Judging Empire: Courts And Culture in Rome's Eastern Provinces

ARI Z. BRYEN

In the middle of the second century CE, the satirist Lucian of Samosata (c. CE 125–180) composed a text known as the *Bis Accusatus* ("Twice Accused") in which he describes a day of judgment. It begins with Zeus complaining to Hermes about the onerous nature of running the universe:

> In the first place, I have to supervise the work of the other gods who have responsibilities under my regime, to make sure they don't slack in their duties. Then I have a million tasks to perform myself, scarcely manageable because of their complexity. It's not as though I simply have the major administrative tasks to perform, I mean managing and organizing the weather—rain, hail, wind, and lightning—before I can simply sit down and take a break from my assigned worries. I've got to do all this and keep a watch in all directions and supervise everything as though I were that herdsman at Nemea: people stealing, people perjuring themselves, people sacrificing. Has someone made a libation? Where's the sacrificial smell and smoke coming from? Who has called for me in sickness or at sea? But the most onerous task of all is being in so many places at the same time: Olympia

Ari Z. Bryen is lecturer and American Council of Learned Societies (ACLS) New Faculty Fellow in the Departments of Rhetoric and Classics at the University of California, Berkeley <azbryen@berkeley.edu>. He thanks Clifford Ando, Cam Grey, Michael Peachin, and Phil Venticinque for comments and discussions of this manuscript. In addition, the anonymous readers have provided many helpful comments. Initial research for this project was funded through the Institute for the Study of the Ancient World (ISAW)/New York University; sections of the manuscript were completed at Georgetown University. The ACLS New Faculty Fellows Program allowed the author course relief, which enabled completion of the manuscript. Previous versions of this article were presented at ISAW; the University of Texas, Austin; Temple University; and at the New York State Political Science Association meeting.

Law and History Review August 2012, Vol. 30, No. 3

doi:10.1017/S0738248012000259

> for a hecatomb, Babylon for a battle, with the Getae to hail, with the Ethiopians to feast. . .
>
> Take an example. We're so damned busy, we've got an enormous backlog of old lawsuits not dealt with. They've been stacked there so long, they've fallen apart with mildew and they're covered in spider's webs. I'm thinking in particular about the ones taken out against certain individuals associated with the intellectual arts and crafts. Some of them are absolutely ancient. The litigants themselves are bawling on every side, grinding their teeth, calling for justice and accusing me of tardiness. What they don't realize is that it's not through contempt that these decisions have passed their sell by date. It's because of the state of bliss that they think we live in. That's the name they give to our complete lack of spare time.[1]

Hermes sympathizes with Zeus, although without failing to point out that the legitimacy of his rule is, nonetheless, predicated on keeping up with the enormous pile of paperwork that governs the lives of the cosmic empire. To clear the desk, Zeus and Hermes decide to set up a "market" for lawsuits,[2] located on the Athenian acropolis, allowing everyone to come, for the day, to plead their old cases before the lord of the universe. And come they do: in short order the acropolis is thronged with petitioners, who fill to capacity even the sacred precincts at its foothills.

Lucian's caricature of the gods is a spoof on the running of the Roman Empire. The vast amount of mundane business that Zeus complains about would not have been news to the Roman emperor, who, in addition to having other duties, such as keeping the Roman senatorial aristocrats happy, keeping the populace of the city of Rome fed and entertained, and keeping the potentially murderous intentions of the military in check (tasks at which he occasionally failed), was a chief executive responsible for the management of civilian government, the extraction of taxes, and, most importantly, the administration of justice.[3] It would neither have been news to the other chief executives of the empire, the provincial governors. The work of these men was onerous indeed, and the perception of the

1. *Twice Accused*, 2–3, trans. K. Sidwell, *Chattering Courtesans and Other Sardonic Sketches* (London: Penguin Books, 2004).

2. *agoran dikon*, the standard translation of *conventus*. See further below, and G.P. Burton, "Proconsuls, Assizes and the Administration of Justice under the Empire," *Journal of Roman Studies* 65 (1975): 92–106. Inscriptions are abbreviated according to the system of the *American Journal of Archaeology* http://www.ajaonline.org/index.php?ptype=page&pid=8 (November 22, 2010). Papyri are abbreviated according to the system of the *Checklist of Editions* http://scriptorium.lib.duke.edu/papyrus/texts/clist.html (November 22, 2010). My documentation is necessarily selective.

3. For the link between Zeus and the Emperor, for example, Plutarch, *Moralia* 781B, Dio Chrysostom, *Orations* 1.37–41.

inhabitants of the Empire—particularly the urban literate classes who composed the majority of the literary texts that remain from the period—that their jobs involved little more than hedonism and gluttonous whimsy, was no doubt irritating.[4]

In Lucian's story, the announcement of the court of Zeus in Athens (here an ahistorical stand-in for Rome) brings forth a boisterous throng, all waving papers, and all in line to receive divine justice in the case of terribly mundane matters. The story could be dismissed by modern scholars as a merely satiric picture, if not for the existence of a roughly contemporaneous papyrus accidentally preserved in the sands of the Egyptian city of Arsinoe which records the governor of Egypt (a Roman province since 30 BCE) hearing a total of 1,804 individual petitions from the surrounding region over a three-day period in 209 CE.[5] Naphtali Lewis has done the math: if we posit the governor hearing all of these complaints within a ten-hour workday, petitions would be handled at the rate roughly one per minute.[6] Even with his staff helping to alleviate the burden, this was hardly divine justice.[7]

The satire of Lucian and the papyrus from Egypt both speak to a common theme: the importance of courts in the culture of the Roman provinces, and similarly, in the Roman provincial imagination. To judge from the varied, variably preserved evidence from Rome's eastern (that is, Greek-speaking) provinces—a swath of land stretching from what is now Greece and the former Yugoslavia eastwards across the Bosporus into Turkey and the Middle East, and then back westward to include Egypt and parts of Libya—a significant number of individuals would be involved in a court case at some point in their lives. Courts appear, inter alia, in curse tablets in which people ask the gods to cripple their opponents and tie their tongues on the day of an approaching lawsuit,[8]

4. On the potential of lawsuits to get backed up, see Suetonius *Vespasian* 10; a description that purports to be Domitian's court in Rome can be found in Philostratus, *Life of Apollonius of Tyana* 7.31, although this may more accurately reflect its time of composition in the third century CE; Fergus Millar, *The Emperor in the Roman World, 31 BC–AD 337* (Ithaca: Cornell University Press, 1977), 203–72 gives the best overview of the duties of the emperor.

5. *P.Yale* 61.

6. Naphtali Lewis, *Life in Egypt Under Roman Rule* (New York: Oxford University Press, 1983), 190.

7. See Hermann Horstkotte, "Die 1804 Konventseingaben in P.Yale 61," *Zeitschrift für Papyrologie und Epigraphik* 114 (1996): 189–93, for the details and typicality of this process.

8. See, for example, Preisendanz, *PGM* 2.224-25. See, generally, H.S. Versnel, "Beyond Cursing: The Appeal to Justice in Judicial Prayers," in *Magika Hiera: Ancient Greek Magic and Religion*, ed. Christopher A. Faraone and Dirk Obbink (Oxford: Oxford University

in oracular responses that predict court victories or in oracular questions in which individuals ask whether or not they should sue someone,[9] in personal letters preserved on papyrus,[10] in official and unofficial inscriptions,[11] and in literary texts, most notably (but far from exclusively), the New Testament and the early Christian martyr narratives. In some cases court days were fantastic affairs in which spectators and allies from far and away converged on a central location to watch a trial (and yell, heckle, laugh, snicker, and otherwise seek to influence the proceedings in support of their favorite);[12] the other cases—by far the great majority—were mundane affairs of paper pushing, a mind-numbing hassle of waiting for opponents who might or might not appear to answer the charges against them, and of traveling from point to point to pursue the decisions of a series of differently-ranked magistrates who, if they heard the complaint in the first place, would most likely make an underwhelming decision by means of a six-letter subscription to a written complaint: *apodos*, in Greek, that is, pass it on to the next person up or down the chain of command, and let him deal with it.[13]

The massive workload of the governors and the emperors invites a series of questions. In particular: why are "law" and "courts"—here conceived of

---

Press, 1991), 60–106, who reviews the evidence for the entire ancient world, including the Roman period.

9. See, for example, *P.Oxy*. VIII 1148 (AD I), an oracular question; Paul Canart and Rosario Pintaudi, "PSI XVII Congr. 5: un système d'oracles chrétiens ('sortes sanctorum')," *Zeitschrift für Papyrologie und Epigraphik* 57 (1984): 85–90, an oracular response.

10. E.g., *P.Fay.* 124 (AD II), *P.Oxy*. II 294 (AD 22), *P.Oxy*. VI 936 (AD III), *P.Oxy*. VIII 1180 (AD III–IV), *P.Oxy*. XX 2276 (AD III–IV).

11. Sources collected in Elisabeth Meyer, "The Justice of the Roman Governor and the Performance of Prestige," in *Herrschaftsstrukturen und Herrschaftspraxis: Konzepte, Prinzipien, und Strategien der Administration im römischen Kaiserreich*, ed. Anne Kolb (Berlin: Akademie Verlag, 2006), 169–70.

12. See, for example, Apuleius, *Metamorphoses* 3.2–10; 10.6–8. For perspectives from the Hellenistic period compare Angelos Chaniotis, "Watching a Lawsuit: A New Curse Tablet from Southern Russia," *Greek, Roman, and Byzantine Studies* 33 (1992): 69–73; and Helmut Engelmann, *The Delian Aretalogy of Serapis*, trans. Ewald Osers (Leiden: E.J. Brill, 1975), lines 81–83: *all' opote chronos ixe dikaspolos, egreto naois pasa polis kai panta polymigeo<n> hama phyla xeinon*, describing the audience of a trial for a religious offense.

13. J.D. Thomas, "Subscriptions to Petitions to Officials in Roman Egypt" in *Egypt and the Hellenistic World*, ed. E. Van't Dack, P. Van Dessel, and W. Van Gucht (Leuven: Orientaliste, 1983), 369–82; Naphtali Lewis, "The Prefect's Conventus: Proceedings and Procedures," *Bulletin of the American Society of Papyrologists* 18 (1981): 119–29,; Naphtali Lewis, "Judiciary Routines in Roman Egypt," *Bulletin of the American Society of Papyrologists* 37 (2000): 83–93; comprehensive treatment in R. Haensch, "Die Bearbeitungsweisen von Petitionen in der Provinz Aegyptus," *Zeitschrift für Papyrologie und Epigraphik* 100 (1994): 487–545.

as umbrella terms for all sorts of legal interactions between a petitioner and a source of imperial authority—such fundamental parts of the cultures generated by the Roman Empire? Why do legal documents make up such a large portion of the extant documentation from the eastern provinces? If getting justice—however defined—was such a headache, why bother pursuing complaints in courts at all? If we accept that legal structures serve to redistribute goods in the wake of a real or perceived injustice, then who benefited from the legal regimes that the Roman Empire produced? And how did the structures of power that these legal regimes produced map onto (or fail to map onto) other sorts of power exercised by the Roman imperial government?

It is my hope in this article to contribute a premodern perspective on an ongoing discussion in the field of law and society. In particular, my starting point is in a series of thoughtful monographs on legal history and anthropology that started with the publication of Sally Engle Merry's *Colonizing Hawai'i: The Cultural Power of Law* (1999), and have since been followed up by Lauren Benton's *Law and Colonial Cultures* (2002) and Daniel Hulsebosch's *Constituting Empire* (2005). In what follows, I hope to offer a series of arguments about courts, and the power of courts, in constructing the culture of the Roman provinces. I start from two well-known facts about the nature of government in the Roman provinces generally, but which are particularly well documented in the Eastern provinces specifically, as these provinces had a long history of multiple well-developed urban centers coexisting while competing for regional preeminence. The first is the fact of jurisdictional complexity. There was a complex patchwork of city and regional governments in the Hellenistic East, but one of the most immediate consequences of Roman rule was that, despite the professed desire of the Romans to preserve local laws and institutions, there was an increasing number of venues and jurisdictions in which cases could be judged, and a tendency for provincials of varying status to try to access venues monopolized by Roman power (such as the governor's assizes) to handle their complaints. The reasons why these complaints tended to trickle upwards are complex and cannot be reconstructed here, but their tendency to move in this direction is unmistakable.[14] The second fact is that the provincial governors,whether of public or imperial provinces, possessed a nearly unrestrained and largely unaccountable power in the provinces allotted to them. The power of the governor is well documented; the challenge for provincials

14. Compare Philostratus, *Lives of the Sophists*, 532 on Polemon the sophist's attempts to keep lawsuits from leaving the city. For one attempt at theorizing this problem, see Ari Z. Bryen, *Violence in Roman Egypt: An Interpretation* (Philadelphia: University of Pennsylvania Press, forthcoming, 2012), chapter 6.

was to find ways to control his potential for violence, and similarly, to channel it, to direct it against their enemies.

In what follows I will argue that, starting in the late first century CE the provincials learned a package of techniques for achieving control over their governors, or, more accurately, for controlling the governor to an extent sufficient to harness his nearly unlimited power and turn it against their local enemies, usually in the course of civil disputes. These discoveries had a series of knock-on effects that significantly impacted imperial governance. Provincials learned, in their dealings with their governors, a package of tactics that resonated with Romans in power, and as such, learned how to manipulate (and in some cases control) a particular, powerful, ritualized discourse: the discourse of the courtroom. This discourse could be controlled because the provincials had access to—if not a near monopoly on—legal texts. The validity of these texts, along with their ability to resonate with those in power, allowed them to be selectively rearranged, forgotten, or monumentalized to encode local priorities. In doing this, the eastern provincials relied on a concept of law which was something substantially new in Roman legal thinking concerning the governing of subjugated peoples. This vision of the law was founded on the idea that there existed a disembodied world of rules that transcended even the emperor himself, and that these rules could be accessed by the skillful manipulation of authoritative legal texts in the context of courtroom encounters structured by proper procedure. The battle for control over who got to make rules and who had to follow them increasingly was argued around the control of texts, on the one hand, and the courtroom space, on the other. This process took the form of an extended dialogue, one which began late in the first century CE but only came to an end with the codifications of Justinian in the sixth century CE. Although this article cannot detail all the intricacies of this process or the manifestation of this concept of law in the imaginative literature of the provinces (projects I plan for the future), it is my hope that what follows here can serve as a prolegomenon for a richer legal history of the Roman provinces, one that describes the history of legal change and development not as a history of the change of disembodied doctrines or the spread of citizenship as an aggregate but inexorable process, but instead brings conflict and debate, agency and activity, back into the story of how the provincials and Romans collaborated in developing a shared and vibrant legal culture.

I.

In explaining the importance of courts in the world of the Greek East we would do well to be wary of explanations based on facile models of culture

contact. Positing a unitary adaptive response located in some sort of pre-Roman local "substrate" culture would fail to answer the question of "why courts?" It would be hard to overstate the patchwork of cultures that composed the eastern provinces: they were hardly unified in culture, geography, or language (Greek being the language of administration, not, in many places, the language of the home); they did not share common economic or agrarian regimes; they had different degrees of urbanization; and they all took pride in their individual local histories, mythologies, festivals, and gods.[15] Consequently, positing a geographically consistent degree of "litigiousness" would be unjustified in the face of evidence of such diversity. It would be similarly dangerous to explain this development as the result of the provincial adoption of some feature intrinsic to Roman culture: the Romans began expanding into the Greek-speaking East over the course of two and a half centuries, in a halting, minimally coherent process. In the course of bringing this set of territories into the Empire, a number of things in Roman culture, especially Roman legal culture, changed radically. Not the least important of these changes was the shift in the nature of government itself, from a republic that permitted tremendous leeway to provincial governors to judge and govern as they wished, to an imperial principate in which the workings of government were subordinated to the will of a single man, and eventually, after the extension of the Roman citizenship to virtually the entire free population of the empire in CE 212, to a citizen-state governed exclusively (at least in a notional sense) by Roman civil law alone. Additionally, the period of expansion into the Greek-speaking East saw substantial changes in the makeup of the Roman civil law (the *ius civile*, technically limited to Roman citizens, on which more subsequently), the style and sophistication of jurisprudence, and the ideology of rule over the provinces themselves.[16] All of this is a rather expansive way of saying that the process by which the Romans came to rule the East would at times have appeared incoherent, and one would strain to explain the impulse of provincial populations to use courts by making the argument that these populations internalized some innately Roman cultural feature.

Certainly Roman aristocrats themselves spent a great deal of time suing one another in the city of Rome. They developed, from Greek models, traditions of forensic oratory and legal invective, took pains to bring charges against all sorts of opponents, and spent vast sums of imperial wealth on

15. C. Kokkinia, "Ruling, Inducing, Arguing: How to Govern (and Survive) a Greek Province," in *Roman Rule and Civic Life: Local and Regional Perspectives*, ed. L. De Ligt, E.A. Hemelrijk, and H.W. Singor (Amsterdam: J.C. Gieben, 2004), 39–58.

16. On the consequences of these developments for jurisprudence, see Clifford Ando, *Law, Language, and Empire in the Roman Tradition* (Philadephia: University of Pennsylvania Press, 2011), 1–36.

paying the fines of lawsuits directed against them by other aristocrats. But this was not an ideology for export.[17] In fact, the best evidence seems to point to the contrary: the Romans were largely uncomfortable with the idea that they brought their own laws and legal practices into the provinces, even when they did exactly that. Despite the efforts of some modern historians to locate a "civilizing mission" in the Roman expansion into the East, the early expansions of the Empire were in no way justified in such language.[18] Cicero, for example, speaks longingly of how the entirety of Rome's empire—in fact, the entire world—was governed by the city of Rome initially through ties of patronage (*patrocinium*) rather than by formal legal power (*imperium*).[19] The legal aspect of this relationship is critical: Cicero uses the term *patrocinium* to refer to patron/client relations, a legally informal and largely unregulated system based on trust, reciprocity, and mutual interdependence between individuals with unequal levels of power, rather than on a clear set of legally articulated expectations.[20] Moving from the age of Cicero to the age of the Emperor Augustus, the most striking feature of the ruling ideology was that of peace (*pax*). In the words of the court poet Vergil, the destiny of the Romans was to "inculcate the habits of peace, to spare those who have been ground down (*subiecti*), and to defeat the proud (*superbi*)."[21]

17. Eckhard Meyer–Zwiffelhoffer, *Politikos Archein: Zum Regierungsstil der senatorischen Statthalter in den kaiserzeitlichen griechischen Provinzen* (Stuttgart: Franz Steiner Verlag, 2002), 9; understands *politikos* in Strabo 17.3.24 as indicating, among other things, a commitment to the rule of law. The scope of the term, however, is much broader, and only in select instances includes anything resembling a "rule of law" (c.f. *LSJ* s.v. *politikos*). In his extended discussion of examples, however, he is undoubtedly correct that governors worked within the bounds of the law; however, it is no accident that his examples are all much later than Strabo. See further below.

18. The classic proof text is Tacitus, *Agricola* 21, which would seem rather to indicate a deep ambivalence about the ways in which indigenous cultures changed with Roman intervention; see further Jane Webster, "Creolizing the Roman Provinces," *American Journal of Archaeology* 105 (2001): 210–17, with additional references.

19. Cicero, *Duties* 2.8.27 On "the world" and "the empire" compare *Letters to Friends* 3.8.4: *sed in publico orbis terrae consilio, id est in senatu*. J.S. Richardson, "*Imperium Romanum*: Empire and the Language of Power," *Journal of Roman Studies* 81 (1991): 6. Roman understandings of their empire are, of course, complex: see P.A. Brunt, "*Laus Imperii*," in *Roman Imperial Themes* (Oxford: Clarendon Press, 1990), 288–323, and more recently, John Richardson, *The Language of Empire* (Cambridge: Cambridge University Press, 2008).

20. The judgment of J.E. Lendon seems to me quite correct. See, "The Legitimacy of the Roman Emperor: Against Weberian Legitimacy and Imperial 'Strategies of Legitimation,'" in *Herrschaftsstrukturen und Herrschaftspraxis: Konzepte, Prinzipien, und Strategien der Administration im römischen Kaiserreich*, ed. Anne Kolb (Berlin: Akademie Verlag, 2006), 55.

21. *Aeneid* 6.851–53. See also Horace, *Carmen Saeculare*, contrasting *bellante/hostem. . .iacentem*, with Denis Feeney, "The *Ludi Saeculares* and the *Carmen Saeculare*," in *Roman Religion*, ed. Clifford Ando (Edinburgh: Edinburgh University Press, 2003),

The irony is that when Rome began to expand its empire into the Greek-speaking East it found neither quiet inhabitants pleased to accept its rule (*subiecti*) nor a self-conscious population bent on rebellion and resistance (*superbi*). From the perspective of a Roman governor, the situation was instead much worse: the Greek-speaking world was composed of difficult, demanding, overlapping, needling populations each claiming the rights granted to them through their particular citizen statuses while simultaneously demanding that Roman governors often change or augment these rights, requesting that magistrates grant concessions to some but not to others, and insisting that the magistrates themselves behave predictably in preserving the rights and privileges of those they governed—while simultaneously opening up new avenues for obtaining justice and benefits. They found, in other words, the very people badgering Zeus in Lucian's *Twice Accused* and lining up to deliver petitions in the city of Arsinoe in Egypt.

The inhabitants of the Roman East were under no obligation to use the court system with such tenacity, and it appears that the Roman governors would have been perfectly content for them to avoid it. A large part of the process of reorganizing a conquered or otherwise acquired territory as a province involved the setting up of assize districts in which the governor of the province as a whole would make his annual visit (Latin *conventus*; Greek *agora dikon*). This much was obligatory, and a typical feature of provincial government. The governor's annual rounds would include the hearing of cases, and it is from a stop on just such a trip that we get the papyrus discussed in the introduction. It would be hard to imagine that this was a source of pleasure, and was more likely a dull, burdensome chore, even if the Roman elites tried to convince themselves that it was a moral duty. As Cicero wrote to his brother Quintus, "the administration of Asia presents no great variety of business (*varietas. . .negotiorum*); it all rests in the judging of cases (*sed ea tota iuris dictione maxime sustineri*)".[22] This was written in order to console his brother over the extension of his governorship of Asia for another year beyond the time that he had expected to serve: although Quintus would not have the luxury of gaining the glory of military conquests, he would have to serve the remainder of his

113–14; the text of the oracle [Jacoby 257F37, 167–9], which prompted Horace's *Carmen*, gives *tauta toi en phresin eisin aei memnemenos einai, kai soi pasa chthon Itale kai pasa Latinon aien upo skeptroisin epauchenion zygon hexei*; a very different set of claims. The edict of Tiberius Julius Alexander (*OGIS* II 669 = *IGRR* I 1263 = *Chrest.Mitt.* 102 = *FIRA* I 58 = *SB* V 8444, with parts preserved as *BGU* VII 1563 makes the case for regulations for Egypt based not on peace, but on prosperity.

22. *Letters to Quintus* 1.1.20.

time honorably, which meant putting up with the drudgery of hearing the complaints of his charges. The situation does not seem to have changed more than 200 years later when the jurist Ulpian would write in his treatise *On The Duties of a Proconsul*:

> It behooves a proconsul to be patient with advocates, but to do so shrewdly, so as not to seem contemptible; nor should he disguise his feelings on the point if he should detect people illegally participating in litigation… Accordingly, he is duty bound to watch that he has some system of ranking applications, and in fact to make sure that everyone's request gets a hearing and that it does not turn out that while the high rank of some applicants gets its due and unscrupulousness gets concessions middling people do not put in their requests, either having quite failed to find advocates or having instructed less well known ones, whose position is not one of any standing.[23]

Both Cicero and Ulpian talk of cases directed to the provincial governor; they do not include petitions that would have been submitted to lower officials, a process that is extensively documented in the papyri from Egypt. These cases would not always—in fact, only rarely—get passed on to the governor himself, who, in turn, was at his liberty not to hear them. That is to say, the caseload for the governors was heavy even when whittled down by the local bureaucracy, and the temptation to shirk one's work serious.[24]

But if the governor on his assizes would likely be cranky and bothered, it is nonetheless worth asking why it struck provincials that the assizes were a good means to access this particular manifestation of imperial power. This is particularly important when considering that the Romans mediated their power through multiple fields, not only at the legal level, but also the cultic, through the person of the emperor, to name just two.[25] One way into this question is to look to the recent work of Clifford Ando,[26] who sought to explain provincial willingness to engage Roman authority as stemming from certain ideological claims: specifically, he argued, the stability of the Roman imperial endeavor was founded on and perpetuated by a claim of rational and responsive government, a claim that was verifiable through the documentary records that the Empire itself generated, and vested with authority through the person of the emperor, with whom provincial

23. A. Watson, *The Digest of Justinian* (Philadephia: University of Pennsylvania Press, 1985) (hereafter *Digest*) 1.16.9.2–4. Compare *P.Oxy.* XXXVI 2754 (AD 111), a prefectural edict (or extracts from a longer edict) regulating behavior at the *conventus.*

24. Lewis, "Judiciary Routines," 92–93.

25. S.R.F. Price, *Rituals and Power: The Roman Imperial Cult in Asia Minor* (Cambridge: Cambridge University Press, 1984).

26. Clifford Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire* (Berkeley/Los Angeles: University of California Press, 2000).

populations felt a direct and personal connection. Courts were a part, but not the only part, of a system in which provincial engagement with the truth claims generated by imperial discourse served to bolster the system itself. In what follows, I attempt to engage with this model, although the picture I paint is rather darker, and more immediately local. The emperor is, of course, an important part of it, but the interactions with the local representative of the Roman system, the provincial governor, especially in his capacity as an imperial intermediary, are much more in focus. Rather than try to engage the Empire as a system, in what follows I try to add nuance to the ways in which we understand the contours of power within one particularly prevalent strain of discourse. Most importantly, I will suggest that whereas the overall effect of this particular mode of interaction with the imperial government may have resulted in imperial stability, its initial and fundamental impulse was based on fear, inequality, and domination; in particular, it was based on the need to manage the dangers and complexities of living in a violent and arbitrary world made yet more unstable by substantial changes in social and economic regimes.[27] The people who figure prominently in what follows did not seek to validate imperial consensus (although I am open to the possibility that they contributed to it); instead, they actively sought to check the power of those who were in charge of them, as well as the power of other members of their communities. They did this, I will argue, by finding ways to assert control of a particular, ritualized, space and discourse.

I will return subsequently to the specific means through which provincials learned to do this. In the meantime, it is best to begin not with formal institutions and legal knowledge, but with the brute fact of violence, and to offer some accounting for the importance of raw power in the system of Roman provincial government, and the power of the governor in particular. The governor was the total authority in the provinces in dealings with individuals who were not Roman citizens. His power over Roman citizens was somewhat less total: they technically had the right of appeal to the emperor, and thus could access power over the governor, at least theoretically.[28] But barring cases of unquestionably cruel, unjustifiable, or tyrannical behavior, the governor was

27. I realize that the question of the nature and extent of social mobility is vexed: I rely here on the important discussions of Greg Woolf, "Monumental Writing and the Expansion of Roman Society in the Early Empire," *Journal of Roman Studies* 86 (1996): 22–39; and Laurens Ernst Tacoma, *Fragile Hierarchies: The Urban Elites of Third-Century Roman Egypt* (Leiden: Brill, 2006).

28. Suetonius, *Galba* 9 is an excellent example of the divergence between practice and theory. See also *SB* V 7523 (AD 153). For procedural details on appeals to the emperor in civil cases, see James H. Oliver, "Greek Applications for Roman Trials," *American Journal of Philology* 100 (1979): 553, concerning Cos (*AE* 1974: 629)

completely in charge of the non-Roman inhabitants of his province. Even if he was criminal in his dealings, such a thing would be hard to prove, and would require a sojourn to the city of Rome itself to prove it, in a hearing that presumably would take place in Latin, a language that the eastern provincials did not speak. It would similarly require the kind of waiting that was otherwise de rigueur for getting the attention of the governor himself. Finally, although this is a question that will not admit of empirical proof, it would seem to be the case that the emperor himself, as the man who appointed or approved the appointment of the governor, would have been prone to take his side in a dispute with provincials, and a similar hypothesis may likewise have held true for the Senators who similarly tried governors.[29]

Provincials worried about the possibility that the governor would shed his trappings of civility and indulge what they imagined to be his innate tendency toward improvised street violence. The theme occurs frequently in the literature of the eastern Roman Empire, especially in the literature of the early Christian populations.[30] Because of the anti-Christian persecutions of the third century, governors were often tasked with overseeing the performances of mandatory sacrifices to the emperor; upon the refusal of the Christians to sacrifice, the governor would preside over the trial and their subsequent execution. However, the Christians were not the only ones to feel the brunt of the governor's power. Two and a half centuries earlier, Cicero had admonished his brother Quintus that his reputation for unnecessarily harsh punishments had reached Rome.[31] There was no reason to suspect (and Cicero did not) that Quintus was in some way exceptional, or that it would have been uncommon for such news to spread throughout the empire as gossip. Although Quintus was perhaps overzealous in prescribing cruel

29. Keith Hopkins, "Divine Emperors or the Symbolic Unity of the Roman Empire," in *Conquerors and Slaves* (Cambridge: Cambridge University Press, 1978), 222; P.A. Brunt, "Charges of Provincial Maladministration under the Early Principate," *Historia* 10 (1961): 189–227. Brunt presents evidence of forty cases; twenty-eight produced conviction (if suicides are counted as convictions). The lack of specificity in the allegations of cruelty (*saevitia*) would seem to be indicative of a general disinterest. Of preserved cases, Volesus Messala (Seneca *On Anger* 2.5.5) beheaded 300 in one day; Marius Priscus (Pliny *Letters* 2.12) accepted bribes to convict a Roman *eques*, whom he later had strangled in prison. Tacitus, *Annals* 13.52 seems to suggest that *saevitia* was not a terribly interesting accusation.

30. Michael Peachin rightly suggests that this violence was not incidental to Roman strategies of rule. See "Attacken und Erniedrigungen als alltägliche Elemente der kaiserzeitlichen Regierungspraxis," in *Herrschen und Verwalten: Der Alltag der römischen Administration in der Hohen Kaiserzeit*, ed. Rudolph Haensch and Johannes Heinrichs (Köln: Böhlau Verlag, 2007), 120.

31. *Letters to Quintus* 1.7.19. On the details of the sack see further Max Radin, "The Lex Pompeia and the Poena Cullei," *Journal of Roman Studies* 10 (1920): 119–30. Compare the violence of the governor in *P.Flor*. I 61 = *Chr.Mitt*. 80 (AD 85) and *P.Oxy*. IV 706 (AD 73?).

punishments, Cicero presumed that they were proposed as the result of a trial (as were the fantastic punishments of the Christians in the amphitheater). However, the violence of the governor was not limited to the courtroom: many of the lesser, although still humiliating and disfiguring, penalties such as scourging with rods could legally be done *de plano*, that is, without a formal hearing. In *On The Duties of a Proconsul*, Ulpian suggests that disrespectful freedmen can be "corrected" out of court, "whether verbally or by chastisement with rods."[32] Lucian similarly records, in another satiric story, an insult delivered to the governor in Athens by a local cynic philosopher: when the cynic suggests that the governor's personal grooming habits would seem to suggest an enjoyment of passive homosexuality, the governor is provoked into a rage and gets ready to punish the cynic—according to Lucian, with an improvised beating with his fasces, or by sending him into exile.[33]

The threat of exile is particularly telling, and indicative of a power that the governor would have had that stopped short of, but was intimately connected to, direct physical violence. Sending someone into exile entailed stripping them of most if not all of their legal protections, most importantly their ability to be treated as something better than an item of human chattel. This could happen to individuals, as punishment for their commission of a crime, but, in at least one case, it is reputed to have happened to an entire community. This is what Philo of Alexandria alleges that Flaccus, then governor in Egypt, did to the Alexandrian Jews in 38 CE:

> His attack on our laws by means of a seizure of our synagogues, of which he had even the names removed, seemed to be successful to him. For that reason he proceeded to another project, namely, the destruction of our political organization (*politeia*). His purpose in that enterprise was that, if only the things to which our life was anchored were cut away, that is, our ancestral customs and our participation in political rights, we might be exposed to the worst misfortunes without having any rope left to which we could cling for our safety. For a couple of days later he issued a decree (*programma*) in which he stigmatized us as foreigners and aliens and gave us no right to plead our case but condemned us without trial. What could be a better promise of further tyrannical behavior than this? He himself became everything: accuser, enemy, witness, judge, and executioner. But he then added to the first two (crimes) a third one, namely, he gave permission to those who wanted to plunder the Jews, as at the sacking of a city.[34]

32. *Digest* 1.16.9.3. See also the late antique evidence collected by Peter Brown, *Power and Persuasion in Late Antiquity* (Madison: University of Wisconsin Press, 1992), 35–70.

33. *Demonax* 50.

34. *Against Flaccus*, 53–54, translated by P.W. van der Horst, *Philo's Flaccus: The First Pogrom* (Leiden: Brill, 2003).

The ability of the governor to disintegrate, by a single decision, the minimal but hard earned rights and protections granted to the inhabitants of the Empire presents a powerful image. The term that Philo uses, *politeia*, has a great deal of resonance in this instance: it can be translated in a number of ways, and English is ill-equipped to deal with it properly. As a unit of sociological analysis, it indicates the total way of life of a discernable group of people, the way they choose to organize their society, the laws they use, and how they choose to allocate power and resources. Within an imperial system, to have a *politeia* meant to be a recognizable set of people, a discrete unit of political organization, capable of representing its interests collectively. In an imperial context, crucially, this meant that it was capable of communication as a corporate unit with the center of the Empire.[35] Although it was a subordinate political unit, the ability to partake of this kind of communication should not be underrated: in the case of Flaccus, to strip the Jews of their *politeia* also meant to take away their ability to appeal as a group, reducing them instead to solitary individuals in a state of total abjection, prisoners of war, slaves without masters. Philo strains to capture the gravity of this degradation of status, and instead reverts to an example:

> Now I have to tell something that also took place at that time, though I hesitate to do so, since I am afraid that, in case it will be considered as trivial, it may detract from the magnitude of such enormities. But even though it is a small thing in itself, yet it is evidence of no small malignity. There are different kinds of scourges in the city, and these differences are related to the status of the persons to be beaten. So, for instance, the practice is that the Egyptians are beaten with a different kind of scourge and by different people than the Alexandrians, who are beaten with flat blades and by Alexandrian blade-bearers. This custom (*ethos*) was also observed, in the case of our people, by both Flaccus' predecessors and by Flaccus himself in his first years of office. For it is possible, it is really possible, to find some small element in the circumstances of degradation for persons to maintain their dignity, even in a situation of outrage… It was, therefore, unbearable that, although Alexandrian Jewish commoners had always been beaten with scourges that more befitted freemen and citizens even when they were thought to have committed things worthy of stripes, now their rulers, the members of the council of elders, whose very title implies age and honor, were in this respect treated with a greater lack of dignity than their inferiors, as if they were Egyptians of the lowest status and guilty of the greatest crimes.[36]

35. This may serve to explain the "two embassies" of Jews sent to the Emperor Claudius as a result of this violence. Andrew Harker summarizes the problem and earlier scholarship; see *Loyalty and Dissidence in Roman Egypt: The Case of the Acta Alexandrinorum* (Cambridge: Cambridge University Press, 2008), 26.

36. *Against Flaccus* 78–80, trans. van der Horst.

To be stripped of a *politeia* through the mere declaration of a governor meant the loss of corporate status, the loss of personal protection, the loss of dignity even in a situation in which one's dignity was purposely being stripped. To be reduced to the level of an "Egyptian"—whatever their actual legal status, and it is apparent that it was better then Philo imagines it to be—was to be as close to being reduced to slavery as one could get without actually crossing that precarious line.

II.

Philo's emphasis on the Jewish *politeia* is significant not only as an anecdote which shows the capacity of the governor to reduce the status of his subjects, but also as an entry into the complex conceptual problem of the legal structures governing the empire in the first centuries CE. If a *politeia* is a way of representing the total way of life of a particular group of people, what things are then implied by a change in *politeia*? What does having a *politeia* imply for the way a society conceptualizes its legal rules? That is, does having a particular Jewish citizenship imply that one follows a particular package of "Jewish" laws, as it may have meant during the Ptolemaic period?[37] Is such a claim also true for the citizens of the "Greek" cities of Egypt who already followed a hybrid legal order?[38] At what point do people decide that the ways that they write a contract, make a loan, transfer a dowry, or sell a sack of grain constitute a set of practices susceptible to rationalization as a discrete body of "law" possessed by a group of individuals who share a citizenship? Must everyone have different rationalized bodies of law if they have different citizenships? If so, under what circumstances are governors bound to recognize or respect these local traditions *as law*? Moreover, if, in the case of Philo, the evaporation of the Jewish *politeia* meant that the Jews were essentially "Egyptians" in the eyes of the governor, what precisely does that mean? That Jews would enter into contracts in an "Egyptian" style (something that they already did)? Should we then assume that these very Jews would have felt their local *culture*

37. See Joseph Mélèze–Modrzejeski, "The Septuagint as *Nomos:* How the Torah Became a 'Civic Law' for the Jews of Egypt," in *Critical Studies in Ancient Law, Comparative Law, and Legal History*, ed. John W. Cairns and O.F. Robinson (Oxford: Hart, 2001), 183–99.

38. I intentionally ignore here the complex and controversial question of the "unity of Greek law": a question that has its roots, I suspect, in precisely the same package of conceptual problems that I think characterizes scholarship of the Roman world.

in some sense diminished by their change in political status vis-à-vis their imperial masters?[39]

The equation of "citizenship" with a coherent body of "local laws," as well as the reduction of these laws to indigenous customs and eventually to discrete cultures has had major implications for the history of legal change in the Roman provinces. The assumptions behind these easy equations are rarely interrogated by ancient historians, but I hope to show that they are, at the very least, worth doubting, and that they need to be addressed in order to understand better the power dynamic in which the provincials themselves reinvented their legal culture in the wake of imperial conquest. In the discussion that follows, I hope also to begin to move from a discussion that emphasizes law as culture (a distinctive, coherent package of attributes linked with a bounded group of people sharing a common citizenship) to an emphasis on law in practice, with an emphasis not only on the sources of particular legal rules, but also on the venues in which these rules were enforced and the rhetorical techniques that provincial populations exploited to convince their governors to enforce their desires.

Traditionally, the dominant narrative of the history of Roman law in the Eastern provinces is a narrative of the dispersion of Roman citizenship told against the background of the hybridization and fusion of legal forms. In this narrative, citizenship is paramount: since Roman law was restricted to the body of Roman citizens, noncitizen *peregrini* (generally, free but non-Roman members of the imperial order) were under no obligation to use (and in some cases, prohibited from using) traditional Roman forms, nor were they considered bound by peculiarly Roman forms of domination (such as *potestas* or *manus*). But as the Romans eventually secured firm control over their imperial territories and outsourced the collection of revenue and the preservation of public order, they were increasingly required to grant citizen status to an increasing number of people as a payoff for loyalty. In addition, the Romans granted citizenship to discharged members of the military (a significant path to social mobility) as well as to slaves manumitted by Roman citizens.[40] This process of the expansion of citizenship, according to the traditional narrative, reached a peak in the late second/early third centuries, when the preservation of the citizen/peregrine

39. In helping me to pose these questions, I owe a debt to Marianne Constable, *The Law of the Other: The Mixed Jury and Changing Conceptions of Citizenship, Law, and Knowledge* (Chicago: University of Chicago Press, 1994).

40. The theory of slave manumission is certainly more easily apprehended than its actual practice: certainly others thought it remarkable (*ILS* 8763, Philip V to the Larisaeans). The relative proportion of citizens who obtained their franchise through manumission is probably impossible to ascertain.

distinction (and, along with it, the preservation of multiple and conflicting legal forms) increasingly became burdensome and ceased to make sense. Accordingly, in 212 CE, citizenship was extended to the mass of free inhabitants of the Empire; these inhabitants nonetheless persisted in using the forms of their local/native legal traditions. To these, they fused the trappings of Roman legal practice—frequently referred to in the scholarship with the metaphorical language of coating, layering, or veneering—and thus began the process of creating a hybrid legal culture (differently valorized, a process also referred to as the "vulgarization" of Roman law).[41]

The narrative of the spread of Roman citizenship is, of course, important: not least of all, it is easily documentable. Onomastic evidence can be amassed to track the spread of *nomina gentilicia* (generally a reliable indicator of Roman citizen status), a body of data on citizenship in the provinces that can be readily quantified; literary evidence can show the discrete privileges that Roman citizens exercised over and above their noncitizen compatriots (such as the right to appeal);[42] epigraphic and papyrological evidence both can be mustered to demonstrate the persistence of, and frequently pride in, local legal forms, local deliberative and governmental bodies (as well as the persistence of the jurisdiction of those bodies).[43] At the same time, however, using citizenship as the exclusive category for understanding the great transformation of the legal landscape in the provinces obscures a number of other factors. Not least, it replicates, albeit without justification, the categories by which the Romans themselves described their Empire, described most pithily in the first sentences of Gaius' *Institutes*: "All peoples who are governed by laws and customs use in part their own law, and in part the law that is common to all humankind. The law that each people chooses for itself belongs to it alone and is called the *ius civile*, since it is the law peculiar to each city." Generations of historians have understood Gaius as describing a fact instead of making a claim, and accordingly sought to describe discrete

41. Barry Nicholas, *An Introduction to Roman Law* (Oxford: Clarendon Press, 1962), 195: "The possibility becomes a certainty after the *Constitutio Antoniniana* of AD 212, when vast numbers of new citizens who previously had followed the Greek practice of written acts found it necessary to accommodate themselves to Roman forms. Finding that, to all appearances, the Roman law was satisfied by a written contract to which was appended, in words which were common form, an allegation of the exchange of a stipulatory question and answer, they simply added to their documents this common form phrase. Here begins the vulgar law."

42. Pliny, *Letters* 10.96; *Acts* 22:25 with A.N. Sherwin–White, *Roman Society and Roman Law in the New Testament* (Oxford: Oxford University Press, 1963), 57–70.

43. See, for example, Georgy Kantor, "Roman Law and Local Law in Asia Minor in the Early Roman Empire" (MPhil diss., Oxford, 2004).

populations in the Empire by reference to their own laws and customs. However, it is far from clear whether this is justifiable, or if it is, under what circumstances.[44]

It is evident from the mass of papyrological evidence predating the universal grant of citizenship in 212 CE that a significant fraction of the Egyptian population felt justified on any number of grounds to appeal to the highest echelons of provincial authority—in the case of Egypt, both the governor and the lower-ranked *epistrategoi*, Romans of the equestrian rank. Most of these petitioners were not Roman citizens, but, evidently, had a sense of rights and an expectation that the Roman governors would recognize these rights and enforce them. The evidence of the papyri from the Near East similarly suggests that litigants in early second century Arabia wrote documents in Greek according forms comprehensible to Roman magistrates when they presumed that these documents would later come under the scrutiny of an imperial court, further evidence that there was an expectation of enforceable rights independent of a particular local citizenship.[45] Similarly, the evidence painstakingly assembled by Kantor on the local courts of Roman Asia also points to a system in which complaints tended to push toward the (Roman) top, even though Roman governors and local magistrates, as in Egypt, sought to contain these cases within local frameworks.[46] In short, the focus on legal change exclusively along the analytical axis of citizenship does not sufficiently account for the ways in which noncitizens (still the majority of the population before the universal grant of citizenship in 212) accessed, interacted with, and influenced their governors, and used the power of their governor (through the threat of appeal to him, or through the force of his subscription to petitions) to influence local legal officials, nor does it explain why there is relatively little, if any, substantive change in these practices of complaint *after* 212 CE.[47]

Finally and more importantly, focusing only on the fact of citizenship invites questions about the relationship between citizenship and power within and between local communities: how precisely do people with a

44. See Clifford Ando, "Aliens, Ambassadors, and the Integrity of Empire," *Law and History Review* 26 (2008): 494–95 The trend toward seeing the civil law as a *systematic* phenomenon seems to begin in the late first century BCE: Gellius (*Attic Nights* 1.22.7 notes that Cicero composed a treatise "On Reducing the Civil Law to a System" (*De Iure Civili in Artem Redigendo*).

45. E.A. Meyer, "Diplomatics, Law, and Romanization in the Documents from the Judaean Desert," in *Beyond Dogmatics: Law and Society in the Roman World*, ed. John W. Cairns and Paul J. du Plessis (Edinburgh: Edinburgh University Press, 2007), 53–82.

46. Kantor, "Roman Law and Local Law."

47. On the late third century situation, see Serena Connolly, *Lives Behind the Laws: The World of the* Codex Hermogenianus (Bloomington: University of Indiana Press, 2009).

particular status transform it into power over others or protections for themselves? That is, at what point does citizenship as status emerge as rights in practice? And if citizenship entails a package of rights, how are these rights activated? To return, briefly, to Philo's complaints about Flaccus: in addition to his protestations at the edict of the governor, it is telling that Philo makes an explicit equation between tyranny and Flaccus' refusal of the right of a trial to the Alexandrian Jews. It is worth asking why such procedure would have been important: if Flaccus was as bestial and tyrannical as Philo claims, on what grounds could Philo have imagined that the Jews would have fared better in the courtroom than they did otherwise? Could not Flaccus have merely condemned the Jews in the courtroom, and sentenced them in a formally legal way to the loss of status, condemned them individually or even collectively to one of the punishments that the Romans reserved for criminals and those subverting the public order: exile, deportation to the mines, being thrown to beasts in the arena, crucifixion, and more?[48] What precisely would Philo have hoped to have gained from a trial? To ask this question is to point, again, to the peculiar place that courts, and the judgments produced in courts, had in the provincial imagination. But first, some attention needs to be paid to the frameworks through which cases were supposed to be judged, as well as to the frameworks through which they were actually judged. Additionally, attention needs to be paid to a major problem in the world of the Eastern provinces: who actually knew the law, and what does it mean to say that they knew it?

III.

The aftermath of Roman conquest throughout the Greek world was marked by a flood of legal development, all of it taking place through the medium of writing. In its most conspicuous manifestation, this could take the form of promulgating a basic law for the province. In these cases, the Roman government would, upon coming into control of a piece of territory,

48. On punishments, see Peter Garnsey, "Why Penalties Became Harsher: The Roman Case, Late Republic to Fourth Century Empire," *Natural Law Forum/American Journal of Jurisprudence* 13 (1968): 141–62; Ramsey Macmullen, "Judicial Savagery in the Roman Empire," in *Changes in the Roman Empire: Essays in the Ordinary* (Princeton: Princeton University Press, 1990 [originally published 1986]), 204–17. Also Fergus Millar, "Condemnation to Hard Labour in the Roman Empire, from the Julio-Claudians to Constantine," in *Government, Society, and Culture in the Roman Empire, volume 2: Rome, the Greek Word, and the East*, ed. Hannah M. Cotton and Guy M. Rogers (Chapel Hill: University of North Carolina Press, 2004), 120–50.

organize it through presenting it with a sort of Basic Law—what modern scholars refer to as a *lex provinciae*, usually referred to by the name of the person who wrote it for the province. Cicero attests such a provincial law for the island of Sicily (a *lex Rupilia*); Pliny similarly attests one for the province of Bithynia-Pontus (a *lex Pompeia*).[49] This was common but not necessary; in some provinces no such laws were in evidence, and scholarly consensus is tending in the direction that these "provincial laws" were individually planned and negotiated on an ad hoc basis as a way of bringing an area into the Empire. That is, they were not a necessary part of the imperial project, but rather deployed when the situation called for it. Provinces such as Egypt were not, it appears, regulated by a basic provincial law,[50] nor, does it seem, were the Jewish populations of the Empire.[51] Whereas previous generations of scholars thought that these individual provincial laws were instantiations of a single juridical framework into which the Romans placed their provinces, the most recent work emphasizes the patchwork nature of the legal structures of the Empire: during expansion into the East—a long and messy process—individual cities, territories, and confederations made a variety of arrangements with the Romans against their neighbors. Some of these agreements were preserved when these areas became provinces or parts of provinces, as a sign of respect to useful and helpful allies;[52] sometimes, however, they were not.[53] Attempts to standardize a juridical framework for the provinces—evidenced by documents such as Gaius' commentary *On the Provincial Edict* or Ulpian's *On the Duties of a Proconsul*—came later on, as Roman jurists sought to harmonize a vast, conflicting, and often unwieldy body of law.

Much of the material preserved from provincial edicts deals with administrative issues. Therefore, for example, a law of the emperor Augustus for the province of Cyrenaica (in the area of modern Libya), deals specifically with criminal matters, without giving much in the way of substantive

49. See also Marianne Coudry and François Kirbihler, "La *lex Cornelia*, une *lex provinciae* de Sylla our l'Asie" in *Administrer les provinces de la république romaine*, ed. Nathalie Barrandon and François Kirbihler (Rennes: Presses Universitaires de Rennes, 2010), 133–69, with a collection of evidence for other provincial laws at 135–37.

50. Joseph Modrzejewski, "La règle de droit dans l'Egypte romain (état des questions et perspectives de recherches)," in *Proceedings of the Twelfth International Congress of Papyrology, Ann Arbor 1968*, ed. Deborah H. Samuel (Toronto: A.M. Hakkert, 1970), 317–77 remains the best treatment.

51. Tesse Rajak, "Was There a Roman Charter for the Jews?" *Journal of Roman Studies* 74 (1984): 107–23.

52. See, for example, *OGIS* 435, from Pergamon.

53. Andrew W. Lintott, *Imperium Romanum: Politics and Administration* (London: Routledge, 1993) provides the most sophisticated discussion; mine is clearly indebted to his.

definitions, but rather a series of instructions on the composition of the juries.[54] A similar arrangement prevailed in Sicily during the late Republic, and is immortalized by Cicero's prosecution of Gaius Verres for provincial mismanagement in 70 BCE. Among other issues, Cicero accuses Verres of ignoring the ethnolinguistic jury selection procedures mandated (probably) by the *lex Rupilia* that organized the province: "His courts were composed, if the parties were Sicilians, of Roman citizens, though the law of the country required the appointment of Sicilians; and of Sicilians, if the parties were Roman citizens."[55] The prevailing assumption seems to be that the local populations themselves were best equipped to understand the expectations of their local laws and to judge whether certain behavior was legally protected or not. This contrasts with the assumptions that prevailed in Egypt: rather than jury trials, cases there were judged by magistrates alone (*extra ordinem*), although multiple systems of law were nevertheless thought to exist: those of the Romans, the Jews, the citizens of Alexandria, the main "Greek" cities, and the "Egyptians" (everyone else, irrespective of descent).[56] Individuals, it was expected, would be judged according to their own laws. But how, precisely, would people come to know "their own laws"? What if they forgot them?[57] Even if

54. James Henry Oliver, *Greek Constitutions of Early Roman Emperors from Inscriptions and Papyri* (Philadelphia: American Philosophical Society, 1989), no. 8 with further bibliography.

55. Cicero 2 *Verrine* 2.2.12.

56. It is worth noting that a similar attempt at maintaining distinct jurisdictions, which eventually collapsed, seems to have taken place also in Ptolemaic Egypt. Ptolemy II (probably) attempted systematic reforms of the legal systems of Egypt by having representatives of these local communities codify their laws, and then set up a system in which it was not personality, but language that would determine the venue for judgment. In this system, Egyptian-language contracts would be judged in Egyptian courts (those of the *laokritai*), Greek-language contracts by Greek judges (*dikastai*). See Hans Julius Wolff, "Plurality of Laws in Ptolemaic Egypt," *Revue Internationale* des *Droits de l'Antiquité* 3 (1960): 191–223; J.G. Manning, *The Last Pharaohs: Egypt Under the Ptolemies, 305–30 BC* (Princeton: Princeton University Press, 2009), 165–201. This system, however, would not stay so neatly separate, and cases eventually tended to move to the court of royal appointees, that of the *chrematistai*, eventually reducing the regulations to those of "a certain type of court" (Wolff, "Plurality," 217, italics removed). A comparison of the shifts in the two systems—one based on the organization of distinct courts under royal sponsorship and one based a law of personality determined by an individual magistrate in the case of all but Roman citizens—could prove fruitful.

57. As could cities: see Aulus Gellius, *Attic Nights* 16.13.1–9, esp.6–9, with the discussion of Mary T. Boatwright, *Hadrian and the Cities of the Roman Empire* (Princeton: Princeton University Press, 2000), 55–56 (who also provides this translation): "And so '*municipes*' are Roman citizens from municipalities, using their own regulations and laws, sharing only honorary duty with the Roman people… But the relationship of colonies is something else; for they come into the Roman state not from abroad nor do they grow

they knew them, how would they communicate them to the magistrate judging them?

The passage of Philo discussed previously raises this question, albeit obliquely: once the Jews were reduced to the status of "rustic Egyptians," would they all have gone off and immersed themselves in Egyptian law to determine their rights? Even assuming they would have done such a thing (and they would not have, for reasons I outline subsequently), where would they have gone looking? Similar questions are provoked when considering the great reclassification of the inhabitants of Egypt at the start of the Roman conquest into "Greek," "Alexandrian," "Jewish," and "Egyptian." Given that the balance of evidence suggests that people of all groups were capable of taking offense at the behavior of their neighbors and penning a petition complaining to a high authority and asking for redress (such as the 1,800-plus mentioned in the papyrus from the Arsinoite nome discussed in the introduction), we should not conclude that the lowest-ranking groups would have felt that they had *no* rights.[58] But how would the new "Egyptians"—that is, the people, sometimes native Greek speakers, who were folded into the "Egyptian" class—have figured out what these rights were?[59]

We can discount the possibility that Roman governors—to whom the provincials themselves would frequently appeal—could be expected to know these laws.[60] To a certain degree, this is the very situation that the Romans sought to prevent: that is, the emphasis on preserving local laws

---

from their own foundations, but they are, so to speak, grafted from the Roman state and they have all of the laws and institutions of the Roman people, not of their own determination. Which status, all the same, although it is more exposed to constraint and less free, nevertheless is considered better and more preferable because of the greatness and majesty of the Roman people, whose little likenesses and reflections, so to speak, these same colonies seem to be, and at the same time, because the laws of the municipalities are obscure and forgotten, out of ignorance they [the townspeople] can no longer use them."

58. See, further, Ari Z. Bryen, *Violence in Roman Egypt* (forthcoming), chapter 4.

59. Compare, for instance, the decision of the prefect in *Chr.Mitt*. 372.v.4–11 (= *Jur.Pap*. 22 = *BGU* I 114 = *FIRA* III 19, a decision of 142 CE but collated by a third party later) in the case of Alexandrians who served in the military and the status of their children: "Today, having considered the relevant circumstances, I confirm the opinion I gave yesterday. Whether this man served in a legion, a cohort, or an *ala*, the child born to him cannot be his legitimate son; moreover, since he is not the legitimate son of his father, who is an Alexandrian citizen, he cannot be an Alexandrian citizen. Therefore this boy, who was born to Valens while he was serving in a cohort is illegitimate [literally: 'he is foreign (*othneios*) to him'] and he cannot be admitted to Alexandrian citizenship." (trans. Brian Campbell, *The Roman Army, 31 BC–AD 337: A Sourcebook* (London: Routledge, 1994), 155–56).

60. Paul Weaver, "*Consilium Praesidis*: Advising Governors," in *Thinking Like a Lawyer: Essays on Legal History and General History for John Crook on his Eightieth Birthday*, ed. Paul Mckechnie (Leiden: Brill, 2002), 43–62.

and local courts was part of a broader attempt to keep provincials *out* of Roman jurisdiction.[61] I will return subsequently to the question of whether, in the eyes of the provincials, this should be construed as an advantage or a disadvantage of Roman justice. There is also the complex question of the "amateurism" of Roman provincial administration. If Peter Brunt is correct, the majority of the Roman governors of Egypt (where there is a nearly unbroken chain of evidence for them) were largely inexperienced.[62] Similarly, the exchange of letters between Pliny the younger and the emperor Trajan concerning the governance of the province of Bithynia-Pontus seem to indicate that, although Pliny took his job quite seriously, he was at times unsure of individual judgments and rulings that the inhabitants of his province presented him with, and had to send messages to Rome to ask about them.[63] Probably the most well-known (at least to modern audiences) example of this ignorance of local law is found in the New Testament: Pilate suggests that the Sanhedrin judge Jesus by their own laws, to which they reply that they would, but alas, their law prescribes execution for Jesus' actions, whereas they themselves do not have the authority to prescribe the required punishment. Whether Pilate was actually ignorant of this particular limitation on Jewish jurisdiction is doubtful, although it is reasonable to suspect that he cared little for the theological details that would have animated it.[64] Similar is the

61. Compare Werner Eck, "Zur Durchsetzung von Anordnungen und Entscheidungen in der hohen Kaiserzeit: die administrative Informationsstruktur," in *Die Verwaltung des Römischen Reiches in der Hohen Kaiserzeit*, ed. R. Frei–Stolba and M.A. Speidel (Basel/Berlin: F. Reinhardt, 1995 [originally published 1992]), 55–79, on the question of the infrastructure for communication; and Claudia Moatti, "Translation, Migration, and Communication in the Roman Empire: Three Aspects of Movement in History," *Classical Antiquity* 25 (2006): 126–36.

62. P.A. Brunt, "The Administrators of Roman Egypt," *Journal of Roman Studies* 65 (1975): 124–47; R.P. Saller, "Promotion and Patronage in Equestrian Careers," *Journal of Roman Studies* 70 (1980): 44–63; and Fergus Millar, "The Equestrian Career Under the Empire" in *Rome, the Greek World, and the East, vol II: Government, Society, and Culture in the Roman Empire*, ed. Hannah M. Cotton and Guy M. Rogers (Chapel Hill: University of North Carolina Press, 2004), 151–59.

63. Pliny, *Letters* 10.56, 58; and Georgy Kantor, "Knowledge of Law in Roman Asia Minor," in *Selbstdarstellung und Kommunikation: die Veröffentlichtung staatlicher Urkunden auf Stein und Bronze in der römischen Welt*, ed. Rudolph Haensch (Munich: C.H. Beck, 2009), 258–62. Kantor's conclusions are different than mine. See, also, Millar, *Emperor*, 261, and generally Fergus Millar, "Trajan: Government by Correspondence," in *Government, Society, and Culture in the Roman Empire, vol. II: Rome, the Greek World, and the East*, ed. Hannah M. Cotton and Guy M. Rogers (Chapel Hill: University of North Carolina Press, 2004 [2000]), 23–46. See, also, Aristides, *Regarding Rome*, 32.

64. *John* 18:31–5. If David Rensberger, "The Politics of John: the Trial of Jesus in the Fourth Gospel," *Journal of Biblical Literature* 103 (1984): 395–411, is correct, there is a

encounter of the apostle Paul with the proconsul of Achaea, Gallio (brother of the younger Seneca), in *Acts*:

> While Gallio was proconsul of Achaia, the Jews made a united attack on Paul and brought him into court. "This man," they charged, "is persuading the people to worship God in ways contrary to the law." Just as Paul was about to speak, Gallio said to the Jews, "If you Jews were making a complaint about some misdemeanor or serious crime (*adikema e rhadiourgema poneron*), it would be reasonable for me to listen to you. But since it involves questions about words and names and your own law (*peri logou kai onomaton kai nomou tou kath' hymas*)—settle the matter yourselves. I will not be a judge of such things." So he had them ejected from the court. Then they all turned on Sosthenes the synagogue ruler and beat him in front of the court. But Gallio showed no concern whatever.[65]

Even if Roman officials had taken an interest in learning local laws, it is not clear where they would have gone to find them. In tandem with the Roman takeover of individual areas as provinces there appears to be a significant amount of provincial legal writing, although the "legal" status of such writing is a particularly vexed issue. Philo of Alexandria attempted, early in the Roman period, a quasi-philosophical explication of Jewish law in Greek (for what purpose, though, is uncertain). Similarly, a papyrus from the city of Oxyrhynchus (dated to the third century CE) contains a translation of a third-century BCE law code, originally written in the Egyptian language. But it is uncertain whether these translations represent learned artifacts, normative claims about what laws *should* be followed, or manuals of law as practiced.[66] In the city of Gortyn on the island of Crete (itself a provincial capital) a fifth century BCE law code (the so-called "Great Code") was re-erected sometime between the first century BCE and the first century CE while Crete was a Roman province. The massive inscription was written in a very archaic phase of the Greek language possibly no longer comprehensible in Gortyn, and furthermore, it was written in a nonstandard hand that alternated between writing right-to-left and left-to-right, and prescribed monetary penalties in a denomination no longer current at that time.[67] It is most

---

dark undercurrent of systemic attempts at humiliation in Pilate's treatment of the Jews here. Useful on all of these points is G.E.M. de Ste. Croix, "Why Were the Early Christians Persecuted?" *Past & Present* 26 (1963): 11–14.

65. *Acts* 18:12–17, New International Version. See further A.N. Sherwin–White, *Roman Citizenship and Roman Law in the New Testament* (Oxford: Clarendon Press, 1963), 99–104.

66. *P.Oxy.* XLVI 3285. See also *P.Fay*. 22 (AD I), a fragmentary copy of some Ptolemaic marriage laws, the purpose of which is similarly unclear.

67. Published by R.F. Willetts, *The Law Code of Gortyn* (Berlin: de Gruyter, 1967), who pays no attention to the later context, instead hypothesizing a classical or archaic law court in the place of the Roman odeion. The suggestion of G.W.M. Harrison, *The Romans and Crete*

likely a monument to local pride and a relic attesting early sophistication. Athens, from which a great deal is known in the Roman period, seemed to have used local courts and magistrates at Roman behest, but the evidence that it used anything historically resembling the laws of the Classical period is highly dubious, and probably a testament to people's ability to *believe* that they were using the laws of their ancestors when in fact they were doing no such thing. A few references from late literature refer to the reinstitution at Athens of the archaic (seventh to sixth century BCE) "laws of Solon and Draco" by the emperor Hadrian in the second century CE, but these are fantasies at best.[68]

If one looks to lower levels of administration, the evidence for knowledge of local laws remains problematic and fragmented. Egypt again provides the richest evidence. One the one hand, as Uri Yiftach-Firanko has shown in his study of marriage documents, local scribes paid careful attention to the composition of legal documents, even in cases in which higher levels of provincial and imperial authorities were clearly uninformed about the rights conferred, or waived when individuals chose particular forms over others (such as the powers retained or ceded by "unwritten" marriages).[69] However, at the middle levels of administration, it is not clear to what extent these practices were counted as binding local "law" as opposed to enforceable contractual practices. Men such as the *strategoi* (the county chiefs in charge of tax collection and small-scale dispute resolution) might have had knowledge of local laws, but these men were nonetheless extracted exclusively from the ranks of the inhabitants of the metropoleis. These urban Greek-speakers generally had a great deal of contempt for their rural Egyptian counterparts,[70] but were nonetheless expected to help them solve their problems, and it is to them that the

(Amsterdam: Hakkert, 1993), 151–56, that this inscription and others like it represent "dissatisfaction" with Roman rule would seem to be undermined by his citation of *ICr* IV 331, recording a Trajanic restoration of the odeion.

68. James H. Oliver, *Marcus Aurelius: Aspects of Civil and Cultural Policy in the East* (Princeton: American School of Classical Studies at Athens, 1970) 48, 54, 57; and James H. Oliver, "Roman Emperors and Athens," *Historia* 30 (1981): 419. Oliver's evidence does not warrant his conclusions. Presumably he bases his claim on Hadrian's oil law, *IG* II^2 1100 = Oliver, *Greek Constitutions* 92, but I cannot see how this works. Mary T. Boatwright, *Hadrian and the Cities of the Roman Empire*, 91–92 is appropriately skeptical.

69. Uri Yiftach–Firanko, *Marriage and Marital Arrangements. A History of the Greek Marriage Document in Egypt. 4th century BCE – 4th century CE* (Munich: C.H. Beck, 2003).

70. See, for example, *P.Oxy*. XLII 3061 (AD I), *P.Mich.Mchl*. 12 (AD 162) = *SB* XXIV 16252, *P.Oxy*. XIV 1681.

majority subscriptions of the governors discussed in Section I were directed.

What this structural hostility meant for the knowledge of local—or imperial—law is ambiguous. Some of these authorities—primarily the governors, but possibly also other high-ranking magistrates[71]—would have been accompanied by legal advisors.[72] Several Egyptian papyri preserve court records in which a governor hears a case of particular litigants and confers with the experts on "local" law: the *nomikoi*. The precise competence of these *nomikoi* is a matter for debate: sometimes they show up in the provinces drafting and translating wills,[73] providing sureties,[74] and advising governors (and rarely also other magistrates) about issues in both local and imperial law.[75] Little is known about their background: they appear in large numbers in Egypt and Asia Minor, although these areas also provide much of our papyrological and epigraphic documentation respectively.[76] They are not attested in papyri or inscriptions before the second century CE, and the bulk of references concentrate in the later part of that century (although they appear earlier in a literary source—the New Testament—as Jewish scribes, counterparts of other interpreters of Jewish law, the Pharisees).[77] To the extent that onomastic evidence is a

71. *P.Oxy.* III 578 is a highly fragmentary transcript of a trial proceeding in which a *iuridicus* and a *nomikos* are mentioned in consecutive (?) lines; unfortunately the papyrus was never given a complete publication, and more cannot be divined. *PSI* V 450.36 (AD II/III) appears to attest a consultation of a *nomikos* by a *strategos*.

72. I bracket here the question of the legal expertise of advocates in provincial courts, as my attention is directed to law*making* bodies. The material for advocates is assembled by J. A. Crook, *Legal Advocacy in the Roman World* (London: Routledge, 1995).

73. *Chr.Mitt.* 316 = *BGU* I 326 (AD 189–94), which, moreover, is a *Roman* will; also *ChLAnt* XI 486 (AD 249), a petition for *possessio bonorum*; *BGU* I 361.iii.2, iii.15 (AD 184).

74. *Chr.Mitt.* 91 = *BGU* II 388 (AD II).

75. See, for example, *Chr.Mitt.* 372.iii.28 = *BGU* I 114 (AD 142); *P.Oxy*. XXXVI 2757 (post AD 79); *P.Oxy*. XLII 3015 (AD II); *Stud.Pal*. XX 4 (AD 124). *SB* V 7696 (AD c.249) will be discussed further below.

76. Evidence for individual *nomikoi* (and their Latin-speaking counterparts, the *iuris periti*) is collected by Wolfgang Kunkel, *Die Römischen Juristen: Herkunft und soziale Stellung* (Köln: Böhlau Verlag, 2001, originally *Herkunft und soziale Stellung der römischen* Juristen, 2nd edition, 1967), 263–70 with discussion on 354–65. Kunkel is less schematic and more appropriately skeptical than is Rafael Taubenschlag, "The Legal Profession in Greco-Roman Egypt," in *Opera Minora* II (Warsaw: Państwowe Wydawn Naukowe, 1959), 161–4. See also Joachim Hengstl, "Rechtspraktiker im griechisch-römischen Ägypten," in *Recht gestern und heute: Festschrift zum 85. Geburtstag von Richard Haase*, ed. Joachim Hengstl and Ulrich Sick (Wiesbaden: Harrassowitz Verlag, 2006), 123–29.

77. Although notably, the term is primarily used in Luke's gospel (7:30, 10:25, 11:45–52, 14:3).

workable proxy for citizenship and social status, the evidence still permits no solid conclusions: some *nomikoi* bear Roman *gentilicia*, others epichoric names. There is no evidence that they knew local languages. It is furthermore worth emphasizing that at the time of the most significant transformations of the legal landscape of the provinces—that is, throughout the first century—they are nowhere attested. This 100-year-plus gap in jurisprudence, if taken as evidence of absence, is surely significant; if taken merely as absence of evidence, it is nonetheless striking that in comparison to earlier Hellenistic empires (the Ptolemies and the reforms of Ptolemy II Philadelphus in particular) the Romans appear uninterested in understanding and controlling local legal systems. Either way, in the absence of any compelling counter-evidence from Egypt or other provinces (Judaea possibly excepted) for an unbroken tradition of pre-Roman jurisprudence or the persistence of local law as an officially recognized, rationalized, body of canonical rules and texts,[78] one is justified in suspecting that by the second century, when *nomikoi* appear in official capacities, their advice to a Roman governor would have consisted of a combination of vague knowledge of local practices (with a claim that they were indeed law) and a good deal of improvisation.[79]

That is, if the governors trusted local advisors in the first place. There is reason to doubt that these local experts were the trusted legal advisors of governors and local officials, dutifully handling complex matters of conflict of laws; instead, there is reason to suspect that in some circumstances allowing their knowledge to count as authoritative could at times pose a threat. Such is reflected in a decree from 127 CE by the prefect of Egypt.

> Titus Flavius Titianus the prefect of Egypt declares: It has not escaped me that the *nomikoi* of Egypt, thinking that they would be unpunished for their crimes, are filing their reports (*asphaleiai*) everywhere except in the Library of Hadrian, which was built for this specific purpose, namely, that nothing done contrary to good practice be missed. Therefore I order them (the *nomikoi*) and all the officials to do what is required by my orders, and

78. There *is* evidence for people recognizing a concept of local law before the second century, but it appears in private documents that appear to have been uncontested before local authorities: *BGU* IV 1148 (13 BC), contract; and *P.Oxy.* IV 795 (AD 81–96), marriage contract. The evidence for *official* recognition of these local laws is later: *P.Oxy.* IV 706 (= *Chr. Mitt*. 81, AD 115–17); *P.Oxy*. XL 3015.2–3 (post AD 117); *P.Tebt.* II 488 (AD 121–2); *Stud.Pal*. XX 4 (= *Chr.Mitt*. 84, AD 124). An exception is *P.Oxy*. II 237.vii.38, from the first century (87 CE), but perhaps not accidentally the *iuridicus* chooses to ignore the law.

79. I will address these questions in greater detail in another essay: "Tradition, Precedent, and Power in the Papyri," in *Official Epistolography and the Language(s) of Power*, ed. S. Procházka et al. (forthcoming 2013).

> to know that I will punish those who break the rules and who, through their disobedience, seek profits wickedly.[80]

Titianus' edict comes shortly after the foundation of the new depository for official documentation founded in Alexandria, the Hadrianeum, which supplemented and supplanted the previous archive, the Nanaeum.[81] The process by which documents were stored, accessed, and maintained was of critical interest to the Romans, not least because the documents provided for the verification of taxation privileges granted to members of various privileged status groups. This interest in the maintenance of archives is evidenced at least as early as the middle of the first century CE,[82] and remains an abiding concern into the second century. One prefect of Egypt several years before the decree of Titianus not only ordered the re-filing of the property declarations contained in the archives themselves, but also the preservation of old and tattered documents contained that remained (89 CE); the evidence for this edict is contained in another edict concerning the archives, this one from 109 CE.[83] In the document in question, however, the *nomikoi* are in evidence as helping select local constituencies flout the law, rather than abide by it.

This interest in documents is critical, and offers a way into the problem of rights and privileges that differs both in chronology and analytical force from the narrative of citizenship and legal change discussed previously. The evidence, although scant, points to a system in which it is doubtful that the Romans—or, for that matter, the provincials themselves—would have had a clear, diachronically continuous knowledge of the native (that is, pre-Roman) laws of the land, at least in any systematic sense, or, to put it slightly differently, in the sense that these laws could have been capable of systematization.[84] What can be extensively documented on the basis of papyri and inscriptions, however, is that these provincial populations certainly had a command of the laws that the Roman emperors and governors themselves passed concerning substantive issues such as the collection of and exemption from taxes, protections from quartering imperial troops beyond a certain level, and provisions granting certain rights to inheritance, to offer a few examples. In brief, provincial populations were

80. *Chr.Mitt.* 188 = *P.Oxy.* I 34.

81. For elucidation of the system, see W.E.H. Cockle, "State Archives in Roman Egypt from 30 BC to the Reign of Septimius Severus," *Journal of Egyptian Archaeology* 70 (1984): 106–22.

82. *AE* 1976.673 (44 AD), the decree of Quintus Veranius providing violent punishments of the public slaves of Tlos responsible for the maintenance of the archives.

83. *P.Oxy.* II 237.viii = *Sel.Pap.* 219

84. I bracket here, for lack of expertise, the question of the origins of the Mishnah, and the complex question of the existence and evolution of oral torah.

extremely conscious of discrete instances of statutory privilege when it was to their benefit to be conscious of these privileges. The converse is probably similarly true: provincials could potentially forget particular disabilities, at least in the sense that they were under no compulsion to monumentalize or quote from them.[85] The reason for this is that these rights, and the documents that conferred them, were not merely "in the air." They were compiled, quoted, read aloud, and submitted for official validation in courts. It is no accident that a number of papyri preserving edicts of prefects often appear to be collations of rules by private individuals: some of these, such as the massive petitions of Dionysia and Apollinarion, quote edicts and precedents in the course of legal argumentation; others are mere scraps compiling similar decisions, akin to a modern casebook.[86] Although it is therefore likely that, in seeking to manipulate these texts to their advantage, "residents demonstrated their faith in the system when they played by its rules and especially when they attempted to exploit them,"[87] one must also be sensitive to the emotions that would have prevailed at the time: otherwise fearful people found what appeared to them to be a gap in the system, and learned, starting in the second century, to manipulate a particular style of discourse and document that was accorded great importance for *financial*—not legal—reasons by their imperial masters. Still, the respect accorded to these documents was not seen, by provincials at least, as a general phenomenon; that is, although they may have been a tangible manifestation of a larger claim to rational-bureaucratic domination, the power of these documents was, for provincials, circumscribed. They were respected only in the context of formal legal interactions, in courtrooms, when all procedural formalities also prevailed. It is therefore to these sorts of interactions that provincials directed their attention.

It would be an error to presume that the structures of power that prevailed in the street necessarily prevailed in all other aspects of imperial interactions. Courts are a case in point: the courtroom was a sacred space, in the sense that

85. The judgment of Millar, *Emperor*, 260 seems most correct: "Imperial pronouncements of whatever kind, if they survive on inscriptions, do so because cities (or private persons) had them inscribed; and they had the pronouncements inscribed if and only if they were of direct interest or advantage to themselves." For a tantalizing example in which a provincial population may have changed the wording of an imperial subscription, see Tor Hauken, *Petition and Response: An Epigraphic Study of Petitions to Roman Emperors, 181–249* (Bergen: Norwegian Institute at Athens, 1998), 26, concerning the phrase *ne plus quam ter binas operas* in the petition of the *coloni* of the Saltus Burunitanus *(ILS* 6870).

86. Petition of Dionysia: *P.Oxy.* II 237 (186 AD); Apollinarion: *P.Oxy*. VI 899 (AD 200). I will address Dionysia's petition in greater detail in "Tradition, Precedent and Power" and in "Dionysia's Complaint: Finding Emotions in the Papyri," in *Emotional Display, Persuasion, and Rhetoric in the Papyri*, ed. C. Kotsifou. (in progress).

87. Ando, *Imperial Ideology*, 374.

it was the site of a particular set of ritualized interactions. It was where individuals faced down other individuals in the hope of obtaining justice; but even more importantly, it was also the place where individual subjects of empire faced down their governors and used the language of law to articulate normative visions of the world. It would have been possible to punish someone for holding such a vision, of course, but this would not have been the end of the story. The obligation of the governor in his capacity as judge would have been to listen and then decide; the ability of the litigants to speak and articulate was a fundamental part of the process.

This ability to speak freely in the context of the imperial courtroom must not be underrated: whereas the governor was under no obligation (or under minimal obligation) in the streets to hear competing interpretations of his legitimacy when deciding the fate of the criminal, the troublesome, or the just plain obnoxious, the governor in the courtroom would be obligated to sit passively, to listen to claims, and to interrogate (that is, to ask and be answered). As such, the courtroom was a space in which the power dynamics of the everyday were temporarily suspended, negotiated, and potentially reconfigured. In this space, the recitation of legal materials—previously judged cases, imperial and provincial edicts, petitions of others with subscriptions that were honored by the governors—could make a claim on the governors, binding them to punish opponents, obliging the government to desist in pursuing an individual unnecessarily or unjustly, or magically transforming the status of the petitioner him or herself.

In a similar vein, the collation and recitation of legal documents is, in its own way, a form of non-elite jurisprudence. However, it is worth making a clear distinction here, which indicates the different approaches to the law of these two groups. Provincials had no interest, as far as I can discern, in trying to do the work of the Roman jurists: that is, in trying to present a systematic account of the underlying principles that animated these individual decisions, except in a few exceptional circumstances in which they argued that a privilege granted regarding a limited concern should be extended to cover a larger one; for example, if a grant of relief from taxes for a citizen of a particular place should be extended to cover taxes on lands that that citizen owned in another place.[88] What they did have interest in, however, was in establishing that a series of individual decisions in the past should serve as a guide to deciding the issue in the current context.[89] The evidence

88. See, for example, *SB* V 7601; on this papyrus see further Ranon Katzoff, "Precedents in the Courts of Roman Egypt," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte–Romanistische Abteilung* 89 (1972): 279–80.

89. H.F. Jolowicz, "Case Law in Roman Egypt," *Journal of the Society of Public Teachers of Law* 14 (1937): 1–16; and Ranon Katzoff, "Precedents," 256–92.

from Egypt is, again, the most telling: a large number of petitions show that, starting in the late first and early second centuries, individuals would comb the local archives to find any evidence that a particular privilege had been granted formally, informally, or, in some cases, even argued for in another case as evidence to support their claims that they, too, deserved to enjoy the privilege in question.[90] That is, whereas the Roman jurists saw the communities of their empire as structured according to individual groups of citizens living according to their respective *ius*, the provincials disagreed, seeing law as an evolving dialogue taking place in the courtroom and as a historically evolving phenomenon constructed from individual legal decisions and vested in documents recoverable from local archives and public inscriptions. It is a historical irony—but nothing more—that the Romans of the Republican period probably would have shared, until the civil wars of the first century BCE, a similar idea of law; however, as jurisprudence evolved starting in the Late Republic and continuing under the principate, the tendency to see *ius* as a discrete package of rules capable of systematization connected to a particular group of people sharing a citizenship began to predominate.

Although there is no explicit statement of these understandings, it is evident in the grueling archival work that provincials undertook. They dug up the artifacts of law—utterances of magistrates, grants of emperors, decisions of prefects and administrators—and repackaged them as venerable and inviolable traditions, ignoring or failing to discuss in anything but the vaguest detail the structures through which certain privileges were granted. It would be an error to assume that the lack of orderliness or systematization of the legal system constituted failure. This is especially the case for understanding the workings of the law in the eyes of provincial populations. I would suggest that the complex, layered, and sometimes impenetrable system that was in place in the Roman East was user friendly in a particular way: when no one is precisely sure what is happening, a

90. Private collections of legal documents likely include: *Chr.Mitt.* 372 (post. AD 142), *P. Phil.* 1 (AD 104–7), *P.Princ.* II 20 (AD II), with O.W. Reinmuth, "Two Prefectural Edicts Concerning the Publicani," *Classical Philology* 31 (1936): 150–51; *P.Oxy.* XXXVI 2757 (post AD 79). Possible also are *P.Oslo* III 78 + 79 (post AD 136), *P.Oxy.* XLI 2954 (AD III, citing edict of Heliodorus, AD 137), and *SB* V 7601. *P.Oxy.* XLII 3017 (AD 176–77) is an edict of T. Pactumeius Magnus relating to procedures, which is written on the opposite side of a petition dating from 218 CE (*P.Oxy.* XXXIII 2672); the precise interrelation between these two documents (if any) is unclear. Possible is also *SB* XIV 11348 (AD II) with G.M. Parássoglou, "Four Official Documents from Roman Egypt," *Chronique d'Égypte* 49 (1974): 332–41. See, also, Ando, *Imperial Ideology*, 73–130; and Jill D. Harries, "Resolving Disputes: The Frontiers of Law in Late Antiquity," in *Law, Society, and Authority in Late Antiquity* ed. Ralph W. Mathisen (Oxford: Oxford University Press, 2001), 68–82.

space is opened up in which provincial populations can assert their own understandings of the system itself, and how it should work. If the judge does not know the intricacies of the system in which he judged, he is no longer an automatic processor of discrete facts into their relevant categories. One can, of course, doubt that a judge in any society exists in a state of perfect clarity, with total knowledge of the system over which he is both the representative and the gatekeeper. But the nature of the structures of power in this particular imperial encounter makes the governor's position as a judge somewhat problematic, and by temporarily suspending his powers, puts the provincials in a position to articulate their views of the ways the world should be working.

The chronological development of this process is significant. All of the documentary citations in the papyri date from the period after the reign of Domitian, and begin to be seen in great numbers in the reign of Hadrian. The same appears to hold for the compilations of legal decisions to be cited in the courtroom; although the dating on these is less secure, a number of the decisions themselves come from the second half of the first century. Their compilation, however, is always later, sometimes significantly so. For example, Dionysia's petition (one of the longest extant from Roman Egypt) was penned in 187 CE, and cites decisions dating back to the 80s CE.[91] A similar pattern prevails in the literature generated by provincial populations: the great Jewish narratives of Josephus (composed in the Flavian period) cite Roman decrees as proof, whereas Philo does not. Something has happened in the first century CE.

Although this can only be speculation, I would suggest that the development of empire was watched intently by provincials. The period from the death of Julius Caesar in 44 BCE to the death of Nero and the civil wars that followed in 69 CE must have been one of upheaval. Provincial populations in the Greek-speaking East had, for generations, watched governments come and go. Some, such as Polybius of Megalopolis, raised this brute fact of life to something approaching political theory; others were merely savvy, and would have watched closely to see if a particular form of government was merely transitory. Provincials similarly had extended experience with Republican government. And whereas scholars are often comfortable locating the inevitability of one-man rule with the accession of Tiberius in 14 CE, the provincials had no way of knowing this. The aftermath of civil wars of 69 CE—and it is easy to forget how destabilizing these were, but they were surely as much so as the fallout over the death of Caesar—will have crystallized this system in the eyes of provincials, and provoked, if only at a subconscious level, some interest

91. *P.Oxy.* II 237 (AD 186).

in how best to interact with a system that appeared to now be both permanent and to transcend the traditional/charismatic type of leadership that adhered in a family line that could trace itself back to Julius Caesar and Augustus. The advent of Trajan and Hadrian after the death of Domitian seems to have further crystallized this process: not only were these emperors not from the Italian mainland, they claimed that they had law on their side. The visit of Hadrian to Egypt was, in that province, a particular watershed: his foundation of a Greek city (Antinoopolis) with a new group of citizens in the Egyptian countryside—without, it appears, a *systematized* body of law governing their status vis-à-vis the people who lived around them—produces a flood of legal documentation in the provincial courts.[92] The tone of these documents is very different, as these new citizens stridently demand their rights from the governing authorities, who at times appear helpless in light of the claims articulated by reference to the privileges granted by Hadrian.

It is important to recognize that this was a dialectical process; that is, a conversation with authority in which the rules of the game had to be worked out in a process of trial and error, to pun only slightly. The tone of the discussion, as it takes its form in the second century, can be contrasted with a very early appeal for justice and good governance. The earlier text comes from a papyrus of the first century CE, which preserves, among other documents, a short poem. The initial editors guessed that it had been copied down from an honorific statue base in the provincial capital of Alexandria. The poem contains a hymn to the emperor Augustus, praising him for his defeat of Mark Antony in the battle of Actium in 31 BCE, which brought Egypt under formal Roman control:

> Actium's master, lord, sea-fighter: this is the monument of the deeds of Caesar, and witness of his blessed toils, resounding on the lips of Time. For you he calmed the blows of War and the crash of shields, there he stopped the sufferings of fair Peace, and came joyously to the land of the Nile under the weight of a cargo of good laws and abundance (*eunomias…euthenias*), just as Zeus the god of freedom. Nile welcomed its lord with arms full of gifts, and his wife, washed by his golden arms, without war or strife received the rain of Zeus of freedom, and indeed the name of war itself was extinguished. Hail, blessed Leukas, a single good council for the victorious deeds of Augustus Zeus son of Kronos.[93]

92. Alan K. Bowman and Dominic Rathbone, "Cities and Administration in Roman Egypt, *Journal of Roman Studies* 82 (1992): 119–20. A single papyrus (*Chr.Wilck*. 27) seems to indicate that the Antinoopolites used the laws of Naukratis, but the proper interpretation of this statement is, to my mind, still unclear.

93. *P.Lond.* 256, before AD 5–15. Text from H. Lloyd–Jones and P. Parsons, *Supplementum Hellenisticum* 982; translated after D.L. Page, *Select Papyri*, III 113.

Egyptians had a long history of giving their foreign rulers lessons in the expectations of the local populace through veiled suggestions.[94] In this case, the coupling of *eunomia* (good laws) with *euthenia* (prosperity) seems to be a local encoding of priorities: Egypt was conceived of by the Romans as a place of abundance, a land so rich that the flooding of the Nile would produce crops without human interaction.[95] It was soon to be one of the primary breadbaskets of the Roman Empire. The link between the two cannot be accidental, and is a message to the ruling power: if one hopes to extract the country's wealth, it is possible only under the condition that government acts as we would desire. This appeal to *eunomia* is richly evocative, but vague in specific content; it is a helpful suggestion, hardly a demand. It should be contrasted with a papyrus of the middle of the third century, when the tone of this conversation between rulers and ruled reaches its peak, after the extension of citizenship in 212 CE, and after a pair of emperors, themselves from the provinces, had gone so far as to claim that, although they were formally absolved by the laws, they nonetheless wished to live by them.[96] The papyrus in question, although fragmentary, preserves the minutes of a particularly raucous trial before the prefect Appius Sabinus. A group of villagers have come to complain about being pressed into compulsory public services in the city of Arsinoe; they have hired a lawyer, and are prepared to accuse the town councilors, their social betters, of malicious behavior for illegally nominating them. Their lawyer, a man named Seleucus, has done his homework, or at least part of it. When asked by the prefect why he argues that it is illegal for the villagers to be nominated, he reads a decision from a case judged by the emperor Septimius Severus, which Seleucus tells the prefect is "to the effect that men from the villages are not to be impressed into the liturgies of the metropoleis." He begins reading *in medias res:* "And when they had been summoned (?), Severus said, Their request is reasonable, etc." (The abbreviation of the decision, the "etc." in Skeat and Wegener's translation, is original to the papyrus). When asked if he has additional evidence, he merely claims that "after Severus all the Prefects have judged thus." At this reply the opposing counsel, representing the Arsinoite council, can contain himself no longer. He resorts to an

94. See, for example, Janet H. Johnson, "The Demotic Chronicle as a Statement of a Theory of Kingship," *Journal of the Society for the Study of Egyptian Antiquities* 13 (1983): 61–72.

95. Roman perceptions of the richness of Egypt require no footnote, except to note a passage too rarely cited: Historia Augusta, *Firmus* 7.4–8.10 is one of funniest passages in the entirety of Roman prose literature.

96. "'*Licet enim,' inquiunt, 'legibus soluti sumus, attamen legibus vivimus*,'" Justinian, *Institutes* 2.17.8. The emperors in question are Septimius Severus and Caracalla.

argument similar to that of the villagers, but one that is modified by reference to socioeconomic context: "The laws", he claims,

> are indeed to be held in awe and reverence, but you in trying the case must follow (the decisions?) of Prefects who have had regard for the needs of the cities; it is the need of the city which limits the application of the law. For this reason have Prefects many a time, when such laws were quoted to them, decided [to the contrary], having the needs of the cities before their eyes.

The governor hearing the current case was not convinced, and asked the other advocate for the party of the council "What do you say to the law of Severus and to the judgments?" His answer was based not on an appeal to law or precedent, but on the concept of an evolving standard of reasonableness:

> Serenus: "To the law of Severus I will say: Severus ordained the law in Egypt while the cities were still prosperous." The Prefect: "The argument from prosperity–or rather the decline of prosperity–is equal both for the villages and the cities." Serenus: "After Severus this new imposition took place, which the sacred Fortune of Decius Augustus will relieve." The Prefect, after consulting with his assessors, said to Apollonides, chairman of the council: "The power of the laws will, as time goes on, be still further increased. There has been read an ordinance of the Emperor Severus exempting coloni from the municipal liturgies. . ."[97]

The juristic twists and turns of the town council did not work when faced with a group of villagers, their social inferiors, bearing the text of an imperial decision and the weight of tradition. The dynamics of the interaction are telling: law's plain meaning trumps arguments for utility and rational governance. The "plain meaning" of the law is accessed by the quotation of texts in the courtroom with legal value. These texts can be, as in this papyrus, decisions of the emperor, but they can also be less important documents: decisions of lower ranked magistrates, such as governors, or in some cases, even petitions which have received subscriptions.[98]

The preponderance of the evidence, at least the evidence of petitioners who stood at a nonelite place in the social scale, points to a system in which provincial governors worked with minimal knowledge of the letter of the law, but in which they were asked to defer to local interpretations. These local interpretations were drawn from the words—even if spoken inadvertently—of the governors themselves in the courtrooms. And

97. *SB* V 7696 (AD 249); T.C. Skeat and E.P. Wegener, "A Trial Before the Prefect of Egypt Appius Sabinus, AD c.250," *Journal of Egyptian Archaeology* 21 (1935): 224–47.

98. See, for example, *SB* V 7601. In the epigraphic record, subscriptions to petitions seem to be more common. See Tor Hauken, *Petition and Response*.

everything that the governor did could constitute a precedent; every word that he spoke could be reappropriated in a different context, and turned against the governor himself, his successor, or a plaintiff's adversary in a civil trial. To look to one example of this last feature, the *Digest* preserves a section of the *Responsa* of the jurist Papinian concerning *infamia*, a condition produced by certain types of illegal or disreputable behavior that resulted, in some cases, in the diminution of legal status, and barred the *infamis* (the person incurring *infamia*) from certain types of legal remedies.

> The words, 'you appear to have instigated the suit by a clever lie' in the judgment of a provincial governor increase humiliation rather than, it seems, inflict *infamia*.[99]

The precise context of this text is elusive, but it might be deduced that two individuals living in the provinces had gone to court (over a contractual matter?), and in some capacity infuriated the provincial governor to the point where he made an inappropriate ejaculation and called one of the parties a liar. The other party seized upon this phrase, and decided that, by virtue of the governor's insult, his opponent had thereby incurred this particular condition of disenfranchisement. Papinian, in ruling on the case, took the more cautious position: the governor merely intended to humiliate, not disenfranchise.[100]

This case, whether it reflects a real incident or an exegesis of a set of legal hypotheticals, points to a problem: most cases like this would not have made it to a serious Roman jurist, or even a scrupulous Pliny. Most cases would have been dealt with by a governor who was untrained in the law, overburdened, and generally disgusted with the people over whom he was in charge.[101] Governors were prone to say things off the cuff, and these things could be reappropriated by those over whom they ruled, and interpreted as the law of the land. By raising the status of particular phrases to that of "law," provincials made the claim that the governors were bound by them; that is, by reciting these phrases they claimed

99. *Digest* 3.2.20 (Papinian, *Responsa* book 1

100. Similar ejaculations by governors that would have caused *infamia*: *BGU* IV 1024: *su moi dokeis [psychen e]chein theriou kai [o]uk anthropou, [mallon d]e oude theriou*; a parallel can be found in Peter van Minnen, "The Earliest Account of a Martyrdom in Coptic," *Analecta Bollandiana* 113 (1995): 13–38: *ene-thyrion n-akrion* "you make yourself like the wild animals". The precise status of the *BGU* text is unclear; in my view, it is possibly a literary text, not a legal one. See, further, James G. Keenan, "Roman Criminal Law in a Berlin Papyrus Codex (*BGU* 1024–1027)," *Archiv für Papyrusforschung* 35 (1989): 15–23 and James G. Keenan, "Roman Criminal Procedure," in *Law and Society in Egypt from Alexander to the Arab Conquest, 332 BC–AD 640*, ed. J.G. Manning, Uri Yiftach–Firanko, and James G. Keenan (Cambridge: Cambridge University Press, forthcoming)

101. See, for example, Cicero *Letters to Quintus* 1.1.16.

that their problem was henceforth also the governor's problem. As such, the law contained a particular form of power: the power to force imperial authorities to bring themselves or others into conformity with provincial desires, and the power to force officials to change their behavior or to enforce a change in the behavior of another party. However, these moments of power could only be produced in the courtroom, and only accessed in it. The court was both the moment and the venue in which provincial populations could harness this particular form of power, and the fact that the governors knew only a limited amount about the substantive rules governing these interactions stacked the deck in favor of the provincials gaining the access they desired.

These arguments will be controversial for those who tend to see courts and courtroom interactions as comprising a space in which the state acts with unfettered power and thereby reasserts control over the political and social world.[102] Certainly there were places and times—many of them—when this was the case. These fantastic trials—of Christians in the amphitheater, for example, deserve a study of their own, one that I hope to complete in the near future. For the present context, it will suffice to say that the texts that describe the state acting this way *do* describe certain realities of governance; however, they also make claims as to how the system should, ideally, work. The provincials made these sorts of claims, too, but their claims were not only different, they were in competition.

IV.

In this article, I have attempted to make the following case: rather than conceiving of law as a systematized body of local traditions encapsulated in a particular citizenship, we should focus primarily on law in practice, and, in particular, on the exercise of rights. These rights might be linked to a particular citizenship, but they were discovered by and derived from discrete interactions with magistrates in courts. These rights that were generated from courtroom interactions were later reactivated by being reproduced in other legal interactions, by means of quotation. It was a momentous discovery that governors—the most powerful men in the province—could be

102. Yan Thomas, "Se venger au forum: Solidarité familiale et procès criminel à Rome (premier siècle av.-deuxième siecle ap. J.C.," in *La Vengeance: études d'ethnologie, d'histoire, et de philosophie, vol. III*, ed. Raymond Verdier and Jean-Pierre Poly (Paris: Editions Cujas, 1984), 65–100; Maud W. Gleason, "Truth Contests and Talking Corpses," in *Constructions of the Classical Body*, ed. James I. Porter (Ann Arbor: University of Michigan Press, 1999), 287–313; Brent D. Shaw, "Judicial Nightmares and Christian Memory," *Journal of Early Christian Studies* 11 (2003): 533–63.

influenced, bound, and have their power channeled by evocation of these documents. The discovery appears to have first been made towards the end of the first century CE, and reaches a peak in the third century.[103] These techniques developed in tandem with the solidification of the imperial system, but are primarily a reaction to the fearsome power of the governors of provinces. This use and management of courtroom interactions were particularly effective because they pinpointed the field of cultural interaction (to use Bourdieu's terminology) in which the people with relatively small amounts of social capital (nonelite provincials) could gain the most value for their efforts, because the courtroom, unique among the manifestations of Roman power, was the venue in which this power was temporarily but openly negotiable. This is true both for the courtroom interaction as fact— that is, in how decisions in the courtroom in particular historical moments can be raised to the status of law, and subsequently be manipulated by specific individuals as a claim of a right to particular goods and privileges— and also for the courtroom interaction as symbol. From Lucian's hapless Zeus and Hermes surrounded by badgering philosopher-petitioners, to Philo's ruthless Flaccus who did his work by edict rather than by confronting the Jewish community within the ritualized boundaries of the courtroom, courts play a significant role in the imaginative literature produced by provincial populations.

V.

Summum ius, summa iniuria: so Cicero said was popularly believed at Rome during the end of the Republic.[104] There is a case to be made for this kind of statement; according to Cicero the problem was that individuals abused the letter of the law to unfairly or unjustly go after their opponents. He preferred, unsurprisingly, a system that would have been rationalized (in a philosophical sense) to take account of higher goods. Failing that, as his oratory shows, he was comfortable in a system in which the power of rhetoric would be allotted a sufficient role in legal proceedings so that the truly vile could be punished, and the truly decent treated well. It quite obvious, however, that a claim such as "*summum ius, summa iniuria*" is not the "rule of law." The rule of law makes a claim

103. See, for example, the elaborately constructed document recording rights granted to members of athletic guilds from the late third century: *Pap.Agon.* 1.

104. Cicero, *On Duties* 1.10.32–33; compare to Terence *The Self Tormentor* 796: *ius summum saepe summa est et malitia*, cited by Bruce W. Frier, *The Rise of the Roman Jurists: Studies in Cicero's* Pro Caecina (Princeton: Princeton University Press, 1985), 123.

to the inherent value of legal texts as being one of two things. Either they are intrinsically right (as, for example, in Jewish or Islamic law), or abiding by their precepts is necessary because to do anything else would open the field to the arbitrary violence of the strong. I would suggest that the latter interpretation was the one that made the most sense to the provincial populations of the Empire. Within this system, however, there are features that distinguish the premodern from the modern systems of rule of law. I would argue that the most important distinction is one of knowledge, memory, and recoverability. In the modern world, legal texts are locked away in specialized libraries; they are written in a language accessible only to trained lawyers; the "plain meaning" of a law—if such a meaning is accessible—can often be juxtaposed with the context in which the law was composed or with the possibility that the text of the law will contradict the text of other laws. Modern people can participate in collective actions and articulate vague appeals to rights, but they can only in rare circumstances use the logic of the system against the system itself, in no small part because access to the space of the courtroom itself is so often restricted. An important reason for this is, no doubt, that both the advocates as well as the umpires of these interactions are trained professionals, scholars, and interpreters of the law who choose to do their work through a "'consciously structured hybrid of languages' and performances," to use Robert Burns' memorable phrasing.[105] These modern judges contrast neatly with the Roman governors. In the provinces the texts of the laws were scattered across diffuse sets of local and capital archives. They were selectively monumentalized and excerpted by the provincials themselves. They were confusing and often contradictory. The governors could not be presumed to know them.

But when the letter of the law itself contains the power to make governors act in a locally acceptable way, the ability to access law's fragments, decontextualize them, gloss them with local meanings and priorities, weave them into narrative complaints, and represent them to authorities in the courtroom presents an opportunity that is unparalleled in other aspects of the imperial interaction. It similarly presents a potential threat to the imperial power. As such, it is probably no accident that, starting in the late second century, emperors begin to try to assert a greater measure of control by designating certain trusted individuals to travel around and judge "in his place."[106] The greater prominence of trained jurists serving as "secretaries of petitions" (*a libellis, ab epistulis*) in the courts of the emperors is

105. Robert P. Burns, *A Theory of the Trial* (Princeton: Princeton University Press, 1999), 3.

106. Complete study in Michael Peachin, Iudex vice Caesaris: *Deputy Emperors and the Administration of Justice During the Principate* (Stuttgart: Franz Steiner Verlag, 1996).

probably also connected to this, as are the attempts of these jurists, starting in the early second century, to try to build systematic frameworks of Roman law and produce commentaries on provincial law. The same could be said for the notional elimination of the Roman/provincial system of law by the universal grant of Roman citizenship in 212 CE, which technically forced all inhabitants of the Empire to adhere to the *ius civile*, previously reserved for Roman citizens alone. To what extent this grant had a meaningful effect at the level of quotidian practice is a vexed question, but it is certainly in keeping with other imperial attempts to bring a certain consistency and comprehensibility to the system.

However, the narrative of the state's attempt to exert control over an unwieldy system is not the entire story. In this article I have suggested that the Roman provincial experience of the "rule of law" is intimately linked to, and in some senses coterminous with, the experience of empire. There is a broader point that would seem to be relevant to other imperial situations. Approaching the courtroom as a ritualized space of communication means that the historian or anthropologist needs to take account of the myriad ways in which ritual can serve as a form of power; not just the power of those who notionally run the world, but also of the power of those who do not.[107] Jonathan Z. Smith makes the methodological point with characteristic clarity:

> When one enters a temple, one enters a marked-off space in which, at least in principle, nothing is accidental; everything, at least potentially, is of significance. The temple serves as a *focusing lens*, marking and revealing significance… A sacred place is a place of clarification…where men and gods are held to be transparent to one another. It is a place where, as in all forms of communication, static and noise…are decreased so that the exchange of information can be increased.[108]

One could add that the transparency and clarity through which the temple makes possible communication does not map closely onto the power relationships that the gods have over humans on a day-to-day basis. Using the language of ritual and religion in this context is not anachronistic. To return to the story that opened this discussion: Zeus, the cosmic emperor, is quite purposely cast as having chosen to host his court day on the sacred ground of the Athenian acropolis: a sacred place, and the site of a series of temples. This "lawsuit market" of Zeus in the second

107. David I. Kertzer, *Ritual, Politics, and Power* (New Haven: Yale University Press, 1988) is persuasive on this point.

108. Jonathan Z. Smith, "The Bare Facts of Ritual," in *Imagining Religion: From Babylon to Jonestown* (Chicago: University of Chicago Press, 1982 [originally published 1980]), 54, italics in the original.

century stands in marked contrast to the attitude of the emperor Justinian, when, in the sixth century CE, he attempted to bring all of civil law together in a single great code. He likewise spoke of having consecrated, by means of the code, "a sacred temple of justice" (*sanctissimum templum iustitiae consecrare*), the authority of which would "order affairs both human and divine and cast out all injustice" (*et diuinas et humanas res bene disponit et omnem iniquitatem expellit*).[109] Justinian envisioned his temple as a permanent, lasting edifice not for communication with the gods, but as a space in which fixed doctrines are articulated and obeyed; it is a dogmatic Christian's gloss on the *do ut des* that marked interaction in the pagan temple. The power of the state is apparent, but one could hardly call it transparent.

Justinian's codification was the last step in the process by which the state tried to assert control over the rule of law and turn it to its own advantage. As noted earlier, this process started approximately in the third century with the extension of citizenship, and extended to the collection of imperial rescripts in *Codex Hermogenianus* and *Codex Gregorianus*. Theodosius II similarly tried to collect all the laws of the Empire, as well as to provide for some measure of control of legal texts through his "Law of Citations" (426 CE), as well as through a codification of juristic writings. His collection never came to fruition, but Justinian's did. What was novel in this success was Justinian's claim to having established absolute and authoritative knowledge not only of individual laws (*leges, constitutiones*), but also the knowledge of right and wrong itself (*ius*). It was not until this moment in imperial legal history that the government succeeded in taking control of the fragments of the law and rendering all other forms of legal text immediately obsolete.[110] It was also not too long thereafter that the courts of the provinces began to wane in importance; that local, sublegal, and charismatic systems of justice and mediation arose in their place;[111] and that the vibrant legal culture of the provinces essentially flickered out.

109. *Digest, Const. Deo Auctore* 5, 1.

110. The standard study of the Justinianic codifications remains Tony Honoré, *Tribonian* (London: Duckworth, 1978); on general developments in Late Antiquity, see Tony Honoré, "Roman Law AD 200–400: From Cosmopolis to *Rechtstaat*?" in *Approaching Late Antiquity: The Transformation from Early to Late Empire*, ed. Simon Swain and Mark Edwards (Oxford: Oxford University Press, 2004), 109–32.

111. A.A. Schiller, "The Courts Are No More," in *Studi in onore di Edoardo Volterra, vol. I* (Milan: Giuffre, 1968), 469–502, with important modifications by Traianos Gagos and Peter van Minnen, *Settling a Dispute: Toward a Legal Anthropology of Late Antique Egypt* (Ann Arbor: University of Michigan Press, 1994) and Bernhard Palme, "Law and the Courts in Late Antique Egypt," in *Aspects of Law in Late Antiquity* (Oxford: Privately printed, 2008), 68–76.