

Law, Land, and Territories:  
The Roman Diaspora and the Making of Provincial Administration

By

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Abstract

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This dissertation examines the relationship between the institutions of Roman provincial administration and the economy of the Roman imperial diaspora in the Eastern Mediterranean in the second and first centuries BC. Focusing on the landed estates that many members of the imperial diaspora acquired in the territories of Greek cities, I argue that contestation over the allocation of resources in the provinces among Roman governing classes, the members of the imperial diaspora, and the elites of Greek cities decisively shaped the contours of what we would later recognize as the institutions of provincial administration.

Setting the Roman Empire within a new comparative framework, Chapter One suggests that ancient cities around the Mediterranean, including Rome, often used their imperial power to help their own citizens infringe upon the exclusionary property regimes of other cities, which insisted that—unless they decided otherwise—only their own citizens could acquire this land. Chapter Two combines semantic history with archaeological case-studies to argue that Roman ownership of agricultural resources in the territories of provincial cities was widespread and in fact often underpinned the movement of products for which the members of the diaspora are more commonly known. Chapter Three uses epigraphic documentation and Cicero's writings to examine how provincial governors responded to the economic concerns that Romans brought before them, maintaining that law became the most prominent response because it was able to perform a separation between the empire as state and the potentially problematic actions by members of the diaspora, while at the same time not abandoning these Romans' concerns. Chapter Four investigates the contestation over the terms on which members of the diaspora were able to acquire land in Greek cities and vindicates the contributions that Roman jurists and the elites of Greek cities made to the institutional architecture of provincial administration and the political economy it enshrined.

For my parents

## TABLE OF CONTENTS

Acknowledgements	iii
Introduction	1
1. Land and the Statecraft of Civic Empires	12
2. Land in the Economy of the Roman Diaspora in the Greek East	42
3. The Roman Diaspora and the Origins of Law in Roman Provincial Administration	76
4. Jurists, Greek Elites, and Governors as Architects of Empire	116
Conclusion	158
Bibliography	156

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The intellectual origin of the project lies in a seminar on the rule of law in the nineteenth, twentieth, and twenty-first century that Huricihan Islamoğlu taught at Berkeley in the spring of 2010. The readings and discussions in this seminar were my entry point into thinking about the politics of law and property, and they continue to shape my thinking to this day. Nicholas Purcell's Sather Lectures two years later were instrumental in helping me understand how the insights I had gained from reading about law and property in the modern period might translate into a meaningful project concerning the Graeco-Roman past. It has been a great privilege to have been able to learn from both these admirable scholars.

I have presented parts of my argument in papers delivered at the Hurst Summer Institute in Legal History at the University of Madison, Wisconsin, the Legal History Workshop at the University of California, Berkeley, the research colloquium of the International Max Planck Research School for Comparative Legal History in Frankfurt (a. M.), and a conference at the University of Nottingham. I am grateful for the comments, suggestions, and criticisms I received from audiences on all of these occasions. I owe deep and enduring gratitude to all these people. All mistakes that remain are my own.

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## INTRODUCTION

In 88 BC thousands of Romans and Italians died in mainland Greece and Western Asia Minor. They were killed at the order of Mithridates VI, king of Pontus, as part of his attempt to expel Roman power from these regions. But these Romans and Italians were not soldiers; they were ordinary citizens. Ancient authors disagree about the precise numbers of those killed: 20,000 in Greece and 80,000 or 150,000 in Asia Minor.<sup>1</sup> These numbers, impressive though they are, are part of a Roman rhetoric of horror, rather than an indication of solid statistics. But it is clear that the presence of Romans and Italians in the Greek cities in the Eastern Mediterranean in the early first century BC was not a random and incidental occurrence. Mithridates wrote a letter to all his officials in the Greek cities in Asia, cities that had just defected from Rome, and ordered them to kill the Romans and Italians resident in these cities on the same day.<sup>2</sup> As such, the letter presupposed that his officials all were familiar with this phenomenon. And indeed, in 88 BC cities ranging from Adramyttium, situated on the modern-day gulf of Edremit in northern Asia Minor, to Tralles, an important harbor between Caria and Lycia on the south-eastern coast of Asia Minor, bore witness to Romans' and Italians' futile attempts to try and escape their imminent slaughter, seeking refuge in temples or swimming out into the ocean.<sup>3</sup> The “Asian Vespers”, as this dramatic event in Roman history is usually called, thus reveal the existence of the many Romans and Italians that in the early first century BC were living scattered—*σποράδες*, as the first-century BC historian Memnon of Heracleia called them—throughout the Greek cities in the Eastern Mediterranean.<sup>4</sup> And indeed, they were a diaspora—a group of people living in host communities outside of what they thought of as their community of origin, with which they still maintained significant actual and/or imagined connections.<sup>5</sup>

But these Romans and Italians were not just any diaspora. They pursued distinct and significant economic interests in the cities in which they lived and their doing so was inarguably tied up with the projection of Roman power over these cities. Valerius Maximus, an author writing in the early first century BC, was keenly aware of the Roman diaspora's economic dimension. As he put it, the eighty thousand Roman citizens that Mithridates had killed in one day were not just scattered through the cities in Asia; they were scattered there “in pursuit of their *negotia*, their business”: *Asia per urbes negotiandi gratia dispersa*.<sup>6</sup> Mithridates also knew of their material interests in Greek cities, when he ordered that the possessions of all

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<sup>1</sup> App. *Mithr.* 28, Val. Max. 9.2.ext.3, and Plut. *Sull.* 24.4.

<sup>2</sup> App. *Mithr.* 22.

<sup>3</sup> App. *Mithr.* 23.

<sup>4</sup> FGH 434 F1, 22.9.

<sup>5</sup> See Dufoix 2008: 21 and Quayson and Daswani 2013: 3 for this open definition of “diaspora”.

<sup>6</sup> Val. Max. 9.2.ext.3.

those killed should be made over to him; above all, these possessions included their landed estates.<sup>7</sup> By contrast, the imbrication of this diaspora with the projection of Roman power comes to the fore most clearly when considering its chronology and geography; for the Roman diaspora was not limited to the Greek East. Beginning in the second half of the second century BC Romans and Italians could be found all throughout the Mediterranean in the regions and places that Rome had conquered. In fact, the geographical extent of this diaspora coincided more or less with the regions of Roman provinces that were being established at around the same time.<sup>8</sup> In the late second century BC the citizens of Colophon described the Roman diaspora as “those coming into Asia”: οἱ παραγινόμενοι εἰς τὴν Ἀσίαν.<sup>9</sup> This formulation reveals the Colophonians’ keen understanding of the connection between the institutions of the Roman Empire and the existence of a diaspora of Romans and Italians; for “Asia” here was not a simple geographical term, but was the hubristic name of the province that Rome had established in Western Asia Minor in 133 BC. The Romans and Italians, whose slaughter Mithridates ordered, thus constituted a classic example of an imperial diaspora—a diaspora that developed as parts of a metropolitan population migrated to newly conquered regions.<sup>10</sup>

What, then, was the precise nature of this relationship between Roman power, how it came to be institutionalized, and the economic interests of this imperial diaspora in the Greek cities of the Eastern Mediterranean? Particularly, in what ways were the institutions of Roman provincial administration, above all the administration of law, involved in creating, maintaining, and circumscribing the conditions of the landholdings among the members of the diaspora? To what extent did these institutions themselves take shape in response to and in conversation with the needs and demands of this diaspora? And what role did Greek cities as distinct normative communities with their own property regimes play in shaping both the economic possibilities of the emerging diaspora and imperial institutions themselves? These are the questions that guide the inquiry of this dissertation. They have never been the subject of sustained scrutiny and argument. Pursuing them allows me to investigate the relationship between political institutions and economic interests and pursuits in the Greco-Roman world. As it turns out, “state and economy”, as this problem is currently so often formulated, needs to be replaced with “statecraft in economic lives”. Once we no longer focus on economy as a distinct area of life in which people make choices based on an inefficiency of means, but investigate the instituted process by which the members of the imperial diaspora obtained their material means,<sup>11</sup> the state also loses its unity and independence; for while the institutions of provincial administration, the aspect of statecraft that is the subject of this inquiry,<sup>12</sup> admittedly were important for shaping the economic lives

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<sup>7</sup> App. *Mitbr.* 22 and 47.

<sup>8</sup> Wilson 1966. Harris 2007 also sees them in what he calls Rome’s “informal empire” beyond the provinces, but also emphasizes their intrinsic relationship with Roman power.

<sup>9</sup> *SEG* XXXIX 1244, col. I, ll. 23-24.

<sup>10</sup> Cohen 2008: 68-74 discusses examples of early modern and modern imperial diasporas.

<sup>11</sup> Polanyi 1977 draws this distinction between the two sense of “economic/economy”.

<sup>12</sup> The sense of “statecraft” as I use it here does not have a clear origin. Scott 1998 is the most prominent example of its use. Over the past twenty years the term has become rather widespread, covering a large number of practices and institutions of governing from law and its administration to the production of maps and the

of the Roman diaspora, at the same time their own origins lay in the intense contestation and negotiation between the Roman governing classes, the members of the imperial diaspora, and the elites of Greek cities in the provinces over the conditions of precisely these economic lives. If the modern state is but a unique and historically contingent form of politics,<sup>13</sup> politics should not be absent from an account of ancient state institutions.

## SCHOLARSHIP

The perception and fate of empires throughout the nineteenth, twentieth, and twenty-first century have decisively shaped the questions with which ancient historians have approached the Roman Empire. The “Age of Empire” in the late nineteenth and early twentieth century and the struggle for decolonization in the second half of the twentieth century affected scholarly thinking about the institutions of provincial administration. Together they have left the origin and import of these institutions within the empire badly understood.<sup>14</sup> The first period of sustained interest in provincial administration, in fact the period that defined the subject as such, coincided with the transformations of the practices of imperial rule that so many European empires underwent in the late nineteenth century.<sup>15</sup> As contemporary imperial powers began to conceptualize their rule as the rule over annexed territories, Roman provinces came to be understood as just such territories, an understanding that early twentieth century maps of the Roman Empire depicting provinces according to the pictorial conventions developed for nation-states and their territorial possessions reflect so well.<sup>16</sup> Roman provinces were also thought to have been governed by similar means: a set of officials and magistrates, whose actions, above all the administration of private law, were framed by a public law framework. Ancient historians at the time combed the ancient evidence looking for these magistracies and the outlines of this public law framework to reconstruct the Roman system. As a result of their efforts, the study of the institutions of provincial administration came to be considered a worthwhile pursuit and developed into a tradition in ancient history that persists to this day.<sup>17</sup> This line of scholarship constitutes the equivalent of what Emily Mackil has called “old institutionalism” in the Greek context.<sup>18</sup> Needless to say, the founding figures of this tradition all belonged to

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politics of their use, mainly in relation to the modern nation state. See e.g. Kangas 2013, LeVine 2004, and Radcliffe 2009. I find the term useful because it provides a way of divorcing state institutions and their specific forms from the idea of state and/or empire as top-down power, on which I will elaborate further below.

<sup>13</sup> Winterling 2014: 251.

<sup>14</sup> For the “Age of Empire” see Hobsbawm 1987.

<sup>15</sup> Mamdani 2012. See Chapter Four for a more extended discussion of the reasons for this coincidence.

<sup>16</sup> E.g. <http://people.ucalgary.ca/~vandersp/Courses/maps/fullmap2.jpg>, a map taken from a 1925 reprint of the 1907 edition of the *Atlas of Ancient and Classical Geography* in the Everyman Library, published by J.M. Dent & Sons.

<sup>17</sup> E.g. Mommsen 1952 [1888], Arnold 1906, and Stevenson 1939. Eck 1999 calls for a reviatlization of this tradition based on a combination of epigraphical and literary evidence.

<sup>18</sup> Mackil 2013: 4 and 10-11.

metropolitan elites that administered or at least aspired to administer empires. Under their auspices the Roman Empire became a state, the institutions it built its hallmark, and their study the embodiment of scholarship on the Roman Empire.

As the struggle for decolonization became increasingly successful throughout the twentieth century, ancient historians stopped seeing the Roman Empire as a state, and it became an instance of domination instead. Once “empire” came to be understood as the projection of power by one polity over another,<sup>19</sup> scholars became increasingly concerned with the impact of the Roman Empire, with the ways in which Roman rule changed the lives of the people over whom it ruled.<sup>20</sup> In addition, given that imperial rule was universally considered to be undesirable, the maintenance of Roman power over more than five hundred years became a pressing problem that had to be addressed.<sup>21</sup> When scholars began work on these questions, the institutions of provincial administration lost their central place in scholarship on the Roman Empire. Their fall from grace was in part surely due to the fact that for ancient historians the postcolonial reconceptualization of empire coincided with the cultural turn in the study of the ancient world, an approach that made questions of communication, persuasion, and identity paramount and also helped ancient historians and archaeologists rediscover archaeological remains as “material culture” that could be used to answer historical questions. The cultural turn thus not only led to questions and concerns that the study of the institutions of provincial administration found hard to answer, but it also helped scholars discover a new set of evidence for answering questions about the Roman Empire. However, scholars working in this tradition also explicitly diagnosed the inadequacy of Roman provincial administration and its institutions. They often highlighted the limited reach and consistency of these institutions to then argue that other factors, such as the reconstitution of local identities and the imbrication of Rome in them, were crucial in maintaining the empire and realizing its impact. The Roman Empire thus went from being all state and state institutions in the colonial period, to all society in its postcolonial iterations.

Together colonial and postcolonial approaches leave us with a paradoxical understanding of the institutions of provincial administration. Scholarship in the old institutionalist tradition persistently shows that traces of imperial administration pervade our evidentiary record, and scholars in this tradition are quite right to insist that something like provincial administration, understood as a set of magistracies and their respective practices did exist in Roman provinces. At the same time, these institutions barely feature in recent accounts of the Roman Empire. Their limited reach and apparent inconsistency not only made ancient historians disregard them as the means by which the empire made an impact or was maintained; their restricted capacity also casts doubt on the assumptions on which the old institutionalism was based: that the institutions of provincial administration were an effective way of ordering provincial society. What, then, exactly was the role of these institutions within the empire and why were they there? This dissertation argues that finding an answer to these questions requires discarding assumptions about imperial power that are

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<sup>19</sup> For this understanding of empire see Doyle 1986.

<sup>20</sup> E.g. Alcock 1993 and Woolf 1998. See also the international research network “Impact of Empire”, which since 2000 has regularly been publishing edited volumes: <http://www.ru.nl/impactofempire/>.

<sup>21</sup> E.g. Lendon 1997, Ando 2000, and Noreña 2011.

characteristic of postcolonial (and Republican) ideas about empire: the thought that empire embodied the pinnacle of top-down power, that it always amounted to total domination and control, or at least aspired to do so.<sup>22</sup> While this assumption was vital in the struggle for decolonization—once empire amounted to total domination, the only form of resistance left was its complete obliteration—it fails to provide a framework in which we can make sense of the administration of law in the provinces of the Roman Empire as an exercise of imperial power. Recent developments in the study of the Roman Empire point towards a potential new approach.

The fall of the Iron Curtain in 1989 and its aftermath provided the Roman Empire with a new lease on life. As empire ceased to be a political reality that had to be fought, the questions with which scholars approached its Roman instantiation changed, but were no less emblematic of their own time. On the one hand, an emerging tradition that might best be called “Law and Empire” has vindicated the Roman Empire and empires more generally as governance structures that were remarkably competent at managing difference, while also providing their subjects with plenty of opportunities to negotiate their positions and identities.<sup>23</sup> On the other hand, the Roman Empire has been reinterpreted from the perspective of New Institutional Economics and has thus become a state again; as such, it now provides the institutional infrastructure, above all through its commitment to the rule of law, which fostered economic growth.<sup>24</sup>

Both these lines of scholarship cast doubt on the conceptualization of empire as an instance of total domination. Scholars working in the “Law and Empire” tradition highlight the agency of subjects in shaping the effects of the imperial administration of law as well as in its creation. Researchers in the *NIE* tradition underscore the ways in which imperial legal institutions were indeed imbricated in the economic lives of their subjects, thus opening the possibility that some people stood to profit from these and that these institutions might have been built with concrete and circumscribed goals in mind. At the same time, however, both these lines of scholarship still conceptualize imperial power in a way that fails to make sense of the legal institutions of provincial administration as such; for given the limited capacities of Roman administration we must not overestimate the efficiency benefits, including the protection of property rights, that the *NIE* tradition argues the Roman Empire was able to confer on its subjects.<sup>25</sup> By contrast, the emphasis that research in the “Law and Empire” tradition puts on bottom-up perspectives only assumes and reifies the top-down nature of imperial power, leaving the latter completely unexplained. Thus we are left with the possibility that the legal institutions of the Roman Empire mattered in the economic lives of its subjects and that these subjects played some role in shaping their impact, but that we are in no way closer to understanding how they came into existence in the first place.

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<sup>22</sup> Kramer 2011: 1378-1380 discusses the origins of this way of conceptualizing imperial power.

<sup>23</sup> E.g. Humfress 2007, Bryn 2013 and Humfress 2013 on the Roman Empire; Burbank and Cooper 2010 on empires more generally.

<sup>24</sup> E.g. Kehoe 2007 and Lo Cascio 2007; see also collaborative project “Structural Determinant of Economic Performance in the Roman World” based at the University of Gent in Belgium: <http://www.rsrc.ugent.be/sdep>.

<sup>25</sup> Bang 2011: 246.

Studying the relationship between the Roman imperial diaspora and the administration of law in the provinces of the empire suggests that legal institutions became prominent features of provincial administration as part of the struggle over the reallocation of resources that the development of the imperial diaspora entailed. The terms on which this reallocation could take place were contested and negotiated by the arguments of litigants in provincial governors' courts, these governors' decisions, Roman jurists' opinions, the embassies of Greek cities to the senate in Rome, and the decisions of that body itself. Two distinct types of politics shaped these terms and their contestations: Romans were negotiating amongst themselves just who should benefit from their newly won empire and in what ways, and at the same time Greek cities' elites were struggling with Roman authorities to maintain the legal and moral regimes that constituted their communities and identities. These two politics—one distributional and the other one territorial—shaped the contours and content of the legal institutions of provincial administration. These institutions are thus no longer the expression of top-down imperial power with inscrutable aims and goals, but the outcomes and arenas of a long-neglected aspect of the early history of the Roman Empire: the Roman imperial diaspora and the reallocation of land that it entailed.

This dissertation thus provides a political economy, not of the empire as a whole, but of the distinct set of legal institutions that came to make up and characterize provincial administration. I maintain that inquiring whether certain imperial institutions expressed “commercial interests” fails to recognize the multitude of voices and actors that went into building these institutions.<sup>26</sup> I also argue that while the Roman Empire certainly was a “tributary empire,” the mere goal of the extraction of tribute fails to make sense of the institutions of provincial administration that it developed.<sup>27</sup> In fact, the relationship between the institutions of provincial administration and the imperial diaspora might best be captured by bearing in mind that the Roman Empire undoubtedly also was in a conquest empire in the sense that the imperial diaspora and the role that legal institutions played in its development continued and reiterated the act of taking that conquest entailed, while at the same time extending into the provinces the distributional politics among conquerors about who should receive what spoils.<sup>28</sup> In the provinces these debates were carried out through what nineteenth-century scholars would later identify as state institutions, an identification that in one sense at least was undoubtedly correct: just as their nineteenth-century equivalents did, so too these institutions constituted a particular form of politics.

## METHODS AND APPROACHES

At the heart of this dissertation lies the comparative method combined with a new understanding of the implications of Greek cities' property regimes. The one defining feature of these property regimes was that Greek cities in principle only allowed their own

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<sup>26</sup> Harris 2003.

<sup>27</sup> Bang 2009.

<sup>28</sup> Noreña 2011 uses this term to describe the empire in the Late Republic.

citizens to own land in their territory. In order to do so, foreigners had to obtain permission from a city's assembly in the form of a grant of *enktesis*, the right to own land in that city's territory. These property regimes thus placed distinct limitations on the accumulation of agricultural resources. Foreigners could only hope to acquire land in other cities' territories by entering into a reciprocal relationship with the community as a whole, in which grants of *enktesis* were usually embedded. When Greek cities projected their power over other cities, they persistently undid the limitations that these exclusionary property regimes posed for the accumulation of land and helped their own citizens to acquire land in these cities' territories. Just how imperial cities infringed on other cities' property regimes varied from case to case, but they all built institutions that furthered the development of a landholding citizen diaspora.

Rome, then, was just another of these imperial cities that projected its power over a politically fragmented landscape, where access to land was contingent on political membership. The Roman Empire and the many smaller empires that Greek cities built thus share the same origin and their respective institutions can fruitfully be understood by departing from that origin. In this respect, my approach differs from many other studies that situate the Roman Empire in a comparative context; for the latter tend to depart from a common outcome, often indeed the success and longevity of empires, which makes for example Han China an ideal comparandum for the Roman case.<sup>29</sup> The strategy I adopt here, to compare the imperial formations that ancient cities around the Mediterranean built, turns out to be instrumental for unthinking imperial institutions as simple instances of top-down power; for more generally put, rather than beginning with the fact of empire and the domination it entailed, this approach starts from the circumstances in which empires were being built, a perspective that in the case of these civic empires leads to the institutional traditions that they could draw on in building their empires as well as to the political assemblies that decided which of these institutional traditions they would draw on, and how they should be modified. These assemblies, I contend, constituted but one social arena, albeit a very important one, in which the terms and contours of civic empires' statecraft were being negotiated.

At its core comparison consists of noting likeness and difference.<sup>30</sup> This dissertation notes likeness and difference among the civic empires of the more than one thousand ancient cities around the Mediterranean for three different heuristic purposes: the discovery of historical facts and phenomena,<sup>31</sup> the demonstration of a theory in parallel case studies,<sup>32</sup> and the formulation of new problems.<sup>33</sup> The evidentiary record for Greco-Roman antiquity is fragmentary and haphazard, to say the least. In addition, the bias of the material preserved means that it only attests to the existence of landholding imperial diasporas in oblique ways.

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<sup>29</sup> For comparisons of the Roman Empire and the Chinese Empire see Mutschler and Mittag 2007, Scheidel 2009, Burbank and Cooper 2010: 23-60, and Noreña 2015.

<sup>30</sup> Bloch 1967: 45. Collier 1993: 107-108 shows how in the social sciences the comparative method has tended to be understood very narrowly and in analogy with other means of hypothesis-testing.

<sup>31</sup> Bloch 1967: 48-51.

<sup>32</sup> Skocpol and Somers 1980: 176-178 and Collier 1993: 105.

<sup>33</sup> Bloch 1967: 58-67.

And yet, once the phenomenon has been recognized in more notorious cases, such as Athens in the fifth and fourth centuries BC or Rhodes in the third and second centuries BC, traces of analogous cases also become visible in historically less prominent places, such as third-century BC Aetolia or first-century BC Centuripe in Sicily; ultimately, of course, they also come to the fore in the historically most prominent and successful case of ancient imperialism: the Roman Empire.

Examining all these different cases of imperial diasporas also repeatedly demonstrates how these imperial cities built institutions that helped create and maintain their own citizens' landholdings in other cities' territories. These case studies thus testify to the important role that the exclusionary property regimes of ancient cities played in shaping the institutions of these civic empires by providing the limitations on the accumulation of land that these empires repeatedly sought to overcome. Lastly, comparing civic empires places ancient institutions that are not usually treated side-by-side in a single category: Athenian cleruchies and the edicts of Roman provincial governors, for example. And yet, both of these institutions were part of ancient cities' imperial statecraft that helped their citizens infringe on other cities' property regimes. These comparisons thus denaturalize ancient institutions and ask new questions about them. In the case of the Roman Empire they raise the problem of why the administration of law became such a prominent feature of its provincial statecraft. Also in this dissertation, then, comparison works as a means to break down boundaries around knowledge and redraw the lines and categories that organize our understanding of the ancient past.<sup>34</sup>

Property is not simply a legal matter,<sup>35</sup> and the exclusionary rule that characterized Greek cities' property regimes did not just limit citizens' possibilities for the accumulation of land; for property constitutes social relations between people, and it shapes their identities.<sup>36</sup> In the particular case of Greek cities the exclusionary character of their property regimes placed limits on the alienability of citizens' holdings. It made civic territory into a shared pool of resources, and put the community as a whole in charge of controlling access to this pool. As such, these property regimes contributed to territorializing social relations within cities and thus made them into the "communities of place" that they were.<sup>37</sup> As a result, when civic empires infringed on the property regimes of the cities over which they ruled, these infringements had consequences for the social fabric within these cities and the identities of their citizens. However, civic empires only rarely obliterated other cities' property regimes completely, either by abolishing their exclusionary character by fiat or refounding these cities with their own imperial diaspora in their midst. For the most part imperial cities simply provided their own citizens with avenues for circumventing these exclusionary regimes. The administration of law by Roman governors is one of the prime

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<sup>34</sup> Bloch 1967: 70.

<sup>35</sup> Malinowski 1935: 318-319.

<sup>36</sup> Hann 1998: 4-6.

<sup>37</sup> Mann 1986: 135 discusses this effect of states more generally. The property regimes of Greek cities are a concrete example of just how such territorialization might happen. For Greek cities as "communities of place" see Hall 2007a: 70-71 and Hall 2007b: 41.

examples of this strategy, a fact that has two important implications for our understanding of the function of law in Roman provincial administration.

First, the administration of law in the Roman provinces was not about the formulation, application, and universal enforcement of a particular rule or idea of property. Instead, governors' courts provided an alternative arena in which Romans could place their disputes with Greeks on a new normative footing; Romans could use these courts to create facts on the ground in contravention of Greek cities' legal regimes. But these potential infringements still had important consequences for Greek cities. Second, then, these cities were now confronted with men living in their midst who could play by different rules and thus were less dependent on the communities in which their landholdings were located. Provincial governors' courts allowed members of the Roman imperial diaspora to address their economic concerns in a framework that lay beyond the normative ideas that had currency in Greek cities. These courts thus had the potential to deterritorialize the economic lives of the Roman imperial diaspora. As a result, what from the perspective of the conquerors was a matter of distributional politics, from the perspective of Greek cities became a matter of preserving the integrity of their territoriality and the social relations it created and maintained. These, then, were the two kinds of politics that shaped the legal institutions of Roman provincial administration.

## OUTLINE

This dissertation consists of four chapters. Chapter One introduces the exclusionary character of Greek property regimes and explores its implications for the types of communities that Greek cities were and the empires they built. Chapters Two, Three, and Four build on these arguments and together examine the Roman Empire as another instance of such a civic empire. Chapter Two concerns the role of land in the economy of the Roman imperial diaspora, while Chapters Three and Four explore how Roman governors, jurists, and the senate in Rome responded to the Roman diaspora's demands in the provinces and how Greek cities negotiated the infringements on their property regimes that these responses enabled.

Chapter One is an exercise in comparison. It begins with the shared exclusionary character of Greek city's property regimes. These regimes, I argue, set up the community as a whole as the ultimate arbiter over who could and should own land in its territory, a feature that becomes apparent both in the grants of *enktesis* that Greek cities gave to foreigners and in the confiscations of property that accompanied political exile from these cities. At the same time, however, these property regimes also constituted the communities that were in control of them; the development of these property regimes, I suggest, was crucial in making Greek cities into "communities of place" as they emerged in the archaic period. Importantly, these regimes imposed distinct limitations on the accumulation of agricultural resources by individuals, which the empires that these cities built persistently undid for the benefit of their own citizens. I use four case studies to demonstrate this claim: Athens and its empire in the fifth and fourth century BC, the Aetolian League at Delphi in the third and second centuries BC, Rhodes' rule over its subject *peraia* at around the same time, and the hilltop settlement of Centuripe in early Roman Sicily. All of these case studies reveal a remarkable coincidence

between the political ascendancy of a polity and the development of a landholding diaspora of its members. Each of them also exhibits different types of imperial statecraft that these cities used to help the members of these diasporas infringe upon the property regimes of other cities, ranging from the foundation of new settlements on older ones to legal pronouncements and the administration of law itself. The difference in cities' practices in this regard reflects discrepant distributional politics in cities, while local reactions to these practices show how they threatened subject cities' territorialities and thus the identities of those living in them.

Chapter Two examines the place of landholding within the economy of the Roman imperial diaspora. Developments in the historiography of the diaspora as a particular phenomenon and of the ancient economy more generally have combined to obscure the existence and extent of landholdings among the many Romans and Italians that migrated to the provinces in the Eastern Mediterranean as they were being created. *Negotiator*, which is often used in relation to the members of the Roman diaspora, has commonly been understood to mean trader, a translation that has undoubtedly helped this act of forgetting. As a result, revising the semantic history of the term in the Late Republic so as to include landholding as a possible part of the economic profile of the Roman diaspora provides the basis for a set of case studies that demonstrate the extent of Romans landholding in the provinces in the Eastern Mediterranean and also allow us to go some way towards showing how these Romans exploited their landed estates there. Atticus' and his fellow Italian cattle-raisers' possessions in Epirus feature prominently as well as Roman involvement in the production and marketing of Coan wine. Literary and epigraphical evidence combined with archaeological material, such as the history of Coan amphora shapes or changes in settlement patterns in the Epirote mountains, suggests that these Romans practiced a commercialized type of agriculture on their landholdings in the Greek East that was mainly aimed at export, above all to markets in Rome and Italy where Rome's Cultural Revolution was creating an increased demand for precisely the products that these Romans were producing. As such, this chapter also provides a counter-example to the prevalent assumption about the ancient economy that landholding and trade created two incompatible mentalities and attitudes and that interests in both of them could not be found in the same person.

Chapter Three turns to the problems that the members of the imperial diaspora brought before of provincial governors, problems that demonstrably arose from their economic interests in the provinces. I argue that the prominence that the administration of law acquired among the practices of provincial administration resulted from the desire of the Roman governing class to perform a separation between the existence and actions of the Roman Empire as a state and the dealings of its imperial diaspora; legal institutions could perform this separation, while at the same time helping the members of the diaspora escape the legal and moral regimes of Greek cities by reterritorializing their social relations at the level of provincial society. The core of the argument consists of an exploration of the ways in which governors drew on a Mediterranean-wide koine of inter-city legal institutions for how to resolve disputes between members of different political communities—precisely the type of dispute that members of the diaspora would bring before them—in order to frame the principles that governed their own administration of justice and how they transformed these principles in the process. The treaty between the Lycian League and Rome in 46 BC and the provision of the *lex Rupilia* for Sicily preserved in Cicero's *Verrines* are the key pieces

of evidence here. Tracing these transformations from inter-city practices into imperial institutions allows me to argue that among all the demands for the administration of justice that governors encountered, Romans' requests were the only ones for which they developed consistent rules, indicating that these were the requests with which they were really concerned. In sum, then, the administration of law became the most prominent aspect of provincial administration because it was able to perform a separation between the empire as state and the potentially problematic activities of the members of the imperial diaspora, while at the same time providing an avenue for governors not to withdraw from the obligations that the bonds of shared citizenship created.

Chapter Four vindicates Late Republican jurists and the elites of Greek cities as architects of the political economy of the Roman Empire. A careful examination of these jurists' fragments as preserved in later compilations together with the anecdotal evidence about their activities in late Republican sources allow me to examine how these jurists patrolled and limited the legal concepts and principles that Romans and Italians eager to acquire land in the territories of Greek cities could mobilize in the court of provincial governors in order to elide Greek cities' property regimes. A careful reading of a passage from Cicero's *Pro Flacco* also provides a case study for understanding the terms on which these jurists allowed Romans to infringe on the property regimes of Greek cities. These infringements, I argue, threatened the territoriality of these cities and the identities of their elites that were tied up with it, and Greek cities pushed back against them by defining the freedom that Rome had once granted them in such a way as to preserve their territorial integrity at the expense of the interests of the Roman diaspora and—at times successfully, at others less so—asked the Roman senate to recognize these definitions. This, at least, is what is suggested by the inscriptions in which these cities commemorated what they thought were their successful interactions with Roman power.

## CHAPTER ONE

### Land and the Statecraft of Civic Empires

Empire and imperialism, understood as the attempts of one polity to rule over another, was a persistent feature of the history of ancient Greek cities, and took place at a wide range of scales.<sup>38</sup> Examples of imperial ambition range from Alabanda's efforts to recapture a fort in their territory that had tried to secede from the city in the early second century BC to the largest and most famous of empires that a Greek city built: the Athenian *arche* in the fifth century BC.<sup>39</sup> The frequent conflicts between neighboring cities, which sometimes led to the incorporation of entire populations and/or territories of one city into another, but more often simply resulted in negotiated relations of hierarchy between the two, were situated between these two extremes.<sup>40</sup>

Over the past twenty years scholars have begun to detect and highlight the different levels and scales at which Greek cities tried to project power over each other. However, they have not yet considered the heuristic implications of this continuum of Greek cities' imperial ambitions. While discussions of the one great empire, the Athenian *arche*, have tended to center around the ancient and modern terms used to describe and capture the Athenians' exercise of power in the fifth century BC, the smaller scales of imperialism by Greek cities have been treated together, but without situating them in relation to the historically more prominent instances.<sup>41</sup> The different scales of civic imperialism, then, have not been analyzed as part of the continuum of state-building efforts that Greek cities persistently engaged in.<sup>42</sup>

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<sup>38</sup> For this political definition of empire see Doyle 1986. For "scales" and their usefulness for ancient historians see Archibald 2005.

<sup>39</sup> Liv. 38.13.11 tells of Alabanda's efforts in 188 BC and the support that Gnaeus Manlius Vulso gave them.

<sup>40</sup> Cretan epigraphy provides a ready set of evidence for documenting all these arrangements: Chaniotis 1996, no. 44 shows how Gortyn and Knossos divided the territory of Rhaukos, a city they had just defeated in war, between them. *Syll.*<sup>3</sup> 524 contains the conditions for the negotiated hierarchy between Praisos and Stalai in the third century BC. For the tribute-based empire of Sinope and for "micro-empires" more generally see Austin and Vidal-Naquet 1972: 350-1. Amit 1973, Gauthier 1987-1989, and Ma 2000 discuss the wars and empires of smaller cities. See also Eckstein 2008 with Ramsay 2013 for the important and related idea that polities of all sizes participated in international relations.

<sup>41</sup> On the Athenian *arche* and modern definitions of empire and statehood see Pébarthe 2008, Morris 2009, and Pébarthe 2011. For how Thucydides' analysis of the empire as starting out as a *symmachia* to then become an *arche* has shaped modern scholarship see Pébarthe 2011: 55-57 and Kallet 2013 for an attempt to escape and subvert that classification and chronology. For scholarship on smaller imperialisms in the Greek world see n. 3.

<sup>42</sup> Tilly 1992: 1-2 argues that empires could and should be seen as a subset of states, which he defines as coercion-wielding organizations that exercise clear priority in some respects over all other organization within substantial territories. Morris 2009 cites and embraces this definition, but at the same time also draws a clear distinction between states and empires with the Athenian *arche* being an instance of the former rather than the latter.

And yet, one might legitimately wonder whether the fact that on all the different scales one Greek city projected power over other such cities informed the ways in which this projection of power was institutionalized.

Here I explore this question by drawing attention to the exclusionary property regimes of Greek cities, which in principle restricted access to land in their territories to their own citizens. Greek cities, I contend, repeatedly used their power to circumvent the limitation that these exclusionary property regimes imposed upon the acquisition of land in the Greek world; they institutionalized their rule over other cities in such a way as to infringe upon their property regimes for the benefit of their own citizens. These cities, I argue, thus built “civic empires” in the sense that they developed institutions with a view to circumscribing the economic possibilities of their own citizens.<sup>43</sup> More concretely put, they persistently converted political and military power into the acquisition of land for their own citizens.<sup>44</sup>

The case studies I draw on to make this argument range from the Athenian empire in the fifth and fourth centuries BC to the hill-site settlement of Centuripe in Western Sicily in the first two centuries BC, and they also include Aetolian and Rhodian imperial ambitions in the third and second centuries BC. All these cases reveal a temporal and spatial coincidence between the political ascendancy of these cities and the development of a land-holding citizen diaspora. But they also highlight important differences; for Greek cities used a variety of tools to change the ways in which land could be and was being allocated in their subject cities. These variations in statecraft, I suggest, reflect back on the cities themselves and provide new avenues and perspectives onto the ways in which ancient cities and—as a result—their empires differed from each other. As it turns out, choices in imperial statecraft often were part and parcel of the distributional politics that pervaded these cities.

## 1 – Greek cities and their property regimes: land and citizenship

Greek cities reserved the ownership of land in their territories for their own citizens. This is a well-known and readily acknowledged fact.<sup>45</sup> Just as citizens had the exclusive right

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<sup>43</sup> These “civic empires” are related to, but not the same as what Scheidel 2006 calls “Republican Empires”. Just as Scheidel, I emphasize that these empires were working for the benefit of their citizens, but I use this insight to understand the types of institutions that they build rather than trying to quantify the degree and level of their exploitation when compared with other types of empires.

<sup>44</sup> As such, my research here is part of and in conversation with scholarship on the economic dimensions of the imperialism of ancient cities. My main goal is to highlight that in the cases I examine these cities did not govern an/the economy in the way in which we would understand it today; instead, they governed the economic lives and possibilities of their own citizens. This distinction is analytically important, but often gets obscured and elided. See, for example, Morris 2009: 148-9, who mentions Athens’ efforts to open the resources of subject cities to her citizens in passing and interprets it as the creation of an Aegean-wide land market. Similarly, Pébarthe 2011 only clarifies after several paragraphs on Athenian control and interest of trade that this was done for the benefit of Athenians (p. 75).

<sup>45</sup> e.g. Morris 2009: 149 or Gomme 1937: 55 and 60. Usually authors infer the principle from the existence of grants of *enktesis*, the right to own land in Greek cities, which distinguished foreigners could receive; cf. Caillemer 1892, Thalheim 1905, Harrison 1968: 237-8, and Hennig 1994, who also adduces evidence from

of participating in their cities' political institutions, they also were the only people who could make rightful ownership claims to land in their respective cities. Politics in these cities thus emerges as the way in which a group of people made decisions about a set of resources to which only they had access, and the double privilege that citizenship enshrined clearly was the most basic answer to a fundamental question facing Greek cities: Just what should be the relationship between property power and political power?

The political side of this nexus of rights enshrined in ancient citizenship—the way in which citizens could and did make decisions about the resources within their city—has received a lot of scholarly attention.<sup>46</sup> By contrast, the economic side, the exclusionary property regimes in Greek cities, has only been acknowledged without further pursuing its implications.<sup>47</sup> Here I want to take one step in this direction by examining how the development of the exclusionary character of Greek cities' property regimes in the archaic period was instrumental in constituting the kind of communities that ancient Greek cities would come to be (1.1), to then highlight the ways in which these cities politically controlled access and title to land in their midst in the Classical and Hellenistic period (1.2) as well as the obstacles and limitations that this control posed for the economic lives of the people living in these cities' ambit (1.3).<sup>48</sup> These considerations, I contend, are important for two different problems: understanding both why imperial cities built the precise institutions they did and how these institutions impacted the social fabric of subject communities. The first problem is the main topic of this chapter, and I return to the second at the very end.

### 1.1 Land and citizenship: property making communities

At some point between the eighth and sixth centuries BC—the chronology very much depends on your definition and understanding of what a Greek city, a *polis*, was—these cities emerged and became a widespread and important framework for the coordination of political, economic and social life in the Mediterranean.<sup>49</sup> One of the most important and driving paradoxes that undoubtedly animated the emergence of these cities was the

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inter-state treaties (329-335) and reviews the evidence for the arrangements that federal polities in Greece arrived at (pp. 320-329); for these arrangements see now also Mackil 2013: 255-260.

<sup>46</sup> Hardly anyone would dispute that the study of politics and its institutions has been the mainstay of the history of ancient Greek cities.

<sup>47</sup> Finley 1973 argued that the institutional behavior, beliefs, and values of Greek society were bound up with land and the spatial world that Greek cities created, but did not go into specifics and never followed up on the idea. See Millett (*forthcoming*) on Finley's plan to write on Greek property, a plan that he never followed through.

<sup>48</sup> By "economic" I simply mean the second sense that Polanyi 1977 identified for the word: the ways in which people go about sustaining their livelihoods.

<sup>49</sup> Hansen and Neilsen 2004 count over 1000 such poleis along the shores and hinterlands of the Mediterranean by the late fourth century BC. The importance of Greek cities as a locus for political life and the ways in which they produce social differentiation—think women and slaves—has been recognized for a long time. The role of civic institutions for the organization of the economy has only been re-discovered more recently. Exemplary works with generalist ambitions include Ober 2008 on Athens and Bresson 2007-8 on Greek cities more generally. For a summary of the different modern understandings of these cities see Vlassopoulos 2007: 13-67. Important works that approach the problem head on include De Coulanges 1980, Weber 1962, Hansen 1998, and Murray 2000.

coexistence in one and the same place of aristocratic identity and political community, or of what Oswyn Murray has called “the nobles’ world of honor” and “the people’s world of justice”.<sup>50</sup> Among other things, this paradox brought with it a set of contestations, negotiations, and reinterpretations of aristocratic behavior, a phenomenon that Richard Neer has illustrated so nicely with regard to the relationship between Alcmeonid and Athenian monuments and buildings in the sanctuary at Delphi.<sup>51</sup> The development of the exclusionary character of the property regimes of Greek cities, I suggest, can be seen as part of the same process of reimagining and redirecting elite behavior and power.

As Moses Finley has observed, the development of the *polis* meant asserting political control over the rights of land ownership.<sup>52</sup> The exclusion of non-citizens from any such rights in civic territory was one of the basic principles underpinning this process. This created a world in which the behavior of men in the Homeric poems, who could freely give land to their friends and relations from other places without reference to a political community, was no longer possible.<sup>53</sup> Differently put, the exclusion of foreigners from the property regimes of Greek cities meant that the elites in these cities were no longer able to dispose of their properties at their own will. The emergent communities in which they now lived had changed the alienability of land in their midst in such a way as to mediate cross-border relations between elite individuals through these communities; for they reserved themselves the right to approve or reject such transactions in land.<sup>54</sup> As such, the exclusionary character of Greek cities’ property regimes was a crucial element by which aristocratic elites were forced to direct their energies towards the communities in the midst of which they now lived. Directing their energies towards these communities was the precondition on which they could engage in property transactions with their peers in other cities.

More generally speaking, these property regimes were instrumental in making Greek cities the “communities of place” that they undoubtedly were. Jonathan Hall has repeatedly pointed out that Greek cities formed distinctive communities in that they conceived of themselves as founded on the basis of place.<sup>55</sup> In this respect they were quite unlike Greek *ethne*, which saw themselves as communities constituted by common descent. By now it seems a commonplace that the Greek word “polis” started its life as a means of referring to

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<sup>50</sup> Murray 1980: 68 and Ma 2008, arguing for the importance of seeing paradox in Hellenistic history, but also extending his argument to include the archaic period (p. 384).

<sup>51</sup> Neer 2004. More generally on these contestations of meaning in the archaic and early classical period see Kurke 1991 and 1999.

<sup>52</sup> Finley 1971: 159.

<sup>53</sup> For examples of such gifts to their friends from other places see Hom. *Il.* 14.119-124 and Hom. *Od.* 7.311-315.

<sup>54</sup> So far the alienability of property in Greek cities has mostly been discussed in terms of “absolute inalienability”; see e.g. Fine 1951, Cassola 1965, D’Asheri 1966, and D’Asheri 1973. Finley 1971 has successfully argued against such a conception of alienability while also suggesting that the shape of the regulation concerning the alienability of that we do know—they are all restrictions on alienability—does suggest that in principle land was alienable.

<sup>55</sup> Hall 2007a: 70-71 and Hall 2007b: 41. Independently, Osborne 2009: 98 also explained Greek cities as a particular synthesis of people, place, and independence.

an urban settlement, a place. The semantic history of this word, from designating a concrete place to describing a political community, thus illustrates another process that must have decisively marked the archaic period in Greek history: the creation of communities on the basis of place and thus the territorialization of social relations in and around these places.<sup>56</sup> In other words, the paradoxical coexistence of aristocratic identity and political community so characteristic of the archaic period of Greek history also had a temporal dimension: the aristocratic ethos was an inheritance from a past that was re-interpreted and transformed, but the political communities that Greek cities enshrined, communities that accounts of archaic history tend to take for granted, had to be created in the first place.<sup>57</sup> Here I have suggested that the exclusionary property regimes that came to characterize Greek cities were critical instrument in the creation and constitution of these communities. They established a nexus between political participation and access to land that would shape institutions and behavior all throughout the history of these cities.

### 1.2 Land and citizenship: communities making property

Granting non-citizens access to land in a city's territory was a politically charged and controlled affair. Grants that made such access possible gave a privilege to foreigners that the Greeks called ἔγκτησις (*enktesis*), the right to own land in a city's territory.<sup>58</sup> While these grants often simply conveyed that very right, they could also present heavily circumscribed versions thereof, outlining the maximum size, a limited set of permitted locations, and the potential types of the property that the recipients of these grants were allowed to acquire in the city's territory.<sup>59</sup> More importantly, at least in Athens the procedural requirements for conveying these grants of *enktesis* in the assembly were exactly the same as those needed for expelling a citizen; in both instances these requirements made sure that a sufficient number of citizens were present to make the decision in question.<sup>60</sup> Thus theoretically the citizen-body as community was in charge of deciding who may or may not own land in their territory, just as it determined who was and was not a member of the community. This nexus between access to land and community membership as well as the ways in which the community as a whole was thought to govern both of these questions also comes to the fore in how Greek cities understood and constructed exile.

In his monograph on civil strife in Greek cities during the fifth and fourth centuries BC Hans-Joachim Gehrke argued that the practice of exiling people, which was part of resolving many of the episodes of civil strife he examined, was accompanied by the

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<sup>56</sup> See Hann 1998: 6 for the relationship between the ways in which people hold property and their identities and Mann 1986: 135 for the tendency of states to territorialize social relations with "society" being the term developed to capture the social relations that modern nation states created.

<sup>57</sup> Gehrke 2009 can stand here as an example, written by one of the scholars who has arguably developed some of the more sophisticated accounts of the rise of the *polis* as an instance of state-formation in the archaic period.

<sup>58</sup> For the widespread nature of such grants see Marek 1984: 158-159.

<sup>59</sup> Pečírka 1966 examines these limitations in the case of Athens. Thalheim 1905 cites a wealth of such limitations from other cities.

<sup>60</sup> Gauthier 1990 and Pečírka 1966.

confiscation of the exiles' landed properties in civic territory.<sup>61</sup> Most of the evidence for these confiscations is indirect and comes from documents related to the restoration of exiles.<sup>62</sup> Literary passages in particular mention the restoration of property without adding further explanation, thus testifying to the regularity with which confiscations of property accompanied political exile. Xenophon on Phlius and Isocrates on Methymna are two good examples that illustrate how the enjoyment of landed estates in Greek cities was considered to be conditional on good community membership.<sup>63</sup> But these confiscations were not merely a continuation of the violence that pervaded episodes of civil strife in Greek cities; they also accompanied instances of exile that resulted from legal decisions, such as murder convictions.<sup>64</sup> Thus in polities predicated on the nexus of access to land and political participation these confiscations effectively signaled and performed exclusion from the community.

Importantly, in all these cases the newly confiscated properties did not go directly to the winning party, but by a process called *δήμευσις* (*demensis*) went to the community as a whole instead, which could then decide what to do with them.<sup>65</sup> As a result, the exclusionary property regimes of Greek cities not only constituted the communities that these cities were, but these cities and the decisions they made as communities also served as the ultimate point of reference with regard to questions concerning property in land in their midst. As such, these regimes inserted the whole community, embodied in the civic assembly and the decisions it made, into the economic lives of the people living in the ambit of these cities.

### 1.3 Land and citizenship: the economic implications

Debt relations across civic boundaries involving collateral in land provide the best evidence for the concrete implications of this insertion. A passage from the *Oikonomika* attributed to Aristotle that takes place in Byzantium nicely illustrates the contestations and negotiations that could arise when the creditor and debtor did not belong to the same city:<sup>66</sup>

μετοίκων δέ τινων ἐπιδεδανεικότων ἐπὶ κτήμασιν, οὐκ οὔσης αὐτοῖς ἐγκτήσεως ἐψηφίσαντο τὸ τρίτον μέρος εἰσφέροντα τοῦ δανείου τὸν βουλόμενον κυρίως ἔχειν τὸ κτῆμα.

Certain metics had lent money on the security of the citizens' property. As these metics did not possess the right of holding such property, the people

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<sup>61</sup> Gehrke 1985: 210-214.

<sup>62</sup> Lonis 1991 studied instances of such restorations of confiscated property in Athens, Chios, Halicarnassus, Keos, Methymna, Mytilene, Mylasa, Samos, and Tegea.

<sup>63</sup> Xen. *Hell.* 5.2.10-12 and Isoc. *Ep.* 7.8-9.

<sup>64</sup> Dem. 23.45 and 69.

<sup>65</sup> Asheri 1966: 44-51 and Gehrke 1985: 213-4.

<sup>66</sup> Ps.-Arist. *Econ.* II, 2, 3d [1347a, 1-4]. See also Gauthier 1973: 174-5 and Brunt 1966: 86 for the problem of loans across political boundaries.

offered to recognize the title of anyone who chose to pay into the treasury one third of the amount secured.

The passage here makes clear that, as in many other cities, also in Byzantium they did not have the right to own land in civic territory.<sup>67</sup> As a result of this exclusion, the city could bargain with them over the terms on which they could obtain the collateral in land that their Byzantine debtors had offered. From a different perspective the author of a fourth-century BC treatise on the revenue of Athens remarked that foreigners and metics in particular were less likely to extend credit to Athenians because without *enktesis* they were unable accept land as collateral.<sup>68</sup>

More generally speaking, the exclusionary property regimes of Greek cities clearly placed limits on the possibilities for accumulating land. Grants of *enktesis* were well-guarded privileges and civic bodies were also reluctant to lease out public and sacred land to foreigners and metics.<sup>69</sup> The main condition for gaining access to land in another city's territory and having one's title to this land recognized there was the approval of the community as a whole. As a result, ancient Greeks had to enter into a relationship with the collective bodies of these cities and demonstrate their goodwill and friendly attitude towards the city as a whole in order to have a chance at obtaining land within the boundaries of its territory.<sup>70</sup> The city might then decide to reciprocate by giving *enktesis* and another host of privileges to the foreigner in question.

In what follows I suggest that Greek cities persistently tried to institutionalize their momentary geopolitical success in such a way as to alter the terms of these negotiations about access to land in other cities for their own citizens, helping them elide the claim to the political control over access to the land of the communities subject to them. Sometimes they made these negotiations entirely unnecessary; at other times they simply tilted their terms decisively in the favor of the citizens from the imperial city. Civic empires thus disencumbered their citizens' economic pursuits abroad from the political negotiations that they usually entailed. At the same time, however, the ways in which civic empires altered the property regimes of the cities subject to them also built on and continued the tradition whereby property rights were contingent on political power and circumstances that I have detected in this first section of the chapter; only now the political power and circumstances at stake were the maintenance of their imperial sway.

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<sup>67</sup> Whitehead 1977: 70 and 93 discusses the case of Athens. Gauthier 1988 casts the net more widely. Both suggest that the conditions of these subject populations were formed in opposition to citizenship. From this perspective the foreigners' exclusion from access to land only serves to underline the crucial nature of this privilege for citizens.

<sup>68</sup> Xen. *De Vect.* 2.6.

<sup>69</sup> See now Papazarkadas 2011: 323-5 on why so few metics lease sacred land in Athens. He suspects that politically there was an Athenian unwillingness to allow such leases, which after all, were allocated through proceedings in the *boule*.

<sup>70</sup> For the reciprocal relations that communities liked to entertain with individual foreigners and citizens as part of their honorific culture Veyne 1995 is fundamental. The most recent contribution to this big topic is Ma 2013. For how grants of *enktesis* fit into this honorific regime see Marek 1984: 184-185.

## 2 – Land and the statecraft of civic empires: four case studies

Here I present four case studies of Greek polities, three cities and one league, with imperial ambitions and sway, arguing that on each occasion the geopolitical power and status of these polities was accompanied by the development of a land-holding citizen diaspora, which relied on imperial statecraft for the acquisition and possession of their new landed estates. The cases are Athens and its empire in the fifth and fourth centuries BC, the Aetolian League and its relationship to Delphi in the late third and early second centuries BC, Rhodes' rule over its *peraia* in the third and second centuries BC, and lastly, Sicilian Centuripe in the first two centuries of Roman rule over the island. Each of these case studies reveals the same coincidence between imperial sway and the development of a land-holding citizen diaspora and each of them also provides glimpses of the statecraft that helped create and maintain these landholdings. As the examples I draw on cover a wide range of scales along the continuum of Greek cities' imperial ambitions, the pattern that they reveal suggests that in a world dominated by exclusionary property regimes, helping their own citizens infringe upon these regimes was a prominent goal of the statecraft of civic empires.

### 2.1 Case Study One: Athens and its empire in the 5<sup>th</sup> and 4<sup>th</sup> centuries BC

In the early fifth century BC Athens managed to transform its leadership of the alliance of Greek cities against the Persian empire into an empire of its own that would only be dismantled in 403 BC, after nearly thirty years of military conflict between Athens and Sparta. In the early fourth century BC Athens tried to rebuild its empire; this time the military might of the Macedonian monarchy turned out to be its undoing.<sup>71</sup> Breaking with a long tradition of scholarship on the Athenian empire, scholarship that has been fascinated with locating the exact point of transition from alliance to empire, Lisa Kallet recently argued that from its very early days Athens used the military resources of the alliance to further Athenians' economic interests outside of Athens.<sup>72</sup> Her convincing argument concerning the Thasian *peraia* in the first half of the fifth century BC, I contend, mostly extends to the many occasions at which Athens settled its own citizens in the territories of other cities; also on these occasions Athens deployed its might to further Athenians' interests abroad.

#### 2.1.1 Athenian settlements abroad

In the fifth century BC Athens founded Amphipolis and Thurii as settlements that included both Athenian and non-Athenian members.<sup>73</sup> They also settled their own citizens within existing communities such as Naxos, Andros, Chalcis, Eretria, Neapolis, Lemnos,

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<sup>71</sup> Meiggs 1972 is still foundational for the fifth-century BC Athenian Empire. See also Hornblower 1991: 15-47 on its origins and 127-152 for an account of the war that ended it. For the history of the Second Athenian League in the fourth-century BC Rhodes 2010: 261-278 provides a good summary account, while Cargill 1981 remains basic for its architecture, but see now also Dreher 1995.

<sup>72</sup> Kallet 2013.

<sup>73</sup> Brunt 1966: 73-4.

Imbros, Sinope, Amisos, Astacos, the Chersonese and several cities on Lesbos. Most infamously, however, they expelled or killed entire citizen populations and resettled these territories with their own citizens; Scyros, Histiaea, Aegina, Potidaea, Scione, and Melos all suffered this fate.<sup>74</sup> Jack Cargill discussed the evidence for similar settlements in the fourth-century instantiation of the Athenian empire, the most memorable of which was the creation of a cleruchy—a particular institutional form that these Athenian settlements abroad could take—on Samos in 365 BC after the Athenians had expelled the entire Samian citizen population.<sup>75</sup>

Often these settlements resulted directly from military conflict and were explained and justified by appeal to particular constructions of the relationship, both good and bad, between Athens and the communities in question. The expulsion of the Melians and the resettlement of the island with Athenians is the most notorious example of Athenians settling abroad after inter-polis relations turned awry. As Thucydides' Melian Dialogue shows so clearly, the slaughter and expulsion of the Melians and the settlement of five hundred Athenians on the now empty island could be construed as part of Athens' retribution for Melian opposition and *hubris*;<sup>76</sup> the reality of inter-polis relations made this settlement possible, while the morality of these relations could make it right. On the other side of the spectrum, Pericles' settlement of six hundred Athenians in the territory of Sinope could be interpreted as a reward for his effort to free the city from a tyrant.<sup>77</sup> This settlement of six hundred Athenians among the Sinopians thus provides an instance in which Athenian power and interference was welcome and the Athenians capitalized on the good will their actions had engendered in Sinope by negotiating with the city that a group of their own citizens should be allowed to settle there. The Athenian settlements in both Melos and Sinope thus illustrate different ways in which Athens could transform its political success and power into land for its own citizens.

Athens also imposed a set of conditions on those citizens that had been able to reap the profits of empire in the form of land. As a result, these settlements undoubtedly were also an integral part of the Athenian fiscal regime; the grain they produced could be used to stabilize the Athenian wartime economy; and surely they were also a means of controlling subject cities.<sup>78</sup> However, these goals could also have been achieved by different means and

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<sup>74</sup> Brunt 1966: 77. Jones 1957: 169-174 also discusses Athenian fifth-century settlement abroad trying to establish which ones were cleruchies and which ones *apoikiai*, a distinction that many scholars, including Brunt 1966, were interested in, but which is not important for my argument here. Moreno 2007: 77-143 provides the most recent account of the evidence for Athenian fifth-century cleruchies, focusing in particular on those on Euboea. For these settlements more generally see now also Pébarthe 2009.

<sup>75</sup> Cargill 1981: 146-160 Cargill 1995: 1-58 discusses the evidence for Athenian settlements abroad in the fourth century. See Diod. Sic. 18.18 for the historical context of the expulsion of the Samians with *SEG* XLV 1162 and Hallof and Habicht 1995 for a discussion idea about the institutional organisation of the cleruchs on the island: 250 council members and 5 generals, the exact half of the corresponding Athenian institutions.

<sup>76</sup> As Hornblower 2008: 217 points out, the long section on Athens' imperialism, in which the Melian dialogue—a brutal rationalization of imperialist action if there ever was one—is embedded (Thuc. 5.84-114), leads directly into the Athenians sending five hundred settlers to Melos (Thuc. 5.116.4).

<sup>77</sup> Plut. *Per.* 20.2.

<sup>78</sup> Brunt 1966 is keen on their strategic importance in securing access to resources. Moreno 2007 has made the most extensive case for their importance to the Athenian grain supply. Gauthier 1973 likes to see them as mere

without infringing on the property regimes of other cities.<sup>79</sup> The possibility of these alternatives as well as the fact that the Athenians also acquired individual holdings abroad suggest that at least in Athens there was a consensus that Athenians should profit from the empire by gaining access to land in other cities.

### 2.1.2 The landholdings of individual Athenians abroad

The existence and extent of these individual landholdings is a much-debated problem. The evidence invoked in the debate roughly falls into two categories. First, we know that individual Athenians had properties in other cities in the fifth century BC, but it remains uncertain whether these were cleruchic holdings or properties that they had acquired by other means.<sup>80</sup> The debate hinges on what we think cleruchies were, what men held such lots and on what conditions they did so. In short, scholars have been able to argue that some of these holdings cannot have been cleruchic holdings because they demonstrably belonged to members of the Athenian elite and resided at Athens, a fact that according to these scholars makes it impossible that they were cleruchs.<sup>81</sup> However, Alfonso Moreno argued that already in the late fifth century BC cleruchs no longer were obliged to work their land themselves and could thus reside in Athens. He suggested that their properties also made them part of the Athenian elite that was constantly harassed by sycophants and had to perform liturgies for the Athenian *demos*.<sup>82</sup> Moreno's reconceptualization of cleruchies thus makes it possible, but not necessary, that the individual holdings that we have attested were part of cleruchic settlements. The fact that two of these holdings were located in Thasos and Abydos, cities for which we know of no Athenian cleruchic settlement, might even make it a rather unlikely conclusion.

The much more promising set of evidence for making arguments about the existence and extent of individual landholdings by Athenians in the cities throughout the empire are fourth-century documents that look back onto the fifth-century empire. The most important document of this kind is the prospectus of the Second Athenian Alliance from 378/7 BC. In

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garrisons, an interpretation that is becoming less and less likely; nonetheless, Lysander's repeated expulsions of Athenians from their properties outside of Attica also suggest that their presence could be perceived as tightly intertwined with Athenian control: Xen. *Hell.* 2.2.2 (Byzantium and surroundings), 2.2.6 (Melos and Aigina), 2.3.6 ff. (Samos). See Finley 1978 for the suggestion that the mere acquisition of land was an important aspect of Athenian imperialism.

<sup>79</sup> For example, while highlighting the importance of cleruchies for the Athenian grain supply, Moreno 2007 already points to alternatives for pursuing that aim, such as Athenian relations with the kingdoms on the Cimmerian Bosphoros. More generally, Athenian magistrates in subject cities—there were just as many Athenian “imperial” magistracies as civic ones—could have accomplished many of these goals without the settlers. For these magistrates, whom we know so little about, see Pébarthe 2008: 45.

<sup>80</sup> Xen. *Mem.* 2.8.1 (Eutherus) and Xen. *Symp.* 4.31 (Charmides): both men lament their loss of properties overseas. The *poletai* records documenting the sale of the properties of the *Hermokopidai* and of those men accused of consecrating the Eleusinian Mysteries between 415 and 413 BC also contain properties located in cities other than Athens: *IG* I<sup>3</sup> 426, ll. 43-46 (Thasos); 427, l. 78 (Abydos); and 428, ll. 2-4 (Oropos and its harbor). See now also *Agora* XIX, P1, which does not reproduce the text, but provides a historical commentary.

<sup>81</sup> Gauthier 1973: 166-169; Erxleben 1975: 84; and Finley 1978: 116.

<sup>82</sup> Moreno 2009: 213 and Moreno 2007: 91-93.



thinking of cleruchies.<sup>86</sup> Famously, cleruchies featured prominently in Diodorus' rendering of the prospectus of the Second Athenian Alliance. But his paraphrase of the decree also fits rather nicely—maybe too nicely—with his argument that Athens' allies had developed a particular distaste for these cleruchies.<sup>87</sup> Furthermore, Diodorus also stated that at the moment of the foundation of the Second Athenian Alliance the Athenians also promised that no Athenian would cultivate land outside of Attica.<sup>88</sup> Diodorus' mention of this provision makes it clear that he did not understand the decree to be exclusively about cleruchies. And neither should we. Both the language of the decree itself and Diodorus' various paraphrases of it militate against this interpretation.<sup>89</sup>

The second fourth-century document that looks back onto the fifth-century empire is Andocides' *On the Peace*. In 392 BC Athens and Sparta were negotiating a new peacetreaty. When Andocides was composing his speech, the terms on the table would have allowed Athens to keep its navy and maintain its walls. However, a powerful and vocal group among the citizens was also interested in negotiating about getting their overseas possessions back. In Andocides' rendering of their concerns these possessions could take the form of entire stretches of landscape, such as the Chersonese, cities founded or resettled, debts that were still outstanding, and—importantly for our purposes—plots of land in the territories of other cities: *enktemata*.<sup>90</sup> Further on in the speech Andocides emphasized that these possession overseas were also of a private nature (*idios*) and also proposed that Athenians had also bought (*priamēnos*) some of the possessions they held during their fifth-century empire.<sup>91</sup> This language takes us right back to the language of the prospectus of the Second Athenian Alliance, showing that such private acquisitions must have been an important aspect of the fifth-century empire.

Lastly, we have a fifth-century document that rather unambiguously acknowledges the existence of individual landholdings in cities throughout the empire: the treaty between Athens and Selymbria, concluded in 408/7 BC after the city's revolt from the empire.<sup>92</sup> This treaty specifies the terms for the restoration of Athenian property on Selymbrian territory that the Athenians might have lost during the war. Houses and landed property are subject to special regulation; according to the terms of the treaty Athenians can reclaim them.<sup>93</sup> These provisions point to individual holdings by Athenians in Selymbria, because we know

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<sup>86</sup> *contra* Moreno 2009: 211-12. See Quadrino 2011 for an instance of the demarkation of public (*demosios*) land of the Athenians on the ground.

<sup>87</sup> Diod. Sic. 15.23.4 and 15.29.8. Moreno 2009: 212 suggests that this is a correct and exhaustive rendering of the actual contents of the provisions concerning land in the prospectus of the Second Athenian Alliance.

<sup>88</sup> Diod. Sic. 15.29.8.

<sup>89</sup> So also Jones 1957: 267; Brunt 1966: 86; Gauthier 1973: 170-171; and Zelnick-Abramowitz 2004: 328.

<sup>90</sup> Andoc. 3.15. Brunt 1966: 86 also discusses this passage as evidence for individual landholdings.

<sup>91</sup> Andoc. 3.36-37.

<sup>92</sup> *ML* 87.

<sup>93</sup> *ML* 87, ll. 18-22. Cataldi 1983: 328-31 discusses this provision, the Athenian *emporoi* in Selymbria who must have entered into the credit provisions the treaty mentioned, and Athens' strategy of placing Athenian presence in Selymbria on a more solid agricultural basis by allowing only for the recovery of land and houses.

of no cleruchy in Selymbria. In addition, the treaty mentioned Athenian possessions in parallel with allied possessions, which makes it even more unlikely that these provisions were written with cleruchic holdings in mind.<sup>94</sup> In addition to attesting the existence of such individual holdings in fifth-century Selymbria, this treaty also presents an instance in which the Athenians as a community took interest in and concerned themselves with the maintenance of these individual holdings. In the following section I suggest that this imbrication of Athenian power in the creation and maintenance of these holdings was a much more widespread phenomenon.

### 2.1.3 Athenian statecraft and the individual landholdings of Athenians abroad

Direct evidence for this imbrication is scarce, but the Athenians and the cities over which they ruled were distinctly aware of it.<sup>95</sup> As in the argument about the existence of individual Athenian holdings throughout the Athenian Empire that I made above, so also here, with regard to the problem of the involvement of Athenian statecraft in the creation and maintenance of these holdings, attention to the precise wording of the prospectus of the Second Athenian alliance helps advance the argument. In lines 25-31 the Athenians promised that the *demos* would relinquish all claims concerning the property of Athenians, whether public or private, in the territories of the cities entering into the alliance with Athens. The inclusion of landholdings acquired by individuals— private landholdings, that is—as a potential concern for the *demos* is important, suggesting that the situation in Selymbria was not exceptional and the Athenian *demos* was in principle willing to use Athens' imperial might with regard to the individual landholdings that Athenians acquired in cities throughout the empire.

The language of the second set of provisions concerning Athenian property abroad, the provisions looking to the future, is equally revealing. In lines 35-41 the Athenians promised that no Athenian would be able to “*enktēsasthai*”, to acquire land in the territories of the cities joining the alliance. In light of the exclusionary property regimes of Greek cities this is a very puzzling provision; for the cities entering the alliance should have been able themselves to control who was able to acquire land in their territories. The fact that in this provision Athens assumed responsibility for the landholdings that Athenians acquired in the territories of other cities, including both the properties that Athens might assign to them and those that they would pay for, indicates that the Athenians and the cities over which they ruled understood that Athenian power and institutions were involved in the creation of both kinds of landholdings.

How exactly did this happen? Two documents provide glimpses of an answer. First, we have *poletai* records that document the re-sale of properties in cities other than Athens

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<sup>94</sup> So also Gauthier 1973: 169.

<sup>95</sup> The absence of direct evidence has led to a fair amount of scholarly speculation. Jones 1957: 167-8 and Gauthier 1973: 163 and 177-8 suspected members of the Athenian diaspora to simply have force on their side. Brunt 1966: 86 imagined treaty provisions that eliminated the need for Athenians to gain *enktēsis* in the cities of the Athenian empire. Erxleben 1975: 84 speculated that Athenians might be able to buy the lots of deceased cleruchs on Euboea and Cargill 1995: 193-194 conjectured that cleruchs might have had the right to acquire private holdings in addition to their lots in the cities in which they were situated. Zelnick-Abramowitz 2004: 329-330 last addressed this question head on and simply declared herself at a loss.

that had once belonged to Athenians.<sup>96</sup> In Athens the *poletai* were the officials in charge of selling public contracts, but also properties that had been confiscated from Athenians.<sup>97</sup> Both the readiness with which Athenians were willing to recognize that these men's overseas possessions were theirs, as well as the fact that they apparently had no compunction about selling them on, points to one of the ways in which Athenian power and institutions might have ignored and infringed upon the property regimes of other Greek cities.<sup>98</sup>

Second, in a fifth-century oath concerning their relations with Chalcis the Athenian *boule* and the *dikastai* swore that they would not take any property away from an "unjudged" (*akritos*) Chalcidian without reference to the Athenian *demos*.<sup>99</sup> This provision is taken to be part of a section of the oath that had been adopted from the Athenian bouletic oath to fit the imperial circumstances.<sup>100</sup> Balcer suggested that by the late fifth century BC *akritos* had become a technical term for someone whose case had been judged by the Athenian *boule*, but had not been heard in the Heliastic courts.<sup>101</sup> As such, this provision placed the Chalcidians under the same protections from Athenian institutions as Athenian citizens, while at the same time asserting and legitimating the claim that Athenian institutions could and should be binding on individual Chalcidian citizens. It thus created a situation in which Athenians could effectively declare themselves able to *enkteasthai*, the very act that they said they would no longer allow by the time of the Second Athenian Alliance.

Lastly, in this context one cannot help but mention two fifth-century passages, from Aristophanes' *Birds* and Pseudo-Xenophon's *Constitution of the Athenians* respectively.<sup>102</sup> Both Aristophanes and Pseudo-Xenophon, the so-called "Old Oligarch", portrayed sycophants not just as persons eager to despoil the rich in Athens by bringing cases against them, but also as interested in the possessions of the rich in the cities that were part of the Athenian empire.<sup>103</sup> The sycophants took away for themselves (*ἀφαιρείσθαι*) the possessions of the rich in these cities, the Old Oligarch wrote; according to Aristophanes, sycophants simply

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<sup>96</sup> *Agora* XIX, P4, ll. 6-10 documents the sale of a property once owned by an Athenian on Lemnos. Cargill 1995: 194-5 rightly points out that we do not know who bought the property, but suggests that the buyer most likely was another Athenian. *IG* I<sup>3</sup> 426, ll. 43-46; 427, l. 78; and 428, ll. 2-4 record the sale of Athenian properties in Thasos, Abydos, and Oropos and its harbor respectively.

<sup>97</sup> Ps.-Arist. *Ath. Pol.* 47.2 and 52.1 with Rhodes 1981 *ad loc.*

<sup>98</sup> So also Finley 1978: 116-7.

<sup>99</sup> *ML* 52, ll. 8-10. Mattingly 1992: 134-136 and 2002 controversially dates it to the 440s, a suggestion recently supported by Papazarkadas 2009: 73-74, who additionally points out the decree was not as harsh as commentators have made it out to be; the lines in question here, which aim to govern Athenian behavior in Chalcis, only support his point.

<sup>100</sup> Balcer 1978: 37-40.

<sup>101</sup> Balcer 1978: 37-38.

<sup>102</sup> Ps.-Xen. *Ath. Pol.* 14-15 and Ar. *Av.* 1451-1461.

<sup>103</sup> On the idea that sycophants only went after rich men as a part of the ideology of sycophancy in Classical Athens see Christ 1998: 48-71 and for an attempt to look beyond it see Osborne 1990. For the idea that sycophants indeed only went after the well-to-do see Harvey 1990: 104 and 110-112. For the generally accepted idea that the concept of "sycophancy" relied on the Athenian laws that allowed *ho boulomenos* to bring a charge, both public and private, see Rhodes 1981: 444-5.

seized (ἀρπάζειν, l. 1460) their property. These are clearly politically tainted descriptions of an imperial institution, an institution that is commonly agreed to have been a variant of *phasis*—a legal procedure by which the plaintiff was able to acquire a portion of the defendant’s property, should the latter be convicted.<sup>104</sup>

The crucial problem in interpreting these passages is whether the successful sycophant got hold of parts of the actual landholdings or simply part of the price that they achieved at auction.<sup>105</sup> The Old Oligarch shows a sycophant bringing back silver from one of his trips to Athens’ subject cities. At the same time, however, both Aristophanes’ and the Old Oligarch’s portrayal of the sycophant suggest that they took direct possession of the goods of the allies they indicted; and indeed, the silver that the Old Oligarch mentioned might have been just a part of these original possessions.<sup>106</sup> If interpreted in this way, the passages in question reveal an institution that simply ignored the exclusionary property regimes of Greek cities and established what from the Athenian perspective at least were rightful individual landholdings of Athenians in these cities. Furthermore, this particular legal arrangement constituted an instance in which Athens’ commitment to helping its citizens infringe upon the property regimes of other Greek cities and to thus open up new resources for them, found its expression in a context in which it was not a given in any way.

#### 2.1.4 Conclusion

I have argued that Athens helped its citizens acquire landed possessions in the territories of other cities in a variety of ways, including the straight conversion of military success into settlements on civic territories, the building of imperial institutions that put Athenians in the position to establish title to land in subject cities, and the simple tendency to recognize the properties of the members of the Athenian diaspora as rightful and legitimate. Differently put, Athenian statecraft was involved in both creating and maintaining these holdings. As such, my argument here has lent further substance to Lisa Kallet’s suggestion that Athenian economic interests shaped the actions and institutions of the Athenian empire from its very beginning and that they continued a pattern that Kallet already observed in the archaic period and which I suggest was a result of the exclusionary character of Greek cities’ property regimes.

At the same time, focusing explicitly on land also allows me to further Kallet’s argument. My examples here have shown that a much wider range of “political” institutions of the *arche* than she had considered were involved in furthering the economic interests of Athenians abroad; not only military campaigns and the collection of tribute helped Athenians acquire land abroad, but also the myriad ways in which Athens chose to institutionalize its power over other cities, including what could broadly be called “legal” institutions. Furthermore, my discussion also points towards a possible explanation for what Kallet has called the “economic variegation of the extent to which Athenians sought out

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<sup>104</sup> Gauthier 1973: 176; MacDowell 1978: 224-228; Osborne 1990: 84; and Dunbar 1995: 685. On *phasis* more generally see Osborne 1985: 44-8 and MacDowell 1978: 158-9.

<sup>105</sup> Gauthier 1973: 164-6 and and 176-7.

<sup>106</sup> Gauthier 1973: 177.

means and measures to reconfigure the boundaries of Attica”.<sup>107</sup> Beyond her observation that time and the knowledge and expertise that accompanied it played an important role in shaping the institutions of the empire, the difference the Athenians promised would exist between the fifth century empire and its fourth century successor highlights the fact that the statecraft the Athenians deployed was also a matter of distributional considerations both inside and outside the Athenian *demos*.<sup>108</sup> The structure of the decree for the foundation of an Athenian colony at Brea illustrates this point rather nicely; for there a rider, a motion tagged onto the original decree, specifies that members of the lowest two property classes were to be settlers at Brea.<sup>109</sup> Who was to reap the fruits of the empire clearly was a contested question that received a wide range of answers throughout Athenian history.

## 2.2 Case Study Two: The Aetolian League at Delphi in the 3<sup>rd</sup> and 2<sup>nd</sup> centuries BC

Beginning in the early third century the Aetolians were intent on building what modern scholars have called “Greater Aetolia”.<sup>110</sup> This involved entering into an alliance with the Acarnanians, their neighbors and long-standing enemies to the Northwest, and various attempts to extend their influence across the Corinthian Gulf into the Peloponnese.<sup>111</sup> Above all, however, the building of “Greater Aetolia” meant the incorporation of many of its neighbors into the League itself. As a result, the Aetolians acquired one seat after another on the Amphictyonic Council of Apollo’s sanctuary at Delphi, a process that culminated in 245 BC, when the Aetolians managed to make the Delphic *Soteria*, which commemorated Delphi’s salvation from the Gauls, in which the Aetolians had played an important role, into a Panhellenic festival.<sup>112</sup>

In the early second century BC Rome managed to put a halt to this expansion of Aetolian power and influence, after the Aetolian League had entered an alliance with Antiochus III to expel the Romans from mainland Greece. In 191 BC the Roman consul Manius Acilius Glabrio defeated Antiochus III and the Aetolians at Thermopylae.<sup>113</sup> Pursuant upon his victory, Glabrio banned Antiochus III from mainland Greece and after

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<sup>107</sup> Kallet 2013: 44.

<sup>108</sup> Kallet 2013: 57.

<sup>109</sup> *ML* 49, ll. 32-42. Various interpretations exist of the meaning of this rider in relationship to the socioeconomic origin of Athenian settlers abroad. Jones 1957: 168 and de Ste Croix 2004: 11 read it as a provision about the inclusion of the second lowest property class in Athens, assuming that by default only the lowest were entitled to join settlements abroad. Brunt 1966: 71 and Moreno 2009: 219 with n. 18 argue that the rider constituted a limitation on what kind of Athenian citizens could join the settlement at Brea, excluding citizens in the highest two property classes. What matters for my argument here is that the specification comes in a rider, bringing to light the contested nature of the decision.

<sup>110</sup> Scholten 2000.

<sup>111</sup> Mackil 2013: 101-131.

<sup>112</sup> Mackil 2013: 99-100.

<sup>113</sup> Grainger 1999: 407-498 and Grainger 2002 outline the events leading up to the alliance and the war with Rome that ensued from the Aetolians’ and Antiochus III’s perspective respectively.

besieging Heraclia went about setting the terms for dismantling Aetolian power.<sup>114</sup> A set of documents from Delphi, most of them associated with the monument the Delphians erected in Glabrio's honor, provides a good insight into the effects of Aetolian control of the Amphictyony on the allocation of land in the city of Delphi and the land belonging to the sanctuary of Apollo in its midst.<sup>115</sup>

Glabrio's actions at Delphi, those that the city thought worth recording at least, all involved the reallocation of landed property. The key document here is his letter to the Delphians and the list of properties, both land and houses, that he took away from members of the Aetolian League and gave to the city and to Apollo.<sup>116</sup> These amounted to a minimum of twenty-four estates and ninety houses. The previous owners were all from cities belonging to the Aetolian League with the largest group coming from Amphissa in nearby Ozolian Locris.<sup>117</sup> These Aetolians evidently had managed to acquire properties in the territory of Delphi while Aetolia was in control of the Amphictyonic Council.<sup>118</sup> Here I want to argue that the privileges that the Delphians managed to obtain from the Romans and the way in which Glabrio himself described his actions suggest that the fact that the Aetolians had essentially taken over the Amphictyony was instrumental in creating and maintaining the many landed possessions of Aetolians in Delphi.

The extent of Apollo's possessions—his land, his harbor, and his markets—and the rights to control their revenues were constantly subject to contestation among polities in the region, including the Amphictyonic Council.<sup>119</sup> In the early second century BC the city of Delphi was clearly eager to advance its claim to accessing and controlling these resources. Importantly, at this point in time they saw the Amphictyony as their main competitor; the words and deeds of Roman commanders at least suggest as much. In his letter to the Delphians Glabrio promised that in case the Thessalians were to send an embassy to Rome, he would do his best to defend Delphian interests.<sup>120</sup> The Thessalians, of course, were the Greek power eager to take over the Amphictyonic Council after the Aetolians' demise.<sup>121</sup> Furthermore, in 189 BC Delphi sent an embassy to the senate in Rome about its status. Spurius Postumius Albinus, the praetor that introduced them in the senate, also wrote a

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<sup>114</sup> See Mackil 2013: 308-9 and 289 with Appendix n. 43 for Glabrio's actions in the aftermath of the Aetolian defeat in the Peloponnese.

<sup>115</sup> *Choix (Delphes)* 143-148; 143, 144, and 148 were part of the base for Glabrio's statue. The stele on which 145-7 were inscribed has been lost and seems to have been a separate monument.

<sup>116</sup> *Choix (Delphes)* 144.

<sup>117</sup> Michaud 1977: 125 and 130.

<sup>118</sup> So Roussel 1932: 8, Daux 1936: 231-3, and Larsen 1938: 311-312. Ager 1996: 245-6 suggests that Glabrio's actions amounted to an arbitration of a territorial dispute between Delphi and Amphissa, an interpretation that goes against all previous commentators and also fails to make sense of the many non-Amphissian property holders who lost their estates. However, Glabrio undoubtedly did change the boundaries of sacred land in Delphi (Roussel 1932: 18) and it seems likely that in the second century BC the Phylogeneis, a Locrian village, did become part of Delphic territory (Daux 1936:234-258).

<sup>119</sup> Sanchez 2001: 486-488 provides a good overview.

<sup>120</sup> *Choix (Delphes)* 144, ll. 89

<sup>121</sup> Roussel 1932: 20-21 and Sanchez 2001: 372-374.

letter to the Delphians informing them of the success of their embassy. Importantly, he wrote the same letter to the Amphictyons informing them of the senate's decision. At Delphi both documents were inscribed together in spite of their overlapping content.<sup>122</sup> Both Spurius' decision to inform the members of the Amphictyonic Council of the privileges the senate had granted to Delphi and the decision to document that not only the city of Delphi, but also the members of the council had been informed about these privileges indicate that in Delphi's recent experience this council presented the greatest threat to its privileges.

As regards the competing claims of the Amphictyonic Council Delphi appears to have been worried above all about questions of property and the control of resources. When explaining and justifying the privileges that the Delphians received and desired Albinus and Glabrio employed similar language. Glabrio promised to make sure that Delphi obtained "what from the beginning had been their ancestral possessions".<sup>123</sup> Similarly, Albinus informed the Amphictyons and the Delphians that the latter would be in charge of the sacred land and the sacred harbor "as had been their ancestral right from the beginning".<sup>124</sup> The similarity in formulation makes it likely that the Delphians themselves explained their desired privileges as an attempt to recover their ancestral rights and possessions. Delphi's idea of what its ancestral rights and possessions were clearly went far beyond the recovery of individual landholdings from Aitolians. Indeed, the main source of dispute in the history of the region was at stake: the control of access and management of resources, both of Apollo and of Delphi itself. And yet, the specifics of how Delphi understood what its ancestral possessions and rights were can be seen to reflect their recent experiences with the claims and actions of the Amphictyony under Aitolian control; for the Delphians claimed as their ancestral rights the control over sacred land as well as the right to expel from their territory any foreigners they wanted to see expelled and more generally to decide who may live among them.<sup>125</sup> Here I want to suggest that Delphi's insistence that the city should be in charge not only of sacred land but also of the land in its own territory—a right that should have been a matter of course—makes it likely that during the period of Aetolian ascendancy the members of the Amphictyonic Council not only claimed the right to control Apollo's sacred resources, but also did so with regard to other land in Delphic territory, and that in both instances these claims were part of attempts to help Aitolians acquire land there.<sup>126</sup> In this case-study, then, we are faced with the possibility that Amphictyonic statecraft played its part in creating and maintaining possessions.

Indeed, the structure and language of the list of properties that Glabrio confiscated reinforce this idea. These lists contain separate headings for landed estates and houses, but also mention several additional decisions that Glabrio arrived at. One of them explicitly concerned "the *temene* of Pythian Apollo of which Aetolians had possessions" and ordered

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<sup>122</sup> *Choix (Delphes)* 145 and 146.

<sup>123</sup> *Choix (Delphes)* 144, l. 9: ἵνα ὑμῖν κατάμονα ἦ τὰ ἐξ ἀρχῆς ὑπάρχοντα πάτρι[α ...

<sup>124</sup> *Choix (Delphes)* 146, l. 7: καθὼς πάτριον αὐτοῖς ἐξ ἀρχῆς. In *Choix (Delphes)* 145, l. 6 the passage is partly restored.

<sup>125</sup> *Choix (Delphes)* 148, ll. 17-20.

<sup>126</sup> So also Roussel 1932: 10, n. 2.

that they be given to the city and the god.<sup>127</sup> The specification of Apollo's ownership of the *temene* and the absence of such a specification in the case of the long lists of houses and estates opens up the possibility that at least some of them were not on sacred land. Admittedly, we can only speculate that the Amphictyony was also involved in at least some of these acquisitions; but when Glabrio made the city of Delphi and Apollo joint-owners of the properties he had confiscated, he clearly cemented the city's right to control Apollo's resources.<sup>128</sup> Importantly, he did so in such a way that bound civic and divine ownership together and thus precluded the Amphictyons from using their claim to be dealing with the matters of Apollo and of the sanctuary to undermine Delphi's position and prerogatives. As such, his specifications might thus provide yet another indication that Aetolian influence in the Amphictyonic Council and the claims of that council to be able to make decisions about rightful possession of land in Delphic territory had helped to create and maintain the many Aetolian possessions in early second-century Delphi that the documents that I have examined here attest.

In sum, then, Delphi's attempts to establish a new position for itself in the aftermath of Manius Acilius Glabrio's defeat of Antiochus III and the Aetolians in 191 BC and the documents they recorded as part of that effort give historians a glimpse of yet another land-holding diaspora accompanying the ascendancy of a Greek polity, the Aetolian League. I have argued that in this particular case the Amphictyonic Council of Apollo's sanctuary at Delphi, which at the time was dominated by members of the Aetolian League, played an important role in creating and maintaining the possessions of this diaspora by claiming the right to make decisions about Apollo's resources and, in all likelihood, also about properties located in the remaining parts of Delphi's territory, thus reconfiguring the region's property regime to the advantage of the many Aetolians who managed to acquire land in Delphi during the period of the Aetolian League's ascendancy.

### 2.3 Case Study Three: Rhodes and its *peraia* in the 3<sup>rd</sup> and 2<sup>nd</sup> centuries BC

Ever since the publication of the *Geschichte der alten Rhodier* by Hendrik von Geldern in 1900 we know that the Rhodian *peraia*, the stretch of coast and its hinterland on the mainland opposite the island of Rhodes, stood in a distinct and historically developing relationship to the *polis* of Rhodes.<sup>129</sup> One part of this *peraia*, the Loryma peninsula to the south of the Ceramic Gulf, was fully integrated into the city of Rhodes, with its inhabitants fully partaking in its deme-system and the political offices that were allocated by means of this system.<sup>130</sup> The region to the north of the Ceramic Gulf and in the highlands of Caria

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<sup>127</sup> *Choix (Delphes)* 144, ll. 132-135.

<sup>128</sup> *Choix (Delphes)* 144, ll. 11-12 and 132-5. See also Rousset 2013: 218-9 for an interpretation of other dedications "to the god and the city" in Delphi with a view to the administrative details that they entailed.

<sup>129</sup> Van Gelder 1900. For the Greek concept of *peraia* see Carusi 2000: 271-9, Giuffrida 2000 and Funke 1999. For summary discussions of individual cases see Constantakopoulou 2007: 228-253, Carusi 2003 and Débord 1999.

<sup>130</sup> Wiemer 2010: 416-419 lays out the evidence for the chronology of this integration. 408/7, the synoicism of the three *poleis* on the island of Rhodes to found Rhodes as one city constitutes the *terminus post quem* for this act.

fared rather differently. In roughly the same period in which the Aetolian League was building “Greater Aetolia”, the city of Rhodes began to institutionalize its power over this part of its *peraia*. But instead of incorporating it into the territory of the city of Rhodes, this region became the so-called “subject *peraia*” and witnessed the development a Rhodian military-administrative apparatus, the details of which remain vexingly obscure.<sup>131</sup> Leaving administrative details aside, it is very clear that Rhodian citizens owned properties in the subject *peraia*.<sup>132</sup>

### 2.3.1 Rhodian landholdings in the subject *peraia*

A clause from the Treaty of Apamea, which Rome concluded with Antiochus III in 188 BC, concerns itself with the status of these possessions.<sup>133</sup>

ὅσαι δὲ οἰκίαι Ῥοδίων ἢ τῶν συμμάχων ἦσαν ἐν τῇ ὑπὸ βασιλέα Ἀντίοχον ταπτομένη ταύτας εἶναι Ῥοδίων, ὡς καὶ πρὸ τοῦ τὸν πόλεμον ἐξενεγκεῖν. καὶ εἴ τι χρῆμα ὀφείλετ' αὐτοῖς, ὁμοίως ἔστω πράξιμον: καὶ εἴ τι ἀπελήφθη ἀπ' αὐτῶν, ἀναζητηθὲν ἀποδοθήτω.

Such houses as belonged to the Rhodians or their allies, in the territory subject to Antiochus, shall continue to belong to the Rhodians as before the war: any money owed to them shall still be recoverable: and anything taken from them, if sought for, shall be restored.

The treaty mentions houses belonging to Rhodians in the “territory subject to Antiochus”, an expression that in all likelihood referred to the part of Caria where the Rhodians had begun to exercise influence in the third century BC, but which Antiochus III’s campaigns in Asia Minor had wrested from them from 201 BC onwards.<sup>134</sup> As such, this clause in the Treaty of Apamea attests to the existence of Rhodian individual possessions in the subject *peraia* by the later third century BC. The fact that considerations of these possessions made it into the terms of this important treaty speaks to the influence that these Rhodian landholders had in Rhodian politics as well as to the possible extent of their possessions.

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<sup>131</sup> The terminology of a “subject” *peraia* in opposition so a so-called “integrated” *peraia* stems from Fraser and Bean 1954. Bresson 1991 and Blümel 1991 updated the epigraphical record for both areas and the team behind Débord and Varinoglu 2001 (HTC) furnished new and unparalleled material for the subject *peraia*. Recent on the institutional organisation of the subject *peraia* include Reger 1999, Gabrielsen 2000, Bresson 2003, van Bremen 2007, and Wiemer 2010.

<sup>132</sup> Bresson 2003: 188-189 speculates about the precise dimensions of Rhodian economic interests in the subject *peraia*.

<sup>133</sup> Polyb. 21.43.16-17.

<sup>134</sup> Reger 1999: 86-8.

Polybius' report of an embassy that Rhodes sent to Rome in 164 BC provides a second piece of evidence for the coincidence of Rhodian rule over regions in Asia Minor and individual Rhodians owning land in these regions:<sup>135</sup>

ὅτι Ῥόδιοι διαπεπνευκότες ἐκ τῆς περὶ αὐτοὺς γενομένης δυσχερείας ἔπεμπον εἰς τὴν Ῥώμην πρεσβευτὰς τοὺς περὶ Κλεαγόραν, Κάλυνδα μὲν ἀξιόσποντας σφίσι παραχωρηθῆναι, περὶ δὲ τῶν ἐχόντων ἐν τῇ Λυκία καὶ Καρία κτήσεις αἰτησομένους τὴν σύγκλητον, ἵν' αὐτοῖς ἔχειν ἔξῃ, καθά καὶ πρότερον.

Having somewhat recovered from their previous disaster, the Rhodians sent Cleagoras with ambassadors to Rome to ask that Calynda should be ceded to them, and to petition the Senate that those of their citizens who had properties in Lycia and Caria might be allowed to retain them as before.

In the aftermath of Antiochus III's defeat in 188 BC Rome divided Seleucid holdings in Asia Minor between the Attalid kingdom and Rhodes, which received Lycia and Caria, the latter being bounded by the Maeander in the north.<sup>136</sup> However, due to Rhodes' behavior before and during the Third Macedonian War in 167 BC, Rome decided to take these possessions away from the Rhodians.<sup>137</sup> In 164 BC, then, the Rhodian ambassadors entreated the senate in Rome to maintain Rhodian citizens' possessions in what had been the Rhodian dominion before 167 BC, however construed.<sup>138</sup>

Like the provisions of the Treaty of Apamea, the concern of this embassy shows that Rhodians did indeed acquire land in the region north of the Ceramic Gulf, where Rhodes seems to have had considerable political influence beginning in the mid-third century BC. Furthermore, they also indicate that the citizen diaspora and their landed possessions, which developed in the shadow of Rhodes' political preeminence, was politically significant enough to motivate an embassy to Rome and an inclusion in the terms of the treaty of Apamea. Lastly, both of these passages testify to the fact that the conditions and security of possessions of citizens outside of their own city were contingent on the political circumstances at the time.

### 2.3.2 Who were the *Rhodioi*? The extent of Rhodian landholdings in the subject *peraia*

Unlike the members of the Athenian or the Aetolian diaspora, Rhodian citizens in the subject *peraia* appear to have left a good amount of epigraphical documentation, which helps us create a more detailed image of the extent of their landholdings there. Epigraphic material from the region to the north and northeast of the Ceramic Gulf is dominated by documents that identify men and women as *Rhodioi*: just under one half of all epigraphic

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<sup>135</sup> Polyb. 31.4.3

<sup>136</sup> Polyb. 21.24.7 and 21.45.8, and Livy 37.55.5 and 38.39.13.

<sup>137</sup> Polyb. 30.5.12 and Livy 45.25.6.

<sup>138</sup> For the dispute over the terms on which Rome had granted Rhodes Lycia and Caria see Polybius 25.4-5 and Livy 41.6.8-12.

documents recovered from the area mention such *Rhodioi*. If one discounts undecipherable fragments, milestones, and inscriptions pre-dating the third century BC the proportion goes up to two thirds.<sup>139</sup> Hans-Ulrich Wiemer has convincingly shown that beginning in the early 20<sup>th</sup> century, when the first few of these documents came to light, scholars had considered these *Rhodioi* to be Rhodian citizens, who—like many other Greeks—went by their city-ethnic when abroad, while at home they identified by their demotics.<sup>140</sup>

A new inscription, published in 2001, now shows a Rhodian woman in the subject *peraia* being identified by her Rhodian demotic: Panariste, daughter of Pyrrhos, *Ladarmia*.<sup>141</sup> Significantly, all the other members of her family are identified as *Rhodioi*. Based on this coincidence of a Rhodian demotic and the city-ethnic *Rhodos* in one inscription, its editors concluded that *Rhodioi* in the subject *peraia* were not proper citizens of Rhodes, but Carian elites that Rhodes had elevated to a kind of second-class citizenship that did not entail dememembership.<sup>142</sup> This surely seems like a lot of weight to bear for one inscription.<sup>143</sup> Furthermore, at least some *Rhodioi* in the subject *peraia* must be proper citizens of Rhodes; for certain *Rhodioi* held offices that only members of Rhodian demes were able to obtain.<sup>144</sup>

Here I want to add a further argument to support the idea that at least a certain number of these *Rhodioi* were the Rhodian citizens for whose properties the city of Rhodes had repeatedly negotiated with Roman officials. The *Rhodioi* not only dominate the epigraphical material from the subject *peraia*, but the honors that they received, both from public bodies and private people, also reveal them as elite members of local society.<sup>145</sup> Now, their integration in local affairs might suggest that these were indeed hellenized Carians who had been awarded a version of Rhodian citizenship. However, as Peter Thonemann has shown, in first-century BC Phrygia members of the Roman imperial diaspora took over local communities and shaped them in their own image, yielding very similar epigraphical documentation to the one that attest the *Rhodioi* in the subject *peraia*.<sup>146</sup> This similarity of the social and political expression of the *Rhodioi* with that of the Romans that had clearly migrated from Italy to Phrygia makes it more likely and imaginable that these *Rhodioi* in Caria

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<sup>139</sup> van Bremen 2007: 117 with nn. 18 and 19 and Wiemer 2010: 428 with n. 78.

<sup>140</sup> Wiemer 2010: 427.

<sup>141</sup> *HTC* 41, ll. 4-5. *Ladarmia* is the Rhodian demotic.

<sup>142</sup> Débord and Varinliglu 2001: 142 and 152. The suggestion is Bresson's, which Débord 2003: 169-174 accepts.

<sup>143</sup> van Bremen 2007: 124 argues that in all the other inscription Bresson discusses we need to make *a priori* assumptions to see *Rhodioi* as hellenized Carians.

<sup>144</sup> van Bremen 2007: 124 and Wiemer 2010: 432-3.

<sup>145</sup> van Bremen 2007: 126 highlights the uniquely unequal relations that exist between *Rhodioi* and other people living in the subject *peraia* and Wiemer 2010: 429-432 with figs. 2-4, where he breaks down the different honours that *Rhodioi* received in the subject *peraia*.

<sup>146</sup> Thonemann 2013b: 29-31.

were indeed the Rhodian equivalent to the members of Roman diaspora in a different highland in Asia Minor.<sup>147</sup>

If, then, we accept that these *Rhodioi* were indeed citizens of Rhodes who had come to live in the subject *peraia*, a recently published inscription from Stratoniceia can provide an illustration of the density and extent of Rhodian holdings in and around this city.<sup>148</sup> According to the editors, the inscription dates to the years 188-167 BC. It lists thirty donors to a cult of Demeter, who all seem to have donated their landed property to the goddess.<sup>149</sup> Of these thirty men, who undoubtedly all belonged to the local elite, eight, were *Rhodioi*, just over one fourth, that is.<sup>150</sup> This proportion as well as the social prominence of *Rhodioi* and their families, which their Rhodian-style funerary monuments in the subject *peraia* indicate, both provide glimpses of the widespread and sizeable character of land holding among this Rhodian citizen diaspora.

### 2.3.3 Rhodian statecraft and landholdings in the subject *peraia*

Lastly, then, does the evidence permit us to see a connection between the landed possessions of the Rhodian citizen diaspora and Rhodian statecraft? The epigraphical material from the subject *peraia* shows that in the fourth and third centuries BC, in the period before Rhodes ruled the southern part of the Carian highlands, polities in this region called themselves *poleis*. However, beginning in the third century they start to appear as *koina*.<sup>151</sup> These changes in political status then coincide with the first attestations of Rhodian presence in the region, as outlined above. A coincidence? As Hans Ulrich Wiemer has suggested, declaring a polity a *koinon* instead of a *polis* was a strategically sound piece of imperial statecraft, since *koina* by their very definition were no longer members of the network of fully autonomous peer *poleis* that interacted with each other solely on the basis of reciprocity.<sup>152</sup> Becoming a *koinon* thus translated imperial subjection into the language of inter-state diplomacy by disrupting the wider network of reciprocal relations in which these communities had been embedded. But, as Wiemer already briefly mentioned, becoming a *koinon* might indeed also have spelt a change in property regime, making the resources in their midst more readily accessible to foreigners.<sup>153</sup>

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<sup>147</sup> Admittedly Rome provides parallels for both interpretations of the *Rhodioi*; van Bremen 2007: 126 and Wiemer 2010: 427 both point to Rome's grants of citizenship to member of provincial society as a possible parallel for Rhodes' hypothesized second-class citizenship. However, one is a parallel for a policy, suggesting that other cities have done similar things; the other is a parallel based on evidence that helps interpret that evidence.

<sup>148</sup> *SEG* LV 1144.

<sup>149</sup> So Chaniotis in *SEG* LV 1144 and Claude Brixhe in *BE* 2006, n. 368.

<sup>150</sup> *SEG* LV 1144, ll. 2, 4, 9, 11, 15, 17, 24, and 44.

<sup>151</sup> Wiemer 2010: 423-426.

<sup>152</sup> Wiemer 2010: 427.

<sup>153</sup> Wiemer 2010: 434.

In sum, then, for Rhodes in the late third and second centuries BC literary testimony unambiguously attests to the existence of Rhodian landholdings in the subject *peraia* and shows that such landholdings were contingent on political power for their maintenance. The epigraphic record now allows us to produce an account of how Rhodian power could have also been instrumental in bringing them about: by changing the status and identity of political communities in the subject *peraia* from *polis* to *koinon* by *fiat*. Effecting this transformation in status by *fiat* as part of Rhodian statecraft would have left communities in the subject *peraia* without the institutional framework within which to challenge Rhodians' title to land in the region. As such, this act constituted a permanent alteration of the property regimes of subject communities, the most radical and certainly unique strategy among the cases I examine here.

#### 2.4 Case Study Four: Centuripe in Sicily from the 3<sup>rd</sup> to the 1<sup>st</sup> century BC

My fourth and last case study is based on Cicero's observations of the provincial society of Roman Sicily. As part of his prosecution of Verres the Late Republican orator provided glimpses of yet another land-holding citizen diaspora—that of the Centuripans. Centuripe was an inland hilltop settlement in northwestern Sicily. Thucydides called it a “*polis*ma of Sicels”.<sup>154</sup> In the fourth century BC the Syracusan ruler Timoleon expelled a tyrant from Centuripe, and refounded the city, but at the same time made all the Centuripans Syracusans.<sup>155</sup> A series of bronze coins is commonly associated with this re-foundation.<sup>156</sup> From the third to the first century BC the Hellenistic period Centuripe was a city with a gymnasium in which the local elite memorialized itself epigraphically, full of statues that can now be found in the museums in Western Sicily, and famous for its terracotta production.<sup>157</sup> Indeed, the Roman conquest of the town in 263 BC did not interrupt the prosperity of Centuripan elites. In fact, when in the first century Cicero surveyed the Sicilian landscape, he could call Centuripe “by far the greatest and richest *civitas* of all of Sicily” with its farmers being among the noblest in Sicily.<sup>158</sup> The Roman-period coinage of Centuripe seems to reflect the importance of farming in these elite's self-image, since it contains a series of coins featuring Demeter and an ear of corn on the obverse, and a plough with a bird sitting on the share on the reverse.<sup>159</sup> The same type of plough can only be found on two other coinages in Sicily: on the contemporary coinage of Leontini, which is known to have the most fertile lands in all of Sicily, and on several coins of Enna, where parts of the myth of Kore was

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<sup>154</sup> Thuc. 6.94.3.

<sup>155</sup> Diod. Sic. 16.82.4 with Finley 1968: 94-8 and Hansen and Nielsen 2004: 208.

<sup>156</sup> *BTCGIV*: 235.

<sup>157</sup> Patané 2002: 127-8 and 130. Libertini 1953 provides a good archaeological snapshot of the Roman town with mosaic floors, IIIviri Augustales, and Roman citizens identifying themselves by their *tribus* that Centuripe had become.

<sup>158</sup> Cic. *Verr.* 2.4.50 (*civitate totius Siciliae multo maxima et locupletissima*) and 2.5.84. These “farmers” were the Sicilian *aratores*, a group that was part of the Roman fiscal system: they included all the people paying tax on land in Sicily. For a good historical account of this period in Sicilian history see Libertini 1926: 14-19.

<sup>159</sup> E.g. *JNG USA ANS*, Part 3, 1322-1326.

thought to have taken place.<sup>160</sup> In the absence both of a known mythological connection between Centuripe and Demeter and of particularly fertile soil in Centuripe, the placement of Demeter and a plough on Centuripe's coins in all likelihood speaks to the extent of Centuripans' involvement in farming; for as Cicero was keen to write, Centuripan farmers practically owned land and farmed in all of Sicily.<sup>161</sup>

There are good reasons to mistrust Cicero's description of the extent of the Centuripans' possessions. Centuripan farmers were Cicero's most important witnesses for the misconduct and corruption of the tax collector Apronius.<sup>162</sup> He tells several detailed stories about how they were being abused at his hands, including beating and hanging, a prospect that, according to Cicero, even induced one of them to hang himself.<sup>163</sup> Emphasizing the extent of the Centuripans' landholdings helped Cicero make their testimony valid and representative for all of Sicily, thus enabling him to further his case about the extent of Apronius' misdeeds. In fact, the concrete communities in which Cicero mentioned Centuripan farmers cluster in the eastern part of the island: Leontini and Aetna.<sup>164</sup> And yet, even if we imagine the diaspora of Centuripan farmers to be limited to western Sicily, it must nonetheless have been substantial. In Aetna, Cicero tells us, Centuripan farmers cultivated by far the largest part of the territory and the Centuripan diaspora also seems to have sent an embassy to Verres' trial in Rome that was distinct from the city's embassy, thus testifying to the existence of a corporate identity among the diaspora of Centuripan farmers and more particularly to their corporate sense of a major, personal financial stake in the case against Verres.<sup>165</sup>

In the light of the previous three case studies it seems hard to see the correlation between Centuripe's political power and influence and the existence of a land-holding citizen diaspora as purely coincidental. Already Moses Finley saw a connection between the two phenomena.<sup>166</sup> He attributed the extent of Centuripan landholding outside of the city proper to the financial advantage they derived from the tax immunity the Romans had granted Centuripe.<sup>167</sup> As my argument in this chapter so far should make clear, this idea fails to take into account the exclusionary property regimes of Greek cities and the political power and institutions required to infringe upon them with the frequency that the creation of a land-holding diaspora required. While the financial advantage that the Centuripans derived from their tax immunity surely was significant, the avenues for deploying that surplus by acquiring landed properties in other cities had to be politically mediated. My focus on how imperial

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<sup>160</sup> Patané 2002: 129 and Hill 1903: 207 and 219.

<sup>161</sup> Cic. *Verr.* 2.3.108. Note that the specificity of the image on the reverse of the Centuripan coins—the bird on the ploughshare is unique, as far as I can tell—speaks against this being a generic and random choice of a Demeter motive.

<sup>162</sup> Cic. *Verr.* 2.3.108.

<sup>163</sup> Cic. *Verr.* 2.3.56-7 and 2.3.129.

<sup>164</sup> Cic. *Verr.* 2.3.108 and 2.3.113-4.

<sup>165</sup> Cic. *Verr.* 108-9.

<sup>166</sup> Finley 1968: 132.

<sup>167</sup> Along with six other Sicilian cities land in Centuripe was immune from Roman taxation: Cic. *Verr.* 2.3.13.

cities were involved in creating and maintaining their land-holding citizen diasporas has, I hope, opened up the possibility of imagining similarly subtle statecraft at work in the case of Centuripe. I should underline though that we have absolutely no indication about the type of political mediation involved. In the fourth century BC Centuripe had been part of a larger polity of Syracuse, and it is possible that Centuripan properties in Leontini and Aetna—in cities, that is, that were also part of that polity—date from this period.<sup>168</sup> Similarly, one might imagine that the fiscal regime that Hieron II of Syracuse put in place and that the Romans took over made the acquisition of estates in other cities' territories much easier. Both of these accounts, however, do not explain why it should be the Centuripan elite that disproportionately profited from these arrangements. Lastly, then, one might look to the way in which so-called “free cities” such as Colophon, a case I shall discuss in detail below, managed to interpret their freedom at the expense of citizens of other cities living in their ambit to obtain privileges that would have been hard to sustain without the Roman Empire, to begin to speculate how Centuripe, another such “free city”, managed to spin its status in order to help and support the creation of its land-holding diaspora.<sup>169</sup> Importantly though, all of this remains speculation.<sup>170</sup>

## 2.5 Conclusion

In all of the four case-studies I have presented here the existence of land-holding citizen diasporas is undeniable, and so is their coincidence with periods in time in which the polities in questions exercised an exceptional amount of power with regard to the cities in which this diaspora developed. The more elusive part of the argument has been to reveal the role that state power played in creating and maintaining these landholdings. In the case of Athens, the imperial statecraft involved in this process included Athens' purposeful and directed settlement of groups of citizens in the midst of subject cities, but much more frequently imperial cities built institutions that helped individual citizens eager to acquire land in other cities to circumvent the political control over resources enshrined in these other cities' property regimes.

The evidence from the Athenian case crucially reveals that contemporaries were aware of those elisions and took offence at them. It also highlights how imperial cities could treat their citizens' landholdings abroad as if they were in their own civic territory, thus recognizing their citizens' title to these landholdings without reference to other cities' property regimes. The cases of both Athens and Delphi brought to light instances in which imperial polities built and shaped decision-making institutions in ways that gave them the possibility and the right to make concrete decisions about title to land in their respective

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<sup>168</sup> Diod. Sic. 16.82.4 (Aitna) and 16.82.7 (Leontini). Importantly both Aitna and Centuripe appear in the third-century BC list of Delphic *theorodokoi* from Sicily: *Choix (Delphes)* 125, ll. 96-97. Syracuse has its own *theorodokoi*. In some respects at least these two communities at least had thus regained autonomy from Syracuse (see also Hansen and Nielsen 2004: 185-6. This autonomy and their equivalence in this list also suggests that their respective territorial integrity could become a topic for debate again, implying that Centuripan possessions in Aetna were again subject to debate and negotiation.

<sup>169</sup> On Colophon and “free cities” more generally see Chapter 4.

<sup>170</sup> For yet another possible speculation, see Panaché 2002: 130-131, who thinks that these Centuripans framed part of *ager publicus* that the Romans had created in these different communities.

subject cities. By contrast, the evidence from the Rhodian *peraia* opens up a much more radical possibility: changing the nature of subject communities in such a way as to eliminate the exclusionary property regimes characteristic of Greek cities.

The different types of statecraft that effected these elisions undoubtedly had consequences for who among the citizens was in the best position to profit from the spoils of empire. The most obvious difference, of course, existed between the directed settlements and the acquisition of landholdings by individuals; for, unlike in citizen settlements, in the latter case the citizens in question for the most part had to be able to buy land in the first place. The existence of directed settlements in the Athenian empire in which at least sometimes citizens from the lowest property classes could partake thus constitutes a marked and significant difference from the way in which Rhodes used its sway over the subject *peraia*—a difference that might be an interesting starting point for thinking anew about the different understandings and practices of democracy that prevailed in the two most prominent democratic cities in the Greek world.<sup>171</sup>

But of course, as my discussion of the rider on the decree concerning the foundation of Brea has shown, also within these two categories—directed settlement and the acquisition of individual landholdings—there was room for negotiation and disagreement. Analogous to the debate as to just who should be able to settle in Brea, we can juxtapose the way in which Athenians could get hold of properties in other cities by indicting their current owner in Athenian courts with the way in which Rhodes seems to have simply altered the political, and with them the property regimes of the communities in the subject *peraia* so that Rhodians could acquire land there. These two arrangements required citizens to hold and deploy distinctly different kinds of capital in order to obtain properties in other cities. One of the main challenges of exploring the political economy of Roman provincial statecraft, then, will be to outline the conditions on which Roman institutions helped and supported their own citizens in eliding the property regimes of Greek cities.

### 3 – Epilogue: Comparison, Sources, and Territoriality

To return to the beginning, what have been the heuristic implications of seeing the imperial ambitions of Greek cities on a continuum of state-building efforts aimed to facilitate the acquisition of land by citizens outside of their home city? The main point that I hope to have made is that one of the characteristic features of what I have called “civic empires” was that they persistently helped their citizens to acquire landholdings in the territories of cities subject to them. The case studies I examined here represent various different scales at which polities in the Greek world pursued their imperial ambitions. On all of these scales the same impulse to overcome the limitations that the exclusionary property regimes of Greek cities posed for the accumulation of land demonstrably shaped the imperial institutions that these cities built. Civic empires thus built institutions with a view to the profit of their citizens, but just who among them was to benefit and on what terms was

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<sup>171</sup> See Grieb 2008 and Carlsson 2010 for recent attempts at such comparisons from a strictly institutional perspective.

up for debate, a debate that in addition to historically constituted institutional repertoires can help us understand the difference in statecraft that these cities deployed.<sup>172</sup>

But the implications of the argument and case-studies presented here go further. I want to highlight two points in particular. First, there is a clear and significant pattern in the ancient evidence available for these land-holding citizen diasporas. While directed settlements often feature as part of the sequence of events that authors such as Diodorus Siculus and Thucydides presented in their historical narratives, the evidence for individual landholdings tends to come from retrospective and critical perspectives on empire.<sup>173</sup> Thus we learn about the Rhodian diaspora on two occasions at which Rhodes' power over the subject *peraia* was threatened or abolished, all events that called into question the rightfulness of the possessions of individual Rhodians.<sup>174</sup> Similarly, Athens' fourth-century attempts to revive its fifth-century *arche* brought to the fore the voices of a fifth-century diaspora of land-holding Athenians—all men that were keen to recover their properties, but eventually failed to have their way—as well as the concerns of Athens' allies over the prospect of the development of such a diaspora.<sup>175</sup> The inscription from Delphi also provides such a retrospective point of view on the Aetolian land-holding diaspora, while Cicero's account of the extent of Centuripan surely is an outlier due to the fact that in that case we are dealing with two scales of imperialism super-imposed on each other: Roman and Centuripan.

This pattern, I suggest, is crucial for understanding what we are dealing with when studying the creation and maintenance of these land-holding diasporas. As I have argued above in the case of Melos, the mention and description of directed settlements in ancient historical narratives makes sense as an extension of their interest in inter-city relations and warfare. Here these settlements simply were part of the tit-for-tat characteristic of these accounts. Furthermore, the settling of men in distant places also was a fitting expression of imperial power in a world where travel was often used to make sense of geography. Think, for example, of the labors of Hercules or of the Odyssey.<sup>176</sup> In such a world the projection of power over space amounted to the control of these movements. The very act of sending—*στόλος*, *στέλλειν*—be it of expeditions, armies, or colonists, was a mechanism for the performance of state-power.

By contrast, the creation and maintenance of individual landholdings did very little to enhance the performance of state-power within this framework. These landholdings could also not be explained and legitimated within the framework of retribution that pervaded inter-city relations. In fact, individual landholdings and the involvement of imperial power in

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<sup>172</sup> For a strong statement concerning the strict limitations of this repertoire with regard to Roman modes of thinking concerning cities see Ando 2012c and with regard to shaping provincial landscapes see Purcell 1990. Burbank and Cooper 2010: 3, by contrast, emphasize the flexibility of the repertoires of imperial power that they examine, all the while highlighting the constraints imposed by what they call “history and geography”.

<sup>173</sup> See e.g. Thuc. 5. 84-116 for the run-up to Athens' confrontations with the Melians in the fifth century and Diod. Sic. 18.18 for the run up to the expulsion of the Samians in the fourth century.

<sup>174</sup> Polyb. 21.43.16-17 and 31.4.3.

<sup>175</sup> Andoc. 3.15 and 3.36-7 and RO 22.

<sup>176</sup> See e.g. Malkin 1998 for case-studies of the ways in which the myth of Odysseus was used by Greek settlers in the Western Mediterranean to make sense of their surroundings and their position within it.

their creation could pose serious ethical problems for civic empires; for one of the main rhetorical strategies for resisting and criticizing empire was to highlight the abuse the individual people suffered at the hands of members of these land-holding diasporas.<sup>177</sup> Examples of authors using precisely this strategy that I have mentioned in my argument here include the Old Oligarch's and Aristophanes' stories about Athenian sycophants and their alleged expropriation of individual citizens in cities subject to Athens.

The development of a citizen diaspora with individual landholdings thus could become deeply problematic for ancient cities and their imperial ambitions. As such, these landholdings constituted a kind of underbelly of civic empires that these empires did not like to talk about, but that demonstrably shaped their institutional architecture. As such, this potentially problematic nature of individual landholdings placed an additional burden of legitimacy on the means of statecraft used to facilitate their creation, a problem that I will explore in greater depth with regard to Roman provincial statecraft.

Second, I have argued that in the archaic period the development of the exclusionary property regimes of Greek cities was instrumental in making them the communities of place that they eventually became by territorializing social relations. The elisions and alterations of these regimes by civic empires, I contend, not only made these cities into different communities, but also reconfigured social relations for the members of the diaspora in ways that made concrete places much less relevant reference points for them, thus deterritorializing their economic lives.

The plentiful epigraphic material from the Rhodian subject *peraia* testifies to precisely this phenomenon and the reaction by local communities that it provoked. On the one hand, individual *Rhodioi* set up elaborate funerary monuments in which the only point of reference was the family of the deceased.<sup>178</sup> On the other hand, entire communities honored *Rhodioi* as their benefactors (*energetai*), trying to direct their energy, attention, and self-understanding towards these local communities and their members.<sup>179</sup> The fact that also individuals set up monuments commemorating individual *Rhodioi* as their personal benefactors only speaks to the partial success of communities' efforts to do the same, as they cemented and celebrate the personal preeminence of individual *Rhodioi* without reference to a territorially framed community.<sup>180</sup>

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<sup>177</sup> Adler 2011 argued that speeches given by barbarians that ancient historians present as part of their narratives can present such perspectives of resistance within ancient texts. Here I extend this analysis to speeches given by Greek imperial subjects and those critical of empire, highlighting that certain arguments were characteristic of the rhetoric of those resisting or criticizing ancient cities' imperial ambitions. A very nice piece of evidence in this regard is Livy 41.6, who records the Lycians' complaints in 178 BC in Rome that the Rhodians were treating them like slaves and beating them. Importantly, Polybius did not report the content of the Lycians' complaint. Livy might have had his own Roman sources for the embassy, but in the light of the evidence from Athens it seems just as likely that Livy here was simply inserting in his narrative what he and his audience knew people in the Lycians' positions were likely to emphasize: personal abuse at the hands of members of the diaspora.

<sup>178</sup> E.g. *HTC* 41.

<sup>179</sup> E.g. *HTC* 36 or 37.

<sup>180</sup> E.g. *HTC* 7 or 9. Wiemer 2010: 430-431 lists all the honors Rhodians received in the subject *peraia*.

While the Rhodian case presents plentiful evidence for the political and cultural interpretations of the reallocation of resources that the development of the Rhodian citizen diaspora in the subject *peraiia* entailed, the evidence for its Roman equivalent is unique in providing extensive evidence for the precise contours of the economic profile of this diaspora, revealing how precisely its members used the landholdings they acquired in the territories of cities subject to Rome and the local negotiations that their strategies entailed. These strategies, which I now turn to in the next chapter, already reveal that they did not conceive of their activities within the framework of the communities in which their landholdings were located. How the institutions of Roman provincial administration did and did not help them escape and alter the moral and legal regimes of these communities and the latter's reaction will be the subject of the last two chapters.

## CHAPTER TWO

### Land in the Economy of the Roman Diaspora in the Greek East

*Ubi cumque vicit Romanus, habitat.*<sup>181</sup>

Wherever the Roman conquers, he lives.

In AD 41 the new emperor Claudius exiled Seneca to Corsica. In an attempt to put his exile into perspective, Seneca compared his experience to that of the many inhabitants of Rome's overseas colonies. Leaving Rome and living in conquered territory, he suggested, was simply part and parcel of being a citizen of a powerful and victorious city. Seneca's curt statement thus neatly sums up the argument I advanced about Greek cities in the previous chapter; at the same time, the generality of his observation about the implications of Roman imperialism provokes the questions that will animate this chapter: Who were the Romans who went to live abroad after Rome's military victories in the Greek East? What did it mean for them to live (*habitare*) there? And, of course, what role did the acquisition and cultivation of land play in their economic lives?

Unlike the situation that Seneca envisaged, the Romans and Italians who went to live outside of Italy during the Late Republic were no colonists. In fact, founding Roman colonies outside of Italy was a hotly contested topic in Late Republican politics and barely any such foundations took place before Caesar's ascent to power.<sup>182</sup> Instead of imposing Roman settlers on defeated enemies outside of Italy, Romans converted their military victories into administrative regions, the provinces of the empire, which from their early days were accompanied by a steady stream of Romans and Italians eager to live in these newly conquered areas.<sup>183</sup> The prominence of Italians in this imperial diaspora only points to the particular type of city that Rome had become in relation to the Italian peninsula by the late second century BC, a fact that the enfranchisement of a great portion of the peninsula after the Social War in the 80s BC acknowledged.<sup>184</sup>

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<sup>181</sup> Sen. *Helv.* 7.7.

<sup>182</sup> See Vell. Pat. 2.7 for the ancient perception of this pattern; Brunt 1971, chs. 14 and 15 discuss point by point the different ways in which Italians were living outside of Italy in the Late Republic and under Caesar and Augustus.

<sup>183</sup> Hatzfeld 1919 remains the foundational study for this Italian diaspora. The most recent approaches to the phenomenon include Kirbihler 2007, Purcell 2005, and Müller and Hasenohr 2002. See below for a more extensive discussion of the bibliography.

<sup>184</sup> Hatzfeld 1919: 255-257 already underlined the presence of Italians among in the diaspora in the East and Hasenohr and Müller 2002 explored the Italian origins of many diasporic families in great detail. Note though Cassola 1971, who highlights the substantial Roman element among these men. See Ando 1999 and Purcell 2005 for the idea that the Greeks knew all of these men as "Romans".

Scholars of the Late Republican empire tend to see the members of this diaspora as people involved in the movement of goods, as traders.<sup>185</sup> Downplaying the evidence for Roman landholdings in the provinces and the discussion of these landholdings as neatly separate from the commercial dealings of the members of the diaspora contribute to creating and maintaining this understanding.<sup>186</sup> And yet, treatments of Roman landholdings in the provinces under the Principate are unanimous that the extensive Roman landholdings that they see had their origins in the Late Republic.<sup>187</sup> The challenge of this chapter thus consists in uncovering and challenging the assumptions that have obfuscated Roman landholdings from standard accounts of the Late Republican empire (Parts 1 and 2) to then demonstrate through concrete case-studies that these landholdings existed and how they were integrated in the movement of goods in which the members of the diaspora were undoubtedly involved (Parts 3 and 4).

In short, I suggest that beliefs about the nature of the ancient economy together with misinterpretations of ancient categories have prevented scholars from seeing the important role that landholdings played in the economy of the Roman diaspora. As it turns out, the well-off members purposefully acquired agricultural resources yielding products that they knew would sell well, exploited them commercially, and were themselves involved in organizing the transport of these goods to markets, above all to those in Italy. As such, they were crucial in effecting the consumer revolution that Andrew Wallace Hadrill has diagnosed for first-century BC Rome.<sup>188</sup> Differently put, in the Late Republic Romans living where Rome had conquered were not only a consequence of empire but also played a crucial role in shaping what having an empire meant back in Rome and Italy.

## 1 – Landholdings in the diaspora: modern historiography and ancient evidence

The study of the Italian diaspora took its origin with Jean Hatzfeld's *Les trafiquants dans l'Orient hellénique* published in 1919. Drawing on both literary and epigraphic evidence Hatzfeld demonstrated region by region the development and extent of the Italian migration to the provinces and examined the social and economic aspects of this migration. In its ambition and exhaustiveness the work has remained unsurpassed. Hatzfeld was very clear that members of the Italian diaspora also owned land and agricultural resources in the provinces. And yet, these landholdings have disappeared from scholarly perceptions of the

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<sup>185</sup> Verboeven 2004 treats their landed possessions as an exception to their commercial activities and Purcell 2005 emphasizes their involvement in moving things above all else. Wallace-Hadrill 2008: 448, who does not concern himself explicitly with the Roman diaspora suggests that they were in the Eastern Mediterranean for two reasons: military service and trade.

<sup>186</sup> Alcock 1989: 8 and 1993: 75 and Rousset 2004: 371 are both minimizers. The evidence gathered in Zoumbakis 2012a and 2012b make their arguments quite untenable now. For a discussion of instances in which landholdings get treated separately from commercial dealings see section 1 of this chapter.

<sup>187</sup> Broughton 1934: 209-11, 217-8, and 209-211 and Garnsey 2000: 696. Harris 2007: 514-5 and 525 is exceptional among treatments of the Late Republican empire to emphasize Roman landholdings in the provinces, but barely provides any evidence for his divergent assessment.

<sup>188</sup> Wallace-Hadrill 2008: 315-440.

Roman diaspora over the past century. Here I suggest that three factors can explain this disappearance: the onomastic character of the evidence for the diaspora, the importance of Delos as a starting point for thinking about the diaspora, and revisions in our understanding of the ancient economy all combined to promote the idea that the members of the diaspora were bankers and traders and to treat their landholdings, if they are mentioned at all, as exceptional and unrelated to their remaining economic activities.

### 1.1 The temptations of onomastics and Delos

Most of our evidence for the members of the Roman diaspora comes from Greek inscriptions, where their names allow us to trace them. This predominantly onomastic character of the evidence does not encourage the study of the economic profile of the diaspora. Instead, the ever increasing epigraphic evidence for the members of the diaspora, which comes predominantly in the form of lists of Italian names and dedications by Italian individuals and groups, has stimulated research into the problem of integration, leading scholars to ask how the members of the diaspora were organized amongst themselves or how they interacted with the local communities in which they were living.<sup>189</sup> In short, the nature of the evidence does not readily lend itself to investigating the economy of Rome's imperial diaspora, which correspondingly has not been the subject of a major scholarly account since Hatzfeld's chapter on the "professions" of the members of the diaspora. It is likely, then, that the simple lack of attention to economic matters has played a part in excluding landholdings from perceptions of the diaspora's economic profile.

In addition to this general neglect of economic questions, the onomastic character of the evidence has also meant that scholars often saw the Italian diaspora as an extension and a continuation of the Romans and Italians who began to congregate on Delos in the 160s BC after Rome had gifted the island to Athens. Delos is an onomastic paradise, allowing us to establish personal links of these Italians both back to Italy and into other areas of the Greek world.<sup>190</sup> Indeed, Hatzfeld himself discovered the Italian diaspora after a first study of the Italians mentioned in the inscriptions on Delos, and this move from Delos to the rest of Greece was also replicated in the one publication that has been exclusively dedicated to these Italians since Hatzfeld's own book: Claire Hasenohr and Christel Mueller's edited volume *Les Italiens dans le monde grec: II<sup>e</sup> av. J.-C. – I<sup>er</sup> ap. J.-C. Circulation, activités, intégration*. To be sure, starting to think about the Italian diaspora from Delos in some sense follows the evidence. However, beginning the inquiry on a small island with a prominent harbor in the Aegean only helps to occlude landholdings in later periods, when Italian presence in the Greek world was no longer concentrated in this harbor.<sup>191</sup>

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<sup>189</sup> Kirbihler 2007 has collected all the inscriptions attesting groups of Romans in Greek cities in Asia Minor, which, so far, he has made available in a list. Sailakshmi Ramgopal is currently completing a dissertation at the University of Chicago about the relationship of members of the diaspora to the communities in which they were living.

<sup>190</sup> For a discussion of this unique opportunity see Hasenohr and Müller 2002. For an example of its exploration see Cébeillac-Gervasoni 2002.

<sup>191</sup> Cic. *Att.* 9.9.4 with Bruneau 1988: 570-573 provides the only (uncertain and late) evidence for Roman landholding on Delos.

## 1.2 The impact of Moses Finley

An article by Athanasios Rizakis provides a good illustration of how this occlusion of Italian landholdings in scholarship works. In a study on the Roman diaspora in Macedon Rizakis suggested that trading and banking activities were the main occupation of these Romans, even though he had just discussed an inscription from Beroea that mentioned *enkektemenoi Rmaioi*, Romans who had the right to own land in the city's territory.<sup>192</sup> Rizakis' article also illustrates that the projection of the situation on Delos to other places was not alone in obscuring the importance of landholding among the members of the diaspora; for one might wonder, Why could those Romans with properties in Beroea also not have placed loans and moved goods from one place to another one. Rizakis himself provides the answer when his arguments imply that being a landowner and being involved in trade were incommensurable in the ancient world.<sup>193</sup>

And he was not alone in assuming this incommensurability. Elisabeth Dénioux also accepted it, when she classified all the Italians who Cicero recommended to governors as either landowners, bankers and creditors, or as "autres trafiquants", as if these were mutually exclusive categories.<sup>194</sup> Crawford similarly discussed landholdings in a separate section.<sup>195</sup> Interestingly, Hatzfeld himself did not see a contradiction between landholding and trade. Instead, in his chapter on what he called "les professions" of the Roman diaspora, he included both men who demonstrably traded wine and those of whom he knew that they owned the land on which the wine was growing.<sup>196</sup> He called the entire group "industriels".<sup>197</sup>

The disappearance of such modernizing categories as well as the supposed incommensurability between landholding and commerce, which Rizakis can state as a simple fact, testify to the profound influence that the writings of Moses Finley have had on our understanding of ancient economic life.<sup>198</sup> Finley argued that ancient and modern economies were not just different in scale, but also in quality. Greeks and Romans, he suggested, did not make rational choices in order to maximize profit; instead, they acted based on a distinct concern for status. While landholding was crucial for obtaining and maintaining this status, trade in the products from these landholdings was left to other people. Differently put, the people producing goods did not take an active interest in moving and selling them for profit; although they sold some of their estates' products, trade more broadly did not feature in their calculations.<sup>199</sup> Finley's ideas, then, were the third factor – after the predominantly onomastic character of the evidence and the privileged position of Delos in scholarly approaches to the diaspora – that contributed to sidelining the existence of landed

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<sup>192</sup> Rizakis 2002: 110 and 123.

<sup>193</sup> Rizakis 2002: 131.

<sup>194</sup> See the structure of the discussion in Dénioux 1993: 213-239.

<sup>195</sup> Crawford 1977: 48-49.

<sup>196</sup> Hatzfeld 1919: 219-224.

<sup>197</sup> Hatzfeld 1919: 212.

<sup>198</sup> See Osborne (forthcoming) assessing the impact of Moses Finley's work more broadly.

<sup>199</sup> See Finley 1985: 131 and Finley 1981: 188-9.

possessions among the Roman imperial diaspora, a repeated act of forgetting that the example culled from Rizakis' article has illustrated so nicely.<sup>200</sup>

### 1.3 Ancient and modern categories

Beyond these trends in modern scholarship the most important factor in obscuring the importance and extent of landholdings among the members of the Italian diaspora has surely been the ancient social description of the members of this diaspora as *negotiatores*, which is often understood to simply be a different way of speaking of *mercatores*—of traders, that is. In the Principate this purely economic understanding of the term is undoubtedly correct.<sup>201</sup> However, scholars have also noted that the meaning of the word changed in the late first century BC, but they have not been able to agree on what the meaning of the term was during the Late Republic, the period I am interested in here.<sup>202</sup>

In the following section I provide a revised semantic history of the word *negotiator*, arguing that in the first century BC, unlike during the Principate, the term was not part of the economic ideology of a land-owning elite, but was a quasi-technical term in the imperial statecraft of the Late Republic; for *negotiatores* were a constitutive element of Late Republican visions of provincial society and could be used to designate the entire imperial diaspora. As such, the term was part and parcel of the ways in which Romans came to conceptualize the particular modality in the Late Republic by which – to use Seneca's words – Romans came to live where Romans had conquered. Importantly, it was also able to accommodate and capture the diverse range of people who made up the imperial diaspora, including the many Romans who acquired land in the provinces.

## 2 – Who were the *negotiatores*? A conceptual history

*Negotiator* was a Latin noun used to designate a person. It clearly derived from the abstract noun *negotium*, which in turn was the simple negation of *otium*, of leisure.<sup>203</sup> Being defined negatively *negotium* was very capacious and could refer to occupations in the political, military, legal or economic realm. All these occupations had in common though that they were considered to be somehow necessary.<sup>204</sup> Etymologically speaking, then, it would seem that *negotiator* picked out men that were exclusively or mainly engaged in such necessary

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<sup>200</sup> Interestingly, the recent return of modernizing approaches to the ancient economy has not done much to undo this particular aspect of Finley's work.

<sup>201</sup> E.g. Harris 2000: 731-734, who treats *negotiatores* as the equivalent of *mercatores* or *emporoi*. Verboeven 2007 thinks that *negotiator* was more capacious and thus had less social stigma attached to it, but generally agrees that both terms were used to refer to traders.

<sup>202</sup> For the attempts to diagnose the difference between republican and imperial *negotiatores* see e.g. Kneissl 1983: 75-6, García-Brosa 1999: 186-7, and Andreau 2000. For an attempt to investigate how Late Republican *negotiatores* were different from *mercatores* see Hatzfeld 1919: 192-196.

<sup>203</sup> Benvéniste 1951; cf. *imperator* and *imperium* for an analogous process of noun formation.

<sup>204</sup> Feuvrier-Prévotat 1981: 269-370, Valencia-Hernández 1989-1990: 205, and Verboeven 2007: 94.

affairs. Modern scholars have often understood these affairs to be of an economic nature and so *businessmen* or *hommes d'affaires* are popular translations. Can they stand up to closer scrutiny of the ancient evidence?

The etymology of *negotiator* highlights the implication of the term in the worldview of those with leisure, while at the same time the suffix *-tor* also makes clear that the word was used to pick out a distinct social group. Correspondingly the scholarship on *negotiatores* has been at the crossroads between ancient economic ideologies and social history, and scholars have tried to come to terms with them on a conceptual level or inductively, by examining the activities of the supposed members of this group.<sup>205</sup> Both of these approaches have run into problems. On the one hand, scholars have failed to account for the change in meaning that the term underwent in the late first century BC, when *negotiatores* were neither any longer only of Italian origin nor exclusively associated with the economic opportunities offered by empire, but instead came to resemble the figure of the *mercator*.<sup>206</sup> On the other hand, the diversity of activities that the affairs of *negotiatores* encompassed together with the diverse socioeconomic standing of the men themselves has significantly hindered scholars' attempts to inductively capture them as a social group.<sup>207</sup>

Here I argue that acknowledging that *negotiator* began its life as a way of conceptualizing the Italian diaspora in the provinces of the empire can remedy the problems that both of these approaches have encountered. Drawing on observations about the narratological context and the rhetorical figures in which *negotiatores* featured in Late Republican texts by Cicero, Caesar, and Sallust allows me to wrest our understanding of the term from purely economic considerations to vindicate it as a crucial element of how Late Republican Romans conceptualized their empire and the people who inhabited it.<sup>208</sup> However, during the Principate the economic framework seems to fit the evidence fairly well.

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<sup>205</sup> Feuvrier-Prévotat 1981, Valencia-Hernández 1989-1990, García-Brosa 1999, Verboeven 2004, and Verboeven 2007 discuss *negotiatores* from an ideological perspective. D'Arms 1981, Kneissl 1983, Brunt 1988, and Verboeven 2007 proceed inductively to capture them as a social group. Hatzfeld 1919, Cassola 1970-71, and the contributions to Müller and Hasenohr 2002 analyze the *negotiatores* as a group based on the epigraphic material in the Eastern provinces.

<sup>206</sup> D'Arms 1981: 62-64, Feuvrier-Prévotat 1981, Brunt 1988: 170, Valencia-Hernández 1989-1990: 213, García-Brosa 1999: 179, and Andreau 2000.

<sup>207</sup> For a brief account of the diversity of their activities see Brunt 1988: 157 (land) and 168-171 (money lending) together with Cic. *Verr.*1.91 and Cic. *Fam.* 2.11.2 and 8.9.3 for *negotiatores* as traders of wild beasts as well as Verboeven 2007: 96-105. For the wide range of the socioeconomic spectrum that *negotiatores* encompassed and for the impossibility to classify them along these lines see Verboeven 2004: 182-183. For ancient perceptions of this range see Cic. *Flac.* 73.

<sup>208</sup> My discussion here will focus on the works of Sallust and Cicero. For *negotiatores* in Caesar see *BC*, 3.103.1, *B Afr.* 36.2 and 90.1. The two passages in the *Bellum Africanum* already betray an understanding of *negotiatores* that is quite different from Late Republican ideas as I will outline them here and thus works to confirm the doubts regarding its authorship. The fragments of earlier Latin that we have preserved do not contain the word.

## 2.1 *Negotiatores* in the Principate: connecting distant and not so distant places

*Negotiatores* in the Principate were somehow different from their republican counterparts.<sup>209</sup> From Augustus onwards *negotiatores* resembled the classic figure of the go-between in the sense that they were engaged in both the buying and selling of goods.<sup>210</sup> Pliny the Younger sold his wine harvest to *negotiatores*.<sup>211</sup> Galienus punished the *negotiator* who had sold fake glass jewelry to a denizen of Rome.<sup>212</sup> *Negotiatores* were the people who occupied places of sale such as shops and porticoes.<sup>213</sup> They were thought to travel far and thus connect Rome and the Mediterranean to distant places. From their travels they brought back exotic wares such as cinnamon, but also plenty of ethnographic knowledge.<sup>214</sup> They could specialize in the buying, moving, and selling of specific goods such as pigs, iron or slaves.<sup>215</sup> Imperial legislation often concerned itself with those specializing in grain as a means to assure Rome's grain supply.<sup>216</sup>

Briefly put, in the Principate *negotiatores* were readily identifiable intermediaries between places of production and consumption, however close or distant they might be. This was a recognizable profession that could stand in a list together with doctors, advocates and soldiers.<sup>217</sup> A *negotiator's* activity was interchangeable with that of a *mercator*, the classic trader figure.<sup>218</sup> From the point of view of those with *otium*—of those men eager to distance themselves from the buying, selling, and moving of goods—both could be slurred equally.<sup>219</sup> As such, in the imperial period *negotiatores* were defined by the function they played in the coordination of economic life.

Vitruvius' *On Architecture* from the last twenty years of the first century BC may contain the first attestation for this conception of *negotiatores*;<sup>220</sup> for there we hear of

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<sup>209</sup> Kneissl 1983: 75-6, García-Brosa 1999: 186-7, and Andreau 2000. *Contra* Verboeven 2004 and 2007, who is unique in denying that difference. See Verboeven 2007: 103-104 for his attempts to cope with the fact that in the Late Republic *negotiatores* were exclusively associated with the provinces and Verboeven 2007: 109 for an aside where even he acknowledged change, admitting that by the Principate *negotiatores* no longer included bankers and financiers. As mentioned above Harris 2000: 731-734, writing about *negotiatores* in the Principate, treats them as the equivalent of *mercatores* or *emporoi*.

<sup>210</sup> For this conceptualization see Nicholas Purcell's Sather lectures at UC Berkeley in Spring 2012.

<sup>211</sup> Plin. *Ep.* 8.2.1.

<sup>212</sup> *Historia Augusta* (The Two Gallieni), 12.5.

<sup>213</sup> Vitr. *De arch.* 5.1.4 and 5.1.5, and Suetonius, *Ner.* 23.3.

<sup>214</sup> Vitr. *De arch.* 9.5.4, and Plin. *HN* 6.88, 6.146, 6.149 and 12.88.

<sup>215</sup> Plin. *HN* 7.54, Quint. *Inst.* 5.12.17, and *ILS* 6146 and 7484.

<sup>216</sup> Tac. *Ann.* 2.87.1 and 13.51.2, and *Historia Augusta* (*Alexander Severus*), 22.1 with Marasco 1989 and Sirks 1991: 396-402

<sup>217</sup> Quint. *Inst.* 5.10.27.

<sup>218</sup> Sen. *Controv.* 2.7.

<sup>219</sup> Apul. *Met.* 2.13 slurs a *negotiator* through name giving. The man is called Cerdo, which derives from the Greek word for profit. Cf. García-Brosa 1999: 181-183 on the figure of the *mercator*.

<sup>220</sup> Vitr. *De arch.* 5.1.4 and 5.1.5.

*negotiatores* in Rome without any mention of their arrival from or return to the provinces, which is the way in which previous authors in the Late Republic had mentioned *negotiatores* in Rome or Italy. As I will go on to argue now, before the late first century BC, when Vitruvius was writing, *negotiator* was indeed exclusively used to refer to Romans and Italians in the provinces and thus captured a rather different, albeit related, aspect of social reality from its use at the time of the Principate. While no text from the Late Republic explicitly defined *negotiatores* as exclusively Roman or Italian—indeed, any such specification would indicate that this was no longer an aspect of the meaning of the word that was implicitly understood—narratological and rhetorical features of Republican sources suggest that in the Late Republican *negotiatores* were understood to be exclusively Italian and/or Roman and testify to the importance of their connection to the provinces.

## 2.2 *Negotiatores* in the Late Republic (I): from Italy and in the provinces

On two occasions in his account of the war against Jugurtha in North Africa Sallust introduced men from Italy into his narrative and on a later occasion referred to them as *negotiatores*. First, the *Italici* at Cirta advised Adherbal to deliver the town to Jugurtha trusting that he would spare Adherbal and themselves. However, Jugurtha confounded their expectations and created great outrage in Rome when he killed both Adherbal and the *negotiatores*, that is, Italians. I give the relevant passage in full.<sup>221</sup>

*Ea postquam Cirtae audita sunt, Italici, quorum virtute moenia defensabantur, confisi deditione facta propter magnitudinem populi Romani inviolatos sese fore, Adherbali suadent, uti seque et oppidum Iugurthae tradat ... Iugurtha in primis Adherbalem excruciatum necat, deinde omnis puberes Numidas atque negotiatores promiscue, uti quisque armatus obvius fuerat, interficit.*

When news of this result was heard at Cirta, the Italians, by whose exertions the city was being defended, and who trusted that, if a surrender were made, they would be able, from respect to the greatness of the Roman power, to escape without personal injury, advised Adherbal to deliver himself and the city to Jugurtha ... Jugurtha immediately proceeded to put Adherbal to death with torture, and massacred all the Numidians that were of age and the *negotiatores* indiscriminately, as each fell in the way of his troops.

Second, Metellus relied on the *Italici* living and trading at Vaga for the supplies of his army. He drew up his camp there, Sallust explained, because of the many *negotiatores* in the town who would not only supply his army but also provide a defense for the preparations that had already been taken.<sup>222</sup>

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<sup>221</sup> Sall. *Ing.* 26.3 (my translation).

<sup>222</sup> Sall. *Ing.* 47.2 (my translation).

*Erat haud longe ab eo itinere, quo Metellus pergebat, oppidum Numidarum nomine Vaga, forum rerum venalium totius regni maxime celebratum, ubi et incolere et mercari consueverant Italici generis multi mortales. Huc consul, simul temptandi gratia, et si paterentur, et ob opportunitates loci, praesidium imposuit. Praeterea imperavit frumentum et alia, quae bello usui forent, comportare, ratus, id quod res monebat, frequentiam negotiatorum et comeatum iuvaturum exercitum et iam paratis rebus munimento fore.*

There lay, not far from the route which Metellus was pursuing, a city of the Numidians named Vaga, the most celebrated place for trade in the whole kingdom, in which many Italians were accustomed to reside and traffic. Here the consul established a garrison both to see whether the inhabitants would accept him and because of the advantageous situation of the place. Furthermore, he gave orders to gather together grain and other necessities for war; thinking what circumstances indeed suggested, namely that the gathering of *negotiatores* and the frequent arrival of supplies, would help his army and be a defense for what he had already got ready.

In this passage the identification of the *negotiatores* with the many Italians residing and trading there is not as clear as in the previous and requires some argument. At this point in his narrative Italians are the only people at Vaga that Sallust has mentioned. In fact, when Metellus considered how the garrison at Vaga might help his plans he seems to repeat the two categories in which Sallust had described the place initially: the supply of goods and the people residing there. From this point of view, then, it seems plausible to identify the *Italici* with the *negotiatores*. Furthermore, previous commentators have been puzzled by how the presence of *negotiatores*, whom they understood to be traders, would help his army defend the place and support his further plans, especially since in the same train of thought Sallust had already mentioned the ready supply of goods in Vaga.<sup>223</sup> If we accept that these *negotiatores* were Italians residing in the town, the presence of *negotiatores* could indeed be an asset to Metellus' plans, since he could expect them to be loyal to his cause.

Cicero's writings also contain narratological features pointing to the Italian origin of *negotiatores* during the Republican period. For example, he spoke of the Sicilians' attitude to *nostri homines* – our men – and later on made clear that he was thinking of their attitude towards *negotiatores* and *publicani* – Roman tax farmers.<sup>224</sup> In addition, rhetorical features in his writings also point in this direction. So, in his defense of M. Fonteius as the governor of Gaul he described this province as stuffed with Roman citizens and full of *negotiatores*. No one in the province of Gaul, he went on to say, did any business—*negotium*—without a Roman citizen.<sup>225</sup> This hyperbole elides the distinction that the previous two sentences had seemed to draw. Together with the narratological features indicated above, Roman or Italian origin was a defining feature of Republican *negotiatores*.

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<sup>223</sup> E.g. Rolfe 1985: 80, n. 1.

<sup>224</sup> Cic. *Verr.* 2.2.7.

<sup>225</sup> Cic. *Font.* 11.

Beyond their Italian origin during the Late Republic *negotiatores* also had an intrinsic relationship with the provinces. Sallust could not have referred to Italians anywhere as *negotiatores* and expected his audience to understand the equivalency, as the passages above so clearly demonstrate he did. In fact, in the Late Republic there is no evidence for the word used in reference to somebody who was simply located in Italy;<sup>226</sup> for whenever Italians in Italy were called *negotiator*, it is clear that their *negotia* were in the provinces, a fact often manifested itself in references to their mobility, which led from Rome to the provinces and back again. In this regard they mirrored the movement of Roman officials. When Cicero described the relatively unattended return of Piso from his three-year long military command in Macedon, he compared it to his own much frequented and celebrated return from Cilicia, but he also claimed that a middling *negotiator* was always better attended on his return trips to Rome than Piso was at the end of his official mission.<sup>227</sup> Being situated between Rome and the provinces, *negotiatores* clearly had their main field of activity in the latter. It was possible to describe them as being very reluctant to come to Rome.<sup>228</sup> Furthermore, when Atticus thought about registering his census in Rome at the very last minute, because business in the provinces kept him occupied, Cicero called his behavior rather in keeping with what one could expect from a *negotiator*.<sup>229</sup>

### 2.3 *Negotiatores* in the Late Republic (II): conceptualizing the imperial diaspora

In his speech in support of the *lex Manilia* Cicero argued that Mithridates threatened Roman interests in the eastern provinces; both *publicani*—tax-farmers—and *negotiatores* stood to lose a lot from Rome’s defeat at the hands of the Pontic king, he suggested.<sup>230</sup> This passage nicely illustrates the Italian origin of *negotiatores* and their intrinsic relationship with the provinces in the Late Republic. At the same time the conjunction of *publicani* and *negotiatores* also provokes the question of what exactly the latter were doing in the provinces. As I argued above, during the Principate *negotiatores* were go-betweens, connecting places of production with places of consumption, which could readily be mapped onto the economic ideologies of a land-owning elite eager to distance itself from the world of buying and selling. Were their republican counter-parts simply a subset of such go-betweens, connecting Italy with the provinces? The Greek translation of the concept, its geographical spread throughout the eastern Mediterranean, and the rhetorical features of Cicero’s speeches suggest that unlike their imperial counterparts Republican *negotiatores* were not part of the dominant economic ideology in the ancient world. Instead, *negotiatores* was the term by which Late Republican authors conceptualized the Roman imperial diaspora in the provinces more generally as a constitutive element of Late Republican visions of provincial society.

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<sup>226</sup> Verboeven 2007: 95.

<sup>227</sup> Cic. *Pis.* 55.

<sup>228</sup> Cic. *Verr.* 2.3.96.

<sup>229</sup> Cic. *Att.* 1.18.8.

<sup>230</sup> Cic. *De Imp. Gn. Pomp.* 17-18.

### 2.3.1 Moving beyond an exclusively economic account: the Greek translation

Greeks used the expression οἱ πραγματευόμενοι to translate the Latin *negotiatores*.<sup>231</sup> This expression is the participle of the verb πραγματεύεσθαι, a middle verb formed on the basis of πᾶργμα, a Greek noun possibly best translated as “thing, concern, matter”. As such, the Greek rendering closely mirrors the sense of the Latin *negotiator*. While the details of their respective formations differed, they were both *nomina agentis* formed on the basis of very capacious common nouns with suggestively similar meanings: both *negotium* and πᾶργμα were ways of talking about a person’s concerns and affairs. This similarity in formation and sense suggests that the Greek translation of *negotium* was trying to ape its formation, an idea that is supported by the fact that except in the Roman imperial context the substantive use of the participle was rather uncommon in Greek.<sup>232</sup> The Greek translation thus testifies to the quasi-technical quality of the Latin word, at least from the perspective of the Greek world: the Greek language contained existing concepts for “trader” or “merchant”, the classic go-between figures—e.g. ἔμπορος—, but Greeks in the second and first centuries BC clearly did not think that these terms could adequately translate the Latin *negotiator*.

There is, however, one place in the Greek world where Romans and Italians were frequently identified as ἔμποροι: the island of Delos, which in 166 BC the Romans had declared a free harbor and handed over to Athens. Multiple inscriptions on the island testify to this identification. I give one example here, a dedication of a statue of Lucius Aufidius to Apollo, Artemis, and Leto:<sup>233</sup>

[Λεύκι]ον [Αὐ]φι[δίων]  
2 [Ἀθηναίων καὶ] Ῥωμαίων καὶ τῶν ἄλλων  
[ξένων? οἱ] ἔμποροι καὶ ναύκλη[ροὶ καὶ οἱ],  
4 [ἐργαζόμε]νοι τῇ τραπέζ[ῃ] ἀ[νέθηκ]αν  
Ἀπόλλωνι, Ἀρτέμιδι, [Λητοῖ].

Lucius Aufidius. Of the Athenians, of the Romans, and of the other foreigners, the traders, shippers and those working in the bank dedicated (a statue of) him to Apollo, Artemis, and Leto.

On Delos many collectives and individuals identified as ἔμποροι. As this inscription and several others testify, at least some Romans and Italians on the island did so as well.<sup>234</sup> Notably, on Delos we have no attestation of the Latin *negotiator* or of its Greek translation.<sup>235</sup>

<sup>231</sup> Examples include *IGRR* IV, 148 (Cyzikos), *IGRR* IV, 249-250 (Assos), and *IG* V, 2 268 (Mantineia). See A.2 in the entry for πραγματεύομαι in *LSJ*.

<sup>232</sup> A.2 in the entry for πραγματεύομαι in *LSJ*. *Contra* Benvéniste 1951, Andreatu 2000, and Verboeven 2007, who all think that the Romans were trying to imitate the Greeks, for which there is absolutely no indication. In fact, it seems rather clear that the Latin term produces a neologism in the Greek language: the repeated use of the nominalized present participle of πραγματεύομαι.

<sup>233</sup> *ID* 1729.

<sup>234</sup> For other examples where *emporoi* and *naukleroi* of various different origins and other groups set up dedications together see *ID* 1526, 1642, 1645, 1647-9, 1652, 1658-60, 1662-3, 1665, 16702-3, 1705, and 1725-6.

This lexical exceptionality of Delos further supports the suggestion that in the Late Republic *negotiatores* should not be understood as a subset of “go-betweens” or with a purely economic framework. The Delian lexical pattern also opens up the possibility that contemporaries perceived the presence of Romans and Italians on Delos after 166 BC and the development of the imperial diaspora accompanying the foundation of provinces in the Greek East in the late second century BC as two different phenomena, with *negotiatores* being used to conceptualize the latter phenomenon.<sup>236</sup> Cicero’s writings lend further credence to this idea; for, as I go on to argue now, several features of his rhetoric suggest that for him *negotiatores* were a constitutive element of provincial society, thus tying their existence to the existence of provinces. To put it another way, so far I have argued that in the Republican period their Roman and Italian origin and their presence in the provinces defined *negotiatores*. Now it emerges that the reverse is true as well; for Romans during the Late Republic *negotiatores* were a constant, distinct, and constitutive group in their visions of provincial society. *Negotiator* was the term by which Romans conceptualized the imperial diaspora that accompanied the early days of the provinces in their empire.

### 2.3.2 Conceptualizing the diaspora: Cicero’s rhetoric

A rhetorical figure Cicero was fond of reveals this constitutive aspect of the term *negotiatores*. He often invoked the opinion of entire provinces as a way to judge provincial governors and their behavior. So the entirety of Sicily testified against Verres in 70 BC, and in 54 BC all of Asia was asking that Gaius Claudius Pulcher should stay for another year.<sup>237</sup> On both these occasions Cicero explicated these hyperbolic expressions for his audience; all the Sicilians and all the *negotiatores* were testifying against Verres, and it was the tax-farmers, *negotiatores* and allied citizens who demanded another year for Gaius Claudius Pulcher as governor of Asia. In Cicero’s explications the hyperbole continues, but we have been told the constitutive parts of provincial society. *Negotiatores* are a persistent feature in them.

Furthermore, when disputes arose in the provinces they were perceived through the prism of the groups that made up provincial society. For example, a dispute about a transit tax was seen as a conflict of interest between tax-farmers, *negotiatores* and the rest of Asia.<sup>238</sup> The same groups could provide rival testimony about the behavior of one official in their

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See also Roussell 1916: 84-95 on the many foreigners on Delos who individually and collectively identified themselves as *emporoi* on Delos.

<sup>235</sup> Note though *ID 1698*, which dates to the first century BC and contains a form of the verb “negotiari”. But here again the Greek translation – οἱ κατοικοῦντες – highlights how Greeks did not perceive “negotium” and its various derivatives to be equivalent to their own ways of conceiving of go-between figures. I have discussions with Énora LeQuéré to thank for this point, who brought the Greek translation to Latin inscription to my attention.

<sup>236</sup> For a list of the Romans and Italians on the island see Ferrary et al. 2002. For studies of their social organisation see, for example, Roussel 1916: 75-84, Dénioux 2002, and Hasenohr 2002. For account of the early days of the provinces in the Greek East see Kallet-Marx 1996.

<sup>237</sup> Cic. *Verr.* 1.20 and *Scaur.* 35.

<sup>238</sup> Cic. *Att.* 2.16.4.

province.<sup>239</sup> Tax-farmers, *negotiatores*, and locals thus emerge as the conceptual divisions of the provincial society of Asia in the Republican period. This conception of provincial society was not limited to Asia though, as Cicero's statements about Sicily as well as about Gaul show.<sup>240</sup> So just as provinces made *negotiatores*, so *negotiatores*, together with other groups, conceptually made provinces. Importantly, these visions of provincial society as a whole imply that with the exception of Roman tax farmers, the term *negotiator* was used to refer to all the members of the Italian diaspora. During the Late Republic Romans thus thought of their imperial diaspora as a set of men with *negotium*—with affairs to attend to—in the provinces.

The change in the meaning of the word in the imperial period then also spelled the end to its function as an part of an ethnography of the Italian diaspora. Tacitus' work provides a set of examples from imperial contexts in the first century AD that suggest as much. The decisive passage come from his *Histories*, where he describes a Frisian attack on a Roman fort on the Rhine:<sup>241</sup>

*nec providerant impetum hostium milites, nec, si providissent, satis virium ad arcendum erat: capta igitur ac direpta castra. dein vagos et pacis modo effusos lixas negotiatoresque Romanos invadunt. simul excidiis castellorum imminebant, quae a praefectis cohortium incensa sunt, quia defendi nequibant.*

The soldiers had not anticipated the assault of the enemy, and even if they had done so, they did not have enough forces to ward it off. The camp, then, was taken and plundered. Then they fell upon the camp followers and Roman traders, who were wandering about in every direction, as they would in a time of peace. At the same time they were on the point of destroying the forts, which, because they could not be defended, the prefects of the cohorts set on fire.

Unlike for Sallust, Cicero, and Caesar, then, for Tacitus the Roman and Italian origin of *negotiatores* was no longer a given. In this passage Tacitus also associated *negotiatores* with camp followers (*lixai*) in the provinces. This association suggests that here indeed Tacitus was thinking of a group of traders, of go-betweens. In two further passages he associates *negotiatores* with goods traveling between Britain and Ireland and the simple bustle of people around London.<sup>242</sup> There is no passage, then, that comes close to suggesting that for Tacitus *negotiatores*, though present in the provinces, were in any way a conceptually constitutive element of provincial society, let alone of Italian or Roman origin.

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<sup>239</sup> Cic. *Flac.* 38.

<sup>240</sup> Cic. *Font.* 12 and 15 (Gaul), and Cic. *Verr.* 2.2.167 (Sicily).

<sup>241</sup> Tac. *Hist.* 4.15.3 (my translation).

<sup>242</sup> Tac. *Agr.* 24.2 and *Ann.* 3.42.1.

## 2.4 Conclusion

As a result of my argument here, we can now formulate two different answers to the question, Who were the *negotiatores*? The first answer understands and describes *negotiatores* as a social group and attempts to provide a definition for it. Along these lines republican *negotiatores* were the group of Romans and Italians who specialized in the economic opportunities that the emerging Roman provinces offered without committing them to particular kind of economic activity. Imperial *negotiatores*, by contrast, were the go-between figures that connected places of production and consumption. The second type of answer does not focus on the internal composition of the group, but on the larger worlds of which they were a part. While first-century BC *negotiatores* were conceptually constitutive of society in the provinces, their imperial counterparts were part of a universe of sale that arose out of an ideology that privileged stationary landholders, who were eager to distance themselves from the world of buying and selling and thus needed somebody else to move their products.<sup>243</sup>

These answers also allow us to revisit the problems that previous scholarship on Late Republican *negotiatores* has encountered. First, understanding that *negotiator* was a term used to describe the Italian diaspora as a whole can explain the incredible range of activities and socio-economic origins that inductive approaches to *negotiatores* as a social group have revealed. Second, the implication of the term in Late Republican conceptions of the empire and the place of Romans and Italians within it also provides a ready means for explaining the shift in the meaning of the term in the imperial period; for it becomes possible to imagine how a reconceptualization of the imperial diaspora on the part of Roman politicians could affect the meaning and use of the word. And indeed, it is possible to argue that with Augustus Roman visions of the Italian diaspora were put on a radically different conceptual footing, which left the term *negotiator* without its original purpose and free to be assimilated to the idea already expressed by the term *mercator*.<sup>244</sup> This assimilation of the term's meaning to designate the role of go-between or trader surely reflected a substantial part of what the exploitation of the provinces by the members of the Italian diaspora involved—the movement of goods, in particular to Italy, an argument that I will make at greater length in the fourth section of this chapter.<sup>245</sup>

Understanding *negotiatores* as part and parcel of how Romans in the Late Republic thought of their empire, its provinces and the place of the Italian diaspora in them rather than as a description of the place of a group of men in the coordination of economic life also allows me to reevaluate the evidence for landholdings among the members of the Italian diaspora without having to see these men as an exception or a group that is set apart. Assessing the evidence for the extent of landholding among the members of the Italian diaspora, as I do in the following section, must be the first step in such a reevaluation.

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<sup>243</sup> For this diagnosis of *negotiatores*' role in the land-holding mentality see Nicholas Purcell's Sather Lectures at UC Berkeley in Spring 2012.

<sup>244</sup> This is an argument that I make elsewhere, as it does not fit within the framework of the dissertation in its present shape.

<sup>245</sup> For now see also Brunt 1988: 170 and Verboeven 2004: 192 for hints at the *negotiatores*' involvement in the movement of goods to Italy.

### 3 – The fact and extent of landholding in the Italian diaspora

In 1966 A J N Wilson published a book entitled *Emigration from Italy in the Republican Age of Rome*, in which he surveyed the evidence for the presence and activities of Italians in Spain, Sicily, Africa, and the Greek East during the Late Republic. In each of these areas he found direct attestations of Italians owning land in the first century BC.<sup>246</sup> It is undeniable that some of these Italians owned land, but just how extensive were their possessions? Given the fragmentary nature of our evidence, enumerating passages and landholders can only ever give an incomplete and impressionistic answer to this question. By contrast, the ways in which contemporary Romans and Greeks perceived and spoke of landholdings among the members of the diaspora suggests that such holdings were not exceptional and could rise to considerable prominence among the interests of Romans and Italian in the provinces. Moreover, the events surrounding the First Mithridatic War produced the critical and retrospective accounts of empire, which already in Chapter One provided some of the best evidence for the acquisition of landed possessions and agricultural resources by members of the Athenian, Rhodian, and Aetolian imperial diasporas.

#### 3.1 Roman sources and perspectives on landholding in the imperial diaspora

In 59 BC Cicero defended Flaccus against the charge of misconduct as provincial governor of Asia. Through Cicero's speech we learn that during Flaccus' tenure as governor a certain Decianus had come before him claiming to have purchased a stretch of land in Apollonis, an Attalid foundation in Northern Lydia between Pergamum and Sardis.<sup>247</sup> What is important here is that Cicero did not introduce Decianus' interest in acquiring land in a city in Asia Minor as extraordinary or surprising. Regardless of whether Cicero was right in assuming that his audience was familiar with these aspects of provincial reality, he himself certainly knew many such men with landed possessions in the provinces.

For starters, his friend and fellow *equus*, the famous Atticus, owned land in Buthrotum in Epirus and possibly also on Delos; Cicero knew of these possessions as they repeatedly figure in the flourishing letter exchange between the two.<sup>248</sup> In addition, he also wrote letters of recommendation to provincial governors for men and women with landed possessions in the provinces in the Greek East, asking these governors to look after their interests there. These men include L. Cossinius Anchialus and L. Lucceius with possessions in Epirus, L. Genucilius Curvus, C. Curtius Mithres, L. Flavius, and a certain Caerellia with landholdings in Parium, Ephesus, Colophon, and Asia more generally, and A. Trebonius, who had acquired some agricultural resources in Cilicia.<sup>249</sup> So whether arguing for or against

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<sup>246</sup> Wilson 1966: 39-40 (Spain), 42, 45 and 50-51 (Africa), and 55-57 (Sicily). For the Greek East see further on in this section.

<sup>247</sup> Cic. *Flac.* 29-32.

<sup>248</sup> Cic. *Att.* 1.5.7 (Buthrotum) and *Att.* 9.9.4 with Bruneau 1988 (Delos). For an extensive account of Atticus' presence in Buthrotum see Part 4 below.

<sup>249</sup> Cic. *Fam.* 13.32 (L. Cossinius Anchialus in Epirus); 13.42 (L. Lucceius in Epirus); 13.53 (L. Genucilius Curvus at Parium on the Hellespont); 13.69 (C. Curtius Mithres at Ephesus and probably at Colophon), and

the probity of members of the Italian diaspora, Cicero knew of their landed possessions and never thought to mention them as something extraordinary. To him they were part and parcel of the *negotium* that these men pursued in the provinces.

### 3.2 Greek sources and perspectives on landholding in the imperial diaspora

The Greek material consists of the epigraphical output of Greek cities. These cities had a long history of managing foreign subject populations in their midst and were in the habit of negotiating with these foreigners over the distinct set of rights and duties that they would enjoy as a group.<sup>250</sup> Such cities treated the members of the Roman imperial diaspora accordingly. But instead of being lumped together with all the other foreigners, these Romans and Italians were treated as a separate group with what we may assume was a distinct set of rights and duties.<sup>251</sup> In the epigraphic record these groups of Italians tend to show up as “Romans” accompanied by a participle that describes their relationship to the city in question. Here is one example:<sup>252</sup>

2           Θεσπι[έω]ν οἱ παῖδες καὶ παροῖκω[ν κα]ὶ Ῥωμα[ίων] τῶν πρα[γματευ-]  
                  ομένων ἐν Θεσπιάϊς Πρωτογένην Πρωτάρχου τὸν κρίσ[ε]ι πατέ-  
                  ρα καὶ εὐεργέτην ἑαυτῶν.

The sons of the Thespians, of their *paroikoi*, and of the Romans who do business in Thespieae [honor] Protogenes, son of Protarchos, their father of their own choosing and benefactor.

In Thespieae in Boeotia, then, the members of the Italian diaspora were clearly set apart from the remaining subject population, the *paroikoi*, and they were described as men with *πράγματα* there. In other words, the Thespians and these Italians had agreed that the latter should be identified and thought of in accordance with the Roman perception of them as *negotiatores*. However, this was but one among many of the social descriptions by which groups of members of the Italian diaspora were integrated in Greek cities. For example, in Opus and Eretria the Romans were not doing business, as in Thespieae, but they were “staying in town” (*ἐπιδημοῦντες*).<sup>253</sup>

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13.72 (Caerellia in Asia); Cic. *Q. fr.* 1.2.10-11 (L. Flavius in Asia); Cic. *Fam.* 13.3 with Dénioux 1993: 219 and 564-6 (A. Trebonius in Cilicia).

<sup>250</sup> Athens' subject populations remain the best explored with Whitehead 1977 focusing on the fourth century and Niku 2007 on the Hellenistic period. Gauthier 1988 casts the net more widely, emphasizing the opposition between citizens and other free populations in Greek cities.

<sup>251</sup> Kirbihler 2007.

<sup>252</sup> *IG* VII 1862. The translation in mine.

<sup>253</sup> *IG* IX, 1,283 (Opus) and *IG* VII, 190 (Eretria).

Notably, these groups of Italians could also be identified as those “having the right to own land in the city” (ἐγκεκτῆμενοι).<sup>254</sup> The inscription from Beroea in Macedon that I mentioned above is an excellent example.<sup>255</sup> Also, three inscriptions from Olympia dating from the first quarter of the first century BC to the first quarter of the first century AD identify a group of Italians in Elis as ἐγγαιοῦντες, which seems to mean the same thing as ἐγκεκτῆμενοι.<sup>256</sup> These inscriptions, then, are instances in which the unique social description of members of the Italian diaspora identified them as potential landowners. Such identifications, I would argue, should not be seen to imply that all those groups not described as such were not interested in landholdings. Instead, these descriptions point to the prominence to which access to landed possession could rise in the negotiations between these Italian subject populations and the cities in which they were residing. As such, these inscriptions speak to the importance of access to landed possessions for certain members of the Italian diaspora. The events surrounding the First Mithridatic War provide further evidence for the extent of these possessions.

### 3.3 Mithridates’ view: landholding in critical and retrospective perspectives on empire

Between 89 and 85 BC Mithridates VI, king of Pontus, waged war against Rome and the kingdom of Bithynia in Asia Minor and Greece. Not only did he fight against the Romans with his own army, but he also invited the Greek cities in Asia Minor to rebel from Rome and join him in his efforts to throw off the Roman yoke. Most famously, in 88 BC he sent letters to these cities, asking them to kill all the Italians in their midst, leave them unburied, and share their possessions with Mithridates himself. I quote Appian’s account of his plan.<sup>257</sup>

...καὶ σατράπαις ἅπασι καὶ πόλεων ἄρχουσι δι’ ἀπορρήτων ἔγραφε, τριακοστὴν ἡμέραν φυλάξαντας ὁμοῦ πάντας ἐπιθέσθαι τοῖς παρὰ σφίσι Ῥωμαίοις καὶ Ἰταλοῖς, αὐτοῖς τε καὶ γυναῖξιν αὐτῶν καὶ παισὶ καὶ ἀπελευθέροις ὅσοι γένους Ἰταλικοῦ, κτείναντάς τε ἀτάφους ἀπορρίψαι, καὶ τὰ ὄντα αὐτοῖς μερίσασθαι πρὸς βασιλέα Μιθριδάτην.

... and he wrote secretly to all his satraps and magistrates that on the thirtieth day thereafter they should all together set upon the Romans and Italians in their towns, and upon their wives and children and their domestics of Italian birth, kill them and throw their bodies out unburied, and share their goods with himself.

Valerius Maximus tells us that 80,000 people were killed on this occasion. Plutarch thought it had been 150,000.<sup>258</sup> In organizing these so-called “Asian Vespers” Mithridates clearly

<sup>254</sup> On ἐγκτησις—the right to own land in Greek cities—see Gauthier 1990 and Pecirka 1966.

<sup>255</sup> Gounaropoulou & Hatzopoulos 1998, 59.

<sup>256</sup> *IO* 33, 335, and 938 with *SEG* XVII 197. See Zoumbaki 1994 for this interpretation.

<sup>257</sup> App. *Mith.* 22 (translation by White 1899 with slight alterations).

<sup>258</sup> Val. Max. 9.2.ext.3 and Plut. *Sulla*, 24.4.

pursued strategic goals, including the removal of men and women that were likely to side with Rome in the war to come.<sup>259</sup> However, the actions he demanded surely also appealed to the rhetoric by which, as I argue in Chapter One, Greek cities were accustomed to voicing their criticism of being subject to another political power—by emphasizing the wrongs that their inhabitants had suffered as individuals, wrongs that often involved members of the respective imperial diasporas and the various means by which they managed to lay hold of landed possessions in these cities.<sup>260</sup> So when Mithridates coordinated the attack on the Italian diaspora, he invoked and played on precisely this discourse, a discourse that spoke to Greek cities’ day-to-day experience of being subject to another city: the presence and dealings of members of the imperial diaspora in their midst.<sup>261</sup> The Asian Vespers were a way of opposing the Roman Empire that was based on the critique of “civic empires” that cities had been in the habit of formulating more generally.

Mithridates also realized what killing these Italians entailed. He understood that their possessions in these cities would now be without their owners and accordingly made provisions as to what should happen with them. While Appian’s expression here is vague (τὰ ὄντα), and it is uncertain whether he has exclusively landed possessions in mind, Mithridates’ letter to Cos in the aftermath of the Asian Vespers makes it very clear that Mithridates was well aware of these landholdings and that they were among his main concerns; for in this letter he complained that the Chians did not pay their dues to him on the Roman possessions in the city, although they were cultivating them after their Roman owners had left for fear of Mithridates:<sup>262</sup>

ἐπιστολὴ δὲ ἦκε Μιθριδάτου τάδε λέγουσα: εὖνοι καὶ νῦν ἐστὲ Ῥωμαίοις, ὧν ἔτι πολλοὶ παρ’ ἐκείνοις εἰσὶ, καὶ τὰ ἐγκτήματα Ῥωμαίων καρποῦσθε, ἡμῖν οὐκ ἀναφέροντες.

A letter came from Mithridates with the following content: “You favor the Romans even now, and many of your citizens are still sojourning with them. You are harvesting the fruits of Roman possessions of which you do not make returns to us. ...”

The resistance and opposition to the Roman Empire that coalesced around the figure of Mithridates was only a temporary challenge to Roman dominion over Greek cities in the Eastern Mediterranean. And yet, as I argued in Chapter One, the discourses and concerns that came to the fore in such moments of crisis provide modern historians with the most persuasive glimpses of the socioeconomic implications of empire that accompanied the respective imperial diasporas, implications that the Romans conceptualized as the *negotium* of the members of their imperial diaspora.

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<sup>259</sup> See Purcell 2005: 87.

<sup>260</sup> Ps-Xen. *Ath. Pol.* 14 provides the best-known example of this way of criticising imperial rule.

<sup>261</sup> Purcell 2005: 87 emphasizes the strategic importance of getting rid of the members of the diaspora.

<sup>262</sup> App. *Mith.* 47 (translation based on White 1899 with slight alterations).

### 3.4 Conclusion

After Mithridates' defeat in 85 BC, Romans and Italians returned to the cities of Asia Minor from wherever they had fled and continued the pursuit of their *negotia* there.<sup>263</sup> As I have suggested here, one aspect of these *negotia* was the acquisition and cultivation of landed possessions in the territories of Greek cities. Cicero and in all likelihood his audience in Rome understood as much. Similarly, the inhabitants of Greek cities as well as Mithridates understood that the members of the Roman diaspora were eager and successful in their pursuit of landed possessions in these cities' territories. Thus the Roman diaspora resembled its Greek counterparts, which I discussed in Chapter One, in the existence of landholding among its members as well as in the rhetoric invoked against its members and the types of sources that we have for it. The remaining part of this chapter is dedicated to inquiring what the members of the Roman diaspora did with these possessions. What role, then, did land play in their *negotia*?

### 4 – Land in the economy of the Roman diaspora

Were previous scholars right to treat landholding among the members of the Roman diaspora as a separate category, unrelated to their involvement in trade and the movement of goods? The question is urgent, but the answer will raise further questions; for any attempts to challenge the fixed and separate categories into which members of the diaspora have been grouped—bankers, traders, land-owners etc.—and to investigate how the people and the activities that they so neatly separate related to each other in a given historical context, has implications for and by necessity engages with scholarship on the organization of economic life in the Greco-Roman past.

My strategy here is to initially leave aside debates about the nature of ancient economies and return to them in the end. Instead, I focus on concrete places – Epirus, Cos, and Chios in particular – in which Romans and Italians demonstrably owned land and examine the history of agricultural production there. Doing so involves a diverse set of evidence, ranging from Coan amphora handles and archaeobotanical material from Epirus to Ovid's love poetry and Varro's writings on pastoralism. Overall, these case-studies repeatedly show how Roman involvement in agricultural production led to an increase and intensification of said production and the export of products to markets in Rome and Italy, where cultural developments at the time were creating a demand for precisely these products. The types of agricultural resources that these men acquired and the commercial agriculture that they practiced suggests that they did so with the sale and export of the goods they produced in Italy on their minds. These case studies thus heed Sue Alcock's call to use the ever-increasing archaeological material to draw a more fine-grained picture of economic life in the Eastern Mediterranean under Roman rule.<sup>264</sup>

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<sup>263</sup> Broughton 1938: 543-554. For example, some Italians fled to islands in the swamps of Lydia and were spared only to the return to their possessions in Greek cities (Plin. *HN* 2.209). Morstein-Marx 1995 argued that they only properly arrived after Mithridates, but see Ferrary 2002 for a relativization of this conclusion.

<sup>264</sup> Alcock 2007: 673 and 696. See also p. 691, on the possibility that archaeology might provide evidence for elite involvement in commerce, which is exactly what I use it for in this section.

My research thus suggests that the economy of the Italian diaspora constituted an instance in which the strict ideological boundaries between stationary land-owners and the go-betweens who link up places of production and consumption did not correspond to the practices animating economic life. As it turns out, Roman landholding in the provinces, the influx of products into Rome from all over the Mediterranean, and the consumer revolution in Rome that they effected were all intimately connected.

#### 4.1 Atticus in Epirus: an exemplary and varied economic portfolio

Atticus, Cicero's intimate friend, provides a readily available prism through which to view these different aspects of the economy of the Italian diaspora. The evidence for the circumstances of his life is extraordinary: his correspondence with Cicero is extensive, Varro made him an interlocutor in the second book of his work on agriculture, and Cornelius Nepos, his friend, wrote a brief biographical sketch about him.

To begin with, these sources allow us to assess the extent of his landed possessions. We know that in Italy Atticus had urban properties in Rome and two rural estates.<sup>265</sup> In 68 BC he acquired additional land in the region of Epirus in Northern Greece.<sup>266</sup> It is clear that he became the owner of these properties and that at least some of them were located in the territories of the cities on the coast. Together with his urban possessions in Rome this property made up the main part of his estate.<sup>267</sup> On his land in Epirus Atticus raised sheep, cows, and horses.<sup>268</sup> He was selling them and their processed by-products, such as manure, milk, and wool.<sup>269</sup> His correspondence with Cicero shows him at times deeply involved in his *negotia* in Epirus.<sup>270</sup>

However, Atticus' affairs in Epirus were not limited to his landed possessions. He also placed some of Cicero's money in Epirus in interest-bearing loans, and he himself lent money to the city of Buthrotum, where his estate was located.<sup>271</sup> This was not a unique occurrence, as we also know of another loan that he had made to the city of Sicyon in the Northern Peloponnese and which he now had trouble recovering.<sup>272</sup> And indeed, nothing indicates that this combination of landholding and banking was an exceptional portfolio of activities. Often when Cicero introduced his friends to provincial governors by means of a letter of recommendation, he made reference to their *negotia*—their affairs, their interests—in the respective province.<sup>273</sup>

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<sup>265</sup> Nep. *Att.* 14.3.

<sup>266</sup> Cic. *Att.* 1.5.7.

<sup>267</sup> Nep. *Att.* 14.3.

<sup>268</sup> Varro, *Rust.* 2.5.12, 2.5.18 and 2.7.1.

<sup>269</sup> *Ibid.* 2.11.

<sup>270</sup> Cic. *Att.* 5.19 and 12.53.

<sup>271</sup> Cic. *Att.* 13.37.1 and 16.6A.

<sup>272</sup> *Ibid.* 13.1.

<sup>273</sup> For a detailed discussion of these letters cf. Dénioux 1993.

Atticus' *negotia* in Epirus, then, were of a rather varied nature and we should imagine that those of his fellow Italians in the provinces were as well. To be sure, Cicero's friends were all well off and represented the upper echelons of those Romans and Italians who had *negotia* in the provinces. For these men placing loans and acquiring land created revenue streams. Revenue from land, of course, stemmed from the sale of agricultural products, which in turn implies a highly commercialized form of agriculture, for which Varro's second book on agriculture together with the archaeological record of the region and several other literary sources provides independent evidence.

#### 4.2 The Roman diaspora in Epirus: making the most of the landscape

From Varro we learn that Atticus was not the only Roman who was engaged in cattle breeding in Epirus. In his book that concerns itself with cattle breeding five of the six interlocutors—T. Pomponius Atticus, L. Cossinius, Qu. Lucienus, Murrius and Vaccius—were Italians whose properties were located in the region of Epirus.<sup>274</sup> From Cicero's correspondence we know the name of a sixth one, L. Luceius. He was embroiled in a dispute with the town of Byllis in the very north of Epirus.<sup>275</sup> Varro also mentions the towns of Pergamis and Maledon as reference points for these *negotiatores* in Epirus. The former has been identified based on a Hellenistic inscription as a place in Northwestern Epirus.<sup>276</sup> Atticus had a property in Buthrotum on the Southern Epirote coast.<sup>277</sup> This list of places provides us with are the known geographical parameters of these *negotiatores'* activities in Epirus.

##### 4.2.1 Epirus – a pastoral landscape

The region of Epirus has seen a lot of archaeological work since the fall of the Iron Curtain. The Butrint Project and the Nikopolis Project are the two main concerted efforts to better understand the history of the Epirote landscape and countryside.<sup>278</sup> The Nikopolis project in particular has greatly increased our understanding of the Epirote coastline by undertaking case studies of the lower Acheron valley in Southern Epirus and of the Ambracian embayment further north.<sup>279</sup> They show that in the Ambracian Bay sedimentation only overtook the rise in sea level around AD 1500 and that in the Roman period the lowest three kilometers of the Acheron valley in fact formed a marine inlet. Thus

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<sup>274</sup> Varro, *Rust.* 2.1.2 and 2.2.1. Regardless of whether these men actually existed – and at least one of the, Atticus, did – it seems clear that Italians raising cattle in Epirus was a well-known phenomenon in the Late Republic.

<sup>275</sup> Cic. *Fam.* 13.42.

<sup>276</sup> Flach 1997: 209.

<sup>277</sup> Cic. *Att.* 1.5.7.

<sup>278</sup> For the Butrint Project see Hodges et al. 1997, Bowden et al. 2002, Bowden and Përzhita 2004 and Hodges 2005. For the Nikopolis project see Wiseman 2001, Wiseman and Zachos 2003, and Zachos 2007.

<sup>279</sup> For the Acheron valley see Tartaron 2004 and Besonen et al. 2003. For the Ambracian embayment see Jing and Rap 2003.

in Antiquity the coastal and flood plains of Epirus were of a much more limited extent. Byzantine sources also testify to this.<sup>280</sup> This made the economy of the mountains rising behind the coast all the more important.

The mountains rising from the Epirote coastline are made up of limestone and occasional Flysch beds.<sup>281</sup> While limestone pavements and vertical crags surely make it hard for vegetation to develop there, the low-lying shrubs that cover most of the mountains in the present day only became the dominant species in the last two hundred years. Pollen analysis of deep cores shows that in earlier periods trees populated the Epirote landscape to varying degrees.<sup>282</sup> The famous oak forest at Dodona thus was not exceptional in the ancient Epirote landscape. Still, only the low-lying hills were suitable for the cultivation of wines and olives.<sup>283</sup> The main economic use of the mountains undoubtedly was pastoral.

#### 4.2.2 The history of pastoralism in Epirus and the impact of the Roman diaspora

Archaeologically this economic strategy and its extent are of course hard to trace. The Bronze Age faunal remains that have been recovered from the region conform with those of the rest of Greece and do not allow for an estimation of the extent or relative importance of the activity.<sup>284</sup> By the late first century, however, it is clear that pastoralist activities were an important part of the economy; when Caesar and his troops were stranded in these mountains without access to the sea before the battle of Dyrrachium, his men resorted to eating meat and a bread-like substance that was made from a local root and milk.<sup>285</sup> While Caesar praises the resourcefulness of his soldiers reporting that they discovered the root (*genus radicis inventum ab eis*), in all likelihood they were simply living on an established local diet. Caesar also claims that the Epirotes usually imported the grain that they needed.<sup>286</sup>

But already Aristotle testifies to the important social role that pastoralism played in the region in the late fourth century BC. According to him the sheep and cows of Epirus had acquired Panhellenic fame as a result of their extraordinary size and the plenitude of their products, such as milk. More importantly, however, the house of Pyrrhus and that king himself took pride in having their own special flock of cows to whose well-being they tended and whose extraordinary qualities surely also were meant to reflect back onto the kings.<sup>287</sup> This tidbit of royal ideology shows us the Epirote kings as the largest and most successful

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<sup>280</sup> Veikou 2012: 40.

<sup>281</sup> Bowden 2003: 11.

<sup>282</sup> Tartaron 2004: 139-141.

<sup>283</sup> Bowden 2003: 11-12.

<sup>284</sup> Tartaron 2004: 142 and 186.

<sup>285</sup> Caes. B 3.47-48.

<sup>286</sup> Caes. B 3.42.

<sup>287</sup> Arist. *Hist. an.* 3.21 and 7.8, and Plin. *HN* 7.176.

pastoralists in Epirus – a reflection of the specific ecology of the region in which these later unambiguously Hellenistic kings originated.

While it is likely that Caesar's observations can be retrojected into earlier periods, it is equally possible that the arrival of Roman landowners in the first century BC and tipped the balance between agriculture and pastoralism in Epirus further towards the latter. For the Italians who came to Epirus were famous for their pastoralist activities and interests. This required access to grazing grounds, which could be found in coastal plains at the expense of cereal agriculture, but also on the valleys and flanks of the mountains that rose from the coast. While we cannot assess the impact the Roman diaspora had on the cultivation of cereals in Epirus, as I will go on to argue, the archaeological evidence for settlement patterns in the mountains of Epirus makes it likely that the Romans changed the grazing patterns in Epirus for their own benefit.

As Aristotle testified, pastoralism in Epirus was transhumant. Epirus was well suited to cattle-raising, he claims, because for every season there was an appropriate grazing ground.<sup>288</sup> Hence the Italians did not only have to acquire plots of land for their farms and houses, but also extensive grazing rights on the flanks of the Epirote mountains. In Northern Epirus at Ripësi and Paleomanastri archaeologists have found two enclosures of about three hectares each. Their walls date to the Hellenistic period, but in their perimeter Roman pottery was also found, which indicates some continuity in the use of transhumant infrastructure across the periods.<sup>289</sup> However, transformations in settlement patterns during the same period suggest that the people who used this infrastructure changed. Making this argument requires some consideration of the structure of the property regimes involved in transhumant pastoralism more generally.

Transhumant pastoralism can imply migration from low-lying valleys into summer pastures in the mountains, or conversely migration down from the mountains in the winter. For example, between the Zagros mountains and the Mesopotamian flood plains both relationships were possible and co-existed at the same time. Changes in the relative prevalence of these two regimes were highly contested and often only brought about by brute force. In other words, military conflict was often used to bring about the extension of the mountain grazing grounds to which valley-based pastoralists had access and viceversa.<sup>290</sup> Recent anthropological and archaeological work in Thessaly reveals the possibility for similar dynamics in central Greece.<sup>291</sup> Preliminary surveys have shown that starting in the first century BC Hellenistic sites in the Epirote mountains were abandoned or at least decreased in size.<sup>292</sup> If we accept that the newly arrived Roman pastoralists had their bases on the coast, as Atticus' *domus* in Buthrotum suggests, the pattern in the archaeological record could indicate a loss of grazing grounds for the populations of these upland sites and hence the abandonment of certain sites. Pointedly, L. Lucceius had a dispute with the town of Byllis,

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<sup>288</sup> Arist. *Hist. an.* 3.21.

<sup>289</sup> Shpuza 2011: 614-615.

<sup>290</sup> Greco 2003.

<sup>291</sup> Reinders and Prummel 1998.

<sup>292</sup> Shpuza 2011: 610.

such an inland community.<sup>293</sup> At any rate, surely not only Italians, but also the citizens of the coastal cities such as Buthrotum, will have profited from this shift in grazing rights.<sup>294</sup> While the exact details of the shift in property rights that accompanied the arrival of the Roman pastoralists remain speculative, we can be certain about the highly commercialized form of agriculture that Atticus and his fellow Italians in Epirus were involved in. For this argument we need to return to Varro.

#### 4.2.3 Roman commercial pastoralism in Epirus

Varro jokingly refers to the protagonists of his book on cattle-raising as shepherds. When he calls them “cattle-breeding athletes of Epirus” he hits far closer to the truth, for they engaged in the extensive breeding and sale of cattle.<sup>295</sup> Murrius even managed to sell some of his foals for further breeding in Arcadia, which itself was a renowned place for breeding donkeys.<sup>296</sup> When it came to horses, it is likely that the fame of Epirote horses as race-horses was a result of Roman breeding and marketing.<sup>297</sup> Most of the time though, the animals were sold for slaughter and consumption. Varro’s remark that some people in Italy still only used Italian cows for sacrifice and refused to have recourse to animals from Epirus for these purposes illustrates the wide-spread circulation of these animals from Epirus.<sup>298</sup> For the Italians in Epirus the processing of milk and wool was but an afterthought in the economic profile of their respective properties.<sup>299</sup>

The “cattle-breeding athletes of Epirus” thus were involved in a highly commercial form of agriculture that centered around the raising, selling, and slaughtering of all kinds of cattle. Such agriculture also necessitated a large staff including the unfree labor of the *magister pecoris*—the master of the herd—and of the other shepherds and their families. In Varro’s world thoughts on purchasing shepherds had the same pattern as and followed straight on from ideas about buying and selling horses, asses, and dogs.<sup>300</sup> It appears then that the “cattle-breeding athletes of Epirus” intensively marketed the resources of Epirus. In particular, they seem to have directed their products to the markets that they knew best—those of Italy.

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<sup>293</sup> Cic. *Fam.* 13.42.

<sup>294</sup> See Bowden 2009: 168-9 for the increasing prevalence of individual over collective ownership as reflected in the manumission documents from Buthrotum as an indicator of social transformation in Epirus.

<sup>295</sup> Although we are lacking the explicit textual evidence to confirm the existence of breeding in Antiquity, MacKinnon 2010 clearly demonstrates based on zooarchaeological and textual evidence that it took place in ancient Italy.

<sup>296</sup> Varro, *Rust.* 2.6.1 with Flach 1997.

<sup>297</sup> Varro, *Rust.* 1.59 and 3.117-122 provides the first evidence for Epirote horses’ fame for racing. Stat. *Achil.* 1.420 is an echo of the idea. Apsyrtyos in the second century AD seems to have forgotten about this fame. For him Epirote horses were simply mean and bite. For all of this see Étienne 2004: 244 n.10.

<sup>298</sup> Varro, *Rust.* 2.5.10.

<sup>299</sup> *Ibid.* 2.11.

<sup>300</sup> *Ibid.* 2.1.24 and 2.10.4-5.

How representative were these men in Epirus of the imperial diaspora as a whole? In light of the wide socio-economic spectrum from which members of the Italian diaspora came, on one level these men can only be representative of the better-off within that group. But the archaeological and epigraphic record for Chios and Cos, to which I turn in the following parts of the argument, reveals an analogous pattern; there Romans also owned the agricultural resources the products of which we know made their way to Italy and Rome. Furthermore, following the things produced on these islands—wine and silk—, rather than the men who oversaw their production, also reveals that Italians from a wide range of socio-economic backgrounds were involved in their production and export to Italy. This involvement at various levels and in various capacities might then also be what characterizes the members of the Italian diaspora as a whole.

#### 4.3 The Roman diaspora and the wine of Cos

What is the evidence for the Italian presence on Cos? Evidence from the events surrounding the First Mithridatic War suggest that already before that event the island played host to a community of Italians; the Coans provided refuge to a set of resident Romans in the temple of Asclepius on the island.<sup>301</sup> In the late first century BC the city received honors from a group of Roman *negotiatores* based on the island for its allegiance to Julius Caesar, and around the same time the Coans began to inscribe a list of the priests of Apollo in Halasarna, which included several Romans.<sup>302</sup> In the same century those who lived in the Coan deme of Haleis and those who had possessions and farmed the land in the demes of Haleis and Peles honored a physician. Here is how they describe themselves:<sup>303</sup>

4       ... τοὶ κατοικεῦντες  
           ἐν τῷ δάμῳ τῶν Ἄλεντίων καὶ το[ι]  
 6       ἐνκεκτημένοι καὶ τοὶ γεωργεῦντε[ς]  
           ἐν Ἄλεντι καὶ Πέλη(ι), τῶν τε πολτεῖτων  
 8       καὶ Ῥωμαίων καὶ μετοίκων ...

... Those residing in the deme of the Halentians and those having the right to own land and those farming in Haleis and in Peles, of the citizens, the Romans, and the metics ...

This honoring group defined itself through its relationship to a specific part of land on the island; it was composed of citizens, Romans and metics. This definition testifies to the disintegration of an exclusively citizen population in the countryside. Most importantly for my purposes here though, this shows that Romans were now among those men who had access to and owned land in the rural landscape of the demes of Cos. Catalogues from the first century AD—the list of the priests of Apollo at Halasarna and a list of the members of the Coan *presbutika palaistra*—present a different angle and yet reveal the same phenomenon,

<sup>301</sup> App. *Mith.* 22 and Tac. *Ann.* 4.14.

<sup>302</sup> Segre 1993: EV 23 and *IG* XII 4,1.

<sup>303</sup> Paton and Hicks 1891: no. 344, ll. 4-8.

namely the extent to which throughout the first century BC Romans had become a part of local Coan society.<sup>304</sup>

#### 4.3.1 Roman involvement in the production of Coan wine

As in Epirus, Italians on Cos and Chios were engaged in the production of goods for which the islands had been famous for before their arrival. On Cos, above all, this was wine. Roman names on amphora handles tell us that by the first century BC Romans were heavily involved in the production and trade of this wine.<sup>305</sup> Two pieces of evidence speak to the extent and depth of their involvement.

First, Nicias of Cos, the tyrant of the island in the late first century BC, obtained his Roman citizenship through Gaius Curtius, a producer of wine whose amphorae reached both Egypt and the Danube.<sup>306</sup> Gaius' freedman, Gaius Curtius Mithres, owned land in Ephesus on the coast opposite Chios, and Naxos, another island known for the quality of its wine, honored him.<sup>307</sup> In this context it is interesting to note that a type of amphora that has been ascribed to Cos—the so-called Nikandros group—has recently been shown to have been produced in Ephesus.<sup>308</sup> Second, imitations of the Coan double-handled amphora became the widely popular imperial Dressel 2-4 types. Pliny praised Coan amphorae highly.<sup>309</sup> Dressel 2-4 type amphorae were first produced in Italy in the first century BC. In the subsequent centuries production centers of these amphorae were located from Africa to Britain.<sup>310</sup>

Both of these pieces of evidence also indicate the scope of these *negotiatores'* activities, which lay at the origin of their overwhelming power within the context of Greek cities.<sup>311</sup> Clearly the activities of these well-off Italians were not confined to one city. Tellingly, Cicero often situated Atticus in the landscape of Epirus, not in the civic territory of Buthrotum.<sup>312</sup> One might imagine a similar regional context encompassing Naxos, Cos and the coast of mainland Asia Minor opposite these islands, in which to place Gaius Curtius Mithres and his

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<sup>304</sup> See Sherwin-White 1978: 253-254 nn. 191-193 for these lists. The second volume of *IG* on Cos that is scheduled to come out this year should have new editions of these texts. I have not been able to get hold of a volume yet.

<sup>305</sup> Sherwin-White 1978: 252 n. 184.

<sup>306</sup> For more on Nicias of Cos see Syme 1961 and Dénioux 1993: 419.

<sup>307</sup> Cic. *Fam.* 13.69 and *IG* XII 5, 61.

<sup>308</sup> Finkielsztejn 2002: 137-138.

<sup>309</sup> Plin. *HN* 35.161.

<sup>310</sup> Empereur and Hesnard 1987: 36.

<sup>311</sup> Cic. *Fam.* 13.69 wrote that whenever he wanted to get something done in Asia, he would get in touch with Curtius Mithres.

<sup>312</sup> Most of the times that Cicero mentions Buthrotum, the threat of the Caesarian colony is the subject matter. During his own exile, he always contemplates whether to take up Atticus on his invitation to Epirus, not Buthrotum.

patron. It should not come as a surprise then, that as those producing and marketing wine became less bound to one particular city, so also the shape of the containers in which they carried their products lost their local reference points. Briefly put, the new configurations of power that the elite members of the Italian diaspora introduced in the Greek East in the first century BC altered the conditions of possibility for the development of the shapes of transport amphorae. To be sure, the increased opportunities for the international coordination of the production and marketing of wine also gave the individuals who orchestrated this coordination an increasing amount of purchase in the local arena of Greek cities such as Cos, where somebody as deeply involved in the wine trade as Gaius Curtius picked the future tyrant of Cos as his client.

#### 4.3.2 Roman consumption of Coan wine

The history of the trade in Coan wine, as reconstructed through the textual and archaeological record, allows us to consider the impact of Roman involvement in the production and marketing of this wine. Trade in Coan wine is first attested in the fourth century BC.<sup>313</sup> For Cato the Elder, to speak of Coan wine was to refer to the Greek fashion of mixing wine with salt water.<sup>314</sup> Adding seawater was a means of preserving the wine, but also created a particular and clearly sought after taste. Both Cato and Columella explain how to achieve this effect in vineyards that were far away from the sea.<sup>315</sup> Cato promised that if one followed his prescriptions for producing this kind of wine while away from the sea, the end-result would not be worse than wine from the island of Cos. Hence for him wine that came from Cos was on the high end of a spectrum of wines that were all mixed with salt water. In addition, this type of Coan wine was known for its medicinal uses. The Hippocratics prescribed it as a laxative, and Horace in his spoof on Epicureanism attests to the medicinal uses of this kind of wine in Late Republican Italy. Pliny the Elder would elaborate on these uses *in extenso* one hundred years later.<sup>316</sup>

However, the consumption of Coan wine in Italy was widespread beyond Epicurean circles. Varrius Flaccus, a grammarian of the Augustan Age whose work is preserved as an epitome by Sextus Pompeius Festus, knew of a *hippocoum vinum* the origin of which he traced back to an actually existing deme on Cos with the name “Hippias”.<sup>317</sup> Varrius’ intimate familiarity with the geography of Cos in relation to wine surely originated with the high levels of consumption of Coan wine in Italy in the first century BC. Varro also attests to the widespread consumption of Coan wine when in his account of Roman decline he argues that Romans even abandoned viticulture and are now drinking only the wines of Cos and

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<sup>313</sup> Dem. 35.32 and 34.

<sup>314</sup> Cato, *Agr.* 105.

<sup>315</sup> Columella, *Rust.* 12.21.37.

<sup>316</sup> Hor. *Sat.* 2.4.29 and Plin. *HN* 14.77-79, with Georgopoulou 2005: 179.

<sup>317</sup> Festus, *De verb. signific.* s.v. “hippocoum vinum.”

Chios.<sup>318</sup> While he was clearly exaggerating, many Coan amphorae have been found on shipwrecks in the Western Mediterranean.<sup>319</sup>

#### 4.3.3 The history of the Coan wine-trade and the impact of the Roman diaspora

Due to changes in the interpretation of archeological remains of ancient amphorae, in recent years Cos has emerged as the second largest exporter of wine from the Aegean. Several insights combined to allow this change in perspective. Traditionally amphorae have been identified through the stamps on their handles. Coan amphorae, however, were stamped at very low rates. The estimates are situated between one and ten percent, while it is generally assumed that almost all Rhodian amphorae handles, the most common type in the Late Hellenistic period, were stamped.<sup>320</sup> In the early 1990s an excavation at Halasarna on Cos led to the development of a typology of Coan amphorae that allowed the identification of Coan amphorae without reference to stamped handles.<sup>321</sup> In the Eastern Mediterranean this has led to the discovery of Cos as a major exporter of wine in the Late Hellenistic period, second only to Rhodes.<sup>322</sup> The case of the Coan wine trade thus also reveals that Italy was not the only possible market for the goods in the production of which Romans were involved. In the early first century BC, for example, Coan amphorae completely replaced Rhodian amphorae in the archaeological assemblages of the sanctuary at Labraunda in Caria.<sup>323</sup>

Overall, however, the history of the trade in Coan wine is difficult to write as Coan amphorae are badly dated and a corpus of amphora stamps, which would provide the names of at least some of the men involved in this trade, has not been published yet. It appears though that the production of these amphorae predated the synoecism on the island in 366 BC. Starting around 300 BC the rate of production increased, but only really took off in the late second century or early first century BC. Coan amphorae were still found in layers from the first century AD.<sup>324</sup> And indeed, in first-century BC Cos slaves for planting vines and wine for export were as firm and reliable a tax base as prostitution or letting out rooms.<sup>325</sup> Based on my discussion of the pastoral economy of Epirus and the changes that the Romans wrought on it, it is likely on Cos, too, the apparent intensification of production and export in the late second century BC was in all likelihood a result of Roman involvement in the trade. However, chronology and dating are still very tentative.

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<sup>318</sup> *Ibid.* 2.pr.3.

<sup>319</sup> Georgopoulou 2005: 182.

<sup>320</sup> Finkielsztejn 2000: 209-10.

<sup>321</sup> Finkielsztejn 2002: 141 and Finkielsztejn 2004b: 154.

<sup>322</sup> Finkielsztejn 2000, 2004, and Johnsson 2004.

<sup>323</sup> Georgopoulos 2005: 182.

<sup>324</sup> Johnsson 2004: 133, 139 and 143.

<sup>325</sup> *Syll.*<sup>3</sup> 1000, ll. 4 and 6.

At any rate, as an oblique chapter in the history of the trade in Coan wine I am tempted to suggest its expansion to the detriment of Rhodian preeminence in the markets for wine in the late second and first centuries BC. Although the Rhodians had been able to protect their agricultural resources from the threat posed by the dynamics of civic empire—barely any Roman possessions are attested on Rhodian territory throughout the first century BC<sup>326</sup>—it appears that they did not remain unaffected by the agricultural activities that Romans practiced on the territories of other cities. The case of Labraunda is one concrete example where Coan and most likely Roman exports increased at the expense of Rhodes'. More generally speaking, indeed after 120 BC Rhodian export seems to have been in decline. Again, the chronological correlation is tempting, but the causal relation will to some degree always remain speculative.

In sum, then, the evidence for Roman involvement in the production and marketing of Roman wine, for its consumption in Rome and Italy, and for the history of the Coan wine-trade allow us to see a similar situation on Cos, which a very different set of material revealed in Epirus. Members of the Roman diaspora acquired agricultural resources in the territories of Greek cities with a view to exporting their products to markets in Italy and Rome. In so doing they most likely increased production of said products from previous levels, which the history of Coan amphorae suggest, or at least concentrated ever greater amounts of production in their own hands, a phenomenon indicated by the changes in settlement patterns in Epirus. Beyond showing that the imperial diaspora in Epirus was not exceptional, the evidence for Cos also allows us to see the local effects of the scale and extent of the commercial agriculture practiced by the members of the imperial diaspora, affecting consumption in Rome as well as in the provinces and creating individuals whose influence stretched beyond city-boundaries in ways that cities will have found difficult to manage. Two more case studies of luxury products from the provinces in the Greek East provide evidence that fits the pattern emerging here.

#### 4.4 Luxury Products (I): The Roman diaspora and Coan silk

In addition to wine, Cos was also famous for the silk that was woven from the cocoons of silkworms on the island. Aristotle already knew of this connection between Cos and silk, when he told the story of the Coan woman Pamphile, the first woman to discover how to weave the threads that made up the cocoon of the silk worm into cloth.<sup>327</sup> By the first century BC, however, the culture of the leisured men and women of the Roman elite resulted in a very specific demand for Coan silk, a demand reflected in and shaped by the writings of late first-century BC Latin poets.

When Ovid anticipated what his love interest would be wearing, Tyrian or Coan garments were the options.<sup>328</sup> Coan garments were what a man might don in order to dress up like a girl in Propertius, and Horace lampooned an older woman for trying to recapture

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<sup>326</sup> Bresson 2002.

<sup>327</sup> Arist. *Hist. an.* 5.19.

<sup>328</sup> Ov. *Ars am.* 2.298.

her youth by means of Coan dress.<sup>329</sup> For Propertius the pleasure of seeing his girl could amount to seeing the billows of Coan silks on her, and this same Coan cloth by itself could stand in for the girl and be the inspiration for his poetry.<sup>330</sup> In short, garments of Coan silk connoted a particular kind of ethos, which the love poets of the late first century BC embraced and promulgated.

Tibullus imagined that Coan women were weaving and embroidering the dresses of his love interest.<sup>331</sup> However, it is far more likely that these tasks were being carried out by one of the female slaves who were so frequently, consistently, and visibly employed on Cos that the city levied a tax on them.<sup>332</sup> It also seems likely that at least some Romans supervised their activities and marketed their products to their Italian customers. A gravestone from Cos might provide a small glimpse of this reality; there Marcus Spedius, son of Nason and his wife Elpis, present themselves as sellers of purple dye. The sale of this product laboriously extracted from murex, made Spedius and his wife part of the weaving and dying industry, the products of which epitomized luxury and eroticism for the late first-century BC Latin love poets.

#### 4.5 Luxury Products (II): The Roman diaspora and Chian wine

Just like the Hippocratic and Epicurean preference for Coan wine I mentioned earlier, the musings of these elite Roman poets were a part of the cultural construction of the demand for Coan silk. Demand for luxury items such as Coan silk, we might assume, was important in encouraging and maintaining the commercial type of agriculture that I suggest was typical of the *negotiatores'* business in the world of Greek cities. In this context one might also point to the racehorses that the Romans began to breed in Epirus.<sup>333</sup> Chian wine clearly also belongs in this category. In first-century Italy wine from Chios was often mentioned in the same breath with Falernian wine, and Horace straightforwardly tells us that it was one of the most expensive wines.<sup>334</sup> There is no piece of evidence that allows us to directly link Romans with the production and marketing of Chian wine. We only know that Romans owned property on Chios.<sup>335</sup> However, the parallels with other luxury products of the Late Republic strongly suggest that Romans were implicated in the production and marketing of Chian wine.

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<sup>329</sup> Prop. 4.2.23 and Hor. *Carm.* 4.13.13.

<sup>330</sup> Prop. 1.2.1 and 2.1.5.

<sup>331</sup> Tib. 2.3.53.

<sup>332</sup> *SyllB* 1000, l. 5.

<sup>333</sup> For Roman chariot races as an increasingly state-sponsored event in the Late Republic that went hand in hand with the unprecedented monumentalization of the circus as an architectural form see Humphrey 1986: 11-12. Thus horses, just as Coan silk, were one of the consumer goods that indexes the cultural and societal transformation in Late Republican Rome.

<sup>334</sup> Hor. *Sat.* 1.10.24 and Tib. 2.1.28 (together with Falernian) ; Hor. *Carm.* 3.19.5 (most expensive).

<sup>335</sup> App. *Mithr.* 47. For Romans more generally on the island see RDGE 70, McCabe 1986: no. 387, and *IGRP* 1703.

Coan wine, by contrast, was not a luxury product. When Horace described a fancy dinner party, Chian wine was drunk without mixing in seawater and was a worthy alternative to Falernian. In order for Coan wine to serve as a vehicle for conspicuous consumption, only its lees in the form of condiment could do.<sup>336</sup> Actual prizes from Delos also show that Coan wine was even less expensive than Cnidian wine.<sup>337</sup> Given Varro's descriptions, Epirote cattle also likely resembled Coan rather than Chian wine as regards the level of conspicuous consumption it represented. As a result, while *negotiatores* were very interested in the luxury products that the agricultural resources of the Greek East might yield, they also were involved in the production and movement of goods with a much broader appeal such as the cattle they were raising in Epirus. However, no matter who the eventual consumers were in Italy, *negotiatores* seem to have been particularly interested in resources and products for which regions and cities were already famous. Their impact consisted in intensifying the exploitation of these resources and re-directing the movement of the products they yielded, mostly, though not exclusively, to Italy and Rome.

#### 4.6 Conclusion

What can we learn from these case studies? First, in Epirus, Cos, and in all likelihood also on Chios Romans owned agricultural resources that yielded products that were eagerly consumed by Italians at home. The targeted acquisition of such landholdings suggests that better-off members of the Italian diaspora acquired these properties with the goal of exporting their products to Italy. The evidence for the intensification in the use of these landed possessions hints at their commitment to making the most of what these resources had to offer. Thus Atticus and the many Italians on Cos provide examples of landowners with a keen sense of the commercial opportunities that their properties offered. As such, they clearly problematize the idea that landowners were suspicious of and distant from the movement of the goods they produced. In short, their economic profile confirms that the movement of goods was central to the economy of the diaspora, but also provides a avenue to envisage the role of landed possessions in this economy.

Second, these case studies have revealed a whole range of less well-off members of the imperial diaspora who were involved in the exploitation of landed possessions and the movement of their products. The Spedii on Cos, who sold purple dye for a living, were one example of the many Romans of lesser means who found an occupation that was intimately tied to the commercialized agriculture practiced by the more well-to-do Romans. One might also point to Gaius Curtius Mithres, surely a freedman, who conducted business for his patron on and around Cos. As such, these men point towards the integration and interdependence of the livelihoods of the members of the Italian diaspora. They point towards the idea that landed possessions were not only wide spread among the members of the Italian diaspora; their exploitation also animated the economy of the diaspora more generally, providing the products that could then be moved to Rome, Italy, and elsewhere.

Lastly, Italy and Rome seem to have provided particularly attractive markets for the sale of the goods that diasporic Italians produced on their landed possessions. Surely these

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<sup>336</sup> Hor. *Sat.* 2.8.8-12

<sup>337</sup> Kent 1953.

were the markets that they knew best, but the fact of empire also meant that in Italy and Rome an increasing amount of disposable wealth was circulating; thence the many luxury products—from Coan silk to Epirote race horses and of course all kinds of things “Greek”<sup>338</sup>—that *negotiatores* produced and marketed. When first-century BC authors, from poets to agricultural writers, described the exceptional quality of the products of a certain region, they iterated the cultural production that accompanied and obscured the heavy investment of human and financial capital by *negotiatores* in the cultivation and transportation of these goods.<sup>339</sup> To be sure, not every acquisition of land by a *negotiator* resulted in such intense commercialization in the direction of Italy, but even in cases where products might be marketed more locally the quality of the land was a crucial criterion. Cicero at least attributed such a concern to Decianus who was cultivating some land in Northern Lydia.<sup>340</sup> However, when *negotiatores’* products did arrive in Italy, they fed directly into a demand for luxury and sub-luxury items that characterized the first century BC there.<sup>341</sup>

## 5 – Epilogue: The contradictions of *negotium*

When Seneca contemplated the implications of Rome’s military victories and imperial power for Roman citizens, he thought of *habitare*, of “living” or “residing”. For him Romans “lived” where Rome had conquered. Given my revisions of the semantic history of the word *negotiator*, in the Late Republic Romans thought that where Rome had conquered, Romans had *negotium*, which constitutes a rather different way of thinking about the presence of Romans in the provinces than what the verb *habitare* implies. As I hope to have shown, having *negotium* in the provinces could readily include owning land there, but conceptually this land was not the place where one’s residence was located. And yet, judging by Atticus’ example, men like him spent a great deal of time on their estates in the provinces. How, then, did Romans construct the relationship between *negotiatores* and their landed possessions in the provinces? And what were the implications of these constructions for how Romans understood the relationship between the members of the imperial diaspora and the communities in which their landholdings were located?

On one level, Cicero could compare the pleasures that his place at Tusculum gave him with those that Atticus must be receiving from living on his estates in Buthrotum.<sup>342</sup> In

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<sup>338</sup> See Wallace-Hadrill 2008: 73-143 for the intensified Hellenism of the first century BC. Cicero’s communications with Atticus about certain statues that the latter might procure for Cicero’s estate at Tusculum are a good example of the economic implications of this Hellenism (Cic. *Att.* 1.5). See, for (another) example, also Hatzfeld 1919: 225-230 on the *negotiatores* that were involved in the production of bronze and stone goods that together with Coan silks and Chian fueled the revolution in consumerism that accompanied the developing Roman Empire.

<sup>339</sup> See Finkelstejn 1995, 2001 and 2004a for a re-dating of Rhodian amphorae stamps that yields this chronology.

<sup>340</sup> Cic. *Flac.* 71.

<sup>341</sup> See Wallace-Hadrill 2008 for a discussion of the distinction and the phenomenon more broadly.

<sup>342</sup> Cic. *Att.* 2.6.2.

Epirus Atticus not only had his *ager*—his land—but his *domus*, the main house on his estate.<sup>343</sup> Varro provides a small glimpse of what the main houses of these estates looked like. They included all the amenities of Greek life, he claims. There were porticoes in courtyards, porticoes around buildings, and *palaestrae*—places for physical exercise.<sup>344</sup> Archaeology also reveals some aspects of this relationship to the landscape.<sup>345</sup> In a sense then, Atticus in Epirus and his contemporaries in Italy lived in a similarly Hellenizing. However, for Cicero the analogy between his own place at Antium and Atticus' country estate at Buthrotum also had its limits. While he could conceive of both as places of refuge from urban and political centers—or at least places where politics was still what it was supposed to be—the identity of the centre in relation to which these places were constructed was ambiguous.<sup>346</sup> Rome was the obvious choice, but in one letter Cicero also suggests that when it came to the practice of politics Antium was to Rome what Buthrotum was to Corcyra.<sup>347</sup> Conceptually, then, Epirus was not in the *chora* of Rome in the way in which Italy was by the 40s BC. Retiring to Epirus had different implications for a Roman's political participation in affairs in Rome than retiring to Tusculum; indeed, Cicero was an important figure in Late Republican politics while Atticus was notorious for his abstention from political life. Conversely, in spite of their landed possessions in the provinces the members of the Roman imperial diaspora were, according to their social description at least, simply there for their *negotia*.

However, Cicero's comparison of the indications of landed estates in Antium and Buthrotum for a landholder's political life openly acknowledged what the social description of the imperial diaspora as *negotiatores* obscured: as Romans in the diaspora began to own land in the territories of the cities of the Greek East, their interests became tied up with the livelihoods of these cities. Atticus did not lack a city towards which to direct his political energies; it just was not Rome. The extensive correspondence between Cicero, Atticus, and Antony, sparked by the prospect of a veteran colony at Buthrotum, nicely illustrates this implication of Atticus' livelihood in the community in which he resided.<sup>348</sup> This is just one example of how the fortunes of individual Romans had become intertwined with those of the cities over which the Roman Empire construed itself as ruling. But this social reality was in outright contradiction with the vision of provincial society, of which the *negotiatores* were a constitutive part. In this vision, *negotiatores* were an independent and separate group from local populations, as is nicely illustrated by Cicero's hyperbolic expressions about the

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<sup>343</sup> Cic. *Att.* 2.6.2 and 3.9.2.

<sup>344</sup> Varro, *Rust.* 2.pr.2.

<sup>345</sup> See Kokkorou 2009: 64 for a late Hellenistic/early Roman villa outside of the original deme center of Halasarna. Outside the city of Buthrotum across Lake Buthrotum at Diaporit, field survey and excavation have revealed a building complex that underwent substantial renovation and expansion with building techniques that were foreign to the region in the first century BC. Around AD 40 it was transformed into a Roman villa. See Bowden and Përzhita 2004 for the details of the details of the complex and its chronology.

<sup>346</sup> Cic. *Att.* 2.6.

<sup>347</sup> Cic. *Att.* 4.8.1; When the complex at Diaporit was transformed into a villa in the first century AD this also amounted to a reorientation of the buildings to face the city of Buthrotum head on. This acknowledges the firm basis in the provinces of its owner.

<sup>348</sup> The correspondence between Cicero and Atticus from the year 44 BC is full of references to the impending danger of the city of Buthrotum becoming *ager Buthrotinus*, and thus the land for a veteran colony.

testimony of entire provinces. So while the acquisition of land in the territories of Greek cities surely created great political investments in the maintenance of empire, the conceptualization of the Italian diaspora as *negotiatores*, which placed Romans and Italians on the outside of the Greek cities in which they were conducting their business, did not accurately capture the developing stakes of individual Romans in these very same cities.

Members of the imperial diaspora not only had stakes in the communities in which their landholdings were located, but also became their most prominent members. At the same time, Romans in the diaspora formed their own communities and networks across civic boundaries.<sup>349</sup> These relations with local communities and diasporic networks in which Romans and Italians in the provinces were embedded highlight the fact that the institutions of provincial administration were only one of the many factors that went into shaping the lives the members of the Roman diaspora, a fact that their social description as mere *negotiatores* independent of local society in the provinces might induce us to forget. By contrast, the demands that these Romans made of provincial governors and their staff were crucial in shaping what provincial administration would eventually amount to. This is the argument of the next chapter.

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<sup>349</sup> Rathbone 2007 begins to explore this topic. Lakshmi Ramgopal, currently a Prize Fellow at the American Academy in Rome, is the process of completing a dissertation on precisely these networks and the relationship with local communities at the University of Chicago.

## CHAPTER THREE

### The Roman Diaspora and the Origins of Law in Roman Provincial Administration

*ac mihi quidem videtur non sane magna varietas esse negotiorum in administranda Asia sed ea tota iuris dictione maxime sustineri.*

To me at least it seems that there isn't much variety of business in the administration of Asia, but that *iuris dictione* above all maintains this entire province.<sup>350</sup>

When giving advice to his brother Quintus, who was the governor of Asia between 61 and 59 BC, Cicero thought that his main task as governor of that province was *iuris dictione*: the administration of justice. Cicero's account of his own governorship of Cilicia in 51/50 BC gives much the same impression. The letters that he sent to his friends from before, during, and after his tenure of office suggest that all his activities fell into one of two categories: the administration of law and the conduct of war: in Cicero's preparation for his governorship he focused on the military resources at his availability and the provision and details of his edict, the document that would frame his administration of justice;<sup>351</sup> while governor, he either heard disputes and instituted cases or led an army to subdue mountain peoples in northeastern Cilicia;<sup>352</sup> finally, Cicero thought that he had accomplished all his tasks once he brought the administration of justice to a conclusion.<sup>353</sup> By the early first century BC the administration of justice had come to epitomize the practice and behavior of Roman governors in times of peace. Velleius Paterculus' account of the run-up to the traumatic Roman defeat in the Teutoburg forest in AD 9 suggests that subjects may also have known and played off of these imaginaries. The Roman commander Varus, Paterculus

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<sup>350</sup> Cic. *Q. fr.* 1.1.20

<sup>351</sup> For Cicero's concern with the legions that would be at his disposal in Cilicia while at Brundisium in Italy in the spring of 51 BC see Cic. *Ad Fam.* 3.3. As regards the composition of the edict, Cicero mentions drawing up the edict in Rome, while on Samos a group of tax-farmers ask for an additional clause (*Fam.* 3.8.4); while at Trebula, Cicero receives a copy of an edict by a previous provincial governor (*Att.* 5.3.2); and when Cicero resides at Beneventum in May 51 BC, Sicinius persuades him to include a specific *exceptio* in his edict (*Att.* 5.4.2-3). On Roman warfare in the Cilician highlands more generally see Shaw 1990a and 1990b.

<sup>352</sup> For Cicero's campaign at Mt. Amanus and the fort of Pindenissus see Cic. *Fam.* 2.7.3 and 2.10.2-3. For his assizes right upon entering the province in August 51 BC see Cic. *Fam.* 3.8.6 and *Att.* 5.15.1 and 5.16.2. For his plans for assizes in the part of Cilicia that had previously belonged to Asia in the spring of 50 BC after he had administered justice in the Cilician parts of his province see Cic. *Att.* 5.21.7-9 and 6.2.4. For a detailed narrative account of Cicero's journeys through Cilicia in order to administer justice and fight mountain tribes see Marshall 1966 : 242-246.

<sup>353</sup> Cic. *Fam.* 2.13.4: *iurisdictionem confeceram.*

claims, had made the tragic mistake of thinking he was at peace with the Germans and thus invited them to hear their disputes. The Germans, deceitful as they were, participated in this charade of peace and did indeed bring their disputes before him, all the while plotting the notorious ambush in the Teutoburg forest that would haunt Rome's relationship with the people beyond the Rhine for years to come.<sup>354</sup> This story, like Cicero's letters, testifies to the prominent position that the administration of law came to occupy in Roman conceptions and practices of provincial administration, with imaginaries and reality undoubtedly shaping each other.

While the details of the Roman administration of justice have been the object of much scholarly attention, the very fact of its prominence within Roman provincial statecraft, though acknowledged, has not provoked much consternation or investigation.<sup>355</sup> And the relative absence of this question should not come as a surprise; after all, in European history law and the administration of justice have been profoundly intertwined with the processes of state-formation that yielded modern-day nation states, a phenomenon that was not simply a matter of practice, but was also heavily theorized and became a crucial element of these states' self-perception.<sup>356</sup> This ideology has shaped how historians have been able to talk about the origins of these European states as well as how Western scholars have for a long time written the legal history of non-Western societies and places. On the one hand, then, scholars have been able to point to the purported medieval origins of the modern state by simply highlighting the ways in which the Middle Ages witnessed the growth of a group of professionals with ever more specialized training in law who were involved in the administration of medieval polities.<sup>357</sup> On the other hand, accounts of the place of law in other, that is non-Western, societies and states have tended to emphasize its absence; examples of such "legal orientalism" include the notion that China and India knew and still know no law, or at least no real law, and these ideas have shaped colonial governance as well as contemporary scholarly production.<sup>358</sup> Importantly, the Roman Empire has not been subject to the othering that Chinese or Mughal empires have undergone. By contrast, Rome and Roman law—in particular, the texts that resulted from Justinian's fifth-century AD collection and codification of law—have served as a persistent reference point in the state-formation processes taking place in Western Europe from the Middle Ages onwards.<sup>359</sup> This

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<sup>354</sup> Velleius Paterculus, 2.117-118.

<sup>355</sup> Marshall 1966 aimed to restore credit to the "routine labors" of governors—to their "judicial and administrative work" that is (p. 231), thus highlighting the prominence of law. The two recent major summary treatments of provincial administration in the Republic both also acknowledge the prominence of jurisdiction among the governor's activities: Richardson 1994: 589 and Lintott 1993: 55.

<sup>356</sup> Wong 2009: 232-4 and Dresch 2013: 29-30 both struggle with the hermeneutical implications of the assumed identity of state and law that accompanies the European tradition for their respective projects of legal history.

<sup>357</sup> Strayer 1970. See also Berman 1983, esp. p. 276, who argues that the Catholic Church after the Investiture Conflict in 1054 was a state because it used formal legal discourse as a means to institute ecclesiastical organs.

<sup>358</sup> Cohn 1996: 62-65 discusses the tradition of thought among late 18<sup>th</sup> century employees of the East India Company that India was lawless. Ruskola 2002: 181-188 and 213-215 recounts how European 18<sup>th</sup> and 19<sup>th</sup>-century philosophers disputed the existence of "real law" in China, an assumption that scholars of Chinese law are still struggling with today. I also draw on his concept of "legal orientalism" here.

<sup>359</sup> Stein 1999 is the best and most focused treatment of this subject to date.

central place of Rome in the European experience and theorization of state-formation has thus shaped the questions that scholars have asked about the role of law in the formation and administration of the Roman Empire itself: there, just as in the European tradition, law as an aspect of statecraft simply did not require a lot of explanation.

However, a quick glance at states in other periods and places suggests that law played a highly contingent and historically constituted role in processes of state-formation. Attempts at codification provide the most ready illustration of this contingency. For instance, ancient Mesopotamian kings only began to promulgate codes concerning private and contract law about one thousand years after the first appearance of these states. This, then, was the moment in which rulers began to show an interest in these social relations and imbricate their conduct in the existence and maintenance of these polities.<sup>360</sup> In Qing China, by contrast, such a concern never emerged; the law emanating from the imperial center was concerned with determining fines and state building more generally relied heavily on informal rules.<sup>361</sup> The extent and content of the administration of law by state officials, which is my concern in this chapter, has also varied significantly across time and space. The continuities and differences between Attalid and Roman rule in Asia Minor illustrate this point rather nicely; for while it is commonly agreed that Attalid administrative units in some sense served as predecessors to the assize districts of the Roman province of Asia, it also seems clear that the function of these districts changed radically with the establishment of Roman rule: we do not know of their use for legal purposes in the Attalid kingdom.<sup>362</sup> This comparison between the Roman Empire and its direct predecessor in Asia Minor reveals the singular character of the prominence of the administration of law among the activities of Roman magistrates throughout the empire. Similarly, within the context of other civic empires the role that law played in how the Romans governed their empire outside of Italy also turns out to be unique. In other words, while the claim to have a monopoly on authoritative and binding rule-making is one of the key characteristic of states, both ancient and modern, the types of rules that were formulated, the ways in which these rules were administered, and the purposes they fulfilled have varied widely.<sup>363</sup> It is precisely this variation that legitimates inquiries into how the administration of justice became the main task of Roman provincial governors. The fact of this historical variation also shows how to go about such an enterprise. For this variation is not simply a matter of presence and absence, as the above-mentioned colonial perspectives might have it. Instead, inquiring into the prominence of law within Roman provincial statecraft means asking what disputes and

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<sup>360</sup> Richardson 2012: 313 presents the evidence for this phenomenon and suggests that the promulgation of these lawcodes was the response to changes in documentary habits among the citizens of Mesopotamian polities.

<sup>361</sup> Wong 2009.

<sup>362</sup> For different versions of the continuity argument see Mileta 1990, Ando 2010: 24-5, and Thonemann 2013b. For remarks and accounts of their changing function of these districts see Mileta 1990: 438 and Mitchell 1999: 25. One might add the simple observation that while maintaining continuity geographically, they are now perceived in different terms: from Attalid *topoi* to Roman *diokeseis*, with the latter in all likelihood not being a translation of a Roman term (Mileta 1990: 438-9). Ando 2010: 24-5 highlights the continuities, but at the same time cannot help but note the changes that the Roman Empire wrought, all of which are related to law and the administration of justice.

<sup>363</sup> So Mann 1986: 112 and 120.

problems Roman governors concerned themselves with and why.<sup>364</sup> What, then, were the contours of the administration of law in the provinces and how were they constituted?

Here I build on existing accounts that highlight the importance of demand in shaping the administration of law to argue that Roman authorities saw a previously neglected type of demand—the disputes and problems that members of the Roman diaspora encountered as part of their economic dealings in the provinces—as one of their main tasks. The administration of law, I suggest, was the most successful way for governors to recognize and further these Romans’ ventures, as it involved Roman authorities in the fortunes of the diaspora, while at the same time enacting a differentiation and separation between Romans in the provinces that were there as representatives of the empire as state, and those that were there for their own business, a distinction that Rome was keen to make. In brief, then, law became entrenched as an element of Roman provincial statecraft because it allowed Roman authorities to support and not abandon their own citizens, while at the same time separating these citizens from the fact and institutions of Roman rule. Helping their citizens by means of the administration law was way in which Rome dealt with the highly problematic potential that the existence of an imperial diaspora spelt for a “civic empire”, a potential that I highlighted in Chapter One. It was, then, its distinctly Republican origin that set the Roman empire on the path that eventually resulted in Justinian’s compilations in the fifth century AD.<sup>365</sup>

My argument in this chapter begins with a review of the brief passages in scholarship on the Roman Empire that have identified the demand for the administration of law as the reason for its prominence, highlighting the merits of this account as well as its insufficiency; for it leaves unexplained why Roman governors responded to this demand as they did (Part 1). Building on these accounts, I then use Cicero’s letters of recommendation and details of inscriptions from Greek cities to draw attention to the frequency with which members of the Roman diaspora approached provincial governors with their problems from the very early days of the provinces in the East, thus foregrounding a type of demand that has so far gone unnoticed (Part 2). There were indeed many ways in which governors could and demonstrably did engage with the problems that the members of the imperial diaspora brought before them, but all of them, except for the administration of law, contemporary Romans could perceive as problematic. These perceptions, I argue, were based on the desire of the Roman governing classes to enact a distinction between Romans who were in the provinces in pursuit of their *negotia* and those acting as magistrates and representatives of Rome, a distinction that the administration of law persistently performed (Part 3). Importantly, responding to the problems of the Roman diaspora by administering law was no less a means of supporting them in their material pursuits. A close examination of the terms of the *lex Rupilia* in comparison with the much more fragmentary evidence from the Greek East allows me to show how governors drew on principles and practices from a Mediterranean-wide *koine* of institutions developed to address disputes between members of two different civic communities, a strategy that allowed them to single out the problems of

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<sup>364</sup> As such, this chapter follows the call issued by Burton 1975: 106 to consider the operations of Roman civil administration from a historical point of view.

<sup>365</sup> Bryen 2012 sketches one possible history of this path and the actors that shaped it, but begins in first century AD Egypt without asking how law and the its administration actually came to be a provincial governor’s concern. See Mackil 2013: 11 for this idea of a “path”.

the diaspora as a distinct, discrete, and unquestionable concern of theirs, which, at times, they could portray as the sole purpose of administering justice in a given area. Examining this transformation of inter-city institutions and practices into imperial law, which provincial governors effected, reveals that the main means by which governors helped Romans in the provinces was by taking them out of the legal and moral regimes of Greek cities (Part 4).

## 1 – Why did provincial governors administer justice? A historiography in fragments

The existing scholarship on Roman magistrates and provincial administration contains two possible accounts of why governors spend so much time administering justice. The first view suggests that the practice of instituting and hearing cases simply travelled to places beyond the city boundary and beyond Italy as Roman praetors, who were the main judicial magistrates in the city of Rome, travelled to these regions.<sup>366</sup> The second view emphasizes the evolution of provincial governors' judicial activities and attributes them to demand. In other words, governors instituted and heard cases because people asked them to.<sup>367</sup>

Both of these views to me seem insufficient on several counts. Their respective short-comings can best be illustrated with reference to a passage from the *lex de provinciis praetoris*, a law passed in Rome in the last years of the second century BC that—in what we have preserved—concerned itself with the assignment and government of the provinces of Macedonia, Cilicia, and Asia. Among many other things, the *lex* enumerated the competencies of a provincial governor and as such provides the only account of these competencies that we have preserved from the Republican era.<sup>368</sup>

32 ἐὰν οὐτ[ο]ς ὁ στρατηγός, ᾧ τῆς Ἀσίας Μακεδονίας τε  
 33 ἐπαρ[χ]εῖα ἐγένετο, τῆς ἀρχῆς αὐτὸν ἀπέιπη ἢ ἀπέιπη-  
 34 ται ὡς ἐν ἐπιταγῇ, ἐξουσία πάντων πραγμά-  
 35 των ἐ[π]ιστροφῆν τε ποιῆσθαι, κολάζειν, δικαιοδοτεῖν,  
 36 κρείνειν, κ]ριτὰς ξενοκρίτας διδόναι, ἀναδόχων κτημά-  
 37 των ΤΕ[.]ΓΑΡΟΔΟΣΕΙΣ ἀπελευθερώσεις ὡσαύτως κα-  
 38 τὰ τὴν δικαιοδοσίαν ἔστω καθὼς ἐν τῇ ἀρχῇ ὑπῆρ-  
 χεν οὐ[τ]ός τε ὁ ἀνθύπατος ἕως τούτου ἕως ἂν  
 εἰς πόλ[ι]ν Ῥώμην ἐπανεέλθῃ ἔστω.

If the praetor or proconsul to whom the province of Asia or Macedonia shall have fallen abdicates his magistracy, as described in his *mandata*, he is to have power in all matters according to his jurisdiction just as it existed in his

<sup>366</sup> In his volume on the Roman praetor Brennan 2000: 133 and 449-450 sees praetors doing abroad what they do in Rome and Italy, namely the conduct of warfare and jurisdiction. Peachin 2013 adopts the same perspective.

<sup>367</sup> Both Richardson 1994: 589-90 and Lintott 1993: 55-7 discuss the developmental aspect of Roman provincial administration and its concern with law, and emphasize the importance of demand in making law a prominent concern of Roman governors.

<sup>368</sup> RS 12, Cnidos IV, ll. 31-39. Both text and translation are those provided in *Roman Statutes*.

magistracy, to punish, to coerce, to administer justice, to judge, to appoint *indices* and *recuperatores*, <registrations> of guarantors and securities, emancipations, and he is to be <immune from prosecution> until he returns to the city of Rome.

While proponents of the first view are surely right to emphasize that praetors, whether in Rome, Italy or abroad, all belonged to the same college of Roman magistrates, the continuity and similarity that this created lay above all in the way in which their tenure of office was conceived: they each had a *provincia*. It would be wrong to infer from this conceptual similarity that praetors would also engage in the same tasks and have the same competencies wherever they went.<sup>369</sup> For, as Jean-Louis Ferrary has convincingly shown, the powers of provincial governors as conceived in the *lex de provinciis praetoriis* do not match those of the urban praetor in Rome. By the late second century, he suggests, the latter already had the right to appoint tutors (*tutoris datio*), a competency that the *lex de provinciis praetoriis* does not attribute to the governors of Asia and Macedon.<sup>370</sup>

I think Ferrary's argument can be taken further; while the competencies of the urban praetor and provincial governors were demonstrably not the same, the law also does not conceive of them as parallel. Instead, the law provides a finite list of discrete competencies that circumscribe what the governors of Asia and Macedon may do and makes no reference to the urban praetor. Importantly, law and its administration loom large among the competencies. But given the lack of reference to the urban praetor in how the drafters of this law conceived of the powers of provincial governors, we might say that when in 51 BC Cicero compared his activity as governor of Cilicia to that of the urban praetor in Rome, he was making an *ex post facto* comparison.<sup>371</sup> In other words, Cicero could make this comparison because both he and Plotius—the urban praetor in 51/50 BC—were hearing and instituting many cases, not because one office was from the start conceived on the model of the other.<sup>372</sup> The first view, then, is surely right to emphasize that urban praetors and provincial governors employ similar techniques and concepts in their administration of justice, but it fails to consider the choice that Romans demonstrably exercised in what techniques and concepts they thought that Roman magistrates should deploy in the provinces.<sup>373</sup>

Focusing on the choices that the Roman people, the senate and provincial governors persistently made in exercising power overseas also underscores the insufficiency of simply pointing to demand. Much recent scholarship on law in the Roman Empire has indeed

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<sup>369</sup> For “task of a magistrate” as the original meaning of the word “provincia” see Richardson 1994: 564-5, a point that he has expanded on in Richardson 2008.

<sup>370</sup> Ferrary 2001 : 136-7.

<sup>371</sup> See Brennan 2000: 406, n. 142.

<sup>372</sup> Cic. *Att.* 5.15.

<sup>373</sup> It is undeniable that Romans saw reality in the provinces through Roman eyes. For discussion of examples involving law see Richardson 1983 and Ando 2011. See also the next chapter, where I will address cases in which Romans ruled that certain concepts—e.g. *nexum*—may not be deployed to apprehend provincial reality.

focused on the demands that imperial subjects made on the imperial administration. These litigants' demands have demonstrably been crucial in propelling legal development and scholars have begun to inquire why these subjects were entering governors' courts to begin with.<sup>374</sup> I would like to suggest that the list of competencies contained in the *lex de provinciis praetoriis* provides a good counterpoint to this bottom-up perspective on law and empire, reminding us that at the top choices are continually being made about how to respond to certain types of demand; for the possibility of comparing the provisions of this *lex* with the powers of the urban praetor foreground the fact that there are things that, according to this law, the governors of Macedon and Asia simply may not concern themselves with.

Indeed, the most glaring absence among the competencies of these governors is that of their power to effect changes in family composition. The provisions of the law allow the provincial governors in question to witness manumissions, but emancipations, adoptions, and—as already mentioned—the appointment of tutors were not in their purview. Passages from the Justinianic Digest show that this would change later on in the empire, but in the late second century BC it is clear that in principle provincial governors were not supposed to concern themselves with changes in the composition of Roman families.<sup>375</sup> And such exclusions, it seems, also had consequences; for it is tempting to see a relationship between this absence of competency in family matters and a letter that Cicero wrote to Servius Sulpicius Rufus while the latter was governor of Achaëa in 46 BC.<sup>376</sup> In this letter he asked Servius to maintain the rights to an inheritance of a citizen of Patrae, whom one of Cicero's clients, a certain Gaius Maenius Gemellus, had adopted according to the local laws of Patrae. There are many circumstantial reasons that might explain why Gemellus did not go to the provincial governor to effect this adoption, but his behavior might also have been an acknowledgement that in the 40s BC provincial governors were still not supposed to concern themselves with adoptions.<sup>377</sup> As a result, he looked to different magistrates and centers of authority—in this case, Patrae, the Greek city in the Peloponnese in which he was residing.

The example of changes in family composition thus illustrates nicely that while there might be demand, whether it was heard and could be answered was a different question. This question was subject to political decisions made by Roman magistrates in the provinces and the people manning the institutions in Rome that circumscribed these magistrates' powers. The second view, then, turns out to be incomplete. Demand was undoubtedly important; in fact, in a rather banal way no governor could be busy hearing cases unless somebody brought them to him. But at the same time, we also need to ask why governors heard these cases, which cases they were keen to hear and which ones were excluded from

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<sup>374</sup> Humfress 2007 recovers bottom-up involvement in creating new law during the Dominate; Bryen 2013 asks why non-elite actors enter Roman law courts; Richardson 1994 hypothesized that Roman might and the promise of enforcement that accompanied it brought many litigants to Roman courts.

<sup>375</sup> *Dig.* 1.7.36, 1.16.2pr., and 40.2.17 with *RS* (vol. 1): 265-6.

<sup>376</sup> *Cic. Fam.* 13.19.

<sup>377</sup> The adoption happened when Gemellus was an exile from Rome and had just become a citizen of Patrae. Note though that Cicero also wrote letters of recommendation to provincial governors for exiled Romans; cf. *Cic. Fam.* 6.9 with 6.8.3, where he implies that sometimes governors and exiles might just belong to the same political camp and thus get on rather well.

their purview. Correspondingly, inquiring into the social origins of law in provincial administration cannot be limited to outlining demand, but we should also ask what demand was met, why it was met, and why it was met in the way in which it was met. In other words, we might also ask why law and its administration were the means by which Roman governors responded to the problems that people brought before them in the first place. In the following three parts of this chapter, then, I examine the relationship between the members of the Roman imperial diaspora, the Roman magistrates sent to administer the provinces, and politics in Rome, arguing that while Roman magistrates in the provinces had a variety of means at their disposal to help the members of the imperial diaspora in their economic pursuits, the desire in Rome to dissociate the existence of the empire from that of the imperial diaspora made the administration of law the epitome of provincial statecraft. I begin the argument by highlighting a demand for governors' support and attention that scholarship has neglected so far: the members of the Roman diaspora and the problems that they ran into as part of their economic dealings in the provinces.

## 2 – Demanding Support: Romans and the provincial governor

Scholarship on law in the provinces in the Late Republic and the early Principate has for the most part focused on proper and unambiguous imperial subjects, that is, men and women living in the provinces who are not Roman. So, for example, Richardson, who over the course of four pages provides the most developed account of how the bottom-up demand for law and the settlement of disputes made the administration of justice such a prominent feature of Roman provincial administration, only focuses on how Greeks and the cities they lived in came before the governor, thus not taking into account the many members of the Roman diaspora.<sup>378</sup>

If we want to understand the relationship that these Romans had with provincial government, it is necessary to look beyond the epigraphical material produced by Greek cities, which by its very nature only presents evidence for these cities' and their inhabitants' views of the governor and his activities.<sup>379</sup> Recently Julien Fournier has highlighted the potential of the many letters of recommendation that Cicero wrote to provincial governors for members of the diaspora as a source for studying provincial administration.<sup>380</sup> Building on his observations, I will suggest that when studied carefully these letters show how Romans looked to the governor for help and support, in particular with regard to their varied material interests in the provinces, which I dealt with in the previous chapter. Based on this analysis I then argue that the epigraphical material that Greek cities produced allows us to detect this attitude also in the very early days of the provinces in the East as well as slightly beforehand. As a result, I argue, this Roman and Italian demand for support in their

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<sup>378</sup> Richardson 1994, 591-595. Lintott 1993 simply writes that it must have been demand without giving any further thought as to who made the demands.

<sup>379</sup> Eck 1999 was right in vindicating epigraphy as a source for provincial administration, but like any evidence it comes with a bias for which see 2002 and now also Ferrary 2009.

<sup>380</sup> Fournier 2010b.

economic pursuits in the provinces shaped Roman provincial administration from the very beginning.<sup>381</sup>

## 2.1 Frequent Introductions: The diaspora and the governor

I begin by outlining the contours of the main body of evidence I am concerned with in this part: Cicero's letters of recommendation. The majority of these letters—eighty-one, to be precise—are preserved in Book XIII of Cicero's *Letters to his Friends*. Another thirty-five are scattered throughout the remaining body of his posthumously published letters.<sup>382</sup> In another ten letters Cicero mentions and alludes to writing or receiving such letters.<sup>383</sup> Of these 126 letters of recommendation, seventy-five are addressed to Roman magistrates. In Book XIII the ratio is even higher: sixty-five out of eighty-one are aimed at such officials. More than two thirds of these letters to governors were written on behalf of Romans. Overall we have nineteen letters to the governor of Asia, fifteen to Achaëa, fourteen to Sicily, eight to Africa, seven each to Gaul and Cilicia, six to Macedon and Illyricum, five to Bithynia, and one to Spain.<sup>384</sup>

While providing much evidence for the provinces in the Eastern Mediterranean with which I am mainly concerned here, the geographical distribution of the addressees combined with the fact that they were mostly written for Romans also shows that these letters of recommendation were a means of coping with a problem of distance that was very specific to the period, but empire-wide: the Roman diaspora in the provinces, which I discussed in the previous chapter.<sup>385</sup> As such, these letters provide a rich body of evidence for thinking about the expectations with which the members of the Roman diaspora approached provincial governors.

In order to further interpret these letters, it is necessary to consider how and why they were first preserved for posterity. The publication and circulation of letter collections by individuals, which was a frequent practice in Antiquity, has recently received much scholarly attention. These accounts argue that the goal of these collections was not to provide a window into the history of a period or serve as a stand-in for an autobiographical account of the author's life; instead, they argue, the books of letters which these collections contained were exercises in the self-presentation of their authors and had didactic purposes.<sup>386</sup> Thus

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<sup>381</sup> Gabba 1996 and Purcell 2005: 85-86 already suggest that this must have been so. Purcell then explores the question in relationship to Augustus.

<sup>382</sup> Dénioux 1993: 22-24 and White 2010: 46, n. 45 respectively collect these.

<sup>383</sup> See White 2010: 46, nn. 46 and 48.

<sup>384</sup> Cic. *Fam.* 13.45-46, 53-57, 61.1 and 64-72 (Asia); 17-28a, 50, 78 (Achaëa); *Fam.* 6.9, 13. 30-39, 52, 75.1, and 79 (Sicily); *Fam.* 12.21, 24.3, 26, 27, 29, 30 and 13.6 and 6a (Africa); *Fam.* 7.5, 13.10-14 and 13.48 (Gaul); *Fam.* 1.3, 3.1.3, and 13.43, 44, 73, and 74 (Cilicia); *Fam.* 5.5, 5.100a.1, 13.30, 40, 41, and 42 (Macedon and Illyricum); *Fam.* 13.9, 47, and 61-63 (Bithynia); *Fam.* 9.13 (Spain).

<sup>385</sup> On the idea that letters in general deal with the problem of distance see Trapp 2003: 39-40. For the idea that letters of recommendation are particularly useful in the context of diaspora see Cotton 1981: 3.

<sup>386</sup> On ancient letter collections specifically see Beard 2002 and Gibson 2012. For a study of the letters of Pliny the Younger as a collection see Gibson and Morello 2012. For a general renewal of interest in ancient letters see Trapp 2003 and Morello and Morrison 2007.

Cicero's letters of recommendation collected in book XIII of *Letters to his Friends* can be seen as a way for Cicero to style himself as a powerful social patron at a time when his political power was waning, or as a collection intended to provide models for how to write letters of recommendation under more or less tricky political circumstances.<sup>387</sup> As a result, it would be wrong to assume that Cicero wrote letters of recommendation almost exclusively for members of the diaspora; for example, there may have been many letters of recommendation that arose from Cicero's continued relationship with Arpinum, the small city in Italy that he came from, which the preference in ancient letter collections for correspondence with important personalities of the day surely worked to exclude.<sup>388</sup>

And yet, the addressees of the extant letters as well as Cicero's own remarks about the practice of writing these letters highlight the frequency with which members of the diaspora looked to provincial governors for support. Among the preserved letters, thirteen are written to the governor of Achaia in 46/5 BC, Servius Sulpicius Rufus.<sup>389</sup> Similarly, we have seven of the letters that Cicero wrote to Minucius Thermus, governor of Asia in 51/50 BC.<sup>390</sup> Cicero also mentions such "batches" of letters to individual governors when writing to Gaius Antonius, the governor of Macedon in 61 BC.<sup>391</sup> In yet another letter Cicero mentions Quintus Cornificius' complaint that while he was governor of Africa in 46 BC, he did not receive a personal letter from Cicero; instead, Cornificius claimed that the only letters he had gotten from Cicero were those brought to him by men eager to have their disputes heard in his court. These letters, we should imagine, were the letters of recommendation that Cicero had written that year for members of the Roman diaspora in Africa.<sup>392</sup> Just as Cicero did not just write one, but many letters to governors in a given year and province with whom he thought he could have some influence, so the members of the diaspora who were able to obtain these letters from Cicero asked for them repeatedly.<sup>393</sup> Thus we know of at least two occasions on which Cicero wrote on behalf of Lucius Valerius to the respective governors of Cilicia: in 56 BC to Lentulus Sphinter and in 53/52 BC to Appius Claudius Pulcher.<sup>394</sup> Likewise, Aulus Caecina also obtained at least two letters of recommendation from Cicero.<sup>395</sup>

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<sup>387</sup> On Cicero's self-stylization see Rees 2007: 151-153; He assumes that Cicero published Book XIII himself, but see White 2010: 31-32 with n. 5 on the less than convincing evidence for this assumption. On Book XIII as a didactic collection see Gibson 2012: 73-74. For *litterae commendaticae* as an established genre in Antiquity see Cotton 1981. On Cicero's handling of the genre see Trisoglio 1984, Cotton 1985, and Hutchinson 1998: 8, 15, and 179 (on the self-consciousness and reflexivity with which Cicero engages the genre).

<sup>388</sup> See Gibson 2012: 75 for the diagnosis of this preference and White 2010: 39 on letters that those letters preselected point to, but which were not included in the collections.

<sup>389</sup> Cic. *Fam.* 13.17-28a.

<sup>390</sup> Cic. *Fam.* 13.53-57 and 64-5.

<sup>391</sup> Cic. *Fam.* 5.5.

<sup>392</sup> Cic. *Fam.* 12.30.

<sup>393</sup> In Cic. *Fam.* 2.17.7 Cicero expressed his doubts as to whether his recommendations to Bibulus could be effective.

<sup>394</sup> Cic. *Fam.* 1.10 and 3.1.3.

<sup>395</sup> Cic. *Fam.* 6.9 and 13.66.

Given this evidence, we should imagine that there were many members of the diaspora who wanted Cicero and his peers among the Roman political elite to introduce them to the new provincial governors each year. Many of these men will also have sought contact with more than one governor. As a result, the Roman diaspora cannot have been a negligible factor in the shaping the institutions of provincial administration. In order to understand why these men looked to the governor, I now turn to the content of these letters of recommendation and the social relations and pressures that shaped it.

## 2.2 Formulating Concerns: *Negotia* and the governor

At a basic level letters of recommendation always aimed to triangulate a pair of two-way relationships.<sup>396</sup> Cicero often simply suggested to the governor or to a member of his staff that, based on Cicero's previous friendship with the man he recommended, they had every reason to expect a persistent return from the favors they might show towards this particular man during the tenure of their posts.<sup>397</sup> As such these letters relied on and articulated a wide-spread idea in Roman elite culture: a relational conception of action, the idea that actions are motivated and assessed based on how they affect one's relationship to other people.<sup>398</sup> To put it another way, letters of recommendation were part of and constituted the operation of patronage and *gratia* in Roman society.<sup>399</sup>

Within these networks of reciprocity such letters undertook a very risky act: They did not simply describe and enact reciprocity, but they demanded it. Anxieties concerning the possibility of having one's demand refused produced the notoriously formulaic structure of these letters and the predominant absence of specifics pertaining to the situation of the beneficiary from them.<sup>400</sup> Here I argue that the formulae themselves and the points at which they do actually break to allow specific requests to be made, show that the governor was encouraged to help and support these Romans' economic interests in the provinces and that the administration of law played a crucial part in how the governor was expected to meet these requests.

The formulaic language of these letters points in two ways towards the prominence of material interests in the mind of the recommender and the recommended. First, Cicero sometimes gives the injunction to the governor to keep the beneficiary's possessions,

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<sup>396</sup> See Rees 2007: 156-8 for a more detailed analysis of how Cicero's letters triangulate reciprocity.

<sup>397</sup> Cic. *Fam.* 6a and 17 are good examples of letters—the first to a private person and the second one to a governor—that consist of this argument alone.

<sup>398</sup> See Schneider 1998: 669-80 for the argument that late Republican Rome was marked by such a relational conception of action.

<sup>399</sup> Thus Kelly 1966: 56-62, Cotton 1984: 424-5, Cotton 1986: 446, and most recently Hall 2009: 30-34. For the importance that Romans in the first centuries BC and AD attributed to these ways of conceiving and constructing relationships with others see Griffin 2003.

<sup>400</sup> Hall 2009: 32 and 107-9 explains the formulaic nature of letters of recommendation as strategies of 'face-saving'. Cotton 1985 bemoans the vagueness that results from their formulaic structure. For analysis of their formulaic nature of these letters see Cugusi 1983: 99-100, Cotton 1984, Dénioux 1993: 44-50, and Rees 2007: 156-8.

prosperity, and rights intact: *res, fortunas et iura tuere*.<sup>401</sup> In one letter Cicero even explicitly states that one of his beneficiaries had often used his letters of recommendation in order to protect his possessions (*res*), together with his personal influence (*gratia*) and standing (*auctoritas*).<sup>402</sup> Second, in the formulaic phrases used to introduce these men to the governors, to outline their problems, and finally to commend them, Cicero showed a preference for presenting them as men with *negotia* in the province of the respective governor. These *negotia*, Cicero suggests, should command the attention of the governor. Thus Cicero frequently describes the Italians recommended in these letters as “having *negotia*” in a certain town in the province of the respective governor or in the province more generally.<sup>403</sup> These men also often had trouble bringing a specific business to an end—*negotium conficere*—and correspondingly Cicero asked the governor to help them conclude their transactions.<sup>404</sup> In addition, in most letters of recommendation that Cicero wrote he summed up the letter by saying: “I recommend x to you.” We would expect the name of a person to take the place of “x”, but sometimes Cicero also simply commended the possessions and affairs of the beneficiary to the provincial governor: *res/possessiones/negotia commendo*.<sup>405</sup> This replacement of men with their possessions reveals the hopes and expectations that many of these men had when approaching the provincial governor: he might be able to confirm and validate whatever claims they had about what their rightful possessions were.

Once the formulae break and Cicero articulates explicit requests, these turn out to concern Roman claims to property in the provinces. With two exceptions, the specific situations and problems that Cicero recounts to governors of the eastern provinces are disputes between Roman *negotiatores* and Greek individuals or cities concerning rights to land, money, or both.<sup>406</sup> Cities such as Sardis, Mylasa, and Nicaea were in conflict with Romans about debts, while landed possessions by Romans in Parium, Alabanda, and Colophon were the subject of potential and actual disputes between Romans and members of these cities.<sup>407</sup>

In sum, then, elements of the formulaic language of these letters as well as the few concrete details that Cicero does include suggest that above all, members of the diaspora looked to Roman governors to help them pursue and further their various material interests in the provinces, which often opposed them to members of the local population and the

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<sup>401</sup> Cic. *Fam.* 13.19 and 51. Cic. *Fam.* 13.79 contains a similar injunction to protect the possessions of the beneficiary: *rem utriusque defendas te rogo*.

<sup>402</sup> Cic. *Fam.* 13.49.

<sup>403</sup> Cic. *Fam.* 5.5 6.9, 12.24.3, 13.17, 22, 26, 33, 43, and 50.

<sup>404</sup> Cic. *Fam.* 12.21, 13. 27, 28, 56, 57, and 63.

<sup>405</sup> Cic. *Fam.* 1.3, 12.27, 13. 21, 38, 44, 45, 53, 72, and 74.

<sup>406</sup> Exceptions: Cic. *Fam.* 13.54 and 77: Once Cicero tried to save Marcus Marcilius’ mother-in-law from prosecution in Asia. On another occasion he wrote to the governor of Illyrium to get him to lay hold of his slave Dinoyisius. The slave had apparently made off with a substantial part of Cicero’s library and was last seen at Naronia in Illyria. See also Verboeven 2002: 292-5 for the argument that the requests articulated in letters of recommendations were all to do with the economy of the diaspora.

<sup>407</sup> For debt: Cic. *Fam.* 13.55 and 57 (Sardis), 56 (Mylasa), and 61 (Nicaea). For land: Cic. *Fam.* 13.53 (Parium), 56 (Alabanda), and 69 (Colophon).

cities in which they lived. Just how they hoped the governor would help them pursue their interests in these disputes is the problem animating the next section.

### 2.3 Debating Means: The diaspora and law

*Peto igitur a te ... ut negotia eius, quae sunt in Achaia, ... explices et expadies, cum iure et potestate, quam habes, tum etiam auctoritate et consilio tuo.*

Therefore I entreat you ... to facilitate and expedite his business affairs that are in Achaia ... not only by means of law (*ius*) and the power that you have, but also through your weighty influence and advice.<sup>408</sup>

In this letter to Servius Sulpicius Rufus on behalf of L. Mescinius Cicero lists different ways in which Servius might show his concern for Mescinius' affairs in Achaia, which in this case amounted to a complicated inheritance case. Law (*ius*) is the first avenue mentioned, but Cicero also envisages that Rufus' personal influence and his advice might contribute its fair share to resolving the dispute about the inheritance. Members of the Roman diaspora surely did have concerns that did not require the governor to resort to formal rules. For example, Cicero asked Q. Minucius Thermus, the governor of Asia in 51/50, to help P. Terentius Hispano, a member of a company of tax farmers in Asia, make agreements with the cities in the province of Asia concerning taxes on grazing cattle that they were to pay to Rome.<sup>409</sup> In some instances, such as Marcus Scaptius' dispute with the city of Salamis over the money the city owed him, the rules that the governor had set in his edict provided the framework in which settlement negotiations took place. Presiding over these negotiations himself, the governor thus combined *ius* and *auctoritas* in a meaningful way in response to Scaptius' requests.<sup>410</sup> For the most part, though, members of the diaspora seem to have approached the governor with the purpose of having him institute a trial and thus obtaining a verdict. After all, Quintus Cornificius called all the men who came to him and brought him Cicero's letters of recommendation *litigatores*—people engaged in a lawsuit.

And indeed, Cicero's letters of recommendation have received most attention as part of an ongoing debate about the ways in which Roman law and its administration conformed to contemporary notions of the rule of law.<sup>411</sup> These scholars surely were not wrong in making this connection between these letters and legal proceedings; for in at least some letters Cicero provides advice and suggestions concerning how, when, and where cases should be heard. Firstly, his letters undoubtedly were a means of bringing cases to the attention of the governor and keeping them there, and at least one letter aimed to remind the

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<sup>408</sup> Cic. *Fam.* 13.26.

<sup>409</sup> Cic. *Fam.* 13.65.

<sup>410</sup> Cic. *Att.* 15.21.10-12 and 6.1.5-7. The governor in question was Cicero himself, whose detailed account of the episode is motivated by the fact that Cicero found himself unable to meet Scaptius' demands and was worried that this might offend Brutus, who had recommended the man to him.

<sup>411</sup> Kelly 1966, Cotton 1984, Meyer 2006, and Kantor 2012. I return to their arguments in the next chapter.

governor that there was a case to be heard.<sup>412</sup> Cicero also made requests about the *fora* in which particular cases should be heard.<sup>413</sup> Finally, at times he also ventured to make suggestions as to what rules should govern a specific case; for instance, Cicero made a concrete suggestion to the governor of Asia, Servilius Isauricus, about how aspects of a recent decision by the senate in Rome might help the cause of his beneficiary in the provinces.<sup>414</sup>

#### 2.4 Before Cicero's letters: The diaspora, Roman power, and law in the second century BC

So far, then, I hope to have shown that careful readings of Cicero's letters of recommendation are able to reveal that members of the Roman diaspora did approach provincial governors to seek support in their personal economic pursuits, and indeed did so mostly, but not exclusively, with the administration of justice in mind. But these letters of recommendation all date from a fairly narrow time-bracket: from the late sixties to the mid forties BC. But is it possible to see similar demands being made in the very early days of the provinces and possibly already before their establishment? In the following section I will suggest that two inscriptions from the second century BC, one from Thisbe in Boeotia and one from Colophon in Asia Minor, allow us to do just that, which will suggest that Roman and Italian demands on governors played a crucial role in shaping the institutions of provincial administration from the very beginning.<sup>415</sup>

##### 2.4.1 Italians in Thisbe and Roman authorities in the second century BC

The Greek mainland presents good evidence for the presence of Romans and Italians in local cities even before the establishment of formal provinces. On the one hand, Polybius and Livy occasionally mention local resident Romans and Italians as part of their accounts of the political events that engulfed the region in the first half of the second century BC.<sup>416</sup> On the other hand, epigraphical sources also contribute their share of evidence. For example, Richard Bouchon finds at least six Roman and Italian names in the epigraphical corpus from ancient Thessaly dating to the first half of the second century BC.<sup>417</sup> During the same period Christel Müller has identified at least two Romans and Italians in the epigraphical material from Boeotia.<sup>418</sup> One of these inscriptions is of particular interest

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<sup>412</sup> Cic. *Fam.* 13.72.

<sup>413</sup> Cic. *Fam.* 13.53 (place) and 64 (time).

<sup>414</sup> Cic. *Fam.* 13.72. For a similar suggestion see also Cic. *Fam.* 13.48.

<sup>415</sup> As such, my argument here deploys the approach adopted in Ferrary 2002 understand the early days of the provinces in the East.

<sup>416</sup> Roselaar 2012 and Zoumbakis 2012a summarize this evidence. See Kosmin 2013: 67 on ancient historical writers and how their eyes and writings followed imperial power-holders.

<sup>417</sup> Bouchon 2007 : 268-9.

<sup>418</sup> Müller 2002 : 90-92.

here, as it shows how Roman authority is mobilized to address a disagreement between the Boeotian city of Thisbe and a man from Italy, Gnaeus Pandosinos:<sup>419</sup>

54 ὡσαύτως περὶ ὧν οἱ αὐτοὶ Θισβεῖς ἐνεφάνισαν περὶ σίτου καὶ ἐλ-  
ου ἑαυτοῖς κοινωνίαν πρὸς Γναῖον Πανδοσίνον γεγονέναι, περὶ τού-  
του τοῦ πράγματος, <ἐ>ὰν κριτὰς λαβεῖν βούλωνται, τούτοις κριτὰς  
δοῦ-  
56 ναι ἔδοξεν.

Similarly, concerning the thing which the Thisbeans themselves have declared, that they had dealings with Gnaeus Pandosinus concerning grain and oil, on this matter it has been decided that if they want to take judges, they should be given judges.

In 171 BC three Boeotian cities—Coroneia, Haliartus, and Thisbe—had sided with Macedon against Rome. When the Romans retaliated by destroying the city of Haliartus, Thisbe surrendered. The four lines cited above come from the very end of the *senatus consultum* that set the terms for Thisbe's future. There are different accounts of what the *koinonia* that bound Pandosinos and Thisbe together involved, and there is no sure way of deciding between them.<sup>420</sup> The interesting and more relevant question, though, is why this matter was referred to Roman authorities in the first place, that is, why did Roman authorities end up appointing judges for the case? Thisbe surely had its own procedures for settling disputes with foreigners, which could also always be adapted to new circumstances.<sup>421</sup> Furthermore, from what we can tell, the matter seems to have nothing to do with Thisbe's anti-Roman past or its projected pro-Roman future. Thus neither Thisbe nor Rome seems to have had any *prima facie* reason for including this dispute with Pandosinos in the settlement negotiations. I would like to suggest, then, that the third party involved, Pandosinos himself, lies behind the Roman authorities' decision to appoint judges for the case. In other words, here we have another member of the (very early) diaspora trying to capitalize on his political association with Rome to have his case considered by Roman authorities. On this interpretation he replicates the behavior of the many members of the diaspora who were eager to have their disagreements heard in front of the new and distinct embodiment of Roman authority that the establishment of provinces brought about: provincial governors.

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<sup>419</sup> IG VII, 2225 (=RDGE 2), ll. 53-56. My translation.

<sup>420</sup> For a concise summary of the different interpretations—lease of public land with rent in grain and oil, tax collecting in kind for the Roman army, supplying the city in times of need—and their various authors see Mueller 2002 : 92.

<sup>421</sup> The *dikai emporikai* in Athens as well as the many treaties that Athens makes in the fourth century BC concerning jurisdictional privileges are probably the best examples of such adaptations: for the treaties and their historical interpretation see Gauthier 1972: 173-206, where he also discusses their relationship to the *dikai emporikai*. For a recent treatment of these courts, see Lanni 2006.

#### 2.4.2 Italians in Colophon and the governor of Asia in the second century BC

In Asia Minor the evidence for the presence of Romans and Italians before the establishment of provinces is much thinner. After all, for the most part the accounts of political history of the period that we have only arrive there by the time that there are provinces in place. However, an inscription detailing events that most likely took place within the first fifteen years after Rome accepted Attalus III's legacy and decided to establish the province of Asia, betrays how members of the Roman diaspora appealed to the provincial governor even at this early date to obtain a judgment on their disputes with Colophonians; for their persistent appeals eventually prompted the city of Colophon to send an embassy to the senate in Rome in order to address this situation and force these Romans to accept and abide by the judgements of Colophonian courts. An honorific decree for Menippos, the Colophonian leading this embassy, gives a brief account of the embassy's motivation:<sup>422</sup>

...τέταρτον τῶν

24 παραγινομένων εἰς τὴν Ἀσίαν τὰ κριτήρια μεταγόν-  
των ἀπὸ τῶν νόμων ἐπὶ τὴν ἰδίαν ἐξουσίαν καὶ πρὸς  
26 μέρος ἀεὶ τῶν ἐγκαλουμένων πολιτῶν ἐγγύας  
ἀνανκαζομένων ὑπομένειν ...

... and the fourth time, because those who were coming into Asia were changing the judgments from the laws to their own power and the citizens accused were at their turn always forced to provide sureties ...

The language of the decree contains an analysis of the changing world that surrounded them: the existence of the province of Asia, the members of the Roman diaspora, and how they related to each other. It describes these Romans and Italians by recounting what the inhabitants of Colophon surely must have seen happening in the late 2<sup>nd</sup> century BC: “men coming into Asia”. Asia—the Roman province of that name, that is—here already features in Colophonian local geography; to the Colophonians' mind it constituted the destination and, one might surmise, the reason for the arrival of Romans and Italians on the shores of Asia Minor in the late second century BC. For the authors of the decree it was also clear that Roman government was not just any power and authority (*exousia*), it was the power with which these newly arrived men were associated with, “their power”. And to Colophonians one of the most egregious things about these newly arrived men was that they repeatedly brought their disputes with Colophonian citizens before “their power”, before the Roman governor, that is, rather than before a Colophonian court. Thus again, here we have evidence that allows us to retroject the situation revealed through Cicero's letters of recommendation into the early days of provincial administration.

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<sup>422</sup> *SEG* XXXIX 1244, col. I, ll. 23-27. The date is discussed by Ferrary 1991: 227; Menippos is praised for his repeated diplomacy to the Attalid kings before 133 BC and also appears to have hosted Quintus Mucius Scaevola, the governor of Asia in 120 BC. The fourth embassy thus probably happened at some time between 133 and 110 BC.

## 2.5 Conclusion: Patronage and beyond

Epigraphical evidence shows that in the early days of the the provinces were in the Eastern Mediterranean and even before they were established, Romans and Italians in these regions at times looked to Roman authorities to air their disputes and problems and that in the early days of provincial life such appeals to provincial governors, the new embodiment of Roman authority on the ground, seem to have been a frequent and important occurrence. These were not disputes among Romans, but primarily those opposing them to local cities and their inhabitants. Therefore it becomes possible to retroject the situation revealed by Cicero's letters of recommendation from the mid-first century BC into the very early days of the province. My argument thus vindicates the suggestion that Roman and Italian material interests in the provinces contributed to shaping the institutions of Roman provincial administration. We only need to look at Cicero's correspondence from his time as governor in Cilicia to understand why this would be a type of demand that provincial governors were likely to take seriously.

In at least three letters that Cicero wrote to Atticus from Cilicia, he mentioned the affairs of one Marcus Scaptius, a *negotiator* in Cilicia and on Cyprus, whom Marcus Junius Brutus had recommended to him.<sup>423</sup> Cicero found himself unable to meet the demands of this Marcus Scaptius, a fact that appears to have been deeply troubling to him, above all because he feared offending Brutus. In all the letters to Atticus that involve the matter Cicero ended up adopting a very defensive stance and justifying his decisions with reference to general rules and precedents.<sup>424</sup> In other words, the letters of recommendation that furnished the bulk of the evidence for this section not only testify to the Roman demand for support in their pursuits in the provinces; in so far as they were instrumental in extending the networks and operations of patronage into the provinces, they also point to one of the reasons why Roman governors were prone to take the requests from members of the Roman diaspora seriously.<sup>425</sup> However, while networks of patronage and *gratia* were surely able to get Roman governors to listen to certain requests from the members of the Roman diaspora, why did they respond as they did? And why did the administration of law become so prominent among their various responses? Outlining governors' possible responses as well as their respective perceptions by contemporaries goes some way towards answering these questions; doing so also gives the Roman office-holding elite and their concerns about the maintenance of the empire as a state an important part to play in the process by which the administration of law came to epitomize provincial statecraft.

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<sup>423</sup> Cic. *Att.* 5.21.10-12, 6.1.4-8, and 6.3.5.

<sup>424</sup> See esp. Cic. *Att.* 5.21.12, 6.1.8, and 6.3.5.

<sup>425</sup> One might also add as evidence for the strain that the bonds of *gratia* and patronage placed on governors the rather wonderful letter from Vatinius, the governor of Macedon in 44 BC, in response to a letter of recommendation that Cicero wrote to him for Catilius (Cic. *Fam.* 5.10a.1). In this letter Vatinius expressed his concern that he would simply not be able to help Catilius and explained his problems to Cicero. In the same letter he also anticipated being indicted in a *de repetundis* trial and asked Cicero for support.

### 3 – Responses: Distinguishing among Romans, of How to create a state

The Roman Empire relied on the separation and differentiation of the idea and institutions of the empire from the concrete individual Romans that imperial subjects might encounter. The most prominent example of such an operation might be the development of the *repetundae* procedure in Rome, by which those subject to Rome could hypothetically hold Roman officials accountable and obtain restitution for the money and property that they had obtained illegally while abroad.<sup>426</sup> This institution dissociated Roman rule from the individual deeds of Roman magistrates; for once the *repetundae* procedure was in place, evaluating the acts of the latter no longer entailed questioning the former. A similar, but less well known and more wide-reaching, process of differentiation was simultaneously taking place in the provinces themselves, by which the members of the diaspora had to be permanently separated from the Roman state, in particular its official representatives in the provinces, the provincial governor and his staff.<sup>427</sup>

The various ways in which governors were asked and—at times—showed themselves willing to help Romans in their disputes with members of the non-Roman provincial population often called this separation into question. In fact, Cicero’s writings provide good examples of how the boundaries of the Roman Empire as a state could at times become blurry when it came to the needs and requests of Roman *negotiatores*: businessmen could ask governors for military support in enforcing their claims and used the riders provided to hold civic assemblies hostage;<sup>428</sup> governors could be asked to act as procurators for their friends’ estates in their province;<sup>429</sup> members of governors’ staff, such as quaestors, could act like businessmen when the opportunity arose and quickly net HS 25.000 on shipping wine along the coast of Asia Minor;<sup>430</sup> and lastly, the institution of *legatio libera* allowed senators to go to the provinces at public expense and carry the insignia of a Roman magistrate there, while only looking after their private possessions there.<sup>431</sup>

Importantly, the appropriateness of all of these acts is being questioned in the very passages in which we learn about them. Cicero clearly intended his audience to disapprove of the wine-shipping quaestor, and the letter in which he is being asked to act as a procurator is

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<sup>426</sup> For a good account of the main episodes in the history of this court see Lintott 1992: 10-33. See also Ferrary 1998: 41-45 on the possibility that the procedure did not just offer remedies to provincials, but also to Italians. Most recently Prag 2013 explored the relationship between patronage and *repetundae* trials.

<sup>427</sup> See Poggi 2001: 95-96 on need for states and their elites to differentiate themselves from the very social processes in which they have taken an interest.

<sup>428</sup> Cic. *Verr.* 2.3.22.55 ff. gives brief examples of members of the diaspora using “official violence” to further their goals. The most extensive account of individual Romans trying to resort such practices comes from Cicero correspondence when in Cilicia: Cic. *Att.* 5.21.10, 6.1.3-6, and 6.3.5.

<sup>429</sup> Caelius Rufus made this request of Cicero, when the latter was governor in Cilicia in 51/50 BC: Cic. *Fam.* 8.11.4.

<sup>430</sup> Cic. *Verr.* 2.1.36.90 ff.

<sup>431</sup> Cic. *Fam.* 12.21 recommends a man on a *legatio libera* to the governor of Africa and asks the governor to provide him with lictors. Cic. *Ad Qu. fr.* 2.8.2 tells us that Clodius was seeking permission for a *legatio libera* to Byzantium and Pessinous. Cic. *Att.* 2.18 reveals that Cicero himself was offered such a *legatio* in 59 BC. At Cic. *Flacc.* 34.86 he suggests that the allies at times complained about these *legationes liberae*.

part of a series of letters that combine to discredit one of Cicero's correspondents, Marcus Caelius Rufus, and the ways in which he seeks to use Cicero to obtain panthers from Cilicia for his aedilician games in Rome.<sup>432</sup> On these two occasions Cicero was able to invoke a tacit agreement that a boundary had to be created and patrolled between the governor and his staff as representatives of the empire and the other members of the diaspora. Furthermore, while Claudius Appius, Cicero's predecessor as governor of Cilicia, might have given riders to help a businessman exact what he claimed the Salaminians owed him, Cicero refused to do so as a matter of principle and apparently was not alone in thinking that such a request was not right.<sup>433</sup> He and his contemporaries in Rome also questioned the legitimacy of *legationes liberae* as an institution in the mid first century BC and introduced legislation that would prevent senators from bearing the insignia of Roman power when pursuing their business matters in the provinces.<sup>434</sup>

In all the episodes I have mentioned here, Roman *negotiatores* in the provinces began to look like governors and members of their staff, and vice versa. While this blurring undoubtedly was part of provincial reality, public opinion could be invoked and mobilized to disapprove of these acts and to redraw and patrol the boundaries of the Roman state in the provinces. The administration of justice, unlike the other means of statecraft available to governors, such as the provision of military troops or of *apparitores* to individual members of the diaspora, by its very nature drew a neat line between those representing the Roman state and those who did not; for it was simply impossible for men to institute trials in which they themselves were one of the parties. Thus in spite of being deeply concerned with the problems and fortunes of members of the Roman diaspora, the administration of law by provincial governors continuously performed the differentiation between Romans in the provinces that public opinion in Rome seems to have considered correct. From this point of view, law was not just an unproblematic element of Roman statecraft, but was also crucial in upholding a separation underpinning the legitimacy of Roman rule.

However, separation did not mean abandonment—quite the opposite, in fact. In what follows I want to suggest that there was a structural way in which the Roman administration of law in the provinces addressed and concerned itself with the disputes and problems that the members of the Roman diaspora ran into as part of their economic dealings. I argue that the categories and principles through which governors understood and addressed disputes between Romans and non-Romans in the provinces reveal these disputes as a distinct object of concern for provincial governors, a concern that unlike others they would not relinquish. These categories and principles also help us to see just how these governors were able to and did help members of the diaspora in these disputes. Differently put, patronage made sure that demands were heard; concerns about the maintenance of the

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<sup>432</sup> The request for panthers recurs frequently in Cicero's correspondence and in the end is denied, an act that allows Cicero to style himself as the epitome of a good governor in that he refuses to impose additional expenses on local communities: Cic. *Fam.* 2.11.2, 8.2.2, 8.4.5, 8.6.5, 8.8.10, 8.9.3, and 8.11.5. At Cic. *Att.* 6.3.9 Cicero explains his motives in refusing Rufus' request to Atticus.

<sup>433</sup> For the clearest and most vehement articulation of his "rule" see Cic. *Att.* 6.3.5.

<sup>434</sup> Cic. *Att.* 15.2.4 mentions a *lex Iulia* that concerned itself with the length of *legationes liberae* and at *Leg.* 3.5 and *Att.* 15.11.4 Cicero explains his own misgivings about these *legationes* and his attempts to end the institution. Ulpian, however, still knows it but is also keen to emphasize that a man on such a *legatio* is pursuing his own affairs rather than anything "public" (*Dig.* 50.7.14).

empire made sure that the administration of law was the predominant response. In the next section I will argue that the way in which Roman governors understood the disputes that members of the imperial diaspora brought before them reveals that they themselves theorized these disputes as a paramount concern and also helps us to understand why the members of the diaspora kept coming back to the governor.

#### 4 – Responding to Roman Demand: From inter-city to imperial law

The conflicts that resident Romans might have had with the citizens of Colophon confronted the governor of Asia with an old and persistent legal problem: How should a dispute between people belonging to different political and/or normative communities be tried? This question—albeit always framed slightly differently—keeps recurring in many historical periods and places and has provoked a wide range of answers; Philippe Gauthier has been instrumental in bringing the question to the attention of historians of the world of Greek city-states.<sup>435</sup> When faced with the disputes with members of the local populations that members of the diaspora brought before them, Roman governors demonstrably thought that this was precisely the question at issue. As I will show here, in dealing with these conflicts they drew on principles and practices concerning this problem that had developed across the Mediterranean as part of inter-city relations. By drawing on and transforming these traditions they made them an integral aspect of the administration of law in Roman provinces.

##### 4.1 A case study : Roman bilateral treaties from inter-city diplomacy to imperial statecraft

My argument will suggest that the creation of the institutions of Roman statecraft in the provinces involved processes similar to those by which Romans used bilateral treaties in building their empire outside of Italy.<sup>436</sup> After its defeat and dismantling of the Antigonid monarchy in Macedon in 167 BC, Rome concluded bilateral treaties with many Greek cities and leagues. We have fragments of such treaties with Astypalaea, Callatis, Cibyra, Maroneia, Methymna, Thyreion, and the Lycian League; furthermore, decrees from Alabanda, Elaea, and Epidaurus mention the conclusion of such treaties.<sup>437</sup> These treaties were strictly

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<sup>435</sup> Gauthier 1972. See also van Effenterre & van Effenterre 1990, who focus more specifically on the question of policing foreigners in Greek cities. For a discussion of the approach to the problem by 12th century Norman kings and in 18<sup>th</sup> and 19<sup>th</sup> century Northern America see Constable 1994. The question, though framed in rather different terms, also recurs in the later Roman Empire: What if two people belonging to a different *fora* or with different *domicilia* (e.g. Italy and the provinces) had a legal dispute? Where should the trial take place? cf. *Dig.* 5.1.19.4 (Ulpian) and 42.5.1-3 (Gaius) as well as *Cod. Inst.* 3.13.5 pr. (AD 397), 3.19.3 (AD 385), and 3.22.3 (AD 293).

<sup>436</sup> Täubler 1913 is still foundational. Gruen 1984: 13-53 kicked off a debate about the proper historical interpretation of Rome's use of treaties of alliance; Baronowski 1990, Ferrary 1990, Avram 1999 and Schuler 2007: 64-67 all still position their arguments in relationship to Gruen's attempt to read Roman bilateral treaties as an empty ritual that took its origins in Greek demands, an idea supporting his claim that at least in the Greek East Rome was not an imperialistic power.

<sup>437</sup> *RDGE* 16b (Astypalaea), *IKallatis* 1 (Kallatis), *IKibyra* 1 (Kibyra), *SEG* LIII 658 (Maroneia), *Syll.*<sup>3</sup> 693 (Methymna), *SEG* LVII 490 (Thyreion), and *SEG* LVII 1664 (Lycian League); *SEG* LV 1100 (Alabanda),

bilateral; Rome and the respective cities swore each other friendship and that they would not go to war with each other. They promised that they would not support each other's enemies and that they would come to the help of the other party in case it should be attacked.<sup>438</sup> In the second half of the first century BC we find four treaties that built on this model, but also altered it significantly; for these later treaties acknowledged that the Greek polities making them were surrounded by the institutions of the Roman Empire and outlined their privileges with regard to them.<sup>439</sup> These are the treaties Rome concluded with Aphrodisias, Cnidos, Mytilene, and the Lycian League.<sup>440</sup>

The phenomenon of these treaties and its history illustrates very nicely how the practices of inter-city relations went into building the institutions that upheld the Roman Empire. I want to highlight two points. First, as Ferrary has argued, the strict bilateralism of the first set of treaties, which has provoked so much consternation among ancient historians, was rather exceptional within Rome's history of inter-state relations.<sup>441</sup> Thus one might suggest that in the aftermath of 167 BC Rome rather consciously performed bilateral relations with Greek cities and thus implicitly and persistently provided a distinct interpretation of this victory and its implications for the cities in the Greek world, a strategy that helped legitimize Roman power in their eyes.<sup>442</sup> Second, several features of these treaties—both of the first and of the second groups—question and undercut this bilateralism. In the treaties from the second half of the first century BC this becomes particularly obvious in the adoption of unilateral clauses, but also in the first group of treaties the Roman dating formula and the repeated use of Rome as the location of the swearing ceremony betray the fact of Roman hegemony.

My argument here will further our understanding of how the institutions of the Roman Empire were built by drawing on and transforming the principles and institutions of inter-city relations, suggesting that some aspects of Roman provincial statecraft can also be productively understood along these lines. In the process, this argument will reveal how provincial governors not only heard the problems and requests that members of the diaspora brought before them, but also situated them in a new and distinct moral and legal framework. First, I argue that Rome participated in a *koine* of institutions regarding the settling of disputes between members of two different cities. Then, I draw on evidence

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*Syll.*<sup>3</sup> 694 (Elaia), and *IG IV*<sup>2</sup> 1.66 (Epidaurus). See Schuler 2007: 67-74 for a brief discussion of all of these inscriptions and a good summary of the scholarship on them.

<sup>438</sup> Ferrary 1990: 222-223 and Avram 1999: 30-39.

<sup>439</sup> For this analysis of the transformation see Ferrary 1990: 235 and the same in *BE* (2006), no. 143 on the Lycian treaty in particular.

<sup>440</sup> Aphrodisias (*Aphrodisias and Rome*, nn. 8 and 9), *SEG* LVII 1097 (Cnidos), *RDGE* 26 d/e (Mytilene), and *SEG* LV 1452 (Lycian League).

<sup>441</sup> Gruen 1984 proposed to see these treaties as an empty ritual, which Rome granted to Greek cities at the latter's request. With the discovery of such a treaty between Rome and the Lycian League Schuler 2007: 64 could very effectively combat Gruen's argument that these treaties were only concluded with small cities and thus should not be taken seriously. Ferrary 1990: 235 made the observation that when compared to the other treaties that we know Rome made, this set is exceptional for being bilateral.

<sup>442</sup> Along these lines see also Avram 1999: 94-98 who explains the bilateral character of these treaties with reference to Rome's commitment to the "freedom of the Greeks".

concerning Sicily and the provinces in the Greek East to examine how provincial governors drew on and transformed these institutions when handling disputes between members of the diaspora and local populations to then examine what this meant for the considerations that went into resolving them.

#### 4.2 Roman inter-city institutions as part of a Mediterranean *koine*

The first step in arguing that Romans drew on a Mediterranean-wide tradition of understanding and tackling the problems at stake in disputes between citizens of two different communities must be to argue that Romans were familiar with these traditions. Here I will go one step further to suggest that as a city-state Rome participated in them just as we know the many Greek cities in the Eastern Mediterranean to have done. The epigraphic record suggests that these Greek cities coped with the problem of disputes between citizens of different cities by concluding treaties, so-called *symbola*, that provided means and avenues for instituting trials concerning these disputes.<sup>443</sup> As Winkel has pointed out, from the cities populating the shores and hinterlands of the Western Mediterranean no such treaties are preserved epigraphically. And yet, he argues, they must have been there.<sup>444</sup> Building on his argument, I want to suggest that literary sources allow us to see that the polities in the Western Mediterranean, and Rome in particular, did indeed participate in a Mediterranean-wide *koine* of institutions through which disputes across political boundaries could be handled—including, but not limited to, bilateral treaties specifying how trials should be instituted.

##### 4.2.1 How to sell things to foreigners: Romans, Latins, and Carthaginians

I begin, then, with the first treaty that Polybius tells us Rome concluded with Carthage, commonly dated to 509 BC. It contains a provision about how Romans may buy or sell things in Libya and Sardinia:<sup>445</sup>

τοῖς δὲ κατ' ἐμπορίαν παραγινομένοις μηδὲν ἔστω τέλος πλὴν ἐπὶ κήρυκι ἢ γραμματεῖ. ὅσα δ' ἂν τούτων παρόντων πραθῆ, δημοσίᾳ πίστει ὀφειλέσθω τῷ αποδομένῳ, ὅσα ἂν ἢ ἐν Λιβύῃ ἢ ἐν Σαρδόνι πραθῆ.

Men landing for commerce shall strike no bargain save in the presence of a herald or town clerk. Whatever is sold in the presence of these, let the price be secured to the seller by the assurance of the state—that is to say, if such sale be in Libya or Sardinia.

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<sup>443</sup> Gauthier 1972: 157-208 discusses the evidence from fifth- and fourth-century Athens, to which one can now add *SEG* XXXIX 76. On pp. 285-307 and 338-346 he presents the evidence from outside of Athens.

<sup>444</sup> Winkel 2012.

<sup>445</sup> Polyb. 3.22.8-10. Translation based on Shuckburgh 1889, taking into consideration Walbank 1984 on the problem of how to understand the involvement of the magistrate and the public in the transaction.

It seems clear that the obligation to buy and sell in the presence of a magistrate was an attempt to avoid competing claims about who owed what to whom, the very relations that the Carthaginians then committed themselves to guaranteeing. In this arrangement the need for a trial to determine the respective obligations of the two parties never arose; for this provision in the treaty between Rome and Carthage was a means of containing the disputes that might arise from commercial relations between Carthaginians and Romans in the very space in which these relations took place, thus obviating the need for procedures to institute trials between Carthaginians and Romans. As such, this clause provides good evidence for the fact that Romans were well aware of the problem of how to address disputes between members of different communities. Furthermore, this particular way of dealing with the problem that the Carthaginians and Romans adopted in this first treaty was also well known and widespread throughout the Greek world.

In his fragment on the various ways of buying and selling things, Theophrastus mentions the requirement that a magistrate be present at the act of selling as part of the classification of how things could be sold, a classification that began with the magistrate doing the actual selling, as at an auction, and ended with the sale outside of the agora in the mere presence of neighbors.<sup>446</sup> According to Theophrastus, Pittacus, the great general and statesman from Mytilene, ordered that sales only take place in the presence of *basileis* and *prytaneis*.<sup>447</sup> Two pieces of evidence, one literary and one epigraphical, show how Greek cities used this way of selling and handling the disputes that arose from it. Plutarch tells us that the Epidamnians had a magistrate called *poletes*, seller, who every year provided and organized an occasion, a market, at which the citizens of Epidamnus could sell and buy things from the barbarians living close to Epidamnus.<sup>448</sup> A recently discovered sacred law from 2<sup>nd</sup>-century BC Adania sets out the regulations for a festival; it also appoints a set of magistrates to be in charge of how festival participants may buy from each other and the disputes arising from these exchanges.<sup>449</sup> Romans and Carthaginians thus were not alone and acted very much in line with Mediterranean-wide practice, when they decided to force Romans and Carthaginians who wanted to buy things from each other to seek a magistrate, who would then supervise and govern the entire exchange. Given that with regard to this practice, Rome demonstrably partook in a Mediterranean-wide *koine* of institutions, it now seems all the more likely that Romans were also familiar with bilateral treaties that created avenues for resolving disputes between members of different polities by trial. In fact, two passages in Dionysius of Halicarnassus and Polybius suggest that this was indeed so.

In his account of Rome's early history Dionysius quotes a treaty that Rome concluded with the Latins in 493 BC, the so-called *foedus Cassianum*. In his *Pro Balbo* from the mid-fifties BC, Cicero mentions that a copy of that treaty can still be consulted and examined in Rome.<sup>450</sup> Dionysius was writing in the second half of the first century BC and famously also went to Rome after the conclusion of the Civil War to study Latin and prepare

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<sup>446</sup> Theophr. fr. 97 (Wimmer), 1-16.

<sup>447</sup> Theophr. fr. 97 (Wimmer), 2-3.

<sup>448</sup> Plut. *Mor.* 297 F-298 A.

<sup>449</sup> *IG V*, 1 1390, ll. 99-101 with Chandezon 2000: 81-85 and Gawlinski 2011.

<sup>450</sup> Cic. *Balb.* 53.

the material for his Roman Antiquities.<sup>451</sup> So the chances are fairly high that Dionysius had actually read, copied, and translated a treaty in Rome that first-century BC Romans thought was the treaty Spurius Cassius Viscellinus concluded with the Latins on the occasion of his second consulship in 493 BC.<sup>452</sup> If this is correct, then the Romans had once made a treaty containing the following clause:<sup>453</sup>

τῶν τ' ἰδιωτικῶν συμβολαίων αἱ κρίσεις ἐν ἡμέραις γιγνέσθωσαν δέκα, παρ' οἷς ἂν γένηται τὸ συμβόλαιον.

And the judgments concerning the private contracts must happen within ten days and in the place where the contract was first entered into.

This provision from the *foedus Cassianum* as recorded by Dionysius of Halicarnassus was a clear case of provisions by which polities agreed to open their courts to a specific group of foreigners. This was also one of the ways in which *symbola* between Greek cities at times addressed the problem of cross-boundary disputes.<sup>454</sup> It might also be possible to see similar provisions lurking behind a rather obscure clause in the second treaty between Rome and Carthage:<sup>455</sup>

ἐν Σικελία ἧς Καρχηδόνιοι ἐπάρχουσι καὶ ἐν Καρχηδόνι πάντα καὶ ποιεῖτω καὶ πωλεῖτω ὅσα καὶ τῷ πολίτῃ ἔξεστιν. ὡσαύτως δὲ καὶ ὁ Καρχηδόνιος ποιεῖτω ἐν Ῥώμῃ.

In the parts of Sicily over which the Carthaginians rule and in Carthage itself Romans may do and sell all the things that it is lawful for a Carthaginian citizen to do and sell. In like manner also may a Carthaginian at Rome.

The difference from the first treaty between these two cities, which I discussed above, is remarkable. First, the provisions now are reciprocal, just as was the case in the *foedus Cassianum*. Second, the Carthaginians no longer make special provisions for how Romans may sell things; instead, they commit themselves to allowing Romans in Carthage and Sicily to do all the things that Carthaginians may. One might assume that this also included access to the magistrates and courts that Carthaginians would use to settle their own disputes. As a result, we now have at least two examples of Roman treaties containing clauses that should be seen as parallel and analogous to what the Greeks called *symbola*. Importantly, these treaties are unambiguously situated among the polities of the Western Mediterranean and as such they constitute proof that Romans knew of and recognized the

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<sup>451</sup> Dion. Hal. *Rom. Ant.* 1.7.

<sup>452</sup> For a good discussion of Spurius and the evidence concerning his life see Oglivie 1985: 337-9.

<sup>453</sup> Dion. Hal. *Rom. Ant.* 6.95.2. My translation.

<sup>454</sup> Gauthier 1972: 204-5 and 344-5.

<sup>455</sup> Polyb. 3.24.12-13.



to his own laws, and in no other fashion. And if in any other matter<sup>460</sup> a Roman sues a Lycian,<sup>461</sup> may the matter be judged in Lycia according to the laws of the Lycians, and in no other fashion. If a Lycian sues a Roman, may the magistrate or promagistrate administering justice to whom the two parties in dispute have applied administer justice for them, institute a jury and make an effort so that in this matter the judgment be reached as soon as possible and as to him seems just and good.

Scholars have approached these provisions from two perspectives. Following the formal shape of the treaty, scholars have treated these provisions as part of the inter-state relations between Rome and the Lycian League. They are, after all, part of a bilateral treaty between these two polities. The predominant question has thus been about the equality of the relationship between Rome and the Lycian League enshrined in these provision. Ferrary admits that the provisions are reciprocal, but has nonetheless spoken of a sham equality, wondering how a Lycian might be able to convince a Roman to go to the next Roman magistrate with him.<sup>462</sup> Sanchez has embraced a more radical position, detecting a fundamental imbalance in the provisions; he argues that the entire treaty only concerned cases arising in Lycia, while the situation of Lycians in Rome remains completely undetermined.<sup>463</sup>

However, scholars have also looked past the formal nature of the treaty to interpret the provisions in the context of empire, comparing them to the privileges that we know other Greek polities had acquired with respect to Roman rule. Thus Ferrary detects a gradual loss of jurisdictional privileges and Sanchez equally sees the Lycians as giving up more jurisdictional rights than a free city, such as Colophon.<sup>464</sup> Both these lines of interpretation have in common that they presume certain benchmarks—equality and autonomy respectively—and then evaluate the jurisdictional provisions of the treaty between Rome and the Lycian League with reference to these benchmarks, asking either how unequal the relationship between Rome and the Lycian League was or how autonomous or subject the

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<sup>460</sup> Any matter that is not capital. See Kantor 2013: 221 on the distinction being drawn here as being that between capital cases and all others and not between public and private offences.

<sup>461</sup> Both here (l. 37) and in l. 38 I understand *παρὰ μεταπορεύηται* to be the Greek translation of *petere ab*, as suggested by Kantor 2006: 63 and Sanchez 2007: 368-372; *contra* Mitchell 2005.

<sup>462</sup> *BE* 2006: 639.

<sup>463</sup> Sanchez 2007: 368 and 375-6. Fournier 2010a: 452-3 and 455 follows him in this interpretation. The argument is based on the phrase *ἐν Λυκίᾳ* in l. 35, which Sanchez reads as applying to all the judicial provisions of the Lycian treaty. This reading, I think, has two weaknesses. First, the position of the *ἐν Λυκίᾳ* within the sentence makes it an unlikely candidate to be understood all throughout the text. Second, there is never any specification of where a crime or an infraction happened; for in its immediate context *ἐν Λυκίᾳ* only modifies *εὐθύνηται*, which is the Greek equivalent of *accusare*. The provision is thus concerned with where the accusation happens, not where the supposed crime happened. See my argument below for a different interpretation of this geographical specification. Kantor 2010: 197, who does not accept Sanchez' argument either.

<sup>464</sup> *BE* 2006: 640 and Sanchez 2007: 376-7; Fournier 2010a: 455 also sees the Lycian League as preserving full sovereignty, which, though divergent, is a judgement on the same “imperial” scale.

Lycian League was with respect to Rome. In so doing, both perspectives fail to acknowledge what drove and gave shape to this inequality or lack of autonomy: the fact of the Roman diaspora.

The treaty is clearly composed with the existence and problems of the diaspora in mind. First, the provisions concerning non-capital matters envisage that a Lycian suing a Roman might go to any Roman magistrate administering justice.<sup>465</sup> Among other things, this indeterminacy acknowledges that given the nature of the Roman diaspora conflicts between Romans and Lycians might occur anywhere. Second, the first part of the provisions about capital matters restricts the cases where Romans are indicted to those where Romans are indicted in Lycia.<sup>466</sup> This limitation, it seems to me, speaks to the awareness that, given the extent of the Roman diaspora, Romans might be indicted in many more places. These cases, however, clearly fell outside the scope of a treaty between Rome and the Lycian League. These two details in the treaty between Rome and the Lycian League thus show that its provisions were formulated with an awareness of the Roman diaspora and that it was this awareness that created the slight imbalances and asymmetries in what otherwise was a strict application of *forum rei*, the principle that the origin of the person indicted dictates the circumstances under which the trial would take place.

Chronologically this treaty stands between the first treaty between Rome and the Lycian League, which in all likelihood postdates 167 BC, and the year AD 43, when under the emperor Claudius Lycia became a province of the Roman Empire.<sup>467</sup> Fournier has pointed out that in comparison with the first treaty, now, in 46 BC, Romans and Lycians actually made provisions concerning the disputes of their citizens.<sup>468</sup> This is an unambiguous sign that by the mid-first century BC, Roman statecraft took the diaspora seriously and attempted to govern its relations with other groups in the empire. Kantor has suggested that when compared to the legal arrangements of the later province, the differences were not that great, an observation that the Lycians themselves made.<sup>469</sup> In the following section I build on these claims and add another aspect to Kantor's argument—generalizing it beyond Lycia—by exploring just how the administration of law in the provinces developed as a distinct way of taking the Roman diaspora seriously.

### 4.3 *Symbola* and Roman Provinces: Similarities and Differences

Any discussion of the framework within which provincial governors during the Republic administered law must make reference to the so-called *lex Rupilia*, the terms of which Cicero outlines in the Verrines; for this passage is the only extant account of the rules that directly concerned themselves with how governors are to administer justice in the

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<sup>465</sup> *SEG* LV 1452, ll. 38-43.

<sup>466</sup> *SEG* LV 1452, ll. 34-36.

<sup>467</sup> Schuler 2007: 60-63 attempts to date the treaty and comes up empty; on the provincialization of Lycia see most recently Kolb 2002 and Thornton 2004.

<sup>468</sup> Fournier 2010a: 457. Sanchez 2007: 380-381 also speculates that the first-century BC treaty with Mytilene might have contained legal provisions.

<sup>469</sup> Kantor 2006.

Republican provinces. The framework that Cicero described was the result of a mandate that a *senatus consultum* gave Publius Rupilius, the governor of Sicily in the late 130s BC, after he had put down a slave revolt on the island. Though formally not a *lex* voted on by the assembly in Rome, it served as an important reference point for governors of Sicily in the late second and first centuries BC.<sup>470</sup> Given its unique quality as evidence for Republican provinces, it will provide the starting point for my argument in this section in spite of the fact that it concerns itself with Sicily, which lies outside the geographical scope of my research. As it turns out, the terms of the *lex Rupilia* provide a useful framework for interpreting the details of the much more fragmented evidence from the provinces in the Greek East of the empire. Here, then, is the relevant passage from Cicero's *Verrines*:<sup>471</sup>

*Siculi hoc iure sunt ut, quod civis cum cive agat, domi certet suis legibus, quod Siculus cum Siculo non eiusdem civitatis, ut de eo praetor iudices ex P. Rupili decreto, quod is de decem legatorum sententia statuit, quam illi legem Rupiliam vocant, sortiat. quod privatus a populo petit aut populus a privato, senatus ex aliqua civitate qui iudicet datur, cum alternae civitates reiectae sunt; quod civis Romanus a Siculo petit, Siculus iudex, quod Siculus a civi Romano, civis Romanus datur; ceterarum rerum selecti iudices ex conventu civium Romanorum proponi solent. inter aratores et decumanos lege frumentaria, quam Hieronicam appellant, iudicia fiunt.*

The rights of the Sicilians are as follows. Cases between two fellow citizens should be tried in their home city and by their own laws. For cases between two Sicilians of different cities, the praetor should appoint judges by lot in accordance with the decision of Publius Rupilius made on the advice of the ten legates, which is known among them as the Rupilian law. When an individual sues a community or a community an individual, a council of some city is appointed to try the case, after each side has rejected a city in turn. When a Roman citizen sues a Sicilian, a Sicilian is appointed as a judge, and when a Roman citizen is sued by a Sicilian, a Roman citizen is appointed. In other cases the regular procedure is to nominate judges from the *conventus* of Roman citizens.

Several scholars have pointed out that there are distinct parallels between the provisions of the *lex Rupilia* and the treaty between Rome and the Lycian League, which I discussed at the end of the previous section. Above all, these scholars highlight the principle that the indicted party should be tried at home, also known as *forum rei* or *forum domicilii*, and that it is consistently applied in both cases.<sup>472</sup> Here I want to push the examination of this parallel further. I suggest that by being more precise about both the differences and the similarities between the provisions of the Lycian treaty and those of the *lex Rupilia* we can

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<sup>470</sup> Schulz 1997: 95-6 is very good on status of this *lex* and in n. 14 also gives bibliography of the discussion since Mommsen. For a recent restatement of his opinion see Fournier 2010a.

<sup>471</sup> Cic. *Verr.* 2.2.32. The translation is taken from Kantor 2010: 188.

<sup>472</sup> Sanchez 2007: 372; Fournier 2010b: 184-5; and Kantor 2010: 197.

begin to see how Roman governors responded to the demand for the administration of justice that the members of the Roman diaspora brought before them: they identified disputes between Romans and non-Romans as a distinct object for the administration of law in the provinces and persistently took these disputes outside the confines of the legal and moral regimes of Greek cities. I begin my argument by focusing on the similarities between the two documents.

#### 4.3.1 Similarities: Disputes between members of different political communities

Two of the five provisions contained in the *lex Rupilia* concerned themselves with disputes between parties that belonged to different polities. These are the clauses designed to cope with the fact that in the ancient world people persistently travelled and interacted beyond the confines of the *civitates*, each with its own laws, which the Romans imagine populated their empire.<sup>473</sup> Roman authorities thus demonstrably concerned themselves with these disputes and applied the same principle to them as in the treaty with Lycia: *forum rei*. But the parallels between the two documents do not stop there; one of the provisions also sets out how disputes between Romans and Sicilians are to be addressed and thus contained analogous parties to the ones we encountered in the Lycian treaty: Romans and Lycians. Kantor has argued that in spite of appearances there were several types of rather common disputes that the provisions of the *lex Rupilia* did not regulate—above all, those involving persons who were neither Roman nor Sicilian.<sup>474</sup> In light of this incomplete and partial character of the *lex Rupilia*, the explicit rules that it does contain can and should be read as evidence for the matters that Roman administration did take an interest in and considered worth regulating. Thus based on the evidence of the *lex Rupilia*, disputes between Romans and the provincial population, of the kind which I have suggested members of the Roman diaspora frequently brought before governors, undoubtedly were among such matters.

A further feature of the Rupilian law supports this argument; for it contained a separate clause dealing with the procedure for resolution of disputes between Sicilians who belonged to two different cities. In both provisions, those concerning Sicilians and Romans and those about Sicilians from different cities, the drafters of the law applied the same principle, *forum rei*. And yet, they wrote two separate provisions. By singling out disputes between members of Sicilian cities and Roman citizens from all the other disputes between

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<sup>473</sup> The first clause of the Rupilian law acknowledges their existence and precludes governors from interfering in them. See Ando 2014a and 2014b for this imagination and how people in the empire constantly moved beyond the bounds established by this vision of the empire. As examples of such movement, he mentions what he calls “double communities” and “sub-political communities”, but fails to explicitly consider the Roman diaspora, which was to some degree also organized along these lines. See Kirbihler 2007 for an overview of this phenomenon.

<sup>474</sup> Kantor 2010: 200. See Kantor 2013: 220 on these ambiguities being possibly being deliberate. Here I adopt the position that what is there, is deliberate and that the ambiguities and incompleteness of legislation should be seen as a result of the concerns driving the law-making. Conversely, the *lex Rupilia* can also be understood as an instance in which the Roman Empire as an ancient state makes a claim to be able to set all laws; see Ando 2014a: 4 for this argument, who there draws a parallel with the ambitions that Richardson 2012 has detected in ancient Mesopotamian states. In relation to this line of reasoning, I am suggesting that the way in which this universal ambition is realized in concrete cases has significance and needs to be accounted for, very much in the way in which Richardson 2012: 32-44 is doing for Mesopotamian wage and price schedules.

members of different polities, Roman authorities made these disputes a distinct area of regulation, which again points to the interest that they took in this type of dispute. Furthermore, evidence from other provinces suggests that the way in which the Rupilian law divided and categorized disputes between members of different polities was a more widespread and general feature of provincial administration. For an example one need only look to Cicero's description of his administration of Cilicia in 51 BC.

In a letter to Atticus from Cilicia, Cicero wrote that the Greeks thought that they had obtained freedom because he allowed them to use their own laws when in conflict with each other. He went on to say that they also considered themselves to have acquired autonomy because Cicero had allowed them to use foreign judges.<sup>475</sup> These passages show that while the ways in which non-Roman members of provincial society must resolve their disputes may vary across time and space, their disputes nonetheless constituted a distinct field of regulation—one about which the Romans could also be much more oblivious than the provisions in the *lex Rupilia* suggest, but which are persistently singled out as distinct from the disputes involving Romans and non-Romans.<sup>476</sup>

From this evidence it seems clear that for provincial governors the disputes that Romans had with other members of provincial society were a separate and distinct affair and unlike the disputes between non-Romans belonging to different polities, conflicts involving Romans received governors' undivided attention. Again, a detail of Cicero's correspondence from his time as governor of Cilicia serves to highlight this point.<sup>477</sup> The cities in Cyprus had apparently obtained the privilege that their citizens could not be summoned to appear in a court on the mainland. As a result, Cicero sent one of his legates to administer justice there. Importantly, he explained this move with reference to the Romans doing business on Cyprus. These Romans, he wrote, also had to have their disputes heard. This passage not only shows that Cicero was committed to meeting the needs of the members of the diaspora in his province; it also provides an instance in which a governor conceived of the administration of justice in his province more generally as serving the needs of the Roman citizens in his province, yet another piece of evidence that points to the importance of these men's demand for the administration of justice in making it a crucial feature of Roman provincial statecraft. This particular way of dividing all the cases involving members belonging to different communities that might occur in a province, which, I have argued here, was a persistent feature of Roman provincial administration, also meant that cases between Romans and non-Romans could be and were subject to special regulation. The differences between the Lycian treaty and the Rupilian law, to which I now turn, will show how Roman governors made use of this possibility and manipulated the principle of *forum rei* to extract Romans from the moral and legal frameworks of the Greek cities on the resources of which their economic dealings depended.

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<sup>475</sup> Cic. *Att.* 6.1.15. As most other scholars do, I follow Larsen 1943 in taking *peregrinis iudicibus* to be the foreign judges that we know from the Hellenistic period. See Kantor 2010: 195, n. 24 for the bibliography on the question.

<sup>476</sup> For these variations see Kantor 2010: 194-199.

<sup>477</sup> Cic. *Att.* 5.21.6.

#### 4.3.2 Differences (I): Creating new categories and communities

As Ando has argued on several occasions, law and citizenship formed a powerful and long-lived nexus in the ancient world.<sup>478</sup> The *symbolon* between Rome and Lycia provides an excellent example of this idea, when Roman and Lycian defendants in capital cases are supposed to be judged according to their own laws—according to the laws of their polity, that is.<sup>479</sup> The provisions of the *lex Rupilia* are therefore all the more striking, since the way in which they envisage the origin of the parties in conflict goes beyond the cities to which they belong.<sup>480</sup> Who, after all, were the Sicilians, the group of people with whom Romans have conflicts in Sicily? In the case of the Lycian treaty, the language is very explicit. The Lycians are “Lycian citizens”; they are citizens of the Lycian League.<sup>481</sup> In Sicily, by contrast, the Sicilians are a group of people that only make sense from the point of view of Roman administration; they are the provincial population, Romans excluded.<sup>482</sup> As Ando has pointed out, “the Sicilians” is an arbitrary category masked by geography.<sup>483</sup> As the provision of the Rupilian law concerning disputes between Romans and non-Romans shows, this category became key to how governors understood the conflicts that members of the diaspora brought before them and provided the basis for applying the principle of *forum rei*. The implication was that Sicilian defendants in disputes with Romans would now be tried in fora that were just as artificial as the category that underpinned them.

In the provinces in the Greek East we find evidence for the creation of analogous categories used to conceptualize the non-Roman part of provincial society in its entirety. As is so often the case, the province of Asia provides the most ample and ready documentation. Ferrary has drawn our attention to a set of honorific inscriptions from first-century BC Colophon and Priene that praise the honorand for all the benefits he had bestowed on “the Hellenes”, “the Panhellenes”, and “the other Hellenes” respectively.<sup>484</sup> He convincingly argues that these categories were the means by which these cities referred to the other members of League of the Greeks in Asia, the κοινὸν τῶν ἐπὶ τῆς Ἀσίας Ἑλλήνων. The earliest inscription testifying to the existence of this institution is a decree by the League from the 70s BC.<sup>485</sup> As Drew-Bear has demonstrated, the wording of the decree suggests that the “Greeks” that were members of this League included a much wider range of people than the cities of coastal Asia Minor would have called “Greek” in the second century BC;

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<sup>478</sup> Most recently see Ando 2014b: 7-9. For a more developed argument with an emphasis on the ontological and epistemological foundations of this nexus see Ando 2012b.

<sup>479</sup> *SEG* LV 1452, ll. 35-37.

<sup>480</sup> Ando 2014b: 8 remarks on this muddled nature of the criss-crossing categories at play in the Rupilian law, but does not develop the observation any further.

<sup>481</sup> *SEG* LV 1452, ll. 35 and 36.

<sup>482</sup> Whether this non-Roman part of the provincial population included only citizens of cities or also the resident foreigners in these cities is a moot point for my purposes here. For a discussion of the problem see Kantor 2010: 191-2, with n. 14.

<sup>483</sup> Ando 2011: 5-6.

<sup>484</sup> Ferrary 2001a: 19 and 24.

<sup>485</sup> *Aphrodisias and Rome*, nn. 8 and 9.

“the Greeks” of the League was the non-Roman population of Asia, it seems.<sup>486</sup> Most recently Ando has argued that the terminology employed by the League to describe its constituents points to Roman initiative in its foundation, which by implication also made the particular sense of “Greek” that can be detected in its decrees part of a Roman vision of provincial society.<sup>487</sup> The decrees that Ferrary examined thus constitute examples in which Greek cities thought about their surroundings in the categories developed by Roman administration. Overall, the parallels with the use of “Sicilians” in the *lex Rupilia* for the province of Sicily should be obvious.

Much more fragmentary evidence points to a comparable deployment of categories by Roman officials to capture the non-Roman part of provincial society as one group in other provinces. In Bithynia and Cyrene this group was seemingly also called “the Greeks”.<sup>488</sup> Cicero’s letter to Atticus about the legal arrangement he had made for Cilicia seems to speak of “the Greeks” in an analogous fashion: they simply were the part of the provincial population that was not Roman.<sup>489</sup> In the case of the province of Achaëa, the Romans most likely appropriated the terminology of the Achaëan League and called the non-Roman part of provincial society “the Achaëans”.<sup>490</sup> These conceptualizations of provincial society were all operative in official Roman documents, thus demonstrating again that they encapsulated a Roman view on the provinces of the empire. However, for the provinces in the Eastern Mediterranean there simply is no evidence comparable to the Rupilian law. And yet, Cicero’s first letter to his brother Quintus, which reads like a general letter of advice for provincial governors, shows that Romans were in the habit of deploying these categories for the non-Roman part of the provincial population in their analysis of the disputes that came before governors.<sup>491</sup>

*constat enim ea provincia primum ex eo genere sociorum quod est ex hominum omni genere humanissimum, deinde ex eo genere civium qui aut quod publicani sunt nos summa necessitudine attingunt aut quod ita negotiantur ut locupletes sint nostri consulatus beneficio se incolumis fortunas habere arbitrantur. at enim inter hos ipsos exsistunt graves controversiae, multae nascuntur iniuriae, magnae contentiones consequuntur. ... tu cum pecuniae, cum voluptati, cum omnium rerum cupiditati resistes, ut facis, erit, credo, periculum ne improbum negotiatorem, paulo cupidiores publicanum comprimere non possis nam Graeci quidem sic te ita viventem intuebuntur ut quendam ex annalium memoria aut etiam de caelo divinum hominem esse in provinciam delapsum putent.*

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<sup>486</sup> Drew-Bear 1972: 449.

<sup>487</sup> Ando 2010: 36.

<sup>488</sup> For a collection of the evidence from Bithynia see Campanile 1993. For Cyrene Augustus’ edicts are the crucial bit of evidence: *FIRA* I, 68. Already de Visscher 1940: 48-54 recognized the prevalence of the category of “Hellenes” in the edicts. See Ferrary 2001a: 31-32 for the interpretation of this category in the edicts that I am following here.

<sup>489</sup> Cic. *Att.* 6.1.15.

<sup>490</sup> See *RDGE* 43, l. 15.

<sup>491</sup> Cic. *Q Fr.* 1.1.6-7.

For your province consists, in the first place, of all the type of allies that, among all types of people, is the most civilized; and, in the second place, of citizens, who, either as *publicani* are very closely connected with me, or, having become rich in pursuit of their *negotia*, think that they owe the security of their property to my consulship. But indeed it may even be said that between even such men as these there occur serious disputes, many wrongful acts are committed, and hotly contested litigation is the result. ... But while you resist, as you do, money, pleasure, and every kind of desire yourself, there will be, I think, a risk of your not being able to suppress some fraudulent banker or some rather over-extortionate tax collector. For as to the Greeks, they will think, as they behold the innocence of your life, that one of the heroes of their history, or a demigod from heaven, has come down into the province.

Cicero begins the passage by outlining the different groups that Quintus will find in Asia: allies and Roman citizens, with the latter being either tax farmers or businessmen. The passage then ends with Cicero discussing Quintus' relationship with the same groups, with the difference that now instead of "allies", *socii*, he speaks of "Greeks"—an interchangeability of terms that recurs throughout the letter.<sup>492</sup> At the core of the passage Cicero discusses how members of these three groups tend to come into conflict with each other.<sup>493</sup> Here, then, Cicero comprehends the disputes occurring in the province of Asia through the particular ethnography of provincial society which, as I have suggested, was characteristic of Roman administration. These disputes, of course, included the conflicts that members of the Roman diaspora brought before governors; thus provincial governors in both Sicily and Asia could and did understand these disputes as conflicts that Romans had with "Sicilians" and "Greek" respectively.

These perceptions were in no way necessary. Differently put, it is clear that Roman governors did not think of the non-Roman part of the population in the Eastern provinces as "Greek" because they believed all these men and women to be in some sense essentially Greek. In the *Pro Flacco* Cicero was well aware of the fact that the province of Asia contained people that from the point of view of Roman administration were "Greeks", but whose ethnicity could also be understood in radically different terms.<sup>494</sup> Indeed, the Roman appropriation of existing categories such as "Greek", "Sicilian", and "Achaean" and their abstraction and transposition from realist to nominalist uses is a common feature in the

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<sup>492</sup> See, in particular, Cic. *Q Fr.* 1.1.16.

<sup>493</sup> See Seleckij 1979: 428 and Nicolet 1966: 354 for this interpretation of the passage.

<sup>494</sup> Cic. *Flac.* 64-66 contains a brief history of the people now inhabiting Asia that emphasizes how the Greeks conquered these parts, but failed to colonize them, ruling of the local population—Lydians, Mysians, Phrygians etc.—instead. One might also note Cass. Dio, 51, 20, 6-7, who in an aside remarks that Augustus called the *Asiatici* and the *Bithyni* "Greeks". He thus provides an example of someone who explicitly remarks on the particular use of "Greek" that I have been arguing for here, but from a world-view that has fully internalized the geography the Roman Empire has created.

history of Roman statecraft.<sup>495</sup> While the Romans might thus be seen to do what they are always doing, I think we still need to ask what was at stake in deploying this strategy in this particular instance. As Innes has convincingly argued with regard to the end of the Roman Empire—its successor kingdoms in the West—the many transformations of identities and the categories deployed to fashion them were not merely innocent games, but accompanied and constituted political and material conflicts.<sup>496</sup>

In the case of the early Roman provinces, I would like to suggest, the issue at stake was the extent to which members of the Roman diaspora were and should be subject to the legal and moral regimes of Greek cities. The Roman ethnography of provincial society I discussed in this section and its deployment to understand the disputes with non-Romans that members of the diaspora brought before governors were a crucial way of extracting Romans from these regimes; drawing on the practices and traditions of inter-state relations was crucial in effecting this extraction, while at the same time surely legitimating the ways in which provincial governors administered justice. Note that the provision of the *lex Rupilia* maintained the strict reciprocity known from *symbola* and utilized the well known principle of *forum rei*. However, the deployment of the category of “the Sicilians” made the non-Roman populations of the province of Sicily accountable to people who did not necessarily belong to the same normative community as they did. Defendant and judge were not necessarily citizens of the same city; the Roman litigant thus did not have to make his argument within the context of the moral economy of one civic community, even though the resources in question were located within that community. In order to further understand how the administration of justice in the provinces removed Romans from the legal regimes of provincial cities, I now return to comparing the provisions of the Lycian treaty and the Rupilian law.

#### 4.2.2 Differences (II): Keeping quiet on the laws

The provisions of the treaty between Rome and Lycia carefully specified which laws should be applied in which case. A Roman defendant in a capital case was to be tried according to his own laws and the same principle was to apply in the case of a Lycian defendant: *κατὰ τοὺς ἰδίους νόμους κρινέσθω*.<sup>497</sup> In civil trials Lycian defendants were to be tried according to the laws of the Lycians: *κατὰ τοὺς Λυκίων νόμους*.<sup>498</sup> The law to be used in the case of Roman defendants in civil trials was not specified. Compared with the repeated and varied specifications of the laws according to which the magistracies in question are to conduct trials, the *lex Rupilia* is notably silent on this point. Except for in the case of a conflict between two citizens of the same city, in which their own laws are to be applied—*domi certet suis legibus*—the Rupilian law does not make reference to any specific set

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<sup>495</sup> For a diagnosis of this strategy as a particularly Roman habit see Ando 2012a: 39-44. However, note also Mackil (*forthcoming*) on the distinct nominalism with regard to “ethnic” designations that Greek federal states developed.

<sup>496</sup> Innes 2006, esp. pp. 43-45. For a similar argument see Hall 2002.

<sup>497</sup> *SEG* LV 1452, ll. 35 and 36-7.

<sup>498</sup> *SEG* LV 1452, l. 38.

of laws.<sup>499</sup> This is all the more striking since the Rupilian law was predicated on the Roman two-step procedure.

The first part of this procedure, the part called *in iure*, took place in front of the magistrate and the question at issue was what formula should be used to frame the dispute. The second part, then, was called *apud iudicem* and took place in front of a judge, who was to examine the facts to provide an answer to the legal question enshrined in the formula.<sup>500</sup> Except for the first provision, all clauses of the Rupilian law are about the judges—*iudices*—that are to be assigned for specific trials, something that happens at the very end of the *in iure* stage of the proceedings, which the magistrate in question—in this case, the governor of Sicily—presided over.<sup>501</sup> As such, the law can be read as a way of circumscribing the powers of this governor.<sup>502</sup> Given that the crucial part of the *in iure* phase of a trial was the choice of formula, which amounted to the choice of law, it seems significant that in a law that clearly looks to regulate the behavior of governors, no mention of what laws to choose should be made.<sup>503</sup> I would like to suggest that the silence of the Rupilian law on this question means that the choice of law was at the discretion of governors.

This argument has to come to terms with the rather old idea that the ancients were not able to conceive of different bodies of law and of choosing between them.<sup>504</sup> My argument against this view builds on the arguments Arangio-Ruiz made against DeVisscher's when he argued that the frequent and well-known Roman expression *suis legibus uti*—to use one's own laws—already implies the possibility of the existence and use of other laws.<sup>505</sup> The terms of the Lycian treaty allow us to further develop this argument; for there we do not only find the provisions that defendants were to be tried in accordance with their own laws, but the treaty also provides that in some cases “the laws of the Lycians” are to be used. Admittedly the defendant in this case was a Lycian citizen, and so we might imagine that this clause is simply synonymous with the principle of trying somebody according to his own law. However, Lycia was a federal state made up of cities that could all potentially be seen as

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<sup>499</sup> Cic. *Verr.* 2.2.32.

<sup>500</sup> For basic accounts of the two-step procedure in Roman law see Greenidge 1901: 132-196 and Kaser and Hackl 1996: 132-145. For this interpretation of the *lex Rupilia* see Fournier 2010a: 267. We can thus add it to the evidence for the use of the two-step procedure in the provinces gathered at Ando 2014b: 12. Important for this question is also Turpin 1999 debunking a lot of scholarship on the so-called *cognitio extraordinaria*.

<sup>501</sup> Whether this was also the cases in the disputes between two Sicilian from different cities is a debated issue, since there Cicero only speak of the *sortitio iudicum*, not of their *datio* by the governor. The most extensive argument that we should nonetheless envisage the two-stepp procedure applied in this case, see Mellano 1977: 97-126. For the opposing view see de Visscher 1940: 133-4.

<sup>502</sup> See Richardson 1994: 589 for this interpretation of the *lex Rupilia* and de Vischer 1940: 120 for an analogous reading of the fourth Cyrene Edict.

<sup>503</sup> On the way in which Roman law developed through the discussion and interpretation of these *formulae* and thus in some sense through procedure, see Birks, Rodger, and Richardson 1984: 60.

<sup>504</sup> De Visscher 1945: 53-4 ist the most vigorous statement in this regard.

<sup>505</sup> Arangio-Ruiz 1950: 64.

having their own set of laws.<sup>506</sup> Thus a Lycian might give various answers on being asked what “his own laws” were. The specification that Lycian laws should be used might in this case limit just what his answers could be and for my purposes here clearly demonstrates that the ancients were able and in the habit of specifying distinct sets of norms and their selective application. Given this possibility, the silence of the *lex Rupilia* on this question leaves the choice of law as something to be decided case by case.

How likely, then, were governors to institute trials involving non-Romans with reference to the principles of Roman law? The *Tabula Contrabiensis* probably is the most prominent and best documented example of precisely such an action.<sup>507</sup> This document shows how in 87 BC Gaius Valerius Flaccus, the Roman governor of Spain, helped resolve a property dispute between two provincial communities by using formulae and argumentation known to be part of Roman law to frame the arbitration.<sup>508</sup> One of the provisions of Scaevola’s edict for Asia also ordained that disputes between Greeks were to be settled in accordance with their own laws. This provision implies that the alternative, the use of other laws, including Roman ones, was a possibility.<sup>509</sup>

In both of these cases, we are only dealing with disputes among the provincial population in which no Roman was involved. In the cases that members of the diaspora brought before Roman governors the chances that principles of Roman law would be applied were even higher. For in these cases Romans used the legal argument called  *fictio civitatis* to assimilate non-citizens into the framework of Roman law without violating the principle that Roman law should only apply to Romans. In Roman legal thought it was possible to treat a problem “as if” a set of facts obtains, which in reality were not the case. This way of creating a “legal reality” is what the Romans called  *fictio*. A  *fictio civitatis* thus was the means by which somebody could be treated as a Roman citizen even though he had officially never obtained that status.<sup>510</sup>

Two inscriptions from Greek cities point to the frequency with which Roman governors were willing to institute trials between Romans and non-Romans according to the principles of Roman law. The first of these passages stems from the letter of the governor of Asia in the early first century AD to the city of Chios:<sup>511</sup>

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<sup>506</sup> For the cities that were members of the Lycian League in the Hellenistic period numismatic material is still the best proxy evidence. Troxell 1982, esp. p. 39 is the basic discussion here. For the member cities during the imperial period see Behrwald 2000: 174-180.

<sup>507</sup> Richardson 1983.

<sup>508</sup> For an in-depth discussion of the legal aspect and background of this document see Dirks, Rodger, and Richardson 1984; pp. 52-54 on the deployment of  *fictio* as a mode of argumentation and pp. 60-72 for a discussion of the formulae used.

<sup>509</sup> Cic.  *Att.* 6.1.15.

<sup>510</sup> For a brief discussion of the possibility of using the  *fictio civitatis* in a provincial context see Raggi 2006: 162-3 with n. 46. For a much more sustained and argumentative treatment, which vindicates  *fictio* as a figure of thought that was key to how the Romans ruled their empire, see Ando 2011: 1-18.

<sup>511</sup>  *RDGE* 70, ll. 15-18.



and principles of Roman law. The context of the documents in which these passages occur also suggests that this was a rather grievous practice for both Greek cities and their members.

By not addressing the question in an ordinance such as the *lex Rupilia*, Roman authorities avoided an outspoken commitment on a question that surely was a grievous matter for its subjects. Being officially silent on this question thus complemented the ways in which governors deployed the categories “Sicilians”, “Achaean”, or “Greeks” in their understanding and resolution of disputes between Romans and the non-Roman members of the provincial population. Together these two strategies helped Roman governors extract members of the Roman diaspora from the moral and legal regimes of the Greek cities in the midst of which their economic ventures in the provinces were located, while at the same time framing their administration of justice with reference to the principles and traditions of inter-state *symbola*: reciprocity and *forum rei*. In so doing, they re-territorialized society in the provinces in the image of its Roman ethnography—as two groups of people, *cives* and *socii*—much to the detriment of the manifold legal and moral regimes in provincial cities.<sup>515</sup>

Thus, just as in the case of the bilateral treaties between Rome and Greek cities, which I discussed at the beginning of this part, Roman authorities drew on institutional traditions and principles that were part of a Mediterranean-wide *koine* of inter-city relations, while at the same time transforming their content in ways that both acknowledged and created distinct imperial realities. My argument here has been that the fact that Roman provincial governors made use of the practices and principles enshrined in what Greek cities called *symbola* and the way in which they did this all support the idea that Roman authorities understood the disputes with non-Romans that members of the diaspora brought before them to be one of their key tasks. The administration of law was not only the least problematic way for Roman authorities to address the problems of the imperial diaspora; these problems were also among the main concerns of governors administering law.

## 5 – Conclusion

Throughout history some people have run away from states, while other have run towards them, with both strategies demonstrably shaping statecraft.<sup>516</sup> The members of the Roman diaspora clearly belonged to the latter category and, as I hope to have shown here, their running towards the governor provoked a set of responses that established the

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<sup>515</sup> Mann 1986: 134-5 highlights the way in which states create “society” by territorializing social relations. The Roman Empire is an interesting case in that it surely relied on cities as frameworks for territorialization (cf. Ando 2012), but at the same time also took certain disputes and issues out of these cities and conceived of them on a province-wide scale.

<sup>516</sup> Thonemann 2013a and Richardson 2012 have drawn attention to instances in the ancient world—the post-Persian Phrygian highlands and Mesopotamian polities, respectively—when people ran away from the state and the ways in which states coped with and reacted to this, with Richardson notably interpreting the promulgation of law-codes and price-regulations as means of persuading these “fleeing citizens” to return to the fold. Bryn 2013 inquires why certain people might run towards the state and to legal proceedings in particular, a question that, while not being the focus of my argument here, I will explore in passing in this chapter and will touch upon in greater depth in the next chapter.

administration of justice as the most prominent aspect of how Romans chose to govern their provinces. Importantly, as I hope to have shown here, Roman authorities had to make a set of decisions for this to happen. First, there exists the distinct possibility that political authorities would refuse to concern themselves with certain types of disputes. Disputes between citizens of the same city in the Roman Empire are a case in point.<sup>517</sup> Second, disputes come to be disputes at law; they have a pre-history and an afterlife, and as my discussion in Part 4 has shown, do not need to become disputes at law at all.<sup>518</sup> In this chapter I have suggested that while the networks of personal relations that connected governors with the members of the diaspora allowed the latter to mobilize governors in disputes related to their property and investments in the provinces, the administration of law was uniquely suited to perform and enact a separation between Roman state power and the fortunes of the members of the diaspora. This dynamic, I suggest, was crucial in establishing the administration of law as a prominent aspect of provincial statecraft, which in the course of the empire many different actors would contribute to shaping.

Again, comparison helps to sharpen this point. As I mentioned in the introduction, in Hellenistic kingdoms the evidence for the administration of law and/or justice by royal officials is far and few between. In particular, we do not know of a magistrate whose main task it was to administer justice. The Seleucid Empire is a case in point. When we hear about Seleucid magistrates' involvement in the administration of justice—such as the *oikonomos* in the Hefzibah inscription, who is to represent villagers on royal estates in their disputes with other villagers—these activities were incidental to a different primary task: in the case of the *oikonomos*, the management of revenue from royal estates.<sup>519</sup> While Roman governors undoubtedly also were involved in the tributary aspect of the Roman Empire, concerning themselves with the disputes arising from Roman claims to taxation, it were the concerns of the imperial diaspora that brought Roman civil law to the provinces. And, I would suggest, it was their concerns and the problems that they might pose for the maintenance of the empire that encouraged the understanding of provincial governors' main task as *iuris dictio*.

A crucial part of my argument here has relied on examining the cognitive frame through which governors understood the disputes that members of the diaspora brought before them and their administration of justice more generally; the ways in which governors drew on a Mediterranean-wide *koine* of institutions concerning disputes between members of different political communities to frame their own administration of justice, I argue, support to the idea that from their point of view the administration of law in the provinces served precisely that purpose: to settle disputes between Romans and non-Romans. To some degree this argumentative strategy was born from necessity, as barely any records of provincial

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<sup>517</sup> The fact that Roman authorities ultimately had the ambition to determine how these disputes should be handled, as Ando 2014 has suggested, does not change the fact governors, at least notionally, were not to concern themselves with these cases.

<sup>518</sup> Humfress 2007: 30, with reference to Wickham 1986 for the observation.

<sup>519</sup> For the Hefzibah Inscription see Landau 1966 with the important and convincing restorations of the section concerning the administration of justice (ll. 11-16) by Bertrand 1982. Capdetrey 2006 discusses the role of the *oikonomos* in Seleucid administration (pp. 310-312) and outlines the scant, but distinct evidence for Seleucid concern with settling disputes (pp. 436-8). Ando 2010: 24-5 highlights the continuities, but at the same time cannot help but note the changes that the Roman Empire wrought, all of which are related to law and the administration of justice.

courts and the actual cases they heard survive from the Republican era. At the same time, however, this strategy has been instrumental in revealing that governors understood the disputes Romans brought before them in such a way as to take them outside of the moral and legal regimes of Greek cities. In the next chapter I will explore this operation in greater detail by focusing on how the details of Roman private law could be deployed to elide Greek cities' property regimes—an argument that vindicates private law and the jurists that formulated it as architects of empire already in its early days, while also revealing yet another way in which the Roman diaspora shaped the institutions of provincial administration.

## CHAPTER FOUR

### Jurists, Greek Elites, and Governors as Architects of Empire

*Quae quisque aliena in censum deducit, nibilo magis eius fiunt.*<sup>520</sup>

Someone else's property, which a person enters as his own in the census, does not thereby become his.

Mucius Scaevola, a famous Late Republican jurist, uttered this legal opinion in the late second or early first century BC. It is among the rare fragments of the writings of Republican jurists that the Justinianic Digest preserved for posterity. In the early 50s BC, Cicero defended the provincial governor Lucius Valerius Flaccus on extortion charges in Rome. In his defense speech he recounts an episode from a dispute about property in the provinces that involves that very opinion: Decianus, a Roman citizen living in the province of Asia, had declared several of his slaves and estates there in the census in Rome, slaves and estates that Amyntas, a citizen of Apollonis in Asia Minor, considered to be his own. Worried about his property Amyntas consulted some experts in Roman law, some *iuris consulti*, who determined that Decianus' declarations did not have any particular legal effects as regards claims to property.<sup>521</sup> We do not know whether these *iuris consulti* formulate their opinions with explicit reference to Scaevola or whether Scaevola's opinion was also formulated in response to a dispute in the provinces. However, Amyntas' consultation of Roman jurists acknowledges the role that their opinions played in shaping the alternative moral and legal regimes that Roman provincial administration offered. He knew that once his dispute with Decianus came before the provincial governor, these men and their expertise would be important in setting the rules that would determine its outcome.

But not only jurists mattered in such a dispute; so did governors, who had great discretion in choosing the rules in reference to which the litigants coming before him could frame their disputes. Flaccus, the governor before whom Decianus and Amyntas explained their disagreement accepted and followed the opinion of the jurists whom Amyntas had consulted. But he could also have chosen not to. Lastly, Greek cities and their elites could also decide to protest the outcome of a trial that a governor had instituted; for example, the decision of Flaccus' predecessor about the dispute between Decianus and Amyntas had prompted the city of Apollonis to send an embassy to the Roman in an attempt to preserve its territoriality. In this chapter, then, I suggest that jurist, governors, and the elites of Greek cities all participated in shaping the conditions under which the members of the Roman diaspora could and did acquire their landholdings in the Greek East. I show how the legal

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<sup>520</sup> *Dig.* 41.1.64.

<sup>521</sup> *Cic. Flac.* 79-80.

regimes the governors' courts offered were able to help members of the imperial diaspora infringe on the property regimes of Greek cities, and I argue that in spite of these Romans' attempts to make different claims, within these regimes such infringements were always conditional on Romans' ability to buy their new estates. And yet, these infringements still elided and contested the territoriality of Greek cities, an effect that the elites of Greek cities were eager to contest. In order to do so, they did not question the decisions of governors themselves, but reinterpreted the freedom that Rome had promised them to challenge these governors' right to concern themselves with trials involving their citizens. Whoever was living among them, including Romans, these cities claimed, should be judged in their courts.

As such, my argument here questions a long-standing approach to provincial administration, which has privileged what it saw as the ancient equivalent of public law framing the administration of justice in the province, and for which the law that these governors actually administered was only an afterthought. In the first section of this chapter I explore the colonial origins of this approach in the late nineteenth century to then explore how late twentieth-century research on Roman imperialism in the Middle and Late Republic has begun to cast doubt on the assumptions of this approach (1). Building on these doubts, my argument here actually inverts the relationship between public and private law assumed in this approach by suggesting that the concrete contours of juristic opinions and governors' edicts, which for scholars working in this tradition is but an afterthought, prompted Greek cities to develop a very particular understanding of the legal aspects of their status as so-called *civitates liberae*—free cities—an understanding that the senate in Rome would eventually sanction and adopt. What these scholars identified as private law thus not only preceded, but also produced what they saw as public law. Making this argument requires engaging with an ongoing discussion about whether and how rules mattered in deciding Roman trials (2.1), vindicating Republican jurists' concern with matters in the provinces (2.2), and with land in particular (2.3). At the center of the chapter, however, lies a close reading of a passage from Cicero's *Pro Flacco* in which recounts the dispute between Decianus and Amyntas about an estate in Apollonis in great detail. The passage provides an opportunity to examine the legal and moral regimes that governors' courts offered in action, in particular their relationship to how Greek cities constructed title to land (3). In the final section I then evaluate the cumulative impact of the infringements on Greek cities' property regimes that the administration of justice by provincial governors allowed by examining the territorial strategies that Greek cities employed in their pushback against these elisions (4).

## 1 – A Historiographical Prelude: Roman provincial administration in the Republic

The primary and distinctive feature of Roman statecraft outside Italy was the emergence of what we have come to call provinces, an English word derived from the Latin *provincia*. But what was a province? Scholars have tended to understand Roman provinces as territorial units annexed into the Roman state after conquest—an understanding that also shaped how they thought about the place of law in the creation of these provinces; for this territorial conception of provinces has led to a focus on a certain set of institutions that were considered imperial public law—the normative framework in which the provincial governor was then supposed to have administered private law, that is.

As I argue here, this approach has its roots in the historical context in which the academic study of provincial administration took shape—late 19<sup>th</sup> century and early 20<sup>th</sup> century imperial Europe—and recent scholarship on Roman imperialism has indeed chipped away at its assumptions, casting doubt on the idea that Romans initially conceived of provinces as territories and that these provinces came with a distinct public law framework. Taking these developments seriously, I contend, allows us to review how the institutions of provincial administration were created and what role their interaction played in their creation. Above all, however, it becomes possible to vindicate jurists and the law they formulated as an important element of imperial statecraft.

### 1.1 The 19<sup>th</sup>-century origins of the study of provincial administration

The earliest monograph on the subject of Roman provincial administration in the English-speaking world appeared in 1906: Arnold's *Provincial Administration*.<sup>522</sup> A second monograph followed in 1939: *Roman Provincial Administration* by Stevenson. These works thought of Roman provinces as annexed territories and as instances of the expansion of the Roman state.<sup>523</sup> As such, the authors in this tradition figured Roman provinces as newly acquired possessions, as claims to property. The first question then was how Rome—as a new owner—disposed of its recently acquired territories. A focus on singular actions by Rome that instituted a particular order was the result.

In this tradition the granting of a *lex provinciae* became one of the founding moments of a province. These laws provided the normative framework for the governors' activities.<sup>524</sup> In addition, these scholars saw the different statuses granted to cities as part of the imperial public law by which Rome circumscribed how provincial governors could administer law.<sup>525</sup> Lastly, the governor's edict—the list of cases that he was willing to hear during his tenure of office—could also be interpreted in this way.<sup>526</sup> All of these acts then combined to create the framework within which the governor dispensed justice. How governors then dealt with actual disputes, though acknowledged to be their main task, rarely received any further attention in this line of scholarship. At most, the governor was seen as an agent of

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<sup>522</sup> For the sake of my argument I am focusing on the English-language scholarship, the tradition which I am working in. German and Italian late 19<sup>th</sup> century scholarship on Roman provincial administration contained analogous visions of the role of law in the provinces. For Germany see Theodor Mommsen's *Römisches Staatsrecht* (vol. 3.1) and *Römische Geschichte* (vol. 5) with Hölkeskamp 2005 for Mommsen's interest in the juridification of power relationships. For Italy, see, for example, Accame 1946. Of course, these national literatures did not develop in isolation. See Freeman 1997 on Mommsen in late 19<sup>th</sup> century Oxford and de Donno 2011 on the reception of English scholarship on the Roman Empire in Italy and how scholars such as Ettore Pais and De Sanctis interpreted the empire in light of contemporary Italian politics.

<sup>523</sup> Arnold 1906: 12, 14-15 and 32 and Stevenson 1939: 54 and 57. For another scholarly work of the period that thinks of the Roman Empire in terms of territorial growth, see Frank 1914, esp. p. vii.

<sup>524</sup> Arnold 1906: 16 and Stevenson 1939: 68.

<sup>525</sup> Arnold 1906: 223-268 and Stevenson 1939: 82.

<sup>526</sup> Stevenson 1939: 39.

Romanization, spreading Roman law, which in these accounts was conceptualized by analogy with religion or language, through the provinces.<sup>527</sup>

This conception of Roman provinces as property and territory, which were ruled through a type of public law that provided the framework for the administration of private law, still pervades the standard accounts of provincial administration, and it is also reflected in detailed treatments of specific aspects of provincial administration.<sup>528</sup> These works still speak of expansion and the administration of areas, while also rehearsing the distinction between public and private law, which is predicated on the priority of the former to the latter.<sup>529</sup>

The shape of these scholarly accounts of provincial administration was no accident, it arose in the second half of the 19<sup>th</sup> century in the midst of renewed and changed commitments of European countries to their colonies. In particular, in Britain the development of the academic study of provincial administration was part of a much wider interest in the Roman Empire as a foil for thinking about the contemporary British Empire. Thus, Arnold's *Provincial Administration* drew explicit parallels between Roman actions in the provinces and the British administration of India.<sup>530</sup> In a similar vein, Francis Haverfield, the Camden professor for History at Oxford, argued that the study of the Roman imperial system illuminated the British system in India at every turn.<sup>531</sup> And indeed, writings on the contemporary British Empire itself, especially on India, contained frequent references to the Roman Empire.<sup>532</sup>

This interest in the Roman Empire was a new development in the interest in Roman history among British elites. In the early 19<sup>th</sup> century they had praised the liberty of the Roman republic, while the empire was considered despicable due to its despotic nature.<sup>533</sup> The reevaluation of the Roman Empire as a historical subject to study and think with went

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<sup>527</sup> Arnold 1906: 29 with Majeed 1999, esp. pp. 98-100 and Mamdani 2012.

<sup>528</sup> For standard accounts see Richardson 1976 and 1994 as well as Lintott 1993, chs. 4 and 5. For instances of treatments of specific aspects of provincial administration see Steel 2004 and Pinzone 2007.

<sup>529</sup> Jolowicz 1972 and De Martino 1973 are the obvious exponents of this way of thinking. For a concrete example of the language see Richardson 1994: 564.

<sup>530</sup> Arnold 1906: 32-33. One of the reviewers of the work echoed this connection, when he suggested that the study of Roman provincial administration was a necessary subject of inquiry, since it was so close to the British situation; Edwards 1908: 51.

<sup>531</sup> For a discussion of Haverfield's speech at the inaugural meeting of the Society for the Promotion of Roman Studies in London in 1911, where he made these observations, see De Donno 2011: 48-49. For accounts of the institutionalisation of the study of the Roman Empire in Britain see Butler 2012: 16-68 and for the German influences in this process see Freeman 1997: 34-50.

<sup>532</sup> For an example of casual mentions of the Roman Empire see Seeley 1922: 282-6, who as a professor of History at Cambridge, did much to make his countrymen see British India as an extension of the British state, not as a mere appendage. See also Betts 1971: 150 and Butler 2012: 6 on the place of the Roman Empire in his writings more generally. Bryce 1901 provides an example of much more sustained comparisons.

<sup>533</sup> Hingley 2000: 19-27. See Freeman 1997: 28-29 for the analogous political importance of the Republic in early 19<sup>th</sup> century Germany and Italy, where Rome's conquest of Italy provided a good foil for thinking about national unification.

hand in hand with changes in British conceptions of their own empire and the way in which they thought it should be governed.<sup>534</sup> These changes in imperial governance were not limited to Britain though. Several revolts in the colonies and the economic crisis of the 1870s produced a reevaluation and reconceptualization of imperial governance more generally;<sup>535</sup> importantly, empires ceased to be thought of as a set of shipping rights and overseas stations. Instead, they began to be seen as the expansion of the emerging nation state—as the rule over people and, more importantly, over land. Territories were annexed and borders drawn.<sup>536</sup> As a result of this division of the world, it was appropriate to talk about British rule in 1900 as extended over one fifth of the globe’s landmass and one fourth of its population.<sup>537</sup>

It is not hard to see that the language used to think about Roman provinces had its origin in this change in nineteenth-century imperial statecraft. Ideas about annexed provinces and an expanded Roman state replicated how contemporaries saw Britain’s relationship to its colonies. At the same time, the prioritizing of Roman public law as a framework for how disputes must be resolved in the provinces mirrored the new conception of contemporary colonies as territories that could be administered as extensions of nation states.<sup>538</sup> At the same time, understanding the historical specificity of this late 19<sup>th</sup> century construction of imperial power raises the question whether this account adequately captured Roman conceptions and practices. Recent insights gained in the study of the origins of Roman imperialism suggest that it did not.

## 1.2 The implications of 20<sup>th</sup>-century research on Roman imperialism

The 1970s and 1980s saw an intense debate on the nature of Roman imperialism: How defensive, aggressive, or accidental was it, and why?<sup>539</sup> Investigating how Rome behaved after moments of military victory and conquest was a common strategy employed by all scholars who participated in this debate. As a result, the early history of many provinces received careful examination. These studies showed that many aspects of Roman statecraft—the *lex provinciae*, for example—which had been considered unique to provinces

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<sup>534</sup> For a similar development in Italy see De Donno 2011: 52 and 58 ff.

<sup>535</sup> See Mamdani 2012: 6-42 on the intellectual reaction to the Indian Rebellion in 1857 and analogous developments in the Dutch colonies. See Hobsbawm 1987: 57 ff. on the the impacts of the economic crisis on imperial governance.

<sup>536</sup> Hobsbawm 1987: 59, Maier 2010: 39 and 41, and Osterhammel 2010: 173. See Mamdani 2012, esp. pp. 2-4 on the much increased ambitions of government in this new regime.

<sup>537</sup> For the idea of the ‘division of the world’ see Lenin 1996. For the numbers on the British Empire see Bradley 2010: 27.

<sup>538</sup> See Mamdani 2012: 4 on the difference between colonies and nation states: In the latter difference was located in civil society, while in the former difference was enshrined and produced at the level of the state and administration through the newly developed idea of indirect rule.

<sup>539</sup> The debate was started by the immensely influential Harris 1979. For the development of the debate see also Sherwin-White 1980, Gruen 1984, Harris 1984, Rich 1993, Kallet-Marx 1995, and Raaflaub 1996. For a recent survey of the debate surrounding Roman imperialism see Eckstein 2006.

were also practices employed in previous periods, while often the internal ordering of provinces—taxation, for instance—was regulated only a considerable time after a Roman magistrate had started to come to the region annually.<sup>540</sup> In other words, a province was not a unique and ready-made package of institutions to be implemented by Rome. In fact, the only indispensable element of provincial rule was the regular presence of a Roman magistrate in the region.<sup>541</sup>

Second, the study of the Roman Empire, as so many other fields of inquiry, took an interpretative turn.<sup>542</sup> Among other things, *provincia*, the Latin word that gives us the English province, has been the object of several inquiries.<sup>543</sup> *Provincia* was the Roman name of the task of a magistrate. For example, the fisc could be one such task. It could also be a region like Macedon, but the word did not acquire a spatial sense independent of any magistrate until the first century BC; even then a province was rarely, if ever, thought of as an object of possession, let alone a territory to be possessed.<sup>544</sup> From an interpretative point of view, then, any analysis of Roman imperial statecraft that begins from the late nineteenth-century conception of a province as the simple annexation of territory proves unsatisfactory.<sup>545</sup> The Romans did not think that they were taking possession of a territory when they began to regularly give a geographical area as a task, a *provincia*, to an official, and the assignment of such an area as a *provincia* was a simple Republican civic practice.

These two insights—the first about administrative practice, the second about historical actors’ own interpretation of their actions—mutually reinforce each other. Together they undermine the assumptions of the predominant approach to law as a means of administration in the Roman provinces, as outlined above; in the early days of the empire a province was not a territory to be annexed and there clearly existed no one public law framework that could be imposed on it. These insights also both highlight that the person of the governor was the distinctive feature of early imperial statecraft in the provinces: The regular presence of the governor was the only defining feature of early provinces, and the word *provincia* had its origins as a means of defining the task of the governor, a meaning that would admittedly shift throughout the empire’s history, but which in the early days of the

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<sup>540</sup> Richardson 1984, a case study of the two Spanish ‘provinces’ under the Republic, illustrates these insights very well. Kallet-Marx 1995 contains a solid critique on the sources upon which ready-made provincialisation in Greece has been based.

<sup>541</sup> See Ferrary 2008 for the most recent articulation of this opinion.

<sup>542</sup> Most prominently and influentially maybe Nicolet 1991. Smaller studies include chapters 14 and 18 in Brunt 1990 and Ferrary 1997. Retrospectively one might also want to read Derow 1979 as part of this approach.

<sup>543</sup> Lintott 1981 first inquires extensively into the semantic histories of the words *provincia* and *imperium*. To date, the most complete semantic study of these two words is Richardson 2008. Hermon 1996 asks what practices of governance in the provinces led to the territorialization of the conception of *provincia*.

<sup>544</sup> Richardson 2008: 80-84.

<sup>545</sup> For a similar idea, though formulated more broadly, see Purcell 1990: 8, who writes that “Roman imperial behavior will not be understood until we can say what ‘conquest’, ‘annexation’, ‘subjugation’, ‘acquisition’ meant in actuality: and, equally important, what were the proper objects of these various processes.” See also Woolf 2001 and Richardson 2008: 62.

provinces has been shown to be just that.<sup>546</sup> As a result, I suggest that inquiries into the historical origins of provincial administration and the participants in its making must begin from the court of the governor and the rules administered there, thus inverting the relationship between private and public law that marks traditional accounts and ultimately blurring the boundary between them.

However, no records from these courts are preserved and hence we need to write the legal history of these courts from without. Starting from general considerations about how governors could and did administer justice in the provinces, I then use passages from Cicero's *Pro Flacco* to explore the court of provincial governors from the litigants' perspective. Inscriptions from Greek cities provide yet another perspective on the workings of provincial governors' courts, but at the same time they also reveal how some cities participated in the making of imperial public law in response to decisions of governors, who were willing and able to elide the property regimes of these cities when members of the diaspora appealed their disputes with the inhabitants of these cities to them. Juristic opinions and their mobilization in the courts of governors thus propelled forth the production of what has often been considered imperial public law, a process that completely inverts the traditional relationship between private and public law in accounts of provincial administration.

## 2 – Making and choosing the rules: jurists and governors as architects of empire

Outside the study of provincial administration, the problem of just what governors did when they heard cases and instituted trials in the provinces has been the subject of much debate. In the absence of records or direct evidence from these courts in the provinces, this debate has centered around the next best source: the many letters of recommendations that Romans wrote for the members of the imperial diaspora. I already introduced and discussed these letters in the previous chapter, suggesting that, among other things, they provide clear evidence for the frequency and persistence with which members of the Roman diaspora looked to the administration of law by provincial governors for support in their economic dealings in the provinces, including those to do with land. As such, these letters have presented historians of ancient law with a bewildering problem: How were these requests for favoritism and their apparently unproblematic publication compatible with notions of the rule of law? Differently put, and important for my argument here, did legal rules matter at all for how disputes were decided?

### 2.1 *Gratia* and the administration of law: Did rules matter?

The first scholar to treat these letters in the context of law, J. M. Kelly in his *Roman Litigation* of 1966, discussed them in a chapter entitled *Improper influence in Roman litigation*.<sup>547</sup> To him their very existence and the fact of their publication were a sign that the objective and regular application of private law was not achieved and rarely aspired to in the Roman

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<sup>546</sup> Richardson 2008.

<sup>547</sup> Kelly 1966: 31-68.

world.<sup>548</sup> In 1984 Hannah Cotton revised this view by arguing that the Roman governor possessed influence beyond the administration of law, which some of these letters asked him to use, and she also developed an account of Roman conceptions of the *ius civile* and its justice that were compatible with and integrated the importance of social rank and distinction.<sup>549</sup> Elizabeth Meyer pushed this last argument further by suggesting that the style, the fact, and the aims of administering law in the provinces amounted to displaying, weighing, and adjusting claims to prestige and social standing, an idea that accommodates such letters of recommendation very easily within an ancient legal framework.<sup>550</sup> At first glance, their arguments thus provide a very pessimistic perspective on the importance of legal rules in the administration of justice; in fact, such rules barely feature in either Cotton's or Meyer's account. Here I want to suggest that it is possible develop their accounts in such a way as to vindicate legal rules as instrumental before Roman magistrates; for, I suggest, Roman judicial magistrates could choose which rules they administered, and this choice was the principal means by which they could accommodate *gratia* in their administration of justice. As such, my argument here complements the conceptual account that Cotton and Meyer have developed by asking on how this weighing of status might have worked in practice.

Cotton was surely right to emphasize the many means by which a provincial governor could accomplish something. For example, Cicero asked Q. Minucius Thermus, the governor of Asia in 51/50, to help P. Terentius Hispo, a member of a company of tax farmers in Asia, make agreements with the cities in the province of Asia concerning taxes on grazing cattle that the cities were to pay to Rome.<sup>551</sup> This clearly was a case that appealed to the non-legal aspects of the governor's power. In the cases in which Romans in the diaspora looked to the administration of legal rules for support in their disputes, as they demonstrably did, it is worth bearing in mind that the Roman understanding of law was not characterized by the rule of law in the contemporary sense;<sup>552</sup> for governors were able to choose the rules according to which they administered justice, which provided them with a distinct opportunity for taking into account *gratia* and patronage relations. Several episodes from Cicero's correspondence suggest as much.

For example, in 49 BC, one year after his own governorship in Cilicia, Cicero exhorted Sextus Rufus, the current *quaestor* in Cilicia, to observe Cicero's own ordinances and the law (*lex*) that Lentulus had set. This request is part of a letter that he wrote to Rufus on behalf of the city of Paphos. The rules Cicero recommends are clearly meant to work in favor of this community.<sup>553</sup> The possibility for the rules to suddenly change as a new governor entered the province and brought with him a new edict also underlay Cicero's

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<sup>548</sup> Kelly 1966: 32.

<sup>549</sup> Cotton 1986.

<sup>550</sup> Meyer 2006. See Kantor 2012 for how this argument calls into question the assumption that the Romans were wedded to the rule of law in the way in which we might understand it today.

<sup>551</sup> Cic. *Ad Fam.* 13.65.

<sup>552</sup> See Kantor 2012: 78 on rule of law in Roman law more generally.

<sup>553</sup> Cic. *Ad Fam.* 13.48.

urging to conclude a trial promptly.<sup>554</sup> But governors did not just set the rules according to which they were going to administer law at the beginning of their tenure of office. In one instance Cicero suggested to the governor of Asia, Servilius Isauricus, that a recent decision by the senate in Rome might help the cause of one of Cicero's recommendees in the provinces:<sup>555</sup>

*equidem existimo habere te magnam facultatem, sed hoc tui est consili et iudici, ex eo senatus consulto quod in heredes C. Vennoni factum est Caerelliae commodandi.*

I believe—but it is for you to consider and judge—that you have a great opportunity to accommodate Caerellia, arising out of the Senate's decree in respect of C. Veronius' heirs.

Furthermore, the most vehement and elaborate criticism of Cotton's argument—and thus implicitly also of Meyer's—also indirectly vindicates the importance of the choice of rules in accommodating *gratia* in provincial administration. In his monograph on the role of *amicitia* in the organisation of Roman economic life Koenrad Verboeven has convincingly argued that for the Romans the relationship between *iustitia* and *gratia* was not as unproblematic, as Cotton (and Meyer) had suggested.<sup>556</sup> Among several arguments, he makes his case with reference to the *lex Cornelia* of 67 BC. Writing in the first century AD, Asconius described its intentions as follows:<sup>557</sup>

*... ut praetores ex edictis suis perpetuis ius dicerent: quae res studium aut gratiam ambitiosis praetoribus qui varie ius dicere assueverant sustulit.*

... so that praetors administer law from their perpetual edicts—a provision that took away the eagerness and influence from praetors, who in their attempts to court favor had been in the habit of administering law in changing ways.

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<sup>554</sup> For such urgings see e.g. Cic. *Ad Fam.* 13.64.

<sup>555</sup> Cic. *Ad Fam.* 13.72.

<sup>556</sup> Verboeven 2002: 325-9. The most convincing and simple aspect of his argument lies in the reservation clauses that are part of most letters of recommendation. The addressee is to look after the interests of the recommended, but only as far as his own *fides* would allow. A piece of evidence supporting his theory is Cic. *Ad Fam.* 5.10a, where the governor of Macedonia writes to Cicero in response to one of his letters of recommendation, stating that he cannot provide what the man Cicero had recommended was asking for. In the same letter he also asks Cicero whether he might defend him in the *de repetundis* trial that he feared awaited him in Rome.

<sup>557</sup> Ascon. *Corn.* 52 (Ed. Clark). My translation. On the *lex Cornelia de edictis* see Berger 1953: 549 and Rotondi 1962: 371. For a more detailed ancient account of what the problem that this law was supposed to address see Dio Cass. 36.40.1-2.

According to Asconius, then, this *lex Cornelia* ordered Roman magistrates to adhere to the principles and rules they had set out in their edicts, rather than choosing different ones throughout their tenure of office. This provision was meant to curb the role that *gratia* played in the administration of justice. The fact that efforts to curb the role of *gratia* focused on the choice of rules suggests that the Cornelian law identified the choice of rules as the crucial way in which *gratia* could and did operate in the ways in which Romans, whether in Rome or in the provinces, administered law. As such the provisions of the *Lex Cornelia* ledn additional support to my suggestion that the way in which *gratia* could and did operate in the administration of law by provincial governors was in their choice of rule. At the same time, of course, it also reveals that the Romans themselves could these operations as something problematic.

More generally speaking, the Cornelian law thus points to a wide-spread behavior among Roman judicial magistrates that indicates that the Romans themselves thought that the rules that they chose to frame disputes played an important part in determining its outcome. In addition to Roman judicial magistrates themselves, Roman jurists were instrumental in formulating and developing these rules. During the Late Republic, I argue in the following section, they were deeply involved in articulating the rules that framed the choices that governors could make—a fact that the story Roman law tells about itself obscures. Importantly for my purposes here, the jurists also took a great interest in the ways in which land could be owned and transferred in the provinces.

## 2.2 Jurists in/on the provinces: The forgotten history of Roman jurisprudence

What was Roman law? For the Roman themselves, it was the law under which Roman citizens, members of the Roman *civitas*, had agreed to live and interact with each other. This idea was not limited to the Republican period; during the empire Roman jurists thought that they were elaborating and commenting on the law of the Roman *civitas*, which they conceived of as a direct continuation from regal and republican Rome.<sup>558</sup> Sextus Pomponius' history the Roman constitution, its magistrates, and its jurists provides a nice illustration of this historical vision: the second-century AD jurist began the history of *civitas nostra*, our polity, with Romulus and Remus, ended it in his own day, and never once mentioned the empire and its provinces.<sup>559</sup> His account of the history of Roman magistracies similarly excludes the empire even though at the time of his writing Rome had built and administered its empire for more than three centuries.<sup>560</sup> This exclusion together with idea of a continuous Roman *civitas*, whose laws were Roman jurists' concern, has helped to obscure the way in which Roman jurists have formulated opinions in response to legal problems located in and arising from the provinces, also at times making specific and distinct rules for

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<sup>558</sup> Ando 2011 writes about this foundational story that Roman jurists told about their professions at great length, arguing that the civil law, and the idea of it in particular, in itself were instruments of empire (p. ix). My concern here is rather with how Republican jurists' day-to-day dealings were concerned with the problems in the provinces.

<sup>559</sup> *Dig.* 1.2.2.pr.-12.

<sup>560</sup> *Dig.* 1.2.2.13-35.

the provinces.<sup>561</sup> Here I want to suggest that already the few fragments of Republican jurists that are preserved in the Digest together with Cicero's writings allow us to uncover these jurists' involvement in governing the empire and to thus better understand their involvement in shaping the ways in which Roman statecraft in the provinces could help Roman citizens infringe upon the exclusionary property regimes of Greek cities there.

### 2.2.1 Locating jurists in the provinces

Republican jurists were members of the political elite, and as such they also held political offices. These offices at times also took them to the provinces. P. Orbius is one of the lesser known examples; a Republican jurist and coeval of Cicero, he was governor of Asia in 64 BC.<sup>562</sup> P. Rutilius Rufus, a man most famous for his allegedly wrongful conviction at a *de repetundis* trial concerning his acts as legate in Asia, also studied *iuris scientia* with Mucius Scaevola, developed a new bankruptcy procedure, and gave legal opinions on matters from property disputes to the interpretation of wills.<sup>563</sup> Mucius Scaevola himself is undoubtedly the most famous example of a man known as a Roman jurist, who also acted as provincial governor.<sup>564</sup> During his time as governor of Asia Scaevola demonstrably also put his legal expertise to use. The senate commended him for the way in which he governed his province and the way in which he administered law seems to have formed the core of his qualities as governor;<sup>565</sup> for his edict would still serve as a model for other governors fifty years later.<sup>566</sup>

We do not only know of Republican jurists who were in the provinces. We also have their opinions on problems in the provinces. Servius Sulpicius Rufus, a prominent jurist, who was also the governor of Achaia in 46/5 BC, also gave at least two opinions on a question of law that arose in the provinces.<sup>567</sup> The first one concerned a clause in the *lex*

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<sup>561</sup> This is particularly true of the Republican period and might best be seen in the ways in which histories of *ius gentium* mention Rome and the foreigners that come there as a potential place where law concerning the relations between Romans and non-Romans was being developed and never mention the provinces, where this undoubtedly happened equally frequently. For examples see Kaser 1993 and Labruna 1999: 297-8. Also Kunkel 1967, Bauman 1983, and Baumann 1985, the foremost accounts of Republican jurists and their work in its political context, fail to mention their concern with legal problems arising in the provinces. More generally I here follow Frier 1980, Martin 1989, and Kehoe 1997 (*contra* Watson 1995) is arguing that Roman jurists did concern themselves with problems arising in the world around them and thus constantly adapted legal categories to new circumstances.

<sup>562</sup> Cic. *Brut.* 179 and *Pro Flac.* 76. For the date of his time in Asia see Broughton 1952: 597.

<sup>563</sup> Broughton 1952: 9 lists the sources for the trial. Cic. *De Off.* 2.47 (studies), Gai. *Inst.* 4.35 (bankruptcy), and *Dig.* 33.9.3.9 and 43.27.2.1 (opinions).

<sup>564</sup> Tuori 2004 contains a good discussion of the sources concerning Mucius Scaevola's legal life and the myth that has developed around it.

<sup>565</sup> Val. Max. 8.15.6.

<sup>566</sup> Cic. *Ad Att.* 6.1.15.

<sup>567</sup> Both passages are preserved in the fragments of Alfenus Varus' Digest, a collection dating to the second half of the first century BC. I follow Bremer 1896: 213-126 in attributing them to Servius Sulpicius Rufus.

*ensoria* for the harbor tax of Sicily; the problem at issue was the circumstances under which a slave could be counted as a good being imported for personal use.<sup>568</sup> The second opinion gave an interpretation of a clause in Caesar's law about the quarries on Crete that the Roman state leased out.<sup>569</sup> When Cicero was governor in Cilicia, he also consulted a jurist, Camillus, on a revenue-related problem: Could the lessees of contracts for imperial revenues transfer their debt to another person, or should their securities be seized?<sup>570</sup>

The fragments of M. Antistius Labeo reveal how jurists also dealt with the legal problems of the members of the Roman diaspora. In one instance, Labeo advised a *provincialis*, who also had a shop in Rome that his slave operated, on whether regarding this shop he had to go to court in Rome or in the provinces.<sup>571</sup> On another occasion, he gave an opinion on how the absence of a Roman from the province in which he resided affected the statutory period during which the person claiming to be wronged could bring a suit against him.<sup>572</sup> Lastly, he also discussed a problem involving a contract that specified that either Capua or Ephesos should be the place of delivery. It is unclear whether Labeo was in the provinces when he formulated these opinions, but several passages from Cicero's writing show how Roman jurists also were and acted as jurists in the provinces, thus being directly involved in the lives of the members of the diaspora and their legal problems.

One might begin here with the passage from the *Pro Flacco*, in which Amyntas, a citizen of Apollonis, asked un-named *iuris consulti* in the provinces for an opinion on whether the declaration of slaves and estates in the provinces constituted a proof of ownership.<sup>573</sup> In a letter to Lucius Valerius, a man learned at law in the province of Cilicia, Cicero mentions what the men returning from Cilicia to Rome were saying about the legal opinions and advice that Valerius had given them.<sup>574</sup> Cicero also wrote a letter of recommendation for the same L. Valerius, introducing him to the new governor of the province, in which he described him as a *iuris consultus* and highlighted the advantage the governor might reap from his legal knowledge.<sup>575</sup> Another governor, Caesar, wrote to Cicero about Trebatius Testa, a friend of Cicero's and also a famous jurist, who had recently joined him in Gaul; he expressed his and his men's appreciation of Testa, because—so he claimed—Testa was the only one with him who knew how to draw up a bail (*vadimonium*).<sup>576</sup>

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<sup>568</sup> *Dig.* 50.16.203.

<sup>569</sup> *Dig.* 39.4.15.

<sup>570</sup> *Cic. Ad Fam.* 5.20.

<sup>571</sup> *Dig.* 5.1.19.3. One might also cite here *Dig.* 5.4.9, where Alfenus Varus deals with the statutory period for taking up an inheritance that the law conceded to a man who inherited property in Italy, but at the time was away in the provinces.

<sup>572</sup> *Dig.* 4.6.28.4.

<sup>573</sup> *Cic. Pro Flac.* 79-80.

<sup>574</sup> *Cic. Ad Fam.* 1.10.

<sup>575</sup> *Cic. Ad Fam.* 3.1.10.

<sup>576</sup> Cicero summarized Caesar's letter for his brother Quintus in *Cic. Ad Qu. fr.* 2.14.3.

In sum, men known as jurists during the Late Republic went to the provinces as Roman magistrates, where, among other things, they administered justice according to their legal knowledge and understanding. They gave opinions interpreting the legal framework for the collection of state-revenues in the provinces, and they also concerned themselves with the legal problems of the members of the diaspora. They even advised Greeks, *negotiatores*, and governors. In the following section I will show that one of the questions they concerned themselves with was how Romans could own and transfer land in the provinces and that they developed a strong consensus on this matter. Contrary to the ancient narratives about jurists and Roman law that fail to explicitly address the empire, jurists and the legal rules they formulated thus emerge as one of its primary architects.

### 2.2.2 Roman jurists on land in the provinces

*Sed in prouinciali solo placet plerisque solum religiosum non fieri, quia in eo solo dominium populi Romani est uel Caesaris, nos autem possessionem tantum uel usumfructum habere uidemur.*

Moreover, it has been held by the greater number of authorities that, in the provinces, ground does not become religious, as the ownership of the same belongs to the Roman people or to the emperor, and we are only considered to have the possession or the usufruct of the same, and though it may not actually be religious, it is regarded as such.<sup>577</sup>

The ownership of provincial land, the second-century AD jurist Gaius wrote, belonged to the Roman people or to the emperor. It should come as no surprise that scholars in the early twentieth century were keen to date and interpret this doctrine. After all, this idea could be understood as a foundational claim in public law, the relic of how Romans interpreted their military victories and a means of justifying the taxation of the defeated.<sup>578</sup> Also, rather disturbingly, claiming ownership of all land was what contemporary social theory considered to be the characteristic property regime of Eastern despotism, a resemblance that demonstrably shaped several accounts of the origins of the Roman doctrine.<sup>579</sup>

In 1941 A. H. M. Jones published an influential article that broke with all previous approaches to the topic, arguing that scholars had been wrong to see Gaius' doctrine as part of the public law framework of the empire. The contexts in which it occurred, he suggested,

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<sup>577</sup> Gai. *Inst.* 2.7.

<sup>578</sup> Bleicken 1974: 363-367 provides a good summary of this scholarship.

<sup>579</sup> See Mileta 2008: 4-8 for a brief account of this theory. Tenney 1927 and Levi 1929 acknowledge this similarity; for them it becomes a key element in dating the doctrine, attributing it respectively to Caesar's despotic and orientalizing ambitions (Tenney 1927: 160-1) and the Hellenistic heritage that the Romans encountered on Sicily (Levi 1929: 514-6).

all had to do with problems of private law and property relations in the provinces.<sup>580</sup> More specifically, he argued that the doctrine was an afterthought by jurists who were at pains to explain why certain forms of property that were part of Roman law did not exist in the provinces.<sup>581</sup> In 1974 Jochen Bleicken introduced further substantiating arguments for the private law perspective by pointing out that juristic fragments concerned with the *ius Italicum*, the set of privileges of colonies in the provinces with Italian status, many of which had been founded by Augustus, overwhelmingly concerned property relations in land.<sup>582</sup> As part of discussing several problems in the manuscript of Gaius' *Institutes*, in 1990 Grelle again argued that the doctrine that had intrigued so many scholars as an element of public law should rather be seen as an after-thought to a debate about how property in provincial land could be acquired and transferred between private individuals.<sup>583</sup>

Jones' original argument relies on his reconstruction of the Roman doctrine according to which Roman law concepts were not applicable to land in the territories of other cities.<sup>584</sup> Here I want to propose that a much neglected passage from Gaius' *Institutes* allows us to draw a much more fine-grained picture of the ways in which Roman jurists decided that specific concepts and instruments of Roman law were not to be applied with regard to land in the provinces. The language in which these exclusions were formulated suggests that Late Republican jurists were the ones making these considerations. Jones and Bleicken had already indicated that the complex of doctrines surrounding provincial land must be interpreted in relation to the Roman diaspora in the provinces, but they only took into account a minor portion of it: Roman colonies, which Caesar and Augustus founded. By contrast, I suggest that the colonies and the elaboration of Italian status in the late first century BC were but an afterthought in a long history of jurists circumscribing the ways in which the members of the Roman diaspora could formulate their claims to land in the provinces.

### 2.3 *Nexum* in provincial land: Late Republican jurists and landholding in the diaspora

In the second book of his *Institutes* Gaius also outlined the different ways in which things might be sold. As part of this passage he returns to provincial land, reiterating what he had stated before, that it could not be sold by the procedure called *mancipatio*.<sup>585</sup> Importantly, he presents this principle as an interpretation of the opinions of previous jurists:<sup>586</sup>

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<sup>580</sup> Jones 1941: 26-27. By the time of Gaius the existence of a distinct legal regimes for property in land in Roman provinces cannot be doubted, cf. Gai. *Inst.* 2.18-21 (how to transfer land in the provinces), 2.31 (the creation of praedial servitudes in the provinces), 2.46 (*usucapio* of provincial land), 2.63 (the treatment of dotal land in the provinces).

<sup>581</sup> Jones 1941: 29-30.

<sup>582</sup> Bleicken 1974: 367-379.

<sup>583</sup> Grelle 1990: 175.

<sup>584</sup> Jones 1941: 27-28, citing Cic. *Pro Flac.* 80 and Plin. *Lett.* 10.50 as evidence.

<sup>585</sup> See Gai. *Inst.* 2.18-21 for this point as part of the way in which he classifies things.

<sup>586</sup> Gai. *Inst.* 2.27. I provide the text given by Zulueta 1946-1953.

[*Praeterea admo*]nendi sumus, [*quod veteres dicebant soli Italici nexum*] esse, *provincialis soli nexum non [esse, hanc habere] significationem: solum [Italicum] Mancipi [esse], provinciale nec Mancipi [esse]. Aliter enim veteri lingua [actus vocatur, et quod illis nexum, idem nobis est] Mancipatio.*

Moreover, we should note that this saying of men of old (*veteres*), that there is *nexum* of Italian land, but not of provincial land, has the following meaning: Italian land is susceptible to *Mancipatio*, while provincial land is not. For in the language of old the transaction had a different name, and what to them was *nexum*, to us is *Mancipatio*.

While the text becomes very fragmentary at this stage in the manuscript, the fact that in this passage Gaius was interpreting a statement made by previous jurists for his present day audience seems certain.<sup>587</sup> Writing in the second century AD Gaius thus knew that certain jurists had once written about *nexum* in provincial land and implied that his audience might also know these passages and be puzzled by them.

Gaius described the language these men used as *vetus*, old, and commentators have suggested that we should restore *veteres*, men of old, as the people to whom Gaius attributed the opinion. This restoration seems a likely choice, because in at least seven places Gaius attributed ideas and judgments to a group of men whom he called *veteres*.<sup>588</sup> In one of these instances Gaius also explicitly named the jurists he was thinking about: Quintus Mucius Scaevola, Servius Sulpicius, and Labeo.<sup>589</sup> In a second instance he spoke of legal reforms undertaken by the *veteres* that we can safely attribute to laws from the second and first centuries BC: the *lex Aebutia* of the mid second century BC and the *leges Iuliae* of 17-16 BC.<sup>590</sup> To be sure, these two examples in which Gaius used *veteres* to refer to Late Republican jurists do not preclude the possibility that he referred to later jurists as *veteres*. However, for Gaius, the history of Roman jurisprudence from the first century AD was dominated by jurists who fell into two camps: followers of the Sabinian and Proculian schools, or *procaeptores nostri*, and *diversae scholae auctores*, as he liked to call them.<sup>591</sup> He used these classifications extensively, and it seems likely that *veteres* was the way in which he referred to the jurists preceding the establishment of these schools in the first century AD.<sup>592</sup>

Second, fragments of Late Republican jurists, which are preserved outside of the Digest, provide further evidence for the idea that already Republican jurists were concerned

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<sup>587</sup> *Significationem*, which separates *provincialis soli nexum non* and *provinciale nec Mancipi*, together with *aliter enim veteri lingua* give the outline of the basic content and thought contained in the passage.

<sup>588</sup> Gai. *Inst.* 1.188.4; 3.180.6, 189.4, 196.7, and 202.6; 4.11.1 and 30.2.

<sup>589</sup> Gai. *Inst.* 1.188.4.

<sup>590</sup> Gai. *Inst.* 4.30.2 with Zulueta 1946-53 (vol. 2), *ad loc.*

<sup>591</sup> See Zulueta 1946-1953 (vol. 2): 9-10.

<sup>592</sup> For his references to disagreements between the followers of Sabinus and those of Proculus see Gai. *Inst.* 1.196; 2.15, 37, 79, 123, 195, 200, 216-8, 231, 244; 3.87, 98, 103, 133, 141, 161, 167a, 178-9; 4.78-9, and 114.

with the way in which land in the provinces could be acquired and transferred; for unlike their imperial counterparts, jurists such as Aelius Gallus and Manlius Manilius in the second and first centuries BC still actively knew and dealt with a legal concept called *nexum*.<sup>593</sup> Modern scholars have tended to use these fragments to reconstruct an enigmatic archaic form of debtor's pledge, and while the occurrence of *nexum* in the XII tables and Livy's colorful narrative of an episode surrounding the law of debt in the Struggle of the Orders make the existence of such an institution in the archaic period likely, by the first century BC Cicero could cite *nexum* as an example of an artificial category used to refer to things that do not have a name.<sup>594</sup> In fact, the Republican jurists who comment on *nexum* are primarily concerned with providing a definition for the concept. Unlike for imperial jurists, for them this was still a category that mattered in the law and legal opinions they dealt with and developed.

So far, then, I have suggested that both the language that Gaius used to refer to the opinion and the language of the opinion itself suggest that the men developing and uttering the opinion that *nexum* did not apply in the case of land in the provinces were the jurists of the Late Republic. The fact that other Late Republican authors used the word *provincialis* in an analogous way and that texts from the period also already differentiated between Italy and the provinces only makes this suggestion more plausible.<sup>595</sup> It thus only remains to interpret the stakes and implications of these provisions in its Late Republican context.

### 2.3.1 Late Republican definitions of *nexum*

The key to interpreting this doctrine lies in what we understand *nexum* to mean. Agennius Urbicus, the author of one of the extant treatises on Roman land-surveying, also used the word when discussing provincial property regimes; *nexum non habent* he wrote of lands in the provinces.<sup>596</sup> In all likelihood Agennius wrote in the fourth century AD, a time by which, as I have argued, *nexum* no longer was a recognized legal concept. Thus, just as in

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<sup>593</sup> In the second century AD Gaius clearly felt the need to translate *nexus* as a concept for his contemporaries; the Digest compiled three hundred years later did not know of any legal concept of that kind. There are three passages which contain forms of *nexus*, the perfect passive participle of *necto* (*Dig.* 2.14.52.2, 43.4.1.4, and 49.14.22.1), and one instance of the fifth declension noun *nexus*, *-us m.* (*Dig.* 46.4.1). All of these instances refer to debt and the words have the very literal meaning of “being bound” and “bond” respectively. For the passages from Late Republican sources see Festus 165 (Gallus Aelius) and Varr. *De Ling. Lat.* 7.5.205 (Marcus Manilius and Q. Mucius Scaevola).

<sup>594</sup> Tomulescu 1966: 41-42 provides a good account with references of the wide-ranging scholarship on this topic, to which now we should add Behrends 1974 and Horak 1976, as well as Tuori 2008. *RS* 40, VI.1 and Livy, 8.28 are important for *nexum* in the archaic period. Cic. *De Or.* 3.159.5 gives *nexum* as an example of a particular type of metaphor in the first century BC.

<sup>595</sup> See in particular, Cic. *Cael.* 73 on the *usus provincialis* of Africa, the provinces' customs. For Italy and provinces as distinct entities and in lists or opposition to each other see e.g. Cic. *Mil.* 87, Cic. *Sull.* 42, and Cic. *Dom.* 147. Although not also Richardson 2008: 166-189, esp. pp. 180-1, for the idea that the opposition between Italy and the provinces was a particular hallmark of the post-Augustan period.

<sup>596</sup> Campbell 2000, 20.8. With Behrends 1974: 175 on how Agennius simply made the genitive of Gaius' formulation into a construction with *habeo*, thus testifying to the standardized nature of this phrase as a way to think about provincial land.

Gaius, the term was a relic from a previous time. The recurrence of *nexum* in both Gaius and Aegennius in relation to provincial land suggests that the term was part and parcel of a key moment in how the Romans set up property regimes in the provinces, a moment that I have suggested took place in the Late Republic. To begin, then, we should ask, Was Gaius right? Was *nexum* simply another way of saying *mancipatio*, the procedure in Roman law by which the ownership of a specific set of goods, *res mancipi*, could be transferred, which, among other things, also included land?

*Mancipatio* and *nexum* certainly were part of the same universe. In a metaphor Cicero put them next to each other, contrasting them with *usus* and *fructus*, the use and enjoyment of things.<sup>597</sup> Just like *mancipatio*, *nexum* then certainly featured among the procedures by which things acquired a *dominus*, owner, according to the *ius civile*; Cicero himself said so explicitly as part of his Stoic account of slavery.<sup>598</sup> However, the definitions of *nexum* that Late Republican jurists formulated militate against the idea that *nexum* and *mancipatio* meant the same thing.<sup>599</sup> In fact, the very question at issue in these definitions was the relationship between the two terms, and no known Late Republican author envisaged them as equivalent. Instead, there was a consensus that, strictly speaking, *nexum* referred to acts that were done *per aes et libram*, by scales and bronze. *Mancipatio* was discussed as either something different from *nexum* or as a type of *nexum* but not the same thing.

Aelius Gallus, Cicero, and Manlius Manilius all used analogous formulations to define *nexum*. It was, they wrote, what was being carried out *per aes et libram*.<sup>600</sup> Varro, who reported Manilius' opinion, also cited Mucius Scaevola on the question. Scaevola clearly disagreed with Manilius and held that *nexum* referred to all the acts by which an obligation was created, which—so he seems to have stated explicitly—excluded *mancipatio*.<sup>601</sup> According to Varro, Manilius also expressly emphasized that *mancipatio* was one of the procedures that *nexum* made reference to. It is tempting to interpret these passages chronologically, with Manilius and Scaevola disagreeing in the late second century BC and Aelius Gallus and Cicero reflecting the consensus of the first century BC. This interpretation also seems to be supported by the fact that Aelius Gallus also made reference to the understanding of *nexum* that Scaevola articulated, attributing it to men of old. However this may be, in the long term the definition of Gallus, Cicero, and Manilius surely won out, and already in the Republican period, I contend, this understanding was being brought to bear on the property regimes that the Romans created in the provinces. For in the *Pro Flacco* Cicero could ask the rhetorical question, Is provincial land susceptible to *mancipatio*? Cicero's audience could readily infer the answer to this question from the doctrine that there was no *nexum* in provincial land.<sup>602</sup>

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<sup>597</sup> Cic. *Ad Fam.* 7.30.2.7.

<sup>598</sup> Cic. *Parad.* 5.35.7.

<sup>599</sup> *contra RS*: 655.

<sup>600</sup> Festus 165.20, Cic. *De Or.* 3.159.5, and Varr. *Ling.* 7.105. See also Tomulescu 1966: 51 and Behrends 1974: 179 on the artificial nature of the category of *nexum* in the Late Republic.

<sup>601</sup> Varr. *Ling.* 7.105.

<sup>602</sup> Cic. *Flac.* 80.

### 2.3.2 The implications of the *nexum*-doctrine for Romans' claims to land in the diaspora

I want to highlight three points here. First, according to any definition, *nexum* referred to a set of procedures by which Romans were in the habit of transacting with each other. The fact that the Romans saw it as part of the law their citizens might use combined with its transactional nature suggests that the doctrine that there was to be no *nexum* in provincial land was first formulated with a view to the many Romans of the diaspora who were keen to acquire land in the provinces.<sup>603</sup> As I mentioned above, scholars have suggested that the classification of provincial land, in particular the doctrine as to who had *dominium* in it, was an after-thought seeking to explain a situation.<sup>604</sup> My argument here then suggests that the situation in response to which this after-thought was formulated arose out of Late Republican jurists' concern with governing the empire and the Roman diaspora within it. As such, the doctrine also testifies to the importance that the acquisition of land had for the members of the diaspora.

Second, given the attributes that the Romans thought transactions conducted *per aes et libram* had, which *nexum* could refer to, the doctrine also precluded situations in which governors would uphold the transactions of Romans in the diaspora as valid, simply because they had been carried out in a formally correct way.<sup>605</sup> Third, the doctrine also seems to have been interpreted in such a way as to prevent members of the diaspora from declaring their properties in the census in Rome.<sup>606</sup> As such, it was crucial in blocking the wealth that the members of the diaspora accumulated from translating into an increase in their formal political influence in Rome; for their provincial holdings were not able to transfer them to a different and high census class in Rome, which determined the type of political participation Roman citizens could engage in.

The idea that there should be no *nexum* in provincial land thus was crucial in shaping the ways in which members of the diaspora could and did relate to the institutions of the Roman state. It was an instance of a legal rule that demonstrably mattered, as the jurists who formulated it significantly contributed to shaping the political economy of the empire. While this doctrine clearly worked to exclude members of the imperial diaspora politically in Rome, it still allowed for the administration of justice by governors to further these Romans' economic fortunes. Just how this was possible and what moral and legal regimes regarding landed property governors' courts provided, I will explore in the following part of this chapter.<sup>607</sup>

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<sup>603</sup> See Chapter Three on the use of  *fictio civitatis*  to integrate non-Roman parties into transactions involving the use of Roman civil law.

<sup>604</sup> See pp. 21-22 above.

<sup>605</sup> For the *per aes et libram* from a legal perspective see Kaser 1949: 123 and Kaser 1983: 105. For an anthropologically inspired account see Tuori 2008.

<sup>606</sup> Cic. *Flac.* 80 with Bleicken 1974: 374 with n. 34.

<sup>607</sup> For the exploration of an analogous though much more broadly framed question—whether provincial governance was favorable to *negotiatores*—see Ferrary 2002, esp. 137-143.

### 3 – Competing property regimes in the provinces: Cicero’s *Pro Flacco*, 73-80

At *Pro Flacco*, 73-80 Cicero described the attempts of a Roman citizen, Decianus, to lay claim to pieces of land in Apollonis, a city in Asia Minor, on a plain about fifty kilometers southeast of Pergamum and ten kilometers west of Thyateira, where the ancient rivers Lycus and Glaucus flow into the Phrygius. The *Pro Flacco* was a defense speech in a *de repetundis* case, a legal forum designed to prosecute provincial governors after their tenure of office for extortion. Flaccus was the governor accused in the trial. He had been governor of Asia in 63 BC; when during his tenure of the office Decianus brought his claims to land into the governor’s court, Flaccus found against them.<sup>608</sup> Decianus, then, was one of the witnesses for the prosecution in the *de repetundis* case against Flaccus.

Cicero chose to defend Flaccus by discrediting the prosecution and their witnesses, including Decianus, since the prosecution seems to have at least partly been based on the testimony of people such as Decianus formulating his claims to land and arguing that he had been wronged in Flaccus’ court. Cicero aimed to discredit these accounts by showing how these claims could and should be rightfully contested. His strategy thus makes the *Pro Flacco* a unique source for approaching the court of the governor from the perspective of a member of the diaspora and thus for exploring the legal regime with regard to land that this court offered. As such, the *Pro Flacco* provides a singular opportunity for inquiring how this legal regime differed from the property regimes of Greek cities, a question that is crucial if we want to understand the role of the governor’s court in effecting the large-scale re-allocation of resources that accompanied the development of the Roman diaspora. However, the goal of Cicero’s speech was still a successful outcome in court, and not ethnographic detail.<sup>609</sup> As a result, the ways in which the *Pro Flacco* and, more generally, speeches given at *de repetundis* trials, which are the most extensive ancient sources for provincial administration during the Republic, can shed light on the questions I just outlined deserves careful consideration.

#### 3.1 The pitfalls and potential of Cicero’s rhetoric

Two recent books have dealt with the problem of what kind of evidence Cicero provides in connection with the *Verrines*, several speeches through which Cicero hoped to prosecute Verres for extortion during his governorship of Sicily in 73-71 BC.<sup>610</sup> Both build on the interest in Cicero’s rhetoric and persuasive strategies, which has been developing since the 1990s.<sup>611</sup> Overwhelmingly, the contributors to these volumes adopt a rather pessimistic outlook on what we can learn from these speeches about provincial administration. In particular, they argue that we cannot take Cicero’s condemnation of certain practices of administration in these speeches as reliable indicators of their novel

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<sup>608</sup> Cic. *Flac.* 73-80. On the family of Decianus see Badian 1956. For discussions of the episode see Nicolet 1966-74: 783, Marshall 1969: 157-9, Bleicken 1974: 374 and A.36, Peppe 1988: 5-16, and Schulz 1997: 222.

<sup>609</sup> Prag 2007a: 4.

<sup>610</sup> Prag 2007b and Dubouloz & Pittia 2007. Both arose from the same CNRS sponsored project on Late Republican Sicily.

<sup>611</sup> See in particular Vasaly 1993; for case studies see Scuderi 1996 and Steel 2001.

character or illegality. Cicero's goal, they suggest, was to impeach Verres' character. His references to, and portrayals and interpretations of, specific administrative acts were a means to this end; thus, Cicero's evaluation of these acts cannot be taken at face value.<sup>612</sup>

However, some of the contributors also ask why the administration of law figured so prominently in Cicero's attempts to portray and condemn Verres' character in the first place. They argue that Cicero portrayed the administration of law as a way by which the governor could balance competing interests in his province. For example, in the *De Frumento*, the third speech of the *Verrines*, Cicero claimed that several of Verres' legal arrangements and decisions put his own interest or those of his friends first at the expense of others. Showing such preference, Cicero suggested, was the wrong way for a governor to behave.<sup>613</sup> This argument as a whole thus nicely demonstrates how strategies of persuasion, rather than standing in the way of uncovering historical fact, themselves can reveal some dynamics that could inhere in the courts of provincial governors.

Drawing on both of these perspectives on the pitfalls and potential of Cicero's rhetoric for historians of provincial administration my analysis of Decianus' attempts to lay claim to land in Apollonis provides an additional answer to the problem that the rhetoric of these speeches poses. I suggest that Cicero's persuasive strategies echo different arguments made by different parties at different stages of the dispute about the estates in Apollonis; for the different arguments that Cicero advanced about the illegitimacy of Decianus' claims were clearly embedded in the distinct property regimes enshrined in Greek cities and Roman law, which Romans, such as Decianus, demonstrably were able to play off against each other in their pursuit of landed estates in the Greek East.

### 3.2 *Pro Flacco*, 73-80: Property claims in the provinces as persuasive strategies in Rome

Cicero began the passage in question by recounting how Decianus acquired, lost, and tried to reclaim his estates in Apollonis. Decianus had questionable relations with the mother-in-law of Amyntas, the man who would eventually dispute Decianus' claim to the estate, and thus got hold of her estate in Apollonis. He then also brought Amyntas' wife and daughter into his household, Cicero claimed. The orator also insinuated that all these actions had involved the use of physical violence (72-73). Further on in Cicero's narrative, Dion, the guardian of these women and intimate friend of Decianus, was convicted of fraud in his duties as a guardian in Apollonis, and Decianus' titles to the estates were nullified locally. His attempt to get these titles recognized in Pergamum failed in spite of the honors that the city had decreed for him (74-75). Decianus then also appealed to two governors before Flaccus: Publius Orbius and Publius Globulus. The latter found in his favor (76). Countering an argument the prosecution seems to have made, Cicero then argued that Flaccus' decision against Decianus had not been informed by long-standing family enmity and quoted a *senatus*

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<sup>612</sup> Steel 2004 already argued this for the portrayal of Verres' action at Lampsacus. In Steel 2007 she comes to the same conclusion concerning the *De Frumento*. Pinzone 2007 discusses Verres' so-called *edicta repentina* to show that as such they were not an unusual practice by governors. Dubouloz 2007: 110-113 also argues that the inclusion of a *si uter volet* clause in Verres' edict, which Cicero reproaches, was not necessarily an innovation.

<sup>613</sup> For the general idea see Steel 2007: 47 and Dubouloz 2007: 106-7 and esp. 113. For the example from the *De Frumento* see Dubouloz 2007: 93.

*consultum* that the Apollonians had obtained concerning Decianus and his claims to land as well as a letter from his brother about the situation in Apollonis (77-78). After an account of the embassies that the Apollonians sent to provincial governors and to the senate in Rome concerning Decianus' complaints, Cicero concluded the passage with a set of rhetorical questions based on Decianus' attempt to declare these estates in the census in Rome. He had no right whatsoever to do this, Cicero claimed (79-80).

It should be clear from this brief summary that in this passage Cicero was not concerned with presenting a clear and accurate narrative of Decianus' claims to land in Apollonis: the sequence of events is dubious, insinuation prevails, and denigrating Decianus' character is the clear goal of Cicero's account. Indeed, on one level, the passage further pursued the rhetorical goal that animated the preceding paragraphs in the speech, where Cicero aimed to portray Decianus as hopelessly greedy and socially isolated;<sup>614</sup> for even though, as Cicero suggested, no one could ever find in favor of his claims, Decianus was simply relentless in his attempts to get hold of them. However, Cicero's repeated emphasis on the judgments against Decianus also moved beyond discrediting Decianus' character; for it validated Flaccus' decision against Decianus and in favor of Amyntas, presenting it as merely the most recent judicial finding in a long line of decisions, which all agree that Decianus' claims had no merit. A rhetorical question Cicero asked, sums up this aspect of Flaccus' defense most clearly: "Are you surprised that Flaccus did not approve of this? To whom, I ask, did you make your acts palatable?"<sup>615</sup> In spite of this strategy, the details of the narrative he provides betray that the legal situation was not as clean cut; at least one person, Publius Globulus, the governor in 63 BC and avowed friend of Cicero himself, did indeed find in Decianus' favor and the trial in Apollonis at which Dion, the women's tutor, was spectacularly and unanimously condemned was just that: a trial of Polemocrates.<sup>616</sup> Cicero's narrative structure sought to portray this as yet another judgment against Decianus and his titles to land, but at most Decianus lost these titles as a result of Dion's conviction.<sup>617</sup> Both these details together with Decianus' own insistence suggest that Flaccus' decision in favor of Amyntas was not as necessary and uncontroversial as Cicero made it out to be.

Beyond past decisions, Cicero also presented his own arguments as to why Decianus' claims to the estates in Apollonis were untenable. More precisely, he presented two arguments for why Decianus' claim should have been rejected. Cicero not only insinuated at several points that Decianus got hold of land in Apollonis by force, but on three occasions he also spoke of false purchases and the false and deceitful registration of these purchases.<sup>618</sup> Here I want to suggest that the nature of Cicero's two arguments against the validity of Decianus' claims was was not accidental and that the precise details of the arguments that his narrative presents reflect the terms on which Decianus and Amyntas conducted their disputes in different courts. As such, they provide a unique window on the coexisting,

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<sup>614</sup> See Steel 2001: 60-66 for Cicero's rhetorical strategy.

<sup>615</sup> Cic. *Flac.* 74.

<sup>616</sup> Cic. *Flac.* 76-77.

<sup>617</sup> See Steel 2004 for an analogous argument about Cicero's portrayal of Verres' actions at Lampsakos.

<sup>618</sup> Cic. *Flac.* 74.

competing, and contradictory property regimes that operated in Roman provinces. As it turns out, Cicero's arguments about false acquisitions and deceitful registrations and acquisition by force (*vis*) respectively were embedded in the particular and separate ways in which Greek cities and Roman law recognized claims to title in land. Carefully examining them, I contend, can reveal just how Flaccus—and thus presumably all governors—might have been able to help or harm men like Decianus in their disputes about estates located in Greek cities by changing the legal regimes that framed the allocation of land in the provinces.

### 3.2.1 Registration and the property regimes of Greek cities

I begin with the claim that Decianus' sales and their registration were false and deceitful, arguing that such statements point to a crucial element in disputing claims to land in Greek cities. As Michele Faraguna has convincingly argued, in many Greek cities the registration of the purchase of land was a crucial ingredient in gaining security of title.<sup>619</sup> The best evidence for this practice is a law of Alexandria, stating that if a public record of a purchase was brought about in the correct way—with a certain period of public advertisement of the intention to sell in the central square of the city, with witnesses present at the time of handing over the property etc., that is—the city would not recognize a challenge to this acquisition *ex post facto*.<sup>620</sup> The revocation or refusal of such registrations spelled the end of any title to land that it had previously guaranteed. The precise wording that Cicero used—Decianus made false purchases and registered them with deceit—seems to invoke precisely this logic of title to land.<sup>621</sup>

Cicero's choice of vocabulary constitutes a further piece of evidence that we should see the argument about false purchases and deceitful registrations as located in the context of the property regime prevailing in Apollonis. The English "registration" renders the Latin *proscriptio*. Outside of the *Pro Flacco* Cicero only uses *proscriptio* to refer to the public notice of the intended sale of the estate of a debtor in default. As such it is often paired with expressions of selling.<sup>622</sup> By contrast, in Cicero's description of Decianus' actions, there are no mentions of debts, while *proscriptiones* is paired with *emptiones*: purchases.<sup>623</sup> Here, then, a *proscriptio* was simply the action noun of the verb *proscribo*, which roughly meant to register or declare something publicly. Cicero clearly used it to refer to the registration of land sale that was a common practice in Greek cities. The word thus lost its usual technical meaning. Evidently, Cicero's account of a property dispute in a Greek city stretched and distorted his Latin vocabulary.

Now, the repeated emphasis on these false purchases and their deceitful registration not only reveals that at some point the dispute between Amyntas and Decianus was

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<sup>619</sup> Faraguna 2003.

<sup>620</sup> *P. Hal.* 1, col. XI, ll. 242-249. See Faraguna 2003 for a full discussion of this papyrus and a collection of other analogous pieces of evidence from Greek cities. See Game 2008 for the collection of the epigraphic evidence of such registries of sale.

<sup>621</sup> *Cic. Flac.* 74: *falsas emptiones, praediorum proscriptiones cum aperta circumspectione fecisti.*

<sup>622</sup> *Cic. Pro Quintio*, 56.6; *Pro Roscio*, 128; and *De Reditu in Senatum*, 11.

<sup>623</sup> *Cic. Pro Flacco*, 74.

conducted on the term of the property regime of the Greek city of Apollonis. The local decision that the purchases and their registration were invalid also shows that Decianus actually tried to account for his possession of these estates by registering their purchase, as was common in Greek cities. The structure of Cicero's narrative does much to obscure Decianus' initial claim to having purchased the estates, a claim that he made within the framework of Apollonis' property regime. In fact, Cicero began his discussion of Decianus' claims with a counterfactual wish for the past: *emisses*. Decianus should have bought the estate, implying that such purchases did not take place. Cicero then went into elaborate detail about how Decianus had come into the possession of the estates through some shady dealings with the women of Amyntas' family and—as outlined above—by force.<sup>624</sup> It is at this point in the narrative that Cicero asked the rhetorical questions I already mentioned above: “Are you surprised that Flaccus did not approve of this? To whom, I ask, did you make your acts palatable?”<sup>625</sup> Based on Cicero's account up to this point no one in his audience could help agreeing with him. And yet, in the next sentence Cicero mentioned Decianus' purchases and registrations of land, which—though now declared false and deceitful in Apollonis and narratologically erased in Cicero's speech—are what originally must have lain at the core of Decianus' claims to the estates in Apollonis.

### 3.2.2 Possession and the property regimes of praetorian law

While in Greek cities the only way to challenge title to land secured by public registration was to impugn the manner of registration, Roman law knew a way of protecting claims to land that made arguments of acquisition by force (*vi*), such as Cicero advanced with regard to Decianus' estates in Apollonis, an attractive and indeed the only way of attacking these claims: possessory interdicts.<sup>626</sup> Interdicts, including so-called possessory interdicts, are part of praetorian law in Rome; they constituted one of the three types of *formulae* from which the praetor composed his yearly edict. These *formulae* enshrined the cases Roman judicial magistrates were willing to hear in any given year.<sup>627</sup> Interdicts, then, were distinguished by the fact that they did not award pecuniary compensation, as *actiones*, the most well-known and most-studied type of *formula*, did, but instead they resulted in an order by the magistrate to do something or to abstain from doing something. In the case of possessory interdicts the order was to restore or relinquish possession to one of the parties. As such, they were instrumental in establishing title to land and generally speaking worked to

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<sup>624</sup> Cic. *Flac.* 72-73.

<sup>625</sup> Cic. *Flac.* 74.

<sup>626</sup> Kaser 1966: 321 on *exceptio vitiosae possessionis* being the only defense against the interdict *uti possidetis*, which would have been at issue here.

<sup>627</sup> For a brief account of the edict of the praetor in Rome see Johnston 1999: 112-121 with Frier 1985: 78-92. For an account of its history and development see Wieacker 1988: 429-486. See Conzo 1996 for the change in the meaning of *formula* between the Late Republic and the second century AD, the age of the Classical jurists. My use of '*formula*' here corresponds to Cicero's era, when it was used as a means to designate not only *formulae* that arose from *actiones* (the later meaning of the word), but also *interdicta* and *stipulationes*—all three kinds of cases that a Roman magistrate might hear, that is.

protect possession.<sup>628</sup> Importantly, possession established by force, such as Cicero claimed Decianus had established, was a type of possession that these interdicts explicitly did not protect.<sup>629</sup>

While the formulation of these interdicts is most famously contained and discussed in Gaius' *Institutes*, which date to the second century AD, the formulation of the clause listing the exceptions is already attested in a comedy by Terence dating to 161 BC.<sup>630</sup> At the same time the entire text of the possessory interdicts pertaining to land are also contained in several inscriptions dating to the late second century BC.<sup>631</sup> As such, we can be sure that possessory interdicts and their formulation were both known and used by Romans in the second century BC, when provincial administration began to develop in the Greek East accompanied by the continued migration of Romans to these areas. Importantly, the second-century BC evidence also provides a good corrective to Gaius' interpretation of these interdicts, who sees them as part of a pre-trial maneuver by which the praetor decided who should have possession of the estate during the actual trial. For in all the examples that the epigraphic evidence provides the possessory interdicts are meant to settle a dispute about land once and for all.

Again, Cicero's language reveals the details of the legal arguments at play. In his speech Cicero stated that Decianus had established his slaves in possession (*in possessione*) of the estates under dispute.<sup>632</sup> In the language of Roman law to be in possession of something (*in possessione esse*) was very different from possessing something (*possidere aliquod*). The former was the mere physical act of holding something, while the latter described a factual situation with legal effects.<sup>633</sup> This small point thus strengthens the argument that a keen awareness of the types of argument available in Roman courts underpinned Cicero's rhetoric. His overall point is clear: Decianus' possession of the estate was such that it merited no protection from the perspective of Roman law.

Importantly, then, should we expect Roman governors to have made recourse to interdicts? And did the argument about possession by force that Cicero advanced in this passage originate in the dispute between Decianus and Amyntas in the provinces? For an answer to the first question, we need only look to the Cicero's letter to Atticus in which he outlines the details of his edict.<sup>634</sup> The very fact that Cicero draws up an edict just as judicial

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<sup>628</sup> See Kaser 1959 § 96, esp. 335-336 and Kaser and Knüttel 2005 § 21 and 86 for overviews and Stein 1989 for a discussion of their role in protecting possession within the wider context of praetorian law. See also the second century AD jurist Paul, who sums up the situation as follows (*Dig.* 43.17.2): "He who has possession has through this very fact that he is possessor, a better right than he who does not possess."

<sup>629</sup> See Cic. *Tul.* 19 and Gai. *Inst.* 4.150-152 and 160 with Jolowicz 1972: 268-270 for the phrasing of the rule.

<sup>630</sup> Ter. *Eun.* 319.

<sup>631</sup> *Syll.*<sup>3</sup> 679, 683, and 685 (*uti possidetis*; see now all with Chaniotis 1996) and RS 1 § 18 (*unde vi*).

<sup>632</sup> Cic. *Flac.* 73.

<sup>633</sup> Berger 1953: 636.

<sup>634</sup> Cic. *Ad Att.* 6.1.15. For an extensive discussion of this edict and its parts see Peppe 1991. For discussion of whether and to what extent formulary procedure was in fact used in the provinces, see Lemosse 1998, Dubouloz 2007: 94-102 and Maganzani 2007: 143. For a change on this score between Republic and Principate, see Ando 2006: 190-191. On this topic see also Ando 2014b, who argues that *cognitiones extra ordinem*, the

magistrates did in Rome, the fact that he talks about its content using technical legal terminology—*bonorum possessio*, for example—and the fact that he leaves a set of provisions unspecified referring to the praetor’s edict in Rome all suggest that interdicts could at least potentially be part of a governor’s repertoire of legal tools. As regards the second question, it seems important to note that, as I have shown above, in his account of Decianus’ deceitful registrations Cicero’s rhetorical strategies built on claims and terms that originated in how the dispute between Amyntas and Decianus developed in Apollonis in the province of Asia. This circumstance makes it likely that also Cicero’s argument about force has its origins in a phase of the dispute in the provinces, this time though before the provincial governor. Differently put, Cicero did not just make a legal argument about the invalidity of Decianus’ claims because he was giving a speech in Rome to a Roman audience, but also echoed the arguments that Amyntas and Decianus were making to their Roman audience in the provinces—to the provincial governor, that is. As such, the argument about force to invalidate Decianus’ claim suggests that Decianus himself was arguing for his rightful possession of the estates, in all likelihood by appealing to one of the possessory interdicts.

### 3.3 Interpreting the Difference: Governors’ courts and civic property regimes

In the first century BC Roman administrators, members of the diaspora, and imperial subjects alike had no problem recognizing the political implications of specific parts of the governor’s edict. For example, just as Cicero’s enemies suspected that one clause in his edict was directed against the plans of his predecessor as governor of Cilicia, so also Atticus thought that Bibulus’ edict contained a clause that was a great insult to Roman knights.<sup>635</sup> In addition, when the tax farmers of Cicero’s province in 51 BC asked him to include in his edict a provision that his predecessor Claudius Pulcher had included, they surely knew from experience how this clause could be helpful to their pursuits. Lastly, according to Cicero, many Greeks in his province were glad to have non-Roman judges.<sup>636</sup> Just what provoked their reaction to this particular provision is not clear, but the very fact of their emotion, albeit mocked by Cicero, shows that from their perspective there were things at stake in the provisions of their governor’s edict.

Governors too were invested in the terms of their edicts. The evidence surrounding Mucius Scaevola’s governorship of Asia in 90 BC suggests that his success as governor was attributed to the composition of his edict. Cities in Asia Minor celebrated the *Mucia*, a festival for Quintus Mucius Scaevola, a governor of Asia in the 90s.<sup>637</sup> But not only Greeks honored him as a governor; the senate in Rome also passed a decree that advertised him as an exemplary governor. He was a famous Roman jurist, and Cicero, at least, attributed his success as a governor to his edict, part of which he copied during his own governorship in

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procedure the Romans themselves claimed they employed in the provinces, were civil law procedures by another name. More generally, see Purcell 1986 for the civic magistrate as one of the three models of authority available in Antiquity and the building of empires upon these models.

<sup>635</sup> Cic. *Ad Fam.* 3.8.4 and Cic. *Ad Att.* 6.1.15.

<sup>636</sup> Cic. *Ad Att.* 6.1.15.

<sup>637</sup> This honor in itself, however, did not necessarily make him a governor: see Cic. *II Verr.* 2.21, 46, 63 and 4.10 on the *Verria* and how Verres had them installed to replace the *Marcellia*.

Cilicia in 51 BC.<sup>638</sup> When describing the second part of this edict Cicero wrote that it provided for what could not conveniently be handled without an edict. This part concerned itself with the possession of property (*de bonis possidendis*) and the sale of property (*de bonis vendendis*) among other things.<sup>639</sup> Cicero's suggestion that these provisions concerning property simply were a matter of necessity betray the degree to which Roman governors' concern with the economy of the diaspora had become a matter of course and also naturalized that very involvement; they were a mere matter of convenience, he suggested.

The passage from the *Pro Flacco* has allowed me to outline the distinct and competing property regimes of Greek cities and praetorian law in the provinces and how they could be involved in one and the same dispute. In this section of the argument I now turn to inquire into the political implications of the differences between these regimes, arguing that governors' concern with property, in particular the possessor interdicts they provided, allowed members of the Roman diaspora to elide and infringe upon the property regimes of Greek cities. The second part of Cicero's edict thus clearly was more than a mere matter of convenience.

### 3.3.1 Putting a dispute on a new footing (I): Eliding the registration requirement

Decianus' opponent Amyntas claimed Decianus had acquired possession of his estates by force, an argument, which, as I have suggested, could potentially be very effective with the context of praetorian law. As such, Amyntas' argument suggests that Decianus claimed that his possession of the estates in Apollonis was completely legitimate, a claim, which in all likelihood he also formulated with reference to Roman law. Cicero's speech gives us no clues as to what his precise arguments might have been. It is nonetheless worthwhile to explore the Roman law of property for the arguments he might have made, as this exercise brings into relief the ways in which Roman ideas about deciding disputes about property lay were at odds with how many Greek cities allocated title.

In Apollonis Decianus had clearly gone through the procedures for purchasing the estates in question; Cicero's mentions of false purchases and registrations suggest as much. If he continued the argument that he had purchased the estates he currently possessed, he most likely invoked the idea of *traditio*, an informal way of transferring things between people that the Romans knew. Its first attestations as a technical legal term date to the first century BC and can be found in the writings of Cicero and Varro.<sup>640</sup> By the mid second century AD, Gaius could speak of *traditio* as a key institution in the *ius gentium*, a category of law the Romans used to refer to the legal ideas and practices that they thought were

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<sup>638</sup> See OGIS 438, 439, and Cic. *Verr.* 2.2.51 together with Rigsby 1988: 145-149 for the Mucia. See Val. Max. 8.15.6 for the decree by the senate. See Cic. *Brut.* 102 for his reputation as a lawyer and Cic. *Ad Att.* 6.1.15 on his edict. It is worth noting that even Scaevola did not escape being indicted for extortion. See Cic. *Brut.* 102; Cic. *De Or.* 2.281 for details of the trial and Lucilius 55-94 for fragments of a literary rendering. In a more cynical moment Cicero suggests that Scaevola was so successful as a governor because he only held the post for nine months: Cic. *Ad Att.* 5.17.1.

<sup>639</sup> Cic. *Ad Att.* 6.1.15.

<sup>640</sup> For the *terminus ante quem* of the establishment of the *traditio* as a technical term in the middle of the first century BC see Daube 1969: 23 for Cicero and add Varr. *Rustic.* 2.6.3.

common to all people.<sup>641</sup> Already Late Republican authors thought that several legal arguments were part of the *ius gentium*, and while they do not name *traditio* explicitly, there is no reason to suppose that it was not also already then included among these arguments.<sup>642</sup> A passage from the *Bellum Hispaniense*, a work that continued Caesar's works on the war in Gaul and the civil war, also places the *ius gentium* in relation to the provinces and their administration, when Caesar in one of his speeches told the local population that in spite of their knowledge of the *ius gentium* they had behaved despicably.<sup>643</sup> Based on these pieces of evidence it is possible that in the governor's court men like Decianus not only explained their possession of land in the provinces with reference to *traditio*, but also that this argument was understood to be an appeal to the principles of the *ius gentium* and thus unproblematically applicable in cases involving non-Romans.

What, then, was *traditio*? In stark contrast to *mancipatio* and *in iure cessio*, other means of transferring things between people that the Romans knew, *traditio* required few formalities and no publicity for a transaction to be valid.<sup>644</sup> It was an informal means of transferring an estate from one person to another and gave rise to possession (*possessio*), as long as the transfer had happened by just cause (*ex iusta causa*). The transfer of money in return was one example of such a just cause. Importantly, *traditio* also did not require the registration of the purchase in a public archive for the transaction to be valid. The availability of a claim to have acquired property by *traditio* within the legal regime enforced in the governor's court thus presented men like Decianus with a possibility to reframe their claims to land in new terms and thus to completely pass over the question of correct and lawful registration that Greek cities insisted on.

On one level, the court of the governor and the legal regime it offered thus simply provided a second chance for having their claims validated. On another and more significant level, the possibility of acquiring land from Greeks by *traditio* and having these acquisitions protected by possessory interdicts, allowed Romans in the provinces to circumvent Greek cities' claim to exclusively determine who could own land in their territories. This at least is my argument in the following section. Roman law as administered by provincial governors, then, could interfere with the territoriality of Greek cities by constructing conceptions of law—the *ius gentium* or the *ius naturale*—that was not bound to a territory and that, so Romans claimed, all people shared.

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<sup>641</sup> Diges 41.1.9.3 (*Gai. 2.rer.cott.*). At *Gai. Inst.* 2.65 he claims it to be part of the *ius naturale*. On the *ius gentium* as an integral part of Roman law and legal institutions see Kaser 1993: 6-7.

<sup>642</sup> The two major accounts of the history of the Roman *ius gentium* locate its origins in the third century BC with the institution of the *praetor peregrinus*: Frezza 1949: 263 and Kaser 1993: 4-5. For examples of Late Republican passages attributing legal instruments to the *ius gentium* see *Cic. De Off.* 3.23 and 3.69-70; and *Har. Resp.* 32.2. See *Plaut. Pers.* 4.3.64 for a second century BC source that clearly indicates that the Romans knew of a way to acquire things from foreigners and also protected such transactions at law. *Traditio* is not mentioned in this context, but is a likely candidate.

<sup>643</sup> [Ps.-Caes.], *BHisp.* 42.4.1.

<sup>644</sup> On *dominium*, *mancipatio* and *in iure cessio* see Kaser 1955 § 31 and § 33. On *traditio*, see Buckland 1932: 226-231 and Kaser and Knütel 2005 § 24. For an attempt to write a history of the developments of these categories see Kaser 1956. See also Daube 1969 for the argument that actions nouns provide the *terminus ante quem* for the establishment of a legal concept.

### 3.3.2 Putting a dispute on a new footing (II): Eliding exclusionary property regimes

*Utī nunc possidetis eum fundum, quo de agitur, quod nec vi nec clam nec precario alter ab altero possidetis, ita possideatis. Adversus ea vim fieri veto.*

As you now possess the estate that your dispute concerns, so you may possess it with the provision that neither one of you possess it from the other by force, in secret, or on loan. I forbid that violence be used against these things.<sup>645</sup>

This is the text of the possessory interdict commonly referred to as *uti possidetis*. It seems to have been most frequently used in disputes about property in land, as the explicit mention of a *fundus*, an estate, in the version quoted here shows.<sup>646</sup> Already the few fragments of Late Republican jurists who discussed the interdict's terms did so in the context of disputes about landed property.<sup>647</sup> And indeed, just as in many other instances, these discussions of the terms of Roman *formulae* were crucial in the development of the Roman law of property.<sup>648</sup>

For example, Cassius Longinus, a first-century AD jurist, explained what *possidere* meant with regard to properties in the provinces; there men could establish possession through those whom they had in the province, in other words, through members of their *familia*, including sons in power and slaves.<sup>649</sup> And already in the late second century BC Quintus Mucius Scaevola thought about this agency problem, maintaining that a man should be held accountable not only for what he did by force or in secret (*aut vi aut clam*), but also for what was done by force or in secret by the members of his *familia* or at his behest.<sup>650</sup> Similarly, jurists also had to figure out just what it meant for an action to be carried out by force or secretly. Labeo illustrated his understanding of *vi* and *clam* in the case of *uti possidetis* with reference to a little story:<sup>651</sup> If I go to the market, he suggested, and leave no one on my estate, anyone taking possession of it does so secretly (*clam*). If he prevents me from returning to the estate, he will also have taken possession by force (*vi*). The language of the interdict thus demonstrably shaped how Romans understood the type of possession that deserved protection in their courts.

At the same time, however, this language placed distinct restrictions on the questions that jurists, litigants, and judges could consider when deciding whether a particular instance

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<sup>645</sup> Festus, s.v. *possessio*. Ulpian has a slightly different version of the text with *aedes* replacing *fundus*. Lenel 1907: 453 provides and discusses both.

<sup>646</sup> Lenel 1907: 453-454 argues this point, taking into account a much wider set of evidence.

<sup>647</sup> *Dig.* 41.2.6.1 (Labeo) and *Dig.* 43.17.3 (Servius Sulpicius Rufus).

<sup>648</sup> Birks 1972, Birks 1984, and Birks 1985: 4 (*contra* Watson 1973).

<sup>649</sup> *Dig.* 41.2.1.14.

<sup>650</sup> *Dig.* 43.24.5.8.

<sup>651</sup> *Dig.* 41.2.6.1.

of possession was worth protecting.<sup>652</sup> The interdict *uti possidetis* was phrased in such a way that in principle it was committed to protecting the state of possession as it was, while allowing a limited set of objections. These objections could only be connected to the relationship between the two claimants and what they had done to each other, as the phrase *alter ab altero* in the *quod*-clause makes abundantly clear. As had been pointed out from the earliest days of scholarship on this interdict, third-party claims could not enter the consideration.<sup>653</sup> Importantly for my purposes here, community norms and claims could not receive consideration within this framework either. As a result, the question whether men like Decianus had been granted *enktesis* and, from the perspective of Greek cities, were thus allowed to own land in their territories remained a moot point once *uti possidetis* was used to frame a dispute.<sup>654</sup> As such, this interdict presents a prime example of the ways in which law is able to transform the terms on which disputes were being conducted and thus the disputes themselves.<sup>655</sup> It made the outcome of the dispute hinge on the question whether force and secrecy were involved in the transaction between the two parties, thus completely eclipsing the opinion of the city from the questions at hand.

So far, then, I have argued that the legal regime that according to my reading of the *Pro Flacco* passage could be invoked in the governor's court allowed Romans like Decianus to elide two key aspects in Greek cities' property regimes: these cities' requirements to register transactions in land in order to establish title and their ambition to decide whether individual foreigners were allowed to own land in their territory.<sup>656</sup> Members of the Roman diaspora, I contend, were aware of this potential and anticipated it in their behavior. In fact, Decianus' behavior in Apollonis provides an excellent example of just such anticipation. Cicero reproached him for not vacating the lands after the registration of his purchases in Apollonis had been declared void.<sup>657</sup> Bearing in mind how *uti possidetis* protected the fact of possession, Decianus' apparent insolence can be seen as a strategic decision, which counted on the possibility to protect the fact of possession that the edict of the governor offered; for *vis* used to defend possession, something that Decianus undoubtedly employed, was acceptable in Roman law.<sup>658</sup>

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<sup>652</sup> On the idea that procedure, such as the language of interdicts, restricts the questions that can be considered in a case see Milsom 1967: 3-6. For the importance of thinking about what is not there and not being considered see Thomas 1974: 109-110.

<sup>653</sup> See e.g. Roby 2000: 460-1 for this observation. As such the interdict is very much in line with the overall structure of the Roman approach to property, as outlined in Thomas 1974: 105, n.1 and retooled in Pottage 2014, which does not know absolute rights and instead thinks in terms of a hierarchy of claims. The interdict also was a means to figure out such relative claims, simply asking who of two parties had the better claim to possession.

<sup>654</sup> See Chapter One for an detailed account of this exclusionary aspect of Greek cities' property regimes.

<sup>655</sup> Latour 2010.

<sup>656</sup> For a discussion of this aspect of Greek cities' property regimes see Chapter 1.

<sup>657</sup> Cic. *Flac.* 74.

<sup>658</sup> *Dig.* 43.16.1.28-29.

The best illustration of such anticipation, however, stems from cases in which Roman creditors accepted land in Greek cities as collateral for their debts.<sup>659</sup> Creditors accepting land to which they nominally had no access as collateral is a problem with a long history in the world of Greek city-states. An episode from fourth-century BC Byzantium nicely illustrates the extortionate tactics that the exclusionary property regimes of Greek cities could give rise to once the debtor defaulted on his loan from a foreign creditor. When Byzantine debtors defaulted on loans to their foreign creditors, the city negotiated with the creditors and offered to recognize the title to the land which these citizens had put up as collateral on the condition that the creditors pay one third of the sum secured into the treasury.<sup>660</sup> When Roman creditors faced an analogous situation, they could benefit greatly from casting their exchange with the debtor in terms of *traditio* and *possessio* in the court of the governor; for thus they were able to eclipse Greek cities' claim to authority as to who could own land in their territories.

And indeed, the writings of Cicero suggest that Roman creditors understood the ways by which they came into the possession of the landed estates that their defaulting debtors had put up as collateral in terms of *traditio* and *possessio*. For instance, in 50 BC Cicero wrote to Minucius Thermus, the governor of Asia, on behalf of a certain Cluvius from Puteoli. He ventriloquized the latter's demands: Thermus was to take care that Cluvius' debtor in Alabanda hand over the estate which had served as collateral for the loan. The verb used to describe the transfer is *tradere*, the verbal form of *traditio*. In other words, Thermus was to recognize and effect the rightful transfer of title to this land to Cluvius. To give another example, in the *Pro Flacco* Cicero aimed to discredit one of Decianus' witnesses, a certain Lysianas.<sup>661</sup> Allegedly Decianus was blackmailing Lysianas to give adverse testimony by promising to return his family estate to him, which the youth had lost when he failed to pay back a debt he owed to Decianus. At that moment, Cicero said, Decianus held and, what was more, possessed the estate: *tenes hodie ac possides*. This formulation betrays a keen awareness of the difference between merely holding something physically and doing so in such a way as to give rise to legal claims; *ac/atque* in Latin introduces a new idea and so *possidere* here must refer to something different from the mere physical act of holding something, which the word could also refer to. Whether Decianus had his rightful possession of Lysianas' estate recognized by a governor is impossible to know, but he would certainly have agreed with Cicero in conceiving of it in this way.

Roman jurists excluded provincial land from transactions involving *nexum*—from transactions conducted *per aes et libram*, which were legally binding by virtue of the correctness of the ritual involved in the transaction, that is. Instead, possession and the interdicts protecting it became the hallmark of the property regimes that the governor offered. The provision of these interdicts by provincial governors in their edict was one of the ways by which Roman governors could help the members of the diaspora in the provinces infringe upon both Greek cities' requirements for registration and their exclusionary ambitions. In so doing they temporarily eclipsed the territoriality of Greek cities

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<sup>659</sup> On the role Romans played as money lenders in the provinces see Verboeven 2004 and Verboeven 2008, esp. pp. 214-215 and Hatzfeld 1919: 197-211.

<sup>660</sup> [Ps.-Arist.], *Oec.* II, 1346b30-35.

<sup>661</sup> Cic. *Flac.* 51.

in favor of considering the relation between two parties only and understanding that relation through the framework of the *ius gentium*, the Roman construction of the law that all people had in common. As such, these operations provide a case study in legal pluralism understood as the intersection and superimposition of different legal spaces, the results of which were decisively shaped by the jurisdictional set-up in which they took place.<sup>662</sup>

### 3.4 Beyond the governor's court

It is important to note that a favorable decision by the governor was not the final step in establishing title to land in Greek cities; rather, the decision of the governor was a means of getting cities themselves to acknowledge the rightful possession of an estate by a Roman. In 50 BC, Cicero wrote a letter on behalf of Lucius Genucilius Curvus to Minucius Thermus, the governor of Asia. Cicero wrote about Curvus' landed possessions in Parium. The city had decreed and given them to him and there had never been any dispute about them, he wrote. Cicero knew that such grants ultimately made the possession of landed estates in Greek cities much more secure.<sup>663</sup>

In Decianus' case, Amyntas and the city of Apollonis were not ready to recognize Decianus' rightful possession of the estate. They expressed their refusal to accept Publius Globulus' decision by sending an embassy to the senate in Rome. Flaccus then decided Decianus' case with reference to the *senatus consultum* that the Apollonians obtained on that occasion. The *de repetundis* trial at which Cicero's speech was delivered, could be seen as another step in the escalation of this dispute about land in Apollonis, as Decianus indicted Flaccus after the latter's decision was unfavorable to Decianus' claims to land in Apollonis. As such, Amyntas' refusal to accept the decision of Publius Globulus is one of the reasons why we hear of the historical episode upon which this entire section has been based.<sup>664</sup> The singularity in the evidentiary record of Cicero's account of Decianus' problems surrounding his claims to the estate in Apollonis then attests to our fragmentary and accidental historical record but possibly also to the frequency with which other cities felt compelled to accept the governor's decision.

In the subsequent and final section of this chapter I focus on such refusals to accept the decision of the governor and argue that the epigraphic record shows us several parallels for Amyntas' and Apollonis' behavior. While these refusals testify to the importance of the appeal to the governor as part of a strategy for establishing title to land in Greek cities, they also emerge as critical for the production of what has commonly been seen to constitute Roman public and administrative law. Briefly put, I will argue that what looks like the Roman senate granting a specific and set status to certain cities actually has its origins in the concrete socioeconomic dynamics that the administration of law through the provincial governor

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<sup>662</sup> See de Sousa Santos 1987 for this conception of legal pluralism and Valverde 2009 for the importance of jurisdictional rules for its outcomes.

<sup>663</sup> Cic. *Ad Fam.* 13.53. The language here is very interesting: *decrevit and dedit*. The explicit mention of the political decision (*civitas decrevit*) is a good reminder that as a foreigner Curvus required such a decree within the Greek context. The use of the verb for giving—*dedit*—is either an interpretation of this political decision or a reference to Curvus actually having been gifted the land. The former seems much more likely.

<sup>664</sup> See Ferrary 2001: 105 for the same point regarding epigraphical evidence from the same period.

facilitated and that these cities tried to avoid. More broadly, I will show that by becoming involved in contesting and negotiating the conditions of the Italian migration to the provinces during the Late Republic, several different parties—governors, Romans, Greek cities and their inhabitants, Roman jurists, and the senate in Rome—all participated at different stages in making and shaping what we recognize today as Roman provincial administration.

#### 4 – Contesting and negotiating migration: the court of the governor and beyond

The last part of this chapter, then, focuses on so-called free cities (*civitates liberae*), a status that was an integral part of the public law that enshrined the government of provinces according to the traditional account of provincial administration as outlined at the beginning of this chapter. As regards historiography, Theodor Mommsen gave the most extensive early account of free cities in his third volume on Roman public law. His presentation was structured by attention to their general rights and duties.<sup>665</sup> In works of the early 20<sup>th</sup> century the status of these cities was described in a similarly juridical way.<sup>666</sup> When attempting to outline the privileges of these free cities, Brunt gave a list: freedom from taxation, freedom from interference by the governor and by troops, and freedom to use their own laws. But he also admitted that there were exceptions and irregularities between these cities.<sup>667</sup> More recently, several scholars have coped with this apparent lack in consistency by suggesting that free cities had to struggle to maintain their status against the constant infringements of their privileges by Roman governors.<sup>668</sup>

Here I want to address the problem that this irregularity poses by shifting perspective to inquire how the privileges that freedom entailed came about and who formulated them. I will suggest that the cities themselves and their inhabitants were instrumental in formulating what their freedom should mean on concrete occasions; these formulations in turn arose from the concrete experiences of these cities and their inhabitants with Italian migration to the provinces and the governor's role in facilitating the acquisition of land by these Members of the Roman diaspora.<sup>669</sup> This argument is based on an

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<sup>665</sup> Mommsen 1952: 645-715. See Hölkeskamp 2005 for an attempt of an outline of how Mommsen conceived of public law as the juridification of power.

<sup>666</sup> See Arnold 1906: 223-268, Abbot & Johnson 1926: 39-54, and Stevenson 1939: 82.

<sup>667</sup> See also Kantor 2010: 197 for the idea that the Romans refused to commit to a concrete template when it came to the judiciary privileges of free cities in the East. My argument here suggests that the differences in wording of these judiciary privileges, which he bases his arguments on, also reveal something about how these privileges came about.

<sup>668</sup> See Raggi 2001: 104 and Ferrary 1991: 576 for this observation. For the complementary idea that governors were very opportunistic in what cases they chose to judge see Peppe 1991: esp. 148, which is also the most comprehensive treatment of the governor's jurisdiction as regards free cities. Fournier 2010a examines Cicero's letters for Romans that pushed for such opportunistic behavior.

<sup>669</sup> This argument is analogous to what Ferrary 1988: 214-215 has argued about the intellectual history of the concept of freedom in these cities: Its content changed as new modalities of rule—provinces—were

exploration of three pieces of documentary evidence from such free cities: the description of Colophonian embassies to the senate in Rome as related in the honorific decree for Menippos of the early first century BC; a *senatus consultum* recorded in a letter from a provincial governor to Chios; and the *Lex Antonia de Termessibus* from the late 70s or early 60s BC.<sup>670</sup>

#### 4.1 Colophon: The Roman diaspora, land, and embassies to the Roman senate

Here is part of the description of an embassy to the senate in Rome, as given in the honorific decree for Menippos that Colophon, a city on the coast of Asia Minor, passed in the early first century BC:<sup>671</sup>

...τέταρτον τῶν

24 παραγινομένων εἰς τὴν Ἀσίαν τὰ κριτήρια μεταγόν-  
των ἀπὸ τῶν νόμων ἐπὶ τὴν ἰδίαν ἐξουσίαν καὶ πρὸς  
26 μέρος ἀεὶ τῶν ἐγκαλουμένων πολιτῶν ἐγγύας  
ἀνανκαζομένων ὑπομένειν, ...

... and the fourth time, about those who were coming into Asia were changing the judgments from the laws to their own power and the citizens accused were each time forced to provide sureties, ...

The people who were coming into Asia—a revealing phrase that gives a contemporary account of what surely were the members of the Roman diaspora who came to the province of Asia during the Republic—refused to accept judgments made in the city of Colophon and instead sued the Colophonians in front of the provincial governor.<sup>672</sup> This sequence of events mirrors precisely the dynamic observed in the case of Decianus’ claims to his estates in Apollonis. Importantly and in line with the parallel between this situation and Decianus’

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established by Rome. For other accounts of the meaning of freedom at this point see Jones 1939 and Bernhardt 1971.

<sup>670</sup> *RS* 19 and *SEG* XXXIX 1244, col. I, ll. 23-27, *RDGE* 70, ll. 15-18, and 37-44. Other documents relevant to this argument include grant to Aphrodisias from the first century BC (*Laph2007*, no. 8.27, ll. 46-48), which is similar in terms to the inscription from Chios.

<sup>671</sup> *SEG* XXXIX 1244, col. I, ll. 23-27. In my translation I am supply *περί* as a preposition to govern the genitives from the description of the previous embassies. It seems likely that the description of the topics of the respective embassies were taken from the *senatus consulta* that they obtained, more precisely from their section announcing the theme of the embassy at issue, which in the Greek translation also is introduced by *περί*. See *RDGE*: 14 for a collection of evidence. This passage being a translation from Latin made in Rome, as all the *senatus consulta* that we have in Greek seem to be (cf. *RDGE*: 13), would also help to explain the unusual expression *πρὸς μέρος* in ll. 25-26. Though unparalleled in other translations of *senatus consulta* in Greek, these texts nonetheless show a preference for comparatively unusual construction with *μέρος*, such as *ἐν μέρει* (*RDGE* 31, ll. 9 and 57) or *ἀνα μέρος* (*RDGE* 31, l. 122) to convey ideas for which the Greek *κατὰ μέρος* would have been a more common expression.

<sup>672</sup> The reference is disambiguated in the subsequent account of the results of this embassy at *SEG* XXXIX 1244, col. I, ll. 37-44. See Lehmann 2000: 233, n. 24 on the diplomatic choice of language, which left the identity of the two parties conveniently vague.

strategy, interdicts—the formulae used to protect possession—often entailed what was called *missio in possessionem*; this meant that the Roman magistrate gave preliminary possession to the person who was making a claim as a means of making his eventual judgment more enforceable.<sup>673</sup> While they are not a definite proof, these arguments make it likely that these disputes were about land in Colophon.

At any rate, a second passage in the decree describes the results of Menippos’ embassies to the senate in Rome. The formulation of these results reveals the awareness in Colophon of the problem of making Romans abide by local judgments, while also pointing to the rhetoric in which men like Menippos, who were on an embassy from a free city, would cast their arguments in front of the senate in Rome.<sup>674</sup>

... τοὺς δὲ κατοι-

38 κοῦντας τὴν πόλιν ἠλευθέρωσε κατεγγυήσεων  
καὶ στρατηγικῆς ἐξουσίας, τῆς ἐπαρχείας ἀπὸ τῆς  
40 αὐτονομίας χωρισθείσης. κυρίους δὲ τοὺς νόμους  
τετήρηκεν ἐπὶ παντὸς ἐγκλήματος καὶ πρὸς αὐτοὺς  
42 Ῥωμαίους, τῆς συνκλήτου δεδογματικείας καὶ τὸν  
ἀδικοῦντα καὶ τὸν ἐγκαλοῦντά τινα τῶν ἡμε-  
44 τέρων πολιτῶν Ῥωμαίων κρίνεσθαι παρ’ ἡμῖν ...

... and he freed those living in the city from having to deposit sureties and from the power of the governor, since the province was set apart from autonomy. He maintained the authority of our laws for every accusation, even those made against Romans; for the senate decided that a Roman, be he accused or he himself accusing one of our citizens, should be judged with us  
...<sup>675</sup>

<sup>673</sup> Stein 1989: 190. See Ferrary 1991: 566 for a similar argument. Fournier 2010a: 426-7 discusses these sureties in analogy with what we know about the regulated appeal procedure from *municipia* in the Western Empire and speculates that the governor of Asia could have similar provisions in his edict. In so doing, he fails to recognize the difference in citizenship involved between the litigants in this case. This was not a matter of appealing a dispute between two members of one community out of this community.

<sup>674</sup> *SEG* XXXIX 1244, col. I, ll. 37-44. Robert and Robert 1989, Ferrary 1991, Fournier 2010a, Laffi 2010, and Sanchez 2010 all take the description of the fifth embassy to begin in line 40. Lehman 2000: 234 is alone in reading the decision by the senate as part of the fourth embassy. For my interpretation here this difference is not important.

<sup>675</sup> My translation here is based on the reading of Robert in Robert & Robert 1989: 87. For an alternative reading see Laffi 2010: 30-40, who is skeptical about whether the senate would also order that capital cases against Romans be tried in Colophon. He reads ll. 42-44 (καὶ τὸν ἠδικοῦντα καὶ τὸν ἐγκαλοῦντά τινα τῶν ἡμε- | τέρων πολιτῶν Ῥωμαίων) as only referring to the case in which a Colophonian is being indicted by a Roman citizens, a problematic reading not least because it becomes hard to make sense of the double καὶ in the phrase as well as of the interpretation that the text of the decree provides for it. Fournier 2010a: 427-8 summarizes Laffi’s argument nicely, but remains skeptical. So do Kantor 2010: 194 and Sanchez 2010: 59. My argument here relies on the interpretation of the senate’s decision that the decree provides, rather than its actual content, which is what Laffi is concerned with.

The text of the decree rehearses a decision made by the senate: a Roman, whether as accuser or defender, was to be judged in the city of Colophon. The decree also provides an interpretation of this decision, which explain why obtaining such a decision was an achievement for which the city should honor Menippos: Menippos guarded the laws of the city even with regard to charges against Romans. This interpretation of the *senatus consultum* shows what implications of the senate’s general ruling Colophonians felt to be important;<sup>676</sup> from now on Romans in Colophon could no longer appeal local decisions that were unfavorable to them outside of the city and thus outside of the city’s laws.

The claim that Menippos freed those residing in Colophon from depositing sureties and the explanation for this act—that the province had been set apart from autonomy (literal transl.)—then also points to the rhetorical strategy he might have used before the senate in Rome;<sup>677</sup> Menippos argued that the freedom of Colophon, which Rome had committed itself to, amounted to not having to deposit sureties in front of the governor. In other words, he went to Rome to negotiate over the precise definition of what it meant for Colophon to be a free city.<sup>678</sup> A look at a *senatus consultum* preserved in an inscription from Chios, and the sources for the *Lex Iulia* of 59 BC, the first attestation of the articulation of a general principle in Rome regarding the jurisdiction of governor with regard to free cities, provides additional evidence for this interpretation.

#### 4.2 Defining freedom in the senate in Rome

The inscription from Chios dates from the early first century AD. It records a letter from a provincial governor, in which he writes about how he came to a decision in a dispute involving Chians. The important point for present purposes is that in preparation for the proceedings the Chians had prepared a set of documents for him, which also included a *senatus consultum*. In his letter the governor spells out the privileges the senate had granted to Chios:<sup>679</sup>

16           ... ἐβεβαίωσεν ὅπως νόμοις τε καὶ ἔθεσιν καὶ δικάσις χ[ρῶν]-  
                  ται ἃ ἔσχον ὅτε τῆ Ῥωμαίων φιλιᾷ προσῆλθον, ἵνα τε ὑπὸ μῆθ’  
                  ῶτινι[οῦν]

<sup>676</sup> Nikolaos Papazarkadas has pointed out to me that the absence of an article in the expression πρὸς αὐτοὺς Ῥωμαίους in ll. 41-42 suggests that this passage and its language most likely stems from the original *senatus consultum*. Here the Colophonians chose this language—these three or four words from the *senatus consultum*, that is—to explain what was important about the senate’s decision that Menippos had obtained.

<sup>677</sup> *SEG* XXXIX 1244, col. I, ll. 37-40.

<sup>678</sup> See Ferrary 1988: 214-215 for an analogous argument concerning the intellectual history of the idea of Greek freedom; as provinces developed, he suggests, so also the idea of what it meant to be free changed. See Ferrary 1991: 576 and Raggi 2001: 104 for readings of this decree as Colophon trying to maintain their privileges, but note that the text of the decree does not cast Menippos embassies as maintaining a status. My interpretation also fits well with the observation made by Kantor 2010: 197 that even in the late first century BC the Romans had not developed a standard template for the jurisdictional privileges of Greek cities. The negotiations that I argue were involved in establishing these privileges explain this apparent absence of such a template well.

<sup>679</sup> *RDGE* 70, ll. 15-19.

τύπῳ ᾧσιν ἀρχόντων ἢ ἀνταρχόντων, οἳ τε παρ' αὐτοῖς ὄντες  
 Ῥωμ[αί]-  
 18 οἱ τοῖς Χείων ὑπακούωσιν νόμοις.

... [the senate] made secure that they may use the laws, customs, and rights which they used when they entered the friendship of the Romans, so that they [the Chians] may not be subject to any written order from a consul or a praetor and that the Romans in Chios be subject to the laws of the Chians.

Two things should be pointed out here. Chios did not simply state that it was a free city, but in order to make sure its privileges were upheld gave the governor a copy of a decision the senate had taken specifically with reference to the city of Chios. Also, the fact that the governor spelled out the terms of this decision in his letter detailing his judgment, indicates that they were a salient feature in how cases could be decided. Cicero's rhetoric surrounding the *Lex Iulia* provides a Roman perspective on what was at stake when these embassies from Greek cities came to speak in the senate in Rome.

This law in all likelihood was part of Caesar's attempt to put provincial governance on a new footing in 59 BC.<sup>680</sup> The main source for its content with regard to free cities are Cicero's attacks on Piso, where the orator focused on Piso's behavior as governor of Macedon. This law, so Cicero claimed, properly freed free cities.<sup>681</sup> By contrast, Piso's appointment to Macedon and his behavior there enslaved these cities.<sup>682</sup> According to Cicero, part of these cities' enslavement was that another law was passed after the *Lex Iulia* which allowed Piso to hear and decide cases on debt that involved free cities and their citizens. Caesar's law had not allowed this.<sup>683</sup> If we look beyond Cicero's rhetorical goal in these passages, we can see Caesar's and Piso's laws as competing visions of what the freedom of free cities might amount to concretely when it came to the jurisdiction of the provincial governor. But we should also take Cicero's rhetoric seriously. His description of the repeated and multiple agents by whom Greek cities were freed—by the Roman people, by the senate, by many *senatus consulta*, by the *lex Iulia*—surely reflected the many embassies of these free cities to Rome to argue over the concrete dimensions of their freedom.<sup>684</sup> The decisions which Apollonis and Colophon obtained in the senate in Rome was one of the moments when—to put it in Cicero's terms—yet another free Greek city was freed yet again.

<sup>680</sup> For the *Lex Iulia repetundarum* as an integral part of Caesar's political reforms see most recently Gruen 2009: 33. See Kantor 2010: 197 on Caesar not introducing a set template for formulating the judiciary privileges of cities.

<sup>681</sup> Cic. Pis. 37: nam lege Caesaris iustissima atque optima populi liberi plane et vere liberi.

<sup>682</sup> Cic. Pis. 37: omnis erat tibi Achaia, Thessalia, Athenae, cuncta Graecia addicta.

<sup>683</sup> Cic. *Prov. Cons.* 4.7.

<sup>684</sup> Cic. Dom. 9.23 (populos liberos, multis senatus consultis, etiam recenti lege generi ipsius liberatos) and Cic. *Prov. Cons.* 4.7 (civitas libera, et pro exmimiis sui beneficiis a senatu et a populo romano liberata).

### 4.3 Termessos: The Roman diaspora, land, and the absence of freedom

A passage from the *Lex Antonia de Thermessibus* reveals the predicament that cities unable to negotiate over the conditions of their freedom with the senate could be in. Rome had punished Termessos for its behavior in the First Mithridatic War, but in the late 70s or early 60s BC the city somehow managed to improve its position. The *Lex Antonia de Thermessibus* articulates these new privileges and thus casts light on what happened in the period when the city had fallen out of favor with Rome. The law contains a clause concerning property disputes between Termessians and Romans:<sup>685</sup>

*Sex. Iulio co(n)s(ulibus) inter civeis Romanos et Termenses*  
20 *Maiores Pisidas fuit, eadem leges eidemque ious*  
*eademque consuetudo inter ceives Romanos et*  
22 *Termenses Maiores Pisidas esto; quodque quibusque*  
*in rebus locis agris aedificiis oppideis iouris*  
24 *Termensium Maiorum Pisidarum eieis consulibus,*  
*quei supra scriptei sunt, fuit, quod eius praeter*  
26 *loca agros aedificia ipsei sua voluntate ab se non*  
*abalienarunt, idem in eisdem rebus locis agris*  
28 *aedificiis oppideis Termensium Maiorum Pisidarum*  
*ious esto; et quo minus ea, quae in hoc capite scripta*  
30 *sunt, ita sint fiant, eius hac lege nihilum rogatur.*

Whatever statutes, whatever law, whatever custom existed, in the consulship of L. Marcus and Sex. Julius, between citizens of Rome and citizens of Termessos Maior in Pisidia, the same statutes and the same law and the same custom are to exist between citizens of Rome and citizens of Termessos Maior in Pisidia; and whatever rights belonged to the citizens of Termessos Maior in Pisidia over any things, pieces of land, fields, buildings, towns, in the consulship of those men who are written down above, are to belong to the citizens of Termessos Maior in Pisidia over the same things, pieces of land, fields, buildings, towns, insofar as they have not voluntarily alienated any of these rights, except pieces of land, fields, and buildings; and to the effect that those things which are written down in this chapter should not be implemented or enforced in this way, nothing of it is proposed by this statue.

The inscription recognizes that the relationship between Romans and Termessians were subject to statutes, laws, and customs. It also acknowledges that these were subject to regulation and aims to restore the situation of 91 BC, when L. Marcus and Sex. Julius were consuls in Rome. As such, the text of the inscription directly identifies what the city of Colophon showed itself so concerned with: how disputes between Romans and locals were to be resolved. Also, the clause regulating relationships between Romans and Termessians

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<sup>685</sup> RS 19, ll. 19-30. See Sherwin-White 1976: 11-14 and Ferrary 1985 for discussions of the *Lex Antonia* in its historical context.

contains prescriptions concerning rights to land in Termessos; roughly speaking, they also aim to restore the distribution of titles to land that prevailed in 91 BC and the voluntary alienations of land and buildings after 91 BC were not recognized as valid. The first implication must be that the alienation of land to Romans was an occurrence frequent and important enough to require special attention.<sup>686</sup> While the specific historical experiences that underlie this condition are beyond our reach, the acquisition of land by Romans in Termessos while the city had fallen out of favor with Rome must have been particularly grating to certain Termessians. One might also speculate that during the period in which Termessos had lost some of its privileges as a free city, the governor was able to interpret certain alienations as voluntary, which otherwise might not have been considered to be so. The experience of Termessos then reveals the condition of all those cities and their inhabitants which could not use the recognition of their freedom as a means to contest and negotiate over the conditions of the Italian migration to the provinces. Freedom, it turns out, was not about sovereignty, but about the possibility of participating in the process of working out the socioeconomic implications of empire.

## 5 – Conclusion

The fact that free cities such as Colophon sent embassies to the senate in Rome in response to decisions made by provincial governors and obtained new definitions of their freedom in the form of general rules, completes the inversion of the relationship between private and public law in traditional accounts. For these embassies and the rulings they obtained reveal that the definition of the status of a free city, which traditional accounts of provincial administration cast as one of the constitutive features of imperial public law, in the Late Republic was the result of cities pushing back against the potential inherent in the Roman law categories mobilized in the court of the governor. Moreover, embassies such as that of Menippos invert the relationship between what traditional accounts of provincial administration understood on the model of public law and private law, but they also collapse their analytical separation; for the same struggles about the socioeconomic implications of Roman rule—the conditions of the Roman migration to the provinces—animated both. Moreover, these embassies introduce the importance of interaction between ruler and subjects in the maintenance and constitution of empire, which has been recognized in the context of Hellenistic kingdoms, into our thinking about the administration of law in the provinces of the Roman Empire during the Late Republic.<sup>687</sup> At the same time, however, by also examining what prompted these embassies this chapter has also cast doubt on the adequacy of the distinction between ruler and subject, arguing that very concrete struggles over the allocation of resources animated these interactions. Empire, it turns out, was not merely the exercise of imperial power and subjects' attempts to evade or shape it.

Within the comparative argument that this dissertation is advancing, this chapter completes the fifth case study, the Roman Empire, that I have used to demonstrate the hypothesis of what I Chapter One I introduced as the logic of civic empire: the idea that the

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<sup>686</sup> See Sherwin-White 1976: 13 for the argument that these sales of land were indeed to *negotiatores*.

<sup>687</sup> See Ma 1999 on the importance of the interaction between king and city in Seleucid Asia Minor.

property regimes of the many cities, which in Antiquity populated the shores and hinterlands of the Mediterranean, placed distinct limits on the accumulation of land, limits which the imperial institutions that these cities built repeatedly elided to the benefit of their own citizens. The evidence for the Roman Empire, being more plentiful and multi-faceted than for any of the other case studies, has also allowed me to demonstrate in greater detail the arenas in which the distributional politics of the empire was being negotiated. The silent background to my discussion here, of course, has been the repeated debates in Rome about whether to found colonies outside of Italy or not. Up until Caesar and Augustus the answer was mainly negative with the exception of the Gracchi, and their proposals and plans were defeated or reversed.<sup>688</sup>

Just as political discussions in the Roman forum about whether to found colonies outside of Italy had crucial implications for the terms on which a Roman landholding diaspora could exist, so also jurists and the opinions they formulated were concerned with exactly that problem. The negative character of Scaevola's opinion with which I began this chapter—the idea, that is, that declaring land in the census did not give rise to title—suggests that there were indeed people arguing and claiming just that. If this latter opinion had won the day, Romans would no longer have been required to buy their properties in the provinces; very different people would have been able to reap the spoils of empire by acquiring land in the provinces. From the point of view of the elites of Greek cities, however, the conditions of the Roman migration to the provinces that they participated in shaping were not so much a distributional question; instead, the institutions of provincial administration threatened the territoriality of their cities and thus the place of these elites within them. Note that the grant that Menippos obtained did not try to uphold a version of the principles with which Greeks and Romans were in the habit of approaching disputes between members of different polities; instead, the Colophonians successfully insisted on Colophonian jurisdiction over anyone living in the city, including Romans. Colophonian elites thus mobilized the power of the senate in Rome to rearticulate the authority of the city and its courts over the rapidly changing population living in the city. In so doing they constituted Colophon as a new and different community, but one whose reference was still above all territorial.

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<sup>688</sup> Vell. Pat. 2.7 provides a hint of what the arguments of the opposition might have looked like.

## CONCLUSION

When Mithridates ordered that the Greek cities in Asia to kill the members of the Roman diaspora who were living in their midst, he also had to explain and justify just what was so objectionable about Roman power. In the arguments he made explaining his own endeavors and why the elites of Greek cities might want to join him Roman *pleonexia* and *philokerdeia*—Roman greed and acquisitiveness—featured prominently and are preserved in various aspects of the evidentiary record. For example, in Appian’s account of the events of the war between Rome and Mithridates one of Mithridates’ generals provides a highly original interpretation of the causes of the Social War that was raging in Rome at the same time: even Italy could not stomach Roman greed anymore.<sup>689</sup> In his view, greed simply was a permanent attribute of all Romans and was a widespread and legitimate reason for rejecting and resisting the Romans. Appian also reported that Mithridates himself, at a conference with Sulla, charged the Romans with avarice, suggesting that this was their main vice.<sup>690</sup> Mithridate utters this verdict on Roman greed after giving an account of how the Romans had wronged him personally: by depriving him of Phrygia, by allowing Nicomedes to wrong him, and by restoring Ariobarzanes to the throne in Cappadocia. These wrongs, Mithridates suggested, had all resulted from Roman greed. By interpreting Roman actions against himself in this way, Mithridates was able to connect his personal reasons for waging a war against Rome to the experience of the elites of Greek cities, whose cooperation he needed in order to win this war; for Roman *pleonexia* also provided a ready analysis and criticism of the concrete ways in which these elites experienced Roman power. Contemporaries could understand the behavior of roman tax-farmers in the provinces as an instance of Roman greed, as well as the practices of individual Roman creditors.<sup>691</sup> *Pleonexia* and its associated concepts in the Roman Empire were the equivalent to *douleia* in the Athenian case. In their respective historical circumstances both these abstract notions were able and used to encompass, describe, and galvanize a wide variety of visceral experiences by different actors into resistance to the imperial ambitions of an ancient city.<sup>692</sup>

The aim of this dissertation has been to uncover a previously neglected set of these experiences of Rome’s imperial ambitions: the development of an imperial diaspora, their eagerness to acquire land in the territories of Greek cities, and their appeal to Roman governors to obtain their estates on different and more favorable terms than the legal and moral regimes that Greek cities provided. And again, this was an experience that could be readily understood and analyzed through the framework of Roman *pleonexia*. In one instance that the evidentiary record has preserved for us, Mithridates even seems to have addressed the important role that law played in effecting these infringements and in shaping the

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<sup>689</sup> App. *Mithr.* 16.

<sup>690</sup> App. *Mithr.* 56.

<sup>691</sup> Diod. Sic. 37.5, Just. 38.7.8, and *Orac. Sibyll.* III 350-355.

<sup>692</sup> Zelnick-Abramowitz 2004 excavates the different experiences that *douleia* evoked in the Athenian case.

conditions for the development of the Roman diaspora more generally. In 88 BC he poured molten gold down the throat of Manius Aquilius, a consular legate sent to Asia to pursue the war against the Pontic king. Appian provides a ready interpretation of this action: Mithridates gave to Manius what Roman *dorodokia*, Roman readiness to accept bribes, always desired.<sup>693</sup> By invoking Roman *dorodokia*, a particular way in which Roman greed manifested, Mithridates' performance not only criticized Romans for wanting an excessive amount of things, but also managed to speak to and attack what, according to my argument here, often enabled and legitimated the realization of their desires: the administration of law by provincial governors.

My choice to focus on this aspect of the experience of Roman power to the exclusion of others—on the reallocation of land that accompanied the development of the Roman Empire in the Greek East, that is—has been deliberate. In part this choice was motivated in part by the fact that, as I hope to shown in Chapter Two, this was a substantial and so far under appreciated aspect of the impact that the Roman Empire made, an impact that places it among the civic empires that I discussed in Chapter One. More importantly, however, I made this choice also based on heuristic considerations. First, then, this dissertation did not consider the fiscal nature of the Roman Empire and Roman tax farmers, the *publicani*, who admittedly were prominent and important members of the Roman diaspora, because the undeniable fact that the Roman Empire was in some sense a tributary empire leaves so many aspects of its institutional architecture unaccounted for. Instead, my goal has been to complicate the conception of empire as a particular and large-scale way of rent-seeking on the part of a particular group of people and to reveal the many different groups and constituencies whose competing interests found their expression and were negotiated in the building and development of imperial institutions, a development that these negotiations actually propelled forth. Second, this dissertation also did not focus on debt relations between Romans and Greek cities as well as their citizens that figure prominently in the evidentiary record. I have considered private debt in passing, focusing on particular on how Roman law might understand and treat collateral in land after a Greek debtor defaulted and arguing that this might have been a prominent and important occasion at which these Roman law understandings helped members of the imperial diaspora infringe on the property regimes of Greek cities. Thorough research on these private debt relations and their competing legal construction remains to be done; my arguments here about the relationship between Greek and Roman arguments in action might provide a fruitful starting point for rethinking how and why Roman jurists and governors appropriated and reinterpreted the Greek legal concept of *hypothekē* in their own arguments and thinking.

Not focusing on the public debt that these cities incurred and on the infringements on their property regimes instead has allowed me to question and look beyond the stories of resistance—stories of a quest for freedom and autonomy, that is—that Greek cities like to tell of themselves and investigate how the interests and fates of individual citizens, the politics within these cities, and the external endeavors where these cities themselves appear as actors are related. The fact of public debt and the dependence and limitations on decision-making that it undoubtedly created, and still creates today, are readily intelligible as just such a quest for autonomy. By contrast, my attention to property and Roman adjudication over

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<sup>693</sup> App. *Mithr.* 21.

the rights to landed estates in the territories of Greek cities has made it necessary to think about the relationship between cases involving individual estates and citizens and the actions and endeavors of the cities that they were members of at large. In Chapter Three I have suggested that there existed a Mediterranean-wide *koine* of institutions designed to cope with the situation of how disputes between two members of different communities should be addressed. The very existence and variety of these institutions strongly speaks against the attempt by some scholars to read the ways in which cities such as Colophon or Chios defined their freedom—as their right to adjudicate all disputes that people residing in their territory were involved in, including Romans, that is—as part of these cities’ quest for the pre-Roman conditions of their autonomy; for the terms of how these disputes should be handled were always up for contestation. And this, of course, also was the case in disputes between Romans and the citizens of Greek cities. My arguments in this dissertation suggest that the very subject of this contestation between Greek cities and the Roman authorities was the extent to which Romans should and could live without reference to the legal and moral regimes in the midst of which their properties were located. Disputes over land and the ways in which Roman authorities could help members of the imperial diaspora infringe on the property regimes of Greek cities are a specific variation of this question; they are an important variation, however, since they threatened the way in which Greek cities were constituted as communities and put into question these cities’ social order and the respective positions within it. This their effect, I suggest, explains why the disputes of individual citizens could provoke a response by entire cities and why this response took the shape of affirming and strengthening the cities’ territoriality: the administration of law by provincial governors did not just impinge on the autonomy or freedom of Greek cities, but the rules according to which they operated as communities, thus putting into question much more than the possession and ownership of a particular piece of land.

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