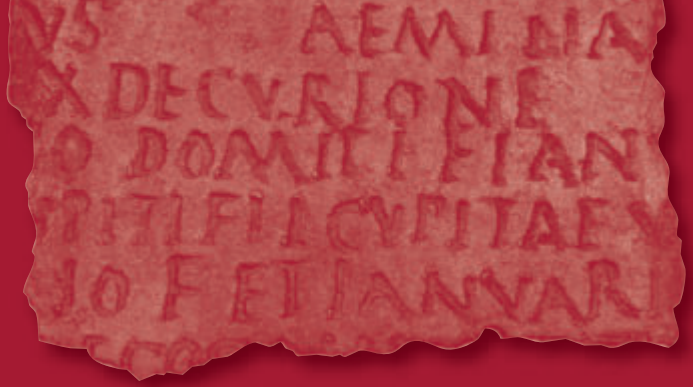

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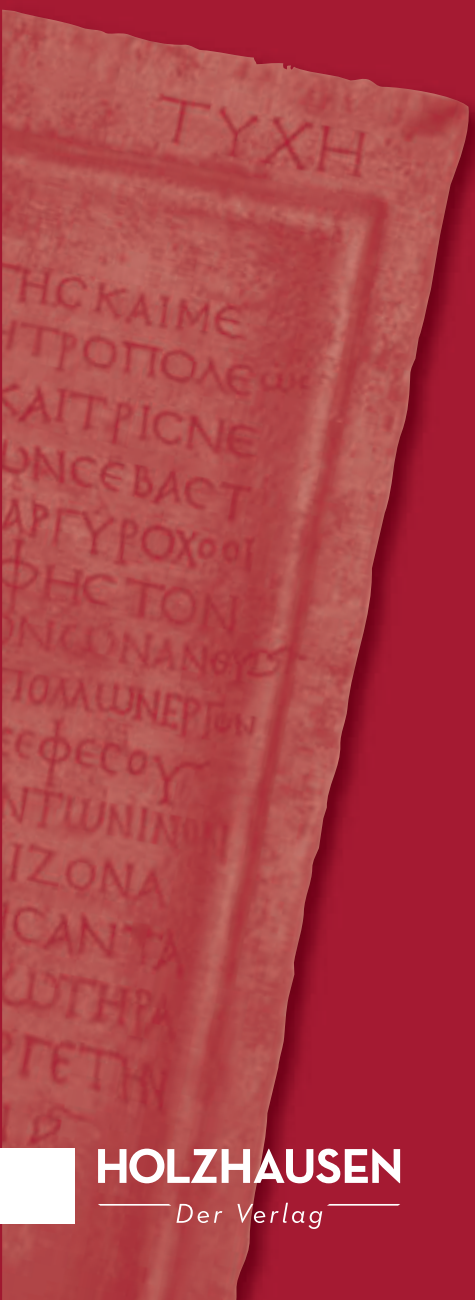

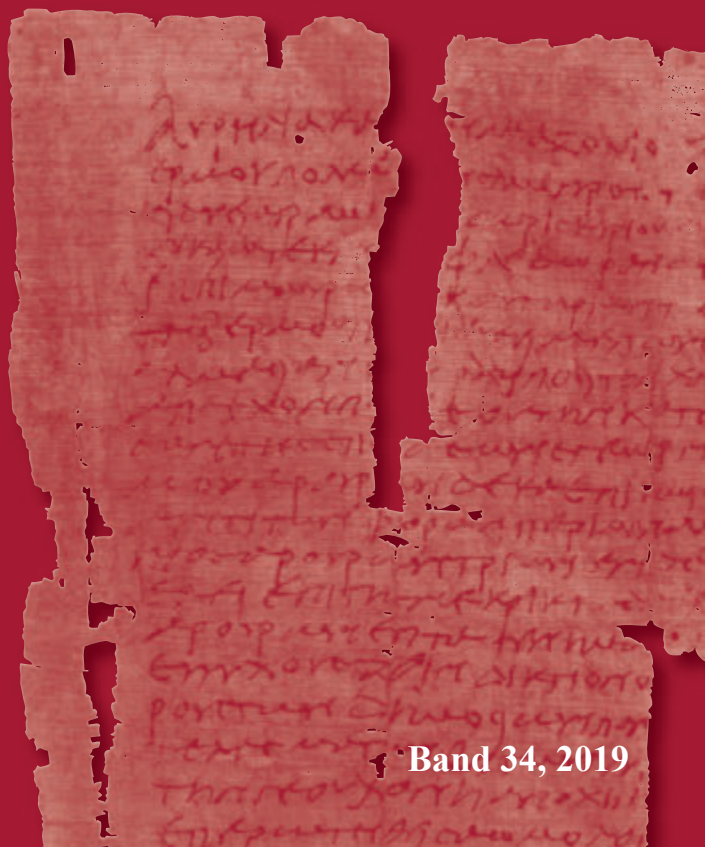

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INHALTSVERZEICHNIS

ANNA DOLGANOV

Reichsrecht and Volksrecht in Theory and Practice: Roman Justice in the Province of Egypt
(P.Oxy. II 237, P.Oxy. IV 706, SB XII 10929)*

In 134 CE, a few years after Hadrian's visit to the province, the Roman governor of Egypt (*praefectus Aegypti*) published a letter from the emperor extending to Egyptian provincials the right of representation in succession, as it existed in Roman testamentary law. In the same year, a woman petitioned the prefect seeking to reclaim her deceased father's share of her grandmother's intestate inheritance, which she had forfeited to her uncle and cousin several years before the emperor's grant. After consulting with the prefect, the judge who was delegated the case confirmed that she stood to benefit retrospectively from the emperor's χάρις (*beneficium*) the gift or privilege of Roman justice.[1]

This episode illustrates several key aspects of law and justice in the Roman imperial context. Law and the administration of justice constituted an important *beneficium* that the Roman imperial state saw itself as conferring on its provincial subjects. In addition to being an instrument of governance, law was part of the legitimizing narrative of empire, an embodiment of the rationality and equity of Roman rule. As illustrated by this case, the rules and remedies of Roman law — including Roman *ius civile*, the law governing private legal relations between Roman citizens — could be applied to provincials of non-Roman civic status who brought their grievances to Roman courts. In this instance, the application of Roman *ius civile* to Egyptian provincials was an entirely explicit act, part of the performative dispensation of justice by the Roman emperor. The power of the emperor's word made this provincial woman confident that she could get the Roman

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1 For the dispute, see BGU I 19 (135 CE) with R. Katzoff, *BGU 19 and the law of representation in succession*, in: D. H. Samuel (ed.), *Proceedings of the Twelfth International Congress of Papyrology*, Toronto 1970, 239–242 and my discussion in A. Dolganov, *Empire of Law: Legal Culture and Imperial Rule in the Roman Province of Egypt*, unpublished Diss. Princeton 2018, 436–438. The Dissertation can be consulted in the records of the US Library of Congress (ProQuest); its publication is in progress. Important contextual information for Hadrian's pronouncement is provided by BGU XX 2063 (ca. 134–137 CE), not yet available to Katzoff, which reveals that Hadrian had written an *epistula*.

governor to acknowledge her new Roman claim, overriding her uncle's rights under the local law.[2]

The nature of the Roman legal order in the provinces and the status of local laws and traditions under Roman rule are much-debated and fundamentally unresolved problems in Roman legal history. The traditional debate, since the inception of the field of papyrology in the late 19th century, has focused on the spread and reception of Roman law (as we know it primarily from Byzantine anthologies of Roman legal literature) and the persistence or regression of local or indigenous law. To what extent was Rome interested in generalizing Roman law throughout its empire and to what extent were provincial populations inclined or compelled to adopt it? Answers to these questions have tended to be part of arguments about imperialism and acculturation, where the reception of Roman legal forms (or lack thereof) has been interpreted as a sign of integration within the Roman order (or resistance to it). It is traditionally presumed that the adoption of Roman law functioned more smoothly in the West than in the Greek East, which remained tied to the strong institutional and cultural legacy of its Hellenistic past. Much controversy still surrounds the watershed moment of 212 CE, when an edict of the emperor Caracalla — the so-called *Constitutio Antoniniana* — transformed all freeborn provincials into Roman citizens. If everyone suddenly became Roman, what did this mean for Roman law?[3]

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[2] On the 'beneficial' ideology of Roman rule, see V. M. Nutton, *The beneficial ideology*, in: P. D. A. Garnsey, C. R. Whittaker (eds.), *Imperialism in the ancient world*, Cambridge 1979, 209–222. See also E. Meyer-Zwiffelhoffer, Πολιτικῶς ἄρχειν. *Zum Regierungsstil der senatorischen Statthalter in den kaiserzeitlichen griechischen Provinzen*, Stuttgart 2002, 172–222 and B. Kelly, *Petitions, Litigation and Social Control in Roman Egypt*, Oxford 2011, 195–204. On rationality as a key legitimacy claim of the Roman state, see C. Ando, *Imperial ideology and provincial loyalty in the Roman Empire*, Berkeley 2000, 325 and 373–385. On the legal force of imperial pronouncements, see J. Harries, *Law and Empire in Late Antiquity*, Cambridge 1999, 19–31.

[3] For the traditional debate about Roman and local law in the provinces, see L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des Römischen Kaiserreichs*, Leipzig 1891, E. Schönbauer, *Reichsrecht gegen Volksrecht? Studien über die Bedeutung der* Constitutio Antoniniana *für die römische Rechtsentwicklung*, ZRG 51 (1931) 277–335, and *Reichsrecht, Volksrecht und Provinzialrecht*, ZRG 57 (1937) 309–355, V. Arangio-Ruiz, *L'application du droit romain en Égypte après la constitution antoninienne*, Bulletin de l'Institut d'Égypte 29 (1946–1947) 83–130, R. Taubenschlag, *Die römischen Behörden und das Volksrecht vor und nach der C.A.*, ZRG 69 (1952) 102–127, F. De Visscher, *La constitution antonine (212 ap. J. C.) et la persistance des droits locaux*, Cahiers d'histoire mondiale 2 (1954–1955) 788–811 and *L'expansion de la cité romaine et la diffusion du droit romain*, MH 14 (1957) 164–174, J. Mélèze-Modrzejewski, *La règle de droit dans l'Égypte romaine*, in: Samuel (ed.) (n. 1 above) 317–377, and *La loi des Égyptiens. Le droit grec dans l'Égypte romaine*, in: B. G. Mandilaras (ed.), *Proceedings of the XVIII International Congress of Papyrology*, Athens 1988, 383–390, E. Seidl, *Rechtsgeschichte* Ägyptens *als römische Provinz*, St. Augustin 1973 and H. J. Wolff, *Faktoren der Rechtsbildung im hellenistisch-römischen Aegypten*, ZRG 70 (1953) 20–57, *Zur Romanisierung des Vertragsrechts der Papyri*, ZRG 73 (1956) 1–28, and *Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats*, vol 1: *Bedingungen und Triebkräfte der Rechtsentwicklung* (edited by H.-A. Rupprecht), Munich 2002, 113–200. For an overview of the debate, see M. Amelotti, *Reichsrecht, Volksrecht, Provinzialrecht. Vecchi*

The only region of the Roman Empire where these questions can be posed and investigated in detail is Egypt, where arid conditions have preserved tens of thousands of papyrus-documents from the Hellenistic and Roman periods. This unique wealth of documentary evidence makes Egypt essential for our understanding of law in the Roman provinces. The currently prevailing consensus on Egypt is that the Roman state did not have a strong interest in imposing a Roman legal standard in the province beyond its primary concerns as an imperial power (grain, fiscal revenue, military manpower, public order, etc.) and did not actively interfere in the private legal sphere. Instead, the Roman attitude is regarded as pragmatic and broadly tolerant of local practices, tending to assimilate them into the Roman provincial order. The apparently limited evidence for Roman legal forms in papyri has led to the conclusion that knowledge and reception of Roman law in Egypt was limited throughout antiquity. Instead, arguments have been made for the continuity of Ptolemaic traditions and Graeco-Egyptian legal and documentary forms in the Roman period. Moreover, a handful of references to the 'law(s) (*nomos* or *nomoi*) of the Egyptians' have been taken to mean that the Roman state observed a strong principle of legal personality and systematically applied Graeco-Egyptian customary law in matters of family and succession with the help of local legal experts. This has served as an additional argument for the limited impact and reception of Roman law.[4]

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problemi e nuovi documenti, SDHI 65 (1995) 211–215. For more recent reflections on these questions, see P. D. A. Garnsey, *Roman citizenship and Roman law*, in: S. Swain, M. Edwards (eds.), *Approaching Late Antiquity: The Transformation from Early to Late Empire*, Oxford 2006, 133–155, G. Kantor, *Knowledge of Law in Roman Asia Minor*, in: R. Haensch (ed.), *Selbstdarstellung und Kommunikation: die Veröffentlichung staatlicher Urkunden auf Stein und Bronze in der römischen Welt: internationales Kolloquium an der Kommission für Alte Geschichte und Epigraphik in München (1. bis 3. Juli 2006)*, Munich 2009, 249–265 and *Greek Law under the Romans*, in: E. M. H. Harris, M. Canevaro (eds.), *Oxford Handbook of Ancient Greek Law*, Oxford 2015 (online), E. Jakab, Review of J. G. Oudshoorn, *The relationship between Roman and local law in the Babatha and Salome Komaise archives: general analysis and three case studies on law of succession, guardianship and marriage*. Leiden 2007, ZRG 128 (2011) 647–655, J. L. Alonso, *The Status of Peregrine Law in Roman Egypt: On 'Customary Law' and Legal Pluralism in the Roman Empire*, JJP 43 (2014) 10–63, K. Czajkowski, *Localized Law. The Babatha and Salome Komaise Archives*, Oxford 2016, K. Czajkowski, B. Eckhardt, *Law, status and agency in the Roman provinces*, P&P 241 (2018) 3–31 and my discussion in Dolganov, *Empire of Law* (n. 1 above) 19–138, 219–296 and 392–431.

[4] For the traditional view that legal papyri from Roman Egypt represent the continuation of Hellenistic and Egyptian traditions, see the works of Wolff (n. 3 above) and H. J. Wolff, *Das Vulgarrechtsproblem und die Papyri*, ZRG 91 (1974) 54–105, U. Yiftach-Firanko, *Law in Graeco-Roman Egypt: Hellenization, fusion, Romanization*, in: R. S. Bagnall, *The Oxford Handbook of Papyrology*, Oxford 2009, 541–560, H. A. Rupprecht, *Recht und Rechtsleben im ptolemäischen und römischen Ägypten. An der Schnittstelle griechischen und ägyptischen Rechts 332 a.C.–212 p.C.*, Mainz 2011 and most recently Alonso, *The Status* (n. 3 above) and *Juristic papyrology and Roman law*, in: P. J. Du Plessis, C. Ando, K. Tuori (eds.), *The Oxford Handbook of Roman Law and Society*, Oxford 2016, 56–69. The evidence for supposed Ptolemaic continuities, an idea that was central to the work of Wolff, requires a thorough reexamination. Contrary to Wolff, the evidence does not support the notion that record-keeping in Roman Egypt primarily

At the same time, the burgeoning field of research on law in the Roman Empire has been drawing our attention to the rise of a vibrant and, in important ways, very Roman legal culture in the provinces. For provincial elites in the High Empire, legal practice in Roman imperial courts was integral to the pursuit of civil careers. For the rest of the population, the Roman court system was one of the most prominent contexts in which provincials experienced, as well as imagined, Roman rule. As indicated by pervasive legal references in literary texts such as Apuleius' *Golden Ass* and the works of Tertullian of Carthage, the doctrines of Roman law were readily familiar to educated elites in the West by the Antonine Age. At the same time, evidence for works of Roman jurisprudence (such as Gaius' *Institutes*) circulating in the East and for eastern provincials traveling to Rome to study Roman law indicates that this legal culture extended to the cities of the East as well.[5]

A question then arises: was Egypt with its metropolis of Alexandria an exception to these broader imperial trends? Or was there a more profound Roman impact on the legal sphere of Egypt (and, by extension, the eastern provinces) than has been generally recognized?

This brings us to the next unsolved problem, which is the place of Roman law in the legal order of the Roman Empire before the *Constitutio Antoniniana.* Since the

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continued the legacy of the Ptolemies, see my discussion in Dolganov, *Empire of Law* (n. 1 above) 155–218. Another received notion is that legal rules emanating from Ptolemaic royal legislation remained in force in the Roman period (Alonso cited above, 392–393). It is highly improbable, to say the least, that references to 'ordinances' (*ta prostetagmena*, a standard term for edicts and other executive acts by Roman officials) in the second, third and fourth centuries CE are references to Ptolemaic legislation.

[5] On the profound Roman impact on legal culture in the provinces, see C. Humfress, *Orthodoxy and the Courts in Late Antiquity*, Oxford 2007 on the Late Empire. A synthetic study of this sort for the earlier centuries is a great desideratum. For regional studies, see J. Fournier, *Sparte et la justice romaine sous le Haut-Empire: à propos de IG V 1, 21*, REG 118 (2005) 117–137 and *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.)*, Paris 2010, and Kantor, *Knowledge* (n. 3 above), *The Law* (n. 3 above) and *Law in Roman Phrygia: rules and jurisdictions*, in: P. Thonemann (ed.), *Roman Phrygia: Culture and Society*, Cambridge 2013, 143–167 on Roman Greece and Asia Minor, Czaikowski, *Localized Law* (n. 3 above) on the Roman Near East and A. Dolganov, Nutricula causidicorum: *legal practitioners in Roman North Africa*, in: K. Czajkowski, B. Eckhardt, M. Strothmann (eds.), *Law in the Roman Provinces,* Oxford, forthcoming, on Roman North Africa. On Roman Egypt, see Kelly, *Petitions* (n. 2 above), A. Z. Bryen, *Violence in Roman Egypt: A Study in Legal Interpretation*, Philadelphia 2013 and *Tradition, precedent, and power in Roman Egypt*, in: S. Procházka, L. Reinfandt, S. Tost (eds.), *Official Epistolography and the Language(s) of Power*, Vienna 2015, 201–218, and Dolganov, *Empire of Law* (n. 1 above). Further on the cultural impact of Roman judicial administration, see A. Z. Bryen, *Judging empire: courts and culture in Rome's eastern provinces*, Law and History Review 30 (2012) 771–811, M. Peachin, *Lawyers in administration*, in: Du Plessis, Ando, Tuori (eds.) (n. 4 above) 164–175, and *In search of a Roman rule of law*, Legal Roots 6 (2017) 19–68. On Roman legal knowledge in the East, see Kantor, *Knowledge* (n. 3 above) and the important study of C. P. Jones, *Juristes romains dans l'orient grecque*, CRAI 151 (2007) 1331–1359, with an appendix of legal experts (*nomikoi*) in Greek inscriptions and papyri.

Republican period, a central domain of Roman provincial rule was dedicated to the administration of justice, whereby Roman governors traveled around their provinces holding assizes and admitting hundreds of litigants into their courts. Before 212 CE, the majority of these litigants were not Roman citizens but had the status of aliens (*peregrini*) under Roman law. How did Roman governors exercise jurisdiction over their predominantly non-Roman subjects and what legal framework did they use?

The traditional view is that the forms of Roman law, insofar as they were exported to the provinces, were in principle restricted to the sphere of Roman citizens. In line with this view, interpreters of the papyrological evidence have tended to exclude *a priori* that Roman law, as we have it from Roman jurisprudential literature, is relevant for our understanding of the 'law of the papyri' where Roman citizens are infrequent before 212 CE. Instead, it has been argued that Roman officials in Egypt systematically upheld local legal forms and applied the 'law(s) of the Egyptians' in matters of private law. This legal category is not attested before the Roman period. Where, exactly, it came from and what its form and substance was has never been elucidated. It must be noted that references to the 'law(s) of the Egyptians' are rare, occurring in approximately 10 out of nearly 1500 surviving petitions and court cases involving Egyptian provincials. This is not sufficient to speak of a body of Graeco-Egyptian private law being systematically applied by Roman officials, nor does it explain the broader legal framework of Roman jurisdiction.[6]

Other evidence points in a very different direction. Sources from as early as the 130s BCE indicate that the jurisdictional framework employed by Roman governors was based on Roman law — specifically, Roman *ius honorarium*, the law and procedure emanating from the jurisdictional activity of magistrates in the city of Rome. This is signalled by the fact that governors issued jurisdictional edicts that closely mirrored (and substantially replicated) the edicts of the Roman praetors. Accordingly, Republican texts such as Cicero's Verrine orations and documents such as the *Tabula Contrebiensis* show governors applying Roman law and procedure to provincial cases.[7] The forms of

[6] For the notion of a "programmatic" Roman policy of applying Graeco-Egyptian customary law to provincials, see Alonso, *The Status* (n. 3 above) 353–354 and Alonso, *Juristic papyrology* (n. 4 above) 61–62. Alonso's claim that, in matters of status, family and succession, "application of Roman law to the peregrines was in general out of the question" (353) is axiomatically stated but never substantiated with evidence. Alonso's main papyrological example (P.Oxy. XLII 3015) implies precisely the opposite, that the lawyers representing the Egyptian plaintiff had invoked Roman legal remedies for disinherited children. For a detailed analysis of this case, see Dolganov, *Empire of Law* (n. 1 above) 419–422.

[7] On Roman *ius honorarium* as a jurisdictional framework of Roman governors, see my extended discussion in Dolganov, *Empire of Law* (n. 1 above) 40–114. This is evident from Cicero's description of his provincial edict in Cilicia (*Ad Att.* 6.1.14), as well as his account of Verres' governorship in Sicily, see *In Verr.* II.1.115–118; II.2.31–45, 54–75, 90–106. On the *Tabula Contrebiensis* of 87 BCE (CIL I^2 2951), where a Roman *proconsul* applies praetorian formulary procedure to a dispute between Celtiberian communities, see J. S. Richardson, *The* Tabula Contrebiensis: *Roman law in Spain in the early first century B.C.*, JRS 73 (1983) 33–41

ius honorarium continued to be employed under the Principate, as reflected by the presence of three copies of a Greek text of the Roman *formula tutelae* among the legal papers of a Nabatean Jewish woman named Babatha in the 130s CE, as well as a contemporary *formula iudicii* attested in an inscription from Spain and references in the writings of the Roman land surveyors (*corpus agrimensorum*) to governors issuing praetorian interdicts in the West.[8] The prominence of the Roman praetor's edict as a subject for juristic commentaries throughout the Principate, as well as the practice of Roman legal writers of interpreting provincial cases from a Roman juridical perspective, further underscore the enduring importance of Roman *ius honorarium* as a framework of Roman provincial jurisdiction.[9]

Enormously important, in this regard, is the evidence for Roman legal learning and expertise in the provinces. In addition to numerous literary and epigraphic testimonia, the surviving papyrological evidence for legal practitioners — including several hundred petitions and transcripts of judicial proceedings — vividly showcases their involvement at all levels of the legal process in Roman provincial courts. At the court of the governor of Egypt (*praefectus Aegypti*), we observe elite Alexandrian orators and legal experts delivering skillful speeches and making sophisticated legal arguments. From numerous documents, it is apparent that these elite figures were well-versed in the concepts and doctrines of Roman law, which they regularly invoked in arguing the cases of Egyptian provincials. The agency of legal practitioners must be regarded as a factor of fundamental importance for the shape and development of the law in the Roman Empire.[10]

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and P. Birks, J. S. Richardson, A. Rodger, *Further aspects of the* Tabula Contrebiensis, JRS 74 (1984) 45–73.

[8] On Babatha's *actio tutelae*, see P.Yadin 28–30 with H. Cotton, *The guardianship of Jesus, son of Babatha: Roman and local law in the province of Arabia*, JRS 83 (1993) 94–108 and D. Nörr, *Prozessuales aus dem Babatha-Archiv*, in: M. Humbert, Y. Thomas (eds.), *Mélanges de droit romain et d'histoire ancienne: hommage à la mémoire de André Magdelain*, Paris 1998, 317–341 and *Zu den Xenokriten (Rekuperatoren) in der römischen Provinzialgerichtsbarkeit*, in: W. Eck (ed.), *Lokale Autonomie und römische Ordnungsmacht in den kaiserzeitlichen Provinzen vom 1. bis 3. Jahrhundert*, Oldenburg 1999, 257–301. For the Spanish *lex rivi Hiberiensis*, see the *editio princeps* of F. Beltrán-Lloris, *An irrigation decree from Roman Spain: the* lex rivi Hiberiensis, JRS 96 (2006) 147–197 with D. Nörr, *Prozessuales (und mehr) in der* Lex rivi Hiberiensis, ZRG 125 (2008) 108–187 and my discussion in Dolganov, *Empire of Law* (n. 1 above) 58–62. On praetorian interdicts in the *corpus agrimensorum*, see B. Campbell, *The writings of the Roman land surveyors. Introduction, translation and commentary*, London 2000, 475–477 (I am grateful to Paul Du Plessis for this reference). For a detailed study of the value of the *corpus agrimensorum* as evidence for legal practice in the provinces, see L. Maganzani, *Gli agrimensori nel processo privato romano*, Milan 1997.

[9] On provincial cases being interpreted by Roman jurists from a Roman legal perspective (notably, in the work of the Antonine jurist Cervidius Scaevola, but these observations can be extended to other legal writers) see R. Taubenschlag, *Opera minora* I, Warsaw 1959, 505–517 and 519–533.

[10] On Roman legal learning in the provinces, see Jones, *Juristes romains* (n. 5 above), Kantor, *Knowledge* (n. 3 above) and *Greek Law* (n. 3 above) and Dolganov, *Empire of Law* (n. 1 above) 392–404. On the papyrological evidence for legal practitioners — including elite orators (*rhētores*) and legal experts (*nomikoi*) — see my detailed analysis in Dolganov, *Empire of Law*

Altogether, the evidence does *not* suggest that 'Roman law' (as we have it from Roman jurisprudential literature) was restricted to the narrow sphere of Roman citizens, who constituted only a small percentage of the imperial population before the *Constitutio Antoniniana*. On the contrary, it appears that Roman law had an integral role in Roman judicial administration in the provinces, already under the Republic and throughout the Principate. This inference has far-reaching implications for our understanding of Roman law *vis à vis* the Roman Empire — not as a localized legal tradition of the city of Rome that was gradually 'exported' to the provinces, but as something that, from early on, functioned and developed as a framework of imperial jurisdiction.[11]

Against the backdrop of these issues, this article will examine a series of courtroom encounters in Roman Egypt, where Egyptian litigants (or, more precisely, the legal practitioners assisting them) engaged in strategic and creative ways with Roman law, the 'law(s) of the Egyptians' and the ideological claims of Roman justice during the century preceding the *Constitutio Antoniniana*. With the help of uniquely detailed information provided by documentary papyri, this article aims to shed light on the mechanisms of jurisdiction and the place of Roman law in the courts of the Roman Empire before the *Constitutio Antoniniana.*

Heraclides: a wronged *patronus*

At some point in the early second century CE, a man named Heraclides freed his slave Damarion for a stipulated sum of money. This transaction was documented in a Greek deed of manumission, where Heraclides confirmed his receipt of the payment and waived any further claims (ll. 3–5).[12] It was now "not permitted that he or anyone else exact anything else" from the freedman, to quote the typical clause from a contemporary manumission document.[13] Without provisions for service after manumission (*paramonē*), the freedman had no further obligations toward his former master.[14] However, a situation subsequently arose in which Heraclides wanted to assert control over his freedman. Possibly, he had requested a favor from Damarion, who refused it, or perhaps he was being pressured or sued by Damarion himself. It then occurred to Heraclides, or was suggested to him by a lawyer, that he should petition the Roman governor, who

(n. 1 above) 297–435 and 451–482. An orator's reference to the Roman notion of universal succession in P.Flor. I 61 ll. 20–22 is one of numerous examples where legal practitioners invoke Roman legal doctrine. On the evidence for legal practitioners in Africa, see Dolganov, Nutricula causidicorum (n. 5 above).

[11] The importance of Roman *ius honorarium* as a core framework of Roman jurisdiction under the Principate is discussed at length in Dolganov, *Empire of Law* (n. 1 above) 40–151. See the remarks of K. Hackl, *Der Zivilprozeß des frühen Prinzipats in den Provinzen*, ZRG 114 (1997) 141–159, who steps away from the traditional ideas presented in M. Kaser, *Das römische Zivilprozessrecht*, Munich 1996 (edition revised and reworked by K. Hackl).

[12] See P.Oxy. IV 706 (114–117 CE) with Mélèze-Modrzejewski, *La loi* (n. 3 above) 386–389, Wolff, *Das Recht* (n. 3 above) 118–119 and G. Purpura, *Diritti di patronato e* astikoi nomoi *in P.Oxy. IV 706*, in: *Iuris vincula. Studi in onore di Mario Talamanca* vol. 6, Naples 2001, 465–483.

[13] See P.Oxy. XXXVIII 2843 (86 CE) ll. 21–25.

[14] On *paramonē* in papyri, see B. Adams, Paramonē *und verwandte Texte*, Berlin 1964 and H. A. Rupprecht, *Kleine Einführung in die Papyruskunde*, Darmstadt 1994, 126–127.

would be sympathetic to his problem because Roman freedmen had extensive obligations toward their former masters and incurred heavy penalties for improper behavior. And indeed, the Roman prefect of Egypt granted Heraclides a hearing where he ruled as follows: "since the laws (*nomoi*) of the Egyptians have no provision regarding [the duties of freedmen?] and the power (*exousia*) of manumittors... in line with the civic laws (*astikoi nomoi*) I order Damarion [to obey?] Heraclides his *patronus*... in accordance with the law (*kata ton nomon*)." To Damarion he stated that, if Heraclides complained about him again, he would have him beaten with rods.

This fragmentary bit of papyrus offers a revealing snapshot of Roman justice in action. Having been admitted into the audience of the highest Roman official, Heraclides presented what was by Roman standards a major social injustice, which had no remedy in the local law. Impressed by the fact that local manumission practices did not impose obligations on freedmen toward their former masters, the prefect applied the *astikoi nomoi* — literally, 'the laws of the city/cities.' This phrase, a *hapax legomenon* in the papyrological evidence, has been taken by some scholars as a Greek rendition of Roman *ius civile* (i.e. 'the laws of the City'), while others have preferred to associate *astikoi* with *astoi* ('citizens'), the juridical status of the citizens of Greek *poleis* in Egypt under Roman rule. Deciding between these alternatives may be less crucial than appears at first sight. Looking into the fiscal rulebook (*gnōmōn*) of the Roman procurator of the *Idios Logos* (BGU V 1210), we observe that some of the rules governing patron/freedman relations among Roman citizens were extended to Greek *astoi*. This suggests that the Romans sought to import their institution of *patronatus* into the law of the Greek *poleis*. Thus, in the case of Heraclides, the prefect was either directly invoking Roman *ius civile* or invoking it indirectly via "the laws of *astoi*," i.e. the legal rules pertaining to citizens of the Greek *poleis*, which were on this point influenced by Roman law. Either way, from the perspective of the Roman governor, the lack of *paramonē* among Egyptian provincials was not going to stand in the way of a patron's basic social right to expect obligations and services from his freedman.[15]

The prefect's application of the Roman law of manumission, overriding the provisions of a Greek manumission contract, illustrates the hegemonic character of Roman jurisdiction. In the provinces, Roman governors administered justice by means of their exclusive formal powers of *imperium* — the power to command and coerce, which underpinned

[15] On Roman manumission, see H. Mouritsen, *The Freedman in the Roman World*, Cambridge 2011, 36–66 and 120–206. Mouritsen follows R. Taubenschlag, *The law of Graeco-Roman Egypt in the light of the papyri 332 B. C.–640 A. D.*, Warsaw ^{2}1955, 101 in taking *astikoi nomoi* to mean Alexandrian law. On *astikoi nomoi* as a reference to Roman *ius civile*, see the works quotes in n. 12 above. For the influence of Roman manumission on the rules pertaining to Greek *astoi*, see BGU V 1210 chapters 9, 10, 14, 15 and 19–21 with my discussion in A. Dolganov, *Imperialism and social engineering: Augustan social legislation in the* Gnomon *of the* Idios Logos, in: T. Kruse (ed.), *Dienst nach Vorschrift: Vergleichende Studien zum „Gnomon des Idios-Logos". 3. Internationales Wiener Kolloquium zur Antiken Rechtsgeschichte*, Vienna forthcoming. This point is attractive because the 'laws of *astoi*' then become a parallel to the 'law(s) of the Egyptians' as a Roman legal category, see my discussion below.

the governor's criminal jurisdiction — and *iurisdictio*, the governor's power of civil jurisdiction, literally to 'pronounce the law.' Within his province, a Roman governor had an exclusive right to issue general legislation (*ius edicendi*) and possessed supreme judicial authority, which was unappealable except before the emperor. In line with the Roman concept of *iurisdictio*, the role of the governor was to define the legal issue of the case (*ius dicere*) and establish by whom it would be adjudicated — by a judge or jury, by another official or by the governor himself.[16] If the governor chose to adjudicate the case himself, his ruling constituted an authoritative statement on a particular legal scenario that could be cited as a judicial precedent in similar cases. Accordingly, papyrological documentation shows that the judicial rulings of governors were actively copied and collected by lawyers, who cited them as precedents in subsequent court cases. In fact, the idiosyncratic, slanted hand of the papyrus on which the hearing of Heraclides is attested appears to be identical to the hand of another document containing the draft of a court speech, which suggests that the case of Heraclides, too, had been anthologized by a lawyer.[17]

As noted above, the jurisdiction of Roman governors employed the legal and procedural forms of Roman *ius honorarium*, directly reflected by the fact that the jurisdictional edicts of governors were modelled on the edicts of the urban praetors.[18] This is vividly illustrated by a Republican inscription from Spain in the 80s BCE, where a Roman governor Flaccus issues a Latin *formula* (definition of the issue to be adjudicated) and appoints judges in a conflict over water rights between two Celtiberian communities. In applying Roman law and legal procedure to this provincial dispute, Flaccus was clearly responding to a request for adjudication from the communities themselves. No doubt attracted by the prospect of having their claims protected by a Roman *proconsul* and his army, the victorious group took care to have the *formula* and judgment inscribed in Latin.[19] We are told by the second-century legal writer Gaius that a fiction of Roman citizenship enabled Roman officials to make Roman legal actions available to non-citizens (*peregrini*): "a fiction of citizenship is made for a *peregrinus*, if he sues or is sued on a matter for which there exists a Roman legal action, if it is proper to extend this action to a *peregrinus*." Gaius' examples are the legal actions for theft and damages. Thus, through the device of legal fiction, Roman lawsuits and legal remedies could be

[16] On the jurisdictional activity of Roman governors, see G. P. Burton, *Proconsuls, assizes and the administration of justice under the empire*, JRS 65 (1975) 92–106 and Fournier, *Entre tutelle romaine* (n. 5 above) 41–98. On the governor's jurisdictional powers, see Dolganov, *Empire of Law* (n. 1 above) 62–67, on judicial procedure at the court of the governor, on 40–54 and 115–137.

[17] See SB XVI 12495 (2c CE). For some examples of lawyers' collections of legal cases, see R. Katzoff, *Precedents in the courts of Roman Egypt*, ZRG 89 (1972) 256–282, and *Sources of law in Roman Egypt. The role of the prefect*, ANRW II,13 (1980) 807–844 and Bryen, *Tradition* (n. 5 above).

[18] See above nn. 7–10 and my discussion in Dolganov, *Empire of Law* (n. 1 above) 40–114.

[19] On the *tabula Contrebiensis* (CIL I^2 2951), see n. 7 above.

extended to provincials.[20] Elsewhere in the Roman legal sources, we find a statement of the Hadrianic legal writer Salvius Iulianus that the law of the city of Rome (*ius civile*) served as the ultimate point of reference when statutory regulations, custom and precedent were lacking on a given issue. Both passages imply that Roman *ius civile* as a body of knowledge was available in the provinces — similarly, a Flavian *lex municipalis* from Spain states that all matters of private law not mentioned in the *lex* are to be handled according to Roman *ius civile* — and that in principle Roman *ius civile* could be invoked when deemed appropriate. Both Iulianus and Gaius seem to have envisioned that this would take place at the discretion of the official.[21]

Thus, when the prefect of Egypt applied Roman legal rules to the case of a provincial *patronus* complaining about the injustice of local manumission practices, he was exemplifying a more widely attested practice of Roman governors.

The 'law(s) (*nomos* or *nomoi*) of the Egyptians', mentioned here and in a small number of other papyri, is unlikely to reflect the indigenous law of a specific ethnic or social group. Aigyptios was a Roman blanket-category for the entire hinterland population of Egypt, beyond its three (later four) Greek cities. While Roman administrators did distinguish between Greeks and Demotic-speaking Egyptians residing in the hinterland (*chōra*), in strict juridical terms both groups had the status of *Aigyptioi.* Consequently, the 'law(s) of the Egyptians' encompassed the practices of a mixed hinterland population, some of which (such as Demotic-style alimentary marriage contracts) still belonged to distinct cultural *milieux* in the second century. To speak of the 'law(s) of the Egyptians' as 'laws' also requires some qualification. Because the 'Egyptians' — the undifferentiated population of the *chōra* — were not a political community with its own legal institutions and sphere of local jurisdiction, the 'law(s) of the Egyptians' were entirely dependent on their recognition by Roman courts.[22] It is relevant that, from a Roman

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[20] On the fiction of Roman citizenship, see Gaius, *Inst.* 4.37 with C. Ando, *Law, Language and Empire in the Roman Tradition*, Philadelphia 2011, 1–36 and 114–131 and J. Platschek, *Die Klageformel gegen den peregrinen Dieb in Gai. 4,37. Zugleich zum Aufbau der* actio furti, ZRG 131 (2014) 395–402. Ando is surely right to emphasize this as a key mechanism of Roman jurisdiction over non-citizens.

[21] The passage from Iulianus is *Dig.* 1.3.32pr. (Iulianus, 84 *Dig.*): *De quibus causis scriptis legibus non utimur, id custodiri oportet, quod moribus et consuetudine inductum est: et si qua in re hoc deficeret, tunc quod proximum et consequens ei est: si nec id quidem appareat, tunc ius, quo urbs Roma utitur, servari oportet*. The clause on Roman *ius civile* in the Flavian *lex Irnitana* occurs in chapter 93, see J. Gonzalez, M. H. C. Crawford, *The* Lex Irnitana*: a new copy of the Flavian municipal law*, JRS 76 (1986) 198 and 237. Interestingly, although Wolff was opposed to the idea that Roman jurisprudential literature could be brought into productive dialogue with legal papyri, it was nevertheless clear to him that Roman law was occasionally employed by Roman officials, see Wolff, *Das Recht* (n. 3 above) 116–122.

[22] On *Aigyptios* as a blanket-category for the population of the *chōra*, see Yiftach-Firanko, *Law* (n. 4 above) 550–553 and my discussion in Dolganov, *Imperialism* (n. 15 above). On the 'law(s) of the Egyptians', see Mélèze-Modrzejewski, *La règle* (n. 3 above), and *La loi* (n. 3 above), whose ideas are taken up by H. J. Wolff, *Das Problem der Konkurrenz von Rechtsordnungen in der Antike*, Heidelberg 1979, 66–73 and *Das Recht* (n. 3 above) 117–122. For Mélèze-Modrzejewski, Ptolemaic legislation and local traditions were regarded by the

perspective, the term 'Egyptian' had a strong pejorative connotation as a label for a provincial population whose customs the Romans regarded as alien, inferior, and occasionally downright repulsive.[23]

We know that the 'law(s) of the Egyptians' existed in written form, but their precise nature and shape is unclear.[24] It has been suggested that the '*nomos* of the Egyptians' was a continuation of the '*nomos* of the *chōra*', a phrase attested in Ptolemaic and early Roman documents.[25] It is striking, in this regard, that Demotic casebooks from the Ptolemaic period were still being copied in Greek and Demotic into the second century CE.[26] Some scholars have argued that the 'law(s) of the Egyptians' consisted of Greek legal material such as Ptolemaic ordinances, which are still attested in the second century CE, and compilations of Greek private law, for which there is however no written evidence.[27] Other scholars have suggested that the 'law(s) of the Egyptians' had the shape of a manual of precepts of mixed origin for use in Roman courts.[28] That an entity called the 'law(s) of the Egyptians' should emerge under Roman rule is in line with the well-known tendency of Roman administrative practice to create space for local legal

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Romans as a kind of customary law (*consuetudo* or *mos regionis*) that was by nature subordinate to the Roman legal order. Building on this, Wolff emphasized that, from the Roman perspective, local traditions were formally non-binding but acquired authority by virtue of being upheld by Roman courts. Alonso, *The Status* (n. 3 above) 401–404 argues that, from the Roman perspective, local traditions had an inherent legal authority.

[23] On Rome's anti-Egyptian prejudices, see Verg. *Aen*. 8,675–728, Juv. *Sat*. 15, P.Giss. 40 col. ii lines 16–30 and *Pass. Perp*. 10,6–7 with B. D. Shaw, *The passion of Perpetua*, P&P 139 (1993) 28 n. 62: "the choice of the 'foul Egyptian' is almost always misinterpreted. It is a simple reflection of racism. The Egyptians were the most despised, hated and reviled ethnic group in the Roman world — therefore an appropriate choice for a dark and satanic thing." See also P.Oxy. XIV 1681 (3c), a private letter that equates Egyptians with barbarians, and P.Ups.Frid. 10 (3c), a private letter that seems to state that Egyptians are stupid. In SB XXIV 16252 (163 CE), a Roman veteran expresses outrage that he, a Roman citizen, has been denied access to his property by a local official, a mere Egyptian.

[24] The written form of the 'law(s) of the Egyptians' is indicated by P.Oxy. II 237 col. vii ll. 33–36, where the *nomos* is read out in court.

[25] See Taubenschlag, *The Law* (n. 15 above) 1–8. This argument is taken up again by J. Platschek, *Nochmals zur Petition der Dionysia (P.Oxy. II 237)*, JJP 45 (2015) 148–149.

[26] See P.Berl.Dem.Lehrbuch (3c BCE), P.Mattha (3c BCE), P.Carlsb. 236 (2c CE), P.Carlsb. 628 (mid-Ptolemaic), P.Carlsb. 301 (late Ptolemaic), P. Zauzich 41 (1c BCE) and the Greek translation of a Demotic handbook (which has been identified with P.Mattha) in P.Oxy. XLVI 3285 (2c CE).

[27] On Ptolemaic ordinances in Roman-period papyri, see M. Amelotti, *Leggi greche in diritto romano*, MEP 4 (2001) 11–24 and L. Migliardi Zingale, *Ancora sui* prostagmata basileon *nella provincia romana d'Egitto*, MEP 4 (2001) 495–508. Among these are P.Oxy. LXXVI 7096 (early 1c. CE) and P.Fay. 22 = M.Chr. 291 (1c. CE), which contain *diatagmata* concerning marriage. For the hypothesis that the "law(s) of the Egyptians" consisted of Greek private law, see Mélèze-Modrzejewski, *La loi* (n. 3 above) and *What is Hellenistic law? The documents of the Judaean Desert in the light of the papyri from Egypt*, in: R. Katzoff, D. M. Schaps (eds.), *Law in the documents of the Judaean desert*, Leiden, Boston 2005, 7–21.

[28] See Yiftach-Firanko, *Law* (n. 4 above) 551.

traditions in the provinces, already reflected by the Roman policy of referring cases "to the local laws" (*reicere ad suas leges*) in Sicily in the age of Cicero.[29]

For an imperial power to assert hegemony over the legal sphere and designate a sphere of local custom are quintessential acts of imperialism.[30] It has been demonstrated in modern imperial contexts that 'indigenous law' tends to be a colonial construct created through the mutual agency of imperial authorities and local elites. In Roman Egypt, where the 'law(s) of the Egyptians' were from the outset an artificial blanket-category encompassing all inhabitants of the *chōra*, a similar phenomenon may have taken place.[31] In a number of cases, we observe local legal experts (*nomikoi*) with Roman *nomina* and Greek *cognomina* being called upon to give authoritative opinions on the 'law(s) of the Egyptians'. The names and titles of these experts indicate that they were officeholders at Alexandria who had received Roman citizenship through imperial grants. The fact that they are singled out by name and reappear at multiple assizes of the prefect suggests that they were a small and elite group who belonged to the entourage of the prefect and traveled with him to the *conventus*. The nature of their expertise in the laws of the land is obscure, but it is noteworthy that their pronouncements tend to interpret the 'law(s) of the Egyptians' in line with Roman legal concepts.[32]

The evidence for the 'law(s) of the Egyptians' generally displays signs of *interpretatio Romana.* For instance, marriage between Egyptian provincials without a written contract (the so-called 'unwritten marriage') was understood to give fathers legal power over

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[29] See Cic. *Verr.* 2.2.32, 59–60 and 90.

[30] See for example the preservation of 'indigenous' family law by British imperial authorities in India, see M. Galanter, *Remarks on family law and social change in India*, in: D. C. Buxbaum (ed.), *Chinese Family Law in Historical and Comparative Perspective*, Seattle 1978, 492–497, and *Law: judicial and legal systems of India*, in: A. T. Embree (ed.), *The Encyclopedia of Asian History*, New York 1988, 411–414.

[31] On the creation of a sphere of custom as a form of imperialism, see P. Fitzpatrick, *Custom as Imperialism*, in: J. M. Abun-Nasr, *Law, Society and National Identity in Africa*, Hamburg 1991, 15–30. On indigenous law as the product of colonialism, see M. Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*, Cambridge 1985 (with the useful review essay by S. E. Merry, *Law and colonialism (review essay)*, Law and Society Review 25 [1991] 889–922), S. F. Moore, *Treating law as knowledge: telling colonial officers what to say to Africans about running 'their own' native courts*, Law and Society Review 26 (1992) 11–46 and T. O. Ranger, *The invention of tradition in colonial Africa*, in: E. J. Hobsbawm, T. O. Ranger (eds.), *The Invention of Tradition*, Cambridge 1983, 211–262 on colonial Africa. See also the remarks of P. Fitzpatrick, *Traditionalism and traditional law*, Journal of African Law 28 (1984) 20–27 and F. von Benda-Beckmann, *Law out of context: a comment on the creation of traditional law discussion*, Journal of African Law 28 (1984) 28–33 on 'traditional' law. On the codification of local tradition as a bilateral effort of imperial authorities and local elites, see B. S. Cohn, *Colonialism and Its Forms of Knowledge: The British in India*, Princeton 1996, 57–76 on British India. On custom as an ancient and modern imperial discourse, see C. Humfress, *Law and Custom under Rome*, in: A. Rio (ed.), *Law, Custom and Justice in Late Antiquity and the Early Middle Ages*, London 2011, 23–49.

[32] On *nomikoi* in papyri, with names such as Claudius Artemidoros and Ulpius Dioskourides, see the prosopography assembled in Jones, *Juristes romains* (n. 5 above) and my discussion in Dolganov, *Empire of Law* (n. 1 above), 405–435 and 477–482 with an updated prosopography.

their children in terms analogous to *patria potestas* in Roman law. The logic seems to have been that, since the wife had not brought property into the marriage, the children did not own assets independently of their father. Accordingly, analogous to a Roman child *in potestate*, the child of an 'unwritten' marriage could not make a will, while a daughter's dowry and personal acquisitions formally belonged to her father. On the other hand, a marriage with a written contract (the so-called 'written marriage') did not give rise to this sort of paternal power, presumably because the children had independent claims to the property of their mothers when they came of age.[33] In one case (to be examined below), a legal expert (*nomikos*) adduces an additional interpretation: that the formal act of giving a daughter away in marriage (*ekdosis*) — implicitly, with a dowry and a marriage contract — suspended the father's legal power as if she had not been born into an 'unwritten' marriage after all. The influence of Roman legal concepts on the rules governing Egyptian marital arrangements suggests that, whatever the primary ingredients of this body of knowledge (translations of Demotic casebooks, Ptolemaic legislation, Greek private law, local informants), the 'law(s) of the Egyptians' took shape in Roman courts and were accordingly cited with reference to judicial rulings by Roman officials.[34]

It is noteworthy that virtually all references to the 'law(s) of the Egyptians' pertain to the sphere of the family (marriage, testation, paternal power). This is curious, in view of the fact that the Roman state recognized a variety of local legal forms, including numerous forms of Greek contracts, that were rarely if ever singled out by the labels 'Greek' or 'Egyptian'. Evidently, however, a marked juridical space was created for 'Egyptian' family law.[35]

Let us look again at the case of Heraclides. It is remarkable that a private conflict of this sort was adjudicated by the Roman governor at all. In view of the efforts taken by Roman governors to limit the flow of litigation to their courts, why was the prefect sorting out a dispute between an Egyptian provincial and his freedman?[36] It is possible

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[33] On 'written' and 'unwritten' marriage, see H. J. Wolff, *Written and unwritten marriages in Hellenistic and postclassical Roman Law*, Haverford 1939, and U. Yiftach-Firanko, *Marriage and marital arrangements: a history of the Greek marriage document in Egypt: 4th century BCE–4th century CE*, Munich 2003, 81–104.

[34] In this respect, the 'law(s) of the Egyptians' can be compared to the evolution of 'Hindu law' — compiled on British initiative from classical Hindu legal texts and the testimony of local informants — into an increasingly Anglicized case law in British courts, see Cohn, *Colonialism* (n. 31 above) 57–76 and Galanter, *Law* (n. 30 above). On the displacement of traditional law that thereby resulted, see M. Galanter, *The displacement of traditional law in modern India*, Journal of Social Issues 24 (1968) 65–91.

[35] On the Roman recognition of the legal force of written contracts, no matter their form, see F. Pringsheim, Id quod actum est, ZRG 78 (1961) 1–91 and U. Babusiaux, Id quod actum est*: Zur Ermittlung des Parteiwillens im klassischen römischen Zivilprozess*, Munich 2006. Generally, on the capacity of Roman law to assimilate provincial legal forms and practices through mechanisms developed within Roman jurisprudence, see Ando, *Law* (n. 20 above).

[36] For Roman governors proclaiming the limits of their jurisdiction at first instance, see the edict of the prefect Petronius Mamertinus in SB XII 10929 (discussed below) with A. Jördens, *Eine kaiserliche Konstitution zu den Rechtsprechungskompetenzen der Statthalter*, Chiron 41

that this sort of conflict had frequently come to the notice of the prefect and was being singled out for an authoritative decision. Another explanation is offered by an intriguing clause in an edict of the prefect Petronius Mamertinus from the reign of Hadrian, which enumerates categories of cases that the prefect would examine at first instance:[37]

vac. ὁ ἡγεμὼν διαγνώσεται

col. ii
περὶ φόνου
περὶ λῃστειῶν
περὶ φαρμακείας
περὶ πλαγιαρίας
περὶ ἀπελατῶν
περὶ βίας σὺν ὅ-
πλοις γεγενημένης
π(ερὶ) πλαστογραφίας
καὶ ῥᾳδιουργίας
[π(ερὶ) ἀ]νῃρημένων
[δι]αθηκῶν

col. iii
π(ερὶ) ὕβρεως ἀνηκέστου
π(ερὶ) ὧν ἐὰν μέμφωνται ο[ἱ]
ἐλευθερώσαντες ἀπε-
λευθέρους ἢ γονεῖς παῖδ(ας)
οἱ λοιποὶ οὐκ ἄλλως
ὑπ᾽ ἐμοῦ ἀκουσθήσονται
εἰ μὴ ἐπικαλεσάμενοι
καὶ παραβόλιον θέντες
τὸ τ̣έ̣[ταρτον] μέρος ἐκ τιμή-
μα[τος περὶ(?)] οὗ̣ ἐδικάσθη

"The prefect will hear cases of homicide (φόνος = *homicidium*), brigandage (λῃστεία *latrocinium*), poisoning (φαρμακεία = *veneficium*), kidnapping (πλαγιαρία = *plagium*), rustling of livestock (ἀπεσλαία = *abigeatus*), armed assault (βία σὺν ὅπλοις = *vis armata*), counterfeit and forgery (πλαστογραφία = *falsum*) and fraud (ῥᾳδιουργία = *fraus*), the destruction of testaments (ἀνῃρημέναι διαθῆκαι = *testamenta rescissa*), grave personal injury (ὕβρις ἀνήκεστος = *de iniuria atroci*), and all accusations that patrons bring against their freedmen or parents against their children. To all others I will not grant a hearing unless they have lodged appeals and have made a deposit of one-fourth of the estimated value of the case."

In addition to a series of public crimes, the prefect would hear "all complaints of patrons against their freedmen or parents against their children." This clause reflects the Roman legal concept of *familia*, a juridical construct of a family unit, where children and freedmen (*liberi* and *liberti*) were the two main categories of dependents of the *paterfamilias*, the head of the *familia*. A curious shift to the first person in the final sentence of the text indicates that Mamertinus is citing from a document — possibly, his own jurisdictional edict (the *edictum provinciale*, modelled on the Roman praetor's edict) or a handbook of instructions (*liber mandatorum*) issued by the emperor. Evidently,

(2011) 327–356 and the edict of an Antonine governor of Achaia in IG V 1, 21 with Fournier, *Sparte* (n. 5 above). Apparently, second-century prefects of Egypt regularly made pronouncements restricting the flow of private cases, see P.Oxy. II 237 col. vi, 5–8. Also worth mentioning is a first-century inscription from Cos, where Domitius Corbulo, as governor of Asia, stipulates a very large deposit of 2,500 *denarii* for appeals lodged at his court, see IGRR IV 1044 = AE 1974, 629, with G. P. Burton, *The issuing of* mandata *to proconsuls and a new inscription from Cos*, ZPE 21 (1976) 63–68.

[37] For the text, see SB XII 10929 (133–137 CE) col. ii–iii with Jördens, *Eine kaiserliche Konstitution* (n. 36 above).

it was part of the Roman governor's administrative mandate to examine all cases pertaining to the authority of parents and patrons over their dependents. Mamertinus emphasizes that these were the *only* private cases that he would hear at first instance.[38]

This striking clause, in which the authority of the *paterfamilias* is singled out for the governor's attention on par with violent crimes, is likely to reflect regulations emanating from the social legislation of the Augustan Age. A powerful innovation of the Augustan political regime was the idea that one could manipulate the fabric of society through the institutions of the juridical *familia*. Accordingly, Augustan laws governing marriage and manumission sought to control access to Roman citizenship and regulate the composition of the Roman elite classes (*ordines*) through restrictions on marriage and testation.[39] Augustan legislation also created a new legal action that enabled patrons to sue freedmen for "ingratitude," broadly conceived to include breach of obligation, verbal insult and physical assault. The fact that the authority of parents and patrons is typically discussed in tandem in the Roman legal sources (including a rubric in the Digest dedicated to "the respect (*obsequium*) owed to parents and patrons") suggests that analogous remedies were created for parents against undutiful children. The juridical definition of moral virtues such as *obsequium* and *pietas* resonates well with what we know about Augustan social legislation.[40]

The Augustan reforms left a powerful legacy for the ordering of society through the juridical *familia*. An administrative handbook (*gnōmōn*) of a fiscal procurator in Egypt illustrates how restrictions on marriage and testation were instrumental for the stratification of the provincial population into Romans, Greek *astoi* and *Aigyptioi*. The fact that the Roman state acted as an arbiter of family affairs was a potent message of imperial power: it was customary for Egyptian provincials to draft their marriage contracts at the feet of statues of the Roman empress, the universal patroness of marriage, while the

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[38] On the edict of Mamertinus as a citation from the *edictum provinciale* see G. Purpura, Katholikon diatagma. *Sulla denominazione dell'editto provinciale egizio*, in: *Studi in onore di Arnaldo Biscardi* vol. 2, Milan 1982, 507–522 and *Diritti* (n. 12 above) n. 13 and my discussion in Dolganov, *Empire of Law* (n. 1 above) 97–114. R. Katzoff, *Law as* katholikos, in: R. S. Bagnall, W. V. Harris (eds.), *Studies in Roman law in memory of A. Arthur Schiller*, Leiden 1986, 119–126 argues for imperial *mandata* (his suggestion of an imperial edict is less convincing). On imperial *mandata*, see V. Marotta, *Mandata Principum*, Turin 1991.

[39] On Augustan social legislation, see A. Wallace-Hadrill, *Family and inheritance in the Augustan marriage laws*, in: J. Edmondson, *Augustus: His Contributions to the Development of the Roman State in the Early Imperial Period*, Edinburgh 1988, 250–275 and T. A. J. McGinn, *Prostitution, sexuality, and the law in ancient Rome*, Oxford 1998. For a social-engineering perspective on the Augustan marriage laws, see D. Nörr, *The matrimonial legislation of Augustus: an early instance of social engineering*, Irish Jurist 16 (1981) 350–364 and my discussion in Dolganov, *Imperialism* (n. 15 above).

[40] Jördens, *Eine kaiserliche Konstitution* (n. 36 above) does not comment on the possible origins of the clause regarding patrons and parents; neither does Fournier, *Entre tutelle romaine* (n. 5 above) 278–280. On the Augustan origins of the *actio ingrati* against freedmen, see J. F. Gardner, *Being a Roman citizen*, London 1993, 39–51, who draws only a tentative link with the father's remedies against undutiful children (66–68); the edict of Mamertinus is not taken into account. For the rubric *de obsequiis parentibus et patronis praestandis*, see *Dig.* 37.15.

wills of Roman citizens were deposited in temples of the imperial cult. Thus, the family was both central to the juridical framework of the empire and occupied a central place in the ideology of imperial rule.[41] The importance of the *familia* as a constitutive mechanism of the Roman social order in the provinces alerts us to the significance of occasions like the case of Heraclides, where rules pertaining to the Roman *familia* were applied to Egyptian provincials.[42] Through his ruling, the Roman prefect conferred on Heraclides an important legal and social power of the Roman *paterfamilias* over his freed slaves — he even pointedly used the Latin term *patronus*. In the performative context of a Roman tribunal, this was a triumph of Roman equity over retrograde 'Egyptian' practices. To have Roman standards applied to his case is, of course, precisely why Heraclides had petitioned the Roman prefect in the first place.[43]

It is through judicial encounters like these, where local practices and traditions were packaged in legal arguments and brought to the courts of Roman officials, that the Roman legal order of Egypt (including the 'law(s) of the Egyptians') evolved and took shape, as court judgments were recorded, copied and circulated as authoritative precedents. As noted above, this is almost certainly why the case of Heraclides appears on our papyrus.[44]

Chaeremon: a wronged *paterfamilias*

Approximately seven decades later in 186 CE, a man named Chaeremon, a member of the municipal elite of Oxyrhynchus, petitioned the prefect with the following complaint:

Χαιρήμων Φανίου γυμνασιαρχήσας τῆς Ὀξυρυγχειτῶν πόλεως· τῆς θυγατρός μου Διονυσίας, ἡγεμὼν κύριε, πολλὰ εἰς ἐμὲ ἀσεβῶς καὶ παρανόμως πραξάσης κατὰ γνώμην Ὡρίωνος Ἀπίωνος ἀνδρὸς αὐτῆς, ἀνέδωκα ἐπιστολὴν Λογγαίῳ Ῥούφῳ τῷ λαμπροτάτῳ, ἀξιῶν τότε ἃ προσήνεγκα αὐτῇ ἀνακομίσασθαι κατὰ τοὺς νόμους, οἰόμενος ἐκ του παύσασθαι αὐτὴν

[41] On Augustan social legislation in the papyrological evidence, including the *Gnōmōn* of the *Idios Logos* (BGU V 1210 and P.Oxy. XLII 3014), see Dolganov, *Imperialism* (n. 15 above). On marriage ceremonies before statues of empresses, see M. B. Flory, Sic exempla parantur: *Livia's shrine to* Concordia *and the* Porticus Liviae, Historia 33 (1984) 319–320. In Egypt, this practice is attested in a dozen papyri, including one Demotic-style marriage contract (*syngraphē trophitis*), see P.Ups.Frid. 2 (59–60 CE). On the deposition and opening of Roman wills in *Kaisareia*, see C. Kunderewicz, *Quelques remarques sur le rôle des Καισαρεῖα dans la vie juridique de l'Égypte romaine*, JJP 13 (1961) 123–129, S. Strassi, hoi ek tou Kaisareiou. *Diffusione e valore simbolico dei Kaisareia nell'Egitto romano*, APF 52 (2006) 218–243 and M. Nowak, *Wills in the Roman Empire: A Documentary Approach*, Warsaw 2015, 77–78.

[42] On the *familia* as instrument of social engineering, see Dolganov, *Imperialism* (n. 15 above). Similarly embedded in a discourse of imperialism was the preservation of 'indigenous' family law by British imperial authorities in India, see Galanter, *Remarks* (n. 30 above) and *Law* (n. 30 above).

[43] In fact, the prefect's decision may have been spelled out for him by imperial *mandata*, which prescribed a series of punishments to freedmen according to their offenses, see for example *Dig*. 37.14.7.1 (Modestinus *l.s. de manumiss*.). Nevertheless, the ruling was enacted as a spontaneous exercise of Roman justice.

[44] The most frequent context for excerpts from court records is the arsenal of legal practitioners, see for instance P.Oxy. XLII 3016 (148 CE), written in a calligraphic book-hand that suggests a lawyer's reference collection. On argument from judicial precedent in papyri, see the literature cited in n. 16.

τῶν εἰς ἐμὲ ὕβρεων· καὶ ἔγραψεν τῷ τοῦ νομοῦ στρατηγῷ (ἔτους) κε, Παχὼν κζ, ὑποτάξας τῶν ὑπ᾽ ἐμοῦ γραφέντων τὰ ἀντίγραφα ὅπως ἐντυχὼν οἷ πᾳρεθέμην φροντίσῃ τὰ ἀκόλουθα πρᾶξαι. ἐπεὶ οὖν, κύριε, ἐπιμένει τῇ αὐτῇ ἀπονοίᾳ ἐνυβρίζων μοι, ἀξιῶ τοῦ νόμου διδόντος μοι ἐξουσίαν οὗ τὸ μέρος ὑπέταξα ἵν᾽ εἰδῇς ἀπάγοντι αὐτὴν ἄκουσαν ἐκ τῆς τοῦ ἀνδρὸς οἰκίας μηδεμίαν μοι βίαν γείνεσθαι ὑφ᾽ οὗτινος τῶν τοῦ Ὡρίωνος ἢ αὐτοῦ τοῦ Ὡρίωνος συνεχῶς ἐπαγγελλομένου. ἀπὸ δὲ πλειόνων τῶ[ν] πᾳρὶ το[ύ]των πραχθέντων ὀλίγα σοι ὑπέταξα ἵν᾽ εἰδῇς. (ἔτους) κϛ, Παχών.

"Chaeremon, son of Phanias, former gymnasiarch of the city of Oxyrhynchus. Since, my Lord Prefect, my daughter Dionysia had on many occasions acted impiously (*asebōs*) and illegally (*paranomōs*) against me at the instigation of her husband Horion, son of Apion, I submitted a letter to his Highness Longaeus Rufus, in which I claimed to recover in accordance with the laws (*kata tous nomous*) the property that I had given to her as a gift upon her marriage (*prosēnegka*), thinking that she would thereby be persuaded to stop her outrages (*hybreis*) against me. The prefect then wrote to the *stratēgos* of the nome in the 25th year on the 27th of Pachon, attaching copies of the documents I had submitted, and instructed him to examine my case and act accordingly. Now, my Lord, since she persists in her mindless behavior (*aponoia*) in harrassing me further, and since the law (*nomos*) — the relevant portion (*meros*) of which I have attached for your information — accords to me the power (*exousia*) to take her from her husband's house against her will, I request that no violence (*bia*) be inflicted on me by any of Horion's men or by Horion himself, who is constantly threatening me. Of the many previous cases that have dealt with this problem, I have appended a selection for your information."[45]

This carefully formulated petition used a series of key words to attract the prefect's attention. Chaeremon had experienced moral injury (*hybris*, the standard Greek term for the Roman legal concept of *iniuria*) from his daughter, as well as threats of physical violence (*bia*, the standard Greek term for the Roman legal concept of *vis*) from his son-in-law. Allegations of violence were a classic strategy to engage the social and moral duty of Roman officials (as persecutors of crime and protectors of the physical inviolability of freeborn persons) to react. As we discover in the edict of Mamertinus, Chaeremon's case was also eligible for privileged consideration by the governor as a complaint of a father against his daughter. Thus, Chaeremon provided the prefect with numerous reasons — his elite status, the threat of violence, his grievances against his daughter — to examine his case. And indeed, the prefect Faustinianus granted Chaeremon a hearing and wrote to the district governor (*stratēgos*) of the Oxyrhynchite nome to investigate Chaeremon's charges of violence and follow up on the orders of the former prefect.[46]

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45 For the text of Chaeremon's letter, see P.Oxy. II 237 col. vi, 12–20.

46 For a general introduction to the petition of Dionysia, see the *editio princeps* and C. Kreuzsaler, *Dionysia vs. Chairemon: ein Rechtstreit aus dem römischen Ägypten*, in: U. Falk, M. Luminati, M. Schmoeckel (eds.), *Fälle aus der Rechtgeschichte*, Munich 2008, 1–13. On law in the petition, see J. Urbanik, *D. 24.2.4:* '...patrem tamen eius nuntium mittere posse...' – *l'influsso della volontà del padre sul divorzio dei sottoposti*, in: T. Derda, J. Urbanik, M. Weçowski (eds.),

The substance of Chaeremon's complaint (about which we learn from the counter-petition of his daughter Dionysia, P.Oxy. II 237) was that his daughter had illegally seized the income of a large estate that he had given her as a gift on the occasion of her marriage (*prosphora*).[47] Chaeremon had apparently retained usufruct of the property, with which Dionysia was now interfering. Accordingly, Chaeremon claimed his legal right (*kata tous nomous*) to revoke the marriage gift as punishment.[48] The prefect Rufus directed the case to the *stratēgos*, apparently without a final resolution. In his complaint to the subsequent prefect Faustinianus, Chaeremon argued that his daughter's unabated brazenness motivated him to act upon the power (*exousia*) given to him by "the law" (*nomos*) to forcibly separate Dionysia from her vicious husband.

The question that has sparked generations of scholarly debate is the nature of the "law" (*nomos*) cited by Chaeremon as the source of his power to revoke his marriage gift to his daughter and to dissolve her marriage. The counter-petition of Dionysia, in which Chaeremon's own petition is cited, includes an appendix of judicial precedents that mention the 'law(s) of the Egyptians'. This has led to the conclusion that Chaeremon was appealing to local Graeco-Egyptian law. Others have argued that the father's power to reclaim a married daughter (*aphaeresis*) existed in Attic law, hence the 'law(s) of the Egyptians' on this point were actually of Greek origin. As a result of the argument of Dionysia's own petition, Chaeremon's case is generally regarded as an argument from local law being brought into a Roman court and this papyrus is often cited as evidence for the persistence of pre-Roman legal forms in the Roman period. Some recent studies have taken matters in a different direction, arguing that 'the law(s) of the Egyptians' (like other examples of 'indigenous' law in imperial contexts) was a highly constructed juridical domain and that we should expect litigants to engage with it in strategic and manipulative ways. After all, according to Dionysia's description of the events, Chaeremon

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Euergesias Charin: Studies Presented to Benedetto Bravo and Ewa Wipszycka by their Disciples, Warsaw 2002, 293–336, Yiftach-Firanko, *Marriage* (n. 33 above) 84–91, C. Kreuzsaler, J. Urbanik, *Humanity and inhumanity of law: the case of Dionysia*, JJP 38 (2008) 119–155 and Platschek, *Nochmals* (n. 25 above). On complaints of violence in petitions and administrative responses to them, see chapter 5 of Bryen, *Violence* (n. 5 above). That Chaeremon was granted a hearing by the prefect is revealed to us by Dionysia in col. vi, l. 7 of the papyrus.

[47] On the papyrological evidence for marriage gifts (*prosphora*), see Yiftach-Firanko, *Marriage* (n. 33 above) 164–174.

[48] The idiomatic expression *kata tous nomous* did not connote specific laws but meant 'legal' or 'legitimate' in a more general sense. For example, it was used to translate the Latin expression *heres legitimus* into Greek (see BGU V 1210 24, 27 149 CE). *Kata tous nomous* is to be distinguished from *kata nomous* without the definite article, where *nomos* meant custom or established practice, for instance when speaking of a *de facto* marriage *kata nomous* without a written contract, see P.Mich. XVIII 785B (47–61 CE) and SB XVIII 13168 (123 BCE). On this point, I disagree with U. Yiftach-Firanko, *Judaean marriage documents and* ekdosis *in the Greek law of the Roman period*, in: Katzoff, Schaps (eds.) (n. 27 above) 80 (with reference to P.Yadin 18) that *kata tous nomous* means "according to the customs." With a definite article, this phrase always has a specifically legal connotation.

was trying to win a property dispute against his daughter by strategically rerouting it onto the terrain of family law.[49]

A different perspective that I would like to offer here is that Chaeremon, much like Heraclides, was in a position to take advantage of Roman legal remedies available to him through the court of the Roman governor. Accordingly, his lawyers presented his case in line with Roman rules and policies and in ways that would appeal to the sensibilities of a Roman judge. Their main tactic was to present the case as an egregious instance of filial disobedience: Chaeremon's daughter was acting brazenly and unlawfully (*asebōs kai paranomōs*) and causing him moral injury and financial loss, while his son-in-law had insulted him and threatened him with violence. As we learn from the edict of Mamertinus, Roman governors had an administrative mandate to hear the grievances of parents against offenses by their children. This policy is corroborated by the Roman legal sources: we read in Ulpian's *de officio proconsulis* that it was expedient for governors to chastize disobedient children and freedmen during an informal public audience (*de plano*): "a governor can even threaten and terrify a child brought forward by a father who does not behave as he ought to; similarly, he can castigate a disobedient freedman, either with words or by having him beaten with rods." This may be the sort of scenario in which the freedman of Heraclides was disciplined by the prefect.[50]

Roman governors also gave privileged attention to legal disputes between parents and children. A third-century imperial rescript tells a woman named Galla that her financial conflict with her children will be heard by the governor, who will issue aggravated punishment to the children if he finds them violating the respect owed to their mother (*laesa pietas*).[51] Another third-century rescript states: "if your son continues his brazen behavior (*contumacia*), you can use a more extreme remedy and bring him to the provincial governor, who will issue the sentence that you seek" — the son in

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[49] That Chaeremon's case against Dionysia represents an appeal to Egyptian law is the prevailing interpretation of the papyrus. That the 'law of the Egyptians' on this point was in fact Greek was argued by Mélèze-Modrzejewski (n. 3 above). For the idea that Chaeremon's power to effect his daughter's divorce hearkens back to the Attic practice of *aphairesis*, see N. Lewis, Aphairesis *in Athenian law and custom*, in: J. Mélèze-Modrzejewski, D. Liebs (eds.), *Symposion 1977*, Cologne 1982, 161–182. On the highly constructed nature of the 'law(s) of the Egyptians' see Bryen, *Tradition* (n. 5 above).

[50] See *Dig.* 1.16.9.3 (*De officio proconsulis et legati*): *De plano autem proconsul potest expedire haec: ut obsequium parentibus et patronis liberisque patronum exhiberi iubeat: comminari etiam et terrere filium a patre oblatum, qui non ut oportet conversari dicatur, poterit de plano: similiter et libertum non obsequentem emendare aut verbis aut fustium castigatione.* On judicial pronouncements *de plano*, see D. Nörr, *Zu einem fast vergessenen Konstitutionentyp*, interloqui de plano, in: *Studi in onore di Cesare Sanfilippo* vol. 3, Milan 1983, 521–543.

[51] *CJ* 8.46.4pr.–1 (*De patria potestate*): *Congruentius quidem videtur intra domum, inter te ac filios tuos si quae controversiae oriuntur, terminari. Sed si ita res fuit, ut iniuriis eorum et ad ius experiundum et ad vindictam processeris, aditus praeses provinciae super disceptationibus quidem pecuniariis consuetum exerceri iubebit ordinem iuris: reverentiam autem debitam exhibere matri filios coget et, si provectam ad inclementiores iniurias improbitatem deprehenderit, laesam pietatem severius vindicabit* (Valerian and Gallienus, 259 CE).

question had alienated property belonging to the father.[52] "The authority of the provincial governor will compel your daughter not only to pay you reverence, but also to be a support in your life," state the emperors Diocletian and Maximian.[53] "Daughters, sons and other contumacious offspring who have affected parents with the pain of harsh verbal insult (*convicium*) or grave personal injury (*atrox iniuria*) the laws wish to punish by cancelling their emancipation and depriving them of their undeserved liberty," states a fourth-century imperial letter to an urban prefect.[54] Just as an undutiful freedman could be reenslaved as an extreme punishment, an emancipated child could be brought back under the *potestas* of the father.[55]

The Roman legal sources also attest to legal remedies enabling parents to reclaim gifts from undutiful children. In part, this was a self-evident aspect of *patria potestas* in Roman law, where the property of a child *in potestate* had the status of *peculium* and formally belonged to the father. Although married daughters *in potestate* had independent claims on their dowries, real property and additional gifts were considered to be part of the *peculium.* Once a marriage ended, the dowry of a daughter *in potestate* could, under some circumstances, revert back to the father. On this issue, the regulations attested in the Roman legal sources are in line with the papyrological evidence for Roman jurisdiction. In one second-century petition, a Roman veteran asks the prefect to hear his case against his daughter regarding her undutiful behavior (*akharistia*, possibly a Greek rendition of the Latin *irreverentia*) in line with the provisions of the "sacred general edict" (*hieron katholikon diatagma*) — most probably a reference to the governor's jurisdictional edict (*edictum provinciale*).[56] The veteran states that his daughter is under his legal power (*hypokheiria*, literally *sub manu*, which appears to be a Greek rendition of the Latin *in potestate*) "according to the law" (*kata ton nomon*). His careful enumeration

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[52] *CJ* 8.46.3 (*De patria potestate*): *Si filius tuus in potestate tua est, res adquisitas tibi alienare non potuit: quem, si pietatem patri debitam non agnoscit, castigare iure patriae potestatis non prohiberis, artiore remedio usurus, si in pari contumacia perseveraverit, eumque praesidi provinciae oblaturus dicturo sententiam, quam tu quoque dici volueris* (Severus Alexander, 227 CE).

[53] *CJ* 8.46.5 (*De patria potestate*): *Filia tua non solum reverentiam, sed et subsidium vitae ut exhibeat tibi, rectoris provinciae auctoritate compelletur* (Diocletian and Maximian, 287 CE).

[54] *CJ* 8.49.1 (*De ingratis liberis*): *Filios et filias ceterosque liberos contumaces, qui parentes vel acerbitate convicii vel cuiuscumque atrocis iniuriae dolore pulsassent, leges emancipatione rescissa damno libertatis immeritae multare voluerunt* (Valentinian, Valens and Gratian, 367 CE). This echoes Ulpian's citation of the Augustan jurist Labeo on *convicium* and *atrox iniuria* committed by freedmen against patrons (*Dig.* 47.10.7.7–8). According to Labeo, *iniuria* became *atrox* when it was committed against a magistrate, patron or parent. *Atrox iniuria* also features in the edict of Petronius Mamertinus among the crimes examined by the governor at first instance.

[55] On punitive reenslavement (first attested under Claudius in *Dig.* 37.14.5.pr.) and recall into *potestas* in the legal sources, see Gardner, *Being a Roman citizen* (n. 40 above) 48–51 and 66–68. See also Constantine *Frag. Vat.* 248 (330 CE).

[56] See BGU VII 1578. On the *edictum provinciale* in Egypt, unnecessarily called into question by scholarship against clear evidence for its existence, see Purpura, Katholikon diatagma (n. 38 above) and my arguments in Dolganov, *Empire of Law* (n. 1 above) 97–114. In view of the semantics of *hieron* (*sacrum* = imperial) it is possible, although less likely in my view, that the *hieron diatagma* was an edict of the emperor.

of his gifts to her upon her marriage in return for her help and support in his old age suggests that he was intending to revoke these gifts. Whether the marriage itself had ended is unclear. The veteran emphasizes that all property acquired by his daughter *in potestate* in fact belongs to him. We observe similar principles being invoked by Egyptian litigants, as illustrated by a petition where an Egyptian father asserts his legal power (*exousia*) over his daughter in order to reclaim her dowry and property after her divorce.[57]

As noted above, a Roman conceptual framework can generally be detected in the Roman interpretation of marital arrangements between Egyptian provincials, where 'unwritten marriage' was understood to confer a strong form of paternal power. In one well-known example, an Egyptian father asserts ownership of the property of his deceased son, who had tried to bequeath it to someone else. The father's argument is that the son, by virtue of being a child of an 'unwritten marriage', does not have the power to make a will (*exousia tēs diathēkēs*, clearly a Greek rendition of the Latin *testamenti factio*), which made him analogous to a child *in potestate* in Roman law.[58] In another example, which offers a close parallel to the dispute between Dionysia and Chaeremon, an Egyptian father successfully strips his daughter of an 'irrevocable gift' (*charis anaphairetos*) of real property that he had registered in her name as punishment for her impious behavior (*asebeia)*. The daughter objects that she is not the child of an 'unwritten' marriage, which shows that her father had argued that she was under his legal power on this basis.[59]

Overall, there is ample evidence in both legal and documentary sources for the existence of Roman legal remedies for parents against offenses by their children. We read in the Roman legal sources that violation of filial respect (*pietas*, *obsequium*) aggravated the punishment for any other offense. It also justified disherison, the revocation of gifts and punitive loss of legal independence (or reenslavement, in the case of freedmen). Confronting the Roman legal sources with papyrological evidence, including the edict of Mamertinus, it becomes evident that these Roman rules and remedies were dispensed by Roman courts to provincials regardless of their civic status.

There remains the question of Dionysia's marriage: on what basis did Chaeremon make his second request to the prefect Faustianus, that the scandalous behavior of Dionysia and her husband authorized him to take his daughter home? Was this an appeal to local, Graeco-Egyptian law, as has been generally assumed? Or were there Roman remedies available to Chaeremon to reclaim his married daughter and bring about her divorce?

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[57] See P.Mil.Vogl. IV 229 (140 CE). See also P.Tebt. II 407 (ca. 199 CE), where a man threatens that his marriage gifts to his daughter together with everything that she has subsequently acquired will be donated by him to the Serapeum of Alexandria.

[58] See CPR I 18 (124 CE) with my discussion in Dolganov, *Empire of Law* (n. 1 above) 424–425. On the Egyptian father and his impious daughter, see P.Oxy. LXXIII 4961 (223 CE).

[59] See P.Oxy. LXXIII 4961 (223 CE). In the rubric *de revocandis donationibus* in the *Codex Iustinianus* (*CJ* 8.55) we discover that the right of parents to revoke gifts also applied to emancipated children from at least as early as the late third century CE. See also the rubric *quando donator intellegatur revocasse voluntatem* in *Frag. Vat.* 248–259.

For Roman legal theorists, the interference of fathers in daughters' marriages constituted an important juridical problem, where the Roman notion of consent-based marriage came into conflict with the strong Roman notion of paternal power. In Roman law, marriage was a consensual contract that lasted as long as both spouses had the mental disposition to remain married (*affectio maritalis*). Although the initial consent of the father was necessary for the marriage of a child *in potestate* to take place, Roman legal theorists did not like the idea that a marriage, once created, could be interfered with, or that a dowry, once delivered, could be withdrawn. A third-century anthology of Roman legal maxims states this principle concisely: "those who are in the legal power of their father cannot contract legal marriages without his consent; once the marriages have been contracted, however, they cannot be dissolved."[60]

However, this principle was not hard and fast. In his commentary on the praetor's edict, the Severan jurist Ulpian tells us that, formally, fathers had the power to reclaim their children *in potestate* through the praetorian interdict *de liberis exhibendis item ducendis*, which could even be used to reclaim a married daughter from her husband:

Si quis filiam suam, quae mihi nupta sit, velit abducere vel exhiberi sibi desideret, an adversus interdictum exceptio danda sit, si forte pater concordans matrimonium, forte et liberis subnixum, velit dissolvere? et certo iure utimur, ne bene concordantia matrimonia iure patriae potestatis turbentur. quod tamen sic erit adhibendum, ut patri persuadeatur, ne acerbe patriam potestatem exerceat

"If a father, whose daughter is married to me, wishes to take her away or asks for her to be brought out to him, should an exception be given against the interdict if the father seeks to dissolve a marriage that is consensual/harmonious (*concordans*) and perhaps even bolstered by the existence of mutual children? On this issue we adhere to a clear legal principle (certo iure utimur) that concordant marriages should not be disturbed by the law of paternal power (*patria potestas*). But this policy should be implemented by persuading the father that he should not use his *patria potestas* harshly."[61]

Thus, under Roman *ius honorarium*, the father had formal remedies to reclaim his daughter *in potestate*, even if she was married. However, Roman officials were advised to observe the "clear principle" (*certum ius*) that *patria potestas* should not be used to upset a harmonious marriage. This principle did not alter the scope of the father's *potestas* — rather, Ulpian states that the father had to be persuaded to change his mind — nor did it exclude that, under some circumstances, a father might have legitimate reason to interfere. And interfere they clearly did, since we are told by a third-century

[60] See *Paul. Sent*. 2.19.2: *eorum qui in potestate patris sunt sine voluntate eius iure matrimonia non contrahuntur*, *sed contracta non solvuntur*: *contemplatio enim publicae utilitatis privatorum commodis praefertur*. Generally on the Roman law of marriage, see S. Treggiari, *Roman Marriage*, New York, Oxford 1991.

[61] See *Dig.* 43.30.1.5 (Ulpian, 71 *ad ed.*).

legal writer that a husband had an analogous legal action (*de uxore exhibenda et ducenda*) to demand his wife back.[62]

At some point in the 160s or 170s CE, not long before the legal dispute between Dionysia and Chaeremon, the question of *patria potestas* and divorce received an authoritative ruling by the emperor Marcus Aurelius, which evidently became widely known and was cited by subsequent emperors and legal writers. This ruling stated that a harmonious marriage (*bene concordans matrimonium*) of a daughter *in potestate* to which the father had initially consented could not be rescinded by him, "unless great and just cause had arisen" (*magna et iusta causa interveniente*). The emperor Diocletian, citing Marcus' ruling in a rescript in 294 CE, specified that a father did *not* in any case have the power to effect the divorce of an emancipated daughter. The emperor Justinian, citing Marcus' ruling in the sixth century, specified what "great and just cause" might be: if the spouses were young and unwise and their behavior was bringing shame on them or material loss to their parents.[63] This may reflect the content of Marcus' original ruling, since we discover in another classical source (Ulpian citing the Augustan jurist Labeo) that daughters forfeited their dowries to their fathers for similar reasons: "and I also believe, as Labeo believes, that the father can occasionally be denied the action [to recover the dowry], if his character is so vile that there is reason to fear that he will squander it... because if the father has an upright lifestyle and is the sort of person to whom the daughter ought by all means to give her consent, while the daughter is of volatile character, or else too young or too much under the influence of an undeserving husband, we should say that the praetor should rather concede the legal action to her father."[64] In other words, although the consent of a daughter *in potestate* was necessary for her dowry to return to the father after divorce, her consent was dictated by an objective standard of what was reasonable in a given situation. If the daughter could be shown to be immature, immoral, or under the influence of a reprehensible husband, it sanctioned her father to dispense with her consent. Elsewhere, we find that a daughter's

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62 See *Dig.* 43.30.2 (Hermogenian, 6 *iuris epit.*). The enduring importance of the interdicts *de liberis exhibendis et ducendis* is indicated by the rubrics dedicated to them in *Dig.* 43.30 and *CJ* 8.8. These interdicts provided the framework for the key pronouncement of Marcus Aurelius regarding *patria potestas* and divorce, discussed below, as implied by *Dig*. 43.30.1.3 and *Paul. Sent*. 5.6.15.

63 The ruling of Marcus Aurelius is cited by Diocletian in *CJ* 5.17.5 (294 CE) and by Justinian in *CJ* 5.17.12 (534 CE). The latter is preserved in Greek in a single Verona manuscript of the *Codex Iustinianus*. See also *Paul. Sent*. 5.6.15 (attributing the ruling to Antoninus Pius) and *Dig.* 43.30.1.3, 5 (Ulpian, 71 *ad ed*.). See the discussion of these texts in Urbanik, '*…patrem tamen* (n. 46 above).

64 See *Dig*. 24.3.22.6 (Ulpian, 33 *ad ed*.) *Nec non illud quoque probamus, quod Labeo probat, nonnumquam patri denegandam actionem, si tam turpis persona patris sit, ut verendum sit, ne acceptam dotem consumat... quod si is pater sit, cui omnimodo consentire filiam decet, hoc est vitae probatae, filia levis mulier vel admodum iuvenis vel nimia circa maritum non merentem, dicendum est patri potius adquiescere praetorem oportere dareque ei actionem.*

bouts of insanity likewise enabled the father to end her marriage by *repudium* against her will and to recover her dowry.[65]

Therefore, despite the Roman principle protecting marriage against paternal interference, Roman legal writers state that a father who could show that his interests were being damaged by his married daughter *in potestate*, especially if he could demonstrate her husband's bad influence and her own lack of sound judgment, was empowered to effect her divorce. A *concordans matrimonium* was, by definition, a marriage based on mutual consent. However, the idea may have been that an immoral or irrational daughter was unfit to exercise consent. One can clearly see, from this range of testimonia, that the question of *patria potestas* and divorce was a contentious issue that was frequently debated in the courts, where there were arguments on both sides that could influence the outcome one way or the other.

Chaeremon's stated intention to forcibly reclaim his married daughter is formulated in similar terms to what we find in the Roman legal sources: Dionysia and her husband had caused him financial loss; Dionysia's mindless behavior (*aponoia*) was the result of her husband's pernicious influence over her (P.Oxy. II 237 col. vi, 12–20). As demonstrated above, there is substantial evidence that Roman provincial courts made Roman legal remedies available to provincials, including fathers against offenses by their children. Formally, as we have seen, Roman law recognized the father's right to exercise his *patria potestas* to reclaim a married daughter *in potestate* from an undesirable marriage. Could Chaeremon, in his petition to the Roman governor, have been appealing to the rules of Roman law?

The formulation of Chaeremon's petition is significant, since what he was requesting from the prefect was to be allowed to exercise his legal power (*exousia*) to reclaim his married daughter without any violence being done to him. Looking closely at the wording of the request, it bears a notable resemblance to the Roman praetorian interdict *de liberis exhibendis item ducendis* as cited by Ulpian in his commentary on the praetor's edict:

ἐπεὶ οὖν, κύριε, ἐπιμένει τῇ αὐτῇ ἀπονοίᾳ ἐνυβρίζων μοι, ἀξιῶ τοῦ νόμου διδόντος μοι ἐξουσίαν οὗ τὸ μέρος ὑπέταξα ἵν' εἰδῇς ἀπάγοντι αὐτὴν ἄκουσαν ἐκ τῆς τοῦ ἀνδρὸς οἰκίας μηδεμίαν μοι βίαν γείνεσθαι ὑφ' οὑτινος τῶν τοῦ Ὡρίωνος ἢ αὐτοῦ τοῦ Ὡρίωνος συνεχῶς ἐπαγγελλομένου.

"Now, my Lord, since she persists in her mindless behavior (*aponoia*) in harrassing me further, and since the law (*nomos*) — the relevant portion (*meros*) of which I have attached for your information — accords to me the power (*exousia*) to take her from her husband's house against her will, I request that no violence (*bia*) be done to my person by any of Horion's men, or by Horion himself, who is constantly threatening me."[66]

ait praetor: "*qui quaeve in potestate Lucii Titii est, si is eave apud te est dolove malo tuo factum est, quo minus apud te esset, ita eum eamve exhibeas.*"

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[65] On the fragility of the daughter's consent — it was sufficient that she did not openly refuse — see *Dig.* 24.3.2.2 (Ulpian, 35 *ad Sab.*). On the father's power to forcibly reclaim a married daughter prone to fits of insanity (*furiosa*), see *Dig.* 24.2.4 (Ulpian, 26 *ad Sab.*).

[66] P.Oxy. II 237 col vi, 16–19.

deinde ait praetor: "*si Lucius Titius in potestate Lucii Titii est, quo minus eum Lucio Titio ducere liceat, vim fieri veto.*"

"The praetor states: 'whoever is in the legal power of Lucius Titius, if he or she be in your custody, or if with malicious intent you have arranged for him or her not to be in your custody, so let him or her be produced.'

Then, the praetor states: 'if Lucius Titius is in the legal power of Lucius Titius, let no violence be done to prevent Lucius Titius from taking him away.' "[67]

Thus, Chaeremon's request to be allowed to use his legal power to "take (*agein* = *ducere*) his daughter away from her husband's house without any violence (*bia* = *vis*) being done to his person" echoes the interdict *de liberis ducendis* with the standard interdictal formula *vim fieri veto*, prohibiting that violence be done to prevent the father from exercising his rights. Chaeremon's apparent invocation of a praetorian legal action (*interdictum*) has a number of important parallels: in the Roman *corpus agrimensorum*, we find numerous references to praetorian *interdicta* being issued by governors. In one passage, it is stated: "we shall see whether this type of possession warrants the issuing of an *interdictum* since there is a great variety of legal controversies pertaining to ordinary praetorian law (*ius ordinarium*) that arise in different provincial contexts. While in Italy access to rainwater certainly gives rise to considerable disputes, in Africa this question is handled quite differently."[68] Here and elsewhere in the *corpus agrimensorum*, it is taken for granted that the framework employed by governors in sorting out provincial disputes is Roman *ius honorarium*. Similarly, in the eastern province of Arabia in 130s CE, a Nabataean-Jewish woman Babatha carried three copies of a Greek translation of the praetorian *formula tutelae*. In view of Babatha's ongoing dispute with her son's guardians, it can be deduced that she and her son were planning to use the *formula* in a lawsuit at the Roman governor's court.[69]

Thus, the dispute between Dionysia of Chaeremon appears to be providing us with another important piece of evidence for Roman *ius honorarium* operating as a jurisdictional framework in a Roman province. As the source of his legal power (*exousia*) over his daughter, Chaeremon cited a portion (*meros*) of a law (*nomos*) that empowered him to "take his daughter away from her husband's house against her will" (col. vi, 17–19). Based on the judicial precedents cited by Dionysia (discussed in the next section), scholars have assumed that Chaeremon was referring to the 'law(s) of the Egyptians,' the precise shape and content of which remains unknown. At the same time, Chaeremon's appeal to his paternal power took place under Roman jurisdiction and within a Roman procedural framework: whatever the formal source of the father's *potestas*, once this

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67 *Dig*. 43.30.1 pr.; 43.30.3 pr. (Ulpian 71 *ad ed.*).

68 See Agennius Urbicus, *De controversiis agrorum* 20.14–18 Campbell.

69 On Babatha's *formula tutelae*, see P.Yadin 28–30 with Cotton, *The guardianship* (n. 8 above) and Nörr, *Prozessuales* (n. 8 above) and *Zu den Xenokriten* (n. 8 above). What Babatha was planning to do with this *formula* has been debated, since the *actio tutelae* was strictly speaking only available to the son when he came of age. The praetorian *formula* may have been part of Babatha's general effort to persuade the governor to protect her son's rights, or may have been intended for a future lawsuit.

potestas was established the governor could proceed with an *interdictum* authorizing its legitimate exercise. The formulation of Chaeremon's complaint suggests that his lawyers had a very precise knowledge of the arguments that enabled a father to use his *patria potestas* to end his daughter's marriage and reclaim her dowry in contemporary Roman law.

Dionysia: a daughter victimized by her Egyptian father

However, Chaeremon's daughter Dionysia — or, more precisely, the legal practitioners composing her petition — had a different take on the matter. Dionysia's petition to the prefect Faustianus in 186 CE is the longest surviving petition from Roman Egypt, a professional product skillfully composed by someone with legal expertise, a keen sense of rhetoric and access to an impressive arsenal of judicial precedents. In this long and complex document, Dionysia gave a comprehensive history of her conflict with her father, seeking to resolve it once and for all. As noted by Ari Bryen, the petition is full of rhetorical terms for silence and speechlessness, which communicate Dionysia's goal to silence her father.[70] Here is her version of the story.

The lawyers of Dionysia began by revealing the true nature of the conflict. Apparently, the 'gift' of property that Chaeremon wanted to revoke had in fact belonged to Dionysia's deceased mother, who had used her marriage contract to entail her property on her future children. Chaeremon, who retained lifelong usufruct of the property, had with Dionysia's permission mortgaged it as security for a loan of eight talents from a man named Asklepiades (it must have been quite a large estate). However, Chaeremon apparently did not intend to repay the loan and may have been planning to forfeit the estate to his creditor — i.e. the mortgage may in fact have been a covert form of sale. Realizing this, Dionysia made agreements with Chaeremon, stipulating that income from the property should be channelled to repay Asklepiades (col. iv, 6–10 and 12–14). However, still no payment took place. In the end, Dionysia seems to have personally taken on the debt and taken over the annual income of the land as repayment (col. iv, 16–32). At this point, Chaeremon petitioned the prefect Rufus about Dionysia's "illegal possession" (*anomos katoche*) of the property, which he presented as his own gift to her and now wanted to revoke (col. iv, 33–35; col. vi, 12–16). Dionysia sent a counter-petition to Rufus, telling her side of the story and citing her contractual agreements with Chaeremon (col. iv, 35–col. v 4). Apparently, it was not stated in Dionysia's own marriage contract that the property had belonged to her mother, so she had some difficulty proving her claims to it. The prefect Rufus ordered the *stratēgos* of the Oxyrhynchite nome to perform an investigation into the financial transactions between father and daughter and their respective property claims (col. v, 5–19). An archival search at Oxyrhynchus confirmed Dionysia's financial agreements with Chaeremon. It also revealed a property declaration made by Chaeremon twenty-four years earlier, which apparently made clear that the property had belonged to Dionysia's mother. In a subsequent hearing, this document

[70] On the rhetoric of speechlessness in the petition, see A. Z. Bryen, *Dionysia's complaint: finding emotions in the courtroom*, GRBS 57 (2017) 1010–1031.

seems to have convinced the *stratēgos* regarding Dionysia's claims to the property (col. v, 23–28). However, when she petitioned the new prefect Faustianus to a get a definitive confirmation of her rights, she received an impersonal and ambiguous answer: "you are entitled to exercise the rights that you possess; regarding the rest of your petition, the *stratēgos* will take care..." (col. v, 38). She then petitioned the *stratēgos* to have her claims formally registered for the future. Undaunted, Chaeremon petitioned the new prefect Faustianus as well (the letter cited above, P.Oxy. II 237 col. vi, 12–20) mentioning nothing about the archival investigation. Instead, he made it seem as if nothing had happened after the prefect Rufus issued his initial response, instructing the *stratēgos* to look into the case. Remarkably, the prefect Faustianus gave Chaeremon a hearing (col. vi, 7) and ordered the *stratēgos* to investigate the new charge of violence against Dionysia's husband and carry out the orders of Rufus (col. vi, 32–35). Chaeremon (armed with the prefect's letter), Dionysia and Horion then came together at the court of the deputy-*stratēgos*, who stated that the only question that remained to be settled was the issue of Chaeremon's right to reclaim his daughter from her husband, which had not been addressed by the prefect. Therefore, both parties had the option of petitioning Faustianus again (col. vii, 1–8). This appears to be why Dionysia's lawyers composed her present petition.

As argued above, Chaeremon was probably trying to take advantage of the powerful Roman remedies available to a father wronged by his daughter *in potestate*. Dionysia's argument was more intricate, since her own property claim derived from the Demotic-style marital arrangements of her parents, where her mother had used her marriage contract to entail property on her future children. To explain the nature of this claim, Dionysia's lawyers cited the decrees of two prefects from nearly a century earlier (col. viii, 21–27 and 28–43), where the entailment of property in traditional Egyptian marriage contracts was described as an *epichōrios nomos* (col. viii, 34), an "indigenous local custom." The prefects confirmed the validity of such entailments and declared it obligatory that they be registered in the archives of acquisitions (*bibliothēkē enktēseōn*), where this information would be available to potential creditors. Apparently, Egyptian husbands were trying to hide such entailments in order to mortgage or alienate the property. Dionysia's point was that Chaeremon had avoided filing his own marriage contract in the archives for precisely this reason. Although Dionysia herself did not have a copy of her parents' marriage contract, the discovery of a property declaration (*apographē*) made by Chaeremon two decades earlier somehow revealed that the property had belonged to Dionysia's mother (col. v, 23–28). Dionysia's overarching point seems to have been that Chaeremon, in his pursuit of Roman legal remedies due to a wronged father, was in fact trying to escape the provisions of his own, very traditional Egyptian marriage.[71]

[71] On marriage, testation and entailment practices in Demotic documents, see P. W. Pestman, *Marriage and Matrimonial Property in Ancient Egypt. A Contribution to Establishing the Legal Position of the Woman*, Leiden 1961 and *The law of succession in Ancient Egypt*, in: J. M. Brugman, M. David, F. R. Kraus, P. W. Pestman, M. H. Van der Valk (eds.), *Essays on Oriental Laws of Succession*, Leiden 1969, 58–77. For an overview of the property claims of children in Greek

In response, Chaeremon reasserted his position as a wronged father, introduced a new charge of violence against his son-in-law Horion and invoked his power to reclaim his "mindless" daughter. The strategy of Dionysia's lawyers was to argue that Chaeremon was concocting this lawsuit in order to escape his financial obligations (col. vii, 16 and col. viii, 7–21). Her claim to her mother's property had meanwhile been established (or so she says, col. v, 25–27). However, Dionysia also had to be insured against the arguments put forward by Chaeremon. Accordingly, her petition and supporting apparatus of judicial precedents (examined in detail below) appealed to the protection accorded to marriage against paternal interference by Roman officials. Dionysia's lawyers also insisted that she was *not* under her father's legal power. This part of the argument was instrumental, since it undermined Chaeremon's ability to take advantage of Roman remedies due to a *paterfamilias* with regard to his children *in potestate*, including the interdict *de liberis exhibendis item ducendis* as suggested above. On this point, Dionysia's lawyers brought in the 'law(s) of the Egyptians' to show that, according to the Roman interpretation of Egyptian marital arrangements, Chaeremon did *not* have legal power over his daughter.

To bolster her argument, Dionysia's lawyers included a series of judicial precedents illustrating the problem of *patria potestas* and marriage in Roman Egypt. These cases were carefully chosen to reinforce Dionysia's case and constituted a nuanced legal argument in their own right. They are also snapshots of courtroom interactions that provide us with insight into the dynamics and mechanisms of jurisdiction in Roman provincial courts.

(Case no. 1) In 128 CE, nearly sixty years before the conflict between Dionysia and Chaeremon, a man named Sempronius and his son-in-law Antonius appeared before the prefect of Egypt. After a quarrel, Sempronius came and took his daughter away from her husband's house. Antonius summoned his father-in-law to the court of a Roman procurator (*epistratēgos*), who pitied the daughter and ruled that the father should not prevent the couple from living together. However, Sempronius ignored the verdict and

documents, see H. Kreller, *Erbrechtliche Untersuchungen aufgrund der graeco-aegyptischen Papyrusurkunden*, Leipzig 1919, 181–200. On the development of dowry (*phernē*) and related instruments in Graeco-Roman Egypt, see Yiftach-Firanko, *Marriage* (n. 33 above). On the continuation of Demotic marriage practices in the Hellenistic and Roman periods, see G. Häge, *Ehegüterrechtliche Verhältnisse in den griechischen Papyri Ägyptens bis Diokletian*, Cologne 1968, 104–126 and 181–208 for a survey of the evidence. On the translation of Demotic marriage practices into Graeco-Roman legal instruments, see the important paper of T. Gagos, L. Koenen, B. E. McNellen, *A first century archive from Oxyrhynchos or Oxyrhynchite loan contracts and Egyptian marriage*, in: J. Johnson (ed.), *Life in a Multi-Cultural Society: Egypt from Cambyses to Constantine and Beyond*, Chicago 1992, 181–205 on loan-marriages in Oxyrhynchus and my discussion in A. Dolganov, *Loan-marriages and deposit-dowries: local practice and imperial legal fora in the Roman provinces*, in: K. Berthellot, M. Goodman, C. Nemo-Pekelman (eds.), *Legal Pluralism and the Law of the Other*, Oxford forthcoming. On the compulsory registration of debts, mortgages and property claims in the archives of real property as a Roman initiative to improve the security of transactions, see F. Lerouxel, *The* bibliothēkē enktēseōn *and transaction costs in the credit market of Roman Egypt (30 B.C.E. to ca. 170 C.E.)*, in: D. Kehoe, D. Ratzan, U. Yiftach-Firanko (eds.), *Transaction Costs in the Ancient Economy*, Ann Arbor 2015, 162–184.

petitioned the prefect, charging Antonius with violence (*bia*). At the prefect's court, Antonius requested "not to be separated from a woman who was fond of him." The lawyer Didymos argued that Sempronius had acted with reason: Antonius had insulted him, accusing him of incest with his daughter, and even physically threatened him. Unable to tolerate this outrage (*hybris*, by which we may understand the Latin *iniuria*), Sempronius had "used the power (*exousia*) accorded to him by the law (*kata tous nomous*)" to reclaim his daughter. In response, the lawyer Probatianus stated that, "if the marriage is still intact (*aperilytos*), the father has no legal power (*exousia*) over the daughter or her dowry." Thus, Probatianus identified the legal issue at stake: if the physical removal of the daughter did not end her marriage, she was protected against her father's legal power (*exousia* = *potestas*). Following this reasoning, the prefect Titianus ruled that everything depended on the will of the daughter. It is noteworthy that the names of all parties involved in this case are Roman and there is no reference to 'Egyptian' laws and practices. Instead, the courtroom debate appears to reflect a Roman legal framework, including the concept of *patria potestas* (*exousia*), the notion of consent as the basis of marriage and the protection accorded to marriage against paternal power.[72] The names of the forensic orators representing the litigants reappear at multiple trials at the court of the prefect, which suggests that these were elite figures, closely connected to the entourage of the governor.[73]

(Case no. 2) The verdict of Titianus served as a key precedent in another case, which took place five years later at an assize in the eastern Delta in 134 CE. There, a certain Flavesis son of Ammounis wished to remove his daughter from cohabitation with Heron, son of Petauesis, and was summoned by Heron before the Roman *epistratēgo*s. This time, both parties had Egyptian names and were speakers of Demotic. The daughter was apparently not married with a contract but merely "living together" with Heron. The verdict was postponed "so that the law (*nomos*) of the Egyptians could be read." After the relevant text was read out in court, the lawyers of Heron announced that the prefect Titianus had "heard a similar case involving Egyptian persons (*prosōpa*, probably a Greek rendition of the Latin *personae*) and did not uphold the inhumanity (*apanthrōpia* = *inhumanitas*) of the law but instead honored the will of the daughter." The argument of these provincial lawyers reflects modes of argumentation employed in Roman jurisprudence, where the principles of *humanitas* (humanity, civility) and *aequitas* (equity) are used to argue against the letter of the law. Presented with a choice between the 'law(s) of the Egyptians' and a recent equitable decision by a Roman governor, the *epistratēgos* upheld the ruling of Titianus. With the help of a translator, the girl indicated that she wished to remain with her husband. The precise role of the 'law(s) of the Egyptians' in this case is not entirely clear. It may have been used to establish the Egyptian father's legal power over his daughter (possibly, a child of an 'unwritten' marriage). Whether or not there was an explicit 'Egyptian' rule permitting a father to reclaim his daughter from an undesirable marriage, or whether this point was argued on the basis

[72] For the case, see P.Oxy. II 237 col. vii, 20–29. On *patria potestas* and divorce in the Roman legal sources, see Urbanik, '…*patrem tamen* (n. 46 above).

[73] See Dolganov, *Empire of Law* (n. 1 above) 370–380.

of Roman notions of marriage and *patria potestas*, is unknown. What is clear, however, is that Heron's lawyers wanted to emphasize the 'Egyptianness' of the father's actions. According to them, the prefect Titianus had rejected excessive use of paternal power by 'Egyptians' as *apanthropon* (inhumane, uncivilized). In fact, none of this is apparent from the proceedings before Titianus, where the names of the litigants are Roman and there is no reference to Egyptian law. One suspects that the 'Egyptianizing' interpretation of Titianus' ruling reflects rhetorical sleight-of-hand by Heron's lawyers.[74]

(Case no. 3) In the third of the four extant cases, Dionysia's lawyers went back an entire century to the court of the Roman *iuridicus* at Alexandria in 86 CE, where a woman named Didyme, represented by her husband Apollonios, stood as a plaintiff against her father Sabinus. Sabinus no longer approved of Didyme's marriage and had revoked her dowry. Speaking on Didyme's behalf, the lawyer Sarapion stated that, "in addition to everything else, these persons (*prosōpa* = *personae*) are Egyptians, the severity of whose laws is intemperate. For I tell you quite plainly that Egyptians have the legal power (*exousia*) to deprive their daughters not only of what they have given them, but also of everything they might acquire as their own private possessions" — i.e. the 'Egyptian' notion of paternal power was even more extreme than that of the Romans. Lest the *iuridicus* be misled by the Roman name of the defendant, the lawyer took care to emphasize that Sabinus was an 'Egyptian' behaving like a typical 'Egyptian'. This case shows the disdain with which Roman officials were disposed to view the population of Egypt and its customs. The *iuridicus* told Sabinus to return the dowry he had already granted. Sabinus objected that he did not want his daughter to be married to Apollonios. The *iuridicus* replied that it was worse for her to be taken away from her husband. The ruling of the *iuridicus* appears to be in line with the Roman principle that a dowry, once given, could not be revoked, and that a marriage, once contracted, could not be interfered with. Similarly, the distinction made by the lawyer Sarapion between the daughter's property as given by her father vs. property subsequently acquired appears to be in line with the Roman distinction between dowry and *peculium*.[75]

(Case no. 4) The next case is an extract from a correspondence that took place in the 130s CE between a Roman military officer (*praefectus classis*) in charge of enforcing legal decisions (*epi tōn kekrimenōn*) and a legal expert (*nomikos*) named Ulpius Dionysodoros. The *praefectus* was sorting out a dispute between a father and his daughter over her dowry, where the daughter was the child of an "unwritten" marriage (hence, understood to be under her father's legal power) and the father was trying to reclaim her dowry. It is unclear whether the marriage itself had ended. The *nomikos* responded that the act of giving the daughter away in marriage (*ekdosis*, implicitly with a dowry

[74] For the case, see P.Oxy. II 237 col. vii, 30–38. On the discourse of *humanitas* in Roman jurisprudence, see Kreuzsaler, Urbanik, *Humanity* (n. 46 above). *Humanitas* was also the quality of being "civilized," which the Romans thought of themselves as imparting to conquered peoples, see G. Woolf, G., *Becoming Roman*: *The Origins of Provincial Civilization in Gaul*, Cambridge 1998. There is a touch of imperialism behind *apanthropia* in this case as well.

[75] On the Roman distinction between dowry and *peculium*, see R. Saller, *Patriarchy, Property and Death in the Roman Family*, Cambridge 1994, 204–224.

and marriage contract) transformed her status, as if she were no longer the child of an "unwritten marriage" or under her father's legal power (*en exousia = in potestate*). The opinion of the *nomikos* accords with the Roman principle that a daughter *in potestate* was protected with regard to her marriage and dowry unless she voluntarily ceded it to her father. Quite remarkably, the *nomikos* employed the Roman device of legal fiction to argue that the daughter's marriage with a marriage contract effectively suspended the father's legal power, as if she had never been born into an 'unwritten marriage' at all.[76]

What points did Dionysia's lawyers want to be extracted from these four cases? Above all, they wanted to provide the prefect with authoritative models for ruling in favor of Dionysia. Consequently, cases 1–3 showcased the commitment of Roman officials to protecting the institution of marriage (including marriage between Egyptian provincials) against paternal interference and the respect paid by them to the will of the woman.

Next, although Dionysia argued that paternal power should not be used to interfere in a daughter's marriage, Chaeremon was obviously trying to argue the opposite. Accordingly, it was important for her to protect herself by demonstrating that she was not under her father's legal power. Although Dionysia insists that she is the child of a 'written' marriage, she evidently did not have her mother's marriage contract in her possession, which made her position somewhat precarious. Consequently, case 4 served to demonstrate that her own marriage with a dowry and marriage contract was sufficient to suspend her father's legal power.

Dionysia's lawyers apparently also wanted to underscore that Chaeremon's attempt to end her marriage reflected retrograde 'Egyptian' notions of paternal power, which had been condemned by Roman officials as excessive and "uncivilized." Cases 2 and 3 were perfectly chosen, because they contained explicit criticism of Egyptian fathers, as well as a convenient (and possibly misleading) interpretation of the key decision of Titianus as a ruling against the *inhumanitas* of Egyptian practices. To Egyptianize Chaeremon's case was a clever rhetorical move against his strong position as a father injured by his daughter under Roman law. It is revealing that Dionysia's petition does very little to refute Chaeremon's charges of violence and *hybris*, which were arguably his main points of leverage with the prefect, but perhaps her lawyers thought that proof of her honest business dealings was sufficient and that protesting too much could provoke suspicion. As a result of this highly rhetorical presentation of the case, generations of scholars have been convinced that Chaeremon was appealing exclusively to local Egyptian tradition.

Dionysia's petition concludes with a summary of the argument. She asked the prefect to issue orders to enforce Chaeremon's annual debt-payments to her and to prevent him from harassing her again:

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[76] For the case, see P.Oxy. II 237 col. viii, 2–7. On the daughter's claims to her dowry after the end of a marriage, unless she voluntarily ceded it to her father, see the rubrics *soluto matrimonio dos quemadmodum petatur* in *Dig.* 24.3 and *CJ* 5.18; see also *Frag. Vat.* 116.

ἐπίσχειν τε αὐτὸν ἤδη ποτὲ ἐπειόντα μοι πρότερον μὲν ὡς ἀνόμου κατοχῆς χάριν, νῦν δὲ προφάσει νόμου οὐδὲν αὐτῷ προσήκοντος· οὐδεὶς γὰρ νόμος ἀκούσας γυναῖκας ἀπ᾽ ἀνδρῶν ἀποσπᾶν ἐφείησιν, εἰ δὲ καὶ ἔστιν τις, ἀλλ᾽ οὐ πρὸς τὰς ἐξ ἐνγράφων γάμων γεγενημένας καὶ ἐνγράφως γεγενημένας

"since he has already attacked me on the initial charge of 'illegal possession of property' and now on the pretext of a law that is not available to him, for there exists no law that permits women to be taken from their husbands against their will, and if there is such a law it certainly does not apply to women born of a 'written' marriage and themselves married with a written contract."[77]

How to interpret the rhetoric of this statement has been debated.[78] On one level, it appears to reflect the tenuousness of Dionysia's position on the terrain of family law. From a Roman perspective, a *paterfamilias* had a formal right to reclaim his daughter *in potestate* even if she was married, as we have seen. On top of this, Roman policy privileged the grievances of parents against offenses by their children. Since Dionysia could not deny that a father's legal power might, under some circumstances, be allowed to end a daughter's marriage ("and if there is such a law...") the best that she could do was to insist that this power did not apply to *her.* The main thrust of her argument — that Chaeremon was trying to take advantage of a law that was not available to him — was to demonstrate that the rules and precedents cited by Chaeremon were not relevant as models for the case (instead, she provided her own precedents). At the same time, the repeated use of the term *nomos* suggests that Dionysia's lawyers were invoking "the law" on two distinct fronts — on the one hand, with reference to enlightened Roman policies protecting marriage based on mutual consent (*bene concordans matrimonium*) from the exercise of paternal power ("for there exists no law that permits women to be taken from their husbands *against their will*") and, on the other hand, with reference to the legal effects of 'written' and 'unwritten' marriage on paternal power emanating from the 'law(s) of the Egyptians' ("and if there is such a law...").

Despite the rhetorical brilliance of Dionysia's petition, the outcome of the case was not a foregone conclusion. Our sample of Roman legal texts on the question of *patria potestas* and marriage, despite being carefully selected and freed from major contradictions by Justinian's compilers, shows that legal opinions on this issue were influenced by the specific circumstances of each case. Ultimately, whether Chaeremon had good reason to take action against his undutiful daughter, or whether he was maliciously trying to cheat her out of her maternal inheritance, would have to be determined through contentious proceedings with arguments brought forward on both sides of the case. The deftness with which both parties juggled aspects of Roman and 'Egyptian' law, arguing on opposite sides of a contentious problem in Roman jurisprudence, shows that the true agents in this affair were competing teams of expert lawyers.

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77 P.Oxy. II 237 col. vii, 10–14

78 See the remarks of Platschek, *Nochmals* (n. 25 above) 150–152, 158–159 on the various interpretations of these lines.

Conclusion

The point of departure for this article has been the very traditional problem of determining the place of Roman law in the legal order of the Roman provinces before the generalization of Roman citizenship in 212 CE. Given the evidence that legal procedure in Roman provincial courts was modelled on the Roman praetor's edict and *ius honorarium* and that Roman law was generally present in the provinces as a body of knowledge, this article has sought to hone in on contexts where we can see what this meant in more concrete terms.

The litigation documents examined here vividly show Roman law functioning as a normative and intellectual framework in the courts of high-ranking Roman officials — and, consequently, in the arguments of legal practitioners who composed petitions and argued cases in Roman courts. In most of the cases considered, the litigants involved were not Roman citizens but provincials of 'Egyptian' status. Nevertheless, the legal practitioners representing them invoked Roman legal principles and formulated their cases in ways that would appeal to the sensibilities of a Roman judge. In Roman legal literature, we read that Roman officials were advised to apply Roman *ius civile* when policy, custom and precedent were lacking on a given issue. In papyri, we also see officials doing this when they thought that a local practice was distasteful, produced an unjust situation or offended a key Roman principle or social value. One has the impression that the iuridicus who ordered an Egyptian father to return the dowry that he had delivered was bristling at the idea that contractual obligations were being violated. On the other hand, in order to protect an Egyptian *patronus* from his freedman, the prefect was ready to override the written provisions of a Greek manumission contract. After all, Roman justice was one of Rome's great *beneficia* to its subjects — in the language of colonialism, it was, quite literally, "the gift we gave them."

As far as we can tell, the 'law(s) of the Egyptians', which were drawn up in written form, were the result of the Roman state granting juridical space to local marriage, family and inheritance practices. At the same time, the 'law(s) of the Egyptians' were manifestly interpreted by Roman administrators and legal practitioners through the lens of Roman legal concepts. This was part of the Roman imperial state's hegemonic exercise of jurisdictional authority — iurisdictio, literally the power to "pronounce" (and thereby determine) the law.

The results of this investigation shed light on the integral role of Roman law in the legal sphere of the Roman Empire before 212 CE. In addition to highlighting the ways in which Roman law was formally part of the Roman provincial order — such as the role of *ius honorarium* as a procedural framework and the protection offered by Roman governors to parents and patrons against their dependents — papyrological evidence illustrates Roman law being employed by Roman officials and legal practitioners as an intellectual toolkit. Even in areas of private law where Roman citizens were distinguished by the special rules of Roman *ius civile*, we observe Roman legal concepts and arguments being invoked with reference to cases involving Egyptian provincials.

Overall, this investigation draws attention to a crucial mechanism by which Roman legal forms were generalized in the provinces: through the agency of legal practitioners, who assisted provincials who had something to gain by engaging in litigation, and who

had a deft command of rhetoric and of the concepts and doctrines of Roman law. We should of course be realistic as to the cultural depth of this phenomenon. Whatever customary practices characterized the relations between men and women in the hinterland of Egypt (who were evidently still making Demotic-style marriage arrangements into the second century), what was brought to court was what was thought to guarantee them success.

Ultimately, the fiction of Roman citizenship discussed in Gaius' *Institutes* foreshadowed another, very powerful fiction, which came to encompass the entire imperial population in 212 CE, formally turning Roman *ius civile* into an imperial law. As illustrated in this article, this dramatic shift was facilitated by the fact that Roman law had already been functioning in important ways as a framework of Roman jurisdiction. Furthermore, provincials were remarkably quick to orient themselves with regard to the new options presented by a changing legal landscape and the Roman world was full of legal practitioners who mediated this process. But these key figures are part of another story.

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