

# Romans under Chian Law

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ONE OF THE MOST FAMOUS LANDMARKS for those who explore the situation of free Greek cities within Rome's provinces, and in particular the relation of resident Romans to the judiciaries of those cities, is to be found in a letter of an Asian proconsul issued in settlement of a dispute between the Chian authorities and (apparently) some Roman citizens.<sup>1</sup> The name of the proconsul is not preserved, but as he refers to an Antistius Vetus as his predecessor, the letter is usually dated between A.D. 5 and 14 on the assumption that the Vetus in question is the consul of 6 B.C.<sup>2</sup> The importance of this document lies in the fact that its author, having studied a copy of a *senatus consultum* of 80 B.C. which the Chian parties to the dispute had submitted with their documentary evidence, cites several provisions from it while giving his grounds for rescinding a decision or ruling issued by Vetus in a letter. The last of the three provisions

<sup>1</sup> CIG 2.2222; IGR 4.943; SIG<sup>3</sup> 785; F. F. Abbott and A. C. Johnson, *Municipal Administration in the Roman Empire* (Princeton 1926) no.40; V. Ehrenberg and A. H. M. Jones, *Documents Illustrating the Reigns of Augustus and Tiberius*<sup>2</sup> (Oxford 1955) no.317. Cf. J. and L. Robert, *REG* 65 (1952) 128. The inscription is freshly edited by W. G. Forrest, in *SEG* 22 (1967) no.507, whose text is given (with bibliography and discussion) in R. K. Sherck, *Roman Documents from the Greek East* (Baltimore 1969) 351–53, no.70. The fragmentary state of the opening lines makes identification of the parties to the dispute a matter of inference. Chian ambassadors appear as one party in line 2, and citation of rulings concerning Roman citizens in lines 17–18 makes it very probable that the other party was Roman. The name *Στάφυλος* (line 2) appears in other Chian inscriptions: see *SEG* 17 (1960) 105 no.381 B (d) line 9 and C (b) line 5. See W. G. Forrest, *PBSA* 55 (1960) 188–89 for the local associations of the name. (I am indebted to Mr Forrest for these last references).

<sup>2</sup> K. M. T. Atkinson, "The Governors of the Province Asia in the Reign of Augustus," *Historia* 7 (1958) 300–30, at 328, dates the proconsulship of this Vetus to A.D. 2/3 or 3/4. See also *PIR*<sup>2</sup> A, no.771; V. Chapot, *La Province romaine proconsulaire d'Asie* (Paris 1904) 306; L. Robert, *Études anatoliennes* (Paris 1937) 128 (= *AE* 1938 p.157); D. Magie, *Roman Rule in Asia Minor* (Princeton 1950) 1581; Sherck, *op.cit.* (*supra* n.1) 353. H. Furneaux, *The Annals of Tacitus*<sup>2</sup> (Oxford 1907) 2.439, followed by Forrest, *SEG loc.cit.* (*supra* n.1), identifies this Vetus with the consul of A.D. 55 (*PIR*<sup>2</sup> A, no.776), dating his proconsulship to A.D. 64/65. But the disgrace and suicide of L. Antistius Vetus in A.D. 65 (*Tac. Ann.* 16.10f) makes this identification difficult in view of the honorific reference to Vetus in line 4 of the Chios inscription. The wording of the reference to Augustus in lines 18–19 also implies that the latter was alive at the date of composition.

cited states that Roman residents of Chios are to observe the laws of the Chians.<sup>3</sup> While a preceding provision which guarantees to the Chians the use of their own laws corresponds to similar clauses in decrees where the privileges of other free or federate cities are regulated, and may be assumed to have been a regular concomitant of such privileged status,<sup>4</sup> this explicit statement of Roman obligation to local law is quite without parallel.

Discussion of the standing of Roman citizens before the judiciaries of the Greek cities notoriously suffers from a dearth of unequivocal evidence. Since the Chios inscription appears to provide one important certainty, it figures in most discussions of the judicial and constitutional rights of free cities and of the relation of Roman residents to their judiciaries.<sup>5</sup> It is, therefore, the more disappointing to discover that the clause which regulates the Romans' relation to Chian laws has been lifted from the document to provide support for a wide range of theories. It has, moreover, usually received passing treatment within the scheme of some wider study which is not concerned to examine either its historical context or even its setting within the document. But the document has remained something of a puzzle, and it would seem that the Romans who were attracted to the free island of Chios by the wealth of its vineyards and its flourishing harbour could hardly have left us a more effective and intriguing memorial.<sup>6</sup>

<sup>3</sup> Lines 17–18: οἱ τε παρ' αὐτοῖς ὄντες Ῥωμαῖοι τοῖς Χείων ὑπακούωσιν νόμοις. The fragmentary state of the document after line 19 leaves obscure the proconsul's reference to a letter sent by Augustus in 26 B.C. Cf. Tac. *Ann.* 3.62, an appeal by Magnesia in A.D. 22 to a decree of Sulla. For the storing of such documents and their production in evidence before the governor, see Plin. *Ep.* 10.58, 110; Cic. *Att.* 5.21.11, with M. Frederiksen, *JRS* 55 (1965) 184–87.

<sup>4</sup> For parallels from the Sullan period, see Abbott and Johnson, *op.cit.* (*supra* n.1) no.16 line 12, no.17 lines 48 and 89, no.19 line 8. Cf. Polyb. 18.46.5, 21.46.7; Livy 37.32.13, 38.39.12.

<sup>5</sup> See S. Accame, *Il dominio romano in Grecia dalla guerra acaica ad Augusto* (Rome 1946) 64f, for a summary of the controversy.

<sup>6</sup> For the status of Chios see App. *Mithr.* 61; Plin. *HN* 5.38.136. The island may have been free since 189 B.C. (Polyb. 21.45.6; Livy 38.39.11). See B. V. Head, *Historia Numorum*<sup>2</sup> (Oxford 1911) 601, for Chian coinage after the Sullan settlement. For the island's thriving vineyards and export trade, see Plaut. *Curc.* 78; Hor. *Sat.* 2.8.15,48; Plin. *HN* 36.4.12; Head, *op.cit.* 599f; Magie, *op.cit.* (*supra* n.2) 45f; P. Gardner, "The Financial History of Ancient Chios," *JHS* 40 (1920) 160f; J. Boardman, *PBSA* 53–54 (1958–59) 304f. For the Roman residents, see B. Haussoullier, *RevPhil* 34 (1910) 120f; C. E. Goodfellow, *Roman Citizenship* (Bryn Mawr 1935) 52f; T. R. S. Broughton, "Roman Asia Minor," in T. Frank *et al.*, *An Economic Survey of Ancient Rome*, IV (Baltimore 1938) 543, 546; A. J. N. Wilson, *Emigration from Italy in the Republican Age of Rome* (Manchester 1966) 174, 191. Roman finds on Chios are listed by

One authoritative interpretation of this text relates the Senate's ruling on Roman residents' obligation to observe local law to fiscal matters, and claims that the intent of the clause was to compel Roman landowners to share the burden of civic taxes and liturgies.<sup>7</sup> This interpretation is unsatisfactory for several reasons. It is a written ruling of Vetus which his successor is apparently rescinding (*ἐπιστολή*, lines 3, 6), having reversed his previous decision to uphold this ruling on reading the cited terms of the *senatus consultum*, and it is unlikely that the fiscal liability of native-born Romans would be a matter for such a ruling by an individual proconsul. Nor is it likely that a proconsul would be so uncertain about the standing of Roman citizens in this regard as to change his mind on the basis of a decree of 80 B.C. and proceed to submit them to local taxes. The latter objection has more force if it is contended that the fiscal liability of enfranchised Greeks is in question, since at this date the governor would surely follow the recent and firm precedent set by Augustus over such a dispute in a senatorial province in 6 B.C. and not a decree of the Sullan period.<sup>8</sup> Nor, indeed, is it likely that this *senatus consultum* would itself have made the major decision of rendering Roman citizens liable to local tax in so brief a phrase.

The phrasing and vocabulary of the document point, rather, to a dispute of a judicial or legal nature as the context of the citation of the *senatus consultum*. A neglected clue to this is provided by the use of the term *τύπος* in the second proviso quoted from the decree, in which the Chians are declared free of interference by Roman magistrates.<sup>9</sup> Although I find no close parallel for the use of the term in an inscription of this date and kind, literary texts employ it to denote a written document used in legal procedure.<sup>10</sup> Of the later usages in

D. W. S. Hunt, *PBSA* 49 (1954) 161 no.333; J. Boardman, *PBSA ibid.*, 124, 126, 129; *PBSA* 56 (1961) 113 no.43. Cf. Cic. *Verr.* 2.1.20.52 for the Chian judiciary at work in 80/79 B.C.

<sup>7</sup> Broughton, *op.cit.* (*supra* n.6) 548, also "Roman Landholding in Asia Minor," *TAPA* 65 (1934) 207-39, at 211; M. Rostovtzeff, *The Social and Economic History of the Hellenistic World III* (Oxford 1941) 1570 n.58.

<sup>8</sup> Ehrenberg and Jones, *op.cit.* (*supra* n.1) no.311, Cyrene Edict III. But the term *Ῥωμαῖοι* used in the Chios inscription normally denotes native-born Romans. Note the fuller wording used to differentiate enfranchised Greeks in Cyrene Edict III. Cf. F. de Visscher, *AntCl* 14 (1945) 52.

<sup>9</sup> Lines 16-17: *ἵνα τε ὑπὸ μήθ' ὀτινιοῦν τύπων ὄσιν ἀρχόντων ἢ ἀνταρχόντων.*

<sup>10</sup> Philostr. *VS* 1.25.9 C 541 describes *τύποι* (plural) as a writ issued by the city court declaring judgement by default against a debtor who does not pay up. Pollux 8.28 defines *δίκησ λήξις* as *ὁ νῦν καλούμενος τύπος*. Cf. *LSJ s.v. λήξις* II, 'written complaint lodged with the

papyri, the well-attested meaning 'rescript' affords the most likely parallel to the use of the term in this decree.<sup>11</sup> These texts suggest that the word as used in the Chian decree refers to a ruling or directive issued in writing by the governor to treat a legal matter.

The context in the document lends itself to this interpretation. The letter which Antistius Vetus sent, and whose content is being appealed by the Chian envoys (lines 2–3), must have contained a decision or ruling of some sort, rather than a mere communication of fact, for it to be the object of such dispute and require his successor's decision whether or not to uphold it. This obvious implication, together with the fact that the proconsul cites the proviso about freedom from a Roman magistrate's *τύπος* while giving his reasons for cancelling the letter of Vetus (as lines 4ff clearly imply he had decided to do), support the suggestion that *τύπος* in the Senate's decree refers to a written decree or ruling. This in turn lends probability to the view that some particular legal issue is at stake rather than the general principle of Roman liability to taxation.<sup>12</sup> Since the Chians submitted the *senatus consultum* in order to substantiate their appeal against the letter of Vetus (lines 9–10), the implication is that they are protesting a written decision of a Roman magistrate on the ground that the Senate had guaranteed their freedom from such interference. Accordingly, there seems to be no good reason for assuming that taxation is involved at all.

A close reading of the inscription discovers further clues in the collocation of the three clauses from the *senatus consultum* and their rôle in the argument of the letter. The proconsul cites from the decree of 80 B.C. three provisions which are relevant to his decision

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Archon'. L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (Leipzig 1891) 96 n.6, suggests that Philostr. *loc.cit.* is referring to a magistrate's *mandatum de solvendo*.

<sup>11</sup> See F. Preisigke, *Fachwörter des öffentlichen Verwaltungsdienstes Ägyptens* (Göttingen 1915) 173, and *Wörterbuch der griechischen Papyrusurkunden II* (Berlin 1927) cols. 626–27 s.v. *τύπος*; E. Berneker, *RE* 7 A (1943) cols. 1799–1800 s.v. *τύπος*; P. M. Meyer, *Juristische Papyri* (Berlin 1920) 170f no.52, line 41.

<sup>12</sup> The phrase *τῶν κατὰ μέρος ζητημάτων* (line 8) suggests that a specific issue or series of issues was at stake rather than a general principle. The governor's request for written depositions from either side (lines 9–10) and the delivery of speech and counter-speech (*ἐξ ἀντικαταστάσεως*, lines 7–8) reinforce this impression. Cf. Preisigke, *Wörterbuch I* col.134. But Chapot, *op.cit.* (*supra* n.2) 125, and Goodfellow, *op.cit.* (*supra* n.6) 43, go beyond the evidence in claiming that Vetus' decree had been contrary to Chian law and in conformity with Roman law.

whether or not to uphold the ruling contained in his predecessor's letter. The first guarantees to the Chians use of the laws and customs which they enjoyed when they entered Rome's friendship (lines 15–16), the second provides that they are not to be subject to written directives (*τύπος*) of Roman magistrates or promagistrates (lines 16–17), and the third requires resident Romans to observe Chian laws (lines 17–18). The fact that he cites these three provisions while explaining his decision to revoke the ruling indicates that the Chians had complained that the letter of Vetus overrode their legal independence in a matter involving Roman citizens which would otherwise have been regulated by Chian law. Presumably, some resident Romans had bypassed Chian law precisely by obtaining a written ruling from the governor. In context, therefore, the collocation of these three provisions in the proconsul's explanation of his decision strongly indicates that judicial independence and freedom from the governor's control are in question. We may infer that Vetus had ignored the first provision of the Senate's decree by setting aside Chian legal procedure in favour of his own intervention, the second by the act of sending his ruling by letter, and the third by using his jurisdiction in the interest of the Romans who were presumably party to the dispute. What the particular question was on which Vetus had ruled we are not told, but the clear implication is that he had dealt with a matter which would otherwise have been regulated by Chian law. The cited portions of the *senatus consultum* should therefore be taken in conjunction as establishing a guarantee of the autonomy of the Chian legal system. Thus a strict interpretation of the provision concerning Roman observance of local law must take into account its close connection with the other two, both in the text and in the proconsul's exposition, a connection which clearly relates it to a context of legal procedure.

Most scholars have accepted, without argument, a judicial interpretation of this provision, but they have also made the basic assumption that its intention was to subject Romans to Chian laws in the sense of rendering them liable to trial before the Chian courts. The concepts of 'subjection' and 'liability' to Chian courts have thus become integral to this standard view.<sup>13</sup> A note of surprise is evident

<sup>13</sup> See e.g. J. Marquardt, *Römische Staatsverwaltung* I<sup>2</sup> (Leipzig 1881) 76; Th. Mommsen, *Römisches Staatsrecht* III<sup>3</sup> (Leipzig 1887) 702, 748; Mitteis, *op.cit.* (*supra* n.10) 86; A. H. J.

in some discussions, and some scholars have been so struck by the apparent comprehensiveness of this 'subjection' that they have either viewed it as an isolated puzzle<sup>14</sup> or have sought to contain it by the theory that it was a special favour granted to reward Chios for her endurance in the first Mithridatic war.<sup>15</sup> The latter view merely replaces one puzzle with another, since it is hardly conceivable that Rome would give away jurisdiction over her citizens to provincials as a reward.<sup>16</sup> A similar view would simply regard the provision as a clause peculiar to the particular treaty between Rome and Chios, on which no generalization should be based.<sup>17</sup> This theory, however, suffers from a total lack of proof that Chios was in fact a federate, as distinct from a simply free, city.<sup>18</sup> Other scholars have sought to mitigate the surprising aspect of this supposed subjection of Romans to local courts by the ingenious argument that if there was need of a *senatus consultum* to subject Romans to Chian laws, Romans cannot have been subject to the jurisdiction of cities which lacked this special concession. This argument accordingly leads to the more

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Greenidge, *The Legal Procedure of Cicero's Time* (Oxford 1901) 112; Abbott and Johnson, *op.cit.* (*supra* n.1) 341. Cf. G. H. Stevenson, *Roman Provincial Administration* (Oxford 1949) 82, and *CAH* 9.465; A. H. M. Jones, *The Greek City* (Oxford 1940) 118–19; H. Hill, *The Roman Middle Class* (Oxford 1952) 86; Wilson, *op.cit.* (*supra* n.6) 176; Sherck, *op.cit.* (*supra* n.1) 352.

<sup>14</sup> Cf. G. W. Bowersock, *Augustus and the Greek World* (Oxford 1965) 88.

<sup>15</sup> Th. Mommsen, *Römisches Strafrecht* (Leipzig 1899) 111 n.1, and *The History of Rome IV* (Eng. tr., London 1908) 54; Chapot, *op.cit.* (*supra* n.2) 37; Goodfellow, *op.cit.* (*supra* n.6) 43; A. Heuss, *Klio Beiheft* 18 (1933) 111; F. De Martino, *Storia della costituzione romana II* (Naples 1960) 334; Sherck, *op.cit.* (*supra* n.1) 352. Cf. P. Garnsey, *JRS* 56 (1966) 183.

<sup>16</sup> No such grant is found in the treaty of any other city rewarded for loyalty. The *lex Antonia de Termessibus* (Abbott and Johnson, *op.cit.* [*supra* n.1] no.19) col.2 lines 18f, and the *Epistula Caesaris ad Plarasenses et Aphrodisienses* (Abbott and Johnson, no.29) line 3, are often cited as parallels for local jurisdiction over Roman citizens. See, e.g., Marquardt, *op.cit.* (*supra* n.13) 78; Abbott and Johnson, no.44. But these documents make no specific reference to Roman liability to local courts, and are usually read in the light of the very interpretation of the Chios decree which I am calling into question.

<sup>17</sup> Accame, *op.cit.* (*supra* n.5) 64, 75–76. Accame seems led to this opinion by his assumption (66) that the right of access to judiciaries outside their home city which is granted to enfranchised Greeks in the Rhodus decree (Ehrenberg and Jones, *op.cit.* [*supra* n.1] no.301 lines 53f) was standard for new citizens; hence *a fortiori* native-born Romans would not normally be restricted to the courts of their city of residence. But since we have no other case of the grant of such privileges in conjunction with citizenship, they are not known to have been standard. In the Rhodus decree, they may also have had a limited and special purpose. See A. J. Marshall, "Friends of the Roman People," *AJP* 89 (1968) 39–55.

<sup>18</sup> Plin. *HN* 5.38.136 describes Chios as simply free. The existence of a *foedus* is also assumed by H. Volkmann, *Zur Rechtsprechung im Principat des Augustus* (Munich 1935) 143.

comfortable conclusion that Romans were normally free from the jurisdiction of the Greek city courts.<sup>19</sup>

Most scholars, however, have not hesitated to draw the very opposite conclusion. Some have deduced that the courts of allied and/or free cities generally possessed civil jurisdiction over Roman residents,<sup>20</sup> while others have ventured the inference that these courts also had criminal jurisdiction over Roman residents—a major claim to base on so short a phrase.<sup>21</sup> Mommsen himself was led to this uneasy conclusion, although he qualified his opinion by the conjecture that the decree must mean, not that Romans were to be treated just like Chians in court, but that the special rules which regulated suits between Chians and non-Chians on the island were also to be observed when the foreign party was Roman.<sup>22</sup>

Those who see a reference here to criminal liability, however, do not observe the significance of the term *τύπος*, which appears to be used elsewhere in a civil context. Moreover, the proconsul is referring to the clauses of the *senatus consultum* to establish the proper procedure for a dispute of a kind that his predecessor had attempted to settle by a ruling sent in a letter, and a decision by letter is an unlikely procedure for a criminal case involving Romans. But the possession by a Greek city of any degree of criminal jurisdiction over resident Romans is in any case improbable on general grounds. We have no clear case of the formal exercise of such jurisdiction by a Greek city of any status, and it is unlikely that Rome ever specifically conceded to a Greek city the right to punish Romans under criminal law since this would have been fatal to Roman prestige. Some have claimed to discern a reference to punishment of Romans by due process in Cyzicus and Rhodes, but even if this were so the strong reaction from Rome renders the idea of an explicit concession of a right to such jurisdiction from the Senate highly improbable.<sup>23</sup>

<sup>19</sup> J. Hatzfeld, *Les Trafiquants italiens dans l'Orient hellénique* (Paris 1919) 324; De Martino, *op.cit.* (*supra* n.15) II.334, 341.

<sup>20</sup> See, e.g., Marquardt, *op.cit.* (*supra* n.13) 78; P. Willems, *Le Sénat de la République romaine* II (Louvain 1883) 709; Greenidge, *op.cit.* (*supra* n.13) 112. Cf. Stevenson, *CAH* 9.465.

<sup>21</sup> Chapot, *op.cit.* (*supra* n.2) 125, 190, 351 (with marked hesitation); Mitteis, *op.cit.* (*supra* n.10) 86 n.5, 87 n.3; J. S. Reid, *The Municipalities of the Roman Empire* (Cambridge 1913) 483.

<sup>22</sup> *Op.cit.* (*supra* n.13) 702 n.2, 706 n.2. In *op.cit.* (*supra* n.15) 111, Mommsen later retreated, denying that Romans were ever actually involved in criminal suits in a free city's courts and admitting to doubts whether criminal liability is to be understood in the Chios decree.

<sup>23</sup> See Cass.Dio 54.7.6, 57.24.6; Tac. *Ann.* 4.36; Suet. *Tib.* 37; Cass.Dio 60.24.4. Cf. Suet. *Aug.* 47; Cass.Dio 60.17.3. The wording of these sources implies acts of violence rather than

A variant view of the Chios inscription finds proof in the document that it was specifically the grant of *amicitia*, involving reciprocity of rights, which entitled a city to exercise jurisdiction over Romans. One exponent of this view claims that the Senate expressly refers to Rome's *amicitia* with Chios to establish that Chios has this competence.<sup>24</sup> But in stating that Chians are to enjoy the laws and customs which they had at the time of entry into Rome's friendship (the first provision), the decree refers to the time of entry into *amicitia* simply to date and specify the laws to be maintained, and I can discern no obvious causal implication.<sup>25</sup> Moreover, no explicit connection is made in the document between *amicitia* and Roman observance of local law (the subject of the third provision) even for this dating purpose, which appears to be confined to the first provision.

Most of these discussions of the inscription, despite wide variation in other respects, have assumed that the terms of the *senatus consultum* were designed to make Roman residents liable to trial in Chian courts. Debate has therefore concentrated mainly on the theoretical extent of this liability. I wish to offer a fresh interpretation which questions this very assumption, basing my argument on the simple fact that the phrase in which Romans are directed to observe Chian laws contains no reference whatsoever to trial and litigation. The traditional view, I contend, goes beyond the evidence in assuming that Roman liability to trial must be involved. I shall argue that the Senate's injunction simply directs Romans to comply with Chian procedural and administrative law and that the law in question is probably that which concerned real estate.

I need not argue the point that it would be preferable to interpret the *senatus consultum* by reference to its immediate historical context than to follow the usual course of fitting it into a Procrustean theory

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regular processes of law, and the demotion of the cities makes this interpretation the more probable. See Hatzfeld, *op.cit.* (*supra* n.19) 323–24; Mommsen, *op.cit.* (*supra* n.13) 687; M. Lemosse, *Le régime des relations internationales dans le haut-empire romaine* (Paris 1967) 162f. *Contra*, Mitteis, *op.cit.* (*supra* n.10) 87 n.3; Accame, *op.cit.* (*supra* n.5) 76.

<sup>24</sup> L. Gallet, "Essai sur le Sénatus-Consulte 'De Asclepiade Sociisque'," *RevHistDroit*, SER. IV 16 (1937) 242ff, 387ff, at 288. Cf. V. Ferrenbach, *Die Amici Populi Romani republikanischer Zeit* (Strasbourg 1895) 70.

<sup>25</sup> See Abbott and Johnson, *op.cit.* (*supra* n.1) no.5, lines 20–25, for a reference to entry into *amicitia* made to date a submission. Cf. *ibid.* no.8, lines 21, 47.

of international relations.<sup>26</sup> We should therefore investigate events in Chios immediately prior to the issuing of the decree in 80 B.C. to see if we can discern the occasion for some particular dispute involving the competence of the local authority and the evasion of its laws by resident Romans. It would certainly be odd for a senatorial decree explicitly to assure a free city that resident Romans should comply with its laws if no problem or dispute had arisen in this connection. If so, it is better to seek some particular issue which would be likely to occasion a complaint of Roman evasion of local law than to assume that the Senate's ruling was made *in vacuo* to expound a point of international law.

The most likely occasion for such an issue is, I suggest, to be found in the return to the island of the Roman estate-owners who had fled before the invasion of Mithridates, and in particular their efforts to reclaim their estates and re-establish their titles of ownership. We could hardly discover a more promising situation for a Roman attempt to bypass the operation of local authority by invoking the governor's aid. The history of Chios during this period, together with some crucial detail about the fortunes of the Roman landowners, is mainly related in Appian's *Mithridatica*. From Appian's account we learn that the Romans fled from the island for the duration of the war, abandoning their estates to be taken over and worked by Chians.<sup>27</sup> The occupation of their estates by these Chian squatters would certainly have presented difficulties for the returning Romans when they sought to re-establish their titles, especially since Mithridates had abrogated Roman rights of ownership.<sup>28</sup> The subsequent wholesale transportation of the Chian population by Mithridates in the summer of 86 B.C., his settlement of Pontic colonists on the island, and the return of the Chians under the terms of peace must greatly have added to the chaos over land-titles. The returning Romans would now have to re-establish their titles to estates which had been occupied successively by Chian squatters and Pontic colonists.<sup>29</sup> The

<sup>26</sup> E.g. Mommsen's "die internationale Parität" (*op.cit.* [*supra* n.13] 702).

<sup>27</sup> App. *Mithr.* 46f. Mithridates complained (in the letter of *Mithr.* 47) that Chians were working the Romans' estates without paying tax into his treasury. Hatzfeld, *op.cit.* (*supra* n.19) 46f, thinks that the profits from these estates may have gone to the Chian government. If this was so, we have an additional source of friction with the returning Romans.

<sup>28</sup> Cf. App. *Mithr.* 22 and 62, with Broughton, *op.cit.* (*supra* n.6) 513-15, and Magie, *op.cit.* (*supra* n.2) 224.

<sup>29</sup> For the transportation, see App. *Mithr.* 47, 55; Aih. 6.91, p.266; Posidonius, *FGrHist* 87

restoration of property, proving of titles of ownership, and physical reoccupation of estates by the former residents or their heirs would have proceeded amid confusion and dispute and occasioned strong temptation for the Romans to bypass local procedures by appealing to the governor for intervention in their favour. It can also be imagined that a Roman returning after Sulla's victory would be in no mood to respect the niceties of Greek law if Roman authority could aid him to cut through irksome technicalities.<sup>30</sup>

A vivid illustration of the legal difficulties and confusion over property claims which could occur in the aftermath of prolonged absence during this same war is provided by the *senatus consultum de Asclepiade sociisque* of 78 B.C. The terms of this decree clearly anticipate struggle and legal difficulties for the returning Greek veterans in the reclaiming of long-standing debts, inheritances, lost real estate and forced levies on property. The decree refers *inter alia* to the selling of lands and houses during the owners' absence and proceeds to offer them a special guarantee of access to courts outside their native cities in order to assist them in their struggle for reinstatement. This decree, accordingly, also illustrates the desirability for those returning after such an absence to have an opportunity to bypass the local authority at choice and gain access to other, less interested judiciaries.<sup>31</sup>

The precise legal basis of the Roman residents' tenure of their Chian estates, together with the procedures necessary to re-establish

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§ 38 = Nicolaus, *FGrHist* 90 § 95. For the date, see Magie, *op.cit.* (*supra* n.2) 224, 1108 n.50. For the Pontic settlement, see Memnon, *FGrHist* 434 § 33. F. Koep, *RhM* 39 (1884) 216, suggests that the island was even renamed Berenice after a Pontic queen. Cf. Rostovtzeff, *op.cit.* (*supra* n.7) II.943; Chapot, *op.cit.* (*supra* n.2) 27f, 37f; Geyer, *RE* 15 (1932) cols. 2174–75, s.v. MITHRIDATES 12.

<sup>30</sup> For property damage on Chios during this war, see Joseph. *AJ* 16.2.2. The Chians refer to their sufferings in lines 13–14 of the Chios inscription. Possibly their state archives were damaged or destroyed. Cf. Abbott and Johnson, *op.cit.* (*supra* n.1) no.5 lines 25–27, and no.19 col. ii lines 1–5, for settlement of property-ownership after hostilities, and see Tac. *Ann.* 14.18 for the legal tangles which squatters could cause.

<sup>31</sup> IGR 1.118; C. G. Bruns, *Fontes Iuris Romani Antiqui*<sup>7</sup> (Tübingen 1909) no.41; S. Riccobono, *Fontes Iuris Romani Anteiustiniani*<sup>2</sup> I (Florence 1941) no.35; Sherck, *op.cit.* (*supra* n.1) no.22. Lines 12–17 relate to the need to recover property lost during absence in the war. I have argued in *op.cit.* (*supra* n.17) that the judicial privileges granted in this decree have a special purpose. We have no explicit reference to a pro-Pontic faction in Chios, but App. *Mithr.* 47 (the flight of some Chians to Sulla's camp) suggests that some were more favourable to Rome than others. Hatzfeld, *op.cit.* (*supra* n.19) 46, notes that we do not know whether Chios surrendered voluntarily to Mithridates or not.

this, cannot be reconstructed. But if we accept Schweighäuser's emendation *ἐγκτήματα* in the text of Appian which refers to these estates, their tenure will have been subject to the grant of the legal privilege of *γῆς ἔγκτησις* by the Greek authorities.<sup>32</sup> This would entail that Roman holdings were subject to Chian administrative regulation, a situation which provides the likely basis which we are seeking for a dispute between Romans and Chian authorities over administrative law in the immediate post-war period. Roman efforts to reclaim estates would be the more complicated if grants of *γῆς ἔγκτησις* had lapsed or been abrogated during the war, and it will be recalled that the Greek cities were tenacious of jurisdiction over property.<sup>33</sup> If the returning Romans sought to evade the requirements of Chian legal procedure by the expeditious course of an appeal to the governor for a ruling on their affairs, it is understandable that the Chian authorities should counter this affront to their autonomy by an embassy of complaint to the Senate. The Romans may have found the Asian governor compliant,<sup>34</sup> but the leading Chians could expect a favourable hearing in Rome, and they were successful in their appeal to the *summum auxilium omnium gentium*.<sup>35</sup> If the decree of 80 B.C. was indeed

<sup>32</sup> App. *Mithr.* 47. For *ἐγκτησις*, as a non-hereditary grant which allowed aliens to hold real estate, see Thalheim, *RE* 5 (1905) cols. 2584–85; E. Caillemer, *Dar.-Sag.* 2.1 (1899) 494ff; H. Francotte, *Les finances des cités grecques* (Liège and Paris 1909) 278ff; A. W. Gomme, *Essays in Greek History and Literature* (Oxford 1937) 55, 60; A. R. W. Harrison, *The Law of Athens* (Oxford 1968) 189, 199, 237ff. For a grant of landholding rights in Chios as a special reward, see D. W. S. Hunt, *PBSA* 41 (1940–45) 46 (ca. 300 B.C.). Hatzfeld, *op.cit.* (*supra* n.19) 299–300, holds that Romans were readily granted *γῆς ἔγκτησις* without the usual formalities and restrictions, citing Chios as one case of such a grant, but argues that it was not universally granted as a matter of course and that some cities might still withhold it. Cic. *Fam.* 13.53 may well refer to such a grant to a Roman in the phrase “... *id iuris in agris, quod ei Pariana civitas decrevit et dedit.*” Cf. Broughton, *TAPA* 65 (1934) 211 (*supra* n.7).

<sup>33</sup> Cf. Philostr. *VS* 1.25.2, p.532, Polemo's advice to the people of Smyrna not to surrender disputes over property to the governor since these lay within their own jurisdiction.

<sup>34</sup> The governors of Asia 83–80 B.C. were no models of correctness. L. Licinius Murena violated Sulla's agreement with Mithridates, while C. Claudius Nero countenanced the corrupt trial described in Cic. *Verr.* 2.1.28.71f. (Broughton, *MRR* II.64, 80). The embassy of Alabanda which protested infringement of its privileges before the Senate may have been sent immediately after the first Mithridatic war and thus may have involved Murena. See H. Willrich, “Alabanda und Rom zur Zeit des ersten Krieges gegen Mithradates,” *Hermes* 34 (1899) 305–11; A. H. M. Jones, *Cities of the Eastern Roman Provinces* (Oxford 1937) 63. Cf. Ch. Diehl and G. Cousin, *BCH* 10 (1886) 299–314; M. Holleaux, *REG* 10 (1898) 258ff; D. Magie, *op.cit.* (*supra* n.2) 994 n.32, and *Anatolian Studies presented to W. H. Buckler* (Manchester 1939) 175.

<sup>35</sup> Cic. *Cat.* 4.1.2. See App. *Mithr.* 46 for Chian refugees in Sulla's camp, and *ibid.* 47 for a secret embassy sent to him from Chios. Some leading Chians will therefore have had

issued in response to such an appeal, the unique specification of privileges which it contains finds explanation in the fact that it is an answer to specific complaints arising from a particular situation.<sup>36</sup>

Parallel cases of such interference by the governor are not hard to find. The letters in which Cicero requests governors to aid Romans in disputes with provincials or city authorities provide a ready source.<sup>37</sup> In one, he presents the case of a Roman who had been granted certain rights in landholding by decree of the unprivileged city of Parium, asking the governor to see that these rights are maintained and to ensure that any dispute arising over them is sent to the nearest Roman assize-centre.<sup>38</sup> The presumption is that the Parian authorities would claim jurisdiction over this matter, since they had granted the rights in question, and that the Roman wanted access to the governor's tribunal in case of difficulty. In this letter, accordingly, we find a Roman landholder, whose holdings were subject to local regulation, seeking assurance of these rights from the governor and access to his jurisdiction in case of trouble. It is also evident that governors could be prevailed upon to intervene in the administrative processes of the Asian cities. In another letter, Cicero asks the same governor to see to it that a citizen of Alabanda (probably a free state at this time) who had gone surety for a debt and whose surety was forfeit to the Roman Cluvius either pays off the sum or surrenders the pledged property to the latter's agents.<sup>39</sup> Cicero is later found asking a governor of Asia to help a freedman in a dispute with a citizen of unprivileged

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connections with Sulla. Lines 13–14 of the inscription itself suggest that the Chian case was forcefully presented.

<sup>36</sup> Lines 13–14 of the inscription describe protestations to the Senate of Chian loyalty and sufferings for the Roman cause, presumably to support a claim or appeal. The use of *εἰδικῶς ἐβεβαίωσεν* to describe the Senate's response (line 15) suggests a specific reassurance to meet a specific complaint. The second embassy of Alabanda (*supra* n.35), esp. lines 28ff, provides a parallel for such a complaint. For the embassies sent by Greek cities in 81/80 B.C. to settle their statuses, see Abbott and Johnson, *op.cit.* (*supra* n.1) nos. 16, 17 (Sherk, *op.cit.* [*supra* n.1] nos. 17, 18), with Chapot, *op.cit.* (*supra* n.2) 38ff. Cf. Cic. *Brut.* 90.312.

<sup>37</sup> Cf. J. M. Kelly, *Roman Litigation* (Oxford 1966) 56ff.

<sup>38</sup> *Fam.* 13.53.

<sup>39</sup> *Fam.* 13.56.2. The phrase *de hypothecis decedat* suggests that the property was real estate. Alabanda was free at the time of the embassy to Rome (see the inscription cited above, n.34) and was still free in Pliny's day (*HN* 5.190). Cf. Chapot, *op.cit.* (*supra* n.2) 114. Cluvius was probably an agent of Pompey. See E. Badian, *Roman Imperialism in the Late Republic*<sup>2</sup> (Oxford 1968) 83. The large legacy which Cluvius left to Cicero has interesting implications (*Att.* 13.46.3, 14.9.1, 14.10.3).

Colophon over some real estate, presumably by intervening.<sup>40</sup> These references establish both that Greek cities regulated landholding by Romans and that Romans on occasion exerted influence to invoke the governor's help in the disputes which arose. For the cities, appeal to the Senate or to the governor's successor was the obvious recourse.<sup>41</sup>

The fullest and most interesting parallel, however, is to be found in the case of Decianus, the Roman *eques* who owned estates in the territory of the free city of Apollonis.<sup>42</sup> The salient features of this episode are that Decianus attempted to acquire proper legal title for some shadily acquired estates by a formality of sale from the Greek women who previously owned the property. This attempt was frustrated by the condemnation for fraud in the courts of Apollonis of Amyntas, the women's *tutor* according to Greek law.<sup>43</sup> After this, the authorities of Apollonis struck the registration of the act of sale to Decianus from the city records.<sup>44</sup> So far, Decianus had proceeded in accordance with Greek law, and even after this check to his plans he continued to do so by applying to the Pergamene authorities to have the act of sale entered in their city records. Once again, he was unsuccessful. His next step was a fruitless application to P. Orbius, Asian governor of 64 B.C., followed by a renewed approach to his successor P. Servilius Globulus in 63 B.C. which was more auspicious. But in 62 B.C. L. Valerius Flaccus issued as governor a decree in the matter which was contrary to the interests of Decianus, after the latter failed to appear before him. Apollonis had sent ambassadors to Rome in 63 B.C. to protest the misdeeds of Decianus before the Senate,

<sup>40</sup> *Fam.* 13.69. Cf. also *Q.Fr.* 1.2.3.10, where we learn that Quintus high-handedly sent a written order to the authorities of free Apollonis concerning the disposition of a Roman's property.

<sup>41</sup> The Senate did on occasion support the rights of free cities. See the Alabanda inscription (*supra* n.34) and, for the *senatus consultum* which forbade governors to interfere in the recovery by Romans of loans to free cities, see *Cic. Att.* 1.19.9, 1.20.4, 2.1.10; cf. *Prov.Cons.* 4.7.

<sup>42</sup> *Cic. Flacc.* 29.70–33.83. Cf. Chapot, *op.cit.* (*supra* n.2) 41ff. For the family history of this C. Appuleius Decianus, see E. Badian, "P. Decius P. f. Subulo," *JRS* 46 (1956) 91–96.

<sup>43</sup> The discussion of E. Costa, *Cicerone Giureconsulto I* (Bologna 1927) 153ff, is confused by his assumption that Polemocrates was tried in the Pergamene courts. But cf. *Flacc.* 32.79, *mitto quod convicta ab Apollonidensibus*.

<sup>44</sup> *Flacc.* 30.74: *Condemnatus est Polemocrates sententiis omnibus; inritae venditiones, inritae proscriptiones*. The executive action of the Greek authorities may be inferred from the last four words.

and the decree of Flaccus was presumably issued in conformity with the *senatus consultum* passed in response to this embassy.<sup>45</sup>

The details of this story are not clear in Cicero's brisk narrative, but it has generally been assumed that the application to the Roman governor in the case of Orbius and Globulus was initiated by the authorities of Apollonis.<sup>46</sup> It is, however, more likely that it was Decianus who made these approaches and that the first action initiated by the Greeks themselves outside their own judiciary was the embassy to the Senate in 63 B.C.<sup>47</sup> The people of Apollonis are not explicitly described by Cicero as being active in any approach to Roman authority prior to the sending of this embassy and their subsequent approach to Flaccus in 62 B.C. to implement its terms. While we are given little detail of the transactions before Orbius and Globulus, it is neither stated nor implied that the authorities of Apollonis applied to either of these governors or were even represented before them.<sup>48</sup> Moreover, after the rejection of the registration of the act of sale by Apollonis and Pergamum, the next move was obviously up to Decianus, and he is the more likely to have approached Orbius in order to reverse this setback. By the same token, it is hard to see why the Greeks should make renewed application to the governor of 63 B.C. if they had succeeded in getting a favourable ruling from Orbius in the previous year. Decianus, on the other hand, would have had every reason to renew the approach in this way.

Accordingly, the story of Decianus presents an interesting case of the regulation of a Roman resident's transactions in real estate by the

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<sup>45</sup> *Flacc.* 32.77–78. The words "*Quid? si non decrevisset, sed edixisset, quis posset vere reprehendere?*" imply that Flaccus could have settled the dispute by an *edictum*, or executive ruling. Cf. T. B. L. Webster, *M. Tulli Ciceronis Pro L. Flacco Oratio* (Oxford 1933) 96. For the embassy to the Senate, see *Flacc.* 32.79: *Ad senatum nostrum me consule nonne legati Apollonidenses omnia postulata de iniuriis unius Deciani detulerunt?*

<sup>46</sup> See J. Duquesne, "Cicéron, 'Pro Flacco,' chap. 30–32 et l' 'In Integrum Restitutio'," *AnnGrenoble* 20 (1908) 285–323; Webster, *op.cit.* (*supra* n.45) 94. Cf. R. Dareste, *Nouvelles études d'histoire du droit* (Paris 1902) 108–16.

<sup>47</sup> Duquesne is misled by his acceptance of Dareste's faulty inference from Plin. *HN* 5.33.126 that citizens of Apollonis had to take cases involving Roman citizens to the Roman assize at Pergamum. But Pliny's statement "*Pergamena eius vocatur tractus iurisdictio. Ad eam conveniunt . . . Apollonidenses,*" shows, not that Apollonis belonged as a free city in Cicero's day to the assize-area of Pergamum, but that its status had changed by Pliny's day to that of a *civitas stipendiaria*. Cf. Jones, *op.cit.* (*supra* n.13) 130.

<sup>48</sup> *Flacc.* 31.76, *Apud P. Globulum, meum necessarium, fuisti gratiosior*, implies that Decianus initiated this application.

administrative law of a Greek city, a dispute over land-registration which led to the overriding of local authority by the application of a thwarted Roman to the governor, and the issuing of decrees in the matter from the Roman tribunal. Here too we find the sequel of an embassy of protest to the Senate which won a decree favourable to the city.<sup>49</sup> This provides a fair parallel for the events in Chios as I have reconstructed them. It should be noted in particular that in this case also the Roman was not directly party to an actual suit in the local courts nor was he involved in any trial before the Roman governor. The latter operated by issuing decrees to regulate the possession of the land and not by trial-proceedings.<sup>50</sup>

This episode is instructive for our understanding of the Chios inscription in other ways also. There is no indication in Cicero's account that at the outset Decianus was formally compelled to use the procedural law of Apollonis for his land transactions rather than expected to use it as the obvious and natural course. His use of the registration procedure at Apollonis and Pergamum seems a matter of convenience rather than formal requirement, and Cicero, who taunts Decianus for following Greek custom in other respects, betrays no shock at this use of Greek legal forms. Decianus accordingly presents the case not of a Roman 'subjected to' local law, but of a Roman who was willing to use local procedures where appropriate.<sup>51</sup>

Roman observance of local legal procedures was in itself no exorbitant expectation, and in the Chios decree only the explicit directive that they do so is unusual. For if local legal forms were the most natural and convenient instrument for dealings in land which lay under the cities' jurisdiction, most Roman residents could be expected to employ them as a matter of course and without formal compulsion. This being so, rulings establishing an actual obligation to comply with this law would rarely be called for. Romans would

<sup>49</sup> Duquesne (*supra* n.46) assumes that the Greeks were narrowly concerned with *integrum restitutio* at every stage of the dispute, even before the Senate. But the phrase "*omnia postulata de iniuriis*" (*Flacc.* 32.79, *cf. supra* n.45) implies general complaint rather than a request for a specific legal remedy peculiar to Roman law. The embassy may well have complained of the flouting of their laws and the bypassing of their judiciary by the approaches to Orbius and Globulus.

<sup>50</sup> See *Flacc.* 31.76–32.78 for the decrees of Orbius and Flaccus.

<sup>51</sup> It is not likely that Decianus had accepted the citizenship of Apollonis, especially since Cicero would undoubtedly have made great play with this while taunting him for his Greek dress and long absence from Rome (*Flacc.* 29.70).

naturally use local procedural law *except* when serious conflict arose with local authority and thwarted Romans thought it worthwhile to proceed by other means and attempt to involve the governor.<sup>52</sup> The governor, in turn, would not normally claim jurisdiction over real estate transactions in even a subject city's territory, since he had little time or reason to assume this responsibility regularly. He could be induced to intervene on occasion by the persuasions of *gratia*, but the very need for Cicero to send his *litterae commendaticiae* suggests that this was not the governor's regular business.

It is, on the other hand, equally significant that Decianus, the resident of a free city who initially observed its administrative requirements in the registration of the sale of real estate, also served at the Pergamene *conventus* in the *consilium* of Flaccus. So far from being cut off from Roman law by his place of residence, he played an important rôle in the running of the Roman assize.<sup>53</sup> Similarly, the *senatus consultum* of 80 B.C., in ruling that Romans should comply with Chian law, can hardly have placed them under the complete and exclusive jurisdiction of that law on the same footing as native Chians. It is not necessary to suppose that Romans had to use Chian law for all business and could not, for example, resort to the Roman tribunal for uncontroversial matters of personal law which required treatment under Roman law and to which the Chian authorities would be indifferent.<sup>54</sup>

To sum up, I suggest that the Chios inscription has been viewed in the wrong perspective because of a misplaced concern to determine exclusive spheres of jurisdiction. There is no compelling reason to discern in the terms of this decree a reference to Roman liability to trial by Chian courts, and observance of procedural law may be all

<sup>52</sup> But cf. Plut. *Praec. ger. reip.* 814E–815A, with J. H. Oliver, "The Roman Governor's Permission for a Decree of the Polis," *Hesperia* 23 (1954) 163–67, who shows how the cities themselves occasionally invited the governor's intervention in order to obtain his endorsement of measures which local magnates (including Roman residents) refused to observe.

<sup>53</sup> *Flacc.* 29.70, 32.77, 33.81. Yet Hill, *op.cit.* (*supra* n.13) 86, cites the case of Decianus to show that Romans were sometimes exclusively subject to the jurisdiction of a Greek court.

<sup>54</sup> Cf. *Digest* 1.18.2 and Plin. *Ep.* 7.16 for the governor's execution of adoption, emancipation of sons and manumission of slaves, which required treatment at Roman law to safeguard status. Note that Marcianus, in distinguishing *iusdictio contentiosa* and *voluntaria* (*Digest* 1.16.2), cites as examples of the latter manumission of children or slaves and adoption. See also Gai. *Inst.* 1.185, 195, for the governor's granting of *tutores* under the *lex Iulia et Titia*. A. H. M. Jones, "The Greeks under the Roman Empire," *DOPapers* 17 (1963) 3–19, at 4, notes that Roman residents regularly used Greek law and were obliged to follow Roman rules "only for certain aspects of family life."

that is in question. If so, the decree does not reveal an odd situation but one which fits the pattern of Roman use of such law varied with occasional intervention by the governor.<sup>55</sup> I further suggest that a likely occasion for such an intervention occurred after the first Mithridatic war, so that a delegation complained before the Senate of the disregard for Chian law shown by returning Romans while re-ordering their affairs. The unique clause concerning the relation of Romans to Chian law is best explained by the hypothesis that the decree was passed in answer to this delegation. Moreover, if this clause forms part of the settlement of a specific issue, it need not be interpreted as regulating the total legal standing of resident Romans since it essentially settles the question whether the governor should regulate Chian affairs which involved Romans by the sending of decrees. While Roman compliance with local administrative law is not unusual *per se*, this is the only known case in which formal clarification of this point was both demanded and granted. The clause under discussion remains unique, but I hope to have shown that it need not remain either surprising or inexplicable.

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<sup>55</sup> The rule cited from Gaius in *Digest* 50.1.29, "*Incola et his magistratibus parere debet, apud quos incola est, et illis, apud quos civis est,*" does not strictly apply to the Chian affair, but does indicate the common sense Roman attitude to such a situation.