Law and Power: Matthew, Paul, and the Anthropology of Law

by

David A. Kaden

A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Department for the Study of Religion
University of Toronto

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Abstract

This dissertation examines the relationship between legal discourse and the exercise of power in the Gospel of Matthew and the letters of Paul. Drawing from Michel Foucault’s understanding of power, I argue that relations of power are instrumental in forming law as an object of discourse in these two sets of texts. This approach differs from the current approaches to studying law in Matthew and Paul in that it raises the question of why law emerges as an object of discourse. Previous studies have, conversely, tended to focus on what the two writers’ views of law are and where these views situate them vis-à-vis their contemporaries in first century C.E. Judaism. The main problem with this approach is that the evidence in Matthew and Paul is inconclusive regarding whether the two writers are inside or outside of Judaism; and scholarship in both fields has reached a stalemate over this issue. By raising a more fundamental question—why law?—my dissertation invites an analysis of law that moves beyond the Jewish/Christian cultural context, and probes the issue of why law emerges as an object in a variety of cultural settings. I examine the ancestral customs of people groups in the Roman legal world, and also indigenous rules and customs in Indonesia, Mexico, the Philippines, and Hawaii, as outlined in ethnographic studies from the field of the anthropology of law. I identify two levels of power relations in each context: macro, inter-group relations; and micro, intra-group
relations. The interaction between the two generates a proliferation of discourse around the object law—or, in the indigenous contexts, a proliferation of law-like practices. An analogous macro-micro dynamic can be detected in Matthew and Paul, and this accounts for the proliferation of legal discourse in both sets of texts.
Acknowledgments

One thing that everyone who has worked on a major project knows, but which someone can really only learn in the doing, is that bringing a project of this scale to completion requires—to modify a seafaring expression—“many hands on deck.” A project such as this is the product of a team effort, which means of course that there were more people involved in helping me hone my arguments, tighten my logic, correct my errors, and improve my writing than I can possibly give credit to in this short space. So let me begin by thanking all those who made suggestions for improving this project over the past few years.

In terms of thanking specific people, pride of place must go to my supervisor John Kloppenborg. John is a brilliant scholar, who is exceptionally good at envisioning the forest of a project before dealing with the specific trees. It was John who said to me during one of our meetings, after reading several of my clumsily written chapters, “I think the problem you are really getting at in this project is, Why law?” I was stunned. And it took me several weeks of subsequent work to realize that he was right, and that he had managed to summarize the entire project in just two words. That conversation occurred in August of 2013. I spent the next six months rewriting four chapters with that specific question in mind, and working to fill in the details—the trees—that this two word question had now framed as a forest. But, as I say, John is not merely good at envisioning a project in its broad strokes; he also examines with scientific precision each and every brush stroke along the way. John sees all, makes suggestions for improvement, and in the process he transformed this wet-behind-the-ears graduate student into a scholar. I don’t think a greater complement can be made about one’s supervisor.

I wish to also thank the other members of my dissertation committee for their suggestions that helped to bring this project to completion. John Marshall and Terry Donaldson for their expert insights that sharpened my understanding of Paul. Joe Bryant for originally suggesting
several years ago that looking into the field of legal anthropology might be useful to me. And to my external examiner, Laura Nasrallah, whose careful, critical eye helped to focus my thinking in various ways.

Let me also express my gratitude to the Jackman Humanities Institute (JHI) and to its fellows, in particular Oisín Keohane, for helping me to consider how this project might appeal to a wider academic audience than simply Christian Origins people. My Chancellor Jackman Graduate Fellowship in the Humanities at the JHI allowed me to complete this project in much less time than I otherwise would have. Special thanks go to Pamela Klassen and Ruth Marshall, who helped to shape the theoretical vision of this project. I am indebted to Ruth for correcting my structuralist fallacies, and for helping me to think more intentionally as a Foucauldian. Ruth and I have become friends after our many conversations, and that is much more rewarding to me in the long run than whether we’ve gotten Foucault right.

Among my colleagues in the Department for the Study of Religion, I wish to especially thank Rick Last, Sarah Rollins, Ian Brown, Brigidda Bell, Callie Callon, Felipe Ribeiro, Ronald Charles, Tim Langille, Rebekka King, John Parrish, and all the members of the CRMA who helped me improve this project. To Nick Schonhoffer, R.I.P. I regret that you weren’t around long enough to see how our many conversations about J. Z. Smith planted the seeds that became this project. I will miss you. To Rick and Ian, in particular, thank you for bantering with me about Paul and the law over beers. We didn’t quite drain The Duke of its kegs, but we made a valiant attempt, and this project certainly benefited from our efforts.

I want to thank my parents for their unfailing support. Completing a Ph.D. saps you emotionally, physically, and intellectually. Their words of encouragement evoked my college baseball years when I could hear them yelling from the stands as I was pitching in the latter innings of a game with a sore arm and men on base, struggling to hang on to our team’s lead. I
don’t remember how I fared back then on the mound—bad memories tend to fade over time—but our many chats on the phone helped me to finish my doctorate. To my brothers, each of you has been remarkably successful in your various careers; your successes have driven me to push myself harder to keep up.

Lastly, I want to thank my wife and kids. Children, by virtue of being children, pull your head out of the Ph.D. clouds and remind you of what actually matters in life: laughing, playing board games, watching movies, chilling on the couch, reading *Harry Potter* together, going out to eat, etc. etc. etc. And kids don’t care about daddy the scholar; they love daddy the daddy, and that is refreshing. Finally, to my longsuffering wife. You are the rock of our family, and the anchor of my life. I would never have accomplished what I have thus far accomplished in this short life were it not for you. Words cannot possibly do justice. I love you and I thank you. The project is as much yours as mine.
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### Abbreviations

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<tr>
<td>ABD</td>
<td>Anchor Bible Dictionary. Edited by D. N. Freedman. 6 vols. New York, 1992</td>
</tr>
<tr>
<td>AcT</td>
<td>Acta theologica</td>
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<tr>
<td>Aen.</td>
<td>Aeneid</td>
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<td>A.J.</td>
<td>Antiquitates judaicae</td>
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<td>AJCL</td>
<td>American Journal of Comparative Law</td>
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<tr>
<td>AnBib</td>
<td>Analecta biblica</td>
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<tr>
<td>Ann.</td>
<td>Annales</td>
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<td>ANTCAnt</td>
<td>Abingdon New Testament Commentaries</td>
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<td>Aphr.</td>
<td>Aphrodisias and Rome</td>
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<tr>
<td>ARA</td>
<td>Annual Review of Anthropology</td>
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<tr>
<td>AThANT</td>
<td>Abhandlungen zur Theologie des Alten und Neuen Testaments</td>
</tr>
<tr>
<td>AUSTRA</td>
<td>American University Studies in Theology and Religion</td>
</tr>
<tr>
<td>BA</td>
<td>Biblical Archaeologist</td>
</tr>
<tr>
<td>BDSJC</td>
<td>Bible in Dialogue: Studies in Judaism and Christianity</td>
</tr>
<tr>
<td>BECNY</td>
<td>Baker Exegetical Commentary on the New Testament</td>
</tr>
<tr>
<td>BETL</td>
<td>Bibliotheca ephemeridum theologicarum lovaniensium</td>
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<tr>
<td>BEvT</td>
<td>Beiträge zur evangelischen Theologie</td>
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<tr>
<td>B.J.</td>
<td>Bellum judaicum</td>
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<td>BJS</td>
<td>Brown Judaic Studies</td>
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<td>BMW</td>
<td>Bible in the Modern World</td>
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<td>BNTC</td>
<td>Black’s New Testament Commentaries</td>
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<tr>
<td>BTB</td>
<td>Biblical Theological Bulletin</td>
</tr>
<tr>
<td>BZ</td>
<td>Biblische Zeitschrift</td>
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<tr>
<td>CA</td>
<td>Classical Antiquity</td>
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<td>C. Ap.</td>
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<td>Caes.</td>
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<tr>
<td>CCWJCW</td>
<td>Cambridge Commentaries on Writings of the Jewish and Christian World 200 BC to AD 200</td>
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<td>CNT</td>
<td>Commentaire du Nouveau Testament</td>
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<tr>
<td>ConBNT</td>
<td>Coniectanea neotestamentica or Coniectanea biblica: New Testament Series</td>
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<tr>
<td>CPJ</td>
<td>Corpus papyrorum judaicorum. Edited by V. Tcherikover. 3 vols. Cambridge, 1957–1964</td>
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<td>CSCS</td>
<td>Cambridge Studies in Cultural Systems</td>
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<td>Dial.</td>
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<td>Dig.</td>
<td>Digesta</td>
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<td>Dio</td>
<td>Dio Cassius, Historia romana</td>
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<td>Diodorus</td>
<td>Diodorus Siculus, Bibliotheca historica</td>
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<tr>
<td>DJD</td>
<td>Discoveries in the Judaean Desert</td>
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<tr>
<td>Abbreviation</td>
<td>Title</td>
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<tr>
<td>EKKNT</td>
<td>Evangelisch-katholischer Kommentar zum Neuen Testament</td>
</tr>
<tr>
<td>Ep. Tra.</td>
<td>Epistulae ad Trajanum</td>
</tr>
<tr>
<td>ERS</td>
<td>Ethnicity and Racial Studies</td>
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<td>FAT</td>
<td>Forschungen zum Alten Testament</td>
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<td>FB</td>
<td>Forschung zur Bibel</td>
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<td>Flacc.</td>
<td>In Flaccum</td>
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<tr>
<td>FRLANT</td>
<td>Forschungen zur Religion und Literatur des Alten und Neuen Testaments</td>
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<td>Greek Constitutions of Early Emperors</td>
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<td>HUCA</td>
<td>Hebrew Union College Annual</td>
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<td>HvTSt</td>
<td>Hervormde teologiese studies</td>
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<td>HW</td>
<td>History of Warfare</td>
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<td>JBL</td>
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<td>JEA</td>
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<td>Jerome Lectures</td>
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<td>JLASup</td>
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<td>JSOTSup</td>
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<td>Law and Society Review</td>
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<td>De migratione Abrahami</td>
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<td>MTSR</td>
<td>Method and Theory in the Study of Religion</td>
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<td>NA²⁷</td>
<td>Novum Testamentum Graece, Nestle-Aland, 27th ed.</td>
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<td>Nat.</td>
<td>Naturalis historia</td>
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NIB The New Interpreter’s Bible
NICNT New International Commentary on the New Testament
NIGC New International Greek Commentaries
NovT Novum Testamentum
NRSV New Revised Standard Version
NSBT New Studies in Biblical Theology
NTAbh Neutestamentliche Abhandlungen
NTM New Testament Monographs
NTOA Novum Testamentum et Orbis Antiquus
NTS New Testament Studies
PCC Paul in Critical Contexts
PCNT Paideia Commentaries on the New Testament
PG Philosophie und Geschichte
PNTC Pelican New Testament Commentaries
RB Revue biblique
RDGE Roman Documents in the Greek East
Res gest. Res gestae divi Augusti
RGE Rome and the Greek East
RPT Religion in Philosophy and Theology
RUSCH Rutgers University Studies in Classical Humanities
SAG Studien zur Alten Geschichte
SBEC Studies in the Bible and Early Christianity
SBLDS Society of Biblical Literature Dissertation Series
SBLGPS Society of Biblical Literature Global Perspectives on Scholarship
SBM Stuttgarter biblische Monographien
SFUSJ South Florida University Studies in the History of Judaism
SJLA Studies in Judaism in Late Antiquity
SNTSMS Society for New Testament Studies Monograph Series
SNTW Studies of the New Testament and its World
Somm. De somniis
SPAMA Studies in Philo of Alexandria and Mediterranean Antiquity
Spec. De specialibus legibus
SPhilo Studia philonica
STDJ Studies on the Texts of the Desert of Judah
SUNT Studien zur Umwelt des Neuen Testament
TA Theologische Arbeiten
TB Tyndale Bulletin
TDGR Translated Documents of Greece and Rome
Tib. Tiberius
TSAJ Texte und Studien zum antiken Judentum
USQR Union Seminary Quarterly Review
Vesp. Vespasianus
WBC Word Bible Commentary
WMANT Wissenschaftliche Monographien zum Alten und Neuen Testament
WUNT Wissenschaftliche Untersuchungen zum Neuen Testament
YLJ  The Yale Law Journal
ZNW  Zeitschrift für die neutestamentliche Wissenschaft und die Kunde der älteren Kirche
Chapter 1
Foucault, Smith, and Comparison

“What [St. Paul] wanted was power.” ~Nietzsche, The Antichrist, #42

1.1 Overview and Problem

M. Foucault observed that since the beginning of the eighteenth century there has been a “discursive explosion”—a “proliferation of discourses”—around the objects of sex and sexuality, and that certain “power mechanisms” made these discourses “essential.”¹ In this project, I borrow Foucault’s insight and apply it to the proliferation of discourses on law in the Second Temple period of early Judaism—the period when the Priestly source was completed and the Torah took its final form, halakhic debate became the mechanism for the segmentation of groups within Judaism, and those precepts that are used to demarcate the boundaries of Judaism (e.g. circumcision, Sabbath observance, kashrut) became objects of more intense focus. That the law becomes a topic of greater interest during this period is not new to scholars.² The question I am raising, however, is one that is rarely asked: why law? Or, in more explicitly Foucauldian language: why does law emerge as an object of discourse in this period?

I will address this question comparatively by probing the ways in which relations of power in a variety of cultural³ contexts generate discussions of law among social groups. I

³ I recognize that terms such as “culture” and “cultural” are difficult to define. My views of culture are essentially Weberian, and are summed up nicely by Clifford Geertz, who wrote, “[t]he concept of culture
examine a selection of textual materials from the later Second Temple period in chs. 4 and 5 (portions of Philo and Josephus, the Gospel of Matthew, and selections from the letters of Paul) and compare them cross-culturally with ethnographic studies from the field of the anthropology of law. My goal is to remedy some of the specific problems that I see in Matthean and Pauline scholarship on law, which I will detail briefly below and more fully in ch. 3. My main argument is that external, macro forces of power in each of the cultural situations that I study have begun to engage and even clash with local, micro relations of power within the social groups; and in the space of this interaction, discourses on law have begun to multiply. Since the indigenous groups in the ethnographic contexts are nonliterate, “law” is not formed as a codified object but as a set of practices that have become more frequent in the space of this macro-micro friction—a dynamic that I will describe in ch. 2. In each of the cultural situations that I investigate, certain laws or cultural practices have become problematic in the interaction between the macro and micro relations of power, and it is the perpetuity of these laws and practices in particular that is most at stake for the respective social groups.4

Before outlining the method I will use, and before I survey the specific problems that I see in Matthean and Pauline scholarship on law, I want to distinguish between the focus of this

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4 By focusing on power relations, I see confluence between this project and recent work in the academic study of religion; see William E. Arnal and Russell T. McCutcheon, The Sacred is the Profane: The Political Nature of “Religion” (Oxford: Oxford University Press, 2013): “Only by self-consciously [and] . . . continually anchoring human action in the mundane, historical world of interests and contests, will we ensure that our scholarship continually steers clear of unreflectively reproducing participant interests and self-understandings; after all, for scholars of the social, there is nothing religious about religion. The sacred is the profane” (pp. 130-131).
project and that of the tangential field of comparative law in antiquity. On the one hand, I am completely in agreement with B. Jackson’s observation that “[t]he best legal history is rarely achieved by scholars immersed in a single legal system.” One criticism that I have of Matthean and Pauline scholarship on law is its tendency to treat matters of law as a Jewish/Christian phenomenon without seriously investigating how law operates in different cultural contexts. By incorporating cultural materials from the anthropology of law, my project is in line with Jackson’s observation about the importance of examining multiple legal systems. On the other hand, I am not comparing disparate legal systems with each other, or comparing specific precepts from different legal systems; that is, I am not comparing, for example, the cultural customs of the Dou Donggo in Indonesia with Matthew’s views of the Sabbath. I suppose such a study could be undertaken, but I am not confident that it would produce useful results. There is nevertheless a rich tradition in Jewish Studies of comparing rabbinic and Roman legal systems, and also ancient and modern forms of law within Judaism. The work of B. Jackson has engaged both types of

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5 I am specifying “antiquity,” because there is a large and growing body of literature on modern comparative law. See for example the American Journal of Comparative Law published by the American Society of Comparative Law.


7 Henry S. Maine’s classic study (Ancient Law: Its Connection with the Early History of Society, and its Relation to Modern Ideas [Tucson: University of Arizona Press, 1986]) is an older exemplar of this approach despite its grounding in the evolutionary assumptions of the nineteenth century. For example, when surveying the development of law from its unwritten stage to its written stage typified in the codified Roman Twelve Tables, Maine remarked “there is no such thing as unwritten law in the world” (p. 12); “a barbarous society practice[es] a body of customs” (p. 17); and, reflecting the orientalist tenor of the age, “[w]e are not of course entitled to say that if the Twelve Tables had not been published the Romans would have been condemned to a civilisation as feeble and perverted as that of the Hindoos, but this much at least is certain, that with their code they were exempt from the very chance of so unhappy a destiny” (p. 19); cf. the discussion in Jackson, Essays, 8. Such assumptions about the development of law are built on the twin specters of “euro-centrism” and “orientalism”; see, for example, Teemu Ruskola, “Legal Orientalism,” MLR 101/1 (2003): 179-234.
comparison;\(^8\) and C. Hezser\(^9\) has more recently edited a collection of articles on wide-ranging topics that compare *inter alia* rabbinic and Roman legal conceptions of dispute settlement,\(^10\) legal fiction,\(^11\) slavery,\(^12\) households,\(^13\) marriage,\(^14\) and the status of children in intermarriages.\(^15\) Such studies have been made possible because of the groundbreaking investigations beginning in the early part of the twentieth century, which explored the relationship between rabbinic and Greco-Roman legal traditions.\(^16\) B. Cohen’s two-volume study\(^17\) can be situated in this stream of secondary literature, especially since it hints at parallel developments in both the Talmud and

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\(^8\) See the collection of articles in Bernard S. Jackson, *Jewish Law in Legal History and the Modern World* (JLASup 2; Leiden: Brill, 1980); also Jackson, *Essays*, esp. ch. 1.


Justinian’s *Digest*, and also the possible influence of the codified Twelve Tables on the compilation of the Mishnah.

My intention is not to criticize such approaches—though comparativists themselves have raised questions about whether tracing “influences” from one legal system to another is a useful object of investigation—but merely to show that such studies are being conducted by scholars who specialize in comparative law, and to underscore that comparing legal systems and individual precepts is not my primary focus. I am instead interested in power. More specifically, I compare relations of power in various cultural contexts, and observe how these relations operate to form law as an object. Accordingly, I am not treating law (or unwritten customs or rules in the case of the ethnographies) as a ready-made object—comprised of an essential group of traits—that exists apart from the discursive processes and social relations that make its emergence possible. The primary question I am trying to answer, therefore, is not what is said about law in various cultural contexts, but rather the Foucauldian question of what enables law as an object to appear?

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20 See, for example, Catherine Hezser’s comments: “the question of ‘influence’ must be considered inappropriate [in the current postmodern context of legal theory]. Whether a particular Roman legal text actually influenced a particular rabbinic utterance can neither be fully determined nor is it of great relevance. What is much more important is to investigate the ways in which rabbinic legal thinking participated in ancient legal thinking at large”; see introduction to *Rabbinic Law*, 1-16, here, 13.
21 See Michel Foucault, *The Archaeology of Knowledge and the Discourse of Language* (trans. Alan Sheridan; New York: Pantheon Books, 1972), 45: “the object does not await in limbo the order that will free it and enable it to become embodied in a visible and prolix objectivity; it does not preexist itself, held back by some obstacle at the first edges of light. It exists under the positive conditions of a complex group of relations.”
22 Cf. Foucault, *Archaeology of Knowledge*, 45. Legal scholars have mined Foucault’s writings to assess his views of law; see for example, Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (London: Pluto Press, 1994); and more recently, Ben Golder and Peter Fitzpatrick, *Foucault’s Law* (New York: Routledge, 2009). My intention in this project is not to identify
I have chosen to focus specifically on law in the Gospel of Matthew and letters of Paul for two reasons. First, both sets of texts contain comparatively more numerous and denser discussions of law than their contemporaries in the early Jesus movement, which, in my opinion, invites a Foucauldian approach that explores how power relations make possible these discussions. Foucault saw the exercise of power as instrumental in the proliferation of discourses on sex, arguing that since the eighteenth century these discourses “did not multiply apart from or against power, but in the very space and as the means of its exercise.”

I will describe Foucault’s perspective of power in greater detail below. Second, while the history of scholarship on these two sets of texts is plentiful and rigorous, both fields are fractious, and there are few points of agreement among scholars. The lack of consensus suggests to me that the time has come to reassess the approaches that are routinely deployed by scholars in both fields.

Here I will only summarize my conclusions from ch. 3. Scholars in both fields over the past fifty years have tended to explore what Matthew and Paul say about the law in order to compare their findings with “Jewish” views of the law, or with an aspect of Judaism, or simply with Judaism itself. At stake in these studies is determining whether Matthew and Paul are still part of first century C.E. Judaism, which implicates a series of derivative issues of concern to scholars, including, for example, deciphering the identities of Matthew and Paul, pinpointing

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24 There has been a very recent move to situate Paul’s views of law in a Roman imperial context, which I welcome for reasons that will become clearer as my argument develops.

the beginning of the so-called “parting of the ways” between Judaism and Christianity, and extrapolating from the analysis of law in Matthew and Paul in order to address ecumenical issues such as improving relations between Jews and Christians after the horrors of World War II. These are laudable goals; yet the many detailed studies of law in both fields have not yielded results that scholars can agree on. Indeed, the argument I make in my literature review in ch. 3 is that both fields are at an impasse with respect to situating Matthew and Paul among their contemporaries in first century Judaism. Two examples will suffice at this point to demonstrate this, one from each field. G. Stanton has argued that Matthew’s views of the law and his polemical language signify that his group has separated from Judaism and no longer observes certain precepts of the law, such as the Sabbath. A. Saldarini comes to the opposite conclusion. He argues that Matthew is still within Judaism, that Matthew should be situated among other post-destruction (i.e. post-70 C.E.) Jewish texts, and that Matthew’s group is fully law

26 The name that is most closely associated with the phrase “parting of the ways” is of course James D. G. Dunn; however, his particular views of Paul and the law are constructed in reaction to those of E. P. Sanders, who sees a more overt distinction between the “Christian” Paul and Judaism; see the discussion in ch. 3 below; see also Dunn’s “The Question of Anti-Semitism in the New Testament Writings of the Period,” in Jews and Christians: The Parting of the Ways A.D. 70-135 (ed. James D. G. Dunn; WUNT 1/66; Tübingen: Mohr Siebeck, 1992), 177-212, esp. 181 fn. 21. For a critique of Dunn’s approach, see especially Paula Fredriksen, “What ‘Parting of the Ways’?: Jews, Gentiles, and the Ancient Mediterranean City,” in The Ways that Never Parted: Jews and Christians in Late Antiquity and the Early Middle Ages (ed. Adam H. Becker and Annette Yoshiko Reed; Minneapolis: Fortress, 2007), 35-64, esp. 35 fn. 1.

27 E.g. Lloyd Gaston, Paul and the Torah (Vancouver: University of British Columbia Press, 1987), 34, who mentions “the agonized concern of many in the post-Auschwitz situation.” See also John G. Gager, Reinventing Paul (Oxford: Oxford University Press, 2000), 150-151: “my sense is that the Nazi Holocaust, together with the founding of the state of Israel, account for the possibility of reading Paul in a new way.”

observant.\(^\text{29}\) Among Pauline scholars, M. Nanos insists that Paul should be located “within or for or representing Judaism,” and that Paul remained a law observant Jew his entire life.\(^\text{30}\) S. Westerholm draws a different conclusion from Paul’s statements about the law. He argues that Paul sees the law as fundamentally flawed in that it cannot rectify humanity’s core problem of “captivity to sin,”\(^\text{31}\) which indicates that for Paul “the Sinaitic economy” is “temporary by design,” playing a “role [that is] negative and preparatory.”\(^\text{32}\)

These scholars are representative of the opposing camps that have emerged in both fields of scholarship over the fundamental issue at stake in these studies: where are Matthew and Paul to be situated vis-à-vis first century C.E. Judaism? One reason why scholars have had difficulties agreeing on an answer to this question is that they do not agree on the related question: what do Matthew and Paul say about the law? Since most studies use Matthew’s or Paul’s views of the law to gauge the two writers’ proximity to Judaism, the lack of agreement on what these views are leads to a lack of agreement on the question of proximity. Another reason why scholars do not agree on where to situate Matthew and Paul vis-à-vis Judaism is that they cannot agree on a definition of “Judaism.” Scholars use a variety of terms to demarcate first century C.E. Judaism—synagogue Judaism, post- destruction Judaism, common Judaism, Pharisaic Judaism, formative Judaism, or some similar designation—but because each category is a construct, the degree of correlation between the category and the actual Judaism encountered (or practiced) by Matthew or Paul cannot be determined with certainty.


\(^\text{32}\) Westerholm, *Perspectives Old and New on Paul*, 300; italics original.
My primary interest in this project is different from this approach in that I focus less on what Matthew and Paul say about law, and where this situates them vis-à-vis their contemporaries in Judaism, than on what makes possible the two writers’ discussions of law. In particular, I raise the question of why law emerges as an object of discourse for Matthew and Paul, which is to raise the Foucauldian question of power. As I will demonstrate further below, Foucault sees relations of power as instrumental in forming objects for investigation, which means that it is the exercise of power and not some essential feature or trait that accounts for the emergence of law as an object of discourse. In Matthean and Pauline scholarship on law, however, there is an assumption that law is an essentially Jewish thing, which implies that the Jewish/Christian cultural context provides the only relevant setting for investigating the topic of law in Matthew and Paul. I reject this assumption, and explore how law (or unwritten cultural rules and customs) emerges or becomes an object in a variety of cultural contexts, not only from the Jewish context in the ancient Roman world, but also from more recent ethnographic studies in the field of the anthropology of law. Over the past century, ethnographers have gathered abundant cross-cultural materials from various indigenous contexts, something to which theorists of comparative law in antiquity have generally paid little attention, and scholars of

33 Foucault, *History of Sexuality*, 98.

34 A similar observation has been made by Niko Huttunen, *Paul and Epictetus on Law: A Comparison* (LNTS 45; New York: T&T Clark, 2009), 1.

35 Primogenitors in the field of legal anthropology are Bronislaw Malinowski, *Crime and Custom in Savage Society* (New York: Harcourt, Brace & Co., 1926), and Karl N. Llewellyn, and E. Adamson Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman, Okla.: University of Oklahoma Press, 1967). Llewellyn and Hoebel are widely regarded to have made the most important initial foray into this field.

Christian origins who specialize in law have ignored entirely. Anthropologists have observed that “law” is not necessarily something codified in these contexts, but is something culturally specific, an aspect of “local knowledge”; it is a feature of human culture that “gains force inter alia through a number of social mechanisms.” In this project I examine ethnographic materials from Indonesia, Mexico, the Philippines, and Hawaii with the goal of using such materials analogously to defamiliarize the well-worn fields of Matthean and Pauline scholarship on law, and thus to reframe in broader cultural terms how law is discussed in both fields of scholarship.

37 Clifford Geertz, “Local Knowledge: Fact and Law in Comparative Perspective,” in Clifford Geertz, Local Knowledge: Further Essays in Interpretive Anthropology (New York: Basic Books, Inc., 1983), ch. 8. Geertz argues that law is part of “local knowledge; local not just as to place, time, class, and variety of issue, but as to accent—vernacular characterizations of what happens connected to vernacular imaginations of what can. It is this complex of characterizations and imaginings, stores about events cast in imagery about principles, that I have been calling a legal sensibility” (p. 215); “law is local knowledge not placeless principle and . . . it is constructive of social life not reflective” (p. 218).


39 Jonathan Z. Smith, introduction to Imagining Religion: From Babylon to Jonestown (Chicago: University of Chicago Press, 1982), xi-xiii, esp. xiii, where Smith cites Victor Shklovsky, “Art as Technique,” in Russian Formalist Criticism: Four Essays (ed. Lee T. Lemon and Marion J. Reis; Lincoln, Nebr.: University of Nebraska Press, 1965), 3-24: “the historian of religion, like the anthropologist, will . . . gain insight from the study of materials and cultures which, at first glance, appear uncommon or remote. For there is extraordinary cognitive power in . . . ‘defamiliarization’—making the familiar seem strange in order to enhance our perceptions of the familiar.”
1.2 Method

Undertaking a comparison of this sort that examines such disparate cultural materials requires careful thought about method. Comparison is more complicated than simply juxtaposing two or more aspects of culture and then drawing conclusions. It requires disciplined thought about what exactly is being compared and for what reasons, and why particular cultural materials have been selected as objects of investigation.40 Scholars of comparative law have grappled with the issue of method, especially as it relates to comparing legal systems or specific precepts from two or more legal systems.41 I have already noted that this sort of comparison is not my primary focus in this project. For my purposes, the comparative method of J. Z. Smith from the study of religion is most useful. This is because Smith has frequently drawn from ethnographic materials in his body of work, which provides a methodological template for my use of these materials in this project.

1.2a

40 This is of course quite complicated. E. E. Evans-Pritchard wrote, “‘[t]here is only one method in social anthropology, the comparative method— and that is impossible’”, quoted in Niewöhner and Scheffer, “Thickening Comparison: On the Multiple Facets of Comparability,” in Scheffer and Niewöhner, Thick Comparison, 1-15, here, 8.

Smith argues that “the enterprise of comparison” is tied to the individual scholar’s intellectual program. It is the scholar who decides what should be juxtaposed and for what reasons. This means for Smith that there are in principle no ontological reasons why two or more items or features of culture should be compared; there is nothing inherent in the cultural materials themselves that requires their being compared:

[T]here is nothing ‘natural’ about the enterprise of comparison. Similarity and difference are not ‘given’. They are the result of mental operations. . . . In the case of the study of religion, as in any disciplined inquiry, comparison, in its strongest form, brings differences together within the space of the scholar’s mind for the scholar’s own intellectual reasons. It is the scholar who makes their cohabitation—their ‘sameness’—possible, not ‘natural’ affinities or processes of history.42

A comparison is a disciplined exaggeration in the service of knowledge. It lifts out and strongly marks certain features within difference as being of possible intellectual significance, expressed in the rhetoric of their being ‘like’ in some stipulated fashion. Comparison provides the means by which we ‘re-vision’ phenomena as our data in order to solve our theoretical problems.43

Strictly speaking, then, a scholar can compare any set of cultural materials that he or she finds interesting as long as it can be explained why this particular set of materials was selected instead of that set.44 Making such a determination involves careful consideration of the similarities.45

42 Jonathan Z. Smith, Drudgery Divine: On the Comparison of Early Christianities and the Religions of Late Antiquity (Chicago: University of Chicago Press, 1990), 51. Smith writes that “the enterprise of comparison, in its strongest form, brings differences together solely within the space of the scholar’s mind. It is the individual scholar, for his or her own good theoretical reasons, who imagines their cohabitation, without even requiring that they be consenting adults—not processes of history, influence, or diffusion which, all too often, have been held to be both the justification for and the result of comparison” (p. 115); cf. Jonathan Z. Smith, “The ‘End’ of Comparison: Redescription and Rectification,” in A Magic Still Dwells: Comparative Religion in the Postmodern Age (ed. Kimberley C. Patton, and Benjamin C. Ray; Berkeley: University of California Press, 2000), 237-241, esp. 239.

43 Smith, Drudgery Divine, 52; italics original.

44 There is of course a sense in which any scientific study proceeds more or less on the individual scholar’s ‘‘hunch’’ to borrow a term from Valcke, “Reflections on Comparative Law Methodology,” 29.

and differences\textsuperscript{46} of the materials being compared with a view to addressing the questions “‘how’ 
. . . ‘why’ and, above all, . . . ‘so what’,”\textsuperscript{47} which is especially challenging for comparativists
who draw from widely disparate cultural materials:

There are many days when the cultural comparativist feels like the frustrated hunter of the
African plains must feel when confronting the myriad of historical and ethnographic details that
cross her or his desk. There is so much that it seems impossible to find significance in any one.
There is so much that the comparativist spends most of the working day deciding what not to
study, what facts to refuse to take up as potential data.\textsuperscript{48}

One of the clearest examples in Smith’s body of work of a step-by-step procedure for doing
comparison can be found in the article “Sacred Persistence: Toward a Redescription of

\textsuperscript{46} Jonathan Z. Smith, To Take Place: Toward Theory in Ritual (Chicago: University of Chicago Press, 1987), 13-14: “It is axiomatic that comparison is never a matter of identity. Comparison requires the acceptance of difference as the ground of its being interesting, and a methodical manipulation of that difference to achieve some stated cognitive end. The questions of comparison are questions of judgment with respect to difference: What differences are to be maintained in the interests of comparative inquiry? What differences can be defensibly relaxed and relativized in light of the intellectual tasks at hand?” Cf. also Jonathan Z. Smith, “Differential Equations: On Constructing the Other,” in Jonathan Z. Smith, Relating Religion: Essays in the Study of Religion (Chicago: University of Chicago Press, 2004), 230-250; “What a Difference a Difference Makes,” in Smith, Relating Religion, 251-302, esp., 275; and “In Comparison Magic Dwells,” in Smith, Imagining Religion, 19-35: “Comparison requires the postulation of difference as the grounds of its being interesting” (p. 35). The scholar needs to be careful with the category “difference,” however, because he or she needs to avoid positing that particular cultural materials are “unique”; see Smith, To Take Place, 34-35: “Uniqueness denies the possibility of comparison and taxonomy; . . . absolute difference is not a category for thought but one that denies the possibility of thought.”


\textsuperscript{48} Smith, “Differential Equations,” 242. See similarly, Jonathan Z. Smith, “Map is Not Territory,” in Smith, Map is Not Territory, 289-309: “the philosopher or the theologian has the possibility of exclaiming with Archimedes: ‘Give me a place to stand on and I will move the world’. There is, for such a thinker, the possibility of a real beginning, even of achieving The Beginning, a standpoint from which all things flow, a standpoint from which he may gain a clear vision. The historian of religion has no such possibility. There are no places on which he might stand apart from the messiness of the given world. There is, for him, no real beginning, but only the plunge which he takes at some arbitrary point to avoid the unhappy alternatives of infinite regress or silence. . . . The historian’s task is to complicate not to clarify. . . . Like a pilgrim, the historian is obliged to approach his subject obliquely. He must circumambulate the spot several times before making even the most fleeting contact. . . . The historian’s manner of speech is [consequently] often halting and provisional” (pp. 289-290). Smith uses this same metaphor in “The Influence of Symbols upon Social Change: A Place on Which to Stand,” in Smith, Map is Not Territory, 129-146.
In what follows I will detail the main features of the article (section 1.2b), and highlight a key aspect of it that I find troubling, namely, Smith’s understanding of the category of “similarity” in the disparate cultural materials that he juxtaposes (section 1.2c). This will segue into a discussion of how I am incorporating Foucault’s approach into this project (section 1.3).

1.2b

One advantage of the article “Sacred Persistence” is that Smith deals well with the category of “difference” in cultural materials by demonstrating the usefulness of cross-cultural comparison. By introducing different sets of cultural materials, Smith shows how well-worn topics in scholarship can be reframed in broader cultural terms. In the article, Smith accepts the challenge of J. Neusner that the study of Judaism should be used by scholars to reconsider some of the well-worn categories of the history of religions.50 One such category for Smith is the notion of canon in western “religious” traditions, of which Judaism is the primogenitor. Smith proposes to compare this topic with the divinatory practices of non-literate indigenous groups.51 The effect of the comparison will be to redescribe “the canon and its authority,”52 which means that Smith will reframe in broader cultural terms the phenomenon of canon by demonstrating that non-text-based objects in non-western traditions can function like canons.53

50 See citation in Smith, Imagining Religion, 141 fn. 1.
53 Smith, “Sacred Persistence,” 44: “I have drawn many of my [comparative] examples from nonliterate peoples in order to further the enterprise of redescription. Such societies would seem, at first glance, to be those for whom the category of canon would be most difficult to establish, as the notion of canon, in ordinary use, is primarily associated with the western ‘Peoples of the Book’ (Judaism, Christianity, Islam, and Manichaeism and other Iranian traditions).”
As with many of Smith’s articles, the argument in “Sacred Persistence” develops in stages, and is woven together with a variety of seemingly divergent threads. Smith begins by taking his cue from discussions of “religion” in Cicero and Freud, both of whom highlight the persistence of certain exegetical activities in people, and labels this behavior “sacred persistence: the rethinking of each little detail in a text (Cicero), the obsession with the significance and perfection of each little action (Freud).” This “rethinking of” and this “obsession with” minutiae is for Smith a cultural action that is replicated in the treatment of foodstuff:

A given foodstuff represents a radical, almost arbitrary, selection out of the incredible number of potential sources of nutriment that are at hand. But, once the selection is made, the most extraordinary attention is given to the variety of its preparation. . . . The same sort of process may be observed with respect to every important human phenomenon . . . . An almost limitless horizon of possibilities that are at hand (in nature) is arbitrarily reduced (by culture) to a set of basic elements . . . . This ingenuity is usually accompanied by a complex set of rules.

Smith points out that “religious” behavior is more closely likened to the cultural treatment of food than to a form of *sui generis* human behavior with respect to its diversity, ingenuity, and attention to detail. This comparison sheds light on the intellectual agenda of the scholar of religion:

[T]he radical and arbitrary reduction represented by the notion of canon and the ingenuity represented by the rule-governed exegetical enterprise of applying the canon to every dimension of human life is that most characteristic, persistent, and obsessive religious activity. It is, at the same time, the most profoundly cultural, and hence, the most illuminating for what ought to be the essentially anthropological view point of the historian of religion and a conception of religion as human labor. The task of application as well as the judgment of the relative adequacy of particular applications to a community’s life situation remains the indigenous theologian’s task,

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57 Smith uses a “triadic” form of comparison to make this point. For a discussion of triadic comparison, see Smith, *Drudgery Divine*, 51. Smith defines this form of comparison as “‘x resembles y more than z with respect to . . . .’” Smith proposes another version of triadic comparison as well: “‘x resembles y more than w resembles z with respect to . . . .’” Smith is not consistent in his articulation of the triadic method of comparison. In “Bible and Religion,” in Smith, *Relating Religion*, 197-214, he seems to slip into a dyadic explanation of comparison (p. 198); cf. Smith, “The ‘End’ of Comparison,” 239.
but the study of the process . . . ought to become a major preoccupation of the historian of religion.\textsuperscript{58}

This conclusion authorizes Smith to begin a formal comparison of disparate cultural materials in order to demonstrate that “canon, broadly understood as the arbitrary fixing of a limited number of ‘texts’ as immutable and authoritative, is far from unusual.”\textsuperscript{59} This process of reframing begins with the redescription of canons as catalogs within the more general genre-type of the list.\textsuperscript{60} Once Smith has identified this correlation, he begins searching for similar cross-cultural examples, which he finds among the Iatmul of New Guinea (#1 below), and, borrowing from the summary provided by C. Lévi-Strauss, among the peoples of the Malay Archipelago (#2 below).\textsuperscript{61} I include portions of both catalogs here as well as a summary of Smith’s analysis of them:

\begin{itemize}
  \item \textbf{#1} the first time a boy kills an enemy or foreigner or victim bought for this purpose . . . the [first] killing of any of the following animals: birds, fish, eel, tortoise, flying fox; the [first] planting of any of the following plants: yams, tobacco, coconut, areca, betel, sago, sugar cane; . . . the [first] using of a spear thrower; . . . the [first] using an axe; . . . the [first] making a canoe; . . . the [first] beating a hand drum . . . ; the [first] travelling to another village and returning; . . . the [first] buying of an axe, knife, mirror or other trade goods.
  \item \textbf{#2} For several very primitive peoples of the Malay Archipelago, the supreme sin, unleashing a storm and tempest, comprises a series of superficially incongruous acts which informants list hiddlely-piggledy as follows: marriage with a near kin; father and daughter or mother and son sleeping too close to one another; incorrect speech between kin; ill-considered conversation; for children, noisy play; for adults, demonstrative happiness shown at social reunions; imitating the calls of certain insects or birds . . . ; laughing at one’s own face in the mirror; and, finally, teasing animals and, in particular, dressing a monkey as a man and making fun of him. What possible connection could there be between such a bizarre collection of acts? . . . A native remark puts us on the track. The Pygmies of the Malay Peninsula consider it a sin to laugh at one’s own face in the mirror, but they add that it is not a sin to ridicule a real human being [to his face] since he can defend himself. This interpretation obviously also applies to the dressed up monkey which is treated as a human being when it is teased and looks like a human being (just as does the face in the mirror), although it is really not one. This interpretation can be extended to the imitation of certain insects or birds. . . . Thus we find [in the list] two categories of acts definable as an
\end{itemize}

\textsuperscript{58} Smith, “Sacred Persistence,” 43.
\textsuperscript{59} Smith, “Sacred Persistence,” 44.
\textsuperscript{60} Smith, “Sacred Persistence,” 44-45.
\textsuperscript{61} Smith, “Sacred Persistence,” 46-47.
immoderate use of language: the first, from a quantitative point of view, to play noisily, to laugh too loudly or to make an excessive show of one’s feelings; the second, from a qualitative point of view, to answer sounds which are not words, or to converse with something (mirror or monkey) which is human only in appearance. These prohibitions are all thus reduced to a single denominator: they all constitute a misuse of language.  

Smith isolates traits from the catalogs that will become the focus of his comparison in the subsequent analysis. He first identifies the repetitive trait of “firsts” in #1, and observes that the otherwise “heterogeneous group of materials” is organized around this “single principle: the first performance of a cultural activity.” Smith also observes that the catalog is really a “map of a particular culture’s selection, out of the multitude of elements which make up [its] common life, those which are capable of bearing obsession, those which are understood as significant.” The organizing theme of the catalog, argues Smith, is “relations with strangers,” which is explicitly mentioned at the beginning when an enemy or foreigner is killed, and at the end when the themes of travelling to foreign villages and of trading foreign objects are listed. Similar principles can be discerned in #2, which also organizes seemingly heterogeneous elements around a common theme—in this case, the “misuse of language”—and maps the Malay’s selection of significant features, which become the focus of their attention.

After classifying such fixations with lists as Listenwissenschaft, which Smith notes is “an all but universal phenomenon,” he identifies differences between these catalogs and formal


63 Smith, “Sacred Persistence,” 46.

64 Smith, “Sacred Persistence,” 46.


66 Smith, “Sacred Persistence,” 47.
canons: missing from both catalogs are the “element of closure,” which would render the lists “complete,” and also the corollary of a “hermeneute,” who interprets and applies the canon “over everything that is known or everything that exists without altering the canon in the process.” In terms of method, Smith has thus far argued that canons are like lists but more like catalogs. And they are different from catalogs in that canons presume hermeneutics. The points of comparison have been sifted out of cross-cultural materials.

Smith then looks for cross-cultural examples of list-making that include the need for an interpreter and application to life circumstances, which is to say, examples that appear to “serve as functional equivalents to a written canon.” Among the Walbiri of Central Australia, the reduction of two hundred and fifty designs to a smaller number that can be “extended through combination . . . to accompany and encapsulate every narrative from a story of everyday activity to the report of a novel dream, or to the transmission of esoteric ancestral traditions,” shares the trait of application but not of interpretation. Both traits can, however, be seen in the practices of the Senufo and the Dogon. But Smith argues that even closer similarities with canons can be found among those peoples who practice divination:

Ndembu divination consists of shaking a basket in which some 24 fixed objects are deposited (e.g. a cock’s claw, a piece of hoof, a bit of grooved wood, a black withered fruit). These are

70 Smith, “Sacred Persistence,” 49.
71 Smith, “Sacred Persistence,” 49: “For example, the Senufo set of 58 figurines of human and animal forms presented to novices in a ‘fixed order’ with oral interpretation during initiation rites . . . ‘constitutes a sort of lexicon of symbols and different possible ways of using them.’ Or the even more complex, totalistic, theosophical system of 266 signs, capable of being ‘read’ in four different ways depending upon one’s stage of initiation, among the Dogon.” For the ethnographies that Smith is drawing upon here, see Imagining Religion, 142 fns. 25, 26.
shaken in order to winnow out ‘truth from falsehood’ in such a way that a few of the objects end up on top of the heap. These are ‘read’ by the diviner with respect to both their individual meanings and their combinations with other objects and the configurations that result. The client’s situation is also taken into account in arriving at an interpretation. . . . The total collection of 24 objects is held to be complete and capable of illuminating every situation. . . . What enables the fixed canon of divinatory objects in the diviner’s basket to be applied to every possible situation or question . . . is that, prior to performing the divination, the diviner has rigorously questioned his client in order to determine the latter’s situation with precision. The diviner functions with respect to his client much as the successful preacher functions with respect to his congregation. . . . It is the genius of the diviner in his role as hermeneute to match a public set of meanings with a commonly known set of facts . . . in order to produce a quite particular plausibility structure which speaks directly to this client’s condition.72

Yoruba divination is slightly different, but the same basic principles apply:

[A] large repertoire of poems . . . are correlated with a set of 256 divination figures . . . . The diviner selects one of these figures by a simple process. While shaking sixteen palm nuts in his loosely clasped hands . . . he abruptly tries to lift all of the nuts out of his left hand with his right. Because of the size of the nuts, it is virtually impossible to hold all sixteen of them in one hand; thus, one or two will remain in the left hand. If one nut remains, the diviner draws two parallel lines in the powder in his divination tray. If two nuts remain, he draws one line. He makes repeated casts and records his results until he completes a figure consisting of two parallel columns of four marks each. . . . This arrangement of marks forms one divination figure . . . . Since each column has 4 x 4, or 16 possible combinations of marks, the two columns combined have a total of 16 x 16, or 256, possible combinations.73

Smith points out that the poems are correlated with the figures drawn by the diviner, and it is up to the client to apply the poem that bests matches his/her situation. The poems are not the canon, but the “mathematically fixed number of possible divination figures” is; and “[i]t is the individual who serves as his own hermeneute.”74

Smith’s method of comparison is as follows: step 1) canons are more like catalogs than like lists with respect to the element of closure; step 2) canons are more like practices found among the Senufo and the Dogon than like practices found among the Walbiri with respect to the


74 Smith, “Sacred Persistence,” 52.
elements of application and hermeneutics; step 3) canons are closest to the divination practices of the Ndembu and Yoruba than to the practices of the Senufo and Dogon with respect to “the essential structure of limitation and closure along with exegetical ingenuity.”\textsuperscript{75} For Smith, the function of canons is part of a “basic cultural process of limitation and of overcoming that limitation through ingenuity.”\textsuperscript{76} This means that the function of canons is not culturally unique or \textit{sui generis} but has cross-cultural parallels. As a human phenomenon, this function can thus be explained by means of anthropological and not theological categories, which is for Smith a vital distinction that needs to be made in the academic study of religion. The scholar of religion needs to insist upon an “essentially anthropological” perspective, which sees “religion as human labor” and leaves to the side any analysis based upon theological arguments.\textsuperscript{77} I intend my project to be situated in this methodological stream, since I am treating law as a product of human culture, and, more specifically, reframing the study of law in Matthew and Paul in cultural terms that are broader than simply the Jewish/Christian context. Methodologically, this means that I am explicitly borrowing features of Smith’s approach: cross-cultural comparison, redescription, and an “essentially anthropological” posture.

1.2c

\textsuperscript{75} Smith, “Sacred Persistence,” 52.
\textsuperscript{76} Smith, “Sacred Persistence,” 52.
\textsuperscript{77} Smith, “Sacred Persistence,” 43. See also Smith, “Map is Not Territory,” 290-291: “What we study when we study religion is one mode of constructing worlds of meaning, worlds within which men find themselves and in which they choose to dwell. . . . Religion is the quest, within the bounds of the human, historical condition, for the power to manipulate and negotiate ones ‘situation’ so as to have ‘space’ in which to meaningfully dwell. It is the power to relate ones domain to the plurality of environmental and social spheres in such a way as to guarantee the conviction that ones existence ‘matters’. Religion is a distinctive mode of human creativity, a creativity which both discovers limits and creates limits for humane existence.”
In making his anthropological argument, however, Smith has, in my opinion, assumed too much about the “sameness” of the cultural materials he has compared. By arguing that the function of canons is part of a “basic cultural process,” Smith has isolated a core cultural similarity—an “essential structure,” in his words—that inheres in the disparate cultural materials that he has examined. This structuralist-inspired argument appears to posit a transcultural aspect of culture that is essentially similar—essentially constant—across the field of cross-cultural difference, and is embedded in the cultural materials where it waits to be discovered.

78 I recognize that criticizing Smith should not be entered into lightly as John W. Parrish has ably demonstrated; “You Show Your Smith and I’ll Show Mine: Selection, Exegesis, and the Politics of Citation,” MTSR 21/4 (2009): 437-459.

79 Gayatri Chakravorty Spivak, “Translator’s Preface,” in Jacques Derrida, Of Grammatology (trans. Gayatri Chakravorty Spivak; Baltimore: The John Hopkins University Press, 1997), iv, has defined “structuralism” economically as “an attempt to isolate the general structures of human activity.” The structuralist presumption that universal mental structures are concealed within divergent social forms has been problematized by the Weberian tradition, in particular, as reflected in the broader field of the sociology of knowledge/culture. This tradition has established a connection between social forms and mental processes, which makes it difficult to examine one without presuming the influence of the other. See for example, Karl Mannheim, Ideology and Utopia: An Introduction to the Sociology of Knowledge (London: Routledge & Kegan Paul, 1966): “[The sociology of knowledge] confines itself to discovering the relations between certain mental structures and the life-situations in which they exist. . . . [H]uman thought arises, and operates, not in a social vacuum but in a definite social milieu” (p. 71); cf. p. 274. See also Karl Mannheim, Essays on the Sociology of Knowledge (ed. Paul Kecskemeti; London: Routledge & Kegan Paul, 1972), 104; and also the famous comment by Geertz on his “semiotic” view of culture and its Weberian roots, in “Thick Description,” 5.

80 In this regard, Smith seems to draw heavily from the work of Claude Lévi-Strauss. Not only does Smith explicitly ground his argument in the “essential structure” of the cultural materials he is comparing, which is evocative of Lévi-Strauss’ approach, he also borrows Lévi-Strauss’ analysis (see Sacred Persistence,” 47-48), and he sifts cross-cultural materials for traits and patterns that can be compared, deploying a method that is akin to Lévi-Strauss’ method of “straining”; see Claude Lévi-Strauss, Structural Anthropology (trans. Claire Jacobson and Brooke Grundfest Schoepf; New York: Basic Books, 1963), 1-27, esp. 22, where Lévi-Strauss discusses the reconstruction “by means of a kind of straining process [par une sorte de filtration laissant passer ce]” the underlying “structural elements” that can be extrapolated from historical forms. The French comes from Claude Lévi-Strauss, Anthropologie Structurale (Paris: Librairie Plon, 1958), 30. It is these “structural elements” that make comparison possible for Lévi-Strauss, because they allow the commonalities in human culture to come into focus. His clearest explication of this method is in his work Elementary Structures of Kinship (ed. Rodney Needham; trans. James Harle Bell et al.; London: Eyre & Spottiswoode, 1969), 478-479: “In the course of this work, we have seen the notion of exchange become complicated and diversified; it has constantly appeared to us in different forms . . . [but] it is exchange, always exchange, that emerges as the fundamental and common basis of all modalities of the institution of marriage”; cf. pp. 233, 254-255, 268.
and extracted by the scholar. This could imply that Smith has presumed an object of analysis that exists prior to the scholar’s intellectual program, which suggests that it is not merely the scholar who designates similarity and difference, but essential traits of culture—preformed objects of analysis as things-themselves—that evoke such designations. It seems to me that this treatment of the object is especially problematic when examined from a Foucauldian perspective of the formation of objects of discourse.

The method of straining is deployed throughout Lévi-Strauss’ body of work; see for example, The Raw and the Cooked: Introduction to a Science of Mythology, vol. I (trans. John and Doreen Weightman; New York: Harper & Row, 1964), 142, where his analysis “confirm[s] that the Ge myths about the origin of fire, like the Tupi-Guarani on the same theme, function in terms of a double contrast: on the one hand, between what is raw and what is cooked, and on the other, between the fresh and the decayed. The raw/cooked axis is characteristic of culture; the fresh/decayed one of nature, since cooking brings about the cultural transformation of the raw, just as putrefaction is its natural transformation”; cf. also the generalities in Lévi-Strauss, Totemism (trans. Rodney Needham; Boston: Beacon Press, 1963), 88-89; and The Savage Mind/La pensée sauvage (London: Weidenfeld and Nicolson, 1966), 109, where he argues that “the exchange of women and the exchange of food are means of securing or of displaying the interlocking of social groups with one another.”

81 I wonder if this is also the case in Smith’s longest comparative work, To Take Place, where the object “ritual and its relation to place” guides the analysis, which juxtaposes the Tjilpa with treatments of sacred spaces in Jerusalem—the Jewish temple and the Church of the Holy Sepulchre; see p. xii: “The Tjilpa were chosen because they stand as a privileged example within one of the more influential contemporary theories of religious ritual. They allow, as well, the raising of questions concerning the enterprise of comparison. The second set was chosen because Jerusalem stands as a center of ritual activity for all the major components of Western religious experience and expression.”

82 Cf. Friedrich Nietzsche, On the Genealogy of Morals (trans. Walter Kaufmann and R. J. Holingdal; New York: Vintage Books, 1989), I.13, p. 45, who observes that “our entire science still lies under the misleading influence of language and has not disposed of that little changeling, the ‘subject’ (the atom, for example, is such a changeling, as is the Kantian ‘thing-in-itself’).”

83 Another possible critique of “Sacred Persistence,” is that Smith never tells his reader how he has determined that canons should be compared with divination; he merely asserts that “[c]ross-cultural study has convinced [him] that the primary Sitz im Leben of canon is divination” without providing specific reasons why this is so (p. 50). This, in my opinion, exposes Smith to a critique that he levels against other scholars, namely, turning a subjective connection into an objective one: “at some point along the way [in the course of the scholar’s research], as if unbidden, as a sort of déjà vu, the scholar remembers that he has seen ‘it’ or ‘something like it’ before . . . . This experience, this unintended consequence of research, must then be accorded significance and provided with an explanation. In the vast majority of instances in the history of comparison, this subjective experience is projected as an objective connection through some theory of influence, diffusion, borrowing, or the like. It is a process of working from a psychological
1.3 Theory

P. Veyne summarizes Foucault’s understanding of the formation of the object as follows: “the object, in all its materiality, cannot be separated from the formal frameworks through which we come to know it, frameworks that Foucault . . . calls ‘discourse’. That, in a nutshell, says it all.”\(^8^4\) The connection between discourse and the formation of the object means that the object takes shape and emerges in particular discursive contexts, and is not embedded within cultural materials as a fully-formed thing waiting to be discovered by the scholar.\(^8^5\) As I suggested above, and will fill out in greater detail below, a Foucauldian approach to the formation of objects renders problematic Smith’s treatment of “limitation and closure along with exegetical ingenuity” as a “basic cultural process”\(^8^6\) that functions as a cross-cultural constant—a core, structural similarity embedded in disparate cultural materials. In the following two sections (1.3a and 1.3b), I will summarize Foucault’s understanding of the relationship between the formation of objects and the exercise of power, and summarize how I intend to use these insights in this project.


\(^8^5\) Cf. Lois McNay, *Foucault: A Critical Introduction* (Cambridge: Polity, 1994), 72: “a given object of study does not exist anterior to discourse but is constructed within discourse.” Ruth Marshall, *Political Spiritualities: The Pentecostal Revolution in Nigeria* (Chicago: University of Chicago Press, 2009), 34, observes that Foucault’s understanding of the object is not a “theory” of particular objects (e.g. government, politics), but a way of “unsettling” objects of investigation.

\(^8^6\) Smith, “Sacred Persistence,” 52.
1.3a

Foucault discusses the formation of objects as part of the broader discussion of the architecture of discourse in his work *Archaeology of Knowledge*. Particular objects are formed within broader discursive unities. One example of such a unity, according to Foucault, is the discourse of psychopathology within which a whole series of objects are formed. These include “motor disturbances, hallucinations, and speech disorders . . . minor behavioral disorders, sexual aberrations and disturbances, the phenomena of suggestion and hypnosis, lesions of the central nervous system, deficiencies of intellectual or motor adaptation, criminality.”

Foucault argues that the broader discursive unity does not coalesce around any particular preexistent object, and is not based upon the existence of the object, but rather that the object is formed within the broader unity of psychopathology because of a “complex group of relations” that make its emergence possible:

These relations are established between institutions, economic and social processes, behavioral patterns, systems of norms, techniques, types of classification, modes of characterization; and these relations are not present in the object; it is not they that are deployed when the object is being analyzed; they do not indicate a web, the immanent rationality, the ideal nerve that

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87 Foucault, *Archaeology of Knowledge*, 40. To identify such objects, Foucault posits the delineation of 1) the “surfaces of emergence,” which are the sites where objects are formed (e.g. family, place of work, “religious” group, etc.); 2) the “authorities of delimitation,” which define objects (e.g. medicine as an institution, government, “religious” authorities, penal law, etc.); and 3) the “grids of specification,” which are the operations that demarcate *kinds* of objects (e.g. *kinds* of madness; pp. 41-42).

88 Foucault, *Archaeology of Knowledge*, 45; cf. p 43: “In the sphere with which psychopathology dealt in the nineteenth century, one sees the very appearance . . . of a whole series of objects belonging to the category of delinquency: homicide (and suicide), *crimes passionels*, sexual offences, certain forms of theft, vagrancy—and then, through them, heredity, the neurogenic environment, aggressive or self-punishing behavior, perversions, criminal impulses, suggestibility, etc. It would be inadequate to say that one was dealing here with the consequences of a discovery: of a sudden discovery by a psychiatrist of a resemblance between criminal and pathological behavior, a discovery of the presence in certain delinquents of the classical signs of alienation, or mental derangement. Such facts lie beyond the grasp of contemporary research: indeed, the problem is how to decide what made them possible. . . . If, in a particular period in the history of our society, the delinquent was psychologized and pathologized, if criminal behavior could give rise to a whole series of objects of knowledge, this was because a group of particular relations was adopted for use in psychiatric discourse.”
reappears totally or in part when one conceives of the object in the truth of its concept. They do not define its internal constitution, but what enables it to appear.89

In Foucault’s later writings and lectures he streamlines this somewhat cumbersome definition of relations, and identifies relations of power in particular as playing an instrumental role in the formation of objects. Of the object “sexuality” he writes:

One must not suppose that there exists a certain sphere of sexuality that would be the legitimate concern of a free and disinterested scientific inquiry were it not the object of mechanisms of prohibition brought to bear by the economic or ideological requirements of power. If sexuality was constituted as an area of investigation, this was only because relations of power had established it as a possible object.90

Foucault argues that sexuality as an object was not discovered but produced. He refers to this “production of sexuality” when he insists that “[s]exuality must not be thought of as a kind of natural given which power tries to hold in check, or as an obscure domain which knowledge tries to gradually uncover. It is the name given to a historical construct.”91 This indicates that objects such as sexuality or law are not fully formed entities that preexist in any meaningful sense their own emergence, which is to say that they do not “await in limbo the order that will free [them]

89 Foucault, Archaeology of Knowledge, 45; italics mine. Foucault goes on to distinguish between kinds of relations: primary (e.g. “the bourgeois family and the functioning of judicial authorities and categories in the nineteenth century”); secondary (e.g. “what . . . the psychiatrists of the nineteenth century could say about the relations between the family and criminality”); and discursive (e.g. those practices that “determine the group of relations that discourse must establish in order to speak of this or that object”); see pp. 45-46. McNay, Foucault, 72-73, criticizes Foucault for not being clearer in his discussion of these various relations. Other scholars have been critical of Archaeology of Knowledge as a text. Paul Veyne, Foucault, 84, says the book was written “too hastily.”

90 Foucault, History of Sexuality, 98; italics mine.

91 Foucault, History of Sexuality, 105. See also Michel Foucault, Security, Territory, Population: Lectures at the Collège De France, 1977-78 (ed. Michel Senellart; trans. Graham Burchell; New York: Palgrave Macmillan, 2007), 79, where Foucault observes that the “constant interplay between techniques of power and their object gradually carves out in reality, as a field of reality, population and its specific phenomena. A whole series of objects were made visible for possible forms of knowledge on the basis of the constitution of the population as the correlate of techniques of power. In turn, because these forms of knowledge constantly carve out new objects, the population could be formed, continue, and remain as the privileged correlate of modern mechanisms of power.”
and enable [them] to become embodied in a visible and prolix objectivity.”

They are instead constructed by means of the exercise of power. Sexuality or law become objects of discourse because relations of power make possible their emergence.

Foucault admits that this approach initially accepts discursive unities such as psychopathology before subsequent analysis demonstrates the contingency not only of the objects contained within the unity but also of the unity itself. This is, at least initially, to accept that a thing called psychopathology exists. Taking my cue from Foucault, I am initially accepting that certain domains of knowledge—e.g. scholarship on law in early Judaism and Christian origins, and the field of the anthropology of law—have constituted a series of social practices as the discursive object “law”: law as Torah in Judaism of the first century C.E.; law-like practices in the ethnographic materials from the anthropology of law. Thus, while there are clear differences between the disparate cultural materials that I am comparing—e.g. Ilongot headhunting in the Philippines and Paul’s views of the law in the Roman world—the unity “law”

92 Foucault, *Archaeology of Knowledge*, 45.

93 This focus on power is a function of Foucault’s shift away from archaeology as a method, which characterized his large monographs of the 1960s, to the more Nietzschean method of genealogy, which characterizes much of his later work on discipline, punishment, sexuality, and ethics. On the relationship between archaeology and genealogy, see Arnold I. Davidson, “Archaeology, Genealogy, Ethics,” in *Foucault: A Critical Reader* (ed. David Couzens Hoy; New York: Basil Blackwell, 1986), 221-233. Foucault explicitly distinguishes between archaeology and “a genealogy of techniques of power” in his lectures; see Foucault, *Security, Territory, Population*, 36. In his later lectures, Foucault surveys the terrain of his previous work: “I have, if you like, devoted myself mostly to studying each of these three axes in turn: that of the formation of forms of knowledge and practices of veridiction; that of the normativity of behavior and the technology of power [i.e. governmentality]; and finally, that of the constitution of the subject’s modes of being on the basis of practices of self [i.e. subjectivation]”; in Michel Foucault, *The Government of Self and Others: Lectures at the Collège De France, 1982-1983* (ed. Frédéric Gros; trans. Graham Burchell; New York: Palgrave Macmillan, 2010), 42; cf. the more detailed outline of these three axes on pp. 4-5 where Foucault labels his body of work a “history of what could be called ‘experiences’” (p. 4).

94 Foucault, *Archaeology of Knowledge*, 26: “I shall accept the groupings that history suggests only to subject them at once to interrogation; to break them up and then to see whether they can be legitimately reformed; or whether other groupings should be made.”
presumes at the outset that there are similarities between these cultural features, which makes it possible to juxtapose them for purposes of comparison. By accepting “law” in this way, I am able to see for example how law gets constituted as a problem in each of the cultural situations that I examine; at stake in each cultural situation is the perpetuity of the social group’s laws (or law-like practices), which is an insight that I will develop below (chs. 2, 4-5). However, again taking my cue from Foucault, I will demonstrate the contingency of these similarities and thus of the broader unity of law by showing how particular relations of power make their emergence possible.95

1.3b

Power can create the conditions for the emergence of objects such as law because for Foucault it is a productive force.96 It constitutes objects such as sexuality and law, and it also constitutes the social relations of a society. Foucault argues that “in any society . . . multiple relations of power traverse, characterize, and constitute the social body.”97 “A society without

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95 Foucault describes a similar disaggregation of unities in terms of analyzing the role of statements in discourses: “statements belonging to psychopathology all seem to refer to an object that emerges in various ways in individual or social experience and which may be called madness. But . . . the unity of the object ‘madness’ does not enable one to individualize a group of statements, and to establish between them a relation that is both constant and describable. . . . One might, perhaps one should, conclude . . . that it is not possible to accept, as a valid unity forming a group of statements, a ‘discourse, concerning madness’. Perhaps one should confine one’s attention to those groups of statements that have one and the same object: the discourse on melancholia, or neurosis, for example. But one would soon realize that each of these discourses in turn constituted its object . . . . So that the problem arises of knowing whether the unity of a discourse is based not so much on the permanence and uniqueness of an object as on the space in which various objects emerge and are continuously transformed. . . . The unity of discourses on madness would not be based upon the existence of the object ‘madness’ . . . [but on] the interplay of the rules that make possible the appearance of objects during a given period of time”; Archaeology of Knowledge, 32-33.

96 Foucault, History of Sexuality, 94.

97 Michel Foucault, “Society Must Be Defended”: Lectures at the Collège De France, 1975-1976 (ed. Mauro Bertani and Alessandro Fontana; trans. David Macey; New York: Picador, 2003), 24. Foucault connects power with various other themes in his work. In this particular lecture series, he argues that power relations “are indissociable from a discourse of truth, and they can neither be established nor function unless a true discourse is produced, accumulated, put into circulation, and set to work. Power
power relations,” he writes, “can only be an abstraction.”

Power in Foucauldian thought is not understood to be a repressive or a conflictive (e.g. war) force. Power is also not understood to be attached to a particular institution such as the State or the Sovereign, nor does it have the quality of a commodity that can be possessed by some and denied to others. Such conceptions of power are labeled by Foucault as “juridical” because they encase power in “a certain image of power-law, of power-sovereignty” that sees power as primarily “juridical and negative” and as embodied in techniques that set limits on behavior (e.g. laws and rules). The problem with this perspective he argues is that it does not adequately account for “the multiple forms of domination that can be exercised in society”—that power “circulates” in a social body, “passes

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99 Foucault, “Society Must Be Defended”, 15: “I think that the twin notions of ‘repression’ and ‘war’ have to be considerably modified and ultimately, perhaps, abandoned. At all events, we have to look very closely at these two notions of ‘repression’ and ‘war’; if you like, we have to look more closely at the hypothesis that the mechanisms of power are essentially mechanisms of repression, and at the alternative hypothesis that what is rumbling away and what is at work beneath political power is essentially and above all a warlike relation” (p. 17). See also Foucault, History of Sexuality, 72, 81.

100 Foucault, “Society Must Be Defended”, 26-27.


102 See the discussion in Foucault, History of Sexuality, 86-91, here, 90. There is a growing body of literature that addresses the question of whether Foucault viewed law as being superseded in modernity by techniques of discipline and bio-power in his body of work. See for example Hunt and Wickham, Foucault and Law; and the response by Golder and Fitzpatrick, Foucault’s Law. Both works cite the relevant literature.

103 Foucault, “Society Must Be Defended”, 27; cf. Michel Foucault, “Truth and Power,” in Faubion, Michel Foucault: Power, 111-133: “the state, for all the omnipotence of its apparatuses, is far from being able to occupy the whole field of actual power relations; . . . the state can only operate on the basis of other, already-existing power relations” (p. 123).
through individuals,” and can never be “localized” or “appropriated.”\textsuperscript{104} Additionally, he criticizes the juridical theory of power for presuming a preexistent human subject that is already constituted in the social body.\textsuperscript{105} For Foucault, subjects do not preexist the exercise of power but are constituted by means of certain practices that have become possible as a result of its exercise.\textsuperscript{106} By proposing to examine “the power relationship itself,”\textsuperscript{107} and not presuming that power is localized in the Sovereign, or that power is primarily a repressive force, or that the subject preexists the exercise of power, Foucault intends to uncover the productive quality of power;\textsuperscript{108} that is, its ability to open up spaces for particular objects to emerge and take shape in a

\textsuperscript{104} Foucault, “Society Must Be Defended”, 27. See also Michel Foucault, “The Ethics of the Concern for Self as a Practice of Freedom,” in Michel Foucault: Ethics, Subjectivity and Truth, Essential Works of Foucault 1954-1984 (ed. Paul Rabinow; trans. Robert Hurley et al.; New York: The New Press, 1997), 281-301: “when one speaks of power, people immediately think of a political structure, a government, a dominant social class, the master and the slave, and so on. I am not thinking of this at all when I speak of relations of power. I mean that in human relationships, whether they involve verbal communication . . . or amorous, institutional, or economic relationships, power is always present: I mean a relationship in which one person tries to control the conduct of the other. So I am speaking of relations that exist at different levels, in different forms; these power relations are mobile, they can be modified, they are not fixed once and for all” (pp. 291-292).

\textsuperscript{105} Foucault, “Society Must Be Defended”, 44.

\textsuperscript{106} See for example Foucault, “The Ethics of the Concern for Self,” 291: “I am now interested in how the subject constitutes itself in an active fashion through practices of the self, these practices are nevertheless not something invented by the individual himself. They are models that he finds in his culture and are proposed, suggested, imposed upon him by his culture, his society, and his social group.” Foucault also criticizes the notion of a preexistent subject in Michel Foucault, “Truth and Juridical Forms,” in Faubion, Michel Foucault: Power, 1-89: such a view of the subject “exhibits a very serious defect—basically, that of assuming that the human subject, the subject of knowledge, and forms of knowledge themselves are somehow given beforehand and definitively, and that economic, social, and political conditions of existence are merely laid or imprinted on this definitely given subject” (p. 2). See also, Michel Foucault, “Interview with Michel Foucault,” in Faubion, Michel Foucault: Power, 239-297, where Foucault points out that as an object such as “madness” was taking shape “the subject capable of understanding madness was also being constructed” (p. 254).

\textsuperscript{107} Foucault, “Society Must Be Defended”, 45.

\textsuperscript{108} See Foucault, “Truth and Power,” 120: “If power were never anything but repressive, if it never did anything but to say no, do you really think one would be brought to obey it? What makes power hold good, what makes it accepted, is simply the fact that it doesn’t only weigh on us as a force that says no; it also traverses and produces things, it induces pleasure, forms knowledge, produces discourse.”
field of discourse (objectification), and also to create the conditions for people to constitute themselves as particular kinds of subjects (subjectivation). In this way, power is a kind of “government,” understood in a very general sense, in that it “conducts” the “conduct” of individuals by “structur[ing] the possible field of action:”

[Power] operates on the field of possibilities in which the behavior of active subjects is able to inscribe itself. It is a set of actions on possible actions; it incites, it induces, it seduces, it makes easier or more difficult; it releases or contrives, makes more probable or less; in the extreme it constrains or forbids absolutely, but it is always a way of acting upon one or more acting subjects by virtue of their acting or being capable of action. A set of actions upon other actions.

These insights demonstrate that power for Foucault is not an abstract thing or object; there is no “ontology of power.” Power is instead a relation, something that is exercised: “Power exists only as exercised by some on others, only when it is put into action.” For my purposes, this means that law is not a hub where power resides—as if law were an already-constituted thing—but rather law is an effect of power; it is a site that gets constituted as an object in the sphere of the exercise of power, and, once constituted, can become a relay of power.

Accordingly, in order to map the process of the formation of law (and law-like practices) as an object in the Gospel of Matthew, in the letters of Paul, and in the ethnographic materials, I need to analyze how power is exercised and what are its effects.

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109 Foucault, *History of Sexuality*, 32: “Discourses on sex did not multiply apart from or against power, but in the very space and as the means of its exercise.”

110 See Foucault, “Subject and Power,” 342: “Power is exercised only over free subjects, and only insofar as they are ‘free.’ By this we mean individual or collective subjects who are faced with a field of possibilities in which several kinds of conduct, several ways of reacting and modes of behavior are available.”

111 Foucault, “Subject and Power,” 341.

112 Foucault, “Interview,” 284: “I’ve never claimed that power was going to explain everything. . . . For me, power is what needs to be explained.”

113 Foucault, “Subject and Power,” 337.

114 Foucault, “Subject and Power,” 340: “what defines a relationship of power is that it is a mode of action that does not act directly and immediately on others. Instead, it acts upon their actions: an action upon an action, on possible or actual future or present actions.”
Foucault suggests a way in which this can be done by urging an examination of the “how” of power: “‘How?’ not in the sense of ‘How does it manifest itself?’ but ‘How is it exercised?’ and ‘What happens when individuals exert (as we say) power over others?’”¹¹⁵

These questions address both the techniques and the effects of power. The particular conditions of emergence—the sites where power is exercised—make possible certain practices and certain discourses around the object, which in turn form the object in a particular manner. Foucault observes for example that the exercise of power in various sectors of society since the beginning of the eighteenth century made possible the formation of the object “sexuality,” around which a series of discourses proliferated (e.g. mechanisms of confession in the Christian pastorate and in psychiatry; rules for children’s sexuality in schools; apparatuses in government that recorded births, marriages, effects of contraception; etc.).¹¹⁶ I have organized this project around a similar observation in the field of law: in each of the cultural contexts that I investigate, discussions of particular laws, or, in the case of the indigenous contexts, the actual practice of law-like customs, have become more numerous at the sites where relations of power have clustered. These power relations are comprised of both micro, intragroup relations at the local level, and macro, intergroup relations at the broader economic and socio-political levels. My focus in this project is on how the object “law” is formed as an effect of the interaction and clash of these macro and micro relations of power.¹¹⁷

¹¹⁵ Foucault, “Subject and Power,” 337; italics original.

¹¹⁶ Foucault, History of Sexuality, 72, refers to “a proliferation of discourses carefully tailored to the requirements of power.” This proliferation of discourse on sex was “articulated around a cluster of power relations” (p. 30).

¹¹⁷ Here as well I am taking my cue from Foucault, who once pointed out that analyzing relations of power involves “an ascending analysis of power,” whereby one “begin[s] with its infinitesimal mechanisms [i.e. micro relations],” and examines how they relate to “increasingly general mechanisms and forms of overall domination [i.e. macro relations]”; in “Society Must Be Defended”, 30.
1.4 Conclusion

My intention is to use Foucault’s work as an “analytical grid.”¹¹⁸ This involves treating neither power nor law as objects in themselves, but instead involves seeing power as a relation, and law as something that emerges in particular sites where power is exercised. As a result, I am not discovering, extracting, and then comparing a preformed cultural object that is presumed to be embedded in cultural materials, as J. Z. Smith appears to do in “Sacred Persistence”; I am instead analyzing social relations of power.¹¹⁹ I do, however, find Smith’s general approach to comparison useful in that it draws insights from cross-cultural materials, and thus redescribes familiar cultural materials—in my case, perspectives of law in the late Second Temple period—in broader cultural terms. The effect of this approach is to demonstrate that particular features of culture are not sui generis but have cross-cultural analogs. The analogs in my project are social relations of power. My aim is thus to demonstrate the contingency of “law” by demonstrating how the broader and narrower relations of power in various cultural situations interact to produce “law” as an object.

¹¹⁸ Marshall, Political Spiritualities, 34.
¹¹⁹ Cf. Foucault’s comparison of relations of power in the ancient Hebrew and Greek worlds; in Security, Territory, Population, 125-130.
Chapter 2
Ethnographic Materials, Power Relations, and the Anthropology of Law

“What we wondered was, quite simply, how people whom we liked and admired as much as Tukbaw and his companions could be killers [i.e. headhunters]. . . . To our probing ‘Why?’ [Tukbaw] responded with a dull, ‘It is our custom.’” ~Michelle Z. Rosaldo

2.1 Anthropology of Law

The field of the anthropology of law has roots that extend back to the early twentieth century beginning with a series of ethnographies dedicated to examining and/or comparing the customs and rules—the “law-like” practices or the “law-stuff”—of various indigenous cultures. Although there are many approaches to doing ethnography in this context, there is

120 Michelle Z. Rosaldo, Knowledge and Passion: Ilongot Notions of Self and Social Life (CSCS 4; Cambridge: Cambridge University Press, 1980), 137.

121 Older anthropologists of law used this term; see, for example, E. Adamson Hoebel, The Law of Primitive Man: A Study in Comparative Legal Dynamics (New York: Atheneum, 1968), 37.

a common presumption that law is one aspect of human culture—“a means of illuminating culture.”

It is “human labor,” to import a phrase of J. Z. Smith’s from the study of religion.

The following summary of the anthropology of law by E. A. Hoebel could be read with Smith in mind:


The ethnographies of Llewellyn and Hoebel, and Malinowski, for example, correspond to two distinct approaches to legal data: normative and processual analyses, respectively. The two approaches are based on divergent perspectives of what ethnographies of law should do. Normative analysis pursues ethnographic materials for examples of breaches of social norms that generate some kind of sanction to restrain the behavior. Norms of this type are said to be “juridical”; see Rouland, Legal Anthropology, 38. Hoebel argues that “law” is made up of “a specially demarked set of social norms that are maintained through the application of ‘legal’ sanctions. The entire operating system of sanctioning norms is what constitutes a system of social control. Law as a process is an aspect of the total system of social control maintained by a society”; see Law of Primitive Man, 15. Processual analysis, conversely, probes ethnographic materials for more diffuse instances of group and individual interactions, which can be said to function as governing mechanisms for a society. It is these social relations that establish the confines on human behavior; Rouland, Legal Anthropology, 40. For Malinowski, “the real mechanism of law” is “social and psychological constraint . . . which make men keep to their obligations”; Crime and Custom, 39. The “motive force” that ensures “obligations” are kept, argues Malinowski, is “reciprocity”; Crime and Custom, 23. For a different approach that favors viewing law as an aspect of “local knowledge”; see Geertz, “Local Knowledge,” 215: “[law is an aspect of] local knowledge; local not just as to place, time, class, and variety of issue, but as to accent—vernacular characterizations of what happens connected to vernacular imaginings of what can. It is this complex of characterizations and imaginings, stories about events cast in imagery about principles, that I have been calling a legal sensibility.” Geertz is critical of creating a “centaur discipline” called “anthropology of law” (see pp. 169-170), but the present project is not the place to adjudicate such a discussion. As this footnote indicates, the field of legal anthropology is fractious; and this appears to be driven by anxiety over how to do ethnography of law. There are derivative questions regarding definitions of law as well as the relationship between law and power. For a survey of such discussions, see the review essay by Peter Just, “History, Power, Ideology, and Culture: Current Directions in the Anthropology of Law,” LSR 26/2 (1992): 373-411; and more recently, Pirie, Anthropology of Law, esp. ch. 3.

Peter Just, Dou Donggo Justice: Conflict and Morality in an Indonesian Society (New York: Rowman & Littlefield Publishers, 2001), 18; also Fallers, Law Without Precedent, 2-3. Cf. the provocative statement by Donovan and Anderson, Anthropology and Law, 31-32: “law is wholly a cultural creation, which arises and persists because, in important ways, we want it that way. Law is not thrust upon us the way gravity is, but is instead an artificial construct.”

Smith, “Sacred Persistence,” 43.
An anthropological approach to law is flatly behavioristic and empirical in that we understand all human law to reside in human behavior and to be discernible through objective and accurate observation of what men do in relation to each other and the natural forces that impinge upon them. . . . Methodologically, we shall accept such beliefs [in gods or supernatural forces] as cultural facts or realities without committing ourselves to an answer as to whether they are or are not empirical realities.\(^{126}\)

When Smith points out that “[r]eligion is a distinctive mode of human creativity, a creativity which both discovers limits and creates limits for humane existence,”\(^{127}\) an anthropologist of law might substitute “law” for “religion” in the phrase,\(^{128}\) since both fields—the study of religion and the anthropology of law—analyze human behavior.\(^{129}\) This implies, in the case of law, that more cultural practices can be classified under the rubric “law” than merely formalized legislative systems with codes and courts; indeed one premise of the anthropology of law is that cultural norms and customs—as social practices—can operate like laws in that they can regulate group conduct by demarcating socially acceptable forms of behavior.\(^{130}\) The quotation from M.\(^{126}\) Hoebel, \textit{Law of Primitive Man}, 5.

\(^{127}\) Smith, “Map is Not Territory,” 291.


\(^{129}\) Smith, “Map is Not Territory,” 290; cf. discussions of the academic study of religion as a field in Arnal and McCutcheon, \textit{The Sacred is the Profane}, especially the preface (pp. ix-xiv) and the introduction (pp. 1-16).

\(^{130}\) Bederman, \textit{Custom as a Source of Law}, 3: “All law begins with custom. Anthropologists know this, and see the role of custom in law as part of a larger phenomenon of the law of primitive peoples, or even more simply, ‘primitive law.’” See further Bederman’s discussion of the notion of “custom” in the field of the anthropology of law; pp. 3-15. Local cultural practices can function as “law” even when they bear little resemblance to “western” understandings of jurisprudence; see, for example, Fallers, \textit{Law Without Precedent}, 312, who observes that Basoga courts in Uganda operate “without precedent or legislation” (italics original). It will be demonstrated further below that among the Dou Donggo in Indonesia, one can be convicted of a crime he/she might have committed, evidence be damned. Note also the similarities and differences between “judicial process in Western society” and that of the Lozi in Zambia in Gluckman, \textit{The Judicial Process Among the Barotse}, 357. Among the differences is “the unwritten state of the law” (p. 357), which is a criterion sometimes used to demarcate a custom or “customary law”; see Pospíšil, \textit{Anthropology of Law}, 194. Hoebel, \textit{Law of Primitive Man}, 98-99, discusses Eskimo “song duals,” which do not at first glance seem law-like, yet function as “juridical instruments insofar as they do serve to settle disputes.” He continues that the element of “‘judgment,’” is present, but “no attempt to mete justice according to rights and privileges defined by substantive law”; cf. Gluckman, \textit{Politics, Law and Ritual}, 303-313. When discussing Tiv courts in Nigeria, Bohannan acknowledges that they do not cohere easily with some notions of “law”; however, in practice they “appl[y] ‘native law and custom’”; \textit{Justice and
Rosaldo at the beginning of this chapter illustrates this well even though her ethnography is not, strictly speaking, within the field of the anthropology of law. What is baffling to the ethnographers in that quotation—i.e. hunting heads—is simply the cultural practice, the “custom,” of the Ilongots, according to the native informant Tukbaw, and is, as I will point out below, a practice that operates in Ilongot society as a mechanism for the regulation of social behavior. It is this aspect of the anthropology of law that connects most directly with Foucault’s understanding of power as relational; that is, power as divorced from a juridico-political discourse. For Foucault, power operating through law needs to be detached from sovereignty in order to be examined at the specific points where it is exercised. The “image of power-law, of power-sovereignty,” he argues, is myopic in that it sees power as exercised through the monarch as the embodiment of codified law, and sees the monarchy as the site around which power coagulates, both of which inhibit the examination of power relations “within the concrete and historical framework of [their] operation.”

For my purposes, by conceptualizing power as something distinct from “law as a model and a code,” a Foucauldian analysis of power relations fits together well with the presumption of the anthropology of law that “law” is more than a code that is connected with a particular manifestation of sovereignty or institutional regime, but can be conceived of as a malleable cultural practice or social force. In this way as

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131 Foucault, *History of Sexuality*, 90.
133 For an approach to the anthropology of law that is critical of overly broad definitions of “law,” see Pirie, *Anthropology of Law*, 217: “It is the argument of this book that we should take law seriously as a
well, Foucault’s emphasis on tracing power relations to specific practices or actions fits together nicely with the focus of ethnographers on examining certain “law-like” cultural practices such as customs or rules.

Since there are so many ethnographic investigations of law, “deciding what not to study”\textsuperscript{134} has meant both narrowing the field and also delving deeply into a selection. In the following four sections, four ethnographies will be surveyed, three from within the field of the anthropology of law and one that details a cultural practice that operates for the social group like a law. My main observation in each of these ethnographies is that law-like practices proliferate in the space where there is interplay between local, micro relations of power and relations of power that are outside of the group. This is to say that in each of the ethnographies external social forces have begun to penetrate and engage the indigenous group. The interplay between these micro and macro relations of power has created the space within which laws, or, law-like cultural practices have been constituted as a problem, and begun to proliferate in frequency and intensity. Related to this is the issue of what happens to the members of the indigenous groups as individual subjects when these various relations of power clash and intermingle. One feature of the ethnographies is the sense among group members that their world is changing—the class of social phenomena, one that is defined by its form, rather than its functions. This is law delineated more narrowly than the broad range of social norms, processes of government, conflict resolution, and power relations, which fall within the eclectic field of legal anthropology.” The form of law for Pirie is defined as “legalism,” which is “a way of describing and prescribing human conduct in terms of categories, generalizations, and rules . . . [it] is a recurrent, albeit not universal, social form” (p. 13; cf. pp. 131-133, 223). Pirie uses the concept of legalism to guide her comparative approach throughout the book, and her point is that there are certain (legalistic) traits that distinguish “the nature of law” from other social norms (cf. pp. 1, 14, 24). Arguing for or against particular definitions of law extends beyond the parameters of my project; however, Pirie’s study does address the important issue of how one might go about constructing a definition of “law,” and does so in an interdisciplinary manner.

\textsuperscript{134} Smith, “Differential Equations,” 242.
external world is encroaching more and more into the daily life of the group and the forces of modernization seem inexorable. As individuals are caught up in this shifting world with its clash of power relations, and as they act and react to it, they constitute themselves as particular kinds of subjects. To conceptualize this in Foucauldian terms, in each context the “mode of subjection (mode d’assujettissement)” is made possible by certain practices whereby individuals act to preserve as best as they can the rules and customs of the social group.\textsuperscript{135} To put this differently, the exercise of power by individuals in each one of the ethnographies is at once an attempt to hold at bay the external forces that are encroaching into the social group, and simultaneously a means by which individuals constitute themselves as subjects.

2.2 Dou Donggo (Indonesia)

P. Just’s fieldwork was in the highlands of the island of Sumbawa in eastern Indonesia. His ethnography focuses on the connection between justice and morality among the Dou Donggo.\textsuperscript{136} Such a connection is most clearly displayed in dispute settlement in the paresa—a kind of court proceeding—and in negotiations (mbolo) between kin groups.\textsuperscript{137} Each of the following three case studies illustrates how justice is achieved among the Dou Donggo, and how legal issues are implicated in cultural change.\textsuperscript{138} I will present the case studies, and my analysis will come after further below.

\textsuperscript{135} Michel Foucault, \textit{The Use of Pleasure: Volume 2 of the History of Sexuality} (trans. Robert Hurley; New York: Vintage Books, 1990), 27. Here I am slightly modifying Foucault’s wording, but the principle is preserved: “one regards oneself as an heir to a spiritual tradition that one has the responsibility of maintaining or reviving.”

\textsuperscript{136} Peter Just, \textit{Dou Donggo Justice}, ix. “Dou Donggo” means “‘mountain people’” (p. 34).

\textsuperscript{137} Just, \textit{Dou Donggo Justice}, 122, points out that both evoke the “moral ontology” of the group. Elsewhere he writes, “Dou Donggo disputing . . . come[s] out of a coherent, if diffuse, set of ontological beliefs about the nature of the world and the beings in it” (p. 136).

\textsuperscript{138} Just, \textit{Dou Donggo Justice}, chs. 5-7.
The first case study begins with an abruptly interrupted game of dominoes. Two women, ina Hawu and va’i Linu, rushed into the house where Just (the ethnographer) and three others were playing, and accused a man named la Nindé of attacking a woman named ina Omé with a golo (the butt of a knife). The attacker and victim are second cousins, though ina Omé is roughly a generation older than la Nindé; they share patrilineal kinship ties that place ina Omé in a position of seniority. La Nindé had begun to court an unmarried young woman (la Ifo), who was betrothed to a young man (la Mou) who was away from the village attending school. Apparently, ina Omé had gone to la Nindé’s mother earlier that day to complain about this indiscretion, and he, in a fit of rage, tracked down ina Omé in her house that evening to exact revenge, beating her with the golo and ripping her shirt as she tried to escape.

The four domino players and the two women went to the victim’s house where several other adults had gathered, and began deliberating about a course of action. Ina Omé’s brother-in-law wanted to track down la Nindé and punish him, a threat signaled by his uttering the Nggahi Mbojo phrase “veha bhuja, ramba cila’,” “take down the spears and sharpen the bush knives.” Others were seriously considering turning the case over to the local police, which, according to Just, was “the local legal equivalent of a thermonuclear device,” since such a course of action was “regarded as a last resort in the almost unthinkable event that a case . . . could not

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139 Just, *Dou Donggo Justice*, ch. 5. The case study is entitled, “Letting the Evidence Fit the Crime: The Case of the Assaulted Gossip.”
140 Just, *Dou Donggo Justice*, 164.
141 Just, *Dou Donggo Justice*, 166.
142 Just, *Dou Donggo Justice*, 165.
143 Just, *Dou Donggo Justice*, 166.
144 Just, *Dou Donggo Justice*, 167.
be settled internally [i.e. within the community].” Both positions were more rhetorical exaggerations than serious proposals of action; and the finality of both proposals appeared to touch on the chronic nature of la Nindé’s behavior—this was not the first time he had been violent in the community. In the meantime, ina Omé had come out of her back room with one side of her face covered in “a paste of uncooked rice and medicinal leaves,” and carrying the torn shirt. The gravity of the situation meant that the community elders (doumatuatua) would need to convene a paresa (trial) to adjudicate the case.

During the trial on the following day, the elders alternated between pressuring la Nindé to admit to the crime by displaying the evidence of the torn shirt and rice-covered face of ina Omé, and haranguing him for his chronic bad behavior by recounting his past misdeeds. The latter was intended to uncover the underlying issue of making him “aware of who and what he was.” After initially refusing, la Nindé eventually did admit guilt after the elders summoned a member of the village headman’s staff (Haji Damai) to oversee the trial. The headman is a liaison between Donggo and the local Indonesian government. Such an action was a veiled threat that unless la Nindé acceded, the elders were willing to involve forces from outside the community. La Nindé eventually paid a fine levied by the elders to the aggrieved family, and asked for forgiveness from the community. The real twist of the case came the next day, however, when Just (the ethnographer) was informed by an eye witness to the “crime” that not only had la Nindé not attacked ina Omé at all, but the “evidence” itself had been fabricated—the medicinal rice was

145 Just, Dou Donggo Justice, 166-167.
146 Just, Dou Donggo Justice, 164: “la Nindé was regarded as an obstreperous and dangerous young man. . . . In fact, the whole family was altogether looked on as bad news.”
147 Just, Dou Donggo Justice, 168.
149 Just, Dou Donggo Justice, 173-174.
used to conceal that no bruises were on ina Omé’s face, and the shirt she had ripped herself.\(^{150}\)

La Nindé did go to ina Omé’s house and yell, but nothing more. Furthermore, it appears that Just was the only one in the village unaware of this! Laughing, the witness said, ""[e]veryone in the village knows what happened. By now they’ve probably heard about his in Jakarta!""\(^{151}\) In good Geertzian fashion, Just “thickly” describes what he thinks was going on:\(^{152}\)

Dou Donggo legal proceedings frequently have little to do with ‘discovering the facts’ or ‘determining the truth’ or establishing ‘guilt’ or ‘innocence.’ The ‘facts,’ . . . may be in dispute, but they are rarely in doubt. Using legal proceedings to determine guilt or innocence, to establish ‘what happened and was it legal,’ is unnecessary and perhaps even undesirable . . . This is not as paradoxical as it sounds because . . . it is not the purpose of a paresa to determine facts or guilt or innocence. Its purpose is to nga ro tei, to inform and to teach; its purpose is to make people like la Nindé aware of who he is and what his obligations are. . . . If he could be brought to awareness, it was hoped, perhaps his chronically bad behavior might be corrected.\(^{153}\)

The trial, the trumped up evidence, the haranguing by the elders, and the ultimate admission of guilt by the defendant were part of a moral narrative that was “‘more true than what really happened’”:

What makes a given moral narrative persuasive, I think, is the way in which it speaks to deeply held social values about which the community feels strongly. La Nindé was guilty of . . . persistent bad behavior over a long period of time, and that made it not only possible but necessary to make him accountable for the full potential of the situation he had created. He was guilty of [a] . . . general disdain for, ignorance of, his patent lack of awareness of, the fundamental values governing relationships between generations and genders.\(^{154}\)

The final outcome of the paresa was not so easily glossed, however. Just reports that the betrothal between la Mou and ina Ifo (the young woman la Nindé had been courting) was annulled, and la Nindé himself eventually appears to have left the community.\(^{155}\)

\(^{150}\) Just, *Dou Donggo Justice*, 174-175.

\(^{151}\) Just, *Dou Donggo Justice*, 175.

\(^{152}\) The allusion is, of course, to Geertz, “Thick Description,” 3-30.

\(^{153}\) Just, *Dou Donggo Justice*, 175.

\(^{154}\) Just, *Dou Donggo Justice*, 177.

The second case study\textsuperscript{156} involved a local Catholic catechist named Guru Markus and a young woman named la Biba, who happened to be betrothed from early childhood to a young man named la Niwé, who was away at school.\textsuperscript{157} Although the Catholic population comprises only thirty percent of the population of Doro Ntika (the locale of the Dou Donggo), as a “Guru,” Guru Markus wielded some authority in the community because a person of such a rank “lives in the village, leads the Catholic villagers in prayer on Sundays, performs rituals in their homes, and looks after the religious education of the young. He also serves as a religious monitor.”\textsuperscript{158} But Guru Markus had been flirtatious, “tickling and poking and grabbing at some of the more playful young women of the village, in what he thought of as innocent and acceptable fun.”\textsuperscript{159} The locals thought this behavior was “‘too free’” for a young unmarried man, though no one would confront Guru Markus directly because of his status.\textsuperscript{160} As his affections became more focused on the betrothed la Biba, however, Guru Markus had crossed a line:

While in no way prudish, the Dou Donggo expect young people who are betrothed to be loyal in their behavior if not necessarily in their affections. In recent years, however, the maintenance of such loyalty has become problematic, as an increasing number of betrothed young men (and some young women) have begun to leave the village for extended periods to attend high school or teacher’s training college. . . . It is hard to expect a young woman to wait for a young man who may come back to the village to marry her, but who also may find amours abroad or become too educated and cosmopolitan for a simple village girl.\textsuperscript{161}

When Guru Markus was seen leaving la Biba’s house one night when her parents were not at home, a \textit{paresa} was called to adjudicate the matter. The witness was a man named ama Safa, a

\textsuperscript{156} Just, \textit{Dou Donggo Justice}, ch. 6. The case study is entitled, “‘Dead Goats and What Might Have Been: The Case of the Amorous Guru.”

\textsuperscript{157} Just, \textit{Dou Donggo Justice}, 191.

\textsuperscript{158} Just, \textit{Dou Donggo Justice}, 190. In terms of group affiliation, it was a Guru who once informed Just that the local population was “‘70 percent Muslim, 30 percent Catholic, and 90 percent pagan’” (p. 190 fn. 1).

\textsuperscript{159} Just, \textit{Dou Donggo Justice}, 191.

\textsuperscript{160} Just, \textit{Dou Donggo Justice}, 191.

\textsuperscript{161} Just, \textit{Dou Donggo Justice}, 191.
kinsman of la Biba’s.\textsuperscript{162} As with the preceding case, a member of the local village government was called in to be present (Haji Landa), and the trial involved a rigorous interrogation of the defendant, who denied that any sexual impropriety had occurred—\textquotedblleft ‘We only stayed up late talking’,\textquotedblright pleaded Guru Markus; but for the Dou Donggo \textquoteleft \textquoteleft the opportunity to have slept with la Biba was the same as the act.’\textquoteright \textsuperscript{163} Just interjects:

If things had gotten this far, the question became the intentions of the two. Did he love la Biba? Did he wish to marry her? Current ideology [i.e. in the 1990s] holds that a child cannot be forced into a marriage he or she does not want. At the same time, a great deal of capital and human effort comes to be invested in most betrothals and breaking one off is a delicate and difficult affair; the extended kin of betrothed couples may have engaged in exchanges of labor and gifts for years.\textsuperscript{164}

The outcome of this \textit{paresa} was initially positive with both la Biba and Guru Markus publicly declaring their affections for each other and their willingness to marry, which meant that la Biba’s kin would need to begin negotiating a breaking off of the betrothal with la Niwé and his kin.\textsuperscript{165} Over the next several days, however, public opinion in the community began to turn against Guru Markus; the issue of his flirtatiousness with young women had emerged as an important and unsettled accusation against him.\textsuperscript{166}

Six days after the first trial, Guru Markus was abruptly called before another \textit{paresa}, this time on the charge that he had killed a goat, his accuser being ama Safa, the same kinsman of la

\textsuperscript{162} Just, \textit{Dou Donggo Justice}, 193.
\textsuperscript{163} Just, \textit{Dou Donggo Justice}, 193.
\textsuperscript{164} Just, \textit{Dou Donggo Justice}, 193. Elsewhere Just writes, \textquoteleft a marriage in Donggo is not a matter to be decided by two individuals, but rather an alliance between two groups of kin, all of whom to varying degrees have a vested interest in establishing the relationship. . . . But from the time a betrothal is first contracted until well after the final installment of bridewealth is paid off, sometimes years after the wedding, the relationship between the extended bilateral kindreds of the betrothed couple is characterized by frequent and reciprocal exchanges of gifts and services, all of which are seen to katenggo sodhi, ‘strengthen the asking’\textquoteleft (p. 214).
\textsuperscript{165} Just, \textit{Dou Donggo Justice}, 194-195.
\textsuperscript{166} Just, \textit{Dou Donggo Justice}, 195.
Biba’s who had brought the initial charges in the first trial.\footnote{Just, \textit{Dou Donggo Justice}, 196.} Ama Safa had seen Guru Markus leaving la Biba’s house on the night her parents were away, wielding a stick that he had swung at one of ama Safa’s goats, which was later found dead.\footnote{Just, \textit{Dou Donggo Justice}, 196.} Instead of confronting Guru Markus in the moment because he felt “too shy,” ama Safa said he decided to register a more formal complaint with the village government. The hamlet captain was thus present at the trial. Under examination by the elders, Guru Markus had admitted to swinging a stick, but insisted that it was really a twig and he had swung and missed the goat anyway.\footnote{Just, \textit{Dou Donggo Justice}, 196.} This admission was nevertheless tantamount to a declaration of guilt from the elders’ perspectives, who insisted that Guru Markus pay restitution to ama Safa, which he did only begrudgingly.\footnote{Just, \textit{Dou Donggo Justice}, 197.} Since Guru Markus appears to have been innocent of both crimes—adultery in one and wrongful property damage in the other—an explanation for his being convicted is that the two crimes served as proxies for other crimes he was believed to have committed, crimes which were perceived to be “damaging to the institutions and values of society”: his “risqué behavior towards the unmarried women”; his interest in the betrothed la Biba; his attempt to arrange his own marriage; his resistance to the elders’ verdict; and his “anomalous and contradictory” position in the community as a young

\begin{itemize}
\item \footnote{Just, \textit{Dou Donggo Justice}, 197. One step has been left out of this summary, and that is that Guru Markus appealed this ruling to the “headman,” who was a man with one foot in the Indonesian government bureaucracy and another in the community as an elder (explained in Just, \textit{Dou Donggo Justice}, 35-37, 97-98). The appeal was seen as an insult to the elders, and, in any case, the headman in effect upheld the prior ruling and remanded the case. About the meaning of the case, Just writes, “[a]ma Safa’s suit was primarily a mechanism for putting Guru Markus on notice that there was a serious problem in the community’s perception of his behavior” (p. 200). Just points out that ama Safa’s suit also put la Biba’s kin on notice that her attempted annulment of the betrothal in order to marry Guru Markus was facing opposition (pp. 200-201). Guru Markus’ conviction for a crime he strictly speaking did not commit relates to what Just calls “’liability of potentiality’,” which is “a calculation of liability that takes into account what someone might have done, as well as . . . what he or she actually did” (p. 205). This calculation is based on the person’s reputation, and is part of a jurisprudential system that seeks rehabilitation and not necessarily retribution (p. 206).}
\end{itemize}
unmarried man, acting inappropriately yet possessing authority as “Guru.” The social penalty for such behavior ended up not being isolated to court cases, but was also manifested in Guru Markus’ sudden departure from the community, and in la Biba’s severing of the betrothal with la Niwé in order to marry a kinsman of ama Safa.

The final case study also involves issues of betrothal. It began with the father of the prospective groom (ama Di) convening a meeting in his home to discuss annulling the betrothal. His son (la Di) had been away at the police academy and was soon to attend officer candidate school, which would mean delaying the wedding further since he was not allowed a bride while in training. La Di had written to his father asking to have the betrothal annulled, ostensibly because it would be “unfair” to make the bride (la Fia) wait. Just suggests a different motive:

Village gossip held the more plausible theory that since la Di had his sights set on becoming an officer in the national police, la Fia simply would not do as an appropriate mate. . . . A police officer’s advancement could very well depend on the social graces of his wife. An illiterate and unsophisticated village wife who could not even speak the national language would be a considerable hindrance to his career. La Fia was a sweet and earnest young woman, but her parents had never bothered to have her educated.

When la Fia’s family heard about the letter, their initial reaction was “to ‘take down the spears and sharpen the bush knives’,” especially since the betrothal had been intact for nearly twenty

\[171\] Just, *Dou Donggo Justice*, 198-201. There was another “crime” as well: helping la Biba take off her earrings after the two of them had been in the bathing shed together (p. 198). This crime did not warrant a *paresa* because of its serious nature, and precipitated Guru Markus’ departure from the village without even packing. On the whole, it also did not help that Guru Markus was a representative of Catholicism in a community whose residents had been more or less forced to adopt one of the religions deemed acceptable by the Indonesian government—i.e. “one of the established world religions” (p. 78)—in order to be registered with an identity card. Just writes: “In 1969, when the national government required all citizens to register according to religion, both Islam and Catholicism gained at least nominal adherents, the latter being the preference of those who wanted to continue eating wild boar meat” (p. 79; cf. the analysis on pp. 198-199).

\[172\] Just, *Dou Donggo Justice*, 198.


\[174\] Just, *Dou Donggo Justice*, 216.
years, during which time la Fia “had punctiliously observed the obligations of betrothal,” and the
two kin groups had swapped resources and shared labor as was customary of families in
alliance. For these reasons

legally ama and ina Di [the parents of the groom] barely had a leg to stand on. The traditional
fines assessed to the party breaking off a betrothal seem to have been quite substantial. When I
[Peter Just] asked ama Balo [a respected elder], he told me that a family that breaks off a
betrothal without cause or warning could be made to give a great feast to the village, providing at
least a full-grown buffalo and one hundred kilograms of husked rice. If it is the groom’s family
that severs the relationship, any payments made toward the brideprice are considered forfeit.176

Because betrothals implicate kin groups, the respective families of the bride and groom called
their own separate meetings (mbolo) of their kinship relations to discuss next steps: the groom’s
family constructed a moral narrative to justify the annulment, and the bride’s family began
discussing what demands would be made.177 The groom’s family then sent representatives to the
bride’s family to make their case for annulling the betrothal; and the bride’s family responded
with steep demands of “two very fine black sarongs,” that had been given to the groom’s family
earlier, and “Rp40,000 [i.e. about $40 USD]” to repay the amount of the bride’s kin’s betrothal
exchange labor.178 The groom’s negotiators were noncommittal and the meeting was adjourned.

In the meantime, the bride’s family began expressing outrage that the groom’s parents had
chosen to negotiate through intermediaries instead of directly themselves. In particular, they
were incensed that the groom’s family would send the village headman’s brother (ama Hamu) as
their representative in the negotiations, which escalated the dispute by implicating the village

175 Just, *Dou Donggo Justice*, 216-217. Here as well Just suggests an ulterior motive, namely, that la
Fia’s family was looking forward to getting a share in their son-in-law’s lucrative police salary.


177 Just, *Dou Donggo Justice*, 218. Just writes, “mbolo are pivotal arenas in which legal arguments are
framed as moral narratives and tried out until a consensus position is reached [among the kin] in advance
of public dissemination.”

178 Just, *Dou Donggo Justice*, 220. A day’s wages at the time was Rp1,500.
government.\textsuperscript{179} As a result, the bride’s family decided to add to their demands when one of them “‘remembered’” that a “buffalo” had been part of the betrothal agreement.\textsuperscript{180} The groom’s family was also outraged that they were being charged for betrothal labor and now also a buffalo, which, unsurprisingly, none of them remembered promising.\textsuperscript{181} After several more failed negotiations, and the real prospect that the case would be tried in a paresa, a deal was finally brokered that was centered on the issue of reciprocity. The groom’s family argued that if they were to be charged for betrothal exchange labor, then they would charge the bride’s family for failing to help pay for la Di’s (the groom’s) education—which they should have done as prospective in-laws. The amount they owed was calculated at Rp200,000. The bride’s family quickly agreed to accept “three sarongs, Rp10,000, and a large timber [instead of a buffalo],” and the betrothal was annulled with public opinion firmly on the side of the groom’s family.\textsuperscript{182} Just interprets:

> it was not the failure of la Fia’s parents to contribute to la Di’s education that was decisive in shaping public opinion, it was their failure to educate their own daughter. ‘What did they expect?’ was the way ama Ju, who was one of la Fia’s kinsmen, later put it. ‘They knew la Di was going to school and would be a policeman. Why didn’t they send la Fia to school? If she weren’t illiterate, if she didn’t have “village feet,” he would have married her . . . .’ By my lights it was this issue that was decisive, and it was decisive because it speaks to a value fundamental to

\begin{footnotes}
\textsuperscript{179} Just, \textit{Dou Donggo Justice}, 221. Just notes that ama Hamu was a matrilateral cousin and thus not in a position to properly represent the groom’s father; yet his presence at the meeting suggested that the groom’s family was willing to be “litigious” if needed. The bride’s family apparently understood the implications, and tried to emphasize that the groom’s family was too ashamed to negotiate directly because they were in the wrong.


\textsuperscript{181} Just, \textit{Dou Donggo Justice}, 222-223. Just points out that while a buffalo could be part of the brideprice, he had never heard of a buffalo being promised “‘to strengthen the asking’” (i.e. as part of a betrothal exchange): “I suspect that at some point in previous discussions about the marriage someone on la Fia’s side . . . had suggested the gift of a buffalo ‘would strengthen the asking’ and that someone on la Di’s side . . . had affably but noncommittally said ‘Iyo,’ yes. Dou Donggo hate to say no to any request, and laugh at themselves by saying that the only way anyone can bring himself to answer in the negative is to say ‘Iyo, vati,’ yes-no” (p. 222).

\textsuperscript{182} Just, \textit{Dou Donggo Justice}, 227.
\end{footnotes}
the moral constitution of Dou Donggo society: the equivalence and complementarity of spouses.\textsuperscript{183}

The disputes in all three case studies “operate,” according to Just, “like an early warning system for social and cultural change.”\textsuperscript{184} For my purposes, it is important to identify what exactly is driving the disputes in these cases. Just sets the context:

Much of the \textit{Sturm und Drang} generated in the cases . . . derived from the anxieties of the parents of betrothed children. The institution of betrothal has clearly been in a state of transition in recent decades: The behavioral expectations that could be reasonably demanded and enforced in the last generation were predicated on a society in which young people of both sexes grew up and grew old without ever leaving the village for any appreciable length of time. In such circumstances, in which children might be betrothed from infancy, they might be expected to grow up knowing each other, come to love each other, and be able to expect fidelity of each other. But since the 1970’s, a growing population and a degraded ecology have increasingly combined to make a sedentary subsistence economy untenable. More and more drawn to a cash economy, more and more attracted to consumer goods attainable only with money, the young people of Doro Ntika have been drawn to careers outside village agriculture, first and foremost to elementary school teaching but also to nursing, law enforcement, and the like. What has made this so problematic for young betrothed couples is that, from the sixth grade on, the education required for such careers is available only outside Donggo. So no sooner do young people reach puberty, than they may be packed off to school . . . . And yet it is precisely the youngsters who leave, the ones who have the ambition, the talent, and the financial resources to seek opportunities beyond grade school, who are the most desirable as sons- or daughters-in-law. It is precisely young men like la Mou and la Niwé—the absent fiancés . . . who represent the future of the community . . . . Circumstances have conspired to make the most desirable matches the hardest to pull off.\textsuperscript{185}

Since the Dou Donggo are what Just refers to as “teknocentric”—“Dou Donggo . . . are willing to bear almost any discomfort or indignity to see [their children] well off”\textsuperscript{186}—the social stresses

\textsuperscript{183} Just, \textit{Dou Donggo Justice}, 228.

\textsuperscript{184} Just, \textit{Dou Donggo Justice}, 17; cf. the similar observation made Gluckman, \textit{The Judicial Process Among the Barotse}, 243, who points out that in some of the cases he examined there is evidence that Barotse peoples “seemed to be altering customary law partly to accord with changed economic and social facts in Loziland.” See also Chanock, \textit{Law, Custom and Social Order}, 189-191.

\textsuperscript{185} Just, \textit{Dou Donggo Justice}, 213. Just’s description of these social stressors is redolent of Mary Douglas’ observation that one feature of cultural systems is the attempt to manage anomalies; \textit{Purity and Danger: An Analysis of Concept of Pollution and Taboo} (London: Routledge, 2002), 46-49: “we find in any culture worthy of the name various provisions for dealing with ambiguous or anomalous events” (p. 48).

\textsuperscript{186} Just, \textit{Dou Donggo Justice}, 69. This extends to naming as well. Dou Donggo are named after their children: “father of . . .”; “mother of . . .”; “grandfather of . . .”; “grandmother of . . .” Thus “ama Balo” means “father of Balo” (see Preface, p. x).
just described put pressure on the intersecting cultural practices of teknocentrism and marriage betrothal. It is these two cultural practices that have become problematic in the interactions between the Dou Donggo and external social forces; and these two cultural practices in particular have emerged as objects of discourse in the group’s court proceedings. On the one hand, there are teknocentric parents who are eager to see their children get educated and escape what has become the “irrelevant” rural lifestyle. On the other hand, there is the tradition of arranged marriage that establishes alliances between kin groups. The first two case studies illustrate how these cultural practices can work at cross purposes when placed under social stress, leaving the legal system to grope for a compromise solution that attempts to preserve both; however, neither case was completely successful. In both cases the arranged marriages failed while the teknocentric relationships were preserved in modified form through the “absent fiancé” who “represent the future of the community.” Similarly, in the third case study the betrothal was annulled and the teknocentric cultural practice preserved in adapted form—ama Di’s policeman son had been unshackled from the betrothal, and was thus free to pursue his career and ultimately benefit his family with a lucrative salary. The teknocentrism of the bride’s (la Fia’s) family, however, was firmly grounded in the “old rules”; and there was a sense among the parties involved that “it would clearly be unproductive to simply enforce old rules; the old rules had already proven inadequate.” Indeed, the bride’s family was deemed to share in the culpability of the failed betrothal, not because they had not attended to the appropriate cultural and legal practices, but because they had! And, in so doing, ironically, they had not appropriately educated their daughter, and made her into a suitable match.

187 Just, *Dou Donggo Justice*, 69.
188 Just, *Dou Donggo Justice*, 232.
In each of these case studies there are relations of power that operate at multiple points, which help to make possible the multiplication of Dou Donggo legal discourse. The three cases provide examples of how individual Dou Donggo respond to the encroachment of external forces into their daily lives by exercising power through their system of jurisprudence. First, as was outlined above by Just there are social and economic pressures on kin groups to improve their cultural capital and enhance their influence and power by supporting the education of the younger generation. In each of the cases, this broader, macro context helps to frame the micro relations of power. In the first two cases, individuals exercise power by bringing charges against those who are threatening the cultural practice of marriage betrothal. The specific charges are false, but are still serious enough to guarantee that trials are convened. The trials themselves reflect the proliferation of legal discourse around the intersecting cultural practices of teknocentrism and marriage betrothal—the two practices whose perdurabilities are in doubt. Second, in each case members of the village government are called in to add a measure of litigious weight to the proceedings. The use of this tactic of power by the litigants is an attempt to manipulate the negotiations in their favor. Just observes that “the threat to invoke Indonesian state institutions is a potent one,” because their involvement will introduce forms of power, such as the police, that cannot be controlled by the locals. The mere threat of governmental intervention, coupled with the tactic of power used by the elders of pressuring the accused to admit guilt, is sufficient in each case to produce a compromise solution that in effect preserves in modified form the cultural practice of teknocentrism while allowing the practice of arranging marriages to begin to fade from the life of the group. Finally, in responding to the external forces of modernization that are encroaching into their community by exercising power through

189 Just, Dou Donggo Justice, 212.
their system of jurisprudence, the Dou Donggo are constituting themselves as subjects who are trying to preserve their cultural traditions as much as possible, while constantly being forced to cede more of their cultural ground to the outside world. They are caught between trying to preserve their distinctive cultural practices, on one side, and fending off the forces of change, on the other. The case studies bear witness to this process of subjectivation as what it means to be Dou Donggo is put into question, becoming a site of struggle.190

2.3 Zapotec Peoples (Mexico)

L. Nader’s fieldwork was in the Sierra Madre Mountains of Oxaca, Mexico among the Zapotec peoples in the villages of Talea de Castro and Juquila Viljanos in the region of El Rincón.191 Like the Dou Donggo, the Talean Zapotecs were undergoing a social change when Nader began her work:

The Papaloapan Commission, a government development agency, was in charge of completing the road from Oaxaca City to Ixtlán, and on through the virgin mountains to the region known as El Rincón . . . . The people of the region were living in anticipation of improved access to the capital, but they also feared increased and uncontrolled contact due to the developing road system that would open them up to the ‘outside.’192

Although the Dou Donggo of Just’s ethnography were, strictly speaking, living in a postcolonial era in the wake of Dutch rule, their isolation in the highlands limited this significance; not so, with the Talean Zapotec. Incursions by the government into their territory, as in the case of building a road, were read through the grid of centuries of colonial interference.193 Nader

190 Other ethnographers in addition to Just have identified a connection between law and identity. See for example, Chanock, Law, Custom and Social Order, 3, 41; cf. pp. 9, 182. Part of the reason for this connection between law and identity, argues Chanock, is the practice by the colonial authorities of authorizing particular customary laws for particular ethnic groups (e.g. p. 174).
192 Nader, Harmony Ideology, xv.
193 Nader, Harmony Ideology, xx. The Spanish, according to Nader, had used law “as a tool of political control to break insurgency and revolt” (p. xx).
examines legal disputes among the Zapotecs from this perspective of social stress where law is implicated in issues of social control. The Zapotec peoples tend to be wary of bringing cases before state-run district courts, preferring to compromise and reach concord within the community; and yet, when compared with other American Indian groups, the Talean Zapotecs are more litigious. This paradox, argues Nader, can be traced to the community’s “harmony ideology,” which appears to be a blending both of Spanish Christian values promulgated by missionaries (e.g. prohibition of lawsuits; harmony as the “Christian” way), and of resistance to state hegemony:

the basic components of harmony ideology are the same everywhere: an emphasis on conciliation, recognition that resolution of conflict is inherently good and that its reverse—continued conflict or controversy—is bad or dysfunctional, a view of harmonious behavior as more civilized than disputing behavior, the belief that consensus is of greater survival value than controversy. Harmony ideology can be powerful even when it contradicts the common realities of disputing.

Harmony ideology has helped the Zapotec people retain social solidarity and distinctiveness in the face of cultural changes, acting as a buffer to protect the community during the centuries of contact with Spanish colonizers and then the Mexican state. This ideology is an ongoing projection of the community’s self-identity to the outside world—“Taleans operate on the

195 Nader, Harmony Ideology, 1.
196 Nader, Harmony Ideology, 2; cf. p. 307. Nader ascribes the Talean penchant for litigation to their interest in harmony: “It is not so much that Taleans avoid conflict or indeed . . . that they avoid using the courts, but rather that they seek harmony through procedural resolution, through remedies for conflict that has arisen. The Talean concern with harmony makes them not less but more litigious” (p. 220; cf. pp. 238, 244-245). In the conclusion, Nader describes the Taleans as a “peace at any price culture” (p. 309).
197 Nader, Harmony Ideology, 3. Not only internal “ideology” protected the indigenous populations, but also a concerted effort by the colonial authorities to isolate these communities helped them retain a distinctive identity. Nader points out that “[t]he organizational forms given the Indian communities of Middle America by the Spanish Crown were designed to keep them isolated and self-maintaining, with their own legal identity, with their own local administrative council, and with their own local chapel or church dedicated to a patron saint with rights over village lands and resources. With special Indian courts, Indian villages were further able to observe the intention of the Crown to separate Indians and Spaniards” (p. 5). Nader observes that this “separateness” has persisted through the twentieth century.
premise that if they were not living peaceful, harmonious lives, the state would interfere in their business.”

Local Talean courts have thus facilitated village protectionism by preserving traditional cultural values through adjudication.

These local courts operate autonomously and are distinct from the Mexican legal system. They maintain a well-defined division of labor with three main judicial offices—presidente, alcade, sindico—and a small host of bureaucratic officials on annual rotations; every Talean male is expected to serve in the judicial or political system at least once in his lifetime.

There is pressure on officials to ensure that village jurisprudence proceeds with facility: “villages with feuds or problems that escalate to the district courts . . . are more vulnerable to state interference—or so the Taleans perceive the situation”, and “among the many threats seen to emanate from the district court are conflicts over jurisdiction, over the right of the Talean court to handle certain kinds of problems.” Accordingly, as Nader observes,

There is a general agreement that citizens should settle cases locally . . .: it’s cheaper, it’s less bureaucratic, and the corrective sanctions help the town pay for public works. In addition, values


\[199\] Nader, *Harmony Ideology*, 6-7: “Taleans have been hearing their own cases in village courts at least since the founding of the village in the sixteenth century. The local court hears all cases—family, land, slander, debt, and so forth. With the exception of cases where blood has been drawn, the village has the right under state law to conclude the case if the litigants so wish” (p. 7).


\[201\] Nader, *Harmony Ideology*, 73-76. The division of labor in the Talean courts is as follows: “The presidente, who is responsible to the town, deals with the lighter problems—disputes that may be resolved easily, such as conflicts between spouses, between creditor and debtor, and between drunken individuals. The presidente also handles cases of ‘rebellion in the ranks,’ that is, when individuals refuse to comply with their obligations as citizens. Cases of family conflict, debt, and assault and battery due to drunkenness that remain unresolved by the presidente are passed to the alcade. Cases unresolved by the alcade are . . . passed on to the district court in Villa Alta. . . . The sindico . . . is responsible for processing a special class of problems, those classed as crimes (*delitos*). It is the duty of the sindico to investigate all crimes such as murder and theft. The sindico gives judgment in the settlement of property disputes as well” (pp. 58-59). The sindico also oversees the police; cf. the discussion on pp. 28-33.


of harmony and balance are maintained and nourished. By contrast, at the district court the outcomes are, at least theoretically, less negotiable between litigants. This difference places the local court officials in a position to bargain, the threat being that it would be worse for the litigants in the district court. 204

Taking a case to the district court is escalation, and Rinconeros do not escalate disputes both because escalation to an external system is linked to a loss of local autonomy and because village law is more elastic than the state system. The state system narrows disputes . . . in a way that does not permit participants the possibility for creative harmony. 205

The presence of the district court, even if only theoretical, looms in Zapotec jurisprudence. The following cases provide examples. In the first case, the Talean presidente is investigating a claim brought by a husband against the sindico, whom he accused of propositioning his wife:

#1) The presidente talked to him [the sindico] and asked him if it was true. The man denied it. The presidente talked to him when they were both at the municipio [i.e. the court house]. He asked him why he had committed this abuse. The sindico denied the charge. We [Nader’s informants] had told the presidente all sorts of facts: time, date, place, what the woman was doing at the time, and so on. The presidente fined him 40 pesos. The sindico said that he would pay another day. The presidente told him that he had to pay within one-quarter of an hour. He said that he wanted to pay later in the day when he sold his corn. The presidente told him that if he didn’t pay in fifteen minutes, the case would go to Villa Alta [the district court]. The presidente also upped the fine to 50 pesos. He paid, and I wanted to see him pay. 206

This case is an example of both the flexibility of judicial proceedings in Talean law and also of the overshadowing presence of the district court. According to Nader, presidentes in Talean jurisprudence resolve cases without recourse to written law because their primary “law” is a

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204 Nader, Harmony Ideology, 244. Nader goes on to mention that some citizens try to play the village and district courts against each other, seeing which will offer a better deal. See Case 83 (p. 260) for an example where the defendant “thought he had more clout with the district court,” and took his case there. Nader acknowledges that some individuals “have a keen understanding of which jurisdiction is more favorable to their plight or where their situation is more negotiable,” though such cases create problems for village autonomy. In terms of hard data, Taleans had an appeal rate to the district court of 22 appeals/1,000 people in the nine year period between 1953-1962—a total of 44 appeals (p. 169). To give a sense of scale, Nader discusses 409 cases in the eleven years between 1957-1968, but is not certain that this was the total number of cases in that period, since there are no records for every single case (pp. 135-137). The point is that very few cases end up in the district court.

205 Nader, Harmony Ideology, 181.

206 Nader, Harmony Ideology, 82.
cultural principle: “‘making the balance’—which often means the restoration of relations to a former condition of harmony where conflict was absent.” Because Talean law is guided by this “harmony ideology,” the presidente seeks a decision that the litigants can agree to. In this case, the decision was a directive that involved ramping up pressure on the sindico to “make the balance.” The presidente exercised power by means of threatening to turn the case over to the district court in Villa Alta, an escalation in the proceedings that seemed to convince the defendant to comply with the ruling.

“Villa Alta” appears in case #2 as well:

#2) This dispute was over the ownership of a little piece of *café* [land planted with coffee] . . . . Crisanta López came up while Lina was washing and started to insult her. Then she tried to fight with her. Afterward Crisanta told other people that Lina had started the fight with her. Crisanta said that Lina was a thief, that she had moved the boundary stones on the piece of land and thus had stolen some of her property. Lina’s brother [Felipe] went to file a complaint against his sister. He went three or four times to the sindico Miguel Moreno, but Miguel said that he didn’t have the authority to settle this. He said they should go to see the *juez* [judge] in Villa Alta. Felipe never went to Villa Alta. (Lina herself told us that they went to see the presidente after Crisanta assaulted her, but ‘nobody was in the office when Felipe arrived, so we dropped the matter.’)  

Nader points out that the diffidence of the sindico and the absence of the presidente indicate that local officials will sometimes refuse to hear cases for reasons that can range from not seeing a particular case as important to not wanting to waste time on cases that will not add money to the town treasury. In such instances, power is exercised on one side by the authorities, who simply refuse to hear a case, and on the other, by the prospective plaintiffs, who, in weighing their options, decide that dropping a case is in their best interest. The district court thus functions rhetorically as a deterrent from pursuing a trial: the sindico presumably knew that

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Felipe would never travel to the district court; and by suggesting the Villa Alta as the only venue for a trial he in effect ended the case.

Case #3 does not mention the Villa Alta court, but the presence of the district court is palpable nonetheless. A shortened version of the case from Nader’s field notes is provided here:

#3) The police appeared before the presidente, saying that they were bringing before him two men who were fighting in front of a house off the square. One had a scratch on his face and a torn shirt. The other was in a state of drunkenness. The presidente asked them, ‘Why is it that you were fighting?’ The first man said, ‘Señor Presidente, first I would like to know who made the complaint, because we are not complaining. That is, I did not complain, nor did he.’

The presidente responded, ‘Of course, even though you don’t complain, the duty of the police is to watch so that there will not be any fights in the street, because then if something serious happens, this authority finds itself in difficulties. So, why is it that you fought?’

‘Look, Señor Presidente, this companion was drunk; I was sober. I was standing next to Domingo’s house, and when he passed, without saying anything, he pulled me by the hand, and we fell. Now, it would have been different if the two of us had been drunk. Then the police would have had good reason to bring us. But since I was in my senses, it would have been much stupidity on my part to hit a drunk, knowing that he was drunk, which is something that I myself can settle very well with him.’ His companion added, ‘Please excuse, Señor Presidente. I am at fault, because I pulled him. But neither of us is making the complaint. He has wounded my hand, but I do not complain. So we do not need to argue any more. Please tell us what our fine is so that everything can be settled here.’

The presidente said to him, ‘It cannot be done. You are both going to jail, you for putting out your hand and the other for being an insulter and a drunk. You, Nino, should have notified this authority that he was insulting you. We have the obligation to correct. But not the way you did, you put out your hand. For that reason the authority exists. You cannot make justice by your own hand.’

Nino answered, ‘Look, Señor Presidente, when was I going to come and report, if he had already grabbed me and had already given me a push?’ The presidente answered, ‘When you see a drunk who is insulting you, leave and do not say anything. In the end he is drunk. More foolish is he who argues with a drunk, knowing that he is not in his five senses.’ . . . [Nino disputed his jail sentence and tried unsuccessfully to have it decreased to a mere fine. Then after two hours the presidente allowed both defendants to leave after paying 15 pesos each].

The two most important utterances from this trial are when the presidente defends the actions of the police, because otherwise “this authority finds itself in difficulties,” and when he chastises Nino for “mak[ing] justice by [his] own hand.” Nader mentions that both of the defendants were

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210 Nader, Harmony Ideology, 162: “The district court is located in San Idelfonso de Villa Alta, a mestizo village between six and eight hours’ walking distance from Talea. In traveling to Villa Alta, one has to cross a mountain called Matahombres (killer of men). The name is apt, and I [Laura Nader] realized how motivated one would have to be to take a case to the district court after I had traveled the route myself.”

211 Nader, Harmony Ideology, 222-225.
repeat offenders, but that the underlying issue was over the court’s authority. The village court’s efficacy was challenged by Nino’s rogue attempt at taking justice into his own hands. On the one hand, if one of the men were seriously injured or killed, the district court would intervene, since homicides cannot be dealt with at the local level. On the other hand, the notion of citizen “self-help” more broadly was being discouraged. “Self-help is disapproved of in Talea,” writes Nader, “because it is correctly perceived as a threat to village autonomy.” Further, violence in general has potential for “‘disorganiz[ing] the group’,,” which has implications for the integrity of the community. Thus, without mentioning “Villa Alta” explicitly, the presidente’s statements manifest a palpable anxiety in Talean law over state involvement in village affairs. Here again, the presidente exercises power by means of implying that the district court could be involved, which is a tactic that succeeds in winning the compliance of the defendants to his ruling; and in this case it is the possibility that villagers will circumvent the local court, thereby challenging its right to exist apart from the district system, which encourages all the parties involved to resolve the case quickly.

The premise of Nader’s ethnography is that harmony ideology has become the backbone of Zapotec jurisprudence in response to social changes brought about by interaction with colonial and state authorities (e.g. in response to government road projects). Indeed, a commonly uttered Zapotec phrase is “‘[a] bad agreement is better than a good fight’”—a phrase directed at

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212 Nader, Harmony Ideology, 225.
214 Nader, Harmony Ideology, 225.
215 Nader, Harmony Ideology, 243; cf. p. 219: “Taleans distance themselves from outside authorities by prevention—by making sure that acts that would interest the state authorities, such as homicide and factionalism, are either controlled or prevented.”
216 Nader, Harmony Ideology, 87; cf. p. 1. This same phrase was articulated by an informant of Nader’s in the context of avoiding trying cases in Villa Alta (the state District Court; p. 104). Elsewhere, Nader
avoiding bringing cases before the state-run district court—and which is based on the cultural value of aversion to conflict.\footnote{Nader, \textit{Harmony Ideology}, 96.} “Making the balance” or “harmony ideology” emerges as an object in these cases at the point where there is an implied intersection between the district and local courts (e.g. when a presidente suggests that a local case should be heard at the district level). At the point of this intersection, where an agreement between the parties is reached, power is exercised by those who preside over the cases and by the litigants who comply with the rulings—the roles of both in the system of jurisprudence are disciplined by the mere possibility of district encroachment into the local system. Since the goal of litigation is to “restor[e] personal relations to equilibrium” in the community, in order to project harmony and deter state interference,\footnote{Nader, \textit{Harmony Ideology}, 109.} the parties involved in the cases constitute themselves as villagers who are distinct from the district court, and at the same as subjects who live in its shadow. In this way, Zapotec law has proven to be a malleable cultural force, playing a tense game of cat and mouse with district authorities, with the community’s autonomy and distinctiveness hanging in the balance.

\section*{2.4 Ilongot Peoples (Philippines)}

Of the ethnographies being surveyed in this chapter, R. Rosaldo’s examination of Ilongot headhunting\footnote{Renato Rosaldo, \textit{Ilongot Headhunting 1883-1974: A Study in Society and History} (Stanford: Stanford University Press, 1980).} is only loosely connected with the field of the anthropology of law. Nevertheless, points out that “[i]n a Talean court, decision-making in a single case consists of a series of successive choices influenced by the overall pull toward harmony or ‘agreement.’ . . . One could argue that the high value placed on harmony leads the participants to try to reach a settlement (convenio) by any means” (pp. 92-93).
I am including a description of the practice in this chapter because it is acknowledged by Ilongots as their custom, as a demarcation of their distinctiveness, and because it operates both as a site of power and as a tactic for the exercise of power: the practice of taking heads ebbs and flows as interactions between Ilongots and the outside world ebb and flow; and the practice is a means by which power is exercised, albeit violently.

Rosaldo situates the Ilongot cultural practice of headhunting within an historical frame, referring to his approach as an “ethnographic history.” The Ilongot people live in northern Luzon, Philippines, a mountainous region that separates their minority population from the lowland majority. During the course of his fieldwork in 1967-1969 and 1974, Rosaldo was able to reconstruct through oral narratives a history of the Ilongots before and after 1945. This year is pivotal in Ilongot cultural imagination because it is the year Japanese soldiers entered their otherwise isolated territory, while fleeing from the Americans, and wiped out a third of the population in one month. Rosaldo notes that after Philippine independence in 1946 there

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220 Rosaldo, Knowledge and Passion, 137. I define the practice of headhunting below on pp. 62-63.

221 Rosaldo, Ilongot Headhunting, 14. The first line of the book includes the phrase “ethnography stands to gain considerable analytical power through close attention to historical process” (p. 1).

222 Rosaldo, Ilongot Headhunting, 32.

223 Rosaldo, Ilongot Headhunting, 32; cf. p. 113. Rosaldo is careful to point out that Ilongots do not mention calendar dates when recounting stories (p. 47); however, in interviews “[w]hat . . . became apparent,” he writes, “was that Ilongots divided their history into two major periods: before 1945 and after 1945. I heard one tale after another about the events packed into that fateful year of 1945. There were stories about taking Japanese heads; stories about hunger while fleeing through the forest; stories about sudden death and weeping over lost family members; stories studded with the names of every brook and hill and craggy cliff where people walked or ate or spent the night. . . . The stories of 1945 were so numerous, so vivid, so detailed, so often told that it took me over a year to realize that they represented but a narrow strip of time. . . . As never before . . . I understood the pervasive cultural impact of human experiences so laden with significance as to be protracted in retrospect” (p. 39). 1945 even impacted Ilongot language. They designated the pre-1945 time as pistaim, which Rosaldo deduced was a “rendition of the English ‘peacetime,’ the time before World War II” (p. 40; cf. p. 48).

224 Rosaldo, Ilongot Headhunting, 36.
followed four years of calm on the island, which were abruptly interrupted by a spate of Ilongot headhunting:

After four years of calm (1946-49), Ilongot headhunting began once again as an indirect result of violent battles in the lowlands between members of the Hukbalahap guerrilla movement and counterinsurgency forces called Battalion Combat Teams. Angered because two of their men, a father and his son, were murdered by a member of the constabulary, the Ilongots reached a peak of headhunting intensity in 1959-60, when they went on a rampage that made them banner-headline news items in the Manila press. Headhunting, a practice at once central and problematic for both Ilongot raiders and lowland victims, became even more clearly than before the dominant symbol for Ilongot identity in the context of lowland/upland relations.225

Rosaldo identified a similar tendency prior to 1945 when times of peace and spates of headhunting corresponded with the ebbs and flows of external social pressures, especially those exerted by Spanish and American colonial powers.226 The intensification of headhunting raids in 1942-1945, for example, followed the time of peace (1929-1935), and can be correlated with the arrival of the Japanese in the Philippines.227 Other social stressors in addition to Japanese presence, especially after 1945, included the threat to Ilongot territorial control, since neighboring indigenous peoples—“Kallahans, Iballoys, and Ifugaos”—were migrating further inland as a byproduct of settlers infiltrating their territories, and also greater missionary activity, some of which targeted the most interior of Ilongot lands.228

The following account represents selections from Rosaldo’s reconstruction of the first contact between Ilongots and Japanese soldiers in the early and mid-1940s. What is notable in

226 Rosaldo, *Ilongot Headhunting*, 48: “Peacetime was marked by phases of intense headhunting (1919-28), no headhunting at all (1929-35), and a more gradual return (1936-41) to the earlier intensity of headhunting (1942-45). As is probably apparent from the dates cited, social forces located in the world system (most notably, the depression and World War II) shaped the pace, direction, and timing of local-level population movements and headhunting activity.” Cf. the discussion of Spanish colonialism in the late 19th century, which was another time when headhunting was in “full bloom” (p. 232), as it also was during the transition from Spanish to American colonialism (p. 257).
this encounter is how Ilongots revert to the practice of headhunting when external forces of power, manifested in the violent presence of Japanese soldiers, encroach into their territory.\textsuperscript{229}

The Japanese invaded the Philippines on December 8, 1941. Immediately thereafter, news of the alien soldiers reached the Ilongot hills. . . .

Through the wartime years, the Rumyads [the Ilongot group Rosaldo was embedded with] and their companions lived in ever-increasing danger of violence, both from the alien soldiers and from other Ilongots. . . . [T]his epoch was characterized by the presence of soldiers, who were a major factor in producing a sharply increasing spiral of internal beheadings among Ilongots. Kadeng [an informant] said that during this time ‘there was no more government,’ and thus ‘young men rushed to take heads.’ And indeed they did. In 1943, for instance, Tukbaw (then 20) participated in the second of two Rumyad vendettas, one on the heels of the other, against the Beduk people. . . . Tukbaw and the others [in the raiding party] from central Rumyad mounted their attack during the first light of dawn, killing the inhabitants of two households of Beduks . . . . But just as the raiders were about to climb into the two houses to behead the corpses strewn there, a band of Japanese soldiers arrived on the scene and began to open fire, following after them through the forest in hot, if brief, pursuit. That was the first time Tukbaw had seen a Japanese soldier.

His aroused hopes frustrated, Tukbaw pleaded with his father over the course of the next year, saying, ‘Father, why am I still the same? Why have I not yet taken a head?’ His father urged him to be patient. . . .

In about March 1945, when Ilongot men were clearing the forest for new swiddens and women were cleaning their gardens from the year before, a group of Pasigiyan people, as Tukbaw told it, arrived from their homes in Akeba on the southwestern margin with the following news: ‘The Japanese have burst upon us; they drove us from our homes and we have taken flight. . . .’ Tukbaw had his father ask the Pasigiyans to escort him on their raid against the Japanese in Akeba. The older men quickly agreed that Tukbaw (then 22) and none other would take the head of their first victim. . . .

Once near Akeba, Tukbaw and the Pasigiyans spent the day spying on the Japanese troops as they went through their daily activities. That evening they decided to wait in ambush for the lone unlucky soldier whose chore it was to come to the stream at dawn and fetch water. The next morning, Tukbaw said, ‘In an instant I grabbed that head with the short hair.’ He then tossed away the head and fled into the forest. . . .

The violent tenor of Ilongot feuding over the previous three years had abruptly become a thing of the past as all Ilongots united in the face of the Japanese. . . .

Afternoon one day in early June 1945, Ilongot dogs on the Reayan River suddenly began to bark at unseen quarry. In an instant the Japanese arrived on the scene. . . . [T]he men, thirsting for vengeance, set up an ambush near their former homes and beheaded two of the Japanese. One of the heads was taken by Bayaw (then only 16), who almost 30 years later recalled the Japanese pursuing him, firing all the way, and he in turn cursing them: ‘Fuck yourselves, you who brought us hunger.’

\textsuperscript{229} Rosaldo also points out that during this time Ilongots reverted to the cultural pattern of “gathering forces in the center and protecting themselves along the perimeter,” a practice modeled in the harvest ceremony of “rice magic”; see the discussion in *Ilongot Headhunting*, 121-122.
These beheadings, however, were more a beginning than an ending, for massive numbers of defeated and starving Japanese troops were about to fan out, suddenly and unexpectedly, over the Ilongot landscape.\textsuperscript{230}

Since Ilongots are distinctive in that “the standard [societal] institutions—segmentary lineages, ranked age-grades, men’s houses, dual organizations, matrilateral cross-cousin marriage rules,”\textsuperscript{231} and even formal “rules,”\textsuperscript{232} are not present, headhunting becomes the de facto cultural unifier, practiced by all Ilongot\textit{ berton}\textsuperscript{233} (i.e. groups) as a demarcation of Ilongot identity.\textsuperscript{234} Indeed, “taking a head”—which in practice means killing and beheading one’s victim, and throwing the head away (not actually stealing it)\textsuperscript{235}—is performed at the crucial stage of an Ilongot male’s development when he transitions from adolescence to “arrival,” which is followed by marriage.\textsuperscript{236} A successful hunt means that the participants can wear the red-hornbill

\textsuperscript{230} Selections taken from Rosaldo, \textit{Ilongot Headhunting}, 120-126.

\textsuperscript{231} Rosaldo, \textit{Ilongot Headhunting}, 9. The fluid social structure did not lend itself to a smooth reconstruction of history, admits Rosaldo. “[O]wing in large measure to the absence of a hierarchical ordering of social life beyond sex and age,” he writes, “no single official version of events is widely accepted, and in this sense [Ilongot] cultural knowledge is deeply perspectival” (p. 20).

\textsuperscript{232} Rosaldo, \textit{Ilongot Headhunting}, 23: “one of the most deeply held Ilongot values is that their lives unfold more through active human improvisations than in accord with socially given plans. They often insist, for instance, that in marital choice they follow the desires of their hearts rather than prescriptive rules or the dictates of their elders. Thus they prefer to think that their conduct is guided but not governed by rules that they more or less make up as they go along.” Tukbaw, an Ilongot informant, characterized this aspect of his culture as follows: “‘Sometimes people used to disperse. There were those who separated to go to Ma’ni. At other times they all came and met again. They were like wild pigs; they fucked together for a while and then they dispersed again’” (p. 56). Rosaldo says this “aptly represented the Ilongot sense of sociohistorical process as unpredictable and improvised” (p. 57). See also Rosaldo, \textit{Knowledge and Passion}, 1: Ilongots “lack . . . an articulated system of local controls”; cf. p. 14.

\textsuperscript{233} E.g. Rosaldo, \textit{Ilongot Headhunting}, 45. When Rosaldo returned to Ilongot territory in 1974, some of the locals told him they “‘no longer’ were Ilongots,” in part because they had converted to Christianity and given up the cultural practices of “magic,” “oratory,” and, of course, “headhunting”; cf. p. 60.

\textsuperscript{234} Rosaldo, \textit{Ilongot Headhunting}, 131, 142.

\textsuperscript{236} Rosaldo, \textit{Ilongot Headhunting}, 58, 139-142.
earrings—a sign of having taken a head—which is a threshold that must be crossed to attain full maturity in Ilongot society. Males of the same peer group will compete as rivals, and, spurred on by envy, have been known to take heads in “quick succession.” Even the system of betrothal is influenced by headhunting. A prospective husband moves into the household of his in-laws, and is subjected to a kind of hazing at the hands of his future father- and brother(s)-in-law, which becomes attenuated once he has taken a head.

Ilongot society is regulated by cycles of feuding and alliance-formation, both of which are marked by headhunting or the lack thereof: groups that take each other’s heads are feuding; groups that live amicably do not attack each other. In this regard, headhunting is a means for exacting revenge. It is the external manifestation of one’s “anger,” which is metaphorically

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237 Rosaldo, *Ilongot Headhunting*, 46. Rosaldo reports that even in 1974 Ilongot males “still walked about in G-strings and red hornbill earrings.”

238 An exception to this general principle occurred between 1929-1935 when feuding ebbed as a direct result of fewer incursions into Ilongot territory from lowland soldiers—“a number of Ilongot men married without taking heads”; Rosaldo, *Ilongot Headhunting*, 52. Rosaldo opines that “[w]hat they lacked . . . was not so much the desire but the opportunity to take heads.”


240 Rosaldo, *Ilongot Headhunting*, 140-141, 183-185. Rosaldo reports that if prospective husbands have not taken a head, they will need to “withstand the culturally stereotyped ‘insult’ that they have designs on beheading their wives” (pp. 140-141); see also Rosaldo, *Knowledge and Passion*, 140, 152, 159.

241 Rosaldo, *Ilongot Headhunting*, 24: “the feud embodies much of Ilongot historical consciousness and often motivates marriages and residential moves. In this sense the process of feuding is a central moving force for both the conduct and perception of history”; cf. p. 61: “I would . . . assert that other major Ilongot social processes, such as marriage and residential movements, are best interpreted in relation to the politics of feuding.” And central to feuding is headhunting, especially since the initial insult that generates the spate of headhunting can be difficult to identify; see p. 69.


243 Cf. Rosaldo, *Ilongot Headhunting*, 82 and the “law of the talion.”
expunged when the head is thrown away. Feuding bertan will exchange spates of headhunting in retaliation for slights, insults, and previously taken heads until the groups involved decide to make salt oaths, enact a covenant, and/or intermarry, any one of which, or sometimes all together, can end the feud. Victims of headhunting can be any member of a rival bertan, including women and children, or simply unfortunate wanderers on a trail. Sometimes deception is involved. An unwitting victim can be walking on a trail with a “friend,” who attacks and beheads him/her, or be the host of someone who has invited himself over (or a guest invited over) for the evening, and, while being hospitable or even while sleeping, is attacked and beheaded. Suspicious hosts and/or guests have been known to lie awake all night with bolo (i.e. machete) drawn. At other times, raiding parties of males who share grievances are formed. These will then invade houses and kill entire households, or travel to other regions of the forest or lowlands and ambush victims. Although Rosaldo does not report any personal

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244 Rosaldo, *Ilongot Headhunting*, 140.
247 Rosaldo, *Ilongot Headhunting*, 49. Rosaldo mentions “opportunistic deceptions of feigned friendship in which, for example, a man can behead his companion on the trail, of his host or guest while inside a house”; cf. p. 246. Michelle Rosaldo reports that she and Renato were warned by wary Ilongot adults not to ask younger males to be their guides on the trail for fear that the youths might prey on the two anthropologists! See Rosaldo, *Knowledge and Passion*, 142. On another occasion the anthropologists were accompanied by armed guards from Manila, who behaved strangely on the trail, “dart[ing] around rocks with rifles ready, calling out, ‘Don’t shoot, you Butag men; we’re with Americans!’” Only later did the Rosaldos discover that “members of the Butag bertan were about to enter peace negotiations with our companions and had threatened to take a head to equalize a history of killings before forsaking grievances in a binding oath” (p. 13).
249 Examples of grievances can be found in Rosaldo, *Ilongot Headhunting*, 67-74; cf. pp. 252, 269. Headhunting is also something driven by the “desire” of Ilongot males “to emulate” older males; see Rosaldo, *Knowledge and Passion*, 139.
trouble, his predecessor, American anthropologist William Jones, was killed by the Ilongots on April 3, 1909.\textsuperscript{250}

The cultural practice of headhunting is both a site and a tactic of power in Rosaldo’s ethnography of the Ilongots. It is a site in that the frequency and intensity of headhunting ebbs and flows as encounters between Ilongots and the external world ebb and flow. A case in point is seen in the comparison between the relatively peaceful 1930s when headhunting had lulled and the 1940s when the numbers of headhunting raids spiked in response to the presence of Japanese soldiers on the Philippine islands. As a tactic of power, headhunting is the external sign by which Ilongot bertan display their relationships with each other: feuding bertan hunt each other’s heads; however, a feud can be ended, or an alliance formed, when males from two or more bertan conspire together to form a raiding party. Headhunting, as a form of retaliation and as a mechanism for alliance formation, is thus the means by which power is exercised among Ilongot bertan, and the means by which Ilongot males signal that they have attained a certain power status in Ilongot society. This is to say that a male cannot cross the threshold into adulthood until he has participated in a successful headhunting raid, and, indeed, taken a head himself. Achieving this status is essential if he wants to avoid the social stigma that is attached to aging males who still have not taken a head: he will endure the ridicule of his prospective father and brother(s)-in-law; and he will have to fend off the suspicion that his first successful headhunting raid will be when he attacks his wife. Tukbaw’s plaintive comments to his father provide a good example of the angst an Ilongot male feels if a raid goes poorly and he fails to take his first head. Although strictly speaking Rosaldo’s is not an ethnography that focuses on

\textsuperscript{250} Rosaldo, \textit{Ilongot Headhunting}, 2.
“law,” it does succeed in demonstrating that headhunting is a principal Ilongot cultural practice, and a custom that regulates Ilongot society.\footnote{Accordingly, it may bear some resemblance to what older anthropologists of law referred to as “law-stuff”; see Hoebel, \textit{Law of Primitive Man}, 37. The famous statement by E. E. Evans-Pritchard is apropos: “In a strict sense Nuer have no law”; see \textit{The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People} (Oxford: Clarendon, 1965), 162. This perception is in part due to the fact that Evans-Pritchard never observed a “legal procedure” for dispute settlement, even though his informants described such situations (p. 163): “I lived in intimacy for a year with Nuer and never heard a case brought before an individual or a tribunal of any kind, and, furthermore, I reached the conclusion that it is very rare for a man to obtain redress except by force or threat of force” (p. 162), that is, use of “the club and the spear [as] the sanctions of rights. What chiefly makes people pay compensation is fear that the injured man and his kin may take to violence” (p. 169). It is this aspect of Nuer cultural behavior that is perhaps most similar to Ilongot headhunting.}

2.5 Colonizing Hawaii

S. E. Merry’s historical ethnography\footnote{Sally Engle Merry, \textit{Colonizing Hawai’i: The Cultural Power of Law} (Princeton: Princeton University Press, 2000). Merry refers to her study as “an ethnography of the colonizing project in Hawai’i” (p. 26).} of court proceedings in the town of Hilo on the Great Island of Hawaii, during the social transition from kingdom to annexed colonial territory to statehood and beyond (1820-1985), examines law as a force of cultural change. Merry begins her investigation by recounting the arrival of New Yorker William Little Lee to Hawaii in 1846. A trained lawyer, Lee was persuaded by the king of Hawaii, Kamehameha III, to serve as a judge in the Honolulu court system. Within six years, Lee had helped to create a Superior Court of Law and Equity, draft a new criminal code based on Massachusetts criminal law, and write a new constitution for the islands.\footnote{Following Merry, \textit{Colonizing Hawai’i}, 3.} Merry sets the social context for these changes to the legal system:

Lee had arrived in Hawai’i at a critical time. Caught in the crosscurrents of global mercantile trade involving Europe, the United States, and China and at the center of the burgeoning Pacific whale fishery, the Kingdom of Hawai’i had become home to a large and fractious group of foreign merchants and sailors. As Britain, France, and the United States vied for power and influence in the Pacific, each sent warships to the islands demanding special treatment for its resident citizens and threatening to take over the kingdom. In response to these pressures, Kamehameha III and the high-ranking chiefs were engaged in transforming the Hawaiian system...
of law and governance into an Anglo-American political system under the rule of law. Their strategy was to create a ‘civilized’ nation, in European terms.  

Merry’s ethnography represents in her words an examination of “how cultural forms of law are produced, appropriated, and redefined in historically changing social fields, and examines the relationship between these forms and the practices that give them life.” Her study thus treats law in a way that is consistent with the Foucauldian approach of this project, which is exploring the reasons why law emerges as an object around which discourses and practices circulate and multiply in frequency. One point where law emerges as an object is at the intersection between macro and micro relations of power. Merry’s ethnography addresses this very interaction by describing both the imposition of law as a product of colonial intervention, and the appropriation of law by indigenous Hawaiian chiefs—both sides of the colonial encounter aimed at “civilizing” the indigenous. In the interest of preserving the autonomy of the islands, the ali‘i (“chiefs”) adopted Euro-American conceptions of “civilization,” especially the rule of law understood as a written code with a judiciary, because this was what constituted “sovereign,” “civilized” nations in the nineteenth century.  

“Paradoxically,” writes Merry, “as Hawai‘i sought to claim sovereign status as a nation, it was mocked by other nations because of

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254 Merry, Colonizing Hawai‘i, 4. Merry writes of this process of the imposition and adoption of colonial law: “William Little Lee’s actions in Hawai‘i reflect both serendipity and world historical processes. Colonialism is made up of both: chance conjunctures of particular individuals and broad economic, political, and cultural forces. The colonial transformation of Hawai‘i was a fragment of global processes of imperialism, capitalist expansion, and transition to modernity but it was also the product of actions of particular people who found themselves there at the time” (p. 6); also “[t]he law was one of the core institutions of colonial control, serving the needs of commerce and capitalism by producing free labor and privatized land . . . . But it was also an ideological cornerstone of the civilizing process. . . . The law was simultaneously a means of change and a sign of progress” (p. 8).

255 Merry, Colonizing Hawai‘i, 30-31.

256 Merry, Colonizing Hawai‘i, 36.
its mimicry of the ceremonial forms of European nationalism.” Moreover, rather than preserving Hawaiian autonomy, such strivings after civilization led to the proliferation of hybrid forms of law, which eventually resulted in an Americanized legal system that displaced Hawaiian identity in favor of producing identities in terms of criminality.

The process was two-fold. Between 1825 and 1852 Hawaiian law was first blended with Christian law, and then subsumed into a secular American form of law. The first stage was driven by Christian missionaries who exercised power over the chiefs by influencing them to codify biblical laws, such as the Ten Commandments and rigid restrictions on sexual behavior, on the pretext that such precepts reflected divine will. Certain changes to Hawaiian cultural “law,” however, had already been underway prior to missionary intervention. The kapu restrictions on diet and on allowing males and females to eat together, for example, were ended in 1819 by Kamehameha II in the wake of Captain Cook’s arrival at the end of the eighteenth century. One chieftess named Ka‘ahumanu, who supported the changes, maintained that the traditional deity, Akua, had become ineffectual as evidenced both by the loss of nearly eighty percent of the indigenous population to disease since Captain Cook’s arrival in 1778, and also by

257 Merry, Colonizing Hawai‘i, 20. Merry quotes from a supercilious Mark Twain: “There is his royal Majesty the King [of Hawaii], . . . . He lives in a two-story frame ‘palace.’ And there is the ‘royal family’—the customary hive of royal brothers, sisters, cousins, and other noble drones and vagrants usual to monarchy,—all with a spoon in the national pap-dish, and all bearing such titles as his or her Royal Highness the Prince or Princess So-and-so. Few of them can carry their royal splendors far enough to ride in carriages, however; they sport the economical Kanaka horse or ‘hoof it’ with the plebians”; see Mark Twain in Hawaii: Roughing It in the Sandwich Islands (Honolulu: Mutual Publishing, 1990), 31.

258 Merry, Colonizing Hawai‘i, 45.

259 Merry, Colonizing Hawai‘i, 45.

260 Merry, Colonizing Hawai‘i, 59. Merry points out that these kapu restrictions “prevented the ‘unclean’ nature of women from defiling male sanctity. The foods forbidden to women were phallic symbols and also forms of major male Akua or gods: the pig, coconut, banana, and certain red fish . . . . If women ate these foods it would encourage them to devour male sexual prowess . . . [and] get the mana to rule the domains represented by men” (p. 60).
the white man’s resilience despite ridiculing the religion based on kapu: it was deduced that “the [white man] held the secret to long life.” 261 This reasoning created space for the missionary program in the early nineteenth century. Indeed, upon hearing of the ending of these kapu laws, the missionaries en route to the islands interpreted it as a providential intervention by the Christian deity. 262

For indigenous Hawaiian chiefs, the missionaries brought a mightier deity than Akua; and when Ka‘ahumanu was victorious in quelling a rebellion in her district, she attributed this success to prayers offered to the Christian deity, which suggested that the missionaries’ religion held promise for restoring the kingdom, 263 and for “return[ing] religion to the center of law and chiefly power.” 264 But in addition to being mightier, the Christian deity brought writing (palapala), which was believed to hold spiritual power. 265 Codified law exemplified for the Hawaiians this confluence of palapala and the Christian deity’s perceived strength, and by the late 1820s, prohibitions derived from the Ten Commandments had become Hawaiian law. 266

261 Merry, Colonizing Hawai‘i, 60.
262 Merry, Colonizing Hawai‘i, 61.
263 Merry, Colonizing Hawai‘i, 63.
264 Merry, Colonizing Hawai‘i, 70.
265 Merry, Colonizing Hawai‘i, 64-65: “The palapala was desired both for its strategic usefulness and for its transcendent power. It is clear that the initial enthusiasm of the chiefs for the new religion was intimately linked to their desire for palapala. All the chiefs wanted to be able to read and write and they quickly started writing letters to each other . . . . But the Hawaiian chiefs appear to have reinterpreted writing in their own cultural terms, as a form of spiritual power, with which to contest the power of the deity Pele [the volcano deity whom they feared]. They saw mana [spiritual power] just as the missionaries did, but in a different way. For the missionaries, the ability to read the Bible was fundamental to religious life, to access the spiritual world. . . . For the Hawaiians, writing also was related to spiritual power, but apparently as a sign of the deity’s power to speak.”

266 Merry, Colonizing Hawai‘i, 69. Merry identifies important changes to the existing indigenous law structure in addition to codification. These include trials by jury and public hangings (p. 70): “The changes were obviously made in the name of ‘civilization’ as well as Christianity. But the new practices of trial by jury, public killings, and printed laws displaced power from the hands of the ali‘i [chiefs]. The use of printed rather than oral laws diminished the localism by which laws were declared and enforced by particular ali‘i” (p. 71).
The swift implementation is traceable to overlapping cultural values. Merry observes that “the new system of law shared the cultural logic of the kapu system. Both the missionaries and the Hawaiians envisioned law as descending from a divine source through earthly mediators.”

The indigenous cultural system situated the ali‘i (chiefs) in this role of mediating divine power; and their support of the missionary program ensured its success. But with missionary-backed law came missionary cultural fetishes about appropriate clothing and sexual mores. Laws were enacted to prohibit adultery, fornication, restrict divorce, and redefine the family unit as “under the sovereignty and protection of the father,” since “[o]nly men were capable of self-governance.” Consequently, certain Hawaiian sexual practices and cultural attitudes became criminalized, which created both a “criminal” identity for those who committed these “crimes” where previously there had been none, and also the possibility of a “civilized” identity for those who conformed.

In response to this clash of cultural values, however, some Hawaiians resisted:

Although the late 1820s were years of triumph and victory for the missionaries as the ali‘i nui converted to Christianity and then threw their enormous political and religious authority behind attending school and church, by the 1830s missionaries began to report a distressing failure to change conduct, particularly in family and sexual relationships. By the late 1830s Lorrin Andrews, a missionary fluent in Hawaiian, attributed this failure to cognitive deficiencies of the Hawaiians and their inability to think abstractly . . . . By the 1840s theories of the licentious, indolent, and childlike ‘nature’ of the Hawaiians were pervasive among missionaries.

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267 Merry, Colonizing Hawai‘i, 71.
268 Merry writes that “in many ways, marriage and the control of sexuality was at the core of the mission project, the bedrock of virtue”; Colonizing Hawai‘i, 73; cf. p. 229.
269 Merry, Colonizing Hawai‘i, 73.
270 Cf. Merry, Colonizing Hawai‘i, 261-263.
271 Merry, Colonizing Hawai‘i, 76; cf. p. 162. Elsewhere Merry summarizes this situation: “Native Hawaiians were regarded as ‘our’ natives by the whites and treated as childlike but benign, lazy, irresponsible with money, and friendly, although too sensuous. When the missionaries arrived in the 1820s the dominant discourse was one of savagery and heathenism and the need to minister to souls on these dark shores. As the Hawaiians proved resistant to the enormous cultural and moral changes envisioned by the mission, the missionaries began to search for ‘natural’ flaws in their character or
Such theories manifested the underlying presumption among white missionaries that “law” and civilization contain inherent power to tame “the savage within”; and that refusal to conform to the new legal regime of power was a verification of Hawaiian inferiority.272

The cultural values of the missionaries persisted even as the actual legal façade shifted in the mid-nineteenth century to one based on the secular American code.273 William Little Lee’s involvement was again pivotal. His opportune arrival to the islands during the height of their exposure to western capitalist interests helped to facilitate the transition from secluded, missionary project to recognized, sovereign state.274 Between 1844 and 1852 “statutes imported intellect to account for this failure, such as their inability to think abstractly . . . . The frustrating efforts to transform marriage and sexual practices added a recurring complaint about licentiousness, heard loudly in the missionary reports from the field in 1846” (p. 128).

272 Merry, Colonizing Hawai‘i, 74-75. Merry points out that not only were Hawaiians deemed to be inferior “by nature,” they were also considered to be “inherently dangerous” to society, creating a dilemma for missionary parents: “As they struggled to place the veneer of civilized laws and self-restraint over their ‘savage’ children, their children played happily with Hawaiian children and quickly learned to speak fluent Hawaiian. But along with this easy sociability came an open attitude toward sexuality and sexual pleasure, particularly among young people. The missionaries found this intolerable. Many attempted to separate their children from Hawaiian children, although few followed the extreme measures of seclusion adopted by the Thurston, who erected a high wall around their compound and prohibited their children from leaving it. . . . Hawaiian people, like Euro-American women and children, were thought to require constant supervision from adult white males since they were thought unable to acquire the self-restraint characteristic of the liberal subject. This is the only kind of person who can exist without the control of law because the minute systems of disciplinary power have induced him to engage in such control himself” (p. 75).

273 A letter sent by the U.S. President John Tyler to the House of Representatives in 1842 reveals the symbolic significance of this shift: “To the House of Representatives of the United States: The conditions of those Islands has excited a good deal of interest, which is increasing by every successive proof that their inhabitants are making progress in civilization, and becoming more and more competent to maintain regular and orderly civil government. . . . Just emerging from a state of barbarism, the Government of the Islands is as yet feeble; but its dispositions appear to be just and pacific, and it seems anxious to improve the condition of its people by the introduction of knowledge, of religious and moral institutions, means of education, and the arts of civilized life”; cited in Merry, Colonizing Hawai‘i, 84.

274 Merry, Colonizing Hawai‘i, 76-81. This is not to say that the Hawaiian Constitution was devoid of religious language. The prologue of the Constitution includes the words “no law shall be enacted which is at variance with the Word of the Lord Jehovah or at variance with the general spirit of His Word. All laws of the Islands shall be in consistency with the general spirit of God’s law”; see discussion, pp. 79-80.
largely from the United States began to transform land into a privately owned commodity, 
women into possessions of their husbands, and the exchange of goods, services, and loyalty 
between land possessors and land users into cash taxes”; a new penal code was enacted as 
well. These legal changes coincided with social changes. Larger numbers of foreigners 
coming to the islands seeking employment meant that the percentage of native Hawaiians to the 
total population on the islands decreased, creating “the sovereignty paradox,” which, according 
to Merry occurred when Hawaiian

leaders adopted the forms of modern government and rule of law, but . . . required foreigners 
skilled in their practices to run them. And as foreigners developed and ran these new 
bureaucratic systems of law and government, they redefined the Hawaiian people as incapable, 
naturalizing this incapacity in racialized terms.

Another effect of foreign (i.e. American) involvement in Hawaii was the elimination of 
Hawaiian customary law. Unlike the colonial projects of the British, French, and Dutch, which 
tended to preserve the “customary” legal system of indigenous groups, the native Hawaiian 
system was not retained as American models of jurisprudence were imposed. Paradoxically, 
despite being inherently segregationist, the European practice of establishing “dual legal 
systems”—one system for foreigners and another for the native population—helped preserve 
indigenous identity; not so the American civilizing program in Hawaii.

Data from court cases in the Hilo district of Hawaii indicate that the process of imposing 
social transformation through a new legal system was effective. As with the Massachusetts 
criminal code on which it was based, the new Hawaiian system criminalized certain forms of

275 Merry, Colonizing Hawai‘i, 86; cf. pp. 93-102.
276 Merry, Colonizing Hawai‘i, 89.
277 See for example the discussion regarding African customary law in Chanock, Law, Custom and Social 
Order, 49-59; cf. Gluckman, Judicial Process Among the Barotse, ch. 4.
278 Merry, Colonizing Hawai‘i, 113-114.
279 Merry, Colonizing Hawai‘i, 114.
sexual behavior; and, in the years after the criminal code was implemented, the number of sexual crimes had plummeted. Between 1853 and 1893, the number of adultery and fornication cases on the Hilo District Court docket dropped from nearly fifty per year to less than five.  This trend was mirrored in the larger courts of Honolulu and Kaua‘i. Island-wide, the number of sexual crimes fell from between nearly two-thirds of all cases in the period before the new legal system was implemented in 1850, to less than five percent of all cases by 1886. On the one hand, the resistance displayed by Hawaiians to the missionary project earlier in the nineteenth century seems to have been exhausted after decades of population decline; they had begun to acquiesce. On the other hand, the new secular system was coupled with a more thorough apparatus of justice with more reliable courts and prisons. But Merry goes further in her explanation of the success of the new legal system, drawing on Foucauldian insights about power and surveillance:

> The law is a blunt instrument deployed against apparently threatening populations only as the leading edge of systems of surveillance and control. Its effects are less to change behavior than to declare and institute new normative orders, to act temporarily until more subtle and effective forms of control emerge, rooted in the community and workplace. Perhaps its most important role is to enunciate the cultural principles of the new social order. It is, in the end, the law’s productive rather than its repressive power that is important to this cultural transformation.

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280 Merry, Colonizing Hawai‘i, 225. Chart 8.1 (p. 221) indicates that the number of sexual crimes climbed again in 1903 to twenty-two, but Merry notes that only two of the defendants in these cases were Hawaiian, which indicates that the Hawaiians had begun to internalize the system of legal values after nearly eighty years of being the targets of this civilizing process.

281 Merry, Colonizing Hawai‘i, 221. Merry points out that not all of these cases were of native Hawaiians, but the vast majority of them were (82%).

282 Merry, Colonizing Hawai‘i, 244-245.

283 Merry, Colonizing Hawai‘i, ch. 4.

284 Merry, Colonizing Hawai‘i, 206. The intersection between power and surveillance is developed in Michel Foucault, Discipline and Punish: The Birth of the Prison (trans. Alan Sheridan; New York: Vintage Books, 1977), especially in the discussion of panopticism (in part III.3).
The notion of power as productive is described by Foucault in the context of the proliferation of discourse about sex, but is derived from an understanding of diffusive power that sees a connection between power, knowledge, and discourse. This is to say that certain things accepted as “knowledge” are the products of relations of power, and are sustained by discourse. Merry applies this theory to Hawaii’s social and legal transformation: the power operative in the legal system was not merely repressive in the sense of imposing a new regime of law and order, but was also productive in the sense that it “enunciate[d] the cultural principles of the new social order” as evidenced by the constructions of kinds of identities among the indigenous population based upon the knowledge of whether one was a “criminal” or “civilized”:

The construction of some kinds of identity and the effacing of others is a fundamental aspect of the power of the law . . . . Defining identities constitutes some as normal and others as deviant, some as citizens and some as aliens, some as having racial identities and others as unmarked racially, defined as the normal. The most fundamental distinction legal systems draw is that between the criminal and the noncriminal. Making this distinction with reference to particular persons, is, of course, at the heart of the criminal process . . . . This process produces a truth of bodies, a social knowledge of the extent of wrongdoing by particular groups, defined in terms of race, class, gender. In other words, a set of criminalized identities emerges.

Merry points out that the proliferation of legal discourse around the new notions of acceptable and unacceptable behavior was based on circular reasoning. The law was instituted to naturalize and legalize a particular understanding of family and appropriate sexuality, and simultaneously to justify the punishment of offenders, and yet

as the numbers of adultery convictions piled up, foreigners thought they had hard evidence that this was a licentious population, unable to control its sexuality and incapable of self-governance. The childlike nature of the people was revealed. Those unable to govern themselves were

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286 Foucault, *History of Sexuality*, 100: “it is in discourse that power and knowledge are joined together.”

287 Merry, *Colonizing Hawai‘i*, 262-263.
obviously unable to govern a nation. In the class stratification system of the Victorian era, they were consigned to the bottom rungs of society along with prostitutes, the poor, and children.  

Law for Merry is a “site of power.” It can be imposed by the colonial regime, but also appropriated by Hawaiian chiefs like Ka‘ahumanu. It can be resisted by the native population, and it can be attached to the value-system of a missionary agenda. For my purposes, Merry’s study is important because it demonstrates that law emerges as an object of discourse in Hawaii in the space where power is exercised—the cultural clash between the colonizer and the colonized. One product of this clash is that Hawaiian law is displaced by an Americanized system of law, which takes its most visible form in the proliferation of codified laws that produce criminal and civilized identities. Another product of this cultural clash is that Hawaiians are constituted as colonial subjects—as occupying a third space between their indigenous heritage and the imposition of a new civilized identity. H. Bhabha’s category of “ambivalence” helps Merry conceptualize this dichotomy—ambivalence being the name Bhabha gives to the “partial presence” of the colonized subject, who is identified as “other” (e.g. in racialized/stereotypical categories) in the colonial encounter, but is undergoing a civilizing process. The ostensible goal of this process, however, can never be attained precisely because colonial discourse requires an “other” to sustain itself: colonized subjects will, in Bhabha’s

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288 Merry, *Colonizing Hawai‘i*, 256. “In a final ironic twist,” writes Merry, “the alleged eroticism of the Hawaiian people is fundamental to the current tourist trade. . . . The portrayal of sexualized Hawaiian women and men, scantily clad in scenes redolent of nature in a place far from the time and work discipline of industrial capitalism is the staple of tourist advertising. Thus the meanings and practices of sexuality that justified taking away sovereignty now create the cultural images that resell Hawai‘i to the descendants of those people who denigrated Hawaiian sexual practices in the first place” (p. 257).

289 Merry, *Colonizing Hawai‘i*, 265.

290 Merry, *Colonizing Hawai‘i*, 13.


292 Bhabha, *Location of Culture*, 100-101. Here Bhabha describes colonial discourse as an “apparatus that turns on the recognition and disavowal of racial/cultural/historical differences. Its predominant strategic function is the creation of a space for a ‘subject peoples’ through the production of knowledges in terms
words, be “Anglicized” but never “English,” “almost the same, but not quite.” Consequently, for Bhabha, it is the colonial encounter itself that produces a hybridized space that gets occupied by the natives’ almost-but-not-quite mimicry of the colonizer. In short, the natives’ distinctiveness cannot be erased completely, since it is both needed to reinforce the colonial project itself, which is sustained by a discourse of cultural difference, and also because it keeps being reinscribed whenever the colonized appropriate the cultural forms—in the case of Hawaii, legal ones—of the colonizer. By conceptualizing the colonization of Hawaii in Bhabhian and Foucauldian terms, Merry’s ethnography shows how the interplay between macro and micro relations of power—centered on the colonial encounter—creates the space in which legal discourse proliferates and in which colonial subjects are constituted.

of which surveillance is exercised and a complex form of pleasure/unpleasure is incited. It seeks authorization for its strategies by the production of knowledges of colonizer and colonized which are stereotypical but antithetically evaluated. The objective of colonial discourse is to construe the colonized as a population of degenerate types on the basis of racial origin, in order to justify conquest and to establish systems of administration and instruction. . . . [C]olonial discourse produces the colonized as a social reality which is at once an ‘other’ and yet entirely knowable and visible. . . . It employs a system of representation, a regime of truth.”

Bhabha, Location of Culture, 125.

Bhabha, Location of Culture, 123.

Cf. Bhabha’s discussion of “Third Space”; pp. 28-56. See also the story of Anund Messeh’s encounter with a group of five hundred natives reading the “English book [i.e. the Bible]” in Meerut under a grove of trees outside Delhi. The natives appropriated the book, believing it to be a miraculous gift of angels—thus affirming an assumption of the colonizer’s religion, namely, that it has divine origins—yet they flatly refused to affirm either that the book came from the Europeans, or the necessity of adopting baptism and the Eucharist—thus rendering the natives as almost but not quite “Christianized”; see Bhabha, Location of Culture, 146-148; cf. pp. 159-160. Elsewhere Bhabha articulates a similar effect with a different story: “the word of divine authority is deeply flawed by the assertion of the indigenous sign, and in the very practice of domination the language of the master becomes hybrid—neither the one thing nor the other. The incalculable colonized subject—half acquiescent, half oppositional, always untrustworthy—produces an unresolvable problem of cultural difference for the very address of colonial cultural authority” (p. 49).
2.6 Conclusion

One difficulty that faces any comparativist in the study of religion, who is not an ethnographer, is that all ethnographic materials arrive on the scholar’s desk already in discursive form as a monograph or article. The comparativist is thus a step removed from the Geertzian method of interpreting cultural symbols in a “thick” manner. “Thick description” might be one useful way for anthropologists to conceptualize and report their on-the-ground work; but for the desk-based scholar, far removed from steamy jungles, Pacific islands, or the Sierra Madre Mountains, such an approach merely organizes the raw data into a coherent and discursive form. The work of comparison for such a scholar begins where ethnography has ended. And the challenge of how to translate unfamiliar cultural forms into more familiar ones, which confronted the ethnographer, has given way to the comparativist’s problems of what to compare and for what reasons.

I have underscored that my focus in this project is less on comparing the particular laws, rules, or customs of one culture with those of another, and more on the question of what makes possible the emergence of law as an object of discourse. To put this more directly, I am not doing comparative law, but an analysis of power. When scanning the terrain he covered in his career, Foucault once characterized a portion of his work as “passing from the analysis of the norm[s of behavior] to analysis of the exercise of power.” My approach takes its cue from this movement. By decentralizing power, and prying it away from the monarchy and from juridico-

\[\text{footnote} \ref{footnote-296} \]

\[\text{footnote} \ref{footnote-297} \]
See Rosaldo, Knowledge and Passion, 20, who refers to “anthropology [as] at least in part, an exercise in translation; . . . understanding another culture is much like the learning of a foreign language; and . . . , furthermore, acquiring competence in the speech of one’s informants is itself a sort of initiation into the ways they view their world.” These are, she writes, “as old a set of ideas as its analytical ramifications have been various.”

\[\text{footnote} \ref{footnote-298} \]
political discourse, Foucault conceived of power as being embedded in social relations, forming a web or chain of relations or practices. I have pointed out that this aspect of Foucauldian thought fits together nicely with the emphasis in the anthropology of law on law as a cultural practice and not primarily a code.

My main argument is that law emerges as an object in the space where power is exercised; more specifically, at the point where there is interaction between macro and micro relations of power. The four ethnographies outlined in this chapter provide examples that demonstrate this interaction. In each one, certain laws or law-like practices have become a problem in the space of this interaction, and discourses, or indeed the practices themselves, have begun to proliferate as a result. For the Dou Donggo, individuals exercise power through their system of jurisprudence in response to the encroachment of external social, political, and economic forces into their daily lives, and thus are constituted as subjects who are caught between traditional and modernizing practices. For the Talean Zapotecs, harmony ideology emerges as a governing principle in the village in response to the perpetual threat of district court involvement in local cases. Presidentes and litigants agree on verdicts in order to avoid bringing cases to the district level, and thus preserve village autonomy. For the Ilongots, ebbs and flows in headhunting can be correlated with ebbs and flows in incursions into Ilongot territory by outside social forces (e.g. the presence of Japanese soldiers in the 1940s). Headhunting also operates in Ilongot society as a means by which groups regulate behavior, form alliances, feud, and demarcate the difference between youth and manhood. Lastly, for the Hawaiians during the colonial period, the clash between colonizer and colonized produced legislation that was intended to constrain indigenous sexual practices and regulate indigenous cultural values. The civilizing agenda of missionaries and American jurists, the appropriation of this agenda by local Hawaiian chiefs, and the resistance to these colonial forces by the population, are each sites
where power is exercised and where individuals constitute themselves as subjects within the colonial encounter.
Chapter 3
Literature Review of Matthean and Pauline Scholarship on Law

3.1 Overview

The survey of ethnographic studies from the field of the anthropology of law in the preceding chapter is intended to incorporate into this project cultural materials from outside of the Jewish/Christian matrix. I am thus deploying J. Z. Smith’s method of redescription, and simultaneously trying to think about “law” as a cultural practice instead of merely as a written code. My purpose in using such cross-cultural materials is derived from a premise of cultural anthropology, namely, “that there is cognitive power in ‘otherness’,” in defamiliarizing a particular field of study by examining cultural practices that are “other” from the perspective of the scholar, “in order to enhance . . . perception of the familiar.” At the same time, I am not addressing questions that are typically raised by scholars who explore the topic of law in the Gospel of Matthew or in the letters of Paul. As this chapter will demonstrate, studies of law by Matthean and Pauline scholars have tended to focus on what the two writers say about law, and then compared their results with “Judaism” or something similar. At stake in these

299 I will return to this theme at the end of ch. 5 below.

300 Smith, “What a Difference a Difference Makes,” 260: “anthropology holds that there is cognitive power in ‘otherness,’ a power that is removed by studying the ‘same.’ The issue . . . is not the sheer distance of the object of study, but rather the mode of relationship of the scholar to the object. In anthropology, the distance is not to be overcome, but becomes, in itself, the prime focus and instrument of disciplinary meditation.”

301 Smith, “Introduction,” in Smith, Imagining Religion, xiii; italics original.

302 An especially blatant example of this can be seen in Élian Cuvillier, “Torah Observance and Radicalization in the First Gospel. Matthew and First-Century Judaism: A Contribution to the Debate,” NTS 55/2 (2009): 144-159. Cuvillier writes that Matthew stands in “opposition to Pharisaic Judaism,” which “raises the question as to whether his critiques are intra-muros or extra-muros, i.e. within the walls of Judaism or outside them” (p. 145). The first big move in the article is then predictably to examine what Matthew says about “law” (pp. 147-157) with this intra- extra-muros bifurcation in mind; cf. also
investigations is locating where Matthew and Paul should be situated vis-à-vis first century C.E. Judaism. How one answers this question has implications for a host of tangential issues. These include determining the identities of Matthew and Paul, isolating the initial point of the so-called “parting of the ways” between Judaism and Christianity, or extrapolating from these investigations to address modern, ecumenical issues, such as, for example, the betterment of Jewish/Christian relations. Although these are worthwhile goals, my focus in this project is different. I am less interested in what Matthew and Paul say about law, and where this situates them among their contemporaries in Judaism, than I am in what makes possible the statements that the two writers make about law. In particular, I have raised the question of why law emerges as an object of discourse for these two writers, which is to raise the Foucauldian question of power. For Foucault, the exercise of power creates the space in which discourses can proliferate, because power is productive in the sense that it is able to “constitute[e] . . . area[s] of investigation.” For my purposes, this means that there is nothing inherent in law as such that necessitates its emergence as an object of discourse, but rather it is the tactics of power that constitute it as an object. My aim is to explore such tactics.

I have selected the Gospel of Matthew and letters of Paul as objects for this kind of exploration, because, first, Matthew and Paul contain comparatively more numerous and denser discussions of law than do other writers in the early Jesus movement, which, in my opinion, invites analysis that draws from Foucault. Foucault asked why discourses on sex began to


Foucault, History of Sexuality, 98.
multiply in the eighteenth century, and probed this issue by examining relations of power.\footnote{Foucault, \textit{History of Sexuality}, 17-18.}

particular, a variety of detailed studies on law in both fields have been produced, but, paradoxically, no consensus has emerged in either field with respect to the two primary questions that routinely guide these studies: What do the two writers say about the law? Where does what they say about the law situate them with respect to first century C.E. Judaism? Scholars do not agree on the first of these two questions; and both fields are at an impasse with respect to the second: some scholars argue that Matthew and Paul are within Judaism; others that both are outside of Judaism. One reason for the stalemate is that Matthew and Paul do not provide clear-cut perspectives of the law, which leaves room for debate. A second reason is that in order to


situate Matthew and Paul vis-à-vis first century Judaism, scholars try to compare what both writers say about the law and related issues with specific conversation partners, whether “opponents” or groups within or outside of Judaism or simply “Judaism” itself, relying in almost every case on thin or circumstantial evidence, and thereby overstating what can reasonably be proven.

The deadlock in both fields of scholarship suggests to me that the two questions that guide these studies should be set aside in favor of different ones. Instead of focusing on the hermeneutical question of what Matthean and Pauline views of the law mean vis-à-vis first century C.E. Judaism, my approach examines the underlying relations that make possible what the two writers say about law. And by incorporating cross-cultural materials into my analysis, I avoid the implication, which seems to characterize most scholarly investigations of law in Matthew and Paul, that the Jewish/Christian context is somehow culturally unique or sui

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309 One obvious problem with this approach is definitional: What is “Judaism” in the first century C.E.? What are “Jewish views” of the law? Who are the “opponents,” and what are their perspectives of the law? What do we mean by “law?” I am aware of the irony in framing this project with a Foucauldian lens, and yet problematizing scholarly approaches to Matthew and Paul by pointing out the tenuousness of the evidence upon which most reconstructions are based. A more consistently Foucauldian problematization of Matthean and Pauline scholarship might try to evade arguments over evidence, and instead trouble the discourse that sees “Judaism” as a stable notion around which questions of proximity swirl. My intention is to be Foucauldian in spirit, and problematize scholarship for its assumptions about the nature of the evidence.

The literature review below focuses on a selection of studies from the past five decades of scholarship, and will detail the problems I have just outlined.

3.2 Matthew

Two studies from the 1960s help to set the context. The first is by G. Barth, who argues that Matthew’s perspective of the law is “shaped by the struggle between the conservative

311 This implication appears to guide nearly every article in a recent collection that explores the topic of law in the New Testament; Michael Tait and Peter Oakes, eds., The Torah in the New Testament: Papers Delivered at the Manchester-Lausanne Seminar of June 2008 (LNTS 401; London: T&T Clark, 2009). There are two exceptions in this collection, however. Aspects of Roman law are considered by Daniel Marguerat, “Paul and the Torah in the Acts of the Apostles,” 98-117, esp. 111. And aspects of Hellenistic law are considered by F. Gerald Downing, “Legislation as Social Engineering in the New Testament World,” 218-227. Another recent collection of articles positions Paul within Judaism; see Reimund Bieringer, and Didier Pollefeyt, eds., Paul and Judaism: Crosscurrents in Pauline Exegesis and the Study of Jewish-Christian Relations (LNTS 463; New York: T&T Clark, 2012), esp. the prologue, pp. 1-14. Other recent studies that focus exclusively on the “Jewish” context include Anders Runesson, who presumes that Matthew is part of “common Judaism,” and then attempts to map the diversity of this Judaism in order to situate Matthew’s group; see his “Rethinking Early Jewish-Christian Relations: Matthean Community History as Pharisaic Intragroup Conflict,” 95-132; also, “From Where? To What? Common Judaism, Pharisees, and the Changing Socioreligious Location of the Matthean Community,” in Common Judaism: Explorations in Second-Temple Judaism (ed. Wayne O. McCready and Adele Reinhartz; Minneapolis: Fortress, 2008), 97-113. Likewise, Nanos, in an otherwise incoherent article, makes the point that Paul should be located “within or for or representing Judaism”; in Nanos, “Paul and Judaism,” in Given, 159. A recent exception to this trend can be found in the work of Brigitte Kahl, “Galatians and the ‘Orientalism’ of Justification by Faith,” in The Colonized Apostle: Paul Through Postcolonial Eyes (ed. Christopher D. Stanley; PCC; Minneapolis: Fortress, 2011), 206-222. Kahl suggests that Paul’s message of justification by faith and not works of the law undermines boasting and thus any hint of hierarchical othering. “With this,” she argues, “the focus of Paul’s law criticism irrevocably shifts from criticism of Jewish Torah . . . to a much more general criticism of Greco-Roman nomos and any subsequent law construct that justifies ‘our’ Selves as dominant and superior over and against them, the unjustified” (p. 218); see also Brigitte Kahl, Galatians Re-Imagined: Reading with the Eyes of the Vanquished (Minneapolis: Fortress, 2010), 227-229. Kahl’s approach will be described in greater detail further below.

312 Specialists in both fields will no doubt see gaps. A project of this scope trades comprehensiveness for effectiveness. My aim is for the latter by surveying selectively. For more detailed discussions of particular texts from Matthew and Paul, see below ch. 5.

group in the congregation and that which had freed itself from the law.”

On one flank, Matthew rebuffs those with “antinomian tendencies,” who are “false prophets,” and on the other, he opposes the perspectives of law in “Pharisaism and the Rabbinate.” Disagreement with rabbis is acutely felt in matters of Sabbath halakha (12:1-14), the antitheses (5:21-48), the warning about Pharisaic teaching (16:12), and particularly when Jesus elevates the dual love commands over every other precept of the law. “The Rabbinate” thus provides for Barth an entity against which Matthew’s perspective of the law can be compared: “the Sabbath is observed [by Matthew’s group], but no longer as strictly as in the Rabbinate.”

The “antinomians” provide another point of comparison for Barth. Because of their influence,

314 Barth, “Matthew’s Understanding of the Law,” 66.

315 Barth, “Matthew’s Understanding of the Law,” 67: “That the validity of the law was ended is precisely what Matthew contests” (p. 70); “the evangelist himself is also engaged in the struggle with those who wish to abolish the law, in opposition to whom he thinks he must emphasize its abiding validity” (p. 71). Cf. the emphasis on “all [πάντα]” that the Pharisees teach being important for the disciple of Jesus in Matt 23:3, which, for Barth, “is best explained in contrast to those who wished to abolish a part of the law” (p. 71).

316 Barth, “Matthew’s Understanding of the Law,” 75.

317 Barth, “Matthew’s Understanding of the Law,” 76: “the attitude of Matthew to the Old Testament law is determined from two sides, corresponding to the double front against the antinomians and the Rabbinate. Against the antinomians he defends the abiding validity of the whole Old Testament law. Against the Rabbinate, he emphasizes the right interpretation of the law” (pp. 94-95).

318 Barth, “Matthew’s Understanding of the Law,” 75-95. The love command is the “ground and secret goal of all the commandments” (p. 80); it is “the centre and the supporting basis for the whole law and the prophets, and therefore it is made the principle of interpretation” (p. 85); it is the “essence of the law,” and implies a relegation of “the ceremonial law” to a lesser status (pp. 80-81). Barth also emphasizes “the influence of Christology upon ethics . . . . The assumption seems therefore justified that it is Christology itself that has led Matthew to the interpretation of the law by the love-commandment and discipleship” (p. 105). Bornkamm remarked that for Matthew the love commands represented the “essence of the law”; “End-Expectation and Church in Matthew,” in Bornkamm, et al., Tradition and Interpretation in Matthew, 15-51, here, 31.

319 Barth, “Matthew’s Understanding of the Law,” 92.
Matthew underscores “the abiding validity of the law” (e.g. 5:17–20); however his disinterest in food laws (i.e. in 15:11=Mark 7:15) implies a separation from “the strict Jewish-Christian wing” of early Christianity. Matthew is thus positioned somewhere between the two, showing at once a “special nearness to the Rabbinate,” but also an ongoing “debate with Judaism,” a “passionate polemic.”

Barth’s study tries to compare Matthew’s discussions of the law with specific conversation partners, but runs into difficulty identifying more precisely who these conversation partners are. While Barth was not the first scholar to notice a similarity between Matthew and rabbinic contemporaries, the term “Rabbinate” presumes both that the “Pharisees” with whom the Matthean Jesus disputes are stand-ins for “rabbis,” and also that such a definable group existed at the time the Gospel was penned, neither of which can be securely substantiated. Further, the identification of the term anomia with a group of libertines called “antinomians,” who saw in Jesus an end of the law, (based in part on Matt 7:23 [“οἱ ἐργαζόμενοι τὴν ἀνομίαν”];

320 Barth, “Matthew’s Understanding of the Law,” 159. Along with Werner G. Kümmel, “Jesus und der jüdische Traditionsgedanke,” ZNW 33/2 (1934): 105-130, esp. 127, Barth argues that Matt 5:18 should be understood in a fully “‘Jewish sense’” (p. 65).

321 Barth, “Matthew’s Understanding of the Law,” 163.

322 Barth, “Matthew’s Understanding of the Law,” 111.

323 See Barth, “Matthew’s Understanding of the Law,” 111 fn. 3. Barth does not, however, see Matthew as part of the “strict Jewish-Christian wing” of early Christianity because gentiles are not obligated to keep the law (p. 163).

324 See for example, Shaye J. D. Cohen, “The Significance of Yavneh: Pharisees, Rabbis, and the End of Jewish Sectarianism,” HUCA 55 (1984): 27-53; repr. in Shaye J. D. Cohen, The Significance of Yavneh and Other Essays in Jewish Hellenism (TSAJ 136; Tübingen: Mohr Siebeck, 2010), 44-70. Cohen notes that the connection between Pharisees and rabbis relies on tenuous evidence from Josephus and texts from the New Testament; and it is not clear whether the Tannaim recognized this connection: “The tannaim never explicitly call themselves ‘Pharisees’ nor is any individual rabbi ever called a Pharisee” (“Significance of Yavneh,” 38-39); “At no point in antiquity did the rabbis clearly see themselves either as Pharisees or as the descendants of Pharisees” (p. 40).
cf. 13:41; 23:28; 24:10-12), has been challenged.\textsuperscript{325} Barth’s reconstruction thus falters because he relies too heavily on comparing features of Matthew’s gospel with contemporary groups that are historically questionable.

The second study in the 1960s is by W. D. Davies,\textsuperscript{326} and suffers from a similar problem. For Davies, even though the words and life of Jesus in Matthew “reveal the essence”\textsuperscript{327} and “ultimate meaning”\textsuperscript{328} of the law, the validity of the law itself is never questioned.\textsuperscript{329} Davies sees in Matthew a blending of various strands of first century C.E. Judaism, including similarities with the “Essenes” and “Pharisaic Judaism,” and couches the Gospel in the setting of “confrontation [between] Church and Synagogue”\textsuperscript{330} and between “Jamnia” and “Christianity.”\textsuperscript{331} Crucial to understanding the latter is identifying the minim in the birkat ha-minim with Christians.\textsuperscript{332} The consolidation of rabbinic Judaism at Jamnia generated a Matthean


\textsuperscript{326} W. D. Davies, \textit{The Setting of the Sermon on the Mount} (Cambridge: Cambridge University Press, 1964).

\textsuperscript{327} Davies, \textit{Setting of the Sermon on the Mount}, 96.


\textsuperscript{329} Davies, \textit{Setting of the Sermon on the Mount}, 103-107.

\textsuperscript{330} See the relevant discussions in Davies, \textit{Setting of the Sermon on the Mount}, 230, 252-253.

\textsuperscript{331} Davies, \textit{Setting of the Sermon on the Mount}, 272: “What happened at Jamnia was not uninfluenced by the rising significance of Christianity.” Davies makes a passing reference to the historical problems associated with Jamnia (p. 292 fn. 2).

\textsuperscript{332} Davies, \textit{Setting of the Sermon on the Mount}, 275-279, esp. 276: “The Birkath ha Minim makes it unmistakably clear that the Sages at Jamnia regarded Jewish Christians as a menace sufficiently serious to warrant a liturgical innovation. . . . In the Synagogue service a man was designated to lead in the reciting of the Tefillah. . . . The leader would recite the Benedictions and the congregation, finally, responded to these with the Amen. Any one called upon to recite the Tefillah who stumbled on the 12\textsuperscript{th} Benediction could easily be detected. Thus the Birkath ha Minim served the purpose of making any Christian, who might be present in a synagogal service, conspicuous by the way in which he recited or glossed over this Benediction.”
response such that the Sermon on the Mount can be seen as “the Christian answer to Jamnia”—a “Christian, mishnaic counterpart.” The blending of “Christian” and “Jewish” themes in the Gospel, however, suggests that Matthew’s “attitude towards Judaism” is ambiguous, and perhaps the Gospel could be classified as a form of “Christian-rabbinism” for a “slowly emerging . . . neo-legalistic society.”

Davies has detected a nearness to rabbinic Judaism in Matthew’s gospel, though faces the same obstacle as Barth in that “rabbinic Judaism” is a problematic category to compare with Matthew, because it was not a fully coalesced entity at the time the Gospel was written. And Davies’ argument faces the additional difficulty of relying on “Jamnia” as a counterpoint to Matthew, which is historically problematic. Barth and Davies are thus early examples in this literature review of the problems that scholars face when trying to compare Matthew’s discussions of the law with specific conversation partners in order to situate Matthew more precisely vis-à-vis first century C.E. Judaism.

J. P. Meier’s study builds upon the work of several scholars, who view Matthew’s group as having moved beyond the bounds of Judaism, and Matthew’s gospel as possibly having been redacted/authored by a gentile. Meier relies almost entirely on circumstantial evidence,

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333 Davies, Setting of the Sermon on the Mount, 315.
334 Davies, Setting of the Sermon on the Mount, 286.
335 Davies, Setting of the Sermon on the Mount, 401.
336 So Cohen, “The Significance of Yavneh,” 50. Cohen identifies Davies as an example of a scholar who misuses Jamnia (p. 50 fn. 61).
however: *inter alia* Matthew’s improvement of Mark’s use of Greek;\(^{339}\) errors in Matthew’s understanding of the Hebrew language;\(^{340}\) Matthew’s misapprehension of the precise nature of sects in Judaism;\(^{341}\) and the group’s separation from the synagogue.\(^{342}\) To account for the fact that a gentile Matthew has such “stringent Law material” in the Gospel, Meier appeals to salvation-history: \(^{343}\) when the Matthean Jesus “proclaimed stringent fidelity to the Mosaic Law,”\(^{344}\) his public ministry was primarily restricted to Israel; but this posture toward the law changed after his death and resurrection (“die Wende der Zeit”) in light of the soon-coming

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339 Meier, *Law and History*, 16 fn. 96; and pp. 20-21. Meier points out that “Mt does not always represent a more Semitic vocabulary and linguistic usage than Mk,” and that “Mt’s general tendency is to improve the highly Semitic Greek of Mk in the direction of more acceptable Greek usage” (p. 20).

340 Meier, *Law and History*, 16-17. Matthew mentions Jesus riding on two animals while entering Jerusalem (21:2, 7), which appears to be derived from a mistaken understanding of Hebrew parallelism in the prophetic text being fulfilled (Zech 9:9: “על-חמור ועל-עיר בן-אתנות”; see p. 17), “a misunderstanding,” he concludes that is “much more intelligible in a Gentile redactor than in a converted Jewish rabbi, or in any well-educated Jewish Christian” (p. 18).

341 Meier, *Law and History*, 16. Following Mark 12:18, Matthew refers to the Sadducees in Matt 22:23, but alters the Markan expression from “οἵτινες λέγουσιν ἀνάστασιν μὴ εἶναι” to “λέγοντες μὴ εἶναι ἀνάστασιν.” The latter implies that only the particular group of Sadducees talking with Jesus held this viewpoint, when in fact this was a party-wide perspective among Sadducees in the first century. Meier concludes that in “garbling . . . the Markan tradition,” Matthew displays “ignorance of the Jewish situation before and after A.D. 70” (p. 19). A similar misunderstanding can be found in Matt 16:11-12 where the expression “τῆς διδαχῆς τῶν Φαρισαίων καὶ Σαδδουκαίων” implies that both groups share a common teaching. Meier writes, “No Jew aware of the conflicts in Judaism before A.D. 70 . . . could write such a sentence” (p. 18).


343 Meier, *Law and History*, 23, 25: “Salvation-history is a hermeneutical key for unlocking the puzzle of Mt’s position on Law” (p. 25).

mission to the nations. A pivotal piece of evidence for this understanding of salvation-history comes by way of lacuna: Matt 28:16-20 does not mention circumcision, which is interpreted by Meier as Matthew “quite obviously . . . dispensing with circumcision.” This is an argument from silence, and generates circular reasoning: Matthew does not mention circumcision in the Great Commission (28:16-20); therefore, the mission to the nations is law-free. Other scholars have noticed this lacuna and inferred the opposite, namely, that Matthew had probably not yet dispensed with circumcision. Matthew’s silence on the matter is a reason to hesitate before drawing conclusions about his views of circumcision; and his silence should not be used to determine his proximity to Judaism—Meier himself is not prepared to argue that Matthew is completely outside of Judaism, and hints that the lines of communication between Matthew’s group and the synagogue had not yet been severed. Whereas the reconstructions by Barth and Davies compare Matthew’s views of the law with historically questionable conversation partners,

345 Meier, Law and History, 30.

346 Meier, Law and History, 28. “After his death-resurrection, the Lord abolishes those limitations of territory and people which had clung to his public ministry. Correspondingly, his command to make disciples of all nations by baptizing them implicitly rescinds the command of circumcision and so rescinds that fidelity to the Mosaic Law which marked his public ministry. In all this there is a natural, inner logic. A ministry restricted to the land and people of Israel could hardly be carried out otherwise than with fidelity to the Mosaic Law, just as an unrestricted mission to the Gentiles would hardly be conceivable—let alone successful—without the rescinding of such Mosaic prescriptions as circumcision” (p. 30).

347 Hare, “How Jewish,” 265, is particularly forceful in pointing out the fallacy of arguments from silence in Matthean scholarship, though his primary attack is on scholars who argue for a “Jewish” Matthew. Hare cites Jacob Neusner, “Preface,” in Judaisms and Their Messiahs at the Turn of the Christian Era (ed. Jacob Neusner et al.; Cambridge: Cambridge University Press, 1987), xiii: “What we cannot show, we do not know.”


349 Meier, Law and History, 13.
Meier’s approach assumes too much about Matthew’s views and overstates the evidence in the interest of viewing Matthew as having begun to move outside of Judaism.

G. Stanton’s reconstruction suffers from both problems. For him, Matthew’s gospel reflects a community (or communities) that has separated from Judaism. Unlike Meier’s theological approach, Stanton’s deploys sociological categories: he likens Matthew to the Damascus Document in that “both were written for ‘sectarian’ communities”; and both display features of groups that have separated from “parent bod[ies]” and are forming distinct identities. Despite going its own way, Matthew’s group has still retained “continuities and similarities with Judaism.” It is extra muros, hostile to the synagogues, and has begun an outreach to gentiles, but remains loosely law observant, not keeping the Sabbath strictly, for example. The group is also sensitive to “the Jewish accusation” that Jesus had “abandoned the law.”

350 Stanton, Gospel for a New People, 2. For Stanton, Matthew writes to Christian groups who must “come to terms with their identity as communities distinct from Judaism” (p. 3). And further, Matthew’s group is among the “followers of Jesus (both Jews and Gentiles) in the evangelist’s day who see themselves as a distinct religious group over against both Judaism and the Gentile world” (p. 11).
351 Stanton, Gospel for a New People, 88.
352 Stanton, Gospel for a New People, 93-94, 98, 106.
353 Stanton, Gospel for a New People, 3.
354 Stanton, Gospel for a New People, 114. Stanton argues that Matthew as redactor “has strengthened . . . the anti-Jewish polemic which is found in the sources at his disposal” (p. 146; cf. pp. 149-154). He summarizes his position as follows: “Matthew’s gospel legitimates the recent painful separation of Matthean communities from Judaism by providing divine sanction for the parting of the ways” (p. 378).
355 Stanton, Gospel for a New People, 124. Several features of Matthew’s gospel are highlighted to substantiate Stanton’s argument: 1) the negative portrayal of Jewish religious leaders (p. 126); 2) the connection between these leaders and the synagogue (p. 128); 3) unlike the συναγωγή, Jesus is the founder of the ἐκκλησία in Matt 16:18 (pp. 129-130); 4) the kingdom has been handed over “to a new people who will include Gentiles” (p. 131); 5) Matthew hints at hostility in his own day when in 28:15 he identifies a rival explanation of the resurrection being promulgated by Jews (p. 131).
356 Stanton, Gospel for a New People, 205.
357 Stanton, Gospel for a New People, 253. Stanton sees his perspective of Matthew’s relationship to Judaism as distinctive because in his reconstruction, Matthew still holds out hope of “salvation for at least
Matthew’s group raised questions about the ongoing validity of the law, and exacerbated friction with non-Christian Jewish groups.\textsuperscript{358} The affirmation of the law in 5:17 may have been penned in response to this tension.\textsuperscript{359}

Stanton’s argument is intended to hold cumulative weight, yet none of his individual assertions is without problems. The comparison with the Damascus Document is carefully presented but does not quite succeed in substantiating Stanton’s argument, because the Damascus Document is not reflecting a community that has separated from “Judaism,” which is the point that Stanton is trying to make with respect to Matthew. There is also no direct evidence that Matthew’s group has embarked on a gentile mission; a straight-forward reading of Matt 28:16-20, for example, only indicates that Jesus authorized such a mission not that the Matthean group actually embarked on one.\textsuperscript{360} And even if Matthew’s group has begun evangelizing gentiles, there is no evidence for Stanton’s suggestion that new converts have created a problem for the group that is inflected in Matthew’s discussion of the law.\textsuperscript{361} Additionally, the suggestions that Matthew’s group is loosely law observant and is now outside of the synagogue some Jews” (p. 254) based in part on the Sin-Exile-Return paradigm he detects in the \textit{Testaments of the Twelve Patriarchs}.

\textsuperscript{358} Stanton, \textit{Gospel for a New People}, 281.

\textsuperscript{359} Stanton, \textit{Gospel for a New People}, 300.

\textsuperscript{360} Hare’s carefully worded comments are instructive in this regard: “Matthew’s conclusion [i.e. Matt 28:16-20] encourages us to believe that churches of Matthew’s persuasion engaged in a mission to Gentiles; he is silent about when this began, how successful it was, and what was expected of Gentile converts; “How Jewish,” 266.

\textsuperscript{361} I will suggest below in ch. 5 that the mission to the ἔθνη is important for understanding Matthew’s views of law, but this is not the same as Stanton’s position that such a mission is already underway. Even after examining all eighteen textual sites in Matthew where gentiles are explicitly or implicitly discussed (fourteen of which are not in Mark’s gospel), Donald Senior, “Between Two Worlds: Gentiles and Jewish Christians in Matthew’s Gospel,” \textit{CBQ} 61/1 (1999): 1-23, is only prepared to conclude that “Matthew views Gentiles as persons capable of exemplary faith in Jesus, foresees that the gospel will be proclaimed to them, and expects they will thus be incorporated into the community” (p. 16).
(extra-muros) are suspect because the evidence for both is inconclusive.\textsuperscript{362} Lastly, the comparison itself between Matthew and “Judaism” is problematic because “Judaism” is treated as a reified category, and not more precisely defined.

Stanton’s study is part of a wave of methodologically like-minded approaches to Matthew’s views of the law that deploy sociological categories, two of which should be viewed together: J. A. Overman\textsuperscript{363} and A. Saldarini.\textsuperscript{364} Overman compares Matthew’s social location and perspective of the law with that of “formative Judaism”—a phrase borrowed from J. Neusner’s well-known study.\textsuperscript{365} “Matthean Judaism” and formative Judaism are competing;\textsuperscript{366} both are emerging from a Second Temple period that was “sectarian in nature,”\textsuperscript{367} and both are

\textsuperscript{362} Cf. Eric K.-C. Wong’s forceful response to Stanton’s suggestion that Matthew’s group may have relaxed its Sabbath observance or ceased it altogether; “The Matthean Understanding of the Sabbath: A Response to G. N. Stanton,” \textit{JSNT} 14/3 (1991): 3-18. The evidence for the group’s separation from the synagogues comes primarily from Matthew’s use of the pronouns “their” and “your” in 4:23, 9:35, 10:17, 12:9, 13:54, and 23:34. Amy-Jill Levine’s conclusions about Matthew’s relationship to the synagogue are worth quoting: “How the Gospel’s presentation of the synagogue, and of the broader Jewish community, relates to Matthew’s own context cannot be answered with any certainty. The First Evangelist may speak from the position of one expelled from the synagogue, of one who voluntarily left . . . or of one—a second or third-generation follower of Jesus—who never had a place within the synagogue system. The audience might be those also expelled; alternatively, the audience might be those who remain within the synagogue and who, in Matthew’s view, require exhortation to leave. Or the audience might include Gentiles who were never part of the synagogue system, and who learned about Torah not from the synagogue, but from the followers of Jesus. The Gospel does not provide enough information to answer these questions definitively”; see “Matthew’s Portrayal of the Synagogue and Its Leaders,” in \textit{The Gospel of Matthew at the Crossroads of Early Christianity} (ed. Donald Senior; BETL 243; Leuven: Uitgeverij Peeters, 2011), 177-193, here, 192.


\textsuperscript{364} Saldarini, \textit{Matthew’s Christian-Jewish Community}.


\textsuperscript{367} Overman, \textit{Matthew’s Gospel}, 8-34.
struggling to consolidate factions. Matthew’s group “is a Jewish community, which claims to follow Jesus the Messiah,” believing itself to be the “‘true Israel’,” though being perceived by its competitors “as different or deviant.” The Matthean conflict stories portray divergent interpretations of the law, and thus testify to this friction. References in Matthew to the scribes and Pharisees are windows that provide a glimpse into the social conflict between Matthew’s group and the leaders of formative Judaism. The closeness of the two groups with respect to their overall perspectives of the law exacerbates their differences.

The problem with Overman’s study is the use of “formative Judaism” as representative of Matthew’s contemporaries. On the one hand, Overman treats “formative Judaism” as something amorphous with “numerous groups and factions.” On the other, he reifies the term: “formative Judaism” is said to have “adopted and integrated” “Pharisaic paradosis”; it can “claim . . . that its beliefs and practices are not new but are traditional”, its success can be

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368 Overman, Matthew’s Gospel, 42.
369 Overman, Matthew’s Gospel, 4-5.
370 Overman, Matthew’s Gospel, 82: “Matthew asserts that his community is lawful and, indeed, possesses the true interpretation of the law”; “According to Matthew neither Jesus nor those who follow him are lawbreakers” despite being accused of this by their opponents (p. 86); “The conflict stories in Matthew’s Gospel offer examples of that correct interpretation, which came to them through Jesus” (p. 86; cf. p. 88).
371 Overman, Matthew’s Gospel, 79.
372 Overman, Matthew’s Gospel, 141-147.
373 Overman, Matthew’s Gospel, 89: “The Jewish law emerged as an important and essential issue in the struggle between the Matthean community and the opposition. This alone should tell us much about the setting and provenance of the Gospel, as well as the identity of the Matthean opponents. Both parties maintained a high view of the law. The law itself was in no way optional. Both groups laid claim to the law and accused the other of distorting it. The law served as the means both of discrediting one’s opponent and of vindicating one’s position.” Overman argues that Matthew’s group was fully observant, including the keeping of Sabbath and purity laws (p. 148).
374 Overman, Matthew’s Gospel, 51.
375 Overman, Matthew’s Gospel, 66.
376 Overman, Matthew’s Gospel, 67.
traced to “its capacity to claim that things in the post-70 period really had not changed at all”; and it is its own “group.” This makes “formative Judaism” into an artificially homogenized thing, when it is really only a descriptive category to classify the complexities of post-70 C.E. Judaism. Moreover, it is unclear whether Overman sees Matthew as a part of “formative Judaism” or not. The two are in competition, but are not “sufficiently distinct” to permit a “peaceful coexistence.” This affects how the law is understood in Matthew because for Overman Matthew’s views of the law take shape vis-à-vis formative Judaism.

Saldarini’s reconstruction is more subtle than Overman’s. Like Overman, he sees Matthew’s group as a Jewish community that has been labeled as “deviant” by its opponents. The group is comprised of “Jews who believe in Jesus as the Messiah and Son of God,” and can be labeled “Christian-Jewish.” Unlike Overman, however, Saldarini situates Matthew


380 Saldarini, *Matthew’s Christian-Jewish Community*, 1: “the Matthean group is a fragile minority still thinking of themselves as Jews and still identified with the Jewish community by others. Despite its sharp conflicts with the leaders of the Jewish community and its experience of standard disciplinary measures, or better, because of these negative relationships, the Matthean group is still Jewish. It has been labeled deviant by the authorities and by many members of the Jewish community”; cf. pp. 107-116. Regarding the “Jewish community,” Saldarini writes, “we must emphasize again that Matthew nowhere rejects ‘Judaism’ or the ‘Jewish people.’ Nor . . . has he turned away from the Jewish community in favor of a new Christian community. None of Matthew’s polemics are aimed at Judaism or the Jewish people as a whole, but rather at certain interpretations of Judaism, and at opposing leaders and occasionally the people who follow them” (p. 44).

381 Saldarini, *Matthew’s Christian-Jewish Community*, 1: “we shall argue that Matthew’s group is a small and relatively uninfluential part of the first-century Jewish community in the eastern Mediterranean” (p. 3).

382 Saldarini, *Matthew’s Christian-Jewish Community*, 4; cf. pp. 7-8. Saldarini writes, “[t]he numerous claims for Jesus, the exhortations to faith in Jesus, the apologetic refutations of charges made against believers-in-Jesus, and the polemics against the opponents of the Matthean group are all interpreted as part of the Matthean group’s relationship to Judaism” (p. 4); and further, “[d]espite his conflicts with various community leaders and his relatively small following, the author of Matthew considers himself to be Jewish” (p. 7).
more precisely in contemporary Judaism by comparing the Gospel with “other Jewish postdestruction [i.e. post 70 C.E.] literature,” such as 2 Baruch, 4 Ezra, the Apocalypse of Abraham, early traditions of the Mishnah, and Josephus.\textsuperscript{383} That Matthew’s group is labeled “deviant” suggests a close proximity with its contemporaries.\textsuperscript{384} Indeed, Saldarini balks at the notion of even comparing Matthew with “Judaism,” because “the gospel is in a real sense a Jewish document, written within what the author and his opponents understood as Judaism.”\textsuperscript{385} Nevertheless, competition for gentile adherents,\textsuperscript{386} recent tension resulting from some followers of Jesus being disciplined in the synagogue,\textsuperscript{387} and differences over the authority of Jesus, who for Matthew is “\textit{the} transcendent teacher, revealer, ruler, and savior authorized by God,”\textsuperscript{388} have generated friction between the two groups. Matthew’s group is thus “within the orbit of Judaism, though at its far edges”\textsuperscript{389} — a Judaism, which has “hazy boundaries” and is difficult to delineate.\textsuperscript{390}

Saldarini’s study avoids many of the pitfalls of those surveyed above. Matthew’s gospel is situated alongside a small cross-section of post-destruction texts, all of which are trying to

\begin{itemize}
  \item \textsuperscript{383} Saldarini, \textit{Matthew’s Christian-Jewish Community}, 4-5.
  \item \textsuperscript{384} Saldarini, \textit{Matthew’s Christian-Jewish Community}, 1-2: “I will argue that [Matthew’s group] still had close relations with the Jewish community, both negative and positive” (p. 2). The negative differences between the two pertained mostly to the conflict with the leadership over competing symbolic universes (p. 47).
  \item \textsuperscript{385} Saldarini, \textit{Matthew’s Christian-Jewish Community}, 110.
  \item \textsuperscript{386} Saldarini, \textit{Matthew’s Christian-Jewish Community}, 4: “The leaders of the communities are competing with one another to win adherents to their way of living Jewish life and interpreting Jewish tradition. The author of Matthew is one of these leaders, and his gospel is an attempt to both solidify his group and win new followers from the Jewish community and also from the gentiles” (p. 43); “[Matthew] affirms the validity of the Jewish law understood in the correct way (5:17-20)” (p. 8); even gentiles can “attain positive status by . . . affirming the law” (p. 83).
  \item \textsuperscript{387} Saldarini, \textit{Matthew’s Christian-Jewish Community}, 66.
  \item \textsuperscript{388} Saldarini, \textit{Matthew’s Christian-Jewish Community}, 193.
  \item \textsuperscript{389} Saldarini, \textit{Matthew’s Christian-Jewish Community}, 10; cf. pp. 13-18, 193.
  \item \textsuperscript{390} Saldarini, \textit{Matthew’s Christian-Jewish Community}, 111.
\end{itemize}
make sense of Judaism without the temple. Matthew’s emphasis on the abiding relevance of the law fits nicely in this context. Further, Saldarini is straightforward about how comparisons between Matthew and “Judaism” are contrived since Matthew is part of Judaism. This is where his study runs into trouble, however, because the assumption that Matthew is part of Judaism creates a circular argument about Matthew’s perspective of the law: if Matthew is part of Judaism, then Matthew’s group must be law observant. This assumption leads Saldarini to overstate the evidence. Matthew’s views of the law remain a point of contention in scholarship, in part because Matthew does not present his views unambiguously and also because some precepts of the law he leaves unmentioned, such as, for example, circumcision. But Matthew’s silence is viewed by Saldarini as evidence that “circumcision is not a problem in Matthew,” which is an assertion derived from the presupposition that Matthew’s group is part of Judaism. Another example of circular reasoning can be found in Saldarini’s treatment of Sabbath; he assumes but does not demonstrate that the phrase “flight on the Sabbath” in Matt 24:20 reflects the concerns of Matthew’s group, who kept the Sabbath as law observant Jews.

391 Saldarini, *Matthew’s Christian-Jewish Community*, 125. Matthew’s group is “a Christian-Jewish group which keeps the whole law, interpreted through the Jesus tradition. The author considers himself to be a Jew who has the true interpretation of Torah and is faithful to God’s will revealed by Jesus” (p. 7). Also, Matthew’s views of the law “are within the range of accepted discussion [in Judaism] and similar to those taken by other groups” (p. 126).

392 See for example Richard E. Menninger, *Israel and the Church in the Gospel of Matthew* (AUSTR 162; New York: Peter Lang, 1992), 123, who argues that Matthew’s Jesus “sets aside the food laws,” which is part of a broader theological construct: “Jesus has set the Law aside” (p. 104).

393 Saldarini, *Matthew’s Christian-Jewish Community*, 156. To be fair, Saldarini recognizes that views about circumcision were diverse, and arguments from silence can be read in opposite ways (pp. 157-160).

394 Saldarini, *Matthew’s Christian-Jewish Community*, 126. Saldarini is not alone in this. Most scholars who see Matthew as law observant read Matt 24:20 similarly (see p. 268 fn. 8).
This inappropriately reads law observance into what is an otherwise elliptical reference to the Sabbath in 24:20.\footnote{James G. Crossley, The Date of Mark’s Gospel: Insight from the Law in Earliest Christianity (JSNTSup 266; London: T&T Clark International, 2004), 105, is one of the few scholars who is cautious about reading too much into Matt 24:20: “It is possible, but far from clear, that Matthean sensitivity towards the Sabbath is reflected in [Matt 24:20].”}

W. Loader, more than the other scholars being surveyed here, views the topic of Matthew and the law through the prism of Christology.\footnote{Loader, Jesus’ Attitude Towards the Law, 256-260. Loader addresses the connection between Jesus and Moses through this prism, for example: “The actions of Jesus, the divinely created Son of God, authorized as judge to come, do echo those of Moses. This is especially so, when he deals with the Law because the Law was given through Moses. But the emphasis is on Jesus’ authority, which far surpasses that of Moses, so that the typology must be seen as subordinate to the more dominant christology of the Son of God destined to be judge” (p. 260). See similarly, Robert Banks, Jesus and the Law in the Synoptic Tradition (SNTSMS 28; Cambridge: Cambridge University Press, 1975), 245, 251-252: “It is not so much [Jesus’] relationship to the Law that [Matthew] is concerned to depict . . . as how the Law now stands in relationship to Jesus as the one whose teaching and practice transcend it and fulfill it”; cf. M. Jack Suggs, Wisdom, Christology, and Law in Matthew’s Gospel (Cambridge: Harvard University Press, 1970), 113-114, who identifies Jesus with law in Matthew; also Celia M. Deutsch, Hidden Wisdom and the Easy Yoke: Wisdom, Torah, and Discipleship in Matthew 11.25-30 (JSNTSup 18; Sheffield: JSOT, 1987), 143.} Because both Jesus and the law originate with God, there is continuity between the two:\footnote{Loader, Jesus’ Attitude Towards the Law, 268.} the law is never abrogated by Jesus;\footnote{Loader, Jesus’ Attitude Towards the Law, 181, 264; similarly Banks, Jesus and the Law, 242.} and every precept of the law remains valid “inclusive of ritual, ceremonial, food, [and] circumcision laws” (e.g. 5:17-20).\footnote{Loader, Jesus’ Attitude Towards the Law, 171; cf. p. 253.} Matthew’s Jesus can appeal to his own authority when exceeding the law (5:21-48),\footnote{Loader, Jesus’ Attitude Towards the Law, 179-182.} when he appeals to principles that override specific precepts (e.g. 12:1-14; 23:23),\footnote{Loader, Jesus’ Attitude Towards the Law, 202-203.} and when he claims that following him is more important than honoring one’s parents
And his teaching in the antitheses (5:21-48) helps to “reinforce the identity of the Matthean community” in contradistinction with contemporaries. Here, however, Loader’s otherwise careful analysis becomes vague because his use of terminology is imprecise.

Matthew’s group is distinct from the “‘hypocrites’” (cf. 6:1-18), who are “clearly Jewish outsiders and are following normal Jewish practices.” But Loader does not specify who the “Jewish outsiders” are or what is distinct about their “practices.” This belies a tendency in Loader’s work to distinguish the “Christian” Matthew from “Jewish” contemporaries, while trying to maintain Matthew’s proximity to Judaism. For example, Loader sees Jesus as possessing an authority for Matthew’s group that “overrides all other obligations” to keep the law, yet insists that this posture toward the law “from a Jewish perspective outside the community” would merely be “seen as odd.”

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402 Loader, Jesus’ Attitude Towards the Law, 268; cf. p. 190.

403 Loader, Jesus’ Attitude Towards the Law, 181-182. Loader sees Matt 17:24-27 (pp. 223-224) as referring to the temple tax, and, as such, signals that “Matthew’s community is identified as Jewish” (p. 228).

404 Loader, Jesus’ Attitude Towards the Law, 183.

405 As an add-on to the end of his study, Loader identifies both his understanding of Matthew’s group and of contemporary Judaism with the views of Saldarini, but this connection is not evident in the body of his analysis; see Jesus’ Attitude Towards the Law, 271.


407 Loader, Jesus’ Attitude Towards the Law, 208. Loader describes Matthew as portraying a “strongly Jewish ethos” (p. 263) without clarifying what this is exactly. He also contrasts Matthew with “Christians who . . . fail to keep the commandments,” though this group is not defined precisely either (p. 266).

408 Loader, Jesus’ Attitude Towards the Law, 204-205.
contemporary sources, and without clarifying what a “Jewish perspective outside the community” is.

For U. Luz,\textsuperscript{409} the “Jewish Christian Matthean communities” have “separated from Israel” after a failed mission to Israel,\textsuperscript{410} and are about to undertake a gentile mission in a way similar to that already underway among Pauline groups.\textsuperscript{411} Part of this mission will mean wrestling with what the Pauline groups have already resolved, namely, how the law will apply to gentiles.\textsuperscript{412} Matthew is trying to shore up his group’s identity as they occupy the liminal space between Israel and gentiles.\textsuperscript{413} Luz argues that “Matthew is the clearest exponent of a Law-affirming Jewish Christianity”\textsuperscript{414} despite trying to blend divergent traditions about the law: the pro-law Q tradition and the more critical perspective of the law in Mark.\textsuperscript{415} The tension between the two is palpable in those places where Matthew affirms the “observance of all laws” (e.g. Matt 5:19)\textsuperscript{416} despite allowing for the abrogation of some precepts (e.g. in the statement about food purity in 15:11 and in the lex talionis of 5:38-39) in favor of the love command as taught by Jesus, and also when he appears to both accept and reject the teaching authority of the scribes and Pharisees (compare 16:12 and 23:2-3).\textsuperscript{417} For Luz this blending of perspectives reflects the


\textsuperscript{410} Luz, \textit{Studies in Matthew}, 53.

\textsuperscript{411} Luz, \textit{Studies in Matthew}, 12-13; cf. p. 213.

\textsuperscript{412} Luz, \textit{Studies in Matthew}, 213, 217.

\textsuperscript{413} Luz, \textit{Studies in Matthew}, 34-35.

\textsuperscript{414} Luz, \textit{Studies in Matthew}, 185.

\textsuperscript{415} Luz, \textit{Studies in Matthew}, 186.

\textsuperscript{416} Luz, \textit{Studies in Matthew}, 195.

group’s liminal position between Israel and the gentiles even though Matthew’s overall approach to law observance is “in great proximity to Judaism.”

Luz is correct to highlight the tensions and ambiguities of Matthew’s perspective of the law. But in correlating these with Matthew’s conflicted, liminal identity he overstates the evidence: the evidence for the group’s separation from the synagogue is circumstantial; and there is really no evidence at all to substantiate Luz’s thesis that Matthew’s group is a late arrival to the gentile mission unlike the Pauline groups.

P. Foster’s study is a response to what has been characterized as “an emerging consensus” in Matthean scholarship: the socio-historical approach of Overman, Saldarini, and both Jews and gentiles, and thus using the tension in the gospel as a rhetorical tool in a way similar to treatments of the law in Philo and Josephus (pp. 58-62).

418 Luz, Studies in Matthew, 204; cf. pp. 208-213. The “ambivalence” of Matthew’s identity is revealed in the transition that takes place in 5:17-48 away from a quantitative “Jewish understanding of righteousness, oriented toward the fulfillment of single commandments,” to a qualitative understanding characterized by love as affirmed by Jesus (p. 208). Luz writes, “Matthew is in line with Hellenistic Judaism which focused on the commandment to love and the Decalogue, subordinating the others”; and further, “Matthew, unlike pharisaic Judaism, does not develop casuistry and halakah” (p. 210).

419 This is especially important to underscore because Luz maintains that “the most fundamental aspect for the formation of Matthew’s doctrine of the Law is the conflict with the synagogue”; Studies in Matthew, 214.

420 Luz discusses every reference to gentiles in Matthew and draws the plausible conclusion “that mission to the Gentiles is a dominant theme in the Gospel”; Studies in Matthew, 11-12. Luz does not stop here, however; he asserts that this theme corresponds “to the significant step in salvation history now to be taken by the Jewish Christian Matthean communities . . . . [T]hey are to undertake a mission to the Gentiles in the way that other [e.g. Pauline] communities have long since done” (p. 12). There is no evidence for this assertion. Later in his study, Luz is forced to admit the hypothetical nature of these claims (p. 213). In ch. 5 below, I emphasize the theme of missionizing the ethne from Matt 28:18-20, but I am not prepared to make any suggestion about the actual status of Matthew’s group vis-à-vis this mission (i.e. have they begun missionizing or are about to, etc.). We simply cannot know.

421 Foster, Community, Law, and Mission.
which views Matthew and his audience as situated within Judaism in whatever form it may have taken in Matthew’s day. Foster sees Matthew as outside of Judaism; but his study is not really new in the sense that he relies on the same evidence as previous studies both for Matthew’s rift with the synagogue and for Matthew’s group supposedly already undertaking a gentile mission. What is new, however, is how Foster situates Matthew in proximity to his contemporaries in Judaism. Matthew’s perspective of law observance is compared with

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423 Foster, Community, Law, and Mission, 253. For others who challenge the consensus, see for example, Roland Deines, Die Gerechtigkeit der Tora im Reich des Messias: Mt 5,13-20 als Schlüsseltext der matthäischen Theologie (WUNT 1/177; Tübingen: Mohr Siebeck, 2004); Hagner, “Matthew”; Hare, “How Jewish,” 264-277. Of course, it should go without saying that if there are significant studies of Matthew and the law, which disagree with the “consensus,” then perhaps “consensus” is not the most accurate term.

424 Foster, Community, Law, and Mission, 20: “The major aim of this investigation is to show that although the Matthean group originated in Judaism, nonetheless, by the time of the composition of the gospel the community functioned outside the confines of its original locus operandi. Specifically, that at the time of the writing of the gospel a major breach had occurred between the Matthean communities and the synagogues from which the original core of the evangelist’s believers in Jesus had emerged. Consequently, the group was now focusing its attention on recruiting new members from among gentiles, and the integration of recent non-Jewish converts created a number of tensions for long term traditionally Torah observant group members.”

425 Foster, Community, Law, and Mission, 5. Here Foster is arguing that features of the gospel reflect the interests of a specific community or communities. He lists the following: 1) the reference to the conspiracy about Jesus’ body being stolen that was still circulating among Matthew’s contemporaries in Judaism (Matt 28:11-15); 2) discussion of the temple tax seems to reflect the fiscus iudaicus and Matthew’s interest in members of his group retaining the veneer of “Jewish heritage” even though “their primary allegiance” is elsewhere (Matt 17:24-27); 3) the pronouns “their” and “your” with respect to the synagogue in Matt 4:23, 9:35, 10:17, 12:9, 13:54, and 23:34, seem to reflect “the boundary division between one community as opposed to the more dominant emergent Judaism.”

426 Foster, Community, Law, and Mission, 79. Foster cites Senior’s article (“Between Two Worlds,” 1-23) to help substantiate his claim that Matthew had a positive view of the gentile mission (p. 13 fn. 45). Senior is far more subtle than Foster allows, however: “I would like to make the case that Matthew expresses some ambivalence concerning the Gentile world and anticipated that his community would be engaged in a restricted or conditional Gentile mission. Matthew’s complex relationship to his Jewish heritage is mirrored, in fact, in the complex view he has of its Gentile future”; “Between Two Worlds,” 8; cf. p. 18.
4QMMT because both texts share an “antithetical” form of argumentation, and both “reflect disputes between one group, which has a sense of being disenfranchised from the rest of Judaism, and its perceived opponents.” Following the hypotheses of L. Schiffman, and E. Qimron and J. Strugnell, Foster maintains that MMT testifies to an early stage in the life cycle of the Qumran group because it projects open lines of communication with temple-based Judaism; later texts in Qumran’s life cycle such as 1QS are more overtly sectarian and condemnatory of their temple-based counterparts. These open lines of communication are made clear in the “conciliatory tone” of part C in MMT, as well as in the halakhic disputes of part B, which try to convince the addressee of the correctness of the Qumran group’s perspective of the law. This deliberative rhetorical strategy is a vital part of Foster’s argument because it indicates that the MMT people are not yet “outside” of Judaism, unlike Matthew, whose pugnacious language (e.g. the “woes” of ch. 23) suggests that a more irreparable separation has occurred and the lines of communication with his counterparts in Judaism have been severed. The Matthean Jesus has the authority not only to provide an alternative halakhic interpretation of the law but to actually “override” the law, which differs from the law-centered authority

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429 Elisha Qimron and John Strugnell, eds., *Discoveries in the Judaean Desert X, Qumran Cave 4, V, Miqsat Ma'ase Ha-Torah* (DJD 5; Oxford: Clarendon, 1994).


432 Foster, *Community, Law, and Mission*, 91-93.

433 Foster, *Community, Law, and Mission*, 139: “The Matthean attitude towards the law has shown that the evangelist did not advocate a wholesale rejection of Torah, but, as the antitheses demonstrate, he
structure of MMT. This is further evidence that Matthew’s group is “outside the synagogue,” which is, for Foster, the social setting for Matthew’s views of the law (e.g. in Matt 5:18). Moreover, when compared with MMT through the lens of V. Turner’s “rites of passage” model—separation, liminality, reaggregation—Matthew displays features of the final stage, while MMT seems to be in the first one; “the Matthean community is further down the path of redefinition of identity.”

Foster’s approach is innovative. He emphasizes the importance of the gentile mission in Matthew’s gospel, and he does a better job than other studies of more precisely situating Matthew vis-à-vis Judaism, because he compares the Gospel with a single text, 4QMMT: MMT reflects a community that is closer to its parent body than is Matthew’s community to its parent body. This is the right way to approach comparison: it needs to be narrowly focused and precise. What Foster is not successful in establishing is that Matthew is removed from “Judaism.” Being removed from the synagogue is not the same as being removed from

promoted a higher authority, namely Jesus as the legitimate interpreter and re-definer of Jewish traditions” (pp. 257-258).


435 Foster, *Community, Law, and Mission*, 141.

436 Foster, *Community, Law, and Mission*, 194: “It appears that in writing a pastorally sensitive gospel, for a community that has suffered persecution and the experience of disenfranchisement from synagogue origins, that Matthew is attempting to assure vacillating members that the charge brought against them of being anti-Torah was baseless”; and also “There can be little doubt that Matthew saw the breach with the synagogue experienced by his community as having implications for understanding how the law was to be viewed” (p. 217). Neither of these statements can be supported with solid evidence from the Gospel.

437 Foster, *Community, Law, and Mission*, 141.

438 Foster, *Community, Law, and Mission*, 78-79. See below in ch. 5 for my understanding of the importance of this mission.
“Judaism”; and in any case, separation from the synagogue is a point Foster appears to assert more than prove, in part, no doubt because such an argument rests on meager evidence. In this sense, Foster’s study is susceptible to the same problems as the other studies surveyed above.

Scholars routinely try to gauge Matthew’s proximity to “Judaism” by perusing Matthew’s language including especially the portions of the Gospel that address the law, and then they compare their findings with some aspect of Judaism, such as “synagogue Judaism,” “formative Judaism,” “Pharisaic” or “rabbinic” Judaism, “Judaism” itself, or something similar. The two questions that guide these studies are, first, what does Matthew say about the law, and second, where does this place Matthew among his contemporaries in Judaism? Scholars disagree about how to answer the first question, and this contributes to their contradictory answers to the second. Some scholars (e.g, Saldarini, Overman, etc.) argue that Matthew should be situated within Judaism, and others (e.g, Foster, Meier, Stanton, etc.) that Matthew is removed from Judaism or some aspect of Judaism. The difficulty that each scholar encounters is that decisive

439 So Sim, *The Gospel of Matthew*, 147: “Despite the confidence of many scholars who argue that the (Christian) Matthean community stood in opposition to the synagogue (Judaism) the Gospel does not actually refer to this Jewish institution as a synonym for Judaism.”

440 See for example, the various references to the synagogue in Foster, *Community, Law, and Mission*: “the evangelist’s community, which had recently broken with its synagogue origins, is urging those still inside the synagogues to make the same decisive boundary-crossing journey” (p. 102); “[i]n the aftermath of its breach with Jewish synagogues, and in the process of engaging in the first tentative stages of Gentile evangelization, the evangelist’s group viewed itself as persecuted” (p. 129); “[f]or, as is apparent from the antitheses, it is the authority claims that the community have made on behalf of Jesus, which have resulted in the group being ostracized and persecuted by their former synagogue partners, resulting in the struggle to redefine its own identity in the aftermath of that crisis” (p. 139); “[i]t would thus appear that Matthew’s group is at that stage of transformation when, having accepted its permanent marginalized existence outside the synagogue, it now begins to redefine its status as an independent entity” (p. 141); “[i]t appears that in writing a pastorally sensitive gospel, for a community that has suffered persecution and the experience of disenfranchisement from synagogue origins, that [sic] Matthew is attempting to assure vacillating members that the charge brought against them of being anti-Torah was baseless” (p. 194); “this study . . . suggests that although the Matthean community originated in the synagogue environment, at the time of the writing of the gospel the group had broken away from its former religious setting and was operating as an independent entity” (p. 253). These assertions elide the fact that evidence for a possible separation from the synagogue is derived almost solely from the pronouns “their” and “your” in Matt 4:23; 9:35; 10:17; 12:9; 13:54; and 23:34.
evidence for gauging Matthew’s proximity to Judaism is lacking, and the extant evidence is difficult to interpret.\textsuperscript{441} The contradictory reconstructions lead me to conclude that this debate has reached a stalemate, and that the prevailing approach to investigating Matthew and the law, which tries to situate Matthew vis-à-vis his contemporaries in Judaism, should be questioned and revised. I will demonstrate below that the same problems plague scholarship on Paul and the law, which leads me to the same conclusions as those reached here.

3.3 Paul

E. P. Sanders has labeled Paul’s views of the law “‘coherent’” but not “‘systematic.’”\textsuperscript{442} This underscores a problem reiterated many times by scholars that Paul’s statements about the law are difficult to reconcile.\textsuperscript{443} Sanders traces Paul’s inconsistency to a pattern of reasoning that proceeds from “solution” to “plight”:\textsuperscript{444} “in Christ God has acted to save the world; therefore the

\textsuperscript{441} Some studies try to rectify this data problem by simply fabricating evidence. A case in point is Runesson, “Rethinking Early Jewish—Christian Relations,” 95-132. Runesson argues as follows: “I will argue that, while Mattheans were initially part of the Pharisaic association, the community that authored the Gospel was in the process of leaving the larger collectivity after the war of 66-70 C.E. Tensions between the Mattheans and Jewish society generally seem to have been comparatively low, both before and after 70; relations between the Mattheans and other Pharisees, however, were more complex and negative, with tensions increasing drastically after 70 C.E.” (p. 98). Aside from highlighting the hostilities between Matthew’s group and Pharisees (based on Matt 23), there is no solid evidence for any of these assertions; the argument basically hangs in thin air.


\textsuperscript{443} Cf. Lambrecht, “Gesetzesverständnis,” 237, who organizes the literature around this problem according to three questions: “Wir stellen drei Fragen. Ändere Paulus seine Auffassung bezüglich des Gesetzes (A)? Worin besteht nach einigen Exegeten der Kerngedanke hinsichtlich des Gesetzes (B)? Besteht ein logischer Zusammenhang zwischen den zahlreichen Aussagen über das Gesetz im Denken des Paulus (C)?” I discuss the difficulties in reconciling Paul’s views of the law in more detail below in ch. 5.

\textsuperscript{444} E. P. Sanders, \textit{Paul and Palestinian Judaism: A Comparison of Patterns of Religion} (Minneapolis: Fortress, 1977), 482: “Since salvation is only in Christ, therefore all other ways toward salvation are wrong, and attempting to follow them has results which are the reverse of what is desired. What is wrong with following the law is not the effort itself, but the fact that the observer of the law is not seeking the righteousness which is given by God through the coming of Christ.” Sanders writes, “[o]ne of the most striking features of Paul’s argument [in Gal 3] is that he puts everyone, whether Jew or Gentile, in the same situation. This is best explained by hypothesizing that he thought backwards, from solution to plight, and that his thinking in this, as in many respects, was governed by the overriding conviction that
world is in need of salvation; but God also gave the law; if Christ is given for salvation, it must follow that the law could not have been.”

This creates a tension for Paul because the corollary should be that the law is opposed to God’s will; however, Paul’s conviction about God’s goodness and his own positive experience of the law as a Pharisee (e.g. Phil 3:6) cause him to shy away from this conclusion, and instead assert that the law is good.

This, according to Sanders, contradicts Paul’s negative statements about the law (e.g. in Gal 3:22, 24; Rom 3:20; 4:15; 5:20-21; etc.), and produces “tortured explanations” that blame “sin” and try to exonerate God and the law.

This tension is indicative of Paul’s tense relationship with Judaism.

On the one hand, Sanders is adamant that Paul and Judaism should not be opposed in the way scholars have usually done: equating law observance with works-righteousness. On the other hand, he observes that some of Paul’s views moved “well beyond the bounds of contemporary Judaism.”

Paul insists that salvation is by faith and not works of the law, which means that salvation is through Christ. Since Christ came to save all, all needed salvation”; Paul, the Law and the Jewish People, 68.

Sanders, Paul and Palestinian Judaism, 475.

Sanders, Paul, the Law and the Jewish People, 80.

Sanders, Paul, the Law and the Jewish People, 80-81; cf. p. 84. For Sanders, Paul’s inconsistency appears to be the outcome of not seeing the law as a mechanism for “getting in” but as part of the Christian life (“staying in”); Christians are thus both “not under the law” and “fulfill the law”; see Sanders, Paul, the Law and the Jewish People, 94-100, esp. 99; cf. pp. 114, 144-148. Along these lines, Paul reduces the law to the love command, argues that circumcision is void, and yet maintains that continuing to keep God’s commands remains valid (1 Cor 7:19)—a statement that indicates Paul is unwilling to reject the law outright but rather wants to assert that he “upholds the law” (Rom 3:31; p. 103). Sanders concludes later in the book that Paul “knew that righteousness is only by faith in Christ, but he still tried repeatedly to find a place for the law in God’s plan” (p. 199). Anticipating the work of later scholars, Sanders clarifies that Paul appears to fixate on circumcision, special days, and kosher food as particular laws that are no longer binding—all three “distinguish Jews from Gentiles” (p. 114).

Sanders, Paul, the Law and the Jewish People, 198.

Sanders, Paul, the Law and the Jewish People, 103.
gentiles “need not be Jewish to be ‘righteous.’” This perspective attacks the distinctiveness of Israel both in terms of election and of the covenant, and thus “Judaism by definition”; but Paul appears to be unaware that this “impl[ied] a break with Judaism.”

J. D. G. Dunn critiques Sanders for creating an “idiosyncratic” Paul, who is difficult to situate in first century C.E. Judaism. Where Sanders sees inconsistency, Dunn sees development in Paul’s thinking; Paul “speaks as one who is consciously within Judaism” even though in some respects he is still coming to grips with the meaning of his “changed perspective” in Christ. A question Dunn sees as central is “what was it that Paul was reacting against?” He criticizes Sanders for not recognizing that Paul did not break with the law but with works of the law, that is, with boundary markers such as circumcision and kashrut, which separated “Jewish believers” from “Gentile believers.” Paul thus criticized exclusivity that restricted a

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450 Sanders, Paul, the Law and the Jewish People, 46.
451 Sanders, Paul, the Law and the Jewish People, 154.
452 Sanders, Paul, the Law and the Jewish People, 207.
453 James D. G. Dunn, The New Perspective on Paul: Collected Essays (WUNT 1/185; Tübingen: Mohr Siebeck, 2005), 93. Note: even though this volume is a collection of articles, all citations from it will be by page number and not by particular journal title. The volume has been reprinted; James D. G. Dunn, The New Perspective on Paul (revised ed.; Grand Rapids: Eerdmans, 2008). For other discussions of the subject matter by Dunn, see his The Theology of the Apostle Paul (Grand Rapids: Eerdmans, 1998), esp. sections 6, 14, and 23.
454 Dunn, The New Perspective on Paul, 181; italics original; cf. chs. 9, 15.
455 Dunn, The New Perspective on Paul, 1-5, here, 5; cf. also ch. 4.
457 Dunn, The New Perspective on Paul, 7-8. Dunn expands on this definition of “works of the law” when he writes, “we could observe a third element in the equation—‘living like a Jew/Judaizing’ . . . . In Paul’s eyes, Peter and the other believing Jews were in effect insisting that believing Gentiles should observe the food laws=judaize=do works of the law. In other words, ‘works of the law’ are not only a way of describing what members of the covenant are obligated to do by virtue of their covenant membership (‘covenantal nomism’). ‘Works of the law’ also denote the Jewish way of life, including the distinctively Jewish way of life . . . . To ‘live judaically’ . . . is to live according to the law, to do what the law commands (works of the law)” (pp. 24-25). Also, “the issue which caused the first recorded statement of the great principle of justification by faith alone were the works of the law by which Judaism distinguished itself and kept itself separate from the (other) nations” (p. 26; cf. pp. 40-41).
righteous status to Israel alone.\(^{458}\) The coming of Christ meant that the purpose of the law, to the extent that it solidified Israel as exceptional, had in effect come to an end, and that those who still insisted on the observance of works of the law were “‘behind the times.’”\(^{459}\)

It is a testament to the fractious nature of Pauline scholarship that every one of Dunn’s main points has been criticized. His understanding of “works of the law” has been challenged\(^{460}\) as has his suggestion that Paul refined his views over time.\(^{461}\) And his argument that Paul broke primarily with ethnocentrism has been critiqued for not going far enough\(^{462}\) and for going too far.\(^{463}\)

Although Dunn is critical of Sanders, both scholars find in Paul’s treatment of the law a fundamental difference with “Judaism.”\(^{464}\) They disagree, however, over what that difference

\(^{458}\) Dunn, *The New Perspective on Paul*, 14-15; cf. pp. 36-37: “What was it that roused Paul’s anger at Antioch? What was it that he saw as such a threat to the fundamental truth of justification by faith? — precisely the refusal of one group of Christians fully to accept another group of Christians!” (p. 29).

\(^{459}\) Dunn, *The New Perspective on Paul*, 39; cf. pp. 104, 411. For Dunn, Paul’s specific argument “of faith versus works” was forged after the success of the gentile mission, and was honed to the crisper “faith and not works” in the wake of the Antioch incident (p. 37).


\(^{464}\) Both scholars are also similar in that they frame Paul’s thought about the law with anachronistic theological jargon. According to Dunn, Paul represents “Christianity,” which “in its essence . . . is a form
is. 465 For Sanders, Paul undermines the traits of covenant and election and thus breaks with “Judaism,” 466 but is ignorant of doing so. Dunn is much less willing to admit such a break, 467 and so frames Paul’s relationship with Judaism in terms of refinement. Dunn affirms that election and obedience are interconnected, and thus affirms Sanders’ “covenantal nomism” as

of Israel (or of Judaism) breaking through the boundaries which surrounded Judaism”; The New Perspective on Paul, 324. And Sanders suggests that the “Christian” Paul finds the law deficient in that it cannot save the world; Paul, the Law, and the Jewish People, 47; cf. Sanders’ quip: “this is what Paul finds wrong in Judaism: it is not Christianity”; Paul and Palestinian Judaism, 552.

465 Sanders has been criticized for using imprecise terminology when describing this difference; see Hans Hübner, Law in Paul’s Thought: A Contribution to the Development of Pauline Theology (trans. James C. G. Greig; Edinburgh: T&T Clark, 1984), 152. Scholars do not agree about what (if any) aspect of Judaism Paul was criticizing; cf. Klaus Haacker, “Verdienste und Grenzen der ‘neuen Perspektive’ der Paulus-Auslegung,” in Bachmann, Lutherische und Neue Paulusperspektive, 1-15, esp. 9, who points out that Paul may have been disagreeing primarily with his strand of Pharisaic Judaism: “das Lebenskonzept des pharisäischen Eiferers” (p. 9).

466 Sanders does not articulate “common” features of Judaism until later publications; e.g. E. P. Sanders, Judaism: Practice and Belief 63 BCE-66 CE (Philadelphia: Trinity, 1992), 190-240, esp. 236-237); cf. Sanders, Paul and Palestinian Judaism, 423: “To the frequent assertion that there were numerous Judaisms in the Palestine of the period studied, one can reply yes or no, depending on just what is meant. There were obviously different groups and different theologies on numerous points. But there appears to have been more in common than just the name ‘Jew,’” Sanders’ use of the phrase “pattern of religion” to define Judaism has been criticized; see Smith, “In Comparison a Magic Dwells,” 34: “[Sanders’] results give me no grounds for confidence.” This concluding statement is tamely worded when compared with the vicious critique that preceded it; cf. Smith, “Fences and Neighbors: Some Contours of Early Judaism,” 1-18, in Smith, Imagining Religion, here, 18: “students of religion need to abandon the notion of ‘essence,’ of a unique differentium for early Judaism as well as the socially impossible correlative of a community constituted by a systematic set of beliefs. The cartography appears far messier.” See also, Martin Hengel, and Roland Deines, “E. P. Sanders ‘Common Judaism’, Jesus, and the Pharisees,” JTS 46/1 (1995): 1-70, though this critique seems more pointed at Sanders’ pattern of argumentation, use of evidence, and polemical style than at “common Judaism.” Elsewhere Sanders complicates the connection between traits and “Judaism” by suggesting that someone in the first century could still be considered “Jewish” even after “omitting” most of the “common” traits of “Judaism” as long as they thought of themselves, or were perceived by others, as “Jewish”; see E. P. Sanders, “Common Judaism Explored,” in Common Judaism: Explorations in Second-Temple Judaism (ed. Wayne O. McCready and Adele Reinhartz; Minneapolis: Fortress, 2008), 11-24, esp. 21-22.

467 Cf. Dunn, The New Perspective on Paul, 48: “I cannot accept that talk of a ‘break’ with the law, as a summary of Paul’s overall attitude to the law, is justified.” Also, “Paul’s reaction to his native Judaism was not one of wholesale denunciation but was targeted against the misconception of the role of works in the process of salvation, the covenantal nomism which effectively excluded Gentiles from that process” (p. 50).
the pattern of religion in Judaism, yet, he sees the ethnocentrism in both traits as superseded by Paul’s emphasis on faith in Christ. Both scholars ask of Paul the same two questions that Matthean scholars ask of Matthew—what is said of the law; and where does this situate the writer in first century C.E. Judaism?—but they disagree on the answers: Is Paul critiquing the law itself (Sanders) or works of the law (Dunn)? Does Paul attack covenant and election and thus Judaism by definition (Sanders), or boundary markers and thus ethnocentrism (Dunn)? The disagreements notwithstanding, both see Paul’s views of the law as pivotal in situating him vis-à-vis his contemporaries in Judaism.

H. Hübner⁴⁶⁸ and H. Räisänen⁴⁶⁹ disagree over how to explain the tension that they see in Paul’s statements about the law, but share a similar perspective of Paul’s relationship with Judaism. Hübner sees fundamental disagreement between Paul and Judaism over the law—something that does not dissipate even as Paul’s particular views of the law shift over time. As with Sanders and Dunn, he compares Paul with “Judaism” or “Jewish” perspectives: Paul conceives of the law differently from the “Jewish ideal of keeping the whole Law”;⁴⁷⁰ he “totally rejected his [former] Jewish understanding of the Law [in Phil 3:7]”;⁴⁷¹ and in the Letter to the Romans he criticizes the attitude that leads to boasting, which characterized his “Jewish” contemporaries.⁴⁷² Paul’s harshest criticism of the law is found in the Letter to the Galatians, which outraged “Jewish Christians” such as James in Jerusalem,⁴⁷³ and forced Paul to modulate

⁴⁶⁸ Hübner, Law in Paul’s Thought.
⁴⁷⁰ Hübner, Law in Paul’s Thought, 37.
⁴⁷¹ Hübner, Law in Paul’s Thought, 37.
⁴⁷² Hübner, Law in Paul’s Thought, 122.
⁴⁷³ Hübner, Law in Paul’s Thought, 63-64. After all, argues Hübner, Paul had likened observance of the law in Galatians to a “fall from grace [τῆς χάριτος ἔξεπέσατε],” a “separation from Christ [κατηργήθιτε
his vitriol when writing to the Romans. Although both Galatians and Romans “reduce” the law to “‘ethical’” commands (compare Rom 13:8-10 and Gal 5:14), Romans makes provision for additional precepts such as circumcision (e.g. 4:12), and allows for the possibility of gentile observance (see 2:26)—Romans is not completely consistent on this point, however, because the reduction of the law in 13:8-10 drifts into abrogation of purity laws in 14:14, 20. Romans also deemphasizes the quantitative aspect of law observance found in Galatians in favor of a more qualitative focus, traces the human dilemma to “boasting,” something not found in Galatians, contains the phrase δικαίωσία θεοῦ, so important to its theology but absent from Galatians, and softens the notion of the indivisibility of the law found in Galatians 5:3 (cf. Jas 2:10). Thus, for Hübner, Paul’s thinking about the law evolved over time.

Important for Hübner is the comparison between Paul’s views of the law and those of his contemporaries in the Jesus movement: he argues that James’ reaction to the Letter to the Galatians caused Paul to soften his critique of the law when writing to the Romans. A problem for Hübner’s reconstruction is that there is no evidence to verify that James and other Jerusalem

ἀπὸ Χριστοῦ]” (Gal 5:4), “slavery” (Gal 5:1), and thus a separation “from the Church,” and seemed to imply that “freedom from the Law” is the “essence of the Christian faith,” all of which should have meant that law observant Christ believers like James and other “Jewish Christians” were to be denied membership in the church (p. 24). Paul does not go this far, however, and Hübner accuses him of “illogicality” as a result (p. 24).

474 Hübner, Law in Paul’s Thought, 84-85.
475 Hübner, Law in Paul’s Thought, 52-53, 55.
476 Hübner, Law in Paul’s Thought, 84-87.
477 Hübner, Law in Paul’s Thought, 83.
478 Hübner, Law in Paul’s Thought, 101, 111.
479 Hübner, Law in Paul’s Thought, 136-137.
480 Hübner, Law in Paul’s Thought, 56.
Jesus followers read Galatians; and there is at best only circumstantial evidence from portions of Galatians to link Paul’s shifting perspective of the law with his response to the negative reactions of Jerusalem-based Jesus followers.\textsuperscript{481} Hübner seems to recognize that these are significant problems and tries to walk his argument back,\textsuperscript{482} but his reconstruction of Paul’s views of the law is weakened without this underlying social scenario.

Räisänen takes a different tack. He disagrees with Hübner’s theory of development, and argues that inconsistency characterizes Paul’s perspective of the law in both Galatians and Romans.\textsuperscript{483} Räisänen insists that “contradictions and tensions have to be accepted as constant features of Paul’s theology of the law,\textsuperscript{484} and, like Sanders, correlates these with Paul’s own internal tension\textsuperscript{485} brought on in part by the pattern of solution and plight.\textsuperscript{486} But Räisänen goes further, and argues that the solution was “for Paul clearer than the problem.”\textsuperscript{487} Paul’s gentile mission was abruptly interrupted when he was caught off guard by Judaizers, who insisted that

\textsuperscript{481} Fabian E. Udoh, “Paul’s Views on the Law: Questions about Origin (Gal. 1:16-2:21; Phil. 3:2-11),” \textit{NovT} 42/3 (2000): 214-237, points out that even discerning development in Paul’s thinking about the law is problematic because there are “different views [of the law] in the same letter” not just between letters (p. 214).

\textsuperscript{482} See the preface to the German edition in Hübner, \textit{Law in Paul’s Thought}, xi: “The attempts at historical reconstruction . . . are in the way of things the most hypothetical sections of the book. They in no way lay claim to providing the groundwork for the overall presentation. Thus I would ask the critical reader to read the book in the awareness that, for its author, the historical reconstruction of suppositions as to why Paul’s thought developed in this way and not another is not the heart of the matter.”

\textsuperscript{483} Räisänen, \textit{Paul and the Law}, 9: “Neither letter is internally consistent. If this last point is correct, it constitutes a decisive objection to development theories [e.g. Hübner].”


\textsuperscript{486} This is also true for Paul’s discussions of human bondage to sin, which according to Räisänen, is a “radicalization in retrospect, triggered off by Paul’s Christological conviction. He does not consistently hold that man apart from Christ is a helpless victim of sin, and this very inconsistency betrays the secondary character of the radicalism”; \textit{Paul and the Law}, 150; cf. p. 201.

\textsuperscript{487} Räisänen, \textit{Paul and the Law}, 23 (italics original).
gentile converts needed to keep the law. Paul tries to defend his law-free position but muddles his logic. When trying to problematize the law, for example, Paul asserts that gentiles do what the law requires and “ἑαυτοῖς εἰσιν νόμος” (2:14), thus making it “possible to fulfill the Torah without actually possessing it.” But gentiles cannot fulfill the whole law because they are not ethnic Jews and therefore do not observe purity laws or the Sabbath. Paul may be thinking of moral precepts but his “speech is loose,” which ironically may have enhanced its rhetorical affect. When paired with Paul’s “radical critique” of the law, statements about Christian fulfillment seem contrived; and in the end, a charge that Paul abolished the law is justified.

Räisänen concludes that Paul’s crafty argumentation would not have fooled a “‘normal’ Jew,” which for good reasons. If we are not to resort to a semantic trick, abandoning circumcision and food laws can only be deemed as an annulment of the Torah. Of course, Paul had not abandoned everything that the law stood for. Christian expositors of Paul sometimes seem to assume that...

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490 Räisänen, *Paul and the Law*, 26. Räisänen maintains that Paul does not distinguish between moral and ritual Torah precepts in Gal 5:14 when he speaks of the “whole law” being fulfilled in the love command, or in Rom 13:8-10 when the love command “summarize[s]” the law, though in the latter, Paul appears to simply “ignore” the ritual Torah altogether (pp. 26-27). Räisänen explores the reasons for why this might be on pp. 258-259.
492 Räisänen, *Paul and the Law*, 69; cf. p. 50. In Romans 7, “Paul is struggling to find a valid reason for the Christian’s freedom from the nomos. It seems that he has no clear argument conveniently at hand” (p. 46). Paul sees the law as having been abolished because of Christ, which is clear from the limited period of time the law was operative (p. 56), the intrinsic nature of the law itself which has in it the seeds sown of its own demise (pp. 57-59; e.g. Gal 2:19), and the death of Christ as a liberating power that ended the law’s curse (pp. 59-62). And yet, Paul affirms the ongoing validity of the law in several places (e.g. Gal 5:14; 1 Cor 7:19; Rom 3:31; 8:4; 13:8-10; p. 63; cf. Paul’s appeal to the Torah in 1 Cor 9:9; p. 68), though he cannot have meant a literal keeping of the entire law, since many Christians were gentiles and thus not Torah-observant to begin with (p. 67). Räisänen concludes that Paul “wants to have his cake and eat it” (p. 82). For a more detailed discussion of tension in Paul’s views of the law, see below ch. 5.
494 Räisänen, *Paul and the Law*, 71: “Paul’s language . . . could only have deceived those who were already convinced. Any ‘normal’ Jew would have disagreed with his assertion in [Rom] 3:31 [νόμον ἵσταμεν], and that for good reasons. If we are not to resort to a semantic trick, abandoning circumcision and food laws can only be deemed as an annulment of the Torah. Of course, Paul had not abandoned everything that the law stood for. Christian expositors of Paul sometimes seem to assume that
and that Paul’s perspective of the law implies a “‘break’ with Judaism.” Räisänen even posits that Paul’s dismissal of kosher laws (Rom 14:14, 20) and “sarcasm” about circumcision (Gal 5:12; Phil 3:2) indicate that he himself had stopped keeping the law. For Räisänen, Paul’s statements about the law are inconsistent because he did not anticipate Jewish Christian blowback from the law-free gentile mission. Paul’s reasoning is thus ad hoc and ex post facto. The problem for Räisänen is that there is little evidence for this reconstruction; and all of it is extrapolated from snippets in Paul’s letters. He suggests there was no “thoroughgoing critique of the law” prior to Antioch, but deduces this by reading between the lines of Paul’s statements in Gal 2. And he points to the lack of polemics against the law in the letter of 1 Thessalonians to argue that Paul was not interested in the law prior to the intervention of Judaizers. But this is question-begging as is Räisänen’s argument that by declaring all things clean Paul signals that he has stopped eating kosher. Räisänen’s reconstruction does, however, raise the question of how much Paul’s statements about the law are tailored to his audience, something Räisänen recognizes when he hints that a gentile audience may be the reason for Paul’s silence about the law in 1 Thessalonians.

**Footnotes:**

495 Räisänen suggests that “Paul’s critique of the law” was so serious that “we should not shrink from speaking of his ‘break’ with Judaism”; in Heikki Räisänen, *Jesus, Paul and Torah: Collected Essays* (JSNTSup 43; Sheffield: Sheffield Academic, 1992), 114-115. In *Paul and the Law*, Räisänen compares Paul with his contemporaries in Judaism, but does so in a way that stresses their differences. He compares Paul’s “oscillating” views of the law (p. 41), his views of the law’s abrogation (p. 93), his argument that the law needed to be fulfilled totally (p. 120), his idiosyncratic views of the law’s origin (p. 133), and the negative function of the law (pp. 158, 161) with contemporary texts in Judaism, and unsurprisingly, concludes that Paul is different.


Audience is crucial for understanding Paul’s perspective of the law, according L. Gaston and J. Gager. In contrast with each of the views outlined above, for Gaston and Gager Paul never attacks or disagrees with “Judaism”. He speaks instead with a gentile audience about their relationship to the law. Gager is quite forceful about this:

> Any statement that begins with the words, ‘How could a Jew like Paul say X, Y, Z about the law,’ must be regarded as misguided. In all likelihood Paul, the apostle to the Gentiles, is not speaking about the law as it relates to Israel but only about the law and Gentile members of the Jesus-movement.

Similarly, Gaston argues that “Paul writes to Gentile Christians, dealing with Gentile-Christian problems, foremost among which was the right of Gentiles qua Gentiles, without adopting the Torah of Israel, to full citizenship in the people of God.” He reasons that since Paul’s mission

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502 Gaston, *Paul and the Torah*, 57: “Paul’s major theological concern I understand to be not the justification of individuals by their faith but the justification of the legitimacy of his apostleship to and gospel for the Gentiles.”

503 Gager, *Reinventing Paul*, 44; italics original; also “Gentiles turn out to be the pivotal issue in the more far-reaching revisions of the traditional [i.e. Lutheran] Paul. Indeed, it is not too much to say that there is a direct correlation between these radical revisions and the degree to which the Gentile issue remains the center of attention”; (p. 44). This perspective is for Gager “the only historically defensible one” (p. 18). cf. Gaston, *Paul and the Torah*, 4: “one would not expect the Apostle to the Gentiles to be engaged in a dialogue with Judaism but rather with Gentile Christians, explaining how such central concepts as Torah relate to them.”

was restricted to gentiles (e.g. Gal 2:1-10), he “never encourag[ed] Jews to abandon the Torah.” For Gaston, the negative things said by Paul about the law are addressed to gentiles who are ὑπὸ νόμον (e.g. Gal 3:23; Rom 6:14-15; note also the distinction between Ἰουδαῖος and τοῖς ὑπὸ νόμον in 1 Cor 9:20), that is, under the condemnation of the law (cf. Jub. 15.25-26). Without the protection provided by the covenant, gentiles are exposed to the wrath of God; but Christ provides the necessary access point for gentiles into the Abrahamic covenant: “The Gentile counterpart to living in the covenant community of Torah is being ‘in Christ.’ Christ is the fulfillment of the promise concerning the Gentiles given to Abraham,” and functions for gentiles as the law functions for Jews. Gaston insists that Paul never encourages “Jews to abandon the covenant.” And Gager maintains that Paul did not convert from “Judaism,” but should be located “within the religious and social world of Greco-Roman Judaism.”

The Gaston-Gager hypothesis that Paul is talking to gentiles about how the law relates to them is both “economical and plausible”—two traits of a sound hypothesis. Indeed,

505 Gaston, Paul and the Torah, 22.

506 Gaston, Paul and the Torah, 31: “‘The law gives knowledge of sin’ ([Rom] 3:20), and the Gentiles ‘know God’s commandment that those who do these things deserve to die’ (1:32). ‘The law produces wrath’ (4:15), and the wrath of God in 1:18ff functions as does the law elsewhere, to increase sin (cf. 5:20 and 7:5, ‘sin’s sad consequences which are through the law…produce…death’). Gentiles, ‘by nature children of wrath’ (Eph 2:3), ‘are for themselves the law’ and ‘do by nature that which belongs to the law (=sin)’ (2:14), for they have ‘the work of the law (=wrath) written on their hearts’ (2:15) . . . . If in [Rom] chapter 1 the Gentiles are subject to the wrath of God and in chapter 6 are slaves of sin, in Chapter 7 it is the law which rules over them (7:1, cf. 6:12) and from which they are freed (7:4, cf. 6:2).”


508 Gaston, Paul and the Torah, 32; cf. p. 79.

509 Gaston, Paul and the Torah, 32.

510 Gaston, Paul and the Torah, 77.

511 Gager, Reinventing Paul, 54.

512 Gager attributes the origin of the hypothesis to Stendahl; see Reinventing Paul, 45.
Gager’s monograph is one of the most cogent treatments of Paul’s thought. Some issues remain unresolved, however, such as how the halakhic materials in Rom 14, which seem to presume that ethnic Jews/Judeans are among Paul’s addressees, relate to the hypothesis; neither Gaston nor Gager discusses Rom 14 in any detail, which goes to the heart of their reconstruction: how certain is it that Paul is only (or primarily) discussing with gentiles how the law applies to them? Additionally, while the hypothesis successfully weakens the argument that Paul’s negative statements about the law imply his break with Judaism, it tends to brush aside differences between Paul and his contemporaries in Judaism, the most significant of which is granting gentiles covenant membership apart from law observance. Gager assumes that Paul is reflecting an eschatological strand of Judaism, which did not require law observance and full conversion of gentiles, but the evidence for this is spotty. And Gaston’s argument that “being

514 Cf. Robert K. Jewett, *Romans: A Commentary* (Hermeneia; Minneapolis: Fortress, 2007), 70-72. For a different view, see A. Andrew Das, *Solving the Romans Debate* (Minneapolis: Fortress, 2007), 109, who proposes that both the “strong” and the “weak” in Rom 14 are gentiles; the latter are “observing Jewish cultic practices.”
515 Francis Watson, *Paul, Judaism, and the Gentiles: Beyond the New Perspective* (Grand Rapids: Eerdmans, 2007), 72, has raised questions about whether even in Gal 2 it can be assumed anymore that Paul’s sole mission (and thus his message) was always to gentiles.
516 Gager, *Reinventing Paul*, 62 fns. 80, 81, cites Donaldson, *Paul and the Gentiles*, 74 as evidence that a strand of Judaism made provision for gentile salvation apart from law-observance. This is more than Donaldson argues. Donaldson directs the reader to his article, “Proselytes or ‘Righteous Gentiles’?: The Status of Gentiles in Eschatological Pilgrimage Patterns of Thought,” *JSP* 4/7 (1990): 3-27. There he observes that the most direct evidence for gentile salvation apart from law observance is late, and the earlier evidence is mixed (pp. 4-5), even though he thinks Judaism was “groping” in the direction of recognizing a place for gentiles “apart from the Sinai covenant” (p. 7): “On the basis of the above survey, we can conclude that no clear and unambiguous picture emerges from the relevant texts concerning the religious status of eschatological pilgrimage Gentiles. On the one hand, nowhere is there any indication that such Gentiles would undergo circumcision or accept any of the other observances that served to mark out the boundary between Jew and Gentile. On the other, nowhere is it clearly indicated
‘in Christ’” is the gentile equivalent of “living in the covenant community” and enjoying “full citizenship in the people of God”\textsuperscript{517} is certainly different from the tortuous conversion experience of Izates of Adiabene;\textsuperscript{518} and it is different from the notion of righteous gentiles keeping the Noachide laws\textsuperscript{519}—something, in any case, that Paul never explicitly mentions.\textsuperscript{520} Nevertheless, if Sanders has clarified that first century C.E. Judaism is not defined by works-righteousness, and if Dunn has emphasized the social function of the law’s boundary markers, Gaston and Gager have demonstrated that Paul’s statements about the law look different if directed solely at gentiles.\textsuperscript{521}

S. Westerholm’s study is a forceful reminder that the Dunn-Sanders “new perspective” on Paul is not accepted by all scholars.\textsuperscript{522} Unlike Gaston and Gager, he insists that Paul’s statements about the law are universally applicable to both Jews and gentiles; and unlike Sanders and Dunn, he detaches righteousness from covenant. Paul reasons, according to Westerholm,

\begin{itemize}
\item that Gentiles who turn to Israel’s God at the end of the age will be exempt from Israel’s law and remain a distinct people in a separate category of salvation” (p. 26).
\end{itemize}

\textsuperscript{517} Gaston, \textit{Paul and the Torah}, 32, 23.
\textsuperscript{520} See the discussion in Marcus Bockmuehl, \textit{Jewish Law in Gentile Churches: Halakhah and the Beginning of Christian Public Ethics} (Edinburgh: T&T Clark, 2000), 167-173.
\textsuperscript{521} A derivative of the gentile-only hypothesis has been used by Peter J. Tomson, \textit{Paul and the Jewish Law: Halakha in the Letters of the Apostle to the Gentiles} (Minneapolis: Fortress, 1990), who argues that Paul deployed halakhic-style argumentation throughout his letters, but especially in 1 Corinthians. This style of argumentation was well-suited to the \textit{ad hoc} issues Paul was addressing, and provides a window into “Paul’s way of thinking” (p. 58), which for Tomson is more rabbinic than like the philosophical speculation of Philo (pp. 52-53). Thus Paul should be classified as a “Hellenistic Pharisee” (p. 53), who, when addressing gentiles, “used halakha to the extent that it applied to gentiles in his opinion” (p. 62).
\textsuperscript{522} Westerholm, \textit{Perspectives Old and New on Paul}; see his previous work \textit{Israel’s Law and the Church’s Faith: Paul and His Recent Interpreters} (Grand Rapids: Eerdmans, 1988), most of which was subsumed into the larger monograph.
that since both Jews and gentiles are sinful no one is righteous.\textsuperscript{523} Righteousness is not a covenant status, but a standard that is based on performance: Paul declares that only the law’s “doers” will be justified, which means that God will have “\textit{found them to be so} [i.e. righteous]” because of their “doing,” while the “doers” of unrighteousness face condemnation.\textsuperscript{524} Paul connects this righteous performance to keeping the law.\textsuperscript{525} Accordingly, if the law is the righteous standard by which God judges human behavior, and if Paul has been clear that no one meets that standard (i.e. in Rom 1-3), then another righteousness or righteous status (i.e. innocence, acquittal) that is available to all humans and accessed by a means other than “doing” is requisite.\textsuperscript{526} Thus, justification is by faith and not works;\textsuperscript{527} and the law is not to be seen as a mechanism for delimiting an ethnic righteousness for Jews only because it articulates “the goodness require[d] of all” both Jews and gentiles,\textsuperscript{528} something Paul emphasizes in Gal 3:12 (“\textit{ὁ δὲ νόμος οὐκ ἐστιν ἐκ πίστεως, ἀλλ’ ὁ ποιήσας αὐτὰ ζήσεται ἐν αὐτοῖς}”).\textsuperscript{529}

Westerholm redirects the discussion away from Dunn’s focus on the social significance of Paul’s statements about the law toward his position’s logical strength, namely, Paul’s contrast of faith and works. This contrast is sharpened by the universality of human sin, which prevents

\textsuperscript{523} Westerholm, \textit{Perspectives Old and New on Paul}, 272-273.
\textsuperscript{524} Westerholm, \textit{Perspectives Old and New on Paul}, 267-268.
\textsuperscript{525} Westerholm, \textit{Perspectives Old and New on Paul}, 268-269.
\textsuperscript{526} See the discussion of the justifying power of Christ’s death in Westerholm, \textit{Perspectives Old and New on Paul}, 274-278; cf. p. 285.
\textsuperscript{528} Westerholm, \textit{Perspectives Old and New on Paul}, 269.
\textsuperscript{529} Westerholm, \textit{Perspectives Old and New on Paul}, 271-272; cf. pp. 299, 301. Westerholm concludes from this line of argumentation that Paul’s “usage of the [dikaio-] terminology occurs in passages that speak . . . of sinners being \textit{made} dikaios, of ungodly people being dikaiosified, of people who do not have dikaiosness \textit{receiving} it” (p. 273; italics original). And what this implies for the terminology, especially with respect to God’s righteousness, is that it is not referring to faithfulness to the covenant (pp. 292-293): “God’s righteousness in Paul is, explicitly, the act of divine grace by which, through the sacrificial death of his Son, he declares sinners righteous” (p. 293).
both Jews and gentiles from doing the righteousness outlined in the law, and which makes righteousness apart from the law indispensable for human salvation. The plight is universal and so is the remedy. But in reasserting this “Lutheran” argument, Westerholm dismisses too quickly, in my opinion, the Gaston-Gager suggestion that Paul’s statements about the law may be directed only at gentiles, in which case the distinction that Paul draws between faith and works would apply specifically to gentiles and not to the performance of the law more generally. Additionally, I wonder whether Westerholm has constructed a sui generis Paul. Westerholm’s Paul seems to fit better amid the debates between Augustine and Pelagius or between Luther and Erasmus than he does amid his first century C.E. contemporaries in Judaism where he appears to be anomalous and out of place: Paul sees “the Sinaitic economy” as “temporarily by design,” and playing a “role [that is] negative and preparatory”; and Paul attacks the law itself and its requirement of works, and maintains that “Judaism (and the Sinaitic law)” are incapable of


531 The hypothesis is dismissed in a sentence, a short paragraph, and a single footnote; Westerholm, Perspectives Old and New on Paul, 282, 318-319, 319 fn. 66, respectively.

532 Gaston, Paul and the Torah, 25, sees Paul’s emphasis on justification by faith instead of works as directed at gentiles trying to “establish their righteousness by the performance of certain [Jewish] works.” Gaston parries the argument that Paul does not connect righteousness with covenant (e.g. Westerholm, Perspectives Old and New on Paul, 291) by suggesting that such a connection is not relevant for a gentile audience that was not part of the Sinai arrangement—for them, the new terminology of being “in Christ” describes their “counterpart to living in the covenant community;” Paul and the Torah, 32. This, for Gaston, helps explain why Paul never mentions forgiveness, and does not urge his readers to repent; both presume a covenant relationship that one returns to, and are thus inappropriate for a gentile audience; cf. p. 114 where Gaston notes exceptions to this. Westerholm attributes “Paul’s exclusion of Jewish notions of repentance” to his radically negative perspective of the human condition—“effective repentance must surely lie beyond the capacities of a flesh ‘that does not, and cannot, submit to God’s law’”; Perspectives Old and New on Paul, 420-421.

533 Apropos is Gager’s warning (in Reinventing Paul, 44) about the “misguided” nature of studies that generate the question “How could a Jew like Paul say X, Y, Z about the law?”

534 Westerholm, Perspectives Old and New on Paul, 330; italics original.

535 Westerholm, Perspectives Old and New on Paul, 383; cf. p. 413.
rectifying humanity’s core problem, namely, “captivity to sin.” All of this implies that the “Christian” Paul abandoned the law and separated from Judaism. Westerholm’s reconstruction can thus be situated on the extreme end of those reconstructions of Paul’s perspective of the law that imply that Paul is outside of Judaism.

While Pauline scholars do not agree with each other about what Paul sees as problematic about the law, most do conclude that Paul sees an aspect of the law as fundamentally flawed, which implies that Paul has either separated from Judaism or is on the trajectory of moving outside the bounds of Judaism. For Westerholm and other proponents of the “Lutheran” Paul, the law itself is flawed because it is based on performance. For Dunn, the law is flawed because it reinforces ethnocentrism, while for Sanders, Hübner, and Räisänen, Paul says enough negative things about the law that he, in effect, removes himself from Judaism. That Gaston, Gager, and others in this camp can reply that Paul’s statements about the law are not directed at his contemporaries in Judaism but at the gentile relationship to the law, and further, that Paul

536 Westerholm, Perspectives Old and New on Paul, 381; also p. 382-383.
537 Cf. Westerholm, Perspectives Old and New on Paul, 333. Westerholm does not address Tomson’s observation that in Galatians Paul deploys “halakha to prove his point against circumcision of gentile Christians,” which means that “halakha and Law polemic exist independently and are not mutually exclusive,” and further, that “halakha supports theological Law polemic”; Paul and the Jewish Law, 89. In other words, for Tomson, Paul is not wholly rejecting the law because, when addressing gentiles, he deploys halakhic argument to make his polemical points.
538 Westerholm, Perspectives Old and New on Paul, 306-310. Westerholm points out that for many scholars (he cites among others Thomas R. Schreiner, The Law and Its Fulfillment: A Pauline Theology of Law [Grand Rapids: Baker, 1995]; and Mark A. Seifrid, “Blind Alleys in the Controversy over the Paul of History,” TB 45/1 [1994]: 73-95; cf. A. Andrew Das, Paul, the Law, and the Covenant [Peabody: Hendrickson, 2001]) there is a “frustration . . . that [E. P.] Sanders is widely believed to have refuted a ‘Lutheran’ understanding of Judaism when, to their minds, the position of Judaism on the relation between grace and works as Sanders himself portrays it seems to differ little from that of Pelagius, against whom Augustine railed, or that of the sixteenth-century church, upon which Luther called down heaven’s thunder. Sanders has shown that Judaism did not generally believe that salvation was earned from scratch by human deeds of righteousness; the point is well taken, but it by no means differentiates Judaism from the classical opponents of ‘Lutheran’ thought. What the opponents of ‘Lutheranism’ emphatically did not do, however . . . was to suggest that humans can contribute nothing to their salvation. That insistence is . . . the very essence of ‘Lutheranism’” (p. 351; italics original).
likely remained law observant his entire life and thus *within* Judaism, underscores, it seems to me, that the Paul and the law debate has reached a stalemate. There are a variety of hypotheses that try to explain Paul’s complicated views of the law, but, as to the question of where Paul’s views situate him *vis-à-vis* first century Judaism, scholarship is neatly divided: *inside* or *outside* of Judaism.

This is where the fields of Matthean and of Pauline scholarship on law resemble each other most closely, since the difficulties inherent in answering the two questions that guide the scholarly studies—what does Matthew or Paul say about the law; where does what they say about law situate them *vis-à-vis* Judaism?—have produced an impasse in both fields. Scholars do not agree about the first of these questions. And, with respect to the second, both fields are polarized: Matthew and Paul are either *inside* or *outside* of Judaism.

A different approach has been proposed by three Pauline scholars, N. Huttunen, P. Fredriksen, and B. Kahl. Each tries to situate aspects of the Paul and the law debate in the broader Greco-Roman cultural context. Huttunen criticizes the current state of Paul and the law scholarship, arguing that a post-Sanders staleness devoid of new breakthroughs has settled on the field. He invokes J. Z. Smith’s method of comparison and proposes reading Paul alongside Epictetus. Their closeness in thought and style is evident in places like 1 Cor 7 and 9, which

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539 Cf. Nanos, *Mystery of Romans*, 9: “This study finds the Paul behind the text of Romans to be a practicing Jew.”

540 Huttunen, *Paul and Epictetus on Law*.


542 Kahl, *Galatians Re-Imagined*; see also her article “Reading Galatians and Empire at the Great Altar of Pergamon,” *USQR* 59/3-4 (2005): 21-43.


544 Huttunen, *Paul and Epictetus on Law*, 8. There is a long history in the secondary literature of comparing Paul and Stoicism, which Huttunen acknowledges.
Huttunen refers to as a form of “Christian Stoicism,” and a “Christian adaptation of Stoicism.” When Paul erases distinctions between people in texts like 1 Cor 7 and 12, and Gal 3:28, he “sounds much like Epictetus,” and his argumentation in 1 Cor 9 is “[a]nalogically” similar to Epictetus. Further, Paul is concerned about external morality “in the same way” as Epictetus. And Epictetus “uses similar words to express a thought [i.e. ‘willing obedience to God’] similar to Paul’s.” This closeness of the two writers indicates for Huttunen that Paul’s views of law are “clearly coloured by Stoicism,” possessing a “Stoic dimension,” and signal that in some respects Paul has been “influenced by Stoicism” (e.g. in 1 Cor 7:17-24).

Huttunen’s study demonstrates the importance of incorporating Greco-Roman materials into the Paul and the law debate, even though his actual interaction with the intricacies of the debate is cursory: he affirms the traditional (Lutheran) view of Paul without engaging its critics, and he relies on others for his literature review of the discussion. His use of J. Z.

545 Huttunen, Paul and Epictetus on Law, 26.
546 Huttunen, Paul and Epictetus on Law, 31.
547 Huttunen, Paul and Epictetus on Law, 30.
548 Huttunen, Paul and Epictetus on Law, 33.
549 Huttunen, Paul and Epictetus on Law, 34.
550 Huttunen, Paul and Epictetus on Law, 36. Throughout the book these designations are used to delineate the comparison between the two writers. Paul and Epictetus are said to be “similar” in many respects; see for example pp. 45, 49, 51, 52, 56, 59, 71, 72, 73, 75, 81, 84, 93, 94, 99, 115, 116-117, 121, 122, 125, 126, 143-144, 145, 146, 147-148, 149, 150, 151-153.
551 Huttunen, Paul and Epictetus on Law, 36. The notion that Paul’s ideas are colored by or reflect Stoic thought patterns (usually as manifested in Epictetus’ works) is frequently repeated in the book; see for example pp. 48, 53, 55, 58, 60, 62, 71, 82, 112, 117, 119, 123, 126. Huttunen does of course recognize differences between Paul and Epictetus, one of which is the centrality of Christ in Paul’s thought (p. 36). Cf. other differences on pp. 59, 69-70, 73, 83, 95-99, 118, 120, 122, 146.
552 Huttunen, Paul and Epictetus on Law, 31.
553 See for example his discussion of “works of the law” (Paul and Epictetus on Law, 142-143), and his summative statement that “[t]he underlying idea” in Gal 3:10 is “that one should obey every precept of the law in order to attain salvation,” without showing awareness of other interpretations of this difficult passage.
Smith’s method is also suspect in places. Nevertheless, his study marks an important step forward because it compares Paul’s perspectives of the law with a set of materials from outside the Jewish/Christian context.

Fredriksen situates Paul’s discussion of law within the context of how the ancestral customs of people groups were treated in the Roman world. Since “cult defined ethnicity and ethnicity defined cult” in antiquity, a deity was assumed to exist if its people existed. People could revere numerous deities at once including the Jewish deity; that is, they could participate both in Jewish synagogue life and their “native cults” as long as such behavior did not drift into abandonment of their ancestral deities (i.e. full conversion to Judaism)—something “tantamount to changing one’s ethnicity” or committing “treason.” These gentiles, argues Fredriksen, were the “‘god-fearers.’”

Paul’s insistence that gentile Christ-believers abandon their ancestral

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555 Huttunen tends to use Smith selectively in his analysis, and does not recognize the distinction Smith makes between analogy and genealogy. In *Drudgery Divine*, Smith quotes John S. Mill (*A System of Logic* [10th ed.; London: Longmans, 1879], 2.371): “‘if we have the slightest reason to suppose any real connection between . . . A and B, the argument is no longer one of analogy’”; Smith points out that “all comparisons are properly analogical” (italics original; p. 51). Genealogy, on the other hand, is interested in tracing influences, which is how Huttunen understands the relationship between Paul and Epictetus: “Paul was a Hellenistic Jew who had lively interaction with gentile Christians, and in this sense he was surrounded by the Greek culture. . . . Why would have or even how could have Paul avoided Stoic influence?”; Huttunen, *Paul and Epictetus on Law*, 19. It is worth noting that in later essays Smith does allow for genealogical comparison in certain cases, but Huttunen does not refer to these; see Smith, “The ‘End’ of Comparison,” 238.


557 Fredriksen, “Judaizing the Nations,” 239-240: “Worse than turning their backs on their human kin, however, was the fact that such people also turned their backs to the gods who were theirs by birth and blood. They thereby disrupted the fundamental relationship between gods and their humans. Such behavior not only insulted the pagan community: It endangered the pagan community, because it insulted that community’s gods, and angry gods made for sorry humans. Remarkably, however, pagan culture by and large accommodated contemporaries who underwent such a drastic change of status” (p. 240).

deities should be seen in this light; by revering the deity of Israel alone they become “ex-pagan pagans or . . . ex-pagan Gentiles” without having to fully convert to Judaism.\footnote{Fredriksen, “Judaizing the Nations,” 240-242.} This is the reason that Paul invokes the Roman metaphor of adoption. Fredriksen observes that “entering a new family entailed taking on obligations to new ancestors and new gods,” which allowed Paul to join gentile Christ-believers directly to Abraham and not the Israelite patriarchs: they became the adopted children of the Jewish deity by sharing the faith of Abraham.\footnote{Fredriksen, “Judaizing the Nations,” 243-244: “Adoption in Roman culture is much like ‘conversion’ was in Judaism: both represent the legal creation of kinship bonds and an adjusted pantheon. Paul, however, does not think that Christian pagans should convert to Judaism, and so he deploys this image carefully. Israel, adopted already as God’s son, descends from ‘the fathers’ . . . according to the flesh . . . . Pagans-in-Christ are also from Abraham’s lineage, since Abraham was the father of many nations . . . but they descend from Abraham alone, not also from Isaac and Jacob” (p. 243).} This rhetorical move had an unintended consequence, however: “By insisting both that they \textit{not} convert to Judaism (thus maintaining their public and legal status as pagans) and that they nonetheless \textit{not} worship the gods (a protected right only of Jews), Paul walked these Gentiles-in-Christ into a social and religious no-man’s-land.”\footnote{Paula Fredriksen, \textit{Jesus of Nazareth, King of the Jews: A Jewish Life and the Emergence of Christianity} (New York: Knopf, 1999), 135. For my discussion of the Jew/Judean laws and customs \textit{as rights}, see below ch. 4.} This “no-man’s-land” was not, however, “law-free,” because the stipulation that gentiles obey the deity of Israel came from the law itself.\footnote{Fredriksen, “Judaizing the Nations,” 252.}

Kahl’s work resembles Fredriksen’s in that her “critical re-imagination” of Paul’s Letter to the Galatians also considers Paul’s perspective of the law, particularly circumcision, in a Roman context. She underscores the role played by the terms Galatians/Gauls in the Roman imperial thought-world as types of the quintessential barbarian in contrast to the civilized Roman:
The Galatians/Gauls as ‘lawless barbarians’ and conquerors of Rome and Delphi . . . played a constitutive role in an ideological worldview centered on war and the god-given victory of ‘law’ in the fight of civilization against barbarism. They provided one of the most powerful, ‘universal’ stereotypes of law-defying barbarian otherness and of its final, legitimate, and ‘world-saving’ defeat by Rome. Portrayed as archetypal enemies of divine order, civilization, and civilized humanity, they delivered an ideal pretext for conquest and rule in general, and for Roman world conquest and world rule in particular.\textsuperscript{563}

Kahl traces this discursive connection throughout Roman political discourse, conquest art, and in the symbolism of the arena,\textsuperscript{564} and uses it to help conceptualize “law” as a site of social conflict between lawless barbarians and civilized Romans.\textsuperscript{565} She also makes much of the Roman authorization of certain Jewish/Judean laws and customs, and the Jewish/Judean freedom from participating in the imperial cult,\textsuperscript{566} in order to better understand the specific problems facing Paul’s Galatian audience, and to better situate the specific practice of circumcision in this broader Roman context.\textsuperscript{567} Like Fredriksen, Kahl recognizes that Paul’s gospel has led gentiles into a kind of third space where their loyalties to the imperial cult and civic associations were considered idolatrous, yet they were not permitted to fully convert to Judaism:

Paul’s messianic ‘innovation’ of inviting the non-Jewish other into oneness with Israel and Israel’s God constitutes a double offense—against Roman law and Jewish law as well. From the perspective of the Torah, this innovation transgresses the boundary between God’s chosen people and the rest of the Gentile world, marked by circumcision or foreskin; this is the familiar, well-traveled aspect of the Galatian controversy. What has usually been underestimated, however, if it has been recognized at all, is that within the framework of the compromise struck between Torah and Roman nomos/lex, a whole host of transgressions ensue from this boundary-crossing: the breach of ancestral (Jewish) law as safeguarded by Rome, undesirable missionary activity and expansion, illicit associations, and unlicensed ‘atheism.’ . . . Paul shamelessly expands the carefully segregated territory of the conquered God of Israel—defying boundaries set by both

\textsuperscript{563} Kahl, \textit{Galatians Re-Imagined}, 80.

\textsuperscript{564} Kahl, \textit{Galatians Re-Imagined}, esp. chs. 2-4; also Kahl, “Reading Galatians and Empire.”

\textsuperscript{565} Kahl, \textit{Galatians Re-Imagined}, 126.

\textsuperscript{566} Predecessors to this approach are listed in Kahl, \textit{Galatians Re-Imagined}, 353 fn. 45.

\textsuperscript{567} Kahl, \textit{Galatians Re-Imagined}, 221-228: “Whether they were Jews or non-Jews, Christ-believers or not, those in the Galatian congregation who advocated circumcision likely sought a return to a more inconspicuous existence within civic and imperial religion. Their message was probably given serious consideration by the non-Jewish members of the congregation” (p. 225).
Roman and Jewish law, though for different reasons—into the territory of the conqueror god, the divine Caesar.\textsuperscript{568}

For Kahl, key terms in Galatians such as “works of the law,” “righteousness,” and “gospel,” key concepts such as “justification by faith,” and key events such as the Antioch Incident, all need to be understood primarily in the context of Roman imperial discourse and imagery.\textsuperscript{569} Even though each of these at first glance appears to speak to some aspect of Judaism, Kahl insists that Paul is thinking in broader counter-imperial terms; and the reason we might overlook the symbolism is that Paul is writing with a “‘semi-hidden transcript’” that conceals his true meaning to modern (especially Protestant) readers, but not apparently to the Galatians.\textsuperscript{570} Accordingly, much of Kahl’s study is devoted to interpreting the symbolic significance of the imperial context, and then assuming that this is what Paul was really talking about when addressing the Galatians.\textsuperscript{571} While there are obvious methodological problems with trying to identify what Paul

\begin{footnotes}
\footnotetext[568]{Kahl, \textit{Galatians Re-Imagined}, 221.}
\footnotetext[569]{E.g. Kahl, \textit{Galatians Re-Imagined}, 199.}
\footnotetext[571]{Kahl, \textit{Galatians Re-Imagined}, 251-252, articulates the dilemma: “If Roman law and imperial order, as we are trying to show, constitute the overarching context of his Galatian correspondence, why was Paul so cryptic about these issues, leaving them for us to arduously reconstruct and re-imagine, rather than addressing them more plainly and explicitly in his own text?” She continues: “The dominated always know how to communicate in ‘other words’ under the eagle eye of their censors, using abbreviations, allusions, omissions, and the camouflage of a ‘double tongue’ to say what they want to say, without saying it. Only when the context changes and the rules of the (reading) game are no longer understood, the text produced by this matrix of force and coercion, caution and indirection becomes unreadable or ambiguous, as the semantic of its ‘hidden transcript’ is no longer accessible.” John M. G. Barclay, “Why the Roman Empire Was Insignificant to Paul,” in John M. G. Barclay, \textit{Pauline Churches and Diaspora Jews} (WUNT 1/275; Tübingen: Mohr Siebeck, 2011), 363-387, has raised another possibility, which renders Kahl’s reconstruction problematic: “But if we have access here [i.e. in Paul’s letters] to the undisguised ‘hidden transcript’ . . . , it is striking that Paul makes no openly subversive statements about Caesar or Rome as one might expect if the gospel stood in direct opposition to the Roman empire. In other words, Scott’s analysis argues directly against those who would regard Paul’s letters as a coded discourse which masks what he or other early Christians really thought” (p. 383).}
\end{footnotes}
really meant, Kahl like Fredriksen should be lauded for shifting the Paul and the law debate from “Jewish/Christian” terrain to that of the Roman (imperial) world.

Taken together, Huttunen, Fredriksen, and Kahl explicitly situate Paul’s discussion of the law in the cultural context of the Greco-Roman world instead of merely in the narrower Jewish/Christian context. In ch. 4 below, I will continue on this trajectory and examine the laws and customs of Judaism in the Roman legal world. And in ch. 5, I will explore the relationship between missionizing and law in Matthew and Paul in the context of Roman imperialism.

Kahl also seems to reify Roman law into a symbol of civilization without dealing clearly with the particulars of how Roman law actually worked in practice; see for example Galatians Re-Imagined, 7, where Kahl writes that “whatever the subject of contention between Paul and his ‘stupid Galatians’ regarding Jewish law and Jewish affiliation, it was Roman law that ultimately defined and enforced what was licit and illicit.” I will address the problems the Romans faced in enforcing their laws, especially laws related to Jewish/Judean ancestral customs in the next chapter.
Chapter 4
Power and Judean Ancestral Customs in the Roman World

“[The Judeans’] eyes were directed Romewards more than those of other groups.” ~Tessa Rajak

4.1 Introduction and Background

The problem I am addressing in this project—why does law emerge as an object of discourse in the first century, or, more simply, why law?—implies relations of power. It is accordingly the relations of power themselves that provide the points of comparison and not, as in the field of comparative law, particular precepts within legal systems or indeed legal systems themselves. As I noted in ch. 1, Foucault raises questions of method that help to guide this sort of analysis: how is power exercised; and what happens when individuals exercise power over others? Law emerges as a problem in the various cultural contexts being examined in this project, and, to use a Foucauldian expression, it is within the space of the relations of power in these contexts that discourses on law proliferate. In positing “power” as the object of analysis, however, Foucault is insistent that this does not imply that power is a substance. Nor does he intend his understanding of power to be a kind of theory of everything that explains every form of human behavior, since it is power itself that “needs to be explained.”

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574 Foucault, “The Subject and Power,” 337: “The flat and empirical little question, ‘What happens?’ is not designed to introduce by stealth a metaphysics or an ontology of power but, rather, to undertake a critical investigation of the thematics of power. How? not in the sense of ‘How does it manifest itself?’ but ‘How is it exercised?’ and ‘What happens when individuals exert (as we say) power over others?’” (italics original).
575 Foucault, “Interview,” 284: “I’ve never claimed that power was going to explain everything. . . . For me, power is what needs to be explained.”
One common feature that I have identified in each of the indigenous contexts detailed in ch. 2, which will help to frame my understanding of the ancient context in this chapter, is that in each cultural situation the micro relations of power operating at the local level are caught up in a broader network of power relations that implicate both the local social group and forces outside of the group. The friction between the local group and forces outside the group is the sphere within which discourses on law multiply. Such discourses take as their object those laws, rules, or customs in particular that have become problematic in the space of this interaction. I observed this tendency in the emergence of court cases dealing with teknocentrism and marriage betrothal among the Dou Donggo, in the preservation of legal distinctiveness in contradistinction to the district courts among the Talean Zapotecs, in the reversion to headhunting among the Ilongots in response to the Japanese incursion into their territory, and in the interplay between indigenous Hawaiian customs and Americanized law in colonial Hawaii. As I pointed out in ch. 3, Matthean and Pauline scholars have not undertaken this kind of cross-cultural study of law. Their focus has been instead on comparing both writers’ views of law with some aspect of Judaism or with Judaism itself. The product of these studies has been impasse in both fields of scholarship, which suggests that a fundamentally different approach to investigating law is a desideratum.

The focus of the present chapter is on the Roman authorization of Judean ancestral customs in the late republican and early imperial periods. The primary evidence for this

576 Drawing from Steve Mason’s influential article, the balance of this project will deploy the term “Judean(s)” to underscore that law in the Roman world was attached to notions of ethnicity and ancestry and not to a stand-alone category of “religion.” Indeed, the category “religion” did not exist in the time period under examination, which raises questions about the adequacy of the term “Jew” as an identifier for the people from Judea who kept the ancestral customs associated with their ethnicity; see “Jews, Judeans, Judaizing, Judaism: Problems of Categorization in Ancient History,” JSJ 38/4-5 (2007): 457-512, esp. 480-488. Mason’s argument has been criticized; see Daniel R. Schwartz, “Judeans, Jews, and Their Neighbors: Jewish Identity in the Second Temple Period,” in Between Cooperation and Hostility: Multiple Identities in Ancient Judaism and the Interaction with Foreign Powers (ed. Rainer Albertz and Jakob Wörle; JAJSup 11; Göttingen: Vandenhoeck & Ruprecht, 2013), 13-32.
authorization comes from Philo of Alexandria and Flavius Josephus. I have selected this topic as a point of intervention into the ancient world for three reasons. First, a focus on Judean ancestral customs frames law in a manner that is consistent with the practice of Roman governmentality, which identified and organized ethnic people-groups according to their particular laws and customs. The emergence of Judean law as an “ancestral custom” in the accounts of Philo and Josephus is made possible by specific practices: Judeans appeal to Roman magistrates and even to the emperor for the right to observe their traditions, and in so doing, constitute themselves as subjects of the empire and constitute their law as an “ancestral custom.” This chapter thus extends the work of the three scholars discussed at the end of ch. 3; each has situated Paul’s perspective of the law in a Greco-Roman context instead of merely exploring Paul’s relationship to Judaism. N. Huttunen has compared Paul’s views of the law with those of Epictetus. P. Fredriksen has investigated the connection between law and ethnicity in antiquity. And B. Kahl has investigated the relationship between law and empire.

Second, in both Philo and Josephus power is exercised at the micro level in the interaction between local Judean groups and their Greek and Roman neighbors; but these localized relations of power are caught up in the broader web of power that infuses the legal world of the Roman Empire. In the space where there is friction between these micro and macro

Foucault, *Security, Territory, Population*, 108, defines “governmentality” in part as a “power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument.” The definition implies that the term more naturally applies to the modern context, and for this reason I hesitate to link Roman administration too closely with governmentality (though see Foucault’s broader definition of the term “governmentality” in *The Government of Self and Others*, 159). This is also the reason why I am not describing the tactics of Roman administration with Foucault’s other term that has the population as its target, “bio-power.” Foucault is clear that bio-power has emerged more recently: *History of Sexuality*, 140; cf. “Society Must Be Defended”, 245.
dynamics of power, Judean ancestral customs become a problem around which legal discourse proliferates.

Third, by focusing on how power relations shape ancestral customs as an object of discourse in Philo and Josephus, I am trying to shed light on an area that has been neglected by scholars who specialize in studying the authorization of Judean customs in the Roman world. Scholars have routinely pointed out that Judeans in the late republican and early imperial periods endured localized outbreaks of persecution, such as, for example, restrictions placed by certain Greek city councils on the observance of aspects of Judean laws and customs. And scholars have recognized that these outbreaks usually occurred in isolated pockets, mostly in the Roman east. In the past thirty years, scholars have also tended to affirm that Roman legal protection of these ancestral customs was not consistent or uniform—not the equivalent of a “Magna Carta.” What has not been as clearly acknowledged, however, is that this uneven legal protection is an effect of the complexities involved in administering the legal world of the empire. Law was not merely imposed by Roman officials. This is to say that the tactics of power that made obedience to the law possible were not coercive, but were targeted at winning obedience by means of gaining the consent of provincials.  

4.2 Philo of Alexandria and Judean Ancestral Customs

Philo’s work *Legatio ad Gaium* illustrates nicely the friction between the micro and macro relations of power. The primary antagonists are Gaius Caligula and the Judeans as a group; however, power is not exercised in a straight line from the emperor to the people: it is mediated at the local level in the interrelations between Judeans and their neighbors in

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578 In making this observation, I am evoking Foucault’s argument that in order to analyze how power is exercised, power must be detached from the juridico-political discourse that has made the monarch the embodiment of both power and law; see Foucault, *History of Sexuality*, 88-91; see also my discussion of Foucault and power above in ch. 1.
Alexandria; it is also mediated through the Roman governor of Syria, Publius Petronius, who resists carrying out an imperial decree in the face of Judean protest; and lastly, it is mediated in the relationship of friendship between Gaius and Agrippa I—Agrippa succeeds in getting Gaius to rescind his decree to erect a statue in the Jerusalem temple. Power thus moves through official imperial channels, but also through personal relationships and local interactions.\(^{579}\)

In *Legat.*, Philo points out that there is a general Roman policy of honoring the ancestral customs of individual people groups, saying of Augustus that he “maintain[ed] firmly the native customs of each particular nation no less than of the Romans [τῆς βεβαιώσεως τῶν παρ’ ἑκάστοις πατρίων, ὡς δὲ καὶ τῶν Ῥωμαϊκῶν].”\(^{580}\) And with respect to the Judeans, Augustus was both informed of their ancestral customs and permitted them, since many Judeans lived in Rome as freedmen and citizens:\(^{581}\)

[Augustus] knew . . . that they have houses of prayer and meet together in them, particularly on the sacred sabbaths when they receive as a body a training in their ancestral philosophy. He knew too that they collect money for sacred purposes from their first-fruits and send them to Jerusalem by persons who would offer the sacrifices.\(^{582}\)

As with Augustus, so also with Tiberius, Judean laws and customs were acknowledged and permitted.\(^{583}\) Additionally, Philo cites a letter from Agrippa I that mentions the honor shown to

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\(^{579}\) Cf. Foucault, “*Society Must be Defended*”, 29: “power is exercised through networks . . . [and] passes through individuals.”

\(^{580}\) *Legat.* 153; Colson, LCL.

\(^{581}\) Cf. *Legat.* 155-158.

\(^{582}\) *Legat.* 156; Colson, LCL. Later in the text, Philo recounts a letter from Agrippa I to Gaius pleading for the latter to restrain his anger against the Judeans. In that letter Philo reports that Augustus had ordered the governors of Asia to not prohibit Judeans from meeting together (311-312; cf. Josephus, *A.J.* 16.162-165, 166, 169), and had also issued a more general command that the ancestral customs of Jerusalem should not be hindered (313-315; cf. Josephus, *A.J.* 16.171).

\(^{583}\) *Legat.* 159, 240, 298, 301, 308. Though Tiberius plays a positive literary role for Philo, he is portrayed negatively by both Josephus (*A.J.* 18.168-189, 225-235) and Tacitus (e.g. *Ann.* 1.76; 2.5; 3.40-44; 4.45; 6.50). Josephus also highlights the friction between Tiberius and Judeans in Rome, which resulted in the latter’s expulsion from the city; *A.J.* 18.81-84. See discussion in Maren R. Niehoff, *Philo on Jewish Identity and Culture* (TSAJ 86; Tübingen: Mohr Siebeck, 2001), 121-126. Niehoff has
the Jerusalem temple by both emperors and by Marcus Agrippa, and names several other items as evidence of imperial favor toward Judeans: a letter from Augustus to the provinces in Asia that authorized certain Judean customs; a letter from Gaius Norbanus Flaccus to the magistrates of Ephesus that reiterates this favor; Augustus’ financial support of temple sacrifices; and Julia Augusta’s personal gifts to the temple.

The problem for Philo is that this precedent of imperial favor is completely overthrown by Gaius Caligula, whose pretensions to divinity conflicted with the Judean ancestral custom of refusing to honor images of deities:

For he [Gaius] looked with disfavor on the Judeans alone because they alone opposed him on principle, trained as they were we may say even from the cradle, by parents and tutors and instructors and by the far higher authority of the sacred laws and also the unwritten customs, to acknowledge as a custom one God who is the Father and Maker of the world.

Philo underscores that Judeans were alone among people groups in not honoring Gaius as divine, because they judged the admixture of divine and human natures to be the greatest of impieties (“τὸ μέγιστον τῶν ὄντων”). He adds that Judean ancestral customs hang together as a unity, so that not even the smallest (“εἰ καὶ βραχύτατον εἴη”) can be breached lest the whole edifice suggested that the issue of Judean identity is also implicated in Philo’s narrative, since Philo himself worries that the local outbreak of violence in Alexandria will spread throughout the empire, and the integrity of the Judean people group writ large will be put into question (p. 112).

584 Legat. 294-305.
585 Legat. 311-313.
586 Legat. 314-315.
587 Legat. 317.
588 Legat. 319.
589 Legat. 115; Colson, LCL.
590 Legat. 118.
collapse. The implication is that if even the minutest laws are observed in order to preserve the integrity of the whole, how much more the weightier custom of not venerating images of the divine? And further, that if the Judean prohibition of images is threatened then all of the ancestral customs are jeopardized.

Gaius’ hostility toward Judeans unleashes what Philo calls a “war [πόλεμος]” in Alexandria. He says the local population there possessed longstanding resentment (“τὸ τυφόμενον ἐκ μακρῶν χρόνων μίσος”), which bubbled over as a direct consequence of Gaius’ animosity, and resulted in the displacement of the Judean population, plunder of its property, physical violence, death, and the destruction of its houses of prayer (προσευχάς). When images of Gaius are set up in some of the prayer houses, Philo says Judean laws and customs have been overthrown (“τῆς τῶν νόμων καὶ ἐθῶν ἀνατροπῆς”), since this for him represents a breach of the imperial precedent established by Augustus that preserved the “native customs [πατρίων]” of all peoples, not just those of the Judeans.

\[\text{References}\]

591 Legat. 117.
592 Legat. 119.
593 Legat. 120; cf. Flacc. 29.
594 Legat. 133. Mary E. Smallwood, ed. and trans., Philonis Alexandrini: Legatio ad Gaium (Leiden: E. J. Brill, 1970), 207, observes that “[Philo] creates the misleading impression that Gaius was indirectly responsible for the Alexandrian riots by what seems to be a manipulation of the chronology. By describing Gaius’ assumption of divinity before recounting the riots, which are securely dated to August, 38 [C.E.] . . . , he implies that it preceded the riots—which it probably did not.”
595 Legat. 121-131. Philo blames the governor (ἐπίτροπος) for not intervening (132), which links this narrative to that in Flacc. See for example, Flacc. 9, 35, 42-56, 73-96, 101.
596 Legat. 132-134, esp. 134. Philo makes the same connection between the setting up of images in the prayer houses and the violation of Judean ancestral customs in Flacc. 41-43.
597 Legat. 153; cf. Flacc. 50.
This local Alexandrian situation pales in comparison with the implications of erecting a statue in honor of Gaius in the Jerusalem temple. Philo recounts the scene when he and the four other members of the embassy to Gaius are informed of this news:

There came to us one with a troubled look in his bloodshot eyes and gasping convulsively [ταραχῶδες ὑποβλεπόμενος, ἀσθματος μεστός]. He drew us a little way apart since there were some people standing near and said, ‘Have you heard the new tidings?’ and when he was going to report it he was brought up short, as a flood of tears streamed from his eyes. He began again and the second time stopped short and so too a third time. When we saw this we were all in a flutter and bade him tell us the matter which he said had brought him there . . . . He managed with difficulty while sobbing and breathing spasmodically to say, ‘Our temple is lost [ὀἴχεται ἡμῶν τὸ ἱερόν], Gaius has ordered a colossal statue [ἀνδριάντα κολοσσιαῖον] to be set up within the inner sanctuary dedicated to himself under the name of Zeus . . . . [W]e stood there speechless and powerless in a state of collapse with our hearts turned to water [γὰρ εἱστήκειμεν ὀλιγοδρανοῦντες καὶ καταρρέοντες περὶ αὑτοῖς, τῶν σωματικῶν τόνων ἐκνενευρισμένων].

Similar reactions are recounted when Publius Petronius, the governor charged with carrying out the order, informs the Judean priests and rulers of Gaius’ plans, and also when Gaius himself tells Agrippa I. The temple for Philo in the narrative epitomizes Judean identity: zeal for the temple exceeds that of other aspects of law observance, and capital punishment is enjoined for gentiles who breach the court of the gentiles within the walls of the temple complex.

Additionally, harm to the temple imperils the entire Judean people group—a point that is reiterated several times—because Judean communities exist throughout the Roman world, and

598 Legat. 186-189; Colson, LCL.
599 Legat. 222-223: “Smitten by his first words, we are told, as soon as they heard the story of the abnormal calamity they stood riveted to the ground, incapable of speech, and then while a flood of tears poured from their eyes as from fountains they plucked the hair from their beards and heads”; Colson, LCL.
600 Legat. 266-267: “in deep distress (he) turned to every kind of color, blood-red, dead pale and livid all in a moment. And by now from the crown of his head to his feet he was mastered by a fit of shuddering, every part and every limb convulsed with trembling and palpitation”; Colson, LCL.
most Judeans would rather die than see their ancestral customs abrogated. Further, desecrating the temple would inevitably lead to war, something Gaius seems to have anticipated and welcomed. Indeed, Philo frames Gaius’ decision about the statue as a punitive assault on Judeans throughout the world precisely because of the temple’s symbolic significance.

The gravity of the situation even causes the Roman governor Petronius to hesitate before carrying out the order. Petronius is caught between two impossible options: if he obeys the order, he pleases the emperor but risks a war with Judeans; if he disobeys the order, or delays its implementation, he risks facing the wrath of Gaius. What makes his choice even more torturous is the fact that the Judeans, who petition him directly for mercy, refuse to fight, but instead are willing to be slaughtered before seeing their temple defiled. Further, in Petronius’ opinion, and in the opinion of his closest advisers, the Judean plea for mercy is based on the

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603 *Legat.* 214-216, 233, 236; cf. 224, 227, 238, 243, 281-284, 308: “the Jews would willingly endure to die not once but a thousand times, if it were possible, rather than allow any of the prohibited actions to be committed. For all men guard their own customs, but this is especially true of the Jewish nation. Holding that the laws are oracles vouchsafed by God [θεόχρηστα γὰρ λόγια τοὺς νόμους εἶναι ὑπολαμβάνοντες] and having been trained in this doctrine from their earliest years, they carry the likenesses of the commandments enshrined in their souls” (209-210); Colson LCL.

604 *Legat.* 218, 226: “What mean you by this, my lord and master [Gaius]? Is it an act of war based on the foreknowledge that they would not submit but would take up arms to defend the laws [τοῦ νόμου] and die for their national institutions [τῶν πατρίων]? For surely it was not done in ignorance of the probable results of any attempt to violate the temple” (208); Colson, LCL.

605 Cf. *Legat.* 198. Gaius’ hostility meant for Philo that if the embassy failed to win the emperor’s favor, the fate of all Judeans would be put into question: “For if he [Gaius] should decide in favour of our [Judean] enemies, what other city will keep tranquil or refrain from attacking its fellow inhabitants, what house of prayer will be left unscathed, what kind of civic rights will not be upset for those whose lot is cast under the ancient institutions of the Jews? First upset, then shipwrecked, then sunk to the very bottom will be both their peculiar laws and the rights which they enjoy in common in every city”; *Legat.* 371; Colson, LCL. Smallwood, *Philonis Alexandrini*, 324, comments that “Jewish delegates here seem to assume that their compatriots in other centres of the Diaspora are as unpopular with their gentile neighbours as their own community is in Alexandria, so that a decision against the Jews will be the signal for attacks on the religious liberty and civic rights of Jewish πολιτεύματα in other gentile cities.”

606 *Legat.* 213, 246.


608 *Legat.* 229-238.
sound argument that all peoples have their own customs, and should be allowed to observe them.609 This tactic used by Judeans of reasoning before Petronius that their law is just like the ancestral customs of other peoples constitutes them as subjects of the empire—as subjects just like every other people-group in the Roman world—and constitutes their “Torah” as an “ancestral custom.” Petronius decides to delay implementing Gaius’ command on the pretext that a war would interrupt the Judean crop harvest; and this decision inflames Gaius’ wrath.610 Gaius’ power over Petronius is, however, checked by the fact that the governor commands the strategically important army in the eastern empire, and thus possesses enough resources to incite an uprising.611

In the end, it is the friendship between Gaius and Agrippa I that proves to be pivotal. Gaius rescinds his order after acceding to Agrippa’s request made by letter on behalf of the Judeans and their temple.612 Agrippa asks for a “favor [χάριν]” from his benefactor, and it is granted.613 Philo uses the letter to sharpen the rhetorical contrast between the despotic Gaius and his gentler imperial predecessors,614 but the incongruity between the two is something that Philo

609 Legat. 244.
610 Legat. 248-249, 254-258.
611 Legat. 259: “[Gaius] greatly feared the holders of governorships, he saw that they had recourses ready for an uprising, particularly those who had large provinces and commanded large armies of the size of those in Syria and on the Euphrates”; Marcus, LCL.
613 Legat. 287.
614 The letter’s summative point is made in Legat. 321-322, which begins with the inferential particle οὖν and draws together the most poignant evidence from the preceding, namely, the cloud of imperial witnesses who acknowledged and preserved Judean customs unlike Gaius.
tries to rectify. He explains the discrepancy between Gaius and his predecessors by reasoning that Gaius is a rogue. His first seven months as emperor are lauded as a Saturnian golden age (saeculum aureum) of Rome’s sunrise to sunset dominion, but in the eighth month Gaius breaks with his predecessors after being afflicted with an illness that was the product of his unfettered passions (ἐπιθυμίαι). Philo describes Gaius as dishonest, lawless, quarrelsome, impious because he likened himself to a god, unstable, unrestrained.

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615 Cf. Smith, “Bare Facts of Ritual,” esp. 62, who has observed that such situational incongruity can have productive cultural power because it generates “exegetical ingenuity” that strives for rectification. See also “A Pearl of Great Price,” 101: “I have attempted to demonstrate . . . that the Babylonian Akitu festival and the Ceramese myth of Hainuwele are best described neither in terms of repetition of the past nor in terms of future fulfillment, but rather in terms of a difficult and incongruous present; . . . that this incongruity is surprising in light of past precedents; but that it may be addressed, worked with, and perhaps even overcome in terms of these same precedents. I have suggested that both of these texts have in common the attempt at rectification.”

616 Cf. Josephus, A.J. 19.1-16; 201-204. Niehoff, Philo on Jewish Identity, 127-128, underscores the literary contrast in Legat. between Augustus and Tiberius, on one side, and Gaius, on the other; see also pp. 133-134. Gaius is not the only bad actor. Philo also blames Helicon the slave who influenced Gaius (Legat. 171-177), and Capito the tax collector who instigated the Jerusalem crisis (199-202). Interestingly, Philo suggests that the entire Gaius chapter might have been a way (for God) to test Judean virtue and reason (196).

617 Legat. 13: “Indeed, the life under Saturn, pictured by the poets, no longer appeared to be a fabled story, so great was the prosperity and well-being, the freedom from grief and fear, the joy which pervaded households and people, night and day [ὡς τὸν παρὰ ποιηταῖς ἀναγραφέντα Κρονικόν βίον μηκέτι νομίζεσθαι πλάσμα μύθου διὰ τε τὴν εὐθηνίαν καὶ εὐετηρίαν τὸ τε ἄλυπον καὶ ἄφοβον καὶ τὰς πανοικίας ὡς τὰς ἄνεσιν τε καὶ γύκτορ τὸν εὐφροσύνας]”; Colson, LCL. On the significance of the saeculum aureum in Roman propaganda of the early empire, see e.g. Paul Zanker, The Power of Images in the Age of Augustus (trans. Alan Shapiro; JL 16; Ann Arbor: University of Michigan Press, 1990), ch. 5.


619 Legat. 26-27.

620 Legat. 30, 103, 119.

621 Legat. 52.


623 Legat. 34, 113, 339-342, 346.

624 Legat. 41-43.
greedy, unjust, and a mere youth who had mismanaged his absolute imperial power. Thus, for Philo both the Alexandrian situation and the Jerusalem crisis are reckoned as anomalies to an otherwise favorable imperial posture toward Judean ancestral customs.

The relations of power in the narrative form a web that is comprised of a series of micro level interactions that are drawn into the broader antagonistic relationship between Gaius and Judeans. It is clear from the narrative, however, that the relations of power do not run in a straight line from emperor to people. Rather, to think in Foucauldian terms, power is exercised at multiple points. Foucault once observed that “taking the forms of resistance against different forms of power as a starting point” can be a profitable way “to bring to light power relations, locate their position, [and] find out their point of application and the methods used.” In order for Gaius’ command about the statue to be implemented it needs to be obeyed, but this obedience is not guaranteed. The emperor’s will is resisted by the Judean crowd, by Petronius, and by Agrippa, and this resistance underscores the mechanisms by which power is exercised: by means of antagonism between Judeans and their neighbors in Alexandria; by means of negotiation in the interaction between Petronius and the Judean people; by means of official imperial correspondence in the interaction between Petronius and the emperor; and by means of personal favors in the interaction between Agrippa and Gaius. At each point in the narrative

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625 Legat. 343.
626 Legat. 349-350, 359; cf. 368.
627 Legat. 190.
628 Legat. 138-152. Philo points out, for example, that previous Alexandrians never threatened to set up images in Judean houses of prayer despite their proclivity for divinizing animals and venerating images; and further, that neither Tiberius nor Augustus permitted such behavior or accepted divine accolades even though in terms of esteem both could make claims to being divine, especially Augustus.
629 Foucault, “The Subject and Power,” 329.
630 Curiously, the embassy itself, of which Philo is a part, plays little role in the narrative except as an afterthought tacked onto the end of the story; Legat. 349-373.
where power is exercised, the friction between Gaius and Judeans is a backdrop; and, in the space of these interactions, discussions of Judean laws and customs multiply: Philo argues that Judean laws and customs hang together as a unity; and he points to the temple, and specifically to the prohibition against Judeans venerating images, as the most visible symbol of Judean distinctiveness.

4.3 Framing Judean Rights in the Roman World

Philo’s concern is that an otherwise favorable Roman posture toward Judean customs can be so summarily overthrown by one like Gaius. A similar concern is evident in Josephus’ discussion of Judean rights (see below), which tends to focus on the internal machinery of the Roman legal administration, and, more specifically, the constant need for local magistrates to revisit and reaffirm the precedent of favor toward Judean ancestral customs established by Julius Caesar. Recent studies of Roman law provide some insights to help frame this seemingly erratic Roman policy.

In her study of late antique Roman legal policy, J. Harries explores the relationship between law, precedent, and imperial favors by focusing on the connection between the emperor and Judeans.

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631 Cf. Niehoff, Philo on Jewish Identity, 132, who suggests that Philo depicts Augustus as nearly “a convert to Jewish beliefs” in Legat. 317, which reports that Augustus paid for the regular burnt offerings of two sheep and a bull in the Jerusalem temple, and thus “added lustre to the altar [ἐφαίδρυε τὸν βωμὸν]”; cf. Legat. 153, 157; and Flacc. 50; see also Legat. 298, and the favorable posture of Tiberius toward the temple. Other customs mentioned by Philo include oblique reference to Sabbath observance (e.g. Legat. 132, 134, 152, 156), and also to diet in the exchange between the members of the embassy and Gaius where the latter asks, “‘Why do you refuse to eat pork [διὰ τί χοιρείων κρεῶν ἀπέχεσθε;?’” (361). They reply using legal language, that each people group has its own laws (“νόμιμα παρ’ ἐτέρως ἐτερα”; 362), which implies that Gaius’ actions against the Judeans are not merely a violation of ἔθος but of νόμιμος, and thus a breach of imperial precedent established by Caesar and reaffirmed by Augustus. Along these lines, Josephus portrays Gaius’ design to erect an image of himself in the temple as a conflict over competing “laws,” those of Rome and those of Judea; A.J. 18.265-268 (Judean law is referred to as νόμιμος), 271; see also B.J. 2.184-203. One important point in Philo is that “true Romans are beneficient [sic] and friendly toward the Jews. They bring peace and civilization to all regions of the empire and are to a high degree congenial to the Jews. Philo thus suggests that the Temple incident and the Alexandrian pogroms must be seen in a broader context, i.e. as temporary crises which have already been alleviated by God and not indicative of the real nature of Roman rule”; Niehoff, Philo on Jewish Identity, 136.
as one who could establish legal precedents and the emperor as benefactor.  

632 She demonstrates that the emperor’s ability to establish legal precedents was a perpetual point of tension in Roman jurisprudence because the emperor was not primarily a legislator but a power-broker and benefactor; and the concern was, even in the late empire in the era of codified law, that a particular emperor would bend existing rules to promulgate a favor to a client, and this favor would become a precedent in its own right.  

633 The jurist Gaius said that “what the emperor establishes by a decree, an edict, or a letter . . . has the force of law [quod imperator decreto vel edicto vel epistula constituit . . . quin id legis vicem optineat].”  

634 Ulpian, however, tried to keep favors and legal precedents separate to preserve the latter from the encroachment of the former.  

635 As I will demonstrate below, whatever Roman precedent of favor toward Judeans

632 Harries, Law and Empire.

633 Harries, Law and Empire, 215-216, makes this point explicitly in her conclusion: “Where the integrity of the legal process was most under threat was in areas where the operation of rules, which bound all alike, was subverted by the continued, and legitimate, exercise of patronage. The emperor’s attachment to his discretionary powers was only to be expected; the autocrat should have the right to bend the law, to the benefit of subjects, as many, including his own judges, might insist. . . . The difficulty for emperors in dealing with the threat from patronage to the integrity of law was that the threat was omnipresent, and that he himself was a prime offender”; cf. p. 77: “Roman law became the victim of a deep-seated conflict within Roman society between rules, which were universal, and power, which was arbitrary. . . . The emperor himself was implicated in this conflict, because he was supreme patron as well as legislator.”


635 Justinian, Dig. 1.4.1.2. Ulpian lists the various ways an emperor could make law, including epistolae, subscriptiones, judgments, and edicta; Dig. 1.4.1.1. Harries, Law and Empire, 20, interprets: “Ulpian . . . perceived the necessity of differentiating imperial acts of patronage, shown in the granting of favours . . . to individuals, from laws which established precedents. This differentiation went to the heart of the emperor’s relationship with the law of the empire. No one could challenge his right to act as a patron, and exercise his power in a discretionary fashion, as and when he chose. What Ulpian attempted to do was to limit the impact of the emperor’s activities as patron on the operation of the general law . . . . What was not desirable [when the emperor made changes to laws] was that changes should be made through the creation of precedents by casual infringements of the rules. [This resulted in] tension between the
there may have been was probably a derivative of imperial benefaction,\textsuperscript{636} which implies that the favorable posture was only as stable as the relationship itself. Rights could be revoked, and favor withdrawn. As T. Rajak has argued, since Judean rights in the Roman world were secured through “an exchange of beneficia,” they suffered from a “degree of potential impermanence or instability”: “no amicitia can be entirely secure and any clientela may turn sour.”\textsuperscript{637} Philo’s characterization of Gaius Caligula illustrates the impermanence of this relationship.\textsuperscript{638}

C. Ando has examined the mechanics of administering the Roman Empire with a particular focus on how the loyalty of provincials was won and maintained.\textsuperscript{639} A distinctive

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\textsuperscript{636} See Rajak, “Was There a Roman Charter.”

\textsuperscript{637} Rajak, “Was There a Roman Charter,” 116; cf. Trajan’s comments to Pliny about the limited nature of his predecessors’ decrees via rescripts; \textit{Ep. Tra.} 10.66.1-2.

\textsuperscript{638} There are several examples in the early empire of Judean rights being revoked: the \textit{fiscus iudaicus} under the Flavians (though Judean rights are preserved after the war in Antioch and Alexandria; Josephus, \textit{B.J.} 7.110-111; \textit{A.J.} 12.121, 123; cf. \textit{B.J.} 6.334); Hadrian’s policies half a century later (see Marius Heemstra, \textit{The fiscus iudaicus and the Parting of the Ways} [WUNT 2/277; Tübingen: Mohr Siebeck, 2010]); Judean expulsions from Rome under Tiberius and Claudius (see Leonard Victor Rutgers, “Roman Policy toward the Jews: Expulsions from the City of Rome during the First Century C.E.,” \textit{CA} 13/1 [1994]: 56-74); cf. Dio, 60.6.6, where Claudius revokes the right of Judeans to assemble, which had been established by Caesar. Other groups could have particular rights revoked as well. Tiberius revoked the freedom of the citizens of Cyzicus (Suetonius, \textit{Tib.} 37.3). The peoples of Ilium, Bononia, and Rhodes all benefited from a teenaged Nero’s eloquent advocacy on their behalves before Claudius, who restored their rights after they had been revoked (Tacitus, \textit{Ann.} 12.58). Vespasian then removed the rights of Rhodians (Suetonius, \textit{Vesp.} 8.4).

feature of this administration was the “gradual extension of government by *consensus* formation to [Rome’s] subjects,” which involved all the vicissitudes of promulgating “Roman rules and Roman procedures” to ensure that the compliance and cooperation of provincials was made possible.\textsuperscript{640} Several of the Roman directives regarding Judean rights, discussed further below, were publicly available (e.g. inscribed on bronze)—an ancient form of “mass communication” that invited the accession of those to whom the directives were addressed, and did not rely on Rome’s coercive power to ensure compliance.\textsuperscript{641} “it is precisely Rome’s monopoly over coercive force,” argues Ando, “that has hindered our ability to understand both the willingness of Romans and provincials to form *consensus* through dialogue and the extent to which Romans felt their society rested upon such *consensus*.\textsuperscript{642} Practical obstacles to winning provincial accession to Roman rules include relying on local administrators to publish laws, the periodic unwillingness of locals to enforce new statutes, the challenge of authenticating imperial directives, and the abysmal literacy rates among provincial populations—to abide by new laws people needed to be informed of them.\textsuperscript{643} While Roman favor toward Judeans had a legal foundation in both imperial decrees and *edicta*, and in *senatus consulta*, such was never ironclad precisely because imperial directives needed to win obedience from the locals. Furthermore, built into the Roman legal system itself was an inherent ephemerality such that laws needed to be constantly wielded, whether by “common consent” or by elites on behalf of clients “to further

\textsuperscript{640} Ando, *Imperial Ideology and Provincial Loyalty*, 77-78.

\textsuperscript{641} Ando, *Imperial Ideology and Provincial Loyalty*, 78.

\textsuperscript{642} Ando, *Imperial Ideology and Provincial Loyalty*, 77.

\textsuperscript{643} Ando, *Imperial Ideology and Provincial Loyalty*, 78-79, 80-81, 83, 96-97, 102-103, 104, 115, 116. Ando raises an issue he says cannot be “definitively solved,” namely, “Was the imperial government realistic in its expectation that posting written texts, in however many places, would result in their contents’ coming ‘speedily to the knowledge of all?’ Extant evidence does not suggest that many in the cities could have read complex texts, and literacy was undoubtedly lower in smaller communities” (p. 101).
their local aims,” otherwise, “they ceased to count as law at all.” Harries observes that there were underlying conceptual difficulties over the shelf-life of imperial constitutions, which were rooted in the history of how Roman laws were made. Few of the many forms taken by Roman ‘law’ had been originally conceived as ‘perpetual’. The exception under the Republic was statute-laws (\textit{leges}) passed by the popular assemblies and binding on the whole state. Even after emperors had assimilated the powers of the sovereign \textit{populus} into their own prerogatives, imperial constitutions still, strictly, had only the ‘force’ (\textit{vigor}) of statute and were not statutes, \textit{leges}, themselves. All other forms of imperial legal enactment, which were authorised by their holding of the combination of magistracies devised originally by Augustus, were, in a formal sense, ephemeral. Edicts were issued by a magistrate and were valid only for his term of office, rescripts and subscripts were relevant, technically, only to the person and problem addressed, and formal letters, \textit{epistulae}, to designated recipients, Senate, People, Provincials, or officials, were personal statements which often (but not invariably) contained legal rulings. All forms of law, bar statutes, lacked permanence.

Both Harries and Ando underscore the role inhabitants of the empire played in the legal process, whether by evoking laws as precedents or by appealing for favors from local rulers or even the emperor himself; and there is evidence that Judeans had learned to navigate this

\begin{quote}
\textbf{644} Harries, \textit{Law and Empire}, 33, 96.
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\textbf{645} Harries, \textit{Law and Empire}, 83-84. Harries is careful to highlight the “Roman flair for improvisation” (e.g. the codification of rescripts under Hadrian), which gave laws durability despite the prevailing tendency that “[r]epetition of laws . . . added strength to the law” (p. 86). Cf. the trial before Aurelius Appius Sabinus, Prefect of Egypt, cited by Harries (p. 85). Details of the trial are drawn from Theodore C. Skeat and Eefje P. Wegener, “A Trial before the Prefect of Egypt Appius Sabinus, c. 250 A.D. (P. Lond. Inv. 2565),” \textit{JEA} 21/2 (1935): 224-247, esp. 235-237. In lines 65-106 of the papyrus, Seleucus, the counsel for the “villagers” “in the Arsinoite nome,” appealed to a dated law from Septimius Severus in order to preserve his clients from having to contribute to “the liturgies of the metropoleis.” Seleucus pointed out that “after Severus all the Prefects have judged thus.” Philippus, advocate for the \textit{boule} of Arsinoe, acknowledged the importance of the law, but appealed to other decrees of Prefects that took into consideration the concerns of cities: “The laws are indeed to be held in awe and reverence, but you in trying the case must follow (the decisions?) of Prefects who have had regard for the needs of the cities; it is the need of the city which limits the application of the law. For this reason have Prefects many a time, when such laws were quoted to them, decided…….having the needs of the cities before their eyes.” Faced with conflicting precedents, the Prefect sided with the law that also had antiquity on its side, and ruled in favor of the villagers, stating, “The power of the laws will, as time goes on, be still further increased.”
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\textbf{646} Monika Schuol, \textit{Augustus und die Juden: Rechtsstellung und Interessenpolitik der kleinasiatischen Diaspora} (SAG 6; Frankfurt: Antike, 2007), 342, argues that Josephus’ account of the activities of Judeans in Asia indicates that Judeans were well-informed about Roman jurisprudence, and used it to their advantage: “Die kleinasiatischen Juden in augusteischer Zeit zeigen sich gut informiert über die
system to secure their rights. In a conservative legal system, which is what the Roman system was, precedents—or the reaffirmation of previous pieces of legislation—counted as statutes in “the daily practice of Roman law in the provinces.” And yet, a law that was not cited as precedent, for all practical purposes, ceased to be a law: “A dead law,” writes Harries, was “one that was never evoked.” Roman law was not so much imposed as wielded. And for particular precepts to retain their utility, they needed to be wielded and reauthorized. Consequently, when observed through the lens of this discussion, the legally tenuous aspect of the rights of Judeans to keep their ancestral customs in the Roman world can be seen as an effect of the intersection between, on the one hand, the emperor as benefactor, able to establish or abrogate precedents, and, on the other, the practical challenges of consensus, and the possibility of precedents slipping into desuetude if not subsequently evoked.

647 A second century C.E. example that resembles this process can be found in the Babatha archive; see Hannah M. Cotton and Werner Eck, “Roman Officials in Judaea and Arabia and Civil Jurisdiction,” in Law in the Documents of the Judaean Desert (ed. Ranon Katzoff and David M. Schaps; JSJSup 96; Leiden: Brill, 2005), 23-44.

648 Ando, Imperial Ideology and Provincial Loyalty, 378; cf. p. 374. Ando observes that citing precedents was a common practice found among “soldiers, doctors, parents, women, and men, as well as organizations and municipalities” (p. 381); see his list of sources in fn. 197. There is also evidence of provincials citing rescripts as precedents even when the rescript was not addressed to them, indicating an ability to wield the law “in good Roman fashion [as] an exemplum,” something “analogous” (p. 382; also fn. 207).

649 Harries, Law and Empire, 87.

650 Ando, Imperial Ideology and Provincial Loyalty, 375: “Provincials arguing their cases before an imperial magistrate—under the Principate, before a governor at his conventus . . . cited a fantastic number and variety of earlier decisions in formulating their cases.” This was a posture toward law promulgated by the Romans themselves, according to Ando (p. 374). See also Harries, Law and Empire, 80, who points out that the principle of wielding Roman law was also utilized by citizens: “much of Roman law existed, not for purposes of social control, but for the regulation of legal relationships between Roman citizens and it was up to litigants to make use of it as they saw fit.”
4.4 Flavius Josephus and Judean Ancestral Customs

In his work *Antiquitates judaicae*, Josephus cites a series of documents that contain evidence of the Roman authorization of certain Judean laws and customs. The documents illustrate each of the main points made above. Josephus is the most important source for this Roman authorization in the late republican and early imperial periods, and he provides the clearest description from this period of the inner workings of Roman legal bureaucracy and of the emperor’s complicated roles of law-maker and benefactor. Additionally, the documents preserve a snapshot moment of upheaval in Roman legal and political history in the transition from republic to empire as the emperor as benefactor became the embodiment of law, a tension noted by jurists Gaius and Ulpian. A thread that runs through Josephus’ account is the necessity of Roman administrators to reauthorize the precedent of protecting Judean laws and customs. Local Greek city councils, or individuals in particular locales, were ignoring Roman directives that were issued on behalf of Judeans; and upon learning that their directives were being ignored, Roman administrators, and in a few instances the emperor himself, would reissue an order that protected Judean laws and customs by appealing to the precedent of favor that was established by Julius Caesar and ratified by the Roman senate. To use Ando’s terminology, provincial loyalty in these cases could not be presumed but needed to be won. In such instances, the local, micro relations of power come into conflict with the broader apparatus of the Roman

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651 Much of the following discussion is drawn from Miriam Pucci Ben Zeev’s thorough examination of this evidence, which remains the most comprehensive investigation in recent secondary literature on the topic; *Jewish Rights in the Roman World: The Greek and Roman Documents Quoted by Josephus Flavius* (TSAJ 74; Tübingen: Mohr Siebeck, 1998). For a history of scholarship on aspects of the topic of Josephus and Judean rights, which reaches back to the eighteenth century C.E., see Ben Zeev, *Jewish Rights in the Roman World*, 7 fn. 17.

administration, and the point at which the two clash is where Judean laws and customs are constituted as a problem. This is the sphere in which discussions of Judean laws and customs become numerous. As with Philo’s narrative, so also here in Josephus, power does not move in a single line from a Roman magistrate or emperor to a particular region in the empire, but is exercised at multiple points: by means of resistance to Roman directives; by means of the mediation of official, imperial correspondence through local administrators and city councils; and by means of various micro relations such as the localized interactions between Judeans and Greek city councils, or between individual Judeans and members of the Roman administration.

4.4a

The historical veracity of the documents has been questioned by some scholars; however, more recent studies have tended to accept them as generally trustworthy. Scholars

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653 See Horst R. Moehring, “The Acta pro Judaeis in the Antiquities of Flavius Josephus,” in Christianity, Judaism and other Greco-Roman Cults: Studies for Morton Smith at Sixty (ed. Jacob Neusner; 4 vols.; SJLA 12; Leiden: Brill, 1975), 3:124-158, esp. 126, where Moehring discusses the “apologetic concerns of modern historians;” see also his survey of the secondary literature. Moehring raises several questions about the documents Josephus cites: 1) the possibility that Josephus merely reproduced forged senatus consulta (p. 133); 2) the difficulty of deciding exactly how many documents are cited (pp. 25, 30, 33, etc.; cf. p. 134); 3) the documents are in various ways textually uncertain (pp. 135-140); 4) the senatus consulta cited by Josephus lack some key formulaic features (p. 144); 5) there are internal inconsistencies in the documents (pp. 146-148); see Moehring’s summaries on pp. 149, 150-152. See also Harold W. Attridge, “Josephus and his Works,” in Jewish Writings of the Second Temple Period: Apocrypha, Pseudepigrapha, Qumran Sectarian Writings, Philo, Josephus (ed. Michael E. Stone; Philadelphia: Fortress, 1984), 185-232: “the source from which Josephus obtained his information and the historical value of the materials cited are uncertain. . . . Although most of the documents accurately use the proper legal forms and their authenticity is generally accepted, they contain numerous historical anomalies. These may be due to accidents of transmission or they may be an indication that some of the documents are apologetic forgeries” (p. 226); cf. Philip S. Alexander, “Epistolary Literature,” in Stone, Jewish Writings of the Second Temple Period, 579-596, esp. 588; Helga Botermann, Das Judenedikt des Kaisers Claudius (Stuttgart: Franz Steiner, 1996), 108-113.

654 See Schuol, Augustus und die Juden, 331; also Ben Zeev, Jewish Rights in the Roman World, 388-408, and especially the survey of scholars who accept the historicity of the documents on p. 9 fn. 26. One key piece of evidence Ben Zeev cites in favor of authenticity is that the documents tend to follow known forms of imperial correspondence, decrees, edicts, and decisions of local city councils (pp. 16-21). There are precursors to the recent acceptance of the documents; see for example Richard Laqueur, Der jüdische
who have worked closely on the documents typically focus on the content of the “rights” themselves and whether they possessed a “legal” status. E. P. Sanders, for example, has made a lasting contribution to the discussion of isolating particular traits in first century Judaism that he characterizes as “common,” that is, practiced among the ordinary people and not merely priests or Pharisees, based in part on the Roman practice of authorizing as “rights” certain Judean ancestral customs. Extrapolating from Josephus, Sanders identifies five such “rights”: the rights of Judeans 1) “to assemble” and “have a place of assembly”; 2) “to keep the sabbath”; 3) “to have their ‘ancestral’ food”; 4) “to decide their own affairs”; and 5) “to contribute money” (i.e. to the temple). My interest in the documents Josephus cites is different from this. By analyzing relations of power, I am focusing on what occurs below the surface of where Judean ancestral customs as rights become visible, which is to say that I am focusing less on

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655 See J. Z. Smith’s negative assessment of Sanders’ common/normative Judaism in *Imagining Religion*, 138 fn. 33. Smith’s argument for polythetic classification in “Fences and Neighbors,” also undermines the notion of finding an “essential” Judaism: “What has animated these reflections and explorations is the conviction that students of religion need to abandon the notion of ‘essence,’ of a unique differentium for early Judaism” (p. 18). Smith is also critical of Sanders’ notion in *Paul and Palestinian Judaism* of “patterns of religion”; see “In Comparison a Magic Dwells,” 34: “[Sanders’] results give me no grounds for confidence.”

656 Sanders, *Judaism*, 212.


what the Romans authorized and more on the relations that make possible the formation of rights as an object. I am interested in particular in how the Roman precedent of favor toward Judean laws and customs emerges and reemerges throughout the documents, and how the promulgation of this precedent by Roman administrators intersects with the exercise of power in local settings.

4.4b

According to Josephus, the authorization of Judean ancestral customs is found in *edicta* and *mandata* from emperors, *senatus consulta*, and letters and decrees of Roman magistrates and of councils of Greek cities in Asia Minor—a collection of about thirty documents that Josephus says was only a selection of all that was extant at the time. The setting for most of the documents is the diaspora where, according to Josephus, Judeans were enduring animosity from their Greek neighbors ("μίσους αἰτίας ὑπεξαιρούμενος"); Josephus’ recounting of the various ways in which the Romans displayed their favor toward Judean laws and customs is meant to redress this situation.\(^662\)

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\(^662\) Ben Zeev, *Jewish Rights in the Roman World*, 1-3; cf. Josephus, *A.J.* 14.186-188. Ben Zeev highlights Josephus’ apologetic interests, and argues that the first century historian selected “only those documents which exhibit a favourable attitude toward the Jews” (p. 3), and “which help to substantiate the notion . . . that through republican and imperial times, the Romans respected and honored the Jewish people” (p. 4). Ben Zeev quotes John M. G. Barclay, *Jews in the Mediterranean Diaspora from Alexander to Trajan: 323 BCE-117 CE* (Edinburgh: T&T Clark, 1996), 263: “Josephus would take care to omit reference to those occasions . . . on which Roman rule was less accommodating to Jewish sensibilities.” Barclay says, “Josephus gives a highly partisan selection of material”; cf. Rajak, “Was There a Roman Charter,” 119: “[Josephus’] purposes . . . are avowedly partisan, [and he] presents only what looks relatively advantageous to the Jews and puts it in as favourable a light as he can.” I have chosen to examine those documents that emerge at the end of the republican period and in the early imperial period. As a result, documents from the Hellenistic period (i.e. *A.J.* 14.145-148 and 247-255, which deal with Hyrcanus I not Hyrcanus II; see Rajak, “Was There a Roman Charter,” 111), or those that are not clearly apropos (i.e. *A.J.* 14.306-322 and 20.11-14) have not been included in this investigation.

\(^663\) *A.J.* 16.175: “And if I frequently mention these decrees, it is to reconcile the other nations to us and to remove the causes for hatred which have taken root in thoughtless persons”; Marcus, LCL; cf. *A.J.* 14.187. See also Tessa Rajak, “Jewish Rights in the Greek Cities under Roman Rule: A New Approach,” in *Approaches to Ancient Judaism: Theory and Practice* (ed. William Scott Green; BJS 5; Atlanta: Scholars Press, 1985), 19-35, esp. 21-22.
The recurring Roman activity on behalf of Judeans throughout the documents derives its authority in part from the letter and decree of Julius Caesar to “the magistrates, council and people of Sidon [Σιδωνίων ἄρχουσι βουλῇ δήμῳ]” in 47 B.C.E.\(^{664}\)

I, Julius Caesar, Imperator and Pontifex Maximus, Dictator for the second time, have decided as follows with the advice of the council. Whereas the Jew Hyrcanus, son of Alexander, both now and in the past, in time of peace as well as in war, has shown loyalty and zeal toward our state, as many commanders have testified on his behalf, and in the recent Alexandrian war came to our aid with fifteen hundred soldiers, and being sent by me to Mithridates, surpassed in bravery all those in the ranks, for these reasons it is my wish that Hyrcanus, son of Alexander, and his children shall be ethnarchs of the Jews and shall hold the office of high priest of the Jews for all time in accordance with their national customs [κατὰ τὰ πάτρια ἔθη], and that he and his sons shall be our allies [σύμμαχοι] and also be numbered among our particular friends [φίλοις]; and whatever high-priestly rights or other privileges exist in accordance with their laws, these he and his children shall possess by my command. And if, during this period, any question shall arise concerning the Jews’ manner of life [ἀγωγῆς], it is my pleasure that the decision shall rest with them. Nor do I approve of troops being given winter-quarters among them or of money being demanded of them.\(^{665}\)

Caesar grants a privileged status in perpetuity to Hyrcanus II and to his descendants “in accordance with their national customs.” This favor is given in exchange for military aid—which is a form of benefaction that I will discuss further below—and establishes Hyrcanus’ ethnarchic authority to adjudicate matters of Judean law,\(^{666}\) which was a de facto authorization for Judeans “to use their own laws.”\(^{667}\) Accordingly, it is significant that Caesar’s decree

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\(^{664}\) So similarly Ben Zeev, *Jewish Rights in the Roman World*, 419. All dates for the documents quoted by Josephus are drawn from Ben Zeev, who provides comprehensive discussions in cases where dates are uncertain.

\(^{665}\) *A.J.* 14.190-195; Marcus, LCL. The letter reports that Hyrcanus sent fifteen hundred soldiers to Caesar’s aid; however, Josephus is inconsistent when reporting this number, referring to “three thousand” soldiers in *B.J.* 1.187 and in *A.J.* 14.128, 139, and to “two thousand” soldiers in *A.J.* 16.52.

\(^{666}\) This represents a revision of Pompey’s policies; see Peter Schäfer, *The History of the Jews in the Graeco-Roman World* (3d ed.; New York: Routledge, 2003), 81-85. See also *A.J.* 20.244 where Pompey is said to have granted the title ἐθνάρχης to Hyrcanus, but denied him the kingship.

\(^{667}\) See Mariam Pucci Ben Zeev, “Caesar and Jewish Law,” *RB* 102 (1995): 28-37; cited in Ben Zeev, *Jewish Rights in the Roman World*, 50 fn. 19; see also pp. 430-431. Cf. *RGE* 81, l. 5 where P. Servilius Isauricus (Caesar?) is honored by the citizens of Pergamum for “having restored . . . [the] ancestral laws”; also *RGE* 83, ll. 30-31(=RDGE 26) where Caesar grants to Mytilene the right to its “[. . . laws and the] privileges which you have had from us [for][mally and those which] have been given to you.” If *RGE* 81 is actually from Caesar, then both decrees are examples of Caesar granting the right to groups to use their
implicitly authorizes Judean ancestral customs in perpetuity in connection with Hyrcanus’
authority, and also has implicit applicability beyond Roman Palestine: the ethnarchy extends
over “Judeans” as an ethnic group, and not merely over a localized region. On at least two
occasions, Hyrcanus successfully wielded his authority as ἔθναρχης on behalf of Judeans in
Asia.

The chart below is intended to demonstrate the connection between Caesar’s decree, its
ratification by the senate, and the Roman documents that are produced afterward, based on
ancestral laws; see Robert K. Sherk, Rome and the Greek East to the Death of Augustus (TDGR 4;
Cambridge: Cambridge University Press, 1984), 101-102. See also Plutarch, Caes. 48.1, where Caesar
grants the Thessalians their “freedom [τὴν ἑλευθερίαν]”; cf. Appian, Civil Wars 2.88. The same right is
granted by Caesar to the Ilians (Strabo, Geogr. 13.1.27), and to the people of Amisus (Dio, 42.48.4).
Granting rights to peoples/cities was a longstanding Roman practice, which continued in the imperial
period; see the discussions in Ben Zeev, Jewish Rights in the Roman World, 50-51, 413-414, 414 fn. 19.
In 190 B.C.E. Scipio and his brother granted the right of self-governance to the Herakleians according to
their particular laws (“κατὰ τοὺς ὑμετέρους νόμους”; RGE 14, ll. 10-12[=RDGE 35]). In 189 B.C.E.
praetor S. Postumius Lucius and the senate granted the Delphians freedom, immunity from taxation, and
the right to the temple of Pythian Apollo (RGE 15, letter #2, ll. 4-5[=RDGE 1]). Rights to use their
“laws” were granted to the Elateians in ca. 189 B.C.E. (RGE 17, l. 13[=SEG XXV, 445]), to the
Thessalians in ca. 140 B.C.E. (RGE 38, ll. 50-52[=RDGE 9]), to the Stratonicians in 81 B.C.E. (“τε νόμοις ἑθισμοῖς τε ἰδίοις” in RDGE 18, l. 91[=RGE 63]), to the citizens of Termessus Maior in Pisidia in
72 or 68 B.C.E. (RGE 72, col. II, ll. 18-21), and to the “community [πολειτήαν]” of Plarasa and

668 Herod would end Hyrcanus’ tenure as ethnarch; see A.J. 15.173.
493, esp. 483, where Sharon points out that an ethnarch rules a “people” not a territory or country. I
hesitate to affirm the conclusion that Sharon extrapolates from this insight, namely, that Josephus’ use of
the term “signifies an innovative and new view of the Jewish people . . . as a nonterritorial entity.” This
seems to me to press the evidence too far. On the significance of the term “ethnarch,” see also Rajak,
“Jewish Rights,” 24; and also A.J. 17.317 (B.J. 2.93), where Augustus gives Archelaus the title ἔθναρχης,
but localizes the jurisdiction to one half of Herod’s kingdom.
671 Several of the documents quoted by Josephus are treated below as part of two senatus consultata (one in
Caesar’s will regarding the conferral of benefits on Hyrcanus II and his descendants “to decide ‘according
to the Jews’ manner of life”; Ben Zeev, Jewish Rights in the Roman World, 54-106. Another senatus
consultum quoted in A.J. 14.219-222 was ratified after Caesar’s death (April 11, 44 B.C.E.) after envoys
from Hyrcanus petitioned the consuls, Marcus Antonius and Publius Dolabella, for a hearing in Rome
two themes that run through nearly the entire collection: \(672\) 1) a linguistic connection either verbatim or thematic to Caesar’s decree; 2) a reference to a decision on behalf of Judeans by a subsequent Roman administrator or emperor, which derives its precedential authority from Caesar’s decree. \(673\) The chart also highlights the particular Judean laws and customs authorized by the Romans. I will provide some explanatory comments further below:

(see Josephus’ editorial comments in A.J. 14.217-218). After listing the senators present as witnesses, the portion of the decree pertaining to Caesar reads, “περὶ ὧν δόγματι συγκλήτου Γάιος Καῖσαρ ὑπὲρ Ἰουδαίων ἐκρίνε”; A.J. 14.221.

\(672\) Exceptions to this are found in those decrees issued by local officials prior to Caesar’s decree: A.J. 14.228-229 (decrees of consul Lucius Lentulus in 49 B.C.E. freeing Judeans with Roman citizenship in Ephesus from military service; cf. 14.234, 236-237, 237b-240); 14.230 (letter from Titus Ampius Balbus “legate and proprietor [πρεσβευτὴς καὶ ἀντιστράτηγος]” in either 49 or 48 B.C.E. that frees Judeans in Asia from military service); 14.231-232 (document from the council of the Delians in 49 or 48 B.C.E. that frees Judeans with Roman citizenship from military service in response to the wishes of legate Marcus Piso, who himself was reflecting the will of the consul Lucius Lentulus); 14.235 (letter from Lucius Antonius, “proquaestor and proprietor [ἀντιταμίας καὶ ἀντιστράτηγος]” to Sardis permitting Judeans to have “an association of their own in accordance with their native laws [σύνοδον . . . ἰδίαν κατὰ τοὺς πατρίους νόμους].” Each decree, except the final one, addresses military service, usually for Roman citizens. The decision by Lucius Antonius is based on the antiquity (ἀπ’ ἀρχῆς) of Judean practices in the local context of Sardis. In each case, the decrees are the products of local decisions by authorities without appeals to a blanket precedent as can be found in the documents produced after Caesar’s decree. And further, none, unlike the decrees listed below, refers to Judeans as “friends” and “allies”; A.J. 14.233 does contain these features, and I am inclined to include it among the documents discussed below; however, there are questions about its dating; see Ben Zeev, Jewish Rights in the Roman World, 22.

\(673\) For example, emperors Augustus and Claudius both appeal to Caesar’s decree as precedential. See A.J. 16.162-163: “Caesar Augustus, Pontifex Maximus with tribunician power, decrees as follows: Since the Jewish nation has been found well disposed to the Roman people not only at the present time but also in time past, and especially in the time of my father the emperor Caesar”; Marcus, LCL; cf. A.J. 16.166. See also A.J. 19.280, 285: “Tiberius Claudius Caesar Augustus Germanicus, . . . I desire that none of their rights should be lost to the Jews on account of the madness of Gaius, but that their former privileges also be preserved to them, while they abide by their own customs [ὑπὲρ Ἰουδαίων ἐκρίνε]”; Marcus, LCL; also A.J. 19.287, 290. See other examples of emperors reaffirming the decisions of their predecessors: Claudius reaffirmed those of Augustus regarding the rights of the Alexandrians (CPJ II 153, col. III, ll. 57-59), the Samians (GC 20, ll. 11-14), the Thasians (GC 23, ll. 7-9), and the Dionysiac Artists (GC 24 A, ll. 7-8; cf. GC 29, ll. 5-9); Trajan reaffirmed the rights of the Delphians (GC 44, ll. 3-4); Hadrian reaffirmed the rights of the Aphrodians (GC 69, ll. 5-7); Marcus Aurelius and Lucius Verus reaffirmed the rights of the Coroneans (GC 117, ll. 8-10; cf. GC 177, l. 14), the Beroeans (GC 167, ll. 10-14), and the citizens of Antinoopolis (GC 166, ll. 47-52); Antoninus Pius reaffirmed the rights of the citizens of Antinoopolis (GC 166, ll. 47-
52); and Septimius Severus and Caracalla reaffirmed the rights of the Delphians (*GC* 215, ll. 24-25), the Dionysiac Artists (*GC* 212, ll. 9-10), and the Aphrodisians (*GC* 218, ll. 11-12; 219, ll. 3-5).
2.1) Senatus consultum in 44 B.C.E. cont’d from above

2.2) Letter from Octavian (?) to Parum in ca. 42-41 B.C.E. (14:4:3-216)

Right(s):
1) Judeans are "φίλος" and "νομοφόρος" and are permitted to keep their "ancestral customs [τοῦτοι; της ὥρας, ἑβοῖκος]" and sacred rites
2) can form collegia and contribute to feasts and sacred rites as they do in Rome, because of Caesar’s permission

2.3) Non-extant Letter from Augustus to Flavian the priest of Libya, and the other officials of the province (ca. before summer 14 B.C.E.) (16:169)

Right(s):
1) contributions to Jerusalem should not be inhibited

2.3a) Letter from Marcus Vipsanius Agrippa, governor of the eastern provinces to Cyrene (ca. summer 14 B.C.E.) that appeals to Augustus’ non-extant letter (16:169-170)

Right(s):
1) contributions to Jerusalem should not be inhibited or taxed
2) synagogue books and monies should not be stolen
Sanction: anything taken should be returned

2.3b) Letter from Agrippa to Ephesus (ca. summer 14 B.C.E.) (16:167-168)

Right(s):
1) administration of contributions to the Jerusalem temple should not be inhibited
2) no one can take Judeans to court on the Sabbath
Sanction: a robber of temple monies is treated as sacrilegious (ανεματεια)

2.4) Edict by Augustus on behalf of Judeans in Asia in March 12 B.C.E. (16:162-165) that explicitly appeals to Caesar’s precedent regarding Hyrcanus

Right(s):
1) observe their own national customs according to their ancestral laws (προσπαραγωγοι τους διονυσιους αστρα του κατοικου προς του βασιλειαν)
2) contributions to Jerusalem should not be inhibited
3) free from appearing in court on the Sabbath or the day of preparation after the ninth hour
4) synagogue books and monies should not be stolen
Sanction: a robber of synagogues will be treated as sacrilegious (απεφυστεος) and his property will be confiscated; transgressors of the above rights will be punished

2.5) Senatus consultum from Augustus to Porcius Flaccus proconsul of Asia in 12 B.C.E. (?) (16:166)

Right(s):
1) contributions to Jerusalem should be unmolested, because "ancient custom" (ἀρχαίαν ἀξίαν)

2.5a) Letter from Flaccus to Sardis in 12 B.C.E. (?) transmitting Augustus’ wishes about contributions to Jerusalem (16:175)

2.6) Letter from Julius (?) Antonius, proconsul of Asia, to Ephesus in Feb. 4 B.C.E. (?) appeals to the precedent established by Augustus and Agrippa (16:172-173)

Right(s):
1) may live unmolested according to their national customs (τοις τίμιποι)
2) contributions to Jerusalem, and the escort that delivers them, should not be inhibited

2.7) Edict by Claudius on behalf of Judeans in Alexandria in 41 C.E., which appeals to their ancient status and to the favor of Augustus as precedents, and explicitly reverses the policy of Caligula (15:280-285)

Right(s):
1) no rights should be lost to Judeans because of Caligula, meaning that previous rights are preserved
Sanction: both Alexandrians and Judeans are warned about further disturbances

2.7a) Edict by Claudius in 41 C.E. that grants Judeans in the Roman world the same rights as those in Alexandria (13:287-291), based on the petitions from Agrippa and Herod, the precedent under Augustus, and the "loyalty and friendship (πίστις καὶ ἰδιότης)" of Judeans, which recalls Caesar’s decree (11:1)

2.7b) Edict/Letter by Publius Petronius, governor of Syria, in the last half of 41 C.E., confirming Claudius’ edicts (συνεντυπώσεις), and the rights therein, and appealing to the precedent established by Augustus (15:303-311)
Sanctions: those who tampered with a synagogue by placing an image of the emperor inside must answer for their actions; those considering further disturbances are warned
The chart makes clear that Roman activity after the decree of Caesar (#1.1) is genealogically derivative of that decree and of its ratification by the senate (#1.2; cf. also #2.1). The materials have been organized roughly by chronology and in two blocks: block #2 deals with documents from the imperial period; block #3 deals with documents that have more localized significance for Judeans in Asia.

The Asian documents can be subdivided according to who is responsible for the actions preserved in them. Documents #’s 3.1, 3.2, 3.2a, and 3.2b, all preserve decisions of local councils in response to the Roman policy regarding Judean laws and customs. Documents #’s 3.3 and 3.3a preserve letters from Roman magistrates to local councils on behalf of Judeans. The first document of block #3, the letter to the proconsul Gaius Rabirius (#3.1), explicitly names Roman policy as the reason why the Magistrates of Laodicea act on behalf of Judeans—the intervention of Hyrcanus was pivotal. The letter also names Judeans as “friends” and “allies” (φίλοι, σύμμαχοι). Both aspects are derivative of Caesar’s decree and of the senatus consultum of 47 B.C.E. (see #1.2). The decree of the people of Halicarnassus (#3.2) likewise includes references both to Roman policy as precedent and to Judeans as being in a relationship of “friendship and alliance [φιλίας και συμμαχίας]” with the Romans. Similarly, the letter from

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674 Ben Zeev, *Jewish Rights in the Roman World*, 422: “when the Roman authorities kept re-affirming Jewish religious freedom, they were not affirming new legal points, but merely applying to each case the general principle established by Caesar, namely, the right given to the Jews to live according to their traditional laws. In other words, if the keeping of the Sabbath, the sending of the sacred monies to Jerusalem and the eating of kosher food could be proved to belong to the traditional Jewish laws, there was no need for a new legal decision to be made in Rome. The fact that the Jews’ laws and freedom ‘had been restored to them by the Roman senate and people’ on Caesar’s initiative would constitute the legal basis for all later confirmations. . . . [T]he permission bestowed by Caesar upon the Jews to live according to their customs and laws had a specific legal value, which was the basis for all the grants they were later to receive.”

675 Erich S. Gruen, *The Hellenistic World and the Coming of Rome* (2 vols.; Berkley: University of California Press, 1984), 1:47, describes this phrase as “an honorific title applied loosely to denote amicable relationship” between Rome and its allies. A more detailed discussion of the significance of this phrase is provided further below.
Dolabella (#3.4) was penned in response to an envoy from Hyrcanus, and appeals to the precedent established by previous Roman governors; however, unlike his predecessors, Dolabella does not localize the rights to only Judeans possessing Roman citizenship, but, in the wake of Caesar’s decree, extends favors to Judeans as an ethnic group. The letter from Publius Servilius Galba (#3.3), the decree of the people of Sardis (#3.2a), and the decree of the people of Ephesus (#3.2b) all mention Roman precedent regarding Judeans: #3.3 reprimands the officials of Miletus for breaching this precedent; #3.2a states that the Romans have restored Judean rights; and #3.2b reflects “matter[s] of concern to the Romans.”

The documents from the imperial period (block #2) are also derivative of Caesar’s decree and of the senatus consulta ratifying his will. The letter from Julius Gaius (possibly Octavian; #2.2) refers to Judeans as “friends” and “allies” (φίλοι, σύμμαχοι), and appeals to Caesar’s policy of permitting Judean collegia in Rome—a policy that is now applied to Judeans in Parium. In his edictum, Augustus cites the precedent established by Caesar toward Hyrcanus as justification for favors shown to Judeans in Asia (#2.4); and a non-extant letter from Augustus (#2.3) was cited as the precedent for Marcus Agrippa’s letter to Cyrene (#2.3a), and possibly supplied the precedent for the letter to Ephesus as well (#2.3b). Document #2.6 appeals for

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678 A.J. 14.246: “contrary to our expressed wish you are attacking the Jews and forbid them to observe their Sabbaths, perform their native rites or manage their produce in accordance with their custom”; Marcus, LCL.
680 Cf. Suetonius, Jul. 42.3; Philo, Legat. 312-313; see also Barclay, Jews in the Mediterranean Diaspora, 270.
681 Cf. Philo’s references to the relationship between Augustus, Agrippa, and Caligula. Agrippa is named as Caligula’s “grandfather” and Augustus as his “great-grandfather”; Legat. 240, 291, 309, 311; cf. 298, where Tiberius is called Caligula’s “other grandfather.”
authority to both Augustus and Agrippa. A mandatum⁶⁸² from Augustus (#2.5) provides the immediate precedent for the letter from Flaccus (#2.5a), while the edicts by Claudius (#’s 2.7 and 2.7a) continue the policies of both Augustus and Caesar; edictum #2.7a explicitly extends previous Roman policy toward Judeans to the entire Roman world. Lastly, document #2.7b appeals to both Claudius and Augustus for precedential authority.

In both blocks of documents, then, there are either verbal or thematic agreements with Caesar’s decree and its ratification by the senate; and each document in some way appeals to Roman policy as precedent.⁶⁸³ The role of Hyrcanus is palpable throughout, as is the naming of Judeans as “friends and allies.” And particularly in block #2 the precedential authority of the emperors is present: the policy of Augustus toward Judeans is derived from Caesar; and the policy of Claudius reverts to that of Augustus prior to the era of Caligula.

4.4c

Given the high profile imperial activity in the documents, it is surprising to see that the Romans were not successful in simply imposing their will on local city councils, but needed to constantly reaffirm Caesar’s decree and its ratification by the senate.⁶⁸⁴ There are, to frame this discussion in Foucauldian terms, multiple points of resistance, which generated official Roman reconfirmation of Judean rights by means of an appeal to previous precedent.⁶⁸⁵ For example,

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⁶⁸² On the classification of this document as a mandatum, see Ben Zeev, Jewish Rights in the Roman World, 259.

⁶⁸³ The lone exception to this might be document #3.3 (A.J. 14.244-246), which does not explicitly refer to Caesar or the senate; however, its author, proconsul Publius Servilius, mentions that the people in Miletus are acting toward Judeans in a way contrary to Roman purpose (“παρὰ τὴν ἡμετέραν γνώμην”).

⁶⁸⁴ See similarly, Schuol, Augustus und die Juden, 238.

⁶⁸⁵ Ben Zeev, Jewish Rights in the Roman World, 289, writes that “the documents quoted by Josephus [give] the impression that the period in which Roman decisions concerning the Jews were respected was, in practice, the very moment in which the Roman letters and edicts reached the council of the Greek
the precipitating event for the letter from Julius Gaius (Octavian?) to the “magistrates, council
and people of Parium” in the late 40s B.C.E. (#2.2), is the prohibition placed on the Judeans “by
statute [ψηφίσματι]” of the council from being able to keep their ancestral customs. The
statute was passed by the council several years after the senatus consultua that had ratified
Caesar’s will (ca. 42-41 B.C.E.), and in response to this, Julius Gaius orders the council to
rescind the statute based on the precedent of favor toward Judeans established by Caesar. M. P.
Ben Zeev observes that “Caesar’s decisions in favor of the Jews were already disregarded in
Asia only a few years after [his] death, in spite of the fact that they had been confirmed by senate
decrees.” Hyrkanus II may have worried about the stability of Roman favor toward Judean
ancestral customs after Caesar’s death, because his envoys petitioned the senate to have Caesar’s
will confirmed, and one envoy was sent to Dolabella the proconsul of Syria to secure various
rights for the Judeans living in Asia.

There are several instances in the documents of local councils and individuals in
particular regions loosely complying with or even resisting imperial decrees regarding Judean
ancestral customs, and of the Romans intervening to protect those rights. The magistrates
(ἄρχοντες) of Laodicea (#3.1) acquiesced to the directive of the proconsul Gaius Rabirius (ca.
47-46 B.C.E.) by letter after residents in their district had prohibited Judeans from keeping their
cities. Shortly afterwards, which may have been a few years later, but possibly only a few months later,
they were disregarded and further confirmations were needed.”

envoys also being present, have appealed to me and declared that you are preventing them by statute from
observing their national customs and sacred rites”; Marcus, LCL.

687 Ben Zeev, Jewish Rights in the Roman World, 117.

688 A.J. 14.219-227. Ben Zeev, Jewish Rights in the Roman World, 129, discusses the possibility that the
uncertainty was generated in part when the decree of Caesar, which was ratified by the senate in February
of 44 B.C.E., was not officially registered in the aerarium before his assassination.
ancestral customs, especially the Sabbath. The proconsul was notified of the legal basis for the Judeans to observe their ancestral customs by envoys from Hyrcanus II, who, in his appointed capacity by Caesar as ἐθνάρχης of the Judeans, was given the responsibility of defending those unjustly treated (τῶν ἄδικουμένων). In the letter there is evidence that the directive from the proconsul was not smoothly accepted because “the people of Tralles objected,” and the magistrates themselves promised compliance with elliptical language: “καὶ περὶ τῶν ἄλλων ἐν ἐπέσταλκας προνοήσομεν ὡστε μηδὲν μεμφθῆναι [and to the other matters on which you have given us instructions we shall give such attention that no one shall incur blame]” (Marcus, LCL). The “decree of the people of Halicarnassus [Ψήφισμα Ἀλικαρνασέων]” (#3.2; ca. 47 B.C.E.) warns both citizens and magistrates not to hinder the keeping of Judean ancestral customs in response to a letter from “the people of Rome [τῷ δήμῳ τῶν Ῥωμαίων],” and promises a “fine [ζημίωμα]” for infraction. Roman intervention appears to have been necessary to rouse the council to action. The letter from the proconsul Publius Servilius Galba (#3.3; 46 or 44 B.C.E.) to the “magistrates, council and people of Miletus” chastises the recipients for targeting Judeans by prohibiting Sabbath observance and the performance of their ancestral customs, and restricting control of their ancestral food. And, the “decree of the people of Ephesus [Ψήφισμα Ἐφεσίων]” in 42 B.C.E. (#3.2b) was needed to protect Judean

692 Ben Zeev, Jewish Rights in the Roman World, 213-214. In this case, the Greeks comply completely with Roman will “at least on a formal level” (p. 214).
693 A.J. 14.244-246. In this document the proconsul says he made his decision after considering the evidence of both sides of the case, which suggests that “it was not enough that the legitimacy of the Jewish cult had been granted by Caesar and confirmed by the Roman senate”; Ben Zeev, Jewish Rights in the Roman World, 204. Cf. the discussion of the phrase “τοὺς καρποὺς μεταχειρίζεσθαι” in E. P. Sanders, Jewish Law from Jesus to the Mishnah: Five Studies (London: SCM, 1990), 366 fn. 40.
Sabbath observance and the keeping of ancestral customs, and prohibit “interference from anyone” (“ἀγωσι τὰ σάββατα καὶ πάντα ποιῶσι κατὰ τὰ πάτρια αὐτῶν ἔθη μηδενὸς αὐτοῖς ἐμποδὸν γινομένου”), because “the matter is of concern to the Romans.” This decree also mentions that “no one should be prevented from keeping the Sabbath days nor be fined for so doing,” which suggests that fines to discourage Judean Sabbath observance had been issued in the past.

Josephus indicates that Judeans in Asia and Cyrenaean Libya in the Augustan age were still being “mistreated [κατέσχεν]”—e.g. the money earmarked for Jerusalem was being stolen—and had appealed to Augustus to deal with this situation. A flurry of imperial correspondence ensued. The letter from Marcus Agrippa to “the magistrates, council and people of Cyrene” (#2.3a; ca. summer 14 B.C.E.) sought to protect the money earmarked by Judeans for Jerusalem, and derived its precedential authority from a previous letter sent by Augustus to Flavius the praetor of Libya and the other officials of the province (#2.3), which had also protected this money. Compliance with Augustus’ letter had not been forthcoming since Judeans in the province were complaining that the earmarked money was being taxed, necessitating Marcus Agrippa’s intervention. Similarly, the letter from Marcus Agrippa to the “magistrates, council

695 A.J. 16.160-161. For a discussion of the inconsistencies between Josephus’ editorial introduction to the Augustan age documents and the contents of the documents themselves, see Ben Zeev, Jewish Rights in the Roman World, 233-235. For a possible social background, see Barclay, Jews in the Mediterranean Diaspora, 268-269.
696 From Augustus in A.J. 16.162-165 (#2.4) and 166 (#2.5); from Marcus Agrippa in A.J. 16.167-168 (#2.3b) and 169-170 (#2.3b); from Norbanus Flaccus in A.J. 16.171 (#2.5a); and from Jullus Antonius in A.J. 16.172-173 (#2.6).
697 A.J. 16.169-170: “The Jews in Cyrene, on whose behalf Augustus has already written to the former praetor of Libya, Flavius, and to the other officials of the province to the effect that the sacred monies may be sent up to Jerusalem without interference, as is their ancestral custom”; Marcus, LCL.
698 A.J. 16.170. For a discussion of the tax being referred to here, see Ben Zeev, Jewish Rights in the Roman World, 276-280.
and people of Ephesus” (#2.3b; ca. summer 14 B.C.E.) protected the Judean rights to send money to Jerusalem and also keep the Sabbath, promising punishment for noncompliance; however, the letter seems to have been ineffective, because two years later Augustus needed to issue both a mandatum (#2.5; cf. #2.5a) and an edictum (#2.4) to secure both rights. More than a decade later in 4 B.C.E., Jullus Antonius proconsul of Asia sent a letter to “the magistrates, council and people of Ephesus” (#2.6) reviewing the policy of Augustus and Agrippa and reconfirming the right of Judeans “to live and act in accordance with their ancestral customs without interference [χρῆσθαι καὶ ποιεῖν κατὰ τὰ πάτρια χωρίς ἐμποδισμοῦ].”

During the reign of Claudius, the authorization of Judean customs also needed to be reaffirmed. Josephus mentions two edicts of Claudius issued in 41 C.E., a local one in Alexandria (#2.7) dealing with the rift between Judeans and Alexandrians in the wake of Caligula’s tenure, and a general one (#2.7a) applicable throughout the empire (“τοῖς ἐν πάσῃ τῇ ὑπὸ Ῥωμαίοις ἡγεμονία Ἰουδαίοις”). There has been some debate among scholars about the relationship between the local edict issued in Alexandria and quoted by Josephus, and a papyrus letter to the Alexandrians that contains virtually identical themes but is more than three


700 A.J. 16.166: “Caesar to Norbanus Flaccus, greeting. The Jews, however numerous they may be, who have been wont, according to their ancient custom, to bring sacred monies to send up to Jerusalem, may do this without interference”; Marcus, LCL. See Ben Zeev, Jewish Rights in the Roman World, 258-259, for a discussion of this letter as a mandatum and also for the identity of “Norbanus Flaccus” with “C. Norbanus Flaccus” proconsul of Asia; cf. Philo, Legat. 311, 315.

701 A.J. 16.162-165; cf. the favor of Augustus mentioned by Philo in Legat. 155-158.


703 A.J. 19.280-285. Josephus mentions that Claudius sent an edict to both Syria and Alexandria, which raises the question of whether the emperor issued two separate edicts; Syria is not mentioned after the single reference in 19.279.

times as long. Some scholars have argued that Josephus forged his version based on the material from the papyrus; but more recent scholarship has tended to argue that Josephus has preserved an earlier edict of Claudius, while the papyrus letter reflects a subsequent intervention by Claudius in Alexandria after the edict proved ineffective. This is another example then of an imperial decree by means of letter or edict on behalf of Judeans that required subsequent reauthorization.

Even these actions by Claudius could be ignored, however. The document from Publius Petronius, governor of Syria (#2.7b; ca. 41-42 C.E.), was needed to reaffirm the decrees of Claudius, which apparently had been disobeyed in Dora where Judean synagogue attendance had been disrupted when a statue of the emperor was erected in the building. Josephus also indicates that challenges to Judean rights were still occurring in Nero’s day.

The periodic need for additional Roman authorization has raised questions for scholars about whether the rights of Judeans to keep their ancestral customs actually possessed the force of law. Rajak answered her own question “Was there a Roman charter for the Jews?” in the

705 The letter is preserved in CPJ 2 no. 153. The papyrus document is one hundred eight lines, while the document in Josephus is thirty lines. See also Molly Whittaker, Jews and Christians: Graeco-Roman Views (CCWJCW 6; Cambridge: Cambridge University Press, 1984), 99-100. For a full discussion of the scholarly debate, see Ben Zeev, Jewish Rights in the Roman World, 304-326.
706 Ben Zeev, Jewish Rights in the Roman World, 312-313.
709 The consensus position among scholars had been that the Romans had issued something akin to a “Magna Carta” for Judeans in terms of protecting their laws and customs; see Jean Juster, Les Juifs dans l’Empire roman: leur condition juridique, économique et sociale (2 vols.; Paris: P. Geuthner 1914), 1:213-217; also the discussion in Alfredo M. Rabello, “The Legal Condition of the Jews in the Roman Empire,” AWRW 13:662-762, esp. 692. The first scholar to seriously question this perspective was Rajak, “Was There a Roman Charter,” 107-123. She has influenced subsequent reconstructions, such as, for example, that of Paul R. Trebilco, Jewish Communities in Asia Minor (SNTSMS 69; Cambridge: Cambridge University Press, 1991), 8-12; cf. also Rutgers, “Roman Policy Towards the Jews,” 57.
negative, arguing that the “legal power” of the documents “has been exaggerated.” More recently, Ben Zeev has made a similar argument, concluding “that the grants given by the Romans [to the Judeans] had practically no value at all without further confirmation.” As I mentioned above, my interest in the documents that Josephus cites has less to do with the questions that scholars typically ask—i.e. what “rights” are embedded in the documents; are those rights “legal”—and more to do with the relations of power that make possible the formation of rights as an object. The documents make clear that there is friction between the Roman desire to honor its precedent of showing favor to Judean ancestral customs, and the lack of compliance to Roman will by some local councils and individuals. The constant need for Roman administrators to reaffirm the precedent established by Caesar and ratified by the senate indicates that power is not exercised in straight lines by Roman magistrates or emperors over local city councils. Romans could not force compliance but rather needed to win the obedience of provincials. This indicates that power is distributed and exercised at multiple points: by means of official acts within the Roman legal apparatus—*senatus consult*, *edicta*, *mandata*, and

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710 Rajak, “Was There a Roman Charter,” 107, 110.

711 Ben Zeev, *Jewish Rights in the Roman World*, 289: “It was apparently very difficult for local Greeks to accept Roman protection of Jewish rights” (p. 271). Mikael Tellbe, *Paul between Synagogue and State: Christians, Jews, and Civic Authorities in 1 Thessalonians, Romans, and Philippians* (ConBNT 34; Stockholm: Almqvist & Wiksell, 2001), 59, suggests that Judean “rights” in the Roman world possessed the status “a sort of ‘official’ Judaism that was generally authorized throughout the empire.” The difficulty with this suggestion is that the actual “rights” that are extracted from the documents do not mention other aspects of Judean cultural practice, such as, for example, circumcision. And Tellbe’s insistence that the rights included freedom from participating in the imperial cult (pp. 46-51) is not based on any hard evidence, but rather is derived from reading this “right” into the letter from Petronius to Dora (A.J. 19.303-311).

712 A few of the documents (#’s 2.3a, 2.3b, 2.4, 2.7, 2.7b, 3.2) threaten sanctions for noncompliance, but there is no evidence of follow-through. The Romans seem to have had a “somewhat apathetic attitude” toward the punishment of local Greek councils for breaching or ignoring imperial directives regarding Judean rights; Ben Zeev, *Jewish Rights in the Roman World*, 421.
epistulae; by means of resistance on the part of local councils, which provokes the Romans to respond through official acts; and, as I will discuss in the next section (4.4c), by means of personal interactions that take multiple forms in the documents, including the exchange of beneficia, and the wielding of the Roman precedent of favor by individual Judeans.

4.4d

Individual Judeans wield the precedent of Roman favor to their advantage throughout the documents. As I noted above, this Roman precedent is traceable to the relationship between Julius Caesar and Hyrcanus II, and lays the groundwork for subsequent Roman decisions on behalf of Judeans, and also empowers Hyrcanus and later Judeans to appeal to this precedent when facing hardships in various Greek cities. The relationship of “friendship and alliance”

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713 In several cases, these acts are sufficient to win the immediate compliance of local Greek councils; see #’s 3.1, 3.2, 3.2a, 3.2b. In the Decree of Halicarnassus (#3.2), the council expresses its desire to emulate the Romans; see A.J. 14.257 and the phrase “κατακολουθοῦντες τῷ δήμῳ τῶν Ρωμαίων.”

714 There is a sense in which this policy was a continuation of the favor shown to Judeans by the Greek and Persian empires. Michael Grant, The Jews in the Roman World (London: Weidenfeld and Nicolson, 1973), 59, has pointed out that one reason “the Romans tolerated the Jews” is that “they found them tolerated already.” See Ezra 7:11-26 for the decree of Artaxerxes permitting Ezra to establish the Torah as Judean law; see also Josephus, A.J. 11.338 and 12.142 for the permission granted to Judeans to observe their ancestral laws from Alexander and Antiochus III, respectively; cf. Cicero’s acknowledgment of the Judean custom of sending funds to Jerusalem; Flacc. 28.67-68; also Josephus, A.J. 14.112-113. Ben Zeev, Jewish Rights in the Roman World, 410: “It actually appears that no significant change took place concerning the practice of Jewish law [when the Romans conquered the Seleucids and Ptolemies]. The Roman government had a conservative character which tended to preserve the existing framework, probably also in view of practical considerations. The permission to live according to local laws and customs provided local order without much expense or trouble and a ready-made organization through which levies could be raised.” There existed a relationship of “friendship” between the Romans and Judeans during the Hasmonean period. Representatives of the Hasmoneans made a request before the senate to establish a relationship of “friendship” (literally the request was “to register us as your allies and friends [γραφῆναι ἡμᾶς συμμάχους καὶ φίλους ὑμῶν]”); 1 Macc. 8.20; see Robert Goldenberg, “The Sabbath in the Roman World up to the Time of Constantine the Great,” ANRW 19.1:414-447, esp. 418. The senate “wrote in reply, on bronze tablets, and sent to Jerusalem to remain with them there as a memorial of peace and alliance [εἰρήνης καὶ συμμαχίας],” and forged an agreement that mutual military assistance would be proffered in time of need; 1 Macc. 8.22-30; cf. 1 Macc. 12.1; Josephus, A.J. 12.416-419; also 1 Macc. 15.16-21, esp. 17: “The envoys of the Jews have come to us as our friends and allies to renew our ancient friendship and alliance [φίλιαν καὶ συμμαχίαν]”; NRSV.
between Caesar and Hyrcanus is formalized by means of Caesar’s decree (#1.1), and is forged in the exchange of *beneficia* between the two. Hyrcanus provided military support for Caesar’s campaign in Egypt; and in exchange for this support, Caesar established a treaty of “friendship and alliance” with Hyrcanus and his descendants, established them as *ethnarchs*, and authorized them to adjudicate matters of Judean law. Hyrcanus’ military aid is mentioned twice more in the documents, once in the *senatus consultum* of 44 B.C.E. (#1.2), and again in the edict from Augustus (#2.4). The Romans often granted favors in exchange for military assistance, and granted privileges to those considered to be “friends and allies of the Roman

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716 The language of exchange of *beneficia* between Judeans and Romans is found in the *senatus consultum* of 44 B.C.E., where the relationship between Caesar and Hyrcanus II is highlighted. See document #1.2 (*A.J.* 14.212) which refers to ἐὔνοια and εὐεργετέω.


718 *A.J.* 14.211-212: “it is fitting that we too should be mindful of this and provide that there be given by the Senate and people of Rome to Hyrcanus and the Jewish nation and the sons of Hyrcanus a token of gratitude worthy of their loyalty to us and of the benefits which they have conferred upon us”; Marcus LCL.

719 *A.J.* 16.162: “Since the Jewish nation has been found well disposed to the Roman people not only at the present time but also in time past, and especially in the time of my father the emperor Caesar”; Marcus LCL; cf. *A.J.* 14.185-186, 197, 214, 216; 19.288.

720 Ben Zeev, *Jewish Rights in the Roman World*, 38: “The importance of former military assistance to the Romans is often stressed in Roman official documents as the reason for bestowing grants on peoples and cities.” E.g. *Aphr.* 7, ll. 2-3, 5: “[? Since in former times too the Rhodians, Lycians, Tajrians and Laodiceans, and also the Plarasans and Aphrodisians, [always] showed the greatest zeal [for the] empire [of the Roman people] . . . [when], holding the most noble principles, [? they undertook] every risk on behalf of the respublica and ourselves; [for which reason ..?..] we ought to provide the most abundant aid in every way and with all zeal (σπουδῇ)”; cf. *Aphr.* 13, ll. 2-3; see also *Aphr.* 8, ll. 23-30: “and since it is agreed that the community [of the Plarasans and Aphrodisians has] continuously [..?..] shown the greatest [..?.. and] goodwill [..?..] to the empire of the Roman people from the time when it entered the friendship of the Roman people; and since M. Antonius and C. Caesar [victorious generals, Triumviri] Reipublicae Constituendae, [spoke] in this house [about the very noble policy] and the exceptional loyalty which [the people of Plaras/Aphrodisia have extended] to our public affairs, (resolved) that it seems to be in the public interest [for the Plarasans and Aphrodisians, themselves, and their children] and their descendants to be exempt from all levies.” This document goes on to free the Plarasans and Aphrodisians from having to provide winter quarters to soldiers; cf. Caesar’s decree (#1.1) in *A.J.* 14.195. Both Aphrodisian
people.” The Judeans used the relationship between Caesar and Hyrcanus to their advantage several times in the documents. After Caesar’s death, Judean envoys from Hyrcanus successfully petitioned the senate to ratify Caesar’s decree on their behalf (#2.1), and one of these envoys then petitioned the Roman magistrate Dolabella to secure Judean rights in Ephesus. Envoys from Hyrcanus also successfully petitioned the Roman magistrate Gaius Rubilius to secure Judean rights in Laodicea. There are several other instances in the documents of local Judeans appealing for protection of their ancestral customs: Judeans from Delos complain about their mistreatment in Parium and win support from the consul Gaius

documents are quoted from Joyce Maire Reynolds and Kenan T. Erim, Aphrodisias and Rome: Documents from the Excavation of the Theatre at Aphrodisias, conducted by Professor Kenan T. Erim, together with some related texts (JRSM 1; London: Society for the Promotion of Roman Studies, 1982). Rome’s gift of favors in exchange for military aid is well documented by Sherk, Rome and the Greek East: RGE 2, ll. 10-23; 25, ll. 1-15; 33, ll. 1-20; 59b, ll. 20-57; 63, ll. 11-13, 35-54, 58-131; 64, ll. 1-30; 66, ll. 1-31; 86, ll. 12-96; 97, col. d, ll. 10-19; cf. 108, ll. 13-16.

721 Ben Zeev, Jewish Rights in the Roman World, 40-41. See Josephus’ testimony about Hyrcanus I and his alliance with the senate in A.J. 14.247-255, which backdrops the senate’s designation of Judeans as “συμμάχους Ῥωμαίων,” and leads to the granting of favors; see discussion in Barclay, Jews in the Mediterranean Diaspora, 264. See also Aphr. 8 where the designation “friends and allies” appears in ll. 16, 21, 23; cf. 72. The same designation can be found in RDE 7 (esp. ll. 1-14, 22, 25, 37, 10, 10-28, 62, 11, 1-6; 11, 1-4, 22, 5, 1-15; 13, ll. 1-17; 16, ll. 18-25; 20, ll. 7-10; 21, ll. 5-7, 17-31; 30, ll. 2-4, 24-27; 31, ll. 15-24; 34, ll. 40-44; 35, l. 10; 37, ll. 1-9; 38, ll. 16-19, 38-42, 40-50; 44, ll. 11-14, 21-22, 25, 47, 45, ll. 1-5; 51, ll. 1-9; 53a, ll. 1-15; 53b, ll. 25-50; 55A (Delphi B), ll. 1-14; 55B (Knidos, col. II), ll. 28-35, Col. IV, ll. 21-25; 57, ll. 27-29; 58, ll. 1-3; 62A, ll. 1-17; 62B, ll. 1-14; 72, ll. 7-36; 73, ll. 1-10; 74, ll. 16-20, 28-29, 38; 76, ll. 13-14; 81, ll. 1-6; 83, ll. 10-24; 85, ll. 10-28; 102, III, ll. 56-59; 108, ll. 15-20 (this letter from the governor of Asia to Chios confirms the rights granted to the Chians after they had fought alongside the Romans against Mithridates [ll. 13-16], which included the rights to keep their ancestral laws, to be friends of the Romans, and to not be subject to the decisions of Roman magistrates; however, interestingly, the letter also mentions that Roman citizens in Chios should observe Chian laws [l. 18], which is difficult to explain; see Sherk’s comments in fn. 2).


723 A.J. 14.241-243 (#3.1). See other examples of this kind of interaction between Roman officials and locals in Aphr. 10, ll. 1-2; 11, ll. 1-6; and 12, ll. 1-10.
Judeans enter the local βουλή in Sardis and gain support for their ancestral customs after pointing out that these have been authorized by the Roman senate and people (“ὑπὸ τῆς συγκλήτου καὶ τοῦ δήμου τοῦ Ρωμαίων”); the same tactic is deployed before the proconsul Marcus Julius Pompeius when Judeans win support for their ancestral customs after drawing attention to the Roman senate’s decrees on their behalf; Judeans win support for their rights from Marcus Agrippa after highlighting Augustus’ authorization of their ancestral customs, and then deploy the same tactic successfully before Julius Antonius when they highlight the prior authorization of their ancestral customs by both Augustus and Agrippa; and at the behest of Agrippa I and Herod of Chalcis, Claudius mandated that Judeans could practice their ancestral customs in Alexandria, and then he extended the application of this decree from Alexandria to the entire empire; Agrippa I also successfully petitioned the legate Publius Petronius on behalf of Judeans in Dora by appealing to Claudius’ empire-wide decree.

It is striking in these examples that once local Roman administrators are informed of the broader policy established by Caesar and ratified by the senate and by subsequent emperors, they comply without question to the Judean request for protection. This is the case even when a

726 A.J. 14.262-264 (#3.2b).
727 A.J. 16.169-170 (#2.3a) and 16.172-173 (#2.6), respectively; cf. the lengthy appeal made on behalf of Judeans from Ionia by Nicolaus of Damascus in A.J. 16.27-57.
728 A.J. 19.280-285 (#2.7) and 19.287-291 (#2.7a), respectively. In A.J. 19.288, Agrippa and Herod are reckoned as the “dearest friends [τῶν φιλτάτων μοι]” of the emperor. Agrippa and Claudius were bound by the exchange of beneficia. Agrippa helped Claudius gain the Principate and appease the senate after Gaius’ death (see A.J. 19.236-247, 265; cf. Dio, 60.8.2). And in A.J. 19.274-275, Claudius responds by instating Agrippa as ruler of Judea and Samaria, and confirming Agrippa’s friendship with Rome via “solemn oaths [ὅρκιά τε ὁμαίνει].” See, however, the word of caution regarding the details of the relationship between Claudius and Agrippa in Daniel R. Schwartz, Agrippa I: The Last King of Judaea (TSAJ 23; Tübingen: J.C.B. Mohr [Paul Siebeck], 1990), 91-93.
729 A.J. 19.303-311 (#2.7b).
particular magistrate seems uninformed of the precedent, and needs it to be recounted to him by Judeans. Dolabella, for example, needed the particulars of Judean rights authorized by the senate to be disclosed to him (ἐμφανίζω) by the envoy from Hyrcanus, and Julius Antonius needed the prior actions of Augustus and Agrippa on behalf of Judeans to be “shown” to him (ὑποδείκνυμι). It is clear that the Roman legal policy toward Judean ancestral customs is consistently positive in the documents. Nevertheless, Judean rights needed constant tending to because, to draw again from C. Ando and J. Harries, the legal apparatus of the empire was such that laws did not enjoy a long shelf-life for a variety of reasons: the infusion of beneficia into the legal machinery meant that the decision of one emperor would need to be reconfirmed by his successors, and could be revoked; the necessity of winning the loyalty and obedience of provincials, and of relying on local councils to publish and enforce laws, meant that Roman will was not imposed but won by consent; and, adding to the complexities of administrating the legal world of the empire, there is the practical reality that if a law was not appealed to, and thus kept alive in the legal system, it ceased to count as a law. It is thus correct to describe the documents and the rights embedded in them, as Rajak does, as “things of the moment” with local application, and not automatically valid in perpetuity. For my purposes, it is precisely because the Roman policy toward Judeans could not be imposed once and for all, and could be resisted, that relations of power become more visible. Foucault once likened resistance to a “chemical

730 A.J. 14.226 and 16.172, respectively. The proconsul Gaius Rubilius is informed of the senate decrees on behalf of the Judeans by way of letter from an envoy of Hyrcanus (A.J. 14.241). In the wake of Claudius’ empire-wide decree, Publius Petronius seems to only need to be informed by Agrippa of the troubles in Dora before acting on behalf of Judeans (A.J. 19.301-302).

731 See the discussion with examples of imperial benefaction in Millar, The Emperor, 410-432, 444, esp. 430-432.

732 “Was There a Roman Charter,” 116. Rajak reads between the lines of A.J. 16.48 where Nicolaus of Damascus, advocating on behalf of Judeans in Ionia, insists that the rights of Judeans were not temporary. This for Rajak suggests that actually the “matter was in some doubt.”
“catalyst” that is able “to bring to light power relations, locate their position, find out their point of application and the methods used.” At the points where Judean ancestral customs are constituted as a problem in the documents, there is friction between the Roman desire to honor its precedent, and resistance to this by local city councils and individuals; and in the midst of this exchange are individual Judeans who advocate for their rights by exploiting their relationships with Roman administrators and with the emperor himself. When these various, and at times, competing relations intersect, discourses about Judean laws and customs multiply. Discussions of Judean law extend from the most micro relations between individual Judeans and their neighbors in particular cities up through the entire Roman administrative apparatus to the senate and to the emperor himself. Along the way, the particulars of Judean ancestral customs, which E. P. Sanders organized into five categories—assembly, Sabbath observance, ancestral food, self-adjudication, and monetary contributions to Jerusalem—emerge as “rights.”

4.5 Conclusion

In both Philo and Josephus, the exercise of power at the micro level is caught up in the broader web of power that infuses the Roman legal world. The point where there is friction between the two is the point at which the reliability of the Roman precedent of favor toward Judean ancestral customs is in question. This is the sphere in which discussions of Judean laws and customs become numerous and dense. Further, in this web of relations Judean law is not constituted as “Torah” but as an “ancestral custom.” This observation intersects with an important aspect of Foucault’s understanding of the formation of objects of discourse. Objects, such as “law” or “Torah,” have no ontological status apart from the discursive systems that shape

733 Foucault, “The Subject and Power,” 329.
them.\textsuperscript{734} It is the relations of power that make possible certain discourses that then enable objects to emerge. But for Foucault this process of “objectification” has implications for the human being as a subject: people exercise power and are drawn up into relations of power, and are consequently constituted as certain kinds of subjects.\textsuperscript{735} In Philo and Josephus, Judeans advocate for their rights, but do so by means of engaging the administrative apparatus of the empire. By appealing for the right to keep their law as an “ancestral custom” before magistrates and even the emperor, Judeans constitute themselves as subjects of the empire.

4.6 Summary

These insights can be compared with the ethnographies that were surveyed in ch. 2, where it was seen that friction between micro and macro relations of power created the space in which law-like customs became numerous. The exercise of power at multiple points in each account made possible the emergence of laws and customs as objects, but also constituted individuals as subjects within their particular cultural situations. For the Dou Donggo, social and economic changes in Indonesia made it difficult to continue certain cultural practices, such as arranged marriage, thus putting strain on the system of forming alliances. The practice of teknocentrism, however, still continued, albeit in modified form. Dou Donggo trials (paresa) and negotiations (mbolo), which addressed these issues in particular, were becoming more numerous. As individuals and families within the community continued to succumb to the trend of drifting away from arranging the marriages of their children, they constituted themselves and their group as modernizing subjects.

\textsuperscript{734} Foucault, \textit{Archaeology of Knowledge}, 44-48.

\textsuperscript{735} Foucault, “The Subject and Power,” 326-327: “My objective . . . has been to create a history of the different modes by which . . . human beings are made subjects.”
The district court system for the Talean Zapotec community was a palpable presence that put strain on the local village courts. Discussions of local laws and rulings were constantly framed vis-à-vis the specter of the district court. The government’s exercise of power by means of constant surveillance, even if it was only hypothetical and not an actual mechanism of surveillance, disciplined the actions of villagers, so that the practice of their own system of jurisprudence at the local level was always performed in the shadow of the district authorities.

The ebbs and flows in Ilongot headhunting can be correlated with external threats to the integrity of Ilongot society. As interactions between Ilongots and the external social world increased, the number of headhunting raids increased as well. The incursion of Japanese soldiers into the Ilongot hills in the 1940s can be correlated with a spike in headhunting raids. While headhunting is not a “law” in any formal sense, it is a means by which Ilongots exercise power over each other. And it is practiced as a mechanism for regulating Ilongot society: the practice of headhunting is the way an Ilongot male constitutes himself as an adult; joint headhunting raids can be the means by which alliances between bertan are formed; and a raid against a rival bertan can be a signal that groups are feuding.

Lastly, the clash of cultural systems during Hawaii’s colonial period was marked by a proliferation of court cases specifically designed to curtail the sexual practices of indigenous Hawaiians. This, coupled with the missionary tactic of winning the loyalty of Hawaiian chiefs by means of teaching them to write (palapala), was a civilizing project aimed at taming the savagery of Hawaiians and Europeanizing them. This exercise of missionary power was not unidirectional, however. Indigenous Hawaiians exercised power at multiple points in the colonial system, and constituted themselves as colonial subjects: some resisted the new, restrictive sexual agenda of the missionaries; others mimicked the new agenda, but in so doing, hybridized it in the Bhabhian sense.
Although the ethnographic materials differ from each other, and differ as a group from the accounts in Philo and Josephus, the Foucauldian approach being deployed in this project provides an analytical grid through which these disparate cultural materials can be read. Foucault’s two methodological questions guide the analysis: how is power exercised; and what happens when individuals exercise power over others? In each cultural situation, laws or law-like customs have become a problem. The micro relations of power operating at the local level have come into contact with broader webs of power, and the exercise of power at multiple points in each of these situations is the space in which legal discourses and law-like practices become more numerous. “Law” thus emerges as an object, which is to say that “law” is not a thing—it possesses no inherent ontological status—before it surfaces in a field of discourse.
Chapter 5
Matthew, Paul, and Power

“[A]ny religious vision that espouses a universalist view will ultimately need the support of a political and economic system that clings to the same ideology.” ~Musa W. Dube

“[Legal fiction does its] most interesting work in the early period of Roman law exactly at those moments and in those places where the Romans sought to incorporate juridically non-Roman populations within their state.” ~Clifford Ando

5.1 Introduction

It remains to be demonstrated how I see this macro-micro dynamic playing out in Matthew and Paul. On the one hand, law is a problem for both writers in a way that is similar to the four ethnographic situations summarized in ch. 2 and in the discussion of Philo and Josephus in the last chapter. This is to say that law is a site of struggle for both writers, and has been constituted as an object of debate. Just a cursory reading of Matthew’s gospel and Paul’s letters is sufficient to indicate that law is being wielded by both writers for polemical purposes. And this appears to be because the law-as-Torah possesses a potent form of social power in the social contexts in which Matthew and Paul are active. Put differently, Matthew and Paul might be situated on a spectrum closer to Q3, James, or the Didache, than to, say, 1 or 2 Peter. In the


737 Ando, Law, Language, and Empire, 1.

former group of texts, the law plays an important role in structuring the thought-worlds of the respective groups, while in the latter the law plays no role at all in structuring the lives of the audiences even though the symbols and language of the Septuagint are pervasive in both texts.

On the other hand, at a broader level, Matthew and Paul are writing in a first century C.E. context in which relations between Judeans and Romans were becoming increasingly fractious. Paul is writing after the Caligula crisis and after the time when Tiberius had expelled Judeans from the city of Rome, and during the time when Claudius had done the same. Matthew is writing in the aftermath of the war with Rome, and may be part of a broader group of writers trying to make sense of Judean laws and customs in the wake of the temple’s destruction. The argument of the previous chapter regarding the tenuousness of Judean rights in the Roman world raises the question of how aware Matthew and Paul were that their discussions of Judean laws and customs were part of a fraught cultural history comprised of complex relations between Judeans, Roman administrators, and local Greek city councils. Neither Matthew nor Paul gives any explicit indication that their discussions of law have been influenced by this broader context, but it is possible, though by no means certain, that such issues were on their “opponents’” minds. In any case, relations between Judeans and Romans and the tenuousness of Judean rights in the Roman world are two components of an even broader cultural stage on which both

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739 On the Caligula crisis, see above ch. 4. On the removal of Judeans from Rome in the first century, see Rutgers, “Roman Policy Towards the Jews.”

740 Similarly Saldarini, *Matthew’s Christian-Jewish Community*, 4-5. In ch. 3 above, I raised questions about how much can actually be known about the immediate socio-historical context of Matthew’s group.

Matthew and Paul were actors: empire.\textsuperscript{742} It seems to me that any examination of law in these two writers needs to consider how their respective views are situated in the broader, macro context of Roman imperial power,\textsuperscript{743} and this is because, as I will demonstrate below, while there are clear differences between them, both writers share an interest in spreading their respective gospels to the \textit{ethne},\textsuperscript{744} and thus participate in a trajectory beginning in the political discourse of the late Augustan period of demarcating the geographic spaces of the \textit{ethne/gentes}, which had been incorporated into the empire. Both writers also shape their understandings of law to accommodate this mission by means of particular notions of authority (ἐξουσία). Such accommodation bears some resemblance to the practice of Roman jurists who deployed tactics

\textsuperscript{742} This is not at all to diminish the significance for either writer of the Judean scriptures or “theology,” though it should be clear that my focus in this project is not on reconstructing what might be called Weltanschauungen, but on thinking with critics such as Foucault, and drawing from aspects of cultural anthropology, to consider “law” not as a “Jewish thing,” but as an element of culture and human behavior more broadly. For a study of Matthew’s “theologischen Konzeption,” see Matthias Konradt, \textit{Israel, Kirche und die Völker im Matthäusevangelium} (WUNT 1/215; Tübingen: Mohr Siebeck, 2007), e.g. 393: “Fragt man nach dem geistesgeschichtlichen Kontext, der das theologische Denken des Matthäus geprägt hat, so tritt vom Beginn bis zum Ende des Evangeliums die fundamentale Bedeutung der theologischen Tradition Israels hervor. Diese zeigt sich nicht nur darin, dass Matthäus die Jesusgeschichte mit einem durchgehenden Rückbezug auf die Schrift neu erzählt. Sie tritt auch in der Profilierung der besonderen Rolle Israels hervor.” With respect to Paul’s theology, see most recently, N. T. Wright, \textit{Paul and the Faithfulness of God} (Minneapolis: Fortress, 2013), esp. Part II, chs. 6-8.

\textsuperscript{743} For a discussion of the complexities of terms such as “imperialism,” “empire,” and also “colonialism” with respect to ancient Rome, see David J. Mattingly, \textit{Imperialism, Power, and Identity: Experiencing the Roman Empire} (Princeton: Princeton University Press, 2010), 5-37. I appreciate Mattingly’s focus on “the nature and effects of imperial power” instead of on “the specific political and constitutional aspects of the Roman Empire” (p. 14); cf. also the recent survey of secondary literature on “imperialism” by Peter Edwell, “Definitions of Roman Imperialism,” in \textit{A Companion to Roman Imperialism} (ed. in Dexter Hoyos; HW 81; Boston: Brill, 2013), 39-52.

\textsuperscript{744} I do not translate the Greek word ἔθνη as “nations.” Although there is debate about which portions of the modern “nation” have roots in antiquity, the most dominant school of thought in nationalism studies is that “nation” and its cognate “nationalism” are creations of modernity. For a view which seeks to reconcile those who believe nationalism and the nation were born in modernity with those who stress the premodern origins of the nation, see Anthony D. Smith, \textit{The Ethnic Origins of Nations} (Oxford: Blackwell, 1988), esp. ch. 1; also Anthony D. Smith, “The Origins of Nations,” \textit{Ethnicity and Racial Studies} 12/3 (1989): 340-367. For an overview of “nationalism” with extensive bibliography, see Umut Özkitirli, \textit{Theories of Nationalism: A Critical Introduction} (2d ed.; New York: Palgrave Macmillan, 2010). I wish to thank Oisín Keohane for notifying me of this debate and for suggesting these resources.
such as legal fiction to accommodate jurisdictionally areas populated by non-citizens which had entered the purview of Rome’s empire and thus its legal power (i.e. esp. prior to the Edict of Caracalla in 212 C.E.). Accordingly, the common thread that connects this chapter and the previous one with the end of my literature review in ch. 3 is the Roman context of Matthew’s and of Paul’s discussions of law.

5.2 Imperial Context

For more than two decades Pauline scholars have been intently exploring the socio-political ramifications of Paul’s language and mission in the context of the Roman Empire. Matthean scholars have been slower to recognize connections between Matthew’s gospel and the empire, but this is changing. In being cognizant of the imperial context, I am not interested in

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746 The work of Warren Carter has been instrumental in this shift. See especially his *Matthew and Empire: Initial Explorations* (Harrissburg, Pa.: Trinity Press International, 2001); and his commentary, *Matthew and the Margins: A Sociopolitical and Religious Reading* (Marykonn, N.Y.: Orbis Books, 2000); also, “Matthean Christology in Roman Imperial Key: Matthew 1.1,” in *The Gospel of Matthew in its Roman Imperial Context* (ed. John K. Riches and David C. Sim; JSNTSup 276; London: T & T Clark International, 2005), 143-165; “Matthew Negotiates the Roman Empire,” in *In the Shadow of Empire: Reclaiming the Bible as a History of Faithful Resistance* (ed. Richard A. Horsley; Louisville, Ky.:
determining—as many scholars have tried to do—whether Matthew or Paul is anti-empire or counter-empire. I want to explore instead in the first part of this chapter the ways in which Matthew and Paul appropriate and reinscribe certain aspects of Roman political propaganda related to the discourse about imperial geography to help inform my reading of the Great Commission text in Matt 28:16-20 and of Paul’s summary of his missionary movements in Rom 15:18-24—two sets of texts that are distinct to these two writers in particular. This macro discourse of imperial power has seeped into Matthew’s and Paul’s respective articulations of the mission to the ethne, so that the ethne that have been conquered by imperialist expansion have now been made available for the hearing of their respective gospels. I will suggest further below that this macro discourse of power seems to have colored and shaped the discussions of law for both writers, producing similar effects for both at the micro level.

5.2a

Two points that I want to establish in this section (5.2a) and in the next two (5.2b, c) are

1) the similarities between Matthew, Paul, and the empire do not require either writer to be

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748 Cf. Dube, “‘Go Therefore and Make Disciples’,,” 231: “[Matthew’s gospel is] uncomfortably imperialist.” See also my quotation of Dube at the beginning of this chapter.
interpreted as “counter-empire” for both theoretical and historical reasons; and 2) that instead of opposing the empire, the missionizing agendas of both writers presume and reinscribe elements of the broader discursive setting of late Augustan Rome (and beyond) with its increasing emphases on imperial geography and on organizing the space of the conquered/pacified ethne.

Many investigations of Matthew, Paul, and the Roman imperial context have been conducted in a paradoxical fashion. Scholars have tended to identify points of overlap between the language used by these two writers and Roman political discourse in order to highlight the fundamental difference between the values and ideologies of these two writers and that of their imperial counterparts. Until very recently, most scholars have assumed that Matthew and Paul deliberately opposed the empire. For example, R. Horsley’s introduction to the path-breaking

749 See especially Barclay, “Why the Roman Empire was Insignificant to Paul”; Marshall, “Hybridity and Reading Romans”; and also the nuanced argument of Harrison, “Augustan Rome and the Body of Christ.” Cf. also Dube, “Go Therefore and Make Disciples.” Barclay’s doubts about Paul’s interest in the empire are quite provocative. He states with respect to the new creation of (2 Cor 5:16-17): “If Rome is not specifically named from this angle of vision, this does not mean that Paul’s theology was apolitical, only that the political is for him enmeshed in an all-encompassing power-struggle which covers every domain of life, including but not limited to the religio-political domain we call ‘the Roman empire’” (in “Why the Roman Empire was Insignificant to Paul,” p. 376). I wonder, however, if Barclay has overlooked an important aspect of the discussion, namely, how Paul’s audiences would have understood his language and imagery. For example, how might the Philippians living in a Roman colony respond to the identification of Jesus Christ as a “savior” and “lord” in Phil 3:20 by Paul, who was in prison under a praetorian guard (Phil 1:13)? Barclay does not comment on this aspect of Phil 3:20.

750 The following is a sampling: Jewett, Romans, 2, refers to Paul’s letter to the Romans as “anti-imperialistic.” Elliott, The Arrogance of Nations, 47, argues that Paul’s ministry would eventually come into conflict with “the Augustan vision of the obedience of the nations”; that these contrasting visions were “hardly . . . incidental” (p. 72); that Paul’s writing is an “ideological intifada” (in Elliott, Liberating Paul, 190); and that “Paul’s apostolic performance constituted a rival representation of power” (in “The Apostle Paul’s Self-Presentation as Anti-Imperial Performance,” in Horsley, Paul and the Roman Imperial Order, 67-88, here, 68). Horsley states that Paul’s gospel opposed the “Roman imperial order” (introduction to Paul and the Roman Imperial Order, ed. Horsley, 1-24, here, 3). Dieter Georgi, “God Turned Upside Down,” in Horsley, Paul and Empire, 148-157, here, 152, argues that “the soteria represented by Caesar and his empire is challenged by the soteria brought about by Jesus.” N. T. Wright, “Paul’s Gospel and Caesar’s Empire,” in Horsley, Paul and Politics, 160-183, here, 162, maintains that Paul’s missionary work and gospel “could not but be construed as deeply counter imperial, as subversive to the whole edifice of the Roman Empire; and there is plenty of evidence that Paul intended it to be so construed”; and “To say that Paul opposed imperialism is about as politically dangerous as suggesting
Paul and Empire volume outlined four areas of overlap between Paul’s language and the broader imperial context in order to underscore the competition between the two: 1. competing claims made by competing modes of salvation: Caesar’s and Christ’s; 2. competing social orders: top-down patronage (Rome) and “reciprocal social-economic relations” (Jesus movement); 3. overlapping terminology (gospel, salvation, cross, crucified, faith, savior, etc.) aimed at “the present evil age” (Gal 1:4) with its rulers and slogans of “peace and security” (1

that he was in favor of sunlight, fresh air, and orange juice” (p. 164); and finally, Paul’s gospel “subverts the imperial gospel of Caesar” (p. 168). Lopez, Apostle to the Conquered, 167, refers to “Paul’s representation of Judaism . . . as a counter-narrative to the Roman imperial project of world conquest.” And, Kahl, Galatians Re-Imagined, 252, says the Letter to the Galatians contains “an anti-Roman core message.”

In Matthean scholarship, Carter, Matthew and Empire, has argued that “Matthew’s worldview or theological claim [i.e. about the depiction of Jesus as ruler of a new heaven and earth] disputes the assertions of imperial ideology” (p. 52); that “Matthew’s Gospel is . . . a counternarrative, a work of resistance” (p. 53); that Matthew’s “claims about Jesus [collide] with claims about the Roman imperial system and the emperor [and] . . . challenge and subvert their legitimacy” (p. 59); and that Jesus is a king who ushers in “God’s empire,” which threaten Rome’s rule (p. 62). Sim, “Rome in Matthew’s Eschatology,” 94-95, suggests that for Matthew “the Roman Empire was . . . destined for condemnation and punishment” at the Parousia. Weaver, “Thus You Will Know Them,” 109, states that the “portrait of Roman imperial power” is “unmasked” by the “greater power” of the “‘kingdom of heaven’” in Matthew’s gospel. And Riches, “Matthew’s Missionary Strategy,” 142, concludes that the authority of Jesus in Matt 28:16-20 points to a “clearly discernable anti-Roman polemic.” For earlier explorations along these lines, see Dominique Cuss, Imperial Cult and Honorary Terms in the New Testament (Fribourg: University Press, 1974). Cuss has noted that “there are great similarities between the position of the pagan rulers of the Roman Empire and that of Christ in the Christian world; similarities which find expression in the divine titles, the ceremonial and the formulae of the official cult-worship” (p. 35). Cuss also argues that these overlapping “divine titles” were “deliberately chosen” by early Christian writers, placing Christ in the position of being a “real challenge” to Roman rulers (p. 35).

753 Horsley, “Introduction,” 4-5.
Thess 5:3);\textsuperscript{754} and 4. Paul’s alternative “assemblies [ἐκκλησίαι]” planted throughout the Roman east that signal the building of a competing socio-political reality.\textsuperscript{755}

With equal vigor, W. Carter has identified both implicit and explicit connections between Matthew and imperial ideology in order to demonstrate “that Matthew’s Gospel challenges Rome’s empire”.\textsuperscript{756}

I am arguing that Matthew’s Gospel assumes [the] experience of Roman imperial power on every page. Sometimes it refers explicitly to the imperial world, such as in scenes involving Rome’s allies (the Herods in chapters 2 and 14), or about paying taxes to Caesar (Matt 22:15-22), or in the crucifixion of Jesus (chapters 26 and 27). But often the imperial realities are not explicit. The Gospel expects that the audience will recognize these realities and understand the Gospel in relation to them.\textsuperscript{757}

Carter argues that: Matthew disputes the ideology of the empire;\textsuperscript{758} the kingship and kingdom of Jesus conflicts with that of Caesar;\textsuperscript{759} Jesus ushers in “God’s empire”;\textsuperscript{760} his resurrection ensures that the empire would not have the final word at the crucifixion;\textsuperscript{761} Jesus is the true divine agent not Caesar;\textsuperscript{762} Jesus challenges the retainers (e.g. Pharisees, priests, etc.) who represent the establishment propped up by Rome;\textsuperscript{763} Jesus and not Rome frees the world from the “sins” of “oppression, domination, and economic greed,”\textsuperscript{764} and he brings healing from the empire;\textsuperscript{765}

\textsuperscript{754} Horsley, “Introduction,” 6.
\textsuperscript{755} Horsley, “Introduction,” 8.
\textsuperscript{756} Carter, \textit{Matthew and Empire}, 53.
\textsuperscript{757} Carter, \textit{Matthew and Empire}, 35.
\textsuperscript{758} Carter, \textit{Matthew and Empire}, 52.
\textsuperscript{759} Carter, \textit{Matthew and Empire}, 62.
\textsuperscript{760} Carter, \textit{Matthew and Empire}, 63; also 70, 88, 107, etc.
\textsuperscript{761} Carter, \textit{Matthew and Empire}, 67.
\textsuperscript{762} Carter, \textit{Matthew and Empire}, 67.
\textsuperscript{763} Carter, \textit{Matthew and Empire}, 69.
\textsuperscript{764} Carter, \textit{Matthew and Empire}, 70.
\textsuperscript{765} Carter, \textit{Matthew and Empire}, 71.
genealogy demonstrates that God’s purposes flow through Israel and not Rome, and culminate in an eternal Davidic kingdom that blesses the earth;\(^{766}\) Jesus is divinely conceived as were both Augustus and Romulus;\(^{767}\) the “yoke” (Matt 11:29) Jesus offers is freedom from imperial domination;\(^{768}\) and various aspects of the Gospel hint at Rome’s ultimate demise.\(^{769}\)

That Matthew and Paul are aware of the empire, its discourses and ideology, seems beyond question;\(^{770}\) however, I am doubtful that such awareness necessarily means that Matthew and Paul opposed the empire. Both feminist and postcolonial theorists have problematized the simple binary—either affiliation or resistance\(^{771}\)—that sustains the scholarship that sees opposition to the empire throughout the writings of Matthew and Paul. E. Schüessler Fiorenza has forcefully argued, for example, that

studies of the Roman Empire have often sought to rehabilitate Christian writings, rather than proceeding in a self-critical fashion. Studies of the gospels, the Pauline literature, or other writings, which examine their attitude toward the Roman Empire, have tended to argue that these were critical of Roman imperial power and resisted its structures of domination because they were written by subordinate and marginalized people. However, such historical arguments overlook that even resistance literature will re-inscribe the structures of domination against which

\(^{766}\) Carter, *Matthew and Empire*, 77-78.

\(^{767}\) Carter, *Matthew and Empire*, 79.

\(^{768}\) See the discussion in Carter, *Matthew and Empire*, 112-129.

\(^{769}\) These include especially the reference to the eagles of Rome being gathered as corpses in Matt 24:28 (Carter, *Matthew and Empire*, 87), and Matthew’s citing from Isa 7-9, which depicts the fall Assyria (pp. 97, 101). Other notions, such as divine judgment (p. 87), Jesus’ ironic “triumph” riding on “a donkey” (p. 129), the resurrection (p. 129), the miraculous fish in Matt 17:27 under God’s providence (pp. 141-142), and the opposition between Pilate and Jesus (p. 158) also all signify that the Gospel presumes an imperial setting and that God’s empire will outlast Rome’s.

\(^{770}\) This is even acknowledged by Barclay, “Why the Roman Empire was Insignificant to Paul,” 375: “The question is not whether Paul noticed the power of Rome—he clearly did to the extent of feeling its physical impact on his body”; see also, Carter, *Matthew and Empire*, 37: “Matthew’s Gospel is affected by and addresses a world shaped by Roman imperial power”; cf. Rajak, “Was There a Roman Charter,” 118: “[The Judeans’] eyes were directed Romewards more than those of other groups.” This presumes, of course, that Matthew like Paul was a Judean.

it seeks to argue. A historical reading, which places the Roman Empire and early Christian writings alongside each other, ends up using the Roman Empire and its power as a foil, in order to underscore the non-imperial meaning of the lordship of Christ and the rulership of [God].

In criticizing attempts to “rehabilitate” early Christian writers, Schüessler Fiorenza implies that Matthean and Pauline scholars have too quickly and too uncritically assumed that any linguistic overlap between these two sets of writings and Roman political discourses means that the former are trying to subvert the latter. A similar critique has been made by scholars who have been influenced by postcolonial criticism, particularly the work of H. Bhabha. Thus, J. Marshall

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773 It is difficult not to think of precisely this when reading the following comment by Kahl, Galatians Re-Imagined, 207: “Love as the focal commandment and fulfillment of Torah ([Gal] 5:6, 16) is the decisive faith-work that manifests the inherent otherness of God’s law from Caesar’s law.” See also Lopez, Apostle to the Conquered, 168.

774 Note the about-face by Elliott, The Arrogance of the Nations, 15, after considering Schüessler Fiorenza’s argument: “In previous writings, I have described Paul’s as an ‘anti-imperial gospel’ and his theology as subversive of imperial values. . . . Though I intend to show that some aspects of Paul’s rhetoric in [the Letter to the] Romans were subversive of some of the claims of imperial propaganda, I recognize that Paul never provides a systematic or comprehensive critique of the emperor . . . or of the empire as such. The empire as such is never his direct target” (italics mine).

775 Rasiah S. Sugirtharajah, “Charting the Aftermath: A Review of Postcolonial Criticism,” in The Postcolonial Biblical Reader (ed. Rasiah S. Sugirtharajah; Oxford: Blackwell, 2006), 7-32, here, 9, refers to postcolonialism as a “style of inquiry” and “a collection of critical and conceptual attitudes,” which suggests that instead of “theory,” it should be referred to as a “criticism.” See also Kahl, Galatians Re-Imagined, 210-211: “The concrete ways for colonized people to negotiate and uphold an alternative social space without risking direct and deadly confrontations with the colonizers are far more complex and murky than our usual constructs, often neat and naïve as they are, allow us to see.”

776 Stephen D. Moore, Empire and Apocalypse: Postcolonialism and the New Testament (BMW 12; Sheffield: Sheffield Phoenix Press, 2006), 90, provides an excellent summary of Bhabha’s key insights: “For Bhabha, colonial discourse is characterized above all by ambivalence. It is riddled with contradictions and incoherences, traversed by anxieties and insecurities, and hallowed out by originary lack and internal heterogeneity. For Bhabha, moreover, the locus of imperial power, far from being unambiguously on the side of the colonizer, inheres instead in a shifting, unstable, potentially subversive, ‘in-between’ or ‘third’ space between colonizer and colonized, which is characterized by mimicry, on the one hand, in which the colonized heeds the colonizer’s peremptory injunction to imitation, but in a manner that constantly threatens to teeter over into mockery; and by hybridity, on the other hand, another insidious product of the colonial encounter that further threatens to fracture the colonizer’s identity and authority.” For my summary of Bhabha’s work, see my article, “Flavius Josephus and the Gentes Devictae in Roman Imperial Discourse: Hybridity, Mimicry, and Irony in the Agrippa II Speech (Judean War 2.345-402),” JSJ 42/4-5 (2011): 481-507, esp. 484-488; see also above ch. 2 fn. 295.
in his analysis of Rom 13:1-7 deals what seems to me to be a devastating blow to scholarship that has focused myopically on Matthew or Paul being anti-empire:

Paul has used the rhetoric of empire and of the divinely sanctioned rule of the powerful over the powerless in substantial conformity with its usual purpose. Paul’s positive embrace of an element of Roman political ideology is undeniable and is not lessened by explanations of why he would undertake such an embrace. Paul’s clear embrace of Roman political authority in Rom. 13.1-7 is what I might call provisionally a ‘content buy-in’; he has in this instance affirmed the discourse of Roman legitimacy and asked his audience to conform themselves to its hierarchy.\footnote{Marshall, “Hybridity and Romans 13,” 169-170.}

Marshall draws from Bhabha’s discussions of hybridity and ambivalence to help explain how it is that Paul in the context of empire can accept his own subject position, and also urge his audience to comply with imperial authorities. Paul’s language is not that of one who opposes the empire, but is instead the kind of calculation (a “‘content buy-in’”) that colonized subjects must frequently make,\footnote{It is worth noting that scholars who draw from postcolonial theory are not suggesting that the first century C.E. Roman world and the postcolonial early twentieth century world are identical. Rather, there are analogies between the two. See Philip F. Esler, “Rome in Apocalyptic and Rabbinic Literature,” in Riches and Sim, The Gospel of Matthew, 9-33, here, 10, who identifies three primary similarities: 1) “political control over subject peoples backed up by overwhelming military force”; 2) “the voracious extraction of economic resources”; 3) “an ideology legitimating these processes conveyed by discourses of various kinds.” Bhabha’s own description of colonial discourse also seems to apply analogously in both the modern and ancient contexts: “[Colonial discourse] is an apparatus that turns on the recognition and disavowal of racial/cultural/historical differences. Its predominant strategic function is the creation of a space for ‘subject peoples’ through the production of knowledges in terms of which surveilances is exercised and a complex form of pleasure/unpleasure is incited. It seeks authorization for its strategies by the production of knowledges of colonizer and colonized which are stereotypical but antithetically evaluated. The objective of colonial discourse is to construe the colonized as a population of degenerate types on the basis of racial origin, in order to justify conquest and to establish systems of administration and instruction. . . . I am referring to a form of governmental that in marking out a ‘subject nation’, appropriates, directs and dominates its various spheres of activity. Therefore, despite the ‘play’ in the colonial system which is crucial to its exercise of power, colonial discourse produces the colonized as a social reality which is at once an ‘other’ and yet entirely knowable and visible”; Location of Culture, 101. See also Moore, Empire and Apocalypse, 9: “Postcolonial studies does pose a formidable ‘translation’ problem for students of ancient literature—much the same sort of problem that contemporary literary theory, forged as it is primarily from analysis of modern and postmodern literatures, poses for the biblical critic—but ought not to be discounted on that account, as the many successes of biblical literary criticism testify.” For a discussion of some of these benefits, see John W. Marshall, “Postcolonialism and the Practice of History,” in Her Master’s Tools?: Feminist and Postcolonial Engagements of Historical-Critical Discourse (ed. Caroline Vander Stichele and Todd Penner; SBLGPS 9; Atlanta: Society of Biblical Literature, 2005), 93-108; and Sugirtharajah, “Charting the Aftermath,” esp. 27.} and which other of his fellow Judeans had likewise made.\footnote{So, for}
example, Philo (when contrasting the reigns of Caligula and Augustus, texts A and B below) and Josephus (speaking through Agrippa II, text C, and then before the walls of Jerusalem speaking on behalf of Titus, text D) appropriate and deploy Roman political discourse about the empire’s universal hegemony:

A) *Legat.* 10: [The empire that Caligula inherited had] a dominion not confined to the really vital parts which make up most of the inhabited world [*οἰκουμένης*], and indeed may properly bear that name, the world, that is, which is bounded by the two rivers, the Euphrates and the Rhine, the one dissevering us from the Germans and all the more brutish nations, the Euphrates from the Parthians and from the Sarmatians and Scythians, races which are no less savage than the Germans, but a dominion extending, as I said above, from the rising to the setting sun both within the ocean and beyond it. (Colson, LCL)

B) *Legat.* 147: This is [Augustus] who reclaimed every state to liberty, who led disorder into order and brought gentle manners and harmony to all unsociable and brutish nations [*ἔθνη*] which before his time were unsociable, hostile, and brutal. (Colson, LCL)

C) *B.J.* 2.350-388 (selections): The powers that be should be conciliated by flattery, not irritated [cf. Rom 13:1-7]; . . . [A list of subdued nations is provided] Myriads of nations [*ἔθνη*], swelling with greater pride in the assertion of their liberty, have yielded. . . . What allies then do you expect for this war? Will you recruit them from the uninhabited wilds? For in the habitable world [*τῆς οἰκουμένης*] all are Romans. (Thackeray, LCL)

D) *B.J.* 5.362-367: Josephus, accordingly, went round the wall [of Jerusalem], and, endeavouring to keep out of range of missiles and yet within ear-shot, repeatedly implored them to spare themselves and the people, to spare their country and their temple, and not to display towards them greater indifference than was shown by aliens [*τῶν ἀλλοφύλων*]. . . . [T]hey knew that the might of the Romans was irresistible [*ἀνυπόστατον*] . . . . For what was there that had escaped the Romans, save maybe some spot useless through heat or cold? Fortune, indeed, had from all quarters passed over to them, and God who went the round of the nations [*ἔθνος*], bringing to each in turn the rod of empire, now rested over Italy. (Thackeray, LCL)

779 Cf. James M. Scott, *Paul and the Nations: The Old Testament and Jewish Background of Paul’s Mission to the Nations with Special Reference to the Destination of the Galatians* (WUNT 1/84; Tübingen: J. C. B. Mohr [Paul Siebeck], 1995), 132: “Jewish writings of the Greco-Roman period presuppose that, in the succession of empires, God has now given Rome sovereignty over the nations of the world; therefore, resistance to its authority is futile. In the interim, Paul the Apostle is able to use both his Roman citizenship and the Pax Romana—the result of Rome’s universal sovereignty—to the advantage of his mission to the nations.” See also Josephus, *B.J.* 2.140, where the Essene community oath for initiates states that God “will forever keep faith with all men, especially with the powers that be, since no ruler attains his office except by the will of God”; cited in Scott, *Paul and the Nations*, 132 fn. 500.
Language such as this, which lauds Roman power and acknowledges that all the *ethne* have submitted to Rome’s yoke, can be found dispersed throughout the material and textual remains of the early empire, especially in the Roman east, as has been documented by scholars of Roman and art history.\(^780\) Geography and the organization of imperial space were integral aspects of this political propaganda.\(^781\) While there is a long history in antiquity of conceptualizing and mapping the known world,\(^782\) C. Ando, J. Richardson, and C. Nicolet have each identified a shift in imperial discourse in the late Augustan age from an emphasis on the connection between Roman rule and political power to an emphasis Roman rule and geographic space; and for Ando and Nicolet in particular, this shift is detectable in the designation of this space by words *orbis*, *orbis Romanus*, and especially *orbis terrarum* (oikoumene).\(^783\) The four texts cited above seem


\(^781\) Ando, *Imperial Ideology and Provincial Loyalty*, 149-152, 320-335; Nicolet, *Space, Geography, and Politics*, 2: “In order to set boundaries to their empire and to claim to have reached those that were marked out, the Romans needed a certain perception of geographical space, of its dimensions and of the area they occupied”; “[In the Augustan] period geography begins to influence history” (p. 9). Richardson, *The Language of Empire*, 145, concludes: “The idea of the Roman Empire as a territorial entity is an Augustan product.”

\(^782\) See Nicolet, *Space, Geography, and Politics*, ch. 3.

\(^783\) Ando, *Imperial Ideology and Provincial Loyalty*, 327-328. Ando sees in poets such as Ovid use of the term *orbis* in the sense of a “region” when he notes that “the phrase *orbis Romanus* did more than substitute for *imperium Romanum*. The latter indicated the sphere of Roman political power. *Orbis Romanus* did, too, by labeling that sphere the world. From the middle of the first century prose authors began to adopt this usage. They often spoke not of ‘the Roman world,’ but of ‘our world.’” For Richardson, *The Language of Empire*, 118, the *Res Gestae* is the primary witness to this shift in discourse. About the *Res Gestae*, Nicolet, *Space, Geography, and Politics*, argues: “The *Res Gestae*
to presume this shift in emphasis, and Matthew and Paul seem to do so as well (see further below). Nevertheless, Roman writers recognized that there were in fact people groups beyond Rome’s boundaries—beyond the oikoumene—but these were either “not advanced enough to know good government when it was imposed on them” and thus not “worth conquering,” or they were already deferential to Roman power, as was said to be the case with the Parthians beyond the Euphrates, according to propagandists of the empire, and according to both Philo and Josephus (see esp. texts A and C above).

Given this discursive setting, what makes the comments of Philo and Josephus quoted above so provocative for my purposes is that both writers are Judeans who positively appropriate Roman propaganda and who appear to reflect the broader trajectory in imperial discourse of focusing more on the geographic extent than on the political influence of the empire in the late

asserts from the very first line that there was Roman control of the inhabited world (orbis terrarum)” (p. 23); “The Res Gestae affirms and proves the direct or indirect completion of the conquest of the orbis terrarum in geographical terms” (p. 29). Nicolet suggests that the map of Marcus Vipsanius Agrippa posted some two hundred meters from the Res Gestae posted on bronze tablets at Augustus’ mausoleum was a “learned illustration” of Augustus’ deeds (pp. 113-114); cf. Virgil, Aen. 1.278. With respect to this map, Nicolet writes, “once the empire had (theoretically) been expanded to the limits of the orbis terrarum, a general geographical map could best illustrate this accomplishment” (p. 111). See also Edwell, “Definitions of Roman Imperialism,” 42-43: “Romans came to conceive of their power more in territorial terms” with Augustus. For classic studies of imperial discourse and the habitable world, see esp. Joseph Vogt, Orbis Romanus: zur Terminologie des römischen Imperialismus (PG 22; Tübingen: J. C. B. Mohr [Paul Siebeck], 1929), 8-9; repr. Orbis: Ausgewählte Schriften zur Geschichte des Altertums (Freiburg: Herder, 1960).

784 See the discussion in Ando, Imperial Ideology and Provincial Loyalty, 324-329, here, 326. Ando mentions the comments of Florus, 2.29, who despised the Sarmatians, even though they were conquered by Lentulus in 12 B.C.E., for “having nothing except snow, frost, and trees. They’re barbarism is such that they don’t even understand peace”; cf. Seneca, Dial. 1.4.14, cited in Ando, Imperial Ideology and Provincial Loyalty, 325: “Writing under Claudius, Seneca asked his audience to ‘consider all the races to whom Roman peace does not extend—the Germans, for example, and whatever nomadic races harass us along the Danube. Eternal winter and a gloomy sky smother them; they wander marshes hardened by ice; and they capture wild animals for food.”
Augustan period and beyond. As with Paul in Rom 13:1-7, there is no hint here from either writer of a counter or anti-imperial posture. Further, both Philo and Josephus positively speak about the Romans in a way similar to Marshall’s “content buy-in” noted above: Philo is trying to underscore that Caligula is an anomaly among emperors (texts A and B); Josephus is embodying a hybrid position as both a member of a (soon-to-be) conquered nation, and yet serving the Roman general Titus (esp. text D). In this sense, both writers appropriate imperial discourse in a manner that is useful for their immediate purposes. Finally, both Philo and Josephus speak of the ethne: Philo sees the ethne as having been tamed and ordered by the empire (esp. text B); Josephus sees the Romans as elected among the ethne to receive divine favor (text D), and, speaking through Agrippa II (in text C), lists the conquered and pacified ethne of the oikoumene in a bid to show that every effort was made by the Judean aristocracy to staunch the Jerusalem rabble’s desire for war with Rome. The presumption of both writers is that the Romans are in control of the ethne—a position made possible by the spread of empire. Put bluntly, there is no “‘Rome-free’ zone.”

Roman imperial power at the macro level is exerted over the ethne, such that, as I demonstrated in ch. 4, Judeans needed to rely on Roman

785 Ando, *Imperial Ideology and Provincial Loyalty*, 328-329, cites Philo, *Legat.* 10 (text A above) as an example of this discursive trajectory in the early first century C.E..

786 Though it should be noted that both Philo and Josephus can be at times tantalizingly suggestive in what appear to be veiled critiques of the empire. In his speech recorded in *B.J.* 5, Josephus says that “God” has circled the nations and decided to favor Rome. This is the Judean deity—the deity that once resided in Jerusalem. On the one hand, this image of the Judean deity now favoring Rome is consistent with the *evocation deorum* tradition; on which see John S. Kloppenborg, “Evocatio Deorum and the Date of Mark,” *JBL* 124/3 (2005): 419-450. On the other hand, there is in this statement what Bhabha refers to as “hybridization” (in *Location of Culture*, 159), in that Josephus’ pro-imperial discourse shows signs of also being pro-Judean. In other words, there is a trace remaining of Josephus’ Judean identity even in the midst of this pro-Roman discourse. See also, Tessa Rajak, “Friends, Romans, Subjects: Agrippa II’s Speech in Josephus’ Jewish War,” in *Images of Empire* (ed. Loveday Alexander; JSOTSup 122; Sheffield: JSOT Press, 1991), 122-134, esp. 132. Along these lines, Philo, *Somn.* 2.92, suggests that silence is the best course of action until the opportune time for revolt presents itself. See further Katell Berthelot, “Philo’s Perception of the Roman Empire,” *JSJ* 42/2 (2011): 166-187, esp. 176-177.

administrators as enforcers of Roman legal precedent for protection of their laws and customs while living among the *ethne*. The reality being that the regions where Judeans lived—whether Asia Minor, Alexandria, Syria, Rome, etc.—were administered and controlled by Roman power, even if, as I argued in ch. 4, the actual enforcement of Roman law was more complicated than a simple imposition of Roman will.

5.2b

For Matthew and Paul, as I noted above, it is not entirely clear that the Roman authorization of Judean laws and customs was a concern. What is clear, however, is that both writers articulate an interest in missionizing the *ethne* in the Roman world (*oikoumene*); and in so doing, Matthew and Paul are, like Philo and Josephus, reflecting the same trajectory in imperial discourse that characterized the late Augustan period—foregrounding the significance of imperial space and geography as the region within which the conquered and subdued *ethne* reside—a point that I will develop below. To state this more directly, Roman imperial power, materialized in the expansion and conquest of the *oikoumenelorbis terrarum*, enabled a mission to the *ethne*. Therefore, by articulating their respective missions both Matthew and Paul did not undermine imperial discourse,788 but appropriated and reinscribed it, albeit in a different context than military expansionism. The first part of my argument in this chapter, then, is that the exercise of Roman imperial (geographic) power—thinking again in Foucauldian terms—provides the macro setting for the formation of the object “law” in Matthew and Paul.

5.2c

788 It might be appropriate to argue that Matthew and Paul “hybridized” this imperial discourse—thinking here with Bhabha’s description of the “English Book” in *Location of Culture*, 145-174—but this is not the same as arguing they were “anti-empire.”
For both writers, the mission to the *ethne* is prospective and climactic. The so-called “Great Commission” (Matt 28:16-20) can be seen as the climax of Matthew’s gospel, something toward which the various references to *ethne/ethnos* in the Gospel have been pointing, and also the end point of a trajectory away from a mission confined solely to Israel. Indeed, Matthew places the lament over Jerusalem (23:37-39) at the pivotal point between the vitriolic rant of Jesus against the Pharisees (23:1-36), and his departure from the temple in the very next pericope (24:1), which is redolent of YHWH’s glory leaving the temple as a sign of judgment in the prophecy of Ezekiel. The mission to the *ethne* is then a kind of

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790 Senior, “Between Two Worlds,” 14-16, lists eighteen textual sites where gentiles/ethne are either explicitly or implicitly discussed by Matthew. These include: 1:1 (implication that the title “son of Abraham” foreshadows the inclusion of gentiles); 1:2-16 (gentile women Tamar, Rahab, Ruth and Bathsheba are named in the genealogy); 2:1-12 (Magi); 4:12-16 (reference to “Galilee of the gentiles”); 4:23-25 (reference to people from “Syria” and “Decapolis” as part of the crowds following Jesus); 8:5-13 (the Centurion’s faith is praised by Jesus, who promises that many from the “east and west” will dine with the patriarchs in the kingdom of heaven); 11:20-24 (contrast between Galilee and the gentile towns of Tyre, Sidon, and Sodom); 12:18-21 (Jesus is the servant from Isa 42:1-4, who has a mission to the gentiles); 12:38-42 (Nineveh and the queen of the South will condemn “this generation”); 15:21-28 (faith of the Canaanite woman); 20:1-16 (possible reference to gentiles as among those who were hired last); 21:43 (kingdom of God will be given to those who “produce [its] fruits”); 22:1-14 (extended invitation beyond those initially invited to the wedding feast); 24:14 (gospel will be proclaimed throughout the habitable world); 25:31-46 (parable of the sheep and goats); 27:19 (positive portrayal of Pilate’s wife); 27:54 (Centurion and those with him confess that Jesus was the son of God); 28:16-20 (Great Commission); cf. Garbe, *Der Hirte Israels*, 122.


792 So Ulrich Luz, *Matthew 21-28* (trans. James E. Crouch; Hermeneia; Minneapolis: Fortress, 2005), 162. In Ezekiel 9-11, YHWH leaves the temple (10:18-19; see esp. v. 18a: “וָאֵלֶּן חַד הַיָּהָה עַל פְּנֵי יְהוָה” and Jerusalem, and pauses at the Mount of Olives (11:23). Luz cites similar examples in Josephus (see B.J. 6.299-300) and Tacitus (*Hist.* 5.13); see p. 162 fn. 48. See also Davies and Allison, *St. Matthew*, **
default, but is treated as prospective in the narrative, since it is the next phase for the disciples in the post-resurrection period. For Paul, the mission to the ethne is central to how he constructs his apostolic identity, seeing himself as having been sent by God to proclaim the risen Jesus to the ethne. But the mission is also treated as one of the two reasons for Christ’s coming, the other being to fulfill the promises to the patriarchs. From Paul’s vantage point when writing the Letter to the Romans, this mission is divided into three parts, only the first circuit of which has been completed: “from Jerusalem and as far around [καὶ κύκλῳ μέχρι] as Illyricum” (Rom 15:19). The arrival in Rome and the subsequent mission to Spain are still future prospects for him (see Rom 15:24, 28)—a point that I will return to below.

For Matthew and Paul, the risen Jesus is integral to this mission, since he is the one who commissions in Matthew, and the one who is proclaimed by Paul; however, the agents who deliver the gospel, the means by which these agents are to complete the mission, and the content of their respective gospels are different for both writers. In Matthew, it is the eleven disciples (minus Judas) who are sent to the ethne, while Paul sees himself as the flag-bearer of this mission.

For Paul, the mission to the ethne has its own gospel, which differs from the gospel

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3:323. Jesus as the presence of God is an important theme in Matthew (esp. Matt 1:23 and 28:20; cf. 18:20).

793 Gal 1:15-16: “But when God, who had set me apart before I was born and called me through his grace, was pleased to reveal his Son to [or in] me [ἀποκαλύψαι τὸν υἱὸν αὐτοῦ ἐν ἐμοί], so that I might proclaim him among the Gentiles [ἵνα εὐαγγελίζωμαι] . . .” (NRSV); cf. Gal 1:12.

794 See Rom 15:8-9a: “For I tell you that Christ has become a servant of the circumcised on behalf of the truth of God in order that he might confirm the promises given to the patriarchs, and in order that the Gentiles might glorify God for his mercy” (NRSV).


to the circumcised, for which Peter is responsible. Additionally, Paul sees preaching as the means by which the mission will be completed, while for Matthew, the role of preaching is downplayed in favor of making disciples (μαθητεύσατε), baptizing (βαπτίζοντες), and teaching (διδάσκοντες). Paul never mentions making disciples, and rarely mentions his roles in baptizing and teaching, and he explicitly says he was not sent by Christ to baptize but to preach. Lastly, the content of the two writers’ gospels is different. Paul preaches Christ crucified, and boasts only in the cross. The Matthean Jesus commissions the disciples not to preach about the cross, but rather “to teach [the ethne] to obey everything I have commanded you” (Matt 28:20), part of which presumably includes “taking up” (λαμβάνω in 10:38, and αἴρω and 16:24) one’s own cross, but not boasting in the cross as Paul does. And there is no indication that Matthew sees two separate gospels—one for the circumcised, another for the uncircumcised—as Paul describes in Galatians. For Matthew, all the ethne are to hear the same message from the disciples; however, as I mentioned in ch. 3, there is not enough evidence to

797 See Gal 2:7.
798 Matt 28:19-20. The direct objects are πάντα τὰ ἔθνη (v. 19), and then the pronoun αὐτους (twice in vv. 19b and 20a). Matthew uses the verb κηρύσσω of John (4:17), Jesus (4:23; 9:35; 11:1), the disciples in their mission to Israel (10:7), and only twice in reference to the gospel being proclaimed among the ethne (24:14; 26:13=Mark 14:9). Paul uses the verb κηρύσσω of himself either in the singular or when referring to the gospel he preaches alongside others (Rom 10:8; 1 Cor 1:23; 9:27; 15:11, 12; 2 Cor 1:19; 4:5; 11:4; Gal 2:2; 5:11; 1 Thess 2:9), and when discussing the need for preachers (Rom 10:14, 15) or when acknowledging that some preach Christ from false motives (Phil 1:15). Both Matthew and Paul use the verb εὐαγγελίζω. Matthew’s Jesus uses it when defending his ministry to John’s disciples (11:5=Q 7:22); Paul uses it almost exclusively to refer to his ministry (Rom 1:15; 15:20; 1 Cor 1:17; 9:16, 18; 15:1, 2; 2 Cor 10:16; 11:7; Gal 1:11, 16, 23; 4:13), but also of other preachers (Rom 10:15), including those who are his competitors (Gal 1:8-9).
799 Paul says he baptized Crispus and Gaius (1 Cor 1:14), and the household of Stephanus (1 Cor 1:16), but that this was not his primary role. And he alludes to his teaching role once (1 Cor 4:17: “For this reason I sent you Timothy, who is my beloved and faithful child in the Lord, to remind you of my ways in Christ Jesus, as I teach [διδάσκω] them everywhere in every church” NRSV).
800 1 Cor 1:17: “For Christ did not send me to baptize but to proclaim the gospel [εὐαγγελίζεσθαι]” (NRSV).
801 I.e. esp. in 1 Cor 1:23.
conclusively determine whether this message included circumcision, since unlike Paul Matthew
never discusses the issue.\(^{803}\)

In spite of these differences, both writers share the common presumption that the *ethne*
are in fact available to be missionized\(^{804}\)—something made possible by Roman conquest and

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\(^{803}\) Sim, “Matthew, Paul and the Gentile Mission,” argues that Matt 28:16-20 was “specifically designed
by the evangelist [i.e. Matthew] to counter the person, the theology and the mission of Paul” (p. 390). Sim
points to five main pieces of evidence: 1) “Paul claims that there were two independent missions,
one to the Jews and one to the Gentiles. Matthew categorically denies this point”; 2) “Paul asserts that the
two missions preached different gospels, a Law-free gospel for the Gentiles and a Law-observant gospel
for the Jews. Again, Matthew challenges this view [because for him there is only one gospel]”; 3) “Paul
argued that these missions were to be led by different people [i.e. Paul and Peter] . . . [but for] Matthew
the responsibility for the leadership of the universal mission falls to the disciples as a whole”; 4) “Paul
maintained that both he and Peter were called to these leadership roles and given their respective gospels
by the risen Christ. Certainly Matthew would agree that Peter was called . . . but the Matthean narrative
leaves no room for the later call and commissioning of Paul”; 5) “Paul is adamant that Peter and the
others in the Jerusalem church acknowledged the independence of the two missions . . . [but for Matthew]
there was a single mission with a single gospel” (pp. 388-389). Sim’s suggestion is compelling, and is
part of the broader case he has been building that Matthew responded to Paul (see above ch. 3 fn. 306 and
the literature cited there); however, the evidence he musters is ultimately all circumstantial; see the recent
critique of Sim offered by Benjamin L. White, “The Eschatological Conversion of ‘All the Nations’ in

\(^{804}\) Whether the *ethne* of Matt 28:19 include ethnic Judeans or not, and whether the mission to the *ethne*
is primarily a mission to Judeans, have been matters of considerable debate. Konradt, *Israel, Kirche und die
Völker*, 1, has named the question of the relationship between the restricted mission in Matt 10:6 and
15:24, and the expanded mission in 28:18b-20 as “ein zentrales Interpretationsproblem . . . Wie sind
Israelkonzentration einerseits und Universalismus anderseits in der theologischen Konzeption des ertsen
Evangelisten miteinander vermittelt?” Konradt concludes: “Die Bedeutung der missionarischen
Dimension in der matthäischen Ekklesiologie ist kaum zu überschätzen. Kirche und Israel erscheinen in
dieser Hinsicht nicht als miteinander konkurrierende Größen, sondern die Kirche ist in ihrem
missionarischen Auftrag positiv auf Israel bezogen” (p. 402); cf. also Luz, *Matthew 21-28*, 628. A
gentile-only mission has been supported by Douglas R. A. Hare and Daniel J. Harrington, “‘Make
Disciples of All the Gentiles’ (Matthew 28:19),” *CBQ* 37/3 (1975): 359-369, and responded to by John P.
Meier, “Nations or Gentiles in Matthew 28:19?” *CBQ* 39/1 (1977): 94-102. Meier insists that the *ethne*
include both ethnic groups. There have been other derivative proposals; see discussion in Lee Kukzin and
1-5. Kukzin and Viljoen point to the debate over whether Matthew’s group is *intra- or extra-muros* with
respect to the synagogue as the main reason why the identity of the *ethne* has been so important in
Matthean studies (p. 1). In this project (esp. ch. 3), I have raised questions about the usefulness of this
19-48, and also *The Gospel of Matthew*, 215-256, esp. 236-238, has suggested that the mission to the *ethne*
in Matt 28:19 is directed primarily at Israel and is not really a gentile mission at all except just prior to the
eschaton. This position has been vigorously challenged by Senior, “Between Two Worlds,” 8-13, and
also by Foster, *Community, Law, and Mission*, 217, 242-257. A related and also complicated issue is
determining the views in early Judaism of proselytizing gentiles; see the discussion in Paul W. Barnett,
pacification,

which is a point that is routinely overlooked by scholars—and further, that the ethne are disseminated throughout the oikoumene/orbis terrarum. In his only use of the word oikoumene, Matthew envisions the gospel spreading among the ethne of the oikoumene. Adding to Mark 13:10, Matthew writes that “this good news of the kingdom will be proclaimed throughout the world [τῇ οἰκουμένῃ], as a testimony to all the nations [πᾶσιν τοῖς ἔθνεσιν]; and then the end will come” (24:14 NRSV).

Commentators routinely explain this Matthean redaction as part of Matthew’s focus on the universal implications of the gospel, looking ahead to the Great Commission, but the connection with imperial discourse is rarely acknowledged even among scholars who investigate Matthew’s relationship to the empire. In this verse,


An effect of which was the development of the road system; see Ando, Imperial Ideology and Provincial Loyalty, 151-152.

It is possible that “εἰς μαρτύριον” could mean “‘for an evidence against’ [instead of] ‘for a witness to’”; see Davies and Allison, St. Matthew, 3:344. Davies and Allison suggest that Matthew’s insertion of “τῇ οἰκουμένῃ” is one reason that v. 14 is “overloaded” with “unnecessary” Matthean additions; 3:343.


In Carter’s commentary on Matt 24:14 (Matthew and the Margins, 473), he mentions other elements in this verse that have connections with Roman political discourse, such as, the “good news of the reign/empire” in competition with the “gospel” of imperial propaganda; but he only hints that there may be a connection between oikoumene and the Roman world. A different view can be found in O. Michel, “ἡ οἰκουμένη,” TDNT 5:157-159; cf. the observation by Pierre Bonnard, L’evangile selon Saint Matthieu
Matthew’s use of *oikoumene* is distinct from that of Luke, the only other synoptic writer to use this language, in that the latter never describes the gospel as being spread throughout the *oikoumene*. For Luke, the *oikoumene* is the inhabited (i.e. Roman) world that will be judged by God; it has been turned upside down by Paul’s ministry; and it is of course the broader region within which the gospel is proclaimed, but it is never explicitly connected with the notion of a mission to the *ethne* as it is in Matthew. Put differently, Matthew does not filter out the overtly “imperialist” vision that is attached to this language in 24:14; he instead doubles-

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810 The *oikoumene* is the site for the census of Augustus (Luke 2:1); the devil shows “all the kingdoms of the world [*πᾶσας τὰς βασιλείς τῆς οἰκουμένης*]” to Jesus (Luke 4:5); the world will endure a famine according to the prophet Agabus (Acts 11:28); the whole world comes to worship Artemis (Acts 19:27). On Luke’s definition of *oikoumene*, see François Bovon, *A Commentary on the Gospel of Luke 1:1-9:50* (trans. Christine M. Thomas; Hermeneia; Minneapolis: Fortress, 2002), 83. The *oikoumene* will be judged at the Parousia (Luke 21:26); and Paul in Athens declares that the date for the judgment of the world by God is fixed (Acts 17:31: “ἐστήσεν ἡμέραν ἐν ᾧ μέλλει κρίνειν τὴν οἰκουμένην”); cf. the tradition that sees the “catholic church” as dispersed throughout the *oikoumene* in *Martyrdom of Polycarp* 5.1; 8.1; and 19.2.

811 This is on the lips of Paul’s accusers; see Acts 17:6 and 24:5.


down on it in the missionizing program of the Great Commission (28:16-20). The final section of the Great Commission (vv. 18-20), according to Dube, fits the definition of imperialism in that it authorizes a “structural imposition of a few standards on a universal scale.” She argues that by propounding a universal imperative of going forth unto all nations and teaching all nations, Matthew sets forth an agenda of disavowing borders not at all unlike that of imperial Rome. Like the Greek and Roman empires, therefore, which promoted their own cultural and religious practices among the subjugated, Matthew also espouses a Jesus who, in the way of other kings and emperors, sends forth his servants to establish an empire and to teach the subjugated to obey everything he has commanded (Matt 28:18-20).

In the discursive context of the early empire with its increasing interest in demarcating the geographic space of the *ethne*, Matthew’s language is not necessarily subversive or oppositional; instead, it reinscribes this broader discourse of imperial power.

Unlike Matthew, Paul maps his missionary strategy with specific place-names, but in so doing he, like Matthew, reinscribes a Roman, and more specifically, a late Augustan, vision of the importance of geography. Paul informs the Roman Christ groups that his missionary plans involve four primary stages (Rom 15:19, 23-24):

1) “from Jerusalem [ἀπὸ Ἰερουσαλήμ]”

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815 Dube, “‘Go Therefore and Make Disciples’,” 233. Dube continues that “this imposition rests on a view of ‘the other’ as a blank slate to be filled.”

816 Dube, “‘Go Therefore and Make Disciples’,” 230. Curiously, Davies and Allison, *St. Matthew*, 3:680, identify what they refer to as “the closest parallel to [Matt] 28.16-20” outside of “the commissioning narratives associated with Moses and Joshua.” It is found in Livy, *Hist.* 1.16.7, and includes the commands to go and teach as told by Proculus Julius: “Go,’ [the deified Romulus] said, ‘and declare to the Romans the will of Heaven that my Rome shall be the capital of the world; so let them cherish the art of war, and let them know and teach their children that no human strength can resist Roman arms;’” Foster, LCL; cf. Virgil, *Aen.* 1.275-290.

817 Cf. Carter, *Matthew and Empire*, 90, who concludes that “the Gospel [of Matthew] cannot imagine a world without imperial power.” See also my quotation of Dube at the beginning of this chapter.
2) “and as far around as Illyricum [καὶ κόκλω ἐνέχρι τοῦ Ἰλλυρίκου]”
3) “But now, with no further place for me in these regions, I desire, as I have for many years, to come to you [γνω ὅ δὲ μηκέτι τόπον ἐχων ἐν τοῖς κλίμασι τούτοις, ἐπισποθιαν δὲ ἐχον τοῦ ἔλθεν πρὸς ὑμᾶς ἀπὸ πολλῶν ἐτῶν]
4) “when I go to Spain [ὡς ἦν πορεύωμαι εἰς τὴν Σπανίαν]”

J. M. Scott has argued that Paul is reflecting a Jerusalem-centered perspective here by using the phrase καὶ κόκλω. 818 He points to various uses of the phrase in the Septuagint as evidence, the most significant of which is LXX Ezek 5:5 where the words “Jerusalem [ἡ Ἱεροσαλήμ],” “in a circle [κύκλῳ],” and “nations [τῶν ἐθνῶν]” all appear. 819 Since conceiving of Jerusalem as at the center of the world is a key aspect of the tradition that draws from the Table-of-Nations in Genesis 10, Scott argues that Paul’s geographic thought-world is structured by this tradition. 820 Other scholars have drawn similar conclusions. 821 A different interpretation that stresses the

818 Scott, Paul and the Nations, 138-139.
819 Scott, Paul and the Nations, 138. Scott quotes the text: “Thus says the Lord, “This is Jerusalem: I have set her in the midst of the nations and the countries in a circle around her [τάδε λέγει Κύριος, αὕτη ἡ Ἱεροθσαλήμ, ἐν μέσῳ τῶν ἐθνῶν τέθεικα αὐτὴν, καὶ τὰς κύκλῳ αὐτῆς χώρας].”
820 Scott, Paul and the Nations, 141. One implication of this, according to Scott, is that Paul’s missionary plans in Rom 15 can be seen as corresponding with the territory traditionally ascribed to Noah’s son Japheth. Scott writes that “when Paul claims to have fulfilled the gospel of Christ from Jerusalem ‘to Illyricum,’ readers who share the Apostle’s presupposed world map based on the Table of Nations realize that Paul conceives of his missionary activity as focused on the sphere of the Japhethites. . . . Furthermore, as the subsequent context of Romans 15 reveals, Paul evidently plans to complete the evangelization of the territory of Japheth” (pp. 141-142). For Scott, such a conceptualization helps to explain Paul’s curious use of the language of measured territory in 2 Cor 10:13-16—territory that Paul sees as distinctly his—and also corresponds with similar conceptions in Josephus (A.J. 1.22) and Jubilees (8.23, 26; 9.12) of Spain (renamed “Gadir/Gadeira”) as at “the westernmost portion of the territory of Japheth”; cf. the discussion of regional missions in Gottfried Schille, Die urchristliche Kollegialmission (ATHANT 48; Zürich: Zwingli, 1967), 70-74.
821 E.g. Rainer Riesner, Paul’s Early Period: Chronology, Mission Strategy, Theology (Grand Rapids: Eerdmans, 1998), 245-253; and Roger D. Aus, “Paul’s Travel Plans to Spain and ‘the Full Number of the Gentiles’ of Rom. XI 25,” NovT 21/3 (1979): 232-262, esp. 237-242; cf. Martin Hengel and Anna Maria Schwemer, Paul between Damascus and Antioch: The Unknown Years (trans. John Bowden; Louisville, Ky.: Westminster John Knox, 1997), 174-176. The place-names of LXX Isa 66:19 are thought to be important for Paul’s understanding of his mission for these scholars. A key obstacle for this view, however, as Aus one of its proponents recognizes, is that Paul not only never cites this passage, he never even alludes to it; see Aus, “Paul’s Travel Plans,” 261-262.
Roman toponymy of the Pauline mission has been suggested by several other scholars. One important piece of evidence for these scholars is Paul’s use of Roman place-names when describing the regions he has missionized. Thus, Magda observes that

Paul’s main geographical points of reference in his letters coincide with a Roman toponymy. He even calls Judah by its Roman name Judea (1 Thessalonians 2:14). The most frequent geographical designation in Paul’s letters is that of Roman provinces. For instance, in 1 Corinthians 16:1 Paul urges the Corinthians to do as the Galatian churches regarding the offering for the saints. In 1 Corinthians 16:5 Paul reveals his travel plans to the Corinthians by referring to Macedonia—another Roman province. In 1 Corinthians 16:19 he mentions that the churches from the province of Asia send greetings. . . . Paul sends his greetings in 2 Corinthians 1:1 to ἀγίοις πάσιν ἐν ὅλῃ τῇ Ἀχαίᾳ. We are aware that Paul had to endure hardship in several places on his missionary journey, yet he summarizes them in 2 Corinthians 1:8 and refers to them as happening in Asia.

Along these lines, in Rom 15:19-28 Paul uses the names of Roman provinces when recounting his past travels and future plans: Illyricum (v. 19), Macedonia (v. 26), Achaia (v. 26), and Spain (vv. 24, 28). This has led to the suggestion by some that when Paul refers to missionizing the ethne, he means “Roman provinces.” R. Jewett has pointed to the geographical significance of

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823 Magda, Paul’s Territoriality and Mission Strategy, 89.

824 Cf. also Paul’s claims to have visited “τὰ κλίματα τῆς Συρίας καὶ τῆς Κυπρίας” in Gal 1:21. While it is unclear what Paul was doing in “Arabia” (Gal 1:17), his reference to this region may have Roman connotations as well, since the region was under the influence of the empire in Paul’s day even though its formal annexation would not occur until the time of Trajan; see Magda, Paul’s Territoriality and Mission Strategy, 83.

825 So, Knox, “Romans 15:14-33,” 3: “Paul speaks so consistently in provincial terms, one may wonder if by ‘nations’ he would not have meant simply the Roman provinces in that area. He was appointed to preach Christ to the nations; and his work was by no means finished. Hence he is looking now with eager interest and deliberate purpose to Rome and Spain and presumably to the Gaul (or what Strabo calls the ‘Celtica’) which lay between”; cf. W. Paul Bowers, Studies in Paul’s Understanding of his Mission (PhD dissertation; Cambridge University, 1976), 71: “These [regions] may have been discriminated in Paul’s thought in terms of the units of the Empire, so that the provinces or regions stood each for a ‘nation’ and collectively for ‘the Gentiles’ to which he was called”; cited in Scott, Paul and the Nations, 144 fn. 43. See also Charles K. Barrett, A Commentary on the Epistle to the Romans (BNTC; London: A & C Black,
Paul’s strategy, stating that its “rationale becomes clear when one realizes that Spain marked the end of the known world, the end of the ‘circle’ [κύκλος] . . . of the known world that ran from Jerusalem through Illyricum and Rome to the Pillars of Hercules.”  

This for Jewett connects with Paul’s statement in Rom 1:13 regarding his plans to missionize the “remaining” (λοιπός) ethne, which in ch. 15 is a strategy that stretches to the edge of the Roman world, and it also connects with Paul’s “obligation” (ὀφειλέτης) in Rom 1:14 to the barbaroi, who were often identified by Roman writers with the inhabitants of Spain. One common trait in Roman propaganda of the time was an emphasis on the geographic extensiveness of the empire, especially its sunrise to sunset (east to west) scope, the regions conquered during Pompey’s eastern campaign mark the beginning of this circuit, and Cadiz (Spain) marks its end, even though regions beyond these bounds were still considered to be under Roman influence. This

1991), 253, who suggests that the gospel is not proclaimed to “every person” in these regions, but that Paul has “covered [the areas] in a representative way.”

Jewett, Romans, 130; cf. Strabo, Geogr. 3.5.

Jewett, Romans, 130.

See Jewett, Romans, 131; esp. fn. 47, where Jewett cites Cicero, Livy, Florus, Caesar, and Pliny.

Cf. Smith, “Simulacra Gentium,” 77. This is made explicit in Philo, Legat. 10, where the geographic boundaries of the empire are said to be “from the rising to the setting sun both within the ocean and beyond it [τὴν ἀφ’ ἡλίου ἀνίόντος ἄχρι δυομένου τὴν τε ἐντὸς ὀκεανοῦ καὶ ὑπερωκεάνιον].” Regions in the north and south were also listed among the subdued; see the discussion in my “Josephus and the Gentes Devictae,” 496-499. For example, the Res gest. divi Aug. 26-33 categorizes regions and peoples as “some ‘recovered’, some defeated, some ‘pacified’ (=Romanized)”; Smith, “Simulacra Gentium,” 59. And section 26.1-27.1 names regions under Roman control from the furthest west (e.g. Spain and Cadiz) to the furthest east (e.g. Arabia), and from north (e.g. Germania) to south (e.g. Egypt).

See the list of Pompey’s accomplishments in the east, including the conquest of “Aristobulus king of the Jews,” in Diodorus 40.4; cf. Pliny, Nat. 7.97-98.

Cf. Res gest. divi Aug. 31-33; also Josephus, B.J. 2.363: “For, not content with having for their frontiers on the east the Euphrates, on the north the Ister, on the south Libya explored into desert regions, on the west Gades, they have sought a new world [οἰκουμένην] beyond the ocean and carried their arms as far as the Britons, previously unknown to history”; Thackeray, LCL. The circuit of the world is depicted on maps such as the Peutinger Table, where Cadiz and the Pillars of Hercules lie at the
geographic expanse is the *oikoumene/orbis terrarum* in late Augustan Rome—an expanse that Roman conquest and government made available for missionizing, and the very space that both Matthew and Paul plan to missionize. In short, while it may be that the Table-of-Nations tradition from Genesis 10 is informing Paul’s conceptualization of the world, it remains true that the actual language he uses is drawn from Roman toponymy, and further, that the geographic boundaries of his mission to the *ethne* coincide with the actual east-west boundaries of the Roman Empire in his day (i.e. Jerusalem to Spain). Paul does not mention plans to missionize regions beyond these bounds, such as, for example, areas further eastward among the Parthians;

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westernmost edge, and to the east the boundary of the empire separates the Roman world from regions beyond; see Nicolet, *Space, Geography, and Politics*, 102-103, and depicted on fig. 43.

832 E.g. the titular phrase of the *Res Gestae*, which lauds Augustus who “brought the world under the empire of the Roman people [orbem terrarum imperio populi Romani subiecit]”; Brunt and Moore text; cf. Nicolet, *Space, Geography, and Politics*, 123: “It [was] not enough [for the Romans] to have conquered the world, or even to declare its conquest... . It was not sufficient to know the approximate extent and limits within the *oikoumene* of the world that they had to govern—they had actually to take possession of it.”

833 In Rom 10:18, Paul cites LXX Ps 18:5 where the word *oikoumene* appears. As with Matt 24:14, this is Paul’s only use of the word. Scholars have typically focused on the incongruity between Paul’s claim in this verse that the gospel has gone out into the whole *oikoumene*, and his articulation of future missionary plans in 15:19-28; see the discussion in Jewett, *Romans*, 643. Jewett hints in fn. 88 that Paul’s use of the word *oikoumene* may be part of “the early Christian appropriation of the imperial concept of the οἰκουμένη.” The *oikoumene* is the space that must be missionized before the eschaton fully arrives for both Matthew and Paul; see Schoeps, *Paul*, 230: “The event of the parousia is bound up, for Paul, with the Gentile mission; before the realization of that event the name of Christ must have resounded to the four corners of the earth”; also, Knox, “Romans 15:14-22,” 7-8. In Matt 24:14, the end (τέλος) is coterminous with the completion of the mission to the *ethne*; see John Nolland, *The Gospel of Matthew: A Commentary on the Greek Text* (NIGC; Grand Rapids: Eerdmans, 2005), 967.

834 Scott, *Paul and the Nations*, 143, acknowledges that Paul uses Roman place-names, but attributes this to Paul’s “missionary situation” (i.e. needing to speak in terms his audience could understand), and to his use of the same practice as writers such as Josephus of “updating” the list of place-names in Genesis 10. This is not surprising with respect to Josephus, since he is actually commenting on Genesis 10 in *A.J.* 1.120-147, and endeavors to fix the names that he complains the Greeks have changed (1.121). Paul, however, is not commenting on Genesis 10. It might be possible to posit that Paul has hybridized (in the Bhabhian sense) imperial toponymy if indeed Genesis 10 is partly influencing him in Rom 15:19-28. The place-names would then be “almost but not quite” entirely Roman; there would still be a trace of Paul’s Judean past in the articulation of his missionary strategy.
he instead plans to move across the Roman world roughly from its eastern boundary (ἀπὸ Ἰερουσαλήμ; Rom 15:19) to its western limit (εἰς τὴν Σπανίαν; Rom 15:24). The ethne within these confines are his primary missionary focus. It is important to keep in mind, however, who the ethne are in the first century: they are conquered and/or pacified by Roman power, and thus made available for Paul’s missionary work. Therefore, by using this geographic language, Paul, like Matthew, has not only reinscribed this political and geographic discourse, he has also (perhaps inadvertently) conceded the macro exercise of Roman power that is its foundation.

5.2d Summary

The main focus of the previous section has not been trying to determine either Matthew’s or Paul’s intentions vis-à-vis the empire (i.e. counter- or anti-empire). I have discussed instead the function of their language in a particular discursive context beginning in the late Augustan period. C. Ando and others have argued that imperial discourse in this period became more

835 Adolf Schlatter, Gottes Gerechtigkeit: Ein Kommentar zum Römerbrief (Stuttgart: Calwer, 1991), 387, takes a more literal view, attributing the reference to Jerusalem to Paul’s giving his testimony there. Dieter Zeller, Juden und Heiden in der Mission des Paulus: Studien zum Römerbrief (FB 1; Stuttgart: Katholisches Bibelwerk, 1973), 228-229, suggests that because Paul sees the east as completely traversed, and because he does not want to missionize in the territory of others (15:20), reaching out to the west is all that remains to him.

836 Cf. Nils Alstrup Dahl, Studies in Paul: Theology for the Early Christian Mission (Minneapolis: Augsburg, 1977), 154, who connects Rom 15:19-23 with 11:25-26, and suggests that “Paul believed that his mission and that of others had succeeded in fulfilling its condition in the Eastern provinces of the Roman Empire, from Jerusalem to the shores of the Adriatic. Paul’s vision extended only to the lands around the Mediterranean. What he actually had in mind in speaking about the [πλήρωμα τῶν ἑθνῶν] . . . may therefore have been the successful completion of his mission to Spain.”

837 Commenting on the ethne depicted at the Sebasteion at Aphrodisias, Smith, “Simulacra Gentium,” 59, concludes: “All the ethne certainly included here seem to have one of three qualifications in Augustan imperial thinking. They have been either simply defeated, or defeated and added to the empire, or brought back into the empire after unwilling secession.”

838 One cannot read 1 Cor 15:24-28, to take one example, without realizing that Paul sees the Judean deity (via Christ’s kingdom) and not Rome and its deities as history’s ultimate victor; however, even here the language of subjugation, redolent of imperialism, is present and thus reinscribed; cf. the scene of eschatological judgment in Matt 25:31-46.
focused on demarcating the bounds of the *oikoumene/orbis terrarum* and also on organizing its inhabitants (*ethne*). My aim is to situate Matthew and Paul in this context by examining the discursive juxtaposition of the terms *oikoumene* and *ethne*, and use of Roman toponymy; and my argument is that by articulating missionary strategies that involve a combination of these elements, Matthew and Paul are reinscribing the discourse of imperial power about the pacification of the *ethne*. In doing so, both writers have presumed that the *ethne* are available to be missionized. Phrased differently, the mission to the *ethne* is made possible by the macro exercise of imperial power—an exercise of power that shapes the very language used by both writers when articulating their respective missionizing programs.

### 5.3 Law, Power, and Legal Fiction

I will tie together all the threads of this project in this final section. The reader is encouraged to review the last few pages of ch. 4 where I summarize my use of ethnographic materials from ch. 2, and summarize my understanding of the relationship between Roman law and the ancestral customs of Judeans.\(^839\) In each of the cultural situations I have investigated in this project, I have tried to make explicit the relations of power—in a Foucauldian sense—at the macro and micro levels that have formed “law” (or “law-like” rules and customs in the indigenous contexts) as an object. I have argued that discourses on law (or “law-like” practices themselves) proliferate in situations where there is interaction between macro and micro relations or power. I argued above that the macro exercise of imperial power provides a discursive context for situating the missionizing programs of Matthew and Paul. I will suggest in the next section (5.3a) that one way to think about how Matthew and Paul accommodate their views of

\(^{839}\) I should also note that my interaction with the secondary literature in the following sections will be limited to what is relevant for my argument. For a survey of the secondary literature on law in both fields, see above ch. 3.
law for the *ethne* is by way of analogy with the practice among Roman jurists of accommodating Roman law to non-citizens by means of legal fiction, that is, treating litigants in a given case *as if* they were Roman citizens and thus subject to Roman civil law. Fictions were useful for administering Roman law to regions acquired by conquest, and, as such, bridged the gap between imperialism on the macro scale, and the particular application of precepts on the local, micro scale.\footnote{Thus Ando, *Law, Language, and Empire*, ix, observes: “The [Roman] civil law was an instrument of empire. It was not, or was not simply, as Roman legal philosophers claimed, a body of rules crafted through communal deliberation and approved by the citizen body for use strictly over itself. On the contrary, many of its most characteristic features—the substructure of formal mechanisms whereby innovation was accomplished in practice and justified in theory; its concern with philosophy of language and the apparatus by which that concern was given expression; its very historical self-consciousness—developed in response to the challenges posed when the Latinate legal system of the single and singular polity of Rome was deployed so as to embrace, incorporate, and govern discrepant people and cultures far afield.”}

By way of analogy, Matthew and Paul also bridged a gap between the macro scale of missionizing the *ethne* and the micro application of Judean law to new “provincial” settings; law surfaces as an object of discussion for both writers in the space of this interaction.

### 5.3a

Fiction in Roman jurisprudence (*actio ficticia*) has been defined by J. Richardson as “the extension of one of the standard types of formulation of a case in civil law to be considered by a judge . . . to cover an instance for which such a formula might be appropriate, but could not otherwise be employed.”\footnote{John S. Richardson, “The Roman Mind and the Power of Fiction,” in *The Passionate Intellect: Essays on the Transformation of Classical Traditions, Presented to Professor I. G. Kidd* (ed. Lewis Ayres; RUSCH 7; New Brunswick, N.J.: Transaction Publishers, 1995), 117-130, here, 119.} More simply, a legal fiction is “the assertion or acceptance for legal purposes of ‘facts’ which are clearly false.”\footnote{Moscovitz, “Legal Fictions,” 106. See his survey of the scholarly literature on pp. 105-106 fns. 1-3.} Richardson points to a classic example of its use in Roman civil law when a non-Roman is involved in lawsuit with a Roman. According to the jurist Gaius, “there is a fiction that he [the non-Roman] is a Roman citizen,” that is, treated *as if*
he were a citizen so that the suit could be prosecuted under Roman civil law. This tactic was used by the urban praetor in Rome and has roots that extend to the late second century B.C.E. Richardson is careful, however, to identify the constrictions imposed by the praetor on the use of a fictio, even though fictiones demonstrate “a well-known trait of the Romans,” namely, “adaptability;” a non-Roman does not ontologically become a Roman, but is treated as if he were a Roman for the purposes of adjudicating the case at hand. Other examples of the use of fictions include inter alia extending the imperium of consuls beyond the annual limit for purposes of commanding the army far from Rome (they become “fictive magistrates”); the practice of adoption (fictive sons); and cases dealing with inheritance (fictive agnates). Most relevant for my purposes is the use of legal fiction to accommodate the expansion of Roman territory through conquest. In his investigation of the interaction between Roman

843 Gaius, Inst. 4.37; Richardson, “The Roman Mind,” 119. In an example where a Greek (Dion, son of Hermaeus) has stolen from a Roman (Lucius Titius), Gaius writes, “‘If it appears that the theft of a golden bowl has been committed on Lucius Titius by Dion, son of Hermaeus, such that, if he were a Roman citizen [SI CIVIS ROMANUS ESSET], he would be bound to compound the loss as a thief . . . ’”; Inst., 4.37; cited in Richardson, “The Roman Mind,” 119-120.

844 Richardson, “The Roman Mind,” 119-120.

845 Richardson, “The Roman Mind,” 121: “What is altered by the fictio is not the status of Dion [the Greek] but the consequences of that status.”


847 Richardson, “The Roman Mind,” 124-130: “The taking of the offspring of another family into one’s own as a son or daughter is of course fictive in its very essence” (p. 124). The name adrogatio applied in cases where the fictive son’s father had died, and he was thus sui iuris, and would be treated not as “the son of the adoptive father, but [as if] in the same position as such a son” (pp. 124-125). The name adoptio applied in cases where the biological father was still alive, and his patria potestas needed to be annulled as if he had emancipated his son (derived from a principle in the Twelve Tables), in order for the adoption to commence (p. 125). The adoption (adrogatio) of Octavian by Julius Caesar is the best known example of the political benefits of the practice (pp. 126-127).

848 Ando, Law, Language, and Empire, 9, referring to Gaius, Inst. 3.25-26: “‘But these injustices in the civil law [i.e. children born after the testator’s death could not inherit because they were never “in his power”] were corrected by the praetor’s edict. For he summons to inheritance all children deficient in statutory title exactly as if [proinde ac si] they had been in their father’s power at the time of his death’”; (italics mine; cited in full on p. 126); cf. other examples of fictions around inheritance on pp. 11-16.
imperialism and Roman law, C. Ando has discussed exactly this use of the \textit{fictio}. His primary example is drawn from a situation in late first century C.E. Spain, which is addressed in the \textit{lex Flavia municipalis}, ch. 91:

\begin{quote}
If judgment has not taken place within the time laid down in Chapter XII of the \textit{lex Iulia} that was recently passed concerning \textit{iudicia privata} and in the decrees of the Senate that relate to that chapter of the statute, so that the matter be no longer under trial; the statute and the law and pleading is to be as it would be if a praetor of the Roman people had ordered the matter to be judged in the city of Rome between Roman citizens.\footnote{The Latin text with an English translation cited in Ando, \textit{Law, Language, and Empire}, 126-127.}
\end{quote}

Ando makes several observations. First, this law cites the \textit{lex Iulia iudiciaria} as authoritative, which means that it elevates the principles found therein of “Roman justice . . . administered by a Roman praetor, judging a case between Roman citizens in the city of Rome.”\footnote{Ando, \textit{Law, Language, and Empire}, 10.} Second, this law does not “subvert or revise that earlier text [\textit{lex Iulia}]. It merely urges that the law be administered in Spain \textit{exactly as if} the litigants were Roman citizens arguing their case before the Roman praetor in the city of Rome.”\footnote{Ando, \textit{Law, Language, and Empire}, 10.} Third, this fiction operates both on the “geographic and social” levels by “dissolv[ing] both distance in time and distinctions in the legal status of persons. . . . Provinces and provincials are thereby assimilated to Rome and Romans.”\footnote{Ando, \textit{Law, Language, and Empire}, 24.} Fourth, such a “transposition[n]” of the law by means of fiction “brought a new social reality into being . . . [that is,] new truths from fictional ones,” and ultimately made possible the extension of empire-wide citizenship rights under Caracalla in 212 C.E.\footnote{Ando, \textit{Law, Language, and Empire}, 10-11.} Fifth, and finally, this fiction means that the distinction between provincials and Roman citizens—though “a matter of law, . . .
was also surmountable at law.”

In conclusion, legal fiction in situations such as this one was an effect of imperialism, a means by which Roman law could be accommodated to address the legal needs of an expanding empire. Related to this, the application of fiction involved the incorporation of non-Romans into the legal framework of the empire, but did so, at least according to the jurists, without superseding earlier statutes; Roman law was extended and stretched but not breached or abrogated. These points are relevant, in my view, for understanding the issue of law in Matthew and Paul primarily because the particular precepts that are formed as objects of discussions for both writers cohere with a set of analytic principles that are similar to those that ground the use of fictiones: preserving the existing legal framework—in the case of both writers this is Judean—without, at least in theory, overtly abrogating it; accommodating this framework to an new exigency created by the missionary agenda; and, deriving the impetus for this expanded application of law from a particular notion of authority (see below).

5.3b

Before examining the specifics of how Ando’s argument might reframe the discussions of law in Matthew and Paul, I should risk oversimplification by briefly summarizing one way the relationship between the ethne and Judean law was understood in the Second Temple period.

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854 Ando, Law, Language, and Empire, 26. Ando cites Gaius, Inst. 2.5-7, and the discussion of treating “provincial soil” as if it were “sacred,” as an example of this “surmounting.”

855 Cf. Ando, Law, Language, and Empire, 1-2: “I urge that a number of the most distinctive formal mechanisms in Roman law and legal language—most notably the fiction and its kin—were developed precisely in order to accommodate before the law persons and things notionally excluded by jurisdictional rules. . . . [D]espite the existence within Roman legal philosophy of doctrines of desuetude, jurists were reluctant to describe laws from these varied sources as having radically superseded each other. Rather, later laws are described as honoring the principles articulated in earlier legislation, even as they worked in precise but significant ways to subvert those same principles.”

856 Cf. Ando, Law, Language, and Empire, 8.
Interacting with the *ethne* is one reason why law becomes an object of discussion in this period, especially since accommodating Judean law to one’s Greco-Roman surroundings was a common practice among Judean writers of the time.\(^{857}\) For Philo in particular, according to H. Najman, the authority of Mosaic law needed vindication “against competing non-Jewish traditions” in Alexandria.\(^{858}\) Philo’s goal when melding his understanding of the Mosaic law with the ideological setting of the Greco-Roman world—especially with extant traditions of the law of

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\(^{857}\) Hindy Najman points to Philo as a key example of this; see “The Law of Nature and the Authority of Mosaic Law,” *SPhilo* 11 (1999): 55-73. Facing the dilemma of how to authorize Judean law in an environment of competing ideological claims both social (Hellenism) and political (imperial Rome), Philo, argues Najman, sought to transpose the authority of the Torah from its written foundation to the unwritten, universal law of nature (pp. 55-57). He accomplished this by arguing that “the law of Moses is the most excellent copy of the law of nature (*Mos.* 2.12-14),” and that it is “connected . . . [to] the virtues (*Mos.* 2.9-11)” (p. 57; though see *Spec.* 4.179, where the strictures of Judean laws, according to Philo, leave Judeans alone and without allies among the *ethne*). His appeal was thus to Hellenized Judeans and non-Judeans alike, for whom particular, written traditions bore less authoritative weight than universal, unwritten laws (pp. 72-73). Accommodation can be found in other texts of the period. Ronald Charles has argued that Bhabha’s notion of hybridity is useful to help explain the blending of Hellenistic and Judean perspectives in *The Letter of Aristeas*; see “Hybridity and The Letter of Aristeas,” *JSJ* 40/2 (2009): 242-259. Charles refers to the well-known passage in *Let. Aris.* 139, where the Mosaic law is said to function as a wall to prevent intermixing with the *ethne*, as a form of “cultural prejudice” and “ethnic chauvinism,” and as an imaginary idealization of “purity” by the author in a Hellenistic context (pp. 256-257). Geza Vermes has identified a strategy of accommodation in Josephus, especially in *C. Ap.* 2.145-219; see “A summary of the Law by Flavius Josephus,” *NovT* 24/4 (1982): 289-303, here, 290. Vermes observes that Josephus is fending off the criticisms of Judeans by Apollonius Molon (especially of being atheists, misanthropists, retrograde, and following a law-giver who is an imposter; see 2.145-148), and also trying to impress his Greco-Roman readers, by arguing that the Torah’s primary purpose “in the domain of human relations” is to teach “philanthropy . . . and a gentle disposition towards not only fellow-Jews but all mankind” (2.213-214; p. 299). To strengthen this apologetic point, Josephus downplays certain aspects of Mosaic law, such as for example the prohibition of idolatry (2.237; see the discussion on pp. 292, 300-301; Josephus also does not discuss laws about the Israelite king; p. 295). Contrast these strategies of accommodation with, for example, the intra-Judean debate over halakhoth in 4QMMT; see Schiffman, “The New Halakhic Letter,” 64-73. An overview of halakhic perspectives in the Judean diaspora is provided by Sanders, *Jewish Law from Jesus to the Mishnah*, 255-308.

\(^{858}\) Najman, “The Law of Nature,” 56; cf. also Hindy Najman, “A Written Copy of the Law of Nature: An Unthinkable Paradox?” *SPhilo* 15 (2003): 54-63. See also John W. Martens, *One God, One Law: Philo of Alexandria on the Mosaic and Greco-Roman Law* (SPAMA 2; Boston: Brill Academic, 2003), 128-129: “Philo’s unity of law seems to be not only a way to express God’s creation of law and unity of purpose, but an attempt to protect the law of Moses from Hellenistic assaults, by Jews or Gentiles. . . . In the famous passage in which Philo scolds the allegorists (*Migr.* 89-93), he has no more impressive argument to bring than that it is good for the community to observe the law. . . . Philo drew the line at the observance of the law: it must be followed.”
nature—was not only “to protect his written [i.e. Mosaic] law” so that it could be kept in full, but also to advertise to his contemporaries among the *ethne* that Mosaic law was the perfect form of law. For Philo then “the Jews had the truth, for which the Gentiles were searching, and [he] invited those who wanted to know to follow the one, true law.” I refer to this now to underscore that for Philo authority resides in the Mosaic law—an authority that gets reinforced because it is “the perfect copy of the law of nature”—and further, that the *ethne* needed to come to Israel to find this perfected law. Matthew and Paul share a different view: both writers insist on an outward movement to missionize the *ethne*, and this has implications for how they understand authority, and for how they accommodate the law to new settings.

5.3c

Authority (ἐξουσία) for Matthew lies with Jesus. Although this motif is drawn in part from Matthew’s sources, only his Jesus claims to have “all authority [πάσα ἐξουσία]” (28:18) when issuing the directive to his disciples to missionize the *ethne*. U. Luz translates the word ἐξουσία as “power,” and argues that the post-resurrection scene in Matt 28:18 plays a climactic

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862 Martens, *One God, One Law*, 120: “The law of Moses cannot, therefore, be abrogated, even in part, or improved.”

863 Cf. Shaye J. D. Cohen, “Respect for Judaism by Gentiles According to Josephus,” *HTR* 80/4 (1987): 409-430. Cohen points to the straightforward way in which Josephus in *Contra Apionem* “glories in the fact that many Gentiles have adopted Jewish practices” (p. 425) as opposed to in his other writings, especially *A.J.*, where, outside of the Adiabene story (20.17-96), conversion to Judaism is viewed negatively (p. 424).


role in the Gospel, because it draws together the various references to the power of Jesus. This superlative power implies the authorization to control and command not only his disciples but also all the ethne, which fits with Foucault’s basic definition of power as conducting the conduct of others. The missionizing program is then a form of the exercise of power. The disciples are commissioned with the directives to “make disciples,” “baptize,” and especially to “teach” the ethne “to keep [τηρεῖν]” all the commands of Jesus (“πάντα ὅσα ἐνετειλάμην ὑμῖν”). This final directive makes explicit the connection between the authoritative power of Jesus and his teaching (cf. 7:29). The “commands” that the disciples are to teach include everything Jesus taught, but especially, for my purposes, the pronouncements of Jesus about Judean

866 Luz, Matthew 21-28, 624. The authority of Jesus is mentioned or alluded to several times: teaching (7:29), forgiving sins (9:6, 8), evident in his healings (chs. 8-9), given to the disciples (10:1), delivered to him by the Father (11:27), and questioned by the authorities in Jerusalem (21:23-27). In ch. 28, Luz observes that what was previously “visible, but limited and by no means indisputable—all of that is now combined, expanded, and absolute because of the resurrection. The risen Jesus now has all the power in the entire cosmos. Next to his power no other power matters. It is unlimited.” Other references to the authority of Jesus include: 1:17 (the symmetry of Israelite history points to Jesus); 1:18 (he is conceived by the Holy Spirit); 1:21 (his advent has a salvific purpose); 1:22 (his birth is foretold by Isaiah); 2:2 (he is a king; cf. 21:5; 25:40; 27:11, 29, 37, 42); 2:15, 23 (his travels fulfill prophecy; cf. 4:13-16; 21:4); 3:17 (he is God’s son; cf. 11:25-27; 17:5); 4:18-22 (his call to people is effectual); 4:23-25 (his teaching and healing generate a following); 5:17 (he fulfills the law and prophets); 5:20 (he possesses knowledge about how to enter the kingdom of heaven); 7:21 (he identifies himself as “lord”; see his self-importance in 11:6; 12:30; “lord” is the only title the disciples use of Jesus in Matthew; see Davies, Setting of the Sermon on the Mount, 97-98); 8:17 (his healing work fulfills Isaiah; cf. 12:15-21); 9:2 (he declares sins to be forgiven); 9:27 (he is the son of David; cf. 1:1; 12:23; 15:22; 20:30-31; 21:9, 15; he is also the son of Abraham in 1:1); 12:6 (he is greater than the temple); 12:25 (he knows thoughts; cf. 9:4); 13:35 (teaching in parables fulfills prophecy); 16:18-19 (he transfers authority to Peter for binding and loosing); 16:16, 20 (he is the Christ; cf. 1:16, 17; 23:10; 26:63-64); 16:27 (he is an eschatological judge; cf. 10:23; 13:41-43; 19:28; 24:30; 25:31-46; 26:64); 17:24-27 (he commands nature; cf. 8:23-27; 14:22-33); 21:12-13, 18-22 (he acts prophetically); 26:31-32, 54, 56 (activities around his death fulfill prophecy; cf. 27:9; they can also allude to scripture; 27:35, 43, 46; cf. 28:18-19 and the allusion to Dan 7:13-14).

867 See BAGD, 353.


870 Davies and Allison, St. Matthew, 3:686: “[The reference to what he commanded] refers not to one command or to the Sermon on the Mount but to all of Jesus’ teaching—not just imperatives but also proverbs, blessings, parables, and prophecies. But more than verbal revelation is involved, for such revelation cannot be separated from Jesus’ life, which is itself a command.”
law, the largest block of which occur in 5:17-48. The so-called “antitheses” in this section (5:21-48) underscore the authority of Jesus as not merely a teacher of the law, but as one who makes his own pronouncements about the law—pronouncements which require no more authority to buttress them than his own declaration, “ἐγὼ δὲ λέγω υμῖν” (5:22, 28, 32, 34, 39, 44).

Structurally, these pronouncements amplify the greater righteousness mentioned in v. 20 (“ἐὰν μὴ περισσεύσῃ ὑμῶν ἡ δικαιοσύνη πλεῖον γραμμάτων καὶ Φαρισαίων”), which Jesus says

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871 Cf. Loader, *Jesus’ Attitude Towards the Law*, 258: “The christology of Jesus’ authority and, within it, his role as judge, provides the primary background for understanding how Matthew perceives Jesus’ approach to the Law.”

872 Dale C. Allison, Jr., “The Structure of the Sermon on the Mount,” *JBL* 106/3 (1987): 423-445, calls this the “section on the Torah” (p. 431). This section is itself part of the larger section that extends from 5:13 (and the “superscription” about salt and light) to 7:12 (and the Golden Rule; p. 431). Bordering these are the beatitudes (5:3-12) and the warnings (7:13-27), and bracketing everything are the twin references to crowds, the mountain, and teaching (4:23-5:2 and 7:28-8:1; p. 429). Helmut Koester, *Ancient Christian Gospels: Their History and Development* (Harrisburg, Pa.: Trinity Press International, 1990), 326-327, details Matthew’s use of sources in the Sermon on the Mount.


874 Davies and Allison, *St. Matthew*, 1:505-509, offer four categories to interpret Matthew’s use of the antithesis: 1) the words of Jesus are not opposed to “Jewish interpretations of the OT; rather is Jesus’ ‘But I say to you’ intended to mark a point of contrast with the OT itself”; 2) this does not mean that Jesus and the Torah are opposed (cf. the forceful declaration by the Matthean Jesus in favor of the Torah in 5:17-19); 3) Jesus does not provide an interpretation of the Torah, but, at least in antitheses #’s 3, 4, and 5 (on divorce, vv. 31-32; on oaths, vv. 33-37; and on retaliation, vv. 38-42), Jesus issues “new pronouncements[s]” that draw from the Torah as “a point of departure”; 4) the antitheses outline the requirements of Jesus in terms of attitude and action, and they demonstrate that “his demands surpass those of the Torah without contradicting the Torah.” For a viewpoint that sees the antitheses as directed against the interpretation of the law by the scribes and Pharisees, see Matthias Konradt, “Die vollkommene Erfüllung der Tora und der Konflikt mit den Pharisäern im Mattheüsevangelium,” in *Das Gesetz im frühen Judentum und im Neuen Testament* (ed. Dieter von Sänger and Matthias Konradt; NTOA/SUNT 57; Göttingen: Vandenhoeck & Ruprecht, 2006), 129-152, esp. 134-141. A different view is presented by Ulrich Luz, *Das Evangelium nach Matthäus: 1. Teilband Mt 1-7* (EKKNT; Zürich: Benziger, 1985), 230: “Zur Debatte steht hier [i.e. in the antitheses] sein Verhältnis zum mosaischen Gesetz und damit zum Judentum.” See Klyne R. Snodgrass, “Matthew’s Understanding of the Law,” *Interpretation* 46/4 (1992): 368-378, esp. 374, for a discussion of whether the conjunction δὲ is connective or adversative.
is required for entrance into the kingdom of heaven. They also recall the preceding verses where he forcefully affirms the validity of the law (vv. 17-19), and they peer ahead to the summative statement in 7:12, which itself might be characterized as exemplary of the teaching of Matthew’s Jesus and thus of the law and prophets as well. Other summations can be found in the emphasis on mercy instead of sacrifice (“ἔλεος θέλω καὶ οὐ θυσίαν”; 9:13 and 12:7; both quoting Hos 6:6); the summary that what truly defiles comes from within a person and not from unwashed hands (15:17-20); the summary of the Decalogue, which emphasizes leaving everything to follow Jesus (19:17b-21); the statement that the entire law hangs (κρεμάννυμι)

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876 Allison, “Structure of the Sermon on the Mount,” 432, notes that vv. 17-19 function as a “prokatalepsis” in that they anticipate an objection to vv. 21-48, namely, that Jesus breached the law, and state in advance that this is untrue by emphasizing that Jesus came to “fulfill” the law and prophets (5:17). Davies and Allison, St. Matthew, 1:485-486, identify nine different ways “fulfill” has been interpreted. On the complicated issues regarding structure and tradition in this section, see Luz, Studies in Matthew, 188-214.

877 Allison, “Structure of the Sermon on the Mount,” 436. Matthew’s messianic Christology coupled with the fact that his Jesus issues pronouncements about the law has raised the issue for some of whether the Gospel is presenting a “messianic Torah” or nova lex; for a discussion, see Barth, “Matthew’s Understanding of the Law,” 153-159.

878 See esp. v. 18 (=Mark 7:20): “But what comes out of the mouth proceeds from the heart, and this is what defiles [τὰ δὲ έκπορευόμενα ἐκ τοῦ στόματος ἐκ τῆς καρδίας έξέρχεται, κύκείνα κοινοί τὸν ἀνθρώπον]” (NRSV). Charles Carlston, “The Things that Defile (Mark vii.14) and the Law in Matthew and Mark,” NTS 15/1 (1968): 75-96, suggests that this statement might be an example of Jesus “appeal[ing] beyond the commandment to the will of God” (p. 95).

879 See esp. v. 21: “If you wish to be perfect [εἰ θέλεις τέλειος εἶναι; cf. 5:48], go, sell your possessions, and give the money to the poor, and you will have treasure in heaven; then come, follow me” (δεῦρο ἀκολούθει μοι)” (NRSV). Although Matthew shifts the wording of Mark 10:13-16 so that it better conforms with that of the Decalogue (i.e. he shifts the negative particle from μὴ to οὐ, and eliminates the phrase “μὴ ἀποστερήσῃς”; see the complete list in LXX Exod 20:13-16 and Deut 5:17-20), he adds the summative remark about loving one’s neighbor (v. 19b), which, given the logic of the exchange with ὁ νεανίσκος, means that being perfect (v. 21) is not possible by simply keeping the commands (“τήρησον τὰς ἐντολὰς”; v. 17b) or even simply loving one’s neighbor; one must also leave everything (“ὄπασε τούλησόν σου τὰ ὑπάρχοντα”; v. 21a) and follow Jesus; see Loader, Jesus’ Attitude Towards the Law, 226.
on the twin love commands (22:37-40); and the emphasis on keeping “the weightier matters [τὰ βαρύτερα]” of the law (23:23). Each one crystallizes in summative form what is required for entrance into the kingdom of heaven: mercy, a clean interior life, following Jesus, loving God and neighbor, and doing the weightier matters (i.e. justice, mercy, and faithfulness).

A problem emerges, however, once this list is juxtaposed with the antitheses: if one needs greater righteousness than the scribes and Pharisees to enter the kingdom of heaven (5:20), and if righteousness for Matthew involves keeping the law, then why does Matthew’s Jesus seem to displace the so-called “ceremonial” aspects of the law both in the antitheses and in the summative statements in favor of those precepts that govern social relations? Matthew’s Jesus

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881 Luz, Matthew 21-28, 124, argues that v. 23 “contrasts the tithing commandment with what is the essence of the prophetic message [i.e. love]”; τὰ βαρύτερα is redactional; see Davies and Allison, St. Matthew, 3:294: “[It] recalls 7.12 and 22.34-40, in which the law and the prophets are summed up in a word.” The affirmation of tithing and the weightier matters in v. 23c is drawn from Q 11:42c, which is part of a third, pro-Torah, editorial stage of the Q document; see the discussion in Kloppenborg, “Nomos and Ethos in Q,” 42-43, 46-47.

882 Cf. Craig S. Keener, A Commentary on the Gospel of Matthew (Grand Rapids: Eerdmans, 1999), 249. Each summative statement (minus 19:17b-21) is uttered in a polemical context by the Matthean Jesus, which could reflect a broader social situation of conflict between Matthew’s group and its contemporaries in Judaism (though the evidence for this is almost entirely circumstantial; see the discussion above in ch. 3).

883 So Benno Przybylski, Righteousness in Matthew and His World of Thought (SNTSMS 41; Cambridge: Cambridge University Press, 1980), 83-84; cf. Hans Dieter Betz, The Sermon on the Mount (Hermeneia; Minneapolis: Fortress, 1995), 190.

884 Almost every scholar has recognized this as a problem and tried to offer a solution; see below. Cf. Donaldson, “The Law that Hangs,” 696, who comments on the twin love commands (22:40), and who frames the problem as a “tension[n] inherent in a statement about the law which, in formal terms, corresponds to a rabbinic viewpoint (the whole law can be derived from the commandment to love God and neighbor), but which, in substance, subordinates and qualifies the written Torah in a manner unparalleled in rabbinic tradition.” See also Deutsch, Hidden Wisdom and the Easy Yoke, 143: “Matthew used Wisdom categories to describe Jesus [in 11:28-30]. In so doing, he displaces Torah with Jesus as the primary referent.”
is adamant that the *ethne* are to keep his commands (28:18-20), that these commands summarize the law and prophets (e.g. 22:40), and that the entire law is valid (5:17-19), but his summaries of the law appear to shift focus away from strict observance: he elevates mercy over ceremony in the Sabbath disputes (12:1-14, quoting Hos 6:6 in v. 7), and thus affirms that Sabbath law can be legitimately breached when the issue of being merciful is at stake, and in the dispute over purity in 15:1-20, he clarifies that the real issue is over hand-washing (v. 20), but he does not completely remove the principle from Mark that all foods are now clean (vv. 11, 17=Mark 7:15, 19). Various suggestions have been made to address this seeming inconsistency, from Matthew trying to manage the conflicting traditions he inherited, to suggestions that Matthew emphasized the essential core of the law or that he privileged the “greater” over the “lesser”


886 Cf. Konradt, “Law, Salvation, and Christian Identity,” 197: “Since according to the prophetic saying in Hos 6:6 quoted in Matt 12:7, mercy is much more important than sacrifices, the Sabbath command is superseded by mercy.” Matthew’s Jesus also points to a legitimate breach of Sabbath law among the temple priests (v. 5).

887 Even though he presumably could have as he did with other sections of Mark that bothered him (e.g. Mark 3:21; 7:33-36; 8:22-26; etc.); see Carlson, “The Things that Defile,” 77. Thinking form-critically, Carlson points to the starkness of the saying: “If [the historical] Jesus had ever said, ‘There is nothing outside a man which . . . can defile him’ his break with the Law would have been instantly recognized by friend and foe alike as complete.” The saying must have arisen, then, among early Christ groups. The tension in Matthew’s view of the law is heightened when one factors in that such things as offerings (5:23-24), the temple tax (17:24-27), various forms of piety (6:1-18), the temple and the altar (23:16-22), tithing (23:23), and possibly the Sabbath (24:20) are treated as valid; see Bornkamm, “End-Time Expectation and Church in Matthew,” 30-31. And yet, as some scholars have suggested, Matthew’s Jesus may have abrogated the law (e.g. especially in his overriding of the *lex taliones* in 5:38-39; Bornkamm, “End-Time Expectation and Church in Matthew,” 24-25), or implied that following him was more important than observing the law (8:19-22; cf. E. P. Sanders, *Jesus and Judaism* [Philadelphia: Fortress, 1985], 252-255). There is also some tension over how the Gospel treats the teaching of the scribes and Pharisees, in particular the tension between obeying it in 23:2-3 and avoiding it as leaven in 16:6-12; see the discussion in Mark Allen Powell, “Do and Keep What Moses Says (23:2-7),” *JBL* 114/3 (1995): 419-435.

888 E.g. Luz, *Studies in Matthew*, 185-186; cf. Strecker, *Der Weg der Gerechtigkeit*, who sees the ceremonial law as rejected in Matthew (pp. 31-33), and the Jewish-Christian elements of the Gospel as reflecting an outmoded tradition (p. 35).

precepts of the law, to the recent trend that smothers the inconsistency under a broader umbrella of unity. Each of these is produced within a scholarly paradigm that attempts to situate the Gospel vis-à-vis its contemporaries in Judaism—a paradigm that I have tried to circumvent in this project.

Here I want to suggest a different way to examine the tension between the so-called “ceremonial” and “moral” precepts in Matthew; and this is where I think the insights of C. Ando about legal fiction are most helpful. The accommodation of Roman law to conquered regions by means of legal fiction was not seen by Roman jurists as a breach or abrogation of the law, but an extension of it—a byproduct of an expanding empire still closely tied with its accepted legal tradition. Something similar may be going on in Matthew’s presentation of the law. The Matthean Jesus has ordered a missionary program with specific directives about teaching the ethne to observe everything he commanded. For Matthew, if one follows Jesus and keeps his

“Matthew retains the ceremonial law, but it has undergone a reassessment under Christian motives”; and Gundry, Matthew, 83-84. The most extreme version of this perspective is overtly orientalist in its pitting of external rituals against internal attitudes; see J. Duncan M. Derrett, Law in the New Testament (London: Darton, Longman, & Todd, 1970), xlii, who attributes the emphasis on external ceremonies to superstition: “It was an oriental society, in which demons could be met at night round any dark corner”; cf. Bornkamm, “End-Expectation and Church in Matthew,” 25: “[The Sermon on the Mount’s] motive from beginning to end is to break through a law which has been perverted into formal legal statements under cover of which the disobedient heart fondly imagines that all is well.”

E.g. Konradt, “Die vollkommene Erfüllung,” 142-143: “Die Barmherzigkeit ist ein großes Gebot, die Sabbatheiligung ist dem untergeordnet. Im Konfliktfall ist dem wichtigeren Gebot der Vorrang einzuräumen” (p. 143); and similarly, Konradt, “Law, Salvation, and Christian Identity,” 196-197. He draws attention to Matt 5:19 and “the hierarchy among the laws: There are lesser and greater commandments. The ritual-cultic regulations belong to the lesser ones, whereas Matt 23:23 presents justice, mercy, and faith(fulness) as the most important issues in the law, and Matt 22:34-40 designates the double love command as the highest law and the sum of the Torah. In case of a conflict, preference is to be given to the more important commandments.”

E.g. Saldarini, Matthew’s Christian-Jewish Community, 126; Overman, Matthew’s Gospel, 86, 88.

I should make clear, however, that I think Matthew’s thought-world is still very much constructed by Judean framework, and in this sense his Gospel presents a perspective of the law not wholly unlike that of Philo, Josephus, James (i.e. the Letter of James), and other Hellenized (or Romanized) Judeans.
commands they will do God’s will and gain access to the kingdom of heaven. Two premises of this missionizing agenda are 1) that the *ethne* are in fact available to be missionized—something made possible by the macro exercise of Roman power—and 2) the superlative authority (*ἐξουσία*) of Jesus at the micro level, which he uses to authorize the disciples to disseminate his commands to the *ethne*, and which authorizes him to summarize and thus accommodate the law for the missionized *ethne*. If the missionized *ethne* comply, are baptized, and become disciples—i.e., thinking in Foucauldian terms, if they constitute themselves as subjects of Jesus—they can be assured that keeping the (summarized) law of Jesus will grant them sufficient righteousness to enter the kingdom of heaven; they will be treated *as if* they were fully in line with the requirements of Judean law whether or not, it seems, they abide by the letter of the so-called “ceremonial” law. The bridge that makes this “fiction” possible is the authority/power of Jesus. As with the ethnographies (above ch. 2) and the discussion of Judean ancestral customs in Philo and Josephus (above ch. 4), the interaction between the macro and micro relations of power has caused “law” to emerge as an object of discourse; in Matthew’s case, there is a proliferation of legal summaries designed for the new missionary setting without breaking entirely with the accepted legal tradition (i.e. Judean law). The summarized “law” of Jesus thus emerges as an object in Matthew’s gospel in the space of the macro-micro dynamic.

5.3d

Unlike Matthew, Paul localizes authority (*ἐξουσία*) in himself. This authority is derived from God and Christ, but it is Paul’s nonetheless and is exhibited in his apostleship.

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894 2 Cor 13:10: “So I write these things while I am away from you, so that when I come, I may not have to be severe in using the authority that the Lord has given me [κατὰ τὴν ἐξουσίαν ἣν ὁ κύριος ἐδώκεν μοι] for building up and not for tearing down” (NRSV); cf. Paul’s reference to his apostolic authority (1 Cor
Paul alludes to his authority by means of a variety of claims he makes about himself: the gospel he announces among the ethne is God-given and God-authorized; he was selected by God for his mission to the ethne before he was born; supernatural revelations establish and corroborate his apostleship; he performs signs and

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9:4-6, 12, 18; 2 Cor 10:8). He also speaks of God’s authority (Rom 9:21), the governing authorities (Rom 13:1-4), internal authority over the will (1 Cor 7:37; cf. 8:9), and the supreme authority of God through Christ (1 Cor 15:24). On the relationship between authority and power in Paul, see John Howard Schütz, *Paul and the Anatomy of Apostolic Authority* (SNTSMS 26; Cambridge: Cambridge University Press, 1975), 10-15 and 281-286.

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See esp. Gal 1:11-12: “For I want you to know, brothers and sisters, that the gospel that was proclaimed by me is not of human origin [οὐκ ἐστιν κατὰ ἄνθρωπον]; for I did not receive it from a human source, nor was I taught it, but I received it through a revelation of Jesus Christ [οὔτε γὰρ ἐγὼ παρὰ ἄνθρωποι παρέλαβον αὐτὸ ὥστε ἑξιδίαζθην, ἀλλὰ δι’ ἀποκαλύψεως Ἰησοῦ Χριστοῦ]” (NRSV); cf. Peter von der Osten-Sacken, *Die Heiligkeit der Tora: Studien zum Gesetz bei Paulus* (Munich: Chr. Kaiser Verlag, 1989), 125; Michael Wolter, *Paulus: Ein Grundriss seiner Theologie* (Neukirchen-Vluyn: Neukirchener Theologie, 2011), 57-58; and Schütz, *Paul*, 35-36. Paul’s gospel is outlined in 1 Cor 15:1-11, and it will provide part of the “criterion” for the judgment of God on the world; see Stowers, *A Re-Reading of Romans*, 141-142. Other references to Paul’s divinely ordained gospel and mission include Rom 1:1, 16; 1 Cor 1:17; cf. Rom 15:18; 1 Cor 3:9; 16:9; 2 Cor 1:21-22 (“ὡς δὲ βεβαιωτόν ἡμᾶς . . . καὶ χρίσας ἡμᾶς θεός”); 2:12; 3:5-6; 5:18-20; 10:13; 1 Thess 2:4; see the discussion in J. Christian Beker, *Paul the Apostle: The Triumph of God in Life and Thought* (Edinburgh: T&T Clark, 1989), 3-10.

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9:46, 12, 18; 2 Cor 10:8.  ἀποστολή to the ethne. Paul alludes to his authority by means of a variety of claims he makes about himself: the gospel he announces among the ethne is God-given and God-authorized; he was selected by God for his mission to the ethne before he was born; supernatural revelations establish and corroborate his apostleship; he performs signs and

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895 Cf. Gal 1:1: “Paul an apostle—sent neither by human commission nor from human authorities, but through Jesus Christ and God the Father, who raised him from the dead” (NRSV). Paul’s defense of his apostleship in Galatians is, according to Bernard Lategan, “Is Paul Defending his Apostleship in Galatians?” *NTS* 34/3 (1988): 411-430, derived from an attack on his gospel (p. 426).

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896 Rom 1:5: “through [Jesus Christ our Lord] we have received grace and apostleship [ἀποστολὴν] to bring about the obedience of faith among all the [ἔθνεσιν] for the sake of his name” (NRSV); 1 Cor 9:2; Gal 2:8; cf. other references to Paul as an apostle in Rom 1:1; 11:13; 1 Cor 1:1; 4:9; 9:1, 2, 5; 15:9; 2 Cor 1:1; 11:5; 12:11-12; Gal 1:1; 1 Thess 2:7. In Rom 15:16, Paul likens his apostleship among the ethne to a “priestly service [ἱερουργοῦντα]” and the ethne as an “offering [προσφορὰ].” Nanos, *The Mystery of Romans*, 21, emphasizes that Paul’s mission to the ethne is in the service of a broader goal, namely, “Israel’s restoration” (e.g. in Rom 11). The bibliography on Paul’s apostleship is substantial; see Hans Dieter Betz, *ABD* 1:309-311.

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897 See esp. Gal 1:11-12: “For I want you to know, brothers and sisters, that the gospel that was proclaimed by me is not of human origin [οὐκ ἐστιν κατὰ ἄνθρωπον]; for I did not receive it from a human source, nor was I taught it, but I received it through a revelation of Jesus Christ [οὔτε γὰρ ἐγὼ παρὰ ἄνθρωποι παρέλαβον αὐτὸ ὥστε ἑξιδίαζθην, ἀλλὰ δι’ ἀποκαλύψεως Ἰησοῦ Χριστοῦ]” (NRSV); cf. Peter von der Osten-Sacken, *Die Heiligkeit der Tora: Studien zum Gesetz bei Paulus* (Munich: Chr. Kaiser Verlag, 1989), 125; Michael Wolter, *Paulus: Ein Grundriss seiner Theologie* (Neukirchen-Vluyn: Neukirchener Theologie, 2011), 57-58; and Schütz, *Paul*, 35-36. Paul’s gospel is outlined in 1 Cor 15:1-11, and it will provide part of the “criterion” for the judgment of God on the world; see Stowers, *A Re-Reading of Romans*, 141-142. Other references to Paul’s divinely ordained gospel and mission include Rom 1:1, 16; 1 Cor 1:17; cf. Rom 15:18; 1 Cor 3:9; 16:9; 2 Cor 1:21-22 (“ὡς δὲ βεβαιωτόν ἡμᾶς . . . καὶ χρίσας ἡμᾶς θεός”); 2:12; 3:5-6; 5:18-20; 10:13; 1 Thess 2:4; see the discussion in J. Christian Beker, *Paul the Apostle: The Triumph of God in Life and Thought* (Edinburgh: T&T Clark, 1989), 3-10.

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898 Gal 1:15; cf. Rom 1:1, 14 (“ὅφειλέτης εἰμὶ”); 1 Cor 9:16.

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899 1 Cor 15:8; 2 Cor 12:1-4, 7; Gal 1:12, 16; 2:2; cf. 1 Cor 2:10; Phil 3:15. Schoeps, *Paul*, 54, draws attention to Paul’s references in 2 Cor 4:6 to light shining in the darkness and to light shining in hearts (“ἐν ταῖς καρδίαις ἡμῶν”) as “probably . . . connected with the Damascus experience.”
wonders in connection with his missionary program; he can speak for God; he attributes his particular rights as an apostle to a special measure God’s grace (χαρίς); and his various hardships legitimize his calling and mission. In practice, Paul wields his authority to sway the opinions and actions of his audiences among the ethne—in Foucauldian terms, he tries to conduct their conduct.

900 Rom 15:18-19; 2 Cor 12:12; 1 Thess 1:5; cf. 1 Cor 14:18; Gal 3:5; also Rom 1:11 where Paul desires to bestow a “spiritual gift [χάρισμα . . . πνευματικόν]”; and 2 Cor 10:3-6 (“οὐ κατὰ σάρκα στρατευόμεθα”). Schütz, Paul, 239-240, sees Paul’s signs and wonders (δόναμις) as “authenticating” his apostolic authority especially in 2 Cor 12:12 (cf. Rom 15:19; 1 Cor 2:4; 4:19; 1 Thess 1:5). Although Paul often connects δύναμις with God (Rom 1:16, 20; 9:17; 1 Cor 1:18, 24; 2:5; 2 Cor 4:7; 6:7; 12:9 [the Lord]; 13:4; or the Holy Spirit in Rom 15:13, 19) or God’s action (esp. in the resurrection of Christ in Rom 1:4; 2 Cor 13:4; Phil 3:10; cf. 1 Cor 6:14; 15:43; or to the gospel in Rom 1:16), Schütz highlights the ironic connection Paul makes between δύναμις and ἀσθένεια (esp. in 2 Cor 12:7-10; pp. 238-239, 242-248), a connection that is traceable to the template of weakness-power in the death and resurrection of Christ (p. 245). Schütz points out that “Paul reflects [in his ministry] this same weakness and power. . . . This is how the authority of the gospel is to be understood. In Paul’s whole apostolic life one sees the manifestation of God’s same act which one sees in the gospel itself” (pp. 245-246).

901 1 Cor 7:10 (“παραγγέλλω, οὐκ ἐγὼ ὀλλὰ ὁ κύριος”); 7:40; 9:14; 11:23 (“Ἐγὼ γὰρ παρέλαβον ὑπὸ τοῦ κυρίου, δ καὶ παρέδωκα ὑμῖν”); 14:37; 15:3; 1 Thess 4:15; cf. 2 Cor 13:3; 1 Thess 2:13; also note the irony of Paul’s citation of LXX Isa 40:13 (“τίς γὰρ ἐγνώνοιν κυρίου”) in Rom 11:34a given that he had just spent three chapters expounding on God’s mysterious will in chs. 9-11 (!); see similarly, 1 Cor 2:7-16; 4:1. It is also worth noting that Paul can distinguish between his commands and those of the Lord (e.g. 1 Cor 7:6, 25); and he frequently cites scripture as an authority. For a list and discussion of each scriptural reference, see Christopher D. Stanley, Paul and the Language of Scripture: Citation Technique in the Pauline Epistles and Contemporary Literature (SNTSMS 74; Cambridge: Cambridge University Press, 1992).

902 1 Cor 3:10 (“Κατὰ τὴν χάριν . . . τὴν δοθεῖσάν μοι”); 15:10; Rom 12:3 (“Δέχω γὰρ διὰ τῆς χάριτος τῆς δοθείσης μοι”); 15:15-16; 2 Cor 12:9.

903 1 Cor 4:9-13; 2 Cor 2:14-17; 4:8-18; 6:3-10; 11:23b-33; 12:7-10; Gal 5:11; Phil 1:12-14, 29-30; cf. 2 Cor 1:4-10; Gal 4:13-14; 1 Thess 3:4.

904 This is accomplished most directly by means of letter writing; see Dunn, Theology of Paul, 572, who notes that Paul “writes his letters to his churches precisely as their apostle. His letters, in other words, are themselves the exercise of his apostleship”; cf. Wolfgang Fenske, Die Argumentation des Paulus in ethischen Herausforderungen (Göttingen: V&R Unipress, 2004), 64-65. Paul’s gospel proclamation sets the stage for his interaction with Christ groups by letter; see Wolter, Paulus, 52: “Das paulinische Evangelium geht also den paulinischen Briefen immer voraus”; cf. Johannes Munck, Paul and the Salvation of Mankind (London: SCM, 1959), 51. Paul issues various directives intended to conduct the conduct of his audiences: Rom 6:12-13, 19; 8:7-9, 12-13; 11:18, 20, 22; 12:1-3, 9-13:8, 13-14; 14:1, 3, 5, 10, 13, 15-16, 19-23; 15:1-2, 7, 15; 16:3, 5-17; 1 Cor 1:10; 3:18, 21; 4:5-6, 14-16, 21; 5:2-5, 7-9, 11-13; 6:1-8, 15-20; 7:1-6, 8-31, 36-40; 8:8-13; 10:7-10, 12, 14, 20-21, 24-11:1, 4-7, 10, 13-15, 17-22, 27-34; 14:1, 5, 13, 20, 26-40; 15:34, 58; 16:1-2, 13-14, 16, 20, 22; 2 Cor 1:11; 2:7-8; 5:20; 6:1, 13, 14-7:1; 7:2;
For my purposes, the most important site for this exercise of power in Paul’s letters is in his various discussions of law. On the one hand, unlike Matthew whose Jesus affirms the law, Paul polarizes law and Christ: the righteousness of God that comes by means of the “πίστεως Ἰησοῦ Χριστοῦ” is “apart from law [χωρὶς νόμου]”; believers die to the law (“ἐθανατώθητε τῷ νόμῳ”) to be joined with Christ; God succeeded through Christ at the point where the law failed because of sin; Christ is the “τέλος . . . νόμου”; Christ’s death and not the law makes one righteous; Christ “redeems from the curse of the law [ἐξηγόρασεν ἐκ τῆς κατάρας τοῦ”

8:7 (though see v. 8), 10, 24; 9:7, 13:2, 5, 11-12; Gal 4:12; 5:1-4, 13, 15, 16, 21, 25-26; 6:1-2, 4, 6, 7-10, 16; Phil 1:27; 2:2-5, 12, 14, 16; 3:16-17; 4:1-6, 8-9, 21; 1 Thess 2:12; 3:12; 4:1-12, 18; 5:6, 8, 11, 12-22, 25-27; Phm 8, 21. Elizabeth A. Castelli, *Imitating Paul: A Discourse of Power* (Louisville: Westminster John Knox, 1991), esp. ch. 4, has also read Paul’s directives (especially mimesis) through a Foucauldian lens. For a different use of Foucault to read Paul, see the recent contribution by Valérie Nicolet-Anderson, *Constructing the Self: Thinking with Paul and Michel Foucault* (WUNT 2/324; Tübingen: Mohr Siebeck, 2012). For a survey of the nuances of Paul’s directives, see Hermut Löhr, “The Exposition of Moral Rules and Principles in Pauline Letters: Preliminary Observations on Moral Language in Earliest Christianity,” in *Moral Language in the New Testament* (ed. Ruben Zimmermann and Jan G. van der Watt; in cooperation with Susanne Luther; WUNT 2/296; Tübingen: Mohr Siebeck, 2010), 197-211. Other tactics of power that Paul uses in addition to directives include appealing to his ethnic pedigree to make polemical points (e.g. 2 Cor 11:22-23a; Phil 3:4-6; cf. Rom 9:1-3; Rom 11:1), and disparaging his competitors (e.g. 2 Cor 11:4-15; 12:11-12; Gal 1:7b-9; 2:4, 11-14; 4:17; 5:10b, 12; 6:12-13; Phil 2:21; 3:2, 18-19; cf. Phil 1:15-18, 28); cf. Herman Ridderbos, *Paul: An Outline of His Theology* (trans. John Richard De Witt; Grand Rapids: Eerdmans, 1975), 240-241. That Paul engages in such tactics indicates that his views have been met with resistance, which is itself a component of the relationship of power; see Foucault, *History of Sexuality*, 95.

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905 Paul uses the word νόμος 118 times in the undisputed letters; Michael Winger, *By What Law?: The Meaning of Νόμος in the Letters of Paul* (SBLDS 128; Atlanta: Scholars Press, 1992), 32. See Winger’s classification of these uses in his Appendix to ch. 2 (pp. 51-64).

906 Whether the genitive is subjective or objective is hotly contested among scholars; cf. Gal 2:16.

907 Rom 3:21-22.

908 Rom 7:4; cf. 7:6, 25; Gal 2:19-20.

909 Rom 8:3.

910 Rom 10:4. The meaning of τέλος is also hotly contested.

νόμου”

9.12 The law served its purpose “until Christ [εἰς Χριστὸν]”
9.13 the connection with Christ can be nullified (καταργέω) if the believer adopts the law;
9.14 and Paul considers his pedigree and his status as a law observant Pharisee a “loss [ζημίαν]” in comparison with “knowing Christ.”
9.15 Paul also opposes “spirit” and “law,”
9.16 “faith” and “works,”
9.17 and “law” and “grace”; and he underscores the negative role of the law: it increases awareness of sin,
9.18 it brings wrath (ὀργή);
9.19 it multiplies transgression;
9.20 it holds one captive (κατέχω);
9.21 it is part of a “ministry of death [ἡ διακονία τοῦ θανάτου]”;
9.22 he likens the Galatians’ flirting with Judaizing to a return

9.12 Gal 3:13; cf. 4:5.
9.13 Gal 3:24; cf. 4:4; also 6:2, where a different law applies to the believer (i.e. the law of Christ); see Winger, By What Law?, 74-75.
9.14 Gal 5:4; cf. 5:2, 6.
9.15 Phil 3:8.
9.18 Rom 6:14; cf. 5:20; Gal 2:21; 5:4; Phil 3:9. See also the tension between “law” and “promise” in Gal 3:18-23; Rom 4:13-14; cf. Gal 4:28; Rom 4:16; 9:8.
9.21 Rom 4:15.
9.22 Rom 5:20; 7:5 (“τὰ παθήματα τῶν ἁμαρτιῶν τὰ διὰ τοῦ νόμου ἐνηργεῖτο”), 8-9; cf. 1 Cor 15:56 (though see the conjectural emendation in the NA27, which is removed in the NA28).
9.23 Rom 7:6; and thus one needs to be set free from it (Rom 8:2; Gal 5:1).
9.24 2 Cor 3:7. Paul also says the law was mediated by angels (Gal 3:19), which some have understood to imply a diminution of its value; so Samuel Sandmel, The Genius of Paul: A Study in History (Philadelphia: Fortress, 1979), 55-56.
to paganism;⁹²⁵ and submitting to circumcision obligates one to keep every other precept, which Paul forbids,⁹²⁶ and which, in any case, he says even his opponents fail to do.⁹²⁷

On the other hand, paradoxically, Paul articulates a high view of the law:⁹²⁸ he speaks positively of the “oracles of God [τὰ λόγια τοῦ θεοῦ]” given to Israel,⁹²⁹ of “the giving of the law [ἡ νομοθεσία],”⁹³⁰ and of circumcision,⁹³¹ he says the doers of the law will be declared righteous;⁹³² he “upholds [ἰστάνομεν]” the law;⁹³³ he seems to affirm a place in Abraham’s family for those who keep the law;⁹³⁴ the precepts of the law are “holy, and righteous, and good”;⁹³⁵ the law is “spiritual [πνευματικός]”;⁹³⁶ there is a righteousness that comes from the

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⁹²⁶ Gal 5:3; cf. Jas 2:10-11; Did. 6.2. For a comparison of these texts, see Kloppenborg, “Didache 1.1-6.1, James, and the Torah,” 214-215.
⁹²⁸ So Nanos, The Mystery of Romans, 22.
⁹²⁹ Rom 3:2.
⁹³⁰ Rom 9:4; cf. the other positives in this verse and in the next (v. 5): “οἵτινές εἰσιν Ἰσραηλίται, ὃν ἡ υἱοθεσία καὶ ἡ δόξα καὶ ἡ λατρεία καὶ ἡ διαθήκη καὶ ἡ καθήκοντος καὶ ἡ πατριαρχεία καὶ ἡ θυσία καὶ ἡ κατάνομος καὶ ἡ πατέρες καὶ ἡ ἀξία ἡ ἁγιασμός ἡ Ἀβραάμ Ἰσραήλ ἡ ἀνατομόνος ἔνωσεν ἐπὶ τὸν Ἰσραήλ ἐστιν πατὴρ πάντων ἡμῶν” (Rom 4:16).
⁹³² Rom 2:13.
⁹³³ Rom 3:31.
⁹³⁴ Rom 4:16: “οὐ τῷ ἐκ τοῦ νόμου μόνον ἀλλὰ καὶ τῷ ἐκ πίστεως ὁμολογεῖται, ὃς ἐστιν πατὴρ πάντων ἡμῶν” (Rom 4:16).
⁹³⁵ Rom 7:12; cf. vv. 16, 22. See Winger, By What Law?, 81-82, 167-193, for a discussion of the difficulties in defining Paul’s use of νόμος in Rom 7.
⁹³⁶ Rom 7:14.
law; and he points out both that the “righteous requirement [τὸ δικαίωμα]” of the law is fulfilled (πληρῶ) by believers, and that the love command in particular fulfills the law.

In addition to this tension, what complicates any attempt to sort out Paul’s precise views of the law is his fluid treatment of its precepts. He says he “becomes all things to all people [τοῖς πᾶσιν γέγονα πάντα],” which in context indicates that he can live either like a law-free gentile or an observant Judean; he can advocate laxity toward precepts related to purity.

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937 Phil 3:6. This righteousness is, according to Westerholm (Perspectives Old and New on Paul, 275), contrasted with the righteousness that comes from God (v. 9). Pauline scholars have produced a veritable library’s worth of writing on the topic of the δικ- word group in Paul. For a concise and balanced overview, see Jewett, Romans, 141-143, 272-273. Jewett combines the cosmic perspective of “righteousness” from the German tradition, the covenantal/participatory (e.g. Sanders, etc.), and the inclusive (e.g. Dunn, Gaston, Stendahl, etc.), and concludes that his understanding “integrat[es] . . . personal and cosmic transformation, the restoration of the divinely intended order, the achievement of justice, and the character of divine righteousness” (pp. 272-273).

938 1 Cor 9:8, 9; 14:21, 34; cf. Rom 10:5-6.

939 Rom 8:4.


941 The entire Paul and the law debate is an attempt to rectify this tension, and also to explain the anomalies that I identify in this paragraph, within the confines of first century Judaism; cf. the comment by Brian S. Rosner, Paul and the Law: Keeping the Commandments of God (NSBT 31; Downers Grove: InterVarsity, 2013), 24: “The crux of the problem of Paul and the law is the fact that his letters present both negative critique and positive approval of the law.” I discuss various scholarly reconstructions of Paul’s views of law above in ch. 3.


943 1 Cor 9:19-23. Osten-Sacken, Die Heiligkeit der Tora, 148, sees here a template of law keeping that “Judenchristen” were expected to follow.
and Sabbath; and he says that deciding whether to eat idol meat (εἰδωλόθυτος) depends on the situation. But perhaps most maddening is his use of irony:

(25) Circumcision indeed is of value if you obey the law (ἐὰν νόμον πράσσῃς); but if you break (παραβάτης) the law, your circumcision has become uncircumcision (ἀκροβυστία). (26) So, if those who are uncircumcised keep the requirements of the law (τὰ δικαιώματα τοῦ νόμου φυλάσσητα), will not their uncircumcision be regarded (λογισθήσεται) as circumcision? (27) Then those who are physically uncircumcised but keep the law (τὸν νόμον τελοῦσα) will condemn you that have the written code and circumcision but break (παραβάτης) the law. (28) For a person is not a Jew who is one outwardly (οὐ γὰρ ὁ ἐν τῷ φανερῷ Ἰουδαίος ἔστιν), nor is true circumcision something external and physical. (29) Rather, a person is a Jew who is one inwardly (ἀλλ’ ὁ ἐν τῷ κρυπτῷ Ἰουδαίος), and real circumcision is a matter of the heart—it is spiritual and not literal (ἐν πνεύματι οὐ γράμματι). Such a person receives praise not from others but from God. (Rom 2:25-29 NRSV)

These verses are part of the broader diatribe that began in v. 17. Here Paul asserts a connection between circumcision and law observance (v. 25a), such that if a person fails to do the latter, the former is nullified (v. 25b). The inference he draws corresponds to this assertion: if the uncircumcised person keeps the law, his uncircumcision will be reckoned as

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944 See esp. Rom 14:15, 20. The relationship between perspectives of the law and the identities of the “weak” and “strong” are pivotal for some reconstructions of the occasion of Romans; e.g. Francis Watson, Paul, Judaism, and the Gentiles: A Sociological Approach (SNTSMS 56; Cambridge: Cambridge University Press, 1986), 94-105. See the counter proposal by Nanos, The Mystery of Romans, 36, 143-145.

945 1 Cor 8:10; cf. 10:28. Paul is clear that the Corinthians should shun idol worship (1 Cor 10:14); however, in emphasizing this he does not disagree with their statement (“all things are lawful”; v. 23a), but merely qualifies it (“not all things are beneficial [συμφέρει]”; v. 23b); so also in 1 Cor 6:12. Räisänen, Paul and the Law, 48, suggests that the issue of idol meat was an “adiaphoron” for Paul.

946 Cf. Nanos, The Irony of Galatians, 6, who sees Galatians as a letter of “ironic rebuke.”

947 Ernst Käsemann, Perspectives on Paul (trans. Margaret Kohl; London: SCM, 1971), 140, refers to the “antithesis” between circumcised and uncircumcised in this text as “paradoxical.” See similarly N. T. Wright, The Letter to the Romans: Introduction, Commentary, and Reflections (NIB 10; Nashville, Tenn.: Abingdon, 2002), 448: “Paul must have known that this was paradoxical to the point of being funny”; cf. 1 Cor 7:19: “Circumcision is nothing, and uncircumcision is nothing; but obeying the commandments [ἔντολῶν] of God is everything”; Gal 5:6: 6:15.

948 See Stowers, A Re-Reading of Romans, 143-158. He identifies 2:17-29 as “speech-in-character” and Paul as addressing a “pretentious [Judean] teacher” who is a competitor in teaching gentiles (p. 153).

949 For a discussion of the phrase “φυλάσσω τὰ δικαιώματα τοῦ νόμου,” see Douglas Moo, The Epistle to the Romans (NICNT; Grand Rapids: Eerdmans, 1996), 170 fn. 21. Peter Stuhlmacher, Paul’s Letter to
circumcision (v. 26). The next verse (v. 27) amplifies this inference by incorporating the element of condemnation—the uncircumcised law keeper will condemn the circumcised law breaker.\textsuperscript{951} The rationale (γὰρ) for this condemnation is that both Jewishness and circumcision are hidden (κρυπτός; vv. 28-29).\textsuperscript{952} It is the “hidden Judean” who is approved (ἐπαινοῦ) by God.\textsuperscript{953}

The immediate purpose of this section from a tactical perspective is to denigrate the Judean interlocutor,\textsuperscript{954} and thereby elevate the status of gentiles as equal participants with Judeans in God’s family.\textsuperscript{955} Accordingly, the legitimacy of Paul’s gospel, of his authority as apostle, and ultimately of his mission to the ethne are all also being implicitly defended.\textsuperscript{956} To succeed in his defense, Paul tries to destabilize the distinction between Judeans and non-Judeans

\textsuperscript{951} Jewett, \textit{Romans}, 234, refers to this shift in roles as “astounding.” On the grammar of this verse, see Rosner, \textit{Paul and the Law}, 98. Joel Marcus, “The Circumcision and the Uncircumcision in Rome,” \textit{NTS} 35/1 (1989): 67-81, suggests that the terms “circumcision” and “uncircumcision” were “epithets” in Rome (p. 79).

\textsuperscript{952} Thomas R. Schreiner, \textit{Romans} (BECNT; Grand Rapids: Baker Books, 1998), 141-143, reviews the theme of “circumcision of the heart” in Judaism, and interprets vv. 28-29 as Paul separating from his contemporaries by seeing circumcision as “expendable.” It is interesting that Paul applies the theme of “circumcision of the heart” to persons outside of ethnic Israel; see Arland J. Hultgren, \textit{Paul’s Letter to the Romans: A Commentary} (Grand Rapids: Eerdmans, 2011), 130-131. For Paul, the “spirit” changes one’s heart irrespective of one’s gentile ethnicity; cf. Rom 8:4; Gal 3:2-3, 5.


\textsuperscript{955} And in this sense, the passage refers back to the gentile law keeping mentioned in 2:14-15, and to the emphasis on God’s impartiality in 2:1-11; see Frank J. Matera, \textit{Romans} (PCNT; Grand Rapids: Baker Academic, 2010), 59-60, 75-76; cf. Leander E. Keck, \textit{Romans} (ANTC; Nashville, Tenn.: Abingdon, 2005), 88-89; also Barclay, “Paul and Philo,” 544.

\textsuperscript{956} Cf. Stowers, \textit{A Re-Reading of Romans}, 153: “[Rom] 2:17-29 criticizes not Jews or Judaism as such but teachers who in Paul’s view stand in antithesis to his own gospel concerning justification of the gentile peoples through the faithfulness of Jesus Christ.”
around the issue of circumcision. But there is tension in his argument: how can an uncircumcised person be reckoned as a law keeper when circumcision is itself a precept of Judean law? Interpreters do their best to ease this tension. There is, for example, a long history of interpreting this passage inter alia as Paul accentuating the primacy of the law’s spirit (or true intent) over the law’s letter (or law-as-code); gentiles (or “Christians”) can then be seen as keeping the former by faith. Other proposals include: treating the “uncircumcised” as “righteous gentiles” who observe part of Judean law; arguing that the “uncircumcised” observe the natural law; concluding that the passage is “not Pauline” or that it refers to a

957 Similarly, Stowers, A Re-Reading of Romans, 157. There are other tensions as well, such as determining the relationship between these verses and Paul’s broader argument that gentiles do not need to keep the law to be included in God’s family (cf. Moo, Romans, 169-170); and classifying Paul’s views of circumcision, which appear to be anomalous in early Judaism; see the forceful conclusion drawn by Barclay, “Paul and Philo,” 555-556: “[Paul’s views] fitted no recognizable mould and matched no contemporary form of Judaism” (p. 556).

958 Scholars divide up the various proposals differently; e.g. Räisänen, Paul and the Law, 101-109.


960 Cf. Nanos, The Mystery of Romans, 35, 174-179; cf. p. 23 fn. 5. See also Stowers, A Re-reading of Romans, 156-157. The main problem with this view is that it is an argument from silence. What Paul asserts is that gentiles (the uncircumcised) are reckoned as “circumcised.” If righteous gentiles were in view, such a designation would be inappropriate; see Sanders, Paul, the Law, and the Jewish People, 130. Franz J. Leenhardt, The Epistle to the Romans: A Commentary (trans. Harold Knight; London: Lutterworth, 1961), 88, sees Paul referring only to those laws that gentiles are “acquainted with.”


962 Sanders, Paul, the Law, and the Jewish People, 131. To be fair, Sanders argues that the whole of 1:18-2:29 is a “synagogue sermon” (p. 129). Still, however, he admits that 2:25-29 does not fit neatly.
hypothetical situation;\textsuperscript{963} positing that these verses nullify those aspects of the law (e.g. circumcision) that divide Judeans and gentiles;\textsuperscript{964} suggesting that Paul has reduced the law to a set of moral provisions.\textsuperscript{965}

Each proposal tries to evade the fact that Paul appears to be speaking of \textit{full} law observance by gentiles \textit{without} circumcision.\textsuperscript{966} But such observance is, strictly speaking, impossible.\textsuperscript{967} Commenting on these verses, D. Boyarin observes:

Law [Torah] can only mean one thing: the aggregate of all of the commandments both ritual—between humanity and God—and ethical—between humans and other humans. To be sure, there is a disagreement between Paul and ‘most Jews’ as to whether gentiles need to be circumcised in order to become part of the People of God, but even more to the point, there is a fundamental gap in the definition of the Law. For prophet or Pharisee, it is possible to preach: ‘What good is keeping this ceremonial part of the Law, if you do not keep that ethical part of the Law?’ For Paul alone is it possible to generalize the one part as the Law \textit{tout court}. For Paul, Law has come to mean something new, vis-à-vis Pharisaic Judaism.\textsuperscript{968}


\textsuperscript{966} Cf. Donaldson, \textit{Paul and the Gentiles}, 148: “there is no hint that ‘the law’ [in Rom 2] bears differently on Gentiles than on Jews; it is referred to throughout as a single, indivisible standard, making equal demands on Jew and Gentile alike.” Brendan Byrne, \textit{Romans} (Sacra Pagina 6; Collegeville, Minn.: The Liturgical Press, 1996), 102, underscores the strangeness of Paul’s language: “Circumcision does not merely ‘lapse’ in some way; it actually ‘becomes uncircumcision.’”

\textsuperscript{967} Käsemann, \textit{Perspectives on Paul}, 141: “The Gentiles cannot, being uncircumcised, fulfill the whole Torah at all.”

Boyarin is correct insofar as he has identified a tension between Judean law as a whole entity, and Paul’s tendency “to generalize” a portion of it. This tension is also detectable in Paul’s statements about love fulfilling (πληρόω) the law (Rom 13:8; Gal 5:14), Christ believers fulfilling the law (Rom 8:4), and in his summation (ἀνακεφαλαιοῦμαι) of the Decalogue (Rom 13:9), which is itself fulfilled completely (πλήρωμα) in the love command (Rom 13:10). In none of these instances, it seems, is Paul referring to the precepts of the so-called “ceremonial” law, even though he conceals this fact from his audiences. It is more obvious in Rom 2:25-29 that Paul is not referring to the “ceremonial” law when he states that the ἀκροβυστία—those who have not submitted to the “ceremonial” precept of circumcision—keep the whole law (“τὰ δικαίωμα τοῦ νόμου”; 2:26a; cf. 8:4a); but the same principle is at work: Paul asserts that the law is “fulfilled” (i.e. reckoned as kept) apart from its “ceremonial” precepts. For Boyarin, and for most scholars, such a perspective of Judean law marks Paul as at the very least odd in early Judaism. I am not prepared, however, to drift as far as some scholars and see Paul’s views of law as nearly unintelligible, or as sui generis, or to try and smooth over the difficulties in

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969 I identified a similar tendency in Matthew (see the previous section above).
970 So G. Delling, “πλήρωμα,” *TDNT* 6.298-305, here, 305.
971 See the discussion in Räisänen, *Paul and the Law*, 62-73: “[Paul] refrains from making any distinctions within the law” (p. 69); also Sanders, *Paul, the Law, and the Jewish People*, 96: “When Paul uses the word ‘law’ or ‘commandments’ in connection with behavior, he never makes a theoretical distinction with regard to what aspects of the law are binding, nor does he in any way distinguish ‘the law’ which Christians are to obey from the law which does not [make] righteous.”
972 See the parallelism between τελέω and φυλάσσω in Rom 2:26-27; Jewett, *Romans*, 234.
973 Cf. Barclay, “Paul and Philo,” 545: “Most Jews would have agreed with Paul ([Rom] 2.25) that law-observance is a necessary condition for the validity of circumcision: without law-observance circumcision will not count. But Paul here suggests that ‘keeping the just requirements of the law’ is actually a sufficient condition as well: with this alone a Gentile may count as if circumcised. It is this slide from necessary to sufficient condition which makes Rom 2.26 so radical.”
974 Cf. Räisänen, *Paul and the Law*, 12. I appreciate Räisänen’s insistence that the difficulties in Paul’s discussion of the law should not be displaced but be accepted. My counter proposal, however, is to think
favor of what Geertz once criticized as an “abstract commonalit[y].” Tension in Paul’s views of law cannot be explained away or dismissed.

But it can be redescribed. Paul’s assertion in Rom 2 that the “uncircumcised” person keeps the law and thus becomes “circumcised” is problematic for many scholars primarily because the point of comparison is Paul’s relationship to his contemporaries in early Judaism. Paul seems odd when compared with this setting. Remaining consistent with my approach throughout this project, and with my treatment of Matthew and the law above, I would like to urge for a shift in focus away from examining Paul vis-à-vis Judaism (e.g. Boyarin et al.), and toward a comparative reading with Roman legal fiction as described by recent scholarship on Roman legal history (e.g. Ando et al.). When Paul states that an uncircumcised person who keeps the precepts of the law will have his uncircumcision looked upon as if it were (λογίζομαι) circumcision, he asserts what might be described as an “exceptio[n] to [a] legal ‘given.’”

about Paul’s views of law from a broader cultural perspective than simply the degree to which Paul resembles or not his contemporaries in Judaism.

This is how I read Westerholm’s reconstruction of Paul’s views; see above ch. 3.

Cf. the views of the scholars listed above. Geertz’s comment is directed at the field of comparative law in particular, but it applies just as well to treatments of Paul; see “Law and Local Knowledge,” 215-216.

The tension is sharpened when the references to heart circumcision from the Hebrew Bible are considered: Deut 10:16 addresses Israel (see v. 12) as do 30:6 and Lev 26:41; cf. Jub. 1.23; 1QpHab 11.13; Odes of Sol. 11.1-3. Jer 4:4 addresses Judah; 9:25[26] distinguishes between Israel and other people groups (including Judah) by saying that Israel is uncircumcised in heart while the others are just physically uncircumcised. Only Ezek 44:7, 9 applies the theme to foreigners (“בני-נכר”), but does so derogatorily, insisting that they are not only uncircumcised in heart (לב) but also in flesh (בשר). Paul adapts this tradition and applies it positively to gentiles and not to Israel. This also means he has transposed the connection between heart circumcision and Israel’s covenant with God (a connection that is explicit in the Deuteronomy and Leviticus texts), and rendered it as if it applied to the ethne.

For a discussion of redescription, see above ch. 1.

Cf. Stowers, A Re-reading of Romans, 141: “In [Rom] 2:26-27, Paul contrasts the gentile who keeps the commandments of the law with a Jew who has the written code but does not keep the law. He says
The “given” in this case is circumcision, which was, ordinarily, requisite for a person to be considered observant. In effect, Paul treats the uncircumcised person as if he were fully law observant without actually being so. This fictive observance accomplishes analogously what Roman jurists sought to accomplish through their use of the fictio, namely, “to attain a desirable legal outcome which could not have been achieved without using a fiction.”\textsuperscript{981} The outcome for Paul is reckoning the non-Judean ethne, whom he believes he is called to missionize, as on equal terms with Judeans in God’s family. A “fiction” also seems to be at work in Paul’s various statements about “fulfilling” the law, each of which, as I noted above, presumes that only part of Judean law is actually being kept. As is implied in Matthew’s treatment of law, the so-called “ceremonial” precepts have been displaced. Nevertheless, the expectation for both writers is that the ethne are to submit to Judean law in some sense, and thus constitute themselves—thinking with Foucault—as subjects of Israel’s deity, who exercised jurisdiction over this law, even that this Jew is not genuine. Although interpreters often infer the contrary, he does not say that the gentile becomes a true Jew but that God will regard the gentile as if he were circumcised, that is, in a covenant relation”; italics original. This legal fiction generates a response from the hypothetical Judean in Rom 3:1, “Then what advantage has the Jew? Or what is the value of circumcision?” The word λογίζομαι carries the sense of “evaluate, estimate, look upon as, consider”; BAGD, 597.

\textsuperscript{980} Moscovitz, “Legal Fictions,” 127. As with most hypotheses in Pauline studies, this one has already been proposed and rejected; see Günther Bornkamm, \textit{Paul} (Minneapolis: Fortress, 1995), 138; similarly H. Heidland, “λογίζομαι,” \textit{TDNT} 4:284-292, esp. 291-292; cf. Dunn, \textit{Theology of Paul}, 385-386. Bornkamm argues that God stands above the law, and, as such, can authenticate real ontological changes (not merely “a legal fiction, an ‘as if’”) in people apart from law (e.g. justifying sinners by means of divine pronouncement). My proposal is not so overtly theological; I am pursuing a comparison by means of analogy not identity. The issue is not whether Paul used legal fiction; he did not. He was not a Roman jurist or a late antique rabbi. The issue is whether legal fiction helps us to reframe and perhaps solve some difficulties we have with Paul’s treatment of law.

\textsuperscript{981} Moscovitz, “Legal Fictions,” 126.
though Paul is especially adamant that the mechanism by which the *ethne* enter God’s family is faith in Christ and not by becoming Judean proselytes.\textsuperscript{982}

As I pointed out above (section 5.3a), some of the impetus for this legal maneuvering by Roman jurists resulted from trying to accommodate Roman law to regions acquired by conquest and occupied by non-citizens: litigants could be treated *as if* they were citizens and *as if* their trial were held within the city limits; Roman law could then be used to adjudicate the case. When compared with Matthew’s and Paul’s treatments of law, these insights accentuate the role that interaction with the *ethne* plays in shaping law as an object of discourse for both writers.

Ando’s comments are worth citing again.\textsuperscript{983}

The [Roman] civil law was an instrument of empire. . . . Many of its most characteristic features developed in response to the challenges posed when the Latinate legal system of the single and singular polity of Rome was deployed so as to embrace, incorporate, and govern discrepant people and cultures far afield.\textsuperscript{984}

Ando articulates the process that seems to me to be analogous to the one facing Matthew and Paul: accommodating a given legal system (i.e. Judean law) to groups of people who ordinarily would not come under this legal system’s jurisdiction,\textsuperscript{985} and doing so in a manner *that is not intended* to breach or abrogate the given legal system.\textsuperscript{986} Accordingly, I see both writers extending Judean law by means of a kind of *fictio* but not reducing, redefining, or isolating the

\textsuperscript{982} The *ethne* are accordingly not “under law” (e.g. Rom 6:14-15; Gal 3:23); for a provocative reading of Paul’s use of this phrase, see Gaston, *Paul and the Torah*, 29-31. Unlike Paul, as I discussed above, Matthew sees the mechanism of entry as involving baptism, discipleship, and keeping the commands of Jesus (Matt 28:19-20).

\textsuperscript{983} See above fn. 840 for the full quotation.

\textsuperscript{984} Ando, *Law, Language, and Empire*, ix.

\textsuperscript{985} Cf. Winger, *By What Law?*, 109: “Νόμος is what Jews do. To be a Jew is to do νόμος, and to do νόμος is to be a Jew.”

\textsuperscript{986} I see this proposal and these conclusions as ultimately consistent, at least with respect to Paul, with those of Gager, *Reinventing Paul*, 3-19.
law’s essential core. What makes this *fictio* possible for both writers is the wielding of authority/power.

My proposal is not an attempt to resolve all of the tensions in either writer’s discussion of law; I am not certain any proposal can satisfactorily achieve such an end. Rather, I am simply suggesting that when Matthew’s or Paul’s views of law are examined from outside of the Jewish/Christian cultural matrix, there are analogous cultural practices (e.g. Roman legal fiction) that may help to explain some of the peculiarities without recourse to needless suggestions that either writer had breached the law or identified its “essential” core, etcetera. On my reading, guided by Foucault, there is no “essential law.” There is only the formation of a discursive object within a particular discursive context by means of the exercise of power.

### 5.4 Conclusion

With Foucault’s understanding of power as my analytical grid, I have argued that both Matthew and Paul reinscribed the discourse of Roman imperial power at the macro level in their respective missionizing programs (i.e. in Matt 28:16-20 and Rom 15:19-28). Roman power, articulated in late Augustan imperial propaganda, made available a conquered, pacified, and organized *ethne/gentes*; and it is these *ethne* who are to be missionized. At the micro level of power relations, both writers pursue their missionizing programs by means of their respective understandings of “authority [*ἐξουσία*].” The Matthean Jesus has superlative authority/power, and is able not only to authorize the mission to the *ethne* but also to issue a directive that

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987 I do not see a significant difference between my thesis and that put forward by Donaldson, *Paul and the Gentiles*, 165-166, who argues that Paul’s Judean “native conviction” already inclined him to think in terms of a mission to the *ethne*. This means that Paul’s discussion of the law is modified because of a paradigm shift that displaces the Torah as a boundary marker, and replaces it with Christ. Donaldson thinks that Paul viewed gentiles who believed in Christ as proselytes—a perspective that would have maintained consistency with his convictions as a Judean (p. 168). My focus is on how to explain the residual aspect of Paul’s treatment of law: the *ethne* obviously only keep part of the law, yet Paul describes this with language that evokes complete observance, as Donaldson also recognizes.
mandates teaching the *ethne* all of his commands; these include his views of law, which are nuanced to accommodate this new setting. Paul claims authority for himself based on his belief that God by means of the risen Christ had called and commissioned him as apostle to the *ethne*. Paul wields his authority to accommodate Judean law for his audiences, but in so doing, he creates tension in his various statements. Alleviating such tensions has not been my primary goal. My primary goal is to explain why there is a proliferation of discussions around law in Paul (and in Matthew as well). My argument is that the interaction between the macro and micro relations of power—the imperial context and the wielding of authority by the Matthean Jesus and by Paul—has generated discussions of law in both writers; and these discussions take as their object the accommodation of Judean law to the missionized *ethne* in a manner that is analogous to the practice of “legal fiction” deployed by Roman jurists. My redescription of Matthean and Pauline views of law thus operates on two levels: 1) it redescribes by way of analogy with legal fiction their respective accommodations of Judean law; and 2) drawing from Foucault, it redescribes by way of analogy with Josephus, Philo, and with the ethnographic studies from Indonesia, Mexico, the Philippines, and Hawaii, the reason why “law” has even become an object of discourse for both writers: “because relations of power had established it as a possible object.”

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988 Foucault, *History of Sexuality*, 98.
Conclusion

My central research question in this project—*why law?*—is deceptively simple. Almost every scholar who explores the discussions of law in the Gospel of Matthew and the letters of Paul has danced around the question in one way or another, but almost no one has investigated it directly. I say “deceptively” because the answer to the question delves into human behavior and human culture, neither of which is easily mapped. This is why I have relied on Foucault’s understanding of power to provide an analytical grid, which helps me to narrow the plurality of human experience to a set of more manageable issues: how is power exercised; what happens when it is; and how are objects formed by the exercise of power? Thinking about law as a discursive object—much like “sexuality” for Foucault—brings out the importance of relations of power, because, as Foucault argued in *The History of Sexuality*, relations of power created the space within which discourses on sex proliferated. I have borrowed this insight here to consider the proliferation of discourses on law in a variety of cultural contexts, always trying to think in terms of the specific relations of power in each setting. I have delineated these relations in two categories—macro and micro—and examined how the interaction between the two played a key role in the emergence of law as an object in each cultural situation. The impetus for my investigation of cross-cultural materials comes in part from J. Z. Smith’s work on comparison, which draws from ethnographic materials in order to think about particular human phenomena in broader cultural terms. It also comes from studying ethnographies in the field of the anthropology of law. My aim has not been to use these various studies to offer another definition of “law.” Nor have I tried to compare aspects of law (e.g. precepts or legal systems) as scholars of comparative law frequently do. Rather, I have been narrowly focused on answering the question of why law becomes an object of discourse; and my specific interest is in answering this question with respect to Matthew and Paul. The interdisciplinary breadth of the project has freed
me up to think about law as an element of human culture, and not, as so many Matthean and Pauline scholars have done, as simply a place-holder for answering their real question of interest: where does what Matthew and Paul say about law situate them with respect to Judaism?

In ch. 1, I introduce the problem as I see it in Matthean and Pauline scholarship on law. Both fields have reached a stalemate over the question of whether Matthew and Paul are inside or outside of Judaism. Competent scholars line up on opposing sides of this issue; and Matthew’s and Paul’s respective views of law are central to the debate. My proposal is to circumvent this debate by widening the focus to the cross-cultural level, and drawing from materials that have heretofore been neglected by almost all scholars of antiquity who investigate law, but especially Matthean and Pauline scholars: ethnographic studies that focus on “law” in the field of the anthropology of law. This move requires careful thought about method, especially the method of comparison. And here I borrow from the work of J. Z. Smith, and blend it with that of M. Foucault. What I am comparing in this project is not particular precepts of divergent legal systems, but relations of power that make discussions of law possible.

Chs. 2 and 3 are juxtaposed in this project because they are so different. In ch. 2, I introduce the field of the anthropology of law and summarize four ethnographies (from Indonesia, Mexico, the Philippines, and colonial Hawaii), always focusing on the interaction between the macro and micro relations of power. “Law,” or “law-like” rules and customs, proliferate as a result of the exercise of power in each setting. In ch. 3, I survey Matthean and Pauline scholarship on law from the mid-twentieth century to the present, and emphasize the stalemate reached in both fields with respect to the issue of where the two writers should be situated vis-à-vis Judaism. I point out that most scholars have narrowly examined law in both fields as an essentially “Jewish” thing without adequately considering law as an aspect of human behavior and thus of human culture; hence the contrast with the ethnographic materials of ch. 2.
I did, however, identify the work of three Pauline scholars (Huttunen, Fredriksen, and Kahl) as examples of attempts to situate Paul’s discussion of law in the wider Greco-Roman context; Kahl’s work is especially noteworthy for considering the issue of Paul and the law in a Roman imperial context.

Ch. 4 examines the macro and micro relations of power in the interaction between Romans and Judeans over the issue of the legality of Judean laws and customs as discussed by Philo (Legat.) and Josephus (A.J.). The main contribution of this chapter is parsing more precisely what is meant by “legal” when we say that Judean ancestral customs enjoyed a certain “legal” status in the early empire. Drawing from the studies of C. Ando and J. Harries, I argue that “legal” in the Roman world did not mean settled-once-and-for-all; Roman law was not imposed but was most successful when it won the assent of provincials. In fact, it was presumed that litigants would wield the law in their favor, and the evidence in Philo and Josephus testifies that individual Judeans did just this when advocating for their “rights” before Roman magistrates. The interaction between Roman magistrates (macro level) and individual Judeans (micro level) made possible the emergence of Judean laws and customs as a discursive object. The various documents that Josephus cites provide our primary evidence for the proliferation of discourses around these laws and customs.

Chs. 3 and 4 indicate that investigating the issue of law in Matthew and Paul will require some consideration of the first century C.E. Roman imperial context. Ch. 5 explores imperial discourse related to geography and the naming of conquered or pacified regions of ethne/gentes in Roman political propaganda. My argument is that when Matthew and Paul discuss their respective missionizing projects among the ethne, they are reinscribing this imperial discourse, and thus the macro exercise of imperial power that is its foundation. Missionizing the ethne is central for both Matthew and Paul (e.g. Matt 28:18-20; Rom 15:19-28), and shapes how they
discuss the issue of law. Both writers attach the impetus for missionizing the *ethne* to notions of “authority [ἐξουσία],” and both use this authority to emphasize those aspects of Judean law that govern social relations while downplaying or displacing precepts dealing with the so-called “ceremonial” law. Why this is so has been a matter of debate among scholars; however, I suggest that one way to understand this phenomenon is by comparing it with the practice among Roman jurists of accommodating Roman law to newly conquered regions by means of legal fiction: treating Roman law *as if* it applied in situations where ordinarily it would not have. This practice was not seen as abrogating the law, but rather as preserving the legal tradition.

Although I have identified a similar macro-micro dynamic in each cultural situation as the causative force in generating discussions of law, I am not prepared to argue for a cultural universal; I am too much of a Foucauldian to be so bold. I will insist, however, that this project be thought of as a way of critically assessing the reasons why law surfaces or becomes an object of discourse in human culture. In this sense, the project is not offering a once-for-all answer; it is instead raising a question. J. Z. Smith once said in an interview that questions are better than answers because “a damn good question” will tend to “stick around.”

My intention for this project is simply to provide one way of answering the deceptively simple, but hopefully “damn good,” question: why law?

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989 Smith also points to the importance of the processes by which one comes up with an answer. The part of the interview where he discusses these issues can be seen here: [https://www.youtube.com/watch?v=TjeD1R7yCqY](https://www.youtube.com/watch?v=TjeD1R7yCqY).
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