13. See, e.g., Varro *De vita populi Romani* bk. 2 fr. 91 Semi, quoted below note 19 and cf. Cicero *De legibus* 2.21 ("Foederum pacis belli indutiarum <iniuriarum> oratorum fetiales ius noscunto; bella denuntianto") with commentary at 2.34 ("sequitur enim de iure belli; in quo et suscipiendo et gerendo et deponendo ius ut plurimum valeret et fides, eorumque ut publici interpretes essent, lege sanximus"). (For the emendations adopted in *Leg.* 2.21, see J.-L. Ferrary, "Ius fetiale et diplomatie," in *Les relations internationales. Actes du Colloque de Strasbourg 15–17 juin 1993,* ed. Ed. Frézouls and A. Jacquemin [Paris: De Boccard, 1995], 415.) See also Cicero *De officiis* 1.34–36 ("Atque in republica maxime conservanda sunt iura belli . . . . Quare suscipienda quidem bella sunt ob eam causam, ut sine iniuria in pace vivatur; parta autem victoria conservandi ii qui non crudeles in bello . . . . Ac belli quidem aequitas sanctissime fetiali populi Romani iure perscripta est, ex quo intellegi potest nullum bellum esse iustum nisi quod aut rebus repetitis geratur aut denuntiatum ante sit et indictum") and *Rep.* 2.31 ("constituitque ius quo bella indicerentur, quod per se iustissime inventum sanxit fetiali religione, ut omne bellum quod denuntiatum indictumque non esset, id iniustum esse atque impium iudicaretur") and 3.35a. Further literature is cited in H. Drexler, "Iustum bellum," *Rheinisches Museum* 102 (1959): 97–140; cf. P. Brunt, *Roman Imperial Themes* (Oxford: Clarendon Press, 1990), 305–8. A related problem is the Roman desire that the gods should favor their actions in war, a concern expressed with particular clarity in the *supplicationes* undertaken when wars were declared: see Livy 21.17.4 ("Latum inde ad populum uellent iuberent populo Carthaginiensi bellum indici; eiusque belli causa supplicatio per urbem habita atque adorati di, ut bene ac feliciter eueniret quod bellum populus Romanus iussisset") and 31.8.1 ("supplicatio inde a consulibus in triduum ex senatus consulto indicta est, obsecratique circa omnia puluinaria di ut quod bellum cum Philippo populus iussisset, id bene ac feliciter eueniret").

14. See, e.g, Sallust *Historiae* 4.69, especially 16–21 = *Epistula ad Mithridatem,* Tacitus *De vita Agricolae* 30.3–5. For some discussion of this topic and further citations, see H. Fuchs, *Die geistige Widerstand gegen Rom in der antiken Welt* (Berlin: de Gruyter, 1938), 15–17 and 44–47, and M. Gelzer, *Kleine Schriften* (Wiesbaden: Franz Steiner, 1963), 2:7.

15. See Livy *Per.* 52 ("Qui [Lucius Mummius] omni Achaia in deditionem accepta Corinthon ex senatus consulto diruit, quia ibi legati Romani violati erant") and Cicero *De lege Manilia* 11 ("Legati quod erant appellati superbius, Corinthum patres vestri, totius Graeciae lumen, exstinctum esse voluerunt: vos eum regem inultum esse patiemini, qui legatum populi Romani consularem vinculis ac verberibus atque omni supplicio excruciatum necavit?"). On the "freedom" of the Greeks, see E. Gruen, *The Hellenistic World and the Coming of Rome* (Berkeley: The University of California Press,1984), 132–56; J.-L. Ferrary, *Philhellénisme et impérialisme: aspects idéologiques de la conquête romaine du monde hellénistique, de*

to arrange the return of hostages they had surrendered to the Romans the year before, by seizing requisition officers sent to them by Caesar, Caesar responded not simply by redescribing his officers as ambassadors, but by insisting that the Veneti themselves had understood them to be such: "at the same time, they understood how great was the crime they had committed, for they had constrained ambassadors, and even held them in bonds, though their title has always been sacred and inviolate among all people." Caesar therefore decided to punish them the more heavily, "in order that the *ius legatorum,* the law governing ambassadors, might in the future be observed the more diligently by all barbarians": all members of their Senate were executed and the rest of the population sold into slavery.[16]

Of course, doctrines of sacred inviolability had local dimensions, too: the Egyptians, for example, held cats to be sacred. When, in 60 or 59 B.C.E., a Roman embassy came to negotiate with Ptolemy XII Auletes ("The Flautist") concerning the exact size of the bribe that would gain him recognition and the status of "friend of the Roman people," one member of that embassy killed a cat. Then "a multitude rushed together to the house of the one who did it, and neither the officials sent by the king to beg the man off nor shared fear of Rome was strong enough to save the man from punishment, even though his deed had been accidental."[17] It would be arch to suggest that the lynch mob had weighed one principle of sacrality against another, or Egyptian law against the law of nations, and had decided to privilege the local and particular over against the shared and abstract. But so to analyze their action is to expose one feature of Roman theorizing about *ius gentium* and to invite inquiry into its history. For the property the Romans attributed to ambassadors was not mere inviolability, but sacrality; and in so doing they located the basis of *ius gentium* in religion and endowed it with moral concerns.[18] So it was that violations of *ius gentium*

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*la seconde guerre de Macédoine a la guerre contre Mithridate* (Rome: École française de Rome, 1988), 5–218.

16. Caesar *De bello Gallico* 3.7–16, especially 7.3 ("praefectos tribunosque militum . . . frumenti commeatusque petendi causa"), 9.3 ("simul quod quantum in se facinus admisissent intellegebant—legatos, quod nomen apud omnes nationes sanctum inviolatumque semper fuisset, retentos ab se et in vincula coniecto"), and 16.4 ("in quos eo gravius Caesar vindicandum statuit quo diligentius in reliquum tempus a barbaris ius legatorum conservaretur. itque omni senatu necato reliquos sub corona vendidit"). See also ibid. 4.12–15, where Caesar describes his massacre of three hundred thousand Usipetes and Tenctheri; his report earned a public thanksgiving at Rome, despite Cato's proposal in the Senate that Caesar be surrendered "to those whom he had wronged," insofar as the massacre commenced during a truce (Plutarch *Cato minor* 51.1 and cf. Plutarch *Caesar* 22).

17. Diodorus 1.83.8, who was an eyewitness (1.83.9).

18. In addition to Caesar *Gall.* 3.9.3 (cited above note 16), see Nepos *Pelopidas* 5.1: "Pelopidas . . . legationisque iure satis tectum se arbitraretur, quod apud omnes gentes sanctum esse conseusset . . . . " For a recent treatment on just-war theory in late Republican

were held impious or sacrilegious and trials for the same were conducted through consultation with the fetial priests.[19]

But in the mid- and late Republic the Romans developed other ways of theorizing *ius gentium:* on the one hand, it could be assimilated to Stoic theories of law and society and in that context could refer to that transcendent law of nature to which the laws of states should be compared; and on the other it became an anthropological category, a principal site around which Rome recognized the status of other civic bodies and other cultures.[20] During the long centuries in which these ideas took root and came to fruition, Rome passed from a city-state whose diplomatic contacts occurred primarily with other communities that had fetials, to an empire that both bordered and contained populations disparate in language, law, and culture.[21] It is my aim in this essay to see what light these histories

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Rome, with specific reference to Caesar, see A. Riggsby, *Caesar in Gaul and Rome: War in Words* (Austin: University of Texas Press, 2006), 157–89 and 215–16.

19. Observe the terminology used by Cicero *Caec.* 98: "ut religione civitas solvatur civis Romanus deditur"; Livy 9.10.9: "scelere impio solutus"; and Plutarch, *Cato minor* 51.1: μὴ τρέπειν εἰς αὐτοὺς μηδὲ ἀναδέχεσθαι τὸ ἄγος εἰς τὴν πόλιν. See also Nonius Marcellius s.v. *faetiales* (p. 850L), quoting Varro *De vita populi Romani* (frr. 91 and 111 Semi): "apud veteres Romanos erant, qui sancto legatorum officio ab his, qui adversum populum Romanum vi aut rapinis aut iniuriis hostili mente conmoverant, pignera facto foedere iure repetebant; nec bella indicebantur, quae tamen pia vocabant, priusquam quid fuisset faetialibus denuntiatum. Varro de vita populi Romani lib. II: 'itaque bella et tarde et magna diligentia suscipiebant, quod bellum nullum nisi pium putabant geri oportere: priusquam indicerent bellum is, a quibus iniurias factas sciebant, faetiales legatos res repetitum mittebant quattuor, quos oratores vocabant.' idem lib. III: 'si cuius [civitatis] legati violati essent, qui id fecissent, quamvis nobiles essent, uti dederentur civitati statuerunt faetialesque viginti, qui de his rebus cognoscerent, iudicarent, constituterunt'" (for the text, see T. Mommsen, *Römisches Staatsrecht* [Leipzig: S. Hirzel, 1887], 1:113 n. 3); and Dionysius of Halicarnassus *Antiquitates Romanae* 2.72.5: ὁμοίως δὲ κἂν ἀδικεῖσθαί τινες ὑπὸ Ῥωμαίων ἔνσπονδοι λέγοντες τὰ δίκαια αἰτῶσι, τούτους διαγινώσκειν τοὺς ἄνδρας εἴ τι πεπόνθασιν ἔκσπονδον, καὶ ἐὰν δόξωσι τὰ προσήκοντα ἐγκαλεῖν, τοὺς ἐνόχους ταῖς αἰτίαις συλλαβόντας ἐκδότους τοῖς ἀδικηθεῖσι παραδιδόναι, τά τε περὶ τοὺς πρεσβευτὰς ἀδικήματα δικάζειν καὶ τὰ περὶ τὰς συνθήκας ὅσια φυλάττειν εἰρήνην . . .

20. See G. Grosso, "Riflessioni su 'ius civile', 'ius gentium', 'ius honorarium' nella dialettica fra tecnicismo-tradizionalismo giuridico e adeguazione allo svilippo economico e sociale in Roma," in *Studi in memoria di Guido Donatuti* (Milan: La Goliardica, 1973), 1:439–53; C. Moatti, *La raison de Rome* (Paris: Éditions du Seuil, 1997), 163–65 and 287–98; as well as M. Kaser, *Ius gentium* (Cologne: Böhlau, 1993), 14–20.

21. On the local, Latin origin of *fetiales,* see Dionysius 2.72.1–2, suggesting that Numa instituted them in imitation of Aequicoli or Ardea; he attributes the latter suggestion to Gnaeus Gellius (fr. 16 Peter). See also Livy 1.32.6 ([Ancus Marcius] "ius ab antiqua gente Aequiculis quod nunc fetiales habent descripsit") and 14 ("Hoc tum modo ab Latinis repetitae res ac bellum indictum, moremque eum posteri acceperunt"). The currency of this legend in late-Republican Rome, in multiple forms, is further confirmed by the *elogium* to Fertor Erresius, an inscription found in the Roman Forum: "Fert. Erresius, rex Aequeicolus. Is

might shed upon each other and, in particular, upon that nexus between understandings of law, sovereignty, and territorial integrity where the practice of diplomacy takes shape.

In the abstract, my argument is as follows. In the course of imperial expansion, the Romans dealt initially with communities much like themselves, speaking similar languages and possessing kindred institutions. But eventually they came into extended contact with populations radically different in language and custom; the Romans themselves commonly identified the conquest of Sicily, in a *transmarinum bellum,* "a war across the sea," as a turning point in such a narrative.[22] Some of these they understood as like unto themselves in sophistication, others as deficient, and diplomatic practice in negotiating with such peoples might differ. Not that the aim or outcome of Roman diplomacy in the age of conquest varied much with time, place, or partner: Romans negotiated, and invoked legal norms, so as to extract from their opponents a treaty recognizing Roman hegemony—the *maiestas,* the "greaterness" of the Roman people[23]—or to produce an impasse that justified violence.

But along the way, in politics, historiography, and law, Roman lawyers, diplomats, and intellectuals required understandings of those same practices of diplomacy that would clarify the status of their outcomes in subsequent deliberations in both domestic and foreign affairs. The theorizing that issued from that demand had two surprising features. First, it tended to assimilate the institutional frameworks of all foreign governments to those of each other and to those of the Romans themselves, in spite of an

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preimus ius fetiale paravit; inde p. R. discipleinam excepit (Fertor Erresius, Aequicolan king. He first crafted the fetial law; thence the Roman people received that science)" (*ILS* 61). See also Cicero *Rep.* 2.31; Plutarch *Numa* 12.4–5; and Servius *Aen.* 7.695. Note also how Livy sums up his account of the fetial ritual (1.32.14): "Hoc tum modo ab Latinis repetitae res ac bellum indictum, moremque eum posteri acceperunt." For a late attempt to construe foreign behavior as analogous to fetial practice, see Ammianus 19.2.4–6, describing the assault on Amida of Grumbates and the Persians (where Ammianus himself was present): "(4) Cernentes populos tam indimensos ad orbis Romani incendium diu quaesitos in nostrum conversos exitium, salutis rata desperatione gloriosos vitae exitus deinde curabamus, iamque omnibus nobis optatos. (5) a sole itaque orto usque diei ultimum acies immobiles stabant ut fixae nullo variato vestigio nec sonitu vel equorum audito hinnitu, eademque figura digressi qua venerant, cibo recreati et somno, cum superesset exiguum noctis, aeneatorum clangore ductante urbem ut mox casuram terribili corona cinxerunt. (6) vixque ubi Grumbates hastam infectam sanguine ritu patrio nostrique more coniecerat fetialis, armis exercitus concrepans involat muros confestimque lacrimabilis belli turbo crudescit, rapido turmarum processu in procinctum alacritate omni tendentium, et contra acri intentaque occursatione nostrorum."

22. See, e.g., Cicero 2 *In Verrem* 2.2.

23. On *maiestas* see Yan Thomas, "L'institution de la majesté," *Revue de synthèse,* 4th ser., nos. 3–4 (July–December 1991): 331–86.

on-going tendency within ethnographic literature in particular and culture more generally to insist upon the radical superiority of select cultures over others. Second, it likewise assigned to all foreign peoples equal status as political collectivities. (The stories cited above about Corinth, the Veneti, and cats in Egypt illustrate a moment in this history, showing as they do Romans confronting deeply foreign peoples and yet insisting, to those peoples' misfortune, that they should be treated as though similar.)

There were, of course, important regular and systematic exceptions to this process of assimilation—I shall list some in a moment and examine them in detail below. But I emphasize here and in the conclusion the opposite: that late Republican and early imperial lawyers, seeking to establish a normative framework for understanding the effects at law of foreign relations, came to construe foreign polities as states similar to Rome and that this framework, which grew out of post eventum reflections on practice, in turn shaped the conduct of diplomacy in the high and late empire. They came, I argue, to conceive of the world as comprised of a network of sovereign states. This was so despite two things: on the one hand, the on-going importance in political life throughout much of this period of aspirations to further conquest, and indeed actions pursuant to the same; and, on the other, an insistence in private law, and in the law of persons, that non-Roman communities and non-citizens within the empire were literally alien, no more and no less than aliens without.[24] Both these doctrines—that Rome would surely expand, not least at the expense of barbarians who had no fixed abode, and that aliens are aliens are aliens—urged a conclusion opposed to that I find in much law, namely, that the world comprised not Rome and other sovereign states but Rome and peoples already or soon-to-be conquered. Hence Rome's borders were in two respects fluid: they changed in light of events, and they were in any event of different kinds when confronting communities understood to exist at different stages of development.

I construct my argument through consideration of a number of discrete bodies of law, none of which can today be studied in light of anything

24. I have argued elsewhere that the first two centuries C.E. witnessed a revolution in conceptions of cultural and political identity under the empire, in which subject populations first and Romans later broke down the citizen-alien distinction in favor of one that divided the world between those who lived inside and outside the empire (C. Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire* [Berkeley: University of California Press, 2000], 277–335); and I take up these issues again in two studies charting the intertwined histories of the law of persons and of political subjectivity at Rome and in the provinces: "From Republic to Empire," in *The Oxford Handbook of Roman Social Relations,* ed. Michael Peachin (Oxford: Oxford University Press, forthcoming); and "Imperial Identities," in *Local Knowledge and Microidentities in the Roman Empire,* ed. Tim Whitmarsh (Cambridge: Cambridge University Press, forthcoming).

like a robust body of evidence. Like the so-called "fetial law" invoked by speakers in Livy, most bodies of Roman law are attested today through agglomerations of evidence of different kinds: a statute, named or unnamed, might be invoked in political or forensic oratory, or by characters in history; fragments of statutes or legal instruments on various media survive in abundance; and vast excerpts, but excerpts only, of jurisprudence and imperial edicts were organized into various genres of codes in the late empire. With that caveat firmly in mind, Section II considers various bodies of law and diplomatic practices whose elaboration in theory required that sovereignty and territorial integrity like that possessed by Rome be credited to its neighbors. These include the law of *postliminium,* on prisoners of war, and the forms observed in staging *conloquia,* literally "speakings-together," negotiations with foreign powers.

By contrast, Section III takes up such bodies of law as recognize—indeed, insist upon—the radical otherness of persons or land within the empire. I focus first on so-called pontifical law—the law of the *pontifices,* another college of state priests. It was the *pontifices,* we are told, who insisted conquered peoples should maintain *their* rites (rather than take up Roman ones, for example); it was likewise a postulate of pontifical law that Roman rites of sacralization could not be performed on "provincial soil."

Section IV brings these together and juxtaposes their status as bodies of law, with their very different bases in evidence, with what we can now reconstruct of the history of *ius gentium.* The elaboration of all these normative codes *as law* takes place, I suggest, at a similar moment in Roman history, as part of that process by which Rome more or less ceased in practice to conquer new territory, ceased in substance to be a Republic, and required, as a result of conquests, new forms of knowledge and new conceptual instruments by which to comprehend and to govern the world that Republican conquest had brought into being. It was by no means necessary that the law as a discipline should assume a hegemonic place among the systems of knowledge then vibrant at Rome, but so it rapidly did. One expression of this process, I would argue, was the limning of a vision of Rome in the world not as empire over all, but as state among states, an important moment in the history of law and empire and the pre-history of the state.

## II. The Predicates of Sovereignty

In searching for Roman theorizing about sovereignty and the conceptions attendant upon its modern configurations, we encounter two interrelated difficulties. First, there survive from the Roman world no treatises on diplomacy or statecraft as such, in which the political institutions and consti-

tutional underpinnings of autonomous states, and the means of dealing with them, are subjected to discursive elaboration.[25] Second, the Romans felt a profound reluctance to codify for themselves what Ulpian denominated *ius publicum,* the law that consisted in "*sacra,* priesthoods, and magistracies."[26] We might therefore seem to be at something of a loss in seeking to understand wherein Romans understood the sovereignty of their own state, and the legitimacy of its government, to lie, to say nothing of those states and governments with whom they came into contact. Of course, after his return from exile in 57, Cicero described the condition of the *civitas* in 58—at the moment and in the aftermath of his exile—as one in which there had been no *res publica*[27]; but his later attempt to equate *res publica* with *res populi,* and then to define a "people" as "not any assemblage of human beings, gathered for any reason whatsoever, but an assemblage united by common interest and consensual commitment to *ius,* to a particular normative order," merely begged the question what the *ius* of a *populus* was, and that is a question he never answered.[28]

In point of fact, we have two bodies of evidence that have been underex-

25. This is true in spite of the remarkable evidence preserved in ancient sources regarding the practice of diplomacy not only within the Mediterranean world (on which see, e.g., J. Ma, *Antiochus III and the Cities of Western Asia Minor* [Oxford: Oxford University Press, 1999], and Ma, "Peer Polity Interaction in the Hellenistic Age," *Past & Present* 180 [2003]: 9–39), but also between speakers of Greek and Latin and those of other languages (on which see W. I. Snellman, *De interpretibus Romanorum deque linguae Latinae cum aliis nationibus commercio* [Leipzig: Dieterich 1914–19], whose collection of testimonia in vol. 2 includes much evidence not particularly germane to the role of interpreters).

26. Ulpian *Institutiones* bk. 1 fr. 1908 Lenel = *Dig*. 1.1.1.2: "Huius studii duae sunt positiones, publicum et privatum. publicum ius est, quod ad statum rei Romanae spectat, privatum, quod ad singulorum utilitatem: sunt enim quaedam publice utilia, quaedam privatim. publicum ius in sacris, in sacerdotibus, in magistratibus constitit. privatum ius tripertitum est: collectum etenim est ex naturalibus praeceptis aut gentium aut civilibus." On the development of the category *ius publicum* in the late Republic and its later history, see C. Ando, "Religion and *ius publicum,*" in *Religion and Law in Classical and Christian Rome,* ed. C. Ando and J. Rüpke (Stuttgart: F. Steiner, 2006), 126–45, especially 134–40 = Ando, *The Matter of the Gods* (Berkeley: University of California Press, 2008), 72–83.

27. Cicero *De reditu ad populum* 14: "Itaque, dum ego absum, eam rem publicam habuistis, ut aeque me atque illam restituendam putaretis. ego autem, in qua civitate nihil valeret senatus, omnis esset impunitas, nulla iudicia, vis et ferrum in foro versaretur, cum privati parietum se praesidio, non legum tuerentur, tribuni plebis vobis inspectantibus vulnerarentur, ad magistratuum domos cum ferro et facibus iretur, consulis fasces frangerentur, deorum immortalium templa incenderentur, rem publicam esse nullam putavi." On the failure of the *res publica* in 58, see A. M. Riggsby, "The *Post Reditum* speeches," in *Brill's Companion to Cicero: Oratory and Rhetoric,* ed. J. M. May (Leiden: Brill, 2002), 168–70.

28. Cicero *Rep.* 1.39.1 ("'Est igitur' inquit Africanus 'res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus'") and cf. *Rep.* 6.13.2, *Leg. Man.* 41, *Off.* 1.124, and *Pro Cluentio* 146.

ploited in pursuing Roman theories of statehood, the first being the Flavian municipal law and its late Republican and Augustan antecedents, and the second being that body of inscribed texts wherein provincial communities described themselves as having, or as constituting, a *res publica.* The ability of communities subordinate to an imperial power both *de facto* and *de iure* to describe themselves as (though) autonomous, using the language of Roman constitutional theory, such as it was, is itself a problem, one not unrelated to the history of diplomacy *within* the empire, and to it I shall return.

Where sovereignty is concerned, we would do well to follow a similar path. We should not investigate the sententious abstractions offered by imperial rhetoricians but the workings-out of theory, as it were, in juridical and diplomatic practice. To show what I mean by this, let me gesture toward two bodies of evidence in which the constitutive predicates of a theory of sovereignty and system of states find expression: the first is the body of law on *postliminium;* the second is a set of records, both documentary and historiographic, for diplomatic negotiations with foreign powers.

In Roman law, the capture or surrender of a citizen by or to an enemy resulted in the suspension of his rights; *postliminium,* "the right of return 'beyond the threshold,'" permitted him to recover all the rights of citizenship upon his return. Under the empire, if not earlier, jurists expanded the concept of *postliminium* to embrace the movements of people and property in peacetime, and in so doing came to discuss, however obliquely and tentatively, the status of those political formations with whom relations of *postliminium* might be formed. So, for example, Pomponius allowed that "*postliminium* is also granted in peacetime":

> for if with some people (*cum gente aliqua*) we have neither friendship nor *hospitium* nor a treaty made for the purpose of friendship, they are not exactly enemies, but nevertheless, what comes to them from us, becomes theirs; and a free fellow citizen of ours captured by them becomes their slave; the same is true, if something from them comes to us.[29]

A half century later, Paulus would similarly describe *postliminium* as "the right of recovering lost property *ab extraneo,* from a foreigner and restoring it to its former condition," "established by law and custom between us and free peoples and kings" (*liberos populos regesque*): relevant losses could occur in war, he wrote, or even "short of war" (*bello . . . aut etiam citra*

29. Pomponius *Ad Quntium Mucium* bk. 37 fr. 319 = *Dig*. 49.15.5.2: "In pace quoque postliminium datum est: nam si cum gente aliqua neque amicitiam neque hospitium neque foedus amicitiae causa factum habemus, hi hostes quidem non sunt, quod autem ex nostro ad eos pervenit, illorum fit, et liber homo noster ab eis captus servus fit et eorum: idemque est, si ab illis ad nos aliquid perveniat. hoc quoque igitur casu postliminium datum est."

*bellum*).[30] Pomponius and Paulus here both reveal that assumption deemed crucial to the existence of systems of states, namely, that the natural relationship between Rome and other powers was at the very least not war; at the same time, both seem to imagine that a relationship between states can be construed, and perhaps must be construable, as a relationship between systems of civil law.[31] Our confidence in this last matter approaches certainty in the case of Paulus insofar as he—together with his contemporary Ulpian—insisted that *postliminium* does not apply to those bodies of violent men not united *consensu iuris,* namely, pirates and bandits.[32]

In the juristic imagination, the notional system of states between whom relations of *postliminium* exist has two further properties that merit scrutiny here: first, as Proculus argued, *postliminium* does not exist between Rome and those with whom Rome has relations by treaty and, second, the states in question, allied and otherwise, have distinct and discernible borders.

> I have no doubt that although free peoples and those bound to us by treaty are foreigners to us, there is no *postliminium* between us and them. For what need is there of *postliminium* between us and them, since they retain their freedom and property rights among us just as among themselves, and the same applies to us among them? (1) A free people is one that is not subject to the control of another people; a people bound by treaty is one that has entered into friendship under an equal treaty or one constrained by a treaty such that one people should with good will preserve the *maiestas* of the other people. It has to be added that the one people is understood to be superior, not that the other is not free; and insofar as we understand our clients to be free, even if they do not excel us in authority, dignity or power, so also those who are obliged to preserve our *maiestas* with good will should be understood to be free.[33]

30. Paulus *Ad Sabinum* bk. 16 fr. 1893 = *Dig*. 49.15.19.*pr.*: "Postliminium est ius amissae rei recipiendae ab extraneo et in statum pristinum restituendae inter nos ac liberos populos regesque moribus legibus constitutum. nam quod bello amissimus aut etiam citra bellum, hoc si rursus recipiamus, dicimur postliminio recipere. idque naturali aequitate introductum est, ut qui per iniuriam ab extraneis detinebatur, is, ubi in fines suos redisset, pristinum ius suum reciperet."

31. Cf. Kaser, *Ius gentium,* 12–13, 23–32.

32. Paulus *Ad Sabinum* bk. 16 fr. 1893 = *Dig.* 49.15.19.2 ("a pirates aut latronibus capti liberi permanent"); Ulpian *Inst.* bk. 1 fr. 1911 = *Dig.* 49.15.24 ("hostes sunt, quibus bellum publice populus romanus decrevit vel ipse populo romano: ceteri latrunculi vel praedones appellantur. et ideo qui a latronibus captus est, servus latronum non est, nec postliminium illi necessarium est: ab hostibus autem captus, ut puta a germanis et parthis, et servus est hostium et postliminio statum pristinum recuperat"). On the Ciceronian roots of the distinction they draw between a "people" and "bandits," see Macrobius *Comm.* 1.8.13.

33. Proculus *Epistulae* bk. 8 fr. 30 = *Dig*. 49.15.7.*pr.*-1: "Non dubito, quin foederati et liberi nobis externi sint, nec inter nos atque eos postliminium esse: etenim quid inter nos atque eos postliminio opus est, cum et illi apud nos et libertatem suam et dominium rerum

Like the distinction between allied and client states on the one hand, and foreign and hostile powers on the other, the notional existence of a border is fundamental to determining when relations of *postliminium* begin and end. So Labeo, for example, asserted that things should be understood as having returned by *postliminium* as soon as they escaped from the enemy with requisite intent and "began to be within the borders of our empire."[34] Paulus later qualified this view: to be sure, "a person is understood to have returned by *postliminium* when he enters into our borders, just as a person is lost when he departs our borders," but "a person should also be understood to have returned by *postliminium* who comes to an allied or friendly community or an allied or friendly king."[35]

A similar theoretical commitment to the existence of borders between notionally sovereign states informed Roman diplomatic practice.[36] This is true despite the claim to universal hegemony implicit in the self-congratulatory rhetoric of imperial autobiography and panegyric or imperial titulature.[37] So, for example, in Ammianus Marcellinus's account of a conversation between Theodosius and the African barbarian king Igmazen, to the latter's question, "What is your rank, and what have you come here to do?" Theodosius responded, "I am a general of Valentinian, the lord of the entire

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suarum aeque atque apud se retineant et eadem nobis apud eos contingant? (1) Liber autem populus est is, qui nullius alterius populi potestati est subiectus: sive is foederatus est item, sive aequo foedere in amicitiam venit sive foedere comprehensum est, ut is populus alterius populi maiestatem comiter conservaret. hoc enim adicitur, ut intellegatur alterum populum superiorem esse, non ut intellegatur alterum non esse liberum: et quemadmodum clientes nostros intellegimus liberos esse, etiamsi neque auctoritate neque dignitate neque viri boni nobis praesunt, sic eos, qui maiestatem nostram comiter conservare debent, liberos esse intellegendum est."

34. Labeo Πιθανῶν bk. 8 fr. 226 = *Dig.* 49.15.30: "Si id, quod nostrum hostes ceperunt, eius generis est, ut postliminio redire possit: simul atque ad nos redeundi causa profugit ab hostibus et intra fines imperii nostri esse coepit, postliminio redisse existimandum est."

35. Paulus *Ad Sabinum* bk. 16 fr. 1893 = *Dig.* 49.15.19.3: "Postliminio redisse videtur, cum in fines nostros intraverit, sicuti amittitur, ubi fines nostros excessit. sed et si in civitatem sociam amicamve aut ad regem socium vel amicum venerit, statim postliminio redisse videtur, quia ibi primum nomine publico tutus esse incipiat."

36. I set aside for now the specification of borders—especially shared borders—in treaties. For examples, see Livy 21.2.7 ("Cum hoc Hasdrubale, quia mirae artis in sollicitandis gentibus imperioque suo iungendis fuerat, foedus renouauerat populus Romanus ut finis utriusque imperii esset amnis Hiberus Saguntinisque mediis inter imperia duorum populorum libertas seruaretur") and 34.58.2–3 (describing negotiations between Flamininus and Antiochus, to be contrasted with the conditions imposed after Antiochus's defeat: 38.38.2–4). For a skeptical position regarding the concept of the border in the debates leading up to the Second Punic War, see Brunt, *Roman Imperial Themes,* 300.

37. I know of no treatment of this problem under the empire to compare with E. K. Chrysos, "The Title Βασιλευς in Early Byzantine International Relations," *Dumbarton Oaks Papers* 32 (1978): 31–75.

world" (*comes Valentiniani sum orbis terrarum domini*).[38] Theodosius may not have seen any contradiction between that language and the fact that he addressed an independent king; and thus his posture, like the arguments of Proculus, may beg the questions whether peoples other than the Romans have *maiestas,* and what the status of a people without it would be. But Ammianus himself understood the danger of failing to distinguish between rhetoric and reality in foreign affairs, and so, though he praised the same Valentinian for his "desire to fortify the frontiers," he found it to be "glorious but excessive": "for Valentinian ordered fortified camps to be built across the river Danube in the very lands of the Quadi, as if they had already passed under Roman rule (*quasi Romano iuri iam vindicatis*); but the natives bore this ill, being protective of their own interests (*suique cautiores*), though for now they worked to prevent it only by an embassy and whispered mutterings."[39]

Perhaps the most astonishing claim to sovereignty in Roman historiography is that put in the mouth of Ariovistus by none other than Julius Caesar: to Caesar, when they met for a *conloquium* on an earthen mound "about an equal distance from each of their camps,"[40] Ariovistus observed,

> that he had come into Gaul before the Roman people. Indeed, before this time no army of the Roman people had left the borders of the province of Gaul. What was Caesar thinking? Why had Caesar come into his possessions? This Gaul was his province, as that other is ours. Just as it would not be proper for us to yield to him, should he make an attack into our territories, so, likewise, we would be unjust, were we to obstruct him in the exercise of his right.[41]

Similar protocols governed the *conloquium* between Lucius Vitellius and Artabanus, the king of Parthia, when they met in C.E. 37: they first met at the Euphrates and, indeed, on the Euphrates, in the middle of a bridge constructed for this occasion. It was only after Artabanus had conceded the superiority of the Roman people that he crossed the river to make obeisance

38. Ammianus 29.5.46; on this passage and the geopolitical claims inherent in it, see C. Ando, *Imperial Ideology,* 320–35.

39. Ammianus 29.6.2: "Valentinianus enim studio muniendorum limitum glorioso quidem sed nimio ab ipso principatus initio flagrans, trans flumen Histrum in ipsis Quadorum terris quasi Romano iuri iam vindicatis aedificari praesidiaria castra mandavit: quod accolae ferentes indigne, suique cautiores, legatione tenus interim et susurris arcebant."

40. Caesar *Gall.* 1.43.1: "Planities erat magna et in ea tumulus terrenus satis grandis. Hic locus aequum fere spatium a castris Ariovisti et Caesaris aberat. Eo, ut erat dictum, ad conloquium venerunt."

41. Caesar *Gall.* 1.44.7–8: "Se prius in Galliam venisse quam populum Romanum. Numquam ante hoc tempus exercitum populi Romani Galliae provinciae finibus egressum. Quid sibi vellet? Cur in suas possessiones veniret? Provinciam suam hanc esse Galliam, sicut illam nostram. Ut ipsi concedi non oporteret, si in nostros fines impetum faceret, sic item nos esse iniquos, quod in suo iure se interpellaremus."

before the standards of the legions and the portraits of the emperors, but that concession received public mitigation when Herod of Judaea feasted both Vitellius and Artabanus in a tent he built in the middle of the river.[42]

Of course, the Romans dealt with many peoples who were not kingdoms, indeed, who did not even dwell in cities, and among such their practice reflects an underlying desire to structure relations as though each party to the negotiation were not only sovereign, but territorially defined; theirs was "a world willed as homogeneous, because there were so many competing ways of constructing and living this world."[43] In the north, along the Rhine and Danube, contacts with "previously unknown or hostile kings" could thus be conducted through forms parallel to those employed with the more developed Parthians in the east: Titus Plautius Aelianus, praetorian legate of Moesia under Nero, brought them to the bank of the Danube—the one he guarded—where they performed obeisance before the Roman standards.[44] In Africa, whose geography provided fewer natural borders, the movement of people was hard to control and boundaries—and perhaps notions of boundaries—proved more fluid.[45] In being so conducted, Roman diplomatic practice mirrors its practice in administration and law, in which the Romans

42. See Josephus *Antiquitates Iudaicae* 18.101–2 (Ταῦτα ἀκούσας ὁ Τιβέριος ἠξίου φιλίαν αὐτῷ γενέσθαι πρὸς τὸν Ἀρτάβανον, ἐπεὶ δὲ κἀκεῖνος προκληθεὶς ἄσμενος ἐδέχετο τὸν περὶ αὐτῶν λόγον, ἐπὶ τὸν Εὐφράτην παρῆσαν ὅ τε Ἀρτάβανος καὶ Οὐιττέλλιος. καὶ ζεύξεως τοῦ ποταμοῦ γενομένης κατὰ τὸ μεσαίτατον τῆς γεφύρας ἀλλήλους ὑπηντίαζον μετὰ φυλακῆς ἑκάτερος τῆς περὶ αὐτόν. καὶ λόγων αὐτοῖς συμβατικῶν γενομένων Ἡρώδης ὁ τετράρχης εἰστίασεν αὐτοὺς κατὰ μέσον τὸν πόρον σκηνίδα ἐπισκηψάμενος τῷ πόρῳ πολυτελῆ); Suetonius *Gaius* 14.3 (Namque Artabanus Parthorum res, odium semper contemptumque Tiberi prae se ferens, amicitiam huius ultro petiit venitque ad colloquium legati consularis et transgressus Euphraten aquilas et signa Romana Caesarumque imagines adoravit); Suetonius *Vitellius* 2.4 (Lucius ex consulatu Syriae praepositus, Artabanum Parthorum regem summis artibus non modo ad conloquium suum, sed etiam ad veneranda legionum signa pellexit); and Dio 59.27.3 ( . . . καὶ τὸν Ἀρτάβανον καὶ ἐκείνῃ ἐπιβουλεύοντο, ἐπειδὴ μηδεμίαν τιμωρίαν ἐπὶ τῇ Ἀρμενίᾳ ἐδεδώκει, κατέπληξέ τε ἀπαντήσας αὐτῷ ἐξαπιναίως περὶ τὸν Εὐφράτην ἤδη ὄντι, καὶ ἔς τε λόγους αὐτὸν ὑπηγάγετο καὶ θῦσαι ταῖς τοῦ Αὐγούστου τοῦ τε Γαΐου εἰκόσιν ἠνάγκασε, σπονδάς τε αὐτῷ πρὸς τὸ τῶν Ῥωμαίων σύμφορον δοὺς καὶ προσέτι καὶ παῖδας αὐτοῦ ὁμήρους λαβών).

43. Ma, *Antiochus III,* 30, writing of the world of Hellenistic city-states prior to contact with Rome.

44. *ILS* 986: ". . . ignotos ante aut infensos p. R. reges signa Romana adoraturos in ripam, quam tuebatur, perduxit."

45. C. Hamdoune, "Frontières théoriques et réalité administrative: le cas de la Maurétanie Tingitane," in *Frontières terrestres, frontières célestes dans l'antiquité,* ed. A. Rousselle (Perpignan: Presses Universitaires de Perpignan, 1995), 237–53; R. Rebuffat, "Mobilité des personnes dans l'Afrique romaine," in *La mobilité des personnes en Méditerannée de l'antiquité à l'époque moderne. Procédures de contrôle et documents d'indentification,* ed. C. Moatti (CÉFR 341; Rome: École française de Rome, 2004), 155–203.

drew elaborate distinctions between types of nucleated settlement, only to assimilate them to the paradigm of a *civitas* for the purposes of designing and describing their legal and political institutions.[46] Where diplomacy is concerned, the remarkable corpus of dedications from Volubilis in Mauretania Tingitana, for example, attesting eleven *conloquia* over more than a century between Roman governors and leaders of the Baquates, suggests by its very spatial fixity an attempt by the Romans both to accommodate and control the geographic fluidity of the semi-nomadic Baquates.[47]

> *To Jupiter Best and Greatest,*
>
> To the *genius* and good fortune
> of *Imperator* Caesar Marcus Aurelius Probus
> our unconquered Augustus,
> Clementius Valerius Marcellinus,
> *vir perfectissimus,* governor of Mauretania Tingitana,
> having held a *conloquium* with Iulius Nuffuzi, the son of Iulius Matif,
> the king of the *gens* of the Baquates—peace having been established
> by treaty—
> set up and dedicated this altar on the ninth day
> before the *kalends* of November, when our lord Probus and Paulinus were
> consuls.[48]

Nothing might be said so to reveal the conceit of these contacts—indeed, nothing might seem so likely to puncture it—as the litany of signatories among the Baquates, who are alternately styled chieftains or kings: Canarta, Ilila son of Ureti, Urelio, Sepemazine, Iulius Nuffizi son of Iulius Matif, Iulius Mirzi brother of the same Nuffizi, and Ucmetius. At the same time, the remarkable continuity of these same contacts, at least as attested by the surviving altars, urges that the Romans' effort to domesticate the Baquates was not altogether unsuccessful, despite the lack in the wilds of Tingitana of those concrete and depersonalized administrative and urban structures that normally mediated Roman power in the provinces.[49] And one consequence of the Romans so meeting with them—as with the Iut-

46. See, e.g., *lex agraria* (*RS* 2) l. 31; Tabula Heracleensis (*RS* 24) ll. 83–86.

47. On these texts, see B. D. Shaw, "Autonomy and Tribute: Mountain and Plain in Mauretania Tingitana," in *Desert et montagne: hommage à Jean Dresch = Revue de l'Occident Musulman et de la Méditeranée,* ed. P. Baduel, 41–42 (1986), 66–89.

48. *IAM* 360: I. O. M | Genio et Bonae Fortun. | Imp. Caes. M. Aur. Probi | Invicti Aug. N. | Clementius Val. Marcellinus | v. p. praeses p. M. T. conloquio | habito cum Iul. Nuffuzi Filio Iul. Matif. | regis g. Baq. foederata pac[e] | aram statuit et dedicavit die viiii | kal. Novembr. d. n. Probo aug. et Paulino cos. The other altars are *IAM* 348, 349, 350, 356, 357, 358, 359, 361, 384, and 402.

49. The language is heavily indebted to Shaw, "Autonomy and Tribute," 74–75.

hungi or Iazyges or Buri along the Danube—was their construal within the habits of Roman political thought and their inclusion within the structures of Roman diplomatic and economic conduct.[50]

## III. The Alien within the Empire

Until now I have concentrated on diplomacy as it was conducted at the frontiers, and I have tried to unpack some of the theoretical work that undergirded it. As regards diplomacy under the empire, this concentration has been misleading in at least two important respects. First, the great preponderance of evidence does not describe *conloquia* at the unurbanized frontiers, but the movement and reception of embassies at the center of power.[51] Second, a very decisive majority of attested embassies came to the Senate or the emperor not from peoples or states outside the empire, but from polities within it—including Roman colonies, which in many respects were held to have no independent existence as political collectivities apart from Rome.[52] Consideration of this sphere of diplomatic activity may well force a remodeling or extension of the simple edifice I have constructed thus far.

This is not to say that the Romans drew no distinction between subject and foreign. The Senate and emperor must have had at their disposal varied forms of etiquette and parliamentary protocols to distinguish the reception of embassies originating from colonies from those arriving from tributary

50. On the tribes north of the Danube, see especially Dio 72.15–20 and Dexippus fr. 24 Müller (*FHG* 3:682–686).

51. For general treatments of the sending and receiving of embassies, see A. A. Thurm, *De Romanorum legatis reipublicae liberae temporibus ad exteras nationes missis* (Leipzig: Engelhardt, 1883); F. Millar, *The Emperor in the Roman World* (Ithaca: Cornell University Press, 1977 [1992]), 410–20 and passim; and F. Millar, "State and Subject: The Impact of Monarchy," in *Caesar Augustus: Seven Aspects,* ed. F. Millar and E. Segal (Oxford: Clarendon Press, 1984). On the legal and other principles underlying diplomatic negotiations, see Gruen, *Hellenistic World,* 13–157.

52. For embassies from colonies under the Republic, see Livy 32.2.6–7, 33.24.9, and 37.46.9; on the legal status of colonies, see Gellius 16.13 and cf. Pliny *Epistulae* 10.47.1: "Cum vellem, domine, Apameae cognoscere publicos debitores et reditum et impendia, responsum est mihi cupere quidem universos, ut a me rationes coloniae legerentur, numquam tamen esse lectas ab ullo proconsulum; habuisse privilegium et vetustissimum morem arbitrio suo rem publicam administrare." On embassies from colonies under the Republic, see M. Bonnefond-Coudry, *Le Sénat de la République Romaine de la guerre d'Hannibal à Auguste: pratiques délibératives et prise de décision* (BÉFAR 263; Rome: École française de Rome, 1989), 275–76; and for those under the empire, see F. Millar, "Government and Diplomacy in the Roman Empire during the First Three Centuries," *International History Review* 10 (1988): 355.

cities, and those in turn from legations sent by free communities within the empire, and so on.[53] For example, we know from Festus's entry on *senacula*—which paraphrases an otherwise unknown work on meetings of the Senate by one Nicostratus—that the Senate received at the temple of Bellona, outside the *pomerium,* those embassies from foreign nations whom it did not wish to admit into the city[54]; and, by way of an example, Livy informs us that the Senate received the Carthaginian envoys that sought to start peace negotiations in 202 in the temple of Bellona, and it was only after the Senate accepted their overture and ordered Scipio to arrange a settlement that the envoys asked permission "to enter the city and speak with their fellow citizens who, having been captured, were being held in public custody."[55]

At the same time, the body of jurisprudential literature on embassies preserved in the *Digest* points to complexities in Roman conceptions of their empire that belie any simple distinction between subject and foreign. It might seem significant that the texts in that chapter—*Dig.* 50.7—deal exclusively with what Ulpian called "municipal embassies," despite the chapter's more generic title, "On embassies."[56] But that emphasis surely derives from the Digest's function as a codification of *ius civile,* of the law governing relations between citizens. Of greater interest are its repeated deployments of the term *patria* to refer to ambassadors' local city of origin.[57] That usage reflects an essentially Ciceronian formulation of the relationship between formerly autonomous municipalities and the empire, and especially of individuals' affective ties to them both.[58] Writing in the aftermath of the Social War, Cicero had been concerned primarily to find a way for individuals from the towns of Italy to negotiate between their local and Roman identities. But in the world of law and administration—and,

53. On this topic, see Bonnefond-Coudry, *Sénat,* 137–51; J. Linderski, "Ambassadors Go to Rome," in *Relations internationales,* ed. Frézouls and Jacquemin, 476–77; and M. Coudry, "Contrôle et traitement des ambassadeurs étrangers sous la République romaine," in *Mobilité,* ed. Moatti, 529–65.

54. Festus s.v. *senacula* (470L): "Senacula tria fuisse Romae, in quibus senatus haberi solitus sit, memoriae <p>rodidit Nicostratus in libro, qui inscribitur de Senatu habendo. Unum, ubi nunc est aedis Concordiae inter Capitolium et Forum, in quo solebant magistratus dumtaxat cum senioribus deliberare; alterum, ad portam Capenam; tertium, citra aedem Bellonae, in quo exterarum nationum legatis, quos in Urbem admittere nolebant, senatus dabatur."

55. Livy 30.40.2 and 43.5.

56. Ulpian *Ad Sabinum* bk. 8 fr. 2493 = *Dig.* 50.7.1.

57. See Q. Cervidius Scaevola *Dig.* bk. 1 fr. 1 = *Dig.* 50.7.13 ("Legatus creatus a patria sua suscepta legatione in urbem Romam venit . . . "); Paulus *Sententiae* bk. 1 fr. 1951 = *Dig.* 50.7.11 ("Si quis in munere legationis, antequam ad patriam revertetur, decessit, sumptus, qui proficiscenti sunt dati, non restituuntur").

58. Cicero *Leg.* 2.5.

of course, diplomacy—Cicero and his successors' multiple distinctions between Rome, city of local citizenship, and city whence one's family derived, worked to disjoin, even as they strove to unite, the empire.[59]

The distinction between what was Roman and what was municipal operated in several spheres, not least religion. Take, for example, the definition of *municipalia sacra,* "municipal rites," provided by Festus: "Those *sacra* are called *municipalia* which a people had from its origin, before receiving Roman citizenship, and which the *pontifices* wanted them to continue to observe and perform in the way in which they had been accustomed to perform them from antiquity."[60] The authority of the college of the *pontifices* was variously circumscribed, but it principally embraced the religious life of the citizen body and the public spaces of the city of Rome.[61] As Festus's remarks reveal, the extension of the franchise had, over time, brought those ways of describing pontifical authority into conflict: by the late Republic, the vast majority of Roman citizens lived outside the City. One solution would have been simply to expand the geographic domain of pontifical authority, and that possibility was canvassed and adopted at least once, when under Tiberius the *equites Romani* wished to dedicate a statue to *Fortuna equestris* but were unable to find a temple to that goddess in Rome. When they did find one in Antium, *repertum est,* "it was discovered" that all the rites, temples, and idols of the gods in the towns of Italy were *iuris atque imperii Romani,* "under the law and power of Rome."[62]

59. See C. Ando, "Vergil's Italy: Ethnography and Politics in First-Century Rome," in *Clio and the Poets: Augustan Poetry and the Traditions of Ancient Historiography,* ed. D. S. Levene and D. Nelis (Leiden: E. J. Brill, 2002), 123–42; cf. Y. Thomas, "L'institution de l'origine. Sacra Principiorum Populi Romani," in *Tracés de fondation,* ed. M. Detienne (Louvain: Peeters, 1990), 143–70; Thomas, *"Origine" et "commune patrie." Étude de droit public romain (89 av. J.C.–212 ap. J.C.)* (CÉFR 221; Rome: École Française de Rome, 1996); and J. Scheid, "Cultes, mythes et politique au début de l'Empire," in *Mythos in mythenloser Gesellschaft: das Paradigma Roms,* ed. F. Graf (Stuttgart: Teubner, 1993), 109–27 = "Cults, Myths and Politics at the Beginning of the Empire," trans. P. Purchase, in *Roman Religion,* ed. C. Ando (Edinburgh: Edinburgh University Press, 2003), 117–38.

60. Festus s.v. *municipalia sacra* (146L): "Municipalia sacra vocantur, quae ab initio habuerunt ante civitatem Romanam acceptam; quae observare eos voluerunt pontifices, et eo more facere, quo adsuessent antiquitus." See also Festus s.v. *peregrina sacra* (268L) ("Peregrina sacra appellantur, quae aut evocatis dis in oppugnandis urbibus Romam sunt †conata†, aut quae ob quasdam religiones per pacem sunt petita, ut ex Phrygia Matris Magae, ex Graecia Cereris, Epidauro Aesculapi: quae coluntur eorum more, a quibus sunt accepta") and s.v. *peregrinus ager* (284L) ("Peregrinus ager est, quae neque Romanus, neque †hostilius† habetur").

61. See, e.g, Cicero *Leg.* 2.47 ("de sacris, credo, de votis, de feriis et de sepulcris, et si quid eiusmodi est").

62. Tacitus *Annales* 3.71.1. On the role of legal argument in the evolution of Roman religion in the Principate, see C. Ando, "Diana on the Aventine," in *Die Religion des Imperium Romanum,* ed. J. Rüpke (Tübingen: Mohr Siebeck, 2008), 99–113.

But later decisions by the emperor Trajan in his capacity as *pontifex maximus* might perversely suggest that not all the empire did, in fact, lie "under law and power of Rome." Pliny the Younger, when governor of Bithynia-Pontus between 109 and 111, twice consulted the emperor on matters of religious law. The first time concerned the desire of "certain persons" to move the remains of their relatives. "Knowing that *in our city* cases of this kind are customarily brought before the college of *pontifices,*" Pliny thought he should consult Trajan as chief pontiff. Trajan responded by suggesting that "it would be a burden to enjoin provincials to approach the *pontifices* if for just reasons they want to move the remains of their relatives from one place into another place."[63] Trajan gave an even more legalistic response to Pliny when consulted about the desire of the citizens of Nicomedia to rebuild or move a temple to Magna Mater. Before writing to Trajan, Pliny had inquired "whether any binding conditions had been pronounced at the consecration of the temple and learned that there was one custom of consecration here (in Nicomedia) and another among us." "You can move the temple of Magna Mater without concern for religious scruple, my dearest Pliny . . . nor let it trouble you, that no conditions of consecration are to be found, since the *solum* of a *peregrinae civitatis,* the soil of an alien city is not capable of consecration as it is practiced according to our law."[64]

Nor were the *pontifices* the only body of priests whose authority was implicated in a particular sacred geography. "According to our *augures publici,* our public augurs," wrote Varro, "there are five kinds of land: Roman, Gabine, alien, hostile, and indeterminate."[65] Not only did the augurs recognize land that was neither Roman nor hostile, but the category Gabine—deriving from a city of Latium that lost its autonomy centuries before Varro—reveals the augurs' taxonomy to have been ossified at a remarkably early stage of Roman expansion. More pointedly, not only

63. Pliny *Ep.* 10.68 ("Petentibus quibusdam, ut sibi reliquias suorum aut propter iniuriam vetustatis aut propter fluminis incursum aliaque his similia quocumque secundum exemplum proconsulum transferre permitterem, quia sciebam in urbe nostra ex eius modi causa collegium pontificum adiri solere, te, domine, maximum pontificem consulendum putavi, quid observare me velis") and 10.69 ("Durum est iniungere necessitatem provincialibus pontificum adeundorum, si reliquias suorum propter aliquas iustas causas transferre ex loco in alium locum velint").

64. Pliny *Ep.* 10.49 ("Ego cum quaererem, num esset aliqua lex dicta templo, cognovi alium hic, alium apud nos esse morem dedicationis") and 10.50 ("Potes, mi Secunde carissime, sine sollicitudine religionis, si loci positio videtur hoc desiderare, aedem Matris Deum transferre in eam quae est accommodatior; nec te moveat, quod lex dedicationis nulla reperitur, cum solum peregrinae civitatis capax non sit dedicationis, quae fit nostro iure").

65. Varro *De lingua latina* 5.33: "Ut nostri augures publici disserunt, agrorum sunt genera quinque: Romanus, Gabinus, peregrinus, hosticus, incertus."

did both pontifical and augural law hold provincial land to be other than Roman, neither drew any obvious distinction between alien land within and without the empire.

But it is the fetials—whom Mommsen described as having the same position with respect to international sacred law as the *pontifices* and augurs did with respect to domestic sacred law[66]—whose history best reveals the capacity of Roman religious thought to absorb, adapt, and also to efface, the emergent realities of politics and geography in the period of Roman expansion.[67] According to Livy, whose information can be supplemented by other, similarly late sources, fetial ritual in early Rome had relied upon the proximity of Rome's enemies: the fetial priests themselves traveled back and forth to the enemy's city three times, once to state the Romans' grievance and demand restitution, a second time thirty days later to call the gods to witness that restitution had not been provided, and a third time thirty-three days later, after the formal vote of the people, in order to cast a sacred spear into the enemy's territory and so declare war.[68]

This system—in whatever form it existed in, say, the early fourth century—must have been strained long before Rome first declared war on a *transmarinum hostem,* "an enemy across the sea." But according to a famous anecdote preserved by Servius, it was the war against Pyrrhus that forced a fundamental and artful change[69]:

66. Mommsen, *Staatsrecht,* 3.2:1157–58.

67. On adaptations of fetial practice, see especially A. H. McDonald and F. W. Walbank, "The Origins of the Second Macedonian War," *Journal of Roman Studies* 27 (1937): 192–97; F. W. Walbank, "A Note on the Embassy of Q. Marcius Philippus, 172 B.C.," *Journal of Roman Studies* 31 (1941): 87–88; J. W. Rich, *Declaring War in the Roman Republic in the Period of Transmarine Expansion,*Collection Latomus, 149 (Brussels: Latomus, 1976); and cf. E. Rawson, "Religion and Politics in the Late Second Century B.C. at Rome," *Phoenix* 28 (1974): 193–212 = Rawson, *Roman Culture and Society* (Oxford: Clarendon Press, 1991), especially 89–93, expressing deep skepticism.

68. Livy 1.32.5–14, on which see R. M. Ogilvie, *A Commentary on Livy Books 1–5* (Oxford: Clarendon Press, 1965), 110–12 and 127–35. On the throwing of the spear, see also Cincius *De re militari* bk. 3 (fr. 2 Bremer = Gellius 16.4.1): "Cincius in libro tertio De Re Militari fetialem populi Romani bellum indicentem hostibus telumque in agrum eorum iacientem hisce verbis uti scripsit . . . . "

69. The debates in 200 and 192 over the proper procedure for notifying Nicanor and Antiochus that Rome had declared war against them reveal the status of the law to have remained in flux: see Livy 31.8.1–4 ("Ab hac oratione in suffragium missi, uti rogaret, bellum iusserunt. supplicatio inde a consulibus in triduum ex senatus consulto indicta est, obsecratique circa omnia puluinaria di ut quod bellum cum Philippo populus iussisset, id bene ac feliciter eueniret; consultique fetiales ab consule Sulpicio, bellum quod indiceretur regi Philippo utrum ipsi utique nuntiari iuberent an satis esset in finibus regni quod proximum praesidium esset, eo nuntiari. fetiales decreuerunt utrum eorum fecisset recte facturum. consuli a patribus permissum ut quem uideretur ex iis qui extra senatum essent legatum mitteret ad bellum regi indicendum") and 36.3.7–12 ("consul deinde M'. Acilius

> Finally, when in the time of Pyrrhus the Romans were about to wage war against a transmarine enemy and could not find a place where they could perform through the *fetiales* this ritual of declaring war, they took care to have a captured soldier of Pyrrhus buy a plot of land in the Circus Flaminius, so that they might fulfill the law of declaring war *quasi in hostili loco,* as if in hostile territory.[70]

This ritual found an analog in antiquarian elaborations of augural law: again, according to Servius—who probably draws on Varro—Roman generals preserved the habit of returning to Rome to take auspices "so long as their wars were fought in Italy, because of proximity; after the empire was carried further, lest a general be away from his army for too long, if for the sake of renewing the auspices he would have had to return from far away, it was decided that one piece of captured land in each province in which there was fighting should become Roman, to which the general might return, if there was a need to renew the auspices."[71]

In point of fact, such evidence as there is for declarations of war in the late third and early second century suggests a different history, in which the fetial ritual was collapsed, its components reordered, and the role of the fetials themselves may have been drastically curtailed. But they continued to play

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ex senatus consulto ad collegium fetialium rettulit, ipsine utique regi Antiocho indiceretur bellum, an satis esset ad praesidium aliquod eius nuntiari; et num Aetolis quoque separatim indici iuberent bellum, et num prius societas et amicitia eis renuntianda esset quam bellum indicendum. fetiales responderunt, iam ante sese, cum de Philippo consulerentur, decreuisse nihil referre, ipsi coram an ad praesidium nuntiaretur; amicitiam renuntiatam uideri, cum legatis totiens repetentibus res nec reddi nec satisfieri aequum censuissent; Aetolos ultro sibi bellum indixisse, cum Demetriadem, sociorum urbem, per uim occupassent, Chalcidem terra marique oppugnatum issent, regem Antiochum in Europam ad bellum populo Romano inferendum traduxissent"), together with McDonald and Walbank, "Origins," 192–95.

70. Servius *Aen.* 9.52: "denique cum Pyrrhi temporibus adversum transmarinum hostem bellum Romani gesturi essent nec invenirent locum, ubi hanc sollmenitatem per fetiales indicendi belli celebrarent, dederunt operam, ut unus de Pyrrhi militibus caperetur, quem fecerunt in circo Flaminio locum emere, ut quasi in hostili loco ius belli indicendi implerent." See also Ovid *Fasti* 6.203–208; Suetonius *Claudius* 25.5; and Festus s.v. *Vellona* (30L).

71. Servius *Aen.* 2.178: "et respexit Romanum morem: nam si egressi male pugnassent, revertebantur ad captanda rursus auguria. item in constituendo tabernaculo si primum vitio captum essent, secundum eligebatur; quod si et secumdum vitio captum esset, ad primum reverti mos erat. tabernacula autem eligebantur ad captanda auspicia. sed hoc servatum a ducibus Romanis, donec ab his in Italia pugnatum est, propter vicinitatem; postquam vero imperium longius prolatum est, ne dux ab exercitu diutius abesset, si Romana ad renovanda auspicia de longinquo revertisset, constitutum, ut unus locus de captivo agro Romanus fieret in ea provincia, in qua bellabatur, ad quem, si renovari opus esset auspicia, dux rediret." See also Servius *Aen.* 9.52, citing Varro *Calenus* (*Logistorici* fr. 2 Semi): "Varro in Caleno ita ait duces cum primum hostilem agrum introituri erant, ominis causa prius hastam in eum agrum mittebant, ut castris locum caperent."

a role in the striking of treaties, and their method for doing so demonstrates once again an investment in place: for when the fetials were ordered in 202 B.C.E. to go to Africa to draw up the peace treaty with Carthage, the fetials demanded that the decree of the senate be written in these words: "that they should take with them one flint knife and one bunch of *verbenae,* sacred herbs, each, so that, when the Roman general order that they should strike the treaty, they could demand of him the *sagmina.*" "That type of plant," Livy says in a gloss, "harvested from the citadel, is accustomed to be given to the fetials."[72] And, for what it's worth, Livy's terminology—and his present tense—are confirmed by Festus, citing Naevius, and the elder Pliny.[73]

## IV. Empire as State: The Limits of the Law

The bodies of law that structured relations between Rome, her subjects, her colonies, and foreign powers were thus multiple, not limited to the largely notional category of *ius gentium.* What is more, appeals to *ius gentium* within diplomatic discourse often served not to establish common ground between parties in order to further understanding and promote peaceful solutions to conflicts, but to establish a putatively common moral register within which to judge and ultimately to condemn the past actions of one or more parties. In a similar way, the bodies of religious law to which I have alluded variously divided rather than united the empire and often failed to distinguish between land and people within and without its borders.

In many respects, this situation mirrors distinctions the Romans drew

72. Livy 30.43.9: "Fetiales cum in Africam ad foedus feriundum ire iuberentur, ipsis postulantibus senatus consultum in haec verba factum est ut privos lapides silices privasque verbenas secum ferrent ut, ubi praetor Romanus imperaret ut foedus ferirent, illi praetorem sagmina poscerent. Herbae id genus ex arce sumptum fetialibus dari solet."

73. Festus s.v. *sagmina* (424–426 L): "Sagmina vocantur verbenae, id est herbae purae, quia ex loco sancto arcebantur a consule praetoreve, legatis proficiscentibus ad foedus faciendum bellumque indicendum; vel a sanciendo, id est confirmando. Naevius (Bell. Pun. 33) <'scopas atque ver[benas sagmina sumpserunt . . . '>] [(trag. inc. 219) 'ius sacratum Iovis] iurandum sagmine.'" Pliny *Naturalis historia* 22.5: " . . . siquidem auctores imperii Romani conditoresque immensum quiddam et hic sumpsere, quoniam non aliunde sagmina in remediis publicis fuere et in sacris legationibusque verbenae. certe utroque nomine idem significatur, hoc est gramen ex arce cum sua terra evolsum, ac semper e legatis, cum ad hostes clarigatumque mitterentur, id est res raptas care repetitum, unus utique verbenarius vocabatur." On the role of the fetials in striking treaties in the late Republic, see Varro *Ling* 5.86 and J. Reynolds, *Aphrodisias and Rome,* Journal of Roman Studies Monographs, 1 (London: Society for the Promotion of Roman Studies, 1982), no. 8, l. 85. Regarding their role in the settlement of the second Punic war in particular, see A. Giovannini, "Le droit fécial et la déclaration de guerre de Rome à Carthage en 218 avant J.C.," *Athenaeum* 88 (2000): 69–116.

within civil law and between bodies of civil law and, once again, *ius gentium.* For while *ius gentium* could stand in contradistinction to any given society's *ius civile,* it more often functioned as an umbrella category: "That law which a people establishes for itself is peculiar to it and is called *ius civile,* as being the special law of that *civitas,* that body of citizens; that law which natural reason establishes among all human beings and which is preserved equally among all peoples is called *ius gentium,* as being the law observed by all *gentes,* all nations."[74] To speak of a singular Roman law for the empire before the Constitutio Antoniniana is thus deeply misleading: for Roman law as such governed relations only between Roman citizens. By contrast, not only did Roman law draw no distinction within the category "alien" between residents and non-residents of the empire; in point of fact, all communities within the empire must surely have contained persons of different legal status, and legal institutions—not least Roman legal institutions—will have taken account of that fact. That we now know so little about the edict of the so-called peregrine praetor, whose title under the empire reflected his sphere of jurisdiction—*praetor inter cives et peregrinos,* "the praetor <exercising jurisdiction> between citizens and aliens"—must in large measure be due to its irrelevance to the legal landscape of the empire after 212 generally and to the specific aims of the Justinianic codifications in particular, a fate it will have shared with the standardized "provincial edict" whose existence is attested by the commentary on it by Gaius.[75] Can the fate of that body of law shed any light on the bodies of religious law whose geographies we have just adumbrated? Should we regard them as ossified relics, increasingly irrelevant within an increasingly united empire?

Perhaps one answer to those questions lies in their status as bodies of law. For it is by no means obvious that the language of the law should have come so to infect the domain of religion—why, for example, the rules governing the use of an altar should be called its *lex,* to say nothing of why the principles governing the actions of the augurs, fetials, and pontiffs should have been labeled the *iura augurale, fetiale,* and *pontificale.* That development seems likely to have been a product of the late Republic, when the law came to occupy a privileged position in Roman conceptions of the

74. Gaius *Inst.* 1.1: "quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur."

75. On the edict of the peregrine praetor, see Labeo *Ad edictum praetoris peregrini* fr. 4 = *Dig*. 4.3.9.4; on the provincial edict, see Gaius *Ad edictum provinciale* frr. 53–388. In modern literature, see D. Daube, "The Peregrine Praetor," *Journal of Roman Studies* 41 (1951): 66–70; consult with caution F. Serrao, *La "iurisdictio" del pretore peregrino* (Milan: Dott. Antonino Giuffrè, 1954).

ordering of knowledge on the one hand, and in Roman theories of social order on the other.[76] In other words, regardless whether we take the fetial ritual of the late Republic and early empire to be an antiquarian reconstruction, its maintenance into the high empire—like the refusal to modify pontifical law—should be regarded as ideologically motivated, an exercise in conservatism as political realities raced ahead of political theory.[77]

That said, Roman law also possessed several means whereby non-Roman lands and peoples could be embraced within its scope. So, for example, Gaius in the mid-second century C.E. wrote regarding laws of consecration:

> That alone is thought to be sacred, which is consecrated on the authority of the Roman people, either by law or by decree of the Senate. We make things *religiosum* in private actions by bearing our dead to particular sites . . . . But on provincial soil it is generally agreed that the soil cannot be *religiosum,* since there ownership rests with the Roman people or with Caesar, while we seem to have only possession or use. Nevertheless, even if it is not *religiosum,* it is treated as though it were *religiosum.* Similarly, whatever in the provinces is not consecrated on authority of the Roman people is properly not sacred, but it is nevertheless treated as though it were sacred.[78]

And regarding the treatment of corpses and tombs, the emperor Hadrian seems to have reversed the principle articulated by his immediate predecessor and extended Roman rules on burial within city boundaries empire-wide. "What if *lex municipalis,* municipal law permits burial within the *civitas*?" asked Ulpian, implicitly acknowledging the limits normally observed on the scope of Roman law, civil and religious. "We must consider

76. On this topic, see especially C. Ando, "Religion and *ius publicum*"; on religion and law as related and mutually implicated ways in thinking about social theory at Rome, see M. Humbert, "Droit et religion dans la Rome antique," *Archives de philosophie du droit* 38 (1993): 35–47.

77. On the use of religious institutions and religious thought in coping with the seeming instability of political life in the high empire, see Ando, *Matter,* 95–148, as well as the literature cited in note 59, above. For an example of fetial ritual being used to strike treaties under the empire, see Suetonius *Claudius* 25.5: "Cum regibus foedus in foro icit porca caesa ac vetere fetialium praefatione adhibita." For an example in declarations of war, see Dio 72.33.3: ταῦτά τε εἰπών, καὶ τὸ δόρυ τὸ ἱματῶδες παρὰ τῷ Ἐνυείῳ ἐς τὸ πολέμιον δὴ χωρίον, ὅς γε καὶ τῶν συγγενομένων αὐτῷ ἤκουσα, ἀκοντίσας ἐξωρμήθη . . .

78. Gaius *Inst.* 2.5–7: "(5) Sed sacrum quidem hoc solum existimatur, quod ex auctoritate populi Romani consecratum est, ueluti lege de ea re lata aut senatusconsulto facto. (6) Religiosum vero nostra voluntate facimus mortuum inferentes in locum nostrum . . . . (7) Sed in prouinciali solo placet plerisque solum religiosum non fieri, quia in eo solo dominium populi Romani est uel Caesaris, nos autem possessionem tantum vel usumfructum habere uidemur. utique tamen, etiamsi non sit religiosum, pro religioso habetur. (7a) Item quod in prouinciis non ex auctoritate populi Romani consecratum est, proprie sacrum non est, tamen pro sacro habetur."

whether there should be some departure from this provision, in light of the imperial rescripts: for rescripts are general in scope and imperial legislation should have its own force and apply everywhere."[79] What is at issue for Gaius and for Ulpian is very precisely the integrity of the empire: should different systems of law operate in different places, and if so, on what grounds? It is thus immensely significant that both find resources within the law to erase distinctions between Roman and provincial or Roman and local that had once worked to disjoin the empire.

But these moves, resting on the use of analogy or debates over the force of different genres of imperial law-making, also betray the inherent conservatism of Roman culture and its political and legal theory, even as they illustrate its creativity and capaciousness. The fate of diplomacy within the expanding world of Roman politics should be understood in the same light: as conducted with profound regard for the practicalities of ancient government and sufficiently under-theorized to survive in legal regimes in which it made little sense.

Those intersecting and often contradictory legal regimes thus raise the questions not simply whether the Roman state accorded sovereignty to other states, but what sort of state was Rome itself. In considering the latter question, we should recall the extent to which nineteenth-century reconstructions of an internally consistent *römisches Staatsrecht* were implicated in an unexpressed assumption that the Roman Empire *was* a state, an assumption that now seems naïve, not least in light of the extraordinary evidentiary problems those projects encountered—problems conceded if not theorized even at the time.[80] But the degree of its naïveté correlates with our own commitment to different theoretical postulates: as citizens of mature states, we can afford to disdain the mere creation and maintenance of constitutional forms. Our attention is elsewhere. If, as some have argued, Rome cannot have been a state because constitutional theory under the Principate never developed abstract justifications for its institutional forms based on some notion of general interest rather than princely power, the evidence of diplomacy and international law might seem to tend in the same direction.[81] For it invites scrutiny of the empire with respect to the other axioms in modern theories

79. Ulpian *Ad edictum* bk. 25 fr. 741 = Dig. 47.12.5: "quid tamen, si lex municipalis permittat in civitate sepeliri? post rescripta principalia an ab hoc discessum sit, videbimus, quia generalia sunt rescripta et oportet imperialia statuta suam vim optinere et in omni loco valere."

80. On this aspect of nineteenthth-century Roman historiography, see especially Y. Thomas, *Mommsen et 'l'isolierung' du droit* (Paris: De Boccard, 1984).

81. C. Nicolet, "L'empire romain est-il un 'état moderne'?" in *L'État moderne: le droit, l'espace et les formes de l'état,* ed. N. Coulet and J.-P. Genet (Paris: Editions du CNRS, 1990), 111–27.

of the state, especially that it should possess territorial integrity, monopolize the use of legitimate public violence, establish and enforce criteria for membership, and that its institutional and legal forms should penetrate both geographically and socially throughout its territory and its population. In each of these areas, Rome might be found lacking. What I would stress in conclusion is something different, namely the extent to which the discordant voices of religious antiquarians, reactionary lawyers, and professional diplomats coexisted and, indeed, could find expression in divergent arenas. I would thus caution against confounding the reconstruction of an intellectual tradition, however polyvocal, with that of the practices and achievement even of the government it was intended to regulate. Where Rome is concerned, one might say that the integration of the empire—which was, it is often now argued, largely a provincial project[82]—could move forward, even as intellectuals in Rome and Italy gave voice to their anxieties about that project, and all the while the barbarians could be kept at the gate.

82. Ando, *Imperial Ideology*, citing earlier literature.