

IMPERIAL SUBSCRIPTIONS AND THE ADMINISTRATION OF JUSTICE*

By WILLIAM TURPIN

Scholars have given much attention to the procedure for submitting private petitions to the Roman emperor.¹ Literary sources suggest that emperors spent a lot of time answering petitions from private individuals, and papyri and inscriptions offer tangible evidence that this was so. But our richest evidence is provided by the Roman legal sources, which preserve over 2,500 of the replies written by the emperors, at least in theory, beneath the petitions themselves. The sheer quantity of these subscriptions, and the fact that some of them were addressed to petitioners of relatively humble status, have suggested that the emperors attended to their subjects in a surprisingly personal way.² Even more important is the fact that subscriptions in our legal sources consist almost entirely of formulations of principle; it has been assumed that they were issued to clarify the law, for private petitioners who had questions about it.³

It seems to be generally agreed that the subscriptions themselves were actually written by the emperor's subordinates; even the most conscientious emperors had better things to do than find the right language for formulations of legal doctrine.⁴ In my view, furthermore, it is unlikely that by the second century emperors were often aware of the decisions taken in their names; it is easier to believe that the chanceries were maintaining a legal fiction than that massive numbers of often trivial questions were entirely dependent on one man.⁵ But even if they had nothing to do with the emperor himself, the notion that imperial subscriptions were issued to give advice about the law is a difficult one. Without discounting entirely the professional commitment which could motivate Roman jurists, we should be reluctant, I think, to conclude that the Roman government functioned in quite such an enlightened way.

This paper will argue that the subscriptions in our legal sources cannot be taken at face value. Numerous though they are, they represent only a fraction of the subscriptions actually issued by the Roman government, and they do not provide a representative sample. The subscriptions in the law books certainly formulate legal principles, and often sound as though they were explicitly aimed at intellectual difficulties. But the lawyers had a particular interest

* This paper was written at the American Academy in Rome; I am grateful to the Academy and to the National Endowment for the Humanities for their support, and to Fred Biggs for his valuable comments. At various earlier stages I have greatly benefited from the help of Peter Garnsey and John Crook, to whom I am extremely grateful.

¹ F. Millar, *The Emperor in the Roman World* (1977), esp. 240–52; 537–49; W. Williams, 'The *Libellus* Procedure and the Severan Papyri', *JRS* 64 (1974), 86–103; D. Nörr, 'Zur Reskriptenpraxis in der hohen Prinzipatszeit', *ZRG* 98 (1981), 1–46; Tony Honoré, *Emperors and Lawyers* (1981). For a discussion of recent work, see F. Millar, 'L'Empereur romain comme décideur', in Claude Nicolet (ed.), *Du Pouvoir dans l'antiquité* (1990), 207–20.

² See esp. L. Huchthausen, 'Soldaten des 3. Jahrhunderts u. Z. als Korrespondenten der kaiserlichen Kanzlei', in *Altertumswissenschaft mit Zukunft: dem Wirken Werner Hartkes gewidmet* (1973), 19–51; 'Herkunft und ökonomische Stellung weiblicher Adressaten von Reskripten des *Codex Iustinianus* (2. und 3. Jh. u. Z.)', *Klio* 56 (1974), 199–228; 'Kaiserliche Rechtsauskünfte an Sklaven und in ihrer Freiheit angefochtene Personen aus dem *Codex Iustinianus*', *WZRoStock* 22 (1974), 251–7; 'Zu kaiserlichen Reskripten an weibliche Adressaten aus der Zeit Diokletians (284–305 u. Z.)', *Klio* 58 (1976), 55–85.

³ G. Wesener, 'Reskriptprozess', *RE Suppl* x (1965), 866: 'Die Prozessreskripte ersetzen auch die Rechtsgutachten der Juristen'; M. Kaser, *Das römische Zivilprozessrecht* (1966), 352: 'Jede Partei kann den Princeps mit der Bitte um seine gutachtliche Äusserung zu ihrem Streitfall anrufen, die er ihr mit *rescriptum* erteilt';

W. Kunkel, *Introduction to Roman Legal and Constitutional History* (2nd edn., 1973), 79: 'legal opinions which the emperors gave in concrete cases in answer to the inquiries of private persons'; Honoré, op. cit. (n. 1), 24–6; viii–ix: '... the Roman ruler provided a free legal advice service. A private citizen could deliver a written petition (*libellus*) to his emperor with a request for a ruling about his legal problems'; J.-P. Coriat, 'La technique du *rescrit* à la fin du principat', *SDHI* 51 (1985), 322: 'Le *rescrit* est l'instrument privilégié d'un véritable service public du droit'.

⁴ Honoré, op. cit. (n. 1), *passim*, argues that subscriptions were written by the secretaries *a libellis*, and tries to identify the styles of the different holders of that office. Honoré's methods are controversial, and it may be that he goes too far in attributing stylistic changes to individual secretaries rather than to the chanceries as a whole; see the review by Alan Watson, *TRG* 50 (1982), 409–14. See also D. Liebs, 'Juristen als Sekretäre des römischen Kaisers', *ZRG* 100 (1983), 485–509. For the present discussion the important point is that imperial subscriptions can no longer be treated as if they were written by the emperors themselves.

⁵ That there is at least some element of fiction in the headings of imperial constitutions is clear from the fact that in a joint reign laws are said to be issued by both emperors. Historians can be reluctant to recognize the existence of legal fictions, but their existence is sometimes made explicit even in the sources themselves; in Ptolemaic Egypt petitions submitted to the king received formal replies in his name without ever leaving the offices of local administrators, cf. E. Seidl, *Ptolemäische Rechtsgeschichte* (1962), 89; H. J. Wolff, *Das Justizwesen der Ptolemäer* (1962), 166.

in subscriptions which included statements of principle, which could establish and illustrate points of legal doctrine, and they paid no attention whatever to two important classes of material. In the first place, many petitioners had no interest in legal matters at all; they wanted honours, jobs, and financial concessions, and such requests were only rarely of any interest to the authors of law books.⁶ In the second place, many petitioners with specifically legal problems received subscriptions which could be ignored; subscriptions were actually issued simply to refer petitioners to judges in the lower courts, and since most of them did no more than that, the lawyers left them out of their books.

The subscriptions in our legal sources are thus particular examples of their genre. They were special because they dealt with the kinds of issues lawyers found interesting, and because they contained formulations of principle that lawyers could learn from. And even these subscriptions have to be seen in context: they were a response not to intellectual difficulties, but to practical ones. Petitioners went to the imperial government to get action, not advice.

1. SUBSCRIPTIONS AND ROMAN JURISPRUDENCE

The sheer number of subscriptions in the legal sources has in some ways made them difficult to understand. Faced with so many subscriptions on legal matters, it is natural to think that they played a central role in the formation and clarification of the law.⁷ But Roman lawyers were in fact more casual about subscriptions than the evidence at first suggests. They alluded to subscriptions, they quoted them, and they sometimes even collected them, but they did so because subscriptions were convenient, not because they said anything particularly important. Subscriptions might well contain statements of principle, which could be useful when explaining the law. But they were not actually issued for that purpose.

Our impression of imperial subscriptions has been shaped almost indelibly by the two collections of them published under Diocletian.⁸ The *Codex Gregorianus*, perhaps published in a first version in 291, apparently collected subscriptions (along with a few other documents) from the time of Hadrian on. The *Codex Hermogenianus*, which seems to have been a sort of last-minute supplement to this, consisted of about 1,000 subscriptions from the years 292 and 293. The approximately 2,500 subscriptions now found in the *Codex Justinianus* were taken directly from these earlier collections, as were a number of other subscriptions preserved in post-classical legal collections. Thus by far the greatest number of subscriptions known to us owe their survival to what was probably a single initiative.

It is important to recognize that we do not really know what the Diocletianic compilers were trying to accomplish, or how they set about their work. The fact that they collected subscriptions in such large numbers tends to suggest that they regarded subscriptions as important in their own right, and felt obliged to make them available to an eager public of some sort. But it is more likely that subscriptions were collected simply because they were readily available.⁹ The attitude of the Diocletianic compilers is not likely to have been different from that of the Classical jurists, who can be seen to have used subscriptions for their own very particular purposes.

The jurists are not as clear as we might like about their views on subscriptions, and offer no definition of their terms, nor of the procedure of petition and response as a whole.

⁶ So, rightly, Honoré, *op. cit.* (n. 1), 24; Millar, *op. cit.* (n. 1, 1977), 538; cf. *idem*, 'Empire and City, Augustus to Julian: Obligations, Excuses and Status', *JRS* 73 (1983), 76-96.

⁷ cf. for example Millar, *op. cit.* (n. 1, 1990), 214: '... on ne peut pas en déduire tout simplement que les souscriptions énoncées par les Empereurs restaient inconnues. Car c'est évident que les juristes ... connaissaient un grand nombre de souscriptions impériales'.

⁸ The best survey of the evidence is G. Rotondi, 'Studi sulle fonti del codice giustiniano', *BIDR* 26 (1913) and 29 (1916), rpt. in *idem*, *Scritti Giuridici* (1922), 1, 110-265; briefly, L. Wenger, *Die Quellen des römischen Rechts* (1953), 534-6. For the arguments which follow, see

W. Turpin, 'The Purpose of the Roman Law Codes', *ZRG* 104 (1987), 620-30.

⁹ There is much uncertainty about the extent and the efficiency of the imperial archives, but it seems clear both that imperial officials did keep records of the subscriptions they issued, and that these records could be used only with difficulty. See Premerstein, 'Commentarii', *RE* IV.1 (1901), 739; Wenger, *op. cit.* (n. 8), 438-41; G. Cencetti, 'Tabularium principis', *Studi Cesare Manaresi* (1953), 133-66; Nörr, *op. cit.* (n. 1), 13. For the inadequacies of the imperial files see Pliny, *Ep.* x.65-6 and the striking conclusions of O. Seeck, *Regesten der Kaiser und Päpste* (1919), 2.

Moreover, they use the actual word *scriptio* only rarely, and, especially after the second century, prefer to label subscriptions, along with self-standing epistles, simply as *rescripta* ('written replies').¹⁰

It is normally held that the jurists regarded subscriptions as obvious vehicles for an emperor's decisions about the law, on a par with his edicts, epistles and *decreta*.¹¹ But in fact subscriptions seem to have been regarded as an entirely distinct kind of imperial decision. They are conspicuously absent from the well-known discussions of the sources of law in Gaius and Justinian's *Institutes*.¹² And it seems to me unlikely that subscriptions are mentioned in the parallel passage of Ulpian:

Whatever the emperor decides has the force of law; the reason is that by the royal law passed on the subject of his authority the people entrusts to him and in him the whole of its own authority and power. Therefore whatever the emperor decided by epistle and *scriptio* or decided in a judicial sentence or decided informally or ordained in an edict, is clearly *lex*. These are what we informally call constitutions.¹³

Many scholars have assumed that the *scriptio* in question is a subscription to a *libellus*.¹⁴ But it is more likely that the word refers here simply to the 'signature' which was an essential part of an imperial epistle: Ulpian is referring, in other words, to decisions made in a single kind of document, *per epistulam et subscriptionem*. *Scriptio* was not, as we have seen, the normal word for a subscription to a *libellus* in Ulpian's day, and if he had been thinking of his *scriptio* as a separate member of his series of constitutions, we would expect to find it set off with *vel*, like all the others. Moreover it is clear that by the sixth century the words *per epistulam et subscriptionem* were taken as referring to a single type of document: the *Basilica* translates *per subscriptionem* as a participle modifying the word for epistle, 'what the emperor decides in an epistle which has been subscribed, or decides after giving a hearing, or orders by edict'.¹⁵

The omission of subscriptions in these passages seems slightly strange, since so many subscriptions are preserved in the legal sources, and particularly since Gaius, Ulpian and Justinian's *Institutes* all cite subscriptions when it suits them. But the three jurists were discussing imperial constitutions in a context that was highly theoretical, as the full texts in Gaius and in Justinian's *Institutes* make clear; they were talking not about the material they used when writing about the law, but about how law was created in the first place. One of the most important sources for new law was the emperor, and the most obvious vehicles for his intervention in the law were the edicts in which he made his own announcements, the epistles in which he gave orders to his subordinates, and the decisions he made in person, whether in court or outside of it. Subscriptions are not mentioned because they were not likely to involve the creation of law.

In their own work the jurists were perfectly happy to use material which was, from a theoretical point of view, less satisfactory. Sabinus cited Homer (of all people) to support his view on the difference between sale and barter, and Paul, who quotes this opinion, responds by quoting two other passages of Homer to support his own view.¹⁶ Marcianus refers to an

¹⁰ Nörr, *op. cit.* (n. 1), 31 n. 92; see, more generally, U. Wilcken, 'Zu den Kaiserreskripten', *Hermes* 55 (1920), 1-42.

¹¹ e.g. R. Orestano, *Il potere normativo degli imperatori e le costituzioni imperiali* (1937), 15 and *passim*; Nörr, *op. cit.* (n. 1), 37-45; Honoré, *op. cit.* (n. 1), 43-4.

¹² Gaius 1.5: 'Constitutio principis est quod imperator decreto vel edicto vel epistula constituit. Nec umquam dubitatum est, quin id legis vicem optineat, cum ipse imperator per legem imperium accipiat'. *I* 1.2.6; 'Sed et quod principi placuit, legis habet vigorem, cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem concessit' etc. Cf. also Theophilus, *Inst.* 1.2.6.

¹³ *Dig.* 1.4.1.pr.-1: 'Quod principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat. (1) Quodcumque igitur imperator per epistulam et subscriptionem statuit vel cognoscens

decrevit vel de plano interlocutus est vel edicto praecepit, legem esse constat. Haec sunt quas vulgo constitutiones appellamus'.

¹⁴ e.g. Wenger, *op. cit.* (n. 8), 428 n. 34. Millar, *op. cit.* (n. 1, 1977), 206. See, however, the translation of McCormick in Th. Mommsen, Paul Krüger, and Alan Watson (eds), *The Digest of Justinian* (1985), I, ad loc.

¹⁵ *Bas.* 11.6.2: 'Ὅπερ ἄρῃσει τῷ βασιλεῖ νόμος ἐστίν, εἴτε δι' ἐπιστολῆς ἐνυπογράφου ὀρίσει ἢ διὰ τῶν ἀνωτάτων ψηφίσεται ἢ ἐξ ἐπιπέδου διαλαλήσει ἢ διὰ δόγματος προαγορεύσει, καὶ λέγεται ταῦτα διατάξεις κτλ. The *Basilica*, though published much later than the *Digest*, mostly used a Greek summary of the *Digest* made in the sixth century, the Anonymous *Summa*; see N. Van der Wal and J. H. A. Lokin, *Historiae iuris Graeco-Romani delineatio* (1985), 46-9 and 81-2.

¹⁶ *Dig.* xviii.1.1.1; the passages quoted are *Il.* vii.472; vi.234 and *Od.* 1.430. Other quotations of Homer are in Gaius III.141 and *I* III.23.2. See, in general, F. Stella Maranca, 'Omero nelle Pandette', *BIDR* 35 (1927), 1-53.

announcement published by Antoninus Pius when he was still proconsul of Asia,¹⁷ and Ulpian himself cites the *Autobiography* of Augustus.¹⁸ The moral authority of such texts was not in doubt, and they provided a useful way of making points clearly and emphatically, but the jurists did not regard them as sources of law. Imperial subscriptions were in much the same position: they could certainly be cited in explanation of the law, but this does not mean that they were issued for that purpose.

Subscriptions did, of course, have much more to offer a writer of jurisprudence than Homer or Augustus' autobiography. But the jurists could be remarkably cavalier about keeping track of them. Papinian, for example, seems to have been unaware of a subscription of Marcus Aurelius and Lucius Verus which was relevant to his work on adultery; the subscription was quoted instead by Marcianus in his annotation of Papinian's work.¹⁹ It seems to me significant, moreover, that apparently only one subscription in the *Codex Justinianus* is found quoted in the extant jurisprudence.²⁰ If subscriptions had been issued to clarify the law or to change it, there should, it seems to me, have been more agreement about which ones were worth preserving.²¹

When jurists did quote subscriptions they clearly did so for their own particular purposes. The petitioners themselves had specific requests, and cared only about whether or not their petitions were successful. But the jurists' interests were more rarefied. They were interested not in the decisions themselves, but in whatever statements of principle they might contain.

In some cases, to be sure, subscriptions were issued specifically to make such statements of principle. Paul, for example, recorded that a subscription of Marcus and Verus contained the principle that, in requests for *excusatio tutelae*, a whole series of justifications could succeed where each individual one would fail:

Those who produce reasons which individually lack substance may sometimes be excused; for even Marcus and Verus replied in a rescript to Sentius Potitus: 'Although the individual things which you included in your letter do not provide you with good grounds for being excused, nevertheless because you have reasons which all point in the same direction, they are able to convince us, so it is possible for you to be excused from your tutorship'.²²

It seems clear that Paul regarded this decision as an innovation, and he may have been right about this. But it is important to observe that the petitioner himself had presumably asked not that new law be created, but simply that his *excusatio* be granted; he presented a reasonable case, and the law was altered to suit the circumstances. Moreover, the new principle (if it really was new) entered the legal literature quite casually, because Paul knew about it and was interested enough to quote it. Other subscriptions of this sort must often have been overlooked. Ulpian tells us of a subscription which apparently introduced the principle that someone coerced into making a promise could bring a suit before the praetor; Ulpian knew of

¹⁷ *Dig.* XLVIII.3.6.1 (Marcianus): 'Sed et caput mandatorum exstat, quod divus Pius, cum provinciae Asiae praeerat, sub edicto proposuit . . .' The *mandata* in question are presumably those given by the emperor Hadrian, but Marcianus seems to regard their authority as derived from the fact that Pius, as proconsul, was responsible for publishing them; see also the petition from Aragua (discussed below), which cites a subscription given by Philip the Arab when he was still praetorian prefect.

¹⁸ *Dig.* XLVIII.24.1.

¹⁹ *Dig.* XXIII.2.57.a. For the extent of the jurists' acquaintance with imperial legislation, see G. Gualandi, *Legislazione imperiale e giurisprudenza* (1963), II, 18–26. See also Gaius II.221, where Gaius admits that he knew a relevant *constitutio* of Hadrian only at second-hand: ' . . . quae sententia dicitur divi Hadriani constitutione confirmata esse'. Nothing else seems to be known of Hadrian's decision.

²⁰ *Dig.* XXXIV.1.13.1 = *Cy* VI.37.1 (n.d.): 'Imp. Antoninus A. Pius libertis Sextiae Basiliae. Quamvis verbis his: "ut quoad cum Claudio Iusto morati essetis", alimenta vobis et vestiarium legatum sit, tamen hanc fuisse defuncti cogitationem interpretor, ut et post

mortem Iusti eadem vobis praestari voluerit'. *Cy* IX.41.1 (196) is quoted in *Dig.* XLVIII.18.1.16 (Ulpian), but the addressee, Spicius Antoninus, is almost certainly a judge, cf. *PIR* III, no. 578. *Cy* IV.65.1 (213) is quoted at *Coll.* x.9 (Paul), but here too the addressee, Iulius Agrippinus, is likely to be an official; a later Iulius Agrippinus, who may be a descendant, appears as a v.c. in an epistle of 259, *CG* II.2.3 = *FIRA* II², 656ff. *Cy* VI.23.1 (n.d.) and VI.26.1 (146) are referred to at *Iy* II.10.7 and II.15.2 respectively, but they too are probably epistles to officials, and in any case could have been known from one of the codes rather than independently.

²¹ It is true that most of the subscriptions collected by the Diocletianic compilers were issued after the real heyday of juristic writing. But the *Codex Justinianus* contains about 175 subscriptions of Septimius Severus, and it seems significant that the Severan subscriptions found in the Classical jurists are all different from them; *Coll.* XII.7.6 (Ulpian); *Dig.* XVI.1.2.3 (Ulpian, in Greek); *Dig.* XVII.2.52.5 (Ulpian); *Dig.* XVIII.2.16 (Ulpian); *Dig.* XXIII.3.40 (Ulpian); *Dig.* XLVII.10.40 (Macer). *Dig.* XLVIII.18.1.16 (Ulpian) is likely to be an epistle.

²² *Frag. Vat.* 245.

the subscription, he says, simply because the praetor himself happened to consult him on the matter.²³

Subscriptions which rejected requests for changes in the law could also be useful to the jurists; they provided clear and authoritative statements about the law as it already existed, and for the purposes of practical jurisprudence this was almost as important as keeping track of innovations. Ulpian, for example, cites a subscription of Caracalla to show that although an agricultural tenant (*conductor*) had a legal right to compensation for losses due to unseasonable weather, he had no such right in cases where a poor harvest might reasonably have been predicted in advance:

When anyone complains about his small grain harvest, that his argument is to be ignored is contained in a rescript of the divine Antoninus. The same thing is contained in another rescript: 'You are asking for a new thing, in asking that you be given a remission on account of the age of the vineyard'.²⁴

Legally speaking, the petitioner had no case. It is perhaps possible that he was unsure of his legal position, and petitioned for a clarification of it. But it is surely more likely that what he wanted was not that the law be explained to him, but that it be changed, or at least suspended, for his benefit.

Most petitioners were probably much less demanding; instead of asking for changes in the law they asked for enforcement of it. But the subscriptions they elicited were employed by the writers of jurisprudence for their own very different purposes. Thus Ulpian quotes a subscription issued to enforce the law precisely because it contains a statement of principle:

If a mother tries to get back from the father what she has spent on a son, she should be duly heard. The Divine Marcus replied by rescript to Antonia Montana in these words: 'But the judges will decide how much you should be given by the father in payment for what you were forced to pay for your daughter's support, and you should not get anything for what you would in any case have spent on your daughter out of motherly affection even if she had been brought up by her father'.²⁵

Antonia had asked to sue the father of her child, on the grounds that she herself had supported a daughter for whom he was legally responsible. The emperor's subscription amounts to a referral of the matter to a lower court; the judge is to decide in Antonia's favour, as long as she can prove that what she has said in her petition is true. For Ulpian the interesting thing about the rescript is that it provides a clear statement of the basic legal principles. But it does not follow from this that Antonia herself had been interested in the same thing; what she wanted was a court to take action.

The jurists could also use such straightforward decisions more imaginatively. Ulpian quoted a subscription of Antoninus Pius which confirmed the right of a disabled son to sue his father for support, but he used it to show that a healthy son had no such right at all:

But if a son is able to support himself, the judges should decide not to award him support. Thus Pius wrote in a rescript: 'The appropriate judges, when approached by you, will order that you be supported by your father in accordance with his resources, but only if, since you claim you are an artisan, you are in such poor health that you cannot work'.²⁶

What interests Ulpian is the subscription's qualification, from which he can infer that sons who are not disabled are not entitled to support. The disabled son had still to prove that he could not support himself, but that is presumably not what he had asked about. He had wanted enforcement of his claim, and that, in effect, was what was being granted.

The subscriptions preserved in the *Codex Justinianus* are preserved without any context; we do not have the petitions to which they replied, and we have no indication of how readers of the codes were supposed to use them. But it is significant that subscriptions were sometimes

²³ *Dig.* IV.2.9.3: '... Et Pomponius scribit in negotiis quidem perfectis et exceptionem interdum et actionem competere, in imperfectis autem solam exceptionem. Sed ex facto scio, cum Campani metu cuidam illato extorsissent cautionem pollicitationis, rescriptum esse ab imperatore nostro posse eum a praetore in integrum restitutionem postulare, et praetorem me adsidente interlocutum esse, ut sive actione vellet adversus

Campanos experiri, esse propositam, sive exceptione adversus petentes, non deesse exceptionem. Ex qua constitutione colligitur, ut, sive perfecta sive imperfecta res sit, et actio et exceptio detur.' See T. Honoré, *Ulpian* (1982), 15-17.

²⁴ *Dig.* XIX.2.15.5.

²⁵ *Dig.* XXV.3.5.14.

²⁶ *Dig.* XXV.3.5.7.

split up, with different sections published in different titles of the *Codex Justinianus*; some subscriptions clearly contained more than one legal principle, and it was the compilers, not the petitioners, who found these principles interesting.²⁷ The legal writers were interested in some subjects rather than others, and they were interested only in subscriptions which contained formulations they could use. Some subscriptions were left out because they addressed problems in which the jurists had no professional interest; others, including some on legal matters, were omitted for the simple reason that they contained no statements of substance at all.

II. SUBSCRIPTIONS IN PAPYRI AND INSCRIPTIONS

The subscriptions preserved independently of the lawyers confirm that the jurists have given us only a partial view. For one thing, papyri and inscriptions reveal the existence of petitions to the emperor in matters which the jurists could ignore. They also reveal that subscriptions could be utterly devoid of legal content: replies which made statements of principle, preserved so carefully in the legal collections, seem to have been the exception rather than the rule.

At first sight the papyri and inscriptions give a rather different impression, because statements of principle do occur. But here too certain distortions have been introduced. Not all the subscriptions in the papyri and inscriptions are simply chance survivals; some of them were selected for preservation because they, like subscriptions in the legal sources, were likely to be of interest to people who had no connection with the original petitioners.

1. Papyri

One of the most useful things about papyri, at least in theory, is that they survive more or less at random, and offer a direct, if haphazard, picture of the texts which might circulate in a Roman province. It is therefore significant that a relatively large number of papyrus texts — almost thirty in all — have been taken to be imperial subscriptions; their survival in such relatively large numbers has been seen as confirming the picture presented by the many subscriptions preserved by the lawyers.²⁸

In my view, however, the Egyptian evidence is more complicated. Twenty-seven of the texts taken to be subscriptions are called *apokrimata*, and I have argued elsewhere that these were in fact simply *decreta*, given by emperors who heard cases personally on their visits to Egypt.²⁹ Imperial *decreta* on their own are, as the legal sources show, usually indistinguishable from subscriptions.³⁰ The *apokrimata* were identified as subscriptions rather than *decreta* largely because the best known of them, the thirteen *apokrimata* of P. Col. 123, were 'posted up' at the gymnasium of Alexandria, and because this sort of public display is most often associated with subscriptions. But since *decreta*, too, seem to have been posted up in public, there is no reason to deny that the *apokrimata* could have been oral decisions of the emperor.³¹ Two of the *apokrimata* were apparently given orally. In the case of P. Tebt. II. 286 there is some room for doubt, but the fact that Hadrian had also dealt with the same litigant on the day before he gave his decision is most easily explained if he was dealing with someone who actually came before him, as is the remarkably chatty nature of the decision itself.³² More important, recent publication of a second version of an *apokrima* of Caracalla reveals that it

²⁷ For a list of *leges geminatae* from the second and third centuries in the *Codex Justinianus*, see Honoré, *op. cit.* (n. 1), 35 n. 77.

²⁸ See, for example, Millar, *op. cit.* (n. 1, 1977), 244–5.
²⁹ W. Turpin, 'Apokrimata, decreta, and the Roman Legal Procedure', *BASP* 18 (1981), 145–60.

³⁰ *CY* VII.62.1 (209): 'Sententia divi Severi data in persona Marci Prisci idibus Ian. Pompeiano et Avito cons. Severus A. dixit: Prius de possessione pronuntiare et ita crimen violentiae excutere praes provinciae debuit. quod cum non fecerit, iuste provocatum est'. It is easy to imagine that this might be quoted by a jurist under a heading such as *Imp. Severus A. Marco Prisco*, and mistaken for a subscription.

³¹ See *SB V. 7696* = T. C. Skeat and E. P. Wegener, 'A Trial before the Prefect of Egypt Appius Sabinus, c. 250 A.D.', *JEA* 21 (1935), 224–47, lines 100–1, where a lawyer describes what is apparently a *decretum* of Severus as having been 'posted up' in Egypt 'in the days when the cities were flourishing'. Much clearer is the evidence for the public posting of the *decreta* of provincial governors; *CIL* II. 4125 = *FIR* no. 186 and P. Paris 69 = *W. Chr.* 41, col. III, lines 17 ff.

³² P. Tebt. II. 286 = James H. Oliver, *Greek Constitutions of the Early Roman Emperors from Inscriptions and Papyri* (1989), no. 72.

was not written by the emperor, but spoken.³³ The *apokrimata*, therefore, do not seem to have been subscriptions.

If this is right, we are apparently left with only five papyri produced as part of the procedure for petitioning the emperor.³⁴ This reduced number places the subscriptions in our legal sources in rather a different light, suggesting that the procedure for petitioning the emperor had, at least in Egypt, a relatively limited impact.

Even these papyri are a mixed bag, containing two subscriptions without petitions, two petitions without subscriptions and one petition with its (very fragmentary) subscription. Of these, it is the three petitions which offer the most direct evidence for the kinds of requests actually made to the emperors. Petitions would normally be preserved among the private papers of the specific individuals involved, and are not likely to have been subject to any systematic preselection by disinterested third parties. The situation for subscriptions is more complicated. Although imperial decisions (of whatever kind) might well be preserved by the original litigants, they were preserved most commonly by people who had no connection with the original lawsuits at all. Since the emperor's decisions had a lasting value as precedents, they were collected by people interested in the general principles they expressed. Most of the imperial constitutions on papyrus occur in the transcripts of lawsuits, or in dossiers assembled in preparation for such lawsuits.³⁵ It therefore seems likely that our two individual subscriptions were preserved in precisely the same way. They were probably not, therefore, typical examples of the subscriptions normally issued in reply to petitions from Egyptians.

The fact that legal collectors have been at work is clear enough in the case of the earlier of the two subscriptions. P.Oxy. 3018 is part of a dossier on the privileges of *paeanistae*, which also included one of the *apokrimata* delivered by Severus on his visit to Egypt, and an epistle of Hadrian addressed to the officials and inhabitants of some province which was probably not Egypt.³⁶ The subscription itself was addressed, through an agent, 'to the *paeanistae* of the Old Arsinoites'. The text is fragmentary, and the emperor responsible for the decision is unknown,³⁷ but he was clearly confirming privileges granted by his predecessors. Moreover, it may be significant that the law was 'posted up seven days before the Ides of December'. Imperial decisions delivered in Egypt were normally given Egyptian dates, and use of the Roman calendar here suggests that the agent of the *paeanistae* had approached the emperor when he was outside Egypt. It seems clear, therefore, that our copy was part of a collection of precedents; none of the documents quoted appears to have had any direct relevance, except by analogy, to anyone in Oxyrhynchus.

The second subscription, P.Tebt. 285, is a decision of Gordian III, preserved complete but without any accompanying documents. It was issued originally in 239, but our copy is a Greek translation from the Latin which, since it describes Gordian as *theos*, was probably made after the emperor's death in 244. What is interesting is that Gordian's decision was exactly the kind of subscription we might find in the legal sources:

The divine Gordian Augustus to Nero Pudens.

False registrations of children do not make the truly legitimate ones illegitimate nor do they make the illegitimate ones, should there be any, into members of the family.

The seventh day before the Ides of July, in the consulship of Gordian and Aviola.³⁸

³³ The first version known was that of P. Mich. IX. 529, the second is P. Berol. inv. 7216 = Oliver, op. cit. (n. 32), no. 267. Both texts are printed by N. Lewis, 'Further Thoughts on the Michigan-Berlin Apokrima', in R. Pintaudi (ed.), *Miscellanea Papyrologica* (1980), 127-33; see also idem, 'The Michigan-Berlin Apokrima: Iterata Invita', *APF* 33 (1987), 49-53.

³⁴ I have omitted from this discussion subscriptions of Diocletianic date because the ones that survive in papyrus, all in Latin, seem to have been derived from the Diocletianic codes. See PSI I. 111 = C.Pap.Lat. 240; P.Amh. II. 27 = M.Chr. 380. For a survey of the evidence see R. Taubenschlag, 'The Imperial Constitutions in the Papyri', *JJP* 6 (1952), rpt. in idem, *Opera Minora* II (1959), 3-28.

³⁵ For the use of collections of material by lawyers in Egypt, see R. Katzoff, 'Precedents in the Courts of Roman Egypt', *ZRG* 89 (1972), 256-92, esp. 279; *ibid.*, 'On the intended use of P.Col. 123', *Proc. XVI Int. Congr. Pap.* (1981), 559-73.

³⁶ P.Oxy. XLII. 3018 = Oliver, op. cit. (n. 32), nos 105, 241, 242. The original editors took lines 1-10 as comprising a single decision, but see the review of J. H. Oliver, *AJPh* 96 (1975), 230.

³⁷ Oliver, op. cit. (n. 32), no. 242 assumes that the emperors missing from line 6 are the same as those named in the preceding document. But there is ample space for one of the shorter headings which were characteristic of subscriptions; cf. P. Tebt. II. 285, discussed below.

³⁸ P.Tebt. II. 285 = M.Chr. 379 = FIRA i², 90 = *Ancient Roman Statutes*, no. 288 = Oliver, op. cit. (n. 32), no. 280. As the editors point out, *CJ* vii.16.15 (293) is very similar: 'Idem AA. et CC. Palladio. Nec omissa professio probationem generis excludit nec falsa simulata veritatem minuit. cum itaque ad examinationem veri omnis iure prodita debeat admitti probatio, aditus praeses provinciae sollempnibus ordinatis, prout iuris ratio patitur, causam liberalem inter vos decidi providebit'.

Nero Pudens, the addressee, is not otherwise known. Gordian is not known to have been out of Rome in 239, so Pudens presumably went to him there; use of Roman rather than Egyptian dates suggests the same thing. What we do not know is whether Pudens had come from Egypt, and was the person responsible for the papyrus translation. The issue of illegal birth registrations was an important one in Egypt, but the case of Nero Pudens need not have had anything to do with Egypt at all. It seems more likely that Gordian's subscription was preserved by someone who was interested in the general principle it expressed, and who thought it could be applied to good effect locally.³⁹ If this is right, it confirms that the lawyers in Rome were not alone in keeping an eye out for subscriptions which could be useful to them. It is also important to observe, however, that among the papyri available to us Gordian's reply is unique.

The petitions themselves offer a more accurate picture of the kinds of requests that were submitted. Petitions, like subscriptions, were not common; only three petitions from the second and third centuries seem to have been preserved in the papyri, including one complete with a (fragmentary) imperial subscription. But these three petitions do provide a vital insight into what petitioners were likely to request, and it is clear that their objectives were much more specific and tangible than our surviving subscriptions, on their own, usually suggest.

The earliest of the three petitions, addressed to Hadrian, is in a recently published Berlin papyrus.⁴⁰ Much of the petition, which is a copy, has been lost; what survives is the conclusion, and the beginning of Hadrian's reply. The petitioners were priests, who wanted help in raising revenue:

[We beg you, the] Saviour and Benefactor, to show pity on us and on our god Soxis, and order that we too may collect from the aforesaid villagers the amount which we spend, in order that by your leave we may be capable of performing the services and of properly paying the taxes due to the treasury. Farewell.

Copy of rescript. I subscribed. Posted.

Imperator Caesar Traianus Hadrianus Augustus to priests . . .⁴¹

The priests, it seems, had referred to precedents for the grant they were interested in. It would be interesting to know exactly how the emperor's subscription was phrased, but it is reasonably clear, I think, that the priests were asking for more than information. They threw themselves on the emperor's mercy because what they wanted was the right to collect some taxes.

The two remaining petitions, which lack the imperial replies, date from the later third century. PSI 1422, addressed to two unidentified third-century emperors, is a request from a middle-aged athlete to be appointed herald.⁴² The petitioner writes artfully and at length about his past services as a professional athlete, and he reminds the emperor that such services were an established prerequisite for such an appointment. But although the appointment would be perfectly legal, even the petitioner cannot really claim anything more than a moral right to it.⁴³ He was not asking about the rules for an appointment as herald; what he wanted was to be given the job itself.

The request made in the third petition was more complicated, but was not in essence very different from the two already considered. P.Oxy. 3366 contains drafts of a petition to Valerian and Gallienus from a certain Lollianus Homoeus, the official *grammaticus* of Oxyrhynchus, along with a covering letter dealing with its presentation at court.⁴⁴ As *grammaticus*, Lollianus

³⁹ Katzoff, *op. cit.* (n. 35, 1981), 570, n. 41; for registration of births in Egypt, see H. C. Youtie, 'APATORES: Law vs Custom in Roman Egypt', *Hommages Claire Préaux* (1975), 723-40.

⁴⁰ A. Lukaszewicz, 'A Petition from Priests to Hadrian with his Subscription', *Proc. XVI Int. Congr. Pap.* (1981), 357-61 = SB. 12509.

⁴¹ The translation is by Lukaszewicz, except that instead of translating *προτεθήτω* ('let it be posted') I have assumed that the text had the more customary *προτεθήτων* ('posted').

⁴² See Millar, *op. cit.* (n. 1, 1977), 537-8. The unidentified emperors may be Diocletian and Maximian, who gave particular attention to athletes; cf. *CJ* x.54.1 (n.d.) and P.Lips. 44 = M.Chr. 381.

⁴³ ' . . . I have fallen at your feet, lords of the world and saviours of myself, a humble person who has suffered much. For as a contestant for twenty-eight years until now I have been going to the competitions held in honour of your victory and the eternity of your rule, and because I was supported by them I prayed continually to Olympian Zeus that he preserve and increase your rule, and that as a result I receive a benefit from yourselves. For since I am now passing beyond my fiftieth year and am on the verge of old age, I approach you for the sake of this petition, asking that, if it seems good to you, you grant me the post of Greek herald in the Heptanomia . . .'

⁴⁴ Originally published by P. J. Parsons, 'Petitions and a Letter: The Grammarian's Complaint', in Ann Ellis Hanson (ed.), *Collectanea Papyrologica*, II, 409-46.

had the right to a salary from the city, but claimed that he was having trouble getting paid. He therefore asked the emperor to make the city award him the use of some land, so that he would have a regular income. In this case, too, there was no doubt about the law. Lollianus' suggestion was based, he says, 'on logic and the law', and he could cite documents showing that the same orchard had once been used for a similar purpose; but what he wanted, clearly, was for the emperors to make his request come true.⁴⁵

The papyri considered here have only a limited usefulness, since they do not permit us to consider subscriptions along with the petitions that prompted them. The two surviving subscriptions were probably preserved for much the same purposes as the subscriptions in our legal sources. But the petitions help to put such subscriptions into context. They suggest that the issues submitted to the emperors were unlikely to be the ones which interested the legal writers in Rome. And they reveal that the petitioners were not nearly as diffident as the subscriptions themselves lead us to think; petitioners did not ask the emperor for mere advice, they asked him for favours.

2. *Inscriptions*

The evidence provided by inscriptions is much more useful, in part because a number of subscriptions are preserved along with their petitions. The inscriptions confirm that petitioners did not necessarily have the same preoccupations as the Roman legal writers, and that they asked the emperor for practical assistance rather than intellectual guidance. More important still, the inscriptions show how it was that petitioning the emperor was supposed to help. Not all subscriptions contained clear statements of principle, and the ones that did, included them only in passing. What petitioners wanted was practical assistance, and the primary purpose of an imperial subscription was simply to declare that a given principle should be enforced.

It is not always easy to establish whether an imperial constitution on stone is a subscription or not.⁴⁶ The main reason for this is that the inscriptions were often put up for purposes which were informal rather than official, so that there is less consistency in the formalities of publication than we might like. There are, in my view, only ten inscriptions containing documents which can be identified as subscriptions. One of these is an inscription from Smyrna containing a petition in Greek from the local *technitae*, along with the subscription of Antoninus Pius, in Latin; the stone itself is now lost, and since neither text was well enough preserved to allow independent deductions about subject matter, I will not discuss it here.⁴⁷ Another inscription, from Ephesus, contains what may be a subscription

⁴⁵ '... since, being occupied with children, one cannot continually persist in demanding payment, I find myself compelled to bring this supplication to your feet, most divine Emperors, a supplication not damaging to the city fund, yet in all justice beneficial to me, namely that your supreme Genius should order that there should be given to me an orchard in the city, within the walls, known as the Garden of Dictynus, along with the trees there, and the water for irrigation, an orchard which brings in 600 atticae on lease, so that I may have from this source what satisfies my needs and so may be able to have ample time for teaching the children...'

⁴⁶ The best collection of this material, with ample discussion, is W. Williams, 'Epigraphic Texts of Imperial Subscriptions: a Survey', *ZPE* 66 (1986), 181–207. The identification of the *sacrae litterae* of Severus and Caracalla known from eight different inscriptions in the East remains controversial; see most recently Oliver, op. cit. (n. 32), no. 256 A–B. Williams, op. cit., 194–8, argues that the text is a subscription, largely because of its brevity, but see T. Drew-Bear, W. Eck, and P. Herrmann, 'Sacrae Litterae', *Chiron* 7 (1977), 355–83. In my view the crucial question is whether or not a document labelled as an 'Exemplum sacrarum litterarum' is likely to

be a subscription. Williams observes that the villagers of Scaptopara use the words *θεία γράμματα* to refer to the reply they were expecting from their petition to Gordian (see below), but they were not giving an official description of the document; the legal sources, by contrast, use 'exemplum sacrarum litterarum' only to identify imperial epistles, *CJ* ix.16.4 = *Coll.* 1.10.1 (290); *CJ* iii.3.3 (294); *Coll.* vi.4.1 (295); *CJ* ix.2.8 and xi.55.1 (n.d. Diocletian and Maximian). For the same reason I am doubtful of the argument of J.-L. Mourges, 'The So-called Letter of Domitian at the End of the Lex Irnitana', *JRS* 77 (1987), 78–87, who identifies as a subscription a text labelled as 'Litterae datae IIII idus Apriles Circeis recitatae v. idus Domitianas Anno M(ani) Acili Glabronis et M(arci) Ulpi Traiani co(n)s(ulum)'.

⁴⁷ The bulk of this document was published by H. W. Pleket, *The Greek Inscriptions in the 'Rijksmuseum van Oudheden' at Leyden* (1958), no. 58; it was republished with additions by G. Petzl, 'Urkunden der smyrnäischen Techniten', *ZPE* 14 (1974), 77–87. For identification as a petition with its subscription, see W. Williams, 'Two Imperial Pronouncements Reclassified', *ZPE* 22 (1976), 235–45.

given by Julia Domna in reply to a petition of the Ephesians.⁴⁸ But although the involvement of an empress in the governing process is extremely interesting, it is probably better to exclude her reply from our discussion of the more routine process for obtaining a subscription. It is worth noting, in any case, that the operative reply to the Ephesians was not Julia Domna's subscription, but a letter of Caracalla published immediately below it. Only eight inscriptions, therefore, provide us with usable information about how the procedure of petition and response actually functioned.

These eight inscriptions, like the papyri discussed above, fall into two groups. Most important, for our purposes, are the subscriptions which seem to have been published by the original petitioners, to advertise their successes. They were not necessarily typical of the whole genre, since it was only in special circumstances that a petitioner would feel it necessary to publish texts in such an ostentatious way. But they provide direct evidence not only about what sort of requests were actually submitted to the emperors, but about the kinds of subscriptions which would be issued in reply. Three subscriptions, however, seem to have been published by persons who had no direct connection with the original petitioners. It is no coincidence that it is these which are closest to the subscriptions in the legal sources. They contain clear expressions of principle which, though very different from those which interested the lawyers, might at least be applied in unrelated cases.

The two clearest examples of this latter kind of subscription are found in the archive of Aphrodisias. In the early third century the Aphrodisians published, or republished, an extensive record of their relations with Rome. Although most of the documents were addressed to the Aphrodisians directly, some were not; the Aphrodisians apparently paid close attention to other peoples' business when it reflected upon their own. Thus a reply of Augustus to a petition from Samos, presumably delivered to him by Livia, was published at Aphrodisias because it mentioned a privilege of the Aphrodisians:

Imperator Caesar Augustus, son of divine Julius, wrote a subscription to the Samians underneath their petition.

You yourselves can see that I have given the privilege of freedom to no people except the Aphrodisians, who, having taken my side in the war, were captured because of their devotion to us. For it is not right to give the greatest privilege of all at random and without cause. I am well disposed to you and I would like to do a favour to my wife who is active on your behalf, but not to the point of breaking my custom. Although I am not concerned for the money which you pay towards the tribute, I do not wish to give the most highly prized privilege to anyone without good cause.⁴⁹

The Aphrodisians had apparently acted in much the same way as Roman lawyers were later to do. Intent on maintaining their privileges intact, they had obtained and kept the reply to someone else's petition.

The second subscription published at Aphrodisias was also addressed to another city. In this case, Trajan was apparently rejecting a petition from Smyrna, complaining that a citizen of Aphrodisias had refused to undertake a liturgy:

Imperator Caesar Traianus to the Smyrnaeotes.

I wish no one from the free cities to be forced into your liturgy, and especially no one from Aphrodisias, since that city has been removed from the *formula provinciae* so that it is not liable either to the common liturgies of Asia or to others. I release Tiberius Julianus Attalus from the temple in Smyrna, since he is a man who has the highest testimonials from his own city; and I have written about these matters to Julius Balbus, my friend and proconsul.⁵⁰

⁴⁸ Text in J. Keil and G. Maresch, 'Epigraphische Nachlese zu Miltner's Ausgrabungsberichten aus Ephesos', *JOAI* 45 Beibl. (1960), pp. 81-2 = *AE* 1966, no. 430 = *IvE* II, no. 212, lines 10-14 = Oliver, op. cit. (n. 32), no. 265: 'I join with all cities and all peoples in praying that they obtain benefits from my sweetest son the emperor, but especially for your city, on account of its size and beauty and the rest of its contribution and because there is a college there for those arriving from everywhere at the school'. For identification as a subscription, see

Nörr, op. cit. (n. 1), 10-11, n. 26.

⁴⁹ Text and translation by J. Reynolds, *Aphrodisias and Rome* (1982), no. 13 = Oliver, op. cit. (n. 32), no. 1. For the date — between 31 and 20 B.C. — see F. Millar, 'State and Subject: The Impact of Monarchy', in F. Millar and E. Segal (eds), *Caesar Augustus: Seven Aspects* (1984), 42 and 58 n. 9.

⁵⁰ Text and translation by Reynolds, op. cit. (n. 49), no. 14 = Oliver, op. cit. (n. 32), no. 48.

In this case the diligence of the Aphrodisian collectors is even more impressive, since Trajan's subscription was presumably a response to a dispute between Smyrna and a private citizen. But it is easy to see why the document was included in the archive. It provides good evidence for the basic principle that no citizen of Aphrodisias was liable for liturgies elsewhere.

A third inscription, from Rome, contains two fragments of Greek, each of which is followed by a subscription in Latin.⁵¹ The first subscription is addressed by Severus to the *paeanistae*, who had presumably requested an exemption from the restrictions on height:

You may, as in your petition [you ask], build over the wedges of the windows to the height of four feet.

The second subscription is unintelligible, but was probably issued by Severus and Caracalla jointly. The second fragment of Greek is only four lines long, and begins with a clear reference to something which preceded. It was probably not, therefore, a self-standing petition, as editors have assumed, but part of an earlier subscription of Severus, quoted within the petition and subscription that form the main subject of the inscription.⁵² This would explain why the second subscription was published with greater formality, giving the emperor's name more fully than in the first subscription. If this is right, there need be no connection at all between the *paeanistae* who had elicited the first subscription and the people who elicited the second one, and put up the inscription itself. Moreover, even if the recipients were identical in each case, or closely connected, some preselection has apparently taken place. Severus' decision contains no formulation of principle of general interest, but it does at least make a decision, and could well have been useful to a third party with a similar request to make.

The other five inscriptions containing imperial subscriptions seem to have been put up by the petitioners themselves; all of them were published locally, and in all but one case the subscriptions were accompanied by the petitions which had prompted them. In at least three cases the petitioners were having difficulties with government officials; one way for them to fight back was to make it very obvious that the imperial government was taking an interest in their problems. The issues involved were, again, very different from those attested by the subscriptions in the legal sources. But the most important thing about these subscriptions is that they show that subscriptions often avoided positive pronouncements of even the most uncontroversial kind; they asserted simply that problems would be taken care of. This was not because the government was weak, or even complacent, but because the purpose of subscriptions was to refer problems to people who could deal with them.

The earliest of the inscriptions containing both petition and subscription is the well-known dossier from Saltus Burunitanus, in Africa Proconsularis.⁵³ It consists of a petition to Commodus from imperial *coloni*, a subscription of Commodus, and a letter from the procurator responsible for enforcing the emperor's decision, all of which are in Latin. The *coloni* had been compelled by the contractor for their estate, Allius Maximus, to provide more forced labour than was required by the regulations for imperial estates in Africa. They had already complained about this in a petition to the emperor (which they call an *epistula*), and had received a favourable subscription in reply. But the imperial procurator, bribed by Allius Maximus, had not only refused to help them, but had even responded with violence. The new petition, however, was not a complaint about the procurator. They may have been too intimidated to complain about him, or they may simply have waited for a new procurator to replace him; it is perhaps significant that they were concerned that Allius Maximus might bribe more than one procurator:

... Please help us, and because we are poor farmers, earning our living by the labour of our hands, and cannot compete with a contractor — who with lavish gifts has made himself very popular with your procurators and who is known to them despite their changes of office because that is a

⁵¹ *CIL* VI, no. 3770 (= 31330) = *IG* XIV, no. 1059 = *IGR* I, no. 145 = *IGUrbRom* I, no. 35.

⁵² So Millar, *op. cit.* (n. 1, 1977), 246; Williams, *op. cit.* (n. 46), 191. For a petition which quotes a subscription, see the inscription from Aragua, *OGIS* no. 519, discussed below.

⁵³ *CIL* VIII, nos 10570 and 14464 = *FIRA* i², 103 = *Ancient Roman Statutes* no. 265 (translation). See Millar, *op. cit.* (n. 1, 1977), 246; Wenger, *op. cit.* (n. 8), 466.

necessary part of his job — take pity on us and condescend to order by means of your sacred rescript that we should not have to contribute more than we are required to by the law of Hadrian and by the letters of your procurators, namely six days of forced labour, so that by the grace of your majesty we your own farmers, born on your estates, shall no longer be harrassed by the contractors of the fiscal lands.

The petitioners were interested simply in their rights and obligations, which had been enshrined in a famous law of Hadrian and confirmed by letters of earlier procurators. All they were asking for was that the existing rules be enforced, and it is not surprising that the petition received a favourable response. But what is surprising is how non-committal Commodus' subscription actually was:

The procurators, in accordance with the regulations and with my orders, shall see to it that nothing shall be exacted from you wrongfully contrary to the established rule.

Given the history of past abuse by the emperor's own officials, and the petitioners' explicit statement that they were afraid of Allius Maximus, this response seems distinctly unsatisfactory. We can understand why the procurator and Allius Maximus were not condemned on the word of the petitioners alone, but it is harder to explain why no one seems to care about the problems reported in such detail; we might expect the new subscription to say something about the problems of enforcement, or at least to reformulate the law in a more emphatic way. But it seems that substance was not particularly important; the *coloni* may not have learned anything by petitioning the emperor, but they did get a new investigation of their case.

A petition to Philip the Arab from the imperial *coloni* of Aragua, in Phrygia, was very similar.⁵⁴ The petition, in Greek, is published with the emperor's Latin subscription first, in the position of honour. The *coloni* of Aragua were located near the main roads, and were thus particularly subject to harassment from the soldiers and officials supposed to keep order in the hinterland. The Araguani had complained about this to Philip when he was still praetorian prefect, and had received a favourable reply:

Once before, Augustus, when you were Praetorian Prefect, we petitioned your Highness about these matters, explaining what was happening. And the enclosed rescript shows that your godlike spirit was disturbed about these matters: 'What you have put into your petition I have ordered the governor to investigate; he will see to it that there be no further cause for complaint'.

In this case, too, it should have been obvious that enforcement would not be easy. But Philip's subscription says only that the problems would be settled in due course:

The proconsul, after examining the veracity of your allegations, will deal with the matter, if anything has been done unjustly.⁵⁵

The imperial government, again, looks at first sight as if it was indifferent to the facts of life. But all a subscription was supposed to do was to put the appropriate mechanisms in motion.

A third inscription, from Scaptopara in Thrace, documents a similar pattern of petition and response, but gives more detail about how the process was supposed to help.⁵⁶ The villagers of Scaptopara also suffered from officials who had ignored their complaints, and they complained to Gordian III. The dossier they published consists of a well-known statement about the provenance of their subscription (in Latin), the original petition to the emperor, a petition submitted to the governor of Thrace (both in Greek), and the text of the subscription itself (in Latin). The problem with Scaptopara was its location: it lay between two military

⁵⁴ *CIL* III, no. 14191 = *OGIS*, no. 519 = *FIRA* i², 107 (no petition) = *Ancient Roman Statutes*, no. 289. See also the original publication by J. G. C. Anderson, 'A Summer in Phrygia: I', *JHS* 17 (1897), 417 ff., and idem, 'A Summer in Phrygia: Some Corrections and Additions', *JHS* 18 (1898), 340 ff. M. I. Rostovtzeff, *The Social and Economic History of the Roman Empire*² (1957), II, 741–2, makes important improvements.

⁵⁵ 'Proco[n]sule v.c. perspecta fide eorum quae [adlegastis, si] quid iniuriöse geratur, ad sollicitudinem

suam revocabit. [v]a[l]l[e].' The restoration of 'vale' at the end of this text has led scholars to assume that it is an imperial epistle. But the original stone has only *XA* or *AA*, as was observed by Williams, *op. cit.* (n. 1), 87 n. 13. We might just as easily read [d]a[t]a, either of which would be consistent with the identification of this text as a subscription.

⁵⁶ *CIL* III, Suppl., no. 12336 = *FIRA* i², 106 = *IGBulg.* IV, no. 2236 = *Ancient Roman Statutes*, no. 287.

camps, was a convenient stopping place for travellers to the local market, and was attractive in its own right because of its hot springs. The result was that officials tended to burden the villagers with their presence (a problem about which, the villagers admit, they could not really complain), and that unfair burdens were placed on the village by travellers to market and soldiers in transit. The villagers were in no doubt about their rights, or about the abuses which had taken place, and complaints to the local governor had failed to have much effect.⁵⁷ On the face of it, therefore, they should have been disappointed with the emperor's reluctance to make any decision of substance:

This kind of complaint placed in a petition you should resolve through the justice of the governor — duly informed about the allegations — instead of taking back a fixed model by means of an imperial rescript.⁵⁸

But in fact the process was probably working in a reasonably satisfactory way; the fact that the dossier was thought to be worth publishing suggests that to get a subscription at all was something of a victory. Moreover the dossier preserves, in a petition to the local governor, an explicit comment about what this meant:

In my opinion some god must have inspired this request. For it seems to me a stroke of good fortune that the most godlike emperor has referred his investigation of these things to you, whom he knew had already spoken about this problem in declarations and edicts.⁵⁹

All the emperor's subscription could be expected to do was bring the complaints to the governor's attention.

The circumstances of the two remaining inscriptions in this short collection are more obscure, but seem to have been similar to those of the three texts just discussed. An inscription from Baetocaeae, in Syria, contains a subscription of Valerian, addressed to the inhabitants of the village.⁶⁰ The original petition does not survive, but the subscription (in Latin) seems to have been published as part of dossier on temple privileges; what does survive is part of a Seleucid document in which a King Antiochus (it is not clear which one) grants the town special privileges because of their temple to Baal. These privileges had presumably been somehow infringed or challenged, since Valerian's decision is simply that the ancient rights should remain unchanged:

He who is in charge of the province will see to it that the ancient privileges granted by the kings, which have been confirmed by the custom of later times, shall remain intact for you, and that the violence of your adversaries shall be suppressed.

This subscription, like those we have just been considering, asserted no more than that justice would prevail, and set the process in motion. There was, again, no attempt to establish what that justice consisted in.

The last inscription we need to consider is from Smyrna, containing a slightly puzzling subscription of Antoninus, addressed to a certain Sextilius Acutianus.⁶¹ Of the petition itself, in Greek, only the last few lines survive, but the (Latin) subscription is preserved in full, along with elaborate details about authentication. Hadrian, Antoninus' predecessor, had apparently issued some kind of ruling on the privileges of priests of Zeus, and Acutianus had been sent to obtain a copy. It is with this modest request that Acutianus ends his petition: 'Therefore, O god-loving and mankind-loving Caesar, order that I be given copies of the memoranda, as your divine father also granted'. The subscription of Pius merely grants the request:

I give you permission to make a copy of the decision of my divine father if he said anything relevant to your case.⁶²

⁵⁷ *IGBulg IV.* 2236, lines 73–107.

⁵⁸ *IGBulg IV.* 2236, lines 167–9: 'Id genus qu[ae]rellae praecibus intentum an[te] iustitia pr[ae]sidi potius super his quae adlegabuntur instructa discinge<re> quam rescripto principali certam formam reportare debeas.' Modern editions print *instructa discinge* which I have trouble translating. The Latin is clearly awkward, but it seems to me that there are two parallel constructions: *potius discinge<re> [sc. debeas] . . . quam . . . reportare debeas.*

⁵⁹ *IGBulg IV.* 2236, lines 108–22.

⁶⁰ *CIL III*, no. 184 = *ILS I*, no. 540 = *IGRR III*, no. 1020 = *Ancient Roman Statutes*, no. 291.

⁶¹ *CIL III*, no. 411 = *FIRA I*², 82 (no petition) = *Ancient Roman Statutes*, no. 253 (translation, no petition). See Millar, *op. cit.* (n. 1, 1977), 247.

⁶² 'Sententiam divi patris mei, si quid pro sententia dixit, describere tibi permitto.'

It is surprising that it took a petition to the emperor to get a copy of Hadrian's decision, though it is possible that litigants would normally have access only to records which were contemporary. But it is even more surprising that such a routine exchange was deemed worthy of publication on stone. There are, I think, two possibilities. One is that Acutianus was advertising his success in obtaining from the emperor a favourable, if unexciting, ruling.⁶³ The alternative is that the issues involved were more fraught than our surviving evidence attests. The residents of Saltus Burunitanus, Aragua, and Scaptopara all had problems with recalcitrant officials, and responded by publishing their petitions to the emperor and the subscriptions they received. It may be that getting hold of Hadrian's decision had proved to be more difficult than it ought to have been, and that the petition to Antoninus was supposed to get some action.

It is not hard to see why the subscriptions published on stone should involve matters which are different from the subscriptions in our legal sources: Roman jurists were mostly preoccupied with the details of private litigation, and were less interested in such mundane matters as the rights and privileges of provincial communities. But what is surprising, I think, is the consistent failure of the subscriptions on stone to make any positive statement about anything at all. Had we thousands of subscriptions like the ones considered here, we would still know little about the theoretical issues behind them. The subscriptions collected by the lawyers were special, not just because they dealt with subjects which the lawyers found interesting, but because they contained statements of principle. In real life most subscriptions were much less substantial; all they really needed to say, and all that many of them did say, was that petitioners could go to the local authorities for help.

III. SUBSCRIPTIONS AND LEGAL PROCEDURE

The legal writers who used subscriptions to explain the law knew perfectly well that they were not issued for that purpose. Our texts from the Classical period do not talk clearly about the procedure for petitioning the emperor, but the legal sources for the late empire are more explicit. Subscriptions, by then invariably referred to as rescripts, were used to obtain both straightforward financial favours and assistance with the legal process.⁶⁴

The question of chronology is crucial here. The legal sources for Constantine and his successors are so different from those for the preceding period that it is tempting to treat them almost as products of a different legal system.⁶⁵ But there was more continuity in Roman law than the sources at first suggest. First, as we have seen, large numbers of subscriptions survive from the second and third centuries precisely because they were collected by the Diocletianic compilers and, on a smaller scale, the Classical jurists; subscriptions from the fourth century are much more rare, but the few that do survive suggest that the procedure continued to function much as it had done in the second and third centuries. Secondly, the fact that the compilers of the *Theodosian Code* employed material of an entirely different kind reflects the different aims of the later code, not a difference in the nature of the raw material itself. Theodosius II wanted a collection of laws intended for general publication, so that his compilers primarily collected imperial edicts and letters to officials; the material thus preserved (some of it taken over by the *Codex Justinianus*) therefore constitutes an unparalleled collection of statements about how the empire was to be governed. But Theodosius also wanted his collection to begin with Constantine, for reasons which had nothing to do with the documents themselves. Thus, although it is from Constantine onwards that the procedures of Roman government are documented in detail, this is because our sources for the later period happen to be different, not because the entire Roman government changed when he took power.⁶⁶

⁶³ This was suggested by Professor Honoré, in a paper read at Oxford in May 1978.

⁶⁴ For the technical terms used by the jurists, see above, n. 10.

⁶⁵ e.g. Kaser, *op. cit.* (n. 3), 412: 'Unter Konstantin finden wir dagegen mit der Neuorientierung, die das gesamte Rechtsdenken erfasst, auch die Prozessordnung

deutlich verändert. In den Gesetzen dieses Kaisers tritt uns das neue Verfahren mit seinen typischen Akten und Fristen bereits als vollendete Schöpfung entgegen; ihre Anfänge bleiben allerdings im Dunkeln.'

⁶⁶ W. Turpin, 'The Law Codes and Late Roman Law', *RIDA*³ 22 (1985), 339-53.

The Theodosian material confirms that subscriptions were more widely used than the evidence of the Classical lawyers suggests. It is clear that though some petitioners were litigants, who needed help with formal lawsuits, others were people who wanted favours. A law of Valentinian II, for example, shows that 'rescripts' were used to obtain illegal concessions on taxes:

To Principius, praetorian prefect. A rescript elicited by damnable deceit to defraud the *annona* and the public welfare cannot, clearly, retain its force. Therefore let there be a fair and just rate of imposition imposed on everyone.⁶⁷

Moreover an edict of Constantine suggests that requests for financial benefits of this sort were at least as important as those arising from litigation:

It is not right to ask for things which cause loss to the treasury or are contrary to the law.⁶⁸

The 'things contrary to the law' were probably special concessions to litigants; but the things causing loss to the treasury were obviously financial in nature, and probably had nothing to do with litigation at all.

More important, the later evidence makes it clear that the function of subscriptions in the legal process was to bring lawsuits before the appropriate judges. The compilers of the Theodosian Code had an entire section called 'On the summons or the issue of a rescript';⁶⁹ the implication is that the issuing of a rescript was parallel to, and almost identifiable with, the issuing of a summons.⁷⁰ Perhaps the most explicit statement of this is a rubric in the *Codex Justinianus*: 'When a petition given to the emperor begins a lawsuit'.⁷¹ But the same assumption is found in a law of Valentinian II:

The emperors Valentinian, Theodosius and Arcadius, Augusti, to Romulus, Consularis Aemiliae. After there has been a summons, whether by edict or by the granting of a rescript, which must have been obtained legally, the lawsuit should be opened, as long as the people involved are the legal and appropriate ones...⁷²

The emperor was not the only person whose authority could get a case into court; lower court judges could do the same with edicts. But it is significant that the two types of summons are treated here as if they had exactly the same effect.⁷³

Direct testimony about this use of petitions to the emperor is provided by Symmachus, in his letters as prefect of Rome to Valentinian II. On a number of occasions Symmachus felt compelled to pass on to the emperor lawsuits he had heard in his own court at Rome, and in doing so he described how those suits had come to him in the first place. In *Relatio* 33, for example, he reported on a case which had been prompted by a petition to the emperor, but had then been pursued in Symmachus' own court:

... I have accepted an impudent appeal made by Constantius, a dealer in swine, after I restored to Theodosius, in accordance with your rescript, property which Constantius had taken from him. For you, moved by Theodosius' petition of complaint had ordered a brief enquiry, to decide whether Constantius had seized possession of Theodosius' property while Theodosius was removed from the scene of the conflict and was in the process of appealing against dispossession.

⁶⁷ *CTh*. 1.2.9 (385).

⁶⁸ *CJ* 1.19.3 (329).

⁶⁹ *CTh* II.4: 'de denuntiatione vel editione rescripti'. By contrast, *CTh*. 1.2, 'de diversis rescriptis', is devoted not to the role of rescripts in legal procedure but to their validity as sources of law, much as in the passages of Gaius, Ulpian, and Justinian's *Institutes* discussed above, nn. 12-13.

⁷⁰ The summons which the compilers had in mind was a process of a very particular kind. The ordinary *litis denuntiatio*, by which a Roman litigant normally demanded that his opponent appear in court, required no direct official involvement. But a litigant could also request the help of imperial officials in presenting his summons, which could then be referred to as a *denuntiatio ex auctoritate*. See Leonhard, 'Litis denuntiatio', *RE* XIII (1927), 780-3; Kaser, op. cit. (n. 3), 371-2; G. Foti Talamanca, *Ricerche sul processo nell'Egitto Greco-Romano. II. L'introduzione del giudizio*, 1 (1979), 25-64. The details of this process are obscure, but

it seems clear that at least one way of obtaining this help was to petition for it: cf. *Frag. Vat.* 167 (Ulpian): 'et petendum, ut denuntietur ex auctoritate, cum denuntiauerit et non venerit. Libellos det et litteras petat'. The punctuation is that of O. Lenel, *Palingenesia iuris civilis*, II (1889), 902.

⁷¹ *CJ* 1.20: 'Quando libellus principi datus litis contestationem facit'.

⁷² *CTh* II.4.4 (385): 'Post celebratam denuntiationem seu edicto seu editione rescripti, quod tamen sit iure impetratum, lis exordium auspicatur inter iustas videlicet legitimas que personas...'

⁷³ See also *CTh* 1.2.6 (333): 'Etsi non cognitio, sed executio mandatur, de veritate precum inquiri oportet, ut, si fraus intervenit, de omni negotio cognoscatur'; *CTh* 1.2.10 (396): 'Dubium non est contestationem intellegi etiam si nostrae fuerint tranquillitati preces oblatæ, easque adversus heredem quoque eius, in quem porrectæ sunt, vel ab herede eius, qui meruerit exerceri...'

And once your order had been placed before the court, I first postponed the whole case so that the vicar could be present, even though you had delegated the case specifically to me. For this case seemed to be like other appeals, which my predecessor but one was not allowed to hear on his own, but which required another judge along with me. But then, when you had reserved for your examination that part of the case which was relevant to the judge of that time, making the question of appeal a separate one, and since I did not have a colleague with whom to hear the case, I heard the complaint about interference with possession, in accordance with your rescript.

And because it was established that Theodosius had not been present in court when he complained that he had been deprived of his resources, and because Constantius could uncover no deceptions in Theodosius' petition, I carried out your divine judgement on behalf of the brother and heir of the petitioner, restoring possession . . .⁷⁴

Despite the technical question about whether Symmachus was competent to hear the case by himself, the basic procedure which had instituted the action is clear. Theodosius had complained to the emperor that Constantius had taken unfair advantage of his absence on appeal. This protest resulted in a reply which may have said something like 'if you can prove that what you say in your petition is true, the judge will grant you possession of the property'. Once this document had been produced in the lower court, it became necessary to consider whether Theodosius' petition had in fact told the truth. The reply played a key role in the process, but Theodosius asked for it not because he needed advice about the law, but because he wanted Symmachus (or someone) to take the case.⁷⁵

Petitioning the emperor to obtain a sort of high-pressure summons is normally taken to be a development of the fourth century; requests for information about the law supposedly evolved into requests for enforcement of it.⁷⁶ But this view depends entirely on taking the surviving evidence as if it were a direct reflection of reality.⁷⁷ As we have seen, subscriptions in the Classical period did not necessarily explain the law at all, and the ones that did were not issued for that purpose. Moreover, a few subscriptions exactly like those collected and used by the Classical jurists and by the Diocletianic compilers in fact survive from the fourth century.⁷⁸ These later examples are rare, but there is no reason to think that they were produced by a procedure substantially different from that of the earlier period.⁷⁹

The Classical lawyers were writing for an audience of fellow professionals, who knew perfectly well what petitions to the emperor were for. In most cases they ignored the details of the procedure, and talked simply about assigning cases to lower court judges.⁸⁰ But in some cases it is clear that the way litigants got their cases assigned to the lower courts was by petitioning. The *Pauli Sententiae* talk about judges assigned to people 'who petitioned the emperor for them in a special procedure.'⁸¹ And more explicit still is a subscription of Diocletian, prompted by a litigant who had clearly encountered difficulties in petitioning for a judge:

The emperors Diocletian and Maximian, Augusti, and the Caesars, to Gregorius.

Even though you claim that some things from the transcripts were left out of your petition, the person assigned to the enquiry by our rescript is no less able to pass judgement.⁸²

⁷⁴ Symm., *Ep.* x.33.2-3.

⁷⁵ Another case introduced by rescript is reported in Symm., *Ep.* x.19.

⁷⁶ Kaser, *op. cit.* (n. 3), 353 n.47: 'Von einem besonderen "Reskriptprozess" wird sich in dieser Periode [i.e. second and third centuries] noch nicht sprechen lassen'; Wesener, *op. cit.* (n. 3), 866: 'Eine Anzahl von Reskripten erscheint als blosse Gutachten . . . ; in späterer Zeit gewinnen die Prozessreskripte den Charakter von Instruktionen an den Richter'; N. Palazzolo, *Potere imperiale ed organi giurisdizionali nel II secolo d. C.* (1974), esp. 233: 'È perciò da respingere la tesi che pretende di anticipare all'età immediatamente successiva ad Adriano il c.d. "processo per rescritto"'. The fullest study of the late evidence is E. Andt, *La Procédure par rescrit* (1920).

⁷⁷ This is especially clear in A. Fliniaux, 'Contribution à l'histoire de citation au Bas-Empire. La *postulatio simplex*', *RD* 9 (1930), 199: 'trois phases successives de l'histoire de la *postulatio simplex* . . . correspondent aux trois grands monuments législatifs'.

⁷⁸ *Frag. Vat.* 32 (312); 33 (? 313); 34 (313); 273 (315); 274 (315); 287 (318); 290 (n.d.); 291 (n.d.); *Cons.* 9.2 (365); 9.5 (365); 9.6 (364).

⁷⁹ This important point is made by D. V. Simon, *Konstantinisches Kaiserrecht* (1977), 5-10. Contrast, e.g. R. MacMullen, *Corruption and the Decline of Rome* (1988), 110: 'By the first half of the second century, after many generations in which they had gradually become familiar, rescripts had established themselves in regular, frequent use. Then under Diocletian they tapered off very abruptly and soon ceased. No similar form of access replaced them. The natural consequences followed.'

⁸⁰ e.g. *Dig.* iv.4.18.4: 'Sed et si ab imperatore iudex datus cognoscat, restitutio ab alio nisi a principe, qui iudicem destinavit, non fiet'.

⁸¹ *PS* v.5.1: 'Res iudicatae videntur . . . ab his, qui ab imperatore extra ordinem petuntur . . .'

⁸² *CJ* 1.22.1 (293).

The original petition had been inadequate, but this did not affect the working of the process. The details of Gregorius' case did not matter, and neither, presumably, did the substance of the subscription he got in reply. All he had done by petitioning the emperor was get his case assigned to a subordinate.

Two Classical jurists, Julian and Callistratus, regarded subscriptions as having precisely the same purpose. Both writers are in fact discussing only a detail of the procedure; they want to make it clear that when an imperial subscription refers a petitioner to an emperor's subordinate, the case can be heard not only by the official explicitly referred to, but by whomever he selects as a delegate judge. The basic point is made by Julian:

I have often heard our Caesar [= Antoninus Pius] saying that with this rescript, 'You may approach him who is in charge of your province', no necessity is imposed on a proconsul, his legate, or a *praeses* that he hear the case, but rather that he should make his own decision about whether to hear the case himself or to assign a judge.⁸³

Callistratus makes the same point in more detail, but also shows that the use of subscriptions to pass on lawsuits was absolutely routine:

As a general rule, whenever the emperor remits matters to the governors of provinces by means of rescripts, such as 'You will be able to approach him who is in charge of your province', either on its own or with the addition 'He will decide what his responsibilities are', there is no necessity imposed on the proconsul or legate that he hear the case, even if there is no addition of 'but he should decide whether he should hear the case himself or should assign a judge'.⁸⁴

There is no question of doubt about what the law said; petitioners went to the emperor merely to get their cases referred to his subordinates. As far as Callistratus was concerned, subscriptions had precisely the same role in the legal process as they were to have in the fourth century.

It is also worth noticing that Julian and Callistratus are apparently quoting texts which they regarded as possible complete subscriptions. It does not matter that the words they actually use are probably not particular subscriptions but ideal types; both authors are saying that an imperial subscription might easily contain nothing more than a brief permission to bring a case before a local court. The subscriptions they 'quote' are not, after all, very different from Philip's reply to the Araguani: 'What you have put into your petition I have ordered the governor to investigate; he will see to it that there be no further cause for complaint'.

When viewed as no more than a request for a judge, a petition to the emperor looks like a fairly routine process, and the texts we have been considering certainly give the impression that this was so. But the same petitions were also discussed in language suggesting that a great deal more was at stake. From the third century (at least) to the sixth, a petition to the emperor could be called a *supplicatio*.⁸⁵ Litigants complained to the emperor when the ordinary legal processes seemed to them unfair; they could complain in advance of judgement, anticipating difficulties and requesting a change of judge, or they could protest after sentence, when the normal appeals procedure was denied them.⁸⁶ The process of *supplicatio* was a routine one in the sense that the government allowed for it and expected it to complicate its legal procedures. But a *supplicatio* could also be quite fraught; it involved allegations of unfairness or incompetence which neither the central government nor the local officials who prompted the complaints could treat with indifference.⁸⁷

The procedure for petitioning the emperor is much easier to understand if it was a channel of protest. Some of the complaints involved issues of substance; judges who misinterpreted

⁸³ *Dig.* 1.18.8.

⁸⁴ *Dig.* 1.18.9.

⁸⁵ *CJ* 1.21.1 (232): 'Imp. Alexander A. Caperio. Licet, postquam supplicasti, priusquam rescriptum impetrares, praeses provinciae vir clarissimus pronuntiaverit, cum tamen a sententia non provocaveris, rescriptum, quod postea secutum esse suggeris, ad retrahenda quae decreto terminata sunt non patrocinator'; cf. also *CJ* VII.30.2 (231); *CJ* VII.27.1 (Severus Alexander, n.d.). For the

Justinianic usage, see *CJ* 1.19: 'De precibus imperatori offerendis et de quibus rebus supplicare licet vel non'.

⁸⁶ Kaser, *op. cit.* (n. 3), 352; 432-3.

⁸⁷ Ammianus XXVII.7.8 complains that Valentinian would reject petitions from litigants who were afraid that judges were prejudiced against them: 'siquis eum adisset, iudicium potentis inimici declinans, aliumque sibi postulans dari, hoc non impetrato, ad eundem quem metuebat, licet multa praetenderet iusta, remittebatur.'

the law out of ignorance or spite might prompt petitions which raised matters of principle.⁸⁸ But the point of the procedure was not to provoke discussion of these issues at the imperial court; subscriptions containing discussions of principle were, as we have seen, exceptions rather than the rule. Rather, litigants submitted their complaints to the emperor for the same reason as the inhabitants of Saltus Burunitanus, Scaptopara, and Aragua had done; they wanted the emperor to refer their cases to courts which would deal with them.

IV. CONCLUSION

The impression arising from the legal sources tends to be overwhelming. The subscriptions preserved by the lawyers invariably read as though they were giving out advice, and it is easy to forget that they were originally issued to resolve practical problems rather than intellectual ones. Moreover the subscriptions actually preserved were only a fraction of those originally issued; many subscriptions, if not most of them, must have resembled the austere instructions for enforcement that we find in the inscriptions, and in Julian and Callistratus.

The papyri provide some help in making the necessary leap of faith. Much more common among the papyri than imperial subscriptions are the subscriptions to petitions given by local officials, particularly the *strategoï* and the prefects of Egypt.⁸⁹ These subscriptions occasionally refer to the legal background of their decisions, and it is not impossible to imagine that a select collection of them might have had its uses.⁹⁰ But most are entirely devoid of legal content; they either reply to the petitions with a simple yes or no, or they refer the petitioners to subordinates.⁹¹ Petitions to the emperor were not quite so routine as petitions to the administrators of Egypt, and it was probably not so hard to find imperial subscriptions which actually said something of substance. But the procedures for petition and response used by the local officials of Egypt were not entirely different from those which involved the emperor; plenty of imperial subscriptions, now lost, must have been very similar to the routine decisions of the local Egyptian officials.

As sources, the Roman lawyers are perhaps a mixed blessing. Diligent though they were, they took material out of context and used it for their own purposes. Imperial subscriptions were not necessarily the most obvious sources for information about the law, but the lawyers used them for that purpose when it suited them. The government itself was much more down to earth: it accepted petitions from its subjects not to explain the law, but to enforce it.

Swarthmore College

⁸⁸ For the contents of the petitions which prompted the subscriptions in the legal sources, see esp. *CJ* vi.37.12 (240), referring to and quoting an opinion of Papinian included in the petition. See also *CJ* iii.33.2 (205); *CJ* x.11.2 (238).

⁸⁹ See, briefly, J. David Thomas, 'Subscriptions to Petitions to Officials in Roman Egypt', in E. Van 't Dack, P. Van Dessel, and W. van Gucht (eds), *Egypt and the Hellenistic World* (1983), 369–82. For petitions to officials outside Egypt, see the petition from Aragua, discussed above, and *CJ* vii.57; *Dig.* xlviii.10.29.

⁹⁰ A. E. R. Boak, 'A Petition for Relief from a Guardianship. P.Mich. Inv. No. 2922', *JEA* 18 (1932),

69–76 = Sel.Pap. II. 260, lines 35–8: 'Announce to the relatives of the orphan who petitioned me that your request has been approved. If the outcome of the judgement . . . the guardianship, you are aware that as regards the past you have withdrawn at your own risk'; P.Oxy. XII. 1466, line 10: 'If you do not have the right to another guardian I give you the guardian you request'.

⁹¹ U. Wilcken, 'Aus der Strassburger Sammlung', *AFP* 4 (1908), 115–47, no. 2 = W.Chr. 52 = Sel.Pap. II. 301, line 21: 'If there is no detriment to any public or private interests, I give permission'; BGU II. 648 = Sel.Pap. II. 284, line 26: 'Submit your case to the strategos, who will do what is in his competence'.