



8/15/2014

# Roman Law, Roman Citizenship, Roman Identity?

Interrelation between the Three in  
the Late Republic and Early Empire

Lina Girdvainyte, 1254707

Thesis Submitted in Partial Fulfilment of the  
Requirements for the Degree of Master of Arts in  
Classics and Ancient Civilizations,  
Leiden University

Supervisor: Prof. dr. L. de Ligt

## Table of Contents

Introduction .....	2
1. Roman law .....	7
1.1 Divisions of Roman law: exclusivity and accessibility to non-Romans .....	8
a. <i>ius civile</i> .....	8
b. <i>ius gentium</i> .....	11
c. <i>ius honorarium</i> .....	13
1.2 Legal enactments and their application .....	16
1.3 Administration of justice .....	18
2. Roman citizenship .....	23
2.1 Legal rights and obligations of a Roman citizen .....	24
2.2 Access to Roman citizenship .....	26
a. The <i>Lex Acilia de repetundis</i> .....	26
b. The 'Italian question' revisited .....	28
c. Citizenship grants and their implications .....	33
2.3 Legal rights and obligations to one's local community upon acquisition of Roman citizenship .....	37
a. 'Dual citizenship' .....	39
b. Imperial practice and the development of Roman citizenship .....	41
3. (Roman) Identity .....	45
3.1 Post-Social War Italy: politically and culturally homogenous entity? .....	46
3.2 Municipalization of Italy and the <i>Lex (Flavia) Irnitana</i> as an example of imperial municipal legislation .....	53
3.3 Roman provincial situation of the 2 <sup>nd</sup> century CE .....	57
a. Linguistic change .....	59
b. The knowledge of law .....	64
c. Native agency and legal manoeuvring .....	65
Concluding remarks .....	72
Bibliography .....	75

## Introduction

Recent years in Roman scholarship have been particularly fruitful in the studies of identity, as various theoretical frameworks have been invented and employed in order to explain the cultural changes brought about by the growth and expansion of the Roman Empire.<sup>1</sup> It did not take long to come to the idea that what made the Roman society ‘Roman’ as opposed to, for instance, the Greek communities glued together by their linguistic and cultural homogeneity, was primarily its self-definition as a citizen community, delineated by the common *civitas Romana* and the observance of civil law.<sup>2</sup> Cicero, for instance, provides us with ample evidence of the pride that the Romans took in their *ius civile* (*de Orat.* 1.197) as well as the significance and exclusivity ascribed to the Roman citizenship (*Balb.* 11.28-30). Similarly, Roman legislation for the province of Egypt points to the eager protection of Roman citizenship and strictly Roman legal institutions, and offers severe sanctions against violation of status (*Gnomon* 42-44, 53, 56).<sup>3</sup> The idea of exclusivity of Roman law and citizenship prevalent in primary (literary and juristic) sources has dominated modern scholarship too, for the majority of works thus far have tended to treat both subjects in isolation. However, as the Roman expansion evidently came to absorb multiple ethnically and culturally diverse societies, the very ‘Romanity’ of the Empire becomes a debatable subject itself. The writings of Cicero and later Roman authors appear exceptionally thought-provoking when juxtaposed to documentary record from various parts of the Empire, attesting to major and very rapid changes in formal (procedural) law, as well as the adoption of exclusively Roman legal institutions by the provincials who did not yet possess Roman legal status. How does then the discourse of *Roman* identity correlate with the evidence for cultural, as well as legal and civic heterogeneity of the Roman Empire?

A number of renowned scholars wrote extensively on various institutions and peculiarities of Roman law, as well as its influence on both ancient and modern legal systems.<sup>4</sup> Legal scholarship, however, is rarely interested in questions concerning social, political or cultural implications carried

---

<sup>1</sup> Goldhill (2001), Wallace-Hadrill (2008), Revell (2009), Mattingly (2011) et al.

<sup>2</sup> Cf. Wallace-Hadrill (2008) who notes on the ‘perpetual lopsidedness between the ‘Greek’ and the ‘Roman’ that flows from the fact that Rome is a citizen state, with a legally defined membership, and Greece is a geographic area defined by its common language’, 34. See also Harries (2006).

<sup>3</sup> *BGU* 5.1210.

<sup>4</sup> Schulz (1946), Kaser (1975, 1993), Schiller (1978) et al. Occasional works have been written that treat the position of Roman law in separate provinces: Wessel (2003) on the province of Africa; Goodman (1991), Cotton (1993) and Oudshoorn (2007) on Roman Arabia and Judaea; or, more recently, Korporowicz (2012) on Roman Britain. Roman Egypt remains by far the best documented and, accordingly, the most thoroughly researched province: Taubenschlag (1948) and Modrzejewski (1990) constitute a solid and comprehensive presentation of changes in Egypt’s legal and judicial systems, while the recent monograph of Kelly (2011) contributes greatly to the social history of litigation in the said province.

by the spread of Roman law and citizenship, e.g. what did it mean to a non-Roman to become subject to the State law? Was Roman law paramount to local law in the periphery of Rome or rather supplementary and thus only used voluntarily? Or, in what way, if at all, could the availability of Roman legal institutions and the acquisition of Roman citizenship have affected one's local identity? Social historians, on the other hand, while engaging with questions of socio-political and cultural change or identity formation, frequently lack sufficient knowledge of (Roman) legal institutions, what leads to their neglect of a major set of primary evidence.

To this day there have been rather few attempts to contextualize Roman law; to view it as an integral part of social history of the Roman Empire, and to analyse Roman legal institutions within the framework of their cultural, political and ideological values. Crook's *Law and Life of Rome* was the first attempt to place Roman law in its social context, yet it deliberately omits any discussion of legal landscape in the provinces.<sup>5</sup> More recently, Johnston treated Roman law in its social and economic context, but added little new to the discussion due to the spatial limitations of a very brief monograph.<sup>6</sup> The spread of Roman citizenship into the periphery of Rome is of minor concern in the majority of these works too, due to the same tendency towards exclusivity: people are assumed to have acted according to their official legal status. The documentary record, however, allows seemingly more fluidity in practice.

One of the pioneer works to treat the history of Roman *civitas* had focused on the notion of 'dual citizenship', alliances and citizenship extensions employed by the Romans, as well as discussed provincial attitudes towards the Empire and its citizenship, thus concluding that 'imperial loyalty went deeper than is usually believed'.<sup>7</sup> More recently, however, Mouritsen has challenged the orthodox view which argues for the perceptible significance of Roman citizenship and sees the Social War of 90-88 BCE as a struggle of Italian allies towards obtaining Roman citizen status, by demonstrating this view to be based on Roman imperial interpretation rather than historical fact.<sup>8</sup> Furthermore, Mouritsen holds the Roman citizenship to have been closely tied with the Roman identity and, stressing its incompatibility with any other set of legal relations, argues for its uselessness outside the Roman soil. In his interpretation, the culturally distinct Italians fought against the Roman hegemony, lost the war, and their eventual enfranchisement led to a 'politically and culturally unified Italy' as well as complete loss of local identities. As Mouritsen's approach

---

<sup>5</sup> Crook (1967), 12. Galsterer (2000), for a change, stressed that the legal developments in Roman Egypt have for too long been thought of as an exception, and that the evidence from Vindolanda or the Greek East may not be too far remote, 345.

<sup>6</sup> Johnston (1999). His study was rather meant to stimulate new research and encourage a 'more in-depth investigation of the issue', see the review by Chlup (2000).

<sup>7</sup> Sherwin-White (1973).

<sup>8</sup> Mouritsen (1998), (2008).

has triggered anew the discussion of the relationship between Roman citizenship and Roman identity, the present thesis will engage with his key publications in attempt to reassess the evidence at hand.

Although the question of Roman identity as such has attracted much due attention, its legal and civic characteristics, contrary to traits of material culture, religion or language, remain collateral to the major debate. As the focus of current scholarship slowly turns away from the imperial centre and shifts towards the periphery of Rome, significantly more research attends to questions of ethnicity and identity in a multicultural setting of the Roman provinces.<sup>9</sup> Notions of cultural interaction, fusion and ‘hybridity’ tend to challenge those of *apartheid* and social stratification in the Graeco-Roman world.<sup>10</sup> The extent to which these ideas truly apply to the legal and civic lives of communities and individuals under the direct Roman influence still needs to be estimated on the basis of both literary and documentary evidence.

Each subject to be addressed in this research has thus been treated on its own merits in scholarly literature, yet the co-dependency and interrelation between them remain largely unravelled. Furthermore, there is no consensus in scholarship as to the role that Roman law and citizenship had to play in the formation and perception of the ‘Roman’ as opposed to the provincial (regional) identities. Primary sources regarding the questions raised in this thesis are often contradictory too, what calls for a fresh reassessment of the subject matter.

While the initial premise that this research will work on assumes an intrinsic connection between ‘Roman-ness’, i.e. ‘being’ or ‘becoming Roman’, and Roman law and citizenship, the investigation of the extent to which the three were intertwined and whether it is possible to put all three into equation will be the main *foci* throughout the paper. Amongst the questions to be unravelled is whether the spread of Roman law into the periphery signified an open invitation to participate, or rather enforced social stratification by being restricted to the Roman citizenry, according to the principle of legal personality (as opposed to that of legal territoriality). To what extent were Roman legal remedies available to non-Roman components of the Empire, and what did the acquisition of Roman citizenship – as exclusively Roman legal status – mean in terms of beneficiary’s legal rights and obligations to his local community? Was the acquisition of Roman citizenship merely an ‘extra’ status, or rather a tool ‘decapitating’ local communities of their elite members by incorporating them into the Roman citizenry, and, simultaneously, making them subject to Roman law? Finally, is one’s possession of two (or more) sets of legal and civic relations to be perceived as a mixed or ‘hybrid’ identity, or rather as two separate ‘identities’ one could juggle according to circumstance?

---

<sup>9</sup> Goudriaan (1992), Vandorpe (2012).

<sup>10</sup> Cf. McCoskey (2002), 29.

Generally, the present research is placed between the two major citizenship grants: the enfranchisement of Latin and Italian allies after the Social War in 90/89 BCE and the universal citizenship grant by the *Constitutio Antoniniana* in 212 CE. The two geographical focal points are Italy shortly before and after the Social War, and the (Eastern) provinces of the mid-second century CE. The first focus is unanimously perceived as a turning point in Roman citizenship policy and, as such, offers insights into both Roman and regional attitudes towards Roman citizenship extension; while the second one provides ample documentary record, roughly contemporary with the most relevant juristic writings.

The present thesis will argue that the interrelation between Roman law, Roman citizenship and Roman identity was fairly more complex and flexible than has been largely assumed. Furthermore, the importance of context and circumstance will be put forward, by employing an agent-based approach. In other words, the present research will turn its focus on collective and individual initiatives, as well as legal or social manoeuvring and opportunistic behaviour of the subject population. This way, a more nuanced picture of the development of Roman law and citizenship policy in terms of their availability, significations and perception should emerge.

One of the main aims of this research will thus be to re-contextualize and reinterpret the Social War in terms of its contribution to the creation of ‘politically and culturally unified’ Italy. The thesis will argue that the role played by Rome and her eventual citizenship extension was of somewhat lesser significance than some scholars, with Mouritsen at the forefront, take it to be; and that the outcome of the Social War as we know it was a result of a much longer development, no less defined by the voluntary agency and opportunistic behaviour of the allies themselves. Yet another argument underlining the present research is that the phenomenon of ‘multiple’ or ‘plural’ identities was not an imperial development, as is sometimes implied by the growing body of scholarly literature focused on imperial period. Our analysis of pre- and post-Social War Italy will strive towards pointing out the similar practice of social, legal and cultural manoeuvring as well as multiplicity of coexistent identities that could be employed depending on circumstance. In the same vein, a closer look at the second century provincial situation will offer a fruitful comparative angle by which the difference between the Republican and Imperial periods may prove to be fairly less pronounced.

The initial part of this thesis will be dedicated to detailed investigation into the divisions of Roman law (*ius civile*, *ius honorarium*, *ius gentium*), as it is deemed beneficial in determining availability and flexibility of Roman legal institutions. By looking at theoretical and practical bounds of Roman law, the present research will survey what parts of it were available to non-citizens; what parts were considered to be *exclusively* Roman; and what possibly stood behind such division. Secondly, the concept of Roman citizenship will be addressed in the light of incoherent evidence pointing to, on

the one hand, increasing extension of Roman citizenship and the fluidity in determining one's *civitas* (Gaius *Inst.* 71; 74, cf. *Gnomon* 46, 47) and, on the other, continuous protection of Roman citizenship as an exclusive legal status (*Gnomon* 39, 49-53). Finally, the question of identity will be attended to, as the final part of the research will aim at investigating the role that Roman law and citizenship played in constructing, (re-)shaping and perceiving the Roman *vis-à-vis* local (regional) identities. The relationship between one's legal, civic and personal (cultural) identities will be looked at, and the extent to which the former two came to influence or reflect the latter. Simultaneously, the survey into Roman literary and juristic sources juxtaposed to provincial documentary record is expected to add colour to the notion of Roman 'legalistic cast of mind',<sup>11</sup> i.e. the Roman understanding of law and order as crucial to their identity.

---

<sup>11</sup> Kantor (2012), 56.

# 1. Roman law

## Introduction

We read in Gaius' (b. ca. 110 CE) *Institutes*, an 'elementary' textbook on Roman law originating in the 2<sup>nd</sup> century CE (c. 170) that 'all people who are ruled by laws and customs partly make use of their own laws, and partly have recourse to those which are common to all men' (*Inst.* 1.1).<sup>12</sup> In other words, Gaius distinguishes between the 'civil' or 'citizen law' (*ius civile*) and the 'law of nations' (*ius gentium*). The former was pertinent to 'what every people established as law for itself' thus being 'peculiar' to that one nation only (*quod quisque populus ipse sibi ius constituit, id ipsius proprium est*), while the latter was 'what natural reason established among all men' (*quod vero naturalis ratio inter omnes homines constituit*), or law which is observed and employed by all peoples alike. Thus, Gaius repeats, 'the Roman people partly make use of their own law, and partly avail themselves of that common to all men'.

In Gaius' description, the *ius gentium* is not perceived as part of the Roman law, but rather as one existing outside of it, or in addition to it. In this, his definition of the *ius gentium* seems closer to that of the *ius naturale*, or 'natural law', common to all living beings (*quod natura omnia animalia docuit*, Ulpian *D.* 1.1.3).<sup>13</sup> The *ius naturale* was, nevertheless, perceived as a separate body of law, which could be added to the *ius civile* and *ius gentium*, thus forming 'yet another instance of the widespread fondness for the number three in the Roman law'.<sup>14</sup> The trichotomy of *ius civile*, *gentium* and *naturale*, Kaser suggests, was rather commonly used by the so-called 'school' jurists of the classical, as well as later periods.<sup>15</sup> Meanwhile, another *ius* was added by the jurists alongside the *ius civile* and *ius gentium*, as the latter continued to be used synonymously with the *ius naturale*. This 'new' branch of law was called *ius honorarium*, or the law of the magistrates.

In what follows, the latter division (*civile – gentium – honorarium*) will be employed, as the main part of the chapter will seek to highlight the most important implications of and differences between the three types of law used by the Romans, as well as investigate the theoretical bounds and availability of their legal institutions. Furthermore, the main types of Roman legal enactments will

---

<sup>12</sup> The Latin text and the English translation of Gaius' *Institutes* are taken from the edition of de Zulueta (1946).

<sup>13</sup> Cf. Gaius *Inst.* 1.1: *quod naturalis ratio ... constituit*. The Latin text and the English translation of the *Digest* are taken from Mommsen, Krueger & Watson (1985).

<sup>14</sup> Goudy (1910), referred to by Schiller (1978), 560. Cf. Ulpian in *D.* 1.1.4: 'manumissions, also, are within the *ius gentium* ... this matter had its origin in the *ius gentium* because by *ius naturale* all were born free ... but after slavery appeared in the *ius gentium*, the relief of manumission followed ... there began to be three types in the *ius gentium*: free men ... slaves, and the class of freedmen' etc.

<sup>15</sup> Kaser (1975), 63.



be briefly discussed in terms of their application and extension to non-citizens. Lastly, due attention will be paid to several aspects of Roman legal administration, both at Rome and in its periphery.

## 1.1 Divisions of Roman law: exclusivity and accessibility to non-Romans

### a. *ius civile*<sup>16</sup>

Ulpian (b. c. 170 CE), writing some 30 years later than Gaius, gives his own interpretation of the *ius civile* in relation to the *ius gentium*: ‘*ius civile* is that which is not wholly apart from (*ius*) *naturale* or (*ius*) *gentium*, nor subordinate to it throughout’ (D. 1.1.6 pr). ‘Accordingly’, Ulpian explains, ‘when we add or subtract something from the *ius commune* (common law), we establish our own law, that is, the *ius civile*’. In Ulpian’s understanding, Roman civil law was, generally speaking, part of the law common to all people (*ius gentium*, *naturale* or *commune*), for it was created by adopting some of the provisions and institutions of the ‘common law’ as well as building upon them. The eventual differences between the ‘citizen law’ and the ‘law of nations’ were what made the former peculiar to the Roman state.

Consequently, the Roman *ius civile* was a body of laws that, normally, applied exclusively to the Roman citizenry, and was meant to be used in settling disputes between Roman citizens only.<sup>17</sup> By making use of institutions and actions of the *ius civile* available to them, the citizens were empowered ‘to make things happen in law by uttering the right words’.<sup>18</sup> The ‘citizen law’ was thus primarily meant to guarantee every citizen his or her rights (of property, ownership, inheritance etc.) as well as enforce the obligations that went along with those rights:

*These were the realities of how people related to each other, the security derived from possessing with proper legal title a home, land and money, and the expectations a business partner could have of a colleague, or a tenant of a landlord. They were integral to what it meant to be a Roman citizen.*<sup>19</sup>

Indeed, aside from ensuring one’s individual rights and obligations, the *ius civile* played a public role of considerable importance too: it was perceived as a defining feature of community where

---

<sup>16</sup> Crook (1967) notes the multiple significations of the term *ius civile*: the expression may be used for the law of Rome in its entirety, or in opposition to *ius publicum*, i.e. the law of constitution and administration (i), *ius honorarium* (ii), and *ius gentium* (iii), 293. In this chapter, the term *ius civile* will be used in relation with and in opposition to both *ius honorarium* and *ius gentium*.

<sup>17</sup> Cf. Schiller (1978) on *ius civile* as comprising ‘the norms which were exclusively applicable to Roman citizens and to them alone, whether these rules stemmed from customary practices, from statutes, or from juristic interpretation’, 525. Such cases involving the citizens were normally adjudicated by the urban praetor.

<sup>18</sup> Harries (2006) on the perception of Cn. Flavius’ collection of *legis actiones* (legal procedures or ‘actions in law’) in the late fourth century BCE, as a form of *ius civile*, 41.

<sup>19</sup> Harries (2006), 15; see also Gardner (1993).

every component was expected to abide the rules if he or she was to live within it. As Harries points out in her analysis of Cicero's contribution to the creation of such a concept, 'Cicero's Crassus' view of the law code as comprising all that citizens required of law did not fit the facts but was a powerful expression of the perceived supremacy of the Twelve Tables as citizen-law'.<sup>20</sup> Cicero's Crassus may also be taken as representative of the pride that Romans, especially of senatorial order, took in their *ius civile*, as he argues for the supremacy of Roman 'citizen law' to any other:

*You will win from legal studies this further joy, interest and delight that you will most readily understand how far our ancestors surpassed in practical wisdom studies the men of other nations, if you compare our own laws with those of Lycurgus, Draco and Solon, among the foreigners. For it is incredible how disordered, and wellnigh absurd, is all national law (ius civile) other than our own; on which subject it is my habit to say a great deal in everyday talk, when upholding the wisdom of our own folk against that of all others, the Greeks in particular,*<sup>21</sup>

Similar sense of pride and awareness of the distinctive features of the Roman *ius civile* is evident in Roman juristic writing too. For instance, in the first book of his *Institutes* alone, Gaius notes on *patria potestas* (1.55), the *manus* authority (1.108), and *mancipatio* (1.119) as being *ius proprium civium Romanorum*.<sup>22</sup> Especially telling is 1.55 where Gaius notes on paternal authority in Roman law in relation to other nations:

*This right is peculiar to Roman citizens; for scarcely any other men have over their sons a power such as we have. The late emperor Hadrian declared as much in the edict he issued concerning those who petitioned him for citizenship for themselves and their children. I am not forgetting that the Galatians regard children as being in the potestas of their parents.*<sup>23</sup>

This passage of Gaius primarily demonstrates the Roman awareness of differences and similarities between their own 'national law' and laws observed by other nations. Although both *manus* and *potestas* institutions had seemingly existed among the Germanic tribes too, in his edict Hadrian was most likely referring to the singularity of the Roman *patria potestas* institution among the

---

<sup>20</sup> Harries (2006), 185 on the Twelve Tables being envisioned as 'encapsulating the full legal implications of citizen identity' in Cicero's *De Oratore*.

<sup>21</sup> *Percipietis etiam illam ex cognitione iuris laetitiam et voluptatem, quod, quantum praestiterint nostri maiores prudentia ceteris gentibus, tum facillime intellegitis, si cum illorum Lycurgo et Dracone et Solone nostras leges conferre volueritis; incredibile est enim, quam sit omne ius civile praeter hoc nostrum inconditum ac paene ridiculum; de quo multa soleo in sermonibus cotidianis dicere, cum hominum nostrorum prudentiam ceteris omnibus et maxime Graecis antepono, de Orat. 1.197. Translation by Sutton & Rackham (1942).*

<sup>22</sup> Law peculiar to Roman citizens.

<sup>23</sup> *Quod ius proprium civium Romanorum est (fere enim nulli alii sunt homines, qui talem in filios suos habent potestatem, qualem nos habemus) idque divi Hadriani edicto, quod proposuit de his, qui sibi liberisque suis ab eo civitatem Romanam petebant, significatur. Nec me praeterit Galatarum gentem credere in potestate parentum liberos esse, Inst. 1.55.*

Mediterranean peoples.<sup>24</sup> Gaius, although acknowledging its observance by the Galatians, nevertheless introduces this right as *ius proprium Romanorum*, and brings the edict of Hadrian as evidence in support of his claim. More importantly still, the given passage illustrates the close link between Roman citizenship (*civitas Romana*) and specifically Roman legal institutions. Powers such as *patria potestas* may easily be seen as a means by which the Romans could claim their distinctiveness from other peoples.<sup>25</sup> In the second century CE, Hadrian must have still seen *patria potestas* as an inherent quality of Roman citizenship, if he had used this ‘peculiarly Roman’ institution when describing citizenship for petitioners in his edict referred to by Gaius.<sup>26</sup> Furthermore, Gaughan notes on the fact that in Gaius’ description of *patria potestas* institution, the emphasis lies on how this power sets a Roman apart from non-Romans, instead of a father from the rest of the family.<sup>27</sup>

Yet another interesting case of similar sort is Gaius’ discussion of verbal obligation in *Inst.* 3.92-93, where he claims that *sponsio*, or an obligation contracted by words ‘*dari spondes? - spondeo*’ is peculiar to the Roman *ius civile*.<sup>28</sup> The other expressions, Gaius maintains, in whatever language they be uttered, belong to the ‘law of nations’ and are therefore valid among non-Romans too, so long as both parties understand what they stipulate.<sup>29</sup> However, the *sponsio* clause, says Gaius, is so peculiar to the Roman citizens (*adeo propria ciuium Romanorum est*) that it cannot be properly rendered into the Greek language. Noteworthy here is both the importance of mutual understanding, and the impossibility of rendering a certain verbal expression into another language serving as a marker of its specificity to the Roman *ius civile*.<sup>30</sup>

In addition to ‘citizen law’, there was also another, more specialized meaning of the *ius civile*, namely that of the body of rules developed through jurists’ interpretation of law. These juristic interpretations would acquire the force of law themselves and be perceived as one of the sources of

---

<sup>24</sup> Muirhead (2009), 29 (n. 28). We read in Caesar’s account of the Gallic wars about the same *vitae necisque potestas* observed by the Gauls, as he writes that ‘men have the power of life and death over their wives, just as they have over their children’ (*virī in uxores, sicuti in liberos, vitae necisque habent potestatem*, *BG* 6.19).

<sup>25</sup> Gaughan (2010), 26.

<sup>26</sup> ‘... though the father’s *potestas* does not describe citizenship in a direct legal sense, it is a means of identifying and distinguishing the Roman citizen male’, *ibid.*

<sup>27</sup> Gaughan supports her idea by observing that the term *pater* is more often used to define ‘Roman-ness’ than ‘father-ness’; and that various examples of its use tend to illustrate the close relationship between family and *civitas*, *ibid.* 25.

<sup>28</sup> ‘Do you solemnly agree to give?’ ‘I do solemnly agree to give’.

<sup>29</sup> ‘And even if they [question and answer of a verbal obligation] are uttered in the Greek language they are still valid, so far as Roman citizens are concerned, if they understand Greek; and on the other hand, although they may be stated in Latin, they will, nevertheless, be binding on foreigners, provided they are familiar with the Latin language’.

<sup>30</sup> In the so-called Transylvannian Tablets (139-167 CE), provincial documentary evidence from Dacia roughly contemporary to the writings of Gaius, we witness non-Romans making use of Latin stipulation clauses, although in their ‘degenerated form’, see Polay (1980) and van Oven (1958).

law (*Inst.* 1.2). Both the broad and the specialized meanings, according to Harries, contributed to the construct of the *ius civile*, it being part of the ‘philosophical, and also emotive, entity: law’.<sup>31</sup>

*b. ius gentium*

Contrary to the *ius civile* which governed legal relations between Roman citizens only, the concept of the *ius gentium* (‘law of nations’ or simply ‘peoples’ law’), broadly speaking, determined Rome’s relationship to the legal customs of non-Roman peoples. The *ius gentium*, in theory, consisted of ‘those legal customs accepted by the Roman law as applying to, and being used by, all the people they met, whether Roman citizens or not’.<sup>32</sup> In other words, it was the body of laws, applicable to foreigners both in their dealings between themselves, and in those involving Roman citizens.<sup>33</sup> The jurisdiction over such cases was largely in the hands of the *praetor peregrinus*.

Although the concept of the *ius gentium* stretches back to at least 200 BCE as it was largely defined by Rome’s territorial expansion and the growing set of complex relations with foreign peoples, the term *ius gentium* first appears in Cicero and is already used in several senses.<sup>34</sup> In his *De Officiis* Cicero distinguishes between the *ius civile* and *ius gentium*, and explains what the relationship between the two should be:

*our ancestors chose to understand that the ius gentium was one thing, the ius civile quite another; that which is (ius) civile is not necessarily (ius) gentium, but that which is (ius) gentium ought to be (ius) civile’;*<sup>35</sup>

The jurists seemingly adopt both theoretical and practical views, and the dualistic interpretation of the *ius gentium* persists: on the one hand, it is perceived as ‘natural reason’ and thus the oldest of laws; on the other, it is understood simply as the body of law which developed together with the city-state Rome turning into an Empire.<sup>36</sup> Whatever the correct answer may be (perhaps the two

---

<sup>31</sup> Harries (2006), 185.

<sup>32</sup> Crook (1967), 29.

<sup>33</sup> Crook provides a simple example of the difference between the two: slavery was held to be *iure gentium*, in the sense that all (most) nations have it; while *sponsio*, as a specifically Roman form of verbal contract, was *iure civili* and, therefore, available only to Roman citizens. Another example comes from the law of status: children of a valid Roman contractual marriage (*iustae nuptiae*) followed the status of a father according to the *ius civile*; while in any other type of marriage (*iure gentium*), the status of a mother. Therefore, children of a Roman citizen woman and a slave or an unknown father became Roman citizens according to the *ius gentium*, while children of Roman citizen fathers and non-Roman mothers may not have become citizens at all, or may even have become slaves according to the same principle of following the maternal line, Crook (1967), 40-1.

<sup>34</sup> Namely, as the law applicable to Roman dealings with foreigners, and the ‘oldest of laws’ based on ‘natural reason’. Schiller (1978), 550.

<sup>35</sup> *Itaque maiores aliud ius gentium, aliud ius civile esse voluerunt; quod civile, non idem continuo gentium, quod autem gentium, idem civile esse debet, De Offic.* 3.17.69. Translation by Schiller (1978).

<sup>36</sup> Cf. Gaius in *D.* 41.1.1 pr. and Papinian in *D.* 48.5.39.2. Schiller (1978) summarizes the endless scholarly debate over which interpretation came first only to conclude that it is still ‘not clear if the theoretical sense of the term is a later development or if it preceded the practical one’, 551.

interpretations coexisted as they are not opposing to one another in any strict sense), the *ius gentium* was still, generally speaking, part of the *Roman* law. Indeed, the specific transactions attributed to the newly created body of the *ius gentium* ‘were Roman in nature, a creation of Roman courts, perhaps with the aid of Roman jurists’.<sup>37</sup>

Particularly telling in this respect is the passage in Marcianus (early 3<sup>rd</sup> century CE) which describes the rights to legal procedures and transactions retained by a person who had lost his citizenship upon deportation:

*a person deported loses his citizenship, he retains his freedom; is excluded from the ius civile but may use the ius gentium. Accordingly, he may buy and sell, lease and hire, exchange, lend at interest, and other similar things.*<sup>38</sup>

A person reduced to peregrinity, thus, was nevertheless allowed to employ the institutions of the *ius gentium*, just as any other non-Roman would be. From Marcianus’ description we see rather clearly that the institutions of the *ius gentium* were primarily meant to govern *commercial* transactions between Roman citizens and foreigners. This notion subscribes to the idea that satisfying the needs of commercial relations between Romans and peregrines was the main reason behind the development of certain legal institutions in addition to those of the *ius civile*. What had previously been established by various commercial treaties between Rome and foreign states (or by extension of the *ius commercium*), was replaced by more flexible legal institutions of the *ius gentium* over the course of the 2<sup>nd</sup> century BCE.<sup>39</sup> Gradually, series of other institutions and transactions, e.g. *traditio*, *occupatio* and *manumissio* that were not considered to be peculiar to the Roman ‘citizen law’, were added to the *ius gentium* based on the notion that they had counterparts in other legal systems too, which automatically made them ‘common’ to all men.<sup>40</sup> Some of the institutions of the *ius civile*, such as the aforementioned *stipulatio*, were first of all adapted to the use of foreigners, and only later included among those of the *ius gentium*.<sup>41</sup>

Some legal powers and principles, as we have already observed, were thought to be more ‘Roman’ than the others. The institutions which a foreigner (or a person reduced to peregrinity) would be barred from largely belonged to the realm of private law. For instance, non-Romans could only make use of limited *ius commercii*, which meant that the property could be transferred between them and Roman citizens and they could make legally binding contracts, but they could not

---

<sup>37</sup> Schiller (1978), 527. Schiller maintains that the very term *ius gentium* was never used by the Republican jurists to refer to those parts of Roman law which applied to peregrines, so it is not entirely clear why they were added to the realm of the ‘law of nations’ by later jurists.

<sup>38</sup> *D.* 48.22.15.

<sup>39</sup> Schiller (1978), 527.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.* 528.

mancipate (transfer property by *mancipatio*), as they were not entitled to full legal ownership of a *res Mancipi* (Gaius *Inst.* 1.119).<sup>42</sup> Furthermore, peregrines were only exceptionally entitled to possess *conubium*, or the right to contract a valid Roman law marriage, which meant that most of the family law, including the law of inheritance, was not accessible to them and thus complicated the possibility of (legally beneficial) personal relations between peregrines and Romans.<sup>43</sup> The acquisition of Roman citizenship would therefore ‘not only affect for them those existing dealings with Romans which were open to foreigners, but would allow them to enter into personal and property relations with Roman citizens’.<sup>44</sup>

Finally, it should be pointed out that the Roman jurists were primarily writing for the Roman public and aimed at interpreting legal conundrums originating within the Roman citizen community; they hardly ever mentioned peregrine ways if not in contrast to the Roman ones.<sup>45</sup> The development of the *ius gentium* institutions was thus merely a response to Rome’s intensified contact with foreign states. The growing flexibility and adaptation of rigid forms of the *ius civile*, and, especially, their extension to foreigners, were all part of the process of expanding the boundaries of legal relations.

### c. *ius honorarium*

Yet another development of Roman law aiming at flexibility and appropriation of the Roman *ius civile* resulted in the emergence of the so-called ‘honorary law’ or ‘law of the magistrates’ (*ius honorarium*), also referred to as the *ius praetorium*, or the ‘law of the praetors’. When Gaius singles out all of the sources constituting Roman civil law in his *Institutes*, he mentions edicts of the magistrates among the rest.<sup>46</sup> Comparably, Papinian (b. 142 CE), one of the most celebrated jurists of the classical period of Roman law and the contemporary of Gaius, gives his own account of the sources of Roman *ius civile*:

*The civil law is the law which is derived from statutes, plebiscites, decrees of the senate, enactments of the emperors, or the authority of those learned in the law. Praetorian law is that which was introduced by the praetors in order to aid, supplement, or amend the*

---

<sup>42</sup> *Res Mancipi* were goods such as land (*ager Romanus*) and rights over it, slaves, four-footed animals etc. Some peoples (cities, city-states) may have been entitled to full *ius commercium*, e.g. Latins and some of the allies in the Republican period.

<sup>43</sup> Cf. Gardner (1993), 187.

<sup>44</sup> *Ibid.* 188. Schiller (1978) points out that the ethical nature assumed by the *ius gentium* in late classical times eventually led to the inclusion of some matters of the law of persons and family law within the category of the *ius gentium*, so that it was no longer perceived as governing commercial relations with peregrines only, 529.

<sup>45</sup> Gardner (1993). Cf. Gaius *Inst.* 2.40.

<sup>46</sup> *Constant autem iura populi Romani ex legibus, plebiscitis, senatus consultis, constitutionibus principum, edictis eorum, qui ius edicendi habent, responsis prudentium, Inst.* 1.2 Cf. differences with Cicero *Top.* 28. Harries (2006) maintains that ‘Cicero’s list of the *partes* of law reveals both the lack of homogeneity of that entity labelled ‘Roman law’ and its contested nature’, 69.

*civil law, with a view to the public advantage. The same is also called 'honorary law' after the honor (public office) of the praetors.*<sup>47</sup>

Papinian, contrary to Gaius, chose not to include edicts of the magistrates among the sources of the *ius civile*. Instead, *ius praetorium* or *ius honorarium* is perceived by him as a distinct body of law, with a clear purpose of supplementing or otherwise correcting the *ius civile*, for the sake of public benefit.<sup>48</sup> This formal separation of the *ius civile* and *ius honorarium* was called the most significant dichotomy in the private law and procedure of the classical epoch by Schiller.<sup>49</sup> Papinian's definition of the sources of law, originating only slightly later than that of Gaius', thus points to the rapidly growing relevance of magistrates with *ius edicendi*.

Marcianus, writing after the death of Septimius Severus (d. 211 CE), provides a kind of combination of Gaius' and Papinian's views. Instead of describing the two (*ius civile* and *ius honorarium*) as separate bodies of law, Marcianus perceives *ius honorarium* as an inherent part of the *ius civile*, merely aimed at fulfilling the practical needs of the population, as he maintains:

*Honorary law itself is the living voice of the civil law.*<sup>50</sup>

It is in these developments that we are able to discern a certain evolution both of Roman law itself and of its perception: old and rigid principles and practices of the *ius civile* had to be adjusted to the needs of the ever-growing Roman state. The urban (from 367 BCE) and the peregrine praetors (added in 241 BCE), who were in charge of the Republican courts, primarily had to work with the system of law based on the Twelve Tables or, as Crook puts it, 'standard and rigid forms of procedure and ancient custom'.<sup>51</sup> Since the praetors had no legislative power and were therefore unable to change the obsolete or no longer relevant law, they started building up more flexible institutions alongside those of the *ius civile* and authorizing them with their annual edict, thus 'enabling the law of the Republic to keep up pace with its economic and social development'.<sup>52</sup>

The edict of a praetor would set out the actions of law allowed throughout his year in office. Although praetor's edict was to be valid during the year of his office only, the contents of the annual edict to a large extent remained stable, as they were normally adopted by the next praetor with very little or no change at all. The possibility of annual change did, nevertheless, invite legal

---

<sup>47</sup> *Ius autem civile est, quod ex legibus, plebis scitis, senatus consultis, decretis principum, auctoritate prudentium venit. Ius praetorium est, quod praetores introduxerunt adiuvandi vel supplendi vel corrigendi iuris civilis gratia propter utilitatem publicam. quod et honorarium dicitur ad honorem praetorum sic nominatum, D. 1.1.7.*

<sup>48</sup> Cf. also Gaius' *Inst.* 3.41: *Qua de causa postea praetoris edicto haec iuris iniquitas emendata est* ('this injustice of the law was afterwards corrected by the edict of the praetor').

<sup>49</sup> Schiller (1978), 531.

<sup>50</sup> *Ipsum ius honorarium viva vox est iuris civilis, D. 1.1.8.*

<sup>51</sup> Crook (1967), 24.

<sup>52</sup> *Ibid.*

innovation, given that the new praetor was willing and, more importantly, competent to initiate modifications.<sup>53</sup> Thus, Kantor maintains, ‘it was through the medium of the praetor’s edict that Roman private law between the Aebutian law [originating in the early second century BCE] and Hadrian’s reign mainly developed’, as the praetors’ edicts gradually became ‘no less permanent than legislation itself’.<sup>54</sup>

Nevertheless, Crook holds that the *ius civile* remained superior to the *ius honorarium* in case of a conflict between the two, as he writes: ‘the remedies and protection he [the praetor] gave were in effect legal rights as against all the world except a superior magistrate or someone claiming under legislation or the civil law’.<sup>55</sup> Similarly, Grosso stressed that while *ius honorarium* was a welcome elaboration of the ‘citizen law’, *ius civile* continued to occupy the central place in the legal life of Rome.<sup>56</sup> Schiller seems to at least partially support this notion as he holds that ‘in every phase of the law there was an antithesis between law in the strict sense and the law created by the magistrate’.<sup>57</sup> The latter, being more progressive and versatile, could be and was perceived by some as a new legal system fashioned to complement if not oppose the old one – a similar view is conveyed by Papinian’s definition mentioned above. In practice, however, as well as in some of the jurists’ opinion (cf. Marcianus *D.* 1.1.8) the two systems of law were closely related and the differences between them were less pronounced. In the spheres of ownership and inheritance, however, the institutions of the two remained sharply opposed.<sup>58</sup>

With the rise of the imperial regime, yet another body of law started to form, namely that deriving from the activity of an emperor and his delegate judges. It received the designation of *ius novum* (‘new law’) or *ius extra ordinem* (‘law outside regular jurisdiction’) as it worked outside the spheres of the *ius civile* and the *ius honorarium*, with judicial proceedings taking place in the newly established tribunals of the emperor and his officials.<sup>59</sup> The shortcomings of both *ius gentium* and *ius honorarium* were thus amended by a new judicial process (*cognitio extra ordinem*) which ‘reflected imperial policy, first in the field of succession, thereafter in the law of persons and of

---

<sup>53</sup> Noteworthy here is the notion that praetors, while being responsible for courts, were not necessarily learned in law, which was the primary reason for their reluctance to alternate the work of their more learned predecessors.

<sup>54</sup> Kantor (2012), 76-77. Some time around the year 129 CE, the annual modification of the praetor’s edict was restricted by Hadrian (r. 117–138), as the jurist Salvius Julianus was commissioned to make a formal revision of the praetor’s edict which resulted in a consolidated and fairly fixed version (*edictum perpetuum*), subject only to changes approved by the Emperor.

<sup>55</sup> Crook (1967), 24.

<sup>56</sup> Grosso (1967), 71-79.

<sup>57</sup> Schiller (1978), 532. Cf. Kantor (2012): ‘Sabinus and Gaius commented on the institutions of *ius civile* in the sense of statutory law as opposed to rules of the praetor’s edict’, 64.

<sup>58</sup> Schiller (1978), 532.

<sup>59</sup> *Ibid.* 534.



obligations'.<sup>60</sup> The development of *ius novum* points not only to the need of legal innovation, but also to the growing degree of imperial intervention into the matters of private law.<sup>61</sup> Personal law, which governed matters of family law, inheritance and succession was, perhaps unsurprisingly, the most conservative and, accordingly, the most exclusive part of the Roman private law. Nevertheless, as we shall later on see, the same principle of exclusivity of personal law applied to other legal systems too, as demonstrated by the livelihood of local legal practices in this particular sphere of law, and their retention even after the *Constitutio Anotininiana* of 212 CE.

## 1.2 Legal enactments and their application

As for the legal enactments by which law was made, Gaius distinguished between the following: laws (*leges*), plebiscites, *senatusconsulta*, imperial constitutions, edicts of the magistrates, and jurists' responses (*Inst.* 1.2).<sup>62</sup> The main features of the most important of these enactments and their applicability has been sufficiently expounded by Crook and may only be briefly summarized here.<sup>63</sup> *Leges*, as the main source for Roman civil law, applied exclusively to Roman citizens. Furthermore, Crook notes, since *leges* largely determined the law applied in the Roman courts, they would normally be seen as overriding one's claim based on non-citizen law.<sup>64</sup> The plebiscites were decisions enacted by the plebeians, which became binding on all citizens after 286 BCE, and were primarily relating to matters of private law.<sup>65</sup> The *senatusconsulta* during the Republican period were merely opinions or advice of the Senate which could at a later stage be turned into law by a

---

<sup>60</sup> *Ibid.* 535. Cf. *D.* 5.3.1.3; *D.* 47.19.3.

<sup>61</sup> Starting already with Augustus' moral legislation (*Leges Iuliae* of 18-17 BCE) on marriage, inheritance, and succession. It suffices here to only briefly mention that the private law (*ius privatum*), in opposition to the *ius publicum* which governed the interests of the state, determined legal relations between private individuals. While the majority of Roman jurists seem to have mostly been occupied with private law matters, Kantor (2012) alerts us that such limitations were never adopted in legal administration: Pliny asked Trajan on private law (not only Roman) as well as on criminal, public, religious law (*Ep.* 10.65, 10.79, 10.31, 10.49, 10.68), p. 64. Furthermore, he maintains, there was no 'real separation of the sphere of private law as living by its own 'legal' rules' at least to the beginning of the 3<sup>rd</sup> century CE.

<sup>62</sup> Kantor (2012) draws attention to the problem of terminology: those were formal (and linguistic) rather than content-related distinctions, as they were made according to the body passing the rule; the only type of imperial constitution distinguished by its contents was a *decretum* – decision in a law-suit, 70. He also notes that 'the difference between state and non-state rules was far less pronounced on a terminological level than is the case in the modern period', *ibid.* 83.

<sup>63</sup> See also Crawford (1996), Crook (1994).

<sup>64</sup> Crook (1967) gives an example: a non-citizen's claim that, according to his law, he could inherit from a Roman citizen would not be valid in the Roman court because such type of inheritance was against Roman civil law, 30.

<sup>65</sup> Alexander (2006), 240.

Roman magistrate with legislative power. These opinions seemingly acquired the force of law under the Empire and could at times extend the application of *leges* to non-citizens.<sup>66</sup>

While *edicta*, as mentioned above, were technically only valid for the time of one's magistracy and were thus relatively open to legal innovation, they would usually be adopted by the next person in office with very little change. The provincial edict would determine legal relations not only between the Roman citizens residing in the province but also among the peregrines, as Cicero's letter to Atticus (c. 50 BCE) concerning his own role as a governor of Cilicia and his provincial edict reads:

... in many matters I have followed Scaevola, amongst them that one which the Greeks consider the grant of liberty to them, namely, that controversies amongst themselves be tried under their own laws.<sup>67</sup>

Many of the provisions of local law thus got their way into what was understood as Roman 'provincial law' through the leniency of the edicts of provincial governors.<sup>68</sup> Most of the *imperial constitutions* were applicable only to specific provinces or sets of people therein, for instance, the Christians. Imperial decisions (*decreta, edicta, rescripta*), on the other hand, could apply to everybody as 'they were not constitutionally confined' to the imperial provinces, nor to Roman citizens in particular.<sup>69</sup>

Bearing in mind the wide range of legal enactments and their applicability, it may come as little surprise that certain difficulties would inevitably arise regarding the application and validity of certain legislation, as well as the superiority of one legal enactment over another. While acting as a governor of the province of Bithynia-Pontus, Pliny seemingly had frequent doubts about the application of various laws and ordinances, as he would often turn to Trajan for legal advice: 'numerous imperial constitutions have been quoted to me about this <...> none, however, applies either specifically to this province or to all areas generally' (10.65), to which complaint Trajan would reply acknowledging that there are many enactments, but no general ordinance for Bithynia, and would nevertheless seek to provide Pliny with a suitable solution (10.66).<sup>70</sup>

Documentary evidence from mid-second century Egypt confirms the regularity of doubt in application of (imperial) ordinances too: in *BGU* 1.19 (135 CE) concerning the restitution of a share

---

<sup>66</sup> Crook (1967), 31. Cf. Gaius' *Inst.* 1.47: 'it should be noted that, as it is provided by the *Lex Aelia Sentia* that slaves who have been manumitted for the purpose of defrauding a patron, or creditors, do not become free; for the Senate, at the suggestion of the Divine Hadrian, decreed that this rule should also apply to foreigners, while the other provisions of the same law do not apply to them'. See also Alexander (2006), 240.

<sup>67</sup> *multaque sum secutus Scaevolae, in iis illud in quo sibi libertatem censent Graeci datam, ut Graeci inter se disceptent suis legibus*, *Att.* 6.1.15. Translation by Schiller (1978), adapted.

<sup>68</sup> Schönbauer (1937), who coined the term *Provinzialrecht* to define a kind of law emerging in the context of interaction between the Empire and local laws, held that Roman courts continued to make use of local legal provisions as part of 'provincial law' even after the *Constitutio Antoniniana*, 309, 351-353.

<sup>69</sup> Crook (1967:31) with reference to *FIRA* 1.68, 1.73.

<sup>70</sup> *In qua ego auditis constitutionibus principum, quia nihil inveniebam aut proprium aut universale, quod ad Bithynos referretur, consulendum te existimavi, quid observari velles*, 10.65.2. See also *Ep.* 10.72-73, 10.79.

left by a grandmother, an Egyptian plaintiff refers to an edict issued by Hadrian which established the right of succession in favour of grandchildren. The judge, nevertheless, has doubts about the interpretation of the enactment and asks the prefect whether it also applies to Egyptians. The prefect answers affirmatively and confirms that the legal share should be adjudged to the plaintiff.<sup>71</sup> One gathers from these examples an idea that the application of an (imperial) ordinance could either be universal or restricted to specific components of a given society. Furthermore, one may safely assume that the least (legally and socially) privileged strata of provincials would often find themselves in the middle of such interpretative problems.

Roman civil law of Late Republican and Early Imperial period thus evidently lacked not only the clarity in defining what constitutes sources of law,<sup>72</sup> but also a clear hierarchy of legislation: ‘while the old forms of legislation persisted, this created a situation in which laws of the Roman people, decrees of the Senate, and personal decisions of the emperor were all on the same level’.<sup>73</sup> Similarly, there does not seem to have been any procedural distinction established between passing temporary and permanent rules throughout the periods in question.<sup>74</sup> Despite the absence of a clean-cut hierarchical system of legislation or attempts to distinguish one type of legal enactment from another, we do nevertheless find ‘a clear idea of binding rules’ in both Hellenistic and Roman legal systems.<sup>75</sup> Furthermore, there seems to have been a clear hierarchy of authority, particularly evident from the willingness of provincial judges to consult governors over uncertain applicability of enactments, and from governors’ further consultations with the higher judicial authorities back at Rome.

### 1.3 Administration of justice

Turning to those in whose hands the application of legislative acts lied, it is important to establish that ‘the degree of discretion which Roman magistrates had in applying or not applying the law was much wider than any modern understanding of the ‘rule of law’ would allow’.<sup>76</sup> This meant that, in

---

<sup>71</sup> Taubenschlag (1951), 127.

<sup>72</sup> Cf. different lists in Gaius’ *Inst.* 1.2 and Cicero’s *Topica* 28. Reinhardt (2003) notes on the possible reason behind the differing viewpoints of the two authors: while Gaius was a teacher in a law-school, Cicero was a practicing advocate.

<sup>73</sup> Kantor (2012), 72. In the imperial period, notably, neither of the first two could have contradicted emperor’s wishes.

<sup>74</sup> *Ibid.* 77.

<sup>75</sup> Skoda (2012), 39.

<sup>76</sup> Kantor (2012), 78. Kantor also notes that in some respects the discretion decreased, e.g. in 67 BCE praetors were forbidden to change their edict after its publication by Cornelian law (Dio Cass. 36.40.1), while in other respects it grew, e.g. through the development of *cognitio* procedure in capital cases, very wide discretion was allowed to presiding magistrates entitled to make their own enquiries and not bound by complex procedural rules of late republican jury courts, *ibid.*, with reference to Kaser (1966), 339-409.

practice, the Roman magistrates and provincial governors were relatively free to independently promulgate and administer various rules of law which would remain legally binding as long as there was no direct intervention of a higher authority, namely the Senate or the Emperor.<sup>77</sup> Similarly to the process of new institutions of *ius honorarium* getting round the obsolete provisions of *ius civile* without abrogating them; Roman legal authorities, such as the Senate, felt free to make exceptions and consider each case separately, although formally acknowledging previous practice and the rules which were applied in the past.<sup>78</sup> Provincial administration of justice, above all, was wont to employ the case-by-case method for dispute settlement, especially if there were more than one set of laws involved (see Ch. 3.3 below).

As mentioned above, the hierarchy of authority was a significant factor in the distribution of legal remedies. The governor, together with other high officials of his entourage, was perceived as the highest legal authority not only by the provincials, but also by Roman citizens resident in the province. Lower courts and regional judges would report cases beyond their jurisdiction to the governor, and it was in his hands to either grant or refuse further investigation. The overindulgence of such power on behalf of Roman high officials would inevitably occur in various parts of the Empire, so that not only provincials but Romans too would often find themselves in need of the protection of Roman law against governors' abuses.<sup>79</sup> The provincials would often seek further help by addressing the Senatorial or the Emperor's court as the highest judicial authorities Empire-wide, by means of petition or personal audience in Rome. While one's chances to successfully pass a petition to Rome hinged upon the benevolence of the governor, one's ability to secure a personal hearing of his case in front of the Senate or the Emperor lied in his financial capacity to afford such a long and costly affair. Naturally, the main incentive to go through with any of these procedures was the awareness that once your case was adjudicated by the highest judicial authority, its decision may no longer be appealed.<sup>80</sup> The governors, too, often sought the emperor's rulings as they would remain legally binding even after the end of their office in the province: thus, 'the emperor was addressed not only as a legislator, but also as an interpreter of existing law'.<sup>81</sup>

---

<sup>77</sup> *Ibid.* 78.

<sup>78</sup> For an example of Senate's discretion, Kantor (2012) refers his reader to Tacitus' *Ann.* 3.60-63.

<sup>79</sup> 'The Roman abroad was ... at risk not only from non-Romans but also from Romans, whose behavior in the provinces might not be restrained by the norms that held sway at Rome, particularly where those Romans held positions of power', Braund (1998), 12. Numerous *leges de repetundis* (on the right to recovery of officially extorted property) have been passed since the *Lex Calpurnia* of 149 BCE, e.g. *Lex Acilia* (123/2 BCE), *Lex Servilia Glauca* (c. 100 BCE), *Lex Cornelia* (81 BCE).

<sup>80</sup> It became a *res iudicata*, which may have been used as a point of reference in further cases of similar sort.

<sup>81</sup> Kantor (2012), 64. Cf. multitude of letters from Pliny to Trajan regarding private, public and criminal (both Roman and local) law matters. Kantor calls Pliny's correspondence with Trajan 'one of the most important sources of law in provincial litigation', *ibid.* 76.

Indeed, governors of the provinces were meant both to provide *all* the inhabitants of their particular province with applicable rules of law, and to make specifically Roman legal remedies available to *Roman citizens* residing in the province. In the aforementioned letter to Atticus regarding his provincial edict, Cicero, having claimed he would leave legal autonomy to the Greeks, goes on to explain some further provisions:

*The edict is short because of my way of dividing it, for I thought of issuing edicts under two heads (genus). One of which is provincial (genus provinciale), in which there are: city-state finances, debts, interest, bonds, in the same way everything connected with tax-farmers. The other [genus], because it cannot be satisfactorily dealt with without an edict, on possession of inheritances, possession of property, appointment of receivers, sale [of property], matters which are wont to be litigated and made according to the edict. The third (genus), containing all else respecting jurisdiction I have left unwritten. I have said that my rulings under this head would conform to the urban edicts [at Rome].*<sup>82</sup>

Cicero's decision to maintain some matters of jurisdiction unwritten may be understood as granting himself, as a governor, the power of 'accommodating' his judgments to the provisions of urban edicts, especially in matters pertinent to Roman citizens. On the other hand, the fact that Cicero chose to include possession and sale of property and, more importantly, a matter of private law such as inheritance in his edict may in fact be pointing toward a certain degree of infringement upon the previously declared 'legal autonomy' of local population.

It is due to this twofold role of Roman provincial government, that the 'Romanity' of administration seemingly (and, perhaps, unintentionally) penetrated the administration of justice too: the Roman provincial courts were 'wont to express their decisions in the framework of the Roman law' (cf. *P. Oxy.* 2.237, discussed in more detail in Ch. 3.3), while the imperial bureaus employed principles of Roman law in their answers to non-Romans' petitions (*P. Col.* 123).<sup>83</sup> One explanation for this may be that the high officials administering separate provinces were normally appointed for a relatively short period of time, and thus naturally lacked specific knowledge of the peculiarities of local administrative and legal systems.<sup>84</sup> Yet another factor important to our understanding of Roman legal administration is the notion that many people responsible for it (in Rome as well as in the provinces) were not necessarily learned in law. Hence, the growing importance of jurists as

---

<sup>82</sup> *Breve autem edictum est propter hanc meam diairesis quod duobus generibus edicendum putavi. quorum unum est provinciale in quo est de rationibus civitatum, de aere alieno, de usura, de syngraphis, in eodem omnia de publicanis; alterum, quod sine edicto satis commode transigi non potest, de hereditatum possessionibus, de bonis possidendis, vendendis, magistris faciendis, quae ex edicto et postulari et fieri solent. tertium de reliquo iure dicundo agraphon reliqui. dixi me de eo genere mea decreta ad edicta urbana accommodaturum, Att.* 6.1.15.

<sup>83</sup> Schiller (1978), 539.

<sup>84</sup> Bowman (1986), 66 on the administration of Roman Egypt.

trustworthy and authoritative legal experts: they were primarily significant for their actual legal and advisory service, rather than their writing.<sup>85</sup>

Even when those appointed to administer justice possessed proper legal knowledge, they were nevertheless trained in the principles of Roman administration obtained through education in Roman law and experience in military service,<sup>86</sup> the institutions which had little use in handling the needs of regional and, quite often, culturally heterogeneous populations. Therefore, the governors and other high officials in the provinces could at any time ‘give official (and thus Roman) sanction to norms of the local law by their judicial and administrative decisions’,<sup>87</sup> especially if those local norms challenged Roman legal or moral values, e.g. cases of incest in Egypt or circumcision among the Jews. The so-called ‘Romanization’ of law was thus considerably indebted to the decisions of Roman provincial courts, imperial responses to petitions, as well as the edicts of the governors, all Roman in nature.<sup>88</sup>

## Conclusion

The development of Roman law, especially the emergence of the *ius gentium* institutions was strongly dependent on Rome’s early relations with foreign states through commerce, alliances and conquest. Rome’s foreign affairs kept influencing her law throughout the period addressed, as a number of legal developments, such as extension of specifically Roman ‘citizen law’ institutions to non-citizens, worked towards keeping up the pace with Rome’s territorial, social and economic expansion or, in other words, Rome’s transition from a city-state to an imperial power. The growing flexibility and adaptation of rigid forms of the *ius civile* by an ever-extending body of complementary *ius honorarium* institutions point towards the same direction.

The idea of a ‘new’ law being built upon or rather alongside the ‘old’ one without the formal abrogation of obsolete and no longer relevant rules and principles alerts to the problem of drawing solely on Roman legal (legislative and juristic) sources in the hope of learning about the actual state of law in practice. In a similar vein, Gardner maintains that: ‘The rules taken alone give a false picture of the actual workings in the society, and of its attitudes; [while] looking at the cases on their own runs the risk of misinterpretation or unjustified generalisation’.<sup>89</sup> Thus, there is a strong

---

<sup>85</sup> Harries (2006), 45.

<sup>86</sup> Bowman (1986), 66.

<sup>87</sup> Schiller (1978), 540; Taubenschlag (1951).

<sup>88</sup> Schiller (1978), 540.

<sup>89</sup> Gardner (1993), 6.

need to consider both theoretical and practical aspects of Roman law in order to gather a comprehensive picture of how it actually functioned and what role it had to play in the society.

As we have already observed, there was no clear hierarchy of legislation in Roman law for most of the period in question: the civil laws proper (*leges*), decrees of the Senate, and personal decisions of the emperor were largely perceived as of equal validity, only the width of their application (e.g. extension to non-citizens) would vary. However, there was at all times a considerably clearly defined hierarchy of (legislative as well as judicial) authority, both at Rome and in its periphery. One of the main features of Roman administration of justice, especially in the provincial setting, was an apparent fluidity in the application of legal enactments, as well as openness to the interpretation of law. The highest judicial authorities in Rome and the provinces (the Senatorial or Imperial court and the provincial governor, respectively) were often addressed as interpreters of both Roman and provincial law. The knowledge of law (or the lack thereof) on behalf of those making judicial decisions also played a significant role in determining the nature of Roman legal administration as well as the process of the so-called ‘Romanization’ of law.<sup>90</sup> If we consider both the application of legal enactments and the administration of justice, especially the *ad hoc* judicial decisions, or the use of precedent, we may conclude that there was a seemingly lesser degree of institutionalization in the provinces than there was at Rome.<sup>91</sup> Furthermore, Rome, unlike the Hellenistic kingdoms it came to acquire in the East, was a *citizen* community living under its own *citizen* law which its representatives evidently knew and made use of, even in the periphery of Rome.<sup>92</sup> The availability of Roman legal remedies could, nevertheless, be extended to non-citizens by means of official legislation, as well as through the agency of Roman provincial administration. Rome’s acquisition of a foreign territory thus inevitably meant a redefined set of legal relations to all those who became subject to the realm, even when local legal autonomy was proclaimed.

The following chapter will treat the concept of Roman citizenship in a similar fashion, as it will primarily seek to establish the main legal rights and obligations conveyed by Roman citizenship, as well as the availability of Roman legal status to peregrines. It will furthermore work towards unravelling the complex relation between the acquisition of Roman citizenship and the legal rights and obligations retained in one’s local community. So far, based on the analysis of (theoretical) legal inabilities of non-citizens, it seems that the acquisition of Roman legal status would have first of all positively affected one’s commercial transactions with Romans, as well as enabled them to enter into personal and property relations via institutions of marriage, succession, and inheritance.

---

<sup>90</sup> For a discussion of the knowledge of law among (provincial) individuals, see 3.3.

<sup>91</sup> That is, based on the premise that ‘law as a set of more or less formalized rules rather than improvised responses to circumstance suggests a degree of ‘institutionalization’’, Skoda (2012), 44.

<sup>92</sup> Kantor (2012), 78.

Such personal relations that came together with the possibility of making use of Roman private law institutions would have arguably entailed a certain degree of redefinition of local identities too.

## 2. Roman citizenship

### Introduction

From what we have observed in our discussion of different parts of Roman law, we gather that *civitas*, or citizenship, was a legal status, the possession of which would determine the availability of legal remedies, as well as a number of obligations one was expected to fulfill in order to enable those remedies.<sup>93</sup> The importance of (legal) status in Roman society is evident throughout juristic and legislative sources too: Gaius, for instance, dedicated the entire first book of his *Institutes* to the law of persons and status that one could occupy in law.<sup>94</sup> Roman respect for one's standing, furthermore, shows even better in judicial actions and attitudes than it does in legal theory.<sup>95</sup> Garnsey, in his research on legal and social privilege in the Roman world, has shown that there were inequalities in legal procedures of both civil and criminal law based on peoples' civic, as well as social, status.<sup>96</sup> He calls this an 'inevitable bias in the law' which manifested itself not only in the official legislation, but also in the prejudice of judges, juries, and law-enforcement.<sup>97</sup>

Much like ancient law, citizenship in antiquity largely operated on a principle of personality, which meant that, unless altered by some sort of grant or imperial constitution, one's status depended entirely on birth, i.e. the status of one's parents.<sup>98</sup> Roman citizenship, thus, seems to have been 'a precise expression of one particular set of rights and duties', defined by Roman civil law.<sup>99</sup> Furthermore, it was a 'bundle of rights' that Rome could grant, either in whole or in part, to non-

---

<sup>93</sup> For instance, a Roman citizen woman wishing to initiate a legal transaction must have, as a prerequisite to its validation, had a male Roman citizen acting as her legal guardian (Gaius' *Inst.* 1.144-145). Note also the decline of *tutela mulieris* by the end of the 2<sup>nd</sup> century CE (*Inst.* 1.190).

<sup>94</sup> According to him, all people were either slaves or free; if free, they could be either free-born (*ingenui*) or freedmen (*libertini*) etc., *Inst.* 1.9-12. In terms of civic status, one could be Roman citizen (i), Latin (ii), either colonial or Junian, or a *peregrinus* (iii), i.e. foreigner, either a citizen of some foreign community or not. Such distinctions demonstrate the tendency of jurists to employ clearly defined categories in their interpretation of law.

<sup>95</sup> Garnsey (1970), 2.

<sup>96</sup> For instance, prohibition against applying corporal punishment, e.g. flogging, to Roman citizens, found in the Porcian laws of the 2<sup>nd</sup> century BCE and the *lex Julia de vi publica* of 50 BCE. Cf. Cicero *Verr.* 2.5.161-167 and Josephus *Bell. Jud.* 2.308 on the infringement of this prohibition.

<sup>97</sup> Garnsey (1970), 2-3.

<sup>98</sup> Crook (1967), 38. See also note 33 above.

<sup>99</sup> *Ibid.* 37.



Roman components within her dominions.<sup>100</sup> But how fixed and predetermined was this ‘set of rights and duties’ exactly? How strictly defined were its confines, and how complicated was the access to it for outsiders? Finally, what were the main effects to one’s local legal and civic relations, carried along with one’s admittance to the Roman status? In search for answers to these and similar questions, this chapter will, among the rest, discuss the development of citizenship extension through to the second century CE, with particular focus on the Social War (90-88 BCE) as a turning point in Roman citizenship policy.

## 2.1 Legal rights and obligations of a Roman citizen

Before turning to the analysis of Roman citizenship policy, it will be useful to define the main legal rights and obligations that the possession of Roman legal status entailed. Suffrage, or the right to vote in the public assembly was one of the most important political rights held by Roman citizens, and it was especially relevant for the formation of state law during the early Republican period. By Cicero’s day, however, corruption and purchase of votes by wealthy political figures had already become a firmly entrenched practice.<sup>101</sup> Further on, only Roman citizens were entitled to stand for public office in Rome, a right which provided with opportunity to gain political influence upon completion of the *cursus honorum*. The *ius provocationis*, or the right of appeal to the Roman assembly against summary execution (accusation and execution without trial) or corporal punishment, was another important asset to Roman citizen status. Although its usefulness declined over time, it nevertheless entailed a significant degree of protection from the state against the abuse of Roman magistrates, especially out in the provinces, by guaranteeing a fair trial in Rome.<sup>102</sup>

Some of the more economic advantages brought by Roman citizenship had to do with tax-farming and land allotments: while the possibility to participate in land distribution schemes could significantly improve one’s financial situation within a relatively short period of time, tax-farming in the provinces guaranteed substantial and regular income.<sup>103</sup> Yet another financially beneficial aspect of Roman citizenship was the exemption from *tributum*, i.e. direct taxes exacted from

---

<sup>100</sup> Gaudement (1967), 525-34.

<sup>101</sup> Crook (1967), 43. Suffrage as a right to freely express one’s will has declined steadily during the Principate too, and the last known occasion of public assembly to vote legislation was under Nerva (r. 96-98 CE), *ibid.* Noteworthy too is the fact that there was no system of representation, which meant that all of the citizens willing to vote had to be present in Rome at the time of the assembly.

<sup>102</sup> Mouritsen (1998) relates that the *ius provocationis* has been seen by most scholars as the ‘major incentive’ behind the allied demand for citizenship at the onset of the Social War, as this right would in fact secure both their lives and property.

<sup>103</sup> Although tax-farming was mostly in the hands of Roman *publicani*, there is evidence of Italian allies taking part in the exploitation of Roman provinces as well, Mouritsen (1998), 93.

provincials and mainly used as contribution towards the upkeep of Roman army, as well as commissioning of public-work. Freedom of movement within the *ager Romanus* was one more privilege exercised by the Romans and, quite possibly, highly desired by non-citizens from less wealthy areas of Roman dominions, for ‘an enfranchisement would legalise migration to Rome and the affluent regions along the Tyrrhenian coast’.<sup>104</sup>

Last but not least, the benefits provided by Roman private law institutions must be accounted for: the full possession of *ius commercium* and *ius conubium*, both restricted to the Roman citizenry, would enable the newly-made Romans to inherit estates from Roman citizens, a right which, according to Crook, must have been one of the two main inducements that ‘moved peregrines in their constant desire to acquire Roman citizenship’.<sup>105</sup> There were many other attractions in personal and family law too, already discussed in the previous chapter. If one’s personal legal protection was guaranteed by the *ius provocationis*, the legal protection of one’s financial and business transactions were covered by a number of private law actions that a Roman citizen could enforce.

One of the major obligations carried along with the possession of Roman citizenship, was compulsory military service. Legions, as the most ideologically significant, although not the most numerous part of the Roman army, consisted entirely of Roman citizens. For non-Romans, however, enrollment into the auxiliary army was a vehicle for acquiring the Roman citizenship upon successful completion of service. Citizens were, furthermore, liable to certain types of taxation: some of them, for instance, indirect taxes that fell on sales of slaves, manumission, and customs dues applied both to citizens and non-citizens; while others, such as the *vicesima hereditarium* (5% tax on inheritances, initiated by Augustus’ legislation) were exacted from Roman citizens only. A range of public *munera*, or liturgies was another burden that fell on the wealthier portion of Roman citizenry residing outside Rome, as well as the land-owning classes of municipalities, as they had to financially contribute toward the expenses of billeting of the Roman army, or provisions of transport for the government’s postal and supply service.<sup>106</sup> While public *munera* such as billeting of soldiers primarily pressed provincials (whether Romans or not), there were plenty of costly civic responsibilities to be attended to specifically by Roman citizens, as they

---

<sup>104</sup> *Ibid.* 94.

<sup>105</sup> Another being the right to hold political office, Crook (1967), 255-6. Mouritsen (1998), nevertheless, argues that both *ius commercium* and *conubium*, at least in their adapted or limited versions, may have been accessible to most of the Italian allies prior to the Social War (Livy 35.7.5; Diodorus 37.15.2). He therefore maintains that the commercial gains attributed to the allied request for Roman citizenship may be an exaggeration, as ‘overseas trade implied no legal obstacles for the Allies prior to the War’, 93.

<sup>106</sup> Crook (1967), 257 with reference to Cicero *Att.* 5.21.7: *civitates locupletes ne in hiberna milites reciperent magnas pecunias dabant* (rich cities were paying huge sums to avoid the army being quartered on them for the winter).

would regularly find themselves under the obligation to act as legal guardians (*tutores*), witnesses, judges or jurors in Roman courts, purely at their own expense. Similarly to the situation with public liturgies, we often find people attempting to escape the required duties by means of various excuses.<sup>107</sup>

As to the law courts, surely enough, the mere possession of citizenship, especially at a later stage, did not in itself ensure privileged treatment: a lot more would depend on one's social standing and wealth.<sup>108</sup> There was, however, a reasonable expectation of every citizen that the state and the law would provide protection in exchange to fulfilment of required obligations. For, as Harries notes, 'if one function of law was to ensure that everyone had his (even her) due ... then the rules which ensured that this was the case were important for citizenship itself'.<sup>109</sup>

## 2.2 Access to Roman citizenship

### a. The *Lex Acilia de repetundis*

To summarize the above, the main attraction in obtaining the Roman citizen status seemingly rested on the hope of participating in land schemes and tax-farming, exercising political influence through admittance to public magistracies in Rome, as well as securing personal legal protection. In Mouritsen's words, it was a 'combination of political and economic motives', which focused on the *personal* (political, social and economic) advantages that Roman citizenship would potentially bring.<sup>110</sup> Mouritsen furthermore argues that at the dawn of the Social War, Roman citizenship was not yet a 'privileged legal status', so it could not have been what the allies took up their arms and fought for. He thus goes on to suggest that in the early grants, such as the *lex Apuleia* of 203 BCE or Marius' grant of citizenship to his soldiers in 101 BCE (see below), the real reward 'was probably little more than the admission ticket to land-distribution programmes'.<sup>111</sup>

In order to confirm or discharge Mouritsen's contention, let us take a closer look at a document preceding the conflict between Rome and her allies, namely, the *lex Acilia de repetundis*, dating to

---

<sup>107</sup> Cf. *FIRA* 3.30 from Antinoopolis (Egypt), 148 CE.

<sup>108</sup> Garnsey (1970), 266. During the Empire, the division between citizens and non-citizens was mitigated by one between the *honestiores*, i.e. people of status and property, and the *humiliores*, or people of low social standing. In terms of legal affairs, the latter, even in possession of Roman citizenship, could be subject to the same kinds of punishment normally applicable only to non-citizens, e.g. crucifixion, torture, and corporal punishment.

<sup>109</sup> Harries (2006), 15.

<sup>110</sup> Mouritsen (1998), 87. The latter notion becomes Mouritsen's main argument against seeing the Social War as an allied struggle for Roman citizenship: according to him, the personal rights and benefits provided by the acquisition of Roman citizenship may only explain individual and not the collective wish for it.

<sup>111</sup> Mouritsen (1998), 90-91.

123/2 BCE.<sup>112</sup> It is neither the first, nor the last of the extortion laws (see note 79 above), but it assumes particular importance here as it contains an *offer* of Roman citizenship.<sup>113</sup> The text at hand, like any other of the sort, deals with the right to recovery of property officially extorted by Roman magistrates in the provinces. The scope of the law stretches out to ‘anyone of the allies either of the Latin name or of foreign nations, or ... anyone of those dependent on the discretion, dictation, power, or friendship of the Roman people’ (2).<sup>114</sup> The law was thus not geographically confined but rather universal, and it is very probable that its provisions were more relevant to provincials further away from Rome than they were for the Italian allies.<sup>115</sup>

Clauses 48 and 49 of the law contain two options between which a non-Roman, having successfully accused an offender of the crime of extortion, could choose: he could either take up Roman citizenship and, in addition, enjoy exemption from military service (*vacatio*), or, if he was unwilling (or unable) to do so, he could accept the grant of the right of appeal (*ius provocationis*) and immunity both from military service and from local duties (*vacatio muneris et militiae*). While the offer of Roman citizenship and *vacatio* in clause 48 seemingly applied to all successful non-Roman accusers *willing* to accept it, clause 49 excludes some Latin magistrates (‘dictator, praetor, or aedile in his own State’, l. 78) from taking up this offer. Bispham maintains that the alternative offer in clause 49 must have been directed to *all* peregrines too, while the Latin magistrates mentioned were excluded from the second option on the grounds that they had already possessed *provocatio* by virtue of their office.<sup>116</sup>

The possibility of choice between Roman citizenship and an exclusively Roman right of appeal accompanied by local privileges, points to the mitigation of boundaries of Roman citizenship policy, as well as the overtly articulated significance of *civitas Romana* prior to the Social War. The offer of citizenship and *vacatio*, Bispham notes, was an important innovation, which ‘necessarily had an impact on Rome’s relations with her allies in Italy, in that it opened an avenue to the citizenship at a time when majority opinion was against extensions of the franchise’.<sup>117</sup> Furthermore, such universally applicable laws as the *Lex repetundarum* raised awareness of the benefits that the acquisition of Roman citizenship would potentially bring both among the allies and

---

<sup>112</sup> On the problems regarding the dating of the law and its identification with the Gracchan legislation, see Badian (1954), 374-384.

<sup>113</sup> Historically, the most important provision of the law must have been the substitution of knights (*equites*) for senators in the juries of extortion trials. Trials of such cases would take place under the jurisdiction of peregrine praetor (*Lex rep.* 2, 6).

<sup>114</sup> *Lex rep.* line 1: [... *quoi socium no]minisve Latini exterarumve nationum, quoive in arbitrato ditione potestate amicitia[e] populi Romani ...]. Latin text and translation used are taken from Johnson, Coleman-Norton & Bourne (1961).*

<sup>115</sup> Bispham (2007), 127 with reference to Cic. *Balb.* 53.

<sup>116</sup> *Ibid.* 129. Some of these magistrates may have already possessed Roman citizenship too.

<sup>117</sup> *Ibid.* 127.

other peregrine communities in direct contact with Rome. The notion of such awareness well before the outbreak of the Social War thus seemingly discharges Mouritsen's idea that Roman citizenship was not yet seen as a privileged legal status in the second century BCE.

Bispham draws attention to the existence of an alternative reward option as evidence for the 'divergence of Italian attitudes towards [Roman] citizenship'.<sup>118</sup> Nevertheless, both options in the *Lex Acilia de repetundis* in fact indicate a degree of infringement of one's local identity: while becoming a Roman citizen in the second century BCE presumably also encouraged moving to the *ager Romanus* and thus abandoning one's original dwelling,<sup>119</sup> the alternative option meant staying at home yet being treated as Roman citizen within one's native community:

*He shall have the right of appeal to the Roman people thereafter, just as if he were a Roman citizen; likewise, he and his sons and his grandsons through the male line shall be exempt and immune from military service and from public duties in his own State, (49).*

Roman legal privileges conferred on peregrines without their acquisition of Roman citizenship created a kind of legal fiction, which must have, to some extent, affected local legal relations as well. Furthermore, as Mouritsen duly noted, the second option demonstrates an 'unequivocal example of Roman interference in the internal affairs of the allies', in that the Romans felt they were in a position to grant *local* privileges to peregrines, i.e. exempt them from public *munera* within their own states.<sup>120</sup> Similarly, Bispham maintains that Rome's boldness to confer immunities on peregrines in their home towns may have been more deeply felt, and resented, in Italy.<sup>121</sup> This brings us to the 'Italian question' which will be discussed in more detail below.

#### b. The 'Italian question' revisited

The first known proposal to extend Roman citizenship to the Italian allies who were willing to accept it appeared in 125 BCE, only slightly earlier than the *Lex Acilia de repetundis*, and was initiated by Marcus Fulvius Flaccus, a consul that year and a supporter of the Gracchi. It was, as Mouritsen calls it, an 'entirely new policy element', whose exact circumstances and implications remain largely unclear.<sup>122</sup> What we do know is that Flaccus' proposal was immediately met with

---

<sup>118</sup> *Ibid.* 128.

<sup>119</sup> Mouritsen (1998), 89.

<sup>120</sup> *Ibid.*

<sup>121</sup> Bispham (2007), 129.

<sup>122</sup> Flaccus' suggestion was most likely related to the Gracchan agrarian reforms and was meant to solve the problem of land division among the allies. However, Mouritsen (2008) maintains that what truly stood behind Flaccus' proposal of citizenship extension was the need for manpower: the decline in *Roman* manpower (legions constituting only a minority of armed forces) implied a threat to undermine Rome's hegemonic status in Italy, as well as signalled Rome's inability

strong senatorial opposition and was withdrawn shortly after.<sup>123</sup> Similarly, C. Gracchus' reforms which also involved citizenship extension to Latins and Italians, were vetoed by another tribune.<sup>124</sup> Later, at the onset of the Social War in 91 BCE, Livius Drusus attempted to revive Flaccus' bill, once again unsuccessfully, an event often perceived as the 'last drop' to provoke the Italian revolt. We will not here aim at expounding the causes of the Social War, but rather focus on possible reasons for citizenship grants and what the eventual enfranchisement meant for Rome's relations with her former allies. This may help to bring to the fore the most valuable components of the Roman citizenship in the first century BCE, as well as to grasp an idea as to why the citizenship grant was an inevitable 'concession' Rome had to make in order to put an end to the crisis.

*Communis opinio* holds that the creation of Roman Italy was accelerated by Italians asking for Roman citizenship in the late second century BCE. Roman refusal to admit Italians into their *civitas* instigated the Social War, which eventually led to the enfranchisement of the allies and to the establishment of a 'politically unified Italy'. Mouritsen, however, calls the Social War 'a political conflict between culturally distinct nations', and offers an alternative version: Italians did not merely fight for Roman citizenship, but rather sought a real power-sharing, giving them equal influence over the empire and its resources.<sup>125</sup> Social War was thus an attempt to break Rome's supremacy by force, and to challenge her hegemony in the Italian Peninsula. Mouritsen argues that the citizenship version may well have been a later interpretation, in which the outcome of the War, i.e. the eventual enfranchisement of the allies, presupposed the reasons for it.<sup>126</sup> However, while refuting the latter version as a possibly anachronistic imperial interpretation, Mouritsen fails to successfully convince of an alternative version of events. His idea of the Roman need for manpower lurking behind the earliest citizenship extension bills does not fully explain the allies' wish to accept the offer, nor does it account for continuous senatorial opposition to such a solution.<sup>127</sup> Mouritsen furthermore argues that the allies had initially fought for freedom from the Roman hegemony and accepted the citizenship offer only upon losing the war. This explanation, however, does not account for Rome's position and willingness to confer her citizen status on the peoples

---

to impose heavier burdens on the allies, 474. Thus, Rome was dependent on her allies, who 'now carried a major responsibility for the empire, but without any corresponding share in its governance or formal exploitation ... [which] created a natural tension between Romans and allies'.

<sup>123</sup> Appian *BC* 1.3.21.

<sup>124</sup> However, Mouritsen (2008) argues that the role of Italians in the Gracchan land reform was a 'purely literary construction' of Appian, and that 'there is no evidence that Ti. Gracchus ever included Italians in his scheme' either, 472.

<sup>125</sup> Mouritsen (1998), *passim*.

<sup>126</sup> *Ibid.* 5. Most of the extant primary sources for the Social War come down to us from Imperial period (Velleius Paterculus, Valerius Maximus and, above all, Appian), and must have therefore been affected by 'contemporary political propaganda', *ibid.* 8.

<sup>127</sup> The repetitive withdrawals of early enfranchisement bills is yet another proof against Mouritsen's contention that the Roman citizenship was not perceived as a privileged legal status before or during the time of the Social War.

who did not ask for it in the first place: in such a light, the eventual enfranchisement of the rebellious allies appears to be an imposition rather than a concession that Rome had to make in order to prevent any subsequent rebellion. Similarly, Wallace-Hadrill reacts to Mouritsen's views by saying it is 'perverse to argue that the demand for citizenship did not come from the beneficiaries themselves, whatever their motives'.<sup>128</sup>

A lot more likely solution to the 'Italian question' has been offered by Keller who suggests that the allies did in fact fight for admittance to the Roman citizenry, and they did so due to the economic reasons triggered by the 2<sup>nd</sup> century BCE crisis. Keller draws attention to the divergence of interests between Rome and her Italian allies, as soon as the former was no longer able to provide economic benefits for non-citizen allies.<sup>129</sup> Once Italian interests ceased to be represented at Rome, that is, shortly after the Ti. Gracchus' reforms, there was a strong need to secure favourable treatment and legal protection in what was already largely perceived as a commonwealth, where the allies had a far larger share in its duties than they had in its privileges.<sup>130</sup> Similarly, Bispham maintains that the allies, naturally, became less and less content with 'the increasingly exclusive nature' of Roman status, this exclusivity being 'accelerated in proportion to the desirability and utility of citizenship'.<sup>131</sup>

As already briefly mentioned above, Mouritsen stresses that the rights and advantages derived from Roman citizenship may only explain one's individual wish for it, but they do not account for a collective one: while Roman citizenship extensions during and after the Social War largely applied to the entire city-states, the actual economic benefits entailed by a change of status, such as participation in land distribution schemes or political career in Rome, were to affect only a small portion of the allied communities.<sup>132</sup> Nevertheless, it was most likely the same small portion of the communities which led the revolts against Rome in the first place. There must have always been a group of influential local elite members well aware of the privileges and benefits to be gained from the acquisition of Roman citizen status, as they already were in direct contact with Rome through administrative structures, military service, as well as legislation such as the *Lex Acilia de repetundis*. The influence of local elites on their entire communities was often far greater than is usually assumed, and thus should not be underestimated.

---

<sup>128</sup> Wallace-Hadrill (2008), 81 referring to Brunt (1971) who held that political rights were always worth fighting for, especially because becoming a citizen with franchise meant, at least in theory, active participation 'in the debate over what that citizenship involved'.

<sup>129</sup> Keller (2007), 51.

<sup>130</sup> Cf. Bispham (2007): 'Italians abroad seem not to have been distinguished from the Romans with whom they formed the conquering armies, and to have been alike considered members of the master race', 158.

<sup>131</sup> *Ibid.* 127.

<sup>132</sup> Mouritsen (1998), 94.

## Enfranchisement of the allies

The eventual enfranchisement of the Italian allies was anything but a unanimous process. Rather, it spanned over three years (90-87 BCE) and involved passing of a number of different laws.<sup>133</sup> The first, and often unduly held to be the main, enfranchisement law, the *Lex Iulia de civitate*, was passed in 90 BCE, and offered Roman citizenship to the Latins, as well as to some of the Italians who had remained loyal to Rome during the Social War.<sup>134</sup> Indeed, the *lex Iulia* was an *offer* rather than a grant in its full sense, the implication being that those Latin and Italian communities were free to choose whether to become *fundi* of the law (i.e. to formally adopt the citizenship offer), or not. Bispham, in his analysis of the law, notes on the *lex Iulia* being more of a spontaneous reaction of the Roman Senate to an imminent crisis, a ‘hasty war measure’ rather than a premeditated solution to a wider problem.<sup>135</sup> The scope and the effect of this law were thus smaller than is sometimes assumed, but it did certainly work as a turning point in the course of the Social War, as well as ‘the measure which marked the opening of the gates of Rome to the Italians’.<sup>136</sup> The subsequent few enfranchisement laws (*lex Plautia Papiria*, *lex Calpurnia*, *lex Pompeia*) were all directed to the pro-Roman allies, and do not seem to suggest more than a reward for loyalty and dedication.

During the following couple of years (88-87 BCE), once the Social War was over, it was up to the victorious Romans to decide the destiny of the rebels, who had now in the eyes of law obtained the status of *dediticii populi*.<sup>137</sup> The universal enfranchisement of all former allies took place only when all of the rebels were disarmed; only then Rome could make the citizenship extension look like a favour to the defeated rather than a concession to the rebellious.<sup>138</sup> There may have been an initial discrepancy in Rome’s treatment of the loyalists and the rebels too, in that the latter were largely enfranchised as ethnic groups rather than city-states, which complicated the subsequent municipalization process.<sup>139</sup>

---

<sup>133</sup> The enfranchising laws known to us include the *Lex Iulia* (90 BCE), the *lex Calpurnia* (90/89 BCE), the *lex Plautia Papiria* (89 BCE) and the *lex Pompeia* (89 BCE), but there may have been a few more. Bispham (2007), 161.

<sup>134</sup> Namely, the Etruscans and Umbrians; in addition, it seemingly provided for individual bestowal of citizen rights *virtutis causa*: *CIL* I (2). 709.

<sup>135</sup> Bispham (2007) argues that it was drafted in a very short period of time and contained very little detail, as it should be expected from a law ‘that most Romans had hoped not to have to pass at all’, 165.

<sup>136</sup> *Ibid.* 163.

<sup>137</sup> i.e. ‘temporarily without any rights at all, until such time as it pleased their conquerors to dictate their new position’, Bennet (1923), 16, quoted in Bispham (2007), 175. See also Gaius *Inst.* 1.12-16 on the legal status of *dediticii*.

<sup>138</sup> Cf. Velleius Paterculus 2.17.1: *Finito ex maxima parte ... Italico bello, quo quidem Romani victis adflictisque ipsi exarmati quam integri universis civitatem dare maluerunt* (the Italian war was now in large measure ended, the Romans, themselves exhausted, consenting to grant the citizenship individually to the conquered and humbled states in preference to giving it to them as a body when their own strength was still unimpaired). Translation by Shipley (1924).

<sup>139</sup> Bispham (2007), 183-4.



## Tribal arrangement

Upon universal citizenship extension in around 88/87 BCE, all enfranchised allies had to somehow be integrated into the Roman political body. The issue was solved by ascribing the new ‘Romans’ to the few newly created tribes which were to vote last in the *comitia tributa* and *concilium plebis*.<sup>140</sup> This, unlike the initial enfranchisement laws, was a premeditated and conscious political decision on behalf of the Roman Senate, meant to obstruct the new citizens from influencing Roman internal politics. The citizenship extension to the allies was thus, in Bispham’s words, ‘by and large meaningless in political terms’: it was not until around 70 BCE that the enfranchised allies ascribed to the newly created tribes came to possess any meaningful suffrage.<sup>141</sup>

The universal enfranchisement of the allies did not imply their equal status among themselves either, and the consequent tribal arrangement was a means to enforce the desired stratification. Apart from disadvantaging the rebels and benefiting the loyalists, several other criteria were looked at, such as personal ties of local elite members to powerful Romans, the presence of significant number of Roman citizens before the enfranchisement, or geographical distance from Rome.<sup>142</sup> Thus, Bispham maintains, the tribal distribution was a process reflecting two conflicting agendas of the Roman people: the conservative wish to limit all new citizens’ political influence by restricting their votes on the one hand, and to benefit the pro-Roman allies while disadvantaging the former rebels on the other.<sup>143</sup> By contributing to the gradation among the *novi cives*, the tribal arrangement must have influenced both the perception of Roman citizenship and of the privilege and rights it entailed. Simultaneously, the sudden increase in citizen body seemingly contributed to the growing exclusivity and political significance of the old Roman tribes: redefinition of civic relations took place and was felt both by the Romans and by their former allies.

## Aftermath of the Enfranchisement

As we have already seen, due to unfortunate tribal arrangement, the political equality of the new citizens proved to be a fiction rather than reality: Mouritsen draws attention to the ‘centralized structure’ of Roman politics, which significantly disadvantaged the ‘extra-urban’ citizens in terms

---

<sup>140</sup> Cf. earlier provision to smaller scale enfranchisement: the peregrines enfranchised through the *lex de repetundis* were to be ascribed into tribes of the convicted Roman magistrates (48): a practical solution or an ideologically loaded message?

<sup>141</sup> Bispham (2007), 189-90.

<sup>142</sup> *Ibid.* 197-8.

<sup>143</sup> ‘The process which led the censors to assign the tribes they did was one of negotiation and compromise between conservative, moderate, and radical elements, and designed to be acceptable to the ruling oligarchy as a whole before all others’, *ibid.* 198.

of their influence on legislation or the election of magistrates.<sup>144</sup> Furthermore, there is no evidence for large-scale participation of local elite members in Roman politics, and there is hardly any extra-urban magistrates found in Rome prior to the age of Augustus.<sup>145</sup> On the one hand, this once again demonstrates the exclusive nature of Roman politics; on the other, it may also point to the lack of interest on behalf of the local elites in the urban matters.<sup>146</sup> The vast majority of local nobles seem to have preferred to stay at home, where they often had to play an intermediary role between Rome and their own community. Comparably, Bispham speculates on the existence of certain groupings of communities (egalitarian or hierarchic in nature) at the time of the Social War, the leading one of which may have been able to become *fundus* of an enfranchisement law (e.g. *lex Iulia*) on behalf of the others.<sup>147</sup> In which case, it once again becomes pointless to look for the allies' universal 'collective wish' for Roman citizenship grant, as Mouritsen does: the influence of local elites familiar with Roman power structures on their own communities, as well as the authority of certain communities over others may explain the 'Italian question' in more perspicuous terms.

Setting aside the doubtful political influence, one should consider other results of enfranchisement and what they may have brought to the former allies. Together with the universal grant of Roman citizenship, there came a measure of Roman law.<sup>148</sup> The extent to which the new citizens were able to employ Roman legal institutions largely depended on municipal laws which were to define the community's legal identity in relation to Rome. Nevertheless, the ability to make use of Roman private law institutions, initiate legally protected transactions, and to enjoy the right of appeal may have been of a far greater importance to the Italians (and other provincials at large) than a political career or influence in Rome. While the suffrage seemingly meant little to the Italians, it was a share in economic gains on the one hand, and the availability of legal protection of one's person and property on the other, that was a most likely driving force behind the allied requests for citizenship. Rome, in turn, while forced to make this concession to the allies (in fear of a renewed rebellion?), sought ways to limit the imminent political repercussions by restricting the allies' right to vote.

### c. Citizenship grants and their implications

Let us now set aside the Social War and the subsequent enfranchisement of Italy, and discuss the other circumstances and implications of Roman citizenship extension. Initially, and, as Cicero's

---

<sup>144</sup> Mouritsen (1998), 96-7.

<sup>145</sup> Mouritsen maintains that 'their access to office and prestige depended on complete integration into the power networks of the capital ... an urban base, i.e. patronage', *ibid.* 98.

<sup>146</sup> Cf. Cicero complaining about Italians' indifference toward Roman politics: *Att.* 8.7.5; 8.13.2; 8.16.1.

<sup>147</sup> Bispham (2007), 190-1.

<sup>148</sup> Schiller (1978), 525.

speeches suggest, up until at least the mid-1<sup>st</sup> century BCE, Roman citizenship was perceived as incompatible with any other citizen status.<sup>149</sup> Furthermore, this principle of incompatibility appears to be based on the belief that ‘no one could be the subject of different judicial systems and legislations’.<sup>150</sup> In *Balb.* 29-30, Cicero confirms not only the exclusivity of Roman citizenship (by referring to Roman law as ruling out the possibility of dual citizenship), but also the fact that there was a considerable amount of Romans who, unaware of such rules, had decided to become Athenian citizens and, furthermore, could serve there in largely exclusive public offices as judges or archons.<sup>151</sup> Habicht notes that the integration of Romans into the Greek communities took place a lot earlier: in Athens, for instance, from 130 BCE onwards, the body of ephebes, which had previously consisted exclusively out of Athenian citizens, became accessible to foreigners, while in the mid-1<sup>st</sup> century BCE, we already see the first Romans with full membership of the Athenian Council.<sup>152</sup> This development, although commonly known in Rome, does not seem to have mitigated the Roman views, as one fails to find evidence for admittance of foreigners into the high circles of Rome up until the time of Claudius (cf. Claudius’ speech in Tacitus’ *Ann.* 11.24-25). Nevertheless, the body of Roman citizens grew steadily and came to absorb foreign components from the Early Republic onwards, and we may briefly consider the ways by which the *civitas Romana* could be conferred on peregrines. Generally, there appear to have been two main types of citizenship extension, namely, by means of collective or individual grants.

The collective citizenship grants would be conferred on entire peregrine communities at once, e.g. the enfranchisement of Latins and Italian allies in the aftermath of the Social War (see above). The peregrine communities would sometimes be granted Roman citizenship through the ‘Latin right’ (*ius Latium*) as a half-way stage.<sup>153</sup> In 180s BCE a number of large colonial settlements of ‘Latin’ status were granted full Roman citizenship.<sup>154</sup> Mouritsen observes that the grant of full citizen rights to the Latin communities involved reciprocal benefits: colonial elites would gain access to careers

---

<sup>149</sup> See Cicero *Balb.* 29-30 on many Romans assuming Athenian citizenship and acting as full members of Athens’ citizenry without realizing that this meant the loss of their Roman citizenship. Cf. also Atticus’ refusal of Athenian citizenship offer due to the fear of curtailing his Roman citizen rights, *Nep. Att.* 3.1. Admittedly, within the Latin League (c. 7<sup>th</sup> century BCE – 338 BCE) a series of rights, e.g. trade, marriage, freedom of movement, could be exchanged without danger to one’s original citizenship.

<sup>150</sup> Mouritsen (1998), 87. If Mouritsen is right, it would show rather clearly that Roman citizenship was perceived to be closely tied to legal system (*contra* Noerr (1963)), the notion which sheds light on the Roman ‘legalistic cast of mind’.

<sup>151</sup> *quo errore ductos vidi egomet non nullos imperitos homines, nostros civis, Athenis in numero iudicum atque Areopagitarum, certa tribu, certo numero, cum ignorarent, si illam civitatem essent adepti, hanc se perdidisse, Balb.* 30.

<sup>152</sup> Habicht (1997), 345.

<sup>153</sup> *FIRA* 1.70/71. Latin municipalities were communities with a ‘half-way’ position: they were not Roman citizens in the full sense, but possessed some of the citizen rights, Crook (1967), 43. Crook also notes that the ‘Latin’ status, which ceased to exist in Italy after 49 BCE, continued to be granted in the first century CE to peregrine communities (not to individuals), e.g. Vespasian granted the *ius Latium* to the whole of Spain in 73/74 CE (Pliny *Nat. Hist.* 3.30), *ibid.*

<sup>154</sup> Parma, Mutina, Saturnia founded in 183; Potentia, Pisaurum in 184, see Mouritsen (2008), 479.

in Rome as well as to public contracts, and benefit from suspension of *tributum* (167 BCE), while Rome would gain direct access to Latin manpower.<sup>155</sup> However, the Senate remained reluctant towards lavish citizenship grants, probably because of ‘concerns about upsetting the *status quo* through large-scale expansions of citizen body’, as this would eventually result in both fiscal and political repercussions.<sup>156</sup>

Since the Republican times, Rome was rather prone to confer its citizenship on magistrates and town councillors of ‘Latin’ communities.<sup>157</sup> Apart from seeking participation of local elites in Roman administration, another logical reason for this type of grant may have been that Rome was simply not able to provide every town or municipality in her dominions with Roman magistrates. Nevertheless, there was a strong demand for pro-Roman governance, so granting citizenship to leading local magistrates was a solution to both maintain political stability within the community and ensure its loyalty to Rome.<sup>158</sup>

As briefly mentioned above, the Roman citizenship could also be extended through military service, either to soldiers upon completion of their military service in the auxiliary regiments, or immediately upon their recruitment to legions. Some *ad hoc* grants would also take place: in 101 BCE, after the battle of Vercellae, Marius is known to have conferred Roman citizenship on two cohorts of Italian soldiers as a reward for their loyalty and contribution. Marius’ action did not pass without repercussions, as he was severely criticized for doing so without the Senate’s permission.<sup>159</sup> Mouritsen notes that the admittance of Italian soldiers to the Roman citizenry was perceived as violating *foedus* between Rome and her Italian allies, a notion which only makes sense ‘within the context of automatic loss of local civil rights’.<sup>160</sup> There is also ample evidence for later, imperial grants to discharged soldiers and their immediate family members.<sup>161</sup>

Apart from enfranchising entire communities or specific components (magistrates, soldiers) therein, Roman citizenship could also be granted to individuals, *singulatim*. The practice of individual grants became especially prevalent in the Imperial period, as emperors would confer citizenship on

---

<sup>155</sup> Mouritsen (2008), 480.

<sup>156</sup> *Ibid.* 481.

<sup>157</sup> Municipal charters of Salpensa and Malaca from the Flavian period still contain this right, which was the *minus Latium* (lesser Latin right), as opposed to the *maius Latium* giving citizenship to all members of a town council (appears under Hadrian), Crook (1967), 42.

<sup>158</sup> The possibility of bestowal of Roman citizenship upon holding of municipal office (the *ius civitatis per magistratum adipiscendae*) by the time of the Social War in order ‘to calm the Latin disaffection’, is rebuked by Mouritsen (1998), as he sees ‘immense legal and practical problems involved in implementing this right prior to the Social war’, 99.

<sup>159</sup> Plut. *Mar.* 28.2.

<sup>160</sup> Mouritsen (1998), 90.

<sup>161</sup> Cf. *FIRA* 1.27. The right of retrospective grant of citizenship to children born during service was abolished around 140 CE when marriage during service was forbidden, Crook (1967), 42. See also Shaw (2000) on ‘biologically transmitted citizenship’, i.e. the ‘centrality of the family as the means by which the citizenship was transmitted automatically to succeeding generations’, 367-8.

peregrines as a reward for various services provided or expected. Crook calls this development ‘a potential door to traffic in Roman citizenship’, as he gives the famous example of Apostle Paul’s conversation with the tribune who admits to having paid a lot of money for his citizenship.<sup>162</sup> Furthermore, Cassius Dio speaks of citizenship purchase during the reign of Claudius as a widely contested but very common and well-known practice (60.17.5-6).

An acquisition of Roman citizenship was also possible through familial ties and personal relations. Gaius informs us of some cases of intermarriage, when Roman citizenship could be extended to all peregrine family members, provided they were able to prove in court that they had entered into such marriage by misjudgement of status:

*if a male Roman citizen marries a peregrine woman, or vice versa, their child is a peregrine; but if a marriage was entered into in error [of status] its defect is cured by the senatusconsultum, Inst. 1.75.*

There is a similar treatment of intermarriage based on an ‘error of status’ visible in the provincial record from Roman Egypt too. While most of the prohibitive provisions of the *Gnomon*, as well as those explicitly dealing with violation and non-conformity of status (clauses 42-44, 53, 56) reveal an eager legal protection of Roman citizenship and status,<sup>163</sup> clauses 46 and 47 allow some degree of lenience in law pertaining to intermarriage ‘by ignorance’ (κατ’ ἄγνοιαν):

*It has been granted to Roman (male) citizens or (male) citizens [of a Greek polis] who have married an Egyptian woman by ignorance, to be exempt from liability and for the children to follow the father’s status (46),*

*A female citizen (of a Greek polis) who marries an Egyptian by ignorance is not responsible; and if both give a birth certificate, the citizenship for the children is granted (47).<sup>164</sup>*

These provisions strongly suggest that the distinction between Roman and Greek citizenry and the class of ‘Egyptians’ was not at all visible, but it was certainly a legal one.<sup>165</sup> In Roman Egypt, much like anywhere else in the Roman Empire, it was precisely the citizenship that played a key role in attributing one’s legal identity. The acquisition of Roman citizen status for a peregrine (whether ethnically Greek or Egyptian) thus evidently meant an improved position in the eyes of law.

Summing it all up, the privileges and legal protection that Roman citizenship had to offer should be seen in the light of the evidence of peregrines willing to pay significant amounts of money, enter

---

<sup>162</sup> Acts 22:28.

<sup>163</sup> Perhaps best reflected by provisions regarding the legal status inherited by children of mixed marriages, e.g.: ‘If a Roman man or woman is joined in marriage with an urban Greek or an Egyptian, their children follow the inferior status’ (39). Note how the *ius gentium* principle of children following the maternal line in case of a non-Roman marriage (note 33 above) no longer applies.

<sup>164</sup> Translation by Fischer-Bovet (2013).

<sup>165</sup> Cf. Fischer-Bovet (2013), 14.

illegal activities such as bribery, or risk huge fines by falsely assuming Roman citizen status. Admittedly, most of such evidence stems from imperial rather than Republican period, which at first glance suggests the development and growth of significance of Roman citizen status, directly dependent on the growing hegemony of Rome. The citizenship offer as a reward for successful prosecution in the *Lex Acilia de repetundis* as well as the analysis of allies' motives for rebellion, however, suggest a somewhat earlier timeframe.

Even if we adopt the idea that Roman citizenship assumed its highest importance in the eyes of peregrine communities only in the imperial period (at the same time when it presumably lost its incompatibility), we must admit that the Roman reluctance to confer its *civitas* on peregrines stretches way back. Furthermore, the criticism towards citizenship grants remained largely the same throughout both periods addressed. Similarly to the Senate's critique of Marius' actions in 101 BCE, we find Roman authors expressing their bitter attitudes towards imperial citizenship grants too, e.g. Seneca remarks on Claudius' numerous citizenship extensions: 'He had decided to put all the Greeks, Gauls, Spaniards and Britons into togas' (*Apocol.* 3). There is, thus, very similar notion of citizenship extension crossing paths with devaluation of Roman identity that underlies both Plutarch's account of the aftermath of the battle of Vercellae and Seneca's rebuke of Claudius' lavishness in citizenship grants.

### 2.3 Legal rights and obligations to one's local community upon acquisition of Roman citizenship

Although the principle of incompatibility of Roman citizenship is still discernable in Cicero's speeches some 30 years after the Social War (*Balb.* 29-30; *Caec.* 100), on several other occasions he also speaks of the possibility of belonging to two *patriae* – one by nature, and one by reason of citizenship.<sup>166</sup> What did then the acquisition of a new, Roman, set of legal and civic relations mean in terms of one's rights and obligations in his or her local habitat?

The municipalisation of Italian communities, as convincingly shown by Bispham's analysis of enfranchisement laws, was more or less contemporaneous to the tribal distribution (86/85 BCE). Bispham takes Aulus Gellius' definition of a *municipium* as an indication that Roman laws (or Roman *ius civile* in its entirety) were not binding on the newly established Italian *municipia*, and that the local statutes prevailed, unless the Roman laws were voluntarily adopted by the process of

---

<sup>166</sup> *De leg.* 2.2.5; *Ep. ad fam.* 13.11; *Balb.* 27-29.

*fundus fieri*.<sup>167</sup> In his *Attic Nights*, Gellius discusses the common misuse of the terms *municipium* and *colonia*, and the confusion of the two types of Roman settlements in the time of Hadrian (r. 117-138). When trying to distinguish between a *municipium* and a colony, he defines the two in terms of their legal relations to Rome:

*municipes then are Roman citizens from municipia who use their own laws and their own authority, are only voluntary participants in a duty together with the Roman people ... bound by no other demands nor by any law of the Roman people, unless that to which their populus has become fundus,*

*<...> But the relationship of the colonies is a different one; for they do not come into citizenship from without, nor grow from roots of their own, but they are as it were transplanted from the State and have all the laws and institutions of the Roman people, not those of their own choice.*<sup>168</sup>

The key element in Gellius' description of the difference between *municipes* and inhabitants of the colonies is the former's freedom of choice of what laws and customs to follow as well as their voluntary participation in adopting the Roman ones. The *cives Romani* of a certain *municipium* are described as a separate *populus*, distinct from the *populus Romanus*, whose laws they may or may not adhere to. Indeed, in Gellius' thought there is no direct link between the acquisition of Roman citizenship by *municipia* and their effective 'becoming Roman'. The *municipia*, unlike colonies which were formed from already existing citizens and, as such, were bound to follow Roman laws and institutions, did not have the same requirements made of them due to their extrinsic acquisition of citizenship.

The adoption of specific Roman statutes by individual Italian and Latin communities, which took place at least since the second century BCE, that is, well before their municipalisation, seemingly implied the replacement of local measures on matters that the adopted legislation covered.<sup>169</sup> Nevertheless, exceptions to such freedom of choice must have been made in cases of crucial importance or, in Bispham's words, where the *maiestas* or the *imperium populi Romani* were considered to be at stake.<sup>170</sup> The level of 'free will' in adopting or ignoring Roman statutes and laws, thus, may not have been the same for all communities alike and depended heavily on circumstance.

---

<sup>167</sup> Bispham (2007), 187.

<sup>168</sup> *Municipes ergo sunt cives Romani ex municipiis, legibus suis et suo iure utentes, muneris tantum cum populo Romano honorari participes, a quo munere capessendo appellati videntur, nullis aliis necessitatibus neque ulla populi Romani lege adstricti, nisi in quam populus eorum fundus factus est <...> Sed coloniarum alia necessitudo est; non enim veniunt extrinsecus in civitatem nec suis radicibus nituntur, sed ex civitate quasi propagatae sunt et iura institutaque omnia populi Romani, non sui arbitrii, habent., NA 16.13.6-8. Translation by Rolfe (1927).*

<sup>169</sup> Contrary to the Roman practice of enabling new legal measures without abrogating the old ones, see Ch. 1.2.

<sup>170</sup> Bispham (2007), 187.

### a. 'Dual citizenship'

It is widely assumed that with the imperial regime taking firm hold, i.e. from the 1<sup>st</sup> century CE onwards, the status of Roman citizenship changed in a way that it lost the principles of incompatibility and territoriality, and gradually became 'a privileged *extra status*', to be enjoyed in addition to one's regional civic affiliation.<sup>171</sup> This has been generally termed as 'dual citizenship', a phenomenon which Mouritsen calls 'an important and fully integrated part of the legal structure of the empire'.<sup>172</sup> He does, on another occasion, also note that the development of 'dual citizenship' itself was most likely a slow process, obstructed by traditional legal conservatism, and that 'the double citizenship does not appear to have been formally adopted at any stage'.<sup>173</sup> The already discussed evidence of transfer of Roman privileges to peregrines without the bestowal of citizenship (*lex repetundarum* (49)), or the ability to continue making use of local laws upon acquisition of Roman citizen status (Gellius on *municipia*), however, suggests that the 'exclusivity' of Roman citizenship, together with the legal relations it entailed, was fairly more fluid and flexible, and that the developments similar to that of 'dual citizenship' took place already under the Republic.<sup>174</sup>

Admittedly, with Caesar and, all the more, with Octavian, the practice of granting Roman citizenship to peregrines significantly accelerated. The *en bloc* citizenship extensions were usually followed by legislation (municipal or colonial charters) determining legal relations within that specific area, as well as its relations to Rome. Furthermore, the publication of these charters in the heart of a town (usually, in the forum) ensured their accessibility to everyone within the commune. Individual grants, on the other hand, raised a problem of whether a beneficiary should abandon all of his former legal rights and obligations to his home community (had he decided to stay there), or to become subject of two, possibly contradicting, sets of legal relations.

Indeed, from Octavian's time onwards the common practice seems to have been to either require beneficiaries of citizenship grants to continue their civic and legal duties in their original communities, or to specifically exempt from them. The earlier, Republican grants of immunity from local duties (e.g. the *lex repetundarum* (48-49)) seemingly give way to the new type of citizenship

---

<sup>171</sup> Crook (1967), 38-40; Schiller (1978), Mouritsen (1998) et al.

<sup>172</sup> Mouritsen (1998), 88. Schiller (1978), on the other hand, points to the frequent inaccuracy in scholarly use of the term, for 'one cannot precisely delineate the areas of each legal system, Roman or local, to which the neo-Roman is subject', 545.

<sup>173</sup> Mouritsen (1998), 91.

<sup>174</sup> The practice of exchange of *hospitium* within one's local community upon acquisition of Roman citizenship also points to the negotiation between the two, supposedly, exclusive sets of legal and civic relations in the first half of the 1<sup>st</sup> century BCE, see Cic. *Balb.* 42.



extensions, all the more frequently afforded with the condition that the laws and customs of one's original community should be continuously adhered to.<sup>175</sup>

A couple of well-known examples of the sort come down to us from the time of Octavian: *Edictum Octaviani de Seleuco Nauarcha* (41 BCE, Rhosus) and *Edictum Octaviani de privilegiis veteranorum* (31 BCE, Egypt).<sup>176</sup> Both edicts specifically allow the newly enfranchised persons to legally enjoy local privileges (*iure liceat uti*), e.g. to hold local civic honours, if they so wished. This provision meant that the beneficiaries of Roman citizenship grant were equally able to hold office or perform public duties in Rome as well as in their home communities.<sup>177</sup> The edict of 41 BCE, furthermore, granted Seleucus of Rhosus a right to exercise a choice of jurisdiction either in a criminal or in a civil suit, which conveyed that he could choose whether his case be tried before the local courts, or before the Roman tribunal.<sup>178</sup> Aside from the freedom of choice of which court to attend, Sherwin-White maintains that Seleucus must have remained bound to the civil laws of Rhosus so long as he lived there. However, a newly-made Roman fell subject to certain provisions of Roman private law, which meant that, normally, 'in matters of personal status, succession, and testamentary disposition, the enfranchised person resident in his place of origin followed Roman civil law'.<sup>179</sup>

Noteworthy is that in the Republican period similar privileges (freedom of choice of jurisdiction, the right of appeal to the Roman Senate, and an exemption from civic taxes and obligations) could be conferred on peregrines even without the citizenship extension.<sup>180</sup> Such evidence leads Sherwin-White to think that the immunities granted by Octavian may have been 'independent of the grant of Roman franchise', and that the practice which we find in these edicts is not yet too far remote from Republican usage. The permissive nature of the grant of local privileges and, especially, those pertinent to local jurisdiction, may seem to imply that a beneficiary would normally lose them upon the acquisition of Roman citizen status. Thus, for instance, the clauses on Seleucus as a defendant 'may be intended to make explicit the privileged judicial position which a Roman citizen should enjoy even in a free city, throughout the Roman world'.<sup>181</sup>

---

<sup>175</sup> Schiller (1978), 545.

<sup>176</sup> *FIRA* 1.55 (9-31), *FIRA* 1.56 (2-7).

<sup>177</sup> Sherwin-White (1973), 296.

<sup>178</sup> *Ibid.* While containing the same or similar grants of Roman and municipal immunity (5, 8-11, 15-16), freedom from billeting, and grant to maintain local civic honours, *FIRA* 1.56 does not include any provision on jurisdictional matters. Sherwin-White notes that they were most likely unnecessary in a Roman province (Egypt), as compared to the autonomous city of Rhosus.

<sup>179</sup> *Ibid.* For instance, his will had to be drawn in Latin and adhere to Roman law.

<sup>180</sup> *FIRA* 1.35.10-15 (78 BCE), for instance, records the Roman Senate granting such privileges to three navarchs of Greek origin.

<sup>181</sup> Sherwin-White (1973), 298.

Mouritsen holds that the conditions of citizenship extension had to be adjusted for the mere fact that all the more beneficiaries of these grants continued to live outside the *ager Romanus*, and he takes one's ability to hold local honours (conferred by specific provisions in the enfranchisement edict) as a sign of the development of the concept of 'dual citizenship'.<sup>182</sup> Sherwin-White has offered a slightly nuanced but similar inference, in that he took the permissive clauses in Octavian's and other citizenship grants as likely evidence that without these specific provisions and exemptions the beneficiary of Roman citizenship grant would be 'totally sundered from his former *patria*'.<sup>183</sup> Either way, the need to assert (or dismiss) the rights and obligations to one's local community upon bestowal of Roman citizen status point to the absence of a standardized method of citizenship extension in the 1<sup>st</sup> century BCE, and demonstrates an attempt to negotiate between the two sets of legal and civic relations.

#### b. Imperial practice and the development of Roman citizenship

In the *Edictum Augusti de Cyrenaeis*, originating in 7-6 BCE, so a few decades later than those previously discussed, we observe an instructive and hortative rather than permissive nature of largely the same provision:

*If any persons in the province of Cyrene have been honoured with Roman citizenship, nevertheless I order that they shall perform the liturgical services required of the community of Greeks in their proper turn, except for those persons to whom citizenship was granted together with exemption from taxation by a law or resolution of the Senate or decision of my father or myself ...*<sup>184</sup>

The practice of including into enfranchisement edicts the provisions regarding beneficiary's legal and civic relations to his own community persists all the way into the second century CE. The so-called *Tabula Banasitana*, an inscription from a Moroccan town of Banasa dating to 177 CE, is a bestowal of Roman citizenship by Marcus Aurelius to a certain Julianus, *princeps* of the Zegrensi tribe, and his family, which contains a provision that the grant is made *salvo iure gentis*, i.e. 'without prejudice to the law of their tribe'.

This relatively new development prevalent in the imperial policy of citizenship extension has been all too often regarded as a proof for Roman cultural relativism.<sup>185</sup> Rather than Rome's mere unwillingness to interfere in the local affairs of peregrine communities, some more practical reasons

---

<sup>182</sup> Mouritsen (1998), 91. Sherwin-White (1973), too, recognizes that the conditions of enfranchisement edicts were in most cases tailored to local circumstance, 299.

<sup>183</sup> Sherwin-White (1973), 300.

<sup>184</sup> *FIRA* 1.68. Translated by Schiller (1978), 481.

<sup>185</sup> Cf. Crook (1967): 'Rome protected legal rights, public and private, which peregrines had in their own communities with as little interference – beyond public safety and the maintenance of upper-class control – as possible', 256.

most likely lurked behind, such as attempts to prevent local disaffection towards privileged Roman citizens or, all the more likely, to maintain the influence of newly enfranchised elites over their native communities. While in the Republican times citizenship extension was possible solely with the authorization of the Roman Senate and, due to the persistent conservatism of senatorial class, often proved to be ‘last resort’ type of a political decision; during the Imperial period it was the Emperor alone who granted both individual and *en bloc* citizenship extensions, sometimes more lavishly than the Senate would like.<sup>186</sup> The main reason for the increase in citizenship grants during the Empire was directly related to its territorial expansion, the primary interest of the Emperor thus being to secure the loyalty of local elites by incorporating them into Roman political power structures, as well as to assure the elites’ authority over their home communities. In this context, the *salvo iure gentis* provision of imperial citizenship grants appears to be a conscious measure aimed at fulfilling both objectives at once. The local elites, too, were often rather proactive in adopting or plainly imitating Roman forms and institutions, this way familiarizing their communities with Roman-like structures before officially appealing to the Emperor for a collective grant of the *ius Latium* or municipal status to their home towns.<sup>187</sup>

Both the perceptible value and, accordingly, the exclusivity of Roman citizenship seemingly grew in correlation with Rome’s territorial expansion and her growing hegemony in the Mediterranean and beyond. Although increasingly exclusive in nature, Roman citizenship, when acquired by a non-Roman individual or community, could in most cases be enjoyed in conjunction with local civic affiliations, under the Republic and the Empire alike. This development was predetermined not by some intrinsic quality of Roman citizenship or its perception, but rather by the circumstances of citizenship extension: it was beneficial to Rome that her subjects, especially the elites among them, be loyal to Rome and, simultaneously, disseminate that loyalty within their home communities. Full integration of non-Roman components of the Empire into its citizenry seems to have never been of pivotal concern to the Romans, just as there was no attempt at political, let alone cultural, unification of the Empire, at least not until the *Constitutio Antoniniana*. In this, we are able to discern one of the paradoxes provided by the development of Roman citizenship: while the exclusivity and significance of Roman citizen status grew together with Rome’s territorial expansion and reached its height in the first two centuries CE, the actual power that the citizenship entailed, at least in terms of privileged treatment, gradually declined as a result of the growing citizenship extension.<sup>188</sup> Although the entirety of rights and duties bestowed together with one’s

---

<sup>186</sup> See the discussion in Shaw (2000), 364.

<sup>187</sup> *Ibid.* 365.

<sup>188</sup> *Ibid.* 362-3.

admittance to the Roman citizenry seemingly constituted the essence of being a Roman citizen and, as such, accounted for the sense of belonging to the Roman state; we may infer from Gellius' definition above as well as from extant epigraphic and literary record that the degree of one's actual 'becoming Roman' upon the acquisition of citizenship primarily depended on voluntary rather than superimposed actions.

## Conclusion

The degree of freedom of choice provided in the early enfranchisement grants argues against the complete incompatibility of the Roman citizenship during the late Republican period: an alternative option in the *Lex Acilia de repetundis* of 123/2 BCE, the offers of citizenship extension by Flaccus' bill of 125 BCE or the *Lex Iulia* of 90 BCE, and the possibility to choose which laws to adhere to all demonstrate some flexibility in the matter, as well as Rome's willingness to negotiate the conditions of admittance to her citizenry. Furthermore, particular rights constituting the *civitas Romana* could be extended to non-Romans without the citizenship bestowal, which alerts that the perception of Roman citizenship as a clearly defined 'bundle of rights and duties' was fairly flexible during the Republican period too. The possibility to simultaneously enjoy both Roman and local sets of legal and civic relations was evidently possible prior to the 1<sup>st</sup> century CE, and is thus not directly related to the shift from the Republican to Imperial rule.

Bispham quite righteously maintains that the 'increasingly exclusive nature' of Roman citizen status was directly proportionate to its growing utility and, accordingly, desirability among non-citizens.<sup>189</sup> The Social War thus stands as a landmark indicating the conflict over the acquisition of citizen rights by those who had participated in the Roman commonwealth for decades yet felt mistreated and misrepresented by the politically superior Rome. Being fairly familiar with the benefits that the Roman citizenship had to offer, Italians sought to secure their rights by joining in the political hegemony of Rome. However, as we shall see in the following chapter, the allied struggle for citizenship and their eventual enfranchisement, contrary to Mouritsen's views, need not have compromised their sense of local identity.

Admittedly, instead of being overzealous in protecting local legal rights, as is sometimes assumed, Rome could and did interfere whenever such action was felt necessary or beneficial to the realm. We see in the imperial edicts above, just like in the *Lex repetundarum* that both the retention of local duties and privileges, and the exemption from them were still firmly in the hands of the Romans who granted their citizenship, or otherwise encroached upon local legal and civic relations.

---

<sup>189</sup> Bispham (2007), 127.

However, what is frequently overlooked in discussing the spread of Roman citizenship, is the notion that the developments in citizenship extension were defined by proactive native agency no less than Rome's official policy. The voluntary adoption of Roman laws by the Italian communities well before the Social War, local elites' 'mimicry' of Roman forms and institutions prior to their acquisition of Roman, Latin or municipal status, and the strive towards, albeit illegal assumption of Roman status evident in the provincial documentary record all point toward peregrines' awareness of beneficial laws and legal positions as well as recognition of privileges conveyed by the possession of *civitas Romana*.

While acquisition of Roman citizenship, either via collective or individual grant, was a symbolic acknowledgement of one's participation in the Roman Empire,<sup>190</sup> the extent to which the change of status affected local relations was not unanimous throughout the Empire. Roman interference (or the lack thereof) into legal and civic affairs of subjected peoples within her dominions, its possible impact on local communities, and their response to change through assumption, negotiation and (re)definition of identities will be discussed in more detail in the subsequent chapter.

---

<sup>190</sup> Cf. Schiller (1978) on the *Constitutio Antoniniana* which 'put into legal terms the sense of the mass of inhabitants as belonging to the Empire', 547.

### 3. (Roman) Identity

#### Introduction: recent approaches to the study of identity

Recent scholarship in Roman studies tends to move its focus away from the imperial centre and shift towards the periphery of Rome, i.e. her provinces, as well as turn against the traditional, elite-centred models, such as that of ‘Romanization’, while searching for new approaches to enable a more fruitful explanation of the changes undergone by the subject peoples in various parts of the Empire.<sup>191</sup> Mattingly, alongside a number of scholars, discards ‘Romanization’ paradigm as oversimplistic and self-fulfilling, and offers a new theoretical framework instead, one ‘based on the recognition of heterogeneous social and cultural behaviour’. The key word in his analysis is ‘identity’, which is meant to relate to ‘patterns of behaviour’, rather than ‘perceivable differences in material culture alone’.<sup>192</sup>

In his theory, Mattingly emphasizes variations between different communities in terms of their cultural preferences, as well as the formation of diverse groupings within a single community, based on social status, occupation or level of urbanization.<sup>193</sup> Each of these groupings, regardless of its size or cultural background which, in the case of military communities, for instance, could be predominantly heterogeneous, was seemingly able to construct its own distinct identity in response to its relation to Rome. This need not have necessarily been a ‘top-down’ or ‘bottom-up’ kind of a process, as various models of ‘Romanization’ have tended to imply. Instead, being of a lot higher complexity, it was evidently dependant on a number of circumstances, such as organization of the community prior to the coming of Romans, the nature of contact with Rome (commercial relations, acquisition or conquest), and the status of the community after its incorporation into the Empire. The construction or (re-)definition of identity by the affected communities and the various groupings therein were thus necessarily influenced or, rather, bound up with what Mattingly calls ‘power negotiations’ between the Roman State and its subjects.<sup>194</sup>

Similarly to Mattingly’s theory of ‘discrepant experience’ or ‘discrepant identities’, Yntema has recently argued for the existence of the so-called ‘plural identity’ under the Romans. These partially

---

<sup>191</sup> To name only a few works addressing the topic of ‘Romanization’, there are editions by Woolf (1992), Mattingly (1997), MacMullen (2000), Keay and Terrentano (2001), Schörner (2005), and Hingley (2005). These and other works stand in line with a number of articles, dealing both with the process and the concept of ‘Romanization’, often merely providing critique towards the use and utility of the term, e.g. Barret (1997:51-66), or Merryweather and Prag (2002:8-10). Cf. Alcock (2001): ‘I admit that I have come to detest the word ‘Romanization’’, 227.

<sup>192</sup> Mattingly (2011), 208. Identity has become a fashionable research subject in the past decade, in the fields of both archaeology and ancient history: see, for instance recent publications of Revell (2009), Hales and Hodos (2010).

<sup>193</sup> Namely, he sees most of the communities under direct Roman influence to be split up into (at least) three main groupings: military community, urban community, and rural dwellers.

<sup>194</sup> Mattingly (2011), 206-7.

draw on somewhat older Gellner's model of 'cultural differentiation' which allows for a high degree of cultural homogeneity among the elite, but a much more fragmented culture and greater local variations among lower-status groups.<sup>195</sup> Lomas, too, in her analysis of Roman Italy maintains that the external (both Greek and Roman) influences were absorbed and adapted to local environment, thus contributing to the creation of distinctive and unique regional cultures.<sup>196</sup>

To what extent can these theories of identity be applied to the study of Roman law and citizenship? From what was discussed in the previous chapters, it is certainly possible to discern patterns of interrelation between law, citizenship, and identity or, rather, between one's legal, civic and personal identities. The present chapter intends to enquire into deployment and manipulation of legal and civic status, and explore whether assuming a new, Roman juridical identity implied any changes to a personal, or localized one. We have already observed the persistently negative Roman response toward increasing citizenship extension both in the Late Republican and Early Imperial periods, which implies that the civic status was not merely a legal, but also a highly emotive concept.<sup>197</sup> Harries maintains that the issue of freedom and civic rights was 'especially sensitive' in the aftermath of the Social War, and that the prolonged process of enrolment of new citizens into the Roman civic fabric 'both enlarged and redefined the Roman citizen community'.<sup>198</sup> We will thus first of all go back to the 'Italian question' by taking a closer look at the pressing identity issues in the post-Social War Italy. Then, we will touch upon Roman municipal legislation taking the *Lex Irnitana* of the 1<sup>st</sup> century CE as an example of imperial municipalisation. Finally, we will progress with the discussion of the legal environment in the 2<sup>nd</sup> century CE provinces, employing the evidence from Roman Egypt, Arabia Petraea and Bithynia/Pontus. The developments such as linguistic change, adoption of procedural and documentary practice, as well as laws at work will all be treated through the concepts of individual agency, knowledge of law and willingness to participate.

### **3.1 Post-Social War Italy: politically and culturally homogenous entity?**

In his interpretation of the 'Italian question', Mouritsen emphasizes the sovereignty, as well as political and cultural diversity of the Italian allies prior to the Social War.<sup>199</sup> The notion of 'politically autonomous and culturally distinct' Italians helped Mouritsen build his argument that

---

<sup>195</sup> Yntema (2009), Gellner (1983), 8-13.

<sup>196</sup> Lomas (1993), 186.

<sup>197</sup> Cf. Harries (2006), 146-7.

<sup>198</sup> *Ibid.*

<sup>199</sup> Mouritsen (1998) *passim*; together with Mouritsen (2008), 474 and Patterson (2006), 606-624.

the Social War was primarily an ‘international conflict’ between the Romans and those perceived by them as foreigners.<sup>200</sup> Interestingly, we often see Italians presented in the extant literary sources largely in the same terms as the Romans from as early as the second half of the 1<sup>st</sup> century BCE, that is, less than half a century after the Social War. At the beginning of his political career in Rome Cicero could fairly count on the support of the townspeople of his native Arpinum, and his consequent political success owed a lot to his influence among Italians.<sup>201</sup> Furthermore, the aforementioned Cicero’s claims that the Italians should not be indifferent to Roman politics demonstrate his recognition of them as belonging to the same political body shortly after their effective enrolment into the Roman tribes.<sup>202</sup> Slightly later, we find Velleius Paterculus (19 BCE – 31 CE) describing the Italian allies at the time of the Social War as peoples of the same folk and blood (*homines eiusdem et gentis et sanguinis*, 2.15.2) as the Romans; a notion which, in Mouritsen’s words, deliberately turns the international conflict, as it were, into a civil war. Since Velleius himself came from Campania in Italy, Mouritsen sees his position as a premeditated background for portraying his own family history.<sup>203</sup> To Appian (95 - 165 CE) too, the Italians and Romans ‘effectively formed a single nation divided by obsolete, purely formal barriers’.<sup>204</sup> Apart from discarding Appian’s view as a later, imperial interpretation influenced by a change in the perception of the Roman citizenship, Mouritsen believes to have found an interior motive to Appian’s take on the events too.<sup>205</sup> Thus, Mouritsen argues, it is because of these ingenious accounts taken for granted by modern scholarship that we are deceived into believing the Italian integration in the Roman state at the time or even prior to the Social War.

Where Mouritsen’s arguments fail to convince is the contention that, almost immediately after the Social War, the political, cultural and even ethnic diversity of the allies was lost as a consequence of their enfranchisement: while the Italian peninsula came to constitute a ‘single political entity with a common citizenship’, he maintains, its former ethnic plurality was ‘largely replaced by a uniform Roman culture’.<sup>206</sup> As the 1<sup>st</sup> century BCE saw the decline of indigenous Italian languages, and the transformation of traditional settlement patterns, these are taken as indications of the political and

---

<sup>200</sup> Mouritsen (1998), 95. Mouritsen (2008) uses the same argument of Italians’ political and cultural distinctiveness to support his view of Flaccus’ citizenship extension bill of 125 BCE being an attempt to increase Roman manpower: ‘As soon as we accept that the allies formed a separate category with interests distinct from Rome’s, the internal balance of manpower between Romans and non-Romans emerges as a real political issue’, 474.

<sup>201</sup> Petersson (1920), 45. Arpinum gained Roman suffrage in 188 BC and was promoted to the status of a *municipium* in 90 BC.

<sup>202</sup> Admittedly, there may have been considerable political motives behind such exhortative claims.

<sup>203</sup> Mouritsen (1998), 10.

<sup>204</sup> Mouritsen (2008), p. 473.

<sup>205</sup> As Appian was born in Alexandria and received the Roman citizenship through personal grant, Mouritsen sees his history as ‘a tribute to the greatness of the Roman Empire, presented by a grateful provincial civil servant’, Mouritsen (1998), 11.

<sup>206</sup> *Ibid.* 2.



cultural integration of the allies. Mouritsen attributes this supposed loss of local identity of Italian towns to their enfranchisement, as he believes that the acquisition of Roman citizenship by the Italian peoples did in fact contribute to their ‘becoming Roman’. Thus, in Mouritsen’s interpretation of the ‘Italian question’, the extension of citizenship appears to be closely tied with identity:

*Only by fully assimilating themselves, moving to Rome and seeking noble patronage might allied leaders enter the senatorial order. And at that stage they had effectively ceased to be Italians, and instead become parvi senatores living in Rome.*<sup>207</sup>

However, the evidence of retention of local identity in addition to the newly assumed ones stretches way back in time and precedes the Social War by almost a century. Quintus Ennius (c. 239 BC – c. 169 BC) was a native of Rudiae, an Oscan town in Italy, who lived and worked in Rome and had become a Roman citizen in year 184 BCE. An extant fragment from his *Annales* reads: *nos sumus Romani, qui fuimus ante Rudini, Fr. 525*. It does not yet mean that he had ‘exchanged’ his Rudian identity for a Roman one.<sup>208</sup> Rather, as a passage in Aulus Gellius informs, he was seemingly able to relate to multiple identities assumed as a result of his multicultural surroundings and upbringing: *Quintus Ennius tria corda habere sese dicebat, quod loqui Graece et Osce et Latine sciret, 17.17.1.*<sup>209</sup> The three *corda* here suggest something deeper than the mere ability to speak three different languages, and may thus be taken to mean multiple identities which, much like the languages referred to, could be used or displayed in specific and appropriate contexts.<sup>210</sup> We see clearly from Ennius’ example that while the acquisition of Roman citizenship did imply a certain degree of adopting the traits of Roman identity, especially in particular settings, it need not have necessarily brought about an immediate loss of one’s former affiliations even upon his or her moving to Rome.<sup>211</sup> The other writers and poets of Italian descent, such as Plautus from Umbria, Catullus and Virgil from Cisalpine Gaul, all seem to have been perfectly aware of their regional affiliations, while at the same time pioneering and actively producing Latin literature in Rome.<sup>212</sup> Their plural identity is expressed in the praise for both their hometowns and Rome as their powerful ‘patron’. Comparably, both Cicero and Velleius Paterculus, having made all the way up the social ladder and acquired senatorial status as *homines novi*, seem to have had similar appreciation to both their new position and their original ties.<sup>213</sup>

---

<sup>207</sup> *Ibid.* 98.

<sup>208</sup> Derks & Roymans (2009): ‘That is not the way identities are usually constructed’, 160.

<sup>209</sup> Quintus Ennius used to say he had three hearts, because he knew how to speak in Greek, Oscan and Latin.

<sup>210</sup> For the close connection of language and identity, see Adams (2003).

<sup>211</sup> Cf. Wallace-Hadrill (2008) on Ennius’ ‘pride in being Roman’, which, ‘correctly defined by citizenship, was no impediment to retaining his Oscan heart’, 4. Wallace-Hadrill calls the case of Ennius ‘cultural triangulation’, i.e. ability to retain a local (Oscan) identity while simultaneously adopting Greek and Roman ones.

<sup>212</sup> Wallace-Hadrill (2008), 21.

<sup>213</sup> With the time of Augustus, men from Italian aristocracy were all the more able to achieve high political offices or magistracies in Rome, see Galsterer (1993).

Some historians and archaeologists argue contrary to Mouritsen's contention too, as they are able to discern a considerable degree of preservation of local cultures and manifestation of regional identities in the post-Social War Italy.<sup>214</sup> According to Lomas, all archaeological evidence is pointing to 'a complex process of cultural interaction' rather than 'the development of a monolithic and uniform Romanized Italy'.<sup>215</sup> The degree of adoption of Roman cultural traits varied among and *within* the local societies, the elites being significantly more prone to claiming their 'Roman-ness' than the rural population which largely 'retained their own distinctive local identity by assimilating external influences and adapting them to their own needs'.<sup>216</sup> There was most likely no immediate clear-cut change undergone by the Italian peoples after their enfranchisement, and the developments such as disappearance of indigenous languages were the result of a much longer process, one that took place already in the late 3<sup>rd</sup> and early 2<sup>nd</sup> centuries BCE.<sup>217</sup> Similarly, Van Dommelen relates that the ability to be seen by the governor and his entourage as adopting a Roman identity may have been politically advantageous to the local elite of Sardinia ever since their becoming a Roman province in 238 BCE.<sup>218</sup> Furthermore, military service in the allied contingents must have entailed a substantial degree of familiarity with Latin, especially among the local elites commanding their units, since at least the early 3<sup>rd</sup> century BCE.<sup>219</sup> Latin was also a preferred language for public inscriptions in many of the allied communities, such as Umbria or Etruria, prior to the Social War, which signifies close ties with Rome and the Roman identity.<sup>220</sup>

In her analysis of acculturation processes in Southern Italy, Kathryn Lomas made a strong case in favour of survival of local cultures under the guise of 'Romanized' communities. Although Roman legal and administrative structures were seemingly imposed as a prerequisite of the extension of Roman citizenship, the actual constitutions of Italian towns prove to be rather 'dynamic' and 'evolving systems' which may have simultaneously involved both local and Roman elements.<sup>221</sup> Some cities in Magna Graecia, for instance, seem to have had both Greek and Roman constitutions at the same time, and certain aberrations from what could be perceived as a norm persisted well into

---

<sup>214</sup> Lomas (1993), Laurence & Berry (1998), Van Dommelen and Terrenato (2007) et al.

<sup>215</sup> Lomas (1993), 187.

<sup>216</sup> *Ibid.*

<sup>217</sup> For instance, the language change at Cumae can be dated to as early as 180 BCE (Livy 40.42.13): Cumaeans petition to the Senate to use Latin instead of Oscan for official business. While regular inscriptions continue to use Oscan for some time, its eventual disappearance from epigraphic evidence in the 1<sup>st</sup> c. BCE may well have been a result of a longer development and a series of deliberate choices rather than the eventual enfranchisement.

<sup>218</sup> Van Dommelen (1998), 25-48.

<sup>219</sup> Wallace-Hadrill (2008), 85 on Etruria. The familiarity with Latin, Wallace-Hadrill maintains, stretches out to the sub-elite groups, for even craftsmen knew Latin as the 'language of export market'.

<sup>220</sup> According to Wallace-Hadrill (2008), 'inscriptions are not neutral evidence [for linguistic situation] ... because they act as conscious expressions of identity', 93.

<sup>221</sup> Lomas (1993), 150.

the 2<sup>nd</sup> century CE.<sup>222</sup> Greek elements, such as language or specific magistracies and institutions, survive after the Social War as functional parts of the constitution in Naples, Velia and Rhegium.<sup>223</sup> The research of Lomas strongly suggests that the different, Greek and Roman, elements of municipal constitutions and administration coexisted alongside each other, without significant degree of assimilation. While retaining Greek magistracies and issuing Greek decrees served ‘an important function in the preservation of a Greek civic identity’, the magistrates holding those offices worked in highly Roman-like administrative structures and had adopted Latin names, signalling their possession of citizenship as well as belonging to the Roman political body.<sup>224</sup> Surely enough, one cannot fully trust the change in naming practices to mean one’s immediate ‘becoming Roman’, and the idea that adopting the Roman *tria nomina* ‘implied acceptance of Roman values’<sup>225</sup> may in fact be too far-fetched. Nevertheless, the adoption of a name, much like the choice of language as a reaction to the change in one’s legal status, suggests (at least temporarily) assuming or choosing one identity over the other, it largely being a deliberate act meant to serve a specific purpose.<sup>226</sup> The cultural heterogeneity of a region such as Magna Graecia also implies a dialogue not simply between the homogenous local and the superimposed Roman, but between more than two sets of cultural identities. The Greek and Latin epigraphic record, for instance, used in strikingly different contexts, and the Italic names appearing in both types of records point to the deliberate construction and negotiation of several voluntarily assumed identities rather than a consequential change in one’s single, ‘original’ identity. The linguistic situation in post-Social War Italy, thus, Lomas argues, ‘does not represent a linear progression away from the Italic languages and in favour of Latin, but a much more complex process in which language choice could reflect the political sympathies of an individual or a city’.<sup>227</sup> From the Roman perspective too, there does not seem to be much evidence of deliberate attempts to impose the Latin language upon the Italians under the Republic nor later on during the Empire.<sup>228</sup> The aforementioned Cumaeans’ petition to the Roman Senate requesting the right to use Latin instead of Oscan for public business (see note 211 above) in 180 BCE shows that there was no encouragement, let alone insistence, by

---

<sup>222</sup> *Ibid.* 144, 162. Cf. Tarentum (*CIL* 1(2) 590). The constitutional problems found in Magna Graecia touch upon ‘the wider issues of civic and cultural identity’, which largely stem from the fact that the region was a multi-cultural society, absorbing Greek, Roman, Oscan and Messapian elements alike.

<sup>223</sup> *Ibid.* 149. *CIL* 10.1492: Greek magistracies appear until 4<sup>th</sup> century CE and even outlast the usage of Greek language.

<sup>224</sup> *Ibid.* 158.

<sup>225</sup> *Ibid.* 173.

<sup>226</sup> Cf. Balsdon (1979): ‘The name one was known by and the languages used in any given context were contingent both on legal status and a bewildering set of socio-political conventions’, 146-60. Similarly, Lomas (1993) on the choice of language being ‘part of a constructed personal or collective identity which may have little to do with the actual linguistic and ethnic background of individuals’, 173.

<sup>227</sup> Lomas (1993), 175.

<sup>228</sup> Adams (2003), 113, 289.

Rome that her allies were to use Latin; while the official request for this right, although it may not have been a legal necessity, worked as a public display of loyalty and recognition of the Roman authority.<sup>229</sup>

Closely tied with the spread of Latin was the diffusion of Roman law into the allied communities. The *Tabula Bantina* may serve as a good example of the relationship between law and language, as well as showcase some issues of negotiation of identities. The bronze tablet comes from the Lucanian town of Bantia and has two types of legal text inscribed on each side: one bears a fragment of Roman law in Latin, while another one displays Bantian legislation written in Oscan.<sup>230</sup> Due to uncertain dating of the tablet, it is not entirely clear whether this piece of evidence stems from before or after the Social War and the consequent enfranchisement of the area in 89 BCE; it is also debatable what Roman legislation the Latin text is part from.<sup>231</sup> Interestingly, the Latin part seems to have been inscribed and used first, while the Oscan text was added later on, thus turning over and reusing the original tablet.<sup>232</sup> The Latin part of the inscription contains an oath of the magistrates (similar to that of the *lex agraria* of year 103 BCE), the procedure in case of a fine, the trial before the assembly, the census, the procedures *in iure*, and the *cursus honorum*.<sup>233</sup> The Oscan part of the tablet is more likely to be dating to sometime after 89 BCE for it appears as part of the municipal statute.<sup>234</sup> It is the most extensive inscription in the Oscan language known, yet it is written in the Latin alphabet which makes it unique among the rest of the extant Oscan inscriptions. Wallace-Hadrill describes the ‘Latin’ nature of the *Tabula Bantina Osca* as manifesting ‘the most intimate contact with Rome’: not only is the Bantian legislation inscribed on the back of a Roman text, but it also uses Latin script, the Roman way of writing (from left to right), adopts Latin terminology, and relates to Roman magistracies and legal or political institutions. Furthermore, ‘the very concept of inscribing laws to prescribe the constitutional basis of a community is Roman, and

---

<sup>229</sup> Wallace-Hadrill (2008), 82. The Cumaeans seemingly asked the Roman Senate to allow them ‘to speak Latin in public and for the right for auctioneers to conduct sales in Latin’ (*ut publice Latine loquerentur et praeconibus Latine vendendi ius esset*, Livy 40.43.1). Cumae, as a Greek colony, ‘may have recalled their Greek origins ... had they wished to assert an independent identity ... but preferred Latin’, *ibid.* Wallace-Hadrill also directs one’s attention to *CIL* 1(2) 581 and Livy 39.18 for more examples of Latin as a recognizable language of power.

<sup>230</sup> *CIL* IX 416; *FIRA* I 6, *FIRA* I 16. Lucania was in alliance with Rome since 298 BCE, and actively participated in the Social War against Rome.

<sup>231</sup> See Sánchez-Moreno Ellart (2013) for the various versions of dating and possible identification with Roman legislation. Most likely it originated before the Social War and is related to either Gracchan or Saturninus’ legislation, but there is no way to know for sure. Sánchez-Moreno relates that ‘the existence of an Oscan legal text after the Social War would be astonishing’, 6503.

<sup>232</sup> Adamesteanu and Torelli (1969). The fixing hole placed below the Latin text is surrounded by the Oscan one, which means that the side with the Latin text was posted first, then turned and reused, see also Sánchez-Moreno Ellart (2013) and Wallace-Hadrill (2008), 94.

<sup>233</sup> The content of *Tabula Bantina Latina* has been diversely interpreted, since no title is preserved, see Sánchez-Moreno Ellart (2013) and Crawford & Coleman (1996), 273.

<sup>234</sup> Galsterer (1971); (2001), 1195. Wallace-Hadrill (2008), however, attributes higher probability to the pre-war context, 94.

the specific topics (trials before the assembly, procedures for census of citizens, civil law procedures and the sequence of magistracies) were ones of current concern at Rome'.<sup>235</sup> The Oscan text thus appears a lot like 'a not-very-accurate translation from Latin', and 'reveals a community led by magistrates with Latin names such as consuls, praetors, and quaestors'.<sup>236</sup>

Whether the law drawn up in the Oscan language belongs to the pre- or post-Social War context, its dependence on Rome remains unequivocal. The choice of the Bantians to inscribe their law in Oscan rather than Latin, however, points to the opposite development: while the adoption of Latin alphabet, terminology, and institutions may initially point to the loss of local cultural traits, the rendition of the law into Oscan manifests reassertion of the local identity.<sup>237</sup> The spread and adoption of Latin did not in itself induce the disappearance of local languages and awareness of local identities; instead, as the case of Bantia shows, it may have encouraged the local identity to come to the fore through the agency of the ruling elite, most likely conversant in both Latin and native languages, yet making a choice to set up their legislation in the latter.<sup>238</sup> Similarly, Laurence and Berry suggest that 'there may well have been greater cultural value in maintaining localised identity once all Italians had been granted the citizenship of Rome'.<sup>239</sup> Admittedly, the change in legal and civic practices, defined by the Roman-like municipal statutes, contributed to the perception of Latin as the language of power and of public inscriptions as displays of the Roman authority. Yet the mere acquisition of Roman citizenship did not automatically make the allies culturally Roman, and it may even, in some instances, have been a driving force to keep the localized identities alive. It is thus important to understand that the 'culturally multilingual', as Wallace-Hadrill calls those affected by yet able to adjust to the Roman domination, 'enjoyed a powerful advantage rather than a loss of identity'.<sup>240</sup> The pattern of linguistic and cultural manoeuvring and negotiation of identities permeates all parts of the Roman world, while active participation in this process does not appear to be limited to the non-Roman part of the population either.

---

<sup>235</sup> Wallace-Hadrill (2008), 94.

<sup>236</sup> Sánchez-Moreno Ellart (2013) with reference to Adamesteanu and Torelli (1969). A typically Oscan magistracy of the *meddix* is present amongst the Roman ones too.

<sup>237</sup> Wallace-Hadrill (2008) sees this as 'dialogue and dual identity' rather than either submission or resistance, 95.

<sup>238</sup> *Ibid.* 95. See also Crawford & Coleman (1996), 276.

<sup>239</sup> Laurence & Berry (1998), 3.

<sup>240</sup> Wallace-Hadrill (2008), 78.

### 3.2 Municipalization of Italy and the *Lex (Flavia) Irnitana* as an example of imperial municipal legislation

Both the legal and civic lives of the communities that fell under the direct influence of Rome were largely defined by municipal or colonial legislation which followed their incorporation into the Roman State. We have already observed some examples of how Italian communities defined their new relationship to Rome. Some traits of pre-Roman administrative and legal organization were retained and coexisted together with the adopted Roman-like structures and principles. While some Italian communities may have become *fundi* of certain Roman laws prior to the Social War and their subsequent enfranchisement, the extent to which these communities were familiar with the Roman *ius civile* guiding the lives of Roman citizens, varied widely between them.<sup>241</sup>

The municipal legislation governing the lives of newly incorporated communities were seemingly passed through the Roman *comitia* with participation of local elites, and were thus products of dialogue and negotiation between Rome and her subjects.<sup>242</sup> A copy of the municipal charter detailing the rules of political, religious and social life of a *municipium*, would be inscribed on bronze and displayed publically.<sup>243</sup> Its exposure in the central civic space and its availability to every member of the *municipium* played a significant role in one's understanding of participation and belonging to the community, as well as defined one as a member of the Roman commonwealth at large, thus integrating him or her 'symbolically as well as practically (e.g. by voting in *curiae*) as a participant in the Roman political world'.<sup>244</sup> While the adoption of the Roman *ius civile* by the Italian communities prior to the Social War was fairly more flexible (as it depended on their choice to become *fundi* of certain laws thus abandoning those of their own), it is not entirely clear whether, after the enfranchisement, Rome was more active in enforcing the adoption of the *ius civile* and other universally applicable provisions in the newly created *municipia*, or whether this remained relatively optional.<sup>245</sup>

In any case, the extent of local civil jurisdiction retained would be defined in the charter, and it was seemingly broader in the Late Republic than during the Early Imperial period. There clearly was no

---

<sup>241</sup> From close to nothing at Samnium to close acquaintance (marriage, inheritance, business affairs) in Latin colonies, Bispham (2007), 205.

<sup>242</sup> Bispham (2007) comments on the relation between draftsmen of municipal laws and *principes* of local communities: the former were 'men with links to and interests in the communities, but also who understood politics at Rome', 245. The fact that municipal *leges* were voted by the Roman people demonstrates a 'powerful link between centre and periphery', so that the communities without municipal laws may have found themselves 'politically and culturally isolated', *ibid.*

<sup>243</sup> Bispham (2007), 206.

<sup>244</sup> *Ibid.* 223-4.

<sup>245</sup> *Ibid.* 206.

one hundred percent continuity of the old ways anywhere in Italy, but the two spheres of jurisdiction (the local and the praetorian) at work should most likely be seen as complementary rather than competing with or opposing to one another.<sup>246</sup> The process of municipalisation was thus ‘flexible enough to incorporate local tradition along with a significant core of Roman standards’.<sup>247</sup> Furthermore, some, if not most of the Italian communities were already to a certain degree familiar with Roman law (through military service, business opportunities, tax farming, and the voluntary adoption of beneficial laws), a development of interaction which must have been well known in Rome. Bispham maintains that the Roman Senate seemingly had ‘expected that absorption of the principles of criminal and civil law was one of the main functions of acculturation, and that guidance was only necessary for some of the more tricky aspects of procedure *in iure* or *apud iudicem*’.<sup>248</sup>

We know somewhat more of later, imperial municipal legislation, which retains the main traits of Republican municipal charters but seemingly displays a higher degree of conformity with the Roman law and administrative practices. The *Lex Irnitana*, an extant piece of Flavian municipal legislation originating in the *municipium Flavium Irnitatum* in Spain and traditionally dated to 91 CE, is one of the most interesting legal sources found to this day and may serve here as an example of imperial city-laws. It’s similarities with the *Lex Salpensana* and the *Lex Malacitana* (82-84 CE) prove the existence of a single ‘matrix-law’ lying behind all the Flavian municipal legislation, parts of which would be adjusted according to each particular case.<sup>249</sup> Since *municipium Flavium Irnitatum* was a Latin community (granted the *ius Latium* in year 73/74 CE together with the whole of Spain), one should not safely assume that the same ‘matrix-law’ applied to the Italian communities of the Late Republic as well. The city-law does, nevertheless, contain some provisions dating back to the Republican times, as well as ‘reflects the legislative concerns of the Augustan age’.<sup>250</sup>

The *Lex Irnitana* discusses general administrative matters, such as magistracies held, elections, financial and religious matters etc., with its longest section concerning jurisdiction (84-93).<sup>251</sup> The

---

<sup>246</sup> *Ibid.* n. 67, 423.

<sup>247</sup> *Ibid.* 245. Similarly, Kantor (2012) maintains that ‘municipal copies of Roman laws represent a potpourri of provisions from different statutes, mixed together without much forethought’, 71. He compares this development to the attitude of the Roman jurists in the sense that they both point toward fluidity and flexibility of interpretation of the law.

<sup>248</sup> *Ibid.* 223.

<sup>249</sup> Galsterer (1988), 78. Bispham (2007) speculates that there was either one or two (colonial and municipal) matrix-laws which these chapters could draw on, and maintains that either way ‘there was a considerable degree of fluidity both in its evolution, and in its application to particular communities’, 228.

<sup>250</sup> Metzger (2013), 10. Gonzales (1986) on part of the Augustan *Lex Iulia de iudiciis privatis* which seems to be ‘incorporated in a set of regulations for *municipia*, if not immediately, surely still by Augustus’, 150.

<sup>251</sup> The beginning of the law is not preserved but it must have started with the definition of the citizen body (and, possibly, their *munera*). The rest of its contents may be summarized as follows: religious affairs; magistrates (to 27);

latter is preserved intact and was righteously held by Gonzales to be ‘the most dramatic section’ of the entire material.<sup>252</sup> A part from this section regarding the law according to which ‘a matter may be judged, a case may be at the peril of the *iudex*, a matter may cease to be under trial’, reads:

<...> the statute and law and position is to be as it would be if a praetor of the Roman people had ordered that matter to be judged in the city of Rome between Roman citizens, (91).<sup>253</sup>

Similarly, a subsequent paragraph ‘concerning the law of the *municipes*’ holds:

On whatever matters there is no explicit provision or rule in this statute, concerning the law under which the *municipes* of the *Municipium Flavium Irnitatum* should deal with each other, they are to deal with each other in all these matters under the civil law under which Roman citizens deal or will deal with each other, (93).

There are a couple of important points one should immediately establish. Firstly, not all of the *municipes* of Irni were Roman citizens: while the majority of members of the community possessed the *ius Latium*, it is most likely only a small number of the ruling elite members that had access to full Roman citizen rights.<sup>254</sup> Secondly, there are no specific provisions differentiating between the Roman and non-Roman citizens in the sections regarding the administration of justice, which is the most intriguing (to this paper) part. Non-Romans (Latins) were authorized by this statute to make use of a number of Roman laws, including the Roman private law institutions *as if* they were Roman citizens (23, 85, 93). The *Lex Irnitana* thus demonstrates that in the 1<sup>st</sup> century CE most of the ‘exclusively Roman’ private law institutions (*patria potestas* (21), *manus* (86), *mancipium* (97), *manumissio*, *tutela*, *ius liberorum*, the *tria nomina* etc.) were made available to the Latin *municipes* in Spain regardless of their possession of citizenship and their formal eligibility for making use of these institutions.<sup>255</sup> Their subsequent change of status from Latin to Roman would thus no longer affect their legal relationships enshrined in the municipal legislation of Irni.<sup>256</sup> From the administrative perspective too there was a compulsion to adhere to the Roman practices in terms of eligibility for office (54), bearing of witness (71), granting of trial (89), conduct of trial (91) etc. Chapter (93) provides that no local rules were to be followed or applied (*contra* Gellius NA 16.13.6-9) unless specifically indicated in the municipal law. Local jurisdiction appears to be retained in fields of payments to scribes, actors, and ambassadors (70-73), inspection of sources of revenue (76), or expenditure on *sacra* (77); in a couple of places we also see adherence to the traditional

---

manumission and *tutela* (28-29); *decuriones* (30-31); elections (51-60); general administration (61-62); financial matters (62-73); illegal gatherings and grain hoarding (74-75); further section on financial matters (76-80); games, roads and *operae* (81-83); jurisdiction (84-93); *incolae*, inscribing of the law and its enforcement (94-96).

<sup>252</sup> Gonzales (1986), 148.

<sup>253</sup> Here and further the law is cited from Gonzales (1986). See *ibid.* for the edition of Latin text and critical apparatus.

<sup>254</sup> Bispham (2007): ‘hence the ‘didactic’ and acculturative functions of the charter were perhaps greater than would have been the case in a Roman *municipium*’, 211.

<sup>255</sup> Cf. Gaius on *patria potestas* and tutelage of women as ‘peculiarly’ Roman institutions, defining the ‘Romanity’ of citizenship holders, see Ch.1.1.

<sup>256</sup> Gardner (1993), 189.



custom of the community, e.g. regarding the local festivals and games (81).<sup>257</sup> For all else, however, the *municipes* of Irni were to deal with each other within the framework of Roman civil law, and local judges were instructed to give judgement according to what would apply *if* the case was tried *at Rome* and *between* the Roman citizens (71, 89, 91).<sup>258</sup> Precisely because of these hypothetical provisions, the law that the *municipes* of Irni were to apply in their dealings was an ‘artificial construct’ or ‘legal fiction’.<sup>259</sup> What we see in the *Lex Irnitana* is then neither the retention of local autonomy nor imposition of pure Roman law. Instead, this should be seen as a creation of a new legal system based on Roman law yet able to ‘accommodate’ peregrines as ‘pretend-Romans’.<sup>260</sup> The bestowal of such a system demonstrates the purest form of redefinition of local set of civic and legal relations through the medium of municipal charter: the implications of such ‘legal fiction’ on the locals’ legal and civic identities must have been significant too.

Yet another noteworthy aspect of such legislation is that it was only valid *within* the individual community.<sup>261</sup> This primarily meant that while a member of the *municipium* of Irni could freely make use of Roman private law institutions in his hometown, they would no longer apply to him or her in their dealings elsewhere. From the legal perspective, at least, communities like that of Irni were designed to look and behave like tiny replicas of Rome herself, with every member of its community well aware of their legal rights and obligations. The regulations on publication of the charter (95) too show the ‘importance of the law as a public document, and as an accessible source of authority within the community’.<sup>262</sup> Although such close adherence of the Spanish *municipia* to Roman law and administration of justice was most likely an imperial development, the Republican municipal legislation may have contained references to the Roman practice in cases of doubt similar to the one in the *Lex Irnitana* (93): ‘If the Italian municipal charters of the Republic were half as complex and wide-ranging as the Flavian charters from Spain’, Bispham speculates, ‘they will have had a very significant impact on the life of the *municipia*’.<sup>263</sup>

Both the limited local jurisdiction and the extension of the Roman *ius civile* to non-Roman (Latin) communities demonstrate that the possession of citizenship was no longer a necessary prerequisite for exercising Roman private law. Although we have seen Gellius explain that *municipia*, in contrast to *coloniae*, were largely able to retain their own laws and customs (NA 16.13.6), he also

---

<sup>257</sup> Gonzales (1986), 149.

<sup>258</sup> Gonzales (1986) remarks on the purely Roman nature of chapters on jurisdiction (84-93) thus concluding that ‘the study of the relationship of *Reichsrecht* and *Volksrecht* will clearly never be the same again’, 149.

<sup>259</sup> Gardner (1993) calls this ‘a mirage of the Roman law’, 188-9.

<sup>260</sup> *Ibid.* 190. A similar ‘legal fiction’ we have already seen in the previously discussed *Lex Acilia de repetundis* (49): ‘He shall have the right of appeal to the Roman people thereafter, just *as if* he were a Roman citizen’.

<sup>261</sup> See Gardner (1993), 189.

<sup>262</sup> Bispham (2007), 223.

<sup>263</sup> *Ibid.* 93, 210.

tells us that there were *municipia* which, to Hadrian's surprise, had requested to have their status changed into that of a colony.<sup>264</sup> Gellius explains such requests as follows:

*the condition [of a colony], although it is more exposed to control and less free, is nevertheless thought preferable and superior because of the greatness and majesty of the Roman people, of which those colonies seem to be miniatures, as it were, and in a way copies; and at the same time because the rights (iura) of the municipal towns become obscure and invalid, and from ignorance of their existence the townsmen are no longer able to make use of them.*<sup>265</sup>

The municipal communities in mid-2<sup>nd</sup> century CE were seemingly less and less aware of their own *iura*, most likely due to their close relations to Rome, especially among the elite members, and familiarity with the Roman law, communicated to them through the Roman-style municipal charters. Roman legal principles and institutions thus seem to have gradually become the 'easiest' point of reference for these communities. Gellius' contention, as we shall presently see, may to some extent be applicable to the provincial situation of the 2<sup>nd</sup> century CE too: people's willingness to assert their rights and secure legal protection came to influence their perception of the Roman governor's court as the only one able to solve the disputes stemming from the plurality of laws.

### 3.3 Roman provincial situation of the 2<sup>nd</sup> century CE

The spread of Roman law and the extension of Roman citizenship were not limited to Italy and the surrounding communities affected by the process of municipalization. In fact, most of the first-hand documentary evidence to throw light on the various legal transactions, litigation and court proceedings within the framework of Roman law come down to us from the (Eastern) provinces of the Empire. Contrary to municipal or colonial communities whose legal and civic lives were defined by official charters drawn upon their acquisition of municipal (colonial) status, the legal relations within the provinces depended on the provincial edict which was subject to annual change (see Ch. 1.2). Together with the Roman administrative apparatus, introduced into the newly established provinces shortly after their acquisition, came the implementation of the Roman judicial system. This was a process influenced by the presence of Roman military force, numbers of Roman

---

<sup>264</sup> *Hadrianus ... peritissime disseruit mirarique se ostendit quod et ipsi Italicenses et quaedam item alia municipia antiqua, in quibus Uticenses nominat, cum suis moribus legibusque uti possent, in ius coloniarum mutari gestiverint, NA 16.13.4.* The request of Utica was not granted until Septimius Severus (r. 193-211 CE). An opposite request of Praeneste to change its status from a colony to that of *municipium* under Tiberius is attested to have been successful (NA 16.13.5).

<sup>265</sup> *Quae tamen condicio, cum sit magis obnoxia et minus libera, potior tamen et praestabilior existimatur propter amplitudinem maiestatemque populi Romani, cuius istae coloniae quasi effigies parvae simulacraque esse quaedam videntur, et simul quia obscura oblitterataque sunt municipiorum iura, quibus uti iam per ignotitiam non queunt, NA 16.13.9.*

citizens sent out to live in the newly acquired dominions, and the gradual increase in citizenship grants provided to pro-Roman provincials as a gesture of gratitude or an implicit request for loyalty. Thus, the primary reason behind the spread of Roman law into the provinces was to provide the Roman citizens residing outside Rome with a proper, i.e. Roman, set of legal remedies. Once there, the Roman administration of justice seemingly came to influence local legal relations to some extent too, as the indigenous people could and did have regular recourse to the Roman courts.

Most of the people we meet in the provincial documentary evidence are *not* Roman citizens, nor do they belong to a particular, presumably wealthier, part of the population. Instead, they are provincial inhabitants of differing social and cultural backgrounds, negotiating their place in a fairly complex legal environment and ready to go to considerable lengths in asserting their rights within the framework of Roman provincial law. The legal disputes of which we read in the papyri mostly have to do with private matters, such as disputes over property or personal injury. In litigation relating to personal and family law we often find claims based on local legal principles that are nevertheless addressed to a Roman court. The Roman administrators of justice were not blind to requests based on local law and they would in a lot of cases try to adjudicate the case without impairing the local legal relations. Hence, the law actually practiced in the Roman provincial courts proves to be far from monolithic: the principle of legal personality largely applied throughout the provinces Empire-wide.<sup>266</sup>

Roman law was thus only one of the many enforceable laws and, in most regions, legal complexity (plurality of laws) prevailed. In Roman Egypt, for instance, the Greek cities had retained their own municipal laws which were decisive in cases brought by the members of their citizenry.<sup>267</sup> Local courts were in most cases retained as well, although often with limited jurisdiction. However, evidence has it that the governor's court was perceived by both the residing Romans and native inhabitants as the highest judicial authority on the provincial level. What is frequently obscured by the debate over the relationship between local and Roman laws ('*Volksrecht*' vs. '*Reichsrecht*') is that, most likely, it was not so much about which (Roman or local) law to address in your claim but rather which judicial authority to trust the matter to. Surely, not every case could reach the court of the governor, and in majority of cases a local magistrate with judicial powers would be the first and the last point of contact for a common provincial. Nevertheless, people's willingness to assert their

---

<sup>266</sup> In Roman Egypt, for instance, we see both Roman and local (Greek, Egyptian) laws applicable in the Roman courts, together with regulations valid for smaller groups, e.g. Jews, Katzoff (1972), 292.

<sup>267</sup> Cf. *P.Oxy.*2199 (3<sup>rd</sup> cent. CE Egypt): the claimant's right to inherit land was put to test by a local official due to his doubts of her eligibility for the legal remedy based in Alexandrian (or Antinoite) municipal law; the *nome strategos* was asked to investigate whether Areia (the claimant) possessed the citizenship of the Greek city in question. The document thus not only proves the citizenship of a certain *polis* to be forming the basis for the woman's capacity to inherit, but also demonstrates that municipal law was in this case considered to be decisive. See Taubenschlag (1951), 128.

rights by securing a hearing before the highest judicial instance proves to have been of considerable scale: *P.Yale* 1.61 (209 CE), for instance, records the prefect of Egypt receiving 1,804 petitions from a single Arsinoite district during his annual assizes. Judging by the overwhelming amount of petitions addressed to the prefect, these clearly came from both the commoners and the upper classes alike.<sup>268</sup> Similarly to Egypt, in Roman Arabia the provincials are often seen to have traced down and tried to approach the governor too, instead of having recourse to local courts or arbiters (*P.Yadin* 26, 1.5; *P.Yadin* 25, ll. 15-16, 42-3). The evidence from Egypt and other (mostly Eastern) provinces thus shows provincials' readiness to address Roman authorities and use them for dispute resolution regardless of their own ethnicity, social status, or even possession of citizenship. To what extent then, if at all, did the spread of Roman law influence local identities and local legal/civic relations in the regions further away from and less dependent on Rome?

#### a. Linguistic change

One of the most easily perceivable developments stemming from the implementation of Roman law and administrative apparatus and pertaining to the question of identity is the change in language use.<sup>269</sup> The linguistic identity of subjected peoples was inevitably redefined by the advent of Roman administrative and legal systems. Similarly to the post-Social War Italy, Latin became a predominant language of official business in the Western parts of the Empire (Britain, Gaul, Spain, Dacia), while the linguistic variety in the East was widely replaced by Greek as an official language of the new government. The survival or disappearance of local languages, however, was not a unanimous process throughout the Empire and depended heavily on native choices as well as governmental policy.<sup>270</sup>

While Demotic script was still used for legal purposes under the Ptolemies, both epigraphic and documentary evidence from Roman Egypt reveals a severe decline in its use within the first century of the Roman rule, and its gradual confinement to religious and literary spheres only. The final entrenchment of Greek under the Roman rule mainly owes to the legal and administrative changes, such as the abandonment of the court of *laokritai* operating with Demotic contracts, and the

---

<sup>268</sup> Cf. Bryen (2008), 185.

<sup>269</sup> Language is often seen as one of the key components constituting one's personal identity, along with ethnicity, customs, religion etc. See Mattingly (2011), Adams (2003).

<sup>270</sup> Cf. Woolf (1998) who discusses the survival of Romance languages in southern Wales and interprets it as a deliberate choice of elite to 'become more Roman', as they perceived it. He also stresses the capacity of rather small numbers of elite groups to influence the adoption of Roman culture, 111-124.

elaboration of institutions of *agoronomieia* and *grapheia*.<sup>271</sup> Demotic legal documents were still drawn during the Roman period in the most conservative areas of law, such as family, inheritance and succession matters. The Romans did, nevertheless, impose various complications and regulations for this type of contracts, for instance, they required a Greek subscription and were considered invalid unless registered in the special archive in Alexandria. Both Roman and peregrine residents of Egypt largely drew their contracts in Greek and followed Greek formulaic requirements, except where Roman law explicitly demanded of Roman citizens to use Latin. In the judicial proceedings too, the native population of Egypt was bound to use Greek, regardless of their knowledge of the language: *PSI* 1362 (181-183 CE) contains a court minute which records an Egyptian answering in the court of the Roman prefect with the help of an interpreter. Naturally, the portion of the provincial population to actually find themselves in need of attending governor's court must have been fairly small, and most people would lead their lives without having to go through too much trouble. Yet the inability to legally transact in one's native language, as well as the acquisition and use of documents drawn in a foreign tongue must have affected many and at all social levels.

In comparison, Roman Arabia posits another example of linguistic change undergone by the native population shortly after its acquisition in 106 CE. Although, contrary to Egypt, the area had not been deeply affected by prior Hellenization, we see an almost immediate shift from Nabataean language to Greek, alongside the very rapid adoption of Roman documentary practices.<sup>272</sup> Out of the 35 papyri (dating from 93/94 to 132 CE) found in the archive of Babatha, a local Jewish woman from a rather wealthy family, 3 are drawn in Aramaic, 6 in Nabataean, while 17 are in Greek language, and 9 in Greek with subscriptions and signatures in Aramaic, Nabataean or both.<sup>273</sup> The linguistic change here thus directly relates to the Roman annexation and reveals a similar pattern to that of Egypt, although, unlike Demotic, Aramaic script remained in use and there are no indications of its invalidity in court. Of particular interest in the said archive are the trilingual documents, such as the land registration by Babatha issued in connection with a census return

---

<sup>271</sup> For the separation of jurisdictions of the two (Greek and Egyptian) courts based on the language of the documents, see the decree of Ptolemy VIII Euergetes II (118 BCE). See Yiftach-Firanko (2009) on the Greek language in Roman Egypt, 549.

<sup>272</sup> The Greek that we see in the documents from Roman Arabia is often grammatically incorrect (e.g. omitted definite Greek articles) and permeated with Latinisms, translations (e.g. *bona fide* (= *kale pistei*, *ek kales pisteos*) and transliterations of Latin legal and administrative terms, such as *acta*, *basilica*, *collega*, *librarius*, *miliaris*, *praesidium*. Shortly after 106 CE in both Greek and Aramaic documents we already see the use of consular dating (i); references to parts of Roman administration (ii); adoption of Latin titles, Roman customs and Latinized names (iii); the use of typically Roman phrases such as 'most blessed days of emperor ...' (v) etc. In addition, 23 out of 35 documents found in the archive are the so-called 'double documents', i.e. two waxed tablets tied together in a Roman *diplomata* fashion.

<sup>273</sup> For a fuller discussion of subscriptions in these documents, see Cotton (1995).

ordered by the Roman governor.<sup>274</sup> The main body of the document was written by Babatha's husband (acting as her transactional guardian, thus in accordance with Roman law) in Aramaic; to this a Greek translation was added and, once approved by a Roman official, a Latin notation was appended, with its parallel translation into Greek. The original, i.e. Aramaic, version of the document, together with the notation in Latin, was displayed in public, thus demonstrating both the importance of Latin for validation of the document and one's ability to nonetheless employ the native language to his or her convenience.<sup>275</sup>

While certain requirements of the Roman administration regarding documentary practices, including the language of documents admitted to court, were imposed throughout the Empire, there clearly was no official policy to govern one's personal linguistic choices. The epigraphic evidence from the Near East suggests the coexistence of local languages with those brought about by the Roman administration. A couple of funerary inscriptions set up in the 1<sup>st</sup> c. CE in Lepcis (Tripolitania, Libya) and dedicated to a certain Boncar Clodius son of Mecrasius and his mother are inscribed in Latin, Greek and neo-Punic.<sup>276</sup> Instead of being taken to mean the intrusion or superimposition of Latin and Greek as the official languages of the Roman government, the trilingual aspect of these inscriptions informs of one's desire to assert several un-contradictory identities. Funerary inscriptions, it must be pointed out, served no less public a purpose than any other type of epigraphic display: an inscription was primarily meant to be read and interpreted by the others, and Boncar Clodius made sure that his would be read by at least three linguistic groups of people which he had identified with during his lifetime.<sup>277</sup> Both literary and epigraphic evidence of the 2<sup>nd</sup> century CE too reveal a common practice of code-switching, i.e. ability to use two or more different languages depending on circumstance, especially among the Greek elites in various parts of the Empire.<sup>278</sup> This linguistic model of appropriating two or more languages instead of creating a 'hybrid' one reminds us of the bilingualism in the 3<sup>rd</sup>-2<sup>nd</sup> century BCE Italy, and once again points to the coexistence of different cultures, and a conscious 'shuttle' between various identities rather than their fusion.<sup>279</sup> In this regard, the frequently accentuated disparity between the

---

<sup>274</sup> *P.Yadin*.16, 127 CE.

<sup>275</sup> Adams (2003) sees the former as proof for Latin taking up the status of the 'language of power', 566-7. The trilingual documents from Arabia reveal the hierarchical relationship between demands of the state and one's personal preferences: in many cases, Aramaic text would be issued for personal use, Greek for local administration of justice, and Latin for the official recognition (validation) of the document.

<sup>276</sup> *IRT* 654, 655.

<sup>277</sup> Cf. Wallace-Hadrill (2008) on the same inscription of Boncar as he notes that the recorded multilingualism 'does not make him a Creole, but someone conscious of several identities', 14.

<sup>278</sup> *Ibid.* 6.

<sup>279</sup> Wallace-Hadrill (2008), drawing heavily on Swain (1996) and Goldhill (2001), notes that 'the Roman world produces no evidence of Creole languages, but abundant evidence of bilingualism and code-switching, and at all social levels', 13.

Republican imposition of ‘Romanity’ and the Imperial policy of ‘non-intrusion’ proves to be less pronounced too.

In fact, there does not seem to have been any official or universal insistence on *Latin* as the single language of the Roman Empire. This, as duly noted by Adams, becomes especially clear in the context of the Roman employment of Greek as the ‘twin language’ for business and administration. Nevertheless, as we have observed in the case of Babatha’s transactions, Latin often served as the language of validation and authority, regardless of whether or not the addressees understood it. The instances of using Latin in the predominantly Greek or any other non-Latin speaking environment by the Roman officials was thus their way of asserting their own identity as well as communicating Rome’s overarching power.<sup>280</sup>

A slightly different story than that of regular provincials applies for those in possession of the Roman citizenship. Although Rome did not officially demand that her citizens should speak Latin and, taking into account numerous citizenship extensions throughout the Empire, it would be absurd to believe that all of them did; there is evidence that the newly made citizens, at least those circling in the highest echelons at Rome, were frequently expected to know the language of the Romans.<sup>281</sup> There is ample provincial record to demonstrate that the acquisition of Roman citizenship implied adoption of Latin in the legal discourse pertinent to personal and family law. As mentioned above, certain types of documents directly related to the assertion and transmission of Roman citizen status, such as birth certificates and wills, had to be drawn in Latin regardless of whether or not the holders of the *civitas* knew the language.<sup>282</sup> It was, as Adams righteously maintains, a practice ‘rich in symbolism’, and one which necessarily implied assumption of a new identity, not only juridical but also linguistic. The principle of mutual understanding, however, seemingly applied to these documents too, and is articulated through their linguistic complexity: e.g. the citizen will in Latin would often have a subscription in Greek (assuming the testator was a Greek speaker) and would be accompanied by a Greek translation.<sup>283</sup> While the Greek copies of such documents would have no legal validity in court, their issue for personal reference demonstrates an attempt against the

---

<sup>280</sup> Adams (2003), 545-6.

<sup>281</sup> *Ibid.* 562. Tiberius is attested to have refused to allow a centurion speak Greek in the senate (D.C. 57.15.3; Suet. *Tib.* 71), while Claudius forbade non-citizens usurping Roman names for their children and is known to have stripped a Greek of the Roman citizenship on the grounds that he could not speak Latin (Suet. *Claud.* 16.2). Claudius’ latter action in general contradicts the principle postulated by Cicero, namely, that a Roman citizen could not forfeit his citizenship without his own consent (cf. *Caec.* 100 on exile), see Harries (2006), 147. Claudius’ aberration from this principle may have to do not only with the altered imperial policy (namely, the hegemony of the emperor over citizenship extension) but also with the idea that foreigners admitted to the Roman *civitas* were still perceived as ‘second-class’ citizens.

<sup>282</sup> Adams (2003) informs that such requirement was valid until Alexander Severus (r. 222-235), 564.

<sup>283</sup> Cf. *P.Oxy.*52.3692; *P.Oxy.*38.2857; *P.Oxy.*22.2348.

impairment of linguistic identity.<sup>284</sup> The newly made citizens, even though able to maintain their native tongue in most of their legal and business transactions (either in the original or in a copy), would nevertheless ‘have been aware that a linguistic demand was being made of them which symbolized the authority that Rome exercised over their lives, and the obligations carried by possession of the citizenship’.<sup>285</sup> The linguistic policy of the Roman government was in general more rigorously felt by the smaller portion of provincial population that was admitted to the Roman citizenry, and it mainly had to do with the prerequisites of Roman law.<sup>286</sup> Possession of the Roman citizenship and the use of specifically Roman legal institutions were thus to some degree perceived as intrinsically connected with the Latin language, at least until the mid-3<sup>rd</sup> century CE.

A final question to be considered in relation to linguistic policies of the Romans is the extent to which legal documents can be used as evidence in discussing identity, given the high rate of illiteracy across the Empire. Not only were the majority of people we meet in the provincial record non-citizens, but a considerable portion of them were illiterate in both Latin and Greek, and sometimes in their own native tongue too. The aforementioned Babatha was most likely among the latter as well (*P.Yadin* 15), yet her illiteracy does not seem to have impaired her rather vigorous legal activity. Furthermore, her possession of the 3 Greek copies of a peculiarly Roman law action (*actio tutelae*, *P.Yadin* 28-30, 125 CE) demonstrates that her inability to read the *actio* did not influence her comprehension of its meaning. In a similar vein, Skoda discusses the lesser degrees of literacy in relation to law only to conclude that ‘in many cases full comprehension of a given text or document was not the point so much as the role of that text or document as an object’. Instead of one’s ability to read, the no less operative concept may have been mere legibility, i.e. ‘ensuring that a predetermined meaning can be extracted from the texts’.<sup>287</sup> Babatha’s copies of a Roman law action were perceived as important because their primary purpose was to ensure the legal protection of her underage child. Similarly, the possession of a Latin will by a non-Latin speaking citizen gave him assurance that his property will nevertheless be protected by Roman law and properly transferred to his heirs.

---

<sup>284</sup> In Roman Egypt, we even find Greek copies of Latin documents which employ Egyptian dating – a practice absent from Latin documents (or Greek *translations* of Latin documents) as these were bound to use consular dating. For a fuller discussion see Adams (2003), 568-9.

<sup>285</sup> *Ibid.* 562-3.

<sup>286</sup> *Ibid.* 570-1.

<sup>287</sup> Skoda (2012), 46.



## b. The knowledge of law

What Babatha's possession of the specifically Roman legal instrument shows, is a considerable degree of familiarity with Roman law within the area shortly after its formal acquisition. Given both her illiteracy and non-citizen status, it becomes all the more plausible that the knowledge of law among the provincials had to do with the availability of legal advice. We have already noted on the prevalent use of local legal experts by the Roman provincial administration: especially valuable must have been those conversant in both the language of administration (either Greek or Latin) and local tongue, as well as familiar with both Roman and local legal practices (Ch. 1.3).<sup>288</sup> These experts would be equally relied on by the Roman administration on points of local law (*P.Oxy.2.237*; *P.Oxy.36.2757*; *P.Oxy.42.3015*), and by the provincials on the peculiarities of Roman law (*P.Yadin* 28-30; Gaius' *Inst.1.191*).<sup>289</sup> The transmission, availability and use of Roman legal literature in the provinces, Kantor convincingly speculates, may have also been a fairly early development, influenced to some extent by the agency of the growing milieu of legal experts.<sup>290</sup> One should, of course, bear in mind that while these experts assisted the governor and his entourage, the majority of municipal magistrates and juries who would normally judge cases brought to a regular court most likely had very few or no legal advisers at hand.<sup>291</sup> Hence, their evident lack of knowledge of Roman law, as well as the locals' strive towards presenting their case before a higher judicial authority.

In his discussion of the knowledge of law in Roman Asia Minor, Kantor draws one's attention to the relevant evidence in Pliny's correspondence with Trajan. The documents produced by the litigants in governor's court demonstrate considerable degree of distribution of Roman legal enactments as well as their availability to provincials: *Ep.* 10.31, 10.56, 10.58 and 10.68 all show litigants' access to documents relevant to each particular case. In some instances, the imperial pronouncements provided in Pliny's court stem from other provinces and do not directly apply to Bithynia/Pontus, a practice which points to circulation of province-specific enactments between

---

<sup>288</sup> Kantor (2012) has made a valid observation that legal studies became an 'independent professional field' in the Greek-speaking world only with the coming of the Romans, and that 'the connection between legal studies and the wider sphere of elite education is very pronounced in the Greek East of the imperial period', 62-63. Similarly, Skoda (2012) maintains that 'the growing use of experts and their training hints at the entanglement of legalism with the growth of states', 48.

<sup>289</sup> See Kantor (2009), 262-5 for these and more examples.

<sup>290</sup> The attested transmission of Roman legal enactments between different provinces also contributed to the unification of Roman provincial law, *ibid.* 264-5.

<sup>291</sup> Cf. Galsterer (1986) on the idea that most of these local magistrates were appointed from local elites where they used to hold political, social, and economic power prior to the Roman domination, which makes their interest in effecting legal changes highly unlikely, 20-21.

different regions.<sup>292</sup> In other instances, the copies of legal enactments produced by the provincials appear to be unknown to Pliny himself, which makes him consult with Trajan not only about their applicability but also their authenticity (10.65.3). Trajan's replies often reveal his own uncertainty regarding the application and validity of these enactments or legal remedies as well.<sup>293</sup>

Since legal practice in the first centuries CE entailed a considerable degree of personal contact, Kantor maintains that one's access to necessary documents was likely to have been a 'very personal affair, dependent on social connections'.<sup>294</sup> The situations in Pliny as well as in provincial documentary record shows that Roman law, at least its parts which were not confined to the Roman citizenry, were increasingly more relied on by the common provincials, including those outside the privileged groupings.<sup>295</sup> The Roman legal instruments appear alongside non-Roman ones and both are perceived as equally operative in the provincial legal environment. Whether or not the spread of Roman legal institutions was intended as a message of 'acculturation' and power, and whether it was understood as such by the provincial population, remains uncertain.

### c. Native agency and legal manoeuvring<sup>296</sup>

The factor of knowledge and accessibility of legal advice comes hand in hand with the concept of agency. For instance, the importance of citizenship outside Rome and preferential treatment of certain social groups and legal categories encouraged manipulation of status and legal manoeuvring. This is especially evident in Roman Egypt, where citizenship was a key to attributing one's legal identity.<sup>297</sup> *BGU* 3.747, for instance, written before 139 CE, is a letter from the *strategos* of the Koptite district complaining to the prefect about the Romans, Alexandrians, and the enfranchised veterans in his district who refused to support him in his duties. Although the prefect replies in favour of the *strategos*, the document nevertheless points to the tendency of privileged (either Roman or Greek) citizens to abuse their status.<sup>298</sup> Yet another papyrus from 63 CE (*FIRA* 3.171) records a delegation of veteran soldiers complaining about their rights as Roman citizens being

---

<sup>292</sup> *Ibid.* 259.

<sup>293</sup> Cf. 10.66.2: *epistulae sane sunt Domitiani ad Avidium Nigrinum et Armenium Brocchum, quae fortasse debeant observari: sed inter eas provincias, de quibus rescripsit, non est Bithynia.*

<sup>294</sup> Kantor (2009), 259; Liebs (2001), 238.

<sup>295</sup> Kantor (2012), 79.

<sup>296</sup> Some documents and arguments relating to Roman Egypt and Roman Arabia in the present sub-chapter have been discussed by the author in the two research papers written for seminars on 'Romanization: Acculturation Processes in the Provinces of the Roman Empire' (2012/2013) and 'Graeco-Roman Egypt: a multicultural society' (2013/2014).

<sup>297</sup> Fischer-Bovet (2013), 14.

<sup>298</sup> Jördens (2012), 252. Similarly, there is evidence of some military veterans who received the citizenship of Antinoopolis along with the Roman, but preferred to stay at their old places of residence. Jördens summarizes this to conclude that these veterans were in constant conflicts with local authorities who would often doubt the privileges of Antinoite citizenship or ignore them all together.

overridden. The emphasis in these petitions is laid on citizenship and the benefits that came along with it: civic privilege and rights come forward in the provincial legal discourse, together with the concepts of status and power.

Nevertheless, in the majority of cases Roman citizens prove to be fully integrated into the daily life of the provinces, legal matters included. In sharp contrast to litigation in Rome, the Roman citizens residing in Egypt, along with the rest of its population, were seemingly relatively free to choose in what form and to which judge to recourse, both in a dispute between themselves and with the peregrines.<sup>299</sup> If in the Ptolemaic times we see a pattern of Greeks, especially women, attempting to use Egyptian forms of contracts and follow Egyptian legal practices due to their more lenient and beneficial nature; in the Roman period predominantly Greek (Hellenistic) law is addressed by the majority of Egypt's population, including Roman citizens.<sup>300</sup> The legal environment and activity of the provincials in the periphery of Rome mainly demonstrate that the observance of and appeal to certain laws were matters of deliberate agency rather than coercion, and that the most important principle determining one's choice was the level of protection that he or she could secure.

This can be illustrated by the enthusiastic adoption of some of the specifically Roman legal institutions once their application was extended to non-Romans. The *lex Plaetoria de minoribus* protecting legal minors was seemingly accessible to the peregrine wards in Egypt, as well as the institute of the *cura minorum* (*P.Oxy.3.487*, 156 CE). Several other papyri record peregrine women making use of the Roman *ius liberorum*, i.e. woman's entitlement to legal independence provided she has three or more children: *P.Hamb.1.16* (209 CE) and *P.Strassb.3.150* (182-215 CE) both refer to the privilege by using the same Greek formula  $\chi\omega\rho\iota\ \acute{\alpha}\ \tau\acute{\alpha}\ \text{Ῥωμαίων}\ \acute{\epsilon}\theta\eta\ \tau\acute{\epsilon}\kappa\nu\omega\nu\ \delta\iota\kappa\alpha\acute{\iota}\omega\ <\dots>$ .<sup>301</sup> In the field of the (procedural) law of succession too we see the reception of Roman legal forms by non-Romans, e.g. the provisions of the *Lex Iulia vicesimaria* on the official opening of a testament in the presence of six witnesses were largely adopted by the peregrines, even though not required.<sup>302</sup>

Similar instances of legal manoeuvring are discernable in Roman Arabia too. Isaac, referring to the Greek marriage contract (*P.Yadin* 18, 128 CE) from the Babatha archive, maintains that 'if Jews in Arabia preferred Greco-Roman marriage contracts to traditional *ketubbot*, the most likely explanation is that the former offered advantages that had been unavailable under the Nabataean

---

<sup>299</sup> *Ibid.*

<sup>300</sup> Except, naturally, the matters of law of persons, family, and succession, see Wolff (2002), 153-62. Manipulation of laws was in general a fairly common practice in the multicultural societies of the ancient world: *P. dem. Lille* II.76, 77, 84, 95, and *P.Petrie* III 58e all demonstrate Greek families living in the villages of Ptolemaic Egypt and making use of Demotic surety contracts. See Clarysse (1992), 54.

<sup>301</sup> [woman's name] transacting in business without the guardian according to the Roman custom of the *ius liberorum*.

<sup>302</sup> Yiftach-Firanko (2009), 553-4.

rule'.<sup>303</sup> This notion becomes all the more plausible when we take into account that some of the documents in the said archive, especially those drawn up in indigenous languages and dating shortly before the Roman rule, were clearly designed to be used in the local courts, which are very unlikely to have been completely abandoned with the advent of the Roman rule.<sup>304</sup> It was more likely opportunistic behaviour combined with recognition of supreme authority that determined the choices of Babatha and her relatives.

The formal and procedural changes reflected in the legal documentation from the newly established province of Arabia clearly aim at appropriating local documents to the Roman court. For instance, in her legal transactions Babatha most of the times appears at court accompanied by a male guardian, as requested by Roman law.<sup>305</sup> Seeing as neither Babatha nor the majority of people that these documents concern were in possession of Roman citizenship, such behaviour shows the applicability of Roman legal procedures and legal positions to the native inhabitants on the one hand, and locals' conformity to the requirements of Roman judicial authorities on the other. The use of legal guardian is, however, inconsistent throughout the archive: in *P.Yadin 25* Babatha acts with a guardian, while in *P.Yadin 26*, drawn up on the very same day, both Babatha and her opponent Miryam act independently. Since there was no institution of legal guardianship of women in the Eastern laws, such incoherence most likely demonstrates a 'gradual not yet completed process of adaption to Roman formal law'.<sup>306</sup> The lawsuit relating to the legal guardianship of Babatha's minor son after the death of his father also reveals her close adherence to the requirements of Roman formal law. Contrary to Jewish or other oriental laws, Roman law did not allow women exercise legal guardianship: the fact that Babatha nowhere asks to be made the guardian of her son herself fits well into the Roman legal practice.<sup>307</sup> Furthermore, Babatha's instigated lawsuit against her son's guardians and her demand for an income 'befitting the style of life the boy is accustomed to' (*P.Yadin 13-15*) also indicates a reasonable knowledge of the peculiarities of Roman law pertaining to the guardianship of minors. In Roman law, women (mothers, grandmothers, sisters) had a right to sue the appointed guardians of their children based on improper, for instance, financially insufficient, care or on the grounds of general untrustworthiness.<sup>308</sup>

---

<sup>303</sup> Isaac (1992), 72.

<sup>304</sup> *Contra* Goodman (1991) and Cotton (1993), 100.

<sup>305</sup> *P.Yadin 16* (census declaration, 127 CE), *P.Yadin 17* (a deposit, 128 CE), *P.Yadin 22* (Babatha as vendor of date crops, 130 CE) etc.

<sup>306</sup> Oudshoorn (2007), 366.

<sup>307</sup> *Feminae tutores dari non possunt*, D. 26.1.18; *Iure nostro tutela communium liberorum matri testamento patris frustra mandatur*, D. 26.2.26.

<sup>308</sup> *Quin immo et mulieres admittuntur [suspectos postulare], sed hae solae, quae pietate necessitudinis ductae ad hoc procedunt, ut puta mater*, D. 26.10.1.7. The right to remove a tutor was granted at Rome by the praetors and in the provinces by their governors (*Dig.* 26. 10.1.3), see Cotton (1993), 106.

However, apart from these examples and the previously discussed *actio tutelae* which was in fact an instrument of Roman substantive law, considerable amount of legal principles applied in the Roman courts of Arabia appear to be local in nature. Having analysed internal references to the applicable laws rather than the Roman façade of the documents, Oudshoorn points out multiple cases where legal acts referred to ‘describe rights that have no basis in Roman law’, e.g. *P.Yadin* 21-22 or *P.Yadin* 23-24.<sup>309</sup> The changes in documentary practice and procedural law may be too often taken to suggest a high degree of ‘Romanization’ of law, thus obscuring the fact that, substantially, the law applicable in those Roman-like documents could be predominantly local.<sup>310</sup> It is nevertheless all the more important to note Babatha’s willingness to go through Roman legal procedures and seek the assistance of the Roman court, especially if she was not barred from attending a local one and thus adhering to local laws. Perhaps, then, what we see is not only the legal manoeuvring and juggling of more than one set of legal relations at once, but also an attempt of the local population to secure their legal transactions and ensure the enforcement of judicial decisions by appealing to the highest judicial authority at hand.

Yet another comparable example of provincial knowledge of law and proactive agency in asserting one’s rights is the famous petition of Dionysia (*P.Oxy.2.237*), originating in 186 CE in Egypt. Dionysia was a woman who bore a Greek name and, presumably, was of Greek descent too, but nevertheless held a legal position of an ‘Egyptian’ in the eyes of the Roman authorities.<sup>311</sup> Dionysia had filed a petition to the Roman prefect asking to settle the dispute between her and her father regarding the *apospasis*, i.e. father’s right to divorce his daughter from her husband – a Hellenistic practice non-existent in the Roman law. While her father’s claim is unsurprisingly described as pertaining to the ‘laws of the Egyptians’, Dionysia in her defence maintains that ‘no law allowed women to be removed from their husbands against their will’ or ‘even if there is such a law, it does not apply’ (ll. 7.12 – 8.7).<sup>312</sup> This may well be interpreted as Dionysia’s attempt to invalidate the claim of her father by appealing to Roman law in which the practice no longer existed.<sup>313</sup>

---

<sup>309</sup> Oudshoorn (2007), 374.

<sup>310</sup> Surely though, the fact that Roman provincial governors could and would occasionally adjudicate a case according to local instead of Roman law should not mean that this was in all cases acceptable, for we read of a legal problem caused by one such judgement by a governor who accepted a will in which a father named the mother as guardian of their children, this being against Roman law (*D. 26.2.26 pr. 4*). This judgement was condemned as ‘a mistake made in inexperience’, but it is very likely that there have been many more ‘mistakes’ of this sort in the Roman provincial administration of justice.

<sup>311</sup> On the grounds that she was neither a Roman citizen nor a Jew, and did not belong to the citizenry of one of the four Greek *poleis*, see Lewis (1983), 31.

<sup>312</sup> The ‘laws of the Egyptians’ was a compilation of both Greek and Egyptian legal principles and practices, used as a source of reference by the Roman administrators of justice in settling local disputes. For a more detailed analysis, see Bowman (1986).

<sup>313</sup> While *apospasis* seems to be commonly practiced in Hellenistic law, a father’s attempt to break up harmonious marriage in the Roman world was made illegal by Antoninus Pius (r. 138-161).

Furthermore, in order to support her position before the Roman prefect, Dionysia refers to previous cases, lawyers' opinions and the decisions previously taken by the Roman governors in settling similar disputes.<sup>314</sup> The decision of a former prefect quoted as a precedent by Dionysia was to disregard the father's claim and his appeal to the 'law of the Egyptians': although recognizing an 'Egyptian' legal practice of *apospasis*, the prefect had opted to reduce 'the inhumanity of law' (μη ἠκολουθηκέναι τῇ τοῦ νόμου ἀπανθρωπία, ll. 7.34-35) and ruled instead that 'the deciding factor is with whom the married woman wishes to be'. The conceptual roots of this ruling, according to Lewis, are most likely to be found in the Roman *ius civile*, where the woman in *iustae nuptiae* passed from the *potestas* of her father into the *manus* of her husband.<sup>315</sup> Dionysia, thus, being well aware of the earlier ruling, understood that the court of the Roman prefect was the right body to approach in her dispute. In this case we may safely assume that Dionysia's choice had to do with her knowledge of Roman law (or availability of legal advice) and of previously adjudged similar cases, no less than with the recognition of the prefect as the highest judicial authority in the province. The prefect's decision quoted in Dionysia's petition was based on neither pure adherence to Roman nor to local law. Instead, he made an *ad hoc* decision thus creating a precedent to be referred to by his successors, which is most likely how the provincial law largely operated.

Interestingly, the document which was called by Pestman 'one of the very few examples of pure Roman law found in Egypt' is a Greek copy of a Roman law will, drawn by a certain Longinus Castor, a veteran of (probably) Hellenized background, who was nevertheless a native of a small Egyptian town of Karanis.<sup>316</sup> The will reveals a discharged soldier's attempt to provide for his 'common law' slave-wives and children within the framework of Roman private law, as was predetermined by his acquisition of Roman citizenship upon the end of his military service.<sup>317</sup> No Latin original of the will survives, only a Greek copy, either drawn for his own personal reference or issued after his death (in 194 CE) for the reference of his heirs. All the official prerequisites of a Roman mancipatory will are present, together with all the required participants of the verbal procedure, such as *testator*, *familiae emptor*, *libripens*, as well as five Roman-citizen witnesses to seal the written will. In this case, drawing a Latin will in accordance with Roman law was a necessity stemming from the change in one's status. Nevertheless, the end result also seemingly displays negotiation of the two sets of legal relations discernable through Longinus' attempt to circumvent the illegitimacy of children born during his military service (thus, against Roman law) by manumitting their enslaved mothers and naming them all heirs. The example of Longinus Castor

---

<sup>314</sup> For a more detailed treatment, see Katzoff (1972), 259.

<sup>315</sup> Lewis (1995), 283.

<sup>316</sup> *BGU* 1.326 dating to 189/194 CE. Pestman (1990), 202.

<sup>317</sup> See Keenan (1994), 101-107.

demonstrates that even the provincials who acquired Roman citizenship and thus fell subject to Roman law knew or were able to find out ways how to manipulate even its strictest provisions and principles in order to provide for themselves and their families.

## Conclusion

Having discussed the situation in post-Social War Italy, touched upon imperial municipalisation of Spain and analysed the provincial environment of the mid-second century CE on the grounds of legal change and its possible affects to local identities, we are evidently facing an emerging pattern of multiplicity of identities resulting from peregrine contact with Rome. Together with the coming of Roman administrative and judicial systems, there were inevitable legal, societal and linguistic changes undergone by the subject populations. If the adoption of Greek or Latin in indigenous legal discourse, the usage of *stipulatio* or *tutela mulieris*, and typically Roman documentary forms such as *diplomata* were in fact perceived in association with the Roman authority, and if such an effort of conformity with Roman law could be taken up even when the person's *status civitatis* 'disqualified' him from using a Roman-law form, it becomes possible to interpret these formal changes as mediators between the imperial centre and provincial periphery. The observance and usage of Roman private law institutions that came together with, but, as we have seen in the case of *municipium Flavium Irnitatum*, were not limited to one's acquisition of Roman citizen status, must have exercised a considerable influence on local identities, at least to the extent of offering a new set of legal and civic relations in addition to one's local or regional one.

Instead of replacement of local legal and civic cultures with a superimposed Roman one, we are mostly able to discern the coexistence and interaction of various legal traditions. The plurality of laws prevalent in the majority of Roman provinces triggered legal manoeuvring and opportunistic behaviour of the subject populations. The Romans did not, as Kantor duly notes, develop any universally applicable system for solving 'conflicts of law' which would inevitably arise in the complex legal environment with more than one legal system in force. The provincials' enthusiasm towards approaching Roman judicial authorities and seeking their assistance in settling disputes is discernable in various parts of the Empire and at all social levels, and may thus point not only to the recognition of the higher judicial authority, but also to the perception of the Roman (governor's) court as the only one able to resolve disputes stemming from the plurality of enforceable laws.<sup>318</sup>

---

<sup>318</sup> Cf. Kantor (2012), 80-81 on Roman Asia Minor, and Goodman (1991) on Roman Arabia and provincials' 'hope that the Roman administration would clear up once and for all longstanding disputes over property rights and the tenure and status of land', 171.

Locals' knowledge of law (availability of legal advice), their recognition of superiority of the Roman judicial authorities, as well as willingness to participate in the power negotiations enabled voluntary agency and contributed to their conscious construction and employment of multiple and non-contradictory identities. While the assumption of a new, Roman identity could be advantageous in certain contexts, it need not have impaired one's retention of a localized one in other circumstances, for instance, in holding of local municipal office. Even when one's adoption of Roman juridical identity was predetermined by his or her acquisition of Roman citizenship, it was most overtly articulated in cases when Roman affiliation was either beneficial or an official requirement was made by Roman private law. The pattern of juggling of multiple juridical, linguistic, even cultural identities is not limited to Roman provincial situation and can in fact explain much earlier developments in the post-Social War Italy as well as municipal and colonial settlements. Roman citizens residing outside Rome too, took part in this 'shuttle' of identities, as the overarching principle and the driving force behind all agency and legal manoeuvring was the degree of beneficial legal protection one could secure.



## Concluding remarks

The overall conclusion that the investigation into Roman law, citizenship and identity suggests is that the possession of citizenship, observation of law and construction of identity seemingly went hand in hand, even if not to the same extent and value throughout the Roman Empire, and were largely affected not only by governmental decisions, but also by deliberate choices of the subject peoples. The situation that we encounter in all parts of the Roman world points to greater complexity and diversity of legal and civic relations rather than their uniformity. Furthermore, in this diversity, individual agents under the direct Roman rule had a considerable degree of selection over the construction and articulation of their own identity.

While some parts of Roman civil law point to the exclusivity and ‘Romanity’ of certain legal institutions, the development of Roman law in itself seemingly sought to provide a reasonable framework for legal interaction between the Roman citizens and their peregrine counterparts. The very creation of the *ius gentium* as a body of legal institutions available to peregrines and governing their dealings with the Romans, argues against the complete exclusivity of Roman law. Instead, the development of the *ius gentium* and *ius honorarium* was a way of transforming and expanding the boundaries of legal relations, and may thus be seen as an attempt to negotiate these relations with those outside the Roman citizen community.

The apparent fluidity in both the hierarchy and application of Roman laws and legal enactments were counterbalanced by a clear hierarchy of authority both in Rome and in its periphery throughout the two periods addressed. While there is considerable evidence pointing toward both the acknowledgement and the applicability of local laws by the Roman administration of justice, the tendency to draw on Roman civil law in cases of doubt remains prevalent and is evident both in the municipal legislation and in the provincial documentary record. The voluntary adoption of Roman laws by the Italian allies in the Republican period, as well as enthusiastic use of Roman courts and available Roman law institutions by peregrines under the Empire reveal patterns of manipulation and legal manoeuvring, no less than recognition of the hierarchy of authority. Rome’s acquisition of a foreign territory thus inevitably meant a redefined set of legal relations to all those who fell subject to the realm, even when the local legal autonomy was proclaimed.

The extension of Roman citizenship, i.e. the bestowal of Roman legal status on peregrines, primarily meant admittance of a community or an individual into the Roman political body through the grant of franchise. On a more personal level, then, one’s acquisition of the Roman *civitas* came to define his or her belonging to the Roman citizenry, and thus having a share in its legal rights and

obligations. Since the actual political influence which a newly enfranchised individual or community could exercise in Rome remained relatively small throughout the period addressed, the importance of safeguarding one's legal and business transactions, as well as protection against magisterial abuse were seemingly amongst the major incentives for the peregrine strive towards Roman citizenship. To the economic advantages, such as participation in land distribution schemes or ability to inherit from a Roman citizen, one should add a reasonable expectation that the citizenship and its law would provide protection in exchange to fulfilment of required obligations. The 'collective wish' for Roman citizenship sought by Mouritsen in order to explain the 'Italian question' may thus have mattered a great deal less, as the influential local elites were already familiar with the benefits of admission to the Roman citizenry, communicated to them through administration, military service, as well as legislation such as the *Lex Acilia de repetundis*.

Both the acquisition of Roman citizenship and the, either consequential or independently exercised, observance of Roman law presupposed assumption of a new, Roman, juridical identity. It did not, however, completely rule out one's retention of local legal and civic affiliations, as the juggling of two (or more) sets of legal relations was evidently possible throughout the periods addressed. While the admission to Roman citizenry entailed certain legal and linguistic demands, the adoption of Latin outside the legal discourse as well as the prevalence of strongly articulated 'Roman' identity in predominantly non-Roman environment largely occurred by deliberate choice, just like the assertion of local (Oscan) identity in Bantia. One's public affirmation of Roman legal or civic status, thus, need not have infringed the retention of local cultural identity: ample literary, epigraphic and documentary evidence often reveal construction and assertion of coexistent multiple identities in both Republican and Imperial periods alike.

Conscious opportunistic behaviour, knowledge and availability of law, as well as recognition of superiority of Roman judicial authorities (in terms of expediency no less than ability to settle disputes based on conflict of laws) equally contributed to the reception of Roman law in the periphery of Rome. The fact that the Roman *ius civile* and its legal institutions became progressively important to non-Roman subjects (cf. Babatha's possession of *actio tutelae*) should be interpreted not as evidence for the 'Romanization' of law, but rather as a result of native agency as well as assumption of multiple, context-specific identities. Although Roman law was in a lot of ways more intrusive into the personal behaviour of both Roman citizens and peregrines than is widely assumed,<sup>319</sup> the importance of protection of one's person, family and property, remained crucial to peoples' legal activity. This notion applies both to the allied wish for citizenship and to

---

<sup>319</sup> See Kantor (2012), 58-60.

the mid-second century provincial agency. The evidence for strive towards assertion of beneficial status, legal manoeuvring and opportunistic behaviour thus permeates the Roman world throughout the periods addressed, and is characteristic of subject people of all social levels alike.

Although the present thesis had its focus set mainly on non-Romans, i.e. the 'receiving end' of the spread of Roman legal and civic institutions, there is considerable reason to believe that the Roman identity too was no less redefined by the various developments discussed above. The self-definition of the *populus Romanus* at first glance continued to rest on their *ius civile* and the shared *civitas Romana*: Gaius in the mid-second century CE still refers his reader to each and every *ius proprium Romanorum*, just as the senatorial opposition to citizenship extension, although no longer effective, persists all the way into the High Empire. Nevertheless, these too may be taken as indicative of the need for reassurance of one's identity – this time on the part of the Romans – possibly stemming from the growing awareness of multiplicity of coexisting and not infrequently competing sets of legal, civic and cultural affiliations constituting what was proudly called *imperium Romanum*.

## Bibliography

### List of Abbreviations:

BGU: = *Berliner Griechische Urkunden*, 1895 onwards

CIL: = *Corpus Inscriptionum Latinarum*, 1863 onwards

FIRA: = *Fontes Iuris Romani Anteiustiniani*, S. Riccobono & V. Arangio Ruiz (eds.), 1940-1943

Gnomon: = *Gnomon of the Idios Logos* (BGU 5.1210) dating after 149 CE

IRT: = *The Inscriptions of Roman Tripolitania*, J. M. Reynolds & J.B. Ward-Perkins (eds.), 1952

- ADAMESTEANU, D. and TORELLI, M. (1969) 'Il nuovo frammento della Tabula Bantina' *Rivista Archeologia Classica* 21, 1-17
- ADAMS, J.N. (2003) *Bilingualism and the Latin Language*, Cambridge
- ALCOCK, S. E. (2001) 'Vulgar Romanization and the dominance of élites', in S.J. Keay and N. Terrenato (eds.) *Italy and the West: comparative issues in Romanization*, Oxford, 227-230
- ALEXANDER, M.C. (2006) 'Law in the Roman Republic', in N. Rosenstein and R. Morstein-Marx (eds.) *A Companion to the Roman Republic*, Blackwell Publishing, 236-255
- BADIAN, E. (1954) 'Lex Acilia Repetundarum', *The American Journal of Philology*, Vol. 75(4), 374-384
- BALSDON, J.P.V.D. (1979) *Romans and Aliens*, London
- BARRET, J.C. (1997) 'Romanization: a critical comment' in D.J. Mattingly (ed.) *Dialogues in Roman Imperialism: Power, Discourse and Discrepant Experience in the Roman Empire*, 51-66
- BENNET, H. (1923) *Cinna and his Times: A Critical and Interpretative Study of Roman History during the Period 97-84 B.C.*, Menasha, Wis.: George Banta
- BISPHAM, E. (2007) *From Asculum to Actium: the Municipalization of Italy from the Social War to Augustus*, Oxford
- BOWMAN, A. (1986) *Egypt after the Pharaohs*, Oxford
- BRAUND, D. (1998) 'The Governor and his Entourage in the Self-Image of the Roman Republic', in R. Laurence and J. Berry (eds.) *Cultural Identity in the Roman Empire*, London & New York, 10-24
- BRUNT, P.A. (1971) *Social Conflicts in the Roman Republic*, London
- BRYEN, A. (2008) 'Visibility and violence in petitions from Roman Egypt', *Greek Roman and Byzantine Studies*, Vol. 48(2), 181-200
- CHLUP, J.T. (2000) Rev. of *Roman Law in Context*, by D. Johnston, *Bryn Mawr Classical Review* <http://bmcr.brynmawr.edu/2000/2000-04-03.html> (last visited on 10.8.2014)
- CLARYSSE, W. (1992) 'Some Greeks in Egypt' in J.H. Johnson (ed.) *Life in a Multi-Cultural Society: Egypt from Cambyses to Constantine and beyond*, Chicago, 51-57
- COTE, J.E. and LEVINE, C.G. (2002) *Identity, Formation, Agency, and Culture: A Social Psychological Synthesis*, L. Erlbaum Associates
- COTTON, H.M. (1993) 'The Guardianship of Jesus Son of Babatha: Roman and Local Law in the Province of Arabia', in *The Journal of Roman Studies*, Vol. 83, 94-108
- (1995) 'Subscriptions and Signatures in the Papyri from the Judaean Desert: The Χειρογράφησις', *Journal of Juristic Papyrology* 25, 29-40
- COTTON, H.M., HOYLAND, R.G., PRICE, J.J. and WASSERSTEIN, D.J., eds. (2009) *From Hellenism to Islam: Cultural and Linguistic Change in the Roman Near East*, Cambridge
- CRAWFORD, M.H. (1996) *Roman Statutes*, 2 vols., London
- CRAWFORD, M.H. and COLEMAN, R.G. (1996) 'Lex Osca Tabulae Bantinae' in M. H. Crawford (ed.) *Roman statutes* vol. 1, London, 271-92
- CROOK, J.A. (1967) *Law and Life of Rome*, London & South Hampton
- CROOK, J.A. (1994) 'The development of Roman Private Law' in J.A. Crook, A. Lintott, and E. Rawson (1994) *The Last Age of the Roman Republic, 146-43 BC*, Vol. 9 of *The Cambridge Ancient History*, Cambridge, 531-563
- DAUBE, D. (1956) *Forms of Roman Legislation*, Oxford

- DENCH, E. (2005) *Romulus' Asylum*, Oxford
- DERKS, T. and ROYMANS, N., eds. (2009) *Ethnic Constructs in Antiquity: The Role of Power and Tradition*, Amsterdam
- DE ZULUETA, F. (1946) *The Institutes of Gaius. Text with Critical Notes and Translation*, vols. 1,2, Oxford
- FISCHER-BOVET, C. (2013) 'Ethnic identity and status: comparing Ptolemaic and Early Roman Egypt', in *Identity and Identification in Antiquity*, ed. H. Ziche, Cambridge
- GALSTERER, H. (1971) 'Die *lex Osca tabulae Bantinae*. Eine Bestandsaufnahme', in *Chiron* 1, 191–214
- (1986) 'Roman Law in the Provinces: Some Problems of Transmission' in Crawford, M.H. (ed.) *L'Impero Romano e le strutture economiche e sociali delle province*, 13-27
- (1988) 'Municipium Flavium Irnitatum: A Latin Town in Spain,' in *Journal of Roman Studies* 78, 78-90
- (1993), in Raaflaub and Toher (eds.) *Between Republic and Empire: Interpretations of Augustus and His Principate*, University of California Press
- (2000) 'Local and Provincial Institutions and Government' in *The Cambridge Ancient History* 11, 344-360
- (2001) 'Tabula Bantina', in *New Pauly* 11, Leiden, 1195–6
- GARDNER, J.F. (1993) *Being a Roman Citizen*, London & New York
- GARNSEY, P. (1970) *Social Status and Legal Privilege in the Roman Empire*, Oxford
- GAUDEMMENT, J. (1967) *Institutions de l'Antiquité*, Paris
- GAUGHAN, J. (2010) *Murder Was Not a Crime: Homicide and Power in the Roman Republic*, University of Texas Press
- GELLNER, E. (1983) *Nations and Nationalism*, Cornell University Press
- GOLDHILL, S. (2001) *Being Greek under Rome: Cultural Identity, the Second Sophistic and the Development of Empire*, Cambridge
- GONZALES, J. (1986) 'The *Lex Irnitana*: a New Copy of the Flavian Municipal Law', in *The Journal of Roman Studies* 76, 147-243
- GOODMAN, M. (1991) 'Babatha's Story' in *The Journal of Roman Studies* 81, 169-175
- GOUDRIAAN, K. (1992) 'Ethnic strategies in Graeco-Roman Egypt', in *Ethnicity in Hellenistic Egypt*, ed. P. Bilde et al., Aarhus University Press, 74-100
- GOUDY, H. (1910) *Trichotomy in Roman Law*, Oxford
- GROSSO, G. (1967) *Problemi Generali del Diritto Attraverso il Diritto Romano*, Turin
- HABICHT, C. (1997) *Athens from Alexander to Antony*, Harvard University Press
- HALES, S., HODOS, T., eds. (2010) *Material Culture and Social Identities in the Ancient World*, Cambridge
- HARRIES, J. (2006) *Cicero and the Jurists. From Citizens' Law to the Lawful State*, Duckworth
- HINGLEY, R. (2005) *Globalizing Roman Culture. Unity, Diversity and Empire*, London
- ISAAC, B. (1992) 'The Babatha Archive: A Review Article', *Israel Exploration Journal* 42, 62-75
- JOHNSON, A.C., COLEMAN-NORTON, P.R., BOURNE, F.C., eds. (1961) *Ancient Roman Statutes*, Austin
- JOHNSTON, D. (1999) *Roman Law in Context*, Cambridge
- JÖRDENS, A. (2012) 'Status and Citizenship' in *The Oxford Companion to Roman Egypt*, 247-260
- KANTOR, G. (2012) 'Ideas of Law in Hellenistic and Roman Legal Practice' in *Legalism: Anthropology and History*, eds. Paul Dresch and Hannah Skoda, Oxford
- (2009) 'Knowledge of Law in Roman Asia Minor', in *Selbstdarstellung und Kommunikation: die Veröfentlichung Staatlicher Urkunden auf Stein und Bronze in der Römischen Welt*, Muenchen, 249-265
- KASER, M. (1966) *Das Römische Zivilprozessrecht, Rechtsgeschichte des Altertums im Rahmen des Handbuchs der Altertumswissenschaft*, III Teil, 4 Band, Munich
- (1975) *Das Römische Privatrecht I-II, Rechtsgeschichte des Altertums im Rahmen des Handbuchs der Altertumswissenschaft*, III Teil, 3 Band, 1.-2. Abs. (2nd ed.), Munich
- (1993) *Ius Gentium*, Böhlau Verlag Köln; Weimar; Wien
- KATZOFF, R. (1972) 'Precedents in the Courts of Roman Egypt', *ZSG RA* 89, 256-92
- KEAY, S. and TERRENTANO, N. (2001) *Italy and the West. Comparative Issues in Romanization*, Oxford
- KEENAN, J.G. (1994) 'The will of Gaius Longinus Castor', in *The Bulletin of the American Society of Papyrologists* 31, Issue 3-4, pp. 101-107

- KELLER, J. and ROTH, R., eds. (2007) 'Roman by Integration: Dimensions of Group Identity in Material Culture and Text', *Journal of Roman Archaeology Supplementary series* no. 66, Portsmouth, Rhode Island
- KELLY, B. (2011) *Petitions, Litigation, and Social Control in Roman Egypt*, Oxford University Press
- KORPOROWICZ, L.J. (2012) 'Roman Law in Roman Britain: An Introductory Survey', *Journal of Legal History* 33:2, 211-224
- LAURENCE, R. and BERRY, J., eds. (1998) *Cultural Identity in the Roman Empire*, London & New York
- LEWIS, N. (1983) *Egypt under Roman Rule*, Oxford
- (1995) 'The Romanity of Roman Egypt: a Growing Consensus?' in *On government and law in Roman Egypt: collected papers of Naphtali Lewis*, ed. Hanson, Ann Ellis 1935-, Atlanta (Ga.), 298-305
- LOMAS, K. (1993) *Rome and the Western Greeks 350 BC-AD 200: Conquest and Acculturation in Southern Italy*, London and New York
- MACMULLEN, R. (2000) *Romanization in the Time of Augustus*, New Haven: Yale University Press
- MATTINGLY, D.J., ed. (1997) *Dialogues in Roman Imperialism: Power, Discourse and Discrepant Experience in the Roman Empire*, Portsmouth
- (2011) *Imperialism, Power, and Identity: Experiencing the Roman Empire*, Princeton and Oxford
- McCOSKEY, D.E. (2002) 'Race before "Whiteness": Studying Identity in Ptolemaic Egypt', in *Critical Sociology*, Vol. 28 (1-2), 13-39
- MERRYWEATHER, A., PRAG, J. (2002) 'Romanization? Or, why flog a dead horse', *Digressus* 2, 8-10
- METZGER, E. (2013) 'Agree to Disagree: Local Jurisdiction in the *lex Irnitana*', in A. Burrows, D. Johnston, R. Zimmermann (eds.) *Essays in Memory of Lord Rodger of Earlsferry*, Oxford (forthcoming)
- MOMMSEN, T., KRUEGER, P., WATSON, A., eds. (1985) *The Digest of Justinian*, University of Pennsylvania Press
- MOURITSEN, H. (1998) *Italian Unification: a Study in Ancient and Modern Historiography*, Bulletin of the Institute of Classical Studies Supplement 70, London
- (2008) 'The Gracchi, the Latins, and the Italian Allies' in *People, Land, and Politics: Demographic Developments and the Transformation of Roman Italy 300 BC-AD 14*, ed. L. de Ligt and S. Northwood, Leiden
- MUIRHEAD, J. (2009) *Historical Introduction to the Private Law of Rome* (3<sup>rd</sup> ed.), London
- NÖRR, D. (1963) 'Origo, Studien zur Orts-, Stadt- und Reichszugehörigkeit in der Antike', in *Tijdschrift voor Rechtsgeschiedenis* 31, 525-600
- OUDSHOORN, J.G. (2007) *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives*, Leiden
- PATTERSON, J.R. (2006) 'Rome and Italy', in N. Rosenstein and R. Morstein-Marx (eds.) *A Companion to the Roman Republic*, Wiley-Blackwell, 606-624
- PESTMAN, P.W. (1990) *The New Papyrological Primer*, Leiden
- PETERSSON, T. (1920) *Cicero: A Biography*, University of California Press
- POLAY, E. (1980) 'The Contracts in the Triptychs Found in Transylvania and their Hellenistic Features', *Studia Historica Academiae Scientiarum Hungaricae* 133, 17-32
- REINHARDT, T. (2003) *Marcus Tullius Cicero, Topica*, Edition with Translation, Introduction, and Commentary, Oxford
- REVELL, L. (2009) *Roman Imperialism and Local Identities*, Cambridge
- RICHARDSON, J. (2008) *The Language of Empire. Rome and the Idea of Empire from the Third Century BC to the Second Century AD*, Cambridge University Press
- SANCHEZ-MORENO ELLART (2013) *The Encyclopedia of Ancient History, First Edition*, ed. by Roger S. Bagnall, Kai Brodersen, Craige B. Champion, Andrew Erskine, and Sabine R. Huebner, 6501-6503
- SCHILLER, A. (1978) *Roman Law: Mechanisms of Development*, Walter de Gruyter
- SCHÖNBAUER (1937) 'Reichsrecht, Volksrecht und Provinzialrecht: Studien über die Bedeutung der Constitutio Antoniniana für die römische Rechtsentwicklung', *ZRG RA* 57, 309-355
- SCHÖRNER, G. (2005) *Romanisierung – Romanisation: Theoretische Modelle und praktische Fallbeispiele*, Oxford
- SCHULZ, F. (1946) *History of Roman Legal Science*, Oxford

- SHERWIN-WHITE, A.N. (1973) *The Roman Citizenship* (2<sup>nd</sup> ed.), Oxford
- SKODA, H. (2012) 'A historian's perspective on the present volume', in *Legalism: Anthropology and History*, eds. Paul Dresch and Hannah Skoda, Oxford
- SWAIN, S. (1996) *Hellenism and Empire: Language, Classicism, and Power in the Greek World AD 50-250*, Oxford
- TAUBENSCHLAG, R. (1951) 'Roman authorities and Local law before and after the C.A.' in *JJP* 5, 121-141
- VAN DOMMELEN, P. (1998) 'Punic Resistance: Colonialism and Cultural Identities in Roman Sardinia', in R. Laurence and J. Berry (eds.) *Cultural Identity in the Roman Empire*, London & New York, 25-48
- VAN DOMMELEN, P. and TERRENATO, N., eds. (2007) 'Articulating Local Cultures: Power and Identity under the Expanding Roman Republic', *Journal of Roman Archaeology Supplementary Series Number 63*, Portsmouth
- VANDORPE, K. (2012) 'Identity' in *The Oxford Handbook of Roman Egypt*, Oxford University Press, 260-276
- VAN OVEN (1958) 'La stipulation a-t-elle dégénéré?' in *Tijdschrift voor Rechtsgeschiedenis* 26, 409-436
- WALLACE-HADRILL, A. (2008) *Rome's Cultural Revolution*, Cambridge University Press
- WOLFF (2002) *Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemäer und des Prinzipats*, vol.1, München
- WOOLF, G. (1992) 'The unity and diversity of Romanisation', *JRA* 5, 349-352
- WOOLF, A. (1998) 'Romancing the Celts: a Segmentary Approach to Acculturation', in R. Laurence and J. Berry (eds.) *Cultural Identity in the Roman Empire*, London & New York, 111-124
- YIFTACH-FIRANKO, U. 'Law in Graeco-Roman Egypt: Hellenization, Fusion, Romanization' in *The Oxford Handbook of Papyrology*, 541-560
- YNTEMA, D. (2009) 'Material Culture and Plural Identities in Early Roman Southern Italy', in *Ethnic Constructs in Antiquity: The Role of Power and Tradition*, ed. by T. Derks and N. Roymans, Amsterdam