



Accommodating former legal systems and Roman law: Cicero's Rhetorical and Legal Viewpoint in the Verrine Orations

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JULIEN DUBOULOZ

ACCOMMODATING FORMER LEGAL SYSTEMS AND ROMAN LAW

CICERO'S RHETORICAL AND LEGAL PERSPECTIVE IN THE VERRINE ORATIONS

Whereas the majority of the papers in this volume focus on how the subjects of Rome related, both practically and theoretically, to Roman law, the present paper considers the Roman viewpoint on this matter. It is based on the accusation speech pronounced in 70 BCE by Cicero in the extortion court, the *quaestio de repetundis*, against Verres, governor of the *prouincia* of Sicily between 73 and 71. Since the Verrine Orations are the only *repetundae* speech preserved in its entirety and were intended by Cicero at the beginning of his political career to prove his rhetorical ability, it is difficult to assess whether they reflect common arguments and ideas, or Cicero deliberately emphasizes moral issues in order to affirm his own *auctoritas* and to shake his senatorial audience in the difficult circumstances of the late 70s.¹ Be that as it may, Cicero most certainly developed arguments about Roman imperialism that were suitable both for a Roman audience and for the envoys of the Sicilian communities attending the trial.

Of course, in a *repetundae* speech, the prosecutor, who acted in fact as the defender of the prejudiced peregrine communities, was bound to praise, among other things, their laws and attachment to *ius aequum*. In a more private context, Cicero is gently ironic towards the provincials of Cilicia rejoicing at the *autonomia* they have regained thanks to his actions as governor. One should not, however, overestimate Cicero's criticality of Greek law in this witty remark to his favorite addressee: as he says to Atticus, petty litigation characterizes Roman no less than Greek tribunals.² Besides,

¹ On the historical and political context of the Verrines: Lintott 2007, p. 5-18; Tempest 2011, p. 45-58.

² Cicero, *Att.* 6, 1, 15 (Laodicea, February 20, 50): *Graeci uero exsultant quod peregrinis iudicibus utuntur. "nugatoribus quidem" inquires. Quid refert? Tamen se*

the Romans did not ignore how much Greek cities valued the grand principle of self-government, or more precisely, how they tried to claim a right to appeal to civic courts when both parties to a civil suit were from the same city, or when a Greek was the defendant and a Roman citizen the plaintiff.³ Epigraphy attests to the successful efforts of several *poleis* to ensure that Roman officials would respect their judicial autonomy.⁴ Even when no such privileges were formally granted, some degree of jurisdictional autonomy could be bestowed by the goodwill of the governor, as demonstrated in Cicero's letter to Atticus about Mucius Scaevola's edict in Asia, as well as Cicero's own edict in Cilicia.⁵ Such a grant of autonomy depended on ethical principles rather than legal dispositions, but the Roman ruling class tended to define itself according to moral standards, and the speeches pronounced in the *repetundae* courts closely associated legal and moral issues.⁶ Cicero expresses an ideal of respect for the provincials' rights. Roman officials, he felt, had to assure them justice and fairness; substantive and procedural law and custom in effect before the conquest should, to a certain extent, be preserved under Roman rule.⁷ Considering that the provincials could not be certain of recovering the sums extorted by Roman officials, the real achievement of the *repetundae* trials probably was in compelling Roman governors to restrain themselves enough to at least make sure that some of their former constituents would send envoys and public decrees in order to support them in case of a trial.⁸ Moral principles thus had potential legal consequences in a *repetundae* court.

ἀντονομίαν *adeptos putant. Nostri enim, credo, grauis habent, Turpionem sutorium et Vettium mancipem.* "The natives indeed are jubilant because they have alien judges. Irresponsibles, you may say. Well, what of it? They feel they have won home rule just the same. And our countrymen have such very impressive judges – Turpio the shoemaker and Vettius the broker!" For Cicero's correspondence, D. R. Shackleton Bailey's edition and translation (1999) is used throughout this paper.

³ Fournier 2010a, esp. p. 308-326. On the general principle *actio sequitur forum rei*, referring a case to the defendant's jurisdiction, see synthesis in Laffi 2009, p. 143-148; Fournier 2010b, p. 171-173.

⁴ E.g., the case of the city of Colophon in Ionia, in the decrees for Menippos (120/119 BCE): Fournier 2010a, p. 417-432. Cf. n. 61.

⁵ Cicero, *Att.* 6, 1, 15; Fournier 2010a, p. 308-312.

⁶ E.g., Dubouloz 2014.

⁷ Cicero, *Ver.* 2, 2, 32-34; 37-39; 42-44; 2, 3, 16-17; 19-22; 24; 38. General considerations about a governor's jurisdiction in the correspondence: Cicero, *Q. fr.* 1, 1, 20-24; *Fam.* 3, 8 (70), 4; *Att.* 5, 20, 1 and 6; *Att.* 5, 21, 8; *Att.* 6, 1, 8 and 15-16; *Att.* 6, 2, 4. Brunt 1990, p. 318-319, opines that Cicero's praise of good government reflects his personal ambitions as much as his moral principles.

⁸ Reputation in Rome, and fear of the extortion courts, in the Verrines: Cicero, *Ver.* 2, 2, 12-15; 114. In the correspondence: Cicero, *Q. fr.* 1, 1, 38-44; 1, 2, 1-14; *Fam.* 2, 12 (95), 2-3; *Fam.* 3, 8 (70), 1-8; *Fam.* 8, 12 (98), 1-3; *Fam.* 15, 4 (110), 11-16.

I intend to explore some of Cicero's arguments about the relationship between local and Roman law in order to understand how two sets of laws and jurisdictions could practically interact in the province of Sicily. However, the Verrine Orations first and foremost are rhetorical objects. This means not only that every idea must be interpreted as an argument against the accused party in a prosecution speech, but also that Cicero is entitled to express broader ideas about imperialism. Michael Crawford has described the 70s as a turning point in the construction of the Roman imperial system.⁹ To what extent then do Cicero's reflections on the relationship between Sicilian and Roman law attest a new reality, a new consciousness among Roman elites? What values are attached to local law in this ideological context?

LEX RUPILIA AND *LEX HIERONICA*:
ROMAN STATUTES AND RHETORICAL CONSTRUCTS

I will focus mainly on the *De frumento* (*Ver.* 2, 3), the part of the speech dedicated to the Roman tax system in Sicily and the governor's embezzlement of tax revenues. Here, Cicero emphasizes a statute called *Lex Hieronica*, named after Hieron II, king of Syracuse between 269 and 215.¹⁰ This statute regulated the collection of a tithe on grain production. Cicero's main argument is that the law remained in effect in the Roman province, at least until Verres subverted it with his own praetorian edicts,¹¹ but later was restored by his successor L. Metellus.¹² Taxes being one of the means through which a dominant power exerts its sovereignty, local practice prior to the conquest might seem at first glance to have been irrelevant: requiring a conquered people to pay tribute is a manifestation of its subordination to a new rule, of a radical change of status. However, paradoxical as it may seem, Cicero not only praises the excellence of the Greek tax system and Greek fiscal jurisdiction in Sicily more than virtually anything else, but he goes so far as to insist that they continue to prevail under Roman rule:¹³

⁹ Crawford 1999, p. 189-196.

¹⁰ *Lex Hieronica*: Cicero, *Ver.* 2, 2, 32; 34; 63; 147; 2, 3, 14-15; 18-19; 24; 38; 44; 117; 120-123; 147; 150; 2, 5, 53.

¹¹ Cicero, *Ver.* 2, 3, 14-15; 19-21, 24.

¹² Cicero, *Ver.* 2, 3, 44; 121.

¹³ Unlike Shackleton Bailey's translation of the correspondence, all translations from Greenwood (1959-1960) are considerably modified. Cf. Cicero, *Ver.* 2, 3, 19-21.

Videte nunc maiorum sapientiam, qui cum Siciliam tam opportunum subsidium belli atque pacis ad rem publicam adiunxissent, tanta cura Siculos tueri ac retinere uoluerunt ut non modo eorum agris uectigal nouum nullum imponerent, sed ne legem quidem uenditionis decumarum neuue uendundi aut tempus aut locum commutarent, ut certo tempore anni, ut ibidem in Sicilia, denique ut lege Hieronica uenderent. Voluerunt eos in suis rebus ipsos interesse, eorumque animos non modo lege noua sed ne nomine quidem legis nouo commoueri. (Cic., Ver. 2, 3, 14)

I would draw your attention to the wise action of our forefathers in this matter. Having secured to the republic, by the acquisition of Sicily, a valuable source of strength in peace and war, they were so earnestly resolute to secure and maintain the loyalty of the Sicilians, that they refrained not only from imposing any new tax upon Sicilian land, but even from altering either the conditions of the sale of the right to collect the tithe or the time or the place of such sale, so that these rights should continue to be sold at a fixed time of the year, locally in Sicily, and, in effect, as provided by the law of Hiero. They resolved that the Sicilians should participate in their own affairs, and should not be irritated by a new law or even by a new name given to the same law.

The *Lex Hieronica* is thus first of all a rhetorical device used in a *repetundae* case. However, both historians and jurists have tried to read beyond this literary object. Jérôme Carcopino's early study, conceived as a thorough reconstruction of the content of the original Hieronian law,¹⁴ suggests possible Hellenistic models for it, especially from Ptolemaic Egypt. Sylvie Pittia has shown that although direct inspiration from the Revenue Law of Ptolemy Philadelphus as proposed by Carcopino and others is unlikely, the Lagid and Syracusan kings may have approached economic and fiscal issues according to a common logic.¹⁵ For his part, Mario Genovese has tried to reconstruct the content of the original Roman tax system in order to assess whether Verres's edicts were as innovative and transgressive as Cicero claimed.¹⁶ Reading beyond – or rather behind – the Verrine Orations is not questionable per se. However, my focus here is on the rhetorical and ideological uses of the *Lex Hieronica* within the speech itself.

Hiero's law is attested only by Cicero's speech, where it is described as the continuation of the original tax system. Although Cicero's approach to the law is not historical, one must infer that the tax system in effect in the Syracusan kingdom, in the eastern part of Sicily, was not only preserved after the fall of the kingdom in

¹⁴ Carcopino 1919. The consequence of this approach is that Carcopino tends to idealize the *Lex Hieronica* as a Roman tax system as well (cf. e.g. Carcopino 1919, p. 74-75), as does Pritchard 1970, p. 354, who completely ignores the rhetorical aspect of his source.

¹⁵ Pittia 2012.

¹⁶ Genovese 1999.

211/210, but also extended to the western part of the island, which had been under Roman rule since 227.¹⁷ What scholarship may not have stressed enough is that this is not the first time that Cicero makes use of an ideal of continuity. In the previous part of the speech, the *De praetura Siciliensi* (Ver. 2, 2), the orator alludes to a single statute that is supposed to encompass the entire judiciary system of Sicily, both for peregrines and for Roman citizens. This statute, the *Lex Rupilia*, establishes principles for the appointment of juries in civil and criminal cases – granting much autonomy to local courts – while placing capital jurisdiction in the hands of the governor.¹⁸ In order to characterize Verres's conduct as abusive and irregular, Cicero presents the *Lex Rupilia* as the keystone of the autonomy that Rome conceded to the Sicilians.¹⁹ As a result, both indirectly, through the *Lex Rupilia*, and directly, through the *Lex Hieronica*, Greek institutions remained in effect in the Roman province, and these should have limited the governor's discretionary power.

There are some obvious differences between the two statutes. First, they differ in origin and legal nature. *Lex Rupilia* is a Roman statute enacted by the proconsul P. Rupilius in 132/131; *Lex Hieronica* is supposed to be a Greek, or rather Sicilian, statute, first conceived in the latter half of the 3rd century BCE. Second, the statutes have very different scopes: *Lex Rupilia*, as far as we can tell, regulates civil and criminal courts, establishing judges and jury panels according to the citizenship of the parties to a case, and broadly defines the function of courts.²⁰ *Lex Hieronica* is a tax system that determines the nature and amount of the tax – a tithe on grains – as well as by whom and how it is to be collected and in what judicial process disputes between payers and collectors

¹⁷ Debate on this chronology: Pittia 2012, p. 360-362, 378-383.

¹⁸ *Lex Rupilia*: Cicero, Ver. 2, 2, 32-34; 37-45; 59; 90; 2, 3, 92. The law is attested nowhere else.

¹⁹ Esp. Cicero, Ver. 2, 2, 40 and 90. Genovese 1999, p. 79 n. 10, accepts the definition of the *Lex Rupilia* as overarching legislation governing jurisdiction in Sicily.

²⁰ Cicero, Ver. 2, 2, 32 (judges chosen by lot in cases between Sicilians from two different cities); 34 (general statement that lots were not drawn under Verres); 37 and 42 (order of different cases to be heard in a given court session in Syracuse, also by lot); 38-45 (judges chosen by lot in a civil case between a citizen of Syracuse and the *palaestra* of that city); 59 (registration of the complaint in a case between a citizen of Bidis and the *palaestra* of that city); 90 (application of local law in cases between citizens from the same community: *Publiusque Rupilius postea leges ita Siculis ex senatus consulto de X legatorum sententia dedisset ut ciues inter sese legibus suis agerent*); 92 (general statement about the legal transaction devised to obtain from a defendant a promise to appear on a certain day before a certain court; cf. below concerning *uadimonium*).

will be settled.²¹ As far as controversies over taxes are concerned, Cicero clearly states that the *Lex Hieronica* provides special rules for a dispute between a tax collector and a taxpayer, and this procedure does not seem to be included in the Rupilian dispositions.²²

Yet there are similarities between the statutes that are not objective, but suit Cicero's rhetorical purpose. First, says Cicero, the islanders call each of these statutes *lex*, law, though they cannot be considered *leges* from the Roman constitutional perspective.²³ *Lex Rupilia* is only a *decretum* passed by one governor, then transferred to his successors' edicts. It is true, however, that this particular decree was sanctioned by the *auctoritas* of an extraordinary senatorial delegation to Sicily²⁴ – clearly a turning point in the province's organization and in a broader process of normalizing relations between Rome and the provincials²⁵ – yet this does not make the Rupilian law a statute sanctioned by a vote of the Roman people. Neither is the Hieronian law a Roman *lex*, of course. The word *lex* allows Cicero to make a legal argument against Verres, although as governor he certainly was less bound by these two dispositions than Cicero claims. Cicero's letter to Atticus about Scaevola's edict demonstrates that a praetor could decide whether to let a majority of cases be handled by Greek civic courts (or Greek judges appointed by the praetor) or to involve himself and Roman citizens residing on the island in as many cases as he saw fit.²⁶ As far as the *Lex Hieronica* is concerned, no regulation required a Roman official to abide by a foreign rule. This is why Cicero criticizes Verres mostly for introducing novelty in provincial tax law,

²¹ The specific provisions of the law are summarized in Pittia 2012, p. 362-365.

²² Cicero, *Ver.* 2, 2, 32: *Inter aratores et decumanos lege frumentaria, quam Hieronicam appellant, iudicia fiunt*. "Cases between farmers and collectors of tithe are tried as is directed by the corn law known as the law of Hiero".

²³ *Lex Hieronica*: see previous note. *Lex Rupilia*: Cicero, *Ver.* 2, 2, 32: *ut de eo praetor iudices ex P. Rupili decreto, quod is de decem legatorum sententia statuit, quam illi legem Rupiliam uocant, sortiatur*. "The praetor should appoint a jury, choosing its members by lot in accordance with the decree enacted by P. Rupilius, following the recommendation of a commission of ten (senators), known in Sicily as the Rupilian law".

²⁴ Cicero, *Ver.* 2, 2, 32; 39-40; 90.

²⁵ Fournier 2010b, p. 158, probably is a bit hasty when he describes the plural *leges*, used concerning the Rupilian decree in Cicero, *Ver.* 2, 2, 90, as possibly including other matters than courts and jurisdiction. The term *lex prouinciae* is misleading even if after one of the slave wars, Rupilius surely had to reorganize Roman rule in Sicily (Prag 2007, p. 299; Dubouloz – Pittia 2009, p. 92-93).

²⁶ Cicero, *Att.* 6, 1, 15; cf. n. 2. Ferrary 1999 (2017), p. 183-184, as well as Fournier 2010a, p. 326-327, insists on restricted autonomy defined by these jurisdictional principles.

as he had previously done in civil law, as a praetor in Rome.²⁷ But it is not difficult to imagine what Cicero would have argued if he had been defending Verres against a piece of legislation issued by a Greek tyrant, instead of repeatedly portraying the former governor as a tyrant and the past Syracusan king as a wise lawgiver.²⁸

VERRES'S *UADIMONIUM* EDICT:
ROMAN VERSUS SICILIAN LAW?

Still, *Lex Rupilia* and *Lex Hieronica* are linked not only because they serve a common rhetorical purpose, but also because they may have, to a certain extent, overlapped or merged.²⁹ As much can be cautiously inferred from the discussion of an edict enacted by Verres in 71, the last year of his governorship. Cicero first mentions this edict among a series of dispositions that Verres enacted as a concerted scheme to exploit the province, and comes back to it when addressing the case of the city of Segesta:

Iam uero illud non solum contra legem Hieronicam nec solum contra consuetudinem superiorum, sed etiam contra omnia iura Siculorum, quae

²⁷ Cicero, *Ver.* 2, 3, 16-17: 16. *Qua in re primum illud reprehendo et accuso, cur in re tam uetere, tam usitata quicquam noui feceris. Ingenio aliquid adsecutus es? Tot homines sapientissimos et clarissimos, qui illam prouinciam ante te tenuerunt, prudentia consilioque uicisti? [...]* 17. *Quam ob rem nouam legem te in decumis statuisset non miror, hominem in edictis praetoriis, in censoriis legibus tam prudentem, tam exercitatum [...]; sed quod tua sponte iniussu populi sine senatus auctoritate iura prouinciae Siciliae mutaueris, id reprehendo, id accuso.* "16. In that matter, Verres, my first step as prosecutor is to demand why you made any sort of change in a system so long and so regularly maintained. Did your powerful mind suggest you any improvement? Were your understanding and your judgement superior to those of all the able and distinguished men who governed the province before you? [...]" 17. I am consequently not surprised that you should have devised a new law for the collection of the tithe, after showing so much judgement, and gaining so much experience with praetors' edicts and censors' regulations: [...] The charge that I do as prosecutor bring against you is that you tampered with the rights of the Sicilian province on your own responsibility, without orders from the people or the authority of the Senate".

²⁸ Cicero, *Ver.* 2, 3, 20: *Scripta lex ita diligenter est ut eum scripsisse appareat qui alia uectigalia non haberet, ita acute ut Siculum, ita seuerum ut tyrannum; qua lege Siculis tamen arare expediret; nam ita diligenter constituta sunt iura decumano ut tamen ab inuito aratore plus decuma non possit auferri.* "The carefulness of this law's provisions shows that its author had no other resources of taxation, their shrewdness shows him a Sicilian, their severity a tyrant. None the less, it would be in the interest of the Sicilian farmer; for carefully as the rights of the tithe-collector are secured by it, the farmer cannot be forced to hand over more than the amount of the tithe". On Verres depicted as a tyrant: Steel 2001, p. 31.

²⁹ Genovese 1999, p. 82, regarding Cicero, *Ver.* 2, 2, 32.

habent a senatu populoque Romano, ne quis extra suum forum uadimonium promittere cogatur. Statuit iste ut arator decumano quo uellet decumanus uadimonium promitteret, ut hic quoque Apronio, cum ex Leontino usque Lilybaeum aliquem uadaretur, ex miseris aratoribus calumniandi quaestus accederet. (Cic., Ver. 2, 3, 38)

And then for a thing that violates not only the law of Hiero, not only the usage of previous governors, but all the rights that have been bestowed to the Sicilians by the Roman senate and people, whereby no man may be summoned to appear in a court beyond the limits of his own district. Verres ordained that a farmer must promise to appear in court wherever the collector might choose, so that Apronius might summon a man to go for this purpose all the way from Leontini to Lilybaeum, and thus make a further profit out of the unhappy farmers by bringing false actions against them.

Segestam item ad immunem ciuitatem Venerius Symmachus decumanus immittitur. Is ab isto litteras adfert, ut sibi contra omnia senatus consulta, contra omnia iura, contraque legem Rupiliam extra forum uadimonium promittant aratores. (Cic., Ver. 2, 3, 92)

Then to deal with Segesta, another exempt community,³⁰ a slave of Venus's temple, by name Symmachus, is sent as collector of the tithe. This man brings with him a letter from Verres which authorizes him – in defiance alike of all our senate's decrees, of all the rights, and of the Rupilian law – to compel farmers to promise him to appear before a court outside the limits of their district.

The edict in question bound farmers to appear in a court not necessarily within the capital city of the assize district to which their city belonged. Cicero states that they could be summoned to any judicial district of the island where the governor or another Roman official held court. The Verrine Orations provide evidence that the cities of Sicily were organized into at least four assize districts (each named *conuentus* or *forum*), every one having a capital city (namely Syracuse, Agrigentum, Lilybaeum, and Panhormus).³¹ To illustrate the deterrent effect this disposition had on farmers' will to resist tax collectors, Cicero draws the fictitious example of a Sicilian from the city of Leontium, within the boundaries of the Syracusan district, in the eastern part of the island, forced to appear before the court in Lilybaeum, at the western end of the province. This would have created many a practical problem for farmers, especially if prevented from being present on their land during the harvest season.

Cicero claims that Verres's disposition contravenes every custom and rule in Sicily, especially the Rupilian and Hieronian

³⁰ In Segesta only noncitizens were subject to the tithe on grain; cf. Genovese 1999, p. 304 n. 170. Ferrary 2014 (1988), p. 22, suggests that Segesta's immunity may have been reduced when the *Lex Hieronica* was applied to the entire island.

³¹ Fournier 2010b, p. 179.

laws. It was, so he says, devised to help the tax collectors compel the farmers to agree to pay sums far greater than what should have been exacted. In a normal situation, the amount of tax was “amicably” determined in a contract, called a *pactio*, between the two parties.³² Negotiations between tax collectors and payers took place when the grain already had been harvested but, according to another edict promulgated by Verres, still was on the threshing floor, ready to be sent to the coast and shipped to Rome.³³ In order to ensure that the *pactio* would be profitable for the collectors, the governor made it compulsory for farmers to declare the acreage of their cultivated land.³⁴ Consequently, after examining the harvested grain, the collectors could file a complaint accusing the farmers of not declaring their farmland or of minimizing the area actually sowed.³⁵ By so doing, Verres did not intend to increase the number of lawsuits before his tribunal – indeed, his term as governor was drawing to an end – but he compelled the farmers to yield to the collectors’ threats and violence.

Verres’s edict, says Cicero, modified the rules for appearing in court. Cicero’s phrase *uadimonium promittere* refers to a promise or legal obligation to come to court. The institution is a particularly complex one. Put simply, there are two main types of *uadimonium* in Roman law, although they often are quite difficult to distinguish. In the first, sometimes called extra-judicial *uadimonium*, two parties oblige themselves by promising individually or mutually to appear at a meeting place near a magistrate’s tribunal on a particular day: the plaintiff makes his claim first before the defendant, and then before the magistrate. The other kind of *uadimonium* also is a promise to appear before a tribunal, but it is exacted by a magistrate in one of two circumstances: either because there is too much judicial business to finish by the end of the day, or because the magistrate declines competence and transfers the case to a court of higher instance.³⁶

The discussion of the *uadimonium* procedure in paragraph 38 relates to the *Lex Hieronica*, but in paragraph 92 to the *Lex Rupilia*.

³² On the *pactio* system: Nicolet 2000 (1994), p. 280-281; Dubouloz 2007, p. 156-159.

³³ Esp. Ver. 2, 3, 36 and 51: *edictum ne quis frumentum de area (tollat) antequam cum decumano pactus (sit)*. Commentary in Genovese 1999, p. 306-310.

³⁴ Esp. Ver. 2, 3, 58. Genovese 1999, p. 237-314, gives a thorough analysis of the *edictum* on the declaration of cultivated land (*iugerum professio*); cf. p. 320-322 about the system formed by several *edicta* promulgated by Verres during the 3rd and final year of his governorship.

³⁵ Genovese 1999, p. 306-314.

³⁶ Syntheses in Kaser – Hackl 1996, §31, p. 226-231; Metzger 2000; Donadio 2011, p. 1-11.

This may indicate that the procedure applied in tax controversies was not in this respect very different from that applied in civil disputes.³⁷ The parallel suggests that in the 1st century BCE, the *Lex Hieronica* was not a purely Greek statute and included at least some provisions borrowed from Roman law – or had been absorbed, as far as the procedure was concerned, in the Roman law of Sicily. There is no mention of a Roman provision passed after the creation of the *provincia* to extend the Syracusan tithe system to the entire island, and Cicero could not have put so much emphasis on the Hieronian law if a Roman *senatus consultum* or law had existed. So it is logical to assume that the Hieronian law had been extended by successive praetorian edicts to the western part of the island and mixed to some extent with Roman law.³⁸ This would explain the presence of the Roman *uadimonium* procedure within the indigenous statute. Alternatively, and more simply, provisions about the assize district system in the *Lex Rupilia* may have held in tax cases as well.

Also conceivable is that the Latin phrase *uadimonium promittere* is the translation of a Greek term. It is possible that for the sake of clarity, Cicero chose as his translation the name of a Roman institution familiar to his audience, thus neglecting the technicalities of Sicilian law. Quite possible as well is that a procedure named *uadimonium promittere* existed in Sicilian documents during the 1st century BCE but was based on local practices or adapted to local purposes.³⁹ Such phenomena are well attested in the Greek provinces, where Georgy Kantor has described local and Roman law as forming a mixed, non-unified legal system, rather than two conflicting sets of laws. He bases his analysis on the modern concept of private international law, which according to Hannah Cotton has some relevance to the Roman provinces. Broadly speaking, private international law is the part of a legal system that accounts for the rights of foreigners. More specifically, it contains rules that regulate the relationship between citizens and non-citizens – and rules from a previous legal system assimilated in a new one.⁴⁰

The phenomenon is further illustrated in the *De praetura Siciliensi*. Cicero uses the word *dica* (plural: *dicae*) as a transliteration of the Greek δίκη (plural: δίκαι), with a sense quite similar to the

³⁷ For further literature on the subject, insisting on the disruptive effect of Verres's edict and less focused on the meaning of the reference to the Rupilian law: Genovese 1999, p. 320 n. 205-206. On the meaning of the reference, Genovese 1999, p. 82, is much clearer.

³⁸ About the different stages of the creation of the province: Pittia 2012, p. 381-383.

³⁹ Genovese 1999, p. 314-319.

⁴⁰ Cotton 2007; Kantor 2015.

expression *uadimonium*, but in the context of civil lawsuits.⁴¹ The term *dica* is attested in Latin comedy as well, which could explain why Cicero does not see a need to define it for the audience – or the reader.⁴² According to Cicero, the order in which civil cases were heard by the praetor on a particular day was determined by lot, a process that he calls *dicarum sortitio* and describes as a disposition of the Rupilian law.⁴³ The term *dica* also appears in the expression *dicarum scriptio*, referring to a written notice given by a plaintiff to his adversary prior to or at the time of summons.⁴⁴ The comparable stage of the Roman formulary procedure is *editio actionis*, in which the plaintiff informs his future adversary of the action he intends to bring against him.⁴⁵ But Cicero probably uses *dicarum scriptio* because it is distinct from the *editio actionis*. Lauretta Maganzani has suggested that the *dicarum scriptio* is a legal transaction that originated in Hellenistic Sicilian law,⁴⁶ and that initiating proceedings this way could prove useful in a province, considering that Roman officials ruled in an itinerant fashion and took an annual tour of their province during which they held assizes in each *conuentus* for a limited time. Since the Roman *in ius uocatio* consisted of the plaintiff's asking his adversary to immediately come with him before the magistrate,⁴⁷ another procedure proved useful when Roman authorities seldom were physically present.⁴⁸

A further problem with the *uadimonium* is that some doubts can be raised about the technical aspects of Cicero's argument. Comparisons with literary and epigraphic documents from the Eastern and Western provinces strongly suggest that contrary to Cicero's implication, even if each city of a province was assigned

⁴¹ Cicero, *Ver.* 2, 2, 37: *Scribitur Heraclio dica. [...] Interea dies aduenit quo die sese ex instituto ac lege Rupilia dicas sortituum Syracusis (Verres) edixerat. Paratus ad hanc dicam sortiendam uenerat. Tum eum docet Heraclius non posse eo die sortiri, quod lex Rupilia uetaret diebus xxx sortiri dicam quibus scripta esset.* "Heraclius' case was formally registered. [...] Meanwhile the day drew near on which Verres had announced by an edict that he would choose by lots the cases to be heard at Syracuse, in accordance with his own practice and the Rupilian law. He had arrived in court ready to draw lots, when Heraclius represented to him that his own case could not be drawn that day, because the Rupilian law forbade the drawing of a case within thirty days from its registration".

⁴² Plaut., *Aul.* 759; Ter., *Ph.* 127; 329; 439; 668.

⁴³ Cicero, *Ver.* 2, 2, 37-38; 42; 45.

⁴⁴ Cicero, *Ver.* 2, 2, 37; 42; 59.

⁴⁵ Kaser – Hackl 1996, §30, p. 220-226, by either written or verbal communication.

⁴⁶ For Kaser – Hackl 1996, §71, p. 475 n. 28, this process is also "non-Roman," but they consider it an opportunity given the accuser to summon the defendant in a judicial district chosen by the former.

⁴⁷ On *in ius uocatio*: Kaser – Hackl 1996, §30, p. 221.

⁴⁸ Maganzani 2007, p. 137-138.

to a judiciary district, parties could be called upon to appear in the capital of another district than their own. For instance, Cicero describes not as a general rule, but as a privileged status conceded to Cyprus, in Cilicia, that no peregrine was to be summoned from the island to a Roman court on the continent, for which reason he dispatches a *praefectus* in charge of settling disputes between Roman *negotiatores* and peregrines.⁴⁹ Conversely, in an *epistula* to the magistrates of the city of Kymè written in 27 BCE, the governor of Asia commands that one Lysias accept a price for sacred land he wrongly possesses and give it back. If the defendant refuses to comply, he can be obliged to promise to appear “wherever the governor will be”.⁵⁰ Chapter 84 of the Flavian *Lex Irnitana* states that local magistrates, when they decline competence over a case, must ensure by *uadimonium* that the parties will appear “in the place where the governor of the province will be,” not specifically in the capital of the district where their city is located.⁵¹ Finally, Babatha’s archive – from the province of Arabia, around 120 CE – affords a glimpse into the strategies developed by both plaintiffs and defendants to choose the right *conuentus* to slow down or speed up a trial.⁵² Thus when a case was brought from a city to the governor, the parties did not necessarily have to wait for him to hold assize in their district.

Could Roman law in Sicily or tax law inspired by the *Lex Hieronica* have stated likewise? After all, it might have been in the collectors’ best interest that their case be heard in a court near

⁴⁹ Cicero, *Att.* 5, 21, 6 (Laodicea, February 13, 50): *Q. Volusium tui Tiberi generum, certum hominem sed mirifice etiam abstinentem, misi in Cyprum ut ibi pauculos dies esset, ne ciues Romani pauci qui illic negotiantur ius sibi dictum negarent; nam euocari ex insula Cyprios non licet.* “I sent Q. Volusius, your friend Tiberius’ son-in-law, a reliable man and also exceptionally scrupulous, to Cyprus for two or three days so that the few Roman citizens who carry on business there should not say they had no one to try their cases – Cypriots cannot legally be summoned out of the island”.

⁵⁰ Letter sent by the governor of Asia to the magistrates of Kymè, *RGDE*, 61, lines 20-21: *Sei] autem Lusia contradeicit quae Apollonides pos[tu]/[lat, uadiimonium ei satisdato ubi ego ero.* “If however Lysias has made a counterclaim against Apollonides, the former should promise the latter to appear in court where I (the governor) shall be”.

⁵¹ *Tabula Irnitana*, cap. 84, lines 20-21: *Et omnium rerum q(uae) [s(upra) s(cripta) sun]t de uadimonio promittendo in eum / lo[cum] q(uo) is erit qui ei prouinciae praeit, futurusue esse ui-/debitur eo die in quem ut uadimonium promittatur postula-/bitur* (Lamberti 1993, p. 350). “And (the local magistrate) is to have jurisdiction [at any rate] over the promise of a *uadimonium* concerning all matters for the place in which the person who governs that province will be or is expected to be on that day for which the request for the promise of the *uadimonium* is made” (trans. Metzger 1997, p. 68).

⁵² Cotton – Eck 2005.

the land and harvest, so that confiscation could be executed more easily.⁵³ On the other hand, one could assume that it was out of not greed, but efficiency, that Verres allowed controversies over the tithe to be arbitrated as quickly as possible, not in any *conuentus* of the island of course, but in the *conuentus* where the governor happened to be when the dispute arose. The harvest was standing on the threshing floor, waiting to be sold or shipped to Rome, and a swift resolution would be beneficial to both parties.

OMNIA IURA SICULORUM, QVAE HABENT A SENATU POPULOQUE ROMANO:
ACTUAL PROCESS OF UNIFICATION, OR RHETORICAL DEVICE?

The truth is that based on a document such as the Verrine Orations, it is almost impossible to distinguish between Sicilian and Roman law – or between what is typical and what is irregular in a governor's behavior. What is quite obvious is the rhetorical and disproportionate emphasis put by Cicero on the particular edict regulating the appearance of causes before the praetor. The main issue clearly is to be found not in legal technicalities, but in a general statement about Roman imperialism and its values. In paragraph 38, quoted above, Cicero mentions that the edict runs contrary to the *consuetudo superiorum*, meaning the judicial practice of Verres's predecessors in Sicily. This argument, often used by Cicero in the speech, rests on moral rather than legal principles: Verres has proven unworthy of his predecessors and unable to abide by tradition.⁵⁴ In the same paragraph, the phrase *omnia iura Siculorum, quae habent a senatu populoque Romano* presents a high degree of generality, because the provincials seem to be considered a single group, whereas in Sicily, as in other territories, the Roman authorities dealt with individual communities of provincials. We are left to consider the difference between two types of sources: the great diversity of epigraphic material gathered throughout the East between the Hellenistic and the Roman imperial period, and one single literary source dealing with a small territory conquered less than two centuries before its writing. Cicero's statement that the Senate and the Roman people have given – or, more exactly, given back – to the Sicilians their laws is quite a condensed account of

⁵³ Genovese 1999, p. 317-320, suggests that the edict created a specific kind of *uadimonium* that he seems to consider compulsory rather than voluntary.

⁵⁴ E.g., Cicero, *Ver.* 2, 2, 119; 2, 3, 6; 16-17; 24-25. Schiavone 1998 insists on the very slow harmonization of *ius praetorium* between the end of the Republic and the early Principate.

the process of conquest and surrender that took place between the 1st and the 2nd Punic War.⁵⁵

Rome had a formal relationship not with the Sicilians as a body, but with individual Sicilian communities, of which a very few, such as Messana, even enjoyed special status.⁵⁶ However, in the case of the city of Thermae, Cicero uses a phrase attested elsewhere that may well correspond to the status bestowed by Rome on all the cities of the island: Rome, he says, has restored to the people of Thermae “their city, their territory and their own laws”.⁵⁷ Scholars commenting upon Roman law in republican Sicily have indeed noted that the diversity and multiplicity of rules in the eastern provinces, and the recognized privileges of peoples, cities, and individuals there, strongly contrast with the unity and coherence of judicial rules enacted in the western province.⁵⁸ Jonathan Prag has shown that from the Hellenistic period onwards, the Sicilians regarded themselves as an entity, obviously without questioning the autonomy of the different *poleis*.⁵⁹ The enactment of a single comprehensive statute regarding jurisdiction in Sicily might signify that for the Romans too, Sicily was a unified entity.

In his treatment of the *uadimonium* edict, Cicero manages to make a broad issue out of a relatively limited procedural matter. By so doing, he introduces a bias to his legal reasoning. What really was at stake in this edict was whether defendants could be bound to appear before the praetor not only in their district, but even somewhere else on the island. The hyperbole and the reference to *Lex Rupilia* suggest that Verres had more generally undermined the autonomy of Sicilian provincials. The audience – and later on the reader – might think that in this case, as in the civil cases contemplated by the *Lex Rupilia* and analyzed in the *De praetura Siciliensi*, the dispute should have been brought before a civil court in the city of the defendant and judged according to local law, or at least settled by Roman arbiters, as required by a principle common to

⁵⁵ A summary of the process: Dubouloz – Pittia 2009, p. 87-91.

⁵⁶ On the few federate cities in Sicily: Ferrary 2014 (1988), p. 13-23.

⁵⁷ Cicero, *Ver.* 2, 2, 90: *Cum [...] senatusque et populus Romanus Thermitanis, quod semper in amicitia fideque mansissent, urbem agros legesque suas reddidisset*. “Whereas the Senate and the people of Rome, considering the unbroken amity and loyalty of the people of Thermae, had restored to them their city, their territory and their own laws”. See Ferrary 2014 (1988), p. 11 n. 23.

⁵⁸ About the extreme diversity of statutes in the East: Ferrary 1999 (2017), p. 184-185; Fournier 2010a, p. 432-437 (free cities). About Sicily: Fournier 2010b, esp. p. 158-159; Kantor 2010, esp. p. 188, on the abolition of existing bilateral arrangements when Rupilius decreed that Sicilians from a third city would judge cases between citizens from different cities (*Ver.* 2, 2, 32).

⁵⁹ Prag 2009.

Greek and Roman courts.⁶⁰ Should a dispute about acreage actually sowed then have been arbitrated locally? Considering that this is the main point of the cases divulged by Cicero in the *De praetura Siciliensi*, which contemplate civil matters, it was easy to convince the audience that the issue was the same here in the *De frumento*.

The case, as Cicero depicts it, was quite similar to the one raised by the city of Colophon around 120/119, when one of its prominent citizens, Menippos, then on his fourth embassy to Rome, obtained agreement that no governor would summon a defendant from the local court to his own tribunal, and that no guarantee to such effect would be requested by the governor. However, Colophon was a free city, and the same decree states that Colophon was not part of the Roman province, while Sicilian cities were.⁶¹

Cicero's emphasis on the *Lex Hieronica* produces the same kind of distortion. What is called a *lex* are in fact the specifications concerning the lease of tithe collection, rather than a judicial disposition. This *lex* dealt only with a single type of tax, which was not the only tax on grain levied in Sicily at the time.⁶² Moreover, Cicero does not have much to say about the cities that were exempted from the Hieronian tithe.⁶³ Finally, although he analyzes other kinds of levies in the province at the beginning of the *De frumento* and in passages on which I have commented, the *Lex Hieronica* is presented as a unique and comprehensive set of rules for taxes on the island. Hiero's law then is partly a rhetorical object forged by Cicero to state the principles of an idealized Roman rule: continuity; demonstrated judicial and legal stability; equal treatment in keeping with the dignity of individuals and local communities. The rights of indigenous people should be placed above what probably

⁶⁰ Maganzani 2007, esp. p. 134-142, about Cicero, *Ver.* 2, 2, 35-52, 53-61.

⁶¹ Colophon, decree for Menippos. *SEG*, XXXIX, 1243, col. I, lines 23-27, 37-40 (Fournier 2010a, p. 418; my trans.): Τέταρτον τῶν ἰ παραγινομένων εἰς τὴν Ἀσίαν τὰ κριτήρια μεταγόντων ἀπὸ τῶν νόμων ἐπὶ τὴν ἰδίαν ἐξουσίαν καὶ πρὸς ἰ μέρος αἰεὶ τῶν ἐγκαλουμένων πολιτῶν ἐγγυὰς ἰ ἀνανκαζομένων ὑπομένειν [...] τοὺς δὲ κατοικοῦντας τὴν πόλιν ἐλευθέρωσε κατεγγυήσεων ἰ καὶ στρατηγικῆς ἐξουσίας, τῆς ἐπαρχείας ἀπὸ τῆς ἰ αὐτονομίας χωρισθείσης. "During the fourth [embassy], as those who were sent to Asia used to transfer the procedures from the [local] jurisdiction to their own authority and one or the other defendant was always compelled to provide securities [...] [Menippos] has freed the inhabitants of the city from the securities and the governor's authority, the province being separated from the autonomy". Regarding the nature of the securities, Laffi 2009, p. 134-135, attributes a broader meaning to the term ἐγγυὰι (*satisfactiones*) than Ferrary 1991 (2017), p. 170-171, who limits it to *actiones in rem* or *ex contractu*.

⁶² Synthesis in Nicolet 2000 (1994).

⁶³ Special fiscal immunity of Centuripae, Halaesa, Segesta, Halicyae, and Panhormus: Cicero, *Ver.* 2, 3, 13; Ferrary 2014 (1988), p. 5-23; Dubouloz – Pittia 2009, p. 105-106.

was the main argument made by the defense in favor of Verres: that he was able to increase tax revenues in a time of hardship for Rome.⁶⁴

GREEK DISPOSITIONS AS A MODEL FOR ROMAN TAX LAW?

Cicero goes even further in paragraph 18 of the *De frumento*, implying that *Lex Hieronica* not only became the Roman tax law in Sicily, but also was a model for tax collection in Rome itself:

18. *L. Octauio et C. Cottae consulibus senatus permisit ut uini et olei decumas et frugum minutarum, quas ante quaestores in Sicilia uendere consuessent, Romae uenderent, legemque his rebus quam ipsis uideretur dicerent. Cum locatio fieret, publicani postularunt quasdam res ut ad legem adderent neque tamen a ceteris censoriis legibus recederent. Contra dixit is qui casu tum Romae fuit [...] Sthenius hic Thermitanus. Consules causam cognorunt; cum uiros primarios atque amplissimos ciuitatis multos in consilium aduocassent, de consili sententia pronuntiarunt se lege Hieronica uendituros. 19. Itane uero? Prudentissimi uiri summa auctoritate praediti, quibus senatus legum dicendarum in locandis uectigalibus omnem potestatem permiserat populusque Romanus idem iusserat, Siculo uno recusante cum amplificatione uectigalium nomen Hieronicae legis mutare noluerunt: tu, homo minimi consili, nullius auctoritatis, iniussu populi ac senatus, tota Sicilia recusante, cum maximo detrimento atque adeo exitio uectigalium totam Hieronicam legem sustulisti?* (Cic., *Ver.* 2, 3, 18-19)

18. During the consulship of L. Octavius and C. Cotta, the Senate authorized the sale at Rome, hitherto always conducted in Sicily by the quaestors, of the right to collect tithes on wine, oil and minor crops, and made for this business such regulations as it thought fit. When notice of sale was given, the publicans asked the Senate to make certain additions to these regulations; all of them, be it noted, in accordance with the other regulations made by the censors. This request was opposed by a man who happened to be in Rome at the time [...] Sthenius of Thermae, now here present. The consuls held an inquiry; and after consulting the most eminent and important men in Rome, they declared that in accordance with these men's opinion they would have the sale conducted in accordance with the law of Hiero. 19. Here is a contrast indeed! These men of ripe judgement, whose opinions all must respect, to whom the senate had conceded, and the Roman people bestowed, full authority to make regulations for the sale of tax-collecting rights – these men, because a single Sicilian protested, refused to change even the name of the law of Hiero, though to do so meant increased returns from taxation. And yet you, who are a man of no judgement, whose opinions no one respects, have without any authorization by the Senate or people, abolished the law of Hiero?

⁶⁴ Cicero, *Ver.* 2, 3, 48 and 70; cf. Steel 2001, p. 23. The rest of the chapter mostly concentrates on Verres's failure as a general in the Slave War, in answer to another argument put forward by Hortensius.

Indeed, in 75, the auctioning of the collection of tithes on wine, oil, and some minor crops was transferred from Sicily to Rome. In the absence of censors that year, the Senate put the consuls in charge of the process.⁶⁵ Until then, the collection of the *uectigal*, the tax on these goods, had been leased by the two quaestors in the province, at Lilybaeum and Syracuse, and collectors most probably had been Sicilians. The Roman publicans took the opportunity to ask that several specifications be made in the terms of the *Lex censoria*, the *cahier des charges* according to which the tax was leased. But a key witness in Verres's trial, a Sicilian named Sthenius of Thermae, successfully advocated for the Sicilians with the Senate and the consuls. Sthenius, acting as a patron for the entire island, managed to neutralize the requirements imposed by the publicans and to persuade the consuls that they ought to adhere to the specifications of the *Lex Hieronica*. It follows that a piece of Greek legislation was incorporated into Roman tax law.

Cicero does not specify what the Sicilians' claim was. I would suggest that they were able to ensure that the amount of the tax would still be proportional to the harvest, rather than fixed. A *decuma*, a tithe, probably was – in theory, at least – more favorable to farmers. That would explain why Cicero states that the Roman authorities “refused to change even the name of the law of Hiero, though to do so meant increased returns from taxation”. It is not impossible however, says Genovese, that Sthenius obtained agreement for Sicilians to still be allowed to participate in the auction of the tax if they were able to get to Rome.⁶⁶ In any case, the issue at stake is much less the incorporation in Roman law of Greek law than it is accounting, to some extent, for the provincials' interests. In reading the Verrine Orations, one must always keep in mind that the 70s BCE were extremely difficult times for Rome in terms of its political situation and grain supply, due to the Slave War and the Sertorian War. Indeed, in 73, Rome levied on Sicilian grain a 2nd tithe, which was auctioned in Rome as well. This time and for this specific purpose, the Senate passed the Terentia Cassia law, a *lex* in the proper Roman sense of the term, regarding which Cicero does not mention any influence by the Hieronian law.⁶⁷ What Cicero describes as an inviolable principle – that Roman authori-

⁶⁵ Dubouloz – Pittia 2009, p. 104-105.

⁶⁶ Genovese 1999, p. 34-35. According to Carcopino 1919, p. 80, 102-103, the effect both of the law and of the Sicilians' resistance is that the auction was merely transferred to Rome and Roman *publicani*, but it was not otherwise altered.

⁶⁷ On this law: Viriouvét 1994, esp. p. 16, 20-21; Nicolet 1999, esp. p. 209-211. The hypothesis that this law underlies lines 72-74 of the *Monumentum Ephesenum* is criticized in the Oxford edition (Cottier *et al.* 2008, p. 128-130).

ties should abide by the *Lex Hieronica* – is at most an argument put forward under special circumstances, in the broader context of an ongoing process of negotiation between Rome and the provincials.

The Verrine Orations are unique as a fully preserved *repetundae* speech, or more precisely, a speech significantly revised for publication. As such, they are very difficult to interpret precisely. They offer a rare glimpse of the functioning of courts in a Roman province, but only through the rhetoric of a prosecution speech. It is impossible in my opinion to ascertain whether Cicero presents the *Lex Rupilia* as a general regulation of civil law in the entire province in order to emphasize Verres's faults as a governor or because Sicilian cities and individuals, unlike other "Greek" provinces, had actually been granted – as far as legal procedure was concerned – a comprehensive regulation that had not only abolished previous arrangements between the cities of the island, but also lessened the praetors' independence.⁶⁸ These two interpretations certainly are not mutually exclusive. Cicero may have put forward the theme of the respect due local jurisdiction and law mostly to destabilize his adversary. Verres, for his part, may have lacked both the skill and the ethical worth to correctly assess and respect the unusual status of his province. This is where legal and moral issues are closely connected.⁶⁹

As far as the *Lex Hieronica* is concerned, describing the Roman tax system in Sicily as the creation of a local ruler corresponds to a rhetorical strategy developed to present Verres's governorship as a dramatic parenthesis amid regular Roman rule. This probably was a good way to tackle the main argument of the defense, that Verres had actually increased tax revenues in Sicily. Yet there can be serious doubt about how effectively that argument hid, from Roman or Sicilian eyes, the fact that the fiscal pressure exerted by Rome on the island had in the 70s been especially strong. Also quite possible is that this reflects the state of Roman imperialism at the time, and maybe one of its key characteristics: a fragile balance between rules and principles progressively harmonized, and a constant process of negotiation with individuals and individual communities.

That a foreign origin could be assigned in a public speech to a part of the Roman tax system still is striking. By calling the Hieronian tax system a *lex*, Cicero draws a parallel with the *leges* given by Rome to individual communities. Not only does he refer to the widely – if rhetorically – accepted principle that subjects

⁶⁸ Kantor 2010, p. 200.

⁶⁹ Brunt 1990, p. 320-321, emphasizes the fact that the provincials' welfare was dependent on the governor's personal *abstinentia*.

of Rome should still govern themselves *suis legibus*,⁷⁰ but he also suggests that Roman rule rests on a process of suspension and restitution of local autonomy.

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⁷⁰ Ando 2011, p. 22–25.

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