

Law, Empire, and the Making of Roman Estates in the Provinces During the Late Republic

Lisa Pilar Eberle*

Abstract

This paper studies the implication of law in the Roman imperial project. It uses the creation of the legal framework for how Romans could acquire landholdings in the provinces of the Greek East in the second and first centuries BC as a case study in order to propose an alternative to the top-down/bottom-up dichotomy that characterizes prevailing approaches. By tracing the different legal arenas in which this framework was developed—Roman jurisprudence, provincial edicts, the senate in Rome—and the different social groups that participated in developing this framework in these arenas—Romans in the provinces, the members of Greek cities there, and Rome’s political elite—this study reveals law in the empire as a site of political debate, not between ruler and ruled, but between several competing groups that used law to shape and contest what the empire should mean for them.

I. Introduction

Standard narratives of Roman imperialism and law’s implication in it run roughly as follows. Starting in the late third century BC, the Romans conquered many lands around the Mediterranean, which they consolidated into provinces, over which they then ruled. In some areas, above all in the Western part of the empire, this entailed the establishment of dispute resolution mechanisms, which they imagined as part of a larger project of pacification and civilization. In the Greek East, by contrast, the Romans limited themselves to asserting direct authority over criminal law, leaving local institutions of dispute resolution and legislative authority intact. Leaving aside these regional differences and particularities, they were generally keen to effect legal change concerning fiscal and administrative matters. Local systems of private law only became an object of concern for Roman jurists in the second century AD, when they wrote commentaries on the standardized edict of provincial governors or tackled conflict of law problems.¹

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¹ For recent iterations of this story, see e.g., Caroline Humfress, *Law and Custom Under Rome*, in *Law, Custom and Justice in Late Antiquity and the Early Middle Ages* 23, 35 (Alice Rio ed., 2011); Cédric Brélaz,

Accounts such as this one see law as an instrument of governance, deployed to manage populations in the pursuit of narrow imperial interests, namely the extraction of taxes and the maintenance of public order. This tidy narrative of imperialism's purpose and law's role in this project is occasionally disturbed. What are we to make of the thousands of Romans and Italians living in Roman provinces in Greece and Asia Minor whom the Pontic king Mithridates had killed in 88 BC?² How are we to understand the *lex Rupilia*, a provision dating to the late second century BC, which goes to great lengths to outline how the governors of Sicily are to institute civil cases between members of the local population and Romans resident in the province?³ And what about the fact that the historical record for the first century BC shows men who are most commonly known as great jurists composing provincial edicts and giving legal opinions in the provinces?⁴ It would appear that jurists of the second century AD had at least three centuries of jurisprudential thought and practice to draw upon when they formulated their thoughts on conflict of laws and composed their commentaries on the provincial edict. And this is only one of the tensions that the above-mentioned evidence creates for the established narrative. For the most part, however, these tensions remain unexplored; the different phenomena are treated in isolation, if at all, and without reference to larger narratives about law and empire.⁵

This study begins a project to revise the mainstream narrative in several respects by rethinking Roman imperialism itself; doing so opens the door to reimagining law's implication in the Roman imperial project. Underacknowledged in existing scholarship is the extent and importance of Rome's imperial diaspora—the many men and women who, beginning in the late third century BC, began migrating to the emerging provinces around the Mediterranean.⁶ At the material level, this empire-wide migration, rather than armies

Maintaining Order and Exercising Justice in the Roman Provinces of Asia Minor, in *The Province Strikes Back* 45, 52 (Björn Forsén & Giovanni Salmeri eds., 2008); and Anna Dolganov, *Reichsrecht und Volksrecht in Theory and Practice*, in *Administration, Law, and Administrative Law* (Heather Baker et al. eds., forthcoming). This story has a long history. Ludwig Mitteis, *Reichsrecht und Volksrecht* (1891), is one of the foundational works in this tradition and Joseph Modrzejewski, *La règle de droit dans l'Égypte romaine*, in *XII International Congress of Papyrology* 323 (1970), provides an influential summary. William P. Sullivan, *Consent in Roman Choice of Law*, *3 CAL* 157 (2016), discusses how Roman jurists approached conflict of law problems.

² App. *Mithr.* 28; Val. Max. 9.2.ext.3.

³ Cic. *Verr.* 2.2.32.

⁴ E.g., Mucius Scaevola. On his provincial edict see Cic. *Att.* 6.1.15. For more examples of jurists in the provinces, see *infra* pt. II, esp. note 12.

⁵ Julien Fournier, *Entre tutelle romaine et autonomie civique* 313-18 (2010), takes first steps in discussing the diaspora's relationship to provincial administration in the Late Republic. Clifford Ando, *Law, Language, and Empire in the Roman Tradition* 3-4 (2011), explores how Roman thought on the civil law that jurists elaborated has prevented scholars from exploring its imperial past.

⁶ On the diaspora more generally, see Alan J. Wilson, *Emigration from Italy in the Republican Age of Rome* (1966); Nicholas Purcell, *Romans in the Roman World*, in *The Cambridge Companion to the Age of Augustus* 85 (Karl Galinsky ed., 2005). Jean Hatzfeld, *Les trafiquants italiens dans l'orient hellénique* (1919), remains foundational for the Greek world. In this study I disregard the question of the specific ways in

or governors, constituted the leading edge of Roman imperialism. These Romans and Italians were heavily involved in the buying and selling of goods, they were prominent providers of cash and credit, and often they also acquired large landed estates.⁷ In short, they were agents of imperial exploitation, and their activities often meant profound interventions in the social, economic, and political fabric of local communities. The imperial diaspora thus became deeply implicated in local legal institutions. It should not come as a surprise that their activities and indeed, as I will argue, they themselves raised the question of just how these local institutions related to Roman ones. The project thus follows in the footsteps of Cliff Ando's work, which has shown that Romans were already concerned with this question in the very early days of the empire in the second and first centuries BC.⁸

In a separate monographic project I show that such exploitative migrations are a continuous and profoundly underappreciated aspect of interpolity relations in the ancient Mediterranean, occurring at all levels—from border disputes between Greek cities on Crete to large imperial formations such as the Athenian or Roman empires. Focusing on this behavior, I contend, holds much potential for developing more sophisticated understandings of imperial statecraft that transcend the currently prevailing dichotomy between top-down and bottom-up approaches to studying law in the Roman empire, the imperial analogues to state and society perspectives in modern history—approaches that all construe respectively the state or the empire as an autonomous entity pursuing a narrow and disembodied set of state or imperial interests.

The existence of imperial diasporas alone already questions such a neat distinction between top-down and bottom-up, between state and society, since it is not quite clear on what side their members should be placed. Neither acting as agents of the empire, nor in their local contexts dissociable from it, these men and women instead brought imperial officials into persistent contact with local norms and practices. Examining their involvement in the development of imperial statecraft reveals the resultant institutions as the negotiated outcome of political debates between several constituencies, including but not limited to various groups in metropolitan populations, the different members of imperial diasporas, and local communities and their elites on the ground, with the consequence that empires as autonomous historical agents disappear. Of course, these debates could occur in political assemblies of cities such as Rome or Athens. But more often, as the evidence shows, imperial institutions themselves were the arenas in which they took place. In the case of the Roman empire, Roman law, broadly conceived, became the primary site for contesting the contours of the imperial project in the provinces, and who should benefit from it and in what ways.

which the Italian members of the imperial diaspora approached Roman authorities before obtaining citizenship after the Social War.

⁷ Most recently, Nicholas Tran, *Les hommes d'affaires romains et l'expansion de l'Empire* (70 av. J.-C. – 73 apr. J.-C.), 96 *Pallas* 111, 112-16 (2014); see also Peter Brunt, *Italian Manpower* 209-14 (1971).

⁸ Ando, *supra* note 5.

This study is a preliminary attempt to explore these ideas by homing in on one aspect of the Roman imperial diaspora's entanglements with local legal institutions: their acquisition of landed estates in the territories of Greek cities in the Eastern provinces of the empire in the second and first centuries BC—the period that is commonly known as the Late Republic.⁹ The regional focus is a matter of evidence. The documentary record in the Greek East is unique in its quantity and both precedes and accompanies Roman domination, thus providing ample diachronic information about the nature of local legal institutions as well as the operations of Roman ones on the ground. In different parts of the empire, local institutions relating to property would have varied, but the contestations that informed how their relation to Roman ones was conceived, which are the subject of this study, would have been broadly similar. The haphazard preservation of material from the ancient world also explains the study's focus on property in land. Analogous, though more fragmentary, stories could be told about debt and inheritance. At the same time, however, there are indications that the problem of property in land prompted a particularly ample set of claims and contestations, which the central role of property in constituting Greek cities as communities—a phenomenon that I hope to explore at greater length elsewhere—can help account for.

Two distinct features characterized the property regimes of Greek cities: the special status they accorded to non-citizens, and an emphasis on correct administrative procedure as means to establish title. In principle, only citizens could own land in the territories of Greek cities; foreigners had to obtain permission from the civic assembly, which for the most part took the form of grants of *enktesis*. Once foreigners were accorded such a grant, they could establish title to land in the same way as citizens: with reference to public archives. For transfers of land (whether by sale or otherwise) to be entered into such archives, they had to be carried out according to specific procedures, which often involved periods of public advertisement. Civic institutions could then be mobilized to uphold titles to land that its current owner had obtained in accordance with these procedures.¹⁰

At times, members of Rome's imperial diaspora clearly followed these protocols. Every so often, however, they argued that different rules, those deriving from Roman legal institutions, should apply to them and to their landholdings in Greek cities. The opportunistic claims they made on these occasions prompted the production of a lot of Roman law:

⁹ For recent reevaluations of the extent of landholdings of the imperial diaspora see Sophia Zoumbakis, *In Search of the Horn of Plenty: Roman Entrepreneurs in the Agricultural Economy of the Province of Achaia*, in *Villae Rusticae* 52 (Athenasios Rizakis & Iannis Touratsoglou eds., 2013); Tran, *supra* note 7, at 111-12; Lisa Pilar Eberle & Énora LeQuéré, *Agricultural Resources and the Economy of the Roman Imperial Diaspora* (in progress).

¹⁰ On the exclusionary aspect, see, e.g., Dieter Hennig, *Immobilienwerb durch Nichtbürger in der klassischen und hellenistischen Polis*, 24 *Chiron* 305 (1994). On the connection between registration and title, see Michele Faraguna, *Vendite di immobili e registrazione pubblica nelle città greche*, in *Symposion* 1999, at 97 (Gerhard Thür & Francisco J. Fernández Nieto eds., 2003). For the persistence of the practice in the Roman period, see Dio Chrys. 31.51.

Roman jurisprudence, which continually denied many of their claims (Part II); the clauses of provincial edicts, in which governors spelled out the legal arguments about Roman landholdings in the provinces that they would allow and uphold (Part III); and *senatus consulta*, which the elites of a privileged set of provincial communities were able to obtain in their attempts to prevent these arguments from circumventing their communities' property regimes (Part IV). The legal framework that emerged out of these contestations clearly was shaped by and helped constitute the political economy of the empire, thus revealing these various forms of Roman law—including, rather controversially in the second and first centuries BC, Roman jurisprudence—as instances of imperial governance.

Such governance was imperial not because it originated from an imperial equivalent to a sovereign, but because it contributed to shaping social relations in the empire. Its authors were multiple. On one level, the story I tell reveals law as the means by which members of provincial communities tried to limit and shape the imperialism of Rome's imperial diaspora. Not only did they send embassies to obtain *senatus consulta* in Rome; in their attempts to check the claims of individual Romans concerning land in the provinces, they also often leaned on the authority of Roman jurists whom they consulted in the provinces. What is less often appreciated is that law also constituted the site in which the political elite in Rome and the diaspora negotiated their competing interests in the Roman imperial project. The legal arguments that governors ended up endorsing not only provided a potentially widely intelligible legitimation of Roman landholdings in the provinces—the Romans had paid for them—but also were among the least rapacious claims that the members of the diaspora made. These arguments thus constituted a compromise between the interests of the diaspora, eager to circumvent the property regimes of Greek cities, and those of the metropolitan political elite, who were generally reluctant to give a wider section of the Roman population a share in the spoils of empire. In short, the legal constitution of Roman estates in the provinces reveals law as a site of political debate, not simply between the rulers and the ruled, but among several competing parties, none of which can readily be called “the empire.”

II. Landownership Denied: Roman Jurisprudence and Distributional Politics

In 63 BC, Lucius Valerius Flaccus was governor of the Roman province of Asia, located in the northwestern part of modern-day Turkey. Like most provincial governors at this point in Roman history, he was prosecuted for extortion during his time in office upon his return to Rome. Prosecutions such as Flaccus's were part of the competition for high office among Rome's political elite. In 59 BC, on the occasion of Flaccus's trial, Cicero appeared in the courtroom and gave the main speech in his defense. While we do not know the outcome of the trial, Cicero's speech is preserved. Like all speeches in such trials of provincial governors, the *Pro Flacco*, as this speech is commonly known, is full of snapshots of provincial life. Towards the end of the speech, Cicero recounts a property dispute between Gaius Appuleius Decianus, a Roman citizen resident in the province of

Asia, and Amyntas, a citizen of Apollonis, a city in the province of Asia, on a plain about fifty kilometers southeast of Pergamon. The property involved was an estate and several slaves. Cicero's account of this dispute, tendentious though it may be, provides a unique window into the legal world of a Late Republican province, of which I make use throughout this paper. Importantly for present purposes, Roman jurists and jurisprudence also make a brief but intriguing appearance.

At one point during the conflict, Cicero recounts, Amyntas consulted a set of anonymous *iurisconsulti*, jurists. He wanted to know whether the declaration of an item as one's property in the census—in the quinquennial ritual in Rome during which citizens declared their property, declarations that in turn determined their political rights—gave the person making the declaration title to said property. Amyntas's inquiry was undoubtedly precipitated by the fact that, as Cicero tells us, Decianus had just declared the estates and slaves in Apollonis that were the subject of his dispute with Amyntas in the census in Rome. In other words, there now existed a document in the far-off imperial center that listed estates and slaves that Amyntas considered his own as the property of a Roman citizen. This circumstance alone might have had Amyntas worried, leading him to consult jurists in the provinces on the precise legal implications of such a document. But it would also appear that Decianus himself actually made claims about these implications, arguing that they made the estate and slaves in Apollonis bindingly his. The Roman jurists whom Amyntas consulted disagreed, and so ultimately did Flaccus, as governor, in his judgment of the dispute.¹¹

Three related points deserve highlighting. First, Cicero's narrative suggests that Decianus told Amyntas that his census declarations gave him title to the estates and the slaves in Apollonis even before taking the case to the governor. One can easily imagine a situation in which a non-Roman party to such a dispute, rather than going off to consult legal experts on the validity of his opponent's claim, might instead be intimidated by such a statement and possibly even relinquish his claims as a result. What is more, as Cicero's account suggests, it was even imaginable that Flaccus would not agree with the opinion of the jurists whom Amyntas had consulted. It would thus be wrong to imagine that the legal framework I excavate in this study ruled all acquisitions of property by members of the diaspora in the provinces. This framework simply was the set of arguments that Roman governors were likely to endorse in disputes that made it to their courts.

Second, it is highly likely that the *iurisconsulti*, the legal experts that Cicero claimed Amyntas consulted, were what today we would identify as Roman jurists: men thought to be able to make authoritative pronouncements on Roman legal institutions. Two considerations suggest as much. First, though never discussed in the standard accounts of their activities, a considerable number of Roman jurists in the first two centuries BC were present in the provinces, both giving opinions and acting as administrators themselves.¹²

¹¹ Cic. *Flac.* 79-80.

¹² Cic. *Fam.* 1.10, 3.1.10, 5.20 (jurists giving opinions in the provinces); Cic. *Brut.* 179 and *Flac.* 76; 2 T. Robert S. Broughton, *The Magistrates of the Roman Republic* 163 (1952) (Publius Orbius, jurist and

Furthermore, there is independent evidence that the question that Amyntas posed to the *iurisconsulti* was exactly what we know Roman jurists in the second and first centuries BC dealt with: Justinian's Digest preserves the response that the *iurisconsulti* gave to Amyntas—that somebody else's property, which a person enters as his own in the census, does not thereby become his—and attributes it to Mucius Scaevola, the most prominent jurist of the period.¹³ In the Digest the opinion has no context, but the *Pro Flacco* makes it at least plausible that he uttered and developed this opinion in response to claims made in the provinces. After all, he himself had been governor of Asia in the 90s BC.¹⁴

Third, and most important, the story reveals a potential dynamic in the relationship between the imperial diaspora and Roman jurisprudence. It would appear that members of the imperial diaspora deployed Roman legal institutions in their interactions and disputes with provincials in rather opportunistic ways—a tactic on which Roman jurists sometimes put a check. Thus, the negation in the opinions of Mucius Scaevola and the anonymous *iurisconsulti* should be taken seriously as such: these opinions constituted the direct denial of competing claims. It is of course possible that other jurists also articulated these claims. More importantly, though, we should imagine that members of the imperial diaspora made them.

Now, this episode is part of the much more extensive narrative of the dispute between Amyntas and Decianus in the *Pro Flacco*.¹⁵ It is clear that Cicero's account of this dispute was highly tendentious. His goal was a successful outcome in court, not ethnographic detail. Among other strategies of persuasion, Cicero sought to portray Decianus as greedy and ruthless, as well as to show that Flaccus's decision against his claims—rather than being the result of a long-standing personal enmity between the families of Flaccus and Decianus, as the prosecution had tried to suggest—was utterly justified.¹⁶ The little episode about the jurists certainly fits into this pattern, as it reveals a source of authority that backs up Flaccus's decision. Hence caution is warranted in building an argument on Cicero's account of this episode. However, his account is not the only piece of evidence that points to a reactive dynamic between members of the diaspora and the legal arguments they made about their landholdings in their provinces on the one hand, and Roman jurists and the opinions they formulated in the Late Republic, on the other.

As part of his exposition of the juridical status of provincial land in his *Institutes*, the second-century AD jurist Gaius included the following remark:

governor of Asia); Cic. *Att.* 6.1.15; Gaius Tuori, The Myth of Mucius Scaevola: Founding Father of Legal Science? 72 *Legal Hist. Rev.* 243 (2004) (Mucius Scaevola, jurist and governor of Asia).

¹³ *Dig.* 41.1.64 (Quintus Mucius Scaevola).

¹⁴ On the precise date of his governorship, see 3 T. Robert S. Broughton, Supplement to *The Magistrates of the Roman Republic* 42 (1960); G.V. Sumner, *Governors of Asia in the Nineties BC*, 19 *Greek, Roman & Byzantine Stud.* 147 (1978).

¹⁵ Cic. *Flac.* 73-80.

¹⁶ On Cicero's rhetorical strategy, see Catherine Steel, *Cicero, Rhetoric, and Empire* 60-66 (2001). On the familial enmity, see Cic. *Flac.* 77-78; Erich Gruen, *Political Prosecutions in the 90s BC*, 15 *Historia* 32 (1966).

Moreover, we should note that this saying of men of old (*veteres*), that there is *nexum* of Italian land, but not of provincial land, has the following meaning: Italian land is susceptible to *mancipatio*, while provincial land is not. For in the language of old the transaction had a different name, and what to them was *nexum*, to us is *mancipatio*.¹⁷

Leaving aside for the moment the precise details of the Roman institutions mentioned, the *veteres*, the jurists of old, whose opinion Gaius reports and interprets here, most likely are jurists of the second and first centuries BC. In two other passages in which Gaius attributed juristic opinions to men of old it is clear that he was thinking of men working in the second and first centuries BC.¹⁸ Of course, this does not preclude that his use of *veteres*—an expression that he uses five more times in the *Institutes*—could also encompass jurists working in later periods.¹⁹ However, for Gaius, the jurists of the first century AD fell into two distinct camps: followers of the Sabinian and Proculian schools.²⁰ It thus would appear that Gaius's *veteres* were all and any jurists working before the origin of the split between Sabinian and Proculian schools in the early first century AD. This reconstruction of Gaius's mapping of the history of Roman jurisprudence suggests that the juristic opinion that there was no *nexum* in provincial land was roughly contemporary with the opinions of Scaevola and Cicero's anonymous *iurisconsulti* about the declaration of provincial estates in the census.²¹

At this time—in the first century BC, that is—*nexum* was an umbrella category that encompassed a set of transactions by which Romans were accustomed to transfer rights in things, including but not limited to ownership, from one person to another.²² Such transactions, the jurists held, were not to have their customary effect in the case of provincial land. The jurists' opinions about the census and *nexum* thus not only share the period in which they were articulated, but also their relevance for disputes about land-holdings in the provinces. Above all, however, these opinions have the same negative character. Both constituted refutations of alternative (legal) worlds. Indeed, we can imag-

¹⁷ G. Inst. 2.27: [Praeterea admo]nendi sumus, [quod veteres dicebant soli Italici nexum] esse, provincialis soli nexum non [esse, hanc habere] significationem: solum [Italicum] Mancipi [esse], provinciale nec Mancipi [esse]. Aliter enim veteri lingua a[ctus] vocatur, et quod illis nexus, idem nobis est] Mancipa[tio]. The text is taken from 1 Francis de Zulueta, *The Institutes of Gaius Part I* 72 (1946).

¹⁸ G. Inst. 1.188.4; G. Inst. 4.30.2; 2 Francis de Zulueta, *The Institutes of Gaius Part II* 250-55 (2d ed. 1963).

¹⁹ G. Inst. 3.180.6, 3.189.4, 3.196.7, 3.202.6, 4.11.1.

²⁰ 2 de Zulueta, *supra* note 18, at 9-10.

²¹ Note also that, unlike Gaius, who felt the need to explain the concept to his contemporaries, jurists of the second and first centuries BC often thought with *nexum*. See Festus, *Gloss. Lat.* 165; Cic. *De or.* 3.159.5; Varro, *Ling.* 7.105.

²² Constantin Tomulescu, *Nexum bei Cicero*, 17 *Iura* 13, 51 (1966), and Okko Behrends, *Das nexum im Manzipationsrecht oder die Ungeschichtlichkeit des Libraldarlehens*, 21 *Revue Internationale des Droits de l'Antiquité* 137, 179 (1974), argue that *nexum* in the Late Republic was an umbrella term that encompassed all, or at least some, of the transactions carried out *per aes et libram*, by bronze and scale, which today are known as libral acts. See Kaius Tuori, *The Magic of Mancipatio*, 55 *Revue Internationale des Droits de l'Antiquité* 499, 503-04 (2008), who discusses *mancipatio* as an instance of such a libral act. Thus Gaius's claims about the meaning of *nexum* were, if not completely misguided, clearly inaccurate.

ine an analogous situation to the one that Cicero described in his *Pro Flacco*. A member of the imperial diaspora explained his claims to an estate in the provinces with reference to the Roman institution of *nexum*—a strategy that was entirely logical within the context of Roman law’s ability to incorporate foreigners into Roman legal institutions such as those that *nexum* denoted, which were nominally reserved for Roman citizens.²³ He argued that together with the estate’s previous owner, who was a citizen of a Greek city, he had carried out all the necessary rituals that *nexum* required; therefore the estate was now his. The person disputing his claims might have consulted some locally available experts on Roman law, who promptly denied yet another claim by a member of the imperial diaspora seeking to provide an account of the rightfulness of his or her landholdings in the provinces with reference to Roman institutions. This reactive and negating dynamic thus emerges as a pattern. How should we understand it?

Roman jurisprudence in the second and first centuries BC was a far cry from the ideal picture of classical jurists of the second and third centuries AD expounding a civil law that supposedly lived by its own legal rules. As Ari Bryen shows in this volume, even in the case of these later jurists—men who had essentially limited their subject matter to what would today be recognized as private law—the political realities of their time, especially in the form of the emperor, continually threatened to disturb their notionally closed off legal world.²⁴ By contrast, in the second and first centuries BC, Roman jurists’ concerns ranged widely, and they were not understood to be taking place in an autonomous sphere.²⁵ Rome’s developing imperial project in the provinces, just like many other social and political realities, confronted jurists with a whole new set of questions and problems that required them to make a range of highly contingent decisions without an apparent set of rules or principles to guide them.

The two opinions discussed so far—one about the relationship between census declarations and title, the other about *nexum* and its applicability to provincial land—were such contingent decisions. In the case of the opinion about *nexum*, its contingent character can most readily be gleaned from the category of provincial land, of *solum provinciale*, that it contains. Rome’s imperial project made such a concept thinkable, but did not *per se* require it. As a category, *solum provinciale* was a means to make the world legible from a juridical point of view.²⁶ If the opinion about *nexum* was indeed the context in which jurists first deployed the concept of *solum provinciale*, this category was part of their attempts

²³ Ando, *supra* note 5, at 6–11, explains how this integration worked through the use of *fictio civitatis*. See Cic. *Parad.* 5.35.7 for *nexum* as part of the civil law, the *ius civile*.

²⁴ Ari Z. Bryen, When Law Goes off the Rails: or, *Aggadab* Among the *iurisprudentes*, 3 *CAL* 9 (2016).

²⁵ Georgy Kantor, Ideas of Law in Hellenistic and Roman Legal Practice, in *Legalism: Anthropology and History* 56, 65 (Paul Dresch & Hannah Skoda eds., 2012).

²⁶ On the importance of making the world legible in state-building and the role of law in this process, see Maxim Korolkov, Calculating Crime and Punishment: Unofficial Law Enforcement, Quantification, and Legitimacy in Early Imperial China, 3 *CAL* 70 (2016).

to govern the activities of the diaspora throughout the entire empire.²⁷ The precise outlines of this governance, of course, were just as historically contingent as the concepts deployed to formulate it. As for the opinion concerning the census, there exists a distinct chance that it did not originate in a provincial context, but instead simply captured long-established Roman practice. And yet, as the opinion concerning *nexum* shows, jurists were willing to treat provincial land as a unique thing to which established Roman rules and practices did not apply. From this perspective, the decision to uphold general Roman custom—if this is indeed what it was—was just that: a decision.

The two decisions that these opinions enshrined patently had implications for who could benefit from the empire and on what terms. Scaevola's opinion on the census illustrates the political economy implications of these opinions most clearly. Imagine a world in which Roman authorities committed to upholding title to land in the provinces based on the declaration of provincial landholdings in the census. In this world, the price of an estate in the provinces that a Roman citizen would have to pay is the expense of a trip to the provinces and back, if even that. Many more and also quite different people would have been able to acquire land in the provinces on these terms than actually ended up having landholdings there. In fact, making census declarations equivalent to title would have made the spoils of empire accessible to an even broader section of the Roman citizenry than Gaius Gracchus's proposal in the 120s to found colonies outside of Italy (a proposal that encountered much opposition at the time, and did not materialize until eighty years later when Caesar was dictator).²⁸ The legal claims that members of the imperial diaspora made, and the checks that the opinions of Roman jurists put on these claims, thus continued the distributional politics of Rome's political conflicts in the juridical sphere. Themselves members of Rome's political elite, broadly conceived, these jurists took a clear side in this debate. The rejection of Gaius's proposal, and the juristic opinion that declaration of property in the census did not establish title, ultimately highlight and stem from the same wide-spread disposition among the Roman political elite in the Late Republic: a general reluctance to make spoils of empire accessible to wider sections of the Roman citizenry.

If the opinion about the census limited who could benefit from the empire, the claim concerning *nexum* shaped the sociopolitical status of those who did manage to benefit. The census in Rome was a mechanism for translating property into political power. But not just any property counted. Citizens could only declare property that they had ac-

²⁷ My analysis here builds on and furthers the argument that the much better known claim about provincial land—that there was no *dominium*, no ownership, of it—was an afterthought designed to explain why certain ways of transacting, such as the ones that *nexum* designated, were not applicable there. A.H.M. Jones, *In eo Solo Dominium Populi Romani est vel Caesaris*, 31 *J. Roman Stud.* 26 (1941), is foundational for this idea. See now also Jochen Bleicken, "In provinciali solo dominium populi romani est vel Caesaris": Zur Kolonisationspolitik der ausgehenden Republik und frühen Kaiserzeit, 4 *Chiron* 359 (1974); Francesco Grelle, *L'appartenenza del suolo provinciale nell'analisi di Gaio 2.7 e 2.21*, 18 *Index* 167 (1990).

²⁸ On Gaius's proposal and its rejection, see Vell. Pat. 2.7.7-8. On Caesar's overseas settlements, see now Jane F. Gardner, *The Dictator*, in *A Companion to Julius Caesar* 57, 64 (Miriam Griffin ed., 2009).

quired by the procedures of the civil law, and these procedures were precisely the transactions that *nexum* encompassed.²⁹ By refusing the validity of such transactions in relation to provincial land, Roman jurists made sure that the wealth that members of the diaspora managed to acquire in the provinces could not be translated into increased political rights in Rome. In other words, as a result of the opinion about *nexum* the members of the diaspora who owned extensive provincial estates were not able to enjoy the usual benefits of such wealth; they could not join the Roman political elite. As such, the opinion was a means by which the men that made up Rome's political elite defended their own position within the Roman polity against the members of the diaspora. It was yet another instance in which the struggle over the spoils of empire—now political rather than economic—was being fought in the juridical sphere.

III. Landownership Explained: Provincial Edicts and the Moral Economy of Possession

Late Republican jurists never outlined the arguments and claims concerning provincial land that they considered valid. In fact, no jurists ever did. Provincial land, *solum provinciale*, was a long-lived category in Roman jurisprudence, but jurists always approached it as an exception. They were keen to outline the legal institutions that did not apply to it—examples include *nexum*, *dominium*, or *praescriptio*—and never explicitly outlined arguments concerning land in the provinces that they did consider valid, let alone arguments that were to be the only valid ones. In the fifth century AD, the emperor Justinian abolished all the prohibitions that Roman jurists had elaborated over seven centuries—a decision that only confirms the negative reactive character of Roman jurisprudence concerning the property regimes in the provinces.³⁰

This situation essentially left the elaboration of arguments about Roman landholdings in the provinces to the interactions between the imperial diaspora and members of Rome's political elite that acted as provincial governors. Romans in the provinces undoubtedly made many different types of arguments about the rightfulness of their landholdings there. Governors not only heard these arguments on a case-by-case basis, but at the beginning of their tenure in office they also composed an edict in which they outlined a set of remedies that they were willing to grant. Given the freedom of provincial governors in composing their edicts, one could imagine a situation in which these remedies and the legal arguments they enshrined would change with every new governor, and thus possibly every year. Although we should of course imagine slight variations between governors, there is evidence that they were consistently willing to provide a forum in which members of the diaspora could explain the rightfulness of their landholdings with arguments that differed from those enshrined in the property regimes of Greek cities, and that these arguments revolved around the idea of possession. I turn once more to Valerius

²⁹ Cic. *Flac.* 80; Bleicken, *supra* note 27, at 374.

³⁰ E.g., G. Inst. 2.7 (*dominium*); Code J. 7.31 (*praescriptio* and Justinian's reform).

Flaccus, Cicero's defense of his actions as governor, and the dispute between Amyntas and Decianus about estates in Apollonis over which he eventually presided.

As explained in Part II, Cicero's main goal in providing an account of the dispute between Amyntas and Decianus was to convince his audience that Flaccus's decision against Decianus had been completely justified and was not informed by any untoward motives. In pursuit of this goal the orator not only named five other authorities that had denied Decianus's claim—two governors of Asia, Publius Orbius and Publius Globulus, the anonymous jurists whom Amyntas consulted, and two Greek cities, Apollonis and Pergamon—he also shaped his narrative of the dispute between Amyntas and Decianus so as to offer two legal arguments against Decianus's claims: Decianus had established possession of the estates in Apollonis by force, and his purchase and registration of them had been false and deceitful.

These arguments were, if not necessarily contradictory, most certainly overdetermined. From a rhetorical point of view such overdetermination is of course not unusual. Upon closer inspection, however, the details of the two arguments are unusual; for the latter makes sense in the context of the property regimes of Greek cities, and the former against the background of Roman arguments about possession. It would appear, then, that Cicero's narrative of events not only mentioned the different authorities that rejected Decianus's claims, but also contained the different terms on which Amyntas and Decianus carried out their dispute in front of these authorities in the provinces.³¹

As outlined in the Introduction, in Greek cities such as Apollonis, the registration of sales of land following a specified period of advertisement was often used to establish title. The only way to dispute changes of ownership that had been registered in this way was to argue that the appropriate procedure had not been followed. The claim that Decianus's registrations had been in some way deceitful amounts to precisely this argument. Importantly, such a connection between registration and title to land did not exist in Rome. In fact, Cicero's language itself in the *Pro Flacco*—in particular his use of *proscriptio*, the Latin term that I read as “registration”—suggests that he was invoking a type of argumentation that was foreign to Rome. In all other writings, Cicero employed the term to designate the public notice of the intended sale of a defaulting debtor's estate, a context where it was often paired with expressions of selling.³² But in the *Pro Flacco*, Decianus's *proscriptiones*, his registrations, appear again and again next to expressions of buying, next to Decianus's purchases that is, and there is no mention of any type of debt. The nature of the argument together with the singular use of *proscriptio* thus suggest that this part of Cicero's narrative was based on events as they were recounted in a courtroom in the provinces—most probably in a Greek city—at a specific stage of the dispute between Amyntas

³¹ Note that Roman arguments did not necessarily mean Roman courts. *RDGE* 70, ll. 17-18 (Chios); *SEG* XXXIX 1244, col. I, ll. 40-42 (Colophon) are both keen to emphasize that Romans are not merely to be judged in local courts, but also according to local laws, suggesting that some Romans might have tried to have it otherwise.

³² E.g., Cic. *Quinct.* 56.6, *Q. Rosc.* 128, *Red. sen.* 11.

and Decianus. It thus becomes likely that the second legal argument against Decianus's claims—the idea that Decianus had acquired his estates by force—also originated in a provincial context. This argument, it turns out, was a thoroughly Roman one.

Roman law was keen to protect possession, unless, of course, this possession had been obtained in improper ways. Possessory interdicts—the parts of the praetor's edict that could be invoked to protect possession—specified three cases in which this protection was to be void: if possession had been obtained by force (*vi*), stealth (*clam*), or sufferance (*precario*).³³ The claim that Decianus had used force in order to get hold of the estates in Apollonis thus constitutes exactly the type of argument that someone should use against an opponent who tried to protect his possession of landholdings with recourse to possessory interdicts. Again, Cicero's language supports the idea that he was thinking within the context of a particular legal institution. According to him, Decianus established himself *in possessione* of the estates.³⁴ This Latin expression was often used to signal factual but not legally rightful possession.³⁵ Based on the undisputed provincial origin of the arguments about registration, it thus becomes likely that at some point during their dispute about the estates in Apollonis, Amyntas and Decianus debated their claims with recourse to possessory interdicts—Roman legal institutions that arguably were to be found not only in the praetor's edict in Rome, but also in the edicts of provincial governors.

In 51 BC, Cicero was provincial governor in Cilicia, a Roman province in the southeastern part of Anatolia. During this time, he maintained an active correspondence with other members of the Roman elite. In one of his letters he also described his edict. What interests me here is not just that Cicero explicitly stated that it included provisions concerning the possession and the selling of goods (*de bonis possidendis* and *de bonis vendendis*); these provisions were also part of a set of measures that Cicero considered necessary. Nothing could be handled conveniently without them, he wrote.³⁶ Leaving aside the way in which this statement naturalized the provisions in question, it surely suggests that the inclusion of remedies regarding possession was not a unique occurrence. We certainly know of first-century AD jurisprudence that outlined what constituted possession in relation to estates in the provinces.³⁷ What is more, details from Cicero's *Pro Flacco* indicate that by the middle of the first century BC members of the diaspora such as Decianus behaved in ways that anticipated arguments involving possession. Cicero reproached

³³ On these interdicts generally, see Max Kaser & Rolf Knüttel, *Römisches Privatrecht* §§ 21, 86 (2005). On their crucial role in protecting possession, see Peter Stein, *Equitable Remedies for Property*, in *New Perspectives in the Roman Law of Property* 185 (Peter Birks ed., 1989). For late Republican attestations, see Festus, *Gloss. Lat.* 260; Ter. *Eun.* 319; *Syll.*³ 679, 683, 685 (*uti possidetis*); RS 1 § 18 (*unde vi*). First-century BC jurists also demonstrably discussed the language of these interdicts: *Dig.* 41.2.6.1 (Ulpian, *Ad edictum*, bk. 70); *Dig.* 43.24.5.8 (Ulpian, *Ad edictum*, bk. 70).

³⁴ Cic. *Flac.* 73.

³⁵ Adolf Berger, *Encyclopedic Dictionary of Roman Law* 636 (1953).

³⁶ Cic. *Att.* 6.1.15. & Otto Lenel, *Das Edictum Perpetuum* 423 (3d ed. 1956).

³⁷ *Dig.* 41.2.1.14 (Paul, *Ad edictum*, 54).

Decianus for not evacuating the estate after the registration of his purchase had been declared invalid in Apollonis. But such behavior made complete sense in anticipation of an appeal to possessory interdicts. The two interdicts that were available in the case of land, *uti possidetis* and *unde vi*, could only be effective if possession had existed in the first place, and they only restored possession that had been lost by force.

So, unlike arguments about declarations in the *census* or about *nexum*, jurists allowed members of the imperial diaspora to explain their landholdings with recourse to the Roman legal institutions of possession. What is more, governors encouraged these arguments in the provision of their edicts, and members of the diaspora, including Decianus, structured their behavior in anticipation of such arguments. Why did Romans in the provinces make these arguments, and why were jurists and governors willing to endorse them? What was at stake in explaining Romans' relationship to land in the territories of Greek cities in terms of possession?

Finding answers to these questions requires looking more closely at possessory interdicts, in particular at *uti possidetis*, which was specifically designed for property in land. I provide the text in full:

As you now possess the estate that your dispute concerns, so you may possess it with the provision that neither one of you possess it from the other by force, in secret, or on sufferance. I forbid that violence be used against these things.³⁸

Appealing to this interdict demonstrably allowed men like Decianus to put their claims to land on a new footing, enabling them to elide the property regimes of Greek cities. To start with, the wording of the interdict left no room for arguments about registrations because it already spelled out and thus limited what counted as valid objections to the rightfulness of possession. Moreover, the language of the edict also precluded considerations of the exclusionary aspect of Greek cities' property regimes. By limiting the attention to the transactions that had taken place between the two parties concerned—*alter ab altero*, one from the other, is the key phrase here—this interdict potentially also protected the possession of men who had not obtained permission to own land in the territory of the city in which the estate in question was located.

As such, the possessory interdict *uti possidetis* helped further the diaspora's imperialism in two distinct ways. On one level, the interdict simply provided an alternative way of explaining claims to an estate. As such, it allowed men like Decianus to recast their disputes about land with citizens of Greek cities. It gave them a second chance to win disputes about their landholdings that they had lost in the context of these cities. More importantly though, the interdict helped Romans overcome the limits that the exclusionary property regimes of Greek cities imposed on their acquisition of landholdings in the provinces of the Greek East.

Greek cities gave out grants of *enktesis*—grants that allowed foreigners to own land in a city's territory—as part of reciprocal relationships with men whom they consid-

³⁸ Festus, *Gloss. Lat.* 260: Uti nunc possidetis eum fundum quo de agitur, quod nec vi nec clam nec precario alter ab altero possidetis <quominus> ita possideatis, adversus ea vim fieri veto. The translation is my own.

ered their benefactors, a role that often involved the outlay of a great deal of capital. At times, Greek cities also simply sold such grants. This last case was a particularly frequent occurrence in relation to foreign debtors who had received land as collateral that, because it was in the territory of a city in which they did not have citizenship, they had no right to own. For example, in fourth-century BC Byzantium, several citizens were indebted to foreign creditors.³⁹ These citizens had offered their creditors their landholdings in Byzantium as collateral. When they defaulted, the city of Byzantium began negotiating with their creditors, offering to recognize their title to these landholdings in return for a payment to the city; a third of the sum that they had originally lent out would do the trick.

It should be clear that the argumentative logic enshrined in *uti possidetis* could help members of the imperial diaspora avoid a lot of expense, provided that they managed to get possession of the land in question in an appropriate way, of course. And indeed, two passages describing the relation of Roman creditors in Asia to the landholdings in the territories of Greek cities that they had received as collateral suggest that obtaining possession was precisely what these men desired. They asked that their defaulting debtors hand over the estates in question in such a way that gave rise to rightful possession (*tradere*), and they asserted that their possession of these estates was not merely a matter of fact, but also of the kind that deserved protection under Roman law (*tenere ac possidere*).⁴⁰

By allowing appeals to *uti possidetis*, members of the Roman political elite who acted as provincial governors showed themselves willing to support some members of the diaspora, not all of them; the interdict enshrined a distinct distributional politics. By outlining the types of possession of land that it did not protect—possession established by force (*vi*), through secrecy (*clam*), or on sufferance (*precario*)—it delimited a distinct sphere of legitimate possession. The defining criterion of such possession was that it had come about as the result of a transfer of land to which both parties in question had in some ways agreed. The situations in the Greco-Roman world in which this condition obtained most commonly involved the outlay of sums of money, either in the form of a loan that was then defaulted on or in the form of the price paid for an estate. The argumentative logic of *uti possidetis* thus supported men of means and their deployment of these means in order to gain control of estates in the provinces.

What is more, this argumentative logic was also widely intelligible. A comparison with arguments about *nexum* helps bring this quality of the interdict to the fore. *Nexum* designated a set of culturally highly specific acts. The validity of the transfers that it designated relied on the observance of a particular set of ritual actions, including the pronouncement of a specific set of words, the presence of witnesses and of a person called *libripens* who held a set of scales, and the performance of certain actions: striking a

³⁹ [Ps.-Arist.], *Oec.* II, 1347a1-3.

⁴⁰ Cic. *Fam.* 13.56; Cic. *Flac.* 51. On *tradere* and *translatio* as a transaction that established rightful possession, see Peter Buckland, *A Text-Book of Roman Law from Augustus to Justinian* 226-31 (2d ed. 1932); Kaser & Knüttel, *supra* note 33, § 24. For its *terminus ante quem*, see Varro, *Rust.* 2.6.3; David Daube, *Roman Law* 23 (1969).

scale as well as taking hold of the object in question.⁴¹ Arguments about *nexum* thus were incontrovertibly Roman, and their wider acceptance could only ever rely on their place of origin and, by implication, on the fact of empire. By contrast, interdicts enshrined a type of reasoning about rightful possession that people might understand and agree with more generally; for what could be wrong with a transfer of possession that occurred without the use of force and was known to both parties involved?

The decision to allow arguments about possession thus reveals the willingness of the Roman political elite to support at least certain members of the diaspora by helping them elide the property regimes of Greek cities, and the argumentative logic of these arguments might also point to their attempts to render their support palatable to local populations. In making these attempts, they acknowledged that members of these local populations constituted a potential third party in the debates about the terms on which Romans could acquire land in the provinces, and it is to their contributions to this debate that I now turn in the following and final section of this paper. Indeed, it would appear that the wide moral intelligibility of the arguments enshrined in *uti possidetis* were not particularly effective at legitimizing the Roman acquisition of landholdings that elided the property regimes of Greek cities. Greek cities repeatedly sent embassies to the senate in Rome in order to push back against the decisions of individual governors concerning the rightfulness of the Roman landholdings in the provinces. In order to explore the decrees that they obtained from the senate and the various considerations that informed them, I return once more to the estates in Apollonis, to Amyntas and Decianus, who were fighting about them, and to Cicero's account of their dispute.

IV. Landownership Contested: *Senatus Consulta* and the Territoriality of Greek Cities

Cicero defended Flaccus against allegations of bias in Decianus's case by arguing that nobody had found in Decianus's favor, and that indeed nobody could. But his own narrative already reveals the falsehood of this claim; at least one governor, Publius Globulus, did find in Decianus's favor. In the same year, in 63 BC, and, we might assume, in reaction to Globulus's decision, the Apollonians sent an embassy to the senate in Rome, where they complained about Decianus and also obtained a *senatus consultum*, an official decree by the senate, on the matter.⁴² While the concrete dimensions of this decree are not preserved, Cicero appealed to its language in order to counter the prosecution's claim that Flaccus should not have made a decision on the matter in the first place: the *senatus consultum*, he stated, did not prevent Flaccus, or any other governor for that matter, from making a judgment about "free fields" (*in liberos*)—about fields located in the territory of a so-called free city (*civitas libera*), that is.⁴³ This passage thus provides a tantalizing glimpse of what

⁴¹ Berger, *supra* note 35, at 625.

⁴² Cic. *Flac.* 76 (on Globulus's decision), 78 (on the *senatus consultum*), 79 (on the embassy).

⁴³ See T.B.L. Webster, M. Tulli Ciceronis Pro L. Flacco oratio 96 (1931), for this reading of Cic. *Flac.* 78.

Cicero and his audience expected to be contained in such a decree: a determination of the jurisdictional privileges of the free city (*civitas libera*) that Apollonis was.

This sequence of events—decisions about landholdings by a Roman governor prompting a civic embassy to the senate in Rome in order to obtain a *senatus consultum* in Rome concerning the city’s jurisdictional privileges—was not unique. This pattern also emerges in an inscription from Colophon, a city on the western coast of modern-day Turkey, which records events from the late second century BC. The inscription records an honorific decree for Menippos, a citizen of Colophon, and praises the many services he had rendered to the city, which included several embassies to Rome. Just as in Apollonis, one such embassy was prompted by the behavior of the members of the diaspora in Colophon—of “those who were coming into Asia,” as the decree calls them—that appealed the disputes they had with citizens of Colophon to the governor of Asia:

and the fourth time, about those who were coming into Asia and who were changing the judgments from the laws to their own power and about the citizens who were called to court and who each time were forced to provide sureties.⁴⁴

The requirement to provide sureties, which the citizens of Colophon perceived as particularly irksome, makes it likely that disputes about the possession of land were at stake here, just as was the case in Apollonis. As part of the application of a possessory interdict, which, as I argued above, would have been crucial in such disputes, Roman officials often gave preliminary possession to the party that was making the claim as a means of making the eventual judgment more easily enforceable (*missio in possessionem*).⁴⁵ From the perspective of Colophonian citizens this could very well have looked like giving sureties. Furthermore, the privileges that the Colophonian embassy obtained were also jurisdictional: those residing in Colophon were henceforth freed from providing sureties and from the power of the governor, the authors of Menippos’s honorific decree wrote.⁴⁶ The parallel with Apollonis can thus be extended.

Episodes such as these traditionally have been interpreted as free cities going to Rome to have their jurisdictional privileges confirmed—privileges on which provincial governors infringed all too often.⁴⁷ The Roman senate surely recognized both Apollonis

⁴⁴ SEG XXXIX 1244, col. I, ll. 23-27 (τέταρτον τῶν | παραγινόμενων εἰς τὴν Ἀσίαν τὰ κριτήρια μεταγόν- | των ἀπὸ τῶν νόμων ἐπὶ τὴν ἰδίαν ἐξουσίαν καὶ πρὸς | μέρος αἰ τῶν ἐγκαλουμένων πολιτῶν ἐγγύας | ἀναγκάζομένων ὑπομένειν). The translation is my own.

⁴⁵ Jean-Louis Ferrary, *Le statut des cités libres dans l’Empire romaine à la lumière des inscriptions de Claros*, 135 *Comptes rendus des séances de l’Académie des Inscriptions et Belles-Lettres* 557, 566 (1991), first provided this interpretation of the inscription. Contra Julien Fournier, *Entre tutelle romaine et autonomie civique* 426-27 (2010) (comparing these sureties with the regulated appeal procedure from *municipia* in the Western Empire). The situation in Colophon was different though; it concerned people with different citizenships, not two members of the same community who appealed their dispute to a higher authority. On *missio in possessionem* more generally, see Stein, *supra* note 33, at 190.

⁴⁶ SEG XXXIX 1244, col. I, ll. 37-40.

⁴⁷ Ferrary, *supra* note 45, at 576, and Andrea Raggi, *Senatus consultum de Asclepiade Clazomenio sociisque*, 135 *Zeitschrift für Papyrologie und Epigraphik* 73, 104 (2001), discuss the Colophon inscription on these

and Colophon as free cities, but it seems less convincing that the embassies these cities sent to Rome simply sought a confirmation of their privileges. But if the goal was simply to renew privileges, why not say so? More importantly, the privileges of free cities were not standardized and could vary widely.⁴⁸ This variation, I suggest, had its origin in the different requests for new privileges that envoys of such free cities put before the senate. Perceptions of the behavior of these embassies in Rome support this interpretation.

For Cicero and his audience, freeing a city in the empire was not a one-time affair. It could happen repeatedly, and might involve separate *senatus consulta*, often prompted by embassies, and laws. The *lex Iulia* of 59 BC, in which Caesar regulated which cases involving citizens of free cities provincial governors were allowed to hear, was just another example of such an act; it was yet another occasion among many on which a set of free cities were being freed.⁴⁹ These perceptions thus reveal that the precise dimensions of the freedom of free cities in the Roman empire were constantly under construction. The cities in question and their elites undoubtedly made considerable contributions to formulating these dimensions. From the perspective of civic elites, their cities' freedom provided the rhetorical basis for their attempts to contest and shape the implications of imperial rule. Indeed, as the events preceding the Apollonian and Colophonian embassies to Rome suggest, the elites of these cities articulated interpretations of their freedom in response to their concrete experiences of said rule.⁵⁰ In their case, these were governors' decisions about landholdings in their respective territories.

It is by no means obvious to interpret requests for jurisdictional privileges as means to shape the terms on which members of the diaspora could acquire land in the provinces. And yet, the sequence of events leading up to both these embassies clearly points in this direction. More importantly, the fact that Amyntas and Decianus carried on their dispute with reference to both Roman and Greek legal institutions shows that the legal pluralism of the empire did not simply consist of separate normative regimes that coexisted; instead, these regimes amounted to legal spaces that overlapped in their potential reach, thus making the extent of their respective reach a highly contested question.⁵¹ The way in which the wording of *uti possidetis* precluded considerations of the norms that constituted Greek cities' property regimes clearly tilted the balance in one direction. Greek cities' requests for the

terms. In the Late Republic, similar privileges are attested in the Greek East for Chios (*RDGE* 70), Termessos (*RS* 19), and Plarasa/Aphrodisias (*LApb* 8.27).

⁴⁸ E.g., Peter Brunt, *The Fall of the Roman Republic 293-94* (1988); Georgy Kantor, *Siculus cum Siculo non eiusdem civitatis: Litigation Between Citizens of Different Communities in the Verrines*, 21 *Cahiers Glotz* 187 (2010).

⁴⁹ Cic. *Dom.* 9.23. Note also *RDGE* 70, where the Chians did not simply argue that they were a free city but presented the governor with an exact copy of the *senatus consultum* that outlined their privileges.

⁵⁰ Jean-Louis Ferrary, *Philhellénisme et Impérialisme* 214-15 (1988), suggests that the freedom of Greek cities changed its meaning depending on the historically specific forms that Roman domination took, without asking though who defined and articulated this meaning.

⁵¹ For this conception of "legal space," see Boaventura de Sousa Santos, *Law: A Map of Misreading: Toward a Post-modern Conception of Law*, 14 *J.L. & Soc'y* 279 (1987).

senate to place limits on governors' jurisdiction in relation to people residing in them were attempts to reverse this balance. Both in the ancient and in the modern world, then, jurisdiction is the main way by which overlapping legal spaces are governed.⁵²

A further aspect that deserves exploring is the transformation of property disputes between two parties into a collective concern for the community, which then sent an embassy to Rome. In each case, different circumstantial factors might explain this transformation, and in each case a distinct political rhetoric was used to effect it. For example, the people in Colophon who tried to argue that there was something wrong with how governors administered justice conjured up a world in which Colophon had the monopoly over laws, and the governor's court was a simple exercise of tendentious power.⁵³

However, a more structural dynamic clearly was at work as well. Roman possessory interdicts understood the transfer of landholdings from one person to another as just that—as an interaction between two people. But in the context of Greek cities, the implications of such transfers were much more wide-reaching. These cities' property regimes construed their territories as a shared resource accessible only to members of the community. When Roman authorities recognized the rightfulness of Roman landholdings in the territories of Greek cities in contravention of these cities' property regimes, they gave access to this notionally shared resource to people who might not feel a particular sense of belonging or obligation towards the community in the midst of which their possessions were now situated. This circumstance made the outcome of property disputes between two parties into a collective problem. On one level, the relationship of these Romans to the community, whose resources they now shared, had to be negotiated. More fundamentally, the potential of interdicts to infringe on the property regimes of Greek cities threatened to undermine the very fabric and definition of these cities as communities constituted around shared territories over which they made collective decisions.

In sum, if by providing possessory interdicts in their provincial edicts, Roman political elites committed to supporting and furthering the imperialism of at least some members of the diaspora, some Greek cities tried to check the implications of this support for their own citizens and for their communities as a whole by appealing to another one of this elite's commitments: their promise that these cities would on some level be free. While their requests for jurisdictional privileges undoubtedly shaped the terms on which members of the diaspora could acquire landholdings in their territories, the embassies that they sent to the senate in Rome were motivated less by distributional politics, as had been the case in the negotiations between Rome's political elite and the diaspora, than by a concern for the territorial basis of their communities. Of course, far from all of the embassies that these cities sent to Rome would have obtained the results that they desired; the *senatus consultum* for Apollonis that failed to prevent governors from making decisions

⁵² On the modern world, see Mariana Valverde, Jurisdiction and Scale: Legal "Technicalities" as Resources for Theory, 18 Soc. & Leg. Stud. 139 (2009).

⁵³ SEG XXXIX 1244, col. I, ll. 24-25 ("and who were changing the judgments from the laws to their own power").

in disputes concerning land in Apollonis is a case in point. And yet, at times, Rome's political elite was clearly willing to compromise their support for the diaspora in favor of the interpretations of their freedom that Greek cities provided.

V. Conclusion

What I hope to have done in this paper is to explore the making of various aspects of Roman law, which framed how members of Rome's imperial diaspora could acquire landed estates in the Greek cities that populated the Eastern provinces of the empire, and to show that while the imperialism of the imperial diaspora undoubtedly prompted the elaboration of this legal framework, Roman imperial interest, however conceived, did not exhaust it. More specifically, I have tried to demonstrate that two broader debates informed the elaboration of the legal institutions relating to Roman landholdings in the provinces: the distributional politics that pervaded Late Republican Rome, and a struggle over social orderings in the provinces—more particularly, over the maintenance of Greek cities' territoriality. These debates and the various parties that participated in them reveal law as the arena in which different groups—members of the imperial diaspora, Roman political elites, and citizens of Greek cities—could try to shape the Roman imperial project, including, but not limited to, what this project might mean for them. In their different and, at times, failed attempts we see what I have been trying to argue all along—that at least in law, the empire was not anyone's in particular, but was up for grabs.