The Little Men Of Law: A Social History Of The Late Roman Jurist

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Abstract
Legal experts in the late Roman Empire were ubiquitous, persuasive, and influential creators of legal meaning. Contrary to the traditional scholarly narrative that posits that legal experts of the period were the ineffectual inheritors of Classical Roman law, this dissertation argues that legal experts neither wholly joined the Roman bureaucratic administration nor found themselves suffering from a mass intellectual decline. Rather, legal experts developed and utilized a contextually significant mode of legal argumentation in order to convince their contemporaries about the legal validity of their claims. By adapting a Critical Legal Pluralism approach to the late Roman legal expert, we can come to appreciate the multiple and powerful forms of the creation of legal meaning in the Empire. The Critical Legal Pluralist approach moves us away from a legal positivist or statist model of law and toward a model of law that values and analyzes legal meaning as it is operative in its local contexts. This dissertation builds on scholarship of the social world of Roman jurists and on newer actor-based approaches to legal history. The scholarship on Roman jurists has focused primarily on early imperial jurists and has approached legal history through a prosopographical methodology. The actor-based approaches to legal history focus on the role of the emperor in the creation of law and on the role of litigants in the processes of creating arguments. The actor-based approaches employ a methodology that aims at being more illuminative than exhaustive; this methodology reveals the wide range of strategies for navigating the law. The actor-based approaches, however, overlook the legal experts assisting, complicating, and hindering all forms of social legal practice. This dissertation reveals the integral role late Roman legal experts played in the empire-wide phenomenon of law by focusing on how the legal expert created persuasive arguments in law, what forms of compensation were given for legal expertise, and how legal practice varied over the heterogenous landscape of the Roman Empire. The “little men of law” filled the spaces of the Empire with individuals who were recognized as being capable and adept to creating legal meaning for their local communities.

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THE LITTLE MEN OF LAW: A SOCIAL HISTORY OF THE LATE ROMAN JURIST

Ryan Pilipow

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in

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Presented to the Faculties of the University of Pennsylvania

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I dedicate this work to my wife, Isabella Louise Reinhardt, who has been a companion and support in every aspect of my life.
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ABSTRACT

THE LITTLE MEN OF LAW: A SOCIAL HISTORY OF THE LATE ROMAN JURIST

Ryan Pilipow
Cam Grey

Legal experts in the late Roman Empire were ubiquitous, persuasive, and influential creators of legal meaning. Contrary to the traditional scholarly narrative that posits that legal experts of the period were the ineffectual inheritors of Classical Roman law, this dissertation argues that legal experts neither wholly joined the Roman bureaucratic administration nor found themselves suffering from a mass intellectual decline. Rather, legal experts developed and utilized a contextually significant mode of legal argumentation in order to convince their contemporaries about the legal validity of their claims. By adapting a Critical Legal Pluralism approach to the late Roman legal expert, we can come to appreciate the multiple and powerful forms of the creation of legal meaning in the Empire. The Critical Legal Pluralist approach moves us away from a legal positivist or statist model of law and toward a model of law that values and analyzes legal meaning as it is operative in its local contexts. This dissertation builds on scholarship of the social world of Roman jurists and on newer actor-based approaches to legal history. The scholarship on Roman jurists has focused primarily on early imperial jurists and has approached legal history through a prosopographical methodology. The actor-based approaches to legal history focus on the role of the emperor in the creation of law and on the role of litigants in the processes of creating arguments. The actor-based approaches employ a methodology that aims at being more illuminative than exhaustive; this methodology reveals the wide range of strategies for navigating the law. The actor-based approaches, however, overlook the legal experts assisting, complicating, and hindering all forms of social legal practice. This dissertation reveals the integral role late Roman legal experts played in the empire-wide phenomenon of law by focusing on how the legal expert created persuasive arguments in law, what forms of compensation were given for legal expertise, and how legal practice varied over the heterogenous landscape of the Roman Empire. The “little men of law” filled the spaces of the Empire with individuals who were recognized as being capable and adept to creating legal meaning for their local communities.
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Introduction

A composite image of the late Roman legal expert from ancient literary evidence would be that of a pale, deliberately obfuscating, greedy, and immoral man. An image derived from contemporary scholarship of the same expert would be that of a bureaucrat enabling an imperial will or the ur-scholar locked in an ivory tower, puzzling out the differences of minute legal quandaries in order to make humble contributions to the impressive castle that is Roman legal doctrine. These “big men” of law have traditionally been assumed to have ordered Roman legal practice and doctrine in a top-down manner: the ancient evidence depicts a man immorally wielding power, the two modern images present the expert as manipulating law through state force or legal doctrine. Although these images undeniably capture aspects of late Roman legal experts, they focus on a single type of elite expert. Another type of legal expert, however, has gone unappreciated. This type of legal expert created a communal and contemporary understanding of what constituted law. The creation of immediate legal meaning was a social practice of law that reached more than emperors and doctrinaire jurists. Rather, law was created as a social phenomenon in a plethora of late Roman communities, in which individuals interpreted and re-interpreted their understandings of what constituted law and justice. These interpretations came in many forms such as mundane legal documents, arguments made in Roman judicial fora, texts rereading and reappropriating older juristic works or imperial constitutions, letters between friends and colleagues, and in popular demonstrations. The alternate legal experts facilitated all of these moments of the creation of legal meaning. These are the “little men” of Roman law. Their stories, their
arguments, and their methodologies are indicative of law in the late Roman world and its
culture.

In order to investigate the late Roman legal expert, in this introduction, I first
describe the chronological basis and parameters for my interests in the late Roman legal
expert. The description—largely drawn from the standard, though at times problematic
scholarly narrative of the late Roman jurist—helps situate the reader into the broader
chronology of Roman legal history and explain why this research is pertinent. With an
understanding of the broad outlines of Roman legal history, I turn both to the theoretical
research, which acts as the foundation of this dissertation, and to the way it affects how I
handle material of late Roman legal experts. The central theoretical apparatus informing
this dissertation is “Critical Legal Pluralism.” Critical legal pluralism focuses on an
individual’s capacity for the creation of legal meaning. When we focus on how
individuals create legal meaning rather than on the creation of law at the top of the legal
world, the late Roman Empire becomes a place not of legal chaos, which it has been
accused of, but a place of legal potential. The application of critical legal pluralism
focuses the investigation into the late Roman legal expert by allowing for the analysis of
the legal meaning created everywhere and by everyone. I conclude the discussion of
critical legal pluralism with a broad overview of the evidentiary basis of my research.
Armed with the analytical tools of critical legal pluralism, I present three bodies of
scholarship according to their main objects of study: jurists, emperors, and litigants. The
specific clusters of themes and topics that each of these bodies of scholarship uses are
indicative of their epistemology of Roman legal history. I follow the scholarship section
with an outline of the dissertation in order to demonstrate how each chapter intervenes in
and contributes to the scholarly discourse and the ways that the chapters contribute to a holistic view of the legal expert, law, and the legal culture of the late Roman world.

1. The Chronology and Periodization of the Late Roman Legal Expert

The standard narrative of Roman legal chronology as found in Roman legal histories¹, the Cambridge Ancient History series², and modern handbooks to Roman law³ divide legal history of the Roman Empire into three periods: the classical period (roughly from Augustus in 27 BCE to Diocletian in 285 CE), the bureaucratic or Dominate period (285 CE-529 CE), and the Justinianic period (529 CE and forward). In what follows, I discuss the classical period as it is constructed in the standard narrative of Roman legal history. This discussion demonstrates how the late Roman legal expert, specifically the expert of the bureaucratic or Dominate period, differed from what proceeded. Then I discuss how much of the chronology of the bureaucratic period is predicated on a faulty narrative of decline and crisis of the late Roman Empire. Finally, I argue how Justinian’s legal program has shaped all of Roman legal history and the scholarship on it, in effect

creating the standard periodization of Roman legal history. The standard narrative of
Roman legal history offers a useful set of parameters for the study of the late Roman
legal expert because the attention scholars have given to the classical and the Justinianic
periods has led to a fundamental mischaracterization of the intervening period. It is
between these two poles that I base my study. The dynamic landscape between the end of
the classical age and the rise of Justinian, though complex, offers a more continuous
narrative of legal culture and practice than previously appreciated.

The classical period of Roman legal history is defined by two axes: senatorial-
equestrian and amateur-professional. Put simply, the standard characterization of the
Roman jurist at the beginning of this period is an amateur man usually from a senatorial
background who works on explicating Roman legal issues through massive
commentaries, treatises, and monographs. By the end of the period, jurists will be
predominantly from the equestrian order and work in the imperial administration. The
unifying characteristic of the entire classical period, however, is the textual production of
its jurists: by the time of Justinian, about three million lines of legal text still existed
mostly produced in the classical period.\footnote{\textit{Const. Omn.} 1.} Jurists of the classical period produced legal
texts in their own name and mostly through their own explicit reasoning as opposed to
the bureaucratic period when texts were produced either pseudographically, by
 compilation, or in the Emperor’s name.

The first axis defining the classical period is the senatorial-equestrian transition.
At the beginning of the classical period, the jurists who created classical jurisprudence
were few in number and were, for the most part, members of the social elite, the senatorial order. Their elite position was maintained in three ways. First, prestigious families produced luminaries of the legal world during the classical age.\(^5\) The quasi-inheritance of legal expertise speaks to the parochial nature of juristic culture at the time. Secondly, the method of education, which was ostensibly open to all, in reality was available to elite young men. This method of education, constituted by elite young men following, listening, questioning, and copying older, more experienced legal experts, served to confine legal expertise or juristic mastery within the elite social class.\(^6\) Third, the historically problematic \emph{ius respondendi}, which supposedly arose under Augustus, would have singled out individuals from the age of Augustus to Hadrian as the most authoritative legal experts of their period.\(^7\) These three aspects of their elite standing allowed select jurists to deliver definitive legal opinions based on their own understanding and authority. The elite standing of jurists marked them as radically different from the following period of the late Roman Empire.

The second axis defining the classical period, the amateur-professional, saw a trend away from the amateur work of jurists who were interested in explicating law in their free time and toward jurists working primarily for the imperial administration. Much

\(^5\) For instance, the Labeos and the Scaevolas.
of the narrative of the amateur nature of the classical period is derived from the suspect
fragment in the Digest of Pomponius’s Enchiridion, which catalogues jurists in the form
of a lineage of famous teachers.\textsuperscript{8} The teachers in Pomponius’s list worked mostly as
private advisers and independent philosophers of law. Antistius Labeo serves as an
example: “Labeo declined to accept office when Augustus made him an offer of the
consulship whereby he would have become consul suffectus (interim consul). Instead, he
applied himself with the greatest firmness to his studies, and he used to divide up whole
years on the principle that he spent six months at Rome with his students, and for six
months he retired from the city and concentrated on writing books.”\textsuperscript{9} Firstly, Labeo
denied Augustus’s offer, which preserves his standing as an amateur. Secondly, by
dedicating half the year to teaching, Labeo maintained a practice of taking requests for
legal help and modeling his interpretation for young men who attended his public
audiences.\textsuperscript{10} Thirdly, in the other half of the year, away from the city, he expounded on
the law in legal treatises and commentaries. Labeo serves as a good example of an early

\textsuperscript{8} The fragment is problematic not only because of the state of the manuscript tradition, but also
because the Enchiridion is unlike any other fragment or example of Roman juristic literature. In
fact, the work seems to share more with its contemporary second sophistic literature than it does
with preceding juristic writing. I suspect both aspects of the text have influenced its reception
among legal historians. Compare Richard Lim’s discussion of dialogue in antiquity in Richard
Lim, “Christian, Dialogue, and Patterns of Sociability in Late Antiquity,” in The End of Dialogue
in Antiquity, ed. By Simon Goldhill (Cambridge: Cambridge University Press, 2009), 151-172 in
which Lim argues that the entire debate about dialogue in antiquity is an attempt at composing a
hierarchy of civilizations. We could consider juristic texts and transgressive juristic texts
similarly.

\textsuperscript{9} Dig. 1.2.2.47 trans. Watson; on the text see Tuori, “The ius respondendi;” contra R.A. Bauman,

\textsuperscript{10} Kathleen Atkinson, “The Education of the Lawyer in Ancient Roman,” South African Journal
classical jurist as depicted in the ancient classical and modern scholarly imagination: elite, amateur, and dedicated to writing.

Toward the end of the classical age, there was a shift away from the amateur labor of jurists and toward the holding of high office while still producing expansive juristic texts. The Severan jurists, such as Papinian, Paul, and Ulpian, in particular are emblematic of this shift. Each held the position of Praetorian Prefect as the final stop in a decorated career serving the imperial administration. Each also wrote expansive commentaries particularly on specific legal institutions, particularly on the Edict, and casuistic literature based on questions and detailed responses. Jurists during this period produced the most famous juristic texts of the Roman world; these texts make up a clear majority of the Digest. For comparison, Paul and Ulpian alone constitute about half of the text of the Digest. While these administrative jurists are fascinating case studies because they have left us so much evidence, not only of their legal philosophies but also of their lives, they tend to overshadow other jurists who likewise made important impacts in the study of law during the period, though we know less about them. The most important jurist from the period about whom we know little is Gaius, whose Institutes, an introductory Roman legal text, was the form upon which Justinian’s Institutes was designed. Although Gaius was undoubted ly influential, his powerful contemporaries

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colored much of the end of the classical period by holding high office and producing juristic texts.

The traditional narrative of the beginning of the bureaucratic period emphasizes two aspects: first, the cessation of the production of juristic texts and second, the expansion of legal experts working in the imperial administration. The rest of this dissertation offers criticism of the characterizations of the bureaucratic period and argues for an alternate model of Roman legal history that values late Roman legal practice according to its own terms. As such, we will not dwell here on the periodization except to point out that in the changing historiographic landscape of late antiquity, nearly every other aspect of history has undergone critical reappraisal. Scholarship of late antiquity in general has gone from a Gibbonesque criticism to a more measured approach of valuing the continuity and change of the period.\textsuperscript{15} I suggest that legal history, as a branch of late Roman history in general, is ripe for a similar reappraisal.

The cessation of juristic texts was a multiply determined phenomenon. Three select factors that led at least to the appearance of the cessation are (1) the creation of the Digest of Justinian, (2) the solidification of a juristic canon, and (3) the general rising preference for compilatory productions. The perception of the end of the classical era of Roman jurists was in part created by the codificatory practice of Justinian, who insisted on retaining only select, classical works.\textsuperscript{16} The juristic works chosen for inclusion were

\textsuperscript{15} The approach began most clearly in Peter Brown, \textit{The World of Late Antiquity, AD 150-750}, (New York: Norton, 1971). For a discussion of the stakes, history of the criteria employed, and the nuance required to write late antique history, see Clifford Ando, "Decline, Fall, and Transformation," \textit{Journal of Late Antiquity}, vol. 1, no. 1 (Spring 2008): 31-60.

\textsuperscript{16} \textit{Deo Auctore}. 
edited so that the texts emphasize the appearance of a coherent and systematic juristic doctrine dating from the archaic period until Justinian’s own time. The works excluded by Justinian’s compilers were ordered to be destroyed. It is questionable how effective this order would have been, but the positive creation of a central text, the *Digest*, has led scholars to consider works derived nearly exclusively from Justinian’s program, contributing to the perception of a sharp and sudden change in legal textual production.\textsuperscript{17} The solidification of a juristic canon can be seen in the developing preference for the jurists mentioned in the *lex citandi*, the law of citations of 426 CE, which dictated which jurists would be considered authoritative on legal questions.\textsuperscript{18} This law originally addressed problems arising from wills, but its inclusion in the Theodosian Code suggests that it was more widely interpreted.\textsuperscript{19} This law aside, it does seem to have been the case that individuals prioritized readings derived from Ulpian, Gaius, Paul, Papinian, and Modestinus.\textsuperscript{20} Scholars have interpreted the cessation of juristic textual production as the result of a dearth of legal intellect after the third century.\textsuperscript{21} This dissertation pushes against such an interpretation and argues instead for an appraisal that focuses on the preferred techniques of legal argument. As is argued in the first chapter, the bureaucratic period saw the development of a method of legal argumentation that privileged the works of classical jurists. Instead of writing new juristic treatises, legal texts were composed by

\textsuperscript{17} Gaius’s institutes are a rare exception, but only because they survived as a palimpsest. The *Institutes* were discovered in 1816.


\textsuperscript{19} Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity*, (Oxford: Oxford University Press, 2007): 76.

\textsuperscript{20} Based on the fact that texts like the *Collatio Legum Mosaicarum et Romanarum* draw exclusively from those jurists.

\textsuperscript{21} Ibbetson, “High Classical Law,” 198-199.
excerpting and juxtaposing older texts in complicated ways. A more neutral—and perhaps more effective—mode of analysis would describe the phenomenon of disappearance of juristic commentaries, treatises, and monographs not as intellectual decay but rather as evidence of different modes of legal creativity.

Support for the shift in analytical language about the changing bureaucratic period is also found in the second aspect of the traditional narrative of Roman legal history, the expansion of legal experts working in the imperial administration. As discussed above, by the end of the classical period, Roman jurists held high office. This trend continued in the third, fourth, and fifth centuries as legal experts seem to have become essential to the functioning of Roman bureaucracy.\footnote{Schulz, \textit{History of Roman Legal Science}, 262-267.} Officials, such as the \textit{magister a libellis} and the quaestor, assisted the Emperor and his administration carry out justice by composing imperial constitutions, writing replies to legal questions, and generally advising on legal matters.\footnote{Tony Honoré, \textit{Emperors and Lawyers} (London: Duckworth, 1981), Tony Honoré, \textit{Law in the Crisis of Empire, 379-455 AD} (Oxford: Clarendon Press, 1998); Tony Honoré, “The Making of the Theodosian Code,” \textit{Zeitschrift Der Savigny-Stiftung für Rechtsgeschichte- Romanistische Abteilung I}, 104 (1986): 133-222; See also the eminently clear article, Jill Harries, ‘The Roman Imperial Quaestor from Constantine to Theodosius II,” \textit{The Journal of Roman Studies}, 78 (1988): 148-172.} The traditional narrative of late Roman legal history posits that most of the legal expertise of the period was invested in ensuring that an imperial will was successfully manifested. That is, Roman legal experts, in light of the autocratic rule of the late Roman Empire, manipulated Roman legal practice to accommodate imperial commands and punishments. Throughout the dissertation, I hope to show that the focus
on bureaucratic legal experts misrepresents the pervasive practice of legal experts in the late Roman Empire.

The final aspect of the bureaucratic period that should be addressed is the relationship of historiographical narratives of the decline and fall of the Roman Empire and the characterization of Roman legal practice. One of the principle assumptions that connects the histories of the Roman Empire and legal practice is the notion that law, even in antiquity, was the prerogative of the state. The declining state would result in declining law. If we refrain from the assumption that the Roman state was the only or primary controller of law, then we can challenge the negative characterization of the bureaucratic period as too closely corresponding to the decline and fall narratives. If legal experts now only labored to please autocratic emperors, we would find it difficult to explain the complex and dynamic practice of law in the period. I am not arguing that law must necessarily be analyzed separately from politics or discussions of state, but I suggest that careful examination of late Roman legal evidence is required so that any modern assumption of the connection between law and state is not unnecessarily imposed on our history of the period. We should not assume that political turmoil necessarily results in declining legal practice.

The final period of Roman legal history considered is the Justinianic. In 529 CE, Justinian ordered the creation of his *Code*, a collection of imperial constitutions, that served as the beginning of his legal program. Other works in the program included the *Digest* (also called in Greek the *Pandects*), the *Institutes*, and the *Novels*. Each of these works was developed in order to displace and restructure Roman legal practice around the Emperor Justinian. As mentioned above, the Emperor was at least somewhat
successful in reshaping legal history, creating the illusion of a dark age of Roman legal intellect.

The supposed extinction of the classical jurist and the rise of Justinian’s legal program act as the two chronological limits of this dissertation. In part, this research will offer a new reading of Roman legal practice and legal expertise that reveals the pervasive resilience of Roman legal experts throughout the bureaucratic period. In addition, I hope to demonstrate that legal historians are not obligated to write history through Justinian, but instead can focus on the small, ubiquitous creations of legal meaning populating the late Roman Empire.

2. Critical Legal Pluralism and Methodology

One method to prevent the assumption of the dependent relationship between Roman state and law is to employ critical legal pluralism. Critical legal pluralism fuses the branches of Critical Legal Studies and Legal Pluralism in order to investigate how individuals create law by drawing on multiple discourses. This scholarship radically emphasizes the jurisgenerative capacity—that is the ability to make law—of individuals in an attempt to move away from an understanding of law as an exogenous, reified object. For critical legal pluralism, legal orders do not exist prior to an individual constructing them; in a sense there is no prior law, no institutional law, no state law before each subject narrates it for him or herself. By denying state law the primary role in defining law, critical legal pluralism privileges the ways that individuals create legal orders, obligations, protections, and ideas—that is, legal meaning—in all facets of their
lives. Critical legal pluralism offers a useful theoretical apparatus for investigating the late Roman legal world because it encourages an analysis of law that prioritizes how individuals on the ground construct legal meaning from a multitude of sources, which may include discourses outside of any notion of the Roman government. In what follows, I describe four propositions derived from critical legal pluralism and how they influence my investigation into Roman legal history. I then define the terms “legal expertise” and “legal expert” in light of my exposition of critical legal pluralism and discuss the evidentiary basis for a critical legal pluralistic study of both of these terms.

The four relevant propositions derived from critical legal pluralism are (1) the fundamental position of the individual in the creation of law, (2) the law as a mode of describing the world, (3) the narrative and pluralistic form of legal meaning, and (4) emancipatory potential of critical legal pluralism. In short, critical legal pluralism prioritizes any individual—regardless of state or doctrinal standing—as creating law whenever they describe the world as it should be. This description is understood as part of the construction of legal meaning whereby the stories told about the world come to signify how things should be done. These stories can be derived from any source and, in fact, most of the world ordering stories that create legal meaning are composed of discourses outside of state law. By focusing on individuals in the act of creating legal meaning, critical legal pluralism offers an emancipatory potential, moving law away from state discourse and instead moving toward recognizing legal meaning in a variety of new places populated by potentially disenfranchised individuals.

A critical legal pluralism approach to law dictates that individuals produce law when they narrate a conception of what the world should be. When individuals narrate
their conception of what the world should be, they generate normativity as legal knowledge. This legal “knowledge is a process of creating and maintaining myths about reality,” and hence bears a strong relationship with normativity. Even when individuals recognize and respond to the legal knowledge of others, they have to conceive of how they fit into and, in a way, create their relationship with someone else’s conception of normativity. In critical legal pluralism, legal knowledge is the province of every individual, not just judges, jurists, and lawyers. Law is constructed by the imaginative power of individuals, who—with their capacity to create legal meaning—try to communicate their imagined worlds to their communities. Their communities can consist of Empires, networks of scholars, schools of jurists, hierarchies of judges, neighbors, peers, subjects, and citizen—and even, God; in short, everyone or, in a strange way, no one. Jurisgenerative individuals, that is all individuals, create law. Their capacity for legal meaning gives rise to and perpetuates legal rituals, objects, practices, and institutions. This is to say that law does not appear out of the soil, waiting for someone to turn it on, nor is it simply handed down. Instead, the creation of law happens radically with each individual who conceives of law to which they and/or their neighbors should be subject.

When individuals create legal meaning, they describe the world as it should be. Law is constituted of two separate but complementary modalities: one modality is complaining about the way things are in the hopes of moving to the way they should be; the other is offering safeguards for protecting against the world slipping from the way it

should be to the way it should not be. The law creates the world as it should be, in the sense of an imagined construction, but law can also affect the world as a lived reality. In Robert Cover’s formulation, “law may be viewed as a system of tension or a bridge linking a concept of a reality to an imagined alternative.” Cover’s formulation shows that law must be anchored in both reality and alterity. This notion of legal alterity envelopes discussions of the nature of justice, ideas of law and order, constructions of utopia, and imagined dystopias. From a historical and anthropological prospective, law is filled with meaning about both the individual constructing it and the communities which that individual inhabits. So, while individuals construct law, they do so in a dialectic nature with their lived reality. But the relationship between reality and alterity is staggeringly complex.

The complexity of the relationship between reality and alterity is, to some degree, instantiated and explained by the fact that narrative is the primary technique for constructing law. When individuals narrate their conceptions of the law, they give their world legal meaning. But the techniques of narration are not confined to traditionally extra-legal actors unable to communicate legal meaning in technical legalese. Rather, broadly conceived, the scholarship on legal hermeneutics can be understand as a subset of legal narration. Scholars following Ronald Dworkin have conceived of the law as the interpretive domain of judges, who through their specific hermeneutics apply their legal

reading to cases. Nonetheless, we can understand even the most positivistic interpreters of law as narrating their distinct conceptions of the world as it should be in the specific language of statute law. When individuals narrate their conceptions of how the world should be outside of the traditional state law language, they create legal meaning just as much as the positivistic interpreters. Critical legal pluralism places emphasis on the individual creating the law thereby acknowledging all of the sources individuals use in their narrations. Legal meaning is not dependent on state legal language. This means that the language of law and the systems of law can come from many places. Individuals can construct legal meaning in multiple communities and discourses. For instance, in divorce cases in the United States, much of the dispute resolution happens outside of a court and without the official language of state law. Even further afield, consider homeowners associations, hospitals, and colleges. Each of these social institutions has its own distinct form of legal sensibility that can bleed into state legal understanding. A critical legal pluralist approach values the individual conception of law regardless of its social arena or the material used for constructing legal meaning.

33 When trying to differentiate between the legal force individuals create outside of state law and state law, scholars have used various terms like “private ordering” and “indigenous ordering.” These terms begin to recognize the legal capacity individuals have, but they tend to retain at least some emphasis on the centrality of state law.
The final proposition derived from critical legal pluralism that must be discussed is the role it plays in understanding power dynamics. By rejecting exogenous state law, critical legal pluralism privileges legal capacity over social position or category. So, the legal meaning created by a judge or a manual laborer would have equal standing in a critical legal pluralist approach. The social mechanisms of state violence or communal discontent do not invalidate any one form of legal meaning. That being said, individuals can incorporate external social and cultural structures into their creative enterprise to give them new legal meaning. This new meaning may position the traditional hierarchies in such a way that the individual can be seen to resist, manipulate, or even coopt others conceptions of law. Critical legal pluralism brightly illuminates these narratives of small legal powers by recognizing them as legitimate legal narratives with their own world creating potential.

Critical legal pluralism was developed to address modern legal concerns and, as such, has to be adapted for any application in the ancient world. My adaptation of this theoretical approach manifests mostly clearly in my terms “legal expertise” and “legal expert.” Although critical legal pluralism denies any greater importance to “traditional legal experts” such as lawyers and state legislators and to classical legal genres such as state law, my analysis of the late Roman legal world focuses on these two topics but greatly widens the frames of reference and materials investigated. I have chosen to retain legal expertise and expert because these terms offer discretionery criteria that help narrow

34 Kleinhans and Macdonald, “What is a Critical Legal Pluralism?,” 46.
the focus of my study. However, once I have those subjects, I analyze every aspect of their legal meaning making. I do not exclude actors, arguments, or actions as “non-legal,” but rather view the totality of attempts to make legal meaning. One could argue that this approach will lead to the criticism that philosophical, theological, dramatic, comedic, poetic, or any other genre could count as law. I am willing to consider the notion that even far-flung texts should be brought into analysis of what constitutes law, because the notion that law is an embedded phenomenon suggests that it could be instantiated in multiple discourses. My investigation into late Roman legal history imports the techniques and modes of analysis developed in studies of critical legal pluralism and employs them to evaluate the wide range of discourses and actions in the Roman legal world.

In my definition of legal expertise, legal meaning and expertise are closely related. If legal meaning is created by individuals conceiving of normative beliefs and behaviors, then legal expertise is the cultural knowledge of how to construct arguments or narratives about the way the world should be. Expertise can include knowledge of traditional legal texts, such as juristic writings or imperial constitutions, but it also extends to other discourses of justice and normativity. I use the term expertise also to include the rhetorical positioning and framing of an argument. These rhetorical materials are not extra-legal but are actually integral to the creation of a legal argument. As I discuss in my first chapter and as critical legal pluralism posits, legal expertise with its attendant discourses and rhetorics used in arguments varies from situation to situation. As such, we have to allow for a dynamic understanding of what constitutes the techniques and material of Roman legal argumentation. We are on solid ground defining legal
material as the juristic writings, imperial rescripts, senatus consulta, and plebiscites. But, as I argue, Romans employed many more sources for material in the construction of legal argumentation. Therefore, legal expertise has to be defined not by any generic constraints but instead by argumentative contexts, which are in turn defined by individuals claiming what-should-be or safeguarding against what-should-not-be.

If legal arguments arise from disparate material, then any coherent definition of legal expert must likewise be flexible. I am interested in legal experts as a class of individuals who most frequently created legal arguments and who were familiar with the practice of creating legal meaning. Previous scholarship has employed strict definitions of legal expert by looking for titles associated with intensive legal training, such as iuris prudens, iuris consultus, iuris interprens, or νομικός. Scholars used these titles to identify legal experts, but if we focus on the function of the title, we realize that each of these terms broadly signifies a person known for his knowledge and ability to create legal meaning. The men known by such title were, for their communities, sources of legal expertise. They were the sort of individual one could rely on for legal arguments. In a sense, they were the "middle men" of law rather than just the little men, because they operated as an important hinge between imperial, cosmopolitan, and doctrinaire sources and discourses of law and any immediate, local conceptions of justice. The middle men were recognized by their communities as an important resource in the formation and resolution of arguments.

The communal sentiment or recognition is operative in my understanding of legal experts. If law is found in jurisgenerative individuals, then the individuals valued for their perceived capacity for law must too be considered as legal experts. Here, I suggest that
we must go beyond the strict definitions employed by previous scholarship to look for
evidence of the middle-man behavior where individuals (whom I will call expert) assisted
others in forming legal arguments. A difficulty arises because not everyone who was
known for making legal arguments was called by their contemporaries the traditional
identifiers associated with intensive legal training. The absence of such terminology
could come about because the person lacked formal legal education or because those who
did have legal education in some capacity chose to operate in a sphere not primarily
associated with legal argumentation. Indeed, what about the individuals who made legal
arguments but were categorically uninitiated in legal texts? In a legal pluralist sense, even
these people would count as a legal actor with the ability to create legal meaning and
perhaps even as legal expert to some degree. To limit my study, however, I define the
legal expert as one who created legal arguments in an institutional setting (as
jurisconsults), in an administrative setting (as advisers to judges and composers of legal
texts), and in communal settings where individuals approached the putative expert for
aid. In each of these settings, the defining features are the community’s recognition of an
individual’s legal ability and that person’s ability to compose arguments from legal
material and with legal effects. So, legal experts, in a sense are the middle men of law in
that they assisted individuals with their demands on law and, because they are not the
famous creators of juristic texts as their predecessors were, they are also the little men of
law. My focus on the expert differs from the truly emancipatory potential of critical legal
pluralism, but I posit that the tools developed in critical legal pluralism offer unique
insight into the practice of even the experts themselves.

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Following these definitions, it is necessary to explain that a critical legal pluralist approach to law affects my methodology in two primary ways. First, one cannot simply deal with juristic writing or rescripts as the sole objects of law. Instead, I try to look at evidence of arguments holistically, by which I mean I consider all of the material in a legal argument such as the speeches before legal material or the evidence of actions and reactions before and after a trial. The second effect is evident in how I handle traditional legal evidence. For instance, I, for the most part, avoid treating imperial rescripts or juristic writing outside of their original context without considering their legislative and historical contexts. The treatment of context gives a thick description of legal practice and also mitigates any impression that law is exclusively a state phenomenon. My legal pluralist approach to the late Roman legal expert may seem to suggest that I am not actually interested in the Roman jurists of the late Roman Empire but rather in wider, more diffuse legal culture. While I certainly am interested in the culture of law, my approach focuses on the specific embodiment of legal expertise in individuals, namely experts, because it was by these experts that law is most frequently defined, constituted, destroyed, and lived. Therefore, I hope to use the late Roman legal expert as a lens through which to view the rest of the legal culture of the late Roman Empire, how law was an embedded and emergent feature of the Roman social world.

With the preceding exposition of my theoretical position, it may now be useful to describe what evidence is available for a critical study of the late Roman legal expert and how I analyze that evidence. Taking a large-scale view, I use five categories of evidence. I will discuss them in ascending order of how significant they are for my project. First, epigraphic. There is a surprisingly robust body of epigraphic evidence that has been
studied especially by scholars who are interested in taking an exhaustive, prosopographical approach to legal experts. By this, I mean the scholars who identify legal experts by those who describe themselves or are described by others as *iuris peritus*, *iuris prudens*, *iuris consultus*, and *assessor*. In Greek, the epigraphic data is selected first by the term *nomikos*, which is used as a translation of most of the Latin signifiers. I use epigraphic data sparingly and primarily to show when I think other scholars have done over-readings such as assuming that any of these titles could be read as guarantees of juristic education. I hesitate to endorse those readings, because they often imply a robust system of institutional accreditation, for which we have nearly no evidence in the ancient world.

Secondly, I use papyri in select places. The study of juristic papyrology is a massive undertaking especially in Poland by the students of Rafal Taubenschlag. The papyri are useful for cataloging petitions, lawsuits, and imperial decisions, but legal experts do not stand out in this data. There are only a few explicit references to the kinds of legal experts mentioned in the epigraphic data. This area of study raises the question of the extent can we identify legally complex papyri as evidence of legal experts.

I primarily use the final three categories of evidence, but--as I will explain below--I try to bring a new lens to this material thereby avoiding repeating much of the previous scholarship. The third category is juristic evidence. Not only do I use, with a great deal of

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circumpection, the Digest of Justinian, but I also analyze a series of late Roman juristic collections from the Western Roman Empire now published in a volume called FIRA-Fontes Iuris Romani Antejustiniani.37 The juristic evidence in FIRA is mostly derived from manuscript evidence, but the existence of these manuscripts suggests that juristic material was copied and distributed throughout the late Roman Empire.

Next, I use imperial constitutions. These are drawn primarily from the multiple codes of the late Roman Empire. The main two codes, the Theodosian and the Justinianic, provide us with a significant body of evidence.38 However, we have to be careful when handling this material because of what we might call the legislative process of the late Roman Empire.39 The Theodosian Code and the Justinianic code following it claim to collect “General Laws.” The only problem is that the concept of general law is absolutely discombobulating. First of all, most of the “laws” more properly called constitutions come about in one of two ways. First, someone has approached the Emperor’s consistory either through an appeals process or by direct application to the Emperor and the emperor gives a case specific response. Following this decision, other inhabitants of the Roman Empire will cite this response as justification in a case, though

it might be argued in response that the decision was case specific and not applicable. The second way these constitutions are made is by imperial decree. This becomes popular under Constantine and is used by subsequent emperors like Theodosius. Like the case-specific responses given to individuals, the vast majority of these constitutions are either written to a specific city or even more defined to a specific magistrate in the city, which raises questions about their general applicability. Throughout the dissertation, I use constitutions at most as evidence of imperial discourse though even this must be seen in light of contextual data.

Finally, for the study of legal practice I rely on literary evidence. The problems of the relationship between literature and history are legion. But one should pause to reflect that there is a significant literary production in the late Roman Empire so we would ignore them at our own peril. When we look at the literary data against the traditional legal data, I argue throughout that we see striking similarities of thought, arrangement, and disposition. That being said, as with most of ancient literary history, the literary data speaks primarily from an elite perspective. While I do not provide an extended meditation on how elite practices radiate throughout the society, I suspect that even the elite voices capture a horizon of possibilities and behaviors that could be practiced by individuals everywhere in the late Roman socio-economic spectrum. This is to say, by labeling the literary evidence as elite, I am not assuming that it can only speak to elite practices; rather, it represents a shared culture of legal knowledge and practice.

In summation, critical legal pluralism enables scholars to analyze how law as a practice is constructed through multiple discourses and behaviors. The evidence for these discourses and behaviors are scattered throughout every society so direct study of only
"traditional" legal evidence will necessarily provide only a partial view of law in society. By inverting the legal paradigm and focusing on individuals as they create legal meaning, we can capture a fuller picture of law in the late Roman world. While the resulting image is fuller, it is at times less concise because it presents a wider range of possibilities than previous countenanced. I endeavor to focus the fuller image of the late Roman legal world by analyzing the legal expert. This expert is found in multiple evidentiary corpora so must be obliquely studied and defined, but such an approach reveals the power of the legal expert in the ubiquitous legal potential of the late Roman world.

3. Scholarship of Late Roman Legal History
   This dissertation intersects with three major groups of scholarship on late Roman legal history. The groups consist of scholars who are primarily interested in Roman jurists, those who are interested in Roman emperors, and finally those who are interested in litigants in the Roman legal world. Each of these groups treats their specific object of study as particularly representative of the legal world in some way. As I will demonstrate, the changing landscape of scholarship on Roman legal history has already been shown to be receptive to critical legal studies, especially in the scholarship on litigants. I argue that a critical legal pluralist approach can illuminate the other actors in the late Roman world as well. Each scholar in these groups chooses his or her subject based on their epistemology of Roman legal history. Scholars who focus on jurists argue that these legal experts signified and constructed a complex web of meaning that in turn affected the rest of their world. Often, focus on the jurist is accompanied by the belief that legal doctrine
has at least some power to change legal practice throughout the Roman world. For scholars focusing on emperors, law is the language of imperial will. Scholars in this group argue that emperors, as “the center” of the Roman legal world, emanate legal power that spreads throughout the Empire. Finally, scholars who take litigants as their object of study often argue that law is a constructed phenomenon, which can be manipulated to address immediate, local problems. In the late Roman Empire especially, scholarly groups that focus on emperors and litigants dominate. By further developing some of the critical legal tools used in the investigations of litigants, I hope to counter the scholarly arguments that emperors were de facto the ultimate creators of law in the late Roman Empire and I also hope to show that legal experts were still conversant in the construction of legal meaning, though perhaps in new ways overlooked by scholars of Roman legal history.

The first group of scholarship we have to consider focuses on jurists in the Roman world. Jurists, as the ur-legal experts, only came to the fore in scholarship on Roman legal history as a vector into the social world and practice of law in 1967 with the publication of Wolfgang Kunkel’s Die römischen Juristen: Herkunft und soziale Stellung.\(^\text{40}\) Kunkel identified a noticeable gap in the scholarship on Roman law: Roman legal historians were mostly uninterested in the social position of jurists, preferring instead to focus on the dogmatic aspects of their writing.\(^\text{41}\) Kunkel found this gap disturbing because it could so easily be remedied, especially in the imperial period, which

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\(^{41}\) An argument shared by John Crook also in 1967 in his *Law and Life of Rome*. 

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was home to numerous inscriptions, literary references, and prosopographical research that could revolutionize our understanding of Roman jurists by giving us a fine-grained history of the jurists’ lives. Kunkel’s main goal, as his title suggests, was to reveal the origin and social position of jurists from the Republican period through the classical age. He argued that jurists and legal knowledge experienced an extreme elevation in social power and political influence in the classical period. This power became more widespread as individuals in the provinces began to recognize the power and social mobility legal knowledge could offer them. The recognition led to a proliferation of legal expertise, opening of legal educational institutions, and senatorial influence on jurisprudence being replaced by equestrian and provincial jurists.\footnote{On the upper-class image of legal experts, see John Crook, \textit{Legal Advocacy in the Roman World}, (Ithaca: Cornell University Press, 1995), 157.}

Kunkel argued that it would be impossible to write a social history of jurists in the late Roman Empire, but Detlef Liebs has proven, conclusively in my opinion, that Roman legal histories can be written about jurists from individual provinces of the late Roman Empire. Liebs argued against an orientalist-occidentalist debate that tried to locate bastions of legal knowledge in the late Roman World. This debate centered on whether or not only the Eastern Roman Empire could be considered the continuator of Roman legal study since the East was home to the law school at Beirut, the legal productions of Justinian, and remained relatively unscathed during the late antique period.\footnote{A concise summary of this debate can be found in Humfress, \textit{Orthodoxy and the Courts}, 67-69.} Liebs investigated three Western regions, Italy, Gaul, and Africa in order to show a vibrant
legal culture in each area, with their own regional variations and legal productions.\textsuperscript{44} Liebs employed a similar method to Kunkel’s; he catalogued both individuals known for their legal expertise and legal texts produced in each region. Liebs focused on legal experts who were known for obtaining a specifically legal education, or who were called some form of legal expert by their contemporaries. Both Kunkel’s and Liebs’s method of identifying legal experts on the one hand allows them to focus exclusively on high value productions and practice of law, but, on the other hand, it can give an overly restrictive notion of legal expertise. The practice of categorizing legal experts according to definitive criteria, such as attending law school, may discount other, culturally embedded methods of obtaining and signaling legal expertise.

Two other approaches to the Roman jurist bear on our discussion of Roman legal history. The first approach considers jurists as representative of an “autonomous law” in the Roman Empire and the second uses legal experts as a proxy for “the Rule of law” in the Roman Empire. Scholars who value the autonomous law approach have developed tools for looking at juristic literature in its original contexts to try to elicit the concerns, thoughts, and philosophies individual jurists had and how they were perceived in the real world. Bruce Frier—the founder of this approach—fashioned a new historical method of juristic research.\textsuperscript{45} Frier argued that in the first century BCE, the jurists developed from individual consultants of relatively minor importance into a professional class of

\textsuperscript{44} Detlef Liebs, \textit{Römische Jurisprudenz in Gallien}, (Berlin: Duncker \& Humblot, 2002), \textit{Die Jurisprudenz Im spätantiken Italien} (Berlin: Duncker \& Humblot, 1987), and \textit{Römische Jurisprudenz in Africa} (Berlin: Akademie Verlag, 1993).
individuals capable of reading and constructing arguments in an “autonomous law.” Frier defined “autonomous law,” as law that is not reliant on political or social factors but has its own rationale. The rise of the jurist and his autonomous law was a historically contingent phenomenon that arose because of three main factors of influence: first, the enfranchisement of Italians after the Social Wars, second, the increase in wealth and commerce in the late Republic, and third, the political instability of the period. Frier’s argument is in many ways radical and can be useful when considering the late Roman Empire because his argument separates law and legal practice from the political system in which they operate. Even though the formation of the principate may have influenced the legal system, it did not determine its operation--a lesson we could well consider for the rest of the Imperial period.

The second approach to the jurist is interested most clearly in legal experts as representatives of the “Rule of Law” in the late Roman Empire. Scholars such as Tony Honoré, Jill Harries, and Michael Peachin seek to define the role legal experts played in late Roman administration in part to estimate to what extent there could be said to have existed a culture of the “rule of law.” The concept of the “rule of law,” while undoubtedly a foundation of western political philosophy, is consonant with Frier’s notion of autonomous law because both assume or imply that legal experts would be

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more systematic in their application of law because they rationally understood it.\textsuperscript{48} In this approach, lawyers are the backbone to a functioning bureaucracy.

This approach revives the Orientalist-Occidentalist debate, albeit in a much more persuasive way. Honoré, in particular, was interested in defining the legal cultures of the Eastern and Western Roman Empire by analyzing imperial rescripts and looking for distinct literary styles.\textsuperscript{49} He argued that different styles would roughly represent different quaestors, who were officials responsible for writing laws in a tone that matched the majesty of the emperor. He argued based on his stylistic analysis of law during the Theodosian period that the East had a greater number of legally trained individuals acting as quaestor than the West had, which was indicative of a stronger rule of law. Following Voss, he also argued that the style of laws seemed unique and likely stemmed from rhetorical training, which had legal components so that individuals trained only in rhetoric still had a rudimentary grasp of law.\textsuperscript{50} In order to differentiate the rhetorically trained from the true “lawyers,” Honoré selected criteria, such as general knowledge of laws, fine application of legal reasoning, and references to jurists, that allowed him to privilege a form of legal expertise that he reasoned would only be available to people trained explicitly in the legal classics, like the writing of certain classical jurists and imperial rescripts.

Scholarship on the legal power of emperors reads imperial constitutions as representative of law. This body of scholarship has investigated implications the “Rule of

\textsuperscript{49} Honoré, \textit{Law in the Crisis of Empire}, 1-33.
\textsuperscript{50} Wulf Eckart Voss, \textit{Recht und Rhetorik in den Kaisergesetzen der Spätantike}, (Frankfurt: Löwenklau Gesellschaft, 1982).
Law” approach to jurists, specifically the idea that legal experts acted as buffers between emperors and law. By retaining a coherence in Roman law and at the same time ensuring that imperial constitutions were the product of the emperor’s will, legal experts acted as insulators protecting all legal practice.\textsuperscript{51} This body of scholarship is adept at focusing on Roman emperors who presented themselves as either legal innovators or explicitly as legal conservatives. Augustus, Diocletian, Constantine, Julian, Valentinian, and Theodosius have been subject to intense investigation because they used laws in the form of \textit{responsa} and edicts to develop unique and powerful ways of communicating their imperial power. In their legislation, emperors like Constantine and Theodosius revolutionized imperial forms of legal communication, employing legislation to communicate their political and legal agenda to the inhabitants of the Empire. On the other hand, emperors like Augustus and Julian presented themselves in legislation as returning to a more conservative form of governance. Imperial constitutions, when read as products of the emperor’s command, become less indicative of law on the ground and rather more indicative of a particular emperor’s style in his governance of the Empire.

A significant insight developed in scholarship on law and the emperor concerns the extent to which law can be used as a criterion for judging an emperor.\textsuperscript{52} Good and bad emperors were not only judged by their contemporaries in their legislative efforts but also on the basis of their judicial responsibilities. Inhabitants of the Roman Empire generally


\textsuperscript{52} Kaius Tuori, \textit{The Emperor of Law}, (Oxford: Oxford University Press, 2016).
felt that administrators, governors, and even emperors were compelled to listen to complaints, hear cases, and respond to their concerns. If an emperor showed a lackluster interest in cases or failed to live up to contemporary notions of justice, he was ridiculed as being a “bad emperor.” Scholarship has focused on emperors and law in these two aspects, legislative and judicial, in order to write a legal history that emanates out from the emperor and down to his subjects.

The final group of scholars focuses on litigants. This new wave of scholars challenges legal histories written both on Roman jurists and on emperors by asking what constitutes a legal actor. The luminary of this group is Caroline Humfress who wrote expansively on legal culture and discourse in the late Empire and Christian Church. Humfress employed a “bottom-up” approach by investigating how individuals accessed and manipulated Roman legal concepts in their everyday activity and, especially, in the formation of notions of heresy.53 In her book, Orthodoxy and the Courts in Late Antiquity, Humfress investigates judges, jurisconsults, and advocates in order to describe a vibrant legal culture, contrary to the arguments of earlier scholars who posited a decline in legal ability in the late Roman Empire.54 Humfress then argues for a close connection between these legally significant individuals and members of the Church in order to argue that the legal resonance of charges of heresy were not accidental but were in fact manifestations of a form of power discourse that leaders of the Church were familiar with. Humfress’s approach to legal history is unique because it prioritizes the ways

54 Humfress, Orthodoxy and the Courts.
individuals create legal arguments through a multitude of materials and genres. No longer is a legal expert simply the individual who went to law school or studied the jurists. Rather law was the creation of individuals fashioning persuasive legal arguments.

As will be apparent throughout my dissertation, my approach to Roman legal history owes much to Humfress’s work, but I am not the only one. Following Humfress, scholars such as Ari Bryen, Serena Connolly, and Kim Czajkowski employed an actor- or litigant-based approach to Roman legal history in order to understand how the Roman legal world operated: who could access it, how were claims made, and what effect did these claims have.55 These works showed that the legal world was much more malleable than previous dogmatic research would suggest. People of surprisingly little means made complaints in courts of being harassed, provincials employed complex legal strategies without any identifiable help, and people addressed the highest judge of the land with a persistent expectation that he was required to respond to them. Roman legal history can no longer be written solely from the perspective of elite jurists but must consider the realities of complex dispute resolution strategies when thinking about what constitutes “law” for inhabitants of the late Roman Empire.

In the scholarly landscape of Roman legal history, legal experts are becoming an overlooked and under-analyzed subject of study. Caught between the eccentric and domineering personages of emperors and the everyday interests of squabbling neighbors, legal experts seem to have lost their capacity to provide probative insight into the practice

of law in the late Roman world. I endeavor to investigate the late Roman legal expert, the little men of law, by employing the tools developed by critical legal pluralism and utilized in the litigant-focused scholarship.

4. Chapter Outlines
To investigate the late Roman legal expert, in the first chapter I look at the techniques of legal argument in traditional sources of law. I consider these techniques within a framework I call “disputatious practice.” Disputatious practice is the practice of the compiling of authoritative legal references and the framing of those references. This chapter argues that even in institutional settings, a legal pluralist approach can illuminate how legal experts created arguments with “extra” legal material, that is the framing devices used to guide a reading of the authoritative references. By considering both the compilation of materials and the way they are presented as “legal,” we move away from an understanding of legal practice as something that is rote or dogmatic and instead move toward an understanding of practice as an imaginative, even artistic, deployment of references. In this chapter, I draw on the critical legal studies of James Boyd White.56 White’s work helps us understand how legal arguments correspond to specific cultural aesthetics. The imaginative use of references and framing material corresponds closely with recent scholarship on late Roman literary and material aesthetics, especially stemming from research on the “Jeweled Style.”57 The reflection of the Jeweled Style in late Roman legal arguments helps us to understand how legal experts were persuasive in

56 James Boyd White, Heracles’s Bow.
the late Roman world when they were using techniques that modern scholarship has dismissed as unintelligent.

The art of disputatious practice is prevalent in late Roman legal texts from the third to sixth century. The second analytical goal of this chapter, in light of the continuity of disputatious practice, is to consider how legal expertise was perpetuated: what methods of education were used and in what sort of setting can we imagine legal education occurring. The Western Roman Empire preserved a surprising density of legal texts from this period, especially of texts not edited for Justinian’s legal program. These Western texts and the absence of law schools like that at Beirut suggest that we need to reconsider what constituted a center of legal education in the Late Roman Empire. The chapter concludes by analyzing the popular reception and reflection of disputatious practice in order to show that legal experts were perceived as being particularly adept at creating legal arguments through the reference to legal texts and through an influential framework for interpretation.

In the second chapter, I turn from the treatment of the legal expert’s argumentation and toward his compensation. The pluralist approach to Roman law invites us to consider the diversity of the employment of legal expertise throughout the Empire and how that employment was compensated. In this chapter, I draw on the social and economic work of Pierre Bourdieu in his “Forms of Capital” and theory of “Symbolic Capital.” Bourdieu’s work is useful for thinking about why evidence of compensation

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for late Roman legal experts is only sparsely preserved. Legal expertise in the late Roman world was compensated through complex forms of capital, which are difficult to track let alone analyze. Compensation in complex forms of capital is a phenomenon that arose, for the Romans, to help legal experts maintain the appearance of being averse to economic compensation. Nonetheless, if we investigate the late Roman world for evidence of modes of compensation, we uncover at least three distinct forms: economic (or financial), cultural, and social. Using these forms as a basic structure, we can see from the Price Edict of Diocletian, papyrological data, and literary references that legal experts could be imagined as being compensated financially according to how much labor they invested in a case. Legal experts were also compensated with cultural capital. The experts who worked in public facing tasks, such as teachers of law and assessors, accrued the respect of their contemporaries for presumably making sure justice was carried out fairly. Finally, legal experts also received exclusive social capital. Experts in the highest echelons of late Roman society traded their expertise in an elite social economy. I analyze one example from the letters of the late Roman Gallic bishop, Sidonius Apollinaris, as an example of how legal expertise operated as a commodity in the exchanges of elite society. I argue that the multiple forms of compensation suggest that legal expertise was a powerful mode of discourse in the late Roman world and this power helps explain why individuals chose to master and create legal meaning.

In the final chapter, I investigate how legal practice varied across the Empire to such a degree that it manifested landscapes that exemplified distinct aspects of law. This chapter is a response to Lauren Benton’s *A Search for Sovereignty*, in which Benton argues that in the early modern period, even though there were multiple legal empires
(for example, the British, the Spanish and the Portuguese), there was an overarching legal order.\textsuperscript{59} Legal practice in this order was defined more by the particular landscape individuals inhabited than by their particular imperial identity. This chapter has the strongest endorsement of legal pluralism because it rejects that state law—either imperial constitutions or classical juristic texts—had the only or even primary claim to the practice of law in the late Roman Empire. I investigate four landscapes and their distinct legal aspects. The first is law schools, which become hubs for travel and for the production of legal experts with their unique understanding of legal texts. Second is imperial capitals. In this section, I analyze how social standing influenced the practice of law to such a degree that being in places with a high density of social elites effectively bent the gravity of law. Elites were accorded unique privileges at law that were usually only recognized when the elite went well outside of the bounds of appropriate behavior. The third landscape is a metaphorical island. In places that pose difficulty for travel, communities experimented with alternate forms of adjudication. The imperial administration sometimes recognized these alternate forms of adjudication, but it becomes apparent that on these real or imagined islands, the practice of law is constrained by the close-knit nature of a community. What was one to do if he or she did not trust the governor or judge in an area? This concern about the practice of law leads to questions and arguments about how to procure justice. The final landscape I consider is provincial towns. In provincial settings, imperial, cosmopolitan notions of justice encounter local, popular notions of justice. The notions clash as individuals argue about what made up right and

\textsuperscript{59} Lauren Benton, \textit{A Search for Sovereignty} (Cambridge: Cambridge University Press, 2009).
wrong, justice and injustice, legal and illegal. In each of these landscapes with their particular concerns of law, we must imagine that masterful legal experts learned to harness the legal aspects of their particular surroundings. It is reasonable to assume that in places defined by law schools, individuals would make arguments based on their textual understanding of law. In imperial capitals, experts probably invoked their clients’ or their own social standing to navigate cases. On “islands,” legal experts probably made arguments for native adjudicative structures when it favored their position or against them when they were opposed. Finally, in provincial towns, legal experts argued for local notions of justice in the face of imperial notions of law. In these landscapes we can see nearly the opposite of Benton’s thesis stands as well: even though Roman law was an imperial legal order, local landscapes of law created legal heterogeneity.

In this dissertation, I hope to show that legal experts and legal expertise were defining features of the late Roman world. Rather than having declined into oblivion, legal expertise took on an ubiquitous character and the masters of legal argument became everyday features of the Roman social world. Individuals were valued or feared, appreciated or derided for their ability to create persuasive legal arguments. Instead of being the pale, greedy, and conniving bureaucrat, the late Roman legal expert was an integral representative of law and a powerful creator of legal meaning.
Chapter 1: Disputatious Practice in Late Roman Legal Education

In this chapter, I argue that late Roman legal experts produced persuasive arguments by compiling authoritative references and by framing those compilations with material that interpreted the argument for the audience. I call these two strategies, compilation and framing, “disputatious practice,” because together they operate to inhibit dispute or disagreement about the relative standing of the expert’s argument. Whether the expert’s argument is right or not depends not on the application of any dogmatic legal apparatus but rather on the expert’s ability to persuade his audience that the argument he has crafted is supported by his interpretation of legal material. The prevalence and
ubiquity of evidence for disputatious practice suggests that legal experts learned these strategies at some time in their formation as legal experts. For the late Roman legal expert, it was more important to know how to construct arguments persuasively than it was to memorize encyclopedically the multitude of authoritative legal texts.

My argument proceeds by sketching first what sorts of sources of law the expert could draw upon to compose his argument. Next, I lay out the history of the scholarship on legal education; this scholarship focuses on how legal experts learned the materials used in argumentation. I explain how the proposed methods of education are tightly bound up with historical interpretations of the activity of legal experts. In short, scholarship employs a circular reasoning by arguing that the bureaucratic or academic nature of the expert is found in his education and his education is used to explain the bureaucratic and academic nature of the expert’s practice. To escape the circular reasoning, I turn to James Boyd White who offers us a dynamic model of law, which I use as a heuristic framework for understanding how legal experts operated in the late Roman world. Next, I analyze late Roman perceptions of disputatious practice and complaints about its occasionally mystifying side effects. White's model and the complaints about legal practice suggest that Roman legal education must have been more complicated than simply memorizing sources of law. In fact, two strategies of disputatious practice are so recurrent in late Roman legal evidence, that legal experts must have acquired them as necessary techniques of legal practice. In the first part, we will see that experts compiled legal references according to distinct logics in order to persuade their audiences. The second aspect of disputatious practice that we have to consider is the use of framing material, which consisted of distinct tones and select
phrases, in order to manipulate the audience’s reception of the expert’s argument. Finally, while disputatious practice could appear to outsiders or losing parties as a dizzying or even underhanded manipulation of the legal system, it was also recognized as an effective tool for creating legal arguments and was characteristic of a legal expert’s work. Legal experts of the late Roman Empire not only mastered texts from which they derived arguments or law, but they also learned to construct arguments and present them effectively.

Before we can see how an expert wove together references to law, we need to consider what texts or sites of authority he could choose from. A legal expert would undoubtedly need to know which texts were considered possible sources of legal authority. Ancient authors generally agreed on what constituted law. Gaius summarized the sources of the law of the Roman people as: leges, plebiscites, senatus consulta, imperial constitutions, edicts, and the responsa prudentium, or juristic writings. Justinian’s Institutes, written more than three centuries later, contains a similar list. Additionally, plaintiffs freely offered past court cases (precedents) along with their petitions, which suggests that, to some plaintiffs, precedents constituted a source law.

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60 Gai.1.2: Constant autem iura populi Romani ex legibus, plebiscitis, senatus consultis, constitutionibus principum, edictis eorum, qui ius edicendi habent, responsis prudentium. “It is generally agreed however that the laws of the Roman people come from laws, plebiscites, decisions of the Senate, the constitutions of emperors, the edicts of those, who have the ius edicendi, the responses of jurists.” Each of these sources are categorized according to their legislative origin. While each can be understood individually (e.g. Plebiscites are laws passed by a vote of the people, senatus consultas are decisions made by the Senate but not voted on by the general population, edicts are the lists of actions allowed by a governor or praetor), the divisions between the categories were not always perfectly clear nor was there a clear hierarchy of the different sources. On the division and changeability of names for legal sources, see Jean Gaudemet, “‘Jus’ et ‘Leges,’” Iura, vol. 1 (1950): 223-252 who argues that the distinction between Ius and Lex or Leges was weaker in antiquity than modern scholarly treatments allow.

61 Inst.1.2.3: Scriptum ius est lex, plebi scita, senatus consulta, principium placita, magistratum edicta, responsa prudentium. “Written law is law, plebiscites, decisions of the Senate, will of emperors, edicts of magistrates, and responses of jurists.” Cf. also Dig. 1.2.2.12; 1.1.7; Cic. Top. 5.28.
These plaintiffs believed that precedent should predict the same or at least a similar outcome for the case at hand.\textsuperscript{62} We know that there was some attempt at controlling these sources by regulating and regularizing archives, juristic writing, and constitutions.\textsuperscript{63} These attempts at control reinforce the notion that the various sources of law were powerful sites of authority and contestation.

The material of Roman legal authority existed both diffusely across the world, in multiple discourses, but also in concentrated collections of constitutions, juristic texts, and other forms of archives. While the imperial judicial administration may have had an interest in creating and maintaining collections of legal material, especially constitutions, these collections enabled a new practice of compilative legal argument like never before.\textsuperscript{64} Large scale collections, such as the codes of Hermogenianus, Gregorianus, Theodosius, and Justinian, were part of a literary field populated with smaller, less well-traveled collections.\textsuperscript{65} These collections had a significant impact in the Empire-wide practice of law.

Scholarship on legal education has focused on how legal experts learned the various sources of law through the meticulous study of texts. Much of this scholarship...


\textsuperscript{63} Clifford Ando, Imperial Ideology and Provincial Loyalty in the Roman Empire, (Berkeley: University of California Press, 2000) ch. 4 “The Communicative Actions of the Roman Government” for regulatory impulses of the Roman government; for the state of archives in the late Roman world, see the debate between John Matthews Laying Down the Law, (New Haven: Yale University Press, 2000): 280-289 and A. J. B. Sirks The Theodosian Code (Friedrichsdorf: Éditions Tortuga, 2007): 117-190; for the control of juristic writing see the lex citandi CTh 1.4.3; for control over constitutions, see Sirks, The Theodosian Code, 18-20 and his discussion of Constantine’s legislation about valid imperial constitutions in CTh 1.1.1 and CTh 1.2.3, 10-11.


\textsuperscript{65} Examples of smaller collections are found in the Sinaiitc Scholia and the end of the Consultatio Culiusdam Veteris Iurisconsulti.
has focused on law schools, like the schools at Beirut or Constantinople, as important sites for teaching authoritative legal texts. The two studies that have investigated the teaching style of these schools in depth are H.J. Scheltema’s *L’Enseignement de Droit des Antécesseurs* and Kathleen McNamee’s “Another Chapter in the History of Scholia.” Scheltema argues that the dominant method employed in late Roman legal education was the professor of law reading a legal text aloud and explaining difficult passages. The professor’s explanation could occasion questions from the students, translations from Latin into Greek (as Greek was the *lingua franca* of the Eastern half of the Empire), and the dissection of complex passages for greater comprehension. McNamee comes to a similar conclusion by looking at legal papyri. She finds that in the fourth and fifth centuries there was a growing number of *indices*, Greek translations of Roman legal texts, and more widespread use of παραγραφαί, commentaries that “provide glosses of unfamiliar words, give notice of the contents of a passage, highlight parallels in other legal sources and provide cross-references.” McNamee’s contribution is especially important here because she notes a papyrological trend whereby the *viva voce* tendencies of translating and explaining Latin legal texts found their way into professionally copied editions, which were probably created at the request of the law professor for his students’ use. Legal educational documents had grown beyond a core text to include lengthy

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67 Raffaella Cribiore, *The School of Libanius in Late Antique Antioch* (Princeton: Princeton University Press, 2007): 207-210 argues that legal education in the Eastern Empire did not require an intense understanding of Latin as much of the work would have been done in Greek.
marginal notes. In both Scheltema’s and McNamee’s formulations, legal education entailed meticulous study of texts.

Purely textual study, however does not account for the wide ranging practice of legal experts in the late Roman world. In his foundational book *A History of Education in Antiquity*, Henri Marrou notes that, from Cicero onward, “the teaching of law […] was evolving on the same lines as the function of the jurisconsult, with which it remained closely connected.” Marrou is commenting on formulation of jurisprudence from the late Republic and the increasing importance of jurists in the Roman world. But his comment emphasizes the close relationship between education and its resulting practice. There are at least two possible consequences that follow from the kind of education Scheltema and McNamee envisage. The first possible consequence is the production of a legal expert as a bureaucrat. Such a result fits well with Fritz Schulz’s argument about the bureaucratisation of Roman jurisprudence. Schulz argues that a bureaucratic tendency in Roman legal practice led to the codification of Roman legal science. In Schulz’s model, Roman law had been reduced to dogma: fixed questions with fixed answers. The solidification of legal dogma would lead to the formation of bureaucrats with an unimaginative idea of what constitutes law and how to use it. A second consequence can be found for the exclusive emphasis on texts in education. The meticulous,

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69 Ibid, 276.  
philological study of law led to the creation of a class of academic jurists. These jurists were removed from the problems and solutions of the late Roman world. Instead of solving real life issues, the academic jurist was busy philosophizing and mastering the minutia of legal texts.\(^\text{74}\) The notion of the academic jurist is raised by Scheltema when he says that the teaching style of Justinian’s jurists seems eerily close to the style he uses when he teaches law in Holland.\(^\text{75}\) In this instance, Scheltema is referring to the difficulty of teaching Roman law to those without a robust understanding of Latin, but his point more broadly is that one could surmise that legal experts spent all of their time clarifying the meaning and forms of dense Latin legalese. The image of legal education as the meticulous textual study analyzed by Scheltema and McNamee is only part of a wider picture. Another part of that picture is disputatious practice, which Roman legal experts also trained in and displayed in order to operate in their legal world.

Here, it is useful to pause and consider the relationship among the terms persuasion, rhetoric and law. While one can think of law as a collection of rules, such a narrow definition elides many of the intervening and accessory texts, acts, and processes of law.\(^\text{76}\) J.B. White’s theory of law posits that law is a species of what he calls “constitutive rhetoric.” He defines constitutive rhetoric as “the central art by which

\(^{74}\) Paul Collinet *Histoire de l’école de droit de Beyrouth* (Paris: Recueil Sirey, 1925).

\(^{75}\) Scheltema, *L’Enseignement*, 12-13 and Schulz *History of Roman Legal Science*, 272; the notion of jurists having no effect on the practice of law in the late Roman Empire has already been disproven by Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity* (Oxford: Oxford University Press, 2007) ch. 3 “Legal Experts and the Late Roman Courts,” but the educational ramifications of her argument have not yet been borne out.

culture and community are established, maintained, and transformed.”

Constitutive rhetoric creates a community through speech, binding speaker and listeners together into a single body. White’s definition of rhetoric allows us to avoid searching for a connection between rhetoric and law in Roman thought. Rhetoric ceases to be a separate practice or an appendage of law and becomes integral to law as a process. Rhetoric consists of the various strategies and skills speakers use when they are making legal arguments. The successful end product of the rhetorical-legal process is persuasion, the ultimate goal of the legal actor, speaker, or writer. An appreciation of the persuasive aspect of law helps us to clarify our understanding of disputatious practice and, by extension, legal education. If the legal actor strives for persuasion through constitutive rhetoric, then the ideal legal education will teach one to be persuasive. White’s theory of law allows us to include the rhetorical or persuasive attributes of legal texts as part an expansive understanding of law. Within our Roman contexts, these attributes can be grouped together under the term disputatious practice.

White’s definition of law has three important aspects that are derived from the work of a modern, American lawyer. The first is that law is culture-specific in the sense that it is formulated according to what audience is the target of the persuasion. In White’s example, this means speaking in technical legal language to other lawyers and in “ordinary English” to jurors, clients or the public. Secondly, law is something that is

malleable. Again for a modern American lawyer, this means adding emphasis or
distinction where necessary for the sake of making any legal language argumentatively
relevant.\textsuperscript{80} Thirdly, as discussed above, law is socially constitutive in the sense that one
speaking or doing law is striving to create a community.\textsuperscript{81}

If we think about Roman law as a genre in which Romans debated the contours
and make-up of their society, we can conclude that Roman law was also concerned with
creating communities. As such, White’s definition of law can likewise account for the
phenomenon of disputatious practice. Disputatious practice corresponds to the first two
aspects of White’s definition of law. First, the culture-specific language of Roman law
can be seen in the deployment of Roman legal texts. When legal experts compile and
arrange legal material, they are speaking in a specific dialect by quoting imperial
rescripts, \textit{senatus consulta}, \textit{leges}, and juristic texts. Second, the malleability of Roman
law can be seen in the placement of framing material. Roman legal experts couched their
arguments in phraseology that would influence an audience’s reception of a text and
secure the agreement of that audience. To appreciate the extent of disputatious practice in
the late Roman Empire, we need to turn to how it was perceived by the wider Roman
community.

\textbf{1. Perception of Practice}

Disputatious practice of legal expertise was so effective and ubiquitous in the later
Roman Empire that it contributed to a series of complaints about the disorganized and

\textsuperscript{80} Ibid, 34.  
\textsuperscript{81} Ibid, 34.
confusing state of law. These complaints arose from the legal expert’s audiences. One place where legal experts had an audience was in legal cases. For the most part, legal cases were composed of at least one litigant who could hire an advocate to plead his or her case and a jurisconsult, someone who professed to have expansive knowledge of Roman law.82 The jurisconsult either advised the litigant on how he or she should have the case presented or gave the litigant a responsum—a jurist’s reasoning on the case—as evidence of the legal arguments supporting the litigant. Usually, the only people who professed legal expertise in cases were the jurisconsult and, perhaps, the judge’s assessors—a kind of legal assistant—if the judge had them.83 So, for the most part, the court was populated by individuals who relied on their native understandings of right and wrong to transact and administer justice.84 To those unfamiliar with the techniques of juristic reasoning, legal experts seemed to sow confusion as they twined legal references and coercively insisted on their meanings. Let us turn to some complaints of the Roman legal world to see how the practice of legal experts was perceived.

The most public complaint came from the emperor Theodosius II in the proclamation (Theodosian Novel 1) validating the Codex Theodosianus (438 CE). In this law, the emperor complains of the foreboding confusion, crassa caligo, thick fog, created by the masses of imperial edicts and rescripts. Playing on a theme of darkness, which is associated with obscurity and ignorance, and light, conversely associated with simplicity and knowledge, the emperor announces his grand codification. Theodosius II proclaims:

82 Humfress, *Orthodoxy and the Courts*, 69-81.
83 Assessors are discussed further in chapter 2.
84 Michael Peachin, *Iudex vice Caesaris* (Stuttgart: Franz Steiner Verlag, 1996), chapter 1 for legal uncertainty and its effect on the judicial administration of the Empire.
“In order that this matter may not be further discussed by anyone with zealous ambiguity, as there occurs to Our minds the boundless multitude of books, the diversity of actions and the difficulty of cases, and finally the mass of imperial constitutions which shut off from human ingenuity a knowledge of themselves by a wall, as though they were submerged in a thick fog of obscurity, We have completed a true undertaking of Our time; We have dispelled the darkness and given the light of brevity to the laws by means of a compendium.”85 The Emperor compares the immensity and confusion of the law to darkness, revealing a perception of legal processes as utterly opaque.

Theodosius II’s reasoning for creating the Code was that law was confusing, but we should hesitate to take him at his word. The codification was not a selfless endeavor. First of all, the promulgation of the code asserted a unity between the East and West in 438 CE that had been elusive since the death of Theodosius I in 395, the last emperor to rule both halves of the Empire.86 Not only does Theodosius II cast his authority into the West, augmenting his rule geographically, but he also appropriates the authority of the emperors from Constantine up to himself. When his legal experts edit and republish imperial rescripts, they do so in his Code. Theodosius II, of course, protests against this interpretation: “their own immortality has not been taken away from any of the previous Emperors, the name of no lawgiver has perished; rather, their laws have been changed by the clarification of Our jurisconsults for the sake of lucidity, and they are joined with Us

85 NTh 1.1 Trans. Pharr Quod ne quoquam ulterius sedula ambiguitate tractetur, si copia immensa librorum, si actionum diversitas difficultasque causarum animis nostris occurrat, si denique moles constitutionum divalium, quae velut sub crassae demersa caliginis et obscuritatis vallo sui notitiam humanis ingenii interclavit, verum egimus negotium temporis nostri, et discussis tenebris compendio brevitatis lumen legibus dedimus…
86 Matthews, Laying Down the Law, 30.
in an august fellowship.”87 Nonetheless, the code—as he admits—will be a testament of his rule for a long time.88 Theodosius II rearranges both the legal past and future around himself as he compiles the legal history of imperial constitutions and requires that people, from the time of his promulgation, go to his Code to make their case in court.89

One way in which Theodosius II mitigated any impression of usurping the authority of his august predecessors was by utilizing the plaintive discourse about law. The De Rebus Bellicis—a short treatise on military craft that ends in the request for the emperor to reform the legal system—exemplifies the plaintive discourse about law.90 The anonymous fourth century author first describes the legal culture as “civil pains” (ciuilium curarum) and asks for the remedy from the emperor. The author beseeches the emperor to “to illuminate the confused and contrary opinions of law (sententias legum).”91 The anonymous author was not alone in his complaints as has been discussed by Dieter Nörr, who has shown that complaints about the confused state of law are often

87 NTh1.3 Trans. Pharr Quamquam nulli retro principum aeternitas sua detracta est, nullius latoris occidit nomen: imno lucis gratia mutuati claritudo consultorum augusta nobiscum societate iunguntur.
88 NTh 1.2 Trans. Pharr “For if We rightly foresee the future with the keenness of Our mind, they (sc. the jurists who compiled the Code) will come down to posterity because of their association with Our labors.”
89 NTh 1.3 Trans. Pharr “No man is granted the right to cite an imperial law in court and in daily legal practice, or to compose the instruments of litigation, except, of course, from these books.”
91 De Reb. Bel. XXI Divina prouidentia, sacratissime imperator, domi forisque Reipublicae praesidiis comparatist, restat unum de tua serenitate remedium ad ciuilium curarum medicinam, ut confuses legume contrariasque sententias, improbitatis reiecto litigio, iudicio augustae digestionis illumines. Quid enim sic ab honestate consistit alienum quam ibidem studia exerceri certandi ubi iustitia profiteante discernuntur merita singulorum? Trans. Thompson: Most Sacred Emperor, when the defenses of the State have been properly provided both at home and abroad through the operation of Divine Providence, one remedy designed to cure our civilian woe awaits Your August Dignity and put a stop to dishonest litigation. For what is so alien to decent conduct as to give vent to one’s passion for strife in the very place where the decision of Justice distinguish the merits of individuals?
coupled with imperial legal enterprises.\textsuperscript{92} By taking part in the plaintive discourse, Theodosius II mitigates the accusation of usurpation because he can be seen responding to the cries of his subjects. The complaints about law become the rhetorical basis for the Emperor’s codification. The Emperor’s response to these complaints means that there was a common enough perception of the law as needlessly confusing and immense such that his codification seemed like a reasonable course of action.

The Emperor’s complaint compares the seemingly gargantuan collection of imperial constitutions to a tangible darkness that separates men from knowledge, but this darkness is the result of the practice of legal experts.\textsuperscript{93} The law as both a tangible and menacing darkness extends beyond the metaphor when the emperor claims that “so few and infrequent persons have existed who were fully enriched by a knowledge of the Civil Law, and in such a great and somber pallor that is produced by their nocturnal studies, scarcely one or two have attained the completeness of perfected learning.”\textsuperscript{94} Such a monumental effort is required to master the law thoroughly that these pale jurists spend their lives in both the real and metaphorical darkness. The master jurists, however, are not the only ones laboring in that darkness. Rather, they stand at the top of an entire class of experts who learned to wield claims of law effectively, and, to the laymen, confusingly. The complaints about law give a layman’s impression of the practice of legal experts in the late Roman Empire. If we turn to the documents attesting legal

\textsuperscript{92} Nörr, “Zu den geistigen und Sozialen Grundlagen,” esp. 109-114.
\textsuperscript{93} Humfress, Orthodoxy and the Courts in Late Antiquity, 88-89.
\textsuperscript{94} NTn 1.1 Trans. Pharr.
practice, we can see the sophisticated deployment of persuasive strategies that could, to a losing party, seem confusing and even underhanded.

2. Disputatious Practice: Legal Compilation as Culturally Specific Argument

The public perception of law as disorganized and confusing arose from Roman jurists’ habit of weaving different laws together. When a legal expert composed a legal argument, he would marshal different genres of law (usually imperial constitutions and jurisprudential writing), selecting and combining them in order to create persuasive and culturally specific justifications for his positions. We find proof of this weaving in papyri, in imperial correspondence, and in late antique legal collections. This compilatory practice constitutes part of the culturally specific aspect that White stipulates in his definition of law. As White’s definition of law suggests, the expert communicates in a culturally specific, technical language. The language in the Roman compilations happens to be citations and references. The expert gathers and arranges these citations to conform to a narrative or an argument he is pursuing. The culturally specific language, here derived from various genres of law, asserts the expert’s place in the justice-seeking discourse, since it is proof that he knows the requirements and conventions of that discourse. The expert knows not only which legal texts to use, but also how to make an argument out of them.

96 White, Heracles’ Bow, 36.
97 Ibid, 63.
Let us focus on two aspects of the collection of legal texts. The two aspects are divided according to the reasoning behind the compilation of material; in short, how the expert created his argument with culturally specific language. On the one hand, we can see collections of legal data where one citation leads logically into another. I shall call this constructive because it uses legal material to build toward an end or argument. On the other hand, we also can see a practice of repetitive citation. In the latter kind, there seems to be no logical progression or connection between the laws. The laws simply seem to repeat the same jurisprudential notion again and again. Nevertheless, while repetitive citation may seem illogical or redundant, recent scholarship on the jeweled style allows us to reassess these texts as a collection of impressive and perhaps even dazzling references.\(^98\) The legal expert used these styles to compile legal arguments in the language of Roman legal discourse.

One under-appreciated example of legal compilation is the *Collatio Legum Mosaicarum et Romanarum*. The *Collatio* is a fourth century CE text from the Western Roman Empire.\(^99\) It is composed of 16 titles or sections, each of which usually opens with a biblical citation followed by a battery of Roman legal references. The sections


roughly follow the first half of the Ten Commandments. Critics have found fault with the *Collatio*’s legal and biblical aspects. Likewise scholars have debated about the author’s identity: was he Christian or Jewish? For our present purposes, however, what is of most interest is the fact that the *Collatio* is a powerful example of legal expertise since it compiles and frames legal material persuasively. As such, the *Collatio* is indicative of the kind of skill a legal expert must learn to navigate the breadth of legal material and to recompose legal data to fit persuasive or disputatious ends.

An example of constructive compilation can be found in *Collatio* 1.1-4, in the title *On Assassins and Intentional or Accidental Murderers*. The section serves as a useful example because the title is divided in two: the first four chapters concern the definition of murder and the rest (5-13) focus on describing culpability in cases of intentional and accidental homicide. We can tell that the Collator is making a division in this title because passage 5 (*Coll. 1.5*) is a second biblical citation. The Collator does not often cite biblical material after an initial citation at the beginning of each title. In fact, other than

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101 Schulz, *History of Roman Legal Science*, 313: “No reasonable man could have made so considerable an array of juristic materials for the purpose of making so superficial a comparison of them with Mosaic law.” Jill Harries, “How to Make a Law-Code,” in *Modus Operandi: Essays in Honor of Geoffrey Rickman*, ed. By M. Austin, J. Harries, and C. Smith (London: Institute of Classical Studies, 1998) 69: “His (sc. the Collator’s) understanding of the finer points of the Bible was seriously deficient.” And, at 70: “If a lawyer, however, he (sc. again the Collator) was not a profoundly well-read one.” Leonard Victor Rutgers, *The Jews in Late Ancient Rome*, (Leiden: Brill, 2000): 250 “The author of the *Collatio* was not an expert in Roman law, nor did he want to be.”


103 On the range of sources used by the Collator, see Frakes, *Compiling the Collatio*, 66-98.
this example, the Collator only cites biblical material within a title in one other place, in
title 6, concerning incestuous marriages. As such, we can use the four chapters as a
succinct example of the Collator’s technique.

In our first example of legal compilation, the Collator uses legal references to
create an expansive definition of murder. This definition is representative of the
constructive style of legal praxis. The Collator cites four passages, each of which
gradually adds nuance and builds on the previous passage. The four passages in order are
from the book of Numbers, Paul’s Opinions, Ulpian’s Concerning the Office of
Proconsul, and, again, Paul’s Opinions. In the first passage, the Collator provides a
limited definition of murder by quoting Numbers and by the end of our example, when
we get to the final reference to Paul’s Opinions, the definition of murder will have
bloomed into a capacious designation.

The Collator opens the title thus:

1.1.1 Moses, priest of God, says this: If someone strikes a person with an iron
weapon and kills him, let him die. 2. Moreover, if someone strikes a person by
hand with a stone by which he might die and he dies, he is a murderer: let him die.
3 And if through hostility (per inimicitiam) someone strikes him or throws an
implement at him from an ambush and he dies, 4. or strikes him by hand through
anger (per iram) and he dies, let him die.104

The passage (Num. 35: 16-17 and 20-21) seems purposefully truncated because it leaves
out verses 18 and 19.105 If we assume that the Collator’s biblical text was not missing
these verses, then he may have omitted them because they were incongruent with the

104 Coll. 1.1.1. Trans. Frakes Moyses dei sacerdos haec dicit: si quis percusserit hominem ferro et occiderit
eum, morte moriatur. 2 si autem manu lapide, quo mori possit, percusserit et mortuus fuerit, homicida est:
morte moriatur. 3. Si autem per inimicitiam inpulerit eum vel inmiserit super eum aliquod vas ex insidis et
mortuus fuerit. 4. Vel per iram percusserit eum manu et mortuus fuerit, morte moriatur.

105 It remains unsettled which text the Collator was using. Volterra, “Collatio,” 53-86 argues that the
Collator translated from Hebrew into Latin whereas Frakes, Compiling the Collatio, 82-97 argues that the
text came from a version of the Vetus Latina, a Latin version of the Bible.
following Roman legal material. Nonetheless, in the quotation from *Numbers*, we have four criteria for murder: the use of an iron weapon, striking someone with a handheld rock, striking someone from an ambush with a weapon, and striking barehanded someone out of anger. These criteria appear to be a diverse assortment, but, as we shall see, they are each highly specific.

In the second passage (1.2.1), the Collator supplies an excerpt from Paul that discusses the Cornelian Law of Poisoners and Assassins, which stipulates that one is liable under this law who walks with a weapon for the sake of committing murder or theft, has poison for the purpose of killing someone, gives false witness that results in someone’s death, or one who kills indirectly. The last criterion is represented in the Latin as *mortisve causam praestiterit* and has been discussed by Dieter Nörr. He argues that the juristic notion of *causam mortis praebere* (or *praestare*) is meant to complement a notion of directly killing, which is signified by the verb *occidere*. The difference between the direct and indirect killing, Nörr suggests, would be the difference between

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106 *Numbers* 35: 18-19: Or if anyone is holding a wooden object and strikes someone a fatal blow with it, that person is a murderer; the murderer is to be put to death. 19 The avenger of blood shall put the murderer to death; when the avenger comes upon the murderer, the avenger shall put the murderer to death (NIV).

107 Coll. 1.2.1 *Paulus quoque libro Quinto sententiarum sub titulo ad legem Corneliae de sicariis et veneficis dicit: Lex Corneliae poenam deportationis infligit et, qui hominem occiderit eiusque rei causa furtive faciendi cum telo fuerit, et qui venenum hominis necandi causa habuerit vendiderit paraverit, falsum testimonium dixerit quo quis periret, mortisve causam praestiterit.*

killing someone with a sword (direct) or starving a person to death by locking him in a room (indirect). The possibility of indirect murder—which was absent from the citation from *Numbers*—is added to the Collator’s definition of murder by the addition of this quotation from Paul.

In the third passage (1.3.1), the Collator inserts passages from Ulpian, which likewise discuss the *lex Cornelia*. Ulpian describes three acts that engender liability under the law. The first act is if someone walks with a weapon for the sake of killing a man or committing theft. The second is if someone kills a man; here using the direct terminology of *occidere: hominem ve occiderit*. Finally, Ulpian introduces a new criterion for the Collator’s definition of murder: *id dolo malo factum erit*, if the deed was done with bad intent. While the emotional state of the murderer was introduced in the *Numbers* passage (both *inimicitia* and *ira* are mentioned), the notion of *dolus malus*, or bad intent, defines murder as an intentional act. Now the Collator’s definition includes examples of direct killing from *Numbers*, indirect killing from Paul, and the notion of intent from Ulpian.

In the final passage, the Collator again inserts a passage from Paul, which has a capacious and straightforward definition of murder: a murderer is he who has killed a man with any kind of weapon (*aliquot genere teli*) or has provided the cause of death.

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110 Coll 1.3.1 Ulpianus Libro VII de officio proconsulis sub titulo de sicariis et veneficos: Capite primo legis Corneliae de sicariis cavetur, ut is praetor iudexve quaestionis, cui sorte obvenerit quae stio de sicariis eius quod in urbe Roma propriisve mille passus factum sit, uti quaerat cum iudicibus, qui ei ex lege sorte obvenerint de capite eius, qui cum telo ambulaverit hominis necandi furtive faciendi causa, hominemve occiderit, cuiusve id dolo malo factum erit. Et reliqua.
(mortisve causam praestitit).

Paul’s indeterminate description of the kind of weapon allows the Collator to include any kind of weapon in his own growing definition.

The Collator’s construction of a definition of murder is a short example of constructive compilation. The description of the direct murder discussed by Numbers, Paul and Ulpian has grown from specific weapons to include any kind of weapon. Additionally, the Collator’s definition of murder includes indirect murders spanning from false testimony to furnishing the cause of death. The only notion left out of this encompassing definition in the final passage (Coll. 1.4.1) is the idea of intent as mentioned previously in the phrase dolus malus, and this will be covered in the following sections of the title (Coll 1.5-13). For now, the Collator has constructed an encompassing definition of murder, thereby showing how legal experts learned to deploy legal material for an argument.

Constructive compilation was only one of the ways the Collator could compile legal material to create a persuasive argument. Another way the Collator structured legal material was in a barrage of references that all said nearly the exact same thing. Whereas constructive compilation could arrange material from general to specific or vice versa, repetitive compilation arranged legal material so that the audience would feel compelled to agree with the legal expert’s point. Repetitive compilation is also in line with the late antique aesthetic, termed the “jeweled style,” as discussed by Michael Roberts. According to Roberts, arts of the late antique world displayed a fascination with small,

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112 Coll. 1.4.1 Homicida est, quo aliquot genere teli hominem occidit mortisve causam praestitit. Likewise see Sirks, “Review of Compiling,” 287 for discussion of the translation of mortis causa praestitit.

paratactically arranged units. Late Roman legal texts, when seen in their cultural contexts, display similar aesthetic tendencies. In the same way, for instance, that Proba composed poetry by arranging select quotations from Vergil into a biblical narrative, we can see legal experts rearranging and recomposing authoritative quotations from legal texts.114 By thinking of repetitive compilation as the instantiation of the jeweled style in law, we can appreciate how legal experts compiled texts in a way that was congruent with the cultural expectations of the period. An expert employed repetitive compilation to create a series of citations, each of which argued his central thesis. These citations could act as a dazzling array of authoritative texts that coaxed or forced the text’s audience into concurring with the expert’s argument.

An example of repetitive compilation can be found in the Collatio. In title 12, On Arsonists, the Collator provides seven citations. These citations are not arranged so that they build up to an encompassing definition of arson nor do they refine down to a specific point. Instead, these citations all play on the same theme, outlining different punishments for arson. Each citation reiterates the central thesis against arson and adds a measure of authority to the Collator as a legal expert. The Collator displays mastery over Roman legal texts by having them all sing the same tune.

Title 12 draws on material from Exodus, Paul’s Sententiae, Ulpian’s On the Office of Proconsul, and Ulpian’s Ad Edictum. The first six passages are relatively short. The

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114 Cooper, Fall of the Roman Household, 62-68. The redeployment of legal texts is analogous to the redeployment of marble decoration in late antiquity where the use of “spolia” (reused material) could be a positive aesthetic contribution that tied the new site to an older one; see Lex Bosman, “Spolia in the Fourth-century Basilica,” in Old Saint Peter’s, Rome, ed. By R. McKitterick, J. Osborne, C. Richardson, and J. Story (Cambridge: Cambridge University Press, 2013): 65-80.
first is from *Exodus* 22:6; it stipulates that damage done by fire should be compensated according to the estimated value of the things destroyed. The second passage is from Paul’s *Sententiae*. It stipulates the punishment for burning down a home on account of hostility and that accidental fires, which burn down agricultural land, should be recompensed according to an estimate of the damages. The third passage is from Paul, and is concerned with the varied punishments of different personal statuses: slaves can be surrendered, *humiliores* condemned to the mines, and *honestiores* relegated to an island. The fourth passage is again from Paul and it warns that deliberate arson in a town for the sake of robbery is a capital offense. The fifth passage is from Ulpian *On the Office of the Proconsul* and likewise notes that fires are punished according to where they are set, whether they are intentional or not, and according to the status of the person who set the fire. Interestingly, Ulpian admits that accidental fires can be forgiven. The sixth passage is again from Paul. It discusses again how purposeful, predatory arson is a capital offense, but accidental fires are more lightly punished. In Paul’s opinion, accidental fires can simply be satisfied with the payment of restitution. These six passages all discuss the different punishments for arson and they all agree that deliberate arson is a greater offense than accidental and so should be reflected in the punishment.

The succession of legal references and their lack of explicit connection makes each citation a unit of authority. These units are aggregated in order to give the impression of completeness or totality. In fact, in other genres of late antique prose literature, such an arrangement could elicit the effect of appearing all-encompassing or

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115 Coll. 12.1.1 Moyses dicit: Si exerit ignis et invenerit spinas et comprehenderit areas vel spicas aut campum, aestimationem restitute ill qui succendit ignem.
totalizing by its representation.\textsuperscript{116} If we view late Roman legal compilations in this way, it becomes apparent that the same aesthetic phenomenon appearing in late Roman poetry, prose, and material arts is operative in legal texts as well. The Collator exemplifies this phenomenon when he arranges juristic texts and imperial constitutions.

In addition to the six short passages, the Collator concludes the title on arson with a long, allusive citation (12.7.1-10). Whereas the first six citations are evidence of a legal expert arranging univocal material, the final citation includes multiple legal references. Within the final citation, which is taken from Ulpian’s \textit{Ad Edictum}, eight different legal authors are mentioned: Labeo, Celsus, Septimius Severus, Neratius, Vivianus, Proculus, Urseius, and Sabinus. Some of the legal authors are repeated with the result that, within this passage, Ulpian refers to external legal authority 14 times.\textsuperscript{117} Whereas the previous six citations were single, and perhaps even simple demonstrations of the varied punishments for arson, the final passage is a veritable explosion of the reference to legal authority. In one passage (\textit{Coll} 12.7.9), in a meta-study of legal reference, the Collator cites Ulpian citing Urseius citing Sabinus. The passage is a discussion of who is liable if a tenant’s slaves burn down an apartment building: can the master be sued or simply the slaves? “\textbf{Ulpian} in the eighteenth book of \textit{Concerning the Edict}... Moreover, if some

\textsuperscript{116} Catherine Chin, \textit{Grammar and Christianity in the Late Roman World} (Philadelphia, PA: University of Pennsylvania Press, 2013): ch. 2 “Imagining Classics” discusses how literary practices of quotation and listing are used to create and recreate identities in late antiquity; Andrew Jacobs, \textit{Epiphanius of Cyprus} (Oakland, CA: University of California Press): 173-175 discusses how the jeweled style is used as an antiquarian display of erudition and mastery; Scott Johnson, \textit{Literary Territories} (Oxford: Oxford University Press, 2016): ch. 2 “An Aesthetic of Accumulation” and ch. 4 “Apostolic Geography;” see especially pp. 107-110 where Johnson argues that Constantine used the tombs of the apostles in his mausoleum as a statement to ruling a unified empire and world.

\textsuperscript{117} Labeo once, Celsus four times, Septimius Severus once, Neratius once, Vivianus once, Proculus three or four times depending on whether Mommsen’s emendation of Proculus in 12.7.8 is correct, Urseius once, and Sabinus once.
slaves burn down an apartment house, in the tenth book of Ursei...n relates that
Sabinus responded that the master is to be sued in the name of the slaves for a noxal judgment by the Aquilian law.” This is a reference that proudly displays its connection to a long juristic history and uses that history to act as the capstone of the Collator’s argument against arson. While most scholarship on this passage has focused on the editorial history of Ulpian by asking whether the passage is really classical or displays signs of post-classical editing, the passage stands out for its abundant referentiality and as evidence for how legal experts arranged material purposefully.119

We have seen that Roman legal experts could arrange material constructively or repetitively. The logic behind the compilation of legal material was not haphazard, but was calculated to persuade an audience. Experts compiled legal material because jurisprudential writing and imperial rescripts constituted their culturally specific language. The syntax of this language could build up a legal expert’s argument or it could repeat a point over and over. The repetitive compilation was not a sign of jurisprudential decline, because it was the instantiation of the pervasive jeweled style. When seen in its late antique contexts, repetitive compilation seems like a fashionable and compelling method to make an argument.

118 Coll. 12.7.1 & 9 Trans. Frakes, emphasis my own: Ulpianus libro XVIII ad edictum...sed et si servi inquilini insulam exussent, libro X Ursei... refert Sabinum respondisse lege Aquilia servorum nomine dominum noxali iudicio conveniendum.
3. Disputatious Practice: Framing Material as Legal Malleability

Experts employed framing material to help audiences successfully interpret their compilations. Framing material could consist of the use of distinct tones or registers and other strategies all so that the audience knew to interpret the legal material in the “correct” way—that is, according to the expert’s argument. Again, White’s theory of law accounts for this phenomenon. In White’s formulation, lawyers have to offer interpretation of legal texts so that their arguments seem coherent with the audience’s understanding of law and justice.120 The problem that confronts both the American and Roman legal expert is that the technical language of law is widely interpretable.121 In the face of a multitude of interpretative possibilities, the Roman expert assured his audience that the proper way to read the law was according to the argument he was making. The expert used framing material to create a coherence between his argument and the audience’s expectations of justice.

To achieve such interpretative force, the legal expert could assume a severe tone, a pious tone, or sound wary of the reliability of other legal experts. These tones effectively created a literary persona for the expert thereby augmenting his authority. In that persona, the expert insisted that his interpretation of the law was correct. Additionally, the legal expert could prepare his audience for counter-arguments so that they both would be ready to respond to contradiction and would get the impression that the legal expert had considered every angle of the issue. The use of framing material

120 White, Heracles’ Bow, 46.
suggests that legal experts manipulated arguments to secure the agreement of their audiences.

An excellent example of this aspect of disputatious practice, the use of framing material, can be found in the *Consultatio Veteris Cuiusdam Iurisconsulti*. This document was created in the latter half of the fifth century.\(^{122}\) The text most likely comes from somewhere in Gaul though efforts to pinpoint its origin have arrived at no conclusive answer.\(^{123}\) Nonetheless, scholarship on the legal culture of late Roman Gaul has shown that legal practice and expertise were common enough throughout the area that many urban areas, especially in what is now southern France, are suitable candidates for the creation of the *Consultatio*.\(^{124}\) The difficulty in discerning an exact origin of the document, both the time of its creation and the geographic details of its author, suggests that rather than the *Consultatio* being indeterminate, it is a good example of legal practice in late Roman Empire because it could very well have come from any city in Gaul.

The *Consultatio* is composed of ten chapters. The chapters are traditionally divided into three groups of three; scholarship usually leaves the last chapter out because it has a different form than the preceding chapters.\(^{125}\) The form of each chapter is composed of a short introduction to a legal problem and a prefatory response or direction,

\(^{123}\) Giorgia Zanon, *Indicazioni di metodo giuridico dalla Consultatio veteris cuiusdam iurisconsulti* (Naples: Jovene Editore, 2009): 51-57; the problem is further compounded by the disappearance of the original manuscript that contained the *Consultatio*. On the manuscript history of the *Consultatio*, see Edoardo Volterra, “Il manoscritto della Consultatio veteris cuiusdam iurisconsulti e il suo scopritore Antonio Loisel,” in *Acta Congressus Iuridici Internationalis* vol. 2 (1935) 401-436.
i.e. legal advice. The introduction is then followed by a compilation of legal materials, specifically quotations from Paul’s *Sententiae* and imperial constitutions. The introductions have served as the primary criterion for the division of the document because they are so unique and characterized by distinct tones. The first three chapters (1, 2, and 3) have introductions that employ a severe tone. The second three (4, 5, and 6) use a pious tone by referring to God. The final three (7, 7a, and 8) are characterized by a concern for the unreliability of bad actors in the legal system. It is the introductions that interest us here because they are evidence of how legal experts would frame material to alter the reception of their text.

The *Consultatio* is a rich example of disputatious practice in its display of how legal experts used tones to frame their material so as to control its reception. I am not arguing that these tones were the only methods of framing legal material nor that legal materials had to be framed in this way, but rather that the *Consultatio* is indicative of some of the possible strategies legal experts employ. Each section or group of three chapters displays a different tone, as mentioned above. Now I will describe each tone and explain how it could prejudice the reception of the text.

The first tone found in the *Consultatio* (chs. 1-3) is severe. One might reasonably describe the tone struck in these chapters as harsh. The harsh tone is found explicitly in *Cons.* 1.4, 2.4, and 3.3.

1.4: Who will there be so destitute of wisdom or so deprived of intellect, such that he would say that this agreement ought to be strong and valid,
which the wife endorsed under the compulsion of fear of the husband, and
thus is not thought to have had free will and her own judgement?126
2.4: Add that the husband is said to have divided (the wife’s possessions)
without the awareness of the wife, what sort of virtue could it have? Or
what will be valid, as soon as the wife decides to oppose it?127
3.3: What can be more miserable? What more abject? What more contrary
to the laws, so that that one could approach the audience with its
sitting judges and could have no firm basis and intends vain actions falling
short of the solemnity of the law?128

While each example is only a sentence long, the introductory sections of chapters
one through three are just five sentences long, so these rhetorically colored sentences
contribute a considerable amount to the impression of the introductions. These
introductions are so harsh that Wieacker and Liebs thought that this first group must have
come from a jurist berating an advocate.129 While it is reasonable to assume that a
jurisconsult could become annoyed with advocates not understanding legal material
properly, it is also possible that legal experts learned that a pointed introduction could
shape how persuasive their legal opinions appeared to their audience. The severity,
whether real or pretended, could buttress the expert’s argument by emphasizing his
expertise. By asking what could be more contrary to the law, the author is emphasizing
that he knows what constitutes the law and what does not. Also, the condescending tone

126 Cons 1.4 quis erit tam destinatus sapientia et uacuus intellectu, ut dicat illam pactivem fortet et firmam
esse debere, quam multer meto coacta maritii subscriptis imperio, ac sic liberam uoluntatem et proprium
arbitrium non intellegitur habuisse?
127 Cons. 2.4 Adde quod sine uxoris conscientia maritus dicitur definisse, qualem poterit habere uirtutem?
Aut quid ualebit, cum primum uxor hoc refragari uolerit?
128 Cons. 3.3 Quid potest esse miserius? Quid abiectius? Quid legibus sic contrarium, ut ingreditur
audientiam sedentibus iudicibus ille, qui nullam in se habeat firmitatem et cyra legum sollemnia vanas
actiones intedat?
129 Franz Wieacker, Recht und Gesellschaft in der Spätantike (Stuttgart: W. Kohlhammer Verlag, 1964):
111 and Liebs, Römische Jurisprudenz in Gallien, 139. The division between advocate and jurist is
extensively discussed in John Crook, Legal Advocacy in the Roman World (Ithaca: Cornell University
Press, 1995) 37-46, and Humfress, Orthodoxy and the Courts, ch. 4 “Late Roman Advocates.”
suggests to the audience that it would be foolhardy to question the opinions of the Consultatio. The audience who hears the phrase “who will there be so destitute of wisdom or so deprived of intellect” is discouraged from probing the Consultatio lest he be labelled the one destitute of wisdom or deprived of intellect. The rhetorical strategy employed in this section of the Consultatio appears elsewhere in the late Roman world as well. Sidonius Apollinaris, a Gallic bishop, likewise uses the strategy in his letter to Explicius in the latter half of the fifth century. Sidonius asks Explicius to arbitrate a case because he is so well respected for his sense of justice. Sidonius compliments Explicius by asking who could be so stupid as to disagree with him: “your repute is such that the loser can never be so stupid as to impugn your verdict, or the winner so over-subtle as to deride it.”

The author of the Consultatio and Sidonius Apollinaris both position their arguments by rhetorically asking who could be so foolish as to disagree with the legal expert. The plain—and hoped for—answer is: no one.

The second tone displayed in the Consultatio is pious. In each of the chapters four through six, God is invoked in the first sentence.

4.1: In the name of God, what ought to be done or observed, whenever pacts between parties have been issued, if stipulations are placed among them conform neither to the laws nor to reason.

5.1: In the name of God, what ought to be done, whenever an opponent intends to demand back some things that were snatched away from him when the proposed action has been removed.

131 Cons 4.1 In nomine dei quid tractari aut obseruari debeat, quoties pacta inter partes emissa fuerint, si condiciones tales interponantur, quaec nec legibus nec rationi conueniunt.
132 Cons. 5.1 In dei nomine quid tractari debeat, quotiens adversarius aliqua sibi direpta sublata proposita intendit actione reposcere.
6.1: With God’s aid, what ought to be done against one, who says that he is the heir to someone or that he thinks that the inheritance of some person is able to belong to him.\textsuperscript{133}
As a rhetorical strategy, the pious invocations do a few things for the audience. First, the invocation puts the author in a moralizing role, orienting the author and audience in a prospective shared religious ideology. Secondly, the invocation invites conflation of civil and religious authority. I am not suggesting that such conflation was abhorrent or uncommon, but it is a marked change when compared to the other chapters of the 
\textit{Consultatio} and classical Roman jurisprudence. We can imagine that the pious tone could easily operate within the same discourse in which religious elites ask for legal aid or discuss legal problems, a phenomenon well attested in the epistles of late Roman bishops like Augustine and Sidonius Apollinaris.\textsuperscript{134}

The final rhetorical strategy is found in chapters 7, 7a, and 8. The author of the \textit{Consultatio} expresses concern about the power of persuasion in the courts. The relevant sentences are:

7.1: Truly the cleverness of the speaker is discovered not to have possessed prudence.\textsuperscript{135}
7a.1: (You have asked) if a maternal grandfather is known to have conferred some goods upon the grandson, whether they ought to remain in his power, or whether they ought to be attributed to the mother, as a partner, in her own possession by slippery persuasion…\textsuperscript{136}
8.1: Add also, while the concern of your apprehension brought forward, that, concerning burglars caught in an obvious crime, the sentence which the judge ought to pass, the page of our tract declares…”\textsuperscript{137}

\textsuperscript{133} \textit{Cons.} 6.1 Iuuante deo quid tractari debeat aduersus eum, qui se heredem dicit alicuius aut ad se hereditatem personae cuiuslibet aequitatem posse competere.
\textsuperscript{134} See, for instance, Augustine \textit{Ep.} 10*, 24*; Sidonius Apollinarus \textit{Ep.} II.v, II.vii, III.x, and V.i.
\textsuperscript{135} \textit{Cons.} 7.1 Dinoscitur itaque calliditas dictantis non habuisse prudentiam.
\textsuperscript{136} \textit{Cons.} 7a.1 si auus maternus nepoti aliqua contulisse noscatur, utrum in iure eius manere debeant, an matri in possessione sua consorti persuaisionibus lubricis imputari…
\textsuperscript{137} \textit{Cons.} 8.1 Adde dum sollicitudinis tuae cura tractauit, ut de effractoribus et manifesto crimine comprehensis quam iudex debutt ferre sententiam, tractatus nostri pagina declarat…
We can see a marked concern about the role of cleverness or persuasion in these examples. This is an old trope in Greco-Roman thought about the role rhetoric plays in the pursuit or miscarriage of justice. Nevertheless, the fact that it is a trope does not mean that it is devoid of significance. Rather, the references to cleverness and persuasion could be useful in persuading an audience that shares similar concerns for the ability of rhetoric to manipulate or circumvent the law governing their nomocratic society. The protestations against rhetoric are aimed at opponents whose arguments are a little too convincing for comfort. The tone of the author encourages an anxiety about being duped. The author’s approach complements the complaints about the confusing state of law in the late Roman Empire, as we saw in the Theodosian Novel 1.

Additional correspondence can be found in Ammianus Marcellinus’s late fourth century satirical digression. In his digression he complains of four different kinds of bad lawyers. The first group commits the kind of crimes the Consultatio tries to caution its audience against. Ammianus twice warns that these wicked legal Cretans “draw the dagger of their talent to lead astray by crafty speeches the good faith of the judges, whose title is derived from justice.” Mistrust of legal experts, perhaps an unintended consequence of their mastery of disputatious practice, could be capitalized on by cunning legal experts to persuade their audience. If the audience is predisposed to mistrust the manipulation of legal material, then creating and appealing to a shared sense of suspicion could be an effective tool for creating a persuasive legal argument.

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138 See the depiction of Socrates in Aristophanes Clouds, for instance.
139 Amm. Marc. 30.4.9 Trans. Loeb inter rapinas insatiabiles inopes ad capiendam versutis orationibus iudicum fidem, quorum nomen ex iustitia natum est, sicam ingenii destringentes.
The purpose of the introduction is persuasion. Tone is one tool that a legal expert could use in the interest of persuasion, but there are other means available as well. In the Consultatio, we can see two other persuasive techniques employed: one is the constant reference to the authority of the legal compilation following the introduction, which suggests that the compilation is likewise legally persuasive as we discussed above, and the other is the mitigation of possible counter-arguments. Both of these techniques suggest that the ultimate goal of the author of the Consultatio, and of Roman legal experts in general, was convincing an audience—that is, creating a shared sense of what constituted the law and their community.

Throughout the introductions in the Consultatio, the author promises his reader that his argument is actually reinforced by legal texts. In other words, the author argues that his interpretation is simply plain law. There are, by my count, 17 instances where the author of the Consultatio tells his audience that his opinion is derived correctly from the law and that can be seen by reading the legal compilation he provides.\textsuperscript{140} Phrases like

\begin{flushleft}
\textsuperscript{140} I.4: Dein textus memoratum legem sic continet In conclusion the text of the recorded laws thus constain; I.5 quantum leges subter annexae testantur how much the laws appended below attest; II.5 sicut lex infra scripta evident lectione declarant thus the law written below declares in an obvious reading; III. 4 Respice leges subter adiectas: tunc intelleges… Look at the laws added below and then you will understand; III.5 Ergo testimonium legum, sicut iam dictum est, sequentum diligenter attendite Therefore, attend carefully to the evidence of the following laws, as has already been said; III.10 leges supra scriptae declarant the laws written above declare; III.11 Attentus audi, quid loquitur lex subter adiecta Pay close attention to what the law added below says; IV. 2 lectionibus subter adnexis poteris evidentius informari you will be able to be rather well informed in the readings attached below; V. 3 secundum leges subter adnexas according to the laws appended below; VI.2 Ut iuris legumque dictat auctoritas as the authority of law and the constitutions dictate; VI. 2 ut leges praecepiunt as the laws forewarn; VI. 2 legibus subter adnexis ostenditur it is shown in the laws appended below VI. 3 sicut leges iubent as the laws command; VI. 5 sicit idem inferius declaratur just as it is declared below; VII. 3 secundum sententiam Pauli iuridici, cuius sententias sacratissimorum principum scita semper valuituras ac divalis constitution declaravit according to the opinion of the judge Paul, whose Opinions the constitutions of the most sacred emperors and the divine law declared would also be valid; VIIa.1 hoc etiam Codicis Theodosiani declarant auctoritas the authority of the Theodosian Code declares this; VIII.1. huic lex divorum princiipum quae infra legitur oppenenda One must contrast with this the law of the deified emperors, which is read below.
\end{flushleft}
“the law written below declares in an obvious reading” operate, along with the use of the tones, to convince the audience that the law has been made apparent.\textsuperscript{141} With these phrases, the legal expert reinforces his authority by joining his argument to the following legal material, to the words of respected jurists and to the words of emperors.

The final use of framing material we shall discuss is the anticipation of possible counter-arguments. The author of the \textit{Consultatio} mentions three objections to his argument.\textsuperscript{142} These objections are quickly dealt with so that the audience is prepared for pushback practically or at least intellectually. Consider chapter II, for instance. The problem discussed in this chapter is whether or not a husband can rightfully divide up his wife’s goods without her knowledge or unfairly. The author’s position is that the husband’s division should not stand. The author foresees the defense’s position when he says

“\textit{It is noted that even if it were} contended that the wife had authorized it, both the division would be able to be shown to be fraudulent or less than fair and it would especially remain void and inane. Add to that that the husband is said to have made the division without the knowledge of the wife, what sort of standing could he have? Or what will be valid, whenever the wife wants to break the thing up? But, \textit{lest he by chance say} ‘you endorsed the division and agreed to the divided goods,’ it must be responded legally and it must especially be considered on behalf of all truth, that even among persons of age and those legally competent if a division should be considered fraudulent, it is rescinded by law...”\textsuperscript{143}

\textsuperscript{141} Cons. II.5 \textit{sicut lex infra scripta evidenti lectione declarat.}
\textsuperscript{142} Cons. II. 3, II. 5, and VII. 7.
\textsuperscript{143} Cons. II.3 Notum est, quod etiam si mandato uxoris niteretur et fraudolenta divisio vel minus aequalis posset ostendi, vacua et inanis specialiter remaneret. 4 Adde quod sine uxoris conscientia maritus dicitur definisse, qualem poterit habere virtutem? Aut quid valebit, cum primum uxor hoc refragari voluerit? 5. Sed ne fort dicat ‘amplexa es divisionem et acquisiti rebus divisis,’ respondendum est legaliter et pro omni veritate hoc specialiter habendum, quia etiam inter maiores personas et legales si fraudulenta divisio facta probetur, legibus rescinditur.
The author of the *Consultatio* is informing his audience that he has considered counter-arguments and has even prepared for them. It would seem that the only legally viable course for the audience is to follow the advice of the legal expert. The appearance of authority, of correctness is the result of a considerable display of disputatious practice.

We have seen in the *Consultatio* that legal experts of the late Roman Empire were concerned with how an audience would interpret legal material. This concern could be mitigated by correctly framing an argument and disposing the audience to respond to the argument favorably. Framing could consist of deploying a distinct tone which could capitalize on a persona of authority. Legal experts could sound exasperated with silly questions. While a severe tone may actually be the result of an expert growing tired of misunderstanding, it also predisposes the audiences to rely on the authority of the expert. If the intended audience were to identify as Christian or Jewish, a legal expert could utilize a pious tone that makes both the author and the audience part of a single, God-fearing discourse. Finally, if the audience identified more with the sorts of complaints the Emperor Theodosius II had about the confused state of law, appealing to their suspicion could effectively persuade the audience that this legal expert in particular really was reliable. When legal experts talked about law and introduced their opinions, they could also weave together their arguments with their legal material. This resulted in a mutually reinforcing relationship where the opinion of the jurist was supported by the words of emperors and jurists and where the writings of emperors and jurists were found to concur with the legal expert. Finally, a legal expert could discuss a legal problem by preempting contradiction. If the legal expert nullified an opponent’s argument before he or she even made it, then he might come across as prepared and perspicacious.
4. The Power of Disputatious Practice

Imperial complaints about the complexity or disarray of the legal system make sense when seen in the light of disputatious practice. Compilations of legal material were constructed to make arguments about legal issues, as we saw with the Collator’s definition of murder, and this construction could appear overwhelming. Indeed, citations could seem like a torrent. It is reasonable to imagine that an opposing party could be caught off-guard by the domineering authority of a legal expert. Likewise, to the layman, framing material could appear convincingly considered or perhaps unnecessarily bombastic, depending on one’s point of view. While complaints about law seem to abound, it is useful to note that some found disputatious practice a powerful tool in navigating the legal world of the Roman Empire.

The power of disputatious practice can be seen in the late antique comedy, *Querolus*, which is about the eponymous youth coming into his inheritance. Querolus’s father, Euclio, lies dying while abroad and has to devise a method for delivering the inheritance so that it would not be stolen. Euclio promises the classic parasite, Mandrogerus, a portion of the inheritance if he honestly delivers it to the son. Before going abroad, Euclio cleverly or miserly had hidden his fortune in a funerary urn and pretended that the urn was his father’s ashes. Euclio, however, does not tell Mandrogerus about the trick. Mandrogerus tries to steal Querolus’s inheritance but is fooled by Euclio’s trick. After finding the urn but failing to recognize its contents, Mandrogerus

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plans to toss the urn, ashes, and disguised gold into Querolus’s house, frightening Querolus and avenging his wasted energies. When he tosses in the urn, it shatters revealing the inheritance to the delight of Querolus. Mandrogerus hears of Querolus’s celebration and returns to claim a portion of the inheritance, as Euclio had promised. Mandrogerus and Querolus argue before a judge, named Arbiter, about whether or not Mandogerus has a legitimate claim on the inheritance.

In the case before Arbiter, Mandrogerus produces the codicil claiming a share of the inheritance. To Mandrogerus, this tactic seems like enough evidence to prove that he is entitled to a share of the gold. Mandrogerus cites evidence of his position in the same way a legal expert might cite legal material supporting his argument. Querolus is accustomed to courtroom disputes and thus is more versed in creating a legally persuasive case. Querolus argues that the codicil dictates that Mandrogerus is to show him the treasure *sine fraude*, without duplicity (*Quer.* XIII. 96), but, since Mandrogerus threw the urn into the house ignorant of its valuable contents, he did not actually deliver the inheritance in good faith. Here, we can see Querolus deploying counter-arguments to Mandrogerus’s citation. Querolus prepares the case in the same way that we saw the author of the *Consultatio* prepare his audience. Querolus pretends to be ignorant of the gold, leading Mandrogerus to make a series of confessions until finally Querolus sums up his charges: “You stole the treasure, violated a tomb, you scoundrel! Not only have you pillaged my house, but you also polluted it, you impious wretch!”145 After this barrage of charges, Mandrogerus begs for mercy and realizes he has been tied in legal knots: if he

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145 *Quer.* XIII. 101: *Thesaurum abstulisti, violasti sepulchrum, perdite; domum meam non solum compilasti, verum etiam polluisti, sacrilege.*
admits to returning the gold, he must first admit to stealing it. Querolus piles up legal accusations just as a legal expert compiles legal references. Mandrogerus concedes; he is utterly mystified by the argument. The appearance of mystification is the result of Mandrogerus exhausting his own supply of legal expertise. He has no legal recourse left to convince his opponent. Querolus has successfully convinced his audience that he has the upper hand.

In the end, the Arbiter suggests to Querolus that he should take Mandrogerus as a friend and servant. Querolus considers it and asks him if he can learn to master the laws, presumably to be useful in a courtroom. In an ironic twist, Mandrogerus boasts of all the laws he has memorized: the Porcian, Caninian, Furian, and Fufian laws. The Arbiter remarks that Mandrogerus is a valuable person because he is so well-versed in law: “Men usually seek such a person at a great price.”146 As the reference to the codicil shows, Mandrogerus was familiar with the legal practice of referring to texts to make an argument. While Mandrogerus may know the law, Querolus knows how to use it. In the final act of the play, Querolus and Mandrogerus embody the two aspects legal education in antiquity: Mandrogerus shows the legal knowledge one would expect from an expert and Querolus show the ability to create an effective legal argument. The Querolus may not be a legal document but it shows how the tools of persuasion were marshalled by legal experts. Disputatious practice was so prevalent that it was represented in the final debate between Querolus and Mandrogerus as characteristic of legal practice in the late Roman Empire.

While scholars have shown that legal experts meticulously studied legal texts, a purely textual method of education alone would make for an ineffective operator of the legal system. Legal experts had to learn how to use authoritative texts to make an argument. As the complaints about the state of law suggest, law was perceived to be confusing. To the layman, disputatious practice would seem like a forceful barrage of legal evidence. First, legal experts learned to compile legal data to create arguments. The arguments could be created by citing legal material that became more and more specific; this technique could show that the issue in question was specifically discussed in legal texts. Alternatively, legal compilations could work from the specific to the general, which would show the audience that the issue not only was discussed explicitly but was considered in the broader sense of the law, perhaps even in the spirit of law. Another way a legal expert might compile legal material was by bringing together citations that made essentially the same point. While this might seem simple to modern audiences, one can imagine that it created an unrelenting barrage of support for an argument. In the second aspect of disputatious practice, legal experts could embroider or frame their arguments by assuming different tones. These tones, if deployed in the appropriate circumstances, could help insure a positive reception of one’s argument. Relatedly, legal experts could insist to their audience that their arguments were stemming from the plain words of classical jurists and emperors. This technique bolstered the expert’s argument by tying the authority of the expert to those sources of law. Finally, experts could include in their arguments preparation for counter-arguments. The signs of preparation show that an expert has prepared a case extensively and they encouraged the audience to rely on the expert’s knowledge. In these ways, we can see disputatious practice was common
throughout the late Roman Empire: emperors commented on it, legal texts preserve it, and comedies satirize it. The ubiquity of the practice suggests that a fuller understanding of legal education must have had some elements of disputatious practice in order to prepare experts to navigate the Roman legal world.
Chapter 2: Compensation for Labor in Law

Legal experts deployed their legal expertise in order to receive multiple forms of compensation. The compensation included cash, kind, public honor, and exclusive social prestige. The notion that legal experts performed labor for compensation is contentious for two reasons. First, scholarship has focused almost exclusively on compensation owed to advocates, court officials, and the effects law has on economic activity rather than on legal experts. Second, the culture built up around Roman legal expertise discouraged experts from asking for financial compensation. The opaque relationship between legal experts and finances invites us to consider other forms of compensation a legal expert could have received. These forms of compensation, although some seem ephemeral, were still valuable. The alternate forms of compensation reveal that recompense was closely bound up with status and money, and experts throughout the Empire skillfully deployed their expertise in order to bolster both their income and their standing. In order to understand a legal expert’s compensation, we have to ask what sort of work, labor, activity, or practice experts performed that merited recognition in any form. When we begin to recognize the protean forms of compensation and labor, we come to appreciate how pervasive legal expertise was throughout the Empire.

To introduce the relationship between the legal expert’s labor and compensation, I will first outline the scholarship around these topics in order to sample the methods of addressing transactions at law. This outline establishes the immediate necessity of considering compensation in the history of late Roman legal experts. Next, I focus on
evidence of legal experts who received financial compensation in order to show two things. First, a pervasive cultural disposition attempted to elevate legal expertise above economic considerations. Second, even in the face of this cultural disposition, there was still a common practice of paying experts for legal aid. In the next section, I discuss Bourdieu’s notion of “Symbolic Capital,” which can help us conceive of the attempted elevation as integral to other forms of economic activity. Symbolic capital is Bourdieu’s term for objects or practices that have not immediately recognizable financial value or that represented economic capital in such a way as to hide economic interest. Symbolic capital helps us realize that individuals can transact in a multitude of ways other than financial. To illuminate the ways that compensation for experts was a mixture of public honor and money, we will consider first teachers of law and second assessors. These two kinds of legal expert represent a broad swath of persons employed by the imperial administration, because they ostensibly required a convincing mastery of the law to perform their roles. Next, we will turn to legal experts who were paid in an exclusive form of social capital. Individuals in the elite social class advised others about Roman law with no obvious form of compensation. Rather, legal experts advised other elites for social capital. The elite social capital transactions offer insight into why social elites assisted others in meticulous legal matters. I conclude by arguing that even though compensation for labor in law was often a disguised phenomenon, the transactions of cash, kind, public honor, and social prestige shed light on some key motivators for legal experts to obtain their mastery of Roman law.
1. History of the Scholarship

The history of the scholarship on the compensation of legal experts and their labor can be divided into three approaches. The first approach is prosopographical, which means that scholars in this tradition have studied every identifiable legal expert and their position in society. While this approach is undoubtedly useful for revealing select experts in fine-grained detail, prosopography tends to overlook non-elites. The second approach is papyrological. Scholars who study legal experts on the basis of papyri have highlighted evidence that is highly suggestive of legal expert activity. They, however, also caution that there are few conclusive marks in the data. Papyri seem like they would be a useful source for uncovering information about non-elite legal experts because they retain evidence of a wide range of economic activities distributed across a broad social spectrum. Nonetheless, identifying individual experts in the papyri is remarkably difficult. The final approach to legal experts, their labor, and compensation investigates legal experts by focusing on discrete administrative or bureaucratic roles an expert could play. The scholars who use this approach argue that legal experts staffed much of the imperial bureaucracy and that their professional activities in turn influenced the production of late Roman juristics. Each of these approaches to legal experts is useful for uncovering how legal experts labored and how they were compensated for their labor.

The most important contributions to the prosopographical approach to late Roman legal experts are Die römischen Juristen: Herkunft und soziale Stellung by Wolfgang Kunkel and the province-specific studies by Detlef Liebs. Kunkel’s primary aim was to

map out the social position and power of Roman legal experts in order to understand their role both in Rome and in the provinces. Kunkel’s principal conclusions were that jurists in the second and third century moved into the provinces primarily from first senatorial then equestrian backgrounds. Kunkel argues that after Commodus (early third century), those practicing Roman law were much more diverse in their racial backgrounds, classes, and geographical origins than had previously been the case. The increase, in Kunkel’s argument, corresponded to the opening of law schools throughout the provinces and, as a result, to the emergence of a greater number of more legally trained individuals who used legal education as a mode for social advancement. For these arguments, Kunkel relied on inscriptive evidence, especially on grave inscriptions and papyri in which individuals claimed to be *iuris consulti*, *iuris periti*, *iuris studiosi*, *magistri iuris*, and νομικοί. Kunkel was hesitant to accept these claims as somehow representing the equals of great jurists like Ulpian, Julian, and Paul, and warned his readers that a system-wide danger Roman legal expertise confronted was the lack of any sort of institutional supervision or regulatory control. The image Kunkel leaves for us of the late third century is a Roman legal world that was dominated by fewer and fewer famous legal experts (the individuals

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recorded in the *Digest* and other legal compilations) surrounded by a sea of lower class individuals who lacked the jurisprudential genius of the classical age.\footnote{The prosopography of the classical jurists has been studied by Richard Bauman. Richard Bauman, *Lawyers in Roman Republican Politics* (München: C.H. Beck’sche Verlagsbuchhandlung, 1983); Richard Bauman, *Lawyers in Roman Transitional Politics* (München: C.H. Beck, 1985); Richard Bauman, *Lawyers and Politics in the Early Roman Empire* (München: C.H. Beck, 1989).} Kunkel, however, adds nuance to that pessimistic reading by saying that we actually are not looking at a demise of legal expertise, but rather at a return to a normal practice of law and legal science by individuals who never disappeared. These individuals were glossed over in favor of the classical jurists. Kunkel ends his study of the Roman jurists by positing that it is impossible to do a social history of the late Roman jurist, because of the lack of sufficient prosopographical data from the late Roman Empire.

Liebs’s primary aim was to push back on scholars like Collinet and Weiacker who argued that the Western Empire suffered a decline in Roman legal science.\footnote{Liebs, *Italien*, 15-16.} To make his argument, Liebs focused on individual provinces in the West (Italy, Gaul, and Africa) and catalogued their identifiable legal experts, their legal literary creations, and the historical significance of legal expertise in the provinces that he studied. In Italy, Liebs identified about 30 individual legal experts and inferred the existence of at least 10 others from anonymous legal texts composed in late Roman Italy.\footnote{Liebs, *Italien*, 283-287.} In addition to these experts, Liebs argued that there must have been hundreds more because of the administrative roles in which legal experts could serve either as administrators themselves or as assistants. Legal experts in Italy could be seen working as administrative advisers, private
legal counsel, and even bishops. In Gaul, Liebs identified 26 legal experts from the 2nd to the 8th century.\textsuperscript{154} These experts worked as advisers, advocates, teachers, assessors, bishops, and in the imperial service. Liebs’s study on Gaul also shows how pervasive the mode of Roman legal discourse was throughout the Roman, Gothic, Burgundian, and Frankish periods.\textsuperscript{155} And, finally, in Africa, Liebs identified 12 (possibly 13) legal experts from the second to early fifth century.\textsuperscript{156} Although he identified fewer experts in Africa in this period, Liebs argued that the Sententiae of Paul, arguably the most influential late Roman juristic work, was created in Africa; the creation of the Sententiae proves the existence of a thriving legal practice in late Roman Africa.\textsuperscript{157} In total, Liebs’s works show in fine-grained detail the unique legal terrain of Italy, Gaul, and Africa by focusing on individual named legal experts. As in Kunkel’s work, Liebs leaves us with an image of experts of social elite standing who operated mostly for an elite clientele. The image of elite jurists makes studying compensation difficult because these elites tended to refrain from discussing compensation in an easily identifiable way.

Scholars who look for legal experts in papyri aim to find non-elite legal experts, because papyri retain a multitude of stories, complaints, and traces of ordinary lives in the late Roman World. The founder of this mode of scholarship, Mitteis, in the 19th century, argued that there must have been an army of legal experts throughout the Empire.\textsuperscript{158}

\begin{itemize}
\item[154] Liebs, \textit{Gallien}, 291-294.
\item[156] Liebs, \textit{Africa}, 119-120.
\item[157] Liebs, \textit{Africa}, 28-109.
\end{itemize}
Although Mitteis struggled to find individuals known for their legal expertise in the provinces, he noted how the complexity of legal documents suggested that experts must have helped draft contracts, write legal documents, and make arguments. Mitteis argued that these unnamed experts probably filled roles such as tabelliones, notarii, grammateis, and performed other scribal functions. Although these roles did not strictly require legal expertise, one could gain a functional legal expertise by working as a scribe in some fashion. Additionally, the scribes could have obtained their expertise from studying Roman law books (like formularies) which allowed them to memorize legal formulae. The autodidactic nature of the scribes’ legal education would explain why, when they employed formulae, they often applied the formulae incorrectly or in the wrong inappropriate settings. The scribal legal experts failed to comprehend correctly the formulae they were applying. These failures led to Mitteis’s outdated-sounding term


160 Joachim Hengstl, “Rechtspraktiker in griechisch-römischen Ägypten,” in *Recht gestern und heute*, ed. By Joachim Hengstl and Ulrich Sick (Wiesbaden: Harrassowitz Verlag, 2006), 114-132, presented the evidence for a rich and varied history of legal practitioners in Greco-Roman Egypt. Hengstl catalogued village scribes, συνήγοροι, ῥήτορες, and νομικοί who performed various legal activities for people throughout the Ptolemaic, Roman, and Byzantine periods.

161 Mitteis, *Reichsrecht und Volksrecht*, 198-203. Although, as Kim Czajkowski, *Localized Law* (Oxford: Oxford University Press, 2017), 86-106, points out such a reading assumes the end of the document. Czajkowski makes her point based on three copies a Roman formula, an *actio*
“vulgarization” of law, by which he meant that provincials repurposed Roman formulae to fit their immediate legal needs. Mitteis’s argument leads us to question the criteria we use when searching for a legal expert because if we apply strict terms of what constitutes a legal expert, we may fail to recognize the multiple forms of legal expertise operative in the late Roman world. If we cannot identify who was providing legal expertise, then we cannot know how much and what sort of compensation these non-elite experts received.

Papyrologists have shown that the “everyday” sort of legal experts, the kind that is invisible in Codes and Digests, is difficult to track; however, the profusion of technical legal documents throughout the papyrological record suggests that expertise was available to inhabitants of the late Roman world. By looking for the non-elite legal experts, we resist the picture of legal practice as one dominated by, or at least reserved for, elites in the Roman world. One step we can take to illuminate the non-elite experts is to look for signs of their compensation in the late Roman world.

The final scholarly approach we will consider focuses on the distinct roles legal experts could play. The roles could be either private—such as iurisconsulti—or public—

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tutelae, which Babatha may have intended to use to get more money to raise her son. The copies of the formula in Babatha’s possession show evidence of a legal expert because on the one hand, the copies were presumably made by a scribe since Babatha is referred to elsewhere in the archive as illiterate, and on the other hand, they are precise replicas of the formula in Gaius’s Institutes, which shows that Babatha or her scribe did not approximate the formula. In short, the copies show Babatha working with someone who could write exact legal formula. As such, Babatha must have had access to some form of Roman legal expertise. Czajkowski highlights that a fruitful line of questioning may be instead of looking for legal experts as we define them rather looking for “perceived” sources of legal expertise.

162 Mitteis, Reichsrecht und Volksrecht, Part III on the particularity of Eastern Roman provinces and individual, private legal Institutions in the Imperial Era.
examples include the *quaestor, magister a libellis*, and assessor. Many of the examples of this scholarship have specifically addressed compensation. In Caroline Humfress’s remarks on the private advising of legal experts, she notes how a *iurisconsultus* was often paid for advice alongside an advocate to present a case.\textsuperscript{163} The jurisconsult was expected to offer advice about a case while the advocate was expected to make the argument before a judge. Public positions such as the assessor, quaestor, and other administrative roles were all forms of work for a legal expert. Hitzig’s 1893 monograph sketches out a list of known assessors, who acted as adviser or secretary to a judge, and their probable legal education.\textsuperscript{164} Honoré studied the administrative roles of the quaestor and the *magister a libellis*—a secretary in the imperial service in charge of responding to letters from private citizens—and argued that much of the work performed in these roles was to advise emperors and compose responses for them on legal matters.\textsuperscript{165} The most prevalent discussion of compensation for these public roles centers on whether or not the role was compensated with a salary. I hope to show below that a salary was only one part of a diverse system of compensation.

\textsuperscript{163} Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity* (Oxford: Oxford University Press, 2007), 69-71.
Where does this survey of older scholarship leave us? First, the prosopographical scholarship has richly illuminated the lives of individual legal experts, but, possibly because of their elite social standing, these legal experts leave little trace of compensation conventionally conceived (money). Second, the quantity and sophistication of legal formula in papyri have led scholars to surmise that legal experts must be operating in a way that is difficult to see and that the prosopographical approach misses a great deal of the non-elite experts whose work stands out in the papyri. Finally, the scholarship that focuses on distinct roles for experts has limned out some of the avenues of work experts could perform, but the constrained definition of compensation has sequestered their discussions primarily to arguing over if and when experts were awarded salaries. Each of these lines of argument border on the compensation of legal experts because each depicts legal practice as a form of complex labor requiring time and significant education. In addition to manifesting as a form of labor, legal expertise became a vehicle by which experts could expect to gain wealth and social status. To understand how experts gained these things, we will turn to the compensation for labor in law.

2. Philosophers, Teachers, and Lawyers: Financial Categorization

In this section, we consider the evidence of legal experts receiving financial compensation. I first argue that there was a pervasive cultural disposition that tried to disassociate legal experts from financial compensation. This aversion can be seen in Ammianus Marcellinus’s satirical digression on lawyers in the Eastern Empire (Amm. 30.4) that excoriates experts for turning to their tools of justice, legal expertise, to enrich
themselves and their immoral clients. The aversion extends beyond satire to categorize legal experts as a profession similar to teachers. In fact, teachers of law handle the most hallowed form of knowledge according to the third century jurist, Ulpian. Ulpian’s discussion of legal experts and their expertise places experts in an elite constellation of individuals who should be uninterested in compensation. After we have conceptualized the cultural aversion, we turn to the evidence of legal experts receiving financial compensation for their aid. The evidence of financial compensation bears out three significant trends: 1) broadly, experts received financial compensation for their labor, 2) that compensation was given according to how much perceived labor was required, and 3) legal experts created, perpetuated, and relied on reputations of legal competence both to attract clients and to enforce their documents. The final trend is consonant with my earlier argument of disputatious practice because the evidence of financial compensation displays individuals using techniques of legal persuasion to create an authoritative legal object.

A. Cultural Disposition: Filthy Lucre

The force of the cultural aversion to money animates Ammianus Marcellinus’s late fourth century satirical digression on legal experts. The digression manipulates a rich literary tradition with references to Roman satire and the oratorical tradition and, as such, we should be hesitant to read the digression as an objective representation of late Roman
legal culture. Instead, the digression operates, that is it derives its humor, from the fact that it animates the normative discourse that legal experts ought to be above money.

The digression begins by incriminating the Emperor Valens for withdrawing from judicial responsibilities. By withdrawing, Ammianus tells us, Valens “opened the doors to theft” and allowed thievery to grow rampant as judges sold the cases of poor folk to military judges or high officials in the hopes of obtaining wealth and honor. Once Ammianus described his aim of critiquing Valens, he continued to lament the downfall of forensic oratory, citing Plato and Epicurus as equally condemnation of the influence rhetoric had on the day to day practice of justice. What makes Ammianus’s time irredeemable is that the honorable advocates, like Demosthenes and Cicero, had gone

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168 Amm. 30.4.2: (Sc. Valens) laxavitque rapinarum fores, quae roborabantur in dies iudicum advocatorumque pravitate sentientium paria, qui tenuorum negotia militaris rei rectorious vel intra palatium validis venditantes, aut opes aut honores quaesivere praeclaros. “He (Valens) opened the doors of theft, which was growing stronger everyday in the equally depraved decisions of advocates and judges, who by selling off the cases of poor people to military judges and strong men in the imperial service, hoped for either riches or honors.”
extinct. Ammianus paints the precipitous decline of the court as the fault of Valens, but the rest of his digression lambasts legal experts for being greedy.

The legal practitioners of Ammianus’s time can be divided into four greedy types. The first hounds the doors of widows and the childless trying to stir up controversies between friends and family. Once lawyers of this kind start a case, “Poor even among the insatiable thefts, they draw the dagger of their talent for the sake of perverting the faith of the judges, whose name is derived from justice, with clever speeches.” By an empty flow of eloquence, justice is perverted and the lawyer has come into a new inheritance as he charges more and more. The second class of lawyers claim to be experts in law, citing ancient statutes that existed before Evander’s mother. Ammianus says that these lawyers are so money-hungry that “even if you suppose that you willingly murdered your own mother, they will promise you that many obscure readings secure you absolution, if they perceived that you are a moneyed man.” The third group knows how to draw out a case with all kinds of inquisitions. Their cases take years to resolve: “In which (sc. pits) if anyone falls in captured, he will not crawl out for many years until the point that he has been sucked dry of his very marrow.” The final kind of lawyer urges all kinds of people into vain litigation. Once in litigation, they simply howl and curse their opponents for lack of any more effective or knowledgeable approach. Ammianus goes as far as to

169 Amm. 30.4.5-7
170 Amm. 30.4.9: inter rapinas insatiabiles inopes ad capiendam versutis orationibus iudicum fidelum, quorum nomen ex iustitia natum est, sicam ingenii destringentes.
171 Amm. 30.4.12: Et si voluntate matrem tuam finxeris occidisse, multas tibi suffragari absolutionem lectiones reconditas pollicentur, si te senserint esse nummatum.
172 Amm. 30.4.13: in quas si captus ceciderit quisquam, non nisi per multa exiliet lustra, ad usque ipsas medullas exsuctus.
say that they are so ignorant of the law that they cannot recall if they have ever owned a textbook. If an ancient author is mentioned in their presence, they are at such a loss they assume the name is a kind of delicacy or a new kind of fish. Though these experts seem ignorant, they still demand payment for their work.\textsuperscript{173} The types of lawyer, each more and more outrageous, are all depicted as being motivated by their love of money.

The satirical digression exemplifies the pervasive cultural disposition around legal experts by describing all of the legal experts as thieves. Ammianus derives humor from this premise by making the legal experts stoop lower and lower for money. The fundamental problem for Ammianus is that these experts ask for money at all. The digression weaves together his critique of Valens and Ammianus’s description of the ideal Roman legal culture in which men of law are unwilling to defend immorality and they pursue justice regardless of the income it garners them.

To flesh out the satirical presentation of legal experts and their financial compensation, let us turn to Ulpian, who likewise discourages payment to legal experts albeit in a specific, less satiric way. In the fragment recorded in \textit{Dig.} 50.13, Ulpian lists the professions whose practitioners are able to seek a governor’s aid in procuring their pay. Ulpian’s list starts with a rubric: the governor only settles pay for “teachers of liberal pursuits.”\textsuperscript{174} Ulpian further specifies that teachers of liberal pursuits included rhetors, grammarians, and geometricians. Ulpian expands this list by way of analogy. First doctors are like teachers “since they take care of men’s health, and the teachers care of

\textsuperscript{173} Amm. 30.4.14-19
\textsuperscript{174} \textit{Dig.} 50.13.1.pr. \textit{praecptores studiorum liberalium}.
Their studies.” Obstetricians are included since they “seem to practice a sort of medicine.” Further definition is required: doctors can also be ear doctors, throat doctors, and dentists but not those who use incantations or exorcisms. Philosophers, however, Ulpian says, are not to be accepted in a governor’s court to procure payment because “they above all ought to profess to spurn mercenary activity.” Next, Ulpian includes teachers of civil law. Governors should not accept their claims because “knowledge of civil law is indeed a most sacred thing, and something which is not to be valued in terms of money or dishonored while seeking in court a payment which should have been offered voluntarily at the outset of the affair.” For even though these [sc. payments] could be honorably accepted, nevertheless they are dishonorably demanded.” Ulpian describes the study of both philosophy and law as revered: philosophy is religiosa and law is sanctissima. Those who study and teach these disciplines ought to be above economic interests. For Ulpian, philosophy and law stand at

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175 Dig. 50.13.1.1 cum hi salutis hominum, illi studiorum curam agant.
176 Dig. 50.13.1.2 quae utique medicinam exhibere videtur.
177 Dig. 50.13.1.3 Medicos fortassi quis accipiet etiam eos, qui alicuius partis corporis vel certi doloris sanitatem pollicentur: ut puta si auricularius, si fistulae vel dentium. non tamen si incantavit, si inprecatus est, si, ut vulgari verbo impostorum utar, si exorcizavit.
178 Dig. 50.13.1.4 quia hoc primum profiteri eos oportet mercennariam operam spernere
179 This could be a reference to the fact that teachers were traditionally paid school fees on the first day of the year, which means instead of being a denial about pay entirely, Ulpian is simply denying law professors from bringing a case against someone who either did not pay the fee or who previously had his fees remitted. Fee remission was not an unheard-of practice, but if a teacher changed his mind about forgiving fees, then Ulpian would seem to suggest that he was not allowed to bring his case. For the timing of fees see Raffaela Cribiore, The School of Libanius in Late Antique Antioch (Princeton: Princeton University Press, 2007), 185 and for the remission of payment, see Robert Kaster, Guardians of Language (Berkeley: University of California Press, 1988), 123 note 128.
180 Dig. 50.13.1.5 Proinde ne iuris quidem civilis professoribus ius dicent: est quidem res sanctissima civilis sapientia, sed quae pretio nummario non sit aestimanda nec dehonestanda, dum in iudicio honor petitur, qui in ingressu sacramenti offerri debuit. quaedam enim tametsi honeste accipiantur, inhoneste tamen petuntur.
the top of a professional and intellectual hierarchy with the implication that both should be done with only the faintest concern for their economic benefit. Professors of law should handle payment discreetly, out of the public’s gaze in the governor’s court. While Ulpian’s focus is on teaching, he forms his consideration of legal instruction not on the act of teaching, which varied in respectability, but on the thing taught. Since law itself was sanctissima, knowledge of law should be given regardless of finances, honorably by teachers and, perhaps, by legal experts in general.

The culture built up around legal experts imagined that the ideal legal expert was above financial considerations. Ammianus Marcellinus’s satirical digression condemned Valens as a bad emperor by claiming that he was responsible for the existence of greedy lawyers. To Ammianus, good legal experts should not stoop to protecting immoral men for money. Ulpian’s discussion of teaching law describes legal knowledge as sanctissima; law’s hallowed status requires that legal experts avoid publicly petitioning the governor for unpaid fees. In both of these authors, legal experts are meant to be disinterested in financial compensation, but, as I will discuss below, legal experts normally could expect remuneration for their labor.

B. Financial Compensation

Although ideal legal experts were supposed to be disinterested in financial compensation, there is much evidence that legal experts were compensated financially. When we review this evidence, it becomes apparent that legal experts were financially compensated according a logic that dictated that compensation should correspond to how
much work a case required. In addition, we will also see that legal experts used their cultural capital to garner payment, by attracting business and validating legal documents. This can be seen in the papyrological fragments that mention payments to experts. In fact, in two of the papyri, we have evidence of legal experts using their status as experts to make their legal documents more authoritative.

The rationale of payment to legal experts can be seen in Diocletian’s Price Edict. In the Edict, Diocletian presented a maximum price for advocates and jurists. The Price Edict imagines a fragmented world of goods and labor and their value in economic and moral terms.181 By announcing how much the goods and services listed in the Edict should cost, Diocletian presented a world view of the proper and reasonable economic interactions of the inhabitants of the Empire. Diocletian projected his view across the entire Empire, as is evident from the well over forty copies that are preserved from the Empire. Most of the copies were found in the East and in Greek, but there is one extant fragment in the West and in Latin, which suggests the Edict may have had an Empire wide effect.182

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The Edict categorizes the legal experts—and therefore their labor—together with teachers. The legal expert is mentioned at the end of the 7th chapter, “on wages.” And at the beginning of the chapter, furthest away from the legal experts, are manual workers like laborers and bakers. At the end of the chapter, Diocletian’s Edict lists teachers: a gymnastic instructor, pedagogue, elementary teacher, teacher of arithmetic, teacher of shorthand, teacher of calligraphy, teacher of literature and geometry, teacher of rhetoric. Only after the list of different kinds of teachers does the Edict list legal experts. After the legal experts, the Edict continues with teachers, listing a teacher of architecture. The legal expert stood in a matrix of educators and, as such, the expert’s labor was considered a learned endeavor similar to that performed by those educators.

The inclusion of legal experts in the Edict suggests that legal experts were compensated for their work across the Empire. If legal experts were not compensated, Diocletian’s Edict would have seemed discordant, because the act of prescribing a payment for a service no one typically purchased would have seemed incoherent especially in light of the wide distribution of the edict. Further evidence that legal experts were paid is provided by Augustine in a letter to Macedonius, the vicar of Africa. The letter is part of a dossier of correspondence between the vicar and bishop. Letters 152-155 contain a discussion between the two men about a bishop’s responsibility to intercede on behalf of individuals in court. Macedonius essentially asks whether episcopal intercession will result in the laws becoming meaningless because bad men

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183 PE 7.54-74
would no longer fear or suffer punishment if all crimes were forgiven as Augustine suggests. Augustine’s response intertwines notions of human and divine justice, crime and sin, in order to explain to Macedonius that forgiveness is an essential part of doing justice. In his explanation, Augustine introduces a complicated notion of just and unjust theft. The bishop asks if a person is owed wages and has to steal those wages from his employer, is that theft unjust? Augustine says no, because it would be unjust if he did not receive his wages. Next Augustine wonders—pointedly in a letter to a high judge—whether judges should take payment for their decisions. Augustine says that even though it is right that “the advocate sells a just defense, and the legal expert sound advice” this does not mean a judge should take payment because the advocate and expert represent one side, while the judge sits between both parties.\(^{185}\) For a judge to take payments—or in more ethically pointed language, bribes—the judge would forsake any notion of impartiality, resulting in thanks and favor being owed to one party and not the other. Augustine uses the payment to legal experts as an example in his argument against on the one hand withheld wages and, on the other, judicial corruption. That both Augustine and Diocletian’s Edict could imagine payment to legal experts suggests that compensation to legal experts was a generally well-known phenomenon and that Diocletian’s Edict described a real transactional relationship between a legal expert and a client.

It is interesting to note the tension between on the one hand Augustine’s and the Price Edict’s depictions and on the other hand Ulpian’s and Ammianus’s arguments that legal experts should not pursue payment. First, Augustine and the Price Edict suggest a

learned class of individuals who transact their business, leveraging their cultural capital to sell their services for financial compensation across the Empire. Ulpian and Ammianus, however, seem ardently opposed to experts boisterously pursuing compensation to the point that the experts appear to be more interested in money than an ethereal concept of justice. It is within these two poles that legal experts must operate.

The Edict not only categorizes the legal expert’s labor as similar to a teacher’s, it also employs a more specific logic of compensation for the expert’s labor by announcing prices for distinct steps in a case. In Table I below, I have excerpted the relevant lines from the Price Edict.

Table I. Diocletian’s Edict of Maximum Prices 7.72-73 from Giacchero 1974

<table>
<thead>
<tr>
<th>72. Advocato sive iuris perito mercedis in postulatione</th>
<th>Ducentos quinquaginta</th>
<th>δικολόγῳ ἐπὶ νομικῆς μισθόν ἐντεύξεως</th>
<th>σὺν'</th>
</tr>
</thead>
<tbody>
<tr>
<td>73. In cognitione</td>
<td>Mille</td>
<td>διαγνώσεως</td>
<td>α</td>
</tr>
</tbody>
</table>

The Edict presents a gradation of the legal expert’s economic transaction. The advocate or jurisconsult was theoretically permitted to be paid up to 250 denarii for a postulatio, which either was the filing of a case with the judge or was the request for permission to use a judge’s authority to procure evidence.186 In the next line of the Edict, a further transaction is imagined, the cognitio for which the advocate or consult could be compensated up to 1,000 denarii.187 The cognitio was the portion of a case in which all

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parties were required to come before the judge. The only scholarly publication on legal experts in the Edict is by Tomulescu, who points out that the two fees—the *postulatio* at 250 denarii and the *cognitio* at 1,000—were not presented as the only ones an expert or advocate could charge. In fact, by way of analogy, Tomulescu points out that the fee limit for advocates discussed throughout the Roman Empire was significantly higher: first 10,000 sesterces then later 100 aurei. If the advocate or the consult only charged for the two procedures listed on the edict, it would fall far below the higher cap discussed elsewhere. Tomulescu’s argument is that the advocate must have been paid more for other activities. Since both the advocate and consult were presented in Diocletian’s Edict, we may suppose that the consult similarly could be imagined to charge for more than just the *postulatio* and the *cognitio*. The logic employed in the Price Edict suggests that legal experts were paid according to the steps or amount of labor required for a case so that, while the Edict only lists two stages of a trial, we can surmise that there were also other unmentioned steps as well that may have been tied to fees.

Thus far we have seen a complex relationship between legal experts and compensation. Ulpian presents legal expertise as an elite form of knowledge that makes professors of law an elevated form of teacher. While law professors may receive compensation, they should not pursue it in court. Since Ulpian’s reasoning is based on the kind of knowledge and not the activity of teaching, we are left to wonder just how he imagined other forms of compensation for legal experts. We know that legal experts were financially compensated in the late Roman Empire both from Diocletian’s Edict and from Augustine’s letter. Diocletian’s edict even suggests a logic of compensation for discrete
legal tasks. Diocletian’s edict and Augustine’s letter, though they both depict a legal expert selling or being paid for services, do not contradict Ulpian’s depiction of legal knowledge— and therefore legal practice as well— as being something above pecuniary squabbles. Legal experts seem to be a sort of individual who could be paid, but had to seem above pecuniary interests.

As elevated as a legal expert’s interests were supposed to be, papyrological evidence records legal experts receiving payment. The identification of the experts as “experts” in these payments suggest that individuals employed their authority in a recognizable way within the community with the result that they obtained compensation. Put another way, the papyri record payments to individuals identified as legal experts because of their persistent use of legal expertise so that they could be recognized as experts and not with some other identifier such as “the scarred man,” “the notary,” or “the centurion.” By searching the papyrological database, papyri.info, for νομικοί, I found ten papyri fragments that record various payments to individuals labelled as νομικοί from the third century CE to the sixth, presented in Table II. I chose the term νομικός because it was a standard Greek term for describing legal experts in other discourses of law and I wanted to see if individuals were identified as νομικοί in connection with documented instances of compensation for legal work.

Table II. Papyri Recording Payments to νομικοί

<table>
<thead>
<tr>
<th>Papyrus</th>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>P. Oxy 14 1730</td>
<td>400-499 CE</td>
<td>600 μορίου</td>
</tr>
<tr>
<td>Papyrus</td>
<td>Date</td>
<td>Amount</td>
</tr>
<tr>
<td>-----------------</td>
<td>---------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>P. Oxy 56 3874</td>
<td>345-346 CE</td>
<td>1 talent τῶ νομικῷ ὑ(πέρ) μισθοῦ βιβλίων (τάλαντον) α</td>
</tr>
<tr>
<td>P. Oxy 64 4436</td>
<td>208 CE or 176 CE</td>
<td>12 drachmai (?) fragmentary</td>
</tr>
<tr>
<td>SB 22 15317</td>
<td>442-447 CE</td>
<td>Measure (μέτρον) of public grain</td>
</tr>
<tr>
<td>SB 26 16528</td>
<td>208 CE or 176 CE</td>
<td>Artabai amount unknown</td>
</tr>
<tr>
<td>SB 26 16750</td>
<td>324-325 CE</td>
<td>Drachma amount unknown</td>
</tr>
<tr>
<td>SPP 10 8</td>
<td>400-499 CE</td>
<td>50 artabai (?)</td>
</tr>
<tr>
<td>SPP 20 96</td>
<td>338 CE</td>
<td>11 carats</td>
</tr>
<tr>
<td>O. Wilck 1606</td>
<td>301-699 CE</td>
<td>11 carats</td>
</tr>
<tr>
<td>P. Ryl 4 627</td>
<td>300-325 CE</td>
<td>1 talent</td>
</tr>
</tbody>
</table>

These papyri usually contain lists of names and values without much elaborating detail, which means that we cannot tell why the νομικός in P.Oxy 14 1730, for instance, was paid 600 μυρίοι. The currencies used in the papyri vary. While some use monetary currency, as suggested by μυρίοι, talents, drachmas, and carats, others use in kind payments like artabai of goods or grain. The only example of the reasoning behind the payment is found in P.Oxy 56 3874, which records the payment of one talent to a νομικός for the purchase of books. The variability present in the papyri—the act for which the expert is paid, the amount paid, the currency—stands in contrast to the persistent identification of the legal expert as a νομικός.

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188 A particularly interesting early example is a legal expert is paid in wine for writing a birth certificate SB XVI 12764, II 4.
The papyrological evidence also shows that the legal expert, as an occupation, was a powerful form of identification in late Roman Egypt and could be used to secure payments. Table II shows that individuals identified as νομικοί were paid and that legal experts employed the culturally significant occupational title as a method of identification.\textsuperscript{189} Although the evidence is not conclusive that they were paid for their expertise, their occupational titles suggest some role for the cultural capital of legal expertise. The identification of an individual as a νομικός suggests that the individual employed the title as more than just a generic functional descriptor. The identifier νομικός was more significant than common descriptive identifiers such as the mention of scars.\textsuperscript{190} Rather the legal expert was identified in this way because his work relied on the construction of an authoritative persona for which he was known in his social contexts. When someone paid a legal expert identified as a νομικός, they recognized the authoritative and culturally significant knowledge the legal expert possessed.

How the expert used his legal knowledge is indicative of why he was compensated. While Augustine tells us that the expert “sells” (\textit{vendit}) his “true advice” (\textit{verum consilium}), the Price Edict suggests that compensation was rationalized according


\textsuperscript{190} See the roughly contemporary SB IV 7464 in which a man, Aurelius Sarapion, wrote a petition in which he described himself as having a scar on his leg.
to the steps in the legal process. The papyri add a third dimension to the work of the legal expert in the form of document creation and translation. There are two examples of experts deploying their knowledge to create authoritative legal documents. The two examples are the will of Gaius Longinus Castor created in 189 CE and a petition for recognition in an inheritance (in Roman legal terminology, *agnitio bonorum possesionis*) of 249 CE.\(^1\) We will look at the later document, the petition, and analyze how the legal expert composed and authorized the document with his expertise.

The petition is recorded in two copies, SB 1 1010 and SB 6 9298.\(^2\) The pertinent difference between the two is that the former is partially translated into Latin. The petition was written to the Prefect of Egypt, Aurelius Appius Sabinus, and asked him to grant Marcus Aurelius Didymus the right to inherit from his mother, Aurelia Ammonilla.\(^3\) The bottom six lines of the petition state that Aurelius Aiguptos is a Roman νομικός who translated a copy of the petition and guarantees that the translation agrees with the original, which he has deposited in the registry.

SB I 1010. 24-29


\(^{2}\) See the papyrological commentary by Karl Kalbfleisch, “Agnitio Bonorum Possessionis vom Jahre 249 n. Chr.,” *Zeitschrift Der Savigny-Stiftung für Rechtsgeschichte- Romanistische Abteilung*, 64 (1944), 416-420.

\(^{3}\) The *Possessio bonorum* was required so that mothers and children could inherit from one another. See Paul du Plessis, *Borkowski’s Textbook on Roman Law* (Oxford: Oxford University Press, 2010), 208-213.
The expert, Aurelius Aiguptos, performed important actions in this papyrus. First, he translated a copy, which essentially means that he made a new copy. Second, he attested that the copy was in agreement with the originals, which means that he swore to their reliability. Thirdly, he also wrote that he “completed” the originals held in the registry. These three actions have an agglomerative effect on the reliability of the document: it was reliable because he made the originals and therefore was in the best position to claim that the copies matched the original. In addition to this effect, Aurelius Aiguptos signed the document with his occupational title, Roman νομικός. By employing this phrase, Aurelius claimed to be an expert in Roman law who ensured the validity of this document. Both this petition and the will of Gaius Castor Longinus employ the same phrase νομικός Ῥωμαϊκός in order to lend legal authority to the document of their creation. These legal experts were not only employing their legal expertise to create the documents, they were also using their cultural capital, in the form of claimed professional credentials, to validate the documents as authoritative legal objects. The use of these legal

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194 BGU 326.2.22.
objects could have occasioned the creation of receipts similar to those collected in Table II. The translated documents and their attendant receipts then reflect the strategies of creating and deploying legal authority.

When we view the contracts alongside the receipts, we are left with the impression that the actions that the legal expert used to validate legal objects were the same ones that led to his community identifying him as a legal expert in the receipts. This means that, although most of the receipts do not tell us what the experts were paid for, their use of the title νομικός suggests the successful employment of strategies of authority seen in the contracts. These actions and strategies amounted to a legal expert’s labor for which we can see in the Price Edict and Augustine that he was compensated financially. Furthermore, the Edict even suggests that legal experts were thought to be akin to teachers and that their payment should increase according to what stage the case they were helping with was in. While Ulpian and Ammianus suggest that overt interest in finances may have been shameful, neither argue that legal experts should not be compensated at all. In fact, when we look for financial compensation for legal experts, we see that it was a regular phenomenon in the late Roman Empire.

3. Honor and Office as Salary

Money and goods are only one part of the heterogeneous phenomenon of compensation for legal services. Take, for instance, being the President of the United States. The $400,000 annual salary while in office and the $207,800 annual pension after office are relatively unimportant when compared to the other forms of compensation
presidents are awarded. To think through other forms of compensation, we will discuss Bourdieu’s notion of “symbolic capital.” Symbolic capital is Bourdieu’s description of traditionally conceived non-economic objects and practices that have high value in their respective societies and that can be converted to—or at least understood in—their economic form. The term invites us to consider the strategies of capital conversion employed by late Roman legal experts; that is, the other, non-pecuniary ways in which legal experts were compensated. In this section, we will turn to what is often considered the most important aspect of the legal expert’s occupation: working for the imperial administration. Scholarship has considered bureaucracy to be the animating force of jurisprudence of this period and has attempted to identify the lawyers surrounding the emperor in the administration.\footnote{Fritz Schulz, History of Roman Legal Science (Oxford: The Clarendon Press, 1946), 262-264.} I hope to add to this discussion by making two points. First, working for the imperial administration in any fashion garnered some degree of social standing, a form of symbolic capital: the bureaucrats or employees of the state were compensated in a mixed form of social prestige and financial compensation through a salary. Secondly, although legal experts could and did work for the imperial administration, similar sorts of practices were performed outside of any administrative overview in a non-official social structure and therefore to understand legal experts as solely operating within the imperial administration would miss the diverse cast of legal experts operating outside of the administration’s remit. To make my argument, I focus on two representative occupations: teaching law and serving as assessor. These occupations represent the wider world of official positions for those with legal expertise, because they
are positions most strongly associated with traditional legal education. We will find that there was no system of verifying or guaranteeing legal expertise even in these official capacities, so legal experts had to rely on similar strategies of authority creation and maintenance as those seen in the papyrological material. In this section, we see individuals deploying legal expertise for status and salary.

A. Bourdieu’s Symbolic Capital

Bourdieu’s work on capital is particularly helpful for thinking about the relationship of economic capital to complex social dynamics and strategies. At base, every form of capital is either an extrapolation of or potential for labor.\textsuperscript{196} When capital is defined this way, one can conceptualize economic capital as the ability to purchase objects or someone else’s labor. Bourdieu delineates three primary forms of capital. First, economic capital can be money or it can take the institutionalized form of property rights. Second, cultural capital relates to one’s knowledge and affects one’s disposition—i.e. the decisions one makes.\textsuperscript{197} We can think of cultural capital as the ability to perform highly exclusive tasks like creating legal documents. Cultural capital can take many related species such as the embodied (which is the learned disposition or acquired knowledge), the objectified (examples can include books or pieces of art; these objects speak to the embodied form of cultural capital because one requires the embodied form to appreciate...
what has become fully objectified), and finally the institutionalized (such as university degrees that are intended to guarantee one’s embodied capital). Third, social capital can be thought of as the ability to convince friends to support you in an endeavor or the amount power one holds in a group. Social capital is important for reproducing and maintaining social relationships and networks. The multiple forms of capital are related in a diffuse economy of practices.\textsuperscript{198}

The forms of capital are all convertible, which means that an individual is able to convert one form of capital into another. The conversion of capital is a vital strategy for maintaining capital in a society because, by converting one’s capital, one is able to hide its labor value thereby emphasizing other values (such as prioritizing social connections over wealth) and activating that hidden labor value for other tasks. Bourdieu’s example of the specific value can be seen in his example of a French mason, who decided to forgo a traditional dinner in his honor after finishing building a house. The mason demanded money in place of the meal to the shock of his community. Even though the meal had a defined economic value--in this case the mason had asked for 200 francs in place of the meal--the meal’s value as social capital was irreducible.\textsuperscript{199} The mason’s mistake was to devalue the symbolic capital of the meal and to prefer it in an immediate economic form.

\textsuperscript{198} Bourdieu’s understanding is an attempt at overcoming a Marxist form of history that understood the only economy to be found in financial currency and a rebuttal to the notion of a “pre-capital” economy for cultures that did not trade primarily in currency. See Pierre Bourdieu, \textit{Outline of a Theory of Practice}, trans. By Richard Nice (Cambridge: Cambridge University Press, 2013), 177-178.

\textsuperscript{199} Bourdieu, \textit{Outline of a Theory of Practice}, 173.
Bourdieu’s interest is not in the calculus of conversion of all forms of capital throughout a given society. Rather, his point is that traditionally non-economic activities and objects can be seen through an economic lens. To achieve this view, one must understand the more complicated forms of capital as “symbolic capital.” For instance, arranged marriages are a kind of strategy that can transfer symbolic capital (masked economic capital) between families. The families are able to transact their social capital by creating bonds between them while transferring significant economic capital.\textsuperscript{200} Arguably, the most important aspect of capital is symbolic capital because it is a socially masked form that allows for the conveyance and accumulation of capital beyond what simple economic capital will allow. The masking of symbolic capital reveals the complicated system of valuation that is hidden when one only looks for economic capital. Bourdieu’s notion of capital suggests that when we see individuals transacting in other forms of capital, we should see such activity as integral to the strategies of capital in a given society.

The mechanisms for enforcing the need for symbolic capital in the late Roman world are prevalent in the discussion of Ammianus Marcellinus and Ulpian’s presentation of the cultural disposition that discourages an overt interest in money. Instead of an interest in economic capital, i.e. money, legal experts are socially conditioned to conduct their transactions in alternate forms of capital. Bourdieu argues that certain professions—

like those in medicine and law—are particularly interested in symbolic capital because
they must be above displaying their interest in economic capital too openly lest they risk
their credibility. A loss in credibility could result in accusations of corruption, which in
turn could negatively affect one’s professional practice and economic income.

I place my discussion of Bourdieu’s capital at this point in the chapter, because
we will now turn to more complex forms of capital in the compensation of legal experts.
Like Bourdieu, however, I will not dwell on the conversion of the forms of capital.
Rather, I employ the notion of symbolic capital as an analytical device for understanding
the relationship between labor and compensation.

B. Teachers of Law

In this section, we will investigate the teachers of law and their compensation.

There were three kinds of teachers of law in the late Roman Empire: imperial professors,
private teachers, and municipal teachers. Each kind of teacher was compensated in a
slightly different way, but in each case, the financial aspect of their compensation was
complemented by other forms such as public honor and private gifts. I hope to show that
even though imperial professors have received most of the scholarly attention in this
field, they inhabited a landscape together with many other kinds of legal educators.

Ulpian presents teaching law as a prestigious endeavor. The most prestigious form
of teaching was in law schools that were imperially endorsed or founded. We know of at
least three imperially recognized schools: Beirut, Rome, and Constantinople. Beirut was unique because it was the only school in the Empire that seems to have been devoted exclusively to legal education, whereas the schools at Rome and Constantinople also housed faculties of oratory and grammar. We have evidence of only one school that was founded by an imperial edict: the school in Constantinople. On February 27, 425 Theodosius II founded a school in Constantinople and staffed it with 3 orators, 10 Latin grammarians, 5 Greek sophists, 10 Greek grammarians, 1 professor of philosophy, and 2 professors of law. The edict stipulates that only officially sanctioned teachers are allowed to teach publicly in the auditoria. The edict threatens that if someone else tried to teach in the auditoria, he would suffer infamy and be expelled from the city; this threat demarcated the dishonored teacher from the honorable. The professors of law were also entitled to exclusive teaching facilities at public expense, which presented their work as publicly sanctioned and endorsed. Appointment to this professorship also probably entailed an imperial salary just as other imperially sponsored professorships did. A few days after the foundation edict, another constitution awarded professors with a rank equal to that of a former vicar. Appointment to these teaching posts would have elevated a legal expert into the highest class of teachers in the Empire and would have separated the appointed teacher from others by explicitly denying privileges to other teachers. In

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201 Const. Omnem 7.
202 Paul Collinet, *Histoire de l’école de droit de Beyrouth* (Paris: Recueil Sirey, 1925), 200-204 argues that the professors of Beirut received neither an imperial or a municipal salary but relied exclusively on student fees.
203 CTh 14.9.3.
204 See Kaster, *Guardians of Language*, 114-123 for the kinds of payments a teacher could expect.
205 CTh 6.21.1 = CJ 12.15.1.
addition, the appointment would have given the teacher an imperial salary, and finally would have granted him the title of former vicar, which would have elevated him above most governors of the Empire. The compensation for imperially endorsed professors of law was composed of multiple benefits, most of which were more pronounced than the financial aspect of the compensation.

The prestige of teaching law extended beyond imperially endorsed teachers to include non-imperially endorsed teachers as well. There were two options for those teaching law without imperial support: teaching privately and teaching publicly in a position supported by a municipality. We have already seen evidence of private teachers in Theodosius II’s foundation edict. The edict opens by censuring those who would teach as both a public professor and in private quarters. Theodosius goes on to specify that teachers could be one or the other. In his edict, he specifies that private teachers are welcome to continue their work as long as they stick to tutoring in private quarters. Theodosius did not try to preclude all legal education outside of that sanctioned by the state, but rather wanted to divide public professorships from private instruction. Furthermore, those who were appointed to public positions should not also teach in private homes. For Theodosius, the aim was to separate public and private teachers.

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206 CTh. 14.9.3.pr. Illos vero, qui intra plurimorum domus eadem exercere privatim studia consuerunt, si ipsis tantummodo discipulis vacare maluerint, quos intra parietes domesticos docent, nulla huiusmodi interminatione prohibemus. “Indeed, We forbid with no threat of punishment of any kind those who are used to tutoring privately in the homes of many if they prefer to keep themselves available for so many of these students, whom they teach within private walls.”

207 CTh. 14.9.3.pr. Sin autem ex eorum numero fuerint, qui videntur intra capitoli auditostrum constituti, ii omnibus modis privatarum aedium studia sibi interdicta esse cognoscant scituri, quod, si adversum caelestia statuta facientes fuerint deprehensii, nihil penitus ex illis privilegiis consequentur, quae his, qui in Capitolio tantum docere praeepti sunt, merito deferuntur. “But if
Theodosius’s motivation for such a separation may have been an attempt to ensure that the public benefits of teaching law in the auditorium were focused exclusively on his endorsed teachers, presumably because if any other teachers were or could use the auditorium, the social value of teaching there would be more diffuse and, therefore, less meaningful.

Public professors teaching in private quarters may have been a common occurrence, which suggests that their activities may not have been not radically different. Rather, the difference between the teachers was instantiated in the importance of the location of their teaching. Evidence for public teachers working in private quarters is explicit in Eumenius’s speech. In Gaul in the late third century, Eumenius gave a speech in which, as the imperially appointed professor of rhetoric, he asked the governor to redirect his teaching salary toward the reconstruction of the school known as the Maenianae. Eumenius complained that because the school had been destroyed, instruction had to take place in private homes. Eumenius’s argument that the school should be restored does not aim at any diminution of private teaching rather at the public glory the school would bring the emperors. Eumenius tells the governor that it is proper that education intended to honor the emperors should take place not in private dwellings, but proudly in the center of the city. Private teaching then was not ignoble, but lacked

they are from the number of those who seem to have been appointed within the auditorium of the Capitol, they should know that they are forbidden in every way from studies in private buildings and they should understand that, if they are caught acting against the heavenly statutes, absolutely none of those privileges will follow, which are deservedly bestowed on those who have been instructed to teach solely in the Capitol.”

208 Pan IX. 9.1; on the location of the Maenianae, see Barbara Rodgers and C.E.V. Nixon, In Praise of Later Roman Emperors (Berkeley: University of California Press, 1994), 161.
the additional honor that public teaching carried, which was an essential component of
the imperial law professor’s compensation.

Private teachers were compensated financially by individual student fees and
gifts. While we don’t know how much individual teachers of law charged per student, the
scholarly consensus suggests that it was comparatively high since more specialized
teachers charged more for instruction than elementary teachers. The fees and gifts
private teachers of law received were probably comparable to those paid to teachers of
rhetoric and grammar. For these teachers, fees could be as high as one solidus per year
per student. This could result in a handsome income, but ancient teachers often
complained that students and their parents dodged fees. Fees, when they were paid,
could also be complemented by gifts. As Cribiore eloquently argues, the student-teacher
relationship was animated by “subtle norms of reciprocity” and “a complex web of
gratefulness” that further sustained a teacher’s endeavor. Gifts to Libanius, for instance, a
famous teacher of rhetoric in Antioch included wine, olive oil, and expensive favors. It
is likely that all teachers, regardless of their position or subject matter, benefited from this
complex web of gratitude.

The final kind of law teacher we will consider is the public teacher outside of the
imperial administration, a municipal teacher. Town councils (either a βουλή or curia)
could vote to endow a professorship in their city. Municipal teachers of grammar and

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209 Cribiore, *School of Libanius*, 187-188.
210 Kaster, *Guardians of Language*, 120.
212 Cribiore, *School of Libanius*, 183.
213 Cribiore, *School of Libanius*, 188 discussing Libanius, Oration, 54.
rhetoric are attested. They received a salary from their town, although sometimes the salary was not entirely reliable. The case of a municipal grammarian from Oxyrhynchus, Lollianus, serves as a good example. Lollianus was entitled to a salary of 500 denarii a year, but he complained that it was not regularly paid and, when it was paid, sometimes it was paid in rotten goods. The money for these positions was not always good, but could be offset by the considerable prestige associated with public teaching. Take, for instance, the famous example of Libanius, who taught rhetoric in Antioch. Libanius had served as a private teacher in Constantinople then moved to Antioch to take a public teaching post where he spent the rest of his career. Libanius may have made less money in Antioch, but he gained valuable relationships and honor in the public post.

Municipal teachers were compensated similarly to the imperial teachers, although perhaps on a smaller scale: they received salaries, student fees, gifts, and honor from the public position.

Unlike municipal teachers of grammar and rhetoric, there is no direct evidence for municipal teachers of law, although they probably took up minor posts throughout the Empire. Libanius tried to attract a teacher of law to his municipal school. His failure to secure a teacher of law in Antioch suggests at least that there were municipal teachers

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214 Kaster, Guardians of Language, 115-116 discussion P Coll Youtie 2.66
215 P. Coll. Youtie 2
216 Kaster, Guardians of Language, 120-121.
217 On municipal teachers of law, see Pierre Riché, Education and Culture in the Barbarian West, Sixth though Eighth Centuries (Columbia, S.C.: University of South Carolina Press, 1976), 62 who argued that every major municipality had law teachers whereas Liebs, Gallien, 23 argued that only some major cities could employ such teachers.
of law even if they are not well attested. Another suggestive piece of evidence comes from the juristic discussions of exemptions from various duties like tutelage or curatorship, which entailed the stewardship of property and legal aid for a person who was deemed incapable of fully making decisions alone. Modestinus, a mid-third century jurist, when discussing the individuals who received exemption from tutelage said that “law teachers teaching in the provinces do not have exemption, but those teaching in Rome are exempt.” Modestinus’s statement is contradicted to some extent by a fragment of Ulpian in the fourth century text, the *Fragmenta Vaticana* (*FV*). In *FV* 150, Ulpian asserts that “neither geometricians nor those who teach civil law are excused from tutelage.” Neither Modestinus nor Ulpian specify what sort of law teacher they are referring to, but it would be unlikely that all of the teachers were imperial teachers, especially since we only have record of two imperial law teachers from Constantinople and both Modestinus and Ulpian predate evidence of imperially financed chairs. It seems likely that Modestinus and Ulpian were disagreeing about municipal teachers because private teachers of law requesting exemption would probably have presented a weaker case than municipal teachers. The difficult case, whether or not municipal teachers deserved exemptions, may have required significant argument to come to a conclusion. As such, it is likely that the third century juristic debate about law teachers’ exemption circled around municipally employed teachers of law.

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219 Dig. 27.1.6.12

220 *FV* 150 Neque geometrae neque hi qui ius ciuile docent a tutelis excusantur. For discussion, see Kübler PW iA 397.
We now have a sufficiently complicated picture of teachers of law and their compensation. Individuals could teach law in an imperially sanctioned school, they could teach privately, they could teach in a municipal setting, and they could sometimes mix these teaching strategies, bearing in mind that imperially endorsed teachers may have been barred in certain locations and at certain times from teaching privately. All teachers probably benefited from gifts and fees, but teachers with official positions received salaries from the state, either from the imperial fisc or the town council. The financial income of the teachers, however, fails to capture the whole picture of compensation because teachers of law also garnered social standing by teaching in public spaces and strengthening social bonds with both students and their parents. The prestige of teaching in an exclusive public venue and the gifts from pupils were instantiations of the symbolic capital teachers of law accrued for their labor. Since teachers of law often taught alongside teachers of rhetoric, we can assume that the two probably shared much in terms of social networks and compensation. These teachers built networks of trust and competence that helped them attract students and an income. The mosaic of teaching strategies suggests that we should not look only to official law schools to comprehend how law was taught; we must also consider the private teachers, municipal professors, and adjunct teachers filling the interstices of the Roman legal educational world.

C. Assessors

The second representative occupation a legal expert could hold for the imperial administration is the assessorship. We noted in the first section that legal experts could be
paid to advise on cases or create documents. The Roman imperial administration also required legal advising because Roman administrators in their judicial roles were not selected for their legal knowledge. The judges of the Roman world required some form of advice to manage complex cases. One official who assisted Roman judges was the assessor. The assessor was often, although not always, an individual trained in law. The assessor deployed his legal expertise for the sake of constructing an authoritative legal persona in order to garner the respect and credibility necessary to advise judges. The techniques the assessor used were the same sorts of practices that we saw in the private legal experts—the jurisconsults and the document creators. In the following, we will first situate the assessor’s work in its several contexts and then investigate two aspects of his compensation: a salary and public honor.

The work of the assessor was similar to that performed by another form of judicial or administrative adviser, an individual in consilio (the consilarius) who usually advised on non-legal matters presumably without any financial compensation. The adviser in the early Empire was an individual whom a paterfamilias, governor, and even emperor would consult before making important decision. These advisers were chosen based on

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221 Michael Peachin, Iudex vice Caesaris (Stuttgart: Franz Steiner Verlag, 1996), 43 on judicial incompetence and p. 50, note 170 argues that legal expertise as a criterion for a governorship starts in 4th century. All governors had judicial responsibility and, in the Roman legal system, would have been the most common judge of first instance. See also, Georgy Kantor, “Knowledge of Law in Roman Asia Minor,” in Selbstdarstellung und Kommunikation: Die Veröffentlichung staatlicher Urkunden auf Stein und Bronze in der römischen Welt, ed. By Rudolf Haensch (München: Verlag C.H. Beck, 2009), 249-265.

222 Georgy Kantor, “Qui in Consilio Estis: the Governor and his Advisers in the Early Empire,” in Istoricheskij Vestnik, 19 (2017), 50-87, esp. 51 suggests, although these forms of consilarii were theoretically distinct, they all performed a similar advisory role to the point that it must have been the case that the more official forms were in fact modeled on the more private.
their connections, patronage, ambition and, for the most part, regardless of their degree of legal knowledge. It is for this reason that Wolfgang Kunkel argued that the two positions, consilium and assessor, were not the same although they were related.

Sometime in the second or third century CE, the role of the assessor became more sharply defined away from that of the consilarius.

A fragment of the jurist Paul from the Digest records a succinct definition of the assessor. The fragment is derived from a single book Paul wrote on the office of assessores; it has been posited that the book operated as a handbook for new assessores on how to do their jobs. The fragment from the Digest first defines the assessor as a iuris studiosus and as someone who helped in trials, opening proceedings, edicts, decrees, and letters. The title iuris studiosus denotes some form of legal training, though the range of legal education probably varied as much as the kinds of teachers that were available. We should not assume that the position of assessor and the title of iuris studiosus referred to a young man directly from law school. Instead, we should be open to a wide range of kinds of familiarity with legal practice; a range which reflects the

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223 Kantor, “Qui in Consilio Estis,” 57.
224 Kunkel, Die römische Juristen, 331.
225 Hitzig, Die Assessoren, argued that the assessor was a Hadrianic development while Behrends, “Der assessor,” 194 argued that the assessorship was actually much older.
227 Dig. 1.22.1 Omne officium adsessoris, quo iuris studiosi partibus suis funguntur, in his fere causis constat: in cognitionibus postulationibus libellis edictis decretis epistulis. “The entire office of the assessor, in which iuris studiosi perform their duties, consists mostly to these cases: in trials, opening proceedings, edicts, decrees, and letters.” See Behrends, “Der assessor,” 214 for discussion.
228 Peachin, Judex Vice Caesaris, 45-49.
heterogeneous nature of Roman legal practice. First of all, the amalgamation of the *studiosus* and the assessor does not necessarily signify a youth, but rather speaks to an individual choosing to connote for themselves some form of legal knowledge. We have one inscription for a man, Caius Calpurnius, whose tombstone describes him as a *iuris studiosus* who died at 39 years old.\(^{230}\) This Caius (or the person who composed his gravestone) found the phrase a fitting description of Caius’s life even when he was nearly 40. Likewise, the number of inscriptions with other legal signifiers, like *peritus* or *prudens*, raise serious questions about the meaning of these phrases and their relation to one another. The blurred distinction between these words becomes apparent when we compare bilingual inscriptions that translate both *iuris studiosus* and *iuris prudens* into νομικός.\(^{231}\) Although the *iuris studiosus* and the *iuris prudens* are considered distinct from one another in modern scholarship, where the *prudens* tends to signify an older, private legal expert, the Greek term νομικός is used as a catchall to describe assessors, *iuris studiosi*, and *iuris prudentes*. As such, we should be hesitant to read *iuris studiosi* as a simple equivalence to the *assessores*. The plurality of funerary inscriptions suggests that the title *studiosus* could be widely appropriated; nevertheless, the plurality also suggests that the individuals using the title were trying to advertise or create a public

\(^{230}\) CIL X 569 C(aius) Calpurnius M(arci) f(ilius) / Quirin(a) Sermius / iuri(s) studiosus / vixit annos XXXIX / hic situs est.

\(^{231}\) CIL 03, 14188, 2 A(ulus) Servilius Maximus / iuris prudens / Α(ῦλος) Σερβείλος Μάξιμος / νομικός AE 2002, 1455 VV(ivi) / L(ucius) Malius Flacus / et C(aius) Malius Maxi/mus fr(atres) sibi et suis et L(ucio) Malio Maxi/mo i(uris) s(tudioso) fil(io) dulciss(imo) et / parentib(us) suis in sol(acium?) / Λ(ούκιος) Μάλιος Φλάκος / και Γ(αίος) Μάλιος Μάξιμος / ἀδέλφοι ἑαυτοῖς καὶ / τοῖς ἵδιοῖς καὶ Λ(υκίω) Μαλίῳ / Μαξίμῳ νομικῷ τέκνῳ / γλυκυτάτῳ καὶ τοῖς ἱδίοις / γονείσι μνήμης χάριν.
perception of their expertise in the field of law. The activities outlined by Paul reflect an individual who, supported by his claims to legal expertise, assisted a governor in his judicial responsibilities. Governors as judges were responsible for hearing cases, receiving petitions, pronouncing provincial edicts, decrees, and letters. As mentioned above, governors were not chosen for their own legal expertise, so the assessor may have been responsible for bringing at least some self-professed legal knowledge to the governor’s court. When viewed together, Paul’s statement and the inscriptive evidence depict the assessor as an individual claiming some degree of legal expertise, who assisted governors and judges with a wide range of judicial responsibilities. The work the assessor performed merited him financial compensation in the form of a salary.

By the third century, assessors, because they worked for the governor, received a salary from the state. Ulpian, writing in the early third century, wrote vaguely that “if comites seek payment (salarium), it is legal, just as it is for professors.” Comites, in Ulpian’s formulation, have been interpreted as an umbrella category that would include the assessor. The editors of the Digest interpreted assessors this way too because, under the title “On the Office of Assessors,” they included a fragment from Papinian that states that “When an imperial legate dies, the members of his staff (comites) are entitled to payment of their salary for the rest of the time of their appointments as made by the

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232 For a list of individuals claiming legal knowledge epigraphically with the titles iuris consulti, iuris periti, iuris studiosi, and magistri iuris, see Kunkel, Die römische Juristen, 264-270.
234 Dig. 50.13.1.8 Sed et si comites salarium petant, idem iuris est, quod in professoribus placet.
legate, provided they have not since then been at the same time members of someone else's staff.” The categorization of comites under the heading of assessors suggests that the two titles were related at some point and that both could be paid. Further evidence can be drawn from Paul quoting a constitution of Antoninus Pius in the Digest: Divus Antoninus Pius responded that iuris studiosi, who were seeking salaries (salaria), are able to claim them. Some equivalence between the studiosi and assessors is operative here because the noun salarium refers to a long-term payment like the English salary or pension. Prolonged payment for legal experts in the private sphere would seem inappropriate because, as we saw, payments to private legal experts were usually tied to discrete individual activities. To add to the juristic discussion about assessor pay, we may turn to a constitution of Honorius and Theodosius II from 422 CE, which granted assessors rights over the money they have made even while under their father’s power. According to classical Roman law, a son under a living pater familias could have a peculium, a semi-independent property, that in reality belonged to the father and would theoretically revert to the father’s estate if he died. In the constitution, the emperors granted assessors the right to retain their peculium, which must have contained their salary, after their fathers died. The juristic and constitutional evidence depicts assessors receiving a salary sometime in the early third century. Although the earlier evidence uses

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235 *Dig.* 1.22.4: Diem functo legato Caesaris salarium comitibus residui temporis, quod a legatis praesstitutum est, debetur, modo si non postea comites cum aliis eodem tempore fuerunt. trans. Watson

236 *Dig.* 50.13.4: Divus Antoninus Pius rescrispit iuris studiosos, qui salaria petebant, haec exigere posse.

237 CTh. 1.34.2: Velut castrense peculium filii familias adsessores post patris obitum vindicent, qui consiliis propriis administratores iuvare consueverunt, si quid liciitis honestisque lucris coadunare poterunt.
opaque equivalences, the fact that the editors of the Digest described assessors as salaried *comites* suggests that at some point, if not immediately at the time of their composition, the juristic fragments and imperial constitutions were understood to refer to assessors being paid.

Literary evidence concurs with the legal discourses that experts were paid a salary sometime in the early third century. The anonymous author of the *Historia Augusta* follows a similar pattern of payment to assessors but attributes the payment and other administrative policies to a mysterious and villainous character named Aurelianus. In the life of Pescennius Niger (emperor from 193-194 CE), the author writes that Pescennius Niger would never have made an attempt at the throne if it had not been for Aurelianus who deceived and goaded Niger onto the throne. Other than the villainous characterization, the author gives us no other details of this Aurelianus. To flesh out the characterization, the author describes—ironically—the equally villainous administrative changes Aurelianus coerces Pescennius Niger to effect. First, governors should hold their positions for five years to create a more effective, stable administration. Second, administrators, governors, and their assistants should not control the provinces they are unfamiliar with, but instead assistants, specifically assessors, should be promoted to rule the same provinces that they served in previously. Third, no one should serve in the

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239 *HA* Pesc. Niger 7.1: Sed deceptus est consiliis scaevis Aureliani, qui filias suas eius filiis despondens persistere eum fecit in imperio. “But he was deceived by the sinister advice of Aurelianus, who by pledging his own daughters to his (Pescennius Niger’s) sons made him pursue the throne.
province where he was born (more on this below) and governors should be from the city of Rome. Finally, Aurelianus recommended that the governor’s council should be paid from an imperial salary so that they do not become a financial burden on the governor, who should abstain from taking or accepting anything (bribes) for a fair judgment. After describing Aurelianus as villain, the author of the *HA* says that later emperors, such as Septimius Severus, continued some of his plans. Regardless of the depiction of Aurelianus as a corrupt advisor, much of his advice, specifically that assessors be paid a salary, was implemented by later emperors in a narrative of justice and accountability. Although the *Historia Augusta* is an infamously problematic historical source, its narrative about financial compensation to assessors fits with the discourse found in the juristic sources and imperial constitutions.

A more prominent component of an assessor’s compensation was the social capital the individual earned by performing the role of assessor. This capital is derived from a discourse of justice that suffused the position of assessor. First we will look at the discourse around the assessor in two forms: praise of the assessor and laws mandating their fair practice. Then we will turn to the public access the assessorship afforded and how that access could lead to promotion or recognition. Finally, we will consider funerary inscriptions that proudly display the assessorship. Such display suggests that deceased assessors or their families recognized the honor and prestige inherent to the position.

The assessor’s honor derives its value, in part, from the fact that assessors were supposed to act as defenders of justice. The *Expositio Totius Mundi* records such a
position in stark terms. The author of the *Expositio* describes the graduates of Beirut’s law school as the men who “assist judges throughout the whole world and, by knowing the laws, defend the provinces.”

The author imagines assessors as legally educated individuals who ensured fairness and justice across the Empire. Specifically, the assessors defended the provinces from injustice by insisting on an authoritative and informed version of a Roman legal discourse. The author of the *Expositio* was not the only one to imbue the assessor with the responsibility of defending justice. In fact, the administrative reforms mentioned in the *Vita* of Pescennius Niger and repeated later in the *Vita* of Alexander Severus rely on the same point. The administrative reforms, principally granting assessors a salary, were all geared toward creating administrative stability and curbing corruption: “In addition, he (sc. Aurelianus, the source of the reforms) suggested salaries for advisers, so that they would not be a burden to those whom they assist (adsidebant), all the while saying that a judge ought not to give nor receive.”

When the author of the *HA* mentions the pay of assessors in the *Vita* of Alexander Severus, he wrote that the Emperor grumbled that judges should not need an assessor. Rather, judges should be sufficiently competent in civil matters to govern. The Emperor’s complaint rests on the understanding that the assessors perform a valuable

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241 *Exp.* XXV: Inde enim viri docti in omnem orbem terrarum adsident iudicibus et scientes leges custodiunt prouinvias
242 *HA Pesc.* Niger 7.6 addidit praeterea consiliariis salaria, ne eos gravarent quibus adsidebant, dicens iudicem nec dare debere nec accipere.
243 *HA Alex.* Sev. 46.1: Furthermore, the assistants of the governors were granted regular salaries, though he often said that only those men ought to be promoted who could carry on the administration of the state by their own efforts and did not need the aid of assistants, adding that soldiers had their own particular sphere, and scholars theirs, and that accordingly it was the duty of every man to do whatever he could. trans. Loeb.
role of ensuring justice; this role, ideally, would not be necessary if the judges were as knowledgeable as they should be. The *Expositio* and the *HA* both rely on the notion that the assessor was a source of reliable legal guidance in an otherwise unreliable world. The assessor became a symbol of justice in the sense that his presence seemed to promise that a judge or governor would have to conduct a case according to the highest ethical standards and in line with an imagined sense of Roman law. The expectations of legal expertise placed on the assessor were a form of social capital, because they imbued the assessor with honor and respect.

Once assessors gained the reputation for safeguarding justice, a second question arose: who makes sure that assessors are reliable? Emperors and jurists contributed to the discourse of the assessor as a guardian of justice by creating hypothetical rules governing an assessor’s work. In the ideal world of the Roman jurists, assessors would not serve in the province of their birth, presumably to guarantee that they did not supervise cases in which they were implicated. The jurists, possibly reflecting second and third century practice, argued that if an assessor served in his own province, he could be thought to be acting not on public business, which meant that he would not have certain legal immunities available to him. This means that in the jurists’ eyes, assessors could serve in their home provinces, but it would not be ideal. The ideal assessor was free of possible sources of corruption from their own pasts. Two imperial constitutions, *Theodosian Code*

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1.34.1 and 1.34.3, from the late fourth and early fifth century and both given in Constantinople suggest a similar concern. These laws, however, were directed toward controlling a governor’s selection of his assessors. Both laws prohibit the governor from selecting and then retaining assessors. The earlier law, 1.34.1 from the late fourth century, allows a governor to take a chosen assessor for up to four months whereas the later law, 1.34.3, threatens the judge with the charge of infamy if he should try to do even this. Both laws display a concern with judges using possibly corrupt assistants. Assessors, according to these laws were ideally appointed publicly and then forced to remain in imperial service for three years in case any provincial wanted to charge them with malfeasance. These laws try to stop another source of possible corruption: the governor himself. The jurists and emperors augmented the discourse of the righteous assessor by discussing how the ideal assessor would be someone unconnected to the province in which he was working and he would be appointed publicly, not a stooge of the governor chosen to do his bidding. The jurists and emperors, though their laws might suggest some degree of control, augmented the discourse of justice by imbuing the assessor with a form of imperial assurance which contributed to the assessor’s accrual of social capital.

While serving as assessor, an individual sat publicly in the court as a sign of legal accountability. As we saw with the teachers with an imperial salary, working in public accrued honor. The assessor observing and assisting sat below the judge.245 Leanne Bablitz has argued explicitly that the assessor would not have fit on the magistrate’s

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tribunal, but just below the judge. Her argument is in part derived from a collection of references to Tiberius acting as assessor. In these examples, the Emperor sat uncomfortably close to the judge. Bablitz analyzes evidence from the second century, but later iconographic evidence suggests her conclusions—that the position of the assessor close to the judge—were still valid in the fourth through the sixth centuries. Two images from late antiquity suggest that the judge was flanked by advisers. First, the image from the Rossano Gospels, dated to the 6th century, show Pontius Pilate presiding over Jesus. As Hoerken has shown, this depiction of Pilate is an amalgamation of late Roman judges. The late Roman Pilate in the image is flanked by two individuals who may be assisting

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the governor. The use of possible assessors in the Rossano Gospels suggest that, like the specific references to multiple kinds of judges in the depiction of Pilate, assessors were still visually paired with the judge to give an impression of a just judge, although this time overruled by his unruly audience. The second image is an ivory diptych displaying Probianus, newly appointed as Urban Prefect in the year 400 CE. Two scenes on the diptych show Probianus proudly at work as judge with two orators either pleading their cases or praising him from below. Beside Probianus stand two slightly smaller individuals who write and point to texts. These smaller individuals complete Probianus’s iconography as a good

251 For discussion on the visual presentation of Probianus, see Dale Kinney, “First-Generation Dyptichs in the Discourse of Visual Culture,” in *Spätantike und byzantinische Elfenbeinbildwerke im Diskurs*, ed by Gudrun Bühl, Anthony Cutler, and Arne Effenberger (Weisbaden: Reichert Verlag, 2008), 149-166.
judge because he is surrounded by competent assistants. These assistants are probably best identified as Probianus’s assessors. If these scenes, from second century literature and later iconography, depict assessors as we know them from other sources, then they suggest that the assessor, whose name is literally derived from “sit beside,” sat in full view of the public eye next to the judge.

By working in the gaze of his contemporaries, the assessor earned their praise, an important form of social capital. Exceptional legal experts, like the great jurists Papinian, Ulpian, and Paul, served as assessors and eventually were promoted all the way to Praetorian Prefects in the early third century. These assessors displayed their knowledge of law and dedication to justice at the right times and to the right people to earn promotion all the way to prefect. The public power of the assessor was not confined to the high Empire, however, but continued well into at least the fifth century. A law published in 413 CE by the Emperor Theodosius II elevated select individuals, one of whom was an assessor, with title of *comes primi ordinis* in rank.\(^{252}\) The offices he selected were: *tribuni scholarum*, counts of the military who have led armies, assessors of *illustres*, chief physicians, governors of provinces, and generally masters of various arts. Since the law is concerned with elevating those who are both *comites primi ordinis* and serving in various offices, Theodosius II was probably trying to correct a situation where there was ambiguity about the statuses of the various officials.\(^{253}\) Although individuals

\(^{252}\) *CTh* 6.13.1; 6.14.3; 6.15.1; 6.16.1; 6.17.1; 6.20.1.

\(^{253}\) A.H.M. Jones, *The Later Roman Empire*, vol. I (Norman: University of Oklahoma Press, 1964) 104-105 for discussion of *comites* and 534 for discussion of this particular set of laws, which Jones calls “a tangled problem.”
held the prestigious title “count of the first order,” they may have been serving in an office that was below their title. The law addressing assessors shows how their title and service deserved higher rank:

We order that after their retirement from imperial services, those assessors with the rank of count of the first order, who in council have assisted or who shall hereafter assist illustres in service, either in the provinces or in the sacred court, shall be ranked among those who have obtained the title of vicar by serving in the administration, since it is absurd that those persons who are decorated with the countship of the first order should be inferior to vicars of the exalted office, whose dignity is increased if, when they have the power of vicar, they are decorated with the insignia of a count of the first order.254

The law raised assessors who served in the most important courts of the Empire: courts run by illustres (i.e., Praetorian Prefects, Urban Prefects, etc.) and the imperial court. The law targets individuals who already hold a prestigious rank, and grants them further standing by labeling them as former-vicars. The various offices chosen by Theodosius were all public-facing offices in which individuals could attract attention, honor, and further promotion, just as Ulpian and Paul did in the third century. Further, by addressing assessors in the same category as tribunes scholarum, military counts, and governors, the Emperor recognized assessors as an important component of the imperial system. His recognition was possible because of the public role assessors played in powerful courts.255

Assessors and former assessors recognized the honor derived from serving in a public position that was so closely connected to the defense of justice. We can tell that

254 CTh 6.15.1 Trans. Pharr with emendation.
255 Peachin, *Iudex Vice Caesaris*, 47 argues that the more important courts were probably staffed by more legally competent individuals.
assessors prized the honor because they and their families exploited the position as a mark of honor in their funerary inscriptions. Over time, however, the inscripational habit changed. Whereas up to the third century inscriptions attesting the position of assessor were more common, after the third century, inscriptions become vaguer.\(^{256}\) Instead of using the term assessor, individuals or their families inscribed phrases that invoked the broader discourse of assessor as justice by using phrases such as “preserved the laws and expertly defended rights.”\(^{257}\) It is unclear what motivated the change in the inscripational habit, but it is clear that references to both the assessorship and the justice discourse around the assessor suggest that the assessor was a socially significant person in his community.

The funerary inscription of Floridus is a good example. Floridus had a long career serving as assessor, governor, and teacher of law in the fourth and early fifth century. When he described his assessorship, he chose a vague periphrasis “lateris socius” a companion at the side of a judge.\(^{258}\) Although the inscription is fragmentary, we can surmise that Floridus described himself as one sat next to the judge and as one who knew law well enough to teach it.\(^{259}\) Floridus’s description emphasized his assessorship through...

\(^{256}\) The change in the inscriptions can be noted in Hitzig’s, Die assessoren, 203-214 collection of inscriptions of assessor. He managed to uncover 8 inscriptions referring to assessors. Of those 8, five date before Diocletian and only 3 after. It is difficult to categorize later inscriptions attesting assessors because later inscriptions use vague descriptions of their work that could apply to a number of individuals.

\(^{257}\) Liebs, Africa, 12-15; Dolganov, “Nutricula Causidicorum,” 12; Vössing, “Africa Nutricula Causidicorum?,” 135 for dating. AE 1926, 29; “Adseruit leges/ defendit iura/ peritus.” Dating this inscription is difficult, but because it is in verse, the inscription likely comes from, at the earliest, the fourth century.

\(^{258}\) CIL VI 31992; Liebs, Italien, 66; Hitzig, Die Assessoren, 193-194.

\(^{259}\) CIL VI 31992: Publica post docuit Romani fo[edera iuris.]
its public aspect and his own legal knowledge. This description suggests that the assessorship was an efficient path to accruing social capital. Claiming to be the companion of the judge, defending justice, and teaching law all align with the attributes associated with the assessor. Floridus’s inscription exemplifies how assessors directly employed the discourse surrounding their position as a defender of justice operating in the public eye.

Imperial salaries were a single part of the complex phenomenon of compensation for legal experts working for the administration. Experts also benefited from their public positions by being visible working in public. If that work were teaching, then they were accorded special rooms, they received gifts from grateful students and their families, and they received pay from students and the state. But we should not become overly focused on the state-endorsed positions of legal experts. Legal education could happen in municipal settings or in private homes, as well. Whereas assessors as legal experts could have the same questionable credentials as the legal experts we saw in the first section, both the public assessor and the private legal aide relied on strategies of naming and authority construction to obtain and execute work. Assessors, like some teachers, received a salary, and this salary was part of a larger discussion of securing administrative regularity and stopping corruption. In the battle against corruption, assessors became a beacon of justice by assuring some semblance of legal knowledge and impartiality. By providing some semblance of fairness or justice in the courts, assessors also gained a public position that enriched them in a way similar to the teacher of law. Working in public gave assessors an opportunity to show their skill and dedication to
justice; these in turn could lead to promotions to positions like governor or even praetorian prefect. The public role in turn could accrue benefits such as being bestowed an honorary title rich with social prestige. Legal experts recognized this honorary compensation and chose to highlight it as a fitting description of their life for the rest of eternity.

4. Elites, Social Capital, and Legal Favors
Legal experts in the late Roman Empire could gain another form of honor or social capital by employing their expertise for aristocrats. The social elite of the late Roman Empire relied on one another for legal advice. Their reliance was part of a wider network of exchange that knit elites closely together. By assisting aristocrats, legal experts traded legally authoritative objects, like legal documents or arguments, for an exclusive form of social capital, away from the wider, uneducated public. Here, again, Bourdieu’s symbolic capital is heuristically useful because it helps us identify the labor of experts, even among the aristocracy, as accruing a form of rarefied capital. Although elites and their legal experts—who may also be members of the aristocracy—transacted their cases, they abstained from discussing money. Compensation, instead followed a different format, in which experts were rewarded with culturally significant objects (like poems) or socially significant objects (like friendship and reciprocity). Though these

objects are removed from the purely financial aspects of compensation, they nevertheless were valuable forms of compensation in the late Roman world.

We can see an example of this sort of exchange of legal expertise for exclusive social capital in the *Letters* of Sidonius Apollinaris, a powerful nobleman of the fifth century Gallic aristocracy. Sidonius’s social position in the aristocracy can be seen in the roles he served in: in the fifth century, Sidonius served as Urban Prefect in Rome and later as Bishop of Clermont. Sidonius’s family was a stalwart institution in the Gallic nobility: his grandfather served as praetorian prefect, his father as consul, and Sidonius even married the Emperor Avitus’s daughter, Papianilla. Sidonius maintained his position in the aristocracy through masterful displays of learning in his poems and allusive letters. Sidonius collected, edited, and published his letters, following the format set by the master epistolographer, Pliny the Younger. The curation of Sidonius’s nine books of epistles puzzles scholars because he refrained from publishing his letters in chronological order, according to recipients, or according to topic. Each

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261 Other examples of elites writing to legal experts include: Augustine *Ep.* 10*, 24*; Sidonius Apollinaris *Ep.* II.v, II.vii, III.x, and V.i.
letter, regardless of where it falls in Sidonius’s life, displays Sidonius expertly operating in elite society, calling in favors and ingratiating himself with other members of the elite. The letters construct an image of a sophisticated and powerful individual who denotes his position in society with ostentatious displays of erudition.

When Sidonius sent someone a letter or poem, he used his erudition as part of the complex system of relationships in his elite network. Sidonius used his poetic erudition and his office holding as forms of social capital; he could leverage his social capital for legal advice. In fact, in Sidonius’s Epistles, he wrote to four individuals known for their legal ability and either commented on their legal prowess or asked them for assistance in resolving legal disputes either for himself or for his friends.266 By incorporating his requests for legal aid into his published letters, Sidonius signals the normative force legal expertise had in his elite network.

One example of Sidonius leveraging his social capital for legal assistance can be found in his letters to Petronius. Petronius too was part of the Gallic nobility and operated in the same spheres as Sidonius.267 In Sidonius’s representation of Petronius, he was also a man of letters. The first epistle of Book VIII of Sidonius’s letters begins with a letter to Petronius, who supposedly encouraged Sidonius to complete another book after he had promised to stop after seven books.268 Sidonius claims that he has no choice but to obey

266 Petronius: Ep. II.V and V.I; Explicius: II.VIII; Tetradius III.X; and Leo: (recognized for legal knowledge though not directly asked for help) IV.XXII, VIII.III and in the Carmina XXIII. 446-449, where Leo is said to know the Twelve Tables better than Appius Claudius.
267 See Sid. Ep. I.VII for Petronius’s part in the trial of Arvandus. PLRE II: Petronius V.
268 Gibson, “Pliny and the Letters of Sidonius,” points out that the dedicatory letters are address to Constantius (I-VII) and Firminus (IX). The dedication to Petronius continues Sidonius’s own predilection for allusive honorands.
Petronius’s request for more letters, but recognizes that he will have to expect criticism soon. Sidonius explains that criticism is inevitable: if Demosthenes and Cicero were criticized for their work, then Sidonius will surely be criticized for his. By comparing himself to Demosthenes and Cicero, Sidonius tries to make himself seem insignificant, but he ends up—perhaps with a satisfied smirk?—making them his beleaguered peers. Petronius’s position as the addressee marks him as a man who can discern a literary giant as great at Demosthenes and Cicero even among his peers. Sidonius’s comparison may redound well upon himself, but it also depicts Petronius as belonging to the learned elite.

In another letter, *Ep. V.I.*, Sidonius combines his erudite compliments to Petronius with a request for legal advice. The letter opens with Sidonius saying he hears that Petronius “invests a joyful patience in perusing my letters.” Sidonius portrays their relationship as one of mutual good taste. Sidonius further compliments Petronius by saying that Petronius’s attention “is a great thing, and one most fitting for a man of letters;” it is especially great “that the smallest things of others are embraced [by you] since you yourself stand out in the greatest studies.” After depicting him as an erudite aristocrat, Sidonius turns to asking for Petronius’s help. In return for this help, Sidonius has only a few lines to offer, a little ditty in place of a small gift. Sidonius offered his letters and poems as a symbolic capital for Petronius’s aid. The payment revealed Petronius’s position in the aristocracy by showing the repeated correspondence between

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269 *Sid. Ep. V.I.1 Audio, quod lectitandis epistulis meis voluptuosam patientiam inpendas.*
270 *Sid. Ep. V.I.1 Magnum hoc est et litterarum viro convenientissimum, cum studiis ipse maxumis polleas, ea in aliis etiam minima complecti.*
271 *Sid Ep. V.I.2 aliquid neniarum munusculi vice.*
the two men and further strengthened the bond between them by means of the trading of gifts: letters and poems for legal help.

The legal problem concerned Sidonius’s friend, Vincidicius, whom Sidonius immediately characterizes as worthy of aid: a pious man and one who is very well suited to the deaconate, which he recently attained.272 Vindicius’s introduction suggests to Petronius that assistance would benefit the legal expert because 1) it would strengthen his bond with Sidonius by creating a debt from the favor and 2) it would put Vindicius, possibly a future leader of the Church in Gaul, in his debt as well. Petronius’s legal expertise gave him the tools to maintain his elite standing in the Gallic aristocracy by helping both Sidonius and Vindicius.

Vindicius’s problem arose after the death of his paternal cousin. Sidonius tells Petronius that the cousin died unmarried (caelebs) and without a will.273 Sidonius’s description is legally significant because according to the Roman law of inheritance, the inheritance of intestate men should go to the closest male relative agnatically. Agnatic means that they are related through the male line. By describing the unmarried (celibate?) cousin as paternal—that is, related to him on his father’s side—Sidonius understands that Vindicius could inherit as the closest agnate. However, an unspecified force was threatening to make trouble for Vindicius.274 This unspecified force could be one of a

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272 Sid. Ep. V.I.2 commendo Vindicium necessarium meum, virum religiosum et leviticae dignitati, quam nuper indeptus est, accommodatissimum.
273 Sid. Ep. V.I.3 nam patrueli paterno caelibi intestatoque defuncto per agnationis praerogativam succedere parat.
274 Sid. Ep. V.I.3 nisi tamen coeptis factiosa vis obviet. “Unless, however, a perverting force obstructs the proceedings.”
number of individuals who might ask for an intercession based on the belief that, though they might not have been legally recognized (such as illegitimate children, spouses, individuals who received promises of payment or bequests etc.), they still had a claim to the inheritance. An unrecognized child or spouse could make a potentially damaging claim by petitioning for an intercession from the governor. Such an intercession, known as *possessio bonorum* as discussed above in the request of Marcus Aurelius Didymus, would obviate Vindicius’s agnatic claim to the inheritance. Finally, there is also the more unscrupulous possibility that Vindicius did not consider his cousin’s will as legitimate and thus described him as intestate. A failed will was as forceful as no will. Vindicius could reasonably ask for legal assistance, because the Roman legal theorization about inheritance was complex: as Paul du Plessis points out, “about a quarter of the *Digest* and the *Institutes*” was devoted to inheritance.275

Sidonius sought Petronius’s help and communicated his request through a shared elite discourse. In the final line of the letter, he compliments Petronius again by saying that after Christ’s help, Petronius’s legal aid is the next best thing.276 Sidonius makes no mention of any payment, but says that “if his character is worthy, his case will result in victory.”277 After having connected Vindicius’s victory to Petronius’s intervention, Sidonius insinuates that Petronius will be the one deciding if Vindicius wins or not. If Petronius does not help, Vindicius is doomed. With Petronius’s help, Vindicius is surely

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saved. Sidonius’s recommendation of Vindicius established the new deacon as an important person in Gallic society while his request tested and, if successful, strengthened the bond between Sidonius and Petronius. Petronius’s compensation can be seen in three ways. First Petronius was asked to intercede in exchange for poems and letters. Secondly, Petronius’s legal expertise was compensated with new and strengthened connections within that society, particularly with Sidonius and a rising star in the Gallic church. Thirdly, though there is no mention of it, if Petronius was successful, there was the possibility of some financial form of appreciation from Vindicius. By asking for Petronius’s help, Sidonius reveals a complex and aristocratic economy of legal interactions and social practices that compensated legal experts in symbolic and culturally significant ways that were, nonetheless, difficult to quantify.

5. Conclusion
Legal experts in the late Roman world were compensated in complex ways. They could be paid in cash or kind for individual tasks, salaries for longer positions, honors for working in the public gaze, and exclusive prestige for helping elites. As we saw in the discussion of the compensation of private legal experts, individuals like jurisconsults and translators or document writers could be paid for the services that they performed in a case. These experts claimed a degree of legal expertise in order to construct an authoritative and reliable persona. This persona in turn helped ensure the validity of the documents the experts created. The strategies of authority construction were also employed by experts who worked for the imperial administration. Individuals could teach
law in imperial schools, in private settings, or in municipal schools. These teachers relied on a network of reciprocity to augment their salaries, if they received them. Perhaps the most important aspect of a law teacher’s compensation was his ability to garner public attention for teaching in public auditoria. Public work earned honor, because it happened in the gaze of the wider public and of administrative officials, like governors and emperors. As we saw with the assessor, working in public view could lead to high promotion. Working in the public also implicitly promised that the individual, whether they were teaching law or advising judges, was doing so correctly and honestly. Assessors especially benefited from the public gaze because they became beacons of justice in the late imperial world when the judge could not be expected to have mastery over the law. The final aspect of a legal expert’s compensation can be seen in the private social capital the expert obtained in return for advising his elite friends.278 When legal experts advised members of the aristocracy, the experts created and reinforced connections among the elite. They traded their expertise for social capital as they advised the highest echelon of Roman society. In all of these scenarios, legal experts transacted in distinct economies of capital and deployed their legal expertise and personas to obtain money, honor, and status.

Chapter 3: Legal Lumpiness of the Late Roman Empire

In this chapter, I examine the variability of legal practice throughout the Roman Empire. Even though litigants took part in an Empire-wide discourse of law, local notions of law and justice conditioned the practice of Roman law. A legal expert’s audience depended on his position in the legal landscape of the Roman Empire. Here, we have to shift from the discussions of legal pluralism, a concept which examines the coexistence of multiple legal orders in the same place, and begin to explore the heterogeneity of a single legal regime across space. How consistent was the practice of Roman law across the Roman Empire? Lauren Benton’s discussion of “legal lumpiness” in modern colonial empires acts as a fruitful model of such heterogeneity. Investigating the legal lumpiness of the late Roman Empire shows us that legal experts operated in diverse legal environments within the Empire and that their practice varied according to the contours of local conceptions of legality.

My argument proceeds first by analyzing the discourse of legal universalism in the late Empire in order to understand how Roman legal order, though heterogenous, could be considered a single, shared entity. Next I summarize Benton’s concept of legal lumpiness, which is characterized by a series of recurrent metaphors describing law and space. Following Benton, I analyze similar types or connected concepts of law and space as instantiated in the late Roman world that each represent a unique understanding of how law is done, what its sources are, and how it should structure the world. Each of the

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spaces represents an aspect of law that can be emphasized in order to make an argument about what is or at least should be legal or illegal. The Roman types of legal space include law schools, imperial centers, islands, and provincial cities. These figures in the legal landscape of the Empire had noticeable effects on the practice of law to the point that each space determined how law might be practiced in that region. Each of these types appears in the late Roman geographical text, the *Expositio Totius Mundi et Gentium*, the “Description of the Whole World and Peoples,” in which the author considers legal practice an important component for understanding spaces in the Roman world. The types of legal space in the Roman world reveal that certain legal concerns and strategies were endemic to particular geographies of the Roman Empire. I conclude that although Roman law was an Empire-wide practice, this practice was highly contingent on its specific instantiation in the various spaces of the Roman world.

1. Legal Universalism

In this section, I argue that there existed a complicated connection between the idea of Roman rule and Roman law. Roman rule did not always entail the absolute subjugation of the inhabitants of the Empire under the Roman styles of governance. On the contrary, the direct rule of the Roman government was a historically contingent phenomenon that came about in tandem with a totalizing discourse of Roman rule. This discourse struggled with the messy reality of Roman rule: internal and external dispute challenged imperial expectations of rule. The totalizing discourse inspired expectations of an equally total Roman law. In this instance, the ideology of Roman law seems to have
followed the imperial practice of law. Inhabitants of the Empire saw the Empire as the absolute ruler of the world, and so they expected imperial law to be absolute too. While jurists and Roman legal theory supposed a boundary between those entitled to Roman law and those barred from it, both Roman judges and non-Roman provincials used Roman law to solve their immediate problems. In response to this use of Roman law and in accordance with the totalizing discourse of the Empire, the ideology of Roman law expanded most famously in the *Constitutio Antoniniana* (212 CE). This constitution enfranchised most free men of the Empire thereby sanctioning the use of Roman law across the Empire. Roman law now, theoretically, covered the whole Empire. This section shows how the complicated imperial concept of a total Roman law could exist despite the heterogeneity of the Roman Empire.

Geography played a significant role in the construction of Empire. Enumeration of Roman provinces, defeated peoples, captured kings, and lands and rivers all displayed a geography of the Empire and, in turn, reified the Empire both in space and in ideology. In the early Empire, it was not uncommon for the Empire to be described as hegemony—that is, Roman rule transposed over other forms of community. Strabo’s early imperial *Geographica* recounts the dizzying array of statuses cities could hold under the Romans: some cities were ruled by kings, others were designated as provinces, and so on.

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some were free, and finally still others were ruled by various rulers. Roman rule as hegemony was wide but not immediate. In the later Empire, hegemony gave way to a more direct form of rule: provinces were redrawn in the administrative reforms of Diocletian and Constantine, which resulted in smaller, more manageable provinces with less room for alternate forms of community ordering.

The direct rule of the Empire was conceptualized, publicized, and celebrated (by some) as a totalizing discourse, in which Roman rule was imagined to cover the entire Roman world. In 298 CE, a Gallic professor of rhetoric at Autun, Eumenius, delivered a speech of praise in which he utilized the totalizing discourse in his request to the governor. Eumenius asked the governor for permission to redirect his own salary toward the restoration of the school of rhetoric called the Maeniana. The Gallic emperor, Tetricus, destroyed the school in 270. Rhetorical instruction in the city had moved to private buildings because only the edifice of the Gallic school still stood. The goal of Eumenius’s speech was to reestablish the school in all of its grandeur. The methods by which Eumenius convinces the governor are indicative of the totalizing discourse of the Empire. To convince the governor, Eumenius described a Roman Empire that rules over

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284 It should be noted that Eumenius surely had other goals as well such as garnering social capital for himself, his family, and his city.
its subjects directly and nearly everywhere. For Eumenius, the Roman Empire was a totalizing force that covered the known world.

Eumenius set out to achieve his goal by select techniques. First, he addressed a provincial governor, a man with the rank of *vir perfectissimus*, thereby setting the stage for official, elite discourse.²⁸⁵ Secondly, he followed Cicero’s *Pro Archia* and the *Pro Rege Deiotaro*; the literary mirroring between Eumenius’s and Cicero’s work shows Eumenius’s audience that he is a man of consummate erudition.²⁸⁶ Eumenius praised both the Emperors and the city and even quoted his letter of appointment by Constantius to the position of professor, all of which showed the warm relationship between Eumenius, his city, and the emperors.²⁸⁷ Finally, Eumenius mentioned his former position as *magister memoriae*, a high position in the Roman administration.²⁸⁸ These techniques stressed to the audience that Eumenius was powerful and well connected. He understood the workings of the Roman elite and he had the rhetorical ability to manipulate his understanding into achievable goals.

Eumenius utilized the totalizing discourse of the Empire in two ways.²⁸⁹ First, Eumenius pointed to a map of the world that once stood in the school. Eumenius described the map and exhorted the governor to “let the young men see and contemplate

²⁸⁶ Giuseppe La Bua, “Patronage and Education in Third-Century Gaul: Eumenius’s Panegyric for the Restoration of the Schools,” *Journal of Late Antiquity*, vol. 3, no. 2 (Fall 2010) 300-315.
²⁸⁷ *Pan.* IX. 14
²⁸⁸ Jones, *Later Roman Empire*, 367-8 refers to the *magister memoriae* as the emperor’s legal adviser and foreign minister.
daily every land and all the seas and whatever cities, peoples, nations the unconquered rulers either restore by affection or conquer by valor or restrain by fear.”⁹⁰ Eumenius’s exhortation shows that he thought of the map as a physical representation of the unitary nature of Roman rule. The map of the Roman world would not show the multiple kings, cities, and peoples ruling themselves. Rather, the map displayed the world as ruled by Roman emperors. The map showed a single image of Roman rule, an uninterrupted display of complete domination since the map included the current of the ocean which showed the very edge of the world. Eumenius’s map showed the world as it was controlled by the Roman Empire.

The second way Eumenius employed the totalizing discourse was by enumerating the conquests of the tetrarchs. Counterintuitively, by highlighting the conquests of the tetrarchs, Eumenius revealed the unstable reality upon which the ideology of empire rested. The Roman Empire could not actually dominate the whole world, because there were still peoples outside the Roman Empire and there were regions within the Empire that attempted to throw off Roman rule. To counteract the problem posed by foreign enemies and internal strife, Eumenius assured his audience that one expected news of imperial conquest any minute now coming from the Tigris, Euphrates, the plains of Libya, the Rhine and the Nile.⁹¹ Eumenius goes on to highlight areas of past and current conflict. Some of these areas and their people, the Persians and the Moors, symbolized the boundaries of Empire that the successful emperors would expand, thereby making real the total subjugation of the whole world to Roman rule. The other areas, Egypt,

⁹¹Pan. IX. 21.1.
Batavia, and Britain, symbolized rebellions squashed within the Empire. Eumenius’s message was simple: “For now, now at last it is a delight to see a picture of the world, since we see nothing in it which is not ours.” The success of the tetrarchs, here symbolized by geographic references, epitomized the totalizing discourse of Empire. Each emperor acted as an agent of Empire either by expanding the boundaries of the Empire or by quelling rebellion. Eumenius’s use of the totalizing discourse encouraged his audience to rebuild the symbols of civility and learning throughout the Empire in light of the newfound era of peace created by the military exploits of the emperors.

The totalizing discourse of the Empire also included ideas about administration and law. In Menander Rhetor’s late third century treatise on epideictic oratory, he divides the praise of a city into three categories: politics, knowledge, and ability. When discussing the politics of a city, he mentions that it is important to consider how the city is ruled, what form of government it has and how well the city behaves according to its laws. Menander abruptly ends the section on a city’s laws by saying that “this last section of praise, however, is virtually useless today, since all Roman cities are governed by one.” Whereas previously, Roman rule could be described as a pixelated hegemony of

294 The unity of the tetrarchy was a constant theme throughout the period as can be seen in the physical depictions of the Emperors like the porphyry column showing the four emperors embracing and the paintings of the emperors at the temple of Aswan in Egypt.
295 Men. Rhet. I.3.360
multiple and distinct ruling structures, rhetoric of the later Empire imposed Roman law on the cities and areas that the Empire controlled.\textsuperscript{297} Menander informs his audience that it was useless to discuss the law of a place because Rome provided a homogenous system of law and government. If one praised the Roman law or administration of one city, he essentially praised every other Roman city as well.

The ideology of Roman law had not always presupposed the ubiquity of Roman legal rule. Before the third century CE, jurists intended Roman law to govern interactions between Roman citizens. Gaius, for instance, says that every people establishes a law for itself, a law that is its own and that belongs to the \textit{civitas}, or polity.\textsuperscript{298} Members of the \textit{civitas} were able to access remedies and were afforded the greatest protections according to that law. Those outside a particular \textit{ius civile}, the law of the \textit{civitas}, had to rely on their own \textit{ius} or the \textit{ius gentium}, which applied to all people by nature. Roman law also had tools for adjudicating legal interactions between citizens and \textit{peregrini} (those without citizenship) and, therefore, methods for keeping the categories separate. The separation can be seen most clearly in the peregrine praetor who acted as judge for disputes between peregrines in Rome.\textsuperscript{299} Likewise, the careful language surrounding the enfranchisement

\textsuperscript{297} A major theme of the tetrarchic government according to Corcoran is the attempt to impose law from an imperial center onto the rest of the Empire. See Simon Corcoran, \textit{The Empire of the Tetrarchs} (Oxford: The Clarendon Press, 1996).

\textsuperscript{298} Gaius 1.1: Nam quod quisque populus ipse sibi ius constituit, id ipsius proprium est vocaturque ius civile, quasi ius proprium civitatis. For discussion of the connection between citizenship and law in the Roman Empire, see Ari Bryen, “Judging Empire: Courts and Culture in Rome’s Eastern Provinces,” \textit{Law and History Review}, vol. 30, No. 3 (August 2012), esp. 787-788.

of individuals and cities throughout the Roman world shows that thought was given to how Roman citizenship should function in legally plural settings. \(^{300}\)

Even prior to the third century, during the supposed classical period, adjudication between citizen and peregrine revealed a conflict between reality and ideology. In the provinces, Roman governors were so often confronted with problems involving non-Roman citizens that the prospect of administering justice along either local lines or Roman became nearly untenable.\(^{301}\) In response, Roman jurists developed legal tools for extending Roman law to non-Romans. These jurisprudential tools were fiction and analogy; they were employed for the sake of expediency.\(^{302}\) Roman governors employed the fiction of citizenship in order to apply Roman law to those who were theoretically disqualified: cases could be resolved \textit{as though} the litigants were Roman citizens. From the Roman perspective, the particularity of Roman law could be overcome by including \textit{peregrini} into Roman justice through such tools.

When we consider the legal actions of non-Roman litigants in the second century of the Empire, we can see that non-Roman provincials did not necessarily consider their citizenship status as barring them from Roman legal technologies.\(^{303}\) In the Eastern provinces, like Syria, Egypt, and Arabia, there is evidence of inhabitants using Roman

\(^{300}\) Jane Gardner, \textit{Being a Roman Citizen} (London: Routledge, 1993).


\(^{302}\) Ando, \textit{Law, Language, and the Roman Tradition}, ch. 1 “Citizen and Alien before the Law.”

legal techniques even though they were not citizens. Drafts of contracts in the Babatha archive from second century Arabia use Roman *stipulatio*, a kind of Roman contract that required both parties to use specific language of promising to make the contract valid. Babatha, like many other non-Roman provincials, interacted with Roman law often enough to realize that Roman legal language and tools could be persuasive even in her local situation. Although Roman law may have been intended specifically for the interaction between Roman citizens, nevertheless interaction between Roman citizens and *peregrini* taught both that Roman law could be a useful device for resolving disputes outside of the strict confines of citizenship.

The ideological difference between citizen and *peregrinus*, which was already challenged by Roman judges and non-citizens using Roman legal technologies, became significantly less important after the promulgation of the *Constitutio Antoniniana* in 212 CE. The Antonine constitution enfranchised most free inhabitants of the Empire. Perhaps paradoxically, at least to modern audiences, the edict does not seem to have ushered in a grand imposition of Roman law. Rather it brought the previous practice of Roman governors and inhabitants of the Empire who entered into Roman court for dispute resolution into line with the wider discourse of Roman rule. After 212 CE,

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305 Peter Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford: Clarendon Press, 1970) 266: Garnsey argues that the citizen/alien distinction was replaced after the *Constitutio Antoniniana* with the new *honestiores/humiliores* distinction.
307 See Ari Bryen for a study of the use of the *Constitutio Antoniniana* in P. Giss. 40 by litigant who had the legislation copied. Ari Bryen, “Reading the Citizenship Papyrus (P. Giss. 40),” in
inhabitants of the Roman Empire could make a claim in a Roman court, before a
governor or praetor, and employ Roman law just as many had been doing before but now
they could do so by virtue of their Roman citizenship. The Antonine Constitution
validated the legal practices of both judges and non-Roman provincials by aligning legal
ideology with the totalizing discourse of the Roman Empire.

Through these mechanisms—the use of legal fiction, the adoption of Roman legal
technology by non-Roman citizens, and the grant of citizenship to most free inhabitants
of the Roman Empire—Roman law spread throughout the Roman world not by the
imposition of any imperial power but rather by the demands and conflicts of individuals
throughout the Empire. The totalizing discourse of Empire and the ideology of Roman
law intertwined to create a Roman Empire in which everyone could lay claim to the same
legal system. In this way, Roman law covered the Empire. That coverage, however, was
not actually uniform or consistent. Rather, the legal landscape of the Roman world was
highly varied, and there were multiple ways of practicing the same Roman law. In short,
the Roman Empire was legally lumpy.

2. Legal Lumpiness

“Legal lumpiness” or legal heterogeneity is the notion developed by Lauren
Benton in her book *A Search for Sovereignty* to describe the repeated legal cultures,
circumstances, and practices that were recurrent in the colonial empires of the British,
Spanish, and Portuguese from the fifteenth to the early twentieth century. These empires

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*Citizenship and Empire in Europe 200-1900*, ed. By Clifford Ando (Stuttgart: F. Steiner, 2016),
29-45.
created strands of legal authority across the world. The strands could coexist so that multiple forms of legality—that is, communally shared conceptions of what constitutes or at least should constitute law—inhabited the same place. This coexistence resulted in a legally plural setting with multiple imperial fora of dispute resolution. A Search for Sovereignty catalogues some of the various kinds of legality—that is, the social construction of legal meaning—according to how they were described in geographic language. Places described as riverine regions were thought to radiate law and sovereignty so that the further one went down the river or the further inland one went, the more tenuous the legal connection to the colonial metropole. The tenuousness of that connection resulted in charges of mutiny and treason as expedition leaders claimed to be representatives of a sovereign power to the dissatisfaction of those around them. Oceans were thought of as narrow passageways between ports that created thin bands of colliding imperial authority. In these narrow ways, sailors often deployed legal language and ritual on their ships to settle disputes between one another in the name of royal

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308 For a discussion of a sociological definition of legality, which I employ throughout this chapter, versus a legal philosophical definition, see Patricia Ewick and Susan Silbey, The Common Place of Law (Chicago: The University of Chicago Press, 1998): 22-23 where the authors describe legality as “the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends.” On the diverse sources of legality, see their discussion on page 43, especially, “Legality consists of cultural schemas and resources that operate to define and pattern social life. At the same time that schemas and resources shape social relations, they must also be continually produced and worked on—invoked and deployed—by individual and group actors. Legality is not inserted into situations; rather, through repeated invocations of law and legal concepts and terminology, as well as through imaginative and unusual associations between legality and other social structures, legality is constituted through everyday actions and practices.”

309 The competition between different forms of legality is studied in Lauren Benton’s earlier book, Law and Colonial Cultures: Legal Regimes in World History 1400-1900 (Cambridge: Cambridge University Press, 2002).

310 Benton, A Search for Sovereignty, 7-9.

311 Benton, A Search for Sovereignty, Ch. 2 “Treacherous Places.”
authority. Legal practice on the islands was characterized by practices of penal law and martial law since islands were well suited to forced labor. The degrees of personal status created in these insular legal environments gave rise to tensions between local authority and imperial oversight as claims of despotic rule were sometimes hurled at island officials. Finally, colonial legal authority struggled to reach into hill country and highland where multiple legal strategies were used to contest legal authority. These spaces of legal anomaly repeated throughout imperial projects to the degree that each geographic feature may be understood as a representative of a kind of legal space. This legal space was, in turn, characterized by distinct and prevalent microcultures of law. By collecting a bricolage of legal spaces, Benton convincingly demonstrates that “empires did not cover space evenly but composed a fabric that was full of holes, stitched together out of pieces, a tangle of strings.” Furthermore the complexity created by such legal heterogeneity did not result in lawlessness, but in legally complex zones. The legal heterogeneity found throughout the colonial imperial projects is legal lumpiness.

The notion of legal lumpiness can be usefully employed as a heuristic frame to describe legal heterogeneity in the Roman imperial project, especially in the late Empire. In Benton’s study, certain strategies were more prominent in some regions than others. These strategies were so prevalent that the geographic descriptions of the spaces were used as metaphors for their legal qualities. The river lands were characterized by accusations of mutiny and treason, the high seas became stages for legal disputes, islands

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312 Benton, A Search for Sovereignty, Ch. 3 “Sovereignty at Sea.”
313 Benton, A Search for Sovereignty, Ch. 4 “Island Chains.”
314 Benton, A Search for Sovereignty, p. 2.
315 Benton, A Search for Sovereignty, p. 38.
were breeding grounds for despotic rule, and highlands lacked a strong imperial legal presence. These strategies were so effective in their particular areas that they colored the impression of the place. In the late Roman world, we can see a similar phenomenon where legal landscapes were characterized by distinct features in the geography of the Empire. For instance, places with law schools, like Beirut, were frequented by young men who hoped juristic knowledge would grant them effective legal strategies and successful careers. In the imperial capitals, like Rome, one’s social connections could easily affect the outcome of a dispute, as one was more likely there to step on the toes of senators or other elites in their daily lives. On small, Roman islands, there was a persistent concern about how to reach judges other than the provincial governor. Finally, in some provincial cities, the local conceptions of justice might differ from an imperial Roman legal notion; this difference could result in violence. These four geographic categories became types of legal space for legal practice in the late Roman world as each was associated with unique legal characteristics. Granted, these characteristics could be found in other areas or regions, but each one possessed a unique connection to individual geographic features. Benton’s analysis of the legal heterogeneity of modern European colonial empires is useful for Roman scholarship because her notion of recurrent legal features and strategies in certain geographic spaces corresponds well to the Roman world. The schools, imperial centers, islands, and provincial cities of the Roman world operated as unique legal spaces under the broad umbrella of Roman law.

Benton’s discussion of legal heterogeneity offers a unique approach to Roman legal history. Traditionally, scholars have considered juristic discourse and imperial constitutions as the only or primary form of Roman law. This definition of Roman law
leads one to conceptualize law and legal practice as a stable heuristic system in which, if there is any variation from the imperial expectation of practice, it must be the result of corruption, vulgarization, or decadence. The resulting idealization of Roman law privileges classical juristic texts over the changing legal world of the late Roman Empire. In response to this kind of approach, there has been a wave of scholarship that attempts to collect the evidence of legal practice as a social phenomenon within the wider Empire, thereby focusing on the diverse range of legal strategies in the imperial system. Instead of seeking to qualify or criticize legal practice, this wave of scholarship is focused on why and how people utilized Roman law in the Empire to solve local problems. In the end, however, both kinds of scholarship, the older juristic focused one and the newer strategy focused one, are broadly concerned with law as an imperial phenomenon.

In response to these imperial-centric models of law, another distinct kind of Roman legal scholarship has emerged that looks at legal practice within individual regions or provinces. The specificity with which these legal provincial studies view

317 Gardner was one of the first scholars to think about how local settings could challenge an imperial practice of law. See also, Ando, Law, Language and Empire, ch. 4, “Sovereignty and Solipsism in Democratic Empires,” and for the general connection between language and Empire, see Clifford Ando, “Law and the Landscape of Empire” in Figures d’empire, fragments de memoire, ed. By Stéphane Benoist, Anne Daguet-Gagey, and Christine Hoët-van Causwenbergh (Lille, France: Septentrion Presses Universitaires, 2011), 25-47. Czajkowski and Eckhardt “Law, Status, and Agency in the Roman Provinces,” shows legal variation throughout the Empire before the Antonine Constitution. Anna Dolganov, “Reichsrecht and Volkrecht in Theory and Practice,” in Administration, Law and Administrative Law: Comparative Studies in Imperial Bureaucracy and Officidal dom, ed by M. Jursa and H. Täuber (Vienna) forthcoming, shows how people navigated the boundaries and barriers between different legal orders before the Antonine Constitution in Egypt.
318 Detlef Liebs, Römische Jurisprudenz in Gallien, (Berlin: Duncker & Humblot, 2002), Die Jurisprudenz Im spätantiken Italien (Berlin: Duncker & Humblot, 1987), and Römische
Roman law has led to a more sophisticated understanding of the local machinations of law and practice. This kind of scholarship, however, tends to lose sight of the imperial nature of legal practice. We can think of the problem the provincial legal studies and the imperial legal studies present in terms of identity. On the one hand, in the imperial model, one loses focus on the local or provincial identities being employed in practice. On the other hand, in the provincial studies, one devalues the imperial or cosmopolitan identities in favor of more immediate or proximal concerns.  

It is at this intersection between imperial and local identities that Benton’s study of legal heterogeneity is most useful for scholarship of the late Roman world. Benton’s framework allows us to situate local legal practice within the wider Empire. This local practice is far less structured or professional than legal practice in the sense of the practice of jurists. Rather, local practice is the instantiation of a particular legality or argument about what should constitute law and justice. This step from jurists’ practice to broader, communal practice of law is necessary for Roman legal scholarship because inhabitants of the Roman Empire too recognized the impact local situations could have on the imperial practice of law. One text that clearly demonstrates the recognition of legal heterogeneity within the Empire is the fourth century geographic text, the *Expositio*  


The *Expositio* and its closely related, abbreviated text, *Descriptio Totius Mundi*, describe the mid fourth century world. Much of the beginning of the *Expositio* is lost, but the *Descriptio* can give us some idea of what the text originally entailed. The first five paragraphs of the *Descriptio* promise the prospective audience, here addressed as *carissime fili*, “my dear son,” to explain the many wonderful histories of the world so that he might both know useful things and adorn his own wisdom with great variety. The author of the *Expositio* draws together identifiable written sources, some things that seem like fables, and his own autopsy to describe the world, from east to west. The author enumerates various peoples of the east until he gets to the Roman Empire. His description of the Eastern half of the Empire, especially in the Levant region is fairly robust, but as he moves further and further west, he begins to display some oddities. For instance, the final place the author describes, Britain, is placed in the Mediterranean sea, next to Sicily and Sardinia. As strange as the author’s worldview might seem, the text displays a geographic understanding of the Roman world: it describes the physical location of places, their importance in the Empire

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320 Hereafter referred to simply as the *Expositio*.
321 For dating of the text, see Fabio Martelli, *Introduzione alla “Expositio Totius Mundi,”* (Bologna: Giorgio Barghigiani Editore, 1982) Ch. 2, “Data di composizione e autore dell’*Expositio*.”
322 Jean Rougé, *Expositio totius mundi et gentium* (Paris: Éditions du Cerf, 1966) is the standard text and presents the *Expositio* and *Descriptio* side by side with a facing French translation.
323 *Descriptio*, I: Post omnes ammnonitiones quas tibi commendavi de studio vitae tueae, carissimi fili, incipiens nunc volo tibi exponere historias plurimas et ammirabiles quorum quidem aliquas vidi, ceteras vero ab eruditis auditu percepit quasdam lectione didici. Haec igitur sensibus comprehendens non solum multa utilia cognoscebis, sed et tuam ornare sapientiam ex huiuscemodi rerum varietatibus praevalebis. Text from Rougé.
both economically and politically, and the unique legal attributes of certain areas. As a geographic document, the *Expositio* is a good candidate for an investigation into the legal lumpiness of the Roman Empire.

I shall use the *Expositio* as a starting point for my analysis of the four types of legal space of the late Roman world: law schools, imperial centers, islands, and provincial cities. Legal experts operated in each of these areas by making their arguments and by deploying Roman law, but each area also had a unique legal environment to which those experts had to conform their practice of Roman law in order to operate successfully. The *Expositio* catalogues the legal attributes of four places that correspond to these wider types: Beirut and its famous law school, the imperial capital of Rome, the islands of the Cyclades, and Alexandria, that famously unruly city. In addition to the *Expositio*, we will consider how other inhabitants of the Roman Empire too recognized and employed the types of legal space to accommodate local variation within the Empire-wide legal practice. Just as the legal landscapes of modern colonial empires had multiple legal attributes, so too the Roman Empire was characterized by landscapes with distinct legal cultures, circumstances, and practices.

3. Law Schools and Bookish Justice

The first kind of legal space we shall consider is the law school. The most famous law school of the late Roman period is undeniably the one found at Beirut.325 The presence of the law school affected the practice of law in and around Beirut by

325 Other could be found at Rome, Alexandria, and Caesarea. *Const. Tant.* 7.
contributing to a culture of law that emphasized a textually based legal practice. The professors, students, alumni, and admirers helped perpetuate a belief that legal texts like imperial constitutions and those of jurists offered an effective avenue to justice. While we have little evidence of court room proceedings from Beirut contemporary with the *Expositio*, we do know that the Eastern Roman Empire developed a preference for jurisprudentially trained advocates throughout the period of the late Roman Empire. The preference can be seen in the number of students from the Eastern Empire attending the school at Beirut and from later, fifth century legislation that tries to mandate that advocates at Praetorian courts have diplomas from law schools. The prevalence of jurisprudentially trained advocates in the East should not be read as an indictment of the Western Empire since, as we will see throughout this chapter, different strategies of legal rhetoric were employed throughout the Empire.\textsuperscript{326} Rather, the emphasis on text-based legal training found at Beirut helped shape the legal landscape around it by cultivating a preference for jurisprudentially educated advocates. In the following, I will discuss the passage on Beirut from the *Expositio*; then I will proceed to analyze how the law school affected the legal practice of the surrounding area. From these considerations, we will see that law schools inflected legal practice in the regions around them by augmenting the preference for a formally juristic practice of law.

A. Student Travel

In the *Expositio*, the author describes Beirut as a productive legal node: it produces legal experts who bring their practice of law to the rest of the Roman world. The author says of the city that it is “a particularly beautiful city and it has auditoria of laws, on account of which all the courts of the Romans seem to stand. Indeed, from that place learned men assist judges and by knowing the laws, guard the provinces, to which the regulations of the laws are sent.”

The author of laws were the law school of Beirut. The school empowered Beirut to be legally productive in the eyes of the author because it sent its alumni across the Roman world. As we shall see, for the author of the *Expositio*, no other space was as famous for its export of legal knowledge, practice, or experts. As such, we can see the city exporting and importing law in two main forms: alumni and their practice.

Beirut’s importance as a legal exporter was a sustained phenomenon. The school had been exporting legal experts for at least a century by the time the *Expositio* was composed. The earliest reference to the school was by Gregory Thaumaturgus, a third century bishop who studied briefly at Beirut before moving to Palestine. The significance of the law school as an exporter can be seen in the sheer number of students

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327 *Exp. XXV:* <Post istam> Berytus, civitas valde deliciosa et auditoria legum habens per quam omnia iudicia Romanorum <stare videntur>. Inde enim viri docti in omnem orbem terrarum adsident iudicibus et scientes leges custodiunt provincias, quibus mittuntur legum ordinationes.
328 Such auditoria might be similar to the one found at Kom el-Dikka. The auditorium at Kom el-Dikka was a hemicycle stone structure that could seat about 20-30 people. See Zsolt Kiss, “Alexandria in the Fourth to Seventh Centuries,” in *Egypt in the Byzantine World*, ed. By Roger Bagnall, (Cambridge: Cambridge University Press, 2007): 187-206.
we know went to the school. Paul Collinet, in his foundational book, *Histoire de l'école de droit de Beyrouth*, identified 51 students who attended the school.\textsuperscript{330} Of the 51, we have record of at least six who worked outside of Beirut after their education. The six alumni presumably found work in Arabia, Asia, Constantinople, Pamphylia, Illyricum, and Phoenicia.\textsuperscript{331} Two of those six, Theodorus and Anatolius, even went on to hold high positions in the government in the mid-fourth century. The defining force of the school, however, must have been in the sheer number of advocates, jurists, and assessors who trained at the school but left no trace in the evidentiary record. Alumni like Zenodoros, Palladius, and Hermogenes left few traces of their work after studying at Beirut. All we have are short references to them; these references comment on the alumni’s work as advocates and assessors as though these were mundane facts to be passed over for their ubiquity. The alumni were unremarkable in the eyes of their contemporaries, which suggests to us that alumni from Beirut were probably common and therefore were likely a powerful determining force in how law was practiced. Though it is difficult to compose a comprehensive list of where students went after their education, the few examples we

\textsuperscript{330} Collinet, *Histoire de l'école*, pp. 114-115 for a table of students and their provincial origins. Linda Hall Jones, *Roman Berytus*, (New York: Routledge, 2004) ch. 9 also reviews the prosopographical work of Collinet and comes to much the same conclusion although she does call some of his sources into question.

\textsuperscript{331} Arabia: PLRE I Severinus 1 it is unclear if Severinus found work, but he received an imperial rescript in the province of Arabia which stipulated that legal scholars should not be pulled away from their studies *CJ* X. 50.1; Asia: PLRE I Theodorus 11 was governor of the diocese of Asia; Constantinople: PLRE II Zenodoros 3 was an advocate; Pamphylia: PLRE I Palladius 9 returned to Pamphylia to work probably as an assessor or advocate; Illyricum: PLRE I Anatolius 3 was prefect of Illyricum; Phoenicia: PLRE I Hermogenes 5 served in Phoenicia probably as an assessor or advocate.
have of alumni throughout the Eastern Empire corroborate the author of the *Expositio*’s observation that the school’s learned men spread throughout the Roman world.

Inversely, the school not only sent students out as the *Expositio* records, it also imported students as well. The school attracted students from across the Eastern half of the Empire. Collinet’s work shows that the school drew on students from the areas of Arabia, Armenia, Asia Minor, Bithynia, Cappadocia, Caria, Cilicia, Egypt, the Euphrates, Constantinople, Greece, Iberia, Illyria, Lycia, Osrhoene, Palestine, Pamphylia, Phoenica, Pisidia, and Syria.

We can see the allure the school had for students in the East from the works of Libanius as he responds in three ways to students traveling to Beirut. Libanius, a professor of rhetoric in Antioch in the fourth century, left the largest epistolary corpus from the ancient world. From his orations and letters, we can see three different responses to students traveling to Beirut: complaining about the students traveling to Beirut, helping the students get to Beirut, and trying to bring back errant young men who went to Beirut without permission. The first response can be found in his *Orationes*, where the rhetor defends himself against accusations that he has failed his students. Libanius alleges that the problem is actually the students who flee the rhetorical education they could receive from him.\(^{332}\) The students flock instead to the Phoenician law school, Beirut. In *Oration* 62, “Against the Critics of his Educational System,” Libanius defends himself from the accusation that his students are unable to secure good jobs after graduation.\(^{333}\) One of the

\(^{332}\) Such criticism appears in *Orationes* 3, 34, 36, 58, and 62.

\(^{333}\) A.F. Norman, *Antioch as a Centre of Hellenic Culture as Observed by Libanius*, (Liverpool: Liverpool University Press, 2000) 88 argues that the date of the oration is the year 382 CE, about two to three decades after the creation of the *Expositio*. Job prospects after graduation, a perennial
reasons, he claims, that students might have difficulty is because they quit their rhetorical education and move as “a mass stampede” toward the law school.\footnote{Lib. Or. 62. 21; Humfress points out that this passage does not prove the demise of rhetoric but is a response to accusations of failure of Libanius’s teaching. Caroline Humfress, Orthodoxy and the Courts in Late Antiquity (Oxford: Oxford University Press, 2007), 13.} In his eyes, students make a fundamental mistake because they can’t retain both skills, law and rhetoric. If they study the one, the other fades so it would be better for the students if they simply stayed under Libanius’s tutelage. Libanius’s argument is not so much against the study of law, but that his students lack the perseverance to master rhetoric under his tutelage. In Libanius’s oration, we can see Libanius constructs his defense of his teaching around the phenomenon of students moving to study at Beirut thereby emphasizing the draw of the school in the surrounding areas.

The other two responses to students studying at Beirut can be seen in Libanius’s letters. For someone who claimed that legal knowledge weakened rhetorical ability, Libanius had a surprisingly robust correspondence with professors of law at Beirut. In many of his letters to professors at Beirut, Libanius, quite contrary to his orations, commends students to his legal colleagues. He introduces his students to law professors and recommends the students to the professors’s care. Libanius’s letters of recommendation were part of an epistolary practice of patronage; the letters suggest that Libanius supported his students’ decision to pursue a legal education.\footnote{See Hall, Roman Berytus, 204-206 and J.H.W.G. Leibeschuetz, Antioch: City and Imperial Administration in the Later Roman Empire.} In one letter,
Libanius asks Domninus, a professor of law at Beirut, to take a student, Apringius, at a discount. Libanius tells Domninus that “this fellow [sc Apringius] is good but poor; if he is unable to pay you, he is indeed capable of remembering a favor.” Libanius recognized the draw of the school and the career prospects it offered even if he also complained of students leaving in his oration. Libanius took part in the elite practice of recommendation and network building: he acted as Apringius’s recommender thereby strengthening the bond between the professor of rhetoric and the student and he suggested that Domninus, the law professor, likewise form such a bond with Apringius. Contrary to his complaints in Oration 62, the letters to the professors of law at Beirut show Libanius helping young men attend the law school at Beirut.

The third kind of response to the draw the school had is found in another of Libanius’s letters. In this letter, however, Libanius disapproved of someone’s travel to Beirut. In the letter to Gaianus, the governor of Phoenicia, Libanius recounts how the son of a friend had run away to Beirut. The son, Theodotus, got on a ship and ran away to Beirut after his father scolded him. Libanius asks for Gaianus’s help in returning the son. Libanius tells the governor to be careful because the son will beg to stay: “whether he praises the study of laws or says that he loves Bertyus (Beirut) or pours forth tears or says something else, do not let him persuade you to frustrate the efforts of his father.”

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337 The relationship between the father, Olympius, and Libanius is unclear. This Olympius (PLRE I Olympius 8) is not the same Olympius (PLRE I Olympius 3) who was close friends with Libanius. See Linda Hall Jones, Roman Berytus, 195, no. 33. While Lib. Ep. F1375 is the only letter that mentions this Olympius, it seems likely that Olympius and Libanius must have had some relationship for Libanius to make such a request of the governor on Olympius’s behalf.

Libanius expected the son to use the study of law as a reasonable pretext for running away to Beirut because the school held such promise for young men of the time. The son would have had some idea what the school was like and what life after school could hold because, as Libanius explains later in his letter, his older brother had been allowed to study law. This son would have to study oratory, even if he preferred the law school.

Libanius’s three kinds of response show how individuals in the area developed strategies for living in this unique legal terrain. While teaching nearby, Libanius saw his students enticed by the prospect of a legal education. Although some have interpreted this as the downfall of rhetoric and the rise of law, it would be wrong to interpret Libanius’s behavior as the failure of a rhetorical education in a bureaucratizing society. In the oration, it is imperative to note that Libanius’s complaint is couched in his own defense. His tirade against the law school is simply a matter of blaming the school to distract his detractors. When we look at the other two responses, we see that Libanius’s endorsement of his students’ legal education suggests that he did not fear the failure of his profession. On the contrary, getting the right students into the law school, i.e. those who first asked for his help, could cement Libanius’s position in the elite world and help those students become members of elite society. Libanius petitioned law professors on his students’ behalf because that is how the elite transacted their business and grew their social networks. Students who failed to ask for his help or failed to earn it were called back with vigor. While the *Expositio* emphasizes people leaving from Beirut, traveling the world to
assist judges, evidence from Libanius’s corpus suggest that the school also pulled students from across the Empire.\textsuperscript{339}

B. Practice in the East

The presence of the law school affected the practice of Roman law by producing students who could deploy legal texts, like imperial constitutions and juristic \textit{responsa}, as part of their argumentative practice. The author of the \textit{Expositio} tells us that the learned men of Beirut “guard the provinces by knowing the laws.”\textsuperscript{340} While the alumni of Beirut guarded against injustice, they also championed their own textual approach to law. The school and its alumni contributed to the formation of a legal culture that privileged legal texts as the main vehicles for producing arguments of justice.\textsuperscript{341} It has long been posited that Beirut preserved legal practice and thought in the Eastern Empire.\textsuperscript{342} The presence of the school in the East and the creation of much of our legal evidence from the East (the Theodosian and Justinianic Codes alongside the \textit{Digest, Novels,} and \textit{Institutes}) has led many to suppose Beirut’s role in the formation of a uniquely textual legal culture. That connection between the school and Eastern legal culture generally, however, is difficult to prove. Although there is no contemporary evidence that definitively proves the effect the school had on the legal practice of the Eastern Roman Empire, there is a marked

\textsuperscript{339} About student and professor travel: Robert Kaster, \textit{Guardians of Language}, (Berkeley: University of California Press, 1988), Ch. 1; a fruitful comparison could be made with late antique rabbis and their student networks. See Catherine Hezser, \textit{The Social Structure of the Rabbinic Movement in Roman Palestine}, (Tübingen: Mohr Siebeck, 1997).

\textsuperscript{340} Exp. XXV: scientes leges custodiunt provincias.

\textsuperscript{341} Schulz, \textit{History of Roman Legal Science}, 269.

preference for legally trained individuals in positions of power in the fifth and sixth centuries some of whom must have been trained at Beirut. This preference seems like the natural continuation of the *Expositio*’s comment that Beirut’s alumni served as assessors, who were legal assistants to judges. Two primary examples show the preference for legally trained individuals. The first example is the repeated calls for the professionalization and licensing required to practice law in the Eastern Empire. The second example is found in the production of imperial constitutions, which often bear the telltale signs of a legal expert. The legal expertise on display in the standardized expectations of legal training for advocates and in the imperial constitutions suggest that the Eastern Roman Empire was convinced of the justice the legal experts of Beirut could provide.

The presence of the law school allowed the imperial administration to require legal education for advocates admitted to the Praetorian Bar in the East. Three constitutions record the requirement. The first constitution is from the Emperor Leo in 460 and was written to his Praetorian Prefect of the East. It required that if one is to be admitted to the group of 150 advocates allowed to argue before the prefect, he must first be examined by the governor of the province of his birth. This examination would lead to the creation of documentary evidence and have an audience present to act as witness for the proceedings. Additionally, on the same document created by the governor, Leo ordered that the aspiring advocate’s “teachers, as legal experts, certify under oath, that the

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343 Much of my argument here follows a paper given by Bruce Frier at the AAH of 2013 entitled “The Professionalization of Advocacy in the Late Roman Empire.”
person who wishes thereafter to be chosen has been trained in legal expertise.”344 The advocates at the Praetorian’s court, however, were not the only advocates in the Eastern Empire. The law goes on to stipulate that the number above 150 would still be allowed to practice law in other courts throughout the Eastern Empire.345 These advocates, both the ones serving in the Praetorian’s court and the ones who were not included in the 150, would have been the highest ranking advocates in the Eastern Empire so we should not assume that this law meant that all advocates in the Empire were held to this standard.

The other two laws requiring legal education, *CJ.* II.7.22 of 505 CE directed at the court of the *Comes Orientis* and II.7.24 of 517 directed at the Governor’s court of the Second Syrian province, both repeat the same line: “nor in the future shall anyone become a member of the above mentioned order before he is known to have applied himself to the study of law for the prescribed time.”346 The two later laws were both issued by the Emperor Anastasius. The editors of the Code and the fragmentary nature of the manuscripts make it impossible to reconstruct the legislative contexts of the laws with any great deal of certainty. If we look to the other laws of 505 CE, we find a law that bears a striking resemblance to the law requiring legal education. In *CJ.* I.4.19 (also copied at *CJ* I.55.11) dated to 505, Emperor Anastasius required that *defensores*, a

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345 *CJ.* II.7.3. those courts were the Proconsul’s and Prefect’s courts in Egypt, the court of the Count of the East, the courts of the Vicars, and those of provincial governors.
position with judicial responsibilities, take oaths declaring their orthodox faith. Both this law about defensores and the one about advocates may serve the same purpose of setting an initial bar of credentials required for holding a position. Defensores were powerful members of their community who received public funds. As such Anastasius’s law might have been aimed at creating a tool by which members of the community could control the appointment of defensores. In fact, the law ends with that very stated purpose: “We order that defenders be appointed in such a way that they are installed by the resolution of the most reverend bishop and clergymen, men of rank, landholders, and curials.” We might profitably think of these laws as being gatekeepers of the profession rather than as positive recognition of either the applicants’ legal knowledge or religious inclination.

These three laws of 460, 505, and 517 were collected by Justinian’s compilers into the second book of his Code under the title, Advocates of the Various Courts, and we should be hesitant to read them as simple proof for the legal expertise of the Eastern Empire. When read on their own they seem like evidence of a rationally evolving legal system that slowly developed a preference for legal expertise. When read in their contexts, however, they suggest a world that is hesitant to change. Rather than bringing a

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348 C.I. 1.4.19 “We order that only those persons shall be appointed to perform the duties of defenders who have been initiated in the holy mysteries of the orthodox faith and have demonstrated this specifically by declaration in the public records and depositions to be made solemnly under oath in the presence of the most pious bishop of the orthodox faith. We order that defenders be appointed in such a way that they are installed by the resolutions of the most reverend bishop and clergymen, men of rank, landholders, and curials.” Edited by John Noël Dillon.
sweeping change in 460, the law of Leo might have had only limited effects in the highest court of the land. The later laws, of 505 and 517, may have used the same technique of requiring legal education to depress the numbers of possible advocates in the courts. In fact, Anastasius may have found this kind of requirement an effective tool for keeping the rolls short when he required defensores to take oaths of faith. While these requirements may speak to wider goals of religion and legal expertise in the Empire, they could also simply be an additional impediment to office holding. Whatever purpose these laws may have originally served, it is clear that requiring legal education would only be feasible in a world where at least some could receive a legal education. Rather than being simple proof of the legal expertise of the East, these laws suggest a complicated relationship between law schools and legal practice wherein Emperors and litigants increasingly found legal education to be a useful skill for legal practice.

The law school’s contribution to the legal culture of the East can also be seen in the number of legally trained individuals who served as the quaestor and the juristic style they employed in composing laws of the Eastern Empire. By the fifth century CE, the quaestor was responsible for the task of leges dictandae, dictating the laws, and had other legal responsibilities well before that.349 A temporary or even idealistic image of the process of legislation is captured in CJ I.14.8, of November 7th, 426 CE.350 In the constitution, legislation was supposed to begin when an idea or problem was brought

before the Emperor’s council, the consistory. The idea was discussed and a response would be formulated if necessary. Once a fitting response had been decided on by the council, the quaestor drafted a provisional copy of the response, which would be discussed one final time in the consistory. After it received its final approval, the Emperor subscribed or signed the law composed by the quaestor and the law was sent to an office to be dispatched to the appropriate recipients. In sum, laws were composed of ideas brought before the consistory and, if necessary, recomposed by the quaestor to be worthy of the imperial voice.\footnote{Wulf Eckhart Voss, \textit{Recht und Rhetorik in den Kaisergesetzen der Spätantike}, (Frankfurt am Main: Löwenklau Gesellschaft, 1982).} Laws composed during the tenure of individual quaestors could retain their idiosyncratic styles.

Tony Honoré suggests that these idiosyncratic styles can be indicative of whether the quaestor who wrote the law was a lawyer or not.\footnote{For Honoré, “lawyer” refers simply to someone who has been trained in juristic literature, what he calls “legal classics.” See Honoré, \textit{Law in the Crisis}, 6-7.} In his study of quaestors during the Theodosian dynasty, Honoré argues that Eastern quaestors were more likely to be trained in law and that their training is evident in the way they composed laws during their tenure. Honoré argues that during the rule of the Theodosian Dynasty there were 30 Eastern quaestors and of that 30, 10 were definitely lawyers and 5 more were probably lawyers (~50%). When compared to the West, of which Honoré identifies 19 total quaestors with only 5 as lawyers (~26%), the East displays a greater concern with employing legally trained bureaucrats to represent the Emperor’s voice.\footnote{Honoré, \textit{Law in the Crisis}, 19-20.}

\footnotetext[351]{Wulf Eckhart Voss, \textit{Recht und Rhetorik in den Kaisergesetzen der Spätantike}, (Frankfurt am Main: Löwenklau Gesellschaft, 1982).}
\footnotetext[352]{For Honoré, “lawyer” refers simply to someone who has been trained in juristic literature, what he calls “legal classics.” See Honoré, \textit{Law in the Crisis}, 6-7.}
\footnotetext[353]{Honoré, \textit{Law in the Crisis}, 19-20.}
Honoré’s methodology is problematic because, as he notes, sometimes the law as it was originally suggested to the consistory would not require significant rewriting.354 The quaestor’s style would be absent from laws he did not rewrite.355 Other sources of interference could come from debate within the consistory and imperial opinion.356 In addition, Honoré’s criteria for lawyerly work relies on the idea that the lawyerly quaestors wrote more legally exact laws while those without legal training tended to write less precise laws. While it is reasonable to assume that one with a legal education could write in precise legalese, the absence of such stylistic markers does not prove that individuals lacked legal training. Rather, the absence of legalese simply suggests that the person who composed the law decided not to write it in a legally precise way.

Even though one can criticize Honoré’s methodology, his investigation demonstrates that the East had a robust legal culture that valued the use of legal language in the formation of imperial constitutions. Furthermore, his criteria for lawyerly work fits well with the kind of legality that was produced and practiced at Beirut. This legality can be found in the laws Honoré studies because whereas he is attempting to associate legal specificity with quaestors, he is also marking a profusion of distinct legal language in the East. The abundance of the legal language suggests that, in addition to the requirement for legally trained individuals as advocates, inhabitants of the East employed distinct legal language in their legislation as well. The presence of the textual legality can be

354 Honoré, Law in the Crisis, 14.
356 For instance, Theodosius I seems to have imposed more strongly on the creation of laws as can be seen in the consistent use of phrases with tamen throughout his reign. Honoré, Law in the Crisis, 35.
attributed to the legal experts acting as quaestors, as Honoré argues, and to the persuasive power such legality had over inhabitants of the Eastern Empire. While Honoré’s thesis is confronted by the possibility of multiple sources of legal language in legislation, we can read the plurality of sources as a demonstration of the ubiquity of a preference for this kind of legality. The fact that the legal culture of the East preferred the kind of legality learned in Beirut’s law school suggests that the school affected the practice of law in the Eastern Empire by creating individuals who represented a distinctly juridical or even bookish legality.

The *Expositio* marks Beirut as a legally unique area. As we saw, Beirut acted as an important distributor of legal experts and expertise. Beirut had a strong draw on individuals throughout the Eastern Empire and then sent alumni to hold powerful positions. Most likely, the greatest effect the school had was to be found in its uncountable students who left us no trace but presumably went on to staff courts, give advice, and write laws throughout the Eastern Empire. While we cannot trace these students with ease, we can see a strong correlation between the distinctly textual legal culture of the East and the sort of legality practiced by the school’s alumni. The presence of the school most likely contributed to the recurrent insistence on legal training for members of the bar in the Eastern Empire and the profusion of legal language in legislation during the Theodosian dynasty. The law school at Beirut was remarked upon by the author of the *Expositio* because of the powerful effect the school had on the legal landscape of the Empire. The *Expositio’s* comments resonate with other late Roman perceptions of the legal landscape and the prevalence of the textual legality practiced at Beirut.
4. Imperial Centers and the Complication of the Social Elite

In this section, we will consider a kind of legal space that was complicated by the presence of social elites. In imperial centers, like Rome and Constantinople, social elites could easily, and often times legally, manipulate cases to their advantage. Roman law had multiple categories for people according to their social standing: for example, free and slave, freed and freeborn, *humiliores* and *honestiores* (the more humble and the more honorable), and a hierarchy of imperial titles, that is the titles awarded to those who held high offices. For the most part, these social categories were not hard, closed categories. Individuals could move between them. Judges and bystanders could choose to disregard the categories or could impose their own understandings of what merited special consideration on a case by case basis. Regardless of the social fluidity of the Roman Empire, the juristic techniques of categorization allowed Roman legal practice to differentiate the legal powers and penalties of litigants depending on their social standing. Elites could make demands of the legal system based on their social standing, or, as they might put it, their innate nobility. Their demands could make legal practice in the imperial centers unpredictable, since one was never entirely sure what extra-legal capacities one’s opponents possessed.

To illustrate the plastic character of legally recognized social division, I will outline the *honestior/humilior* division and system of imperial titles awarded to those who held high office. These two methods of categorization are complementary because, whereas the boundaries of the *honestior/humilior* division was ambiguous, the boundaries
of the system of titles was relatively well policed. Seen together, the two methods of
categorization show why and how elites received special treatment and offer us the
opportunity to consider social class in Roman legal practice generally. Next, I will turn to
the two cities in the Empire that had a senate, Rome and Constantinople. The senatorial
order was populated by the social elite who were clear recipients of legal privilege. I will
analyze two examples, one from each city, that display the meticulous workings of social
power in judicial practice. The two examples show how imperial centers were uniquely
treacherous legal spaces because of the presence of social elites.

A. Social Categories in Law

The *honestior/humilior* division in Roman law was most evident in criminal
punishments. Individuals of the *honestior* class were generally exempt from things like
torture and extreme punishments like working in a mine or execution. The worst
punishment an *honestior* could expect to face was relegation or deportation to an island.
*Humiliores*, however, were not so lucky. They could be tortured as part of the search for
evidence, condemned to the mines for hard labor, or executed. The major difference
between the two classes concerned to what degree was the convict was liable to bodily
punishments. Whereas in classical Roman law, Roman citizens were exempt from
physical punishments and could demand trials before the Emperor, these privileges were
reduced and held only by *honestiores* in the late Empire.\(^{357}\) The only charge that

\(^{357}\) On the evolution of the “dual penalty” system, see Peter Garnsey, *Social Status and Legal
*From the Tetrarchs to the Theodosians*, ed. Scott McGill, Cristiana Sogno, and Edward Watts
(Cambridge: Cambridge University Press, 2010), 33-54.
consistently obviated class distinction was treason, which could result in *honestiores* being tortured and executed.

The division between *honestiores* and *humiliores*, for all of its terrible implications, was unclear. Certain elite classes were undeniably *honestiores*. For instance, those who held the highest ranks in the empire, senators, and high officials were clearly entitled to special treatment.\(^{358}\) Individuals in the middle were a topic for debate. Military veterans could be considered *honestiores*.\(^{359}\) Decurions, members of city councils, were included but could still be subject to torture for certain crimes.\(^{360}\) Presumably, everyone below the ranks of decurions and military veterans were considered *humiliores*. When jurists or emperors discuss punishments for lower ranks, they often specify the sorts of people they intend to make subject to punishment. For instance, slaves were often subject to the worst penalties. Sometimes, authors specified the class to be punished as in *CTh* 9.16.11, where chariot drivers were considered especially low.\(^{361}\) The specificity employed for these lower classes suggests that there was some ambiguity about who would be considered equal to a charioteer and therefore subject to the same penalties. To make matters even more confusing, emperors could analogize certain crimes, like counterfeiting or divination, with treason, which obviated the class division.

\(^{358}\) *CTh* 9.14.3.

\(^{359}\) *Dig.* 49.18.3.

\(^{360}\) For the protean rank of the decurion see *CTh* 9.19.1 in which decurions could be sentenced to torture for forgery and *CTh* 9.21.1 in which decurions and their sons were exempt from the more severe punishments reserved for the lower classes.

Rolf Rilinger, in his 1988 book—*Humiliores-Honestiores*—argued that the bifurcated social structure implied by the *honestior/humilior* division was not representative of Roman social history though there was room for social consideration in legal practice. Rilinger’s argument first dismantles the idea that the division between the two classes was a persistent phenomenon. Instead, most of the juristic evidence for the division comes from the early fourth century Pseudo-Paul *Sententiae*, a compilative juristic work whose late date should bar it from “classical” law. Rilinger argues that the juristic discussion of class was a generalizing technique that tried to reflect changing penal practices found in imperial constitutions. Rilinger analyzed the imperial constitutions on criminal penalties and found that the “dual penalty” system could more accurately be described as a triple penalty system wherein penalties became progressively harsh as they ranged from elites like *honestiores* to *humiliores* and finally to slaves. These classes were not clearly divided and could be grouped depending on the legislative contexts. For instance, slaves and lower classes could be assimilated separately from the elite, or free people (that is *humiliores* and *honestiores*) could be juxtaposed against slaves. Rilinger’s work illustrates how the *honestior/humilior* division suggests a fictitious social structure, but class was still taken as an object of consideration.

Social considerations in Roman legal practice extended beyond criminal punishments as is best illustrated by Ulpian’s discussion of who should be trusted for safeguarding documents like wills. In *Digest* 22.4.6, on “Documentary Evidence and Loss of Documents,” Ulpian says: Where the issue is with whom a will should be

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deposited, we always prefer the elder to the younger, the higher in rank to the lower, male to female, and freeborn to slave born.\footnote{Ascribed to Ulpian, \textit{On the Edict}, book 50, trans. Watson.} Ulpian’s position concerning who would count as a trustworthy illustrates the complexity of social considerations of Roman legal practice. Age, class, sex, personal status all are taken into consideration to the point that an old, elite, freeborn man would be considered a reliable figure because of those attributes whereas a young, low, slave born woman would be the least reliable. While there were other factors that one could consider (profession, whether or not the person had been convicted of disreputable crimes), Ulpian’s hierarchy is confirmed by the excerpts in the following heading of the \textit{Digest}, 22.5, “Witnesses.” In most of the 25 excerpts of “Witnesses,” social standing or relationship determines whether one is able to act as a witness and how reliable the testimony would be.\footnote{Individuals in certain relationships are barred from acting as witness. Family members usually cannot be compelled to testify against one another and freedpeople and patrons cannot act as witnesses against one another. See \textit{Dig.} 22.5.4. The excerpts from “On Witness” that do not deal with some facet of social status are 10-12. The first, 22.5.10 specifies that one cannot be a witness in his own case. The next, 22.5.11 stipulates that in cases where the occurrence is called into question, a witness can testify even if he was not called in for that case. Finally, 22.5.12 says that if the number of witnesses is not specified, two shall suffice.} The reliability of a witness is best summarized by \textit{Digest} 22.5.3: The reliability of witnesses must be carefully assessed. One must first inquire into their status. Are they decurions or plebeians? Do they lead an honest blameless life, or has there been some mark of disgrace? Are they well off or needy, so that they may readily act for gain? Are they enemies of those against whom they give evidence or friends of those for whom they give it?\footnote{\textit{Dig.} 22.5.3 pr. Callistratus, “Cognitiones” book 4 trans. Watson.} Ulpian and the jurists excerpted under the heading “Witnesses” considered social standing an important
factor in practicing law. The vague and porous honestior/humilior division only begins to approximate the complex influence social status had on the practice of Roman law.

The influence social status has on Roman legal practice is most apparent in cases involving elite litigants as they behave in courts in ways that would normally be unacceptable for other Roman citizens. An obvious group of elites was the senatorial order. In the late Roman Empire, there was a hierarchy of senatorial status. Status could be obtained in four ways. First, the senate could elect an individual into their order, a process known as adlection. The second method by which one could obtain senatorial status was by imperial nomination. The third method of obtaining senatorial status was simply by inheritance. The final method of obtaining senatorial status, and probably the most common, was by serving in an imperial office such as the governor or prefect of a city. The multiple avenues to senatorial status meant that by the early fifth century, the senatorial aristocracy had expanded considerably.366

Opportunities to serve as governor, and therefore obtain elite status, increased at the end of the third century when Diocletian reorganized the administration of the Empire by dividing provinces into smaller, more manageable sizes. More provinces meant more governors. Additionally, the emperor made many of those governorships come with an equestrian status, the perfectissimus, a status below that of the senate but undoubtedly a member of the honestior class.367 The three other honorific statuses used in the late Roman Empire designate members of the senatorial order; they are in ascending order:

367 Garnsey, Social Status, 240.
clarissimus, spectabilis, and illustris.\textsuperscript{368} From Constantine forward, there was a noticeable trend in the administration to change the equestrian governorships (those meriting \textit{perfectissimus}) to senatorial positions with the result that the number of senators (ie those with the rank of \textit{clarissimus, spectabilis, or illustris}) went up significantly. In fact, by the early fifth century nearly all provincial governors would attain senatorial status and these newly minted senators would make their home in the Senate at either Rome or Constantinople.\textsuperscript{369} More important provinces, either economically or militarily, could come with a higher ranking governorship.

The multiple ranks of aristocratic standing, either equestrian or senatorial, allowed for immediate recognition of elite status. Further, the ranks also allowed for direct comparison of high ranking individuals. A \textit{clarissimus} governor was outranked by a \textit{spectabilis} governor and he by an \textit{illustris}. The recognition of elite status led to competition between these elite as they jockeyed for prestige and respect in high society. The competition between members of high status affected the practice of law most clearly in cities with senates, where senators had to register their official domicile. In cities rich with elites, legal practice became more unpredictable as judicial authority could be challenged by social standing.

\textsuperscript{368} Daniëlle Slootjes, \textit{The Governor and His Subject in the Later Roman Empire} (Boston, MA: Brill 2006) 73; Michele Salzman, \textit{The Making of a Christian Aristocracy} (Cambridge, MA: Harvard University Press, 2002) 20-43  
\textsuperscript{369} See Jones 528, note 12 who points to the fact that within the \textit{Notitia Dignitatum} made in 408, only a single Western province has an equestrian governorship. Additionally, Jones says by the fifth century most governors were of senatorial status as the last recordable provincial governors occur in the late fourth century. See, Giovanni Alberto Cecconi, \textit{Governo Imperiale e Elites Dirigenti nell’Italia Tardoantica} (Como: Edizioni New Press, 1994).
B. Rome

The author of the *Expositio* recognized the influence of the senatorial order on legal practice. When he described the city of Rome, he listed the features of the city: the city is wealthy, has impressive buildings, is home to the Vestal Virgins, is well situated on the Tiber, and, finally, is home to the illustrious Roman senate. The author of the *Expositio* says that “Rome has, moreover, the greatest senate of rich men; who, if you want to approve each one individually, you will find all either have been, or are going to be, or are able to be judges (*iudices*), though not wanting to be on account of wanting to enjoy their things in security.” The connection between senators and judges makes this passage indicative of the unique legal terrain: the legal landscape was characterized by the presence of rich and influential men, who did not want to undertake administrative or judicial responsibilities. The author of the *Expositio* recognized the positive attributes of the city (its wealth, decoration, religious and historical significance), but also pointed to a final caveat: the wealthy senators of Rome could be as powerful or more powerful than the judges of the Roman world.

When the author the *Expositio* used the word judges (*iudices*), he referred to a complex set of individuals. The lowest level of judge, the *iudex datus* or *pedaneus*, would be someone appointed by a governor to handle low level cases. The most common kind of judge was the governor of a province. Even more important judges

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370 *Exp. LV*
371 *Exp. LV. 26-30:* Habet autem et senatum maximum uirorum diuitum: quos si per singulos probare volueris, invenies omnes iudices aut factos aut futuros esse aut potentes quidem, nolentes autem propter suorum frui cum securitate velle.
373 *Iudices Pedanei CTh* 1.16.3.
could be *vicarii*, prefects, or even emperors. The range of status governors held could be problematic if a litigant outranked or held an equal rank as the judge. In the two cities with a senate in the Roman Empire, Rome and Constantinople, any member of the senate would either hold the same rank as most provincial governors (*clarissimus*) or would even outrank them. The social status of senators, governors, and administrators was an important component of their judicial responsibilities, should they have them, because dispensing justice worked much more smoothly when the judge outranked the litigants.

One example of the conflict of status between litigant and judge is found in the *Relationes*, or state letters, of Symmachus during his tenure as Urban Prefect in 384 CE. This letter complains to the Emperor that even Symmachus could not coerce a fellow senator to stand trial. Symmachus’s letter to the Emperor shows an individual of elite status using his status to bend the rules of law.

Symmachus wrote *Relatio* 28 while he was serving as the Urban Prefect of Rome, a position that awarded him with the highest status, *illustris*. Symmachus’s primary responsibilities as Prefect were judicial as he adjudicated cases and heard appeals.374 In *Relatio* 28, Symmachus wrote to the Emperor to ask him to decide a case. The story began when a woman of senatorial class, Fariana, gave a property to a man, Theseus, her freedman. Fariana used Scirtius, a man of equestrian rank, to deliver the property to Theseus. There is some disagreement about whether or not Fariana’s wishes had been carried out completely by Scirtius. The disagreement arose because Theseus’s children claimed that half of the property was intended for Theseus and the other half was

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intended for them. Scirtius claimed that only half of the property was to go to Theseus and his ilk, as one group. The rest was Scirtius’s property. Once Theseus died, Olybrius, a man of the highest rank, *illustri*, acquired half of the property.\(^{375}\) The new configuration of ownership, Olybrius, Theseus’s heirs, and Scirtius, was a volatile mix. Scirtius was thrown off the property. Scirtius then asked Symmachus to intervene and issue a *praedidicium*, an injunction, that would allow Scirtius to return to the property until ownership was decided. When Symmachus’s official went to carry out the injunction, he was blocked by one of Olybrius’s agents. There seems to have been some confusion because both patrons, Symmachus and Olybrius, were *illustres*; who was supposed to budge first? Next, Symmachus ordered people living on the property to be brought before his court so that he could ascertain who rightfully should have possession of the property. Someone, presumably acting under the orders of Olybrius, detained the inhabitants and took them away from Symmachus’s deputy. Symmachus tried again to round up witness to attest to the rightful possession of the property and this time was able to question a single freedmen of Theseus, who claimed that the inhabitants of the property (here called *mancipia Scirti*, the slaves of Scirtius) had been carried off to Olybrius’s villa. Symmachus instead tried to ask the town council of the city, Praeneste, who owned the property. After interviewing the town council, Symmachus came to the conclusion that Scirtius was the rightful possessor of the land since he had paid taxes on it. Olybrius claimed that he owned half of the property and the heirs claimed they owned the other half. Scirtius claimed that he owned half and that either Olybrius or the heirs

\(^{375}\) *PLRE I* Q. Clodius Hermogenianus Olybrius 3
owned the other half. Therefore, Scirtius had been unjustly ousted from his own property. Symmachus decided to restore the property to Scirtius and as soon as he gave his judgement, both Olybrius’s party and the heirs made a joint appeal, which was forwarded to the Emperor.

*Relatio* 28 touches on many legal formalities as each of the litigants maneuvered to obtain a preferential judgement. This case highlights the effect social standing could have on legal practice. Olybrius and his agents had legal actions available to them based on his elite social standing. There were few men in the Roman Empire who could stand in the way of the deputy of the Urban Prefect or could take a train of witnesses back to a private villa. We do not know how the case ended, but we can presume that if the social disparity were differently arranged and Scirtius was the more elite litigant, this case would never have made it to Symmachus’s court. Scirtius’s higher standing would have been used as conclusive evidence of the validity of the claim: it would have been remarkable if a man of equestrian status ejected a *vir illustris* from his property. Additionally, we never hear of any punitive response from Symmachus for Olybrius’s brazen tactics. Olybrius was confident in the latitude his social standing gave him.

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378 The only imperial response we have to this case is *CTh.* XI.30.44, which rules on the ability to appeal a *praetorium*. 
Olybrius exemplifies the power of social standing when he used his standing to employ legal tactics that would have been unavailable to other individuals.

C. Constantinople

The second example that exhibits the use of social status in law is found in the Novel 15 of Theodosius II. It was written in 444 CE and given in Constantinople to the Praetorian Prefect. The Novel was meant to respond to the actions of a vir illustris, named Valerianus, who demanded first consideration in the court of the governor of Phoenice Libanensis and barreled his way into the court with the help of a “horde of barbarians.” Valerianus also was accused of using a band of slaves to inhibit the collection of taxes. Valerianus was apparently so displeased with the governor, a vir clarissimus, that he took over taxation and conducted public accounts from his own home. Theodosius, in the Novel, says he did this to defraud the state. Theodosius, however, did not respond with the full force of the laws as he well admits and makes reference to “Our customary mildness.” Valerianus, because of his high status, had put the administration in a difficult situation. Had anyone else acted in this fashion, they would have been put to death or relegated. Valerianus’s status as a vir illustris left even the Emperor unsure of how to proceed. The punishment the imperial administration chose was to strip Valerianus of his rank. Valerianus was downgraded to the municipal council of Emesa and was made subject to the governor just as other decurions on the town council were. Valerianus paid for his actions with his rank, but it should be noted that he still would have inhabited the

379 Nov. Th. 15.2.1.
very edge of the *honestior* class. While this case did not occur in Constantinople itself, it was only possible because of the elite statuses produced by positions in the capital. Additionally, the case could only be resolved by the word of the Emperor in the capital. This example shows an elite trying to strong arm the judicial system with his social status. While Valerianus would not have considered the outcome an unqualified success, he certainly escaped, because of his high status, the worst punishments possible.

Legal practice in imperial centers was complicated by the presence of social elites. Roman law had multiple ways of thinking about hierarchy and status in the Empire, as is apparent in the phenomenon of the *honestiores* and *humiliores*. The *honestior/humilior* division, however, fails to capture the complexity of the social history of the Empire. Individuals obtained higher status through service in the government and then used that status in competition with one another. As the case of Olybrius shows, elites could behave in ways that would normally be unthinkable for other citizens of the Empire. When Olybrius blocked Symmachus’s deputy, he relied on his elite standing to validate his behavior. Senators in the Eastern half of the Empire too relied on their status to behave in legally questionable ways. Valerianus, who held the rank *illu*stris, went so far as to take over the collection of taxes from the *clarissimus* governor. These sorts of behavior were only possible because of the capitals where the senatorial elite garnered their titles.
5. Law on the Islands

Law on the islands of the Roman Empire had an intimacy problem. The smaller populations and difficulty of travel for communities on the islands both actual and metaphorical created a legal landscape where the insular communities would most likely have to resort to indigenous dispute resolution tactics to solve legal quandaries. Indigenous tactics could come in the form of multiple kinds of fora and referees who could offer judgment. In the Roman Empire, as discussed above, the most common judge was the provincial governor. On the islands, however, travel between islands could be difficult for litigants to approach the governor in the provincial capital or for the governor to visit each island under his jurisdiction. As a result of this difficulty, inhabitants of islands would have to rely on indigenous dispute resolution tactics more often than their continental or cosmopolitan contemporaries. In what follows, we will first see that travel to and from the islands was recognized as a unique judicial impediment especially in processing appeals which required litigants to approach more powerful judges in major cities. The author of the *Expositio* seems to have considered the unique legal landscape of the islands when he remarked on the islands of the Cyclades by saying that each island had its own judge. Clearly, the judge referred to in the *Expositio* could not be the governor since he would have resided in the provincial capital of Rhodes. If the judge was not the governor, then we need to consider next the plethora of other fora and referees that were operative on the islands of the Roman Empire. The difficulty of travel

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and the small communities of the islands fostered a legal landscape in which dispute resolution was achieved through various judicial fora.

Evidence for the difficulty or, rather, the complaint of difficulty of travel from islands is found in the one of the Novellae of Justinian. Although the Novellae were published in the 6th century, the difficulty of travel from the islands of the Mediterranean was a permanent feature of their geography. Novella 49 is response from the Emperor Justinian in the year 537 CE; the Emperor was trying to address delays in the appeals process. Appeals were an important part of Roman legal ideology and practice and any impediment to pursuing an appeal was taken seriously. In the preface, Justinian first remarks how changeable human affairs are, even after he has already made laws concerning those affairs. A tone of exasperation is nearly palpable. He proceeds to outline how his laws were meant to restrict the abuses of the appeals process, which would deprive the winning side of its judgement by negating favorable decisions. Nonetheless, Justinian concedes that there are some instances in which the duration of an appeal (one year with an additional stay of a second year) would be insufficient and therefore would deprive an appellant of justice. Justinian attempted to respond to the perceived injustices of abuses of the appeals systems while balancing the difficulty of scheduling proceedings. In the preface of the Novel, he enumerates some of the reasons one might be unable to attend a court date to decide an appeal:

But many have beset Us by saying that they indeed gave notice to those seeking an appeal and wanted the case to be examined, though they have

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not been able to obtain a hearing before the same judges on account of, perhaps, some inevitable pre-occupations; others also have blamed the power of the winds and because they would have been unable to sail from their province with contrary winds blowing, truly they would not have been able to come over land because of poverty, or certainly because those inhabiting islands were not able to come any other way, and therefore they were not able to litigate the matter to the very end nor in the second year, and certain people blamed the bitterness of storms, others an incurable illness: we acknowledge all these things from those which have been brought to our attention. Hence, these things justly move us; we are both unwilling to overstep the law and desirous to give possible protection to those who are wounded through so terrible a defrauding of fortune.382

Justinian outlines the myriad excuses brought before him for missing an appeal: unavoidable business, winds, poverty, storms, and disease. Justinian admits that these were all valid reasons for missing an appeal. As a solution for missing the appeal, in the first body section of the Novel, Justinian allows for a case to be reheard even though the litigant seeking the appeal is absent.383 His reasons were especially pertinent for those living on islands, like the inhabitants of the Cyclades. The difficulty of appeal was a perennial issue for those living on the islands. Storms and headwinds could easily hinder one appealing their local judgement.

The permanent difficulty of travel gave rise to a unique legal landscape in which justice might be sought from fora other than the governor. The description of the legal

382 Nov. XLIX Pr. 2: Sed plurimi interpellaverunt nos dicentes se quidem denuntiasse appellantibus et voluisse litem examinari, non tamen ab ipsis iudicibus impetrare valuisse propter quasdam forsas inevitabiles occupationes; aliis vero etiam ventorum insensitatem accusaverunt et quia navigare non licuisset de provincia contrariis flantibus ventis, per terram vero venire non valentes propter inopiam, aut certe quia in insula commanentes alter nisi per mare venire non poterant, et propterea non valuerunt examinare usque ad finem negotium neque secundo anno, et quidam tempestatum acerbitatem, aliis langorem inevitabilem: quae omnia ex ipsis agnoscebus rebus nobis insinuatis. Unde nos haec iuste moverunt et legem transcendere nolentes et his qui per talem quandam fortunae circumventionem laeduntur dare praesidium possibile cupientes.

383 Nov. XLIX 1
landscape in the *Expositio* suggests that, though inhabitants of the Cyclades—a group of islands in the Aegean—may have had difficulty in reaching their governor, they nonetheless had indigenous dispute resolution fora available to them. The author of the *Expositio* remarks that each island of the Cyclades has a judge. The text reads:

Then there are those (sc. islands) which are called the Cyclades, they are many islands, 53 in number, each of which has its own judge.  

The use of the term “judge” or *iudex* here gives some pause. As we saw in the earlier passage about Rome, a *iudex* was a common name for a provincial governor; however, governors were not the only individuals with state sanctioned judicial responsibilities in the Roman world. There were, of course, more senior judges like *vicarii*, prefects, and emperors. There were also lower judges, *iudices pedaneii* or *iudices dati*. Additionally, there were other individuals, like the *defensores civitatum*, who performed judicial functions but had an ambiguous place in relationship to the more regular judges of the Roman world. Here, unless there is a textual error, the author of the *Expositio* must be referring to a judge below the governor, because the Cyclades were part of the Province of the Islands, which only had one governor. The governor of this province would have stayed in the capital city, Rhodes, and would have appointed lower judges to handle cases elsewhere. Traditionally, our understanding of the lower judges is that they were appointed on a case by case basis, but the *Expositio* suggests that each of the islands had

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384 Exp. LXIII: Inde quae sic vocantur Cycladas, insulas plurimas numero quinquaginta tres, quae omnes suum iudicum habent.

385 Such a textual error has been proposed, which would replace *suum* with *unum*; the resulting sense would be “each of which has one judge. Rougé prefers this sense for his French translation (“mais Elles n’ont pour Elles toutes qu’un gouverneur”), but retains the ambiguous phraseology in his Latin text. See, Rougé p. 206-207.
a standing judge. The jurisdictional structure of the Cyclades is an anomaly within the Empire, because if one were unhappy with the decision of his or her judge on the island, one would have to travel to Rhodes to appeal or even further to Constantinople. In this instance, we can see that the author’s comment on the jurisdictional structure of the islands has far reaching implications for dispute resolution on the islands. In order to comprehend these implications, we need to understand the kinds of judicial structures possibly referred to in his comment.

There are three kinds of legal decisors or fora we will consider: the iudex pedaneius, the defensor civitatis, and the possibility of unofficial dispute resolution fora. The iudex pedaneius, also sometimes referred to as the iudex datus, was a lower judge typically appointed by a governor who felt a case did not require his attention. A governor would consider a case as beneath his attention that if it seemed tediously straightforward or if the case was too low in economic value to merit the full court of the governor. Governors of the Roman world had demanding judicial responsibilities so the ability to appoint lower judges would have considerably lightened their burden.

The editors of the Justinianic Code collected laws on the iudex pedaneius in CJ 3.3. The collection gives the appearance of being an Empire-wide institution, as it probably was, but epigraphic remains of one of the laws, CJ 3.3.5, published in 362 CE, roughly contemporaneous with the Expositio, suggests that the iudex pedaneius was an

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386 see Jones, Later Roman Empire, 479 on the iudices pedanei.
387 Naphtali Lewis, Life in Egypt under Roman Rule, (Atlanta, GA: Scholars Press, 1999) on the number of cases; Slotjes, The Roman Governor and His Subjects, Ch. 2 on the social aspects of the governor’s judicial responsibilities.
immediate concern for those living on the islands. The epigraphic remains of the law were found on the islands of Amorgos and Lesbos in two complementary copies. The inscriptions record a copy of a letter of Julian to the Praetorian Prefect Secundus, which must have in turn been published by the governor of the Province of the Islands. The inscription says:

Some cases are accustomed to arise which do not require examination and nevertheless are in lofty courts; moreover there is business in which it would be necessary to wait for the governor of the province.

Julian’s letter first posits that there are cases that do not merit the attention of the governor. For these cases, the emperor continues to say that it is right for the governor to appoint *iudices pedanei* to resolve these cases. The fact that the only remains of this law are found on these islands suggests that there was some concern about devising and employing alternate judicial structures. While the *iudices pedaneii* were thought to be appointed for particular cases, one cannot help but wonder if the governor of the Province of the Islands established someone permanently who fulfilled a judicial function, or at least favored certain individuals who would hold the office on each of the islands.

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388 The law is preserved in both *CJ* 3.3.5 and *CTh*. 1.6.8.
391 Again, text taken from Feissel 323: *Quod novis/ [u] utrumque penden<t>ivus/ rectum admodum visum est <u>t pedane<s>/s iudices, <oc es>t/ Eos qui negotia umiliorq/ discepten<t>, constituentid/ daremus presidivus potest<t>/e<m>.*
Another kind of judicial referee found in the period was the *defensor civitatis*. A *defensor* was a late Roman judicial officer who catered primarily to those who could not afford the burden of pursuing justice before a governor or who feared approaching the governor because rich and powerful litigants would quash any case. As Robert Frakes has shown in his study on *defensores*, the institution was widespread throughout the Empire and probably predates the mid-fourth century. 392 Although the *defensor* appears in other legal landscapes, it is interesting to note that one law that empowered the *defensor* to act as a judge was sent to Tericum, a town on island of Sardinia. 393 In the law, the Emperor Valentinian empowered the *defensor* to decide minor cases, specifically those under 50 *solidi*. Minor cases could include, of course, all those under 50 *solidi*, the reclamation of debt, reclaiming an escaped slave, or restitution for overpayment on taxes. 394 Although, the office of the *defensor* was used throughout the Empire to address all kinds of minor cases, the presence of this law in Tericum suggests that people on Sardinia might have been seeking or experimenting with alternate judicial offices.

The final judicial forum we will consider is unofficial. While most the inhabitants of the islands of the Roman Empire would have been Roman citizens after the *Constitutio

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392 Robert Frakes, *Contra Potentium Injuriias*.
393 The law is recorded in *CJ* 1.55.1 and *CTh* 1.29.2. The codes record the year of the law as 365, but Sebastian Schmidt-Hofner, *Reagieren und Gestalten: der Regierungsstil des spätromischen Kaisers am Beispiel Der Gesetzgebung Valentinians I*, (Munich: C.H. Beck, 2008) prefers 368 CE.
394 *CJ* 1.55.1: If anyone believes that eh should approach you concerning modest and trifling matters, you shall make the records of the judicial proceedings thereof for minor cases, that is, up to the amount of 50 *solidi*. Thus, if anyone demands either a just debt or a slave that has escaped by flight, or repayment of an amount grater than that authorized by the schedule of requisitions, or any such thing, you may restore it by your decision. Other cases, however, which appear to warrant a high court, you shall refer to the ordinary governor. Ed. John Noël Dillon.
\textit{Antoniniana} of 212 CE, they did not necessarily have to disavow other, local dispute resolution fora. Local fora would have left few traces, since they would have been meant for addressing minor problems in a small population. We could consider institutions like tribunals, strong men, self-help, or even common sentiment as other possible sources of justice in the small communities on the islands. These often-times unspoken institutions likely existed on the islands of the Roman Empire as one part of a set of dispute resolution strategies.

The islands of the Roman Empire were legal spaces that often had to resort to indigenous dispute resolution strategies in order to address their local problems. As we saw in Justinian’s \textit{Novella}, islands were characteristically problematic for the Roman legal system because the litigant’s travel to and from the islands could be difficult. Trouble in transportation, however, did not result in the islands being a lawless space. Instead, as the author of the \textit{Expositio} noted, the islands likely developed their own methods of dispute resolution and had their own judges. In fact, evidence of alternate judges, the \textit{iudex pedaneus} and the \textit{defensor}, is especially strong on the islands. These alternate judicial officers suggest that the legal landscape of the islands was characterized by difficulty of travel and unique judicial solutions.

6. Provincial Cities and Popular Justice

In this final section, we will consider how provincial cities and their local conceptions of justice affected the practice of Roman law. One way that provincial urban communities expressed their beliefs about law and justice was by rebelling. When Roman
imperial and local conceptions of law and justice conflicted, communities might choose to communicate their dissatisfaction and disagreement about law by rioting. We will consider three examples of provincial riots that were caused by the difference in belief about what constituted law. The first two examples are taken from Alexandria. First, the author of the Expositio discusses Alexandria in glowing terms and alleges that the Alexandrians alone stand up for what they believe. The other Alexandrian example comes from 261 CE when the urban population of Alexandria expressed their dissatisfaction with the Roman government after a slave was killed by a Roman soldier; the population of Alexandria felt so strongly about the injustice of the murder that they rioted. Alexandria and Egypt, however, present their own complications because the region is so rich in literary tropes that it is difficult to discern whether or not the legal eccentricities were literary creations peculiar to Egypt alone (though this too would be significant). To fill out the picture offered by Alexandria, we will consider a final example taken from Augustine’s Letters. Augustine’s literary corpus—his letters, sermons, and treatises—chronicle myriad conflicts between local and imperial conceptions of justice. Augustine’s account of the riot at Calama in 408 CE serves as a representative of the sort of legal dispute created in provincial cities when there was a conflict of ideas about law. Augustine tells of the riot at Calama in 408 CE, where Christians of the city tried to stop a harvest festival because of its non-Christian connotations. The proponents of the festival burned down the local church and killed a slave in response to the demands of the bishop, Possidius, that the festival should immediately cease. These three examples—two from Alexandria and one from Calama—show how provincial cities could have their own conception of justice and that this
conception could be communicated through violence, specifically rebellion. Local conceptions of justice in the provincial cities of the Roman Empire affected the practice of Roman law by forcing imperial legal practice to negotiate local circumstances and situations.

It may help to think about the interrelated notions of violence, law, and community abstractly or theoretically to understand how they can be read as affecting a particular kind of legal geography. The role of violence—particularly in North Africa—has received a considerable amount of scholarly attention, especially after Brent Shaw’s *Sacred Violence.* Without going into too much detail, one major analytical technique developed in this scholarship has been the discussion of violence as a communicative act. Here, modern scholars draw on Habermas’s idea of “speech act” to think about how violence and violent acts can be part of a wider discussion between disputing parties. Habermas’s “speech act” allows scholars to interpret speech as a kind of action, but by inverting the formula, one can also read action as a form of speech or part of a discourse. A major theme from the scholarship on North African violence is the

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discussion of the ethical claims that violence was both illegal and non-normative.\textsuperscript{399} The ethics of violence is manifest in claims made by individuals who often times denounce certain behaviors as “violent” or gratuitous. We should not be led astray by these ethical claims to the conclusion that late antiquity is more violent than any other age because of the profusion of such claims.\textsuperscript{400} Rather, their presence in late antiquity could suggest that such claims could be successful in persuasion.\textsuperscript{401} As such, we should be wary of any direct causal relationship between violence and ethical claims about violence. Stepping away from the causal relationship, we instead can read claims about violence as part of the wider discourse of acceptability; i.e. what is legal or just or right and what is not. The resulting paradigm allows us to read both violence and claims about violence as attempts to define what constitutes law within a given community.

A. Alexandria

The author of the \textit{Expositio} lists the wonders of Alexandria. The city is famous for its wise men and for having an expert in every sort of philosophy and doctrine.\textsuperscript{402} The city abounds in riches like fish, spices, and foreign goods; ancient temples adorn the city’s topography.\textsuperscript{403} Alexandria and the surrounding region also produce papyri, on which the author alleges that the entire Empire runs and without which, nothing would be

\textsuperscript{399} Catherine Conybeare, “Making Space for Violence,” \textit{Journal of Late Antiquity}, vol. 6, no. 2 (Fall 2013).
\textsuperscript{400} Cam Grey, “Shock and Horror, or Same Old Same Old? Everyday Violence in Augustine’s Africa” \textit{Journal of Late Antiquity}, vol. 6, no. 2 (Fall 2013) contra Ramsey MacMullen, \textit{Corruption and the Decline of Rome}, (New Haven, CT: Yale University Press, 1988).
\textsuperscript{401} Bryen, \textit{Violence in Roman Egypt}.
\textsuperscript{402} \textit{Exp.} XXXIV. 19-30
\textsuperscript{403} \textit{Exp.} XXXV
possible.\textsuperscript{404} Finally, the city also, along with its wise men, has the best doctors.\textsuperscript{405} Juxtaposed with these unqualified goods is the description of the city’s judicial system. The persistence of praise throughout the description of Alexandria suggests that the author of the \textit{Expositio} was fond of the way justice was done in the city.

The author describes the legal landscape of Alexandria thus:

Finally, you will find the city ruling well over the judges; only the people of Alexandria move with utter disregard for them: in the city, judges enter their courts with fear and trembling because they dread the justice of the people; for a volley of stones and flame does not wait to fly at those erring judges.\textsuperscript{406}

The description of Alexandria’s legal landscape emphasizes the power that “the people of Alexandria” have to disregard the imperial judicial administration. The people’s conception of justice, the \textit{iustitia populi}, is so prominent in the city that it intimidates the judges tasked with administering justice. When the people communicate their own conception of justice through violence, they cause the judge’s trepidation. The author tells us that the people throw stones and flaming projectiles at the judges they deem to have made a misstep. The author has subverted the usual claims of Alexandrian and Egyptian riotous behavior to lay the blame for violent behavior at the feet of the imperial administration. The problem, so the author would have us believe, was not that the Alexandrians were naturally wild, but that the judicial system, specifically the judges and...
perhaps also their imperial conception of law, failed to comprehend their unique, local conception of justice.

The role of local conceptions of justice is often overlooked in studies of riots, rebellions, and violence. A prominent historical lens for riots and rebellions is provided by an examination of the leaders of the participating groups.\(^{407}\) Focus on an individual, however, tends to occlude or at least devalue the role of any communal sentiment that may be driving these events. Communal violence can be precipitated by many factors aside from individual agitators. I argue here that one of the possible driving factors found in Alexandria is a popular conception of justice. This conception is evident when individuals trespass it, which gives rise to the communal event. The ensuing violence, then, is perhaps a frustrated form of communication and a continuation of a discourse on justice.\(^{408}\) A riot or rebellion can be a community’s attempt at communicating its desires, grievances, and conceptions to opposing parties, all of which can revolve around what one group thinks what is the right thing to do.

One example in which popular legality was vitally important is the possible accession of L. Mussius Aemilianus in 261 or 262 in Alexandria.\(^{409}\) To understand the kind of evidence the accession of Aemilianus presents us with, we first have to reckon with the events leading up to his elevation. The mid-third century, from 235-284, is


\(^{408}\) Some of this work has already been done by Lenski who reads Constantine’s commanded violence as part of a longer discourse between the emperor and his subjects. Here, however, I want to read violence as the communal response to the imperial portion of that discourse.

commonly known as the third century crisis, though this perception is probably compounded by the unusually sketchy evidentiary remains from the period.\footnote{For an up-to-date discussion of the scholarship, see Lukas de Blois, \textit{Image and Reality of Roman Imperial Power in the Third Century A.D.}, (New York: Routledge, 2019) 1.4; the most popular opponents of the terminology “crisis” are Witschel and Strobel.} An undeniably traumatic event that colors this period, however, was the defeat and capture of the emperor, Valerian. Valerian had been proclaimed Emperor in Rome in 253 CE and immediately made his son, Gallienus, his colleague in the imperial college. In 260 CE, Valerian led an army against the Persians and was defeated by the Persian king, Shapur I. Gallienus was either unable or unwilling to ransom his father, who, perhaps apocryphally, was kept by the king as a footstool until the king had him flayed alive.\footnote{Lactantius, \textit{DMP}.} Inhabitants of the Empire lost confidence in Gallienus’s ability to rule without his father and a series of failed attempts at the throne followed.\footnote{Depending on how one counts, about 10: Ingenuus, Regalianus, Postumus, Aureolus, Macrianus the Elder, Macrianus the Younger, Quietus, Ballista, Piso, Valens, Mussius Aemilianus, Memor, and perhaps even Odenathus, the Palmyrean general, should be considered in this list of potential rulers.} With the help of effective generals, Gallienus was able to maintain power throughout this period until 268 when he was killed by a rebelling general. It was in this imperially chaotic period that Mussius Aemilianus possibly rebelled.

I qualify the rebellion as possible, because while we have two literary attestations to it, the \textit{Historia Augusta} (abbreviated as \textit{HA}) and the \textit{Epitome de Caesaribus}, there are no corroborating testimonia from coins, papyri, or ostraka on which Aemilianus claimed the imperial title.\footnote{\textit{HA Tyr.} 22; \textit{Epit.} 32 for discussion of the lack of physical evidence see J. Grafton Milne, “Aemilianus the ‘Tyrant,’” \textit{Journal of Egyptian Archaeology}, vol. 10, no. 2 (July 1924).} This is all the more surprising given the fact that Mussius Aemilianus
is comparatively well attested. Not only are there a handful of papyri that attest his position, but there is also evidence of an inscription in his honor in Italy. The inscription suggests that Aemilianus was an equestrian who rose quickly through the ranks to eventually hold the position of prefect in Alexandria. While Aemilianus was serving in Egypt, two contenders for the throne in Syria, Macrianus and Quietus, were successful enough to garner some recognition from Egyptians, as can be seen from the papyri dated by their regnal year and a few other papyri that suggest some confusion about who counted as the real emperor. Shortly after Macrianus and Quietus were defeated, Mussius Aemilianus may have laid claim to the throne, but he was quickly put down by Theodotus, his successor as Prefect of Egypt.

It is difficult to ascertain whether and why Aemilianus proclaimed himself emperor. We have no papyrological material suggesting that he claimed the throne nor do we have any epigraphic remains explaining his justification for becoming emperor. Some have made the argument based on chronology that Aemilianus attempted the throne because of the capture of Valerian. This argument suggests that the capture of Valerian was at least a proximal cause for the accession of Aemilianus because the capture created

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416 Milne, “Aemilianus the ‘Tyrant.’”
417 The story about Aemilianus’s defeat is found in HA Gall. And Tyr. 22; Theodotus’s name is found on papyri in 262, suggesting that he was the next Prefect of Egypt and that Aemilianus’s potential rule lasted less than a year.
the chaotic conditions for a series of failed emperors.\textsuperscript{418} A more common argument is that Aemilianus was a supporter of the two Syrian emperors, Macrianus and Quietus, so he rebelled either out of support for the two or out of fear of being killed for his former support. This argument is largely based on two pieces of evidence: firstly, that Aemilianus did not try for the throne until after the Syrian emperors had been defeated; secondly, that the use of the Syrian emperors for the regnal years and confusion about who was emperor in Egypt during Aemilianus’s tenure means that Aemilianus must have endorsed their bid.\textsuperscript{419} A loyal prefect would have set the situation straight about Gallienus being emperor. However, Aemilianus’s retention of the position of the Egyptian Prefect during the Syrian emperors’s attempt does not mean that he had to be an ardent supporter of those failed contenders. For instance, it was possible for a prefect to retain his position throughout an “usurpation.” Mantennius Sabinus retained his position as Prefect of Egypt even though he held the post when Egypt seemed to support Pescennius Niger instead of Severus for the throne. After Severus defeated Niger, Sabinus was able to keep his position.\textsuperscript{420} Furthermore, one might compare the events of Symmachus’s life when he supported the usurper Magnus Maximus in 387 over the emperor Theodosius. Although Symmachus was tried for treason, he was able to preserve his life and eventually return to politics, holding the consulship of 401. These examples suggest that Aemilianus’s position as prefect did not mean that he would automatically be marked an enemy by Gallienus and his supporters. Finally, the chronology of Aemilianus’s supposed ascension

\textsuperscript{419} Hoogedijk is representative “Beginning of a Letter.”
\textsuperscript{420} This example is used by Milne.
likewise does not prove his support for Macrianus and Quietus. At best, the series of failed imperial claimants suggests a weakened impediment to laying claim to the throne. In fact, the only ancient narrative that attempts to ascribe causation to such an accession is found in the later *Historia Augusta*.

In the story of Mussius Aemilianus in the *Historia Augusta*, an Alexandrian conception of justice is a direct cause of Aemilianus’s frustrated ascension. To frame Aemilianus’s story, the author plays with the familiar trope of the riotous Alexandrians. The author opens his account of Aemilianus’s accession with “the Egyptian people, just like madmen and crazy people, are whipped up to the greatest dangers of the Republic on account of the most frivolous things.”421 The author goes on to describe the extent of the frivolity: they often rebel “on account of neglected greetings, a place in the baths not being conceded, meat or vegetables being withheld, servile footwear and other such matters.”422 The author of the *Historia Augusta* portrays the rebellion of Aemilianus as being a “trivial and angry incident.”423

Having constructed his frame, the author goes on to give an example of his characterization by telling of a wrongfully killed slave and an unsatisfied public. The author of the *HA* tells us that a slave of the administrator (*curator*) in Egypt had been

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421 *HA* Tyr. 22.1 Est hoc familiare populi Aegyptiorum ut velut furiosi ac dementes de levissimis quibusque ad summa rei publicae pericula perducantur. For the contemporary treatment of the Egyptians and Alexandrians, see the commentary on Ammianus Marcellinus 22.11

422 *HA* Tyr 22.2: saepe illi ob neglectas salutationes, locum in balneis non concessum, carnem et olera sequestrata, calceamenta servilia et cetera talia usque ad summum rei publicae periculum in seditiones, ita ut armamentur contra eas exercitus, pervenerunt. “They often come to the greatest danger for the Republic in sedition on account of neglected greetings, a place in the baths not being conceded, meat or vegetables being withheld, servile footwear and other such matters to the point that the army is brought in against them.”

killed by a soldier because the slave said that his shoes were nicer than the soldier’s.

Frivolity encapsulated. A crowd gathered and came to the house of the prefect (dux), Aemilianus. There, they pelted him with projectiles, presumably for failing to punish the soldier. And so, fearing for his life either immediately at the hands of the Egyptians or later when Gallienus should come and try to put him down, Aemilianus proclaimed himself emperor in the hope that he would then be able to control the mob. Instead of looking to imperial politics, the author of the Historia Augusta ascribes the cause of Aemilianus’s rebellion to a fight that broke out between a slave and a soldier over shoes and Aemilianus’s fear of being killed in that fight.

The author of the Historia Augusta describes how the Alexandrians rioted when the local ruler failed to conform to their expectations. It is easy to dismiss the Alexandrians as outlandish—just as the Historia Augusta deliberately portrays them. Nonetheless, even the Historia Augusta gives an initial reason for their rebellion: the murder of a slave. Perhaps tensions were running high between the troops in the city and its citizens, but Roman law already had a tool for dealing with a murdered slave. The Lex Aquilia was the law under which one could sue for damages for the destruction of a

424 HA Tyr. 22.3: familiari ergo sibi furore, cum quadam die ciusdam servus curatoris, qui Alexandriam tunc regebat, militari ob hoc caesus esset quod crepidas suas meliores esse quam militis diceret, collecta multitudo ad domum Aemiliani ducis venit atque eum omni seditio num instrumento et furore persecuta est; ictus est lapidibus, petitus est ferro, nec defuit ulla seditionis telum. “Therefore, since they were acquainted with madness, when, on a certain day, a slave of some administrator, who at the time was then ruling Alexandria, had been killed by a soldier for this reason that he said his shoes were better than the soldier’s, a crowd gathered together and came to the house of the commander, Aemilianus; they struck him with every instrument and fury of sedition; he was hit with stones, attacked with iron, no weapon of rebellion was absent.”

425 HA Tyr. 22.4: qua re coactus Aemilianus sumpsit imperium, cum sciret sibi undecumque pereundum. “Aemilianus was compelled by this business to take up imperium, since he knew he must die one way or another.”

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slave. But the Alexandrians were not satisfied with Roman legal remedies. It is not even clear if any Alexandrian would have had standing in such a suit since the slave belonged to a curator or administrator, who is described as “ruling the city.” Nevertheless, the Alexandrians were clearly discontent with their situation and the murdered slave represented the final blow before they wreaked havoc on the prefect, Aemilianus. The rebellion in the Historia Augusta is similar to the sort of discontent described in the Expositio: both result in the regional administrator, either a nondescript judge or prefect, suffering at the hands of the Alexandrians for his failure to conform to the local conception of justice. While it is perhaps more useful with the Empire-wide lens to focus on the several attempts on the imperial throne after the death of Valerian, to do so would be to gloss over any and all local motivating circumstances. The Historia Augusta shows us one striking example of how a local conception of justice, which gave rise to a riot, could propel an administrator all the way to the purple.

The communal violence visited upon judges in the Expositio and the Historia Augusta reveals that ancient authors witnessed varied forms of communication in the discourse about justice. Although these authors would have different appraisals of Alexandrian riots and rebellions, both recognized that even one of the most notorious populations in the Roman world could be motivated to come into confrontation with the Roman legal system. The local conception of justice, which when trespassed against serves as the trigger for these rebellions, could be used by legal actors either to frustrate
the legal system into near calamity or, perhaps more elusively, to pressure a judge or opposing party into accepting one’s argument. In the legal landscape of the Roman Empire, Alexandria seemed to be particularly affected by popular legality, at least in the eyes of the author of the *Expositio*.

B. A Riot in Calama

Popular ideas of justice were not the exclusive purview of Alexandrians. In fact, the tension between multiple understandings of Roman law and justice was prevalent throughout the provincial cities of the Empire. In North Africa, we are particularly well served for evidence of disputes at law concerning different conceptions of justice. I do not mean the competing legal fora or legal systems that populated the imperial landscape, but rather the persistent heterogeneity of what Roman law should signify in provincial cities. In urban centers with strong civic identities, populations constructed their own conception of what is right and Roman. They communicated their conception in celebrations, inscriptions, speeches, and confrontations. One such celebration and confrontation took place in the North African town of Calama. A dispute over the celebration of a harvest festival led to the death of a slave and the conflagration of a church. The bishop of Calama, Possidius, attempted to stop a parade and drew a protracted response of stone-throwing and arson from the festival goers who thought their parade worth celebrating. The bishop pursued legal remedies against the people of Calama for the destruction of the church. During the proceedings, a member of the local elite, Nectarius, wrote to the more senior bishop Augustine to ask for his intercession.
Nectarius implored Augustine to have mercy upon the citizens of Calama and to cease any attempt at pursuing legal recourse. The dispute between the citizens of Calama and Possidius and the correspondence between Nectarius and Augustine were predicated on the difference of belief about what is right. Each party was motivated by a different sense of law and made arguments about what is true justice. In what follows, I will describe how the riot at Calama unfolded. Then I will analyze the arguments of the rioters of Calama and of Possidius as they can be reconstructed by later correspondence and legislation. In these arguments, there is a palpable tension between what constitutes justice from a local and from an imperial perspective.

Before the riot at Calama, the feud between Donatists and Catholics, two sects of the North African Christian community, seethed in North Africa. In 407 CE, the year before the riot, a Catholic envoy had been dispatched to Rome to procure legislation against local adversaries like Donatists and pagans. In mid-November, the Catholics received an imperial response that strongly endorsed their position. The imperial response did not officially reach Africa until June 5, 408 when it was posted as the text preserved as Sirmondian Constitution 12. Since the laws were in response to a North African Catholic delegation, it is reasonable to assume that the Catholic community, with its robust epistolary network, knew about the November 407 laws before they were published in June 408, about eight months later. The imperial legislation can be tedious.

\[^{427}\text{A common technique of the struggle between the churches. See Harries, Law and Empire, 72-76.}\]
\[^{428}\text{The response can be found in CTh. 16.2.38; 16.5.41; Sirm. 12 (from which is derived 16.5.43 and 16.10.19). For arguments on dating see Erika Hermanowicz, “Catholic Bishops and Appeals to the Imperial Court: A Legal Study of the Calama Riots in 408,” Journal of Early Christian Studies, vol 12, no. 4 (Winter 2004) 489-491.}\]
For our purposes, the important fact is the probable inequality of knowledge between Possidius (who probably knew about the 407 laws) and the population of Calama (who were probably ignorant of the laws since they had not yet been published in Africa).429

On June 1, 408 CE, the citizens of Calama were celebrating a harvest festival. This festival would have been the culmination of spring planting and the first fruits of summer.430 The festival may have had some religious significance since, according to Augustine, the parade may have displayed a silver cult image.431 Even though there was legislative precedent for local officials and judges restraining pagan festivities, the festival at Calama seems to have been firmly ingrained in the local culture such that no one, up to that point, thought it necessary to stop the celebration.432 The events of the day can be reconstructed from the four letters that passed between Augustine and Nectarius, especially from Augustine’s account in Epistle 91.8. The parade seemed harmless enough until, in the telling of Augustine, such insulting (tam insolenti) behavior was undertaken.433 The insults came in the form of dancing directly in front of the church (petulantissima turba saltantium in eodem prorsus vico ante fores transiret ecclesiae).434 Augustine’s outrage is palpable when he says that this was a deed so outrageous that not even in the time of Julian was such a thing done.435 When the local clergy tried to stop

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430 Shaw, Sacred Violence, 253-254.
431 Aug. Ep. 104.5 Hermanowicz, “Catholic Bishops and Appeals to the Imperial Court,” 484.
432 Precedent can be found in CTh 16.10.12 and 16.10.13.
434 ibid. “the absolutely shameless crowd of dancers sauntered into the place directly in front of the doors to the church.”
435 ibid. Quod nec Iuliani temporibus factum est “which was not (even) done in the time of Julian.”
the festival, the crowd threw stones at the church. Eight days later, when Possidius the bishop brought the imperial laws to the local council to prove that the festival must be disavowed, the church was again assaulted with a hail of stones. On the next day, at a public trial, there was a hail storm, which both parties took as a sign of divine favor. After the storm, the church was assaulted a third time, set on fire, and a Christian was killed (*unum seruorum dei*). The people of Calama were restrained by a passing stranger (*unum peregrinum*) and the dust settled. Later, Possidius went to court to have the rioters punished capitaly. In an attempt to save the population, Nectarius, a native of Calama, wrote to Augustine to ask for help.

Who was in the right? First, the rioters. If the laws against pagan festivities had not yet reached North Africa, then the people of Calama might reasonably be able to say that their celebration was perfectly acceptable. They could argue that the festival was a time-honored tradition that had more to do with civic engagement than religious worship. In such an instance, Possidius’s intervention would appear as that of an overbearing clergyman who was looking to kill their good-time. The provocation gave rise to the violent responses of stone throwing, church burning, and murder. The people of Calama

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436 Shaw, *Sacred Violence*, 258 interprets this stranger as a rhetorical ploy by Augustine to neutralize Nectarius’s argument that the people of Calama should be forgiven or, at least, there should be some gradation of guilt so that the more innocent can escape severe punishment. The stranger, according to Shaw, is proof that the entire population and the local elites are guilty because a single stranger was able to calm the entire crowd. If a single stranger could have intervened, surely another citizen of Calama could have halted the bad behavior much earlier. Shaw’s reading makes sense in the immediate context of the correspondence, but the figure of the lone stranger saving Christians from martyrdom must have Christological significance. Alternately, see Conybeare, “Making Space for Violence,” 205-206 on the stranger as a symbol of potential in this letter.

437 This argument has been made by Shaw and Hermanowicz.
enjoyed their festival and resented the clerical interference. Their conception of law and justice was predicated both on the absence of any law outlawing their festival and on the long communal expectation of celebrating the festival.

Second, Possidius. If Possidius had access to the imperial legislation, then the abundance of material would impel him to intervene in the festival. In fact, one of the laws from the assemblage delivered in 407 CE empowered bishops to intercede in certain ceremonies. The law is preserved in both Sirmondian Constitution 12 and CTh 16.10.19. It reads: “It shall in no wise be permitted to hold convivial banquets in honor of sacrilegious rites in such funereal places or to celebrate any solemn ceremony. We grant to bishops also of such districts the right to use ecclesiastical power to prohibit such practices.” The law goes on to threaten judges, primarily governors who most likely had no legal training, who failed to follow the letter of the law in all ways with a penalty of twenty pounds of gold. Possidius, as bishop of Calama, could have thought of the dancing parade at Calama as a “convivial banquet” and, therefore, he would have felt compelled to intervene “to prohibit such practices.” From Possidius’s perspective, he was following the letter of the law.

Although we lack any argument made by Possidius, both Nectarius’s intercession on behalf of the people of Calama and the later imperial response recorded in Sirmondian Constitution 14, suggest that Possidius relied on the powers outlined in Sirm. 12 to vindicate his intercession. Since Sirm. 12 threatens judges with a hefty financial penalty,
Nectarius may have felt compelled to beseech Augustine for his intercession. Nectarius makes his case to Augustine, asking for there to be some differentiation in guilt so that the innocent are shielded from punishment. The grounds for making his case, Nectarius claims, are his great love for his home, Calama, where he has always been a dutiful member of the community. While Nectarius makes his case for all of Calama, Augustine’s account of the riot emphasizes the guilt of all involved when only the passing stranger restrains the crowd. Surely one of the local officials could have done the same. In sum, the threat of the judicial fee could further have encouraged the local elite to put together their own case for not supporting Possidius.

_Sirm._ 14, published in January of 409 CE, was an imperial response to Possidius’s complaint of his treatment. The law again threatens judges and demands that those who are guilty, even if they are many, of invading a church, inflicting outrage on the clergy, or inflicting outrage on the place of worship, should receive capital punishment. Since _Sirm._ 14 has such strong language against those who damage a church and the judges who fail to stop or punish them, it seems that Possidius took his complaints of both the rioting people of Calama and the local elites to the imperial consistory, where he got the answer he was looking for. We can reconstruct Possidius’s idea of justice from these imperial responses and situate him in Calama as he watched the parade that, in his mind, flagrantly disobeyed the law of the emperor himself. Possidius had pit the local conception of justice against the imperial.

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439 Aug. _Ep._ 90.
440 Harries, _Law and Empire_, 88-91.
Provincial cities were places thick with local politics, local identities, and local conceptions of justice. These phenomena were intertwined in such a way that when the cities practiced Roman law, law and justice were conceived of along local contours. We can see the discomfort Roman legal practice endured when Empire-wide law was invoked in complex local situations. As parties made their arguments about justice, communities in the provincial cities could communicate their own conception of justice with force. Rioting or mob violence could interject a strong position held by a community into the wider discourse of law and justice. We can read some of these skirmishes between mobs and elites as conflicts between conceptions of what should constitute law. Members of the elite failed to comprehend or appreciate the local situation. Their failures reveal where local conceptions of justice differed from an imperial conception. These local conceptions made a strong impact in the legal landscape of the Roman Empire.

7. Conclusion
In this chapter, I have attempted to analyze the legal heterogeneity found in the Roman legal landscape. Such heterogeneity is difficult to conceive because much of the discourse and ideology of the Roman Empire posited a legally homogenous Roman world. The Roman idea of Empire projected an uncomplicated, homogenizing legal landscape. There were clashes, however, between the idealized version of the legal Empire and the practices of the Empire’s inhabitants. These clashes suggest that we should investigate how different regions instantiated their peculiar practice of law in their local environments. In fact, the phenomenon of differences across the same legal system
is something that has been discussed in modern scholarship, especially in colonial studies. Lauren Benton’s study on legal heterogeneity in the colonial empires of the English, Spanish, and Portuguese is an illuminating model for the Roman world. As I have argued, the connection between the discourses of geography and law in the Roman world were intertwined enough to make Benton’s work a productive heuristic model. I investigated four recurrent types of legal space across the Roman landscape: law schools, imperial capitals, islands, and provincial towns. Law and legal practice made each type of space a unique place. Places with schools, most famously Beirut, were visited by students in search of a legal education. Students then left to secure legal work throughout the Empire. Imperial centers, like Rome and Constantinople, were unpredictable places to practice law because Roman jurists and Roman legal practice was strongly affected by the social standing of litigants. In places populated by many social elites, legal practice was often complicated by members of the elite who could make special demands of the legal system. The islands of the Empire could produce legally claustrophobic spaces. To overcome the problems produced by law in small communities, inhabitants of the islands experimented with alternate judicial schemes, employing multiple and indigenous forms of dispute resolution. Finally, in provincial cities, local populations could challenge imperial ideas of law and justice with their own conceptions about what constituted law and justice. The different notions of law could lead to calamity since urban populations had few ways to communicate their dissatisfaction with imperial legal practice other than by rioting. As such, riots and communal violence can be read as a community’s attempt to communicate its notion of justice. These four types of legal space in the late Roman
Empire suggest that although Roman law was an imperial-wide phenomenon, the location of its instantiation inflected its practice.
Conclusion

This dissertation opened with the presentation of three composite images of the late Roman legal expert. These images displayed an expert as immoral, greedy, and confusing; they showed experts who labored under tyrannical emperors; and, finally they showed a scholar locked away in an early ivory tower. Now, in conclusion, let us consider the alternate image this dissertation endeavors to provide.

“Disputatious Practice in Late Roman Legal Education” presents a purposeful and intelligent legal expert. Previous scholarship, in pursuit of a continuity of Roman legal texts and doctrine, imagined that the legal expert of the late Roman Empire trained in law by meticulous study of central legal texts. The focus on text and doctrine, I argue, leads one to overlook the formation of practical aspects of law. If we analyze late Roman legal texts as reflective of their practice, we find that there were recurrent techniques of legal argumentation found throughout the period. I call these techniques “disputatious practice” because they work together to inhibit dispute about arguments in law. The techniques of disputatious practice—compilation and framing—might be thought of as extra-legal; however, I hope to have demonstrated that these techniques were actually integral to Roman legal practice. The prevalence and continuity of disputatious practice throughout the late Roman Empire suggests that it was a central component to the practical education of legal experts.

When we imagine the sort of legal expert who wielded the techniques of disputatious practice we are confronted with an individual who used contemporary aesthetics in the formation of legal arguments. This legal expert knew at least some of the
normative sources of Roman law, but also adeptly drew on rhetorical modes of condescension, religion, and apprehension in order to fortify his argument. The superabundance of legal material that experts drew on to make arguments left contemporaries with the impression that the law was as dense as a thick fog. These contemporary complaints were the result of legal experts creatively and persuasively weaving together legal arguments and, in a sense, were borne out of the the ubiquitous potential for the formation of legal arguments.

“Compensation for Labor in Law” investigates the multiple forms of labor in law in order to demonstrate how legal expertise manifested throughout the Empire in distinct forms. The multiple forms of labor met a likewise diverse set of compensations. Legal experts were paid in cash and kind for performing tasks such as giving advice and creating legal documents. These documents, as legal objects, were imbued with an authenticity derived from the legal expert’s standing in the community. The community’s recognition of a legal expert’s labor played an even larger role in a form of public cultural capital for those who performed in the eye of the public. Certain offices such as teachers of law or assessors were awarded a profound respect for appearing to do law in the public eye where they presumably demonstrated just legal practice. That these public legal experts were not rebuked in their public practice meant that they were generally seen as reliable sources of legal knowledge and fairness. The final form of compensation in the second chapter is an exclusive social capital. Whereas public legal experts were honored widely, legal experts in the social elite were honored within small, powerful communities. These elite experts used their expertise as part of a sophisticated economy.
of exchange with other elites, transacting in culturally significant objects and strengthening the bonds of their society.

The image of the legal expert offered in the second chapter depicts a multitude of individuals who knew how to communicate legal meaning within their communities. In each of the activities surveyed for this chapter, we see experts creating and relying on their community’s recognition of their legal prowess. Rather than being constantly ensconced in a legal text or working exclusively for the administration, legal experts were common features of late Roman communities. It is also apparent that experts employed their expertise to transact in multiple, complex economies. The economic practices deployed by legal experts allowed them to access multiple markets of legal labor and gain other valuable goods and services in exchange for their knowledge.

“Legal Lumpiness of the Late Roman Empire” analyzes the legal heterogeneity of the late Roman Empire. In contrast to the rhetoric of a legally homogenized world, I argue that the multiple geographies of the legal landscape emphasized unique aspects of law. Places with law schools were hubs of travel for students who sought to obtain training in law. That training, in turn, inflected legal practice around the school as alumni brought their textual legal expectations to courts and to their careers. Imperial centers, such as the capital cities of Rome and Constantinople, were populated by members of the social elite, who could expect special treatment before the multiple courts of the Roman world. Senators domiciled in these capitals had actions available to them that were denied to socially inferior coevals such as ignoring a judge’s orders or even trying to replace the judge when one thought he performed poorly. The islands of the Empire, and probably all small communities constrained by difficulty in travel, experimented with multiple
indigenous legal fora and referees because they were unable or unwilling to invoke Roman administrative decisions. For instance, instead of going to the governor on a distant island, inhabitants of small islands experimented with indigenous dispute resolution strategies such as the defensores civitatis or non-state recognized forms of settlement. Finally, in provincial towns, robust, local conceptions of justice and law clashed with imperial conceptions when cosmopolitan judges or litigants pursued resolutions through official Roman legal channels. Instead of simply accepting the arguments and narratives of governors and bishops about what constituted law, local populations rebutted with their own idea of justice, communicating it sometimes in violent demonstrations such as rebellions and riots. The four landscapes of law in the Roman Empire demonstrate that Roman law as an imperial phenomenon was a dynamic set of social practices that varied across space.

The heterogeneous nature of Roman legal practice suggests that we have to imagine experts utilizing the unique aspects of law emphasized in their spaces. The first two chapters argue for a conception of Roman legal expertise that filled the different social and economic positions of the Empire, in which experts constructed reputations for creating legal meaning. When seen against the heterogeneous landscape we can imagine that the tools of disputatious practice and the complex economies of law reverberated throughout the Empire, filling those landscapes of law. The legal experts that populated the late Roman Empire were not distant, imperial agents, but rather were nearly ubiquitous makers of legal meaning.

Roman legal historians have argued for the demise of legal experts at the beginning of the late Roman Empire. This dissertation reveals the powerful forms of law
and legal experts that existed throughout the Empire. When viewed from a critical legal pluralist perspective, legal experts of the late Roman world were sophisticated and influential actors. They created law for their communities through arguments. They participated in complex economies and garnered social standing for their expertise. Finally, when imagined in the heterogeneous legal landscape, we can surmise that legal experts mastered the disparate aspects of law to create legal meaning that was at once specific to its environs, but also communicated in an imperially intelligible language of law. The legal experts of the late Roman Empire were not the incompetent inheritors of the classical jurists nor the forgettable forefathers of Justinian’s compilers. The legal experts of the late Roman world were the little men of law who created legal meaning throughout the Empire.


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