THE IMPACT OF ROMAN LAW IN EGYPT AND THE NEAR EAST IN THE THIRD CENTURY AD: THE DOCUMENTARY EVIDENCE

Some considerations in the margin of the Euphrates papyri (P.Euphr.)

By

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About 230 a certain Theodore, a young man of some 18 years, studied rhetoric, Latin and some law in his native city of Neocaesarea and wished to pursue the study of Roman law in Beirut and perhaps even in Rome. His life then took another course, for, as we know, this Theodore was going to be baptised and take the name of Gregory, later to be called Thaumaturgus. The pertinent passage from his autobiographical account in a speech of thanksgiving to Origen¹ (5.56-72) is informative about the image a well-connected young man in the Near East in the first half of the third century could have of a possible career. Earlier in the same speech he refers to the study of the law as the study of “our admirable laws, which now regulate the affairs of all people under the rule of the Romans” (ibid. 1.7). This may or may not be a reference to the *Constitutio Antoniniana* of 212 AD;² more importantly, it presupposes the usefulness and indeed practical application of Roman law in the eastern provinces of the Roman empire. His brother-in-law was a jurist and suddenly called upon to be councillor to the Roman governor of Palestine in Caesarea (ibid. 5.65). He probably had been trained as a Roman lawyer, though Gregory does not mention this. In any case, Gregory himself wished to study Roman law and was able to receive at least elementary instruction in Neocaesarea. The story of Gregory's ambitions suggests a high level of penetration of Roman law into legal practice in the Near East in the first half of the third century.

Fergus Millar reminds us in his *The Roman Near East*³ that “by far the most profound and all-pervasive of all external cultural influences in the Near East in the first few centuries was the Roman empire itself” (525). A few pages further down he remarks upon Roman law as one of “two linked exceptions

¹ Gregorius Thaumaturgus, *Remerciement à Origène*, ed. H. Crouzel, Sources Chrétiennes 148, with discussion of the pertinent passages in the introduction, p. 13-16. For a similar discussion see also, e.g., F. Millar, ‘The Greek East and Roman Law: The Dossier of M.Cn.Licinius Rufus’, *Journal of Roman Studies* 89 (1999), 90-108 (106-107).

² P. Giss. 40 I; see J.H. Oliver, *Greek Constitutions of Early Roman Emperors from Inscriptions and Papyri* (Philadelphia 1989), no. 260, with bibliography.

³ F. Millar, *The Roman Near-East 31 BC-AD 337* (Cambridge-London 1993).

to the general absence of any profound Romanisation”; the other is Berytus (527-528). The two statements together give rise to the impression that the manifestation *par excellence* of the Roman empire would be Roman law: we may perhaps expect Roman law to exercise an influence even independent of the paraphernalia of Roman culture.

Let us leave these vignettes of Roman law in the Near East for a moment. I wish to concentrate on documentary evidence, and in particular on a dossier of parchments and papyri belonging to the Middle Euphrates and published only recently, the Euphrates papyri (P.Euphr.), a dossier, by the way, on which also Fergus Millar rests his case. It is still not superfluous to remind ourselves of the importance of just such a dossier.

There are two reasons why documents of this kind are most welcome. Both these reasons are connected with the nature of the legal sources which have reached our times. First, Roman law is known to us predominantly from normative sources and legal literature, in short, Roman law as it should be, ‘law in books’. Any document providing an insight into legal practice, about ‘law in action’, is valuable as such. Second, we have, it is true, a great number of such documents, but the vast majority of them belongs to only one particular area. I am, of course, speaking about the papyri of Egypt. Any document found outside Egypt therefore acquires an additional value through its provenance.⁴

The two reasons together should be seen against the backdrop of another problem: Roman law as a system of mainly private legal rules, originating in Italy was, we may assume, bound up with the social, economic and cultural circumstances of that area of the Mediterranean. When Rome developed to an empire stretching over the entire Mediterranean world and also penetrating deeper into the Near East, the administration which followed in the wake of the conquering armies had to deal with legal disputes arising in circumstances different from the Italian ones. The Roman administration carried with it a legal culture alien to that of the conquered territories. The question of what substantive law to apply to these disputes inevitably arose at some point and had to be answered, implicitly or explicitly. Hard evidence of these answers is again to be found in documents

⁴ The increase of the material we now possess may be observed from a comparison of R. Taubenschlag, ‘Papyri and Parchments from the Eastern Provinces of the Roman Empire Outside Egypt’, *Journal of Juristic Papyrology* 3 (1949), 49-61= Idem, *Opera Minora* II, 29-43, with H.M. Cotton, W.E.H. Cockle and F. Millar, ‘The Papyrology from the Roman Near East’, *Journal of Roman Studies* 85 (1995), 214-235.

from legal practice. They demonstrate how daily life responded to the question, a question which on an ideological and propagandistic level may have been answered differently. The question, in short, phrased by Ludwig Mitteis in the title of his classic book as “Reichsrecht und Volksrecht”.⁵

A dossier of documents originating in the Euphrates area of the Roman empire in the middle of the third century may provide us with an answer to the question of Reichsrecht or Volksrecht in a particular province of the empire in a particular period. On closer inspection, that question falls into various questions, all of them inextricably bound up with one another. To what extent had Roman law replaced indigenous law? How was Roman law being applied in practice? Was legal practice in Mesopotamia different from Egypt, or from Italy? To put it simply, we are dealing with the general problem of Roman law in the provinces, and take Syria as an example. This dossier is a welcome opportunity, and I would like to use it to deal with two points: first, I shall take a more detailed look at some of the texts from the dossier, and second, and more importantly, I will consider some of the questions raised by the dossier at a more general level. Before doing so, however, I should like to present some preliminary considerations.

The general problem of ‘Roman law in the provinces’ has been treated in 1986 by Hartmut Galsterer under that title in a paper, which is concerned with the three centuries from Cicero to the *Constitutio Antoniniana*.⁶ Galsterer is sceptical about the possibility and indeed the desirability from the empire's point of view of imposing the uniform application of Roman law in the provinces of the empire. Not only do I agree with the general drift of his argument, but I also think that the situation was much the same in the third century of our era, even in spite of the *Constitutio Antoniniana*. Whatever may have been the precise purpose of that imperial enactment, it did not remove the distinction between Roman and provincial law.⁷ Apart from indications to the contrary in Roman legal sources, it is simply the case that the papyri from Egypt and elsewhere suggest a

⁵ L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (Leipzig 1891).

⁶ H. Galsterer, ‘Roman Law in the Provinces: Some Problems of Transmission’, in: M.H. Crawford (ed.), *L'impero romano e le strutture economiche e sociali delle provincie* (Como 1986), 13-27.

⁷ The literature is vast; cf. above, n. 2. A good survey is given and a sensible position taken by A. Segrè, ‘La costituzione Antoniniana e il diritto di “non cives”’, *Iura* 17 (1966), 1-26. The question is still subject to debate. The latest monography is K. Buraselis, *Theia dorea. Studies on the Policy of the Severans and the Constitutio Antoniniana* (Athens 1989).

continued coexistence of the two. In that respect our dossier from the Middle Euphrates is no exception, and it is time to have a closer look at its contents.

What I am calling the dossier consists of 21 documents, 12 on papyrus and 9 on parchment. As two documents have been deemed unpublishable, or at least not worth publishing, we are in fact dealing with 19 documents, 17 of which have been written in Greek, and two in Syriac. The distinction should not be taken as absolute: the main body of the individual documents may be characterized as Greek or Syriac, but annotations or subscriptions may be in other languages, including Latin. Twelve texts have been published recently by Denis Feissel, Jean Gascou and Javier Teixidor.⁸ All the texts date to the middle of the third century and relate to the area of the Middle Euphrates, covering roughly a triangle formed by the cities of Zeugma and Nisibis in the north, and Dura-Europos in the south, or the area above the confluence of the river Chabur with the Euphrates, between these rivers. The documents published so far are the ones that have most to offer to the legal historian. For a general description I refer to Feissel-Gascou 1989. There are public documents (petitions), private documents (contracts etc.) and letters. As far as I can make out, the documents, which have been acquired as a group, but of whose archaeological context nothing is known, form a dossier in that they point to the mainly commercial interests of a community, Beth Phouriaia, in northern Syria, during two decades, from 232 to 252, but it is impossible to say whether they stem from one particular archive. I will leave these problems to the specialist and concentrate on two of the Greek documents, one a petition and the other one a contract of sale. The high quality of their publication makes it superfluous for me to introduce them by more than the briefest description.

The petition, P.Euphr. 1, was addressed to the governor of Syria Coele, Julius Priscus, brother of the emperor Philip Arabs, acting governor,

⁸ Publication started in 1989: D. Feissel, J. Gascou, 'Documents d'archives romains inédits du Moyen Euphrate (IIIe s. après J.-C.)', *Comptes rendus de l'Académie des Inscriptions* 1989, 535-561; J. Teixidor, 'Deux documents syriaques du IIIe siècle après J.-C., provenant du Moyen Euphrate', *CRAI* (1990), 144-166; J. Teixidor, 'Un document syriaque de fermage de 242 après J.-C.', *Semitica* 41-42 (1993), 195-208; D. Feissel, J. Gascou, 'Documents d'archives romains inédits du Moyen Euphrate (IIIe s. après J.-C.). I. Les pétitions (P.Euphr. 1 à 5)', *Journal des Savants* (1995), 65-119. D. Feissel, J. Gascou, J. Teixidor, 'Documents d'archives romains inédits du Moyen Euphrate (IIIe s. après J.-C.). II. Les actes de vente-achat (P.Euphr. 6 à 10)', *Journal des Savants* (1997), 3-57. Our first document has been published first in Feissel-Gascou 1989, op.cit., and then again as P.Euphr. 1 in Feissel-Gascou 1995. Op.cit.. I refer to the second edition.

cumulating with the governorship of Mesopotamia,⁹ on August 28th, 245. Its editors point out that the group of five petitions to which this one belongs was “hardly different from the hundreds of petitions which the Egyptian papyri or the inscriptions of various provinces of the empire have preserved for us. On this level, as on so many others, Rome is everywhere the same.”¹⁰ Four villagers of Beth Phouriaia, with clearly non-Roman names, address themselves to the governor in an attempt to receive his assistance in a property dispute with some fellow-villagers. Nothing unusual there, but, while passing by various other problems, the question arises of the legal system that is presumed here. The impression given is that this is Roman law, or perhaps we should say, that an attempt is made to present the case in such a way that under Roman law a favourable outcome would be possible. The text is as interesting for what it says as for what it does not say.

The facts of the case are simple. The petitioners have a conflict with their fellow-villagers over “a piece of land and other things” (6), the governor's court has been approached, and, after a long wait of eight months, the case has been admitted (7), a partial hearing has taken place and an adjournment ordered until the moment the governor would be again on the spot. “Seeing that still no judgment has been given in the case and that the fellow-villagers try to throw us out of the land on which we live and to commit violence before the trial, and seeing that the imperial constitutions, which you more than anyone else know and venerate, order that those who are in possession remain in that position until the trial; for that reason we take refuge with you and ask of you that you will order, by way of your *subscriptio*, Claudius Aristo, *vir egregius, procurator* in Appadana, who is in charge of the diocese, [to make sure] that that everything be kept in its present state¹¹ and that the use of violence be prohibited until good fortune allows that you will again be on the spot; if successful, we will be eternally grateful to your good fortune.” (10-17).

It has been noted by Feissel and Gascoü that the petition asks for “a way of protection which evokes the interdicts *unde vi* and *uti possidetis* of the praetor's Edict”.¹² If we take the petition literally, the other side has so far been unsuccessful in trying to drive out the petitioners with force (10-11). The *interdictum uti possidetis* would best fit that situation, as the desired

⁹ Feissel-Gascoü 1995, op.cit. (n. 8), 80-83.

¹⁰ Feissel-Gascoü 1995, op.cit. (n. 8), 66.

¹¹ The Greek text has ἐν ἀκεραίῳ, which is the standard translation for the Latin legal term *in integro*.

¹² Feissel-Gascoü 1995, op.cit. (n. 8), 74.

order would be aimed at maintaining the status quo and prohibiting the use of violence. If, on the other hand, violence had been effective and possession had been lost, the *interdictum unde vi* would be a suitable remedy, as it would order restitution. There is, however, little to choose between these two remedies: in both interdicts an *exceptio vitiosae possessionis* would be inserted, i.e., the decree would only apply if the petitioner had not himself been at fault vis-à-vis the other party in obtaining possession, so that their result was the same, namely the protection of possession that was itself not unlawful.¹³ At the same time we may note that these interdicts are not mentioned, neither by name nor by way of a quotation. The substance of the petition, however, undoubtedly asks for a decree identical with an interdict: *uti nunc possidetis ... vim fieri veto* perfectly expresses the villagers' desire. It looks as though the villagers in Syria are in fact asking the same remedy as was available to the inhabitants of the city of Rome. The “imperial constitutions” (12) seem to me a short-hand for Roman law, not necessarily one or more specific constitutions. Even if the latter were the case, it would again be notable that the specific constitutions quoted by Deissel and Gascou are not referred to. One cannot help wondering whether such precise information would be generally available.¹⁴

The petitioners, by the way, did not receive a direct answer: “Aristo ... will deal with your request” (20-21). For the annotation *legi* (22) I refer to the commentary of the editors.¹⁵ The σθ in the same line has been interpreted as a “number of reference: 209” in the editio princeps.¹⁶

¹³ For the text of the interdicts see O. Lenel, *Das Edictum Perpetuum* (Leipzig 1927, 3rd ed.), §§ 245 and 246, or FIRA (= *Fontes Iuris Romani Antejustiniani*) I: *Leges* (Florence 1941, 2nd ed. by S. Riccobono), 379-380. The procedure is described in any textbook of Roman law, very concisely e.g. B. Nicholas, *An Introduction to Roman Law* (Oxford 1972), 108-109, and in greater detail W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* (Cambridge 1966, 3rd ed. rev. by P. Stein), 729 ff.; M. Kaser, *Das römische Privatrecht*, I. Handbuch der Altertumswissenschaft X.3.3.1 (Munich 1971, 2nd ed.), 396-400 and Idem., *Das römische Zivilprozessrecht*. Handbuch der Altertumswissenschaft X.3.4 (Munich 1996, 2nd ed. by K. Hackl), 408 ff. Suffice it to say that it is in essence an administrative procedure, in many cases preparing the way for a judicial procedure, which in this case it seems to accompany.

¹⁴ Willem Zwalf draws my attention to a rescript of AD 204, preserved in one Greek and in several Latin copies (Oliver 1989, op.cit. [n. 2], no. 256, with literature) which opens with the phrase: “You seem to be ignorant of the *senatus consultum*”, and going on to tell the addressee that, if he were to consult with the experts, he would find that etc.. This would seem to suggest that expert knowledge would be at least within reach.

¹⁵ Feissel-Gascou 1995, op.cit. (n. 8), 79-80.

¹⁶ Feissel-Gascou 1989, op.cit. (n. 8), 550. This is in all probability an archival reference. Cf. E.G. Turner, *Greek Papyri. An Introduction* (Oxford 1986), 136 ff.

The second document referred to above is a sale of a slave, preserved in two copies, P.Euphr. 6 and 7¹⁷ (November 6th, 249). The document has been styled ‘objectively’: A has sold, B has bought (1-3). Here we meet a number of *Aurelii*, the beneficiaries of the *Constitutio Antoniniana*, not only as parties to the contract, but also as witnesses in Syriac, beginning with ‘WRLS. The seller, Maththabeine, confirms the sale and delivery upon receipt of the price of a 13-year old slave, which is being described in some detail. Then (19 ff.) the seller undertakes (ἀναδέχεται) that she will be answerable for whole or partial eviction, and, in case of failure, will pay back the price plus damages (19-23). Furthermore, in case of “ἱερᾶ νόσος” (epilepsy) within the next six months, she will take back the slave and return the price (23-26). Finally, a formal confirmation is recorded that all has been carried out in good faith (26-29).

Again the question must be asked which legal system is being presupposed here, and again the answer is that there is much that speaks for Roman law. In fact we are dealing with a standard *emptio venditio*, as also noted by the editors. The only guarantee lacking here is that of *stipulatio duplae*, i.e., a formal promise that the seller will pay double the price to the buyer in case of eviction. Such a guarantee may be found in another sale from the same dossier, P.Euphr. 9, l. 24.

The formal promise at the end is slightly unusual in that the words ἐπηρώτησεν — ὡμολόγησεν have been extended with πίστει.¹⁸ This renders our document very similar to two Pamphylian sales of about one century earlier.¹⁹ The same phenomenon may be observed in some of the Palestinian P.Yadin of about AD 130,²⁰ and again, in the same region as our P.Euphr., in some of the P.Dura dating to the third century.²¹ In itself the words ἐπηρώτησεν — ὡμολόγησεν are a standard rendering of the Roman *stipulatio*. As Gaius tells us, a *verborum obligatio* was originally brought about by the use of the word *spondeo*, which was reserved for Roman

¹⁷ Feissel-Gascou-Teixidor 1997, op.cit. (n. 8).

¹⁸ As also noted by Feissel-Gascou-Teixidor 1997, op.cit. (n. 8), 5 with n. 12.

¹⁹ BGU III 887 of AD 151 = FIRA III: *Negotia* (Florence 1943, 2nd ed. by V. Arangio-Ruiz), no. 133; a very close parallel is P.Turner 22 of AD 142. The formula in the former has been discussed by D. Simon, *Studien zur Praxis der Stipulationsklausel* (Munich 1964), 49-50; the latter had not yet been published. Simon points out the parallel use of *fide* in Latin documents of the 2nd century AD.

²⁰ See P.Yadin 17, 18, 20, 21, 22, 37, none of them known to Simon (see previous note). P.Yadin 21-22 pertain to a sale, the other documents relate to transactions of a different type.

²¹ E.g., the sale in P.Dura 26 of A.D. 227 (cf. Simon 1964, op.cit. [n.19], 103). Other transactions showing the word πίστει are P.Dura 29 of A.D. 251 and 32 of A.D. 254. The famous Syriac sale in P.Dura 28 does not contain the equivalent of a *stipulatio*.

citizens. In addition to this there was *inter alia* a *fidepromissio*, which originally was a 'peregrine' version of the same contract.²² In a *fidepromissio* someone promised on his *fides*, which according to the Roman view constituted a general standard of behaviour among all nations: it was part of the *ius gentium* and therefore available to Romans and non-Romans alike. The Greek formula we find here certainly is a logical equivalent of '[A has asked the question:] *fidepromittisne?* [B has answered:] *fidepromitto*'.

It would not be correct, though, to link the use of the word *fides*/πίστις in a *stipulatio* exclusively with peregrines. Kunkel has explained the use of *fides* in its wording as a form of verbal contract, in which the promissor, peregrine or Roman citizen, would be bound by *oportere ex fide bona*. The words *ex fide bona* would refer to the fact that not some *lex*, but *fides* was the basis of the obligation. In the so-called "classical" period the addition of *ex fide bona* to *oportere* would have been felt as an anomaly and therefore omitted.²³ Although the explanation is convincing as a history of the verbal contract, it must be stressed that Kunkel does not deal with the papyri, some of them not yet known by then, and all of them of a later date than the time in which the addition of the clause had become an anomaly. The theory explains the disappearance of *fides* from the context of a *stipulatio*, but leaves its presence in the second and third centuries to be explained.

The matter clearly calls for further investigation. In the present context, two points may be noted. First, only one parallel is known from Egypt.²⁴ Second, one wonders whether its repeated occurrence in the Euphrates region within a relatively short period should not be considered more than a coincidence. In any case, all this does not make our document less Roman.

Our two documents are neither unique nor spectacular, yet extremely important. Their value from a prosopographical point of view has been exploited by Feissel, Gascoü and Teixidor, and I do not intend to go over the same ground again. My present concern is their value from a legal perspective. The dossier they belong to demonstrates the existence of a legal

²² Gaius, *Institutiones* 3.92-94.

²³ W. Kunkel, 'Fides als schöpferisches Element im römischen Schuldrecht', *Festschrift Paul Koschaker* II (Weimar 1939), 1-15. The legal point involved is of no direct concern here.

²⁴ P.Mich. inv. 257 of A.D. 213 (ed. F.T. Gignac, 'A Document from the Reign of Caracalla in the Michigan Collection', *Bulletin of the American Society of Papyrologists* 13 [1976], 93-97), a loan between Roman citizens.

culture in Syria in the middle of the third century AD which is at least equal to that of Egypt. These papyri speak to us in terms that evoke the world of Roman law without exactly corresponding to, e.g., the *Institutiones* of Gaius, that archetypal provincial lawyer of the second half of the second century.²⁵ Other dossiers, such as the Palestinian papyri published as P.Yadin — roughly coeval with Gaius —, or that other third-century treasure from Dura-Europos, the P.Dura, present a similar picture. The documents are usually phrased in Greek, though indigenous languages may be found as well: Aramaic in the P.Yadin, Syriac in the P.Dura and P.Euphr.. The language of the new masters puts in an appearance as well.

Taken as a group, these papyri raise the question to what extent they can tell us how the Near East reacted to Roman influence in the legal field. Studies of this question have always shown an understandably strong emphasis on Egypt, and therefore not on the Near East proper; insofar as the Near East has been dealt with, the object of study has predominantly been the relations between Jews and Romans. The unique value of these papyri from the Euphrates region lies in their being neither Egyptian nor Jewish: they may enable us to ascertain whether Egypt as a territory, or the Jews as a nation, were considered special cases by the Romans. From a methodological point of view they confront us with the same question as all Greek papyri of any provenance. Even when they suggest a Roman character, their student cannot escape the sensation so aptly described by Greg Woolf as ‘becoming Roman, while staying Greek’.²⁶

A couple of decades ago Arnaldo Momigliano was delighted to proclaim the extinction of the legal historian: as a breed, they were just historians with legal expertise.²⁷ Be that as it may, it is a pity that nowadays the fascinating problem of the penetration of Roman law in the provinces is largely being neglected by legal historians, and it is greatly to the credit of the ‘normal, real’ historian that the problem is still on the agenda. The very fact that these papyri exhibit a Roman character makes them a splendid manifestation of the ‘impact of empire’, and a witness of the two-way

²⁵ As to his person we know next to nothing: see, e.g., A.M. Honoré, *Gaius* (Oxford 1962); on his work, see esp. H.L.W. Nelson, *Überlieferung, Aufbau und Stil von Gai Institutiones* (Leiden 1981).

²⁶ G. Woolf, ‘Becoming Roman, Staying Greek: Culture, Identity and the Civilizing Process in the Roman East’. *Proceedings of the Cambridge Philological Society* 40 (1994), 116-143.

²⁷ A. Momigliano, ‘Le conseguenze del rinnovamento della storia dei diritti antichi’, lecture originally delivered in 1963, in: Idem, *Sui fondamenti della storia antica* (Turin 1984), 185-203. I beg to differ — slightly: see my paper ‘Not new but novel. Notes on the historiography of Byzantine law’, *Byzantine and Modern Greek Studies* 22 (1998), 264-279, which, though dealing with a somewhat later period, tries to define the interests of the legal historian in general.

process of acculturation. That it is a two-way process is one of the reasons that one finds the legal content of papyri sometimes described as the 'law of the papyri', a convenient but at the same time rather odd and desperate term which begs the question of the legal system behind the documents.²⁸ It is in the study of that kind of problems that legal historians may make a contribution to the study of the encounter of two different worlds.

In the concluding part of this paper I would like to present some general considerations on the dossier of the Euphrates papyri. I am aware that several of them are concerned with old questions, but in some cases the answers have changed.

First, I agree with Galsterer²⁹ and, more recently, Cotton in her paper on the Babatha archive,³⁰ that no conscious, concerted attempts were made to introduce Roman law at all levels in the newly acquired provinces of the expanding empire. Roman private law, however, was finding its way through the courts into daily practice. The main reason for this to happen should be sought in the fact that the provincial population might wish to receive the cooperation of the Roman authorities in the adjudication and, perhaps even more importantly, the execution of their pretended rights in Roman territory. No doubt an awareness of belonging to the Roman world and the actual Roman citizenship will have been contributory factors.

Second, in the provinces we see an imitation of Roman law as we know it from the city of Rome. How could it be otherwise? In substance, the edict of the *praetor urbanus* will have been the model for the provincial governor. Again, what could we expect otherwise? From a formal point of view, however, it is important to remember that the procedure *per formulam* has never been current in the provinces. The Roman courts in the provinces applied, from the start, the *cognitio* procedure. The *edictum perpetuum* of the praetor is based on the formula procedure. If we find in the Babatha archive blanket formulae of the *actio tutelae*, I would suggest that this is proof of their function as a model for points of substantive law, not of the availability of the formula procedure in the provinces.

²⁸ H.-A. Rupprecht, *Kleine Einführung in die Papyruskunde* (Darmstadt 1994), betrays his legal training in excellently bringing out the legal questions to which the Egyptian documentary papyri give rise. On a general level, see the pages which introduce his chapter on "Recht" (94 ff.), esp. 96-97 with literature at 99-102.

²⁹ Galsterer 1986, op.cit. (n.6), esp. 23 ff.

³⁰ H. Cotton, 'The Guardianship of Jesus Son of Babatha: Roman and Local Law in the Province of Arabia', *Journal of Roman Studies* 83 (1993), 94-108.

Third, never is there a simple reference to the edict of the governor of the province or to an imperial constitution; what we do find is references to their presumed contents. In the case of P.Euphr. 1 we do not find a reference to the *interdictum uti possidetis* or *unde vi* or to a specific constitution, but the petition is phrased in terms which evoke the *interdictum* and the imperial constitutions are generally mentioned. It is as though *θεῖαι διατάξεις* (12) stands for ‘imperial, i.e., Roman law’.

Fourth, Roman rule was conducive to the application of Roman law in the provinces, but by lack of its systematic introduction the reigning law could never become purely Roman law. What we know as the ‘law of the papyri’ has nothing to do with the papyri as such, but is a mixed system of Roman and indigenous rules. To be precise, of Roman law as it was understood and applied in the provinces, in combination with such elements of indigenous law as managed to survive in the competition with Roman law.

Fifth, as understanding of Roman law must have varied according to time and place, and as resistance of indigenous law must have similarly varied, we find in our sources varying degrees of resemblance. The principle of a mixed system makes for such variations.

Sixth, although it is true that the predominant language is Greek, we should not lose sight of documents in other languages however great the difficulties this presents. Here, too, the P.Euphr. offer an interesting illustration. The two Syriac documents invite comparison with the Greek pieces of the same dossier, as well as with the famous Syriac sale of P.Dura 28 of AD 242. One of the two Syriac Euphrates documents may be explained in Roman terms as a *datio in solutum*, the other presents greater problems. It is interesting to see that Teixidor implicitly assumes the influence of Roman law. I am not competent here, but a wider terminological investigation, against the more distant background of the Syro-Roman Lawbook,³¹ seems a desideratum. I would only like to remark here that in a comparable case, namely the Coptic papyri of Byzantine and post-Byzantine Egypt, Greek technical legal terms have established themselves in Coptic, whereas here they have not — or not yet? — made an inroad into the Syriac.

Seventh, we find ourselves on slippery ground. Precisely because Roman law seems to have been adopted voluntarily, it is difficult to be sure

³¹ See W. Selb, *Zur Bedeutung des syrisch-römischen Rechtsbuches* (Munich 1964) and R. Yaron, ‘Syro-Romana’, *Iura* 17 (1966), 114-164. A new edition, prepared by Selb and continued by H. Kaufhold, is forthcoming.

what was adopted in each case. Was it just an attempt to describe an agreement under indigenous law in Roman legal terms? Was it an attempt to make use of guarantees provided by Roman law of a position less well protected under indigenous law? And probably the terms of Roman and indigenous suggest stable bodies of rules, which in fact they were not, and in any case could not remain in this process of voluntary and eclectic transformation.

Eighth, in what form did the indigenous population make the acquaintance of Roman law? Again, a question surprisingly little studied. The established opinion seems to be that formularies or copy-books were in circulation, but these cannot have dropped from the air. *Lex provinciae* and *edictum provinciale* will have played their part, and so will have the example of precedents, but the path from the first elements to the formularies is misty. A nice case study is the appearance in Syria of πίστει in the *stipulatio*: why (almost) only there? A general point is the observation by Feissel *cum suis* that certain elements in the documents are found earlier in Syria than in Egypt.

Ninth, our investigation is seriously hampered by the Roman concept of *ius gentium*: the notion that a great number of legal concepts were common to all peoples. If we want to be absolutely sure that we are dealing with Roman law as opposed to indigenous law, we are of necessity restricted to cases where we can be sure of the difference. An example is the guardianship case of Babatha.

Tenth, and perhaps most important in terms of cultural history, the common element increasingly will have been Roman law. In other words, the penetration of Roman law in the provinces gave rise to a *ius commune*, a name that is usually reserved for a phenomenon we know in the western Middle Ages.³² For the legal historian it follows that documents such as our two texts of today should be studied from the assumption that Roman law *may* have been followed — please note the emphasis. One should of course not lose sight of the possibility that under a Roman coat an indigenous body may be hidden. It would, however, be a mistake to assume that the Roman coat counts for nothing. My personal bet would be that the Roman coat was often adopted in order to keep out the worst effects of bad weather, the bad weather in such cases being the possibility that the Roman authorities would

³² Some work has been done on the legal history of individual provinces: Egypt, Palestine, Arabia etc. What is lacking is a sketch of the general background. The 'law of the papyri' would be a daring concept if it were understood as the *ius commune* of the Eastern Mediterranean.

only favour a claim they could understand. If the fine coat makes the fine gentleman, we must not forget that, eventually, the man might actually become a gentleman.

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