Abstract/Project Background: This paper is one of a series of preliminary studies that I hope will eventually end in a book-length study of the history of law in the eastern provinces of the Roman Empire. The history of law in the provinces tends to be written in one of two ways: either as the story of how Roman rules and concepts interpenetrate local cultural and legal systems (the history of the many and varied “vulgarizations” of Roman law); or, in the wake of the “Mediterraneanist” paradigms of the twentieth century, as a story of how local communities seek to regulate themselves – generally in opposition to the encroachments of the Roman (or any other) state.

Both of these perspectives strike me as unsatisfying. The former generally focuses on forms, doctrines, and the evolution of legal rules at the expense of giving a robust account of why particular rules were adopted or adapted by local populations in the first place. Given that the Roman state had minimal police capacity, a largely under-professionalized administration, and frankly, very little interest in (and sometimes a downright aversion to) forcing local populations to conform to the peculiar rules of the
Roman civil law, histories of doctrine tend to explain change as being because of something intrinsically desirable about Roman rules and forms, or claiming that people followed these rules simply because they were “The Rules”. Very little attention is paid to the ways in which rules were transformed or activated in the politics of local contexts, when, or why. The latter approach – that of Mediterraneanist anthropology – tends to think of imperial law as an external force, one to be resisted. At the very least, this approach fails to explain why “legal” materials – texts of laws, writing about courts, petitions, casebooks, judicial curses, etc – feature so prominently in the extant papyrological, epigraphic, and literary evidence. Both of these approaches assume – in my view unjustifiably – a fundamental division between the make law and those who follow it, and characterize that relationship between the two as one of imposition, whether as a result of direct policy or benign neglect. Both similarly – and again unjustifiably – tend to treat legal systems as systems of dispute processing and resolution which are irreducibly bound to culture, by which is meant a package of distinctive, exclusive, authentic – and therefore preferential – modes of dealing with problems.

Instead of writing a history of rules or approaching “law” as colonizing violence in a cleaner toga, my approach begins by imagining what a history of law in the Roman provinces would look like if we take seriously Robert Cover’s claim that law is “a system of tension or a bridge linking a concept of reality to an imagined alternative.” If I understand him correctly, in Cover’s world law is a privileged strain of discourse that enables people at multiple points on a spectrum of power to find a language to articulate their vision of how the world should work; its special power is that in some cases it also provides that language with a package of institutional relations that allow that vision to
become reality. The consequence of this, for historians, is that if Cover is right then we have to take seriously the moves of non-elite actors who appear in great numbers in a privileged source of evidence from the ancient world, namely, Egyptian papyri. It would also mean trying to show how their priorities, claims, and interpretive strategies interact with those of both imperial and local powers. It would involve, similarly, taking seriously as evidence for “legal” claims and positions the imaginary literature that different groups of people throughout the provinces produced, be they novels, satires, hagiographies or martyrdom texts.

If all this material is treated as containing claims about law and how law should work, the legal history of the Roman world becomes far more interesting and the outlines of a distinct strain of imperial politics begins to emerge. No longer does the history of the interpenetration of legal forms look like vulgarization or assimilation, resistance or resignation. Instead, we find a multifaceted conversation among people with different normative visions of reality and different means for making that vision a reality. Accordingly, the story I seek to tell attempts to show how Roman governors, local elites, local non-elites, and a host of other crafty people manipulated a powerful legal discourse and eventually came to craft a livable, tolerable nomos. It bears adding, of course, that while the result of this process may have been a common legal culture, this was nonetheless a slow, contested, and sometimes violent process. As such, it was a properly political conversation – something which, for a variety of complicated reasons, students of Roman history doubt could have existed in a period of imperial stability.

The paper that follows tries to explore one thread of this process: the politics of local law and precedent in the first three centuries AD. The occasion for its writing was a
conference on ancient bureaucracy that was hosted by the Austrian National Research
Network’s project on “Imperium and Officium”. In what follows, I try to reconstruct two
strains in a conversation between Roman governors, a newly privileged group of local
elites, and people who opposed themselves to local elites in Egypt. (It bears mentioning
that these groups, and their related status and privilege, are not constant or always
consistent, for reasons I outline.) I argue that precedent served as a valuable tool to
oppose a very particular strain of tradition, namely, traditions of “Egyptian” law – which,
it appears, were reinvented in the early second century AD as a means of devolving the
power to judge upon local constituencies, and to keep local peoples within discrete ethno-
legal frameworks. As a reaction to this, litigants sought to connect their claims to a new
source of justification, namely, the decisions of Roman governors. They did this as a way
of avoiding what the Roman were now happy to call Egyptian law. But in the process
these litigants fundamentally came to a new way of using a historical past.