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## Tradition, Precedent, and Power in Roman Egypt

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Abstract/Project Background: This paper is one of a series of preliminary studies that I hope will eventually end in a book-length study of the history of law in the eastern provinces of the Roman Empire. The history of law in the provinces tends to be written in one of two ways: either as the story of how Roman rules and concepts interpenetrate local cultural and legal systems (the history of the many and varied “vulgarizations” of Roman law); or, in the wake of the “Mediterraneanist” paradigms of the twentieth century, as a story of how local communities seek to regulate themselves – generally in opposition to the encroachments of the Roman (or any other) state.

Both of these perspectives strike me as unsatisfying. The former generally focuses on forms, doctrines, and the evolution of legal rules at the expense of giving a robust account of why particular rules were adopted or adapted by local populations in the first place. Given that the Roman state had minimal police capacity, a largely under-professionalized administration, and frankly, very little interest in (and sometimes a downright aversion to) forcing local populations to conform to the peculiar rules of the

Roman civil law, histories of doctrine tend to explain change as being because of something intrinsically desirable about Roman rules and forms, or claiming that people followed these rules simply because they were “The Rules”. Very little attention is paid to the ways in which rules were transformed or activated in the politics of local contexts, when, or why. The latter approach – that of Mediterraneanist anthropology – tends to think of imperial law as an external force, one to be resisted. At the very least, this approach fails to explain why “legal” materials – texts of laws, writing about courts, petitions, casebooks, judicial curses, etc – feature so prominently in the extant papyrological, epigraphic, and literary evidence. Both of these approaches assume –in my view unjustifiably – a fundamental division between the make law and those who follow it, and characterize that relationship between the two as one of imposition, whether as a result of direct policy or benign neglect. Both similarly – and again unjustifiably – tend to treat legal systems as systems of dispute processing and resolution which are irreducibly bound to culture, by which is meant a package of distinctive, exclusive, authentic – and therefore preferential – modes of dealing with problems.

Instead of writing a history of rules or approaching “law” as colonizing violence in a cleaner toga, my approach begins by imagining what a history of law in the Roman provinces would look like if we take seriously Robert Cover’s claim that law is “a system of tension or a bridge linking a concept of reality to an imagined alternative.” If I understand him correctly, in Cover’s world law is a privileged strain of discourse that enables people at multiple points on a spectrum of power to find a language to articulate their vision of how the world should work; its special power is that in some cases it also provides that language with a package of institutional relations that allow that vision to

become reality. The consequence of this, for historians, is that if Cover is right then we have to take seriously the moves of non-elite actors who appear in great numbers in a privileged source of evidence from the ancient world, namely, Egyptian papyri. It would also mean trying to show how their priorities, claims, and interpretive strategies interact with those of both imperial and local powers. It would involve, similarly, taking seriously as evidence for “legal” claims and positions the imaginary literature that different groups of people throughout the provinces produced, be they novels, satires, hagiographies or martyrdom texts.

If all this material is treated as containing claims about law and how law should work, the legal history of the Roman world becomes far more interesting and the outlines of a distinct strain of imperial politics begins to emerge. No longer does the history of the interpenetration of legal forms look like vulgarization or assimilation, resistance or resignation. Instead, we find a multifaceted conversation among people with different normative visions of reality and different means for making that vision a reality.

Accordingly, the story I seek to tell attempts to show how Roman governors, local elites, local non-elites, and a host of other crafty people manipulated a powerful legal discourse and eventually came to craft a livable, tolerable *nomos*. It bears adding, of course, that while the result of this process may have been a common legal culture, this was nonetheless a slow, contested, and sometimes violent process. As such, it was a properly political conversation – something which, for a variety of complicated reasons, students of Roman history doubt could have existed in a period of imperial stability.

The paper that follows tries to explore one thread of this process: the politics of local law and precedent in the first three centuries AD. The occasion for its writing was a

conference on ancient bureaucracy that was hosted by the Austrian National Research Network's project on "Imperium and Officium". In what follows, I try to reconstruct two strains in a conversation between Roman governors, a newly privileged group of local elites, and people who opposed themselves to local elites in Egypt. (It bears mentioning that these groups, and their related status and privilege, are not constant or always consistent, for reasons I outline.) I argue that precedent served as a valuable tool to *oppose* a very particular strain of tradition, namely, traditions of "Egyptian" law – which, it appears, were reinvented in the early second century AD as a means of devolving the power to judge upon local constituencies, and to keep local peoples within discrete ethno-legal frameworks. As a reaction to this, litigants sought to connect their claims to a new source of justification, namely, the decisions of Roman governors. They did this as a way of avoiding what the Roman were now happy to call Egyptian law. But in the process these litigants fundamentally came to a new way of using a historical past.

## I. Introduction: Fathers, Daughters, and New Legal Forms

In AD 186 a young woman named Dionysia entered the final stage of a lengthy conflict with her father, Chairemon, a member of the local elite of the city of Oxyrhynchus. The origins of the conflict are murky, but seem to have involved a series of overlapping financial arrangements between father and daughter revolving around the mortgaging of a piece of property by Chairemon which was technically Dionysia's, since it constituted a part of the dowry she was given when she married a man named Horion, who was still her husband at the time of the lawsuit. As the arrangement between father

and daughter collapsed into mutual acrimony, lawsuits were initiated. Though the text of the document that records this conflict is highly fragmentary towards the beginning, what can be said with some certainty is that Dionysia won this first stage of legal wrangling, and her father Chairemon was ordered to return possession of the property in question. Undeterred by the ruling, Chairemon penned a petition to the governor of Egypt (*praefectus Aegypti*), a Roman official of the equestrian rank and the highest authority in the land, claiming that Horion and Dionysia conspired to do violence to him. What he requested, however, was not pecuniary compensation, but rather that the prefect allow him to force his daughter to divorce her husband, to take her back into his home, and take back possession of her dowry. According to Dionysia, Chairemon claimed that he was allowed to do this on the basis of the “law of the Egyptians” – a problematic term to which I will return below. In response to Chairemon’s request, Dionysia wrote a petition as a counter-claim, which is preserved among the papyri excavated from the garbage mound outside of the city of Oxyrhynchus in 1897, at the start of the scientific study of Greco-Roman Egypt.<sup>1</sup>

Dionysia’s petition is a remarkable artifact for a number of reasons, not least of which is that it is exceedingly long. Eight columns of text have been preserved, each measuring twenty-six centimeters tall.<sup>2</sup> The text stretches across a length of two-hundred-nine centimeters. As such, it is to my knowledge the longest petition preserved from Roman Egypt, a massive artifact designed to be presented to the prefect and his staff at his annual assizes, which the Greek-speaking inhabitants of the Roman Empire called the “settling of accounts” (διαλογισμός). We would know more about how Dionysia began and ended her petition had someone in antiquity not trimmed its by-then-fragmentary

edges and used the opposite side to copy sections of Homer's *Iliad*. But even with these missing sections, it is evident from its physical proportions that the document was meant to be unrolled as part of a performance at the assizes, an unmistakable demonstration of right physically embodied in the great text.

But the complaint is not only remarkable for its length, or for the fact that it preserves the voice, though mediated through the formalities of the language of legal appeal and scribal tradition, of a young elite woman. The style of the rhetoric, and in particular the legal forms by which Dionysia claims her rights, are equally important: the document does not only preserve her narrative of the “facts” of the case (as she chooses to sort them), but includes a series of precedents drawn from earlier cases. These precedents were assembled, probably with assistance, to counter Chairemon's claim that the “Law of the Egyptians” allowed him to force her away from her husband, to re-claim her dowry, and to re-integrate her into his household. According to the precedents that Dionysia cites, even if such a law existed, it was irrelevant, for it had already been overruled many times in the preceding century by Roman officials. But these “precedents” are not mere assertions of what the was the law of the land (a problematic concept, for reasons I outline in another paper),<sup>3</sup> but extracts from hearings and letters from legal experts. They are stories that feature people – particularly other young women and their husbands – standing in front of previous Roman governors and winning cases against their fathers. They are likewise the administrative records of empire, recopied to tell a series of sub-stories, all of which amount to a claim of right. By citing them, Dionysia participated in what had only recently come to be an important new set of legal forms in Egypt. Litigants of the first century AD did not construct their arguments on the

basis of precedent. The second century, however, marked a change in this practice. This new form of legal argument, resting on recycled artifacts of bureaucracy and, in Dionysia's hands, consciously juxtaposing itself to a tradition of "Egyptian law" should invite questions. In what ways can the artifacts of bureaucracy be mustered in opposition to the power of tradition? How and under what circumstances are these "traditions" invented, whose interests did they serve, and on whose interests did they impinge? When and under what circumstances do practices of citation develop? How did people living at the margins of a vast administrative state interact with the documentary records it produced, that is, with a particular strain of the language of power, and how did they transform the meticulous documentation of the past into claims about the future, that is, claims about what should be done?

It is my hope in this paper to excavate the link between power, bureaucracy, and the written artifacts of bureaucracy as it evolves in the Egyptian papyri from the first to the third centuries AD. My point of departure for this exploration will be an attempt to explain the emergence of composite documents like Dionysia's petition, that is, documents in which petitioners insert documents relating to other people's cases into their own complaints. The main documents that are inserted are court records, mainly decisions of magistrates produced from trials, but also, increasingly in the late second century, individual edicts of governors. Connected to these composite documents, though harder to date, are collections of official documents, decisions, and edicts that exist without (or at a stage prior to) an accompanying narrative complaint.<sup>4</sup> These precedents are the dry ephemera of administrative practice, but they came to have the power to control the behavior not just of Roman administrators, but through them, to also control



powerful local, sub-imperial actors. This, I hope to show, was the point of this practice in the first place.

That the citation of precedent should come to play such a central role in the language of complaint is far from obvious: though the Romans were fascinated by the written word, there is no reason to expect that this particular genre of legal citation is something that was obviously persuasive. And in fact, in its beginning phases it was not. Indeed, I hope to show that it evolved in reaction to a very specific set of circumstances in the second century AD. The end result of this process is something very much like the rule of law, a substantially new thing in Roman Egypt. Additionally, this practice deliberately marginalized two kinds of appeal, the appeal to custom and history, and the appeal to ethics and abstract principles. These categories – custom and ethics – continued to exist, as sources of soft justification capable of being manipulated by powerful local actors. Precedent, as it emerged through the manipulation of bureaucratic artifacts, was a firmer justification, capable of protecting structurally weaker parties like Dionysia. The separation of these three categories, however, is not entirely a clean one. Invoking precedent involves an understanding of history; still, it is a very different kind of understanding, for although it looks backward, it looks forward at the same time. I will return to this idea.

In addition to parsing the diachronic logic of these changing legal forms, this paper is also an attempt, albeit a preliminary one, to ask about the validity of our narratives of legal and administrative change in the Roman provinces, particularly the forms of this narrative that tend explain bureaucratic and legal rationalization without a robust account of the problems involved in managing the constituencies that the

bureaucracy served.<sup>5</sup> Egypt here is a remarkable case because of the density of its papyrological documentation, but I doubt that it is an exceptional one. In my view, any account of the developments in bureaucratic knowledge and practice that took place under the Romans – and there is no doubt that both were increasingly fine-tuned over time – must be told in at least two registers: first, alongside of an account of the ways in which the language of bureaucratic power was reactivated at the local level, and second, as a story of how bureaucracies responded to these reactivations – that is, along with an account of which of these precipitate practices bureaucrats sought to block and which they sought to foster. As to the first part, I will argue that in Egypt, and I suspect in the other provinces as well, the development of practices of documentation and their accompanying language of power were met at the ground level not with resistance, but with powerful transformations that forced the administrators into a form of legal dialogue not quite on their own terms, resulting in legal battles that the “better” classes did not always or even predictably win. The extent to which bureaucracy and bureaucratic artifacts opened up a possibility for litigants to influence Roman attempts to manage the system over which they presided is a side of the story not often told. It should be, for I would hypothesize that it precisely through the attempts of the administration to block these routes to legal change on the ground that we can best explain the moves to codification which begin to develop in the high Empire (codification, it bears mentioning, is a move that theoretically reduces the dependence on bureaucracy). Rationalization, here, is not a natural process that can be explained by the internal dynamics of government alone, nor do officials wake up one morning and decide to transform entrenched systems. Changes occur in response to the realities of governance and the

complaints of individuals, and they do not always proceed in the way that the governors intend.

## II. The Administrative Background: Writing Law in the Land of Papyrus

The use of citations and precedents in petitions has been studied before, from distinct perspectives. In his work on the sources of law in Roman Egypt, Ranon Katzoff has looked at the inclusion of precedents from a juridical perspective and shown how the inclusion of decisions and documents in complaints served to emphasize judicial consistency, though he also emphasized, and this is less often cited, the level of uncertainty that accompanied this process.<sup>6</sup> In contrast to Katzoff's juridical perspective lies the work of Clifford Ando, who sought to approach this practice from the perspective of the operation of ideology and the establishment of hegemony: the insertion of precedents and other bureaucratic ephemera into narrative complaints worked to reinforce the Roman imperial understanding of bureaucratic rationality.<sup>7</sup> My approach intends to complement these, though what I will emphasize is local dimension of this practice, and try to set it against the broader shifts in Roman ways of thinking about law and in the world of subject communities.

In order to contextualize this practice, however, some attention needs to be given to the broader landscape of legal practice in Egypt, and especially to a series of disjunctions in the ways that petitioners sought justice. When Egypt came into Roman hands in 30 BC it had a long-established tradition of legal pluralism.<sup>8</sup> The preceding Ptolemaic monarchy recognized the validity of documents written in both Greek and

Egyptian languages, forms of documentation which originated from but also combined native legal traditions and those brought with the Greco-Macedonian settlers who came to Egypt in the wake of Alexander's conquest of the Near East. With the advent of Roman rule things certainly changed, but the precise contours and dynamics of these changes are harder to pinpoint. While in other provinces the Roman conquest was accompanied by the promulgation of a provincial edict regulating legal business in the province, this does not seem to have been the case in Egypt.<sup>9</sup> The Romans, it seems, were slow to intervene in local legal forms. Egyptian-language legal documents, for example, persist for a century after the Roman conquest.<sup>10</sup> There is little evidence that the Romans sought to abrogate existing local forms of contract, marriage, or sale, for instance. Nor does it appear that strikingly different categories of appeal were introduced immediately, or older ones overturned. Roman-period petitions document a package of complaints and daily aggravations that characterize town and village life in most pre-modern societies: theft, violence, and disputes over land and money.<sup>11</sup> The system, furthermore, appears to have been relatively open to a variety of local constituencies: petitions of the first century feature petitions by people with both Greek and Egyptian names, though a number of those bearing Egyptian names come from the literate and privileged priestly class, those who were likely to be literate, well-connected, wealthy, and therefore prone to fight amongst themselves.<sup>12</sup> Nonetheless, all legal business was done in Greek (or occasionally in Latin), and admissible documentation of claims had to be written in Greek or presented in an authorized Greek translation.

In terms of the mechanisms of judicial practice, the story is similarly one of both continuity and change. The most important change is in the system of adjudication.

Whereas in Ptolemaic Egypt cases were judged by boards of judges specializing in the language of the documents concerning the case, in Roman-period Egypt cases were judged by individual magistrates or people judging on their authority. This style of judging, known either as the *cognitio* procedure or as judging *extra ordinem*,<sup>13</sup> effectively ended the institution of collective justice in Egypt. Instead, it concentrated the power to decide cases in the hands of either Roman administrators such as the prefect himself, people acting as judges at his request (ἐξαναπομπή), other Roman officials (such as the *epistrategos*), and the Greek administrators of the local counties (the *strategoï*). Egyptians – a term that comes in the Roman period to refer not only to native-Egyptian-language-speakers but also to Greek migrants of the previous generations who did not have citizenship in a small number of “Greek” cities – were demoted to the lowest rank of society, and as such excluded from the adjudication of cases. I will return to the significance of this below.

The road to adjudication, however, remained broadly similar to that of the Ptolemaic period. Cases were introduced to magistrates by means of petitions, the form of which grew from the basic conventions of epistolography. A petition/epistle from Ptolemaic period will suffice as an example selected on the basis of the theme of conflicts between father and daughter. Formal elements are given in Greek:

To King Ptolemy, Ctesicles sends greetings (χαίρειν). I am wronged (ἀδικουμαι) by Dionysia, also called Nike, my daughter. For I raised this daughter of mine, taught her, and brought her to adulthood, but then I became unlucky, infirm in both body and eyes, and she was not willing to provide me

with any of life's necessities. When I wished to receive satisfaction from her in Alexandria, she begged me (not to?) and in year 18 she swore an oath on the king at the temple of Arsinoe Aktia that she would give me 20 drachmas a month from her own accounts; if she did not do this or in some way broke our contract, she would pay me a penalty of 500 drachmas or be responsible for the oath. [But now (νυ□ν δὲ) she has been corrupted by] Dionysius the homosexual,<sup>14</sup> and she refuses to keep her contract with me, and she scorns my old age and my weakness. Therefore I ask you, King (δέομαι ου□□ν [σου], βασιλευ□), not to overlook me (μὴ πε[ριδει□ν με]) when I am wronged (α□δικουμένου) by my daughter and Dionysius the homosexual who has corrupted her. I ask you to order (προστάξει) Diophanes the *strategos* to order them to appear and to hear our case (διακου□σαι), and if there is truth to it (?), to have Diophanes punish the corrupter however he wants, and to compel my daughter to do what is right [...]. When these things happen I will no longer be wronged, but will have gotten my rights (του□ δικαίου τεύξομαι) by taking refuge in you, King.

(2<sup>nd</sup> hand) Euphor[...] has been designated

(Verso) (Year) 1, Gorpaion 30, Tubi 13. Ctesicles against Dionysius and Nike his daughter concerning a contract.<sup>15</sup>

The majority of the formal elements concentrate towards the beginning and end of the petition, with the consequence that the genre permits significant narrative freedom. Still, some elements of the genre remain common over time: the division between the background narrative and the specific complaint (in this case, the conditions leading to

the making of the contract as opposed to the breaking of it) is common, especially among complaints in which parties have long-standing connections with one another. Similarly, the practice of delegation persists over time: the king (the nominal recipient of the complaint, though not its actual recipient) would be expected to pass the case to another official, not to hear it himself. The rudiments of this form were relatively easy to master by the scribes who drafted these documents for wounded fathers like Ctesicles.

Roman petitions are recognizable descendents of the Ptolemaic documents, though the form and the administrative notations have changed somewhat and the process has become significantly more cumbersome and documentation-intensive. P.Mich. VI 425 (26 August, AD 198) can serve an example:

To Calpurnius Concessus the most powerful *epistrategos*, from Gemellus, also known as Horion, son of Gaius Apolinarius, an Antinoite citizen. I have attached a copy (ἀντίγραφον) of the petition which I sent to the illustrious prefect Aemilius Saturninus (2<sup>nd</sup> hand) along with the (3<sup>rd</sup> hand) sacred subscription which I received from him. I ask (αἰξίω), if it seems good to you, to write to the centurion in Arsinoe to send (the defendant) for your review and to hear my case against him so that I can get what's mine. This is it:

To Quintus Aemilius Saturninus, prefect of Egypt, from Gemellus, also known as Horion, son of Gaius Apolinarius, an Antinoite citizen, and however else I might be known. I petition you (ἐντυγχάνω), Lord, against Kastor, assistant tax-collector of the village of Karanis in the division of Herakleides in the Arsinoite division. This man looks down on me as a cripple, since I am one-eyed and do not

see with the other eye although it looks like it works, and thus both my eyes are worthless. This man robbed me and earlier has done violence to me in public and to my mother, and after his many blows and his shameful treatment of her he broke down the four doors of my house with an axe, so that our entire house lies open and is easily accessible to whatever sort of criminal. Our house was demolished and we were beaten despite [owing] nothing to the treasury, since he dared neither to give a receipt lest he be judged through it [to have done wrong] or to have stolen from us. Therefore (διό), since our savior (*scil.*, the emperor) has ordered [those who have been done wrong] ([αδικουμένους]) to approach without fear and get what is ours, I ask (αξιω) to be heard by you, Lord, and avenged, so that I may receive your benevolence (τιν' ω ευεργετημένος), and my adversary be sent on your orders for a hearing.

(4<sup>th</sup> hand) Gemellus [has submitted this] ([επιδέδωκα]). Germanos wrote for him. (Year) 6, Mesore 18.

Approach the most powerful *epistrategos*, who will not overlook his duties.

Return it (απ[όδος]).

(5<sup>th</sup> hand) (Year) 6, 3<sup>rd</sup> intercalary day of Mesore

Petition me when I am in your locality.

(6<sup>th</sup> hand) Return it (απόδος).

Gemellus' petition reflects the several that we have extant from him – periodically funny, always bombastic, and evincing a clear inability to get along with his neighbors.<sup>16</sup> But the administrative details are particularly interesting for their marked contrast to the



Ptolemaic period. In the Roman period, petitions would only rarely be addressed to the emperor; a number were addressed to Roman officials, particularly the prefect and the *epistrategoï*, who were Romans of the equestrian rank. But the attention of these men was hard to get, and delegation was frequent (if petitions were not ignored outright).<sup>17</sup>

Nonetheless, if the attention of the prefect was desired, complaints would generally have to be presented in person during the yearly assizes. The management of these affairs was undoubtedly complex: one papyrus notes that more than 1,800 petitions were handled within a three-day period.<sup>18</sup> The dry administrative protocols that record these transactions must not be mistaken for what must have been the reality: we must not imagine petitioners quietly lined up with their advocates, patiently having their documents logged by a member of the prefect's staff. More likely, the *conventus* consisted of a throng of people, waving papers, complaining, and whining. Gemellus had approached the prefect in the month of Mesore, which maps roughly to August. It would also have been hot.

The administrative protocols contained in Gemellus' petition give a sense of the complex layers of authority developed to handle this system. Gemellus' petition would have had to be submitted in duplicate to the prefect. It would have been processed at the assizes, though rarely (if ever) would it have been heard at the same time. To attain the justice of the prefect, a petitioner would have had to wait until the document was processed, assembled into rolls, and posted in public or returned to the petitioner. To have the hearing was yet more complicated: defendants had to be summoned, a time appointed, and documentation gathered and authenticated.<sup>19</sup> Delays were frequent. Dionysia, with whose petition this paper began, had her case delegated and heard by the

*strategos* in the early stages of her conflict with her father. Gemellus' case was delegated to the higher-ranking *epistrategos*. In order to attain his hearing, however, he would have had to have an official copy of his original petition made (the ἀντίγραφον, above), and then submitted to the epistrategos. The force of the subscription (υπογραφή) of the prefect's office at the bottom of the document, urging him to take the signed petition to the *epistrategos* (the "Return it" phrase) was supposed to be enough to get the *epistrategos* to issue a summons for the assistant tax-collector Kastor, schedule a hearing, and decide the matter. A copy of the original petition, with the prefect's response, would have been kept in the archives.

This summary of procedure above compresses a complex system into its most essential components. Whether an analogous system prevailed for managing petitions to local officials – by far the great majority of the extant documentation – remains an open question. At the highest levels of the administration, as Haensch has demonstrated, some features also changed significantly over time.<sup>20</sup> Some of these developments appear to be logistical strategies for managing the onslaught of paperwork. Others appear to be substantive, though the evidence for them is more elusive. One significant trend concerns the relation between adjudication and law-making. As the Roman government solidified control over the province, it developed a reluctance to participate in what might be termed reactive law-making.<sup>21</sup> Petitions could be received and processed, hearings could be held, and decisions made without feeling any need to state to the petitioner the precise details of what particular law or rule might govern the legal question at hand.<sup>22</sup> Still, the idea that the Roman governors of Egypt were reluctant to state legal principles by which cases should be judged should not be taken to mean that they were reticent to create law

in general: Katzoff has assembled no fewer than fourteen prefectural edicts from the first century.<sup>23</sup> In this, the governors exceeded the emperors, for whom only four imperial laws are preserved on first-century papyri: one each from Augustus (P.Oxy. XLII 3020), Claudius (P.Lond. VI 1912 = Sel.Pap. II 212 = C.Pap.Jud. II 153), Nero (P.Genova 10), and Trajan (P.Oxy. XLII 3022).<sup>24</sup> The substantive difference is that they preferred to make law independently, by means of epistles which circulated throughout the province, prefaced by cover letters from local officials announcing the new rules. This is not to say that governors would not make new law when deciding cases; instead, the law that was made in this process would live on in the archives instead of being redacted into epistles stating general principles for public promulgation.

Four important characteristics of this system stand out for the discussion at hand. First are the numerous controls developed for the management of paperwork and to ensure the smoothness of procedure: the insistence on duplicates, the necessity of authentication, and the archiving of decisions. This stands in tension, however, with a second feature, namely, the reluctance of the government, in passing complaints along, to state the controlling legal authority by which a particular delegated judge was to decide the case. This is different, in a significant sense, from Roman formulary procedure, in which the legal issue was spelled out explicitly by the urban praetor according to a posted set of legal categories and then passed to a the judge to decide only the facts of the case. It was also different from a jury system, in which representatives of a population decided a case; notably, a procedure in which it was common, in the Roman period, to select jurors from representatives of the community involved – for instance, a jury half of Romans and half of Greeks to decide a case between a Roman and a Greek in the

province of Cyrenaica.<sup>25</sup> It is difficult to excavate the underlying logic behind why the Egyptian system was constructed in the way that it was. It could be simply a matter of convenience. It is also possible that, in processing these complaints, the prefects were merely reserving for themselves questions of law, and referring to lower courts questions of fact, where the relevant law was already known.<sup>26</sup> Still, there is no proof of this, and it is equally likely that the prefect reserved to himself complaints stemming from people who were important, rich, and powerful, with the odd exception for individuals who were particularly obstreperous.<sup>27</sup>

The logic of delegation and decision-making points to a third important feature: the emergence of two tracks through which law could develop, namely, through edicts promulgated throughout the province or through decisions in private cases that were contained within the archives. The combination of these materials by petitioners as sources of law takes a surprisingly long time to develop. It is not evident in the first century of Roman rule, but it *does* develop as a source of law in the second. The remainder of the paper will be devoted to explaining this practice, but it cannot be understood except in light of a fourth significant factor: the tremendous narrative freedom allowed to petitioners to decide how to frame their complaints, and the openness of this system to numerous types of appeal.

### III. Justice Without Justification: The Complaints of the First Century

As stated above, the Romans were largely non-interventionist when it came to substantive issues of law, and were largely content to respect categories of practice and

appeal that were generated in the preceding Ptolemaic kingdom. But there is a striking exception to this rule: though there seems to have been an understanding that there was a body of “local” laws from the Ptolemaic period onward, these laws are never evoked by petitioners as a basis for asking for intervention in the earliest years of Roman rule. In fact, references to the Ptolemies disappear nearly completely. We may discount, for lack of evidence, the idea that the laws of the Ptolemies were specifically abrogated by decree. There are references to “Egyptian” laws of one sort or another in the papyri of the first century,<sup>28</sup> but they are found in agreements between private individuals. It is not until the second century that references to the “laws of the Egyptians” start to be made in official contexts.<sup>29</sup> There appears, then, to be a gap between the practices that people agreed to live by in their transactions among themselves and those practices that they claimed as local laws deserving of respect from their new masters. All together, it appears that in the first century AD the rich legal pluralism of the Ptolemaic period is virtually forgotten, the royal laws either abrogated or, at least, understood to have no power to make the new rulers enforce a right or produce a remedy. This gap between the reality of a legally plural system and the rhetoric used to access it is surely consequential, and a significant horizon for the periodization of legal culture in period spanning the first centuries BC-AD. When conversing with authorities a system of rights and privileges had to be reconstructed *de novo* in the first century.

Tracing the contours of this conversation in the first century AD is a complicated exercise, and is necessarily (if also problematically) based primarily on accounting for forms of appeal that are absent in this period, but present in others. Two absences in particular stand out. First, there is no attempt to base complaints on abstract notions of

justice, equity, or dignity. Second, and perhaps more surprising, appeals to history, culture, and custom are similarly absent. Some notion of justice, equity, and dignity can be extracted from any sort of papyrological complaint, but this is an active process of interpretation: petitioners themselves, at least until the fourth century AD, are shy about making sweeping statements about what they consider just. They prefer, instead, to base their right to complain on a request to use a pre-existing administrative procedure: a hearing, the return of stolen goods, or compensation for a wrong. They do not engage in legal or ethical philosophy, at least not until Late Antiquity.<sup>30</sup>

It is perhaps more significant that petitioners do not, in the first century of Roman rule, appeal to history or culture. This is striking, not least since Roman governors in other provinces were not adverse to allowing inhabitants to live “by their own laws.” The ability to live by one’s own laws was, to be sure, a grant from the imperial power, but it seems to have been a typical default position for the Romans along with the maintenance of local judicial bodies, perhaps not least because in doing this, the governor could deal with less paperwork. But given the Roman ability to tolerate pre-existing local forms enforcing pre-existing local laws, it is worth asking why these were not appealed to by petitioners. Several possible answers emerge, though all are speculative. One is that, with the abolition of the boards of Ptolemaic judges, the bodies of legal knowledge associated with their respective courts ceased to be relevant. Another possible answer is that petitioners did appeal to legal customs, but in such an attenuated way that it could easily be missed. Such may be the case with an appeal by priests from 5-4 BC concerning their exemption from taxation, in which they claim that, from “the time of the Queen [that is, Cleopatra VII] through to the twenty-fifth year of the divine Caesar Augustus the four

priests who performed the ceremonies and sacrifices two-by-two have been unmolested by the *laographia*.”<sup>31</sup> This is, to my knowledge, the only reference to a Ptolemaic law from the Roman period; it is possible that, given Cleopatra’s entanglements with two famous Romans, these priests opportunistically chose to consider her actions as counting, more or less, as Roman.

A more likely answer is that appeals to local rules would have had minimal resonance with Roman authorities, who tended to consider the Ptolemaic dynasty – and indeed, most eastern Hellenistic monarchies – to be a markedly defective form of government, one which tended to debase the otherwise decent Macedonian stock that ruled over it.<sup>32</sup> One example of this can be extracted from the precedents cited in the petition of Dionysia, this one coming from later in the first century from a hearing before the *iuridicus*, Umbrius (P.Oxy. II 237, 7, 39) taking place in AD 87:

From the *commentarii* of Umbrius, *iuridicus*. Year 6 of Domitian, XX

Phamenothe. Didyme, whose advocate was her husband, Apollonius, against Sabeinus also called Kasios. From the transcript.

Sarapion (among other things) said: “The parties are Egyptians, and the severity of the law is untempered for them. I declare to you that Egyptians not only have the power to take back from their daughters what they gave (in marriage), but also (they have power over) whatever the daughters acquired for themselves. After other things, Umbrius said to Sabinus: “If you have already given your daughter a dowry at one time, restore it.” Sabinus said, “this” [...] Umbrius: “Indeed: to your

daughter!” Sabinus: “She should not be with this man.” Umbrius: “It is worse for her to be taken from her husband.”

In this case, there is an appeal to custom, although the custom is linked not to the possible origin and authority for official practices, but to Egyptian status. Umbrius doesn't seem to care what the Egyptian law may or may not say about such presumed powers.<sup>33</sup> It is mere custom, and presumably, a disgusting one at that. He over-rules it on largely moral grounds.

#### IV. From the Return of Local Law to the Emergence of Bureaucratic Law

The legal landscape of the late first and especially of the second and third centuries AD looks significantly different from that of the period from Augustus to Trajan. The differences are multifaceted. First, there is a difference of quantity: there are many more petitions of the second century than of the first century. This is in keeping with the general trend toward larger numbers of papyrological material clustering in the second century, but I think it would be rash to dismiss this, without inquiry, as an accident of preservation. It is more probable to explain it as the intensification of a conversation. This would fit well with an emerging difference of quality: petitions begin to take on a more strident tone, and petitioners begin to justify their rights to complain. This justification takes two forms: first, the idea of Egyptian law is reintroduced, second, there is a significantly more active engagement with the documentary record. Petitioners like Dionysia begin to marshal cases as precedents and to compile case-books. These are



largely parallel developments in the administration of justice and in the style of complaint, and they have to be treated as linked.

The claim of a right based on Egyptian status in the presence of Umbrius is telling, for it sits at a chronological crossroads of sorts: local laws begin to return as sources of law, albeit in a vague form, late in the first century. Historians of law tend to think of customary law, at least in imperial encounters, as something that is fundamentally a constant throughout time. That is, though we may see few references to the “Egyptian law” in the papyri of the first century, it can be presumed that people were living according to a more or less uniform set of principles of verification, contract, dowry, and so forth. Though this is in some sense true, it is nonetheless worth asking why, at a certain point in time, ideas of customary law get reintroduced into a conversation with authority. We can discount for lack of evidence Taubenschlag’s proposal of a new codification of Egyptian law in the late first/early second century.<sup>34</sup> But Taubenschlag was, I would suggest, on to something: this new interest in “Egyptian” law in the second is indicative of something. The question is, of what?

The evidence permits no solid conclusions, but several clues emerge. The second century is the age of Gaius, the age when the Romans begin to think in systematic ways about the connection between natural and civil law, and the connection between people, citizenships, and bodies of law, systematically expressed. The pithiest summary of this principle is found opening of Gaius’ *Institutes*, written around 161 AD but codifying a trend that began in the late republic and peaked in the second century: “All peoples who are governed by laws and customs use law which is partly theirs alone and partly shared by all mankind. The law which each people makes for itself is special to itself. It is called

civil law (*ius civile*), the law peculiar to that state.”<sup>35</sup> In the world of Gaius, the law is composed of statutes and decisions, among other things; law is linked to the historical record, and emerges from it. To what extent this view of law is linked to developments in provincial government is an open question, but it seems that at the very least there is a link between the “laws of the Egyptians” and this relatively new way of thinking about law that arises contemporaneously at Rome: law is linked to discrete peoples and “their” history *as discrete peoples*. The Egyptians are a discrete people. It follows that they must have had their own *ius civile*. And if they did not, one must be found for them, and it must be agreeable to a community of powerful local actors like Dionysia’s father.

That this change in attitudes towards local law came from an imperial source would seem to be born out by the roughly contemporaneous rise of the *nomikoi*, the “legal experts” who emerge in the second century – with official sanction – to interpret the laws of the land. The evidence for the substantive work of these individuals is scarce. They are largely unattested in the first century (with the exception of references in the New Testament that use the term differently),<sup>36</sup> but they appear in the second century in both the epigraphic and papyrological records.<sup>37</sup> They are found, significantly, attached to the entourage of governors and other administrators.<sup>38</sup> We know little about their recruitment, social background, and level of training and expertise. Accordingly, skepticism is warranted towards any claim that these men were drawn from a continuous and active pre-Roman legal tradition. It would not be a tremendous leap to imagine these *nomikoi* as being roughly analogous to the parade of legal interpreters “found” by British colonial authorities to interpret – and in some ways create – a corpus of Hindu and Muslim law in India.<sup>39</sup> This is speculation, but I think it is at least warranted.

This shift marks a significant horizon in Roman thinking about law, and a place from which we can begin to contextualize the move by some petitioners to basing their claims on bureaucratic rulings. It is one thing for governors to monopolize the right to issue edicts and decide who gets to make rulings on cases. This is the privilege of rulers, and no matter how cruel or unjust a particular ruling may have been, the legal system would still have been in a constant state of development. It would have been possible for a litigant to avoid asking it to render a decision, or to attempt to convince it to revisit a certain problem. But coping with this sort of system (the one that prevailed in the first century) is a wholly different prospect than facing an “official” and static body of local law, authoritatively interpreted by intermediaries, translators (*hermeneis*),<sup>40</sup> and local agents who represented powerful constituencies – a system in which judgment officially came from a governor who now sought to devolve the responsibility to know what is just upon a pre-picked set of locals. One could further hypothesize that developing systems of local law served more than just local constituencies: there was necessarily pressure on governors from the center, that they not make too much law that might contradict other law. Governors producing too much law could be solved by devolving law-making back to local communities, and insisting that the law be static, not developing.

How these new sources of law would have worked in practice can be seen from a papyrus of the early second century from the official notebooks (*commentarii*) of a military official, Blaesius Marianus, who was delegated by the prefect to hear a case concerning succession to an inheritance. He is duly accompanied by a *nomikos*, a man named Claudius Artemidorus:<sup>41</sup>

(Hand 1) In the division of Heracleides in the *strategia* of Arsinoe.

(Hand 2) From the book of *commentarii* of Blaesius Marianus, *praefectus* of the *Cohors I Flavia Cilicum equitata*. On delegation (εξαναπομπή) of his highness the prefect Haterius Nepos, year eight of Imperator Caesar Hadrian Augustus, eighteenth of Pharmouthi. In the presence of Claudius Artemidorus the *nomikos*, (the case of) Aphrodisius son of Apollonius against Ammonius son of Apion.

Aphrodisius, speaking through his advocate Soterichus, said that he had an unwritten marriage with a woman named Sarapous, and produced with her a son named Horigenes, who died, and others. Although the law orders that fathers become heirs of children of unwritten marriages, the defendant desires to be the heir of Horigenes according to his will, although according to the law that one (Horigenes) did not have the right to make a will while his father was still alive, since such a will would be undutiful and illegal if to the benefit of the defendant. He (the father) seeks those things left by his son.

Ammonius replied through his advocate Marcianus that the law of the Egyptians allows anyone writing a will to leave his things to whomever he wishes, and that he (Ammonius) is the cousin of the deceased, and along with another son of his opponent, he has been left the inheritance, and that the will has the requisite number of witnesses.

Blaesius Marianus: “Read out the will of Horigenes.” It was read out, year eight of Hadrian the lord, the thirtieth of Choiak. (a large X on the papyrus).

Blaesius Marianus *praefectus* of the *Cohors I Flavia Cilicum equitata* spoke with Artemidorus the *nomikos* concerning the matter. He dictated the sentence, and the sentence that was read out was, “Since the deceased Horigenes came from an unwritten marriage, it appears that he leaves his father his goods, since he lacked the power to make a will while his father lived.”

Ammonius replied that Horigenes actually came from a *written* marriage, but Aphrodisius persisted in his claim that he was born from an unwritten marriage.

Blaesius Marianus *praefectus* of the *Cohors I Flavia Cilicum equitata*:

“Aphrodisius will prove this in sixty days.”

Aphrodisius asked that, since things were in such a state, an inventory be made of the things left by that man. Blaesius Marianus ordered Isidorus, a prefectural employee, to make a double copy of the inventory and to provide a copy to each of the interested parties; the key to the house would remain with Ammonius, under seal. Shortly thereafter Isidorus announced that his order had been fulfilled.

Blaesius Marianus ordered that the decision be recorded. (1<sup>st</sup> Hand)

Claudius...record-keeper, “It exists.” Year eight of Emperor Caesar Hadrian Augustus, Epeiph the twenty-first.

The case turns on the status of the children of fathers who produced them in “unwritten” marriages. The complexities of the law, which also are in play in Dionysia’s case against her father, need not detain us here.<sup>42</sup> More important is the way that the action plays out. There is no expectation that Blaesius Marianus knows the intricacies of local succession law. The *nomikos*, Claudius Artemidorus, is expected to handle these issues. The fact that

he bears a Roman *gentilicium* as well as a Greek name suggests that he came from a family that was granted citizenship under the Claudian dynasty; it would be reasonable to conclude that he was from a relatively powerful local family, one of the “local elites” upon whom the Romans increasingly relied in the Principate for the administration of regional affairs. The contents of the “Egyptian law” are similarly problematic. Ammonius claims that the law allows for individuals to dispose of their property as they choose; the father of the deceased, Aphrodisius, claims that it does not. Claudius Artemidorus settles the issue in favor of the father, in a pattern that is reminiscent of Chairemon’s claims over Dionysia. The last, desperate attempt of Ammonius to claim that a different set of legal principles controls the case in question (the laws concerning written rather than unwritten marriage) is similarly quickly disposed of.

The tensions embodied in this legal moment help in understanding the attitude of Umbrius the *iuridicus* towards these local practices based on a claim of “Egyptian law”. At a certain level, it is not clear that the Roman administrators were ever completely comfortable with this new system, not least because local intermediaries like Claudius Artemidorus could not always be trusted. And it is here that a certain vulnerability in the new system is exposed, one through which we can explain the interest in precedent in Egypt: in one sense, the use of precedent emerges as a reaction to a larger movement in the second century to place and keep people within discrete ethnic frameworks, and to prevent them from accessing Roman justice and Roman courts. This move toward precedent, though in some sense counter-hegemonic, need not be directed at Rome or against Rome, however, and it is far more likely that it was directed at the high-ranking local people who begin, in the late first and early second centuries, to articulate a claim to

knowing the “right” interpretations of law and tradition at imperial behest. But here, at least, is where there is more than a touch of historical irony: though the Romans were at times complicit in recognizing the value of custom for the enforcement of law in Egypt, and while this interest was part and parcel of a larger project of seeking to keep people within their own local systems of justice, individual petitioners also recognized that, given the flurry of lawmaking and decision-making that took place in the first and second centuries, these decisions could also be re-collected, collated, and turned into more law. This is precisely what begins to happen with the invention of a system of citation of precedents in the late first and second centuries AD. It is important to understand, also, that this practice was not just another way of getting the same thing; the evocation of precedent also carried with it a different understanding of how to “do law”, and similarly, a different understanding of history.

The paradigmatic case here is the Petition of Dionysia. Dionysia’s conflict is with her father, a local gymnasiarch, and a high-ranking man who articulates his claims to right on the basis of a harsh and unchanging Egyptian law. From the precedents that Dionysia cites to counter her him, we can see how other high-ranking individuals had also articulated claims based on Egyptian law: in the case before Umbrius, the appeal is to a vague principle, though it is rejected. She records as a precedent another decision in a similar case, this one dating from AD 133.

From the *commentarii* of Paconius Felix, *epistrategos*. (Year) 18 of the divine Hadrian, Phaophi 17. In the upper division of the Sebennyte nome, in the case of Phlauesis son of Ammounis in the presence of his daughter, Taeichekis, against

Heron son of Petaesis. Isidorus the advocate spoke on behalf of Phlauesis, saying that the man in question wishes to take away his daughter who lives with the defendant. Recently his case was judged at the court of the *epistrategos*, and the case was deferred so that the law of the Egyptians might be read. Severus and Heliodorus, the (opposing) advocates, replied that Titianus the former prefect heard a similar case concerning Egyptians, and he decided not in accordance with the inhumanity of the law, but according to the decision of the daughter, whether she wished to remain with her husband. Paconius Felix said, “Let the law (of the Egyptians) be read out.” When it was read, Paconius Felix said, “Read out also the *commentarii* of Titianus.” Severus the advocate read out, “(Year) 12 of Hadrian, Caesar, our lord, Pauni 8, etc.” Paconius Felix said, “As his highness Titianus has decided, they will ask the women.” And he ordered her to be asked through a translator what she wanted. She replied, to remain with her husband. Paconius Felix ordered the decision to be recorded.

There are several layers to this extract. First, it serves as a precedent for Dionysia’s case. But the case in question, which took place before the *epistrategos*, refers to a still earlier case, this one taking place six years earlier at the court of the prefect Titianus. Titianus’ decision was juxtaposed, by the advocates for the daughter and her husband, to the law of the Egyptians. This complex stacking of stories traces the origins of law as a historically generated body of rules and rulings, as opposed to a static set of principles. This contrast is made even more striking in that, in the precedent from the court of Paconius Felix the *epistrategos*, the case has to be “deferred so that the law of the Egyptians could be read”.



It was not immediately at hand, but had to be found and presented. It is as static as the law that protects daughters is dynamic. Paconius Felix, it seems, grants both equal validity, and both are read aloud. It would have been unlikely for him to have overturned the decision of the prefect, the highest authority in the land, especially on the heels of a relatively recent decision. But nonetheless he allows both to be given equal validity in his court.

These conflicts between fathers and daughters are emblematic of the kinds of problems that emerged in the courts of the *chora*: powerful local individuals could make claims to an unchanging law of the land, which people in a similar place in the social hierarchy had power to interpret. Yet some individuals did not wish to be bound by these “inhuman” traditions, and articulated appeals to previous decisions of magistrates. But the style of jurisprudence of these precedent-users is a distinct being: they do not appeal to unchanging principles or legal maxims. Instead, they list decisions, either in the text of their complaints or in casebooks that could have been used by advocates in court. No fewer than ten of these casebooks exist.<sup>43</sup> Fixing a date for them, however, is hard to do: internal evidence can often place the initial interaction with precision, but we have to rely on paleography to guess the point at which they were compiled. This attention to secondary re-use also calls into question other documents: from a Merton papyrus we possess the identical decision of the prefect Similis that is cited by Dionysia regarding registration of marriage contracts,<sup>44</sup> which shows how these decisions could be rearranged in alternative contexts, as well as hinting that even papyri bearing a single decision may actually reflect not only that case, but also a later attempt to use its findings to obtain justice. These secondary uses represent an active relationship between

individuals and the law of the land, though mediated through bureaucracy. But producing a list is not the same thing as making a reasoned legal argument that appeals to principles: the flexibility of this system is what makes it appealing.

The citation of precedent represents a claim that a particular moment of past governance can be read in such a way that it is possible enunciate a general principle.<sup>45</sup> But these principles are not generally announced by petitioners. They are constructed through a process of bricolage which assembles past instances to articulate the outlines of a specific claim. They are an invitation to discuss in court, an invitation to the prefect or the judge not only to confirm them, but to confirm them with additional language that itself will come to make new law. By inviting the presiding magistrate to offer judgment, more law is revealed; the more law is revealed, the more it is understood clearly by petitioner and magistrate alike that legal traditions are alive and shifting, that history is a guide to the present and future, and that, in contrast, traditions represent only one point of view, and not a particularly useable one at that.

#### IV. Conclusions: Bureaucracy and the Emergence of a New Language of Power

As bureaucracies develop, they produce more paperwork. It is not surprising that, as the Romans solidified their control, developed administrative apparatuses for the extraction of labor, and devised routines to monitor the movement of property and the financial transactions of its subjects, these changes increased the emphasis on documentation and recording.<sup>46</sup> But to be required to use imperial recording systems to register transactions is different than imagining that these systems can be turned to the

advantage of a petitioner to create a right or to compel a magistrate to hear a claim. For this to happen, several factors have to converge: first, individual provincials must understand themselves to be juridical subjects who are entitled to rights, and entitled to have those rights taken seriously even in circumstances where lesser-ranked representatives of official power have initially ignored them. They must understand these rights to be more than loose concepts “in the air”, but rather to found in concrete interactions with those whose job it is to enforce those rights – that is, in the courtroom. Second, there must be a structural transformation at the level of imperial governance, from one which seeks to merely have sheep shorn, in the emperor Tiberius’ famous words, to one that understands that all subjects – not just representatives of individual communities – are rights-bearing individuals to whom government owes a duty of care. Both of these shifts push in a similar direction: towards a system of justice that is depersonalized, with the result of particular encounters with bureaucracy are understood to *reveal* abstract principles of governance, as opposed to contingent decisions in the case of individuals, some of whom may deserve more justice, others less. As the principles are revealed historically, over time and in the course of individual encounters, the more intensive the interaction, the greater the amount revealed. This type of system incentivizes legal interactions on the part of subject peoples, as every interaction further reveals the principles of governance and brings clarity and regularity to a situation that could otherwise be directed by fear and brutality. It similarly construes petitioners, bureaucrats, and emperors as active and mutual participants in the creation of a common history and a common system of governance. As such, it tends to efface the boundaries

between governor and governed that the Romans themselves otherwise sought to reinforce.

This type of system, however, has other effects. If the law is revealed historically, through the actions of individual magistrates and governors, then there is an extra level of force and constraint placed on their actions. They cannot claim to be mere processors of facts into distinct judicial categories, for any attempt to follow the lead of a plaintiff in extending or generalizing a privilege creates new law, since each of the magistrates is perceived as actively partaking in the system's creation, rather than merely responding to the dictates of a higher power. They can no longer rely on the force of tradition, mediated through whatever local power-brokers have contributed to its reinvention. This makes magistrates agents, but also thereby serves to constrain their behavior.

The dialogue that took place in the second century between backwards-looking tradition and forwards-looking development was mediated through bureaucracy, but this mediation was also a productive process. The style of petitions changes significantly moving into the third century: petitioners stop citing cases, though casebooks continue to be compiled. The precedents, it seems, have moved from the preliminary phases of legal contact to the courts themselves.<sup>47</sup> What is most surprising, however, is that the efforts of people like Dionysia, and the others whose cases she cites, seem to have been successful in effecting a structural change in governance. Citations of Egyptian law die out roughly at the same time as the practice of citing precedents. It is not long thereafter that another major horizon of legal history appears in Egypt: the *Constitutio Antoniniana* of AD 212 attempted to wipe out all systems of local law by granting Roman citizenship to the majority of the population of the empire. Though the consequences of this change cannot

be cannot be discussed in depth here, I would suggest that this move towards standardization of law was precisely one of these imperial reactions to local practice that attempted to block legal the type of legal creativity outlined above.

What I hope to have done in this paper is to show the genesis of one particular strain of conversation between rulers and ruled, and to show not only how this conversation came to be mediated through documents reflecting a particular language of power, but also that the nature of those documents changed by being part of the conversation. Specifically, I have tried to show that bureaucracy – though useful to historians because it gives us the raw material to document past interactions – is capable of being used as a guide to think about how *subsequent* interactions should take place. That is, it is not just documentation of past, but future-oriented in its outlook. It can be read as a *was*, an *is*, and a *should*. In this capacity it can be used not only to reflect tradition, but, in the hands of shrewd petitioners in an imperial encounter, also to transcend it.

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NOTES:

<sup>1</sup> P.Oxy. II 237. For background on the excavations, see Parsons (2007) 12-30. On the legal problems posed by Dionysia's complaint, see Yiftach-Firanko (2003); Kreuzsaler/Urbanik (2008); Kreuzsaler (2008).

<sup>2</sup> Images of Dionysia's complaint can be found at <http://ipap.csad.ox.ac.uk/4DLink4/4DACTION/IPAPwebquery?vPub=P.Oxy.&vVol=2&vNum=237-1>.

<sup>3</sup> Bryen (forthcoming 2012).

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<sup>4</sup> e.g., P.Hamb. I 29 = Jur.Pap. 85, a document containing rulings of prefects M. Mettius Rufus and M. Iunius Rufus from AD 89 and 94 respectively dealing with courtroom procedure. The existence of the two rulings provides the standard date for the papyrus, but the actual date of composition is later. Precisely how much later, however, is unclear, for it depends on the dating of the script. As an example of how these documents would be used, see SB XIV 12139 (late 2<sup>nd</sup>/early 3<sup>rd</sup> cen. AD).

<sup>5</sup> E.g., Abbott/Johnson (1926) 189.

<sup>6</sup> Katzoff (1972, 1980, 1981); see also Anagnostou-Canas (2004). Early studies of precedents: Weiss (1912); Jolowicz (1937).

<sup>7</sup> Ando (2000).

<sup>8</sup> Manning (2010) chp. 6.

<sup>9</sup> Modrzejewski (1970).

<sup>10</sup> The “demise of the demotic document” is a complex problem. See Lewis (1993); Muhs (2005); Yiftach-Firanko (2009).

<sup>11</sup> See generally Lewis (1983); Hobson (1993); I will return to the petitions concerning violence in Bryen (forthcoming).

<sup>12</sup> See, for instance, the case of Satabous and Nestnephis: Swarney (1970); Rupprecht (2003).

<sup>13</sup> The term “*cognitio extra ordinem*” is attested in Egypt, although relatively late: P.Lips. I 33 = Chr.Mitt. 55 = Jur.Pap. 88 (AD 368).

<sup>14</sup> I hope that this translation is not a bridge too far: the precise meaning of *kinaidos* is still a matter of controversy, but I cannot accept the bowdlerized “dancer”.

<sup>15</sup> P.Enteux. 26 = Sel.Pap. 268 (February 27, 221 BC)

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<sup>16</sup> See further Bryen/Wypustek (2009).

<sup>17</sup> Lewis (2000).

<sup>18</sup> P.Yale I 61 (AD 209).

<sup>19</sup> Which could lead to yet more complications: P.Strasb. I 41 = Chrest.Mitt. 93 (AD c.250); P.Oxy. II 237, 7, 33, contained in one of the precedents in the petition of Dionysia, and on which more below.

<sup>20</sup> Haensch (1994).

<sup>21</sup> Compare BGU IV 1198-99 (BC 4), in which a complaint of priests is connected to an edict (επιστολή) of the governor Gaius Turranius.

<sup>22</sup> SB XII 10929 (AD 133-37) gives a listing of the kinds of cases that would be heard by the prefect, but little detail as to on what basis these categories would be evaluated.

<sup>23</sup> Katzoff (1980).

<sup>24</sup> If the two edicts of Germanicus (Sel.Pap. II 211) are counted, the total rises to six. The documents are assembled by Oliver (1989); Anastasiadis and Souris (2000) add no new papyrological material for the period in question. For an early study, see Taubenschlag (1953).

<sup>25</sup> SEG IX 8 = Oliver (1989) no.8.

<sup>26</sup> SB V 7601 frg. C may be an example of this, on which see Bell (1933). Van Groningen discusses the cache as a whole in the introduction to P.Fam.Tebt., but does not include this particular document in the publication, most likely on the basis of onomastics. On the other hand, P.Oxy. III 486 = Chrest.Mitt. 59 (AD 131) may militate against the idea that the prefect would have reserved cases of law to himself: in this case, a woman's case is referred by the *epistrategos* to the prefect, but when the woman's opponents fail to

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appear at his court in Alexandria, the prefect grants her leave to return home and authorizes the *epistrategos* to hear the case. SB XII 10929 (above, note 22) lists categories which the prefect would hear, but it seems clear that he would also be able to delegate the authority to hear cases from such categories.

<sup>27</sup> Compare Dig. 1,16,9,2-4 with Lewis (2000).

<sup>28</sup> BGU IV 1148 (13 BC), contract; BGU IV 1118 (14 BC), sale of a garden; P.Oxy. IV 795 (AD 81-96), marriage contract.

<sup>29</sup> E.g., P.Oxy. IV 706 = Chrest.Mitt. 81 (AD 115-17); P.Oxy. XL 3015, 2-3 (post AD 117); P.Tebt. II 488 (AD 121-2); Stud.Pal. XX 4 = Chrest.Mitt. 84 (AD 124), on which more below.

<sup>30</sup> E.g., P.Oxy. XXXIV 2713, 3-4 (AD 297).

<sup>31</sup> BGU IV 1198.

<sup>32</sup> E.g., Livy 38,37; Suet. Aug. 18.

<sup>33</sup> Unlike in P.Oxy. IV 706, 12-13 = Chrest.Mitt. 81 (AD 73?), which deals with Alexandrian law. The text, however, is fragmentary and problematic. But “the law” – if it does exist on this point, and the prefect says it does not – is similarly not at issue.

<sup>34</sup> Taubenschlag (1955) 6-7; c.f. Modrzejewski (1970) 331-4. Yiftach-Firanko (2009) 555 is yet more strident than Taubenschlag, positing “...the emergence of a new law, ‘the law of the Egyptians,’ which was applied by the *entire* population and consisted of Greek and Egyptian elements alike” (italics mine).

<sup>35</sup> Institutes 1,1, trans. Gordon and Robinson with minor changes. Ando (forthcoming) will deal with this problem in greater detail.

<sup>36</sup> Luke 7,30; 10,25; 11,45-52; 14,3.



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<sup>37</sup> Evidence for individual *nomikoi* (and their Latin-speaking counterparts, the *iuris periti*) is collected by Kunkel (2001) 263-70, 354-65. Kunkel is less schematic and more appropriately skeptical than Taubenschlag (1959). See further Hengstl (2006).

<sup>38</sup> BGU I 114 = Chrest.Mitt. 372 (AD 142); P.Oxy. XXXVI 2757 (*post* AD 79); P.Oxy. XLII 3015 (AD II); Stud.Pal. XX 4 (AD 124). In P.Paris 69, 3, 18 = Chrest.Wilck. 41 (AD 232), the daybook of a *strategos*, the existence of a *nomikos* is postulated.

<sup>39</sup> Compare Cohn (1996) chp. 3.

<sup>40</sup> I look forward to the publication of Rachel Mairs and Maya Muratov's study (in progress) of the *hermeneis*.

<sup>41</sup> CPR I 18 = Stud.Pal. XX 4 = Chrest.Mitt. 84 = Jur.Pap. 89 (AD 124)

<sup>42</sup> Yiftach-Firanko (2003) details the complexities involved in written and unwritten marriages.

<sup>43</sup> See also Ando (2000) 377n.176-77. Other seemingly private collections of legal documents: BGU I 114 = Chrest.Mitt. 372 (*post*. AD 142), P.Phil. 1 (AD 104-7), P.Princ. II 20 (AD II, with Reinmuth (1936) 150-51), P.Oxy. XXXVI 2757 (*post* AD 79), Possible also are P.Oslo III 78 + III 79 (*post* AD 136), P.Oxy. XLI 2954 (AD III), and P.Oxy. XLI 2954 (AD III, citing edict of Heliodorus, AD 137). P.Oxy. XLII 3017 (AD 176-77) is an edict of T. Pactumeius Magnus relating to procedures that is written on the opposite side of a petition dating from AD 218 (P.Oxy. XXXIII 2672); the precise interrelation between these two documents (if any) is unclear. A further possibility is SB XIV 11348 (AD II) with Parássoglou (1974).

<sup>44</sup> P.Mert. III 101.

<sup>45</sup> Katzoff (1986).

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<sup>46</sup> P.Oxy. II 237, 8, 27-43 (AD 89); P.Oxy. I 34 = Chrest.Mitt. 188 (AD 127) with Cockle (1984). See also P.Fam.Tebt. 15.

<sup>47</sup> c.f., SB V 7696 (AD 250); SB XIV 12139 (late II/early III AD).

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