Application, adaptation and rejection: the strategies of Roman jurists in responsa concerning Greek documents

Mauer, Q.

Introduction

I *pr.* Ἑρέννιος Μοδεστῖνος Ἐγνατίῳ Δέξτρῳ. συγγράψας σύγγραμμα, ὡς ἐμοὶ δοκεῖ, χρησιμώτατον, ὅπερ παραίτησιν ἐπιτροπῆς καὶ κουρατορίας ὠνόμασα, τοῦτό σοι πέπομφα. (1) Ποιήσομαι δὲ ὡς ἂν οἷός τε ὦ τὴν περὶ τούτων διδασκαλίαν σαφῆ, ἀφηγούμενος τὰ νόμιμα τῇ τῶν Ἑλλήνων φωνῇ, εἰ καὶ οἶδα δύσφραστα εἶναι αὐτὰ νομιζόμενα πρὸς τὰς τοιαύτας μεταβολάς.

Herennius Modestinus to Egnatius Dexter. I have written a treatise, in my view most useful, which I named 'Excuses from Guardianship and Curatorship', and I have sent it to you. I will, in as far as I am able to do so, provide a clear instruction regarding these matters by discussing the customs of laws in the Greek language, even though I know that it is difficult to render a suitable translation for these terms.

Dig. 27.1.1*pr*-1 (Mod. 1 *De Excus.*)[1]

According to Modestin, a renowned Roman jurist of the second / third century AD, transferring Roman legal language into the Greek language was notoriously difficult[2]. He used the word *δύσφραστος* which means 'difficult to explain' or 'hard to describe'. Why could this translation have been difficult for Modestin? After all, in the bilingual world that the Roman empire was, the Roman elite jurists were well versed in Greek. The answer lies in the profound differences between the Latin legal sphere of the Roman West on the one hand, and the Greek legal sphere of the inhabitants of the Roman East on the other hand. Modestin had to translate concise and technical legal formulations as known in Rome into Greek legal phrases and expressions. Roman legal science was highly structured, specialised and crystallised. In older Greek legal systems from the many city-states such as Athens and Sparta, such a legal science was not present. The same holds true for the Hellenistic legal practice which followed. Modestin needed to translate technical nuances of Roman law into a language in which the proper words and terminology for these nuances were not available[3]. This was a challenging endeavour.

---

1 All translations are made by the author.

2 A new and extensive commentary of this treatise can be found in Maffi, A/B. Stolte, Viarengo, G. (2021), *Herennius Modestinus Excusationum libri VI*, Rome-Bristol.

3 Rupprecht notes in his contribution to *Law and Legal Practice in Egypt from Alexander to the Arab Conquest* that Greek law in Greece or in the Hellenistic states did not make use of a specialised juristic terminology, by which he means a well-defined, specialised legal vocabulary. See Rupprecht in: Keenan, Manning & Yiftach-Firanko 2014, 250.

The absence of a specialised, structured and systematic legal science in Greek legal systems was also noticed by Marcus Tullius Cicero. He highlighted the pleasure and delight of learning Roman civil law. He then continued by ridiculing the legal systems of the ancient Greek city-states and all other neighbours of Rome:

> Cic. *de Orat.* 44. 197:
>
> Percipietis etiam illam ex cognitione iuris laetitiam et voluptatem, quod, quantum praestiterint nostri maiores prudentia ceteris gentibus, tum facillime intellegetis, si cum illorum Lycurgo, et Dracone, et Solone nostras leges conferre volueritis. Incredibile est enim, quam sit omne ius civile, praeter hoc nostrum, inconditum, ac paene ridiculum.
>
> From learning the law, you will receive such pleasure and delight, that you will then understand easily to what extent our forefathers excelled in wisdom over other peoples, if you would have wanted to compare our laws with the laws made by those, such as Lycurgus and Draco and Solon. It is in fact incredible, how disordered and almost ridiculous all *ius civile* is, except our own.

According to Cicero, Roman civil law was an exceptional invention of his Roman forefathers. He even stated that the wisdom and legal ingenuity of these forefathers excelled that of Rome's neighbouring states. Cicero singled out the three most celebrated legislators of the Greeks: the Spartan Lycurgus and the Athenians Draco and Solon. Compared to the Roman *ius civile* the law made by these three legislators was insignificant, disordered, and risible, or so Cicero states[4]. But even if a structured legal science comparable to Rome's was indeed absent, this does not indicate the absence of a valid and practically applied *ius civile* originating from the Greek city-states. Quite the contrary is the case, in fact. Cicero must have been aware of this too. In a letter to his friend Q. M. Thermus[5], he mentions the use of a Greek-styled *hypotheca* by his acquaintance Cluvius. As it turns out, this Greek legal concept was not so disordered and ridiculous that it could not be used to secure a transaction[6].

Returning to Modestin, he considered his translations of Roman legal concepts into a Greek voice imperfect[7]. Modestin was aware that the Greek language was not completely compatible with Roman legal concepts and

4 See also Chevreau *TvR* 73 (2005), 67.

5 Cic. *Epist. ad Fam.* XIII, 56.

6 This letter is examined on p. 69.

7 In more modern times, the problem of finding the right words and translations to write a legal treatise in a language other than Latin is also attested. In a letter by Hugo Grotius to his children, he explains his choice to write the *Inleidinge* in Dutch. In this letter Grotius wrote that by doing so he 'honours' his Dutch language, but confesses that he had to use unusual and old Dutch words and that he had to make his own compound words in order to write this treatise. See Fockema Andreae, S. (1910), *Inleidinge tot de Hollandsche rechtsgeleerdheid met aanteekeningen van mr. S.J. Fockema Andreae,* Arnhem, p. XIII.

ideas. Via the leeway caused by these imperfect translations, Greek legal ideas and concepts could have entered the treatise he was writing.

II Research topic & question

In this dissertation bilingual cases containing documentary Greek from a Roman legal source are examined. The legal source in question is the Justinianic Digest. This Digest is a sixth century AD codification of Roman law by emperor Justinian. It contains among other texts legal writings from second and third century AD Roman jurists. In the Justinianic Digest twenty-six bilingual cases containing documentary Greek can be found.

The bilingualism in these twenty-six cases is formed by Roman jurists answering a legal question in Latin based on a document in Greek. By adding a quotation of the Greek document to the answer and the question in Latin, bilingual legal writings are formed. An answer by a Roman jurist to a question regarding a legal controversy is called a *responsum* or a reply. Therefore, in this dissertation bilingual *responsa* or replies containing documentary Greek from the Justinianic Digest are examined.

Documentary Greek is here defined as Greek originating from legal documents, such as contracts, codicils, and testaments from a Greek-speaking legal practice. The legal nature of the Greek texts makes these juristic replies different from bilingual legal texts in which a jurist has quoted literary Greek from works of authors such as Homer, Plato, and Demosthenes.

The Greek legal documents may have belonged either to a Roman legal context in the Roman East or to an Hellenistic legal context in the Roman East. Without internal analysis, it cannot be assumed that only 'native' Greeks drafted such documents. Many Romans in both the East and the West knew Greek. Yet they could have had little reason to draft Greek legal documents in the Western part of the Roman empire. The language of the documents, in other words, establishes place (the Roman East), but not "nationality" without further analysis. Furthermore, such documents could also have been produced in a context which consisted of a mix of legal cultures, for example, when an Hellenistic and a Roman citizen contracted with each other. What is meant here by 'Hellenistic legal context', 'Hellenistic law', or 'Hellenistic legal culture' will be elaborated on p. 12.

The documents studied here are rooted in a Greek-speaking and -writing legal practice, be it Roman or Hellenistic or somewhere in between. This legal practice can be reconstructed by studying a great variety of Greek legal documents, varying from contracts, codicils and testaments to reports, petitions and property or tax registrations. Such Greek documents as have survived predominantly hail from the dry sands of Roman Egypt, but also from the Roman province of *Syria Palaestina* and Roman Arabia. These legal documents are written with ink on papyri, on *ostraca* (potsherds), or on parchment (animal skin). Furthermore, valuable legal documents can be found on *tabulae ceratae* (wax tablets).

Inscribed papyri, *ostraca* and parchment together form an immense source of documentary Greek from a Greek-speaking and -writing legal context. From these documents, and in particular from their formulary nature, the existence of an Hellenistic legal practice can be deduced. The twenty-six bilingual *responsa* from the Digest are compared to what is known of this reconstructed Hellenistic legal practice from the second and third century AD. By comparing these *responsa* to Hellenistic legal practice the research examines whether the jurist concerned replied to the question at hand in line with the rules and regulations of Roman law, or in line with Hellenistic legal practice. In other words: *What strategies did the Roman jurists employ to construct* responsa *on legal questions rooted in an Hellenistic legal practice based on Greek legal documents produced in a legal culture that was distinctively Hellenistic*?

III Timeframe

This dissertation covers a timeframe spanning from the second century AD and the third century AD. All the bilingual *responsa* by the jurists examined in this dissertation originate from this period, even if they are now contained in Justinian's sixth century codification of Roman law (the Digest). The papyri with which these bilingual *responsa* are compared in this research stem from the same timeframe, too. I have indicated it separately when an earlier or later comparison is drawn.

The chosen timeframe falls in the so-called 'Classical Period' of Roman law[8]. This period started with the reign of emperor Augustus and ended with the beginning of the Roman Dominate in 284 AD[9]. By the second century AD the Roman empire was at the pinnacle of its political power and reached its largest size. Roman legal ideas and ingenuity from the Republic were now fully developed and perfected. Roman jurists, such as Paul, Ulpian, and Papinian had flourishing *responsa* practices. The jurist Gaius wrote a highly influential textbook on Roman law called the *Institutiones,* offering a structure that would dominate legal thinking well into the 18th century after it became the blueprint for Justinian's institutes. The *ius praetorium*, a *ius* that corrected and complemented Roman *ius civile,* was perfected, solidified, and consolidated around 130 AD[10].

Another reason why the Classical Period of Roman law is interesting for this research is that the *Constitutio Antoniniana* was issued in this timeframe. The *Constitutio Antoniniana* was an edict issued by emperor Caracalla most likely in 212 AD[11]. In this edict emperor Caracalla granted citizenship to all

8 See for the classical period of Roman law, Mousourakis 2003, 279*sqq.*

9 Schulz 1963, 99.

10 Mousourakis 2003, 279.

11 The promulgation date of this edict is not entirely clear. See the chapter *Datation et changement onomastique* in Besson (2020), 64-70.

free inhabitants of the Roman empire. The fact that by 212 AD all free inhabitants of the Roman Empire were Roman citizens meant that from a legal perspective they were governed by Roman law. This may have had influences on the documentary practice of the Hellenistic Roman East in particular and on the Hellenistic legal culture in general.

IV The *responsa* practice of the second century AD

> Dig. 1.2.2.49 (Pomp. 1 *Enchir.*)
>
> Et, ut obiter sciamus, ante tempora Augusti publice respondendi ius non a principibus dabatur, sed qui fiduciam studiorum suorum habebant, consulentibus respondebant: neque responsa utique signata dabant, sed plerumque iudicibus ipsi scribebant, aut testabantur qui illos consulebant (…).
>
> Just so we may know it in passing: before the times of Augustus a right to publicly give responses was not granted by rulers, but those who could rely on their studies gave responses to those seeking legal advice. They certainly did not give responses under seal, but most of the time they themselves wrote to the judges, or they provided an affidavit to those who had asked for legal advice.

Pomponius, the author of this fragment, was a second century AD jurist and legal author, who flourished under the emperors Hadrian, Antoninus Pius and Marcus Aurelius. One of his many books was the *Enchiridion*, an introduction to Roman law that contains many digressions on legal history. A version[12] of his *Enchiridion* was put in the Justinianic Digest (Dig. 1.2.2). In the text of Dig. 1.2.2.49 the *responsa* practice of the second century AD is described[13].

In the second century AD many Roman jurists had *responsa* practices. This practice was founded in Roman Republican times and continued in the Principate. It was not considered to be a public affair, but private business. In the time of Augustus, as stated in the *Enchiridion*, some jurists were granted the right to give legal advice with public authority, on authority of Augustus himself. Even so a positive grant of this public authority is only known from Tiberius's grant to Masurius Sabinus in Dig. 1.2.2.48 (Pomp. 1 *Enchir.*). Every Roman jurist, however, could write *responsa* to the persons who sought his advice. Jurists who had gathered great fame such as Cervidius Scaevola, Julius Paul and Herennius Modestin were asked for legal advice from all the corners of the Roman empire including the Roman East. It may have been a litigant who sought legal advice, but it was also possible that a judge or a magistrate asked for it.

---

12 The version which is in the Digest seems corrupt. See Schulz 1963, 116. The question whether the texts compiled in the sixth century AD Justinianic Digest were the same as the original texts will be discussed on p. 38-39.

13 See also Gaius, *Inst.* I 7.

The flourishing *responsa* practice was beneficial to Roman legal education, as the cases were often discussed by a jurist and his pupils in a *concilium*. It was also beneficial to Roman legal literature. The jurists and/or their pupils collected the most interesting *responsa,* from a legal perspective, and published them in large collections. These collections were read by other jurists who often cited and responded to cases of their colleagues. In order to publish collections of *responsa,* these cases often underwent thorough editing. Most were anonymized. Therefore, *Decknamen* such as Lucius Titius, Gaius Seius, and their female counterparts occur with high frequency.

Regarding the appearance of the *responsa*, the replies are often composed of at least a description of the case, followed by one or more legal questions concerning the case. The *responsum* ends with a reply by the jurist on the legal question(s). Sometimes a brief argumentation for the reply is given. This is not always the case. Sometimes the reply is merely lapidary, sometimes even oracular, and it is left to the student to display his own legal ingenuity in devising the hidden arguments for the response. In the twenty-six cases examined in this dissertation the 'description of the case' is often a citation of a legal document in Greek.

V Strategies of the Roman jurists

Not all Greek legal documents from an Hellenistic legal practice lead to collisions with Roman law. In some of the *responsa* discussed here, the application of norms from an Hellenistic legal practice would lead to the same outcome as the application of Roman law. Two examples of harmony in application are the cases of Dig. 33.4.14 (Scaev. 15 *Dig.*) and Dig. 26.7.47*pr* (Scaev. 2. *Resp.*). Dig. 33.4.14 (Scaev. 15 *Dig.*) concerns a legacy of a dowry, to be paid before or after division of the inheritance. Dig. 26.7.47*pr* (Scaev. 2. *Resp.*) involves the *tutela* and *administratio* of a minor[14].

In cases where norms derived from an Hellenistic legal practice collided with Roman law, the Roman jurists used different strategies to construct their legal advice. This dissertation identifies three strategies that are commonly used when confronted with colliding norms, namely a strategy of *application*, *adaptation,* or *rejection*. In the following, the three strategies will be explained by using examples from the twenty-six cases in the Digest examined in this dissertation.

Application

The strategy of *application* of norms from Hellenistic legal practice means that the jurist would give preference to these norms over norms set by Roman law. Cases from the East in which norms from Hellenistic legal practice were preferred over Roman law, however, remain scarce.

14 These cases are examined on p. 165 and p. 174, respectively.

An example of the *application* strategy can be seen in the works of Modestin in Dig. 31.34.7 (Mod. 10 *Resp.*)[15]. In this reply Modestin not only showed extensive knowledge of the Hellenistic law on dowries, but actually advised the application of Hellenistic dowry law even though it conflicted blatantly with principles from the Roman law on dowries. An explanation of the fact that despite the conflict with Roman law the compilators added this fragment of Dig. 31.34.7 to the Justinianic Digest could be, that by the sixth century AD, influenced by jurists such as Modestin, this practice from Hellenistic dotal law had been preserved in the Roman East and recognized by the (Greek-speaking) Byzantine compilators.

Other examples of the *application* strategy can be found in the works of Scaevola and Paul. Both examples concern the legal concept of *depositum irregulare,* a deposit which could function as a pseudo-loan or as a banking / investment instrument. The cases on this subject are Dig. 32.37.5 (Scaev. 18 *Dig.*) and Dig. 16.3.26.1 (Paul. 4 *Resp.*) in which *depositum irregulare* is used as a pseudo-loan[16]. Roman doctrine on the matter of *depositum* was considered to be too strict. With time it was overtaken by the legal practice which had to service an ever expanding, modernising and globalising Roman economy. Apparently, the strict rule of Roman law prescribing that objects given in *depositum* (especially money) could not be used by the *depositarius* had to be innovated. By applying the Hellenistic norms of *depositum irregulare* this new, modern and globalised economy could be better serviced. The use of deposited money by, for example, (a consortium of) *argentarii* led to an economy which could sustain more and larger investments.

Adaptation

The strategy of *adaptation* is twofold. Firstly, a case from an Hellenistic legal context could be moulded or adapted by reinterpretation to fit within the boundaries of Roman law. Secondly, norms from Roman law could be moulded or adapted to fit a case from an Hellenistic legal context. The jurist employing the *adaptation* strategy stretches the limits of Roman legal norms often to the point of improper use of these norms.

The *adaptation* strategy is attested in works of Paul and Modestin. In, for example, Dig. 28.1.29*pr*-1 (Paul. 14 *Resp.*), Dig. 36.1.76 (74) *pr* (Paul. 2 *Decr.*), and Dig. 31.34.1 (Mod. 12 *Resp.*)[17], Paul and Modestin adapted Roman law to fit specific cases from the Hellenistic East rather than reinterpret the cases to fit Roman legal doctrine. In the case of Dig. 28.1.29*pr*-1 (Paul. 14 *Resp.*), for example, Paul used the Roman *favor voluntatis* as a vehicle to accommodate an Hellenistic legal clause which validated testamentary provisions. By doing so, testamentary provisions became valid even though no legally valid testa-

15 This case is examined on pp. 124*sqq*.
16 For an examination of these cases see 99*sqq* and pp. 115*sqq*, respectively.
17 These cases are examined on pp. 189*sqq*, pp. 180*sqq* and 193*sqq*, respectively.

ment was drawn up. This practice is, however, not in line with the Roman law of inheritance.

Rejection

There are bilingual cases in the Digest in which the jurist could not let Hellenistic legal norms prevail over Roman law. Sometimes, Roman law could not accommodate Hellenistic practices. These cases inevitably led to a strategy of *Rejection* of the Hellenistic legal norm. In these cases, the Roman jurist deemed it necessary to reject the Hellenistic legal practice and let Roman law prevail.

In Dig. 8.3.37 (Paul. 3 *Resp.*), for example, the bequest of a use of water was the object of a legal controversy. The use of water was gifted to the testator by the original owner of the cistern. The bequest, however, was held to have been made invalidly, because the use of water was considered 'personal' from a Roman legal perspective. This meant that the use of water ended with the death of the person to whom it had been granted. The difference between personal servitudes and praedial servitudes, *in casu* the difference between *aquae usus* and *aquae ductus,* is fundamental to the Roman law on servitudes (see Dig. 8 *de Servitutibus*). At this point the jurist Paul could not apply the Hellenistic legal norm underlying this controversy nor could he adapt Roman law to fit the case.

Another example mentioned is Dig. 33.4.14 (Scaev. 15 *Dig.*). This case from the Roman East presumably concerned a Roman citizen and a *peregrinus*. Scaevola could have used a strategy of *Adaptation* to accommodate this *peregrinus,* named Callimachus. By doing so, Scaevola would have made it possible for him to accept an inheritance. Yet he did not do so as it would have violated regulations from the *senatus consultum Pegasianum.* This proved to be an unsurmountable obstacle for Scaevola, who therefore turned to a strategy of *Rejection*.

VI Imperial rescripts excluded from the corpus

The three strategies of *Application*, *Adaptation* or *Rejection* of norms derived from Hellenistic legal practice were not only employed in case of *responsa.* These strategies can also be seen in *rescripta.* This is to say, decisions on petitions for advice addressed to the imperial chancery. *Responsa* and *rescripta* were similar with regard to the following: both a *responsum* and a *rescriptum* is an answer to a question of someone caught up in a legal controversy. A significant difference between the two, however, is that the *responsum* on the one hand is a piece of legal advice, while a *rescriptum* was an authoritative decision on a legal controversy in answer to a petition sent to the Roman emperor as the highest judicial authority. These *rescripta* were delivered in name by the emperor himself, but drafted in all likeliness by jurists from his imperial chancery.

The main body of surviving *rescripta* is the Codex that Justinian promulgated in the sixth century. Yet in the Justinianic Digest both bilingual and Greek rescripts can be found too. What follows is an enumeration of all bilingual and Greek *rescripta* from the Justinianic Digest[18]. In the works of Volusius Maecianus on the Rhodian Sea Laws a Greek rescript can be found, as can be seen in table 1. In *de Cognitionibus* of the jurist Callistratus four bilingual *rescripta* are attested. In the *Responsa* of Julius Paul one Greek rescript by Severus Alexander can be found and one bilingual rescript by Hadrian. Furthermore, in the works of Ulpian two bilingual rescripta are attested. Lastly, the jurist Marcian cites one bilingual rescript in his *Institutiones*.

Table 1: Greek and Bilingual Imperial Rescripts in the Justinianic Digest

Digest	**Author**	**Work**	**Book**	**Emp.**
Dig. 14.2.9	Vol. Maec.	*ex Leg. Rod.*	*Lib. Sing.*	Ant. Pius
Dig. 50.6.6.2	Callistratus	*de Cog.*	I	Helv. Pertinax
Dig. 50.6.6.6	Callistratus	*de Cog.*	I	M. Aur. / L. Ver.
Dig. 8.3.16	Callistratus	*de Cog.*	III	Ant. Pius
Dig. 5.1.37	Callistratus	*de Cog.*	V	Hadrian
Dig. 49.1.25[19]	Paul.	*Resp.*	XX	Alex. Sev.
Dig. 5.1.48	Paul.	*Resp.*	II	Hadrian
Dig. 49.1.1*pr*-1	Ulpian.	*de App.*	I	Ant. Pius
Dig. 16.1.2.3	Ulpian.	*ad Ed.*	XXIX	Sept. Sev. / Ant. Pius
Dig. 48.6.5.1[20]	Marcian	*Inst.*	XIV	Ant. Pius

Surprisingly enough, in the *Codex Justinianus* no bilingual rescripts can be found based on a cited Greek legal document. In fact, only a few bilingual texts can be found in the *Codex Justinianus* from the timeframe researched in this dissertation (second and third century AD). These texts are Cod. 2.11.16 [Gordian, 240 AD] and Cod. 2.11.17 [Gordian, 242 AD]. In the former rescript, from emperor Gordian to Domitianus, a herald is quoted saying: "*κατηγορίαν ἄνευ τινὸς δικαίας ὑποστάσεως οὕτως ἀγενὴς ὑπάρχων μὴ ἐνίστασο*[20]". In the latter rescript, from emperor Gordian to Magnus, the possible verdict of "*συκοφαντεῖς*" (you accuse falsely) is mentioned. The quote of the herald and the verdict in Greek indicate a context of Greek-speaking litigants.

18 In Dig. 27.1.6.8 (Mod. 2 *Excus.*) Modestin quoted a rescript by emperor Antoninus Pius, but it is uncertain whether Modestin translated the rescript himself or that the rescript was originally written in Greek.

19 It seems that both Marcian and Callistratus refer to this *rescriptum* (see Dig. 5.1.37 (Call. 5 *de Cog.*)). Callistratus ascribed the text, however, to emperor Hadrian.

20 Cod. 2.11.16 [Gordian, 240]: "Without any legal ground you cannot file charges, acting so ignobly".

There is a marked discrepancy in the amount of bilingual or Greek rescripts based on a document rooted in a Hellenistic legal context, between the Justinianic Digest, in which ten of these *rescripta* are attested, and the amount of such *rescripta* in the *Codex Justinianus*. No such rescripts are attested in the *Codex Justinianus.* A possible reason for this may be found in the sources of the *Codex Justinianus.* The *rescripta* in the *Codex Justinianus* are largely taken from the *Codex Hermogenianus* and the *Codex Gregorianus*. An overrepresentation of *rescripta* from the time of Diocletian is clearly seen. These jurists may have preferred Latin legal texts over Greek legal texts, which could be the reason that in compiling the *Codex Justinianus* no *rescripta* based on a Greek document were included.

The bilingual *rescripta* from both the Justinianic Digest and the *Codex Justinianus* fall outside the scope of this dissertation which focuses on the strategies employed by private actors and not on state actors[21]. In this dissertation the way in which private actors construct legal advice on controversies based on legal documents in Greek is examined. This research focuses on private actors, because, presumably, private actors are able to show more flexibility in legal thought than jurists anchored in the imperial chancery. However, further examination of this topic with regard to state actors is warranted as well as a comparison between the strategies employed by state actors on the one hand and private actors on the other. By examining the *responsa* of private actors, this research provides a starting point for such a comparison.

VII The dissertation divided into five chapters

In order to systematically answer the research question on the strategies employed by the Roman jurists from II – III AD, the twenty-six fragments of the corpus are put into five categories. Twenty-five of the twenty-six *responsa* examined are put into four 'Roman' categories. One *responsum* is put into a rest-category. This is the case of Dig. 50.9.6 (Scaev. 1 *Dig.*). Dig. 50.9.6 is different from the rest of the corpus, as in this case the Greek legal document quoted is a municipal decree and not a legal document drawn up by private parties. This *responsum* is dealt with in chapter five. As stated, the *rescripta* found in the Digest and the *Codex Justinianus* are not examined in this dissertation.

The four Roman categories are: (1) 'consensual contracts', (2) 'real contracts', (3) testamentary provisions without a slave context, and (4) testamentary provisions concerning slaves, freedmen and freedwomen. The Roman differentiation between consensual contracts and real contracts is chosen to monitor the possible influences of Hellenistic law on these Roman contracts.

21 On p. 27, however, the *rescriptum* of emperor Antoninus Pius, found in a treatise on the Rhodian Sea Laws by Volusius Maecianus, will be briefly discussed.

In Hellenistic legal cultures a conceptual division between consensual and real contracts is not attested.

Due to the high occurrence of testamentary and codicillary provisions in the bilingual *responsa*, the material has been divided over two chapters. Because Roman law strictly governed the (socio-)legal relations between masters, slaves and freedmen, a distinction has been made between *responsa* concerning slaves and *liberti* and those without slaves and *liberti.* No collision with Hellenistic legal practice is to be expected in replies concerning Greek-language testamentary and codicillary provisions in bilingual *responsa* on slaves and freedmen, because these cases often occurred in a Roman legal context.

At the end of each chapter a bibliography is given of the literature used.

VIII Embedding in the existing scholarly research context

Research on law in the Hellenistic East is not exactly new. The last hundred years have seen a tremendous increase in research on Hellenistic law and Hellenistic legal practice by Roman legal scholars. It cannot be called a coincidence, that the increase in research in the twentieth century coincided with the so-called "Century of Papyrology". This term is credited to one of the greatest Roman legal scholars of the nineteenth century: Theodor Mommsen[22].

Indeed, in the past hundred years ground-breaking research in the field of Hellenistic law and legal practice has been done by Roman legal scholars, based on legal documents on papyri. Some works deserve specific mention here, even if a complete catalogue would be both tiresome and impossible. In particular the works of Mitteis *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (Leipzig, 1891), Taubenschlag *The Law of Greco-Roman Egypt in the Light of the Papyri, 332 B.C.-640 A.D* (Warsaw, 1955) and Wolff *Das Recht der griechischen Papyri Ägyptens in der Zeit der Ptolemaeer und des Prinzipats* (Munich, 1978) have been important.

Papyrological finds have often functioned as catalysts for specific legal research in the fields of Hellenistic, local, or *localized* law and their relationship to Roman law[23]. Papyrological finds in En-Gedi, for example, have led to publications such as Czajkowki's work *Localized Law: The Babatha and Salome Komaise Archives* (Oxford, 2017) and Jacobine Oudshoorn's book *The relationship between Roman and local law in the Babatha and Salome Komaise archives: general analysis and three case studies on law of succession, guardianship, and marriage* (Leiden/Boston 2007). Finds of legal papyri and documents from the Judaean desert similarly led to a publication edited by Katzoff

22 Van Minnen *BASP* 30 (1993), 5.

23 See e.g. Alonso (2013) 43 *JJP*, 351-404: *Customary law and legal pluralism in the Roman Empire: The status of peregrine law in Egypt: Customary law and legal pluralism in the Roman Empire.*

and Schaps with contributions by among others Eck and Modrzejewski: *The Law in the Documents of the Judaean Desert* (Leiden/Boston, 2005).

This 'papyrological turn' has enabled legal scholars to (re)construct an Hellenistic law or Hellenistic legal culture. This has led Modrzejewski to a definition of Hellenistic law. He states that Hellenistic law was in essence nothing more than Greek law[24] practiced by Greek-speaking immigrants[25]. It cannot be said that 'Hellenistic law' consisted of a system of positive law and legal concepts governed by a regulatory, lawgiving body. Hellenistic law must be seen as a legal culture in which a set of shared legal concepts, forms and customs were present; a 'Pan-Hellenic' common law conserved by the general use of Greek notaries and archives as Wolff described it[26].

Recently, a lot of scholarly attention has been drawn to the Roman East. An indication of the popularity papyrology and the Hellenistic East evoke in Roman legal studies is the latest issue of the *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung*[27]. Four of the nine *Miszellen* were devoted to this topic as well as two of the ten articles in the journal. Examples are *Parakatatheke und letztwillige Verfügungen: Zum Hintergrund von D. 32,37,5* by Éva Jakab (pp. 338-378), *Roman Law from the Desert: A.S. Hunt, F. de Zulueta, E. Levy, V. Arangio-Ruiz and the Editing of Legal Papyri* by Lorena Atzeri (pp. 446-506) and *Will of Apollos Daughter of Paesis from Oxyrhynchos* by Maria Nowak (pp. 543-554). This development was already indicated by one of the most recent edited volumes on Roman law, the comprehensive *Law of the Roman Provinces* edited by Czajkowski and Eckhardt (Oxford, 2020) with contributions by among others Alonso, Plisecka and Wibier[28]. *The Oxford Handbook of Roman Law and Society* edited by Du Plessis, Ando and Tuori (Oxford, 2016) may also be named[29]. In this volume the authors did not only look at Rome but broadened their perspective by statedly incorporating 'the cultures of the ancient world' including the Hellenistic East[30].

---

24 Greek law from the different Greek-city states can, therefore, be seen as a starting point for Hellenistic law. This is the reason for the digressions in this research to sources of Attic and Doric law.

25 The definition is a paraphrase of pp. 8-9 of Modrzejewski's *What is Hellenistic Law? The Documents of the Judaean Desert in the Light of the Papyri from Egypt* in: Katzoff, R./D. Schaps (eds.), (2005), *Law in the Documents of the Judaean Desert*, Leiden, 7-22.

26 Wolff *SZ* 90 (1973), 63-65.

27 *SZ* 138 (2021).

28 See in this book also Jördens, A. (2020), *Aequum et Iustum On Dealing with the Law in the Province of Egypt,* 19-31.

29 *The Oxford Handbook of Ancient Greek Law* edited by Harris and Canevaro (Oxford, forthcoming: some articles have been published since 2015) is also worth mentioning, particularly the articles *Law in Ptolemaic and Roman Egypt* by Yiftach-Firanko and *Greek Law under the Romans* by Kantar.

30 In this work the editors aimed "to embrace the extraordinary richness of Roman legal culture and the different lines of inquiry that shed light on it and its interactions with the political, economic, social, intellectual and religious cultures of the ancient world". Du Plessis, Ando and Tuori 2016, 6.

In this dissertation the Hellenistic legal practice is compared to Roman law by analysing bilingual *responsa*. This Hellenistic legal practice is mostly deduced from papyri from the Roman East. In doing so, this dissertation aims to follow in the footsteps of the research tradition set by Mitteis, Taubenschlag, and Wolff. This tradition has since been continued by Ando, Katzoff and Czajkowski, whose work has attempted to broaden the perspective of Roman law, placing the Roman legal system in a broader legal continuum. In this continuum interactions can be found between different ancient Mediterranean legal systems and Roman law. For example, the aim of Czajkowski and Eckhardt's *Law of the Roman Provinces* is to "re-describe the relationship between Rome and her empire's inhabitants in a way that places less emphasis on unidirectional impact, and instead encapsulates a more dynamic, two-way process—if the distinction between 'Roman' and 'other' is not altogether abandoned"[31]. Czajkowski introduces indigenous or 'local' agency and do not take a purely Romano-centric perspective[32].

These legal historians form a distinctive school of Roman legal research. This school has focused its research on law at the fringes of the empire. It moves away from the idea of a static centralized Roman power of the capital Rome. Simultaneously, it moves away from the idea of a legal space in which Roman law is unidirectionally spread from the centre of the empire to all its outskirts. In this school's research, the dichotomy between centralised 'classical' Roman law and local legal cultures, for example, from the Eastern provinces, is a central theme. Among other things, this has led to a new valuation of the word *Empire* and a re-imagining of the impact of Rome on the provinces[33].

The research in this dissertation fits the central theme of the abovementioned research school, in starting at the fringes of the Roman empire. At the base of this dissertation stand the legal controversies inhabitants of the Roman East had with one another. This research, however, completes the movement back from periphery to centre by following the legal questions that were sent from the Roman East back to Rome. After the legal ques-

31 Czajkowski in: Czajkowski and Eckhardt 2020, 1.

32 Czajkowski in: Czajkowski and Eckhardt 2020, 1.

33 See, for example, Hekster, O./K. Verboven (eds.), (2019), *The Impact of Justice on the Roman Empire. Proceedings of the Thirteenth Workshop of the International Network Impact of Empire (Gent, June 21-24, 2017),* Leiden. See especially in part II of this work '*Justice in a Dispersed Empire*', Juan Manuel Cortés-Copete's paper (*Koinoi Nomoi: Hadrian and the Harmonization of Local Laws*, 105-121) in which he states that the emperors (most notably Hadrian) attempted to harmonize local law and Roman law, which did not result in a legal unification of all law in the Roman empire, but in a reinforcement of local law that was adapted to a set of common Roman legal principles (see Cortés-Copete 2019, 120). At the end of this process the Roman emperor was the ultimate source of law and legal authority for all inhabitants of the Roman empire. See also the recent book by G. Valditara *Civis Romanus Sum Citizenship and Empire in Ancient Rome* (Washington-London, 2020) and especially chapter 9: *Roman Law and Foreigners in Rome: A Question of "Sovereignty on the Territory"* (pp. 39-40).

tions reached Rome, a decision was made in Rome by a Roman jurist which authoritatively settled the controversy in the East.

This movement from the Roman East back to Rome indicates that a form of legality is constructed in an interplay between the authors of legal questions from a peripheral context and elite imperial jurists, with a flourishing *responsa* practice, from the centre of Roman legal authority and judicial power. The authority of the Roman, Latinate norm and legal doctrine, seems to have been trusted by these Greek-speaking inhabitants of the Roman East.

IX The authors of legal questions

Roman citizens, Romanized inhabitants, and Hellenistic inhabitants of the Roman East had their legal questions answered by top-class jurists from Rome. The question, however, remains who exactly were these Greek-speaking inhabitants of the Roman East who placed their trust in the authority of the Roman norm and legal doctrine.

In some cases, it is evident that the contracting parties were Roman citizens, e.g. in Dig. 40.5.41.4 (Scaev. 4 *Resp*.) and Dig. 33.8.23.2-3 (Scaev. 15 *Dig*.)[34]. In the latter fragment a testator manumitted his slaves via testament and bequeathed them certain *ληγάτα*. This Greek transliteration of the Latin *legata* is (among other things in this *responsum*) an indication that the testator and his family were Roman citizens[35].

The majority of cases in the corpus examined, however, feature inhabitants from the Roman East with an Hellenistic origin or inhabitants who are to a more or lesser extent Romanised, e.g. Dig. 32.101*pr* (Scaev. 16 *Dig.*) and Dig. 31.34.7 (Mod. 10 *Resp*.)[36]. For these two groups of litigants, it seems both improbable and impractical to send questions to the West rather than turning to local legal counsel. They, however, appear to have done so.

It seems that these persons, be it the litigants themselves, their advocates or the judges, possessed the knowledge, the technical know-how, and the financial means for this lengthy, costly, and laborious procedure. In Dig. 50.12.10 (Mod. 1 *Resp.*), it is evident that the heirs of Septicia[37] were well-connected to the local Roman or Romanised ruling elite. One can readily understand that a such a highly Romanised and wealthy family had the financial means and the right connections to facilitate the procedure in question.

---

34 Dig. 40.5.41.4 (Scaev. 4 *Resp*.) and Dig. 33.8.23.2-3 (Scaev. 15 *Dig*.) are examined on pp. 119*sqq* and pp. 217*sqq*, respectively.

35 That these Roman citizens adhere to Roman legal doctrine and asked Roman jurists from the West for legal advice must not be considered a revelation. These are original Roman citizens using Roman law who happen to live in the Roman East and therefore speak and write Greek.

36 Dig. 32.101*pr* (Scaev. 16 *Dig.*) and Dig. 31.34.7 (Mod. 10 *Resp*.) are examined on pp. 83*sqq* and pp. 124*sqq*, respectively.

37 This case is examined on pp. 144*sqq*.

It seems to be less evident that this technical know-how, the financial means, and the connections were present in the case concerning the slave / freeborn Eudo in Dig. 40.4.60 (Scaev. 24 *Dig.*)[38]. In Dig. 40.4.60, Eudo and the heir of the former master of Eudo's mother had a legal controversy regarding the status of Eudo, being either a freeborn man or a slave.

X Legal proceedings

An Hellenistic legal culture supposes shared legal concepts, forms and customs in the Hellenistic world as stated in the above. These legal concepts, forms and customs must have been upheld and enforced by normative decisions in concrete legal controversies, in which the inhabitants of the Roman East mentioned were involved. The twenty-six bilingual *responsa* from the corpus were to a more or lesser extent embedded in an Hellenistic legal culture. The concrete legal controversies on which these *responsa* were based also needed to reach a judgement (a normative decision). In the following the way in which these decisions were made and what authority was capable of making these decisions is described with regard to the Roman Eastern legal sphere.

It cannot be said that legal proceedings in the Roman East of the second century AD were the same as in the Roman West of that time. The use of a *iudex privatus* (a layman judge)[39], which was common in the Roman West, is scarcely attested[40]. It is difficult to compare the two spheres of the Empire with one another because of a lack of sources, but Roman Egypt may perhaps serve as a *pars pro toto,* for which a multitude of sources on legal proceedings remains[41]. From these sources it becomes evident that the *Praefectus Aegypti*[42] had the highest judicial authority, with the exception of the Roman emperor who truly had the highest judicial authority in the Roman East and West.

Most of the cases tried in Roman Egypt were prepared by local authorities. The officials who were typically burdened with this task were *strategi.* Due to the large amount of cases the *Praefectus Aegypti* also delegated the judgement of cases to local authorities (*epistrategi, strategi* or *archidicastes*) or to military personnel. An example of the latter is P. Oxy. XIV 1637 (Oxyrhyn-

38 Dig. 40.4.60 (Scaev. 24 *Dig.*) is examined on pp. 237*sqq*.

39 See for the way in which Roman legal proceedings were conducted, Gaius, *Inst.* IV.

40 Proceedings in which a *iudex datus* is appointed are attested in papyrological sources. An example is P. Mich. III 159 (Arsinoite nome, 37-43 AD). In this document (ll. 5-6), a civil suit with a military context, the prefect of the camp Lucius Silius Laetus ordered the centurion Publius Matius to be the judge.

41 Not all Hellenistic legal cultures had the same judicial institutions. Roman Crete, for example, had a well-organised corpus of judges which continued to function long after Crete became Roman. See Tzamtzis in: Czajkowski and Eckhardt 2020, 255-256. For legal proceedings in Roman Achaea, see Girdvainyte in: Czajkowski and Eckhardt 2020, 211*sqq*.

42 See for the *Praefectus Aegypti,* Jördens, A. (2009), *Statthalterliche Verwaltung in der römischen Kaiserzeit Studien zum praefectus Aegypti,* Stuttgart.

chus, 257-259 AD) in which the *Praefectus Aegypti* Lucius Mussius Aemilianus ordered centurion Demetrius to be the judge in a civil case concerning the division of land. In addition, local (Hellenistic) courts existed well into the second century AD[43].

It is not entirely clear in what way a judgement was reached in the twenty-six cases examined in this dissertation. Sometimes the magistrate is mentioned. An example of this can be found in Dig. 40.5.39.1 (Paul. 13 *Resp.*), in which Paul mentions that the provincial governor[44] must judge the case in a certain way[45]. Sometimes the magistrate in question can be deduced (but not with certainty), from the facts of the case. For example, the bilingual case of Dig. 32.37.5 (Scaev. 18 *Dig.*) concerns a *fideicommissum* in a provincial context. According to Gaius, cases regarding *fideicommissa* in the provinces must be tried at the court of the *praeses provinciae*. This can be seen in Gaius, *Inst.* II 278: *fideicommissa vero Romae quidem apud consulem uel apud eum praetorem, qui praecipue de fideicommissis ius dicit, persequimur, in provinciis vero apud praesidem provinciae*[46]. Therefore, one could assume that the legal controversy on which Dig. 32.37.5 is based was tried at the court of the *praeses provinciae*[47]. Yet in most of the cases examined in this dissertation it remains unclear who the concrete authority was that decided the legal controversy.

XI The issue of applied law

A great variety of legal cultures was present in the Roman East in general and in particular in Roman Egypt. In Roman Egypt, local Egyptian law, Hellenistic law, and Roman law co-existed. One of the principal issues of the field of juristic papyrology, therefore, entails the question which law, norms or customs were applied in the documents researched. This question must not only be asked concerning the legal papyri, but also concerning the twenty-six Greek documents on which the *responsa* in this book are based. A starting point for this problem has often been that contracting parties applied the law of their own ethnicity, meaning so much as: Roman citizens made use of Roman law, while 'native Egyptians used local Egyptian law[48]. While this could hold true for fields of law specific to one's ethnicity, such as marriage

43 Cf. Palme in: Keenan, Manning & Yiftach-Firanko 2014, 482-483.

44 In principle every case is admissible in the court of the provincial governor. See Jördens in: Czajkowski and Eckhardt 2020, 24.

45 Dig. 40.5.39.1 is examined on pp. 241*sqq*.

46 Gaius, *Inst*. II 278: In Rome we enforce *fideicommissa* before the consul or before the *praetor*, who especially in cases concerning *fideicommissa* administers justice, in the provinces, however, [we enforce *fideicommissa*] before the *praeses provinciae*. See Jakab *SZ* 138 (2021), 352.

47 The case of Dig. 32.37.5 is examined on pp. 99*sqq*.

48 Urbanik *JJP* 49 (2019), 292.

and dowry law, it must be considered an oversimplification when it comes to fields of law pertaining to, for example, cession, agency, or sale[49].

Contracting parties from a particular ethnicity did not always make use of the law of their own ethnicity. An example of this can be seen in P. Oxy. I 72 (Oxyrhynchus, 90 AD)[50]. In this document a form of direct agency can be seen concerning a contract of sale of a piece of land. The legal concept of direct agency, however, was not as such accepted in Roman law. From the document, however, it becomes clear that the Roman Marcus Porcius had bought a piece of land from Tiberius Julius son of Basilides via his agent Tiberius Julius son of Philetas. In lines 15-19, P. Oxy. I 72 reads: *ὃν ἠγόρα- // σεν παρὰ Τιβερίου Ἰουλίου Βασι- // λείδου διὰ Τιβερίου Ἰουλίου Φιλή- // του ἀκολούθως τοῖς εἰς αὐτὸν // δικαίοις* (which he [i.e. Marcus Porcius] bought from Tiberius Julius son of Basilides through Tiberius Julius son of Philetas in accordance with the power of agency conveyed upon him). This example shows that it cannot be said with certainty that because the contracting parties were Roman citizens, Roman law was applied.

Looking at the law applied in courts in Roman Egypt by Roman magistrates, it cannot be said – even after the *Constitutio Antoniniana* of 212 AD – that Roman law was exclusively applied in all cases, in all fields of law. Papyrological sources demonstrate that local law in Roman Egypt withstood Roman law and, taking up a supplementary and auxiliary role, it lived on[51]. In his article *Józef inter gentes: On status and law between the centre and periphery*, Urbanik persuasively argues that these older local laws survived Roman law and took up the role of customs[52].

Certainly, in papyrological sources can be seen, that Roman law prevailed over local (Egyptian) law. A famous example of this is the petition of Dionysia, P. Oxy. II 237 (Oxyrhynchus, 186 AD). In this petition, two cases of jurisprudence are mentioned in which local law (the much debated *Νόμοι τῶν Αἰγυπτίων*) was not applied by the Roman magistrates, as it dictated that a father could take away his daughter, unwillingly, from her husband. In the end, Roman magistrates had the power to both make laws as they saw fit and to administer justice as they saw fit.

As stated above, local law survived and sometimes prevailed over Roman Law. Most notably, this is the case in P. Oxy. XLII 3015 (Oxyrhynchus, after 117 AD) in which three cases of jurisprudence from the second century AD are described. In one of these cases, the Roman magistrate Sulpicius Similis, the prefect of Roman Egypt from 107 until 112 AD, explicitly mentioned that as an Egyptian, the testator had the power to draw up a testament in whatever way he wanted. In lines 11-12 the document reads: *Αἰγύ- // [π]τιος εἶχεν ἐξουσίαν καθὼς βούλεται διαθέσθαι* (as an Egyptian, he had the power to draw up a testament in whatever way he wanted to). This practice was in line with

49 Alonso *JJP* 43 (2013), 354-355.
50 Wenger 1906, 245.
51 Urbanik *JJP* 49 (2019), 314.
52 Urbanik *JJP* 49 (2019), 293.

the 'law of the Egyptians' as can be seen in P. Oxy. XLII 3015, 2-4: *κάλλιστόν ἐστιν αὐτοὺς // [δικ]αιοδοτεῖν π[ρὸ]ς τοὺς Αἰγυπτίων νόμους // [ἐ]φ' οἷς ἔξεστι κ[α]ὶ μεταδιατίθεσθαι* (It is best to administer justice to them according to the law of the Egyptians conform which they are allowed to devise their property by will).

In some cases of the twenty-six cases of the Justinianic Digest researched in this book, it becomes clear which Roman official presided over the case. For example, the jurist Paul mentioned the provincial governor in Dig. 40.5.39.1 (Paul. 13 *Resp.*). In light of the examples given above, this, however, did not automatically meant that Roman law was applied. Similarly, by looking at the presumed ethnicity of the litigants of the twenty-six bilingual cases from the Justinianic Digest examined in this book (for example, the 'Roman' Flavia Dionysia in Dig. 31.88.15 (Scaev. 3. *Resp.*) or the 'Greek' Callimachus in Dig. 32.37.6 (Scaev. 18 *Dig.*)), it cannot be determined with certainty which law – be it Roman or Hellenistic – these litigants applied in their contracts.

XII Rationale for asking for legal advice from the Roman west

At some point during the legal proceedings of the twenty-six legal controversies on which the examined *responsa* are based, a person decided to send a question from the Roman East to the Roman West. In a legal culture in which a layman headed the suit, sending such legal questions seems quite self-evident. In a legal context, such as in the Hellenistic East, in which legal proceedings are headed by professionals, government officials, military personnel, and a provincial governor, this practice seems less obvious. Both laymen and professionals, however, could benefit from legal advice.

From P. Tebt. II 286 (Tebtynis, after 138 AD), it appears that in a trial before the *hypomnematographus* and former *archidicastes* Julius Theon, a *rescriptum* by emperor Hadrian from 131 AD was read (ll. 1-9). In this *rescriptum* emperor Hadrian decided in favour of one of the litigants named Apollonides and allocated the disputed slaves to him. Regarding the controversy in P. Tebt. II 286 which was between Ptolemas and an unknown litigant, Julius Theon decided in favour of Ptolemas using the aforementioned rescript as authority. He ended his verdict as follows: *περὶ γὰρ τῆς νομῆς οὐδὲν ζητεῖν // δεόμεθα προσκυνεῖ[ν] ὀφείλοντες τὰς ἀνα- // γνω[σ]θείσας τοῦ θεοῦ T[ρ]αιανοῦ καὶ τοῦ κυρίου ἡμῶν // Ἁδρια[νο]ῦ Καίσαρος Σεβαστ[οῦ] ἀποφ[ά]σεις*[53]. It must be considered evident that legal officials took notice of the *rescripta* of the Roman emperors. It is, however, perhaps less evident that the same thing went for the *responsa* of the Roman jurists.

53 P. Tebt. II 286, 21-24 (Tebtynis, after 138 AD): "For we must not inquire about the possession being obliged to show reverence to the *rescripta* of our Lords the late emperor Trajan and Hadrian Caesar Augustus, which were read". See for the dating of the rescript, BL VIII, 491.

The *responsa* of the Roman jurists cannot be equated to the *rescripta* of the Roman emperors. They, however, must have had some legal standing, otherwise the lengthy, costly, and laborious procedure of obtaining a *responsum* can hardly be justified. The authoritative legal standing of *responsa* can also be deduced from the fact that emperor Augustus gave some jurists the power to respond in his name[54]. Having a favourable reply from a well-known jurist from Rome may have given a litigant a decisive advantage in a procedure in court or during a process of private dispute resolution such as arbitration. In court, imaginably, the advantage of a Roman *responsum* can be seen when litigants produce it in front of Roman magistrates in the East who only judge by Roman law, or to local 'Romanised' judges who are loyal to the Roman regime. The advantage is less evident if it concerns cases in which litigants have their case tried in a local / Hellenistic court. Other explanations for asking Roman legal advice are, firstly, that Roman law may have functioned as a form of *ius commune* filling up legal lacunae for which local legal systems did not provide adequate solutions (*Lückenfüllung*) or, secondly, that litigants opportunistically may have chosen to seek out Roman legal advice, because the decisions were expected to be favourable.

Be it as it may, in the Roman East the practice of sending legal questions to the Roman West was used to resolve legal controversies. Roman citizens, Romanized inhabitants, and Hellenistic inhabitants of the Roman East ordered their local advocates to send these questions. These litigants from the Roman East wanted to receive a reply from the West and trusted the authority of the Roman norm when confronting these Western jurists with their documents in Greek.

XIII The use of Greek

Roman jurists were both confronted with Greek and made use of Greek themselves. In the legal writings from which the Justinianic Digest is composed, both Latin, Greek and a combination of the two languages were used. This bilingualism must not come as a surprise, considering that the entire Eastern half of the Roman empire spoke Greek, and all the Roman jurists of importance spoke and wrote Greek. Seeing, however, that half of the Roman empire spoke Greek and that the Byzantine compilators of the Justinianic Digest were native Greek speakers, the amount of Greek used in the Digest is surprisingly low. In compiling fragments for the Justinianic Digest the compilers clearly chose to underrepresent fragments of Greek legal writings.

Greek is only occasionally used in the fifty books of the Justinianic Digest. The quantity of Greek per fragment ranges from the use of single words to the incorporation of entire treatises in Greek. The smallest quantities of Greek in these fragments consist of expressions of one or two words

54 See Dig. 1.2.2.49 (Pomp. 1 *Ench.*).

employed as a catchphrase. On several occasions, for example, Roman jurists, such as Julian and Ulpian (quoting Julian and Celsus), use the catchphrase *ἐν πλάτει*[55], meaning 'broadly' or 'in a wide sense'. Single Greek words are also often used to clarify Roman legal concepts by providing translations of the 'corresponding' Greek legal concepts. Greek words are also used as a source of etymologies or to borrow terms from fields of science, and for occupations in which Greeks (or Greek slaves) were predominantly active. The usage of Greek can also be more extensive. The largest *corpus* of Greek in the Justinianic Digest can be found in Dig. 27.1, of which the beginning almost solely consists of Greek fragments from *De Excusationibus* by Modestin. Between these two extremities lie legal texts in which Greek authors, such as Demosthenes, Homer and Plato, are cited, a handful of Greek *rescripta*, and the corpus of twenty-six bilingual *responsa* examined in this dissertation.

The Justinianic Digest is for the most part composed of Latin legal texts. Greek or bilingual legal texts play a modest and mostly supportive role.

XIV Categorising greek in the justinianic digest

The Greek in the Justinianic Digest can be categorised into two main groups. The fragments of Group I show no intentional interaction with Greek law or with norms from an Hellenistic legal culture. The fragments of Group II, however, do demonstrate intentional interaction with Greek law or with norms from an Hellenistic legal culture. Examining the stance of the jurists with regard to the Greek they used themselves in their legal writings will provide an interpretative framework for the way in which the jurists handled cases in which they were confronted with Greek legal documents from the inhabitants of the Roman East.

In Group I the Greek words and expressions in the fragments are either used because they are technical terms originating from a predominantly Greek métier, or because they allegedly are the equivalents of Roman legal concepts in Greek, or because these Greek words are used by the jurists for etymologies. This has been explained by Babusiaux as forms of 'emblematic codeswitching' in her article *Quod Graeci ... vocant – Emblematischer Codewechsel in den Juristenschriften*[56]. Emblematic codeswitching is seen when an author predominantly uses a language, but then switches to another language for a few words or an expression and subsequently switches back to the predominantly used language. Greek used decoratively by the jurist or to air the jurist's knowledge falls into this group too. What follows are examples taken from legal fragments from Group I.

55 See, for example, Dig. 13.3.3 (Ulpian. 27 *ad Ed.*), Dig. 46.3.13 (Julian. 54 *Dig.*) and Dig. 46.8.12.2 (Ulpian. 80 *ad Ed.*).

56 Babusiaux, U. in Coriat, J./E. Metzger e.a. (eds.), (2014), *Inter cives necnon peregrinos: Essays in honour of Boudewijn Sirks*, 35-59, Göttingen.

An example of Greek technical terms originating from a predominantly Greek métier can be found in Dig. 21.1.5 (Paul. 11 *ad Sab.*). In this fragment Paul used Greek words borrowed from Greek medical sciences to describe illnesses. In Paul's time the most famous physician was Claudius Galen. This physician, however, wrote in Greek and it is known that many physicians were native Greek-speakers. To avoid legal issues based on terminology, the Greek is used that the physicians themselves also use[57].

An example of Greek which is used to clarify definitions of Roman legal concepts can be seen in Dig. 50.16.19 (Ulpian. 11 *ad Ed. Praet. Urb.*) in which Ulpian quoted Labeo. To explain the meaning of the legal concept of '*contractus*' as a set of obligations for both contracting parties, the Greek word for this legal concept is used: *συνάλλαγμα* (synallagmatic contract). An example of Greek used for etymologies is attested in Gaius's commentary on the Law of the Twelve Tables. Gaius here explained the origin of the word *telum* which according to him is derived from the Greek *ἀπὸ τοῦ τηλοῦ* (from a distance). This etymology can be found in Dig. 50.16.233.2 (Gaius, 1 *ad XII Tab.*). In the same fragment Gaius quoted Xenophon's *Anabasis* (5.2.14) to prove this very point.

With regard to the decorative use of Greek in the Digest, some Roman jurists cited Greek literature and philosophy. This seems to be done to illustrate cases or rules. Both the Iliad and the Odyssey of Homer are often quoted[58]. A long fragment of *Against Midias* by the Athenian orator Demosthenes is quoted in the works of the jurist Claudius Saturninus[59]. Roman jurists such as Paul, Marcian and Pomponius lace their works with quotations of the Greek philosophers Plato, Chrysippus[60], and Theophrastus[61]. The second/third century AD jurist Callistratus, especially renowned for his works on the *cognitio extra ordinem,* even quoted Plato as the highest authority of the Greeks in Dig. 50.11.2 (Call. 3 *de Cog.*): *summae prudentiae et auctoritatis apud Graecos Plato* (of the highest wisdom and authority among the Greeks, Plato).

Set against this first group of Greek texts, the second group concerns texts in which intentional interaction is demonstrated with Greek law or with norms from an Hellenistic legal culture. Into this category fall two Roman legal treatises in Greek, two cases in which Greek law is cited as the basis for Roman law and a case in which Greek common law is the basis for an imperial decision. The Greek and bilingual *rescripta* also fall into this category,

57 See for an example of another science Dig. 50.17.73 (Julian. 54 *Dig.*), in which the jurist borrowed a definition from Greek rhetorical sciences. In this case it concerns flawed reasoning.

58 Cf. Dig. 48.5.14.1 (Ulpian. 2 *de Adul.*).

59 See Dig. 48.19.16.6 (Saturn. 1 *de Poen. Pag.*). In Dig. 48.19.16.8 the same jurist quoted four lines of Homer's Iliad XXIII 85-88.

60 See Dig. 1.3.2 (Marcian. 1 *Inst.*) in which Marcian called Chrysippus a philosopher of the highest stoic wisdom. In this fragment Marcian also quoted Demosthenes.

61 See Dig. 1.3.3 (Pomp. 25 *ad Sab.*) and Dig. 1.3.6 (Paul. 17 *ad Plaut.*). The latter text has been incorporated in the Justinianic Digest twice. See Dig. 5.4.3 (Paul. 17 *ad Plaut.*).

as well as the twenty-six bilingual *responsa* from the corpus examined here. What follows is a brief examination of these cases, with the exception of the *rescripta* and *responsa*.

XV Two treatises in Greek in the Justinianic Digest

In Roman imperial times many legal works must have been published in Greek to meet the needs of the Greek-speaking inhabitants of the East. The countless magistrates, officials and private lawyers were surely in need of legal treatises in the language of the people with whom they worked. Almost nothing of this literature, however, can be found in the Justinianic Digest. In the sixth century AD Florentine Index, in which the books are mentioned which have been used as a source for the fragments of the Justianic Digest, only a few works with a Greek title can be found. Most of these works concern legal works in Latin with a Greek name, such as the famous *Ὅρων* by Quintus Mucius Scaevola, *Πιθανῶν* by Labeo and the *Ἐγχειρίδιον* by Pomponius mentioned above. Such works in Latin with a Greek title belong in Group I, as they make use of emblematic codeswitching. Two treatises in Greek in the Justinianic Digest stand apart. Firstly, there is the Greek treatise by Modestin mentioned at the beginning of this introduction called *De Excusationibus.* Presumably, Modestin wrote this work in Greek because he served as a magistrate in a Greek-speaking part of the Empire and he was asked questions about exemptions on tutelage and guardianship. Secondly, a treatise in Greek by Papinian must be mentioned on *ἀστυνομικοί*. These city officials (*ἀστυνομικοί*) were known in both the ancient Greek city-states and the Hellenistic East. It is likely that Papinian wrote this treatise to cater to the needs of the inhabitants of the many cities in the Hellenistic East. This treatise can be found in the title *On public roads and if anything is said to have been done on it* in Dig. 43.10 (*De via publica et si quid in ea factum esse dicatur*).

De Excusationibus

In his Greek-language work on *Excuses* (*De Excusationibus*), Modestin discussed the regulations on exemptions from guardianship and curatorship in six books. The treatise can be found in Dig. 27.1[62]. This section contains the largest quantity of Greek in the Digest. The compilators of the Justinianic Digest have picked fragments in Greek from Modestin's *σύγγραμμα* (treatise) in order to regulate this subject. The compilators added texts in Latin, mostly by Ulpian and Paul, to complete the section.

62 Some fragments of this treatise were added to other books. See Digest 1: Dig. 1.4.4 (Mod. 2 *de Excus.*), 19: Dig. 19.2.49 (Mod. 6 *de Excus.*), 26: Dig. 26.3.1 (Mod. 6 *de Excus.*), Dig. 26.5.21 (Mod. 1 *de Excus.*), Dig. 26.5.22 (Mod. 5 *de Excus.*) and Dig. 26.6.2 (Mod. 1 *de Excus.*) & 50: Dig. 50.1.35 (Mod. 1 *de Excus.*) and Dig. 50.16.104 (Mod. 2 *de Excus.*).

Regarding this work on *Excuses,* the question can be asked whether the usage of this treatise in Greek in Modestin's time must be considered an influence of Greek law or of Hellenistic law on the Roman law. In the first *lex* of the fragment quoted at the beginning of this introduction, Modestin explains that the legal customs (*νόμιμα*)[63] which he discusses are mere translations in a Greek voice. Hence the book should be interpreted as Roman law translated into Greek. In the *principium* (introduction), both the Latin names of Herennius Modestin and Egnatius Dexter[64] are transliterated in Greek, and the Greek transliteration of the Roman legal concept of *curatio* also betrays that Roman law was used in drafting this treatise. Still, even though the treatise concerns Roman law written in Greek, it warrants more research to find out whether by the use of the Greek language Hellenistic elements have entered Modestin's Roman legal treatise.

Ἐκ τοῦ ἀστυνομικοῦ μονοβίβλου

> Dig. 43.10.1 (Papinian. 1 *Ἀστυνομ.*):
>
> *Οἱ ἀστυνομικοὶ ἐπιμελείσθωσαν τῶν κατὰ τὴν πόλιν ὁδῶν, ὅπως ἂν ὁμαλισθῶσιν καὶ τὰ ῥεύματα μὴ βλάπτῃ τὰς οἰκίας καὶ γέφυραι ὦσιν οὗ ἂν δέῃ.*
>
> The city officials need to take care of the roads in the city, so that they will stay level and that streams of water do not damage the houses and that there are bridges on places where this is necessary.

In this monograph by the second / third century AD jurist Aemilius Papinian, he discussed the duties of the so-called *ἀστυνομικοί*. From the monograph only six fragments remain. These fragments are compiled in Dig. 43.10. In these six fragments the duties of the *ἀστυνομικοί* are summed up. The function of the *ἀστυνομικός* might be comparable to Roman *aediles*. Section 43.10 of the Digest is solely composed out of Greek texts.

These *ἀστυνομικοί* or *ἀστυνόμοι* are also attested in Plato's *Leges* 759a as officials taking care of '*ὁδῶν δὲ καὶ οἰκοδομιῶν καὶ κόσμου τοῦ περὶ τὰ τοιαῦτα*'[65]. The duties of these Athenian officials seem to be comparable to the duties of the *ἀστυνομικοὶ* described by Papinian's monograph from Dig. 43.10.1 quoted above.

In papyrological sources *ὁ νόμος ὁ ἀστυνομικός* is attested once in Alexandrian urban regulations (*dikaiomata*) summed up in P. Hal. 1 (Apollonopolite nome, after 259 BC[66]). Whether Papinian was influenced by Greek or

63 See for an explanation of the interpretation of these *νόμιμα* Maffi 2021, 52.

64 It remains unclear who this Egnatius Dexter was. See Viarengo 2021, 41-42.

65 Plato *Leges* 759a: 'of roads and buildings and the ordering thereof'.

66 The term *ὁ νόμος ὁ ἀστυνομικός* can be found in line 237 of P. Hal. 1. This papyrus contains the city law of Alexandria in Ptolemaic Egypt. The papyrus of P. Hal. 1 is well-known, because it contains a law of Solon which has also been added to the Justinianic Digest in Dig. 10.1.13 (Gaius, 4 *de Leg. XII Tab.*). This case is further discussed on p. 24-25.

Hellenistic legal thought when writing his treatise on *ἀστυνομικοί* remains uncertain. Officials in charge of the maintenance of civic structures may of course be found everywhere. Yet the deliberate choice to write a treatise in Greek on their functions is intriguing to say the least.

XVI Two cases of application of attic law as a basis for Roman law

In two instances from the Justinianic Digest Attic law has been explicitly referenced as a source of Roman regulations. These are two texts from Gaius' commentary on the Law of the Twelve Tables. The Law of the Twelve Tables was Rome's first codification. Allegedly[67], it originated from the fifth century BC. The two fragments mentioned can be found in Dig. 10.1.13 (Gaius, 4 *de Leg. XII Tab.*) and Dig. 47.22.4 (Gaius, 4 *de Leg. XII Tab.*)[68]. In his commentary, the second century AD jurist Gaius quotes the laws of Solon[69]. Solon was a seventh / sixth century BC Athenian political figure and lawgiver. The reason why Gaius quoted Solon may have been because a law of Solon lay at the basis of the regulations of Dig. 10.1.13 and Dig. 47.22.4. Another possible reason is that Gaius mentioned it to enhance the 'Greek' origin story of the Law of the Twelve Tables. In this story, a Roman envoy to the Greek city-states is mentioned, sent by Rome to get inspiration to draw up the Law of the Twelve Tables. This story is also mentioned in Dig. 1.2.2.4 (Pomp. 1 *Enchir.*)[70]. The compilators of the Justinianic Digest have added the text in the title *Finium Regundorum,* on the action for regulating boundaries.

Dig. 10.1.13 (Gaius, 4 *de Leg. XII Tab.*):

Sciendum est in actione finium regundorum illud observandum esse, quod ad exemplum quodammodo eius legis scriptum est, quam Athenis Solonem dicitur tulisse: nam illic ita est: "ἐάν τις αἱμασιὰν παρ' ἀλλοτρίῳ χωρίῳ ὀρυγῇ[71], τὸν

67 Crawford *et al*. discuss the dating of the Law of the Twelve Tables. They refute scholarly opinions that this law was promulgated in 225 BC or 300 BC. See Crawford, M. (ed.) (1996), *Roman Statutes*, London, 556-557.

68 Next to Dig. 10.1.13 and Dig. 47.22.4, in his commentary on the Law of the Twelve Tables Gaius used Greek in three other fragments. These fragments are Dig. 50.16.233.2 (Gaius, 1 *de Leg. XII Tab.*) in which Gaius quoted Xenophon's Anabasis V. 2.14, Dig. 50.16.236*pr* and Dig. 50.16.236.1 (Gaius, 4 *de Leg. XII Tab.*) in which he quoted Homer's Odyssey IV. 230 and used the Greek word *ἀκρόδρυα* (fruit-trees), respectively. Scheibelreiter gives an all-encompassing analysis of these texts, especially Dig. 50.16.233.2, in Scheibelreiter *SZ* 136 (2019), 1-46.

69 Solon (and Draco) are also quoted by Ulpian in Dig. 48.5.24 (23) *pr* (Ulpian. 1 *de Adul.*). In this case, Ulpian used both lawgivers to clarify the meaning of 'caught in the act'. Apparently, Solon and Draco called this *ἐν ἔργῳ*.

70 The authenticity of this story is often debated in modern literature. An overview of opinions on the '*fortschreitende Mythenbildung*' of the Roman envoy to Athens can be found in Schanbacher *SZ* 137 (2020), 14-16.

71 In his *Editio Maior* Mommsen questions whether *ὀρυγῇ* should read *ὀρύττῃ*.

> ὅρον μὴ παραβαίνειν· ἐὰν τειχίον, πόδα ἀπολείπειν· ἐὰν δὲ οἴκημα, δύο ποδας. ἐὰν δὲ τάφον[72] ἢ βόθρον ὀρύττῃ, ὅσον τὸ βάθος ᾖ, τοσοῦτον ἀπολείπειν· ἐὰν δὲ φρέαρ, ὀργυιάν. ἐλαίαν δὲ καὶ συκῆν ἐννέα πόδας ἀπὸ τοῦ ἀλλοτρίου φυτεύειν, τὰ δὲ ἄλλα δένδρα πέντε πόδας.
>
> It must be known regarding the action for regulating boundaries that the following is to be observed, which has been written following, to a certain extent, the law which it is said that Solon had passed in Athens, which is as follows: "When someone builds a wall of dry stones near someone else's land, let him not transgress the landmark. When he builds a wall [as a fence], let him leave one foot in length. And when [he erects] a building, [let him leave] two feet. When he digs a grave or a trench, let him leave a length equal to the depth [of that grave or trench]. When [he digs] a well, [let him leave] a fathom. He should grow an olive tree or a fig tree at least nine feet away from someone else's land and other trees five feet away.

This law of Solon quoted by Gaius is seen as an influence of Greek law on (archaic) Roman law or as the reception of Greek law by Roman law. The reception of this law, however, was not limited to Rome alone, as it is also attested in Ptolemaic Egypt in the city of Alexandria[73]. The resemblance between the text on P. Hal. 1 and the law quoted by Gaius is unmistakable. This can be seen in P. Hal. 1, 98-99, for example: *ἐὰν δὲ φρέαρ, ὀργυάν, ἐλάαν δὲ καὶ [συκῆν φυτεύοντ]α // ἐ[ννέα πόδας φυτεύειν ἀπὸ τοῦ ἀλλ]οτρίου τ[ὰ δ'] ἄλλα δένδρη πέντε [πό]δας*. This law of Solon from the sixth century BC appeared outside of Athens in the Roman Republic of the fifth century BC, in Ptolemaic Egypt of the third century BC and in the Roman empire of the second century AD, which fact indicates a complex interplay between laws and people of the ancient Mediterranean.

The other fragment in which Gaius cited a law of Solon 'verbatim' is Dig. 47.22.4 (Gaius, 4 *de Leg. XII Tab.*). According to Arnaoutoglou, however, the text of this piece of legislation is probably not older than the first century BC[74]. Regulations similar to Dig. 47.22.4 can be found in third century BC Ptolemaic Egypt and Roman Athens[75]. The law depicted below regulates the interactions and agreements of *sodales* (members of an association). Therefore, the fragment is added to a title *De collegiis et corporibus* in the Justinianic Digest.

---

72 An emendation to *τάφρον* would lead to the translation 'irrigation-ditch' or 'trench' instead of *τάφον* 'grave'. In P. Hal. 1, V. 97 (Apollonopolite nome, after 259 BC) *τάφρον* can be found. This is also the case in Plutarch's *Vita Solonis* caput 23. See Kaiser *SZ* 130 (2013), 341.

73 This exact law can also be found on a third century BC papyrus P. Hal. 1 (Apollonopolite nome, after 259 BC), IV-V ll. 84-105 contains this law from Solon. See also Hirata, 125 (2008), 675-676.

74 See Arnaoutoglou *LR* 5 (2016), 87-120.

75 See Arnaoutoglou *LR* 5 (2016), 114.

Dig. 47.22.4 (Gaius, 4 *de Leg. XII Tab.*):

Sodales sunt, qui eiusdem collegii sunt: quam Graeci ἑταιρείαν vocant. His autem potestatem facit lex pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant. Sed haec lex videtur ex lege Solonis tralata esse. Nam illuc ita est: "ἐὰν δὲ δῆμος ἢ φράτορες ἢ ἱερῶν ὀργίων ἢ ναῦται[76] ἢ σύσσιτοι ἢ ὁμόταφοι ἢ θιασῶται ἢ ἐπὶ λείαν οἰχόμενοι ἢ εἰς ἐμπορίαν, ὅτι ἂν τούτων διαθῶνται πρὸς ἀλλήλους, κύριον εἶναι, ἐὰν μὴ ἀπαγορεύσῃ δημόσια γράμματα".

Sodales are those who are in the same association: the Greeks call this *ἑταιρεία*. To them, however, a law gives the power to agree upon whatever pact amongst each other they would like, as long as it does not diminish anything from public law. This law, however, appears to be translated from the law of Solon, because there the following is written: When people either from the same district or members of either the sacred *orgia* or seamen or dinner club members or members of the same burial association or guild members or those who come together for profit or for commerce, agree upon things with one another, this is valid, when it is not prohibited by public laws.

This law could truly be a law of Solon, or a regulation from the third century BC Hellenistic Egypt, or a regulation from Roman Athens. It is, however, evident that the incorporation of this law in a second century AD treaty on the Law of the Twelve Tables indicates that legal ideas in the ancient Mediterranean were not always bound to one time and one place.

XVII Greek common law as a basis for an imperial decision

The interaction between Roman law, and local law and customs from the Greek-speaking East can also be seen in Dig. 14.2. This title in the Justinianic Digest encompasses the *Lex Rodia de iactu.* This is the Rhodian Sea Law on Jettison. As the name of the law suggests, this law is presumed to be from the Greek island of Rhodes. The incorporation[77] of the Rhodian Sea Laws in the Justinianic Digest is seen as one of the most famous 'legal transplants'[78] in Roman law. Dig. 14.2 contains fragments from famous Roman jurists such as Labeo, Julian, Paul, Papinian, Callistratus and Hermogenian. One

76 In his *Editio Maior* Mommsen edits *ἱερῶν ὀργίων θύται* 'members who come together to sacrifice'.

77 The extent to which customs of the Rhodian Sea laws entered Roman law is discussed in Chevreau *TvR* 73 (2005), 79.

78 The term legal transplant is not used in this dissertation. A transplant of a legal concept suggests that the concept is taken from a legal system and subsequently is no longer present in that legal system. The term coined by Alonso 'institutional translation' is in that view preferable. The word *tralata* (*translata*) can also be seen in Dig. 47.22.4, discussed above.

fragment was added to the section from a less-known Roman jurist, Volusius Maecianus. In Dig. 14.2.9 (Vol. Maec. 1 *ex Lege Rodia*) it appears that Volusius Maecianus incorporated a *rescriptum* by an emperor Antoninus in his works. Since it can be established from papyrological sources that Volusius Maecianus was the Prefect of Egypt in 161 AD, the Antonine emperor in question must have been Antoninus Pius. In this *rescriptum* the petition and the corresponding answer by the emperor are in Greek:

> Dig. 14.2.9 (Vol. Maec. *ex Lege Rodia*)
>
> Ἀξίωσις Εὐδαίμονος Νικομηδέως πρὸς Ἀντωνῖνον βασιλέα· Κύριε βασιλεῦ Ἀντωνῖνε, ναυφράγιον ποιήσαντες ἐν τῇ Ἰταλίᾳ διηρπάγημεν ὑπὸ τῶν δημοσίων τῶν τὰς Κυκλάδας νήσους οἰκούντων. Ἀντωνῖνος εἶπεν Εὐδαίμονι· ἐγὼ μὲν τοῦ κόσμου κύριος, ὁ δὲ νόμος τῆς θαλάσσης. Τῷ νόμῳ τῶν Ῥοδίων κρινέσθω τῷ ναυτικῷ, ἐν οἷς μήτις τῶν ἡμετέρων αὐτῷ νόμος ἐναντιοῦται. Τοῦτο δὲ αὐτὸ καὶ ὁ θειότατος Αὔγουστος ἔκρινεν.
>
> Petition of Eudaemon of Nicomedia to Emperor Antoninus [Pius]. Lord Emperor Antoninus, having suffered shipwreck in Italia[79] we were robbed by public servants of the inhabitants of the Cyclades. Antoninus said to Eudaemon: I am the Lord of the Universe, the law, however, rules the sea. Let it [i.e. this controversy] be judged by the nautical law of the Rhodians, in cases where this law does not contradict one of our own. In a similar fashion the late emperor Augustus also decided.

In this rescript emperor Antoninus Pius 'the ruler of the universe' answered to a petition sent by Eudaemon. This Eudaemon was an inhabitant of Nicomedia (modern-day Izmit in Turkey) in the Greek-speaking Hellenistic East. It therefore comes as no surprise that the petition was drawn up in Greek and the subsequent imperial reply was also in Greek. Antoninus Pius was unwilling to decide on this case concerning the law of the sea. The reason for the emperor's unwillingness is that cases concerning cargo and shipwreck were governed by laws and customs from the Rhodian Sea laws. The emperor declared that this law was applicable, unless these laws and customs contradicted Roman law.

XVIII A conclusion on the use of Greek in the Justinianic Digest

The usage of Greek as categorised in Group I indicates that Roman jurists actively engaged with Greek culture. The Roman jurists not only read, wrote and spoke Greek, but also referred to Greek literature, philosophy and science

79 Both Watson and Spruit translate the emendation *Ἰκαρίᾳ* which seems more logical due to the location of both the Cyclades and Nicomedia. In his *Editio Maior* Mommsen indicates that *Ἰκαρίᾳ* is an emendation of Gothofredus.

in their works. The usage of Greek categorised in Group II shows an influence on the legal context in which these jurists operated. Papinian and Modestin addressed some of their works to a Greek-speaking audience. Gaius quoted the laws of Solon to show the (mythical) cultural origins of the Law of the Twelve Tables. Yet a profound influence of legal Greek on the Roman jurists cannot be deduced from these three works. Rather the opposite holds true, however, for the fragment by Volusius Maecianus in Dig. 14.2.9. In the rescript quoted there, the emperor saw no problem in filling up a lacuna in Roman law with local customs and laws which were not invented by the Romans. This means that, much like the earlier jurisdiction of the *praetor peregrinus*, the structure of Roman law was pliable enough during the imperial period to incorporate 'alien' legal thought and concepts, as long as they did not intervene with key aspects of Roman law. This rescript must have been known to Roman jurists of the second and third century AD because it was an authoritative decision by the highest judicial body. From the fragment of Volusius Maecianus, it appears that this practice had been established earlier by emperor Augustus, as he left controversies concerning the sea to the authority of the Rhodian Sea laws, too. From the usage of Greek in the rescript in Dig. 14.2.9, it becomes evident that Roman jurists realized that there was space for Hellenistic legal thought in the Greek language within Roman law. Of course, in concrete cases, the jurists then had to interpret how much space was available for Hellenistic legal thought and how this space could be filled.

XIX The jurists who gave legal advice examined in this research

In the Justinianic Digest a multitude of books with *responsa* can be found from Roman jurists from the second and third century AD. Examples of famous Roman jurists from this timeframe who had a *responsa* practice are Iavolenus, Neratius Priscus, and Ulpius Marcellus. Replies based on cited Greek legal documents, however, can only be found in the works of three Roman jurists in the Justinianic Digest[80], namely Cervidius Scaevola, Iulius Paul, and Herennius Modestin.

From two works of Cervidius Scaevola seventeen bilingual *responsa* are attested. These works are his *Digesta* and his *Responsa*. From the works of Paul four bilingual replies based on a cited Greek legal document are attested and one bilingual *decretum*. These are taken from Paul's *Responsa* and his *Decreta*. Lastly, from the jurist Modestin four bilingual replies based on a cited Greek legal document are attested, taken from his *Responsa*.

80 In Roman legal sources other than the Digest, e.g. the *Pauli Sententiae,* the *Fragmenta Vaticana,* the *Scholia Sinaitica* or other pre-Justinianic Roman legal sources, such bilingual *responsa* are not attested.

XX The *responsa* researched in relation to the jurists and their works

It is highly unlikely that this corpus of twenty-six bilingual *responsa* from the Justinianic Digest is representative for the total amount of legal questions from the Roman East answered by Roman jurists from the West. That *responsa* based on a Greek document are attested from only three Roman jurists, namely Scaevola, Paul, and Modestin, is peculiar, especially considering that other Roman jurists from the second and third century AD were equally renowned. Jurists such as Papinian and Ulpian, to give two examples, had blossoming *responsa* practices as well.

It cannot be explained why no bilingual *responsa* from the works of Papinian or Ulpian were added to the Justinianic Digest. This is even more remarkable considering the large quantity of fragments by Ulpian in the Justinianic Digest. Moreover, hundreds of fragments are attested in the Justinianic Digest from the *responsa* by Papinian. The jurist Papinian himself was in all probability of provincial descent[81]. As was usual for a man of his period and stature, Papinian was fluent in Greek. Part of a Greek treatise by Papinian has been added to the Justinianic Digest in Dig. 43.10.1 (Papinian. 1 *Ἀστυνομ.*) as mentioned earlier. It seems unlikely that Ulpian or Papinian did not produce bilingual *responsa* when confronted with questions concerning documentary Greek. Yet if they did, such *responsa* have not been included by the compilers and do not survive in any other form.

From the perspective of the works of the jurists themselves, it cannot be said that the amount of bilingual *responsa* in the works of Paul and Modestin is an over- or underrepresentation. From Paul's *Responsa* in twenty-three books over 150 fragments are attested in the Justinianic Digest. Four of these 150 replies are based on a cited Greek document. Concerning Modestin, in the Justinianic Digest close to 350 fragments of his work can be found of which circa sixty-five *responsa* from a corpus of *responsa* in nineteen books. Only four replies in which the reply and question is based on a cited document in Greek, can be found in these sixty-five *responsa.*

A different case can be made for the *responsa* by Cervidius Scaevola. From Scaevola's *Digesta* and *Responsa* more than two hundred fragments are attested. From those fragments, seventeen bilingual fragments based on cited

81 Babusiaux states that as almost all imperial jurists, Papinian was of provincial descent. See Babusiaux 2011, 3. Papinian's 'African' descent or his alleged Syrian descent to which scholars often refer must be disputed. The assumption of Papinian's African descent is mostly based on stylistic arguments, even though an African *Sprachfärbung* is philologically highly dubious (Babusiaux 2011, 3). The assumption of Papinian's Syrian descent is derived from the *Historia Augusta* (Caracalla VIII 2). The writings in the *Historia Augusta*, however, cannot always be considered historically accurate sources. For these and more arguments against the assumption of Papinian's African or Syrian descent, see Babusiaux 2011, 3.

Greek documents can be found in Justinianic Digest. In all, there seems to be an overrepresentation of surviving bilingual fragments from the works of Cervidius Scaevola. Talamanca states, based on statistic evidence and analysis of the content of Scaevola's works[82], that Cervidius Scaevola was not specialised in legal questions from the Roman East. Legal questions from the Roman East were a normal part of his *responsa* practice in Rome[83]. He states that from the texts in Scaevola's *Digesta,* which amount to (a reconstructed) 283 fragments only thirteen are bilingual, meaning less than five percent and for Scaevola's *responsa* only four in a corpus of (a reconstructed) 182 texts are bilingual, meaning only a fraction higher than two percent[84]. On this Talamanca elaborates: "*Anche se si tiene presente la scarsità e la casualità del campione su cui la rilevazione è stata effetuata, la maggiore presenza nei Digesta di passi che mostrano un collegamento con la lingua greca è da riportare al «trend» di caraterre generale…*"[85] Talamanca is correct. Scaevola's practice in bilingual *responsa* is not indicative of overrepresentation, but rather of underrepresentation of all the other jurists. No unambiguous explanation can be given for the overrepresentation of fragments from Scaevola, or the underrepresentation of bilingual *responsa* from other authors in the Justinianic Digest.

As indicated, neither personality, assumed background or an Eastern-looking practice can account for the overrepresentation, underrepresentation or complete absence of bilingual fragments from particular jurists in the Justinianic Digest. To test this theory, however, a short biographical sketch of the three jurists that have produced surviving fragments is in order. These biographies may also help to understand their personal and professional reactions to documentary Greek and Hellenistic legal cultures, as this dissertation will show.

Cervidius Scaevola

Quintus Cervidius Scaevola[86] is known for his *Digesta* in forty books and his *Responsa* in six books. To a lesser degree he is known for his twenty books of *Quaestiones,* his two monographs *Quaestiones Publice Tractatae* and *de Quaestione Familiae* and his *Regulae.* Scaevola was a highly renowned jurist from the second century AD, whose year of birth might have been 135 AD[87].

82 Talamanca 2009, 544-546.
83 Talamanca 2009, 542*sqq*; also see Spina 2012, 21.
84 Talamanca 2009, 544.
85 Talamanca 2009, 544.
86 Four elaborate studies on Cervidius Scaevola have been published in recent years: Talamanca *I clienti di Q. Cervidio Scevola* (*BIDR* 103-104 2000-2001 (2009), 483-702), Scarcella *Il bilinguismo nei fedecommessi e il ruolo di intermediario del giurista tra istituti giuridici romani e novi cives, come strumenti di integrazione sociale* (*AUPA* 55 (2012), 619-658), Spina *Ricerche sulla successione testamentaria nei responsa di Cervidio Scevola* (Milan, 2012) and Stepan *Scaevola Noster* (Tübingen, 2018).
87 See Stepan 2018, 8.

Not only is he praised as a *κορυφαῖος τῶν νομικῶν* by Modestin in Dig. 27.1.13.2 (Mod. 4 *de Excus.*), he is also mentioned by the *Scriptores Historiae Augustae* as *praecipue iuris peritus*[88]. In this text he is mentioned as a confidant of emperor Marcus Aurelius. This is also evident from the *Tabula Banasitana*. His name is attested under this document together with the members of Aurelius' *consilium*[89]: *Q(uintus) Cervidius Q(uinti) f(ilius) Arn(ensi tribu) Scaevola* (Quintus Cervidius son of Quintus of the Arnensis tribe Scaevola)[90]. Because of his affiliation with the tribe of Arnensis, the presence of bilingual texts in his legal corpus and alleged Africanisms in his speech, scholars have pondered on a possible origin from a Greek-speaking Roman province. The North-African city of Cartage is sometimes tentatively mentioned as his native city[91]. It is widely accepted that Scaevola was the teacher of Claudius Tryphonin[92] and the jurist Julius Paul[93].

The replies examined in this book are all from Scaevola's *Digesta* and *Responsa.* The way in which Scaevola's *Digesta* and *Responsa* relate to one another is debated. Three main theories concerning this relation can be found in Stepan[94]. The first theory is that the *Digesta* are an elaborated version of the *Responsa.* The second theory is that the *Responsa* are a shortened version of the *Digesta* and the third theory states that the *Responsa* and the *Digesta* have a common, "archetypical" source. No conclusive arguments can be made for either of the three theories. Scaevola's published replies were not always the same as the ones that were sent to his clients. This, however, holds true for most published and edited replies by Roman jurists.

88 SHA *Vita Marci Antonini* XI.

89 See also Dig. 36.1.23 (22) *pr* (Ulpian. 5 *Disp.*).

90 AE 1971, 534 (Banasa, 166-177 AD). Another inscription on marble, concerning Cervidius Scaevola is CIL XIV 4502 (Ostia, 175AD) in which Scaevola is mentioned as a prefect.

91 See Stepan 2018, 8.

92 The evidence for Thryphonin being Scaevola's pupil is, however, indirect. See Stepan 2018, 27-29.

93 One of the arguments of Scaevola being the teacher of Tryphonin and Paul is that both jurists frequently mention him as *Scaevola noster*, as can be seen in Dig. 20.5.12.1 (Tryph. 8 *Disp.*) and Dig. 3.5.18.1 (Paul. 2 *ad Ner.*). Furthermore, Tryphonin wrote *notae* on Scaevola's *Responsa* and *Digesta.* Kunkel (2001, 244.) bases his statement that Paul was a pupil of Scaevola on Dig. 28.2.19 (Paul. 1 *ad Vit.*) from which it becomes evident that Paul was present at the discussions surrounding the legal controversies on which Scaevola is said to have responded: *Scaevola respondit non videri, et in disputando adiciebat ideo non valere* (Scaevola responded that it was not so and during the discussing he added a reason why it was not valid). See also Spina 2012, 50*sqq.*

94 Stepan 2018, 12. For further literature on these theories and the scholars which proposed them, see also Stepan 2018, 12.

Julius Paul

Julius Paul[95], as mentioned above, was a student of Quintus Cervidius Scaevola[96]. He was a classical Roman jurist from the second/third century AD. It is not certain what the exact origin of Paul was. Kunkel, however, states that the story that his native city was Padua must be considered a fairy tale[97]. Presumably, Paul started his legal career as an attorney. In Dig. 32.78.6 (Paul. 2 *ad Vit.*) he noted an anecdote concerning a case he worked on, describing how he brought suit to recover goods that served as a dowry for a woman, to whom they were bequeathed. The proceeding took place before the *praetor fideicommissarius*. According to the *praetor*, however, Paul was in the wrong concerning these goods and he lost the suit. At the time of writing, Paul apparently still disagreed with the decision.

Paul had a flourishing practice in giving legal advice. In the Justinianic Digest over 150 fragments are taken from more than twenty-one of his twenty-three books of *Responsa*. As a prolific author, Paul wrote about 86 works of which over seventy are mentioned in the *Index Florentinus*[98]. Furthermore, Daalder mentions that some of Paul's legal literature is focused on legal education which would indicate that next to his *responsa* practice Paul also trained new generations of lawyers[99]. These works are the *Institutionum libri II*, the *Regularum libri VII*, the *Manualium libri III* and twenty-six books of *Quaestiones.*

Next to his private work as a jurist, Paul was also active at the imperial chancery in the *consilium* of emperor Septimius Severus. Two of his works collect cases discussed at the *consilium*, in the *Decretorum libri III* and the *Imperialium Sententiarum in Cognitionibus Prolatarum libri VI*. From both works, it appears that Paul directly advised the emperor. At times Paul even disagreed with him[100]. Simultaneously, Paul was an *assessor* in the *consilium* of Papinian. In Dig. 12.1.40 (Paul. 3 *Quaest.*), Paul brings to memory that he was present when Papinian and his counsellors discussed a case: *Lecta est in auditorio Aemilii Papiniani praefecti praetorio iuris consulti cautio huiusmodi*[101].

The exact date of Paul's death cannot be established with certainty. It is known that he was still alive in 222 AD. This can be deduced from Dig. 31.87.3 (Paul. 14 *Resp.*) in which Paul mentions a letter from emperor Alexander Severus. In this letter the prefect Claudius Julian is mentioned, who was prefect from summer 222 AD until November 223 AD[102].

---

95 For a biography with extensive references to modern-day scholarly research with regard to the jurist Julius Paulus see Daalder 2018, 97-104.
96 See Kunkel 2001, 244.
97 See Kunkel 2001, 245.
98 Daalder 2018, 104.
99 Daalder 2018, 99.
100 See Dig. 4.4.38 (Paul. 1 *Decr.*) regarding a case of a certain Rutilia.
101 Dig. 12.1.40: "a caution concerning the same matter was read at a hearing chaired by the jurist Aemilius Papinianus, who was praetorian prefect".
102 Daalder 2018, 97.

Herennius Modestinus

Kunkel dates Herennius Modestin[103] as the last of the Roman jurists from the period of Classical Roman law[104]. Modestin is known as a transitional figure operating in a timeframe between the highpoint of Roman law and its decline[105]. The exact year of his birth and death are, however, unknown. A memorable introduction to Modestin is provided by Ulpian:

> Dig. 47.2.52.20 (Ulpian. 37 *ad Ed.*):
>
> Si quis asinum meum coegisset et in equas suas τῆς γονῆς dumtaxat χάριν admisisset, furti non tenetur, nisi furandi quoque animum habuit. Quod et Herennio Modestino studioso meo de Dalmatia consulenti rescripsi circa equos, quibus eiusdem rei gratia subiecisse quis equas suas proponebatur, furti ita demum teneri, si furandi animo id fecisset, si minus, in factum agendum.
>
> If someone had driven off my donkey and had admitted him to his own mares only for the *acte de la génération*, he is not liable with an action based on theft, if he did not also have the will to steal. This I also wrote back to my pupil Herennius Modestin, asking my advice from Dalmatia regarding stallions, to which someone, as was stated, had subjected his mares on account of the same act, namely that he was only liable with an action based on theft, if he had done it with the intention of stealing, if not, an action based on the facts of the matter must be brought.

From Ulpian's fragment two things can be deduced, other than Ulpian's prude use of the Greek language: namely that Herennius Modestinus was a pupil of Ulpian and that for some (unknown) reason Herennius Modestinus was in the province of Dalmatia. Presumably, Modestin had a function as an official in that province, perhaps as *procurator*[106]. This can be deduced from the fact that inhabitants from Dalmatia turned to him to administer justice, in this case concerning an alleged theft.

In an epigraphical source from Rome, the so-called *lis fullonum*[107], Modestin is mentioned as a *praefectus vigilum* somewhere between 226-244 AD. Modestin was one of the jurists who had given an interlocutory injunction: *Interlocutiones // Aeli Floriani Herenni Modestini et Faltoni // Restutiani*

103 An extensive biography of Herennius Modestin can be found in Viarengo 2021, 3-25.
104 Kunkel 2001, 259.
105 See *the Oxford Classical Dictionary* (2012), s.v. *Herennius Modestinus* by T. Honoré.
106 This is a suggestion by Kunkel 2001, 259.
107 CIL VI 266 (Rome, 226-244 AD).

praef(*ectorum*) *vigil*(*um*) *p*(*erfectissimorum*) *v*(*irorum*)[108]. Sometime earlier, presumably from October 223 until October 225, Modestin had been the secretary of petitions (*a libellis*) in emperor Alexander Severus' chancery[109].

Next to his *Responsa* in nineteen books and the already mentioned treatise on Excuses in six books dedicated to a friend in the Roman East, Modestin wrote a great many legal books. Fifteen of these titles are mentioned in the Florentine Index among which are two monographs on dowry and marriage, named *de Differentia Dotis* and *de Ritu Nuptiarum* respectively, and three monographs on the law of inheritance, namely *de Inofficioso Testamento, de Legatis et Fideicommissis* and *de Testamentis*. Presumably to aid him in his legal teachings he also wrote *Differentiae* in nine books, *Regulae* in ten and *Pandectae* in twelve books[110]. Together with Paul, Modestin is one of the five jurists mentioned in the so-called '*lex citandi*' of 426 AD[111].

XXI Differences between the three jurists

The three jurists, Scaevola, Paul and Modestin, have their own distinctive way to handle cases in which legal questions were posed on the basis of Greek documents.

Cervidius Scaevola's style seemed to have been one of brevity. This culminates in the answers of the following four replies. Firstly, in Dig. 31.88.15 he responded: *Respondi secundum ea quae proponerentur non exstitisse*[112]. Secondly, in Dig. 33.8.23.2, he replied: *Respondit secundum ea quae proponerentur non videri legata*[113]. And, in the following fragment, Dig. 33.8.23.3, Scaevola just answered: *Respondit supra responsum.* Lastly, in Dig. 40.4.60 he cryptically and briefly stated: *Respondit non oportere eiusmodi consultationem praeiudicium parare*[114]. In other replies, Scaevola added brief motivations to

108 CIL VI 266, 3-5: Interlocutory sentences of the prefects of the vigils, eminent men, Aelius Florianus, Herennius Modestinus and Faltonius Restutianus. See also ll. 14-18: *et, alio capite, // Modestinus d(ixit) si quid est iudicatum, habet suam auctoritatem, si est, ut dixi, iudicatum, // interim aput me nullae probationes exhi- // [be]ntur, quibus doceantur fullones in pen- // [sione]m iu[r]e conveniri* (and in another paragraph, Modestin said: If, something is judged, it has its own authority, if it is, as I said, judged; meanwhile no evidence has been presented to me, from which is deduced that the cloth-fullers are justly sued with regard to payment).

109 See Liebs 2010, 73. Liebs, D. (2010), *Hofjuristen der römischen Kaiser bis Justinian*, Munich.

110 Cf. *The Oxford Classical Dictionary* (2012), s.v. *Herennius Modestinus* by T. Honoré.

111 See Cod. Theod. 1.4.3. The other jurists mentioned are Papinian, Ulpian and Gaius. Later in the fragment Cervidius Scaevola is also mentioned. Only the opinions and advices of these jurists could be cited with authority.

112 See Dig. 31.88.15 (Scaev. 3 *Resp.*) discussed on pp. 135*sqq*.

113 A detailed analysis of both Dig. 33.8.23.2 and Dig. 33.8.23.3 (Scaev. 15. *Dig.*) can be found on pp. 217*sqq*.

114 See pp. 237*sqq*. Dig. 40.4.60: He responded that it is not right to raise a prejudicial inquiry on such matters.

his answer and in Dig. 32.101*pr* even seemingly casual added an aside[115]: *si modo in proprium patrimonium – quod fere cessante debitore fit – non sint redacta*[116].

A reason for the extreme brevity of these answers cannot be found in differences between the original works in which they were found. These terse replies, with only the advice itself, are present in both the *Responsa* and the *Digesta* of Scaevola. An explanation could be that these replies were not used in an educational setting or were not discussed during a *disputatio.* Alternatively, the topic of the legal question perhaps did not warrant a longer *responsum*. This extreme brevity, however, is not that common in Scaevola's work. In the corpus examined here it is seen in four replies out of a total of seventeen cases.

The fragments of Paul and Modestin in general have a more substantial and more motivated reply than those of Scaevola. Turning to the legal advice of Paul, in four of the five bilingual fragments by Paul a more or less substantial motivation for the advice can be seen. Firstly, in Dig. 16.3.26.1 (Paul. 4 *Resp.*), Paul explained that even though the contract exceeded the bounds of a Roman *depositum,* still an action based on *depositum* could be brought. Secondly, in Dig. 8.3.37 (Paul. 3 *Resp*.), Paul explained that the use of water, being a personal right, could not be inherited, because it was not a praedial servitude. Thirdly, in Dig. 28.1.29*pr*-1 (Paul. 14 *Resp*.), Paul motivated his advice on a testament that was not lawfully completed. In this document a clause was written which validated the testator's provisions made for his beneficiaries. Paul argued that the document contained valid testamentary provisions, because it expressed the *voluntas* of the testator. Lastly, in Dig. 40.5.39.1 (Paul. 13 *Resp*.), Paul advised that a person and his children had to be manumitted, because the will of the testator made that clear. The last of the four fragments by Paul is also extensively motivated. This decision, however has been nominally made and motivated by emperor Septimius Severus[117].

Modestin's four bilingual fragments are relatively long and cite extensive parts of the Greek documents. Modestin's responses in general have more substance than just the advice itself. In the fragments of Dig. 34.1.4*pr* (Mod. 10 *Resp.*) and Dig. 31.34.1 (Mod. 12 *Resp.*) multiple legal questions were asked. In Dig. 34.1.4*pr*, Modestin even 'helped' the author of the four legal questions. This author was influenced by Hellenistic law, but had some knowledge of Roman law. Modestin helped the author of the legal questions by ordering these questions from most important to least important in his reply[118]. The last question answered by Modestin in Dig. 34.1.4*pr* must, from a Roman legal perspective, be seen as a cakewalk.

115 This case is further examined on pp. 83*sqq*.

116 Dig. 32.101*pr*: if they had not been brought into his patrimony – which often happens when the debtor is in default.

117 These four replies by Paul and the decretum are examined on pp. 115*sqq*, pp. 204*sqq*, pp. 189*sqq*, pp. 241*sqq* and pp. 180*sqq* respectively.

118 These four cases by Modestin are examined on pp. 132*sqq*, 144*sqq*, 193*sqq* and 244*sqq*.

That Modestin is inclined to extend a helping hand to an inhabitant of the Roman East, can be explained. As a transitional figure, it is likely, that he tried to bring Hellenistic legal practices to terms with the strictness of Roman law more than his predecessors. Of the three Roman jurists examined, Modestin is the one most inclined to bend and shape the Hellenistic cases into Roman law and more importantly to bend and shape Roman law to fit these Hellenistic cases. Paul is also sometimes inclined to do so, in opposition to Scaevola, who, so it seems, only administered Roman law in the bilingual cases examined.

An explanation for the discrepancy in leniency between the three jurists could be the timeframe and the exposure to Hellenistic culture. Scaevola was the oldest of the three jurists. Possibly, in the period that he was active, the second century AD, Roman law, and most importantly Roman jurists, were not yet enough accustomed to Hellenistic law to flexibly accommodate the inhabitants of the Roman East. In the third century AD of Modestin, the Hellenistic East had been part of the Roman Empire for a hundred years longer. It is more than likely that during this time Roman law became more adjusted to and influenced by Hellenistic legal culture. This made it less complicated for Modestin to accommodate the inhabitants of the Roman East.

XXII The twenty-six texts of the corpus examined

In the following, the twenty-six texts of the corpus on which this dissertation is based are listed in a table.

Table 2: Twenty-six bilingual responsa from the Digest

Digest	**Author**	**Work**	**Book**
Dig. 50.9.6	Scaev.	*Digesta*	I
Dig. 33.4.14	Scaev.	*Digesta*	XV
Dig. 33.8.23.2-3	Scaev.	*Digesta*	XV
Dig. 32.101*pr*	Scaev.	*Digesta*	XVI
Dig. 32.37.5	Scaev.	*Digesta*	XVIII
Dig. 32.37.6	Scaev.	*Digesta*	XVIII
Dig. 32.39.1	Scaev.	*Digesta*	XX
Dig. 34.1.16.1	Scaev.	*Digesta*	XVIII
Dig. 34.4.30.1	Scaev.	*Digesta*	XX
Dig. 34.4.30.3	Scaev.	*Digesta*	XX
Dig. 40.4.60	Scaev.	*Digesta*	XXIV
Dig. 20.1.34.1	Scaev.	*Digesta*	XXVII
Dig. 44.7.61*pr*	Scaev.	*Digesta*	XXVIII
Dig. 17.1.60	Scaev.	*Responsa*	I
Dig. 26.7.47*pr*	Scaev.	*Responsa*	II

Dig. 31.88.15	Scaev.	*Responsa*	III
Dig. 40.5.41.4	Scaev.	*Responsa*	IV
Dig. 36.1.76*pr*	Paul.	*Decreta*	II
Dig. 8.3.37	Paul.	*Responsa*	III
Dig. 16.3.26	Paul.	*Responsa*	IV
Dig. 40.5.39	Paul.	*Responsa*	XIII
Dig. 28.1.29*pr*-1	Paul.	*Responsa*	XIV
Dig. 50.12.10	Mod.	*Responsa*	I
Dig. 34.1.4	Mod.	*Responsa*	X
Dig. 31.34.1	Mod.	*Responsa*	XII
Dig. 31.34.7	Mod.	*Responsa*	XII

XXIII The corpus in relation to other primary sources

This corpus of twenty-six bilingual legal texts in which Greek legal documents are cited from an Hellenistic legal culture takes a unique position in the research regarding law and legality in the Roman East. These texts show that the Hellenistic documentary practice was designed and conserved by a class of notaries. These notaries and their documents were utilized by Roman citizens and Hellenistic inhabitants of the East alike. Sometimes, inevitably, their documents gave rise to judicial decisions. These decisions are attested in the papyrological sources too. Examples are the *apokrimata* (imperial decisions)[119] or the Papyrus Cattaoui[120]. The latter papyrus contains decisions on marriages of Roman soldiers from 114-142 AD. The magistrate in power is sometimes a *strategus*, a prefect and sometimes the *Idiologus*[121]. In the juristic papyrological corpus, however, normative decisions are only sporadically attested. The examples given do not contain *responsa* from jurists from the Roman West. The material from the Justinianic Digest, in other words, provides a missing link between Eastern documentary practice and litigation, and Western juristic opinion.

XXIV The Justinianic Digest

On the fifteenth of December 530 AD, emperor Justinian ordered a codification of Roman law to be made. One of the fruits of this codification was the Justinianic Digest in fifty books. In order to construct these books, a multitude of works from Roman jurists, mostly from the second and third century AD, were collected, copied and put together by Byzantine law professors.

119 See P. Col. VI 123 (Alexandria, 200 AD).
120 See P. Catt. (Alexandria / Arsinoite nome, II AD).
121 The *Idiologus* was a (financial) magistrate in Ptolemaic and Roman Egypt.

Sometimes, these fragments were re-edited by the sixth century AD compilators. Emperor Justinian gave express instructions to do so where necessary, as is evidenced by Justinian's *Constitutio Deo auctore* 7[122]. Such changes were especially necessary where Justinian had explicitly made a new law, for instance in getting rid of the *mancipatio*[123]. *Mancipatio* was subsequently removed from the sources used in the Digest and word-for-word replaced by *traditio*.

From the 16th century onward, scholars of Roman law have suspected that many texts in the Digest might have been interpolated by the Byzantine compilators. The search for interpolations grew into a frenzied *Interpolationenforschung* by the 20th century. Suspicions of such interpolations are discussed in what follows, for example concerning the legal concept of *depositum irregulare* in Dig. 16.3.26.1 (Paul. 4 *Resp*.) and Dig. 42.5.24.2 (Ulpian. 63 *ad Ed*.). In the case of Dig. 16.3.26.1 an interpolation has been suspected because of an alleged 'change of style' in the Latin of the jurist in question. Following modern conventions since the 1960s, in this dissertation the suspicion of an interpolation is never followed, if it is only based on stylistic arguments. Furthermore, the suspicion of an interpolation is not followed, if it is only based on an alleged contradiction with other Digest texts, as is the case in Dig. 42.5.24.2. Suspected interpolations are followed when they fall into the above-mentioned category of cases for which explicit Justinianic legislation is available, such as the interpolations concerning *mancipatio*. Alleged interpolations from secundary literature are mentioned, followed by argumentation why it was rejected or followed. If any emendations to the text have been proposed, as is for example the case in Dig. 10.1.13 (Gaius, 4 *de Leg. XII Tab.*), these are discussed in either the main text or in footnotes.

XXV The edition of the Justinianic Digest used in the research

For this dissertation the *Editio Maior* by Mommsen has been used[124]. Whenever another reading of the text is used, this is indicated. For example, in Dig. 33.4.14 (Scaev. 15 *Dig*.) the suggested emendation by Mommsen of *iuratus* into *interpellatus* is not followed. In Dig. 33.4.14 the text by Spruit is followed instead.

122 Among other things, emperor Justinian gave the order to remove superfluous information. An example of this can be seen in the comparison between Dig. 7.2.1.2 (Ulpian. 17 *ad Sab.*) and that same opinion in FV 75.3 which did not undergo editing by the Justinianic compilators. As a result, FV 75.3 is more elaborate than Dig. 7.2.1.2 and still contains a comparison of legal opinions which is no longer present in Dig. 7.2.1.2.

123 See, for example, Cod. 8.31 [Justinian, 531 AD].

124 DIGESTA SEU PANDECTAE IUSTINIANI AUGUSTI *RECOGNOVIT ADSUMPTO IN OPERIS SOCIETATEM PAULO KRUEGERO TH. MOMMSEN* (Berlin, 1870).

The translations of the Greek and Latin texts were prepared by the author. On many occasions the translations by Watson and the translations by Spruit *cum suis* of the Roman legal sources were consulted[125].

XXVI Papyrological sources

The standard papyrological text editions and the standard abbreviations concerning these texts have been used. In deviation of the *Checklist of Editions of Greek, Latin, Demotic and Coptic Papyri, Ostraca and Tablets*, the name P. Yadin is used in mentioning texts from the so-called Babatha archive[126]. In these cases, I have followed the abbreviations used in the *Berichtigungsliste.*

Changes in comparison to the first edition of the papyrological texts[127] are conform the *Berichtigungslisten* (Vol. I – XIII). These changes have been marked and an *apparatus criticus* is added to texts which require one. In depicting the papyri in the main text of the dissertation, the "Leiden System" of conventions is used. Small fragments of papyri cited in the text are depicted in Italics and the ending of a line is marked by two forward slashes (//). References to papyri are accompanied by the lines in question. The place of origin and the date as far as these are known are added in parentheses.

Bibliography

Besson, A. (2020), *Constitutio Antoniniana L'universalisation de la citoyenneté romaine au 3e siècle*, Basel.

Coriat, J./E. Metzger e.a. (eds.), (2014), *Inter cives necnon peregrinos: Essays in honour of Boudewijn Sirks*, 35-59, Göttingen.

Czajkowski, K./Eckhardt, B. (eds.), *Law in the Roman Provinces,* Oxford.

Hekster, O./K. Verboven (eds.), (2019), *The Impact of Justice on the Roman Empire. Proceedings of the Thirteenth Workshop of the International Network Impact of Empire (Gent, June 21-24, 2017),* Leiden.

Jördens, A. (2009), *Statthalterliche Verwaltung in der römischen Kaiserzeit Studien zum praefectus Aegypti*, Stuttgart.

Katzoff, R./D. Schaps (eds.), (2005), *Law in the Documents of the Judaean Desert*, Leiden.

Keenan, J./J. Manning & Yiftach-Firanko, U. (2014), *Law and Legal Practice in Egypt from Alexander to the Arab Conquest,* Cambridge.

125 The works consulted are *The Digest of Justinian, Volume 1-4 Translation edited by Alan Watson* (Philadelphia, 1998) and the *Corpus Iuris Civilis Tekst en Vertaling* (Amsterdam, 2008-2011) respectively.

126 For details on the different names for the documents from the Judean desert, see Cotton, H. *Documentary Texts from the Judaean Desert: A Matter of Nomenclature* in *SCI* 20 (2001), 113-119. For the case of the Babatha archive see especially Cotton *SCI* 20 (2001), 115.

127 Full texts of the papyri cited in this dissertation can be found on the website: www.papyri.info.

Maffi, A/B. Stolte, Viarengo, G. (2021), *Herennius Modestinus Excusationum libri VI*, Rome-Bristol.
Mousourakis, G. (2003), *The Historical and Institutional Context of Roman Law*, London.
Valditara, G. (2020), *Civis Romanus Sum Citizenship and Empire in Ancient Rome* Washington-London.