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INVITED ARTICLE

The Rise of the Indigenous Jurists

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Abstract

Numerous Roman grants to local communities of the right to use local law survive in contemporaneous copies starting in the second century BCE. Contemporaneous with these grants of autonomy, Rome urged institutional changes that reconstituted local elites as aristocracies of office. By contrast, evidence that individuals identified themselves as experts in local law survives in bulk only starting in the second century CE. The paper urges that the superimposition of Roman courts as courts of the second instance created a role in local polities for expertise in local law in mediation with these Roman courts, and that local elites sought to monopolize this role and the technocratic prestige that it brought.

The Roman empire was legally pluralist.[1] By this one might intend nothing more than that, in the Roman empire, multiple systems of norms obtained simultaneously within the same political space. Given its size and the diversity of ecological, cultural, and linguistic systems that it embraced, this is not surprising; and yet, at one time, it needed to be said. Why say it again now?

Discovered, as it were, in a moment of superheated excitement in legal anthropology, legal pluralism would now seem to have run its course.[2] This

[1] The title of the paper alludes to the splendid work of Bruce Frier, *The Rise of the Roman Jurists: Studies in Cicero's Pro Caecina* (Princeton: Princeton University Press, 1985), whose explanatory ambitions provide a model for this paper. Abbreviations of epigraphic sources correspond to those in *Guide de l'épigraphiste. Bibliographie choisie des épigraphies antiques et médiévales*, 4th edn (Paris: Éditions Rue d'Ulm, 2010).

[2] The early history of the field was shaped by the use of the concept in the study of colonial contexts: see M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975). An early historiographic review is provided by Sally Engle Merry, "Legal Pluralism," *Law and Society Review* 22 (1988): 869–96. A further context has been supplied by globalization, on which see Ralf Michaels, "Global Legal Pluralism," *Annual Review of Law and Social Sciences* 5 (2009): 243–62. See also Paul Schiff Berman, "The New Legal Pluralism," *Annual Review of Law and Social Sciences* 5 (2009): 224–52, and Paul Schiff Berman, ed., *The Oxford Handbook of Global Legal Pluralism* (New York: Oxford University Press, 2020).

is not because there are not spaces of legal pluralism; it is because nearly every political space is legally pluralist. The longing of Hobbes for some form of unitary sovereignty was an act of resistance to an empirical reality that was messily pluralist. Nor was he joined in his project by many peers, for whom law—the common law—was a site of resistance to encroaching royal power. One might say the same of Bodin and advocates of *étatisme* in France: their longing for a strong central state remains, thank goodness, a dream unfulfilled. The historical instances in which one actually approaches a unitary condition of law are the terrifying anomalies. It is they that require explanation. But if pluralism is overwhelmingly the norm, it does not therefore lack interest. Not all pluralisms are the same, nor have they been studied in every context to the same extent.

The surge of interest in legal pluralism among historians of the ancient and late ancient Mediterranean in the past 20 years has two contexts. The first was the confrontation of the United States with the sectarian violence that followed upon the collapse of the prior regime. This prompted much scholarship in the Anglophone world around the question of what had made certain premodern empires so stable, the provocation being the questions of whether the United States had an empire and what its fate might be. Focal points for inquiry were the Ottoman and Roman empires among premodern cases, and the British empire among modern ones.[3] The questions for historian were, what forms of difference were salient to contemporaries, and what intellectual and ideological resources did they develop to explain, and explain away, this difference.

A second context was the spread of systems of transregional federalism: the European Union, the contestation of federal power in the United States, the evolution of the United Kingdom toward federalism by means of the devolution of powers to the parliaments of Scotland, Wales, and Ireland. The question was posed, whether empires in general, and premodern empires in particular, had lessons to offer to those who sought to craft stable pluralist regimes of multiple sovereignties within unified political spaces.[4]

The field of scholarship has also produced trenchant critics,[5] and a number of responses, not least (and most intelligently) that attention to the plurality of norms obtaining in any given context has heuristic rather than straightforwardly interpretive value.[6] On this argument, once identified, each context of pluralism deserves careful empirical study, and theory in each case should be elaborated from particulars.

Viewed in this light, early twenty-first-century work on the legal orders of the early Roman empire deserves reconsideration and elaboration on several

[3] Among a vast literature see, e.g., Niall Ferguson, *Empire: The Rise and Demise of the British World Order and the Lessons for Global Power* (New York: Basic Books, 2003), and Charles Maier, *Among Empires: American Ascendancy and Its Predecessors* (Cambridge, MA: Harvard University Press, 2006).

[4] See, e.g., Olivier Beaud, *Théorie de la fédération* (Paris: Presses universitaires de France, 2007); Clifford Ando, "Pluralism and Empire, from Rome to Robert Cover," *Critical Analysis of Law: An International and Interdisciplinary Law Review* 1 (2014): 1–22.

[5] See, e.g., Simon Roberts, "Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain," *Journal of Legal Pluralism and Unofficial Law* 42 (1998): 95–106.

[6] Franz and Keebeet von Benda-Beckmann, "The Dynamics of Change and Continuity in Plural Legal Orders," *Journal of Legal Pluralism and Unofficial Law* 53–54 (2006): 1–44.

grounds. Preeminent among these was their own ideology. The Romans, and those they ruled, celebrated the legal pluralism of the Roman empire. That is to say, pluralism is not simply "our" heuristic. It was a concept in history. Contemporaries acknowledged that the empire was a unified political space, and that multiple systems of norms obtained within that space—on the sufferance, as they would say, of the Senate and People of Rome.[7] More precisely, Rome allowed the separate city-states of the empire each to have its own law-making and law-applying institutions, and the councils and assemblies of those city-states expressed gratitude for this. Legal pluralism therefore issued from politics, and specifically from the politics of empire.[8] Cui bono?

To answer this question, this paper describes and then seeks to explain a pattern in the evidence. I commence from a pair of empirical observations. Contemporary evidence for grants of autonomy by Rome to subject populations survives starting in the second century BCE, and a study stream of legal instruments continues into the first century and beyond. Principled praises of pluralism such as we find in Cicero, and normative descriptions of the empire as legally pluralist, such as we find in the *Institutes* of Gaius, therefore amount to ex post theorizations of the world that these separate grants created. By contrast, attestations of experts in indigenous law—which we could also call local law, or epichoric law—become abundant only in the second century CE. This evidence is nearly exclusively documentary, deriving from inscriptions and papyri, preeminently from tombstones and honorific inscriptions. This pattern constitutes an historical explanandum. But what are the appropriate questions to ask?

One could say that, for around 200 years, the city-states of the empire had laws and courts but no lawyers. But this is surely not correct. Perhaps there were always lawyers, but something changes such that expertise in law becomes something for which one wants to be remembered, or for which one is honored. Or, perhaps, expertise in law becomes something that the visible class—the elites whom we have seen all along—came to claim for itself. The latter view is surely the correct one.[9] We may therefore refine our questions: what were the political, historical, and sociological conditions that compelled local elites to claim expertise in law? What made expertise in law a newly valuable contribution to structures of social differentiation? Was this related to other changes? For example, was expertise in law simply added to the roster of qualities that made the elite an elite? Did it burnish the qualities of the elite at a moment when other sources of elite distinction were drying up?

[7] Georgy Kantor, "*Siculus cum Siculo non eiusdem ciuitatis*: Litigation between Citizens of Different Communities in the Verrines," *Cahiers du Centre Gustave Glotz* 19 (2010): 187–204; Clifford Ando, "The Rites of Others," in *Roman Literary Cultures: Domestic Politics, Revolutionary Poetics, Civic Spectacles*, eds. Jonathan Edmondson and Alison Keith (Toronto: University of Toronto Press, 2016), 254–77.

[8] I set aside the materialist issue that the Roman state lacked the infrastructural power to impose law on, or teach Roman law to, even the urban populations of a given province. The ideology that non-citizens should not have access to Roman legal forms was therefore at some level a response to weakness. This point does not obviate the stress laid in this paper on the (imperial) politics of (local) autonomy.

[9] Georgy Kantor, "Ideas of Law in Hellenistic and Roman Legal Practice," in *Legalism: Anthropology and History*, eds. Paul Dresch and Hannah Skoda (Oxford: Oxford University Press, 2012), 62.

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And before whom were these claims to elite status being made, and were they effective? All these questions bear on the topic of who benefitted from making public and principled commitments to the Roman form of legal pluralism.

One cannot answer all these questions in a paper of this scope, and many of these questions do not admit of an answer as such. In what follows, I focus on four topics. (1) At the same time that Rome granted autonomy to city-states, they compelled those city-states to organize public power along republican lines. That is to say, they required that magistrates be chosen by election and that terms in office be normatively limited, often but not always to 1 year.[10] (2) They also generally required that legislative power be vested in a civic council, composed of ex-magistrates and often other persons, namely, adlected members of the elite. The important results, I suggest, were (a) that the aristocracies of the Roman Mediterranean were above all aristocracies of office, and (b) that the rule of law was founded on a principle of democratic legal legitimacy. Laws were laws because they had been subject to vote.

But of course, only a tiny minority of persons voted in elections, and even fewer voted for laws. Ancient democracies—including democratic republics—were always, as a numerical matter, oligarchies. Democracy was an ideology of oligarchic power, and, whatever else it was, democratic law was an instrument of republican domination.

The evidence for the history of law admits of another pattern that has significance for the story that I seek to tell. (3) Almost as soon as one has documentary evidence for the administration of provinces, one finds evidence for the operation of assize courts by Roman magistrates. It is likely that the governor's tribunal expected to hear cases involving Roman citizens in particular. But it was also possible for someone to seek to use the governor's tribunal as a court of the first instance, and certainly to appeal to it as a court of the second instance.

(4) As it happens, evidence for the practice of Roman courts in the provinces also commences to be abundant in the second century CE. Importantly, this trend embraces *both* the use by provincials of Roman courts *and* the rules for the operation of those courts generated in the metropole. These rules included cascading series of norms on which Roman magistrates should draw when deciding local cases, and procedural requirements for cases that were appealed from a local level to the Roman magistrate.

In this case, the important results were (c) the coming-to-be of a more rationalized vision of law, on the one hand, and (d) the imposition of specific technologies of knowledge on local courts. A consequence was the elevation of law to a disinterested science that local elites needed to control and which they could use to buttress their own social authority.

[10] As an analytic matter, the fact of difference in the duration of offices is not terribly important. However, there are regions where it appears that electoral processes changed over time, not simply regarding eligibility but also regarding the process whereby slates of candidates were chosen, or whether voting was held by the citizen body (however representative it was) or by the council. Compare A. H. M. Jones, "The Election of the Metropolitan Magistrates in Egypt," *The Journal of Egyptian Archaeology* 24 (1938): 65–72, with Julio Cesar Magalhães de Oliveira, *Potestas populi: Participation populaire et action collective dans les villes de l'Afrique romaine tardive (vers 300–430 apr. J.-C.)* (Turnhout: Brepols, 2012).

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All this occurred in a period in which traditional avenues of elite euergetism were changing, as opportunities for self-promotion via building projects were diminishing in number.

Utere suis Legibus

Evidence for grants by Rome to conquered peoples of what the Greeks called *autonomia*—meaning, narrowly, the right to use one's own civil law—commences in the second century BCE. (Latin had no single term for the concept and used the periphrasis *utere suis legibus*, "to use their own laws.") Historians *in* antiquity —like many historians *of* antiquity—regularly commit to a fallacy regarding the continuity of institutional and ideological operations. In other words, they write histories of the early and middle Roman republic as if the practices and principled commitments of the early and high classical periods of Roman law were always already operative. By contrast, I cite as evidence only contemporary documentary material. A few examples suffice to illustrate the diversity of genres and of language in which such grants were made. The first derives from Iberia at the close of the second century BCE. The text records the formal surrender of an Iberian community to Lucius Caesius the proconsul in 104 BCE, as well as its aftermath: "then Lucius Caesius son of Gaius, the commander, ordered them to be free and the lands and buildings and laws and all other things that were theirs on the day before they surrendered themselves, he gave back to them for so long as the Roman people and Senate wish."[11]

Other republican examples from elsewhere in the empire include a law—the *lex Antonia*—probably from 68 BCE, concerning Termessus Maior in Pisidia, to which certain rights were restored after it stood by Rome in a recent war: its people were declared free; they were named "friends and allies of the Roman people," and they were "to use their own laws."[12] We possess dozens of records of this kind. Not all are contemporaneous with the original grant. For example, communities sent embassies at the accession of each emperor, to deliver congratulations and to receive confirmation that earlier privileges would be continued. In several instances, we possess from such correspondence confirmation regarding an earlier grant rather than contemporary documentation of the original exchange, but in these cases a plausible institutional context for the transmission of knowledge offers a strong guarantee of historical accuracy. As a related matter, it has long been clear that many such grants to Greek *poleis* were made, or at least confirmed, in the immediate aftermath of the battle of Actium, when after decades of civil war power was suddenly concentrated in the hands of a single person and Roman chaos resolved to monarchy.[13]

[11] *ELRH* U2.

[12] *RS* no. 19, col. 1, ll. 5–11. Other examples Pergamum between 46 and 44 BCE (*OGIS* 449); and Aphrodisias in the province of Asia from 39/38 BCE (*IAph* 2007 8.27, ll. 58–62, now discussed in Andrea Raggi and Pierangelo Buongiorno, *Il senatus consultum de Plarasensibus et Aphrodisiensibus del 39 a.C. Edizione, traduzione e commento* [Stuttgart: Franz Steiner, 2020]).

[13] Fergus Millar, "State and Subject: The Impact of Monarchy," in *Caesar Augustus. Seven Aspects*, eds. Fergus Millar and Erich Segal (Oxford: Clarendon Press, 1984), 37–60.

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It is the system that was created through the aggregation of such grants across space and time about which Gaius reflects in the first chapter of the *Institutes*:[14]

> All peoples who are governed by statutes and customs observe partly their own peculiar law and partly the common law of all mankind. The law that each people establishes for itself is peculiar to it, and is called *ius civile*, being, as it were, the special law of that citizen-body, while the law that natural reason establishes among all mankind is followed by all peoples alike, and is called *ius gentium*, being, as it were, the law observed by all peoples.

The terms employed by Gaius are the classic lexical means whereby Roman writers both described and explained the diversity of the empire.[15] In this context, I stress only that Gaius represents a late, second-order theorization of a practice that was at least 250 years old by the time that Gaius wrote.

It might be useful to dispose of one further issue. Roman authorities classified communities according to multiple statuses in public law.[16] A particularly privileged position was that of "free" city, like Termessus Maior or Aphrodisias—where "freedom" meant above all freedom from taxation and the obligation to host at one's own expense representatives of Roman government.[17] Minor distinctions were operative between Hellenophone and Latin-speaking provinces; more substantial differences in administration obtained in areas where the Romans did not find, or did not recognize, a network of juridically constituted communities that could function as nodal points for the transmission of Roman priorities. But in my view, distinctions among city-states in Roman public law made no meaningful difference in Roman practice as regards the right of those states to use their own laws: where the right to use one's own laws was not granted as a privilege, it was justified by the exclusionary ideology that Roman legal forms should be available only to Roman citizens.[18]

Aristocracies of Office

In order to demonstrate, insofar as possible, that the conditions of possibility for the development of law as rationalized domain of expertise, and of

[14] Gaius, *Institutes,* 1.1, trans. Zulueta, modified.

[15] Ando, "The Rites of Others," 254–77.

[16] W. Dahlheim, "Die Funktion der Stadt im römischen Herrschaftsverband," in *Stadt und Herrschaft. Römische Kaiserzeit und hohes Mittelalter*, ed. Friedrich Vittinghoff (Munich: R. Oldenbourg, 1982), 13–74; Joyce Reynolds, "Cities," in *The Administration of the Roman Empire 241 B.C.–A.D. 193*, ed. David Braund (Exeter: University of Exeter Press, 1988), 15–51; Fergus Millar, "*Civitates liberae, coloniae* and Provincial Governors under the Empire," *Mediterraneo Antico* 2 (1999): 95–113; Jonathan Edmondson, "Cities and Urban Life in the Western Provinces of the Roman Empire 30 BCE–250 CE," in *A Companion to the Roman Empire*, ed. David S. Potter (Oxford: Blackwell, 2006), 250–80.

[17] François Jacques, *Le privilège de liberté. Politique impériale et autonomie municipale dans les cités de l'Occident romain (161–244)* (Rome: École française de Rome, 1984).

[18] The question cannot be explored in depth in this context, but the crucial matter may be posed empirically: is it possible to identify a subject city-state, located in a province, alien in respect of Rome, that was compelled to use Roman law? The answer, I believe, is negative.

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expertise in law as a source of social prestige, were uniform across the empire and, indeed, were an effect of empire, it is essential to account for the influence of the empire on local systems of social authority.

The most important institution in this regard was the requirement, on the part of Rome, that systems of public law should be organized as republican. Magistrates should be democratically elected, but there should be property qualifications to office. After leaving office, magistrates should constitute a council. To maintain itself in appropriate numbers, the council should have the power to recruit members from among the local elite. Laws should be voted by the council. Again, one has evidence for the systematic application of these principles starting in the middle of the second century BCE, and the evidence ultimately derives from nearly every province in the empire. It should also be stressed, again, that in most regions the early evidence is documentary and perforce fragmentary, and it is supplemented by literary testimonia from much later. The problems of evidence are substantial but well studied; the reconstruction is uncontested; the repetition of the argument would be pointless.

With regard to the province of Achaea in 146 BCE, we have the testimony of an eyewitness and participant, Polybius, regarding the degree and comprehensiveness of interference in the Greek cities by Lucius Mummius and the senatorial commissioners who were sent to assist him in the process of annexation: he was charged by the Romans "to visit the cities and to clear up any matters about which people were doubtful, until they became accustomed to the constitution and laws."[19] What other evidence makes clear is that "the constitution and the laws" imposed by Rome concerned matters of public law: access to office and the role of the council. This much is confirmed inter alia by the reference to Polybius's work in this period offered by Pausanias, a travelogue of the second century CE, who observes that Lucius Mummius "immediately put an end to the democracies and established magistracies with property qualifications."[20]

A similar set of rules was laid down by Pompey for Bithynia in 64 or 63 BCE, which we know because these rules were still operational 175 years later when Pliny the Younger administered the area[21]:

> It was laid down in the *lex Pompeia* that was given to Bithynia, Lord, that no one of less than thirty years could hold a magistracy or be a member of a senate. By the same law it was provided that those who had held a magistracy should be members of the senate.

The Romans required that identical arrangements obtain in the communities of Italy, which were created de novo as communities of Roman citizens in the

[19] Polybius 39.5.1–2.

[20] Pausanias 7.16.9; see also 8.30.9.

[21] Pliny, *Ep.* 10.79; trans. Radice, adapted. A. N. Sherwin-White, *The Letters of Pliny. A Historical and Social Commentary* (Oxford: Clarendon Press, 1966), 669–70; A. J. Marshall, "Pompey's Organization of Bithynia-Pontus: Two Neglected Texts," *Journal of Roman Studies* 58 (1968): 103–9.

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aftermath of the Social War. For example, in a text preserved at Heraclea but apparently drafted in Rome under Julius Caesar, the language of statute seeks to capture the diversity of both communal forms and titles of magistrates and to bring them all under a single set of rules:[22]

> Whoever in *municipia* or colonies or prefectures or *fora* or *conciliabula* of Roman citizens shall be *IIvir* or *IIIIviri* or shall hold a magistracy or power under any other name, by the vote of those who shall belong to each *municipium* or colony or prefecture or *forum* or *conciliabulum*, none of them is to enroll anyone in the senate of that *municipium* or colony or prefecture or *forum* or *conciliabulum*...

All these contexts reveal a concern on the part of the Romans to specify rules regarding eligibility for office, the procedures by which office-holders were chosen, and membership in the (legislative) council. My point is not to insist that the imposition of republican norms caused, in any given case, a substantial change relative to prior arrangements, whether regard institutional operations or the demographic make-up of the local elite, although in some cases it must have effected substantial *ideological* change. Rather, I cite these texts to establish three things. First, the process of reorganizing local institutions commences under the republic in the second century BCE; second, the reconfiguration of city-state constitutions is contemporaneous with the grants of autonomy that we have studied; and third, contexts of public law—of access to office and the performance of exemplary citizenship—across the Roman Mediterranean were remarkably uniform. I have just described the system of public law imposed by Rome as consisting in "republican norms." One might also say that the Romans sought to cultivate an aristocracy of office, often in ideological replacement of an aristocracy of wealth.[23]

Finally, it is important to emphasize that in the electoral systems established, affirmed or inflected by Rome, it was local systems of social prestige that mattered. It is not simply that the Romans did not require Roman citizenship as a precondition for access to office in the myriad locales whose institutions they contributed to shape. More significantly, the voters in those locales who elected candidates to office were by no means necessarily citizens of Rome; indeed, they were overwhelmingly likely to hold only local citizenship. This was so even in place where, by Roman dispensation, the holding of a local office resulted in a grant of Roman citizenship upon the completion of one's term.[24]

[22] *RS* no. 24, ll. 83–86.

[23] On this term in the study of the Roman republic, see Karl-J. Hölkeskamp, *Reconstructing the Roman Republic. An Ancient Political Culture and Modern Research* (Princeton: Princeton University Press, 2010); see also Cary M. Barber, "*Quibus patet curia*: Livy 23.23.6 and the Mid-Republican Aristocracy of Office," *Historia* 69 (2020): 332–61.

[24] Clifford Ando, "Making Romans: Democracy and Social Differentiation under Rome," in *Cosmopolitanism and Empire: Universal Rulers, Local Elites and Cultural Integration in the Ancient Near East and Mediterranean*, eds. Myles Lavan, Richard E. Payne, and John Weisweiler (Oxford: Oxford University Press, 2016), 169–85.

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"Platform Justice"

I turn now to the evidence for experts in law, and also the evidence for what they did. The first attempt at a comprehensive survey of the attestation of experts in law in documentary evidence from the Roman period was produced by Christopher Jones in 2007; it may now be supplemented by a number of regional surveys, especially those by Georgy Kantor, Anna Dolganov, and Matthijs Wibier.[25] From these items one gleans more than a nearly comprehensive list of all experts in law attested on stone and papyrus. More importantly, what one gains is a comprehensive list of the terms for which one should search in epigraphical and papyrological databases in order to find any hidden experts in law. There are, of course, *nomikoi*; there person who are "learned in law, "interpreters of law," and "experienced in law"; there are men who are *dikaiologoi*. One significant pattern to the great array of this evidence is its chronology: the vast majority of legal experts are attested in the second century CE and later.[26]

How is one to explain this? One clue to the suddenly enhanced visibility of experts in law is provided by an inscription from Amaseia: "Fate snatched away Cleombrotos, who excelled at law, just as he was taking his seat on the Bithynian *bêma*."[27] *Bêma* refers to the raised platform from which Roman magistrates would render judgment; the use of such platforms, even when made of temporary materials and raised on an ad-hoc basis, was a distinctive feature of the performance of Roman justice, visible across the full range of surviving representations of Roman tribunals.[28] In other words, Cleombrotus did not merely excel in law. He served as an advisor regarding local law to the Roman governor when conducting his assize.[29]

[25] C. P. Jones, "Juristes romains dans l'Orient grec," *Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres* (2007): 1331–59; Georgy Kantor, "Knowledge of Law in Roman Asia Minor," in *Selbstdarstellung und Kommunikation: Die Veröffentlichung staatlicher Urkunden auf Stein und Bronze in der römischen Welt*, ed. Rudolf Haensch (Munich: Beck, 2009), 249–65; Georgy Kantor, "Law in Roman Phrygia: Rules and Jurisdictions," in *Roman Phrygia: Culture and Society*, ed. Peter Thonemann (Cambridge: Cambridge University Press, 2013), 143–67; Georgy Kantor, "Greek Law under Rome," in *The Oxford Handbook of Ancient Greek Law*, eds. Mirko Canevaro and Edward Harris (Oxford Handbooks Online: DOI: 10.1093/oxfordhb/9780199599257.013.25); Anna Dolganov, "Nutricula Causidicorum: Legal Practitioners in Roman North Africa," and Matthijs Wibier, "Legal Education and Legal Culture in Gaul during the Principate," in *Law in the Roman Provinces*, eds. Kimberly Czajkowski and Benedikt Eckhardt (Oxford: Oxford University Press, 2020), 358–416 and 462–85, respectively.

[26] Here I must issue a caution that reported data on the epigraphic material are inherently unreliable, both because the science is imperfect and because the secondary reporting on which I rely does not always report a date or use the same standards. A thorough review of the entirety of the evidence is needed.

[27] *IGRR* III 103, I.3.

[28] Clifford Ando, "Performing Justice in Republican Empire," in *Legal Engagement: The Reception of Roman Law and Tribunals by Jews and Other Inhabitants of the Empire*, eds. Katell Berthelot, Natalie B. Dohrmann, and Capucine Nemo-Pekelman (Rome: École française de Rome, 2021), 69–85.

[29] For another example, see *IGRR* IV 618, from Temenothyriae (Flaviopolis), a decree in honor of Marcus Aristonicus Timocrates: he headed the Museum at Smyrna because of his expertise in law, and he was chosen to serve (as an advisor in matters of law) beside the tribunals of the governors

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One is tempted to reply, "Of course members of the local and provincial elite advised the Roman governor. Who else would do so?" When Pliny wrote to Trajan about the *lex Pompeia*, he endorsed the practice of the cities of Bithynia by which local senates enrolled new members from among the upper class who were too young to hold office, rather than selecting persons from among the lower class: "[I]t is far better that the children of more honorable persons should be admitted to the senate, rather than persons from among the plebs."[30] Would a plebeian advise a governor? The idea (apparently) scarcely deserved consideration. As it happens, the surviving evidence for the participation of local advisors in the Roman governor's tribunal displays patterns very similar to those we have witnessed so far in respect of grants of local autonomy and the attestation of expertise in law in public documents. We have *almost* no evidence that this occurred before the second century CE. There exists some evidence to the contrary. The so-called archive wall at Ephesus includes three letters from Publius Petronius when he was governor of Asia from 29 to 31 CE. The content of the letters differs slightly, but every year he confirmed the autonomy of Ephesus—the right of the city to use its own laws—and released the members of the council from attending the *bêmodikion*, the governor's assize.[31]

One could go further. The history of governor's assize is known to us from evidence that exhibits very similar patterns to the history of local law-making and law-applying institutions. Epigraphic evidence tells us, from a very early date, the names of the cities where the governor held his assize, and literary texts produced by Romans offer a schematic view of the operation of the governor's tribunal. But around 150 years pass between the remarks of Cicero on the provincial law of Scaevola and a sudden flowering of information from Greek literary sources, especially the speeches on cities of Dio Chrysostom. Moreover, from the end of the first century to the early third century CE, we also possess evidence that cities actively competed for the right to host an assize—although the governor's route through the province in fact changed very rarely.[32]

Concomitant with these developments regarding the presence or, perhaps, the incidence of Roman courts in provincial life is the appearance of evidence of three kinds about the operation of Roman tribunals, on the one hand, and the effect of their presence on the operation of local courts, on the other. To begin with, it is precisely from these years that one has statements of principle regarding choice of law in Roman courts. In a letter to Pliny, for example, the emperor Trajan avers that, "I think therefore that the law of each city should be followed, which practice is always safest."[33] Likewise from the reign of Trajan survives a statement of principle from a record of proceedings

(ἡγησάμενον Μουσείου ἐπὶ τῶν νόμων ἐ(μ)πειρίᾳ, καὶ παρὰ τοῖς Βήμασι τῶν ἡγημόνων ἐπὶ τοῦ ἔθνους πρόκριτον γενόμενον ...).

[30] Pliny, *Ep.* 10.79.

[31] *SEG* 43.765–767.

[32] See, e.g., *OGIS* 517, from Thyateira in the reign of Caracalla.

[33] Pliny, *Ep.* 10.113.

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on papyrus: "It is best that they give judgments according to the law of the Egyptians."[34]

Commencing in the next reign, and in an ongoing way thereafter, we possess from Roman jurists varied reflections on the sources of norms, and documentation of norms, on which magistrates should rely in hearing local cases. The material must be cited with caution. The majority of surviving jurisprudence derives from a period when the rules and practices of the pluralist regime that we have been describing still obtained, but these texts were excerpted into Justinian's *Digest* hundreds of years after that pluralist edifice had been dismantled. Rules regarding, for example, choice of law in Roman courts, and the relations between Roman tribunals as courts of the second instance in relation to local courts as courts of the first instance, held no interest and were ruthlessly omitted. Their content is visible only when embedded in texts that spoke to still live concerns.

That said, the traces that we may observe speak above all to two issues: the nature and documentation of local norms, and the knowledge technologies by which the application of law in similar cases might be known. For example, quite likely in the reign of Hadrian, not long after the Trajanic rules that we just considered, near the close of his *Digesta* the jurist Julian offered a cascading list of sources of law that one should consult in settling a case outside of Rome:[35]

> What ought to be held to in those cases where we have no applicable written law is the practice established by customs and usage. And if this is in some way deficient, we should hold to what is closest to and entailed by such practice. If even this is obscure, then we ought to apply the law that the city of Rome uses.

The rule pronounced by Julian raises the specter of proceedings in which not merely the facts, but even the content of norms was established adversarially. In the fourth book of his work on the duties of provincial governors, Ulpian suggested that in any case that turned on the content of a custom, the presiding official ought first to explore any relevant documentation regarding earlier cases that turned on the same norm: "When it appears that somebody is relying upon a custom of either a *civitas* or a province, the very first issue that ought to be explored, in my opinion, is whether the custom has ever been upheld in contentious proceedings."[36]

It is an open question whether a polity that failed to inscribe its norms would nevertheless record proceedings in such a way that the content of norms would be documented. But a similar principle was apparently recommended in a rescript by the emperor Severus, in the reign prior to that under which Ulpian wrote: "In fact, our Emperor Severus has issued a rescript to the effect that in cases of ambiguity arising from statute law, statutory force ought to be ascribed

[34] *P.Oxy.* 42.3015.

[35] *Dig.* 1.3.32 = Julian, *Digesta* bk. 84 frag. 819 Lenel.

[36] *Dig.* 1.3.34 = Ulpian, *De officio proconsulis* bk. 4 frag. 2170 Lenel.

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to custom or to the authority of matters judged in the same way over a long period."[37]

As it happens, we possess, from outside the domain of private law, an explicit mandate by a Roman official that local authorities should employ not only specific procedures, but also specific technologies of knowledge in gathering evidence that might be submitted to a Roman tribunal. Our awareness of this command derives from the second book of a work *On Public Tribunals* by the Severan jurist Marcian, which cites a rule promulgated in the province of Asia by the future emperor Antoninus Pius when he served as governor there:[38]

> There is indeed extant a chapter of the rules that the deified [Antoninus] Pius issued under his edict when he was governor of the province of Asia, to the effect that *irenarchs* [local peace-keepers], when they had arrested robbers, should question them about their associates and those who harbored them, make transcripts of the interrogations, seal them, and send them to the attention of the magistrate.
>
> Therefore, those who are sent [to court] with a report [of their interrogation] must be given a hearing from the beginning although they were sent with written documents or even brought by the *irenarchs*.... Accordingly, when someone carries out an examination, the *irenarch* should be ordered to attend and to go through what he wrote.

In this case, the standards of Roman courts are imposed upon local policing directly, because the Roman court is the court of record for criminal cases. Moreover, what is ordained is not simply some set of abstract principles, which might be realized from locality to locality in different ways, but a set of practices by which certain rules of evidence and techniques of knowledge production are enjoined on non-Roman communities.

What this evidence suggests is the superimposition, over the course of the second century CE, of a cluster of Roman expectations about both documentation and argument on the operation of (local) tribunals. These embraced the documentation of positive law; the recording of proceedings, down to the level of the norm(s) that were being applied; and rules of precedence and analogy in the judging of *similia*, of similar cases.[39] The result was the (re)creation of local legal cultures in the image of Roman legal science, and, I suggest, the birth of expertise in law as a domain of technocratic domination. All this suggests that the new experts in indigenous law of the second century CE were closer to (learned) Roman jurists than they were to (aristocratic) Roman pontiffs of an earlier age.

[37] *Dig.* 1.3.38 = Callistratus, *Quaestiones* bk. 1 frag. 92 Lenel.

[38] *Dig.* 48.3.6.1 = Marcian, *De iudiciis publicis* bk. 2 frag. 204 Lenel, trans. Olivia Robinson.

[39] On precedence and analogical argument in Roman courts see, e.g., *Dig.* 1.3.12 = Julian, *Digesta* bk. 15 frag. 259 Lenel; *Dig.* 1.3.27 = Tertullian, *Quaestiones* bk. 1 frag. 5 Lenel; *Dig.* 1.3.37 = Paul, *Questiones* bk. 1 frag. 1269 Lenel.

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Conclusion

Broadly speaking, ancient empires aspired to despotic power but were infrastructurally weak.[40] Even those like the Achaemenian empire that were committed to a project of unification around a unitary ideological and symbolic system perforce developed normative resources to allow, manage, and explain the ongoing diversity of the world, not least in the domain of law.

In the Roman case, the practice of pluralism—what I have termed elsewhere, following Thomas Barfield, the cultivation and management of difference—is abundantly evidenced in the grants made by Rome to provincial city-states, to the effect that local communities should continue to have their own law-making and law-applying institutions. One might therefore have expected ongoing evidence for the existence and functioning of experts in law and, indeed, the operation of tribunals in these polities across the periods of conquest, consolidation, and high imperial rule. But this is not what we see. Instead, experts in law are attested in documentary evidence above all in the second and third centuries CE. The same thing can be said, on the basis of a narrower evidentiary base, regarding the citation of local law: the greater part of that number derives from the second century CE.

Indigenous civil law, in the form we have it, was not a holdover from the pre-Roman world. On the contrary, it was an effect of empire. It is tempting at this juncture to cite the observation offered by Sally Engle Merry in a review essay a generation ago: "One of the major insights produced by work on law in colonial situations is that the customary law implemented in 'native courts' was not a relic of a timeless precolonial past but instead an historical construct of the colonial period."[41] What is surprising is that the city-states and empires of the eastern Aegean did not lack for courts or law in the pre-Roman period. But outside a few strongly democratic contexts,[42] nearly everywhere we see a substantial rupture in the nature of documentation in the post-conquest period; and the legal culture that (re)emerges in the second century bears a distinctly Roman cast.

The fact that evidence for the operation of the Roman governor's assize displays similar chronological patterns suggests a prominent role for Roman courts in provincial contexts functioning as courts of the second instance in the processes that produced the evidence for local courts and local jurists. This paper has argued that the desire on the part of Roman magistrates to apply local rather than Roman law in those tribunals produced changes in local systems of law along two lines.

First, it demanded the rationalization of local systems of law. However they were articulated before, local norms had now to be available in the form of rules that could be applied to fact patterns as the Romans understood them;

[40] Clifford Ando and Seth Richardson, eds., *Ancient States and Infrastructural Power. Europe, Asia and America* (Philadelphia: University of Pennsylvania Press, 2017).

[41] Sally Engle Merry, "Law and Colonialism," *Law and Society Review* 25 (1991): 889–922, 897.

[42] On Athens and Rhodes in particular see Julien Fournier, *Entre tutelle romaine et autonomie civique. L'administration judiciaire dans les provinces hellénophones de l'Empire romain (129 av. J.-C.–235 apr. J.-C.)* (Athens: École française d'Athènes, 2010).

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these would ideally be available in written form; the possibility of appeal to a Roman tribunal meant that instances of the application of norms to fact patterns had henceforth to be documented; and an expectation supervened, that similar cases should be decided in similar ways, with all that this entailed at the level of analysis and argument. This called for experts, and made law into a technique.

Second, the fact that adjudication was now taking place before distant and foreign officials—I use the term "distant" to refer to both ceremonial and cultural remove—created a need for mediators. Members of the local elite, who wielded the sort of learning that enabled transregional and cross-cultural communication, stepped up.[43] This occurred under a regime that had destabilized pre-existing systems of social prestige in favor of an aristocracy of office, and in a context in which prior avenues of elite monopolization of citizenly excellence—in the form of euergetistic building projects—were drying up. The coming-to-be of a domain of technocratic excellence, available for capture by those who (nearly) monopolized the lusters of *paideia*, was an opportunity they did not decline.

This reconstruction of how the pluralist regime of the high Roman empire came into being and took the form it did, offers the opportunity to reflect on the aspirations of "the new legal pluralism" as it emerged four decades ago. In the classic formulation of John Griffiths, scholarship on legal pluralism should seek to overcome ideologies of "legal centrism," with all the inducement they give to grant ontological primacy to state institutions and state law.[44] The Roman case offers—as do other colonial situations, as well—a caution against the optimism of that strand of scholarship. On my reading, the shape of local legal institutions, the ideologies that distributed social authority among their actors, and the techniques that were deployed within them, all existed in fractal relationship to the political economics and modes of domination of the imperial center.

In closing, I stress three final observations. First, for all that I have emphasized the influence exercised by Rome on the shape and ideology of local legal systems, it is also true that significant jurisprudence starts to survive from Rome only in the age of monarchy. It may be that the analysis I have offered of the political economy and modes of domination exercised in the legal systems that Rome contributed to shape, also has something to tell us about the legal history of Rome itself.

Second, evidence from actual litigation for arguments from precedent and about analogical extension does survive in what we might term Roman evidence from provincial courts, and it survives from earlier periods than any

[43] Georgy Kantor, "*Qui in consilio estis*: The Governor and his Advisers in the Early Empire," *Istoricheskij Vestnik* 19 (2017): 50–87; Ari Z. Bryen, "A Frenzy of Sovereignty: Punishment in P. Aktenbuch," in *Legal Engagement: The Perception and Reception of Roman Law and Tribunals by Jews and Other Inhabitants of the Empire*, eds. Katell Berthelot, Natalie Dohrmann, and Capucine Nemo-Pekelman (Rome: École Française de Rome, 2021), 89–108; Ari Z. Bryen, *The Judgment of the Provinces: Law, Culture, and Empire in the Roman East* (in progress).

[44] John Griffiths, "What is Legal Pluralism?," *Journal of Legal Pluralism* 24 (1986): 1–55.

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similar evidence from Rome.[45] In Roman tribunals in the provinces, litigants did cite case law, and above all cases decided by the emperor. They did so in order to constrain the discretion of Roman magistrates. The means at their disposal were of course "Roman," as were the limits they sought to impose, established as these were by imperial decisions. But those decisions nearly always concerned the application of local norms—exactly as Roman rules would have us expect.

Finally, it is essential to stress that this occurred at more or less the same time in every region where we have significant evidence for the history of law.[46]

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[45] Clifford Ando, "*Exemplum*, Analogy and Precedent in Roman Law," in *Between Exemplarity and Singularity: Literature, Philosophy, Law*, eds. Michèle Lowrie and Susanne Lüdemann (New York: Routledge, 2015), 111–22.

[46] This includes, of course, the best attested provincial legal system, to wit, the rabbinic movement and the production of a Jewish civil law. The argument of this paper thus works to support Yair Furstenberg, "Imperialism and the Creation of Local Law: The Case of Rabbinic Law," in Berthelot et al., *Legal Engagement*, 271–300, and Yair Furstenberg, "The Rabbinic Movement from Pharisees to Provincial Jurists," *Journal for the Study of Judaism* 54 (2023).

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