The use of Greek by Roman jurists

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The Greek influence on all aspects of ancient Roman culture is unquestionable. Nevertheless, Romanist legal doctrine seems to be the last bastion of Roman supremacy (or at least autonomy), with scholars still arguing that Roman law was an original product of the Roman spirit, free from any foreign influence.¹ Such an opinion has already been criticized from the point of view of comparative law,² yet a further observation, this time relative to the language, should also be made. In fact, one of the arguments used to support the traditional Romanist opinion is the difficulty, stressed by the later classical jurist Modestinus, of explaining Roman law in Greek terms (De excusationibus D.27.1.1.1). Another argument, possibly even more significant, is based on the fact that Latin remained the language of legal studies deep into the Byzantine age, when Greek was already the dominant language all over the Empire.³ In consequence it may seem that the jurists' language was not subject to Greek influences. Indeed, since Latin legal terminology was much better developed, it even contributed to the Greek juridical terminology by providing a lot of loan words.⁴ Nevertheless it should be observed that Roman legal literature contains a large number of Greek quotations and the fact that whole works were written in this language similarly indicates the opposite tendencies.

The present paper aims at a brief overview of Greek terms and citations in the texts of Roman jurisprudence from the perspective of the expanding cultural and legal pluralism of the Empire. Since we may presume that the use of a foreign language is evidence of an effort to maintain unchanged the original context of the quotation, it is argued that it testifies to the knowledge of a foreign legal culture. Moreover, with regard to the legal

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problems themselves, it seems a fair assumption that a Greek citation stresses the jurist’s distance from a foreign legal system. In consequence, the use of foreign language can be interpreted as an indicator of cultural and legal pluralism, that is to say that Roman jurists were aware of the cultural and legal diversity of the Empire and that they were not necessarily inclined to standardise in this respect.

I. Bilingualism and Multilingualism in Roman Antiquity

Greek culture began to influence Central Italy from the foundation of the Calcidic colony at Cumae in the eighth century B.C. Nevertheless, considering the initial Etruscan domination in Rome, a more intensive contact with the Greek language could have taken place only between the sixth and the fifth centuries B.C. The infiltration of Hellenistic culture in that period is attested by the reception in Italy of the Greek cults, such as those of Dioscuroi, Demeter, Dionysus, Core, Hermes and Apollo from the beginning of the fifth century B.C. onwards. After this period of a broad opening up and assimilation of foreign religions there was a long pause until the beginning of the third century B.C., when the Asclepios cult was received.5

Greek influence on Latin should be considered part of this phenomenon, even if the first loan words were in the meantime often influenced by Etruscan. The phenomenon of linguistic borrowing is usually connected with the assimilation of foreign techniques, whereby the new concepts arrive with their original names; the first linguistic imports into Latin accordingly referred to the terminology connected with sailing6 and with the cultivation of olive trees.7

The infiltration of the Greek language was, from the second century B.C. onwards, encouraged by the enlargement of the Roman Empire to the East and led to the progressive bilingualism of Roman society. Such a situation can be inferred not only from the fact that the first pieces of Roman literature were written in Greek, as for example the historical work of Quintus Fabius Pictor, but also from the numerous inscriptions composed in two linguistic versions.8 A very important group within this category is constituted by the official texts such as letters of magistrates, senatus consulta and

6 Examples by Devoto (as in 5), p. 91.
7 Examples by Devoto (as in 5), p. 91.
imperial decisions. Almost all the decisions regarding the Eastern part of the Empire were supplied with an official translation into Greek.\(^9\)

The comparison of different *senatus consulta* provided with such a translation demonstrates its great uniformity in phraseology and vocabulary, in spite of the fact that the texts span a period of two hundred years and were found in different parts of Greece, Asia Minor and Italy.\(^10\) Their uniformity despite such a geographical variety indicates that the translations were all made at the same place, that is in Rome.\(^11\) They are all redacted in *koiné* and characterised by a high degree of fidelity to the Latin text. Sometimes technical Latin terms are not translated, but simply transliterated.\(^12\) Also, the effort to preserve the original Latin construction of the phrase proves that the translations are owed to official scribes. These were probably, according to Robert Sherk, professional officials, in particular the *scribae* of the *aerarium* or their staff.\(^13\)

Theodor Mommsen formulated the hypothesis, corroborated by material discovered subsequently, that this kind of translation was sent directly to the interested party;\(^14\) therefore the value of such translation was presumably equal to that of the original *senatus consultum* or other normative act. The language of these translations, formed during the second century B.C., remained unchanged until the end of the Republic.\(^15\) Their technique was called *verbum e verbo* as distinct from that of *sensus de sensu* and consisted in giving for each word of the original text exactly one corresponding word in the translation. Moreover, different terms, even if synonymous, have been translated differently. The accurate correspondence of both texts sometimes made the Greek version incomprehensible, particularly if the Latin idiomatic expressions were translated.\(^16\) In spite of the criticisms by people

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13 Sherk (as in 4), pp. 18-19.
15 Schulz (as in 12), p. 115.
16 Sherk (as in 4), p. 7.
such as Cicero\textsuperscript{17} and Horace\textsuperscript{18} of this translation technique, it was used in bilingual texts written for pedagogical use, as well as legal documents.\textsuperscript{19}

The imperial office appointed to answer individual questions was divided in two departments, \textit{ab epistulis latinis} and \textit{ab epistulis graecis}, a fact which substantiates the administrative and political importance of provincial cases.\textsuperscript{20} On the other hand, the imperial \textit{rescripts} were issued almost exclusively in Latin, although some papyrus documents show the contrary practice.\textsuperscript{21} The official Roman correspondence in Greek language reflects Hellenistic patterns.\textsuperscript{22}

The penetration of Greek also caused contrary reactions, from those intent on preserving Roman culture from foreign influence.\textsuperscript{23} The reluctant use of foreign languages was attributed to Emperor Tiberius who, despite his perfect knowledge of Greek, avoided speaking it, especially in the senate.\textsuperscript{24} So, under his influence, did the famous jurist Masurius Sabinus, in contrast with Labeo.\textsuperscript{25} It is evident that the jurists, as members of Roman upper class, were acquainted with Greek.

II. The Transmission of Roman Juristic Works

To investigate the use of Greek in the writings of Roman jurists active between the first and the third centuries A.D. it is necessary to consider the way their texts were handed down to us, for we obviously possess no direct evidence. The two principal sources containing works of Roman jurisprudence are the Institutes of Gaius and Justinian’s \textit{Corpus Iuris Civilis}, above all the Digest.

The former are known, with very few exceptions, only through the Veronese manuscript, which does not contain any Greek. Nevertheless, the

\begin{itemize}
\item \textsuperscript{17} Cic.: \textit{De fin.} 3.15.
\item \textsuperscript{18} Hor.: \textit{Ars poet.} 133.
\item \textsuperscript{19} Brock, Sebastian: Aspects of Translation Technique in Antiquity. In: \textit{Greek, Roman and Byzantine Studies} (1979) 20, pp. 71, 73, 80.
\item \textsuperscript{22} Sherk (as in 4), pp. 189-93, 197.
\item \textsuperscript{23} Val. Max. 2.2.2.
\item \textsuperscript{24} Svet. \textit{Tib.} 71.
\end{itemize}
original text certainly included some quotations in this language, which are marked by the introductions: *Graeca voce...* (G.1.64) or *Graecam vocem expressae fuerint, veluti...* (G.3.93). The manuscript usually leaves some empty space, where Greek words are lacking. It was already noticed by Wilhelm Studemund that neither of the two writers of the manuscript knew Greek.\(^{26}\) All the quotations in the modern editions of Gaius’ Institutes are therefore reconstructed.

Different texts have served as basis for the reconstruction. Some passages were integrated on the basis of comparison with the Digest or with Justinian’s Institutes, which depend strongly on Gaius. For some passages the reconstruction has been based on the Byzantine paraphrase of Justinian’s Institutes. The use of this text, which may seem very distant from that of Gaius, can be justified by the old thesis of Contardo Ferrini. He argued, following the phraseology in all three works, that where Justinian’s manual follows Gaius closely, the Paraphrase is faithful rather to the latter than to the former. Ferrini also maintained that the paraphrast used his translation of Gaius in the fragments where Justinian’s text was close to its model.\(^{27}\) Such a relation between the Paraphrase and *Institutiones Gaii* justifies the utilization of the former in the reconstruction of the latter. Nevertheless, taking into account the fact that the Greek quotations in Gaius are all reconstructed, his work can never provide decisive evidence for the use of Greek.

As far as the Digest is concerned, in the *Vulgata* all Greek quotations were deleted or translated into Latin in the same way as in the Veronese manuscript.\(^{28}\) Alciatus (Andrea Alciato) was the first to begin reconstructing them. Further efforts undertaken in this direction by the later Humanists were published in 1529 in Haloander’s Digest edition.\(^{29}\) But only Torelli’s publication, in 1553, of the *Florentina*, the only manuscript containing Greek quotations, revealed their full range.\(^{30}\)

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\(^{26}\) Studemund, Guilelmus: *Gaii Institutionum Commentarii Quattuor*. Lipsiae 1874, p. XXII;


\(^{29}\) Troje (as in 28), p. 16.

\(^{30}\) Troje (as in 28), pp. 17-18.
III. Troje’s Typology of the Greek Quotations

A German scholar, Hans Erich Troje, analysing the humanistic critical research of the Corpus Iuris Civilis, has distinguished four types of Greek quotations contained in the Digest. To the first belong citations from classical Greek literature, which were, according to Troje, pure decoration, a consequence of the ancient education system, proving only the erudition of the jurist. Their absence would not therefore compromise the juristic meaning of the passages. This interpretation is supported by the fact that such quotations were often omitted in the Vulgata.31 As an exception to this rule Troje reports quotations from Demosthenes and from Chrisippos recalled by Aelius Marcianus in his definition of lex (νόμος) in the first book of his Institutiones (D.1.3.2).32 It seems nevertheless that more such examples can be found, and that the citation of classical Greek authors had strong argumentative force because of their authority, and was not without impact on juristic solutions.33 The most significant case, which contradicts the opinion of Troje, is the use of Homer in the controversy between the different schools of thought among the Roman jurists concerning the relationship between exchange and sale.34

The second, and probably the broadest, group of Greek quotations distinguished by Troje contains single words and expressions. They usually repeat the notions previously mentioned in Latin35 or report a current popular saying.36 Their aim is to render in precise terms a legal problem or to indicate a Greek etymology. Troje has pointed out that they are often translated in the Vulgata version.37

The third, probably the most interesting, group is composed of around 20 texts from the casuistic Roman literature containing quotations of cases and questions raised by Greek-speaking inquirers. Most of these passages

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31 Troje (as in 28), p. 13.
34 See below, § V.
35 Gai. 1 ad l. XII tab. D.50.16.233.2; Gai. 10 ad ed. prov. D.19.2.25.6; Pomp. ench. D.50.16.239.2; Pomp. ench. D.50.16.239.4; Pap. 7 resp. D.33.7.2.1; Paul. l. s. de grad. et adf. D.38.10.10.1; Paul. 3 ad ed. D.2.13.7.1; Ulp. 68 ad ed. D.43.8.2.22; Ulp. 41 ad Sab. D.47.2.3 pr.
36 For example the expression ἐν πᾶλαι in: Ulp. 27 ad ed. D.13.3.3; Lab. 7 pith. a Paulo epit. D.22.3.28; Iul. 54 dig. D.46.3.13; Ulp. 80 ad ed. D.46.8.12.2.
37 Troje (as in 28), pp. 13-14.
are taken from a jurist active between the late Antonine and the early Severan periods, Q. Cervidius Scaevola: 11 texts derive from his *Digesta* and four from his *Responsa*. Four other passages come from Ulpian’s pupil, Modestinus, and only one from the *Responsa* of Paul. As Troje has established, the *Vulgata* usually gives a word-by-word translation in these cases.38

The fourth group contains extracts from works written entirely in Greek by the Roman jurists. The majority of such fragments derive from the six-book treatise *De excusationibus* by Modestinus (D.27.1.1-15).39 Troje presumed, albeit without a sound basis, that the whole work was originally conceived in Latin.40

The above-mentioned classification leaves out quotations from imperial constitutions issued in Greek and juristic works written in Latin, but labelled with Greek titles. Such cases cannot be classified under any of the four headings of Troje. Moreover, his classification, far from being exhaustive, does not take into consideration the legal relevance of the quotations. Therefore Troje’s classification will not be followed in the present work, unless exceptionally for the sake of abbreviation.

IV. Greek Quotations as a Symptom of Linguistic Changes in Latin

The use of Greek in Roman juristic literature has to be considered firstly as a part of a wider linguistic phenomenon affecting Latin in general.41 Cultural exchange and widespread bilingualism led to changes in both languages.42 To the mechanism of linguistic borrowing from Greek into Latin

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38 Troje (as in 28), p. 14
40 Troje (as in 28), p. 17.
41 Devoto (as in 5), pp. 88-92, 166-69, 223-31.
corresponded the opposite, but unfamiliar, mechanism of importation of Latin terms into Greek.43

Different kinds of linguistic borrowing can be identified in Latin. On the one hand, there are semantic borrowings, which reproduce foreign meaning with the means of one’s own language. They can be formally independent of the original term or they may consist in its translation. On the other hand we know of lexical borrowings in which the term itself as well as its meaning are received. In this case the borrowed word can adjust in its spelling and inflexion to the rules of the new language. The examples of the first kind contain adaptations of Latin words to Greek lexical value, usually by putting them one after another, to suggest the identical sense of both.44 Such words could be exact equivalents, or the latter could represent only one of the possible meanings of the former. In this way the Greek technical terminology penetrated into Latin.45 This mechanism was also common in juristic language, where Greek synonyms are usually put together with Latin terms to specify their meaning.

The present research deals principally with these borrowings – that is, borrowings of the second kind – and examines them with regard to the correlation between linguistic import and the original concept. For the same reason another vast group of analysed texts consists of quotations of longer passages in Greek as well as the remnants of works entirely written in this language.

The use of Greek by the members of Roman upper classes, frequent for example in the letters, orations and treatises of Cicero, proves that loan words must have been very common.46 Giacomo Devoto asserts that such borrowing gave freedom of expression, which was lacking at an early stage in literary written Latin.47 In this sense Quintilian still stresses the elegance and charm of Greek as compared to his mother tongue.48 From the Augustan period onwards Greek influence remained stable or even increased, occurring principally at two levels. On the one hand merchants were learning

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43 Magie, David: *De Romanorum iuris publici sacræ vocabulis sollemnibus in Graecum sermonem conversis*. Halle 1904; Mason (as in 4); Daris, Sergio: *Il lessico latino nel Greco d’Egitto*. Barcelona 1991.
44 Devoto (as in 5), p. 167.
45 Examples given by Devoto (as in 5), pp. 166-69.
46 Cic.: *In Verr.* 2.52.192 and 3.65.152; *Pro Arch.* 9.27.
47 Devoto (as in 5), p. 169.
48 Quint.: *Inst. orat.* 12.10.33 and 12.10.28.
new words while travelling, and on the other the aristocracy was assimilating doctrines, fashions and concepts of Greek origin.\textsuperscript{49}

Several legally relevant examples of semantic borrowing can be found in Labeo’s works. In his definition of \textit{opus locatum} the Augustan jurist uses two Greek terms, \textit{ἀποτέλεσμα} and \textit{ἔργον}, stressing that the Latin expression has to be understood rather as the former than as the latter.\textsuperscript{50} Labeo refers here not to the common language, but to the precisely defined concepts of Aristotelian philosophy, which are in fact to be encountered in the \textit{Nicomachean Ethics} (1106a 9; 1144a 4). In this case the Greek philosophical vocabulary, applied to define the expression \textit{opus locatum}, contributes in consequence to the formation of the legal concept of \textit{locatio conductio operis}.

A particular kind of borrowing is constituted by Greek titles given to works entirely written in Latin.\textsuperscript{51} Numerous examples of this kind from every period can be found in Roman legal literature: the \textit{Horii} of Quintus Mucius pontifex, the \textit{Pithana} of Labeo, the \textit{Enchiridion} of Pomponius, the \textit{Pandectai} of Ulpian and Modestinus, as well as the latter’s \textit{De heuematicis} and finally \textit{De formula hypothecaria} of Paul. This group, completely left out by Troje, nevertheless furnishes interesting examples of the importation of Greek literary genres, implying new means of juristic exposition and systematisation.

\textsuperscript{49} Devoto (as in 5), p. 224.


V. Auctoritas poetarum

Even if Homer is the poet most frequently cited by jurists,\textsuperscript{52} he enters into their writings only during the Julio-Claudian age, therefore a long time after his reception in Roman literary culture by Lucius Livius Andronicus, the first Latin poet who, notably of Greek origin, was active during the third century B.C.\textsuperscript{53} As usual in antiquity Homeric quotations by the jurists did not contain any precise indication of work, book and verses. Only Marcianus in the seventh book of his Institutes indicates the actual poem cited: \textit{Homerus in Odyssea ait} (D.32.65.4).\textsuperscript{54} As far as we know, the first use of Homer in the legal literature was connected with the school controversy, mentioned above, on exchange and sale. The poet was cited on the one hand by Sabinus in support of his opinion according to which the contract of sale descends from exchange, and on the other hand by Proculus to underpin the opposite view. For the latter jurist, in fact, sale and exchange differed because with respect to the latter it was impossible to distinguish the buyer from the seller, and therefore the parties to the contract could not be identified.\textsuperscript{55}

It is a further interesting aspect of this controversy that, although the Sabinians, relying on Homer alone, adduced no juristic argument to support their opinion, the technical argumentation of the Proculians was also not sufficient to overrule the \textit{auctoritas} of the poet. In consequence their view required a ‘Homer based’ argument as well, invoked in reality according both to Justinian’s Institutes (3.23.2 \textit{sed Proculi sententia … merito pra-}

\textsuperscript{52} The quotations of Homer by the Roman jurists are contained in: G.3.141; Gai. 4 \textit{ad l. XII tab.} D.50.16.236 \textit{pr.}; Paul. 33 \textit{ad ed.} D.18.1.1.1; Marci. 7 \textit{inst.} D.32.65.4; Marci. 9 \textit{inst.} D.39.6.1; Pap. 7 \textit{resp.} D.33.10.9.1; Mod. 12 \textit{pandec.} D.38.10.4.6; Ulp. 2 \textit{de adult.} D.48.5.14.1; Claud. Sat. 1 \textit{s. de poen. pag.} D.48.19.16.8; cf. Stella Maranca, Filippo: Omero nelle \textit{Pandette}. In: BIDR (1927) 35, pp. 1-53.


\textsuperscript{54} Scarano Ussani (as in 25), p. 374, n. 12.

valuit, cum et ipsa aliis Homericis versibus adiuvatur …)⁵⁶ and their Paraphrase (3.23.2) by the final winner of the controversy, Proculus.

The poetry quotations in legal discourse must therefore have been considered much more seriously then Troje recognises. It is true that the Sabinian use of Homer, an author regarded as a reliable source for very ancient times, could have had a mainly historical character. But it was not just a display of juristic erudition; rather, it was above all a technical argument based on the origins of a legal institution.⁵⁷ Moreover, according to Vincenzo Scarano Ussani, in his recourse to Homer the jurist Sabinus followed Roman and Hellenistic philosophers and rhetoricians who identified Greek authors as the founders of their disciplines; in this case Homeric citation could help attribute the status of an ars to jurisprudence as well.⁵⁸

VI. Greek in Legal Works as a Symptom of Legal Pluralism

According to the Dutch scholar Govaert C.J.J. van den Bergh there are no traces of legal pluralism in the Roman law sources from the Republic and the early Principate.⁵⁹ The only exception would be constituted by the separate legal system of the plebeians, which was in force, however, only until the lex Hortensia of about 286 B.C. Nevertheless, legal questions from Eastern provinces, in the practice of Roman jurists as well as in that of the imperial chancellery, testify to the vitality of local regulations under the Roman rule. This coexistence of different laws can be traced through the quotations of provincial cases by the jurists and through the imperial constitutions formulated in or translated into Greek.⁶⁰

The most interesting in this context appear to be the extracts from casuistic, or ‘problematic’, works of Roman jurists, which constitute the third group in Troje’s classification, together with juristic works entirely written in Greek, which form the fourth group, as well as the quotations he left out of account from imperial constitutions.

In the casuistic literature the factual circumstances are mostly reported in the original Greek language, whereas the legal question and the advice

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⁵⁶ I.3.23.2: The opinion of Proculus … has deservedly prevailed, as it is supported by other lines from Homer, and by still more weighty reasons. (Translation by Thomas Collet Sanders).
⁵⁷ Scarano Ussani (as in 25), p. 382.
⁵⁸ Scarano Ussani (as in 25), p. 382.
given by the jurist are in Latin. Such a situation arose from the fact that the
cases put forward by the inhabitants of the Eastern provinces were formu-
lated in their mother tongue, whereas the Roman jurist either advising his
client or publishing the collection of such *responsa* was using Latin.

This kind of legal literature is certainly addressed to a bilingual audience.
There are many possible reasons why the quotations have remained in their
original Greek: to underline the real nature of the cases, as distinguished
from the fictitious ones, or simply to spare translation work for the jurist?
Most likely of all is the hypothesis that Greek terminology could not be
translated into Latin without misrepresenting important aspects of provin-
cial law, to which these texts refer, as Romanist scholarship ascertained
around a century ago.61 Such a bilingual construction probably reflects,
therefore, the concurrence of Roman and provincial legal systems.

A similar interpretation can be given to the imperial constitutions drawn
up in or translated into Greek. Many of them are included in Justinian's
Code, but some are known only through the juristic literature.62 There are
14 references to the Greek constitutions in the Digest. As far as their char-
acter is concerned, one of them is indicated as *litterae* (Paul. 2 resp.
D.5.1.48 *Pars litterarum divi Hadriani*) and others as *epistula* (Mod. 2 excus.
D.27.1.6.2) or as *διάταξις* (Mod. 2 excus. D.27.1.6.7), which is simply a Greek equiva-

tent for *constitutio.* A further two are indicated as *rescriptum* (Ulp. 29 ad ed.
D.16.1.2.3; Ulp. 1 de app. D.49.1.1.1) and another two clearly display the
same nature, which is attested by their heading (D.14.2.9 Maec. ex l. Rhod.
D.14.2.9: Ἅξιωσις Εὐδαίμονος Νικομηδέως πρὸς Ἀντωνῖνον ὁσιλεό; Paul. 20 resp.
D.49.1.25: Αὐτοκράτωρ Ἀλέξανδρος τὸῦ κοινοῦ τῶν ἐν Βιθυνίᾳ Ἐλλήνων). Another group of six documents are
either *rescripta, litterae* or *epistulae,* because they employ the verb *rescribere,*
which can indicate all these constitution types (Ulp. 3 de off. proc. D.1.16.4.5;
Call. 1 de cogn. D.8.3.16; Call. 1 de cogn. D.50.6.6.2; Call. 1 de cogn. D.50.6.6.6;
Call. 5 de cogn. D.5.1.37; Marci. 14 inst. D.48.6.5.1).63 Most of them are di-

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61 Kübler, Bernhard: Griechische Tatbestände in den Werken der kasuistischen Literatur. In:
*ZRG Rom. Abt.* (1908) 29, pp. 183-226; Schiller (as in 60), pp. 223-24.
62 Troje (as in 28), p. 5.
rected to communities, whereas only two are addressed to individuals, one of whom bears a Greek and another one a Roman name.

The emperors issuing Greek constitutions are, in chronological order, Hadrian (Call. 5 de cogn. D.5.1.37 and Paul. 2 resp. D.5.1.48), Antoninus Pius (Call. 3 de cogn. D.8.3.16; Maec. ex l. Rhod. D.14.2.9; Mod. 2 excus. D.27.1.6.2; Mod. 2 excus. D.27.1.6.7; Marci. 14 inst. D.48.6.5.1; Ulp. 1 de app. D.49.1.1.1), the divi fratres (Call. 1 de cogn. D.50.6.6.6), Septimius Severus (Ulp. 29 ad ed. D.16.1.2.3), Alexander Severus (Paul. 20 resp. D.49.1.25) and probably also Antoninus Caracalla (Ulp. 1 de off. proc. D.1.16.4.5). The Italian scholar Aldo Dell'Oro maintains that the quantity of Greek constitutions cited reveals their position in the legislative production of individual emperors, and therefore it seems relevant that 10 of them originate from the Antonine age, whereas only two survive from the Severan times.

The texts were redacted in Greek probably in order to prevent misleading translations, which was certainly essential with regard to the constitutions addressed to communities. Moreover, even if most of the Greek quotations in juristic works date from the Severan age, the Greek constitutions issued by these emperors are less frequent. According to Aldo Dell'Oro this fact reflects the necessity of stressing the unity of the Empire through linguistic uniformity. Furthermore he maintains that this was a reaction to separatist tendencies, which had not yet made themselves felt during the Antonine age. It seems in fact that the diminishing quantity of Greek language constitutions was due to the unifying policy of the later emperors.

As a final symptom not only of bilingualism, but also of legal pluralism, we have the juristic works written entirely in Greek, usually by authors of Eastern origin. Many of them spent a long time in a Greek speaking province. The first work of this kind known to us is the commentary Ex lege Rhodia de iactu, published by L. Volusius Maecianus during the Antonine pe-

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64 Communities: of aucupes (Call. 3 de cogn. D.8.3.16), of Asia (Mod. 2 excus. D.27.1.6.2), of Thracians (Ulp. 1 de app. D.49.1.1.1), of the Greeks of Bitinia (Paul. 20 resp. D.49.1.25), of the Thessales (Call. 5 de cogn. D.5.1.37 and Marci. 14 inst. D.48.6.5.1).
66 Dell'Oro (as in 65), p. 755.
67 Dell'Oro (as in 65), p. 754.
68 Dell'Oro (as in 65), p. 755.
70 Dell'Oro (as in 65), pp. 755-56.
The jurist, born in Ostia, was probably of African origin and later became the prefect (vice king) of Aegptus. The only quotation from this work is contained in D.14.2.9. Since the inscription does not contain a book reference it is probable that the compilers did not have the original at their disposal. Probably for the same reason the work is lacking from the Index Florentinus. Its attribution to Maecianus, contested by Hugo Krüger and Fritz Schulz, is generally accepted in recent Romanist literature.

Papinian also composed in Greek one of his early writings on the law of the Hellenistic office of roads and buildings supervision Αστυνομικὸς μονοβιβλος, quoted only in D.43.10.1. Its attribution to Papinian was unconvincingly rejected again by Krüger and Schulz as well as by Gaetano Scherillo. More recent literature considers it as a work of Papinian.

Modestinus wrote around 230 A.D. a monograph in Greek about the justified grounds for refusing a guardianship or curatorship (De excusationibus). In his introduction he mentions the difficulties besetting an adequate description of Roman legal institutions in Greek terms. Moreover, he decides not to translate textual quotations from Latin, so that they can be better cited in court (D.27.1.1pr.-2). These Latin quotations derive from imperial constitutions as well as from Ulpian's or Paul's Responsa. Because the work of Modestinus, destined probably for the Northern part of Asia Minor, is not excerpted in the title De excusatione of the Fragmenta Vaticana, it was probably unknown in the West. Some older scholars defended the parallel existence of a Latin version from the sixth or seventh century onwards, but Mommsen had already argued convincingly that the Latin text,
which appears in some manuscripts in place of the Greek one, is nothing more than a medieval translation.\textsuperscript{80}

The three works mentioned above are the only works of Roman jurisprudence written entirely in Greek.

A pupil of Papinian, Paul, wrote \textit{Ad formulam hypothecariam liber singularis}, a work of which only the Greek styled title is preserved.\textsuperscript{81} But Aelius Marcianus, another Severan jurist from the Hellenistic East, certainly wrote in Latin on the same topic.\textsuperscript{82}

Hellenistic culture served as a common background and as a reference point for the jurists as well as for other members of the upper classes. A conspicuous presence of Greek citations in Roman jurisprudence testifies to the impact of Hellenistic culture also in the domain of law. Moreover, it seems that knowledge of foreign legal systems prompted some theoretical and critical reflection amongst the Roman jurists.\textsuperscript{83} From the historical point of view the Greek in Roman juristic texts can illuminate those aspects of ancient law, as yet largely neglected, which depend on the multicultural character and the legal pluralism of the Empire.

\textsuperscript{80} Mommsen, Theodor: \textit{Digesta Iustini Angusti (editio maior). Additamentum III: Versio vulgata Modestinianorum (Dig. lib. XXVI et XXVII)}, vol. I, Berolini 1962, pp. 35*-37*.
\textsuperscript{81} Liebs (as in 72), p. 158.
\textsuperscript{82} Liebs (as in 72), p. 203.
\textsuperscript{83} Hamza (as in 2), pp. 13-19.