



**HAL**  
open science

## “Introduction”

Katell Berthelot, Natalie B. Dohrmann, Capucine Nemo-Pekelman

► **To cite this version:**

Katell Berthelot, Natalie B. Dohrmann, Capucine Nemo-Pekelman. “Introduction”. *Legal Engagement: The Reception of Roman Law and Tribunals by Jews and Other Inhabitants of the Empire*, Presses de l’Ecole Française de Rome, pp.1-26, 2021, 978-2-7283-1464-5. hal-03347112

**HAL Id: hal-03347112**

**<https://hal.science/hal-03347112v1>**

Submitted on 17 Dec 2021

**HAL** is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L’archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d’enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

KATELL BERTHELOT, NATALIE B. DOHRMANN  
AND CAPUCINE NEMO-PEKELMAN

## INTRODUCTION

Roman law and jurisdiction were inseparable from Rome's *imperium*, and, alongside taxes and the military, were among its most tangible manifestations.<sup>1</sup> In addition, efforts to communicate the efficiency of the Roman legal system – through visual and discursive means – conveyed the ideological message of Rome's superiority with respect to other peoples. The challenge posed by Roman law to provincial populations was thus both political and ideological.

Let us first briefly consider the ideological aspect. Although some Roman literary traditions did acknowledge that the XII Tables originated in Greek law and philosophy, Romans generally perceived their legal system as an original production that displayed their own particular genius.<sup>2</sup> This perspective is exemplified in Cicero's *De oratore*:

Though the whole world grumble, I will speak my mind: it seems to me, I solemnly declare, that, if anyone looks to the origins and sources of the laws, the small manual of the Twelve Tables by itself surpasses the libraries of all the philosophers, in weight of authority and wealth of usefulness alike. [...] wisdom as perfect went to the establishment of her laws, as to the acquisition of the vast might of her empire (*imperium*). You will win from legal studies this further joy and delight, that you will most readily understand how far our ancestors surpassed in practical wisdom the men of other nations, if you will compare our own laws with those of Lycurgus,

<sup>1</sup> Laws and courts manifest institutionalized power. Harries 1998, p. 8: "Late Roman society must be viewed in terms of a multiplicity of relationships, in which the law was used as a tool of enforcement, an expression of power, or a pawn in the endless games played out between emperor and citizen, centre and periphery, rich and poor". Brélaz 2008, p. 45: "Law and order are, together with taxation, the main attributes of sovereignty and the most visible demonstrations of the power of an authority".

<sup>2</sup> Rome did indeed have "a culture and a knowledge that was not Greek," as Natalie Dohrmann and Annette Yoshiko Reed aptly write (Dohrmann and Reed 2013, p. 5). As a matter of fact, the Romans were quite unique in developing law as an independent field of knowledge and technical competence, distinct from religious precepts.

Draco and Solon, among the foreigners. For it is incredible how disordered, and well-nigh absurd (*ridiculum*), is all national law (*ius civile*) other than our own.<sup>3</sup>

According to Cicero, it is precisely when compared to the legislation of the most prestigious Greek cities, Sparta and Athens, that Roman law stands out for its superior wisdom. In this text, he deems the legislation of even famous Greek lawmakers, such as Lycurgus and Solon, “absurd”. As for barbarian laws, Cicero originally had little interest in them, as Carlos Lévy shows in this volume. More importantly, Cicero suggests in *De oratore* that the *imperium* of Rome coincides with its legal wisdom: consequently, it is advantageous for the peoples that Rome conquers to live under its sway. Yet, as Julien Dubouloz’s essay in this volume emphasizes, Cicero did not tackle the matter of provincial laws only in a rhetorical and ideological way; indeed, when practical legal and political issues were at stake, he displayed a more open and positive attitude towards local provincial law, at least in the Greek context.

In addition to voicing confidence in Rome’s superior laws, sources also make clear that central to Rome’s ideology was its commitment to the idea of access to justice. They reiterate that the empire offered people who lived under its dominion recourse to tribunals and justice, and, in fact, brought laws where none had existed before.<sup>4</sup> Although Roman jurists (*iurisconsulti*) such as Gaius were clearly aware of the legal systems of non-Roman peoples – as reflected in Gaius’ statement that each nation had its own laws but also shared common laws (*ius gentium*) with other nations – the assertion that the Romans had brought legal order to numerous areas and peoples continued to be made by various authors until the fifth century CE.<sup>5</sup> Writing under Augustus and Tiberius, for example, Velleius Paterculus states that after their defeat at the hands of Quintilius Varus, the Germans distracted the latter from his military duties by:

feigning a series of made-up lawsuits, now summoning each other to disputes, now giving thanks that Roman justice (*ea Romana iustitia*) was settling them and that their savagery was being rendered mild by this unknown and novel discipline and that quarrels that were customarily settled by arms were now being settled by law (*et solita armis discerni iure terminarentur*).<sup>6</sup>

<sup>3</sup> *De oratore* 1, 44, 195-197, trans. E. W. Sutton and H. Rackham, LCL, p. 137.

<sup>4</sup> Virgil’s *Aeneid* thus states that the Romans are a people destined to bring legal order to the *oikoumenē* (“to crown peace with the rule of law” [6.851-853]).

<sup>5</sup> On *ius civile* and *ius gentium*, see Gaius, *Inst.* 1, 1.

<sup>6</sup> Velleius Paterculus, *Compendium of Roman History* 2, 118, 1; translation by Clifford Ando in Ando 2016, p. 288.

In this passage, Velleius implies that the Germans perceived and understood the Romans' ideological claim that they had introduced barbarians to judicial proceedings and legal relationships. More striking is the fact that he also (ironically) grants them the ability to manipulate this claim.

Four centuries later, Rutilius Namatianus writes in a poem to Roma:

You have made from distinct and separate nations (*gentes*) a single fatherland: it has benefited those who knew not laws, to be captured by your conquering sway; and by giving to the conquered a share in your law, you have made a city of what was once a world (*dumque offers victis proprii consortia iuris, urbem fecisti quod prius orbis erat*).<sup>7</sup>

Echoing the wordplay between *urbs* (city) and *orbs* (world) – a pun already found in Ovid during the principate – Rutilius, who is writing after the *Constitutio Antoniniana*, claims that the empire is like a city ruled by common laws that has brought civilization (understood in terms of law) to the barbarian nations “who knew not laws”. A similar perspective is taken by Aelius Aristides, revealing both the prevalence of such ideas before 212 CE and the fact that Greek elites echoed Roman discourse.<sup>8</sup> Furthermore, as Clifford Ando's contribution to this volume shows, the Romans imagined that the judicial rituals that they performed outside the empire had the same ideological implications as those they performed inside it. In short, Rome brought legal order both within and beyond its realm.

With respect to the empire *stricto sensu*, Ari Bryen notes that “the ideology of the Roman legal system in the provinces was that fundamentally it was a system which could be accessible to all free individuals”.<sup>9</sup> The reality on the ground was very different, of course, as access to the governor depended on one's social status, personal connections, and wealth.<sup>10</sup> Nonetheless, access to Roman law and tribunals was vital not only to Roman imperial ideology, but also to its policy.

As both Fergus Millar and Kaius Tuori have emphasized, appeals to the emperor by provincials developed over the course of

<sup>7</sup> *De reditu suo* 1, 63-66, translation by Clifford Ando in Ando 2000, p. 49.

<sup>8</sup> Aelius Aristides, *Roman Oration*, §102.

<sup>9</sup> Bryen 2008, p. 200 (and 183). Clifford Ando has shown how before 212, the Roman jurists succeeded in integrating *peregrini* within the Roman *ius civile* by using legal fictions (Ando 2011; Ando 2016, p. 286-288).

<sup>10</sup> Financial aspects mattered; cf. Harries 2010, p. 98: “The choice of courts and adjudicators, therefore, was a wide one – wider perhaps for those with money who could afford the pressures of possibly long, drawn-out litigation in the Roman courts”.

time, along with the conviction that the emperor was the supreme source of justice and that everyone could – at least in theory – appeal to him.<sup>11</sup> Imperial rescripts, especially those of the Severan dynasty, indicate that it was possible even for commoners or small village communities to receive a response from the emperor. A few papers in this volume document the means by which provincials reached imperial authorities, using petitions drafted and pleaded by intermediaries, such as the *ekdikoi* in Greek cities, and patrons in general.<sup>12</sup> Other chapters deal with literary – and sometimes fanciful – evidence of trials that supported or criticized the legal performances of governors or emperors.<sup>13</sup>

Although the Romans claimed to have established an empire characterized by legal order, it would be wrong to imagine them as imposing their laws on the populations that they conquered. As John Richardson notes,

The history of the development of Roman law in the provinces is not one of systematic exportation of one pattern of law to replace others, undertaken by an imperial power anxious to impose uniformity on its subjects. Still less does it seem to be the adoption by non-Romans of a set of laws seen as intrinsically superior to their own.<sup>14</sup>

This remained true even after the *Constitutio Antoniniana*, which did not make local laws or courts disappear. As Caroline Humfress points out, “In reality, no state act obliged Roman citizens to use Roman private law. Citizenship should be understood rather as an enabling mechanism offering access to the juridical procedures and remedies of the society at different levels”.<sup>15</sup> And yet, late in the third century or the beginning of the fourth, Menander of Laodicea noted that in his time there was no longer any point in praising a city for its laws “because we use the universal laws of the Romans”.<sup>16</sup> Indeed, from the first century BCE through late antiquity, Roman law was a political, legal, and administrative reality that became ever more present in the lives of (most) provincials,

<sup>11</sup> As illustrated by the anecdote reported in Cassius Dio 69, 6, 3, concerning Hadrian. On appeals to the emperor, see Millar 1977, p. 507-516; Ando 2000, p. 362-364; Tuori 2016.

<sup>12</sup> See the contributions by Aitor Blanco-Pérez, Julien Fournier, and Capucine Nemo-Pekelman.

<sup>13</sup> See the contributions by Ari Bryen and Kaius Tuori.

<sup>14</sup> Richardson 2015, p. 56.

<sup>15</sup> Humfress 2013a, p. 80.

<sup>16</sup> Menander, *Treatise* 1, 3, 361-365: “In the public sphere, we consider whether the city accurately lays down legal conventions and the subject matter of the laws – such as inheritances by heirs and other topics covered by the laws. (This aspect, however, is now redundant, because we use the universal laws of the Romans.)” Translation in Humfress 2013a, p. 73. See also Lepelley 2002, p. 848-850.

even if its concrete manifestations varied from place to place and continued evolving over time.

Romans may not have imposed their laws on subject peoples, but this does not mean that their tribunals did not attract and adjudicate many provincial cases. Indeed, the corollary of the Roman interest in spreading and making accessible its rule of law was the latter's appropriation by provincials. Some of them turned to Roman courts rather than to local tribunals, or did so to appeal an initial sentence passed at the local level. Humfress and other scholars refer to this phenomenon as "forum shopping".<sup>17</sup>

Already at the time of the Republic, *peregrini* could and did have access to Roman civil law in certain cases because Roman jurists (*iurisconsulti*) created legal fictions for praetors and governors' courts that enabled *peregrini* to assimilate to Roman citizens. Roman civil law thus became "an instrument of empire" – to use Clifford Ando's expression – from very early on.<sup>18</sup>

Furthermore, from Augustus onward, access to Roman courts became possible not only on the grounds of Roman citizenship or a legal fiction, but also on that of the nature of the case.<sup>19</sup> Anna Dolganov argues that a comparison of Roman legal sources to papyrological evidence of Roman jurisdiction in Egypt reveals that before 212 CE, "these Roman rules and remedies were dispensed by Roman courts to provincials regardless of their civic status".<sup>20</sup> The case of Dionysia in second-century Egypt (P. Oxy. II 237, ca. 186 CE) indicates that this policy was known to provincials, who were often helped by legal advisers.<sup>21</sup> In her lawsuit against her father Chaeremon, for example, Dionysia and her legal advisers refer to previous court judgments, which they are able to cite. The archives of Babatha, a Jewish woman living in the province of Arabia close to the Dead Sea in the early second century CE, include three Greek copies of the *formula* of the Roman *actio tutelae* (which concerns the duties of the guardian of a child under wardship), which she apparently intended or was advised to use in a lawsuit in the Roman governor's court.<sup>22</sup> Roman legal forms, documents, and venues were thus widely known and used.

<sup>17</sup> Humfress 2013b. In other cases, provincials had to appear at a Roman court against their will – for example those who were the subject of criminal prosecution.

<sup>18</sup> Ando 2011, p. ix; see also Ando 2016, p. 285-288.

<sup>19</sup> Hurllet 2011, p. 132-133; and the introduction of Julien Fournier's article in this volume, based on his doctoral work.

<sup>20</sup> Dolganov 2019, p. 47.

<sup>21</sup> On this famous case, see also Bryen 2017.

<sup>22</sup> P. Yadin 28-30. See Cotton 1993; Harries 2010, p. 95-98; Czajkowski 2017, p. 93-105, and her paper in this volume.

The concept of granting provincials access to law and the empire's commitment to justice is corroborated by the care with which the Roman administration preserved copies of imperial rescripts, letters, edicts, and court judgments. This care played an important role in making the system appear trustworthy and contributed to the impression that Roman administrative and legal decisions were firmly established and of lasting impact. It is not by chance that even rabbinic literature explicitly records the existence of administrative archives.

Within what frameworks and under what considerations did provincial populations choose to turn to the different courts open to them? As Jill Harries rightly emphasizes, the appropriation and use of the Roman legal system was not tantamount to political support for Rome.<sup>23</sup> Most cases of appropriation were opportunistic, with individuals trying to find the legal framework that best served their needs. Litigation offered an opportunity to reassess the respective value of the legal solutions provided by different systems. A great deal of negotiation ensued among patrons and legal experts with a good knowledge of both Roman and local laws. The result was the emergence of hybrid forms of law. Recent scholarship has, in fact, emphasized the active nature of the provincial reception of Roman law, distancing itself from the vision of provincials as passive subjects of Roman rule.<sup>24</sup>

This new scholarly awareness of the active role played by provincials in negotiating – and in some cases even modeling – Roman law, goes hand in hand with new theoretical debates, particularly those dealing with the notion of legal pluralism. In a forthcoming book, Humfress argues that “the dominant trend in late Roman ‘law and society’ studies has been legal centralism: exploring how the formal, ‘centralised’, legal rules and pronouncements were received and applied (or not) in practice”. Critical of the concept of legal pluralism, which she associates with the legal centralist perspective, Humfress prefers the notion of multilegalism and adopts a bottom-up approach that aims to challenge the center-periphery model by taking “the social” as a starting point and exploring “when, where, how and why ‘the legal’ appears in our sources as a specialist, technical, discourse”. She admits nonetheless that “the concept of multilegalism is not intended to sideline or downplay

<sup>23</sup> Harries 2010, p. 98.

<sup>24</sup> Harries 2010, p. 98: “Babatha’s archive shows that even relatively obscure people could hope to use, or manipulate, Roman justice in their interests, and that they were scrupulous in compiling the documents required for them to do so. But they also show that the formal judicial system was only one element in the resolution of disputes”.

the fundamental importance of Roman imperial law and bureaucratic structures in late antiquity”.<sup>25</sup> This remark is important as we need to find balance between seeing law mainly as a product of the state, on the one hand, and placing too much emphasis on the individual or collective strategies of local actors (both before and after 212 CE), on the other. As is often the case, different perspectives and approaches need to be combined, depending also on the specific questions being asked.

In *Localized Law: The Babatha and Salome Komaise Archives*, Kimberley Czajkowski acutely observes that:

Provincials [...] did not think in terms of “systems” and picking between them, they thought in terms of authorities [...] how to appeal to them, how to gain their favour and thus win their help with enforcement, or how to harness certain concepts of authority to lend weight to their documents and transactions.<sup>26</sup>

While her statement reflects a bottom-up approach similar to that of Humfress, it also draws our attention to the importance of authority as a key notion at the juncture between the political and the legal. What is law without enforcement? In other words, a focus on local actors should not obscure the discrepancy in power that lies behind the encounter between the imperial legal system and the provincials, their laws, and their local instances of jurisdiction. In short, Roman law was and remained an “instrument of empire”.

The tangible presence of Roman laws and courts in the provinces and the ideological message that came with them cannot have left Jews indifferent. They may have triggered a sense of rivalry in those among the Jews who were devoted to their ancestral laws. Hence, Josephus’ emphasis on the perfection of Judean laws in *Against Apion* is probably a response not only to anti-Jewish authors such as Apollonios Molon and Apion, but also to Roman claims about the superiority of their laws.<sup>27</sup> Boaz Cohen once referred to the Jews and the Romans as “the two most legally minded peoples of antiquity”; the question is whether the former’s development towards “legalism” was in part a response to the Roman context.<sup>28</sup>

Rabbinic literature occasionally responds directly to Roman claims. Admittedly, rabbinic opinions vary on nearly every subject,

<sup>25</sup> Humfress forthcoming; see also Humfress 2013a. We thank Caroline Humfress for sending us a description of her book before its publication.

<sup>26</sup> Czajkowski 2017, 200.

<sup>27</sup> See *Ag. Ap.* 2, 145-296, especially 279-286, 291-295.

<sup>28</sup> Cohen 1966, vol.1, p. 123. On rabbinic “legalism,” see Dohrmann 2013, p. 63-64.



and one should not expect to find a unified perspective even on the question of Roman law and Jews' participation in the Roman legal system. However, certain trends are evident. Apart from a few exceptional statements about the positive role played by the Roman legal order, rabbinic views of Roman law and courts are negative. According to the Mishnah, a compilation of Jewish law edited in the early second century CE, R. Hananiah (a rabbi active in the second half of the first century CE) advised: "Pray for the peace of the ruling power [Rome], since but for fear of it men would have swallowed up each other alive".<sup>29</sup> Genesis Rabbah, a much later midrash (biblical commentary), expresses a similar idea. In reference to Genesis 1:31 ("And God saw everything that he had made, and behold, it was very good"), it attributes a surprising notion to Resh Laqish (a third-century CE *amora* or sage), namely, that even God had declared the "earthly kingdom" (identified as Rome in this context) "very good" because "it exacts justice [*dikion*, from Greek *dikē*] for the creatures [i.e. for human beings]".<sup>30</sup> Most rabbinic texts, however, challenge Rome's claim that it had established legal order within the empire. Another passage in Genesis Rabbah portrays Rome as an "evil kingdom" that "steals and oppresses while pretending to be administering justice" (by erecting a *bimah*, a platform for the tribunal).<sup>31</sup> This passage reflects sharp criticism of Roman judicial courts and legal decisions; although these may look like legal performances, they are, in fact, a parody of justice.<sup>32</sup>

Still other passages reflect a sense of rivalry and competition between Rome and Israel in the field of law and jurisdiction. According to Genesis Rabbah (83:2), Rome (lit. Edom) appoints kings, while Israel appoints judges. This opposition could mean that faced with Rome's huge political and military might and the emperor's nearly absolute power over jurisdiction (at least from a Jewish perspective), Israel erected the power of the law as symbolized by judges (and not kings). The midrash suggests that Israel, not Rome, has the proper *legal* system. Other rabbinic texts that describe Romans seeking knowledge in the Torah and praising Jewish law clearly reflect a sense of rivalry between rabbis and Rome as well as the conviction that the Torah comes closer to perfection.<sup>33</sup>

<sup>29</sup> Mishnah Avot 3:2, trans. Danby 1933, p. 450.

<sup>30</sup> Genesis Rabbah 9:13 (authors' translation, based on the edition of Theodor – Albeck 1927, p. 73-74).

<sup>31</sup> Genesis Rabbah 65:1, ed. Theodor – Albeck 1927, p. 713.

<sup>32</sup> Leviticus Rabbah 13:5.

<sup>33</sup> Sifre Deuteronomy 344 (ed. Finkelstein, p. 401); y. Bava Qamma 4:3, 4b; b. Bava Qamma 38a; Cohen 1966, vol. 1, p. 24-25.

That the rabbis – as experts in Jewish law and as provincials participating in the political and judicial culture of the Roman empire – should be challenged by Roman law and jurisdiction and react to this challenge, is not at all surprising. As Natalie Dohrmann points out:

To the extent that rabbinic religious discourse is legal discourse, and religious engagement is about the law, one should expect to figure external threats primarily not as doctrinal but as jurisdictional – concerning questions of sovereignty [...]. Dangers should not be first expected to be those posed by apocryphal books, rival sermons, or even false messiahs, and heretics – despite their distaste to the rabbis – but posted imperial edicts.<sup>34</sup>

Rabbinic religious discourse is legal discourse, yet we have to add that conversely, rabbinic legal discourse is religious discourse. This equation must be taken seriously, as must the connection between law and authority or sovereignty.<sup>35</sup> Rabbis were legal experts, but the authority of the Torah ultimately derived from its divine origin.<sup>36</sup> Biblical texts such as Leviticus 18:3, which forbids the children of Israel to walk in the ways or laws (*huqqot*) of other nations, can be interpreted as referring to two radically different legal orders, that of Jews and that of non-Jews (whose diversity is irrelevant), and as forbidding Jews to participate in the legal systems of other peoples.<sup>37</sup> Some rabbinic texts do, in fact, make an effort to prevent Jews from turning to non-Jewish tribunals (a similar perspective is evident in Paul's First Letter to the Corinthians).<sup>38</sup> Bernard Jackson refers to the rabbinic ruling according to which "one who voluntarily confesses to an offence involving a penalty and a fine is exempt from that fine" and, in the case of theft, "is liable only to restore the stolen property, or its value" – pointing to m. Shevu'ot 5:4, m. Ketubbot 3:9, m. Bava Qamma 7:4, and t. Bava Qamma 8:2 – and suggests that it "is one of a series designed to keep disputes within the Jewish community, and thereby prevent them from being taken to alien, i.e. Roman, jurisdiction".<sup>39</sup> The problem was political but also religious. It had to do with the nature of the authority involved.

<sup>34</sup> Dohrmann 2015, p. 198.

<sup>35</sup> As Boaz Cohen aptly notes, "Romans were the only people of antiquity who disentangled completely their civil law from all their religious precepts in historical times. [...] The Jews did not make this distinction" (Cohen 1966, vol. 1, p. 29).

<sup>36</sup> On the notion of divine law in Jewish thought, see Hayes 2015.

<sup>37</sup> Beth Berkowitz has shown that there are two main exegetical trends with regard to Leviticus 18: a cultural one (laws as a way of life), and a legal one (laws as a judicial system, including courts). See Berkowitz 2012 and 2017.

<sup>38</sup> Jackson 1975, p. 237; Hezser 1997, p. 476-477; Lapin 2012, p. 98-111; and Berthelot's chapter in this volume.

<sup>39</sup> He mentions as a possible source "the Roman rule of *lis crescens*, e.g. in the *Lex Aquilia* (*Dig.* 9, 2, 2, 1, Gaius)," adding: "If this is indeed its background, then

That this authority was deemed ungodly is evident in the fact that rabbinic texts described locations in which non-Jewish legal action took place as sites of idolatry.<sup>40</sup> Moreover, according to m. Yadayim 4:8, writing the name of the Roman governor alongside (or, in fact, above) the name of God in a bill of divorce was scandalous because it implied that the authority of the governor was equal to (or even surpassed) that of God.<sup>41</sup> As a rule, the rabbinic worldview strongly opposed the laws of Rome (or the gentiles in general) to the law of Israel (considered to be God's revealed law).

Despite this fundamental ideological divide, the rabbis' practical strategy to cope with the Roman legal system and its very concrete presence in Palestine and other settings throughout the empire varied. It consisted of criticism and rejection, on the one hand, and accommodation – perhaps even imitation – on the other.

First, the rabbis tended to *ignore* Roman law while building an alternative system of their own. To quote Dohrmann, “How did the rabbis think they fit into this world of ever encroaching imperial law, even as they were building a sprawling legal cosmos of their own? It is clear that on the whole, rabbinic laws simply ignore Roman law, implicitly allowing it no jurisdiction”.<sup>42</sup> This strategy is evident in works such as the Mishnah and the Tosefta. Although in many ways *sui generis*, the Mishnah (along with the Tosefta) is a unique redaction of a Jewish law code that ran parallel to Roman law codes developed in roughly the same period. The Mishnah differs strikingly from provincial literary productions even if compared, for example, to the Second Sophistic.<sup>43</sup> It also stands out from the Jewish evidence that we do have, even if little survives of non-rabbinic Jewish texts from the second century onward.<sup>44</sup> What is remarkable about the Mishnah is its deliberate disregard for Roman rule, let alone Roman legislation, as if the rabbis responsible for it had been operating in a vacuum.

the possibility that it was based on a Roman model assumes a somewhat novel and ironic complexion”. Jackson 1975, p. 237-238.

<sup>40</sup> See Berthelot's chapter in this volume.

<sup>41</sup> Mishnah Gittin 8:5; Tosefta Gittin 6:3.

<sup>42</sup> Dohrmann 2015, p. 199-200.

<sup>43</sup> Rosen-Zvi 2017; Schwartz 2020.

<sup>44</sup> If one considers the *Collatio legum Mosaicarum et Romanarum* a Jewish text (rather than a Christian one), as Edoardo Volterra, for example, did, then one may understand it as meaning that a Jew familiar with Roman law and writing in Latin could focus on the relationship between biblical and Roman laws – be it only through juxtaposition – and suggest that they had much in common. This approach stands in striking contrast with that of the Mishnah, but recalls Jewish Hellenistic works that compare Jewish and Greek laws in order to emphasize the superiority of the former. See Volterra 1930, esp. p. 86-123.

Second, when faced with Roman law, the rabbis' strategy was to learn the adversary's language and concepts and to use whatever was useful in them for their own codification project.<sup>45</sup> Daniel Sperber's dictionary reveals how many Greek and Latin legal and administrative terms exist in rabbinic literature. Most of them appear in aggadic rather than halakhic texts.<sup>46</sup> Yet, as several papers in this volume argue, halakhic texts occasionally display similarities to Roman legal principles or concepts. To quote Dohrmann once again: "The rabbis have imbibed an argot of and logic from Roman rule, and used it to articulate a distinctive counter-imperial world".<sup>47</sup>

Whether the rabbis' confrontation with the Roman legal system had an impact on the development of rabbinic halakhah has long been debated, and this volume is making inroads towards a new understanding of the problem. Until recently most scholars cautiously rejected the idea that Roman law influenced rabbinic halakhah, either at the level of the principles or tools associated with legal reasoning or at that of substantive law.<sup>48</sup> For example, in an article on legal fiction in Roman and rabbinic law, Leib Moscovitz concludes that "the shared and frequent use of fictions in Roman and rabbinic law is far more significant than the differences just mentioned," but nonetheless refrains from concluding that Roman legal thinking influenced the rabbis.<sup>49</sup> Many scholars prefer to speak about the general development of a common legal and judicial culture – a *Zeitgeist*, so to speak – in which the rabbis likewise took part. This is a cautious way of looking at the phenomenon, one with which it is hard to disagree. Yet when certain comparisons are made between Roman law and rabbinic halakhah, it

<sup>45</sup> Sperber 1984.

<sup>46</sup> Tropper 2005, p. 208-209, and note 7.

<sup>47</sup> Dohrmann 2015, p. 209.

<sup>48</sup> Cohen 1966; Jackson 1975, for example p. 22; Katzoff 2003, who writes on p. 286: "I have not yet seen a single convincing argument for any particular instance of reception of Roman law into Jewish law"; Hezser 2003, p. 13. In the past, the legitimacy or utility of the very comparison was questioned, but today this is hardly the case; see Cohen 1944, p. 409-410.

<sup>49</sup> Moscovitz 2003, p. 131, who further notes that: "Various scholars have pointed out that other ancient legal systems, such as ancient Near Eastern law, Greek and Hellenistic law, and pre-rabbinic Jewish law, are largely or totally devoid of legal fictions, in sharp contrast to Roman law and rabbinic law. The question accordingly arises: Why is legal fiction first (seriously) attested in Roman and rabbinic law? I cannot offer a conclusive answer to this question, although it seems almost impossible to believe that it is mere coincidence that fictions first developed prominently among the Romans and the Jews – 'the two most legally minded peoples of Antiquity,' in Boaz Cohen's famous words". See Cohen 1966, vol. 1, p. 123.

seems difficult to reject the conclusion that the rabbis knew something about Roman legal principles and were inspired by them.<sup>50</sup> In this volume, Orit Malka, Yakir Paz, Yael Wilfand, Catherine Hezser, Yair Furstenberg and others use close philological comparisons to increasingly trace the presence of Roman law in sources once believed to be entirely inner-rabbinic. The fact remains that Roman legal culture was the dominant one at the time that rabbis created the Mishnah, the Tosefta, and the Yerushalmi.<sup>51</sup> The tendency of minority groups to adopt features of the dominant legal system has been studied at length by legal anthropologists and should not be dismissed in this case simply because the rabbinic project differed in significant ways from that of Roman jurists – or worse yet, due to some kind of cultural essentialism.<sup>52</sup>

Still, as Bernard Jackson notes, “This is not to suggest that a finding that a particular institution or rule has been influenced by a foreign system ever provides a complete understanding”.<sup>53</sup> Cases of borrowing must also be understood from within the rabbinic worldview and halakhic thought. What is noteworthy is that rabbinic texts display a degree of legal acculturation in the realm of family law and with regard to the manumission of slaves, which, from a Roman point of view, pertained to the *familia* as well. One needs to investigate why the impact of Roman legal thought seems to manifest itself most strongly precisely in areas that rabbis were eager to control (as opposed to say, criminal law, which had long since been ceded to imperial jurisdiction). Several chapters in this volume tackle these issues and shed light on this phenomenon.<sup>54</sup>

All in all, Roman law and courts challenged the rabbis ideologically no less than practically, even as they inspired creative absorption and adaptation. In this sense, the rabbis stand in for the Roman provincial writ large.

Although this volume focuses on Jewish modes of engagement with imperial law in the context of the Roman empire, it does not limit itself to the Jews *stricto sensu*. As Hayim Lapin, in particular, argues, the rabbis living in Palestine in the third and fourth centuries CE may be considered as one example among other Roman provincial elites and thus as a case study of the provincial negotiation of

<sup>50</sup> Dohrmann 2008 and 2013; Malka – Paz 2019; Wilfand 2019.

<sup>51</sup> According to Hezser 2003, p. 13, to look for “influence” is not essential: “What is much more important is to investigate the ways in which rabbinic legal thinking participated in ancient legal thinking at large, where it reached similar solutions and where it differed from other bodies of legal knowledge”.

<sup>52</sup> Carbonnier 1994 (1978), p. 374-385.

<sup>53</sup> Jackson 1975, p. 15.

<sup>54</sup> See in particular the articles by Catherine Hezser, Orit Malka and Yakir Paz, and Yael Wilfand.

the imperial legal system.<sup>55</sup> To fully understand the Jewish perception and reception of Roman law and courts, we need to think of the Jews as both distinct and similar to other provincials within the empire and to approach their case from a comparative perspective. This book therefore integrates essays on various groups, taking into account the perspective not only of Jews, but also of Greeks, Egyptians, and Christians, as well as the Romans themselves. The contributions deal with both ideological constructs and concrete legal and political issues with the help of literary, legal, epigraphic, papyrological, and iconographic sources.

The first set of papers focuses on Roman perceptions of their own legal system and those of other peoples. As Cicero's work remains the starting point of any investigation on these issues, two chapters are dedicated to his work. In "Cicero, the law and the barbarians," Carlos Levy analyzes Cicero's thought on the laws of peoples deemed barbarian, such as Gauls or Africans. Cicero initially showed little interest in these; when speaking about barbarians, his tone tends to remain contemptuous throughout his corpus. However, in Cicero's writings, the category of "barbarian" combines anthropological and ethical dimensions and is used in various ways, depending on the rhetorical context. Ultimately, the fact that Cicero conceived of Roman laws as the written ones that came closest to the rational law of nature, led him to develop a philosophical notion of imperialism that entailed a legal dimension; Roman domination had to be beneficial to subjected peoples, especially in terms of bringing legal order to them. This was particularly true in the case of barbarians, who, from Cicero's perspective, differed from the "civilized" Greeks, whose legal traditions were in fact thought to have benefited Rome.

In "Accommodating former legal systems and Roman law: Cicero's rhetorical and legal perspective in the Verrine Orations," Julien Dubouloz, on the other hand, tackles the issue of Roman rule over subjected populations through Cicero's speech against Verres, the governor of the province of Sicily between 73 and 71 BCE. Contrary to the case of the barbarians, the Sicilian communities that complained against Verres were civic ones, whose laws and partial legal autonomy were recognized as such by the Romans. As an advocate for these communities, Cicero was bound to praise their laws, so his speech cannot be taken as a straightforward reflection of his personal judgment of them. Yet he clearly advocated for the recognition of local laws alongside Roman ones. As Dubouloz shows, it was above all in the realm of fiscal jurisdiction

<sup>55</sup> Lapin 2012.

– despite the fact that taxes were a field closely bound to Rome’s sovereignty – that Cicero praised the Greek rules in Sicily (the *Lex Hieronica*) and insisted that they should continue to prevail under Roman rule. In the context of Cicero’s prosecution speech, it is admittedly difficult to ascertain whether the reference to the *lex Rupilia*, which granted greater autonomy to local jurisdictions, was intended primarily as an argument against Verres, or whether the Sicilian cities benefited from a special regulation that set limits on the governor’s power. Whatever the case, in demanding respect for the rights of provincial (Greek) communities, including their right to be ruled according to their own traditional laws, Cicero displayed a combination of political, legal and ethical principles characteristic of what Romans held to be the key to good rulership.

In the next article, “Performing justice in Republican empire, 1 – 565 CE,” Clifford Ando focuses on Roman authors’ reflections on the ideological work carried out by judicial rituals not only within, but also beyond the empire’s borders. Accounts of staged trials outside the empire actually reveal what these authors thought judicial performances were supposed to do within the imperial framework. Ando looks at testimony from the reign of Justinian – the account of the trial of the murderers of the client-king Gubazes in Agathias’ *Histories* – all the way back to the time of Augustus. In Agathias’ own words, the meticulous care with which Justinian observed the legal procedure “was to impress the natives by a somewhat ostentatious display of the majesty of Roman justice”. In other words, it was through scrupulous respect for the formal aspects of legal procedures that political reparation was achieved. Drawing on literary and iconographic examples, Ando reveals the importance of recurring visual symbols, such as the *toga praetexta*, the curule chair and the raised platform, to the Roman ideology of jurisdiction. In short, he demonstrates how closely intertwined legal legitimacy was with ritual form.

The next section of the book examines how provincial literary sources represent imperial justice as a drama enacted within the framework of the governor or emperor’s court. In “A frenzy of sovereignty: Punishment in P.Aktenbuch,” Ari Bryen analyzes a peculiar Greek papyrological source that claims to be a record of a series of penal judgments passed by an unnamed governor. Bryen, however, argues that this rare document cannot be used to reconstruct trials involving penal law as it is unlikely that it records actual verdicts. P.Aktenbuch resembles a famous literary artifact, the *Acts of the Alexandrian Martyrs* or *Acta Alexandrinorum*. Nonetheless it inverts the latter’s perspective, as the governor is a positive character, whereas the accused are cast in a negative light. Speech appears

as the privilege of the governor, who serves as the embodiment of imperial justice. Indeed, in P.Aktenbuch, the “frenzy of punishment” stands in marked contrast to what is described in other provincial literary testimony – especially Alexandrian and Jewish – that sharply criticizes imperial justice. Bryen thus concludes that this unique literary artifact “should be read as part of a broader provincial conversation on the nature of sovereignty,” in which the position of each participant relates to his/her relation to imperial power.

Kaius Tuori deals with P.Aktenbuch’s counterpart, namely, the *Acta Alexandrinorum*. In “Between the good king and the cruel tyrant: The *Acta Isidori* and the perception of Roman emperors among provincial litigants,” he focuses on the trial of Isidorus under Claudius, in which the Alexandrian delegate violently opposes the emperor as well as King Agrippa, who represents the Jewish adversaries of the Alexandrians. The narrative, aimed at the Greek community in Alexandria and Egypt, reveals a deep bias against both Rome and the Jews. The *Acta Isidori* offers a window onto the provincial experience of imperial power and justice. It conveys the belief that the emperor is the ultimate judge yet can also act with caprice. Tuori argues that it is Isidorus’ confrontation with imperial injustice that prompts him to embrace self-sacrifice, which at first glance appears wholly irrational. He also claims that the *Acta Isidori* resembles tales of martyrdom known from Jewish and Christian texts and was at least partly influenced by these literary models. He concludes that the *Acta Isidori*’s portrayal of emperors as judges is atypical of provincial sources, and more closely resembles descriptions of bad emperors composed in the imperial center. The text may ultimately have been targeted at both a provincial and imperial audience, and been meant to exhort both to caution and diplomacy.

With Hayim Lapin’s article, “Pappus and Julianus, the Maccabaeen martyrs, and rabbinic martyrdom history in Late Antiquity,” we turn to yet another perspective on Roman jurisdiction – that of Jewish martyrdom narratives, likewise an example of “a drama of resistance before the state”. Lapin focuses on two groups of rabbinic stories, the first dealing with the two martyrs Pappus and Julianus, the second with the trial of a mother and her sons before “Caesar,” a narrative inspired in part by 2 Maccabees. In some versions at least, the heroes triumph by resisting an oppressive state that demands that they violate the divine Torah and thus call into question the very legitimacy of the emperor as judge. Lapin argues that though these stories are set in a second-century context, they reflect the construction of a Jewish history of martyrdom that



developed from the late fourth to the seventh century and was deeply informed by the Christian celebration of martyrdom. He thus concludes that “in late antiquity, sectors within the rabbinic community reframed their orientation to the state and society in the present by discovering themselves in a history of second-century imperial tribunals”.

The third part of the volume examines the very concrete circumstances and modalities in which provincials appealed to the emperor as well as the involvement of intermediaries, whose role was to build bridges between imperial courts and provincial litigants.

Aitor Blanco-Pérez, for example, shows that the imperial travels in eastern provinces provided opportunities for settling legal matters on the spot (*in plano*), that is, outside the tribunal and in the presence of the emperor. In the second century CE, however, it became necessary for an office dedicated *a libellis* to develop mechanisms for petitions and rescripts. Many sources documenting rescripts have come down to us from the Severan Age and the Tetrarch Dynasty thanks to compilations (the Hermogenian Code) and epigraphy. (Blanco-Pérez focuses particularly on the bilingual minutes from Dmeir Syria and the petition of Skaptopara in Thrace.) Access to such procedures was not straightforward as petitioners had to wait for the publication of subscriptions, presumably without public hearings. This is why – particularly when it came to complaints of violence – victims still tried to appeal to the emperor in person. Among much other material, Blanco-Pérez describes a judicial hearing (*cognitio*) in the presence of Caracalla recorded by documents from the imperial estate of Takina in north-western Pisidia that allow us to discover the many actors involved: praetorian prefects, chiefs of the imperial offices, and “friends,” on the one hand, claimants represented by a *defensor*, defendant, and *advocati*, on the other. Parties also needed logographers and legal experts for drafting the *exordium*, the *narratio*, and the *preces* (the claims).

The contributions of Julien Fournier and Capucine Nemo-Pekelman focus on the actors who served as an interface between provincials and imperial courts. In the eastern provinces, Greek cities relied on the services of *ekdikoi* to defend their rights. Fournier shows that the function of the *ekdikos* – which, in Hellenistic times, was dedicated to the diplomatic resolution of conflicts between cities – underwent two mutations in the Roman era: epigraphic evidence from the end of the Republic to the early second century suggests it was not a magistracy but a liturgy or *munus*. Being an *ekdikos* was a personal *munus*, meaning that, contrary to a

patrimonial one, it required personal skills. Unlike the very similar personal liturgy of embassy, serving as *ekdikos* was a judicial function. *Ekdikoi* were chosen *ad hoc* for punctual litigations due to their legal and procedural competence. Fournier assumes that, specifically in cases of litigation before imperial jurisdictions, the function required significant expertise in languages and law and, at minimum, knowledge of the *lex provinciae* (where it existed) and the provincial edict. After the first century, the function of *ekdikos* apparently changed into a magistracy (*archē*) based on elections, annuality, and collegiality. First-century sources document *ekdikoi* only at the provincial level; from the second century on we also find civic magistrates ranked in the *cursus honorum* after the archonate. Fournier notes that the civic magistrates in charge of defending their cities before tribunals may have been the institutional ancestors of the *defensores civitatis* created by imperial constitutions in the mid-fourth century. In any case, *ekdikoi* may have served as important intermediaries for bridging local and Roman laws.

Nemo-Pekelman emphasizes the role of Jewish intermediaries between individuals or *collegia* (mostly synagogues) and imperial courts based on legal and epigraphic sources from the western part of the late empire. Such intermediaries were involved in both the petition and rescript procedure and the judicial procedure (*cognitio*) before imperial courts. We must distinguish between judicial patrons who provided their clients with assistance but not *ex officio*, on the one hand, and advocates and *jurisconsulti* who acted in their professional capacities, on the other hand. Even if Jewish patrons were chosen from the ranks of the *honorati* and most probably possessed legal skills, only Jewish advocates are explicitly documented as having received a forensic education. After completing their studies, advocates could enroll to plead before courts at the municipal and provincial level, then enter the central administration. We know that some of them were employed in the *officia* of the chancery in Ravenna. Yet Jewish patrons and advocates were not of high rank as they came from curial families in small cities. They became an easy target for high-rank Catholics in the chancery and were banned from forensic functions after 425.

The next group of essays uses the anthropological concept of legal pluralism (as defined above) to focus on the impact of the Roman legal system on local laws. The first two contributions follow that of Capucine Nemo-Pekelman in so far as they focus on the western part of the empire. In “Legal pluralism in the Western Roman empire: Popular legal sources and legal history,” Soazick Kerneis refutes the standard claim that the implementation of genuine Roman law in the West – as opposed to the East – would have been

facilitated by the lack of local laws in the former. Certainly, local populations in the West did not have a legal system comparable to that of the Romans, but we need not restrict our concept of law to *leges* and *ius* as enforced by state coercion. Following archaeologists, Kerneis claims that the Romanization of western provinces has been exaggerated. To prove her point, she uses popular sources that document customary laws based on values quite different from Roman ones; a tile engraved in a shrine near Châteaubleau (France) in the second century CE contains eleven lines in a still cryptic Gallic language. Kerneis claims that this is a legal matrimonial document that combines a Celtic wedding tradition, which unfolds in several stages, with the Roman rule of consensus. She also analyzes second- and third-century curse tablets discovered in the south of Roman Britain, which have shed light on judicial praxis that was apparently influenced by a two-step praetorian procedure but also sought divine justice. Lastly, she addresses the so-called barbarians, that is, the *Germani*, the *Mauri*, the *Sarmati*, the *Alani* and especially the *Brittones* of the fourth to fifth centuries. These were *dediticii* subject to the disciplinary power of the imperial army. Kerneis claims that curse tablets indicate the use of the cauldron procedure, which would have been a mixed trial that applied late Celtic divination to late imperial *extra ordinem cognitio* as a sort of *quaestio*.

Marie Roux addresses the impact of Roman law on barbarians after they founded their own *regni*. Focusing on the Visigoths of Aquitaine, her contribution, “Judicial pluralism in the Visigothic kingdom of Toulouse: Special jurisdictions and communal courts,” shows that the judicial pluralism inherited from the Roman empire was still a reality in that period and that the new rulers established a legal framework within which they reorganized it. Roux offers a sharp analysis of several *interpretationes* of the Breviary of Alaric while looking at how this post-Roman kingdom preserved and changed the Roman legislation that regulated public and private trials. She also notes that the special jurisdiction of military courts was maintained for members of the *militia*. The compilers of the Breviary specified the conditions under which Jews could settle their disputes in communal courts. The greatest change from the original imperial constitution (*Codex Theodosianus* 2, 1, 2) lies in the stipulation that any arbitration led by a Jewish leader had to follow the standard Roman procedure *ex compromisso*, thus making clear that Jewish *maiores* were private arbitrators whose sentences were not binding.

Before addressing the impact of imperial law on rabbinic law, the volume examines cases of legal pluralism involving “non-rabbinic” Jews from a small village situated on the south coast of the

Dead Sea in the Province of Roman Arabia in the 120s. Kimberley Czajkowski analyzes three marriage contracts from the archives of Babatha and Salome Komaise: Papyrus Yadin 10 written in Jewish Aramaic, P. Yadin 18, and P. Hever 65 written in Greek (with a Romanized dating system and a *stipulatio*). All three reveal the use of highly diverse legal traditions that cannot be labeled as purely “Jewish” or “Greek”. Czajkowski wonders why and how such variations became available to these villagers. P. Yadin 10 was written by a groom, which may indicate the preservation of models of documents in a private context. As for the two papyri written in Greek, they were prepared by an identified professional scribe, who could have used the *formulae* available in the public archives of the province or benefited from the newly available expertise of legal advisers, Roman soldiers, new traders, or travelers. Such models seem to have been stored and transmitted in anticipation of litigation before imperial courts. Finally, the marriage contracts document the recent “provincialization” process, offering evidence of different interactions between local populations and Roman authorities not only within the same province or even community, but also within the very same family and even by the very same individuals.

According to Yair Furstenberg, the Mishnah too bears witness to the “provincialization” process in the sense that it is meant as a concrete response to judicial imperialism. Although much of the scholarship on rabbinic law treats it as utopian or conceptual, Furstenberg argues that it was driven by practical concerns: a desire to impact the actual court-based application of the law. His focus falls on two features that distinguish tannaitic civil law: the scale and scope of its categorical systemization, and its regular reliance on “custom” as a codified legal category in a range of situations. Such formal systemization, Furstenberg notes, has no preserved precedent in Jewish sources. He also detects a pattern in the rabbinic material that resembles the one noted by theorists of colonialism in other contexts. As Sally Engel Merry, for example, has shown, Hindu legal experts in colonial India were pushed to find a way to make their law legible and enforceable in imperially sanctioned legal venues.<sup>56</sup> Seen through this lens, the Mishnah’s apparent attempt to systematize and formalize a set of previously local and/or informal practices as law appears as an after-effect of and reaction to empire. Moreover, imperial engagement with local law required intermediaries; thus the rabbis in the Mishnah

<sup>56</sup> Merry 1991.

positioned themselves as local legal experts and situated themselves between Jewish law and imperial courts.

Section five brings together four case studies on the impact of imperial law on rabbinic law and legal thought. The first by Catherine Hezser offers a conceptual approach to the question, mapping out in broad strokes the hows and whys of the movement of Roman laws and legal thinking into rabbinic sources. The next two essays carefully trace the specific legal aspects of perplexing rabbinic laws. Orit Malka/Yakir Paz and Yael Wilfand find that Roman laws help answer questions left open by rabbinic law were one to strictly follow its internal logic. The final essay by Natalie Dohrmann hits the brakes on comparison by presenting a case that demonstrates the methodological dangers and pitfalls of analysis in situations where legal systems and even laws align, but the power structures in which each are embedded are radically different.

In “Did Palestinian rabbis know Roman law? Methodological considerations and case studies,” Catherine Hezser asks how rabbis may have learned Roman law and where it may have left an impact on their own legal thinking. She acknowledges the difficulty of finding instances of rabbis reading or otherwise studying Roman law directly and thus takes a more pragmatic approach, arguing elegantly and simply that we should expect to find Roman echoes in rabbinic law gathering around lived situations of self-interested cultural engagement. In short, though she grants that rabbinic law was largely internalist, she claims that in some cases, rabbis must have engaged either regularly or inevitably with Roman law. She insists that we should look to these sorts of laws for Roman influence, and in fact finds it. Certain business laws, for example, covered situations “where contacts between Jews and Romans were greatest and where mutual interests of smooth business dealings were involved”. To exemplify this point, Hezser demonstrates a specific awareness of Roman laws on shipping and on slaves as business proxies. But rabbinic self-interest did not always lead to adaptation. Indeed, in rabbinic family law the trend is to resist Roman norms, despite the rabbinic knowledge of Roman ways. In some instances, rabbis evidently felt that their cultural strictures were non-negotiable despite the temptation and threat of Roman laws and legal venues, as, for example, in the case of divorce law.

The next two papers investigate two additional areas of what was most likely real cultural contact: release from foreign captivity and conversion to Judaism. Such movements between cultures (from the outside, in fact, to the inside) seem to parallel the importation of external legal thinking. Cultural contact (even if conceptual) lead to places of cultural-legal transfer and intermingling.

Orit Malka and Yakir Paz examine the tannaitic laws of captivity and their legal aftermath – a topic in which encountering the imperial other is perhaps unavoidable. In “A rabbinic *postliminium*: The property of captives in tannaitic halakhah in light of Roman law,” the authors – careful to avoid the language of influence or imitation – explain the “internalization” of the logic of citizenship in rabbinic laws with regard to the personal status of the captive vis-a-vis his property. While some mishnaic law seems to protect captives’ control over their property, Malka and Paz see fissures in it. They identify a strain that denies captives’ control over their property until they are released. Such injunctions echo the Roman logic of citizenship, according to which Roman citizens, if sentenced as criminals, lose their property through the confiscation of their possessions or the degradation of their civic status. Captivity likewise severs a citizen from his property; as a captive, he is by definition no longer a citizen, and so loses rights over his property, among other things. Only upon his return and reinstatement as a citizen does he regain them. This, Malka and Paz argue, explains the discordant strain of rabbinic law.

In “A proselyte whose sons converted with him’: Roman laws on new citizens’ authority over their children and tannaitic rulings on converts to Judaism and their offspring,” Yael Wilfand similarly uses the “citizen” as the lens through which to reveal the Roman logic informing rabbinic ideas on Jews and Jewish belonging. Like the authors above, Wilfand homes in on questions pertaining to the preservation or dissolution of bonds, especially to property, in situations in which citizen status is interrupted. A convert to Judaism famously becomes a person without a history, legally stripped of family ties. How does this affect any claims to inheritance by a son born or conceived prior to conversion? Strikingly similar to Gaius, *Inst.* I, 92-94 on new Roman citizens, the rabbinic material does not recognize heirs from before the transformation or the new convert’s natural right or claim to property. Wilfand deems the “parallels between these two legal frameworks [...] too strong to be mere coincidence”. That said, structural similarities between legal *corpora* may still be explained by a range of motives that, in turn, distinguish rabbinic from Roman cultures. Thus the absorption of Roman forms may not always be driven by conscious self-interest, but in some cases may be better explained as the internalization and inevitable rabbinization of ubiquitous Roman concepts.

In “*Ad similitudinem arbitrorum*: On the perils of commensurability and comparison in Roman and rabbinic law,” Natalie Dohrmann points to the challenge of navigating the competing

demands of comparative jurisprudence – the analysis of legal systems and laws – and historical reality. In other words, how does the fact that one legal system controls courts and systems of enforcement inform the way in which we read similar laws lacking such a system. Dohrmann’s case study addresses the problem of informal and extrajudicial adjudication – arbitration – by addressing the systemic and theoretical imbalances behind apparently similar legal complexes. Romans developed and encouraged arbitration as a way of managing a diverse empire, accommodating legal pluralism, and managing the costs and logistics of applying laws. Though the empire had an interest in enforcement, it did not concern itself with the particulars of arbitrated civil disputes. Roman arbitration law hinged on the existence of actual courts of law that served as arbitration’s counterpoint and guarantor. Tannaitic law appears to acknowledge and regulate a similar second-order legal space, in which compromise stands in opposition to strict justice. However, Dohrmann observes that given the fact that *all* rabbinic adjudication would have been conducted from the Roman perspective of “arbitration,” it is odd that the rabbis preserved only an anemic set of traditions with regard to arbitration. She posits that the development of such a law would not only have worked against the theology of a revealed law, but would also have threatened to expose the absence of a mainstream court to which arbitration must necessarily have been secondary.

A final set of articles reflect on the articulation of law and self-perception or self-definition. In Katell Berthelot’s essay “‘Not like our Rock is their rock’ (Deut 32:31): Rabbinic perceptions of Roman law courts and jurisdiction,” the pragmatics of the preceding section give way to more explicitly “religious” concerns. Berthelot’s contribution looks to the tribunal itself, and though she sees large cultural patterns of accommodation, she focuses on particular strains of rejection that insist on religious separation. Some rabbinic sources seem not only to regard the Roman court as a challenge to their authority, but imbue their resistance with a rhetoric of idolatry and impiety and recast the tribunal as a locus in which the pious ideal of the tribunal as sanctified space – likened in some sources to the Temple – is set in contrast to the foreign court as the site of idolatrous abomination. In this way, Berthelot draws the legal theorist’s attention back to theology, a discourse often sidelined in comparative law.

In a similar vein, Ron Naiweld reads the Mishnah as a manifesto of rabbinic political theology. He takes seriously the religious rhetoric that runs through Roman law – from Ulpian’s comment that jurists are “rightly called priests (*sacerdotes*)” to

the providential reverence for the law depicted as a divine gift in Caracalla's *Constitutio Antoniniana*. By way of this fresh angle, Naiweld suggests that Rome's raw power or legislative ubiquity alone do not measure up to the empire's challenge to rabbinic authority. Instead, we should pay heed to the dangerous similarity between Roman and Jewish theological claims because it is this commonality that more perilously blurs lines between their respective ideals of nomistic piety. For Naiweld, the Jewish counter polity of the Mishnah can be seen in its innovative kingdom of jurists, one in which the idealized *beit din* is itself sovereign: "The privileged position attributed to the *beit din* makes it the *de facto* 'sovereign' of Israel and in that respect makes the presence of both temple and king superfluous".

With Kimberley Fowler's "Early Christian perspectives on Roman law and Mosaic law," our gaze turns to the early Church and to how early Christian thinkers tried to square the demands of Roman citizenship and sovereignty with their own religious identity and scriptural authority. Like the rabbinic sources, these Christian texts try to justify obedience both to imperial law and to the conceptually higher but more problematic claims of Mosaic law. Fowler focuses on sources contemporaneous with the Tannaim and early Amoraim. Her sources deploy a range of strategies that claim in common that Roman law is secondary to, derivative of, or dependent upon Mosaic law. Fowler underscores the dual significance of Mosaic law; for early Christians, it was both their own and that of the Jews against whom many of their writers were defining themselves. As such, this sort of Christian trope – a discourse entwining Roman and Mosaic law – was a supple one that could be turned polemically against Jews, but could also, depending on the situation, be drawn on to support the empire.

The volume ends with Christine Hayes's essay "'Barbarians' judge the law: The rabbis on the uncivil law of Rome". This piece usefully expands our horizon of debate by describing a discursive terrain on which the very (Greek) idea of law operated as a lever for ethnic conflict, identity politics, and the assertion of communal self in a world of national political conflict. She asks us to consider the long history of what she sees as a distinctly Greek opposition between Greekness and Barbarism, glossed by her as a struggle between those with (rational, reliable, by definition "civil-ized") law versus those ruled by tyranny and irrational violence (barbarism). This dichotomy was in turn absorbed and redeployed by nearly every culture subsumed by Hellenism, and, she argues, it is central to comprehending the Roman engagement with the rabbis. By reading closely the law of the rebellious son and the laws for



execution, she shows how rabbinic innovations are a form of cooptation of the Roman castigation of Jews and barbarians. Rabbinic law here inverts the dyad barbarism/law, and redirects it against Rome herself.

Katell BERTHELOT  
CNRS – Aix-Marseille University – berthelot@mmsh.univ-aix.fr

Natalie B. DOHRMANN  
University of Pennsylvania – dohrmann@upenn.edu

Capucine NEMO-PEKELMAN  
Centre d'Histoire et anthropologie du droit, Université Paris  
Nanterre – capucine.nemo-pekelman@parisnanterre.fr

## BIBLIOGRAPHY

### *Primary sources*

- Danby 1933 = H. Danby, *The Mishnah, Translated from the Hebrew with Introduction and Brief Explanatory Notes*, Oxford, 1933.  
Theodor – Albeck 1927 = J. Theodor, Ch. Albeck (ed.), *Bereschit Rabba, mit kritischem Apparat und Kommentar*, Berlin, M. Poppelauer, 1927 (*Veröffentlichungen der Akademie für die Wissenschaft des Judentums*).

### *Secondary sources*

- Ando 2000 = C. Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire*, Berkeley, 2000.  
Ando 2011 = C. Ando, *Law, Language, and Empire in the Roman Tradition*, Philadelphia, 2011.  
Ando 2016 = C. Ando, *Legal Pluralism in Practice*, in Ando – Du Plessis – Tuori 2016, p. 283-293.  
Ando – Du Plessis – Tuori 2016 = C. Ando, P.J. du Plessis, K. Tuori (ed.), *The Oxford Handbook of Roman Law and Society*, Oxford, 2016.  
Berkowitz 2012 = B. Berkowitz, *Defining Jewish Difference from Antiquity to the Present*, New York, 2012.  
Berkowitz 2017 = B. Berkowitz, *Approaches to Foreign Law in Biblical Israel and Classical Judaism*, in Hayes 2017, p. 128-156.  
Brélaz 2008 = C. Brélaz, *Maintaining Order and Exercising Justice in the Roman Provinces of Asia Minor*, in B. Forsén, G. Salmeri (ed.), *The Province Strikes Back: Imperial Dynamics in the Eastern Mediterranean*, Helsinki, 2008, p. 45-64.

- Bryen 2008 = A.Z. Bryen, *Visibility and Violence in Petitions from Roman Egypt*, in *Greek, Roman, and Byzantine Studies*, 48, 2008, p. 181-200.
- Bryen 2017 = A.Z. Bryen, *Dionysia's Complaint: Finding Emotions in the Courtroom*, in *Greek, Roman, and Byzantine Studies*, 57-4, 2017, p. 1010-1031.
- Carbonnier 1994 (1978) = J. Carbonnier, *Sociologie juridique*, Paris, 1994 (1978).
- Cohen 1944 = B. Cohen, *The Relationship of Jewish to Roman Law*, in *Jewish Quarterly Review*, 34, 1944, p. 267-280 and 409-424.
- Cohen 1966 = B. Cohen, *Jewish and Roman Law: A Comparative Study*, 2 volumes, New York, 1966.
- Cotton 1993 = H. Cotton, *The Guardianship of Jesus, Son of Babatha: Roman and Local Law in the Province of Arabia*, in *Journal of Roman Studies*, 83, 1993, p. 94-108.
- Czajkowski 2017 = K. Czajkowski, *Localized Law: The Babatha and Salome Komaise Archives*, Oxford, 2017.
- Dohrmann 2008 = N.B. Dohrmann, *Manumission and Transformation in Jewish and Roman Law*, in N.B. Dohrmann, D. Stern (ed.), *Jewish Biblical Interpretation and Cultural Exchange: Comparative Exegesis in Context*, Philadelphia, 2008, p. 51-65.
- Dohrmann 2013 = N.B. Dohrmann, *Law and Imperial Idioms: Rabbinic Legalism in a Roman World*, in Dohrmann and Reed 2013, p. 63-78.
- Dohrmann 2015 = N.B. Dohrmann, *Can 'Law' Be Private? The Mixed Message of Rabbinic Oral Law*, in C. Ando, J. Rüpke (ed.), *Public and Private in Ancient Mediterranean Law and Religion*, Berlin, 2015, p. 187-216.
- Dohrmann – Reed 2013 = N.B. Dohrmann, A.Y. Reed (ed.), *Jews, Christians, and the Roman Empire: The Poetics of Power in Late Antiquity*, Philadelphia, 2013.
- Dolganov 2019 = A. Dolganov, *Reichsrecht and Volksrecht in Theory and Practice: Roman Justice in the Province of Egypt (P. Oxy. II 237, P. Oxy. IV 706, SB XII 10929)*, in *Tyche*, 34, 2019, p. 27-60.
- Harries 1998 = J.D. Harries, *Law and Empire in Late Antiquity*, Cambridge, 1998.
- Harries 2010 = J.D. Harries, *Courts and the Judicial System*, in C. Hezser (ed.), *The Oxford Handbook of Jewish Daily Life in Roman Palestine*, Oxford, 2010, p. 85-101.
- Hayes 2015 = C.E. Hayes, *What's Divine about Divine Law? Early Perspectives*, Princeton, 2015.
- Hayes 2017 = C.E. Hayes (ed.), *The Cambridge Companion to Judaism and Law*, New York, 2017.
- Hezser 1997 = C. Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine*, Tübingen, 1997.
- Hezser 2003 = C. Hezser (ed.), *Rabbinic Law in Its Roman and Near Eastern Context*, Tübingen, 2003.
- Humfress 2013a = C. Humfress, *Laws' Empire: Roman Universalism and Legal Practice*, in P.J. du Plessis (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh, 2013, p. 73-101.

- Humfress 2013b = C. Humfress, *Thinking through Legal Pluralism: 'Forum Shopping' in the Later Roman Empire*, in J. Duindam et al. (ed.), *Law and Empire*, Leiden, 2013, p. 225-250.
- Humfress forthcoming = C. Humfress, *Multilegalism in Late Antiquity*, Oxford, forthcoming.
- Hurlet 2011 = F. Hurlet, *(Re)penser l'Empire romain. Le défi de la comparaison historique*, in *Dialogues d'Histoire Ancienne Suppl. 5. La notion d'empire dans les mondes antiques : Bilan historiographique*, 2011, p. 107-140.
- Jackson 1975 = B. Jackson, *Essays in Jewish and Comparative Legal History*, Leiden, 1975.
- Lapin 2012 = H. Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100-400 CE*, Oxford, 2012.
- Lepelley 2002 = C. Lepelley, *Le nivellement juridique du monde romain à partir du III<sup>e</sup> siècle et la marginalisation des droits locaux*, in *MEFRM*, 113-2, 2002, p. 839-856.
- Malka and Paz 2019 = O. Malka and Y. Paz, *Ab hostibus captus et a latronibus captus: The Impact of the Roman Model of Citizenship on Rabbinic Law*, in *Jewish Quarterly Review*, 109-2, 2019, p. 141-172.
- Merry 1991 = S.E. Merry, *Law and Colonialism*, in *Law and Society Review*, 25, 1991, p. 889-922.
- Millar 1977 = F. Millar, *The Emperor in the Roman World*, London, 1977.
- Moscovitz 2003 = L. Moscovitz, *Legal Fictions in Rabbinic Law and Roman Law: Some Comparative Observations*, in Hezser 2003, p. 105-132.
- Richardson 2015 = J. Richardson, *Roman Law in the Provinces*, in D. Johnston (ed.), *The Cambridge Companion to Roman Law*, Cambridge, 2015, p. 45-58.
- Rosen-Zvi 2017 = I. Rosen-Zvi, *Is the Mishnah a Roman Composition?*, in C. Hayes, T. Novick, M. Bar-Asher Siegal (ed.), *The Faces of Torah: Studies in the Texts and Contexts of Ancient Judaism in Honor of Steven Fraade*, Göttingen, 2017, p. 487-508.
- Schwartz 2020 = S. Schwartz, *The Mishnah and the Limits of Roman Power*, in K. Berthelot (ed.), *Reconsidering Roman Power: Roman, Greek, Jewish and Christian Perceptions and Reactions*, Rome, 2020, p. 387-415, also available online <https://books.openedition.org/efr/4602>.
- Sperber 1984 = D. Sperber, *A Dictionary of Greek and Latin Legal Terms in Rabbinic Literature*, Ramat-Gan, 1984.
- Tropper = A. Tropper, *Roman Contexts in Jewish Texts: On Diatagma and Prostagma in Rabbinic Literature*, in *Jewish Quarterly Review*, 95-2, 2005, p. 207-227.
- Volterra 1930 = E. Volterra, *Collatio legum Mosaicarum et Romanarum*, Atti della Accademia Nazionale dei Lincei, Classe di Scienze Morali, Storiche e Filologiche, Ser. 6, vol. 3, fasc. 1, Rome, 1930.
- Wilfand 2019 = Y. Wilfand, *Did Roman Treatment of Freedwomen Influence Rabbinic Halakhah on the Status of Female Converts in Marriage?*, in *Journal of Legal History*, retrieved on 11 June 2019, <https://doi.org/10.1080/01440365.2019.1625216>.