



# LIVES BEHIND THE LAWS

The World of the *Codex Hermogenianus*

SERENA CONNOLLY



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THE WORLD OF THE CODEX HERMOGENIANUS



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*parentibus optimis*

## PREFACE & ACKNOWLEDGMENTS

The law constantly writes itself on bodies. It engraves itself on parchments made from the skin of its subjects. It articulates them in juridical corpus. It makes book out of them.

MICHEL DE CERTEAU, *THE PRACTICE OF EVERYDAY LIFE*

To ordinary Romans, the emperor must have seemed an enigmatic figure. On the one hand, he was everywhere: his face was on coins, his statue watched over his subjects in basilicas, and his name appeared on laws posted across the empire. Yet their opportunities for contact with the emperor were scarce. They might glimpse him from a crowd during a carefully staged event, or catch sight of him as he shuttled between imperial residences, governors' palaces, Senate houses, basilicas, and army camps. Only a fortunate few ever approached the emperor for a hearing.

Given the emperor's elusiveness, it is remarkable that hundreds, possibly thousands, of individuals communicated with him each year. The system of petition and response enabled Romans to write to the emperor about their legal problems and to receive a response that could offer information or guidance, or direct them to a legal official who could offer assistance or a hearing. Though petitioners did not often meet the emperor face-to-face, theirs was a more personal sort of communication that offered tangible benefits. It could benefit the emperor too, by bolstering his

reputation as an authoritative yet responsive ruler, and it also provided employment to the legal experts who facilitated the system.

The early spring of 293 was a busy time at Sirmium. Diocletian had decided to accompany his newly crowned junior colleague Galerius part of the way to his new court at Antioch. Diocletian would leave him at Byzantium to head back to Sirmium, where he would stay until the following summer, overseeing Roman efforts to repel barbarian invaders from the north. In August 294 he would journey along the Danube frontier to see for himself the aftermath of the summer campaigning, before heading south via Byzantium to Nicomedia. Among the hundreds of imperial staff preparing themselves for the journey were the members of the *scrinium libellorum*. They had been answering a steady stream of petitions at Sirmium since the beginning of 293 and now faced about five months on the road, where they would meet nine hundred-plus petitioners.

The encounters between those officials and petitioners are the focus of this book. It presents a user-centered analysis of why and how petitions were sent and answered, to reveal a wide array of petitioners who petitioned for a wide range of reasons, the working methods of the team that answered them, and the emperors' reasons for investing in a system that provided free legal advice to non-elites. Petition and response emerges as a mutually beneficial undertaking—a means for ordinary people to help solve their legal problems and for emperors to advertise their legal authority and responsiveness. I shall argue that the process of petition and response, which provided subjects their most common—and personally helpful—contact with the emperor, suggests that the Roman imperial administration was a more collaborative enterprise than we might have imagined.

This book is concerned with the people who used and administered the system of petition and response—their problems and their daily experiences. Since petition and response was used by many people to help resolve their legal problems, reconstructing the system offers insights into the role that law played in shaping the lives of these ordinary subjects. Examining the many hundreds of extant responses to petitions (“rescripts”) reveals the types of legal issues that subjects in the provinces confronted and therefore the types of cases that came before the imperial chancery, and considering them en masse helps us understand in some detail how the members of the imperial chancery worked and therefore also, given the ubiquity

and popularity of petition and response, how law was administered in the Roman Empire. This book is concerned also with the role petition and response played in the administration of justice and claims that all participants in the system—petitioners, officials and the emperor—were bound in a mutual dependence that should alert us to the little-acknowledged political power of ordinary people in Roman governance.

Petition and response is a wide subject, both in terms of the time periods in which it is found and in the range of approaches employed to understand it. Trying to synthesize these approaches to understand petition and response in all these periods is an impossible (or at least inordinately lengthy) task. I have therefore decided that a profitable approach to the topic is to look at a span of time in which the evidence is most numerous and detailed. More than nine hundred rescripts are extant from the years AD 293–294, the greatest concentration of responses extant for any two-year period from the reigns of Hadrian to Diocletian and his co-rulers. Written by the *magister a libellis* Hermogenianus and his team in the reign of Diocletian, they provide a useful collection of evidence for analyzing petition and response because they represent the responses of a team operating under an individual legal expert active at particular time.

The rescripts are interesting in themselves, as chapter 4 will demonstrate. Moreover, given the lack of change to the system (Diocletian introduced many administrative reforms in other areas during his reign, but apart, perhaps, from providing increased access to the system, the rescripts do not reveal any significant changes brought about by these reforms) and given that there is no obvious departure from the content or form of previous years' rescripts, we can make inferences from these rescripts about the system not only at the time of the Tetrarchy but also before and after. Further, since, as I contend, the entries of 293–294 were kept primarily because of their legal content, not the identities of the recipients, we can analyze, albeit tentatively, the makeup of the recipients. While the conclusions I draw apply first and foremost to those years, I venture that because Diocletian seemingly made no significant changes to the rescript system, they may be valid for at least the second and third centuries. Possibly my claims about the significance of the system for understanding the interrelationship of rulers and subjects can be applied to all periods and places in which petition and response can be found, from earliest Near Eastern

history to at least the medieval period. (They may also help us understand ordinary people's reasons for and ways of navigating legal systems.)

The system of petition and response as it operated in these two years, then, will be the subject matter of this book, and the focus will be on the people who used and ran the system. I want to move away from imagining petition and response as a static and theorized system of procedures to recreating it as a locus around which the emperor, his officials, and the people interacted. By means of this approach we can reconfigure the roles of the emperor, his staff, and his subjects as mutually dependent—all relied on the system of petition and response (and probably other systems too) to confirm their own positions within Roman society. Further, as I shall show in the introduction, some of our oldest written documents are petitions and responses that express the mutualism between ruler and ruled (and the facilitator, i.e., official). From these we see that, for example, Hittite rulers realized the benefits of responding to needy litigants, who in turn found that their obedience supported a system of rule that safeguarded their daily security. In the Roman world, petition and response acted also as a buttress against the predations of the powerful and as a partial treatment for ills inflicted in court by disinterested, ignorant, or prejudiced judges. The rescript system was much more than “a scheme of free legal aid,” as Tony Honoré has described it.<sup>1</sup>

Chapter 1, using the well-known inscription of the Skaptopareni as a starting point, reconstructs the system to put together a picture of the process from beginning to end that is careful to insert the petitioners, whose experiences of the system seem to have been missed in other examinations. This chapter also examines the interaction between petitioners and *tabelliones*, the people who helped them compose their petitions. Chapter 2 looks at the system in motion, as it was managed on a daily basis, both at the imperial court and also on the move through the lower Danube provinces. It traces the movements of Diocletian and, more importantly, his court during AD 293–294 and looks at the interaction between petitioners and the team of officials of the *scrinium libellorum*, who I believe composed most rescripts under the leadership of their *magister*, Hermogenian.

Chapter 3 focuses more closely on the petitioners in a quantitative approach to the system. Building on the work of Huchthausen, this chapter analyzes the makeup of the petitioners whose rescripts are preserved in the *CJ* from AD 293–294 and seeks to discover the makeup of the total group

of petitioners to the imperial court during those years. It also explores how petitioning helped different types of petitioners and what benefits and barriers existed in their use of the system. Chapter 4 moves from the quantitative to the analytical with a detailed examination of a selection of rescripts to look more closely at how individuals used the rescript system to resolve their legal problems. Analysis of the rescripts' content suggests that the petitioners, who belonged to the "middling sort"—a term I define below—with the crucial exception of those claimed as slaves, were united not by wealth, social status, or occupation, but by a shared sense of vulnerability. Officials responded to their petitions often with sympathy, but primarily with concern for justice and the law. This chapter focuses on the interrelationship of petitioners, officials, and the body of Roman law.

Chapter 5 takes a broader view of the rescript system. Beginning with the claim that petitioners perceived themselves to be "poor" in the sense of feeling vulnerable before others rather than by any objective criteria, this chapter argues that the emperor used his perceived responsiveness to poor petitioners to advertise his regal diligence and legal authority, in the manner of previous rulers in the ancient world and as his successors in the east and west would do. The high degree of interdependence of the emperor, his officials, and his subjects of the middling sort illustrated by the rescript system suggests that the importance of the middling sort to imperial stability has been overlooked and that they should be inserted as a party into the Roman system of law and legal administration.

The petitioners whose problems and lives are examined in this study come from what John Crook has described as the "non-pauper non-elite." Though these people accounted for a significant proportion of the population, finding descriptions, let alone definitions, of them requires sifting through evidence of many kinds. They form a large and diverse group that includes the small-scale commercial farmer, the small-business owner, and the town councilor who was stretched too thin. Augustine knew the latter well. His father, whom he described as a *tenuis municeps* ("a burgess of slender means," in Peter Brown's elegant rendering),<sup>2</sup> was one of them. The family had a roof over their heads and food to eat, but the school fees could not always be paid.

John Crook's description of these people is useful: "A true middle class has political and economic 'clout': the people I mean had none of the

former but some of the latter (i.e. purchasing power, witnessed, e.g., by the less grand sorts of wall-decoration)."<sup>3</sup>

Money purchases property, enables business transactions, and creates a need for people to draw up wills—all of which can lead to the sorts of legal problems we find tackled in the rescripts. People lacking money also suffer legal problems, such as marital breakup, assault, and unlawful eviction, but such individuals can do little except tolerate them as best they can or retaliate using extra-legal means. The non-pauper non-elite or middling sort, as I shall call them for the sake of brevity, while they may have lacked sufficient money to hire a lawyer (or were shy of doing so without establishing greater need), formed the bulk of those who sent petitions to emperors asking for legal information or advice. These were people who could normally support themselves financially (and if they now owed money, they had at some point been considered good for the debt) with enough spare cash or liquidity, opportunity, and wherewithal to consider petitioning and perhaps even use subsequent litigation to rectify a legal problem.

Putting a figure on the worth of the middling sort is a slippery task. The incomes of many are set out in Diocletian's Edict on Maximum Prices and thus supply us with a range that includes the muleteer, veterinarian, barber, teacher, and scribe, but most likely not the advocate. It is possible to define that range with help from John Crook, who has rallied evidence to suggest an upper limit for a middling sort income:

I would note that *ampla pecunia* begins, for the jurist Gaius, at 100,000, and freedmen count as *locupletiores* from that figure up (Gai., *Inst.* IX.140 with Saller at *PCPhS* 209 (1983), 72–76); that 12,000 was the legionary retirement bonus; that Augustus could only find 215 *cives Romani* in Crete/Cyrene with a fortune above 10,000 (the richer element there were peregrine); and that at Irni the level for *iudices* began at 5,000 (cf. *Digest* L.2.12, Callistratus).<sup>4</sup>

At the other end, the lower limit is demarcated by those whose lives were occasionally blighted by *paupertas*, "a poverty that is not the complete indigence of the desperate outsider, but a precarious dependence among the less well-off members of the community," as Purcell explains.<sup>5</sup> We might expect to find the sewer cleaner and cloak attendant of Diocletian's Edict among their number.

While economically diverse, members of the middling sort were united by their lack of formal legal education. Most probably received

a rudimentary general education until the age of eleven or twelve and were subsequently apprenticed and trained in an occupation.<sup>6</sup> A general education in law and the navigation of local or central bureaucracy would not have been part of their formative years (nor is it today). Their legal education was probably acquired through experience or social interaction—speaking with others and learning of their experiences—rather than through a program of learning. It was informal and ad hoc, focused on the most common issues that arose in petitioners' lives. Problems such as those faced by Zosimus and Anicetus, two petitioners facing property disputes whom we will meet in chapter 4, must have occurred frequently in a time when there seem to have been no zoning restrictions and planning permission was not required until after the fact. Yet the knowledge they did have was piecemeal enough that they needed to petition to fill in gaps.

Petition and response is a popular topic that is attracting increasing attention from ancient historians with a wide range of interests—in the Greek, Egyptian, and Roman worlds, in law, in politics, and in administrative and social history—and for good reason. From my experience of discussing the subject with individuals outside of Classics and outside of academe, the basic notion that ordinary people could petition ancient rulers, including Roman emperors, for legal advice and help is surprising and intriguing—surprising because they assume rulers were aloof and unresponsive; intriguing because they want to know what sort of people these were, what they petitioned about, and why rulers received and answered their queries. Answering their questions is an important part of this book. Professional and lay interest in petition and response derives, I think, from the fact that the topic is literally “popular”: it deals with ordinary people's problems, be they mundane or outlandish, common or unusual. We feel an affinity with petitioners. We too encounter complications and obstructions in our legal dealings, and we have all experienced frustration and impatience as we have sought help or information from or complained to large organizations, governmental or corporate. We have all been petitioners.

The increase in scholarly interest has arisen from three developments. The first is the exponential growth in the discovery and study of documentary evidence, such as inscriptions, papyri, and law codes, which are the main repositories of petitions and responses. The second is the increase in the number of scholars engaged in interdisciplinary research. This increase

has come about in part as a result of increased use of documentary evidence, as scholars have integrated inscriptions and papyri into their research. Ancient and medieval historians' growing use of legal evidence, especially law codes, has contributed greatly to our understanding of petition and response and has helped make evidence for it more accessible to the wider academic community. The third is a change in the way history is being written. Influenced by the work of historians of the African American civil rights movement, who have compellingly and effectively integrated testimonies into their analyses (and also the work of sociologists, whose work is based on case studies as well as data sets), historians of other periods and places have realized the power of real first-person or imagined third-person accounts in supporting arguments and coloring a narrative. This is especially the case with the history of non-elites, and petitions make for good stories.

Alongside these factors, there is also much concern at the time of writing with questions of governmental accountability, which has in turn piqued historians' interest in the question of what motivates loyalty to rulers and in the notion of government as a system of exchange between ruler and ruled. These issues have not so far exercised scholars working primarily on petition and response, but they are of central importance to many scholars concerned with the imperial office, many of whom have used petitions and the responses to them as supporting evidence and whose work is in turn influencing research on that evidence. And just as interest in petition and response has increased with developments in the field of ancient history (and beyond), so focus within the topic has changed over time, from concern with the mechanics of the system of petitioning, to analyses of the makeup of the petitioners, to exploring the rhetorical structure of petitions.

This book has its origins in a dissertation that was inspired by a remark from John Matthews. In a conversation several years ago he mused that, according to our evidence, up to one-quarter of the people who received answers to their petitions from emperors were women. I was surprised at the extent of women's participation in a legal process and at their contact with the imperial administration. Then I wondered why I was surprised. Many questions followed. Was I right to be surprised? Who were these women? What did they petition about? Who were the other petitioners and what were their concerns? How did the system of petition and response work?

Why did people petition? And why did the system exist? The resulting book is a product of my curiosity and a desire to answer these questions.

I have benefited greatly from the path-breaking work of Tony Honoré and Fergus Millar, and though they differ in their views of petition and response, both have influenced my thinking. Their work, together with that of Judith Evans Grubbs, has done much to make the system more widely known. Liselot Huchthausen and Simon Corcoran's examinations of the petitioners provided a solid basis for my own analysis. My discussion of the political importance of rescripts continues and elaborates Corcoran's observation that the rescripts served no obvious legislative function and were not legally innovative; Clifford Ando's work on imperial communication set me thinking about why petitioners and emperors alike continued to invest in petition and response. I have taken a cue from John Crook's practice of integrating narrative into theoretical discussion and have also been much influenced by Chris Kelly's compelling depiction of an administrative "system in motion," so much so that I have borrowed the phrase for the title of one of my chapter sections, in which I have attempted to breathe life into a system usually discussed in a rather abstract fashion. Finally, modern sociological work on ordinary people and their encounters with the law has stimulated me into new ways of thinking about familiar material and situations.

This book is an examination of ordinary Romans' interactions in the course of finding help and navigating processes. I too have been aided by interactions with friends and colleagues over the last few years. Several years ago, Carlos Noreña brought to my attention Graham Burton's recent work on the interpretation of evidence, and our discussions helped me think about my findings in the broader context of imperial history. More recently, I have benefited from the suggestions and insights of Simon Corcoran. Michael Peachin has pushed me to think harder about crucial issues, and the book has benefited greatly as a result. Dennis Kehoe has offered encouragement, and his clear vision for the book has revealed much to me. I am grateful to the Department of Classics at Yale University, where the book has its roots, and to my new colleagues at Rutgers, who have provided support in the closing stages. I am also very pleased to acknowledge the assistance of the Frederick W. Hilles Publication Fund of Yale University in publishing this book.

John Matthews suggested the project and has been throughout its realization the ideal adviser. I have benefited enormously from his knowledge and insights and from his enthusiasm for my work, and I have enjoyed his good humor. I could not have had a better guide.

Finally I owe thanks to my parents, Roger and Hazel, for their support and affection, and to Paul Walberg, for everything.

## ABBREVIATIONS

Abbreviations of papyri follow John F. Oates et al., *Checklist of Editions of Greek, Latin, Demotic, and Coptic Papyri, Ostraca, and Tablets*, 5th ed., *Bulletin of the American Society of Papyrologists*, suppl. no. 9 (Oakville, Conn.: American Society of Papyrologists, 2001).

Abbreviations of journals follow *L'Année Philologique*. Abbreviations of literary works follow Simon Hornblower and Antony Spawforth, *The Oxford Classical Dictionary*, 3rd ed. (Oxford: Oxford University Press, 2003).

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| AHB              | <i>Ancient History Bulletin</i>                          |
| AJAH             | <i>American Journal of Ancient History</i>               |
| AJPH             | <i>American Journal of Philology</i>                     |
| ANTARD           | <i>Antiquité tardive</i>                                 |
| APULEIUS, MUN.   | Apuleius, <i>De mundo</i>                                |
| AUGUSTINE, CONF. | Augustine, <i>Confessions</i>                            |
| BASP             | <i>Bulletin of the American Society of Papyrologists</i> |
| BMCR             | <i>Bryn Mawr Classical Review</i>                        |
| CG               | <i>Codex Gregorianus</i>                                 |
| CGL              | <i>Corpus Glossariorum Latinorum</i>                     |
| CH               | <i>Codex Hermogenianus</i>                               |

- CHV *Epitome Codicis Hermogeniani Visigothica* (FIRA<sup>2</sup> ii, 665)
- CIG *Corpus Inscriptionum Graecarum*
- CIL *Corpus Inscriptionum Latinarum*
- CJ *Codex Justinianus*
- CONS. *Consultatio Veteris Cuiusdam Iurisconsulti* (FIRA<sup>2</sup> ii, 594–613)
- CPH *Classical Philology*
- CPR *Corpus Papyrorum Raineri*
- CSEL *Corpus Scriptorum Ecclesiasticorum Latinorum*
- CTH *Codex Theodosianus*
- D *Digesta Justiniani*
- E&L<sup>1</sup> Tony Honoré, *Emperors and Lawyers*, 1st ed. (London: Duckworth, 1981).
- E&L<sup>2</sup> Tony Honoré, *Emperors and Lawyers*, 2nd ed. (Oxford: Clarendon, 1994).
- EDRL Adolf Berger, "Encyclopedic Dictionary of Roman Law," *Transactions of the American Philosophical Society*, new ser., vol. 43, pt. 2 (1953).
- EMP *Edictum de Maximis Pretiis*
- ERW<sup>1</sup> Fergus Millar, *The Emperor in the Roman World: 31 BC–AD 337*, 1st ed. (London: Duckworth, 1977).
- ERW<sup>2</sup> Fergus Millar, *The Emperor in the Roman World: 31 BC–AD 337*, 2nd ed. (Ithaca, N.Y.: Cornell University Press, 1992).
- FEST. Festus, *De verborum significatu*
- FIRA Salvatore Riccobono, Giovanni Baviera, and Contardo Ferrini, *Fontes iuris romani antejustiniani* (Florentiae: apud S. A. G. Barbèra, 1908).

- FIRA*<sup>2</sup> Salvatore Riccobono, *Fontes iuris romani antejustiniani*, 2nd ed. (Florence: S. A. G. Barbèra, 1968).
- FV* *Fragmenta Vaticana*
- G&R* *Greece and Rome*
- GAIUS INST.* Gaius, *Institutes*
- HA, ALEX. SEV.* *Historia Augusta, Alexander Severus*
- HA, HADRIAN* *Historia Augusta, Hadrian*
- IG* *Inscriptiones Graecae*
- IGBULG* *Inscriptiones Graecae in Bulgaria repertae*
- IGRR* *Inscriptiones Graecae ad res Romanas pertinentes*
- IGSK* *Inschriften griechischer Städte aus Kleinasien*
- ILS* *Inscriptiones Latinae Selectae*
- JRA* *Journal of Roman Archaeology*
- JRS* *Journal of Roman Studies*
- JULIAN EP.* Julian, *Epistulae*
- JUST. EPIT.* Justinus, *Epitome*
- JUVENAL, SAT.* Juvenal, *Satires*
- LSJ* Henry George Liddell, Robert Scott, Henry Stuart Jones, and Roderick McKenzie, *A Greek-English Lexicon*, rev. and augm. (Oxford: Clarendon, 1996).
- MEFR (A)* *Mélanges de l'École Française de Rome. Antiquité*
- NOT. DIG. OCC./OR.* *Notitia dignitatum omnium tam civilium quam militarium in partibus occidentalis/orientis*
- NOV.* *Novellae Iustiniani*
- OLD* P. G. W. Glare, *Oxford Latin Dictionary* (Oxford: Clarendon, 1982).