Religio illicita? Roman legal interactions with early Christianity in context

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CHAPTER 1

Roman Administration in Provinces and Empire

Negotiating Diversity

1.1 Introduction

Before undertaking an in-depth analysis of the ways in which Roman officials engaged with early Christians, as well as other religious groups within their territories, it is important to first discuss the context in which such interactions took place in more general terms. After all, any individual encounter that will be discussed in later chapters inevitably took place within the wider legal and administrative framework of the Roman world, and to ignore this fact is to risk creating an artificial disconnect between the treatment of religious groups and the rest of society.[1] It is therefore essential to first discuss the various magistrates, institutions and procedures that collectively shaped Roman administration, and to make explicit the general principles that will form the basis for later analyses. Such a discussion is particularly important in light of the significant developments the field has undergone: especially in recent years, scholarship has given more and more attention to the many intricacies and nuances of the workings of Roman administration, and has increasingly moved away from the traditional view that the Roman government, and its legal system in particular, was both uniform and highly standardised – or even comprehensive. Instead, scholars have come to focus on the significant diversity of Roman administrative practices, as well as the room they reserved for interaction between various actors involved in the administrative process.[2] While this may make it difficult to exhaustively treat the subject within the scope of a single chapter, it nevertheless remains possible to present a general overview of the most important principles and tendencies that played a part in governing the empire, including aspects of both public administration and the legal system in a narrower sense.

As a starting point, it is important to first consider the various types of legal measures and regulations that existed within the Roman administrative framework, and the authoritative sources from which they could be derived (section

1 For the idea that law is a product of its time, and hence reflects the moral considerations of the society that produced it, as well as carrying important cultural connotations, see Bryen (2014[b]), 349. See also Cotterrell (1984) for an introduction on sociological approaches to law as a concept.

2 See, among others, Ando (2000); Ando (2010); Ando (forthcoming); Bang (2013), 438-444; Dolganov (2018); Humfress (2013); Kokkinia (2004); Richardson (2016) and Roselaar (2016). For a more historiographical approach, see Bryen (2014[b]), who also provides an extensive bibliography on the subject. For a note on the limitations of the available evidence, see Burton (2002). It should be noted that Burton chooses not to distinguish between various types of

1.2). As we shall see, the Roman system allowed for a number of different procedures through which the authorities could articulate their policies. An exploration of the various possibilities will not only shed light on much of the relevant legal terminology, but also on the Roman institutions that could be involved. On this basis, we can then continue by discussing the procedures through which these measures could be enforced, and how legal conflicts could be resolved once they emerged (section 1.3). Since a notable number of the interactions between Roman officials and different religious groups that will be discussed in later chapters took place in the context of trials, these proceedings, and the involvement of the Roman authorities therein, warrant special consideration. However, alternative ways of upholding the legal order will also be discussed. The final part of this chapter (section 1.4) will then take a more detailed look at the workings of the Roman government in the provinces. While many of the ways in which the Roman state exercised its power over the various parts of its vast empire originally emerged in the city of Rome itself, and thus reflect the needs and conditions of the original *urbs*,[3] it can hardly be emphasised enough that they did not function in a socio-political vacuum. The expansion of Roman rule over large parts of the Mediterranean world ensured that Roman magistrates and institutions had to interact with pre-existing power structures of the various provinces, and made it necessary to embed these within the wider administrative framework of the empire. While a number of the confrontations between Roman officials and members of various religious groups that will be discussed in later chapters took place in Rome itself, many others occurred in the provinces, and an understanding of the way in which these regions were governed is therefore invaluable. Our consideration of the complex ways in which the layers of government related to each other in the provinces will include both the role of local, pre-existing norms and institutions, and the interplay between the centralised Roman authorities and

imperial pronouncements, instead choosing to regard all of these as "imperial constitutions" and "authoritative rule-making and decision-making by the imperial state," which complicates his attempts to nuance the idea that the Roman authorities were primarily reactive in their approach to provincial administration. See ibidem, 252.

3 An example of the continued relevance of the administrative and legal structures of Rome itself, even after the expansion of the empire, can be found in the works of the Roman jurist Gaius, whose *Institutiones* are one of the most important available contemporary sources for Roman legal procedures. Despite writing around the middle of the second century CE, Gaius repeatedly referenced Roman institutions that were intrinsically tied to the capital, as will be discussed in more detail below, while omitting a similarly elaborate discussion of legal practices in the provinces. The continued interest in the capital's traditional institutions during the Principate is, however, hardly surprising, not only due to Rome's symbolic status, but also for practical reasons. After all, even for many magistrates who were posted elsewhere in the Roman territories, the legal practices of the city can be expected to have been at least passingly familiar due to their previous careers, and could thus serve as a useful basis for their work in the provinces.

their representatives in the provinces. While this chapter in general will be primarily concerned with the way in which the Roman administration functioned during the imperial period, institutions and practices from the republican period will be referenced on a number of occasions in order to provide more clarity, or because their existence continued to be relevant.

1.2 Sources of Law

Even in the Roman world itself, attempts were made to investigate, categorise, and define the various ways in which legal regulations could be created. Especially during the late second and early third century CE, a significant number of Roman jurists attempted to coherently analyse aspects of the legal system of which they were a part, and their writings continue to be an absolutely invaluable source to the historian, not in the least due to their practical purpose. The works of these jurists included not only commentaries and collections of legal opinions, which often provide access to earlier legal measures by quoting and analysing relevant passages,[4] but also handbooks meant for those who practiced and studied law. While many of these sources are primarily concerned with private law,[5] they thus nevertheless shed a light both on the prevailing procedures, and on the parties that were commonly involved. Unfortunately, however, only fragments remain of the works of Roman jurists like Ulpian and Paul. The passages known to us today are overwhelmingly those that were taken from the original works and were subsequently incorporated in the various parts of Justinian I's famous *Corpus Iuris Civilis* (ca. 529-534 CE), and as such offer only a very selective view of the overall contents of the original works, and of the general corpus of law that was created over the course of the imperial period.[6] The writings of the Roman jurists

4 For the various types of works composed by these jurists, see Ibbetson (2015), 37 and Jolowicz and Nicholas (1972), 376.

5 Private law appears to have been the area of law that was most systematically and thoroughly developed in the Roman world, while sources dealing with the areas of public law, administrative law, and criminal law are much more limited in both scope and number. See Jolowicz and Nicholas (1972), 404 and de Ste Croix (1974[a]), 220 for the argument that the level of development of criminal law in the Roman world never match that of private law. The idea that the Roman legal system was primarily used to settle conflicts between private individuals is also supported by Kelly (2011), 163, who argues that economic disputes made up more than half of the known cases from Roman Egypt in the first three centuries CE. Mommsen (1871-1888) and (1899) continue to be seen as foundational studies on Roman administrative and criminal law respectively. For a more recent analysis of the latter, see Robinson (1995). Jolowicz and Nicholas (1972) is an updated and revised edition of Jolowicz (1954). Despite the fact that the latter's systematic historical introduction to Roman law is still highly valuable, the newer edition will be preferred.

6 The percentage of the available legal corpus that was included in the *Digesta* likely amounted to approximately 5%. See Honoré (2010), 9.

are largely contained in the *Digesta*, while the *Codex* collects pronouncements of emperors from Hadrian onwards, and the *Novellae* cover Justinian's own new laws.[7] For our current purpose, however, the final part of the *Corpus*, known as the *Institutiones*, is of particular interest. As the title of this work suggests, it contains an overview of the most important Roman legal institutions, and was included in the *Corpus* to serve as a basic handbook for students of the law in the Byzantine period. Much of its contents, however, derive from an earlier work of the same name that was written by the jurist Gaius around 161 CE. Gaius' *Institutiones* appear to have been considered notably authoritative, as is evidenced not only by their prominent presence in the *Corpus*,[8] but also by the fact that they are the only work by a Roman jurist to survive separately from the *Digesta* in an almost complete form.[9] As such, Gaius' *Institutiones* provide a useful source for the basic workings of the Roman legal system in the imperial period, and a key passage from the first book in particular is a convenient starting point for any discussion on the sources from which legal measures could be derived:

> *Constant autem iura populi Romani ex legibus, plebiscitis, senatusconsultis, consitutionibus principium, edictis eorum qui ius edicendi habent, responsis prudentium.*[10]
>
> The laws of the Roman people consist of *leges*, *plebiscita*, decrees of the senate, orders of the emperors, the edicts of those who have the right to issue them, and the responses of experts.

In this passage, Gaius gives a clear and concise overview of the various sources of law he considers to be of importance to his readers, and on which he will expand in the sections that follow. It should be noted that his catalogue deals exclusively

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7 The *Corpus Iuris Civilis* is so fundamental to the study of Roman law that it would be almost impossible to enumerate every available edition of its text. For an overview of the most important scholarship on each individual part of the *Corpus*, see Kaiser (2015). A recent edition is that of Mommsen, Krueger, Schoell and Kroll (2014). The German edition of Behrends, Knütel, Kupisch and Seiler (1995-2012) is still in progress, and at the time of writing contains the *Institutiones* and part of the *Digesta*. For a Dutch edition, see Spruit *et al.* (1993-2011).

8 Ibbetson (2015), 29; Schiemann (2016).

9 Ibbetson (2015), 37; Kaiser (2015), 133. The independent textual tradition of Gaius' *Institutiones* is based on a palimpsest codex from Verona, which contains a copy of the work that may be dated to the fifth or sixth century CE. For a critical edition of this text, see de Zulueta (1946-1953). For the transmission of the text, see Nelson (1981), especially ibidem 44-46, where the date of the edition is discussed.

10 Gaius, *Institutiones* 1.2. The distinction between *lex* and *plebiscitum* will be discussed in more detail below. Since both terms carry connotations that are difficult to convey in English, they have been left untranslated.

with written sources of law: unlike other jurists, Gaius makes no mention of unwritten laws or customs in this context, nor does the text of his treatise as we know it contain any attempt to explicitly distinguish between the two.[11] To some extent, this omission is understandable. It has been remarked that no clear criteria or procedures for accepting uncodified customs as law existed, and that its concrete status therefore remains very much in doubt.[12] Nevertheless, unwritten laws and customs can hardly be said to have been altogether unimportant: the concept of ancestral customs had great symbolic resonance throughout the Mediterranean world, and furthermore came with important moral connotations.[13] Tradition and ancestral practices, in so far as they were sanctioned by temporal circumstances and local society, were generally respected by Roman officials, and could therefore nevertheless be fruitfully used in legal argumentation.[14] Although it remains unclear to what extent charges and convictions could be based on custom alone, it may thus be argued that tradition and ancestral practices played a substantial part in Roman provincial administration, as will be discussed in more detail below.

Despite his omission of unwritten sources of law, Gaius' subsequent analysis of their written counterparts is noticeably thorough. He makes no attempt to rank the written sources of law in order of importance, thus highlighting their diversity, and the wide range of legal options that was available to Roman decision-makers. Gaius starts out by discussing *leges* and *plebiscita*. These terms refer to two different types of legal measures that are united by the fact that their validity depended on the authority of Roman assemblies – and thus formally on the will of the people, although the proposals up for vote were often prepared

11 This distinction is present in Justinian's *Institutiones* 1.2.3., but likely predates its writing by a significant period of time: similar remarks are attributed to Ulpian in *Digesta* 1.1.6.1 and to Julian, who was a contemporary of Gaius, in ibidem 1.3.32. Gaius himself also refers to custom as a source of law in *Institutiones* 3.82. For the idea that disagreements between jurists are not uncommon, see Ibbetson (2015), 37. Unwritten law is referred to by a variety of terms, including *ius* and *mos*. For the connotations of the former term, see Johnston (1999), 2 and Jolowicz and Nicholas (1972), 353.

12 Ibidem 363-365. See Ibbetson (2015) 39-40 for the similarities between the jurist Julian's reference to custom as a source of law and Gaius' insistence that consensus among jurists, too, had force of law. A similar argument is made in de Zulueta (1953), 13-14.

13 See Schröder (1996), 158-206 for an exploration of the use of the concept of ancestral law in the works of Greek and Roman authors, as well as inscriptions. Ando (2011), 2 argues that later laws were generally presented as honouring tradition, even when their contents differed, or even contradicted each other. This suggests that the idea of traditional practices was highly significant, even if these customs were not always honoured in practice. For the importance of ancestral customs in the religious sphere, see Rüpke (2014), 205.

14 For the importance of the idea of custom for jurists, see Ibbetson (2015), 29, with reference to Cicero, *De Oratore* 1.212.

and formulated by one or multiple magistrates.[15] While both types of laws were historically of great importance, and were likely included in Gaius' summary for that reason, the procedures that created them had become mostly obsolete in the jurist's own time. After the transition from Republic to Principate the practice of passing laws through Rome's popular assemblies nominally remained in place for at least a number of decades, but by the end of the first century CE it had largely disappeared.[16]

By contrast, the importance of the *senatus consultum* appears to have grown over the course of the imperial period, although its status was apparently somewhat unclear even at the time of Gaius' writing.[17] While the senate was of great importance when it came to international relations, and its approval was traditionally indispensable for the formal ratification of treaties and alliances,[18] it originally did not have the power to create laws on its own. The senators were limited to ratifying laws made by the *comitia*, and to advising magistrates who were planning to propose the law, as was decreed by custom.[19] The very term *senatus consultum* originally referred to this advisory function, but over time came to denote decisions made by the senate that had force of law. However, it is unlikely that the senate often took legislative initiative, and in practice the body seems to have functioned primarily as an extension of imperial power.[20] Nominally, a law was proposed by the senate, which could lend early emperors in particular a degree of republican legitimacy, particularly because many who held a seat in the senate had played an active role in the governing of the provinces, or would do so in the future. In practice, however, it would have been very clear that no motion could be passed without the emperor's approval.

This is not to say that the emperor was limited to acting via traditional republican institutions. While these initially remained in place during the early Principate,[21] the emperor's power to create laws gradually grew, and became more

15 Ibbetson (2015), 30; Johnston (1999), 3. *Leges* could be made by the *comitia tributa* and the *comitia centuriata*, which admitted all Roman citizens, while *plebiscita* were made by the *concilium plebis*, which admitted only plebeians. Gaius discusses these matters Gaius, *Institutiones* 1.3. For more information on the differences between these institutions, see Gizewski (2016). The *comitia curiata* ceased to have legislative powers in Republican times. See Jolowicz and Nicholas (1972), 86n.4.

16 Ibbetson (2015), 30 and Jolowicz and Nicholas (1972), 355-356.

17 *Senatusconsultum est quod senatus iubet atque constituit. Idque legis vicem optinet, quamvis fuerit quaesitum*: a *senatusconsultum* is what the senate orders and determines. It has the force of law, although this has been questioned; Gaius, *Institutiones* 1.4.

18 Ibidem 40-42.

19 For the legislative position of the senate in Republican times, see Ibbetson (2015), 30-31 and Jolowicz and Nicholas (1972), 33-34.

20 Jolowicz and Nicholas (1972), 363-365.

21 This symbolic republicanism appears to be to an extent reflected even in Gaius' *Institutiones*. See Ibbetson (2015), 31-32.

distinct.[22] It is little wonder, then, that the will of the emperor was widely recognised as a primary source of law by Roman jurists. The adage *quod principi placuit legis habet vigorem*, 'what pleases the emperor has the force of law', is repeated both in Ulpian's and Justinian's *Institutiones*,[23] and Gaius likewise explicitly states that the emperor's power to create law has never been doubted.[24] However, it remains important to distinguish between the various ways in which the emperor could issue decisions that had force of law. Of the three categories distinguished by Gaius, the *edicta* are most straightforward: this type of measure was intentionally created in order to set a new regulation, or amend one that already existed.[25] This category may also be said to include the *mandata*, a set of administrative instructions given to Roman officials by the emperor at the beginning of their term in office, the relevance of which for provincial administration will be discussed in more detail below.[26] Until the late third century CE, very few *edicta* appear to have been generally applied, and most were likely created for specific groups or areas.[27]

The primary distinguishing feature of the *edicta* is therefore that they were essentially the result of the emperor's own initiative, which stands in contrast to the other, more *ad hoc* types of imperial measures mentioned by Gaius, like the *decreta*. These measures were the result of the emperor responding to specific legal cases in the role of the judge, after which his verdicts could at times come to be seen as more general pronouncements, and gain a relevance as potential precedents beyond the lawsuit from which they originated.[28] The last category, the *epistulae*, consisted of all imperial communications. These included letters responding to questions asked by Roman officials, especially those in the provinces, but also replies to the petitions of various communities or private individuals. The legal measures that were created in response to such questions are also known as *rescripta*,[29] and although the actual text of such rulings was often written by specially designated and trained imperial secretaries, it is difficult to overstate their importance: it could generally be assumed that these measures were in accordance with the emperor's will, and as such *rescripta* allowed the imperial administration to directly respond to very particular situations, while also contributing to the

22 Jolowicz and Nicholas (1972), 366.
23 See *Digesta* 1.4.1 and Justinian, *Institutiones* 1.2.6 respectively.
24 Gaius, *Institutiones* 1.5.
25 Ibbetson (2015), 32.
26 The *mandata* are treated as a separate category by Jolowicz and Nicholas (1972), 370-371, while Ibbetson (2015), 32 includes them among the *edicta*.
27 Ibidem. For a more elaborate discussion of recent debate on this subject, see below.
28 Ibidem. It should be noted that such cases always took the form of a *cognitio extra ordinem*. See Jolowicz and Nicholas (1972), 368.
29 For the various forms rescripts could take, see ibidem 368-369.

ever growing corpus of imperial rulings on a variety of subjects which appears to have been collected for future reference.[30]

The emperor, however, was not the only magistrate who could issue legal measures. Gaius names "the edicts of those who have the right to issue them" as an important source of law, and includes aediles, provincial magistrates, and especially the peregrine and urban praetor, in this category.[31] While the position of the provincial governor is more centrally important to the present study, and will therefore be discussed more thoroughly later in this chapter, the prominent inclusion of the *praetor urbanus* in particular is, in itself, hardly surprising.[32] After all, he was the magistrate who was traditionally responsible for the bulk of judicial matters within the city of Rome, and the edict he issued at the beginning of his term in office originally formed the formal basis for that year's legal proceedings in the capital.[33] Since the praetorian edict dealt exclusively with private law, however, we need not delve into the details of its functioning here. For now, it should be sufficient to remark that the importance of the praetorian edict for civil procedures in the capital gradually diminished, giving way to the so-called *cognitio extra ordinem* that also became prevalent in criminal cases, as will be discussed in more detail below.

The last source of law mentioned by Gaius underlines the important position jurists like himself held in Roman administration. Since most Roman magistrates

30 The significant influence imperial rescripts could have is visible in Justinian's *Codex*, in which a notable number has been included.

31 Gaius, *Institutiones* 1.6. The rulings of these magistrates are also collectively referred to as the *ius honorarium*.

32 The *praetor urbanus* was only responsible for civil cases between Roman citizens. Disputes between citizens and non-citizens were treated by the *praetor peregrinus*, a position that existed from 242 BCE onwards. Here, the *praetor peregrinus* applied the so-called *ius gentium*, a form of natural law that was considered to apply to all peoples. See Jolowicz en Nicholas (1972), 102-107. The term *praetor* is also used to refer to the magistrates who concerned themselves with criminal cases in the so-called *quaestiones perpetuae*, about which more will be said below.

33 Johnston (1999), 3. Rather than being a law in itself, the praetorian edict contained a list of legal remedies that could be used by an injured party to seek reparations arising from the other parties contractual obligations. In essence, then, this edict determined only what types of cases could be brought to trial in the next year, and which could not. Originally, the urban praetor had the right to alter the edict by adding new remedies, amending existing ones, and removing those that were no longer of use – see Galsterer (1996), 398; Johnston (1999), 4. As remarked by Jolowicz and Nicholas (1972), 99-100, this flexibility has at times been seen as the basis for the edict's important status, since it allowed the praetor to respond to relevant developments when they occurred. Gradually, however, the edict became fixed, and like in the case of the senate we may ask ourselves to what extent the praetor and other magistrates retained their independence after the end of the republic. See Ibbetson (2015), 28; Johnston (1999), 4 and Jolowicz and Nicholas (1972), 356-357. In the early second century CE, Hadrian officially standardised the praetorian edict, thus creating what is commonly known as the *edictum perpetuum*.

were not themselves trained in the law,[34] the advice of legal experts who had access to relevant knowledge and examples was of great importance even in republican times, and it is therefore little wonder that the so-called *responsa prudentium* are included among Gaius' sources of law.[35] From Augustus onwards, jurists who were considered to be particularly skilled and learned could be granted the right to speak with the emperor's authority,[36] and Gaius even suggests that consensus among these authorised jurists created a *de facto* law, which subsequently had to be followed by judges in relevant cases. Disagreement among the jurists, however, would have meant that the judge was free to follow the opinion he believed to be most appropriate.[37] This statement has given rise to substantial debate about its interpretation, and much regarding its implications and the formal workings of the *ius respondendi* in general remains unclear.[38] Nevertheless, it is generally acknowledged that jurists contributed significantly to the Roman legal process by collecting earlier pronouncements on specific issues, and using these to establish what they believed to be legally appropriate.[39] Thus, while the opinions of the jurists were likely not universally binding, they could certainly be considered important guidelines, and this authority would only have been increased by an imperial endorsement.

1.3 Upholding Public Order: Trials and Police Actions

It has been widely observed that the upholding of public order was of central importance to the Roman authorities.[40] In order to achieve this goal, a number of viable options were available, in which a variety of different actors could be involved. One key way to target those whose actions were perceived to transgress societal norms was the trial, for which a number of different procedures existed in the Roman world. Of these, the so-called *formula* trial has traditionally been considered most significant due to its prevalence and distinct structure: this type

34 Johnston (1999), 5.

35 Gaius, *Institutiones* 1.7. For the importance of jurists, see Tuori (2004), 296.

36 Ibbetson (2015), 35-39; Jolowicz and Nicholas (1972), 359-363. It should be noted that Hadrian has been said to have made certain innovations concerning the practice, but that the nature of these remains uncertain. See Tuori (2004), 333.

37 *Responsa prudentium sunt sententiae et opiniones eorum quibus permissum est iura condere. Quorum omnium si in unum sententiae concurrunt, id quod ita sentiunt legis vicem optinet; si vero dissentiunt, iudici licet quam velit sententiam sequi*: the replies of the learned are the pronouncements and opinions of those who are permitted to make law. If the pronouncements of all these concur, whatever they observe obtains force of law; if, however, they disagree, then the judge is free to follow whichever pronouncement he wants; Gaius, *Institutiones* 1.7.

38 For an elaborate overview of the debate on both issues, see Tuori (2004).

39 Ibbetson (2015), 35; Jolowicz and Nicholas (1972), 362-363.

40 See, e.g., Garnsey and Saller (1987), 20.

of procedure consisted of two stages,[41] and was reserved for civil cases, which likely made up the more prominent part of legal proceedings that took place in the city.[42] This type of trial was firmly linked to the aforementioned edict of the urban praetor, whereby the types of charges that could be brought forward were restricted.[43]

In the case of criminal trials, which are of greater importance to the present study, the official procedure looked somewhat different even in the city of Rome itself. However, it should be noted that in both types of proceedings the responsibility for bringing charges to court rested with private individuals rather than the Roman authorities. While government involvement would eventually increase, private initiative would remain of essential importance in both civil and criminal proceedings for the rest of the Principate.[44] Despite this similarity, criminal

41 During the first stage of the proceedings, the respective parties had to appear before the praetor, and agree on the exact legal basis for the trial with the help of their lawyers. The judge who would preside over the eventual trial also had to be appointed by the praetor with the consent of both parties – see Jolowicz and Nicholas (1972), 200-201 and Schulz (1951), 19. If they were unable to do so, a judge could be chosen from lists of eligible candidates compiled for this purpose, which likely consisted of senators and *equites*, see Jolowicz and Nicholas (1972), 176-178 and Johnston (1999), 127. There may have been some additional criteria, though none of these related to legal expertise. The second stage of the proceedings then fell under the jurisdiction of this judge (*iudex*), who was in turn responsible for determining liability. See Schulz (1951), 13. The right to pronounce such verdicts is referred to as *iudicatio*. It is important to note that these judges were private persons (note the term *iudex privatus*), and often had little to no legal training. Johnston (1999), 126. For the difficulty this lack of legal background could cause, see the personal experiences related in Aulus Gellius, *Noctes Atticae* 14.2. Since the praetor and the respective parties generally lacked expertise as well, the presence of lawyers, who were often the only ones with any real legal expertise, was absolutely indispensable. See Schulz (1951), 22-23.

42 The earlier type of proceeding known as *legis actio* had largely disappeared by the second century BCE, and therefore need not be discussed here. For more details, see Metzger (2015), 278 and 281-283. For the argument that a lot of cases that would today fall under criminal law were seen as civil matters in the Roman world, see Lintott (2015), 301-302. For a more elaborate discussion on what exactly criminal law entailed, see Riggsby (2016).

43 As previously noted, this edict was not a set of regulations, but rather an overview of the different legal remedies available to those who felt that they had been wronged. The praetor, then, was not himself responsible for passing legal judgement on the case at hand, and only had the authority to determine whether a specific claim could be legally pursued, thus Schulz (1951), 13 and 19. The praetor's authority in such matters is referred to as *iurisdictio*. His official permission for the case to proceed was given in the formal of a *formula*, after which this type of trial is named. This type of document instructed the chosen judge to pronounce a specific verdict, usually by stating "if x is guilty of y, condemn him to z", although clauses could be added or removed if this was agreed upon by the respective parties. See Johnston (1999), 114. Due to the highly specific phrasing of the praetorian edict, the formal accusation had to be carefully chosen. The respective parties might thus favour different accusations in order to increase their personal chances of success, which explains the involvement of the praetor as a third party.

44 For the role of private accusers in civil cases, see Johnston (1999), 112; Metzger (2015), 285 and Rüfner (2016), 263-264. The praetor could in theory grant the accuser possession of the accused's property in order to satisfy the former's demands, should the latter remain absent.

proceedings had originally been rather more flexible than their civil counterparts. The earliest known criminal trials were conducted by a magistrate – possibly with the involvement of an assembly of the Roman people.[45] By the middle of the second century BCE, however, permanent tribunals for a number of specific criminal accusations (the so-called *quaestiones perpetuae*) began to emerge, in which relevant cases were tried by a jury in a *iudicium publicum*. Like the *formula*-trial, these proceedings consisted of two steps: the accuser first approached the praetor assigned to the relevant tribunal, who ascertained that there was indeed a valid charge under the strict stipulations of the *quaestio*, before allowing the case to be brought before a jury, which then voted to convict or absolve based on the cases made by the respective parties.[46]

While the two-step procedure described above continued to be used for certain cases well into the imperial period, after being streamlined under Augustus,[47] it would gradually be replaced by another system, in which the entire trial fell under the jurisdiction of a single magistrate or institution. Due to their deviation from 'standard' legal procedure, these trials are collectively known under the term *cognitio extra ordinem* (or *extraordinaria cognitio*).[48] While the magistrate in question still had the right to appoint a different judge to act as his replacement if he so chose, this was now his prerogative, and no longer dependent on the mutual agreement of the parties involved.[49] As such, the gradual transition to the *cognitio* trial serves to demonstrate a departure from republican Roman values by attributing more power to the imperial bureaucracy,[50] while also allowing for a greater degree of flexibility by allowing for lawsuits and verdicts outside the confines of the *quaestiones perpetuae*, which came to be perceived as overly rigid.[51]

Setting aside these general characteristics, however, the origins and development of the *cognitio* procedure in the empire's capital are somewhat difficult to

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See Johnston (1999), 123-124. For the idea that trials may well have been used primarily to escalate disputes, rather than resolve them, see Kelly (2011), 287-326. For private initiative in criminal cases, see Harries (2007), 8 and 31; Lintott (2015), 309 and Robinson (1995), 4-5.

45 For this reason, this type of proceeding has also become known as a *iudicium populi*. See Bauman (1996), 5; Harries (2007), 14-16 and Robinson (1995), 1. For a brief discussion of the debate surrounding the involvement of a people's assembly, see Lintott (2015), 304.

46 Bauman (1996), 5; Harries (2007), 18-20; Lintott (2015), 309-314 and Robinson (1995), 2-6.

47 Bauman (1996), 5; Harries (2007), 20; Lintott (2015), 314-317 and Robinson (1995), 2 and 6-7.

48 For some discussion regarding the usefulness of this term, see Harries (2007), 9.

49 Harries (2007), 30; Schulz (1951), 14-15.

50 Jolowicz and Nicholas (1972), 396-397; Riggsby (2016), 319; Rüfner (2016), 258; Santalucia (1994), 210-211. This development was also visible in the locations in which legal procedures took place. For a thorough analysis, see Färber (2014).

51 Civil trials underwent a similar shift, although likely at a somewhat later date. See Bauman (1996), 5-6; Harries (2007), 20-27; Lintott (2015), 322; Metzger (2015), 288; Robinson (1995), 10; Rüfner (2016), 261; Santalucia (1994), 211.

trace.[52] It must be remembered that the term does not appear to have been a technical one, and that there were likely significant differences between individual lawsuits beyond the fact that they fell completely under the responsible magistrate's authority.[53] Certainly, new measures outside the boundaries of the *established proceedings* were implemented on a number of different occasions in both civil and criminal cases from Augustus onwards,[54] and it is all but certain that even at an early date emperors themselves were not bound by traditional regulations of the *quaestiones perpetuae* when exercising their judicial authority.[55] The same was likely true for a number of other magistrates: the senate appears to have been allowed to conduct criminal trials on a number of occasions,[56] and by the Severan period, the urban prefect held jurisdiction over all criminal cases in the city of Rome and the surrounding areas.[57] Most significant, however, was the prevalence of *cognitio* proceedings in the provinces, where they appear to have been widely, although likely not exclusively, used.[58] Given the fact that law and administration in the provinces were united under the jurisdiction of the governor,[59] it is hardly surprising that the *cognitio* procedure is in evidence in these regions from a relatively early date. In Rome itself, the *quaestiones perpetuae* appear to have retained some of their importance well into imperial period, but even in the capital the *cognitio* procedure appears to have become increasingly commonplace by the third century CE, although it is unknown when it fully supplanted the *iudicium publicum* in practice.[60]

52 Metzger (2015), 287; Rüfner (2016), 258.

53 Rufner (2016), 257-258; Santalucia (1994), 210-211; Schulz (1951), 14.

54 Bauman (1996), 5-6; Johnston (1999), 47-49 and 121; Lintott (2015), 318-319; Metzger (2015), 287; Rüfner (2016), 258-260; Schulz (1951), 15.

55 Rüfner (2016), 260; Santalucia (1994); 212-213. The former is unsure whether the special position of the emperor contributed to the development of the *cognitio* procedure. See Robinson (1995), 9 for the argument that imperial verdicts were likely shaped by the procedures of the *iudicium publicum*.

56 Lintott (2015), 321; Robinson (1995), 8; Santalucia (1994), 218-223.

57 Fuhrmann (2012), 131; Lintott (2015), 322-323; Robinson (1995), 10-11; Santalucia (1994), 214, the latter of whom argues that this authority was derived from the emperor himself an was delegated to the relevant officials.

58 See Knapp (2016), 371 for the argument that all criminal trials in the provinces were *extra ordinem*. There is, however, some evidence that *formula* trials were also used in civil cases outside of Rome, although this this practice seems to have disappeared by the second half of the second century CE. See also Harries (2007), 7; Lintott (2015), 322; Metzger (2015), 287; Robinson (1995), 11; Rüfner (2016), 261-262; Santalucia (1994), 215.

59 For the increased criminal jurisdiction of the governor over the course of the imperial period, see ibidem 215-216.

60 Jolowicz (1954), 407-408; Jolowicz and Nicholas (1972), 398; Lesaffer (2004), 90-91; Santalucia (1994), 210. For the argument that *cognitio* proceedings replaced the *iudicicum publicum* in Rome by the third century CE, see Lintott (2015), 323. For civil cases, the *formula* procedure was only formally abolished in 342 CE.

Whatever the case, the gradual transition towards the *cognitio* procedure brought with it a number of notable consequences,[61] the most important of which for our current purposes was the fact that magistrates were at greater liberty to inflict the type of punishment they themselves believed to be most appropriate, rather than being confined by the measures prescribed by the *quaestiones perpetuae*.[62] A magistrate's decision could therefore not only be influenced by the facts of the case and the particular circumstances under which the relevant events took place, but also by the socio-political status of the parties involved: those who held Roman citizenship could often expect a more circumspect treatment than those who did not, and social status in general could play an important part in determining the type of punishment that was ultimately administered. Likewise, witnesses of higher social standing were often given greater credulity, and in any case would have had a better chance of making their voices heard.[63]

Aside from trials, which generally continued to be instigated by complaints made by private individuals in response to unwanted behaviour,[64] the Roman authorities also had a number of different mechanisms at their disposal when public order was threatened in more far-reaching ways. During the imperial period, magistrates in Rome and a number of other important cities could increasingly deploy Roman military forces in case of riots or other substantial disturbances of the peace, and local, civilian police forces are likewise attested in many parts of the empire.[65] While magistrates, including the emperor, had to be careful to avoid being perceived as overly harsh, they could take significant action, and even suspend protections normally granted to those accused of criminal behaviour, when the situation called for it.[66] This was especially the case when the safety of the Roman state, or the emperor in particular, was considered to be at risk. Such

61 For a number of other innovations, most serve to limit the ways in which accusations can be brought forward, see ibidem 224. Rüfner (2016), 257-258 argues that not all changes in trial proceedings that emerged alongside the *cognitio* trial can indeed be said to have been the result of the disappearance of the *formula* trial.

62 Harries (2007), 22, 27 and 37; Lintott (2015), 314; Robinson (1995), 10; Santalucia (1994), 225.

63 Garnsey (1968) and (1977); Meyer (2016); Rüfner (2016), 265; Santalucia (1994), 215-216 and 225; Taylor (2016). For a discussion of the argument that the nature of the punishment was up to the personal discretion of the judge during the early Principate, while more fixed rules were gradually (although not straightforwardly) starting to develop in later periods, see Bauman (1996), 124-140. Nevertheless, status may well have been an influential factor even at an earlier stage, albeit in less formally regulated ways. See also Lintott (2015), 325.

64 Accusations brought forward by private individuals were likely still essential for opening a procedure on many occasions even in *cognitio* trials. See Fuhrmann (2016), 297 and Rüfner (2016), 263; but also Santalucia (1994), 223. While Santalucia (1994), 224 notes that limitations on the way in which accusations could be brought forward were gradually imposed, it is somewhat unclear when these measures were introduced. For the fact that accusers could receive punishment for making false accusations, see ibidem 223-224.

65 See Fuhrmann (2012), 45-87; Fuhrmann (2016), 301-308; Kelly (2016), 379.

66 Ibidem 380-381. See Kelly (2007) for the importance of public perception in suppressing riots.

cases could be tried during a *cognitio* procedure before special courts, or even by the emperor himself, while hostility against Roman rule in the provinces could be met with large-scale military intervention.[67] There does not, however, appear to have been a standard procedure for dealing with public unrest: much and more seems to have depended on the nature of the disturbances, the status and position of those involved, and above all on the attitude of the responsible magistrate.[68]

1.4 Roman Administration in the Provinces

Given the scope and diversity of the Roman Empire, it is hardly surprising that its government was compelled to incorporate a complex variety of pre-existing, often informal, socio-political structures, and that it had to find ways of exercising its power that were tailored to the different circumstances it encountered. It is therefore essential to determine how the institutions and practices discussed above functioned in the context of Roman provincial administration, and to consider the ways in which the various layers of government interacted with each other in some detail. Before delving further into these issues, however, a word of caution is in order. When investigating Roman provincial administration, it should be noted that we are unfortunately somewhat limited by the nature of the available source material. No contemporary work reflecting on the subject survives in complete form, and even the passages from Ulpian's *De Officio Proconsulis* that survive as citations in the *Digesta* cannot answer all the questions that will inevitably arise, at least in part due to their third-century date.[69] Epigraphical and papyrological material can on occasion be used to fill in the gaps, but here, too, we should be aware of its limitations: not only is the surviving corpus very likely a rather random representation of the documents that originally circulated, the available material is also unevenly spread across the different regions of the empire, and suffers from important lacunas.[70] We should therefore be aware that any analysis of Roman governance in the provinces almost inevitably includes certain generalisations, whether intentional or not.

Nevertheless, some general conclusions may be reached. In order to do so, we will first investigate the power structures present within the provinces themselves,

67 Kelly (2016), 278-283. For the developing meaning of the term *maiestas* over the course of the republican and imperial period, see Williamson (2016).

68 Kelly (2016), 383-384.

69 See Harries (2014) for the influence of Ulpian's personal background on his views on the office of the proconsul.

70 See Bruun (2015) and Rowe (2015) for the limitations of epigraphy when discussing matters of Roman law and administration. Bruun in particular remarks, among other concerns, that communities and individuals were more likely to record rulings that were in their favour, thus skewing our perceptions of the types of regulations that were issued in historical practice. For

focussing in particular on the role of the Roman governor (section 1.4.1). As the highest official in the territories assigned to him, the governor wielded significant authority, and an understanding of his jurisdiction and duties, as well as the powers and limitations of his office, must therefore be central to any discussion of Roman government in the provinces. In this context, the role of the local population, including its elite, laws, and institutions, must also be considered. We will then turn to the relationship between provinces and the central imperial government (section 1.4.2), discussing the nature of the latter's interactions with both lower Roman officials and the local population in order to investigate the extent to which the emperor and his officials had the chance to influence life in the provinces, and the methods they used to do so.

1.4.1 *Governors and Locals in the Provinces*

The governor was the emperor's primary representative in the province appointed to him, and held supreme legal and administrative authority in the territories under his jurisdiction.[71] While this important office could be indicated by a number of different titles, the primary responsibility of all governors was ultimately to maintain peace, quiet and good order in their respective provinces, and to thereby ensure the stability of the empire.[72] The pivotal nature of the governor's office appears to have been widely recognised, as is shown in the following passage from one of emperor Trajan's letters addressed to his governor Pliny the Younger:

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the argument that epigraphy is nevertheless a highly useful source for the study of Roman law, see Beggio (2016). A similar argument regarding papyrology is made by Alonso (2016). See Meyer (2004) for the importance of *tabulae* in Roman legal practice.

71 See *Digesta* 1.16.7.2, which provides a citation of Ulpian, *De Officio Proconsulis* 2 to this effect.

72 Terms like *praefectus*, *procurator*, *legatus Augusti* and *proconsul* are all frequently used, and a nominal distinction between imperial and senatorial provinces may be made. Governors of the latter formally derived their authority from the consent of the senate and people of Rome and did therefore, formally, not report to the person of the emperor. Nevertheless, it is unlikely that this distinction was truly important in practice. After all, senatorial governors, too, received a set of instructions from the emperor at the beginning of their term in office, as argued by Jolowicz and Nicholas (1972), 370. See Bowman (1996), 346-347 for the differences in the mode and duration of appointment of the various types of governors, and ibidem 369-370 for the ranks they held. For the argument that the day-to-day administration of the various types of governors differed little in practice, see Ando (2006), 179 and Galsterer (1996), 411 and (2000), 346. It should be noted that the office of governor was originally a military position rather than an administrative one. See Richardson (2015), 45-48 and (2016), 111-114. See Drogula (2005) for the argument that the development of the governor's position over the course of the imperial period found its roots in traditional republican values.

> *Sed ego ideo prudentiam tuam elegi, ut formandis istius provinciae moribus ipse moderareris et ea constitueres, quae ad perpetuam eius provinciae quietem essent profutura.*[73]
>
> But I have selected you and your good judgement for this very reason, so that you may regulate the creation of the customs in that province, and implement what is beneficial for the perpetual peace of that province.

The success of a governor's term in office, then, depended in large part on his ability to ensure the internal and external stability of his territories, and their continued compliance to Roman rule. In order to achieve this goal, governors could to a certain extent do what they believed to be best: their *imperium* made them the primary holder of legal power within their provinces, and granted them the right, though not the obligation, to judge any case in which they took an interest, or that was brought before them.[74] Criminal jurisdiction and the right to exert capital punishment in particular appear to have become the particular prerogative of the governor by the Severan period at the latest, to the exclusion of local officials.[75] Governors likewise had significant discretion to decide on the level of punishment they believed to be most appropriate for the majority of the Principate,[76] and were free to take police measures to ensure public order.

The governor often travelled through his province, and the legal and administrative centre of the region travelled with him in his retinue.[77] The governor's entourage consisted not only of his own staff, including soldiers, secretaries, and advisors of various kinds, but also contained provincial notables – to name only those directly involved in the business of government.[78] Wherever the governor went, great numbers of people followed to make use of this important opportunity to gain access to the highest authority present in the region, and to ask him for advice, legal judgements, and assistance of various other kinds. Such visits to different parts of the province were also an important administrative tool for governors themselves, since these travels allowed them to personally survey the areas

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73 Plinius Minor, *Epistulae* 10.117. The Latin text used is the version presented by Mynors (1963), the translation is my own.

74 Fuhrmann (2012), 171; Galsterer (1996), 404-405; Richardson (2016), 116-117. Ando (2006), 190-191 notes that governors could choose to do so either by *formula* trial, or through a *cognitio extra ordinem*.

75 Galsterer (2000), 351.

76 Bauman (1996), 136-139; Harries (2007), 37; Robinson (1995), 10.

77 Burton (1975); Fuhrmann (2012), 173. See Färber (2014), 173-174 for the continued flexibility of provincial legal spaces in the early imperial period. It should be noted that the presence of the emperor, when he chose to travel beyond the capital, likely had a very similar effect, as for instance in the case of Hadrian. See Millar (1977), 28-40.

78 Fuhrmann (2012), 172-174 and 186-187.

for which they were responsible, to make the acquaintance of the local notables, and to present themselves as capable – and potentially generous – administrators, thereby solidifying the power of Rome and the emperor, as well as their personal authority, in the process.[79]

This is not to say, however, that the governor's power was without limitations. Aside from certain imperial legal measures, which will be discussed in more detail below, there were a number of general regulations to which the governor had to adhere. First among these was the so-called *lex provinciae*, which in certain provinces – although notably not all – provided a general framework for the administration of that region.[80] These *leges* established the administrative geography of the province, made arrangements for the collection of its taxes, and determined the status of various cities, as well as their inhabitants and magistrates.[81] However, references to the concrete legal measures that would apply in the region were very likely omitted.[82] This gap appears to have been at least partially filled by the edict that was traditionally issued by the governor before he departed for his province.[83] This edict likely mirrored that of the *praetor urbanus* in Rome by detailing the matters on which the governor would pronounce judgement and the way in which he would do so during his time in office, although there is some evidence to suggest that governors originally were at somewhat greater liberty to alter the edicts of their predecessors as they saw fit, and that the edicts of different provinces could to a certain extent diverge.[84]

Gradually, however, the governor's edict appears to have become more standardised, as had been the case with the praetorian edict. The title of Gaius' commentary *Ad Edictum Provinciale*, with its notable use of the singular, suggests that only one provincial edict existed. By the time of Hadrian, the various

79 See Slootjes (2004) for the various ways in which governors could act as a benefactor, and the complexities of doing so. Kokkinia (2004) presents an analysis of the various alternative ways in which governors could interact with the inhabitants of their province.

80 The *leges provinciarum* likely originated as decrees by individual commanders after Roman conquest, and were later confirmed by the senate. For the argument that the existence of such a law can only be attested in a select number of provinces with any degree of certainty, see Galsterer (1986), 16 and Richardson (1994), 589. For the suggestion that the *leges provinciarum* were not ratified by the Roman assemblies, despite what the term *lex* may suggest, see Richardson (2015), 48. An example of one of these *leges*, the *lex Pompeia*, is referred to in Plinius Minor, *Epistulae* 10.79, 10.80, 10.114 and 10.115.

81 Galsterer (1986), 16; Jolowicz and Nicholas (1972), 69-70; Richardson (1994), 589.

82 Galsterer (1986), 16.

83 Jolowicz and Nicholas (1972), 70; Richardson (2015), 50. For the argument that governors in imperial provinces are unlikely to have issued such an edict, see Amelotti (1999).

84 Ibidem; Ando (2006), 190; Galsterer (1986), 17; Johnston (1999), 9; Jolowicz and Nicholas (1972), 358; Richardson (1994), 589-590; (2015), 50 and (2016), 116. See also Cicero, *Epistulae ad Atticum* 6.1.16.

provincial edicts furthermore seem to have converged so much as to have become almost indistinguishable.[85] In any case, the edicts of the various governors likely served as an important source of law throughout much of the Roman world. While governors do not appear to have been strictly bound by it, and retained the right to judge cases *extra ordinem*, the governor's edict could set some important general guidelines that could be evoked both by officials and by inhabitants of the province – even those who did not hold Roman citizenship themselves, but believed a reference to Roman practices to be beneficial for their cause.[86]

In addition to these Roman legal frameworks, the governor had to take care to consider the local circumstances he encountered during his time in office. Since the number of Roman officials present in a particular province would generally have been comparatively small, both governor and emperor were strongly dependent on local, pre-existing structures and institutions whose collaboration allowed them to govern the region effectively.[87] Governors were highly reliant on self-reporting in their efforts to govern their province and uphold public order, and were often confronted with substantial amounts of petitions and legal cases brought forward by their subjects.[88] A good relationship with the local elite was likewise centrally important, since its members were in a position to both aid and

85 Johnston (1999), 9; Jolowicz and Nicholas (1972), 358; Richardson (2015), 51. The latter remarks that specifications for individual provinces were likely added as an appendix after the standardisation of the edict.

86 It has been suggested that the governor's edict, like the praetorian edict, would only have applied to Roman citizens, and would thus only have been of limited relevance in the provinces before the *Constitutio Antoniniana* of 212 CE. See Jolowicz and Nicholas (1972), 358. Richardson (1994), 589 counters that we have substantial evidence that governors did not limit themselves to cases involving Roman citizens. Indeed, Roman legal practices likely had a significant influence over the provinces. It has been argued that they were part of the 'way of thinking' of Roman officials in the provinces, even those who had not received legal training themselves, among others by Ando (2006), 189 and Dolganov (2018), 35. Furthermore, Roman law enjoyed a degree of standing in the provinces, and there are good reasons to assume that even non-citizens attempted to use it on occasion. It has convincingly been argued by Anna Dolganov that litigants in Roman Egypt, at least, could with the help of a lawyer "speak the language of Roman courts" even before the advent of universal Roman citizenship, and use arguments from different legal systems if this suited their case. See Dolganov (2018); as well as Humfress (2013), 81 and 86. Dolganov limits herself to material from Roman Egypt. For a similar argument on the basis of the famous Babatha archive, which dates from the early second century CE, see Oudshoorn (2007) and Czajkowski (2017). Wolf (2015), 67 notes that Roman law is also attested in Dacia. For the prevalence of specialists in Roman law in the eastern parts of the Empire, see Jones (2007). For the idea that the early usage of Roman law by non-citizens contributed significantly to the "dramatic shift" of the *Constitutio Antoniniana*, see Dolganov (2018), 35. Caracalla's motivation for including all free inhabitants of the empire in Roman citizenship are somewhat disputed. See Garnsey (2004), 134.

87 Ando (2006), 180-181; Galsterer (2000), 345; Garnsey and Saller (1987); Roselaar (2016), 124.

88 Burton (1975); Drogula (2005), 377-389; Fuhrmann (2012), 174 and (2016), 297. It should be noted that governors often lacked expertise both in the character of their province and the law,

hinder a governor in enforcing his authority.[89] Certain cities retained a degree of autonomy alongside their traditional magistracies and laws, the latter of which likely continued to be employed alongside Roman legal practices by those who saw benefit in using them.[90] Local institutions, whatever their particular status, remained essential for the governance of the empire, and could be especially helpful in the day-to-day business of provincial administration, while also granting status to those who held the relevant offices.[91] City governments widely assisted

and therefore needed assistance, as argued in Fuhrmann (2012), 172. While some governors, like Pliny the Younger, did have experience in these matters, this was by no means a formal requirement.

89 Kokkinia (2004), 57. See Rizakis (2007) for the way in which local elites functioned within the Roman Empire. Harries (2014), 197-200 notes that Ulpian believed it to be essential for governors to take the wishes of the inhabitants of their province into account.

90 See Galsterer (2000), 348-349 for the different types of judicial status that could be granted to the cities of the empire. For the right of certain favoured cities to maintain their own laws, see Ando (2006), 184 and Galsterer (1986), 18-19, as well as Cicero, *In Verrem* 2.2.90. It should be noted, however, that governors could still intervene in these cities if they so wished, or were asked to do so – thus Galsterer (2000), 349. There are good reasons to assume that Roman officials on occasion allowed local, pre-existing sources of law to continue to be employed within the empire. Although interpretations of the specific influence of these local traditions vary, their continued existence has been acknowledged, among others, by Amelotti (1999); Ando (2016[a]), 290-291; Dolganov (2015), 35; Galsterer (1986), 24; Humfress (2013), 88; Tuori (2007), 51. For the idea that Roman jurists were well aware of this legal diversity, see Vonken (2013) §263. Wolff (1979) makes the case that local law and Roman law cannot be said to have competed with each other, since the two were – in his view – not on equal footing. The idea that the *Constitutio Antoniniana* resulted a coordinated attempt to fully replace local law with Roman law, a view that was significantly championed by Ludwig Mitteis (1891), 160-166, is now regarded critically, as is the view that substantial differences existed between the adoption of Roman law in the eastern and western parts of the empire. While the influence of local legislation in the East, and in Egypt in particular, has been widely recognised, among others by Amelotti (1999); Garnsey (2004); Humfress (2011) and Mitteis (1891), sources from the West are comparatively scarce. It has therefore been argued that the East, with its long-standing strongly urbanised environment, retained old and complex legal traditions of its own, whereas the West did not, and adopted Roman law with relative ease. See Humfress (2011), 44; Jolowicz and Nicholas (1972), 69; Meyer (2004), 184 and Mitteis (1891), 8. By contrast, Bowman (1996), 344 has argued that the East took to Roman law more quickly, due to the fact that the concept of centralised legal institutions would have been more familiar to its inhabitants. Both arguments, however, are strongly based on a lack of evidence from the Western provinces. Whatever the case, it seems clear that the Roman Empire knew a significant legal diversity, and that the exact relationship between Roman and local law was repeatedly up for negotiation. See Humfress (2011), 44 and Galsterer (2000), 345. For a similar point regarding the construction of local identities in a wider sense, see Ando (2010), as well as (2016[b]), which argues that Roman authorities actively encouraged the continuation of local religious traditions.

91 See Ando (2006), 181 and Roselaar (2016) for an overview of the relevant local institutions and their responsibilities, as well as their usefulness to Roman rule.

in the collection of taxes, as well as in upholding public order.[92] Furthermore, local courts or officials could handle certain types of legal cases, or assist the governor in administering justice in other ways.[93] It would be unwise, however, to characterise the role of the local population as wholly deferential. Members of the local elite, and inhabitants of the province in general, often played a significant part in the administration of their region by encouraging the governor to follow a specific course of action,[94] but they could also create significant difficulties when dissatisfied with his performance. While governors could formally be tried for misconduct only after their term in office was over, a failure to balance the intricacies of local politics could result in significant difficulties for the governor's later career that he would have been eager to avoid.[95]

It thus becomes clear that cooperation between the governor and local institutions was essential for the successful administration of the provinces, and that these actors were strongly interdependent: while it is true that the governor's power was more overt, he frequently relied on the local population to inform him about issues that warranted his attention, and to aid the Roman authorities

92 For the collection of taxes, see Bowman (1996), 362 and Galsterer (2000), 356-357. For local means of upholding public order, see Fuhrmann (2012), 45-87. Fuhrmann argues that a Roman police force was present in most provinces, and that it appears to have grown in size in the second century CE. However, these soldiers were likely not meant to be involved in disputes between civilians, although individual inhabitants of the provinces may nonetheless have made attempts to this effect. See ibidem 214. For the highly limited scope of Roman bureaucracy, see Garnsey and Saller (1987).

93 Bowman (1996), 366; Fuhrmann (2012), 174; Roselaar (2016), 130-131. In certain cities, local magistrates seems to have had limited jurisdiction, and were allowed to hear civil disputes, while criminal cases had to be left to a higher (Roman) authority. See Galsterer (2000), 351. While this does not appear to have been the case throughout the empire, Severan jurists ultimately ascribed only inferior jurisdictions to municipal magistrates, as may be seen in *Digesta* 50.1.26. See also the earlier *Lex Irnitana* 84, which dates from the Flavian period and excludes the local *duoviri* from criminal jurisdiction.

94 Galsterer (2000), 358. See Slootjes (2004), 61-62 for the argument that the governor would often consult locals upon his arrival in the province in order to establish what *beneficia* they expected from him. An interesting example of the local elite spurring a governor into action may be found in an edict from Antioch in Pisidia (93 CE), in which the governor makes provisions for the grain supply of the city after prices had risen significantly due to bad harvests – but only at the instigation of the *duoviri* and *decuriones* of the city. For more details, see Erdkamp (2005), 286-288 and Robinson (1924). Ibidem 12 suggests that the local authorities were unable to resolve the situation themselves, whereas Erdkamp (2005), 287 argues that the enforcement of the edict remained the responsibility of the local magistrates, and that the governor simply lent his authority to the decision. In either case, it should be noted that both the governor's involvement and the initiative of the locals was necessary for the enactment of this measure.

95 See Fuhrmann (2012), 173-177 and Kokkinia (2004), both of whom also note that the inhabitants of a city seldom formed a unified community, and that the governor had to be aware of the various factions present in a certain region. See also Richardson (2016), 115. For the suggestion that the performance of the governor was the subject of debate in the κοινά, or associations of the different cities in a specific province, see Galsterer (2000), 347.

in governing the region effectively. On the other hand, the locals depended on the goodwill of the governor to provide them with an administrative policy that suited their needs. Neither party, then, could successfully function without the other, and negotiation – whether implicit or explicit – between the various levels of government was essential to Roman administration in the provinces.

1.4.2 *Emperor, Governor, and the Inhabitants of the Province*

The importance of local circumstances for the successful functioning of a provincial governor also becomes visible in the relationship between the provinces and emperor himself. While governors were ultimately answerable to the imperial authorities,[96] it should also be noted that emperors were equally dependent on lower officials both for information and in representing Roman authority. To an extent, this can be considered almost unavoidable: the emperor was generally far away in Rome, and the possibilities for speedy and direct communication were thus rather limited.[97] A degree of self-reliance on the governor's part would therefore not only have been beneficial, but also necessary.

Nevertheless, there were a number of different ways in which the emperor could guide the actions of his governors. At the beginning of their term in office, governors were provided with so-called *mandata*, a collection of administrative guidelines that set certain limitations and raised particular points of interest that had to be taken into account.[98] These *mandata*, however, are unlikely to have covered every situation the governor could conceivably encounter, which meant that communication between governor and emperor rarely ended there. While governors could certainly rely on their personal discretion, they appear to have asked for imperial guidance and/or approval with some frequency. The tenth book of Pliny the Younger's letters, which is devoted to his correspondence with emperor

96 Eck (2016), 108. The point of view that the Roman Empire was governed by a strong, centralised authority has historically been highly significant. See Mommsen (1875, volume 2), 709, who argues that this central authority consisted of both the *princeps* and the senate – a construction he refers to as the *dyarchia*. This idea has come to be regarded with suspicion, and is now usually rejected.

97 The communicative limitations the governor faced in the management of his province described by Burton (1975), 106 would have applied *a fortiori* to communication between governor and emperor. See Ando (forthcoming), 5-6.

98 For the idea that *mandata* increased in number over time, and likely contained general guidelines as well as instructions applying to specific provinces, see Eck (2016), 107. Millar (1977), 317 suggests that *mandata* were "the only positive communication from the emperor to an office-holder in the entire course of his functions". It should be noted that Millar (1966), 164 is likely mistaken in his claim that *mandata* were only issued from the early second century CE onwards. See Ando (forthcoming), 6-7 and Bowman (1996), 348, who suggest that these instructions were already issued in the early years of the Principate. The disbanding of the disruptive *collegiae* of Bithynia-Pontus appears to have been one of Pliny the Younger's *mandata*. See Plinius Minor, *Epistulae* 10.96.

Trajan, serves as a fascinating example of the wide variety of subjects about which emperors could be consulted by their subordinates: in Pliny's letters, we find references to building projects, regulations regarding the upkeep of orphans, and the location of a burial site – to name only a few of the issues about which the author requested his emperor's advice. While Pliny's collection is the only extensive example of a correspondence between governor and emperor known to us, it is very likely that other governors sent similar queries on a somewhat regular basis.[99] Such communications showed the governor's deference to his superior, while also reducing the risk of unprompted imperial intervention, or even retribution in case disturbances arose in the province and the governor faced accusations after his term in office.[100] The inhabitants of the provinces, too, could directly approach the emperor with requests for his judgement or advice, and significant amounts of evidence are available to suggest that they did so with some frequency. Pliny's letters repeatedly reference cases in which the governor served as an intermediary between the emperor and the local population, but the inhabitants of the empire could also approach the emperor in more direct ways: delegations could be sent to Rome to plead a particular case, and petitions in writing (*libelli*) were likewise frequently used.[101] It should be noted, however, that emperors could just as well refer matters back to the governor or other (lower) officials, when they felt that the case in question could best be handled 'on location'.[102]

Due to the prevalence of these petitions, it may be argued that emperors were heavily dependent on the personal initiative of their officials and subjects, and as such took an approach to provincial administration that was primarily reactive. This idea has been most extensively extrapolated upon by Fergus Millar, whose seminal discussion of the 'petition and response' model continues to elicit substantial support – in part due to certain practical objections that speak against the

99 Eck (2000), 266-267. See also Aelius Aristides, *Orationes* 26.31-32 for the assertion that governors consulted the emperor even about the smallest of matters.

100 For the idea that the emperor could openly intervene in the provinces with relative ease if the governor mishandled his affairs, or matters escalated in a different way, see Bowman (1996), 347-348 and Richardson (2016), 119.

101 For governors acting as an intermediary, see Plinius Minor, *Epistulae* 10.47, 10.75, 10.79, 10.83 and 10.114. See also Eck (2000), 268-271; Fuhrmann (2012), 149-150 and Galsterer (1996), 407-408. For delegations being sent to the emperor, and the regional differences in this regard, see Ziethen (1994). Eck (2000), 269 notes that emperors attempted to limit the number of ambassadors per delegation. Hauken (1998), i argues that petitions became strictly formalised from Hadrian onwards.

102 Eck (2000), 271 and Fuhrmann (2012), 148-149. A notable number of examples for the emperor referring certain cases back to the governor may be found in Plinius Minor, *Epistulae*. See 10.40; 10.76; 10.84 and 10.109. A notable number of similar examples from epigraphic sources may be found in Hauken (1998), 2-168, while Elliot (2004), 55-60 argues that emperors often delegated boundary disputes to lower officials. See Galsterer (1996), 407-408 for cases being delegated to other Roman officials.

possibility of a strong centralised Roman government.[103] Indeed, the flexibility of Roman administration has been referred to as an important contributor towards its success,[104] and it may well be argued that the central authorities, too, primarily operated on a province-by-province – or even a case-by-case – basis. The number of centralised legal measures, particularly edicts, that were applicable to the entirety of the empire in practice appears to have been very limited until the third century CE, while evidence for imperial regulations focussed on particular provinces is rather more prevalent.[105] This focus on local circumstances is also illustrated by the fact that emperors on occasion appear to have resisted extending a measure made for one province to another part of the empire. Likewise, an emperor could decline to make a pronouncement *in universum*, thus implying a tendency to not only distinguish between provinces, but also between individual cases.[106] It should also be noted that legal measures, once issued, did not necessarily remain in place forever: while the praetorian and provincial edicts gradually attained a permanent status, it is notable that communities or individuals appear to have asked for the confirmation of previously granted privileges with some frequency, particularly after the ascension of a new emperor, while other measures, like the *mandata*, also appear to have been subject to repeated renewals, or supplementations.[107] It has been argued that imperial *edicta* did not necessarily lose their force when the emperor who had issued them died, and could in fact be evoked in later periods without the need for formal renewal. While examples of this may indeed be given,[108] it should be noted that such evocations of the edicts of previous emperors overwhelmingly seem to have occurred at the initiative of the inhabitants of the province, and thus depended both on the accessibility of

103 Bowman (1996), 368; Fuhrmann (2012), 150; Galsterer (1996), 407-408; Harries (1999), 88; Millar (1977). For the practical difficulties presented by strong centralised control, see Galsterer (1986), 24-27.

104 Bowman (1996), 368.

105 Ibidem 350; Ibbetson (2015), 32. The sheer number of rescripts cited in the *Digesta* is likewise a significant indication of the importance of this type of imperial intervention. For the idea that the central imperial government was primarily concerned with military matters, upholding public order, taxation, and a number of other areas that were considered to be of importance for performing these tasks, see Sirks (2015), 340-342. Similar points are made by Humfress (2013), 76 and Galsterer (1986), 26-27.

106 See Ibbetson (2015), 32. For the idea that the *mandata*, too, included province-specific instructions, see Eck (2016), 107. Practical examples may be found in Plinius Minor, *Epistulae* 10.34; 10.65; 10.66; 10.97 and 10.113.

107 Eck (2016), 107-108; Galsterer (2000), 360; Harries (1999), 84; Jolowicz and Nicholas (1972), 370. For the importance – and prevalence – of embassies to a new emperor, see Ziethen (1994), 115-131.

108 See Jolowicz and Nicholas (1972), 367, who suggest that the continued validity of imperial edicts was in doubt in the early Principate, but soon became well-established. This argument is made on the basis of Wilcken (1921), 133-144.

previous rulings, and the extent to which they were considered useful by the general population.[109]

Despite the fact that imperial intervention, as we have seen, generally tended to be strongly localised, and often found its origins in the enquiries of private individuals or lower officials, it must nevertheless be emphasised that the role of the emperor was often highly influential. On the one hand, it has been argued that the epigraphic evidence for centralised, empire-wide policies may well continue to grow in the coming years, and that we should therefore be careful not to dismiss the possibility for wide-ranging imperial measures by default.[110] Even without further evidence in this direction, however, it must be remembered that the emperor was at the very centre of the Roman government, and that both lower officials and the inhabitants of the provinces depended on his administrative authority.[111] The sheer prevalence of petitions directed at the emperor by his subjects is, in itself, indicative of both the symbolic and practical importance of imperial responses, and it is almost undeniable that the emperor acted as a unifying force above and behind the empire's institutional and legal diversity.[112] Previous imperial pronouncements were an important source of potential precedent, and while it is unlikely that they were easily available (or in fact regarded

109 See Ando (2000), 96-117 for the procedures that played a part in the promulgation of a new legal measure. See Ando (2000), 96-117 and (forthcoming), 9-12 for the idea that new edicts would normally have been publicly displayed for a certain period of time in the regions to which they applied, and were thus available to the public. If these edicts were particularly significant for the community in question, they might be engraved in a visible location (a practice that is e.g. referenced in the case of the privileges of certain Jewish communities), but the overwhelming majority of imperial proclamations would have been archived by the authorities – and possibly in the form of transcripts by private individuals who took an interest. See ibidem 91-96. While such archives would have made previous proclamations at least somewhat accessible in theory – at least if we assume that they were properly maintained and open to the public – this does not mean that each imperial edict would have been continuously upheld, or even remembered, in practice. For a debate on the role of both provincial and central archives in the compilation of the *Codex Theodosianus*, see Harries (1993); Matthews (1993) and Sirks (1993).

110 Ando (2006), 92 and (forthcoming), 11-12; Bruun (2015); Edmondson (2015); Each of these authors is, in their own way, careful to suggest a change in nuance, without dismissing the premise that the imperial authorities often acted reactively altogether.

111 Ando (forthcoming), 7; Bowman (1996), 350.

112 See especially Ando (2000) and (forthcoming), as well as Edmondson (2015). For the increasing number of petitions directed at emperors themselves from the time of Hadrian onwards, which has been argued to be an indication of stronger centralisation, see Bowman (1996), 350; Eck (2000), 271 and (2016), 108 and Richardson (2015), 33.

as universally binding) at all times, there is substantial evidence that private individuals and communities evoked such rulings when it suited their needs – even if the original measure had been issued for a different part of the empire.[113]

For most of the Principate, then, the nature of Roman provincial administration was characterised by an intricate interplay between the emperor, his governors, and the general population of the empire and their local notables. It may be suggested that the centralised imperial authorities gradually gained in direct influence as time went on, particularly from the late second and third century CE onwards. This period witnessed a growing interest in the collection and systematisation of imperial legal proclamations on the part of Roman jurists, alongside an apparent increase in the number of laws that were directed at the entirety of the empire.[114] The previously mentioned standardisation of the praetorian and provincial edict under Hadrian can be seen as somewhat earlier signs of this tendency towards centralisation and bureaucratisation, and it may be suggested that the growth in the number of Roman soldiers acting as a military police force for the provinces in the same period reflects a similar pattern.[115] Even from the late second century onwards, however, there are indications that an important degree of administrative diversity continued to exist: local laws and customs still persisted on an important number of occasions,[116] and it has been argued that the

113 Ando (forthcoming), 12; Harries (1999), 81 and 86. Ando (2006), 185 suggests that the use of precedent was so important and ubiquitous that it contributed to the creation of legal uniformity throughout the Empire. It nevertheless remains important to distinguish between the widespread use of precedent and the conscious creation of legal uniformity: the first suggests voluntary participation in the Roman 'system', as well as a bottom-up initiative, whereas the latter suggests the centralised creation and enforcement of policy. While the results might be similar, they suggest notably different political systems. The fact that Plinius Minor, *Epistulae* 10.65 references an imperial edict being read to him (*recitabantur autem apud me edictum*) suggest that this precedent was brought forward by the inhabitants of the province who came before Pliny with their request, not by the governor himself. For the idea that collections of precedents were made available to governors from the reign of Diocletian onwards, see Richardson (2016), 121-122. Dolganov (2018), 7 argues that the rulings of provincial governors were actively collected in order to be used as precedent, while Ando (2015) notes that imperial rulings, too, were primarily evoked not by Roman magistrates, but by those who brought a case to court. For the argument that the extent to which imperial rescripts were generally valid was very much in flux, and depended on their use in practice see Nörr (1981). It should be emphasised that the term 'precedent' is not meant to imply that magistrates were bound to follow previous rulings in similar cases. While the term is used in this way in later periods, the same does not hold true for Roman law – although, as we have seen, such rulings could carry a certain weight.

114 Humfress (2013), 75-76; Ibbetson (2005), 191-192; Richardson (2016), 121-122 and Sirks (2015), 335-337. For the difficulties that the later editorial work of Justinian's jurists in particular poses for the historian, see Galsterer (1996), 397. See Bowman (1996), 350 and Ibbetson (2015), 32 for the increase in centralised legal measures.

115 Fuhrmann (2012), 244.

116 Amelotti (1999).

growing complexity of the governor's responsibilities led to increased pressure and involvement from local elites.[117] Such factors would have contributed to a continued diversity in the implementation of imperial measures, and despite the fact that centralised governance was formally gaining in importance, many aspects of provincial administration continued to be shaped both by lower-ranking officials like governors, and by the attitudes and cooperation of the general population.

1.5 Conclusion

When investigating the legal and administrative framework in which interactions between the Roman authorities and members of various religious groups took place, it becomes clear that the different layers of government were strongly interdependent: while the emperor was the highest political authority in the Roman world, and could exert a great deal of influence in that capacity, he was also reliant on his governors and the inhabitants of the provinces to provide him with information about matters that required attention, and to enforce decisions once he had made them. This reliance on lower officials meant that governors were centrally important to maintaining public order in the empire, and could influence the emperor's decision by the way in which they represented the affairs about which they consulted him. The governor's powers were substantial, and he could often operate with significant independence, especially within the context of *cognitio extra ordinem* proceedings. In doing so, however, he had to take both the wishes of the emperor, and those of the local population (and particularly the local elite) into account: the goodwill of the emperor was essential for any Roman official who wished to maintain his position, while the existing local institutions were indispensable for a form of government that had a limited administrative infrastructure of its own, and could threaten legal action against a governor when they believed him to have acted in a way they found undesirable. Finally, the petitions and complaints of private individuals and local communities were responsible for instigating many of the actions of the Roman authorities, while the inhabitants of the provinces in turn depended on both governor and emperor to provide measures that suited their needs – and possibly even grant political privileges. In practice, then, Roman administration contained both bottom-up and top-down approaches to government, and none of the relevant actors could simply impose his will on the others. Instead, it is most beneficial to see the administration of the Roman provinces as a process of almost continuous negotiation and re-negotiation between various layers of government and the inhabitants of the

117 Roueché (1998), 34-35.

empire, which was necessary for maintaining (and restoring) the balance between various actors.

In large part due to this frequent need for negotiation between various actors, a degree of diversity and flexibility were essential features of Roman administrative proceedings. While wide-ranging centralised enactments were issued on occasion, it can hardly be denied that the possibility for private petitions, as well as appeals, was likewise built into the system – and was frequently employed, as is evidenced by the sheer prevalence of imperial *rescripta*. Similarly, the enquiries of lower Roman officials, particularly governors, could play an important part in the creation of new measures, and these same lower magistrates were overwhelmingly responsible for their implementation. This meant that Roman authorities often took a reactive approach to the governance of the provinces, and that many of its measures were originally both *ad hoc* and intended to be local in nature. The institutionalised flexibility of Roman administration likewise becomes visible from the fact that measures appear to have been frequently repeated, both within the territories for which they were originally intended and elsewhere. Private individuals and local communities appear to have been an essential moving force in this regard: they could ask for the confirmation of previously granted privileges after a change in imperial or gubernatorial leadership, or bring forward relevant cases from the past as a suggested precedent. While there was no guarantee that such suggestions would be accepted, the importance that was attached to both precedent and ancestral custom throughout the Mediterranean world, and the Roman Empire in particular, allowed the local population to shape the legal landscape to their advantage. This is further evidenced by the fact that local law and Roman law were often applied alongside each other in the same region as best suited the needs of those involved in the relevant legal proceedings, as well as local interests and sentiments. Previous imperial pronouncements would have been especially useful in this type of legal negotiation, since their origins would have lent them an important degree of authority. It may therefore be argued that an interplay between tradition and current reality existed alongside the interactions between various layers of government: legal measures were often created to suit specific circumstances, but custom and precedent could be considered a significant indicator of the shape such measures should take. The nature of the legal framework that was applied to specific cases, then, appears to have been determined by an interplay between emperor, governor, local elites and general population that was very similar to the negotiations that were so essential for the creation and implementation of legal and administrative measures in general, and generally appears to have been correspondingly flexible and localised as a result.