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Rome's Emperor of Law

(KAIUS TUORI, *The Emperor of Law. The Emergence of Roman Imperial Adjudication*, Oxford 2016, Discussion Note)

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I. *Introduction*¹

The present consideration of Kaius Tuori's book *The Emperor of Law* must begin with a confession. Tuori spent two different periods as a research

¹I should like to thank the editor of this journal, Alessandro Corbino, for allowing me to write such a lengthy discussion of Tuori's book. I hope that the investment will turn out to have been worthwhile.

scholar at my university. Over the course of those sojourns, and especially during the second (in 2012-2013), he and I spoke often about many of the issues which now appear in this book. Moreover, I was able to read most of the manuscript in, roughly, its penultimate stage. I therefore cannot lay claim to unqualified impartiality; and indeed, I must admit that, overall, I am highly sympathetic to the vision offered up by Tuori. That said, I will nonetheless do my best, in what follows, to represent *The Emperor of Law* fairly, thus allowing my remarks to proceed where they are led.

Now, for several reasons, an extended discussion, rather than something more precisely along the lines of a typical review, seems worth undertaking. First of all, Tuori's topic is expansive, complex, and, more importantly, it is absolutely crucial, not only for law, but indeed to the whole history of the Early Empire. Moreover, this is the first attempt in quite some time to produce what might be considered a synthetic account of the genesis of imperial jurisdiction; and, Tuori offers us a new vision of this phenomenon. I have also been inspired to undertake this rather lengthy consideration of the book because there are already at least three reviews, and they all converge on two essential points: (1) Tuori does not, strictly speaking, prove his most central thesis about 'narratives' having driven the emergence of an emperor of law; (2) nonetheless, the book is an excellent foundation, from which discussion should henceforth proceed². As will emerge below, I am sympathetic to both points. However, the first matter requires some significantly nuanced elaboration, if it is to be made with profit. For on the one hand, it is not at all clear that Tuori's case about these 'narratives' is susceptible, *sensu stricto*, to proof. On the other hand, his discussion of such 'narratives' unveils some pivotal issues about the emergence of an emperor of law, and these issues deserve close, careful, and, I would say, sustained attention. And then, since this book provides a splendid platform for all further discussion of the Roman emperor and his relationships with the world of law, it seems worth making some suggestions as to where our thoughts might go, with Tuori now in hand³.

²The reviews I have noticed are: U. BABUSIAUX, in *Sehepunkte* 17 (2017) [<http://www.sehepunkte.de/2017/06/29711.html>]; E. BUCHANAN, in *BMCR* 2017.11.50; A. DOLGANOV, in *JRS* 108 (2018) 222 ss.

³One thing that Tuori does especially well is to lay out the present state of the scholarship on most every problem surrounding the emperor in his various legal manifestations. Because of that, I will cite only such literature as is absolutely essential in what

The following will thus be undertaken here. It is necessary first to outline, with significant care and detail, the argument Tuori makes. For only with that before us, can we turn to the reviews, so as to consider precisely why the reservations as to the book's central thesis might have emerged. All of this will then allow us properly to consider what might next be done, now that we have Tuori's important contribution as a *vade mecum*.

II. *Tuori's Argument*

The book starts from the proposition that we have reached an impasse with respect to the Roman emperor's position in the world of law. To put the situation in its starkest terms, some imagine that each Princeps was awarded, from the very dawn of the imperial system, a formal statutory mandate to function as a kind of supreme court for his realm, while others are convinced that a series of incremental ad hoc arrangements gradually resulted in a de facto situation of this sort. Furthermore, it can seem as if the proponents of the one or the other position consider these possible visions of imperial adjudication to be mutually exclusive. In order to move us forward, Tuori's argument, in aggregate, seems to champion what might be viewed as a kind of middle ground. He argues that 'narratives' about the emperor as judge are key to understanding the emperor of law⁴. To get the point exactly, I quote Tuori (I have added the emphasis):

“The concept of narrative is central to the argument that this book seeks to make that the practice of imperial adjudication grew out of the spread of the *common conviction* that the emperor is the final arbiter of (nearly) all things, and that the stories that circulated (and are now preserved in the historical writings of the era) were instru-

follows, and I simply point the reader to Tuori for proper references concerning any given matter. That said, there are two articles, in particular, which appeared too late to be taken into account by Tuori. These should be consulted: F. HURLET, *Les origines de la jurisdiction impériale: Emperor Caesar Augustus iudex*, in R. HAENSCH (ed.), *Recht haben und Recht bekommen im Imperium Romanum. Das Gerichtswesen der Römischen Kaiserzeit und seine dokumentarische Evidenz* (Warsaw 2016) 5 ss.; and J.P. CORIAT, *L'empereur juge et son tribunal à la fin du Principat: Un essai de synthèse*, *ibidem*, 41 ss.

⁴There are, however, places in *The Emperor of Law*, e.g., 295 (quoted below, 94), where these 'narratives' seem to be imagined as having worked directly in opposition to formal measures that might have advanced the emperor's legal position.

mental in the formation of that conviction... What narratives like the ones explored in this book provided, constituted, and shaped were the *background understandings* that made possible the formation of the emperor's jurisdiction and gave it a *shared sense of legitimacy*... The fundamental issue of both historical narratives and law is that their validity and legitimacy are ultimately founded on the *acceptance and use* by the members of the community" (p. 16 ss.).

"As the traditional avenues have been exhausted, the main advance that this book seeks to make is to show how different actors like the emperors, imperial officials, petitioners, and litigants utilized various narratives of adjudication to advance their causes, and while doing so reveal, but also influence, aspects of the understanding of what the emperor could and should do in law" (p. 7).

In sum: common convictions spread background understandings via 'narratives,' which then work to create a shared sense of legitimacy, and hence, the acceptance and use of the emperor as a font and an arbiter of law. What precisely is entailed, however, in this pivotal concept of 'narratives'? Tuori puts things thus (p. 17 s. - again, I have added emphasis):

"The tradition of narrative theory has, from the works of Ricoeur onwards, defined narratives as *explanations of events in a form that is understandable and acceptable*, to bridge the gap between an event (or human experience) and its explanation. The concept of narrative is used in this study in both a historical and a legal sense, as narratives of constitutional relevance explain not only the events and their meanings, but also how this narrative could influence the *shared conviction of the possibilities available*. We shall also see how the formulation of a narrative becomes a *constitutive force that has normative effects*... The fundamental issue of both historical narratives and law is that their validity and legitimacy are ultimately founded on the *acceptance and use* by the members of the community".

Again, to summarize: 'narratives' are explanations of events which guide the formation of shared convictions so as to become accepted and thus to have normative effects. The rest of the book seeks to explore a series of such 'narratives,' which are argued collectively, and over the course of time, to have resulted in an emperor of law. We now turn to Tuori's account of this, chapter-by-chapter.

Chapter 1. *Caesar, Cicero, and the Models of Legal Autocracy*

The line of reasoning commences with an interrogation of Cicero's *pro Ligario*. The defendant, accused of having once borne arms against Caesar, was brought before the alleged target of his violence, namely Caesar, who was functioning as dictator and judge (in 46 BC). Such a procedural situation was obviously perplexing, and Cicero's efforts to grapple with it allow Tuori to begin to envision just how contemporaries might have construed Caesar's forays into the world of autocratic-like adjudication; and then, to suggest how such conceptualizations might have offered guidance for later projects in the same vein. Tuori first extracts three strands of argumentation from the *pro Ligario*, each of which provides a model that could serve to instruct Caesar about his own role as judge, and simultaneously could help contemporaries to understand Caesar in that role: (a) Caesar might proceed tyrannically, like Sulla; or, (b) he might adopt the strictness of a Roman magistrate (e.g., a consul, or provincial governor); or, (c) he could embrace the leniency of a father. These suggestions, put before Caesar by Cicero, ultimately demonstrate (p. 43), "...how indeterminate and fluid the understanding regarding the exercise of jurisdiction was at the time".

Evaluation of the *pro Ligario* is followed by an appraisal of two competing 'narratives' about Caesar's constitutional position which emerged from Cicero's writing overall, and which were taken up by later authors, namely: Caesar the king versus Caesar the republican magistrate. Tuori then moves to an assessment of the institution of patronage, with its petitions and gifts, as another potential model for comprehending Caesar's jurisdiction (p. 60): "Since all (regular) legal recourse was more or less futile, what was left was to plead. This process can be seen as an example of gift exchange, in which Caesar and his former enemies traded lives for allegiance".

In sum, this first chapter isolates several 'narratives' (p. 51), or models (p. 66), or examples (p. 66), which emerged from the period of Caesar's ascendancy, and which would enter later discourse about adjudication by emperors: the tyrant; the magistrate; the father; the king; the patron. As for what it was exactly that undergirded Caesar the dictator in his exercise of jurisdiction, no precise answer is offered. Rather, Tuori puts the matter thus (p. 67):

"Caesar, or rather his public image both among contemporaries and afterwards, shaped the expectations and the limits of the accept-

able...[and] Cicero's *pro Ligario* was in many ways a speech that belonged to the emerging new order, one defined by the sovereign power of the ruler...[In the *pro Ligario*] the ambiguousness of the setting [was] reminiscent of the later imperial trials, where both the form and the justification for the trial were undefined but uncontested”.

Thus, with regard to Caesar the dictator, and his ability to adjudicate, we are not so much in the world of what we would recognize as patent formalized legitimacy, whether statutory or otherwise, but rather, we are in a realm involving something more akin to broad consensus, or acceptance, which emerged via communications like the *pro Ligario*, or Cicero's letters – that is, we are observing a kind of communal tacit accord built upon certain types of ‘narrative’.

Chapter 2. *Augustus as Judge and the Relegation of Ovid*

Augustus is next. Tuori begins by remarking that nearly everything about Augustus the judge can be questioned. Did he adjudicate because of his extraordinary *imperium*, or because of statutory actions granting him accordant prerogatives, or because of his *auctoritas*? What kind(s) of jurisdiction did he possess (viz., civil, criminal, first instance, appeal)? Did he oversee only political trials, or was his judgeship routine? Again, I allow Tuori to speak (pp. 69 and 74):

“Much of the existing literature has sought to answer these questions by looking at the constitutional rules or jurisdictional practice as a source for these rules. This chapter seeks to take a new approach by examining the narratives of jurisdiction. How did the jurisdiction of Augustus appear to different groups and how did these perceptions change over time? Members of the elite in Rome and provincial petitioners had radically different views of imperial jurisdiction, but also within these groups there circulated different narratives of the position and powers of the emperor, some of them coming from the administration itself. Through the analysis of these narratives, I argue that imperial jurisdiction emerges gradually as a shared conviction during the reign of Augustus...The narrative tradition on Augustus continues many of the conflicting narratives that Cicero outlined on Caesar, but, as I will demonstrate, the various narratives coalesce into two opposing master narratives”.

The first ‘narrative’ to be considered here involves the exile of Ovid. With what right or prerogative did Augustus apparently try, convict, and relegate the man? This is all notoriously obscure, and Tuori’s ultimate depiction of this Ovidian ‘narrative’ of Augustan adjudication nicely (and indeed, in a kind of Tacitean turn) mirrors the fog created by the poet himself, while still getting pointedly at the crucial issue, namely, that Augustus could seemingly do pretty well as he liked, and with little or no need for justification (p. 80):

“Augustus was able to relegate Ovid not simply because he had the official power to do so, or a clear reason and justification behind his actions, but also because he had the power to make an exception, made possible by the rules, the lack of rules, or the flexibility of such rules. Like Caesar, who had relegated the impostor Herophilus, Augustus clearly could make such a decision, as he had done in the case of both Julias, his daughter and granddaughter, without having to justify the decision”.

In short, Ovid adroitly propagated the notion that Augustus could do effectively whatever he liked in the judicial realm, and that ‘narrative,’ at least with regard to Ovid’s case, has yet to be decisively countermanded. As Tuori puts it, this case, at least in Ovid’s depiction of it (which is all that we have), “reflects the idea of ad hoc jurisdiction” (p. 93).

We next turn to the ‘narratives’ to be gleaned from the second Cyrene edict (*SEG IX 8*), the case of the death of Euboulos from Cnidus (*FIRA*² III 185), and then from the accounts of Augustus’ jurisdiction produced by Suetonius and Cassius Dio. The results (p. 93):

“The inscriptions reveal Augustus as the supreme ruler in the eyes of the provincials, controlling single-handedly both Roman administration and lawsuits in the provinces. What the accounts of Suetonius and Dio show is that, according to their historical understanding in their time, Augustus already had routine jurisdiction, but they are the first to mention it”.

So again, Tuori scrutinizes ‘narratives’ in order to reveal Augustus functioning as a judge; just why the first Princeps was able to do what he was doing remains to be seen.

Livy and the *Res Gestae* are next brought into play. The former can provide a bit of guidance, in that he shows how both Tarquinius Superbus

and Appius Claudius were brought low by their misuse of jurisdiction. Then, the *Res Gestae*, while lacking any information specifically on jurisdiction, provides us with a kind of constitution for the emergent Principate, though a schizophrenic one, poised, as it was, between the poles of republicanism and monarchy.

This all leads into a section entitled (p. 105) “Conflicting Narratives of Jurisdiction”. Now, despite the possible expectation that we will here be concerned with further ancient ‘narratives’ regarding Augustus the judge, what this section in fact tackles are the various modern attempts to identify the underpinnings of Augustus’ ability to function as judge. The goal, and then what seems to me the most central part of the conclusion of this section, are described thus (I have added emphasis):

“What I am trying to demonstrate is that the formalistic and realistic arguments, arguments based on what Augustus was authorized to do and what he actually could do or did, are parts of a complex narrative of power in which references to certain traditional offices and powers were utilized in a polyphonic discourse engaging Augustus, his advisers, the Roman and provincial elite, and the various sectors of the Roman people” (p. 107).

“Securing a firm foundation for the emergence of imperial jurisdiction at the time of Augustus is and will remain a futile attempt. The quests to find authorization, to derive jurisdiction from *imperium*, *auctoritas*, *patria potestas*, or some other key element, have been doomed to fail. It is most likely that the jurisdiction of Augustus *emerges as a necessity, a way of resolving issues*. In that way, it is very similar to the jurisdiction of the provincial governors, who had a general authority to resolve issues and from that grew the practice of jurisdiction. How regular this exercise of jurisdiction and adjudication was is unclear, but the number of historical examples indicate that there emerged *a shared conviction* that the emperor was judge” (p. 124).

In sum, then, it would appear that the several (ancient) ‘narratives’ discussed in this chapter – Ovid’s story of his own exile, the legal situations at Cyrene and Cnidos, and then the evidence of Suetonius, Dio, Livy, and the *Res Gestae* – served variously to record and/or to contribute materially to the creation of a judicial role for Augustus. And so, given this tangled source tradition on the matter, the modern accounts, in so far as they have hoped to ex-

tract harmony from chaos, have failed. Tuori is content with a more protean emperor of law during the Augustan period: an emperor satisfied with the “shared conviction,” which was driven by assorted ‘narratives,’ that he could properly do what he was doing.

Chapter 3. *Divine or Insane: Emperors as Judges from Tiberius to Trajan*

Next, the period from Tiberius to Trajan is evaluated. Tuori begins by pointing out that the ‘narratives’ (or the historiography) for this period offer(s) a twofold image of the emperors: “an ideal ruler who is wise and equitable, and an insane monster engaging in arbitrary acts of terror”. He then goes on to say that (p. 127):

“In this chapter I shall explore this duality of the imperial judge through several contemporary narratives. What will be shown is how much the use of the unlimited powers of the emperor was guided by the examples of earlier emperors. There are, however, several distinct layers in this assemblage of imperial activities in law”.

One of the central elements, or layers, of the chapter’s investigation, which Tuori broaches prior to beginning the march through his ‘narratives,’ is the dichotomy between the insistent thinking about republicanism and the reality of a growing autocracy: “There is no *dominus* in Rome, just an *imperator*, the most just of all the senators. However, the facts were sometimes hard to connect with the ideals” (p. 129). The chapter, then, attempts to visualize the workings of, in the main, these two dichotomies: (a) the wise and just ruler versus the insane tyrant; (b) republican ideal versus autocratic reality.

The first ‘narrative’ considered is Seneca’s *De clementia*, with some attention also paid to the *Apocolocyntosis*. Here, Tuori finds that Seneca abandons republicanism and constructs a theory of the Stoic monarch. Justice is dispensed by the emperor via his *clementia*, which is superior to the laws. Thus, imperial adjudication is controlled only by the emperor’s virtues. The good prince’s virtues (again, primarily *clementia*), though, will cause him to observe three essential duties: (a) to be available to his subjects for their requests; (b) to provide security by curtailing offenses; (c) to use punishments as examples for guiding proper behavior. In fine, Seneca’s ‘narrative’ works “to underline the link between the emperor, law, and justice and the emperor as their guarantor” (p. 142).

This is followed by a section whose aim “is to present the different narratives of imperial adjudication that have come down to us from various sources, from the historians to the documentary evidence such as inscriptions and papyri, and to demonstrate how narratives of adjudication and, by extension, those of imperial insanity could serve a number of different purposes and aims” (p. 143). The *SC de Cn. Pisone patre* worked to underline “the important role of the emperor in delivering justice” (p. 146). Next, various of the historical or biographic or documentary ‘narratives’ (e.g.: Tacitus, Suetonius, Dio, the *Acta Isidori*, Pliny) about the Julio-Claudians, Flavians, and Trajan are considered. What these ‘narratives’ ultimately demonstrate is that: “During the period from Tiberius to Trajan, law emerged as the personal responsibility of the emperors” (p. 162).

The *lex de imperio Vespasiani* thereupon gets a section of its own. Tuori argues that although this document does not, at least in the extant portions, lay down any rules specifically about jurisdiction, it did, nonetheless (p. 177),

“...reinforce both the discretionary powers of the emperor and the relevance of examples in the way the imperial power was used. Both of these were crucial components of the way in which imperial jurisdiction evolved... but the aim of the text is similar to Seneca’s *De clementia* and Pliny’s *Panegyric* of Trajan: it illustrates how the emperor should act in order to be counted among the good, exemplary emperors”.

Next, Tacitus and Pliny, and their depictions of imperial adjudication, are discussed. Tuori reads Tacitus as attempting to portray a kind of decline in, let us say, the quality of imperial jurisdiction over the course of the Julio-Claudian period. As for Pliny, and with respect to the *Panegyric*, this text was meant, like the *De clementia* or Cicero’s Caesarian orations, to guide the ruler toward virtuous conduct. In these two ‘narratives,’ then, the proper emperor is, “a legal multi-functional tool, who legislates, administrates, and adjudicates, but also acts as a handy legal reference guide to whichever rules should be applied” (p. 189).

The conclusions to this chapter begin thus (p. 192): “When one is confronted with the baffling mix of images that one gets from the Roman sources of the Principate regarding imperial jurisdiction, perhaps the only way to approach the issue analytically is to disentangle the various narrative

traditions from each other”. Tuori then says that he has uncovered two such traditions in this chapter: (a) the vein of thought which envisions the prince interacting with the elite, and which prefers that he be a *civilis princeps*, the *princeps senatus*; (b) the emperor as he is imagined by the provincial populations, i.e., the wise and all-powerful king, ready to listen to them and to help them. Seneca gives us the beneficent prince. While the *lex de imperio Vespasiani*, in its present condition, unfortunately does not spell out for us the emperor’s judicial role, it does show us the place of exemplarity in defining his powers, as well as the involvement of the senate in carving out the imperial prerogatives. Tacitus and Pliny also contribute to the discussion of what is acceptable for and expected from the emperor as judge, with Tacitus particularly highlighting the fact that the emperor’s function as judge was key in moderating his role with the elite. And finally, Pliny’s emperor is much like Seneca’s – “an enlightened judge guided by his virtues and justice” (p. 195).

Chapter 4. *Hadrian as the Ideal Judge*

Now, Hadrian (p. 197):

“The purpose of this chapter is to explore how petitioning and the seeking of imperial rescripts becomes a central cultural and legal phenomenon in the narratives of the reigns of Hadrian and his successors. This phenomenon entails two interlinked features: first, the way in which cultural practices and historical understanding began to reflect the centrality of imperial adjudication, especially in the Greek East; and second, how imperial adjudication grows to become the defining feature of the Roman legal system and its development. The question is how both of these developments reinforced the narrative of the emperor as judge and affected the private persons seeking imperial aid and favour, how the narratives created a normative understanding of imperial jurisdiction”.

The first ‘narrative’ examined here is Aelius Aristides’ *Eis Rhomen*. In this piece, Tuori argues, we discover the provincials’ perception of the imperial rescript system – which is extremely positive, and assumes that the emperor will constantly help his subjects with their legal issues. That said, Tuori is indeed fully attuned to the problems arising from the conjunction of Aristides’ rhetoric and personal ambitions. Thus, the conclusion is that (p. 206): “Though the praise of Aelius Aristides was as much of an ideal, a hope

of something that should be, not necessarily a realistic depiction of the system at work, it was a recognition of the aspirations of Roman justice”.

At this point, the discussion turns to a series of sources (‘narratives’), which depict the adjudicative activities of Hadrian and his successors (e.g., various *Digest* passages, the *Sententiae et epistulae divi Hadriani*, Fronto, Dio, the *Historia Augusta*, a few inscriptions). What we find is that this evidence (p. 223),

“...demonstrates how central the imperial adjudication had become in the narrative tradition...From the contents of the decisions and re-scripts, it is apparent that the emperors were beginning to believe in the ideal of the virtuous ruler as the bringer of justice to their subjects”.

This is followed by an extended treatment (pp. 224 ss.) of the images, both positive and negative, of the emperor as judge in Suetonius’ *De vita Caesarum*. The chapter is rounded out by a brief discussion of Hadrian’s image, both in antiquity and now, as the ideal emperor of law. In conclusion, then, Tuori argues that (p. 240):

“...it is evident that Hadrian formalized the administration of law and the position of jurists. What the idealization of Hadrian mostly demonstrates is the narrative foundation of the so-called good emperors, a conglomeration of the narratives about the exemplary behaviour of the emperor...the reign of Hadrian brought the writings of Suetonius and Pomponius...both relied on the idea of exemplarity, where praise and criticism were used to separate acceptable from unacceptable behaviour. They were, in a way, writing the job description of an emperor. Neither was primarily a historian, but their depiction of the past contained a strong normative character, where the law was portrayed as a central preoccupation of the emperor”.

Chapter 5. *Caracalla, the Severans, and the Legal Interest of Emperors*

We now turn to an examination of (p. 241):

“...the different forms in which the imperial adjudication took place during the Severan era, and how they were reflected in the narratives. Especially important is the multiplicity of narratives and the portrayal

of imperial adjudication, evident in the rescripts, inscriptions, and historiography of the era. I shall be exploring both the evolving practices of the expanding imperial adjudication as well as the way that those practices appeared to subjects and how they took advantage of them”.

The first two ‘narratives’ examined here are the Severan *Apokrimata* (*P. Col.* 123) and the so-called *cognitio de Goharienis* (*SEG XVII* 759), both of which demonstrate that the good emperor was available to his citizens – and also that by now, the emperor, as judge and legal advisor to all his people, was becoming more and more institutionalized. Following this, most of the issues as to how, exactly, the system of rescripts functioned are examined. Some attention is given here to the ways in which provincials sometimes attempted to cajole the emperor into helping them legally by means of extravagant praise. The emperors, on the other hand, begin to engage a kind of “majestic simplicity” (p. 265) in their responses to these pleas. Next, Dio is examined, in particular because his history “presents the Roman elite contemporary view of what the emperor’s jurisdiction should be like, as opposed to the provincial approaches the other examples [the *Apokrimata* and the *Goharieni*] provided” (p. 274 s.). Next, a section on Ulpian explores “...how Ulpian translates the narrative of imperial sovereignty and absolutism into the language of law” (p. 282). In particular, the argument is made that Ulpian proposes that emperors must truly be virtuous, and must truly bring justice (p. 289). Ultimately, though, the whole development, which the preceding chapters of the book had traced, is brought to completion, when Ulpian can write, *quod principi placuit, legis habet vigorem*, or when he opines that, *princeps legibus solutus est*⁵. With sentiments such as these, the whole discussion about the emperor’s jurisdiction had pretty plainly been completed, since now, he can simply do whatever he wants.

Chapter 6. *Conclusions*

Let me now attempt to encapsulate Tuori’s argument. He begins with the fact that many scholars have chosen to locate the emergence of the Roman emperor’s juridical powers in formal statutory actions – primarily those which Cassius Dio alludes to in 30 and 27 BC. However, given the fact that

⁵ Respectively: D. 1.4.1 pr. (Ulp. 1 *inst.*); D. 1.3.31 (Ulp. 13 *ad leg. Iul. et Pap.*).

Dio is not nearly as clear as one would like, and given the nature of our evidence otherwise, Tuori is skeptical that such a formal mechanism will ultimately have driven the rise of an emperor of law – or in any case, I take it that he is not convinced that such devices were exclusively responsible for making a judge and legal advisor of the emperor. Indeed, it is primarily in contraposition to this scholarly view of things that Tuori's entire argument proceeds: "For an understanding of the development of imperial adjudication the changes in the narratives are important, as they, taken together, provide a crucial counter-argument to the established formalistic view that relies on expanding Dio's account of the creation of jurisdiction under Augustus" (p. 295). Fergus Millar's formulation – the emperor was what the emperor did – is mentioned at the start of the book, but fades quickly into the background, and is not mentioned at all in the conclusions.

Ultimately, then, the way in which I envision Tuori's 'narratives' moving us beyond both the formalist approach and that of Millar is as follows. Rather than imagining the genesis of the emperor's legal duties to have originated exclusively with the emperor and those closest to him, and as having then been sanctioned by acts of senate and people, Tuori construes this process as involving wide sectors of the populace. As he puts it: "The importance of the study of narratives and their development is that it allows the examination of contradictory and contested developments from multiple angles" (p. 296). Moreover, on his take, the very fact that these discussions occurred creates a situation which generates, at some point or points in time, normative understandings of the emperor's legal position.

In the end, I suppose that Tuori's vision is best described thus. From the time of Augustus on, there was, *de facto*, a Roman emperor. However, the precise boundaries of his duties and prerogatives remained less than crystal clear, regardless of what happened in 30 and 27 BC. Then, multiple actors generated a kind of growing and swirling vortex of 'narratives' in this regard. These 'narratives,' over the course of time, caused consensus to grow, and thereby came to exert a putatively normative effect: "What has been revealed in this study is the gradual process that lie behind it [the emergence of imperial adjudication] and the way that it operated contextually, with seemingly separate factors contributing to the growth of the shared conviction that not only was the emperor the supreme adjudicator but also that all could, in theory at least, appeal to him" (p. 292). Tuori's emperor of law, then, was ultimately the result of an extended polyphonic discourse. This emperor and his advisors did not merely decide what he was going to do, and then impose

those choices upon his realm via senate and people. Nor did the Princeps simply await requests from below, and then elect which he would respond to, thus again himself determining (ultimately) what the emperor of law would look like. Rather, many different actors took it upon themselves to apprehend just what the emperor ought to be doing in the judicial realm, or to envision what they wanted him to be doing, and by communicating variously about this, they, as a kind of garrulous throng, caused what they were thinking and saying to become a normative reality.

III. *The Case for ‘Narratives,’ and Where That Might Lead*

I have tried to represent the full argument of this book as concisely, though still as meticulously, as I possibly could. And in doing this, I have often caused Tuori to speak for himself, hoping that his arguments, exactly as he wanted them to be, will thereby come across most clearly to the reader. Significant space has been devoted to this because it seems to me that only thus can we conclusively assess this project. In particular, though, given the overall importance of *The Emperor of Law*, it seems crucial to decide exactly how far Tuori’s exposition might have brought us, and then, just what direction(s) we might wish to take from there.

Now, as was mentioned at the very outset, Tuori’s most basic proposition – again, that a wide variety of ‘narratives’ propagated by a multiplicity of agents fundamentally propelled a meandering and discursive, yet ultimately normative, evolution of the imperial position in its juridical sphere, and that this multifaceted colloquy better explains the emperor’s jurisdiction than do the formalistic approaches – has been called into question. Since that is so, and since I will want, in a particular fashion, to support, and also to expand upon, some fundamental components of Tuori’s vision, it is crucial that we begin by seeing exactly what the objections, as well as their broader implications, are. Anna Dolganov is perhaps the most skeptical. She proposes that (cit., 223 s.):

“The limited evidence for Augustus and his successors acting as judges does not permit the conclusion that this happened in an irregular fashion and without a formal basis...The second claim that ‘narratives’ influenced the formation of the emperor’s jurisdiction is never actually substantiated with evidence...Without any evidence to support it, T’s core claim about the constitutive power of narratives of

imperial adjudication cannot be regarded as a valid scholarly argument”.

Elizabeth Buchanan takes a similar stance (cit.):

“The idea that the emperors developed their jurisdiction gradually because of their ability to solve problems is attractive because it makes practical sense, but Tuori’s use of narratives rests on two possible assumptions, neither of which is proven. The first is that the specific narratives he uses were representative of the opinions of the intellectual elite, and the second is that, whether representative or not, they were persuasive in creating that shared conviction of imperial jurisdiction. We have lost too many sources that were available at the time for me to feel comfortable with either assumption”.

Ulrike Babusiaux is likewise uncomfortable with the proposition that Tuori’s ‘narratives,’ at least without more explanation than he supplies, should be understood as something akin to normative enactments (cit.):

“Wenn man allerdings die Eigengesetzlichkeit der jeweiligen Quellenstellen wie der untersuchten Epochen betont, bedarf jede Auswahlentscheidung einer Rechtfertigung. Soweit diese in Tuori also selbst exemplarisch vorgeht, hätte man sich eine genauere Begründung für die jeweils gewählte Textgrundlage gewünscht”.

Plainly, the reviewers’ problems lie with the ‘narratives’. In order to sort this out, it seems necessary to deal with the following issues. First, how exactly does Tuori define his ‘narratives;’ and then, how useful is this term as an analytical tool? From here, one must realize, as Babusiaux indicates, that there are many kinds of ‘narratives,’ and that they will not all have functioned in the same ways, so as to establish normative juridical powers for the emperors. This needs more attention. That brings one to the question of formal versus informal mechanisms as drivers of the emperor’s legal prerogatives. Tuori’s most essential argument is that the formalistic approach has not explained things well enough, and that we need his ‘narratives,’ i.e., a whole range of (mainly) informal devices, if we are to understand properly the emergence of an emperor of law. If that is so, then we will need to understand just exactly how each type of informal ‘narrative’ functioned, so as to generate something like normative understandings of the emperor’s adjudica-

tive rights. And if this is to be got at properly, then we will have to think more about just what our terms ‘formal’ and ‘normative’ can actually mean when applied to a Roman context. By sorting all of this out, we will gain a fair notion of just what Tuori’s exposition has accomplished; and, we will likewise have some indications of what might remain to be done.

With all of that before us, I should like then to introduce a slightly larger issue. At its most essential level, all of this discussion about an emperor of law is about definition – i.e., it is all about defining, in some manner, and to some extent, the Princeps’ legal prerogatives. Moreover, the whole discussion presumes that, at a very essential level, the Romans wanted or needed to define the duties of their emperors. But, perhaps we might ask whether this is entirely the case. For if they were less inclined to force themselves into this kind of operation – defining the duties of their emperor – than we tend to think they were, then we will have to consider just why that might have been so, and we will have to wonder how this different kind of attitude might have affected the whole issue of the rise of an emperor of law.

We begin with what a ‘narrative’ is. Now, Tuori’s definition of ‘narrative,’ in my condensed version (p. 84 above), is again this: explanations of events which guide the formation of shared convictions so as to become accepted, and thus, so as to have normative effects. A problem arises, though, given the wide variety of ‘narratives’ adduced by Tuori. Do all of the following, and more, indeed comfortably fit this definition: an oration and various letters by Cicero; poetry from Ovid; the second Cyrene edict; the epigraphically attested case of Eubolus from Cnidos; Suetonius; Tacitus; Pliny; Dio; Livy; the *Res Gestae*; Seneca’s *De clementia* and *Apocolocyntosis*; the *SC de Cn. Pisone patre*; the *Acta Isidori*; the *lex de imperio Vespasiani*; Aelius Aristides’ *Eis Rhomen*; various legal texts and documents; the *Historia Augusta*? I suppose that, to some greater or lesser degree, these can all be convincingly lumped together as ‘narratives,’ at least in the sense laid out by Tuori. Still, it is not so easy to imagine (say) the *lex de imperio Vespasiani* and the *Acta Isidori* as comfortably belonging to the same category, ‘narrative’. Or at the very least, it is not easy to imagine them both working in the same way, so as to establish a normative view of the emperor’s legal functions. For the one is plainly an act of state; it is therefore ipso facto formal and also normative (in both ancient and modern terms). The other, however, is a privately composed piece of literature, the author of which never served in the imperial government; it, therefore, cannot be classified as formal (in either ancient or modern terms), and will consequently have exerted any potentially norma-

tive force in a significantly different fashion than did the *lex de imperio*. In short, one wonders, in the end, just how useful the umbrella term ‘narrative’ is, and whether it might not be complicating things, rather than helping the discussion along.

Be that as it may, Tuori has in fact pushed hard to persuade us that there were many types of ‘narrative’ (or, say, visions) which were of a more informal nature (so, e.g., the *Acta Isidori*), but which might exert a degree of influence sufficient to drive, somehow, and to some extent, normative understandings of the emperor’s legal position. However, we need, at this point, more specificity. Tuori has caused us, I would argue, to recognize the large picture. But if we are to accept that this representation of things is accurate, then we must come to see much more clearly just exactly how each type of informal mechanism (or ‘narrative’) might work so as to make of the emperor an emperor of law. Beyond that, we must realize, I would say, that formal and informal instruments need not be conceived as having been mutually exclusive. Rather, we would do better to try to understand just how a formal ‘narrative’ might have functioned hand-in-hand with an informal one, so as to generate a particular construction of the emperor’s legal droits. We may now turn to this somewhat complicated nexus.

We have already noticed that Tuori argues his ‘narratives’ to provide “a crucial counter-argument to the established formalistic view that relies on expanding Dio’s account of the creation of jurisdiction under Augustus” (p. 295). In this respect, Dolganov has a point, for it seems that Tuori has too perfunctorily sidelined the formalistic vision of the emperor’s adjudicative prerogatives. We surely cannot simply set aside (e.g.) Dio’s reports about the events of 30 and 27 BC. Granted, we will probably never discover the exact formulation of Augustus’ adjudicative rights worked out at that time; but, this gap in our knowledge should not cause us to dodge the fact that something along the lines of a formal concession of some particular set of powers must have been accomplished at this moment. And in any case, it is clear that by AD 69, at the very latest, something which can be understood as a *lex de imperio* was passed by the senate and people upon the accession of a new emperor. Thus, at certain points in time, the apparatus of the Roman state plainly did see fit to devolve, by means of a formal and official act, a given set of discrete powers, presumably including judicial ones, on the person recognized as Princeps. That simply cannot and should not be eliminated from the discussion.

However, neither the measures passed in 30 and 27 BC nor the act promulgated in AD 69 requires anything like an absolute ossification of the

emperor's governmental (or legal) powers. Further development was surely possible. Indeed, one can plausibly argue that the so-called discretionary clause of the only *lex de imperio* we possess, namely, the one for Vespasian, moves precisely in this direction. That is, certain discrete powers (e.g., the right to make treaties) are delineated punctiliously by the *lex* for the new Caesar, while it is simultaneously, and (n.b.) explicitly, recognized that other prerogatives might, in the course of events, become necessary; and these are sanctioned both blindly and prospectively. Thus, Vespasian is formally bestowed (by the sixth clause) with the ability to do whatever seems required for the well-being of the community. In short, we arguably can see, in the only extant formal act of the kind we are seeking, exactly the conjoint desires to nail down precisely the imperial powers and to leave these ultimately indeterminate.

The question still open, of course, involves the nature of the processes which would generate any ensuing developments – or, for that matter, the exact nature of the processes which had led up to the composition of this *lex de imperio*. In fine, what we want to know is this: Can we allow room for informal devices of various sorts – i.e., most of Tuori's 'narratives' – to have worked efficaciously, both before and after the promulgation of any given formal or statutory act, to determine the emperor's constitutional (and hence, juridical) prerogatives? Must we assume, in other words, that a formalistic method of defining the emperor's capacities and a more laissez-faire approach are necessarily mutually exclusive propositions? Might it not be that both types of process were simultaneously at work?

Tuori does not specifically say that this kind of situation – a mix of formal and informal mechanisms working somehow in tandem so as to cause the nature of the imperial juridical position to evolve – might have been at work; and thus, we cannot expect from him any clear picture as to how this might have functioned. It might seem, however, that Tuori indeed allows for something of just this sort, since his 'narratives' include texts like the *SC de Cn. Pisone patre*, the *lex de imperio Vespasiani*, and various juristic texts. And yet, it does also often feel as if he takes the two methods of operation somehow to have been mutually exclusive. But in seeming to argue this way, Tuori is actually in excellent company, namely, that of pretty well everyone, as it would appear, who has studied the rise of the emperor's jurisdiction. Nor, for that matter, is it clear that any of his reviewers was desirous of proposing such an approach as I am now beginning to suggest. Indeed, so far as I can tell, only J.-L. Ferrary has drawn near to making an explicit plea for

such a vision as I am beginning to champion. In an important article on Augustus' powers, Ferrary gives due place to the arrangements made in 30 and 27 BC, and then goes on to say that (I have added emphasis)⁶:

“Comme l’a bien vu Brunt, les pouvoirs judiciaires du Prince sont un des domaines où *imperium* et *auctoritas* sont inextricablement associés: non que l’*auctoritas* ait pu constituer un fondement de la juridiction du Prince, mais dans la mesure où elle lui permettait de tirer tout le parti possible des pouvoirs qui lui étaient conférés, *et même d’en faire un usage qui dépassait leur définition et leur finalité premières, sans que personne prétendît s’y opposer*”.

In other words, Augustus' powers were at specific points in time laid out by statute. Then, however, the force of the emperor's *auctoritas* might cause his prerogatives to grow informally, or in any case, without support from clear-cut acts of state. Tuori's chief point, of course, is that the emperor's *auctoritas* was not the only device which could serve, beyond any formal acts of state, to advance the imperial adjudicative capacity; for on his reading of things, a whole range of other mechanisms engaged by other actors, viz., his 'narratives,' also functioned in this way.

My point, then, is simply this. We should avoid, at all costs, a bluntly Manichaean approach to this whole complex. We must grant, on the one hand, that particular acts of state, at particular moments in time, served momentarily to fix, in a normative manner, the emperor's judicial prerogatives. We must also concede, though, that various other kinds of action might also have brought a very great force to bear on the Roman understanding of what we would call the emperor's legal, or constitutional, rights. And because of that, these other kinds of action might likewise have exerted, just as Tuori argues they did, a normative, or at the very least, a quasi-normative, force; that is, they might effectively have caused changes to the nature of the emperor's juridical prerogatives, without the interference of what we would understand as some formal act of state. What we still do not grasp as well as we might, despite the fact that we now have *The Emperor of Law*, is just exactly how these two essential methods of operation might have worked conjointly, so as

⁶J.L. FERRARY, *À propos des pouvoirs d'Auguste*, in *Cahiers du Centre Gustave Glotz* 12 (2001) 129. A somewhat condensed version of this article appears, in English, as: *The Powers of Augustus*, in J. EDMONDSON (ed.), *Augustus* (Edinburgh 2009) 90 ss.

to shape the emperor's rights in the legal sphere. One wants some clear-cut demonstrations of 'narratives' plainly causing such change.

That said, it must be realized that we are confronted by yet another complication here; and this is something that has not at all been properly faced. When scholars have modified a Roman institutional procedure with the adjective 'formal,' it would appear habitually to have been the case that they were thinking of an action which involved two basic characteristics: (a) the move in question can only have been accomplished when some regular branch of the government made its wishes known – i.e., we are here talking about the promulgation of a *lex*, a *senatus consultum*, an imperial *edictum*, or the like; (b) because the action in question emanated from such a source and in such a way, it was therefore binding on the community, i.e., it was normative. However, as we shall see in what now follows, the Romans, given their modes of thinking and operating, can often confound anything like this neat delineation of that which is 'formal,' or not. And because of this, the question as to what is 'normative,' or not, is equally destabilized.

Let me try to illustrate the various issues that have just been raised by means of an example. The particular case about to be presented has not to do, ultimately, with an advance of the emperor's adjudicative prerogatives – though it might well have done, had things taken a slightly different turn than they did. That said, this situation does demonstrate quite clearly the way in which a meandering course of events, driven by a varied cast of characters, some proceeding 'formally' while others carry on 'informally,' might conspire to shape institutional developments, and to do so in a manner that seems rather 'normative' – i.e., this case mirrors pretty well exactly the kind of thing Tuori is ultimately pleading for. What we also see plainly, though, are all of the difficulties facing us, when we wish to describe, in a Roman context, that which was 'formal,' in opposition to that which was not, or that which was 'normative,' in opposition to that which was not.

We begin with a passage from Justinian's *Institutes* (I. 2.25 pr.)⁷:

Ante Augusti tempora constat ius codicillorum non fuisse, sed primus Lucius Lentulus, ex cuius persona etiam fideicommissa coeperunt, codicillos introduxit. nam cum decederet in Africa scripsit codicillos testamento confirmatos, quibus ab Augusto petiit per fideicommissis-

⁷ The translations are based on those by P. BIRKS & G. MCLEOD, *Justinian's Institutes* (Ithaca 1987), though with significant alterations.

sum ut faceret aliquid: et cum divus Augustus voluntatem eius impleset, cuius deinceps reliqui auctoritatem secuti, fideicommissa praestabant, et filia Lentuli legata quae iure non debebat solvit, dicitur Augustus convocasse prudentes, inter quos Trebatium quoque, cuius tunc auctoritas maxima erat, et quaesisse, an possit hoc recipi nec absonans a iuris ratione codicillorum usus esset: et Trebatium suasisse Augusto, quod diceret, utilissimum et necessarium hoc civibus esse propter magnas et longas peregrinationes, quae apud veteres fuissent, ubi, si quis testamentum facere non posset, tamen codicillos posset. post quae tempora cum et Labeo codicillos fecisset, iam nemini dubium erat quin codicilli iure optimo admitterentur.

Everyone accepts that before the reign of Augustus codicils had no legal effect. Lucius Lentulus was responsible for their introduction, as also for the first trusts. For when he was dying in Africa, he wrote some codicils, validated by his will, in which he asked Augustus, via a *fideicommissum*, to undertake something. And when the divine Augustus carried out his wishes, and others, paying heed to Augustus' *auctoritas*, subsequently fulfilled such trusts, and Lentulus' daughter honored legacies which were not legally binding, it is said that Augustus then called together the jurists, including Trebatius, whose *auctoritas* was at that time the greatest, and asked them whether this practice could be adopted, and whether this use of codicils was contrary to legal principle. Trebatius gave advice to Augustus, saying that that this would be immensely useful and convenient to people on long and far-flung journeys, which in the olden days were oft undertaken; for on these travels a man might be able to make a codicil when he could not make a will. From then on, since even Labeo made codicils, nobody entertained any doubt that they had full legal effect.

This passage must surely be read in conjunction with another from the *Institutes* (I. 2.23.1):

Sciendum itaque est, omnia fideicommissa primis temporibus infirma esse, quia nemo invitus cogebatur praestare id de quo rogatus erat: quibus enim non poterant hereditates vel legata relinquere, si relinquebant, fidei committebant eorum, qui capere ex testamento poterant: et ideo fideicommissa appellata sunt, quia nullo vinculo iuris, sed tantum pudore eorum qui rogabantur continebantur. postea primus di-

vus Augustus semel iterumque gratia personarum motus, vel quia per ipsius salutem rogatus quis diceretur, aut ob insignem quorundam perfidiam iussit consulibus auctoritatem suam interponere. quod, quia iustum videbatur et populare erat, paulatim conversum est in adsiduam iurisdictionem: tantusque favor eorum factus est, ut paulatim etiam praetor proprius crearetur, qui fideicommissis ius diceret, quem fideicommissarium appellabant.

It is to be noted that trusts were originally unenforceable, because nobody was compelled, against his will, to carry out the request made to him. Since there were some, to whom testators could not leave inheritances or legacies, if the testators wanted to leave such bequests, the way to do it was to leave it to someone who did have the capacity and to rely on his honor. Therefore, these were called trusts, because the trustee was bound only by his conscience, not at law. Afterwards, the divine Augustus was the first to order the consuls to intervene. He did this time and again, as a favor to certain individuals, or because his own safety had been invoked in the charge to the trustee, or because there had been outrageous breaches of trust. Because this seemed to be just, and because it was widely well received, this gradually settled into a regular jurisdiction. The demand became so strong that finally a special praetor was created to preside over trust litigation, the praetor for trusts.

Out of these two texts, a little history can be reconstructed. It goes like this⁸. [Text 1:] L. Cornelius Lentulus, when he was serving as *proconsul Africae* at some point between AD 3 and 5, found himself nearing death. He thus wrote a will, adding codicils in which he asked something of Augustus in the form of a *fideicommissum*. Such trusts were, at that moment in time, not legally enforceable. Augustus nonetheless carried out Lentulus' wishes, and Lentulus' daughter followed suit. Then, others, heeding the emperor's *auctoritas (reliqui auctoritatem secuti)*, likewise fulfilled such trusts when they were asked to. Augustus subsequently convened a meeting of his *con-*

⁸I have argued this more fully elsewhere; therefore, in order to save space, I omit various details, as well as all scholarly support of potentially controversial issues. See M. PEACHIN, *Die neue Gerichtsbarkeit der Konsuln und Prätores in der frühen Kaiserzeit*, in K. WOJCIECH, P. EICH (eds.), *Die Verwaltung der Stadt Rom in der Hohen Kaiserzeit. Formen der Kommunikation, Interaktion und Vernetzung* (Paderborn 2018) 83 ss.

silium to discuss this matter – for apparently, the increased use of these testamentary instruments had caused him to wonder whether they should be made legally enforceable. During the sitting of the privy council, Trebatius Testa opined that codicils (containing trusts?) should be admitted as legally binding instruments. Subsequently, M. Antistius Labeo added codicils (containing trusts?) to his own testament. That left no one in doubt about the validity of such testamentary devices. [Text 2:] In the sequel, Augustus was repeatedly approached about *fideicommissa*. In other words, people seem to have assumed that he was the proper judicial instance for such matters. Presumably because he could not handle the volume of requests, or perhaps because he simply did not want to get involved (many of these cases will have been contentious, thus making his involvement potentially invidious), he, as the first to do so, asked the consuls to take care of this litigation. Gradually, because this *modus operandi* seemed just, and because it was popular, a jurisdiction over trusts became an effectively regular duty for the consuls. Ultimately, the demand became so intense, that Claudius created the office of *praetor fideicommissarius*.

A recapitulation of this history will now show plainly the ways in which ‘formal’ and ‘informal’ actions might in tandem drive putatively ‘normative’ transformation. However, this same recapitulation also begins to raise the truly thorny issue as to how we are altogether to delimit ‘formal’ and ‘normative’ legal or administrative actions in a Roman context. And all of this will serve to illustrate the complexities involved in deciding just how any given ‘narrative’ may have served, so as to shape the emperor’s adjudicative powers. Here we go.

Our brief history began when Augustus *informally* executed the requests made in his friend Lentulus’ trust. People *informally* heard about this (news travelled fast in the confined circles of the elite), and *informally* followed suit. They were influenced to do so, just as had been Lentulus’ daughter, by the *exemplum* of Augustus’ response to Lentulus, and by the *auctoritas* it exuded. They had not been swayed by any *formal* legal dispensation which pronounced that trusts were now legally enforceable. In other words, while we are dealing here with a *private* act of friendship and beneficence, the one individual involved was the emperor, and the other was the proconsul of Africa. It is easy, then, to see how others might have sensed this interaction to be, effectively, ‘normative’ for any future situations of the sort. The *exemplum* carried a great deal of weight; and so, people began to execute trusts, sensing these now to be something like legally enforceable instruments.

That said, the issue was still not settled in any absolute fashion, and Augustus, because he was thinking about this, called a meeting of the *consilium* to discuss the matter. There, Trebatius *suggested*, in what should be understood as a more *formal* setting, that codicils (and trusts?) be made legally enforceable. Now, if we take this suggestion actually to be (or at least to be tantamount to) a juristic *responsum*, then it might reasonably have been construed as both ‘formal’ and ‘normative’. And in particular, the fact that the sentiment was uttered in the context of the emperor’s privy council would, presumably, lend the opinion even more force of this kind. That all said, given the way that the story proceeds, it would appear that, for whatever reason, Trebatius’ suggestion might not have gained enough immediate traction to make it, let us say, fully ‘normative’. There is no indication that, for example, Augustus ordered this opinion to be made widely known. Thus, it would seem that at this stage of things, people were sensing the imperial *exemplum* to be rather binding, but were (apparently) still not convinced utterly, or finally, or beyond all doubt, by the opinion of Trebatius, that a trust included in a will would be binding. Things were nonetheless moving rapidly toward a ‘normative’ situation, and were being influenced to do so by both an ‘informal’ (the imperial *exemplum*) and by a more ‘formal’ (Trebatius’ *sententia* or *responsum*) mechanism.

But then, apparently not long after that meeting of Augustus’ *consilium*, Labeo included a codicil (containing a trust?) in his own will – i.e., in a private, and hence, *informal* (at least in legislative terms) arrangement. This became known, but did so in what appears to have been an entirely *informal* manner, i.e., again by word of mouth. From here on, people flatly *assumed* (*nemini dubium erat*) that these instruments were perfectly legal. The point seems to be that Labeo’s *auctoritas* was especially forceful – or that it was, so to speak, the straw that broke the camel’s back. In short, when Labeo’s action was piled upon Augustus’ favor to Lentulus, and then Trebatius’ *sententia* issued at a meeting of the *consilium*, everyone was satisfied. Thus, we have here a progressive cumulation of an informal *exemplum*, a more formal juristic *responsum*, and then a private testamentary arrangement made by a highly respected jurist (i.e., another powerful *exemplum*), which gave rise to a *consensus universonum* that codicils and trusts were binding legal instruments. Apparently, there was no need of anything further, so as to effect this normative legal development.

Throughout this history, the actions seem constantly to teeter on the brink of being ‘formal’ and ‘normative;’ yet nothing is nailed down by any-

thing like an officially promulgated law, stating plainly and explicitly that trusts would henceforth be enforceable legal instruments. That situation, however, appears not to have distressed anyone. Indeed, in the end, it was sufficient that several forceful *exempla* were to hand, so that nobody could any longer be in doubt regarding the legal status of codicils (and trusts?). In sum, there was apparently no thought of promulgating what we would understand as a ‘formal’ act of state to make these instruments legally enforceable, viz., ‘normative’.

In any case, trusts were hereafter frequently written, and disputes about them came repeatedly to the emperor. So far as can be determined, given the evidence we have, this was happening *informally* – that is, we hear of no statutory announcement proclaiming that Augustus, now that trusts were legally binding, had been placed in charge of refereeing issues about them. All the same, Augustus was repeatedly approached about peoples’ problems with trusts, and he time and again delegated, *informally*, it would seem, these cases to the consuls, who thus now, because the arrangement seemed “just” and was “popular,” gradually acquired a quasi-permanent, but all the same, *informal*, jurisdiction in this respect (*quod, quia iustum videbatur et populare erat, paulatim conversum est in adsiduum iurisdictionem*)⁹. The modern observer, though, might have asked whether Augustus had, in the first place, any proper right to be adjudicating these issues. Be that as it may, we also hear of no official act, beyond Augustus’ repeated decision to delegate, and the general feeling that this was a nice way of handling things, which bestowed this new jurisdiction on the consuls. Finally, Claudius fixed things up in a *formal* manner (it seems), by creating (somehow) the office of *praetor fideicommissarius*¹⁰.

Now, this entire process surrounding codicils and trusts mirrors, I think, the most basic kind of situation Tuori imagines his ‘narratives’ to have generated. In other words, we are here confronted by a thorough admixture of

⁹ With respect to the use of the adjective *adsiduus* in juristic texts, see E. SECKEL (ed.), *Heumanns Handlexikon zu den Quellen des römischen Rechts*, 9th ed. (Jena 1907) 18. It cannot be pushed, apparently, to mean something like ‘formally normative’.

¹⁰ See: Suet., *Claud.* 23. 1: *iuris dictionem de fidei commissis quotannis et tantum in urbe delegari magistratibus solitam in perpetuum atque etiam per provincias potestatibus demandavit*. D. 1.2.2.32 (Gaius 1 *ad leg. duod. tab.*): *divus Claudius duos praetores adiecit qui de fideicommisso ius dicerent*. It looks like the task was given to provincial governors via *mandata*. The kind of action taken so as to create the new praetors does not emerge clearly. Perhaps an edict? In any case, it seems safe to assume something ‘formal’.

individuals, situations, communications, and mechanisms, all of them contributing to a kind of widespread dialogue, so as ultimately to drive institutional change – and to do so in an ultimately binding, or normative, fashion. We have the emperor, jurists, private individuals, the imperial and juristic *auctoritas* and *exempla*, and general consensus in the community all working together so as to create, in a gradually evolving way, new legal and jurisdictional situations. It is also important to recognize that the principal agents here would all seem to be members of the elite, communicating things and doing things in their own tight-knit circles. That said, the repercussions of their undertakings will surely have extended widely into the larger population.

Almost never do our sources allow us so clear a picture of an administrative or judicial evolution as the one just presented. And even less often do we have a source like Justinian's *Institutes* as the font of such information. It is this predicament, I think, which principally underlies the criticisms leveled by the three reviewers. They would like Tuori to *show* us that his various 'narratives' actually worked as he says they did, namely, in principle like this. But most of these 'narratives' are laconic in the extreme. They simply do not usually reveal to us, unequivocally, the exact natures of the processes which functioned ultimately to generate something like normative changes to the emperor's adjudicative powers. In short, given the kind of evidence we preponderantly have, Tuori's idea about the workings of 'narratives' probably cannot, in the aggregate, be proved. Nonetheless, there are, I think, strong indications, like the history of codicils and trusts just related, which show pretty plainly that Tuori is by no means on the wrong path. In fact, I would argue that he has fairly forcefully pointed us in an absolutely crucial direction¹¹.

We do not know how often things played themselves out similarly to the way they did with respect to codicils and trusts. Nor will we ever be able

¹¹ As a rough parallel to what is being described here, I might just note that Bernard Stolte gave a lecture in November 2018 at The University of Edinburgh: 'Tituli Privati Erga Omnes'. Though I have neither heard nor read this talk, it is perhaps worth quoting the abstract, which sketched Stolte's line of enquiry: "In many inscriptions from the Roman world the 'sender' is directing himself to the world at large in claiming a right or at least a privilege. To what extent did these inscriptions bind the 'receiver'? Were they enforceable in a court of law? How do these fit into the Roman law of the 'classical' period?" Like Tuori, Professor Stolte is asking just how much legal force such texts, which one would not typically recognize as being binding or normative, might indeed be able to exert in a Roman context. We will never be able to calculate this kind of thing precisely; but, that fact should not cause us wholly to ignore situations of this sort.

to discern, for most of the situations where we do indeed recognize that constitutional or governmental novelties had been effected, just exactly what mechanism(s) propelled those transformations. From our perch, we typically can discern only the fact that an adjustment had come about, while being left in the lurch as to precisely how this happened. Still, the mere knowledge that such a thing as we have just observed with our little history did happen should cause us to be constantly attuned to the possibility that some similar kind of apparatus lurks in many another situation involving Roman institutional change. To this extent, then, Tuori's idea about 'narratives' can indeed be proved. There are, however, many different kinds of 'narrative,' and we must persistently remain devoted to treating each on its own merits. In other words, if we want fully, and in properly Roman terms, to understand the genesis of an emperor of law, we still have some work to do. We can, I think, agree with Tuori that his 'narratives' will have been efficacious in generating an emperor of law. However, we probably should return to these individually, so as to think even more carefully about how exactly each and every one of these 'narratives' might have worked, first on its own, and then also in its larger environment, so as to contribute to the ultimate creation of the emperor's jurisdictional position.

With this all said, we must take notice of a matter which is altogether fundamental to this entire discussion, yet which has thus far been sweepingly neglected by the discussants – namely, the nature of the republican-era political culture, as it has recently come to be understood. Since the appearance in 1984 of Fergus Millar's article pleading for a democratic late Republic, there has emerged a truly transformative reappraisal of the whole political-governmental-constitutional make-up of pre-imperial Rome¹². We cannot even begin to tackle here all that has been achieved¹³. Just in brief,

¹² F. MILLAR, *The Political Character of the Classical Roman Republic*, *JRS* 74 (1984) 1 ss. It is perhaps noteworthy that Millar pleaded for a rather tightly and formally structured republican governmental system, quite in contrast to the thoroughly laissez-faire arrangement he had earlier observed – *The Emperor in the Roman World* (Ithaca 1977) – as characterizing the imperial system. In other words, if one follows Millar's reasoning to its logical conclusion, then there occurred, between Republic and Empire, a sea change in the most basic ways that the Romans went about structuring their governmental apparatus.

¹³ The best avenue into this entire body of research is the recent work of Hölkeskamp K.J., whose own vision of this entire universe seems to me pretty thoroughly convincing: *Reconstructing the Roman Republic. An Ancient Political Culture and Modern*

though, it must nowadays be realized that many of the issues which Tuori's 'narratives' involve, and which I have attempted to adumbrate via the mini-history of codicils and trusts, are by no means to be envisioned as novelties of the Empire – or at least, not if the republican situation, as it has now come to be comprehended, is taken carefully into consideration. Thus, for example, the absence of a written constitution was nothing new. Gradual and often ad hoc development of governmental institutions, mixed with more formal moves, was no innovation. The capacity of *exempla*, or the *mos maiorum*, to behave as normative instruments was not an imperial discovery. Consensus was absolutely key in the republican system of building governmental institutions. The engagement of many different communicative devices for making any and every kind of innovation publicly known was deeply inscribed in the republican way of doing things. The weight of *auctoritas* was firmly in place before Augustus came along. In short, Tuori's vision of 'narratives' at work does not in the least reflect some startling imperial *novum*. Rather, it stands, in pretty well all of its aspects, on a solid base of venerable republican traditions¹⁴. There is work to be done, bringing the 'new Republic(s)' into line with what Tuori now has caused us to see about an emperor of law¹⁵.

In order finally to start moving in the direction of a conclusion, I should like to consider just a bit further the question as to where we might steer a course, now that Tuori's book is to hand. It was just suggested that more thought about how, and to what extent, the republican political culture re-emerged as a not-so-dissimilar imperial political culture might provide us with one fruitful avenue for examining more intently the rise of an emperor of law. A second proposition has been that we might want to consider just generally how, under the imperial regime, more 'formal' developmental mechanisms mixed with laissez-faire processes, so as conjointly to drive 'normative' change. At this point, I should like to raise yet a third issue. This

Research (Princeton 2010); and, *Libera Res Publica. Die politische Kultur des antiken Rom - Positionen und Perspektiven* (Stuttgart 2017). I have not yet been able to consult the second.

¹⁴ Note the thought-provoking remark by Lisa Pilar Eberle in her review of Hölkeskamp's 2017 contribution (*JRS* 108 (2018) 205): "Roman political culture, as H. sees it, might have been imperial in a more substantial sense than he himself allows". Or, to turn this around, Fergus Millar's imperial political culture might have been more republican than he himself allowed.

¹⁵ With the plural of Republic, I mean to indicate the complex of important suggestions made by FLOWER H., *Roman Republics* (Princeton 2010).

matter is probably more expansive and more complex, ultimately, than either of these first two topics. It is also considerably, I would say, more speculative. However, it may be that the matter about to be adumbrated is, in some sense, and to some degree, that which underlies all else. Perhaps.

So, it would appear that nearly every scholar who has sought to comprehend the Roman emperor of law has ultimately been searching, to one degree or another, for some kind, or some measure, of definition. The formalist, in the most stringent manifestation of this preoccupation, prefers to envision acts of state having emerged so as formally to delimit and to fix, in other words, so as to define, even if neither exhaustively nor permanently, the nature of the imperial position. And even Tuori's 'narratives,' despite their multifarious and laissez-faire aspects, and despite his vision of them generating consensual understandings which were commonly accepted, at a certain point become "a constitutive force that has normative effects" (p. 17). In other words, his 'narratives' also ultimately define, in some way, and to some degree, the emperor's judicial prerogatives. There thus appears to be a latent notion among scholars that some form of definition of the imperial position, and hence, of the prince's judicial prerogatives, was something that the Romans themselves fundamentally needed, or desired, and that therefore, a neat definition of their leader's juridical prerogatives was intrinsically a primary goal which they actively sought to achieve. The problem in all of this is that the sources we have make it very difficult to see, with any exactitude, some precise system for accomplishing such a goal. And that has caused scholars to struggle mightily, and to debate endlessly.

But, what if we were to take our source tradition more, let us say, at face value? What if the immediate Roman goal, or the innate Roman predisposition, was to some degree, and in some ways, precisely *not* to box in the imperial position too neatly? What if they *preferred*, in some visceral fashion, to cultivate a drawn-out conversation about their leader's legal responsibilities, rather than efficiently and systematically to pin these down? What if the desire for order is more modern, than it is ancient? Indeed, it may well be that Millar's formulation, in which the emperor simply always was (or always became) what he did, comes the closest of all our current interpretations to the kind of viewpoint I am now beginning to suggest. The question, though, is this. If we indeed were to conclude that the Romans acted more (though still not only) in the vein envisioned by Millar, and ultimately also by Tuori, thus encouraging an all but interminable colloquy regarding the rights and duties of their emperor, and that the most essential thinking behind this

modus operandi reflects some innate proclivity to *avoid* any overly neat definition of the Principate, including its juridical aspects, then how are we to construe this particular preference? In short, why might the Romans have come to think, and then to function, this way? Why would they want *not* to define too scrupulously their Principate? Was this merely a pragmatic reaction to the realities of the post-Actium years, or is there perhaps something even larger lurking here? That is to say, might we be in the presence of a rather thoroughgoing and intrinsic Roman aversion to definitions of *all* kinds? Might Millar's or Tuori's Roman emperor mirror a broader Roman cast of mind? Let me make just a few suggestions in this regard.

Now, it is plain enough that the Augustan experiment was faced by a truly daunting conundrum, namely, how to fashion the kernel of an autocracy without having to admit that such a project was underway. We see this reflected, for example, in the naming process. The man at the top was Imperator, or Caesar, or Augustus, or Princeps, or *pater patriae*, or a *dominus*, or a god – or, all of these at one and the same time. Any or all of these labels, which were variously applied to the man, could arguably be understood to subsume the whole range of *droits* he, at any given moment, might be thought to possess; and yet, not a one of these provided him with anything like a proper legal or constitutional underpinning for a single one of those *droits*, let alone for all of those powers combined. For the emperor was, in legal point of fact (at least so long as he was not holding a consulate), a *privatus* – albeit one to whom a whole array of formal prerogatives and state functions had become attached. The important point, then, is that nobody ever dared to take the step of saying, out loud, that a new magistracy had been created. And so, when the jurists came to writing their books on the *officia* of various state offices, it naturally did not occur to them to produce anything like a tract *De officio Principis*¹⁶. In Roman terms, such a book would surely have been, in a deeply significant way, nonsense. For in short, the Roman emperor was never, at least throughout the early imperial period, fancied to be a magistrate; and this alone will have made any and every formalized and static delineation of his position quite problematic.

¹⁶ DELL'ORO, A. *I libri de officio nella giurisprudenza romana* (Milan 1960) 234, in discussing Arcadius Carisius' book on the *officium* of the praetorian prefect, points this out, and suggests that this book on the *praefectus praetorio*, in a vague sense, approached the status of being a tract about the emperor's power. Note also his comments (p. 275 ss.) regarding the nature of the books *de officio*, and in particular (for present purposes), as to whether they can be considered a form of constitutional law, or not.

To be sure, then, the nature of Roman political culture writ large, with its durable aversion to the idea of being headed up by a king, made any definitive circumscription of the imperial position notably difficult. That said, a Roman allergy to definition was not limited to the sphere of comprehending the emperor. That is to say, the Augustan paradox was very possibly not the only factor at work here. For it can be argued that Roman thinking, in more than one constitutional sphere, tended to spurn definition.

Let us contemplate, for a moment, any constitutionally-grounded rights and duties which might have belonged to the republican senate. Karl-Joachim Hölkeskamp, having argued that a formalistic approach to determining the nature of state institutions under the Republic is by now altogether outdated, has this to say about the republican senate's prerogatives (I have added emphasis)¹⁷:

“...formal regulations of its powers and scope of ‘competence’ were not only not needed, but indeed undesirable: normative rules, defined limits, and their inherent inflexibility would have diminished the general authority of the Senate as a body and as guardian of the constitutional conventions as a whole and therefore obstructed its function as the institution to turn to for decisions and pragmatic solutions. In other words, the power of the Senate was really based on the fact that it did not have any formally defined or precisely circumscribed responsibilities and was therefore not restricted to a specific set of concrete political topics or areas of ‘competence’. *It was the very lack of positively defined ‘rights’ that was the real reason for its immense authority*”.

Against this background, let us recall what Richard Talbert says about the legal force of imperial-age *senatus consulta*¹⁸:

“So, as the jurists explained it, *senatus consulta* gained legislative force almost by default, with the House in some sense being taken to represent the people... Yet in typically Roman fashion, no measure was ever promulgated formally investing *senatus consulta* with legal authority. Rather a *senatus consultum* only ‘has the force of

¹⁷ HÖLKESKAMP, *Reconstructing the Roman Republic* cit., 12 ss., with the quoted passage at 26.

¹⁸ R. TALBERT, *The Senate of Imperial Rome* (Princeton 1984) 432 s.

law,' as Gaius puts it briefly in the mid second century, immediately adding that this claim has been questioned...While technically resolutions of the senate may have lacked legal authority, in practice by the late Republic the convention had long been established that *senatus consulta* on certain matters would be considered binding in their own right, especially in the spheres of finance, foreign affairs, and public order".

The parallels between these two descriptions of senatorial prerogatives and Tuori's arguments about the accretion of the emperor's juridical droits will be plain.

Right now, though, I should like to stress Hölkeskamp's suggestion as to what must be at least a part of the underlying logic, which then led to the situation as just described. The point is that precisely by *not* defining the boundaries of an institution's reach, the Romans gave to that institution an expansive range for action, and consequently *more*, not less, power. This *modus operandi* had, it seems, been internalized very early on. And it was precisely this gut instinct, I would argue, that likewise caused Trajan to tell Pliny that, with respect to regulating the legal status of Christians and Christianity, *neque enim in universum aliquid, quod quasi certam formam habeat, constitui potest*¹⁹. By refusing to say whether it was, or was not, illegal to be a Christian, Trajan left himself, and all of the provincial governors serving under him, absolute and utter power in dealing with the religion. In fine, the Romans, in very many situations, appear viscerally to have shunned definition because by operating thus, they heaped additional power on the person or institution concerned. Augustus, I would guess, will not have been insensitive to this way of thinking.

A desire to increase power, however, was plainly not the only mindset generating resistance to definitions. For in fact, we find a similar impulse in various areas of the law beyond the constitutional branch; and here, a grab at power was clearly not the motivating factor. Rather, some more fundamental objection to defining things – any things, all things – appears to have been at work. So, for example, Fritz Schulz long ago drew attention to the jurists' recurring aversion to definitions²⁰:

¹⁹ Plin., *Ep.* 10.97.1.

²⁰ F. SCHULZ, *History of Roman Legal Science* (Oxford 1946) 67, 130 = ID., *Geschichte der römischen Rechtswissenschaft* (Weimar 1961) 80, 153.

“In the formulation of definitions in the ordinary sense of the term (likewise covered by *horos*, *definitio*, *regula*) republican jurisprudence was decidedly backward, and even in classical jurisprudence, though it inherited many a definition from the earlier age, quite a number of fundamental legal conceptions are still left without a definition – for example, *actio*, *dominium*, *possessio*, *servitus*, *pignus*, *obligatio*, *contractus*, *delictum*, *heres*, *legatum*, *dos*, and so on... Abstract formulations of principle occur chiefly in the elementary works [of literature on the law]. Even in them the task of defining basic concepts is shirked. Questions of detail were what really interested the classical lawyers, and the method they applied to them remained at bottom casuistical”.

Schulz attributes this predilection mainly to the jurists having brought the dialectic method from Greek philosophy into their approach to law. Specifically, he argues that, “[w]hat the jurists aimed at was...by a systematic application of the dialectical method, to master the evergrowing multiplicity of the concrete cases, an eternal dialectical research, an ‘open system’”²¹.

There is, however, another intellectual field, namely, rhetoric, which might also have been thought to play some role in this patent dislike for definitions – since rhetoric surely prioritizes argumentation for its own sake over the ultimate resolution of any given dispute. In other words, rhetoric is patently less interested in achieving the normative, for being more interested in debating what the normative would, or could, or should be. Schulz, however, preferred to keep this particular tool far from the jurists’ hands. For his ancient Roman legal scholars were not liars and cheats, as were the advocates. Rather, the Roman jurist spurned “the noisome weed of rhetoric, which choked so much else that was fine and precious”²². However, this rejection of rhetoric as a factor potentially influencing the thought of the jurists seems too extreme, at least for the classical period. For to provide but one example, Ulrike Babusiaux has recently demonstrated the thoroughgoing

²¹ SCHULTZ, *History* cit., 69 = *Geschichte* cit., 84. Interestingly, I happen to own Arthur Schiller’s copy of this book; Schiller underlined “open system”, and wrote in the margin, “this very true”.

²² SCHULTZ, *History* cit., 55 = *Geschichte* cit., 66.

imprint of rhetoric upon Papinian's *Quaestiones*²³. There, the interests of rhetoric have indeed worked to shape the legal arguments, and to do so materially.

The point in the present context, then, is this. We know full well that rhetoric lay at the very heart of the Roman elite education, and thus played a significant – perhaps even *the* defining – role in elite thinking and doing writ large²⁴. We can also be fairly certain that the same kind of devotion to rhetoric played no little part in the construction of the Roman law. So, if we then turn to the area of constitutional law, or better, to the domain of constitutional thinking (since the Romans were chary of actually writing constitutional law), are we to presume that this otherwise widespread and deeply ingrained cast of mind was there absent? This seems to me an unlikely proposition. And if that is correct, then there is a corollary, namely this. Let us presume a member of the Roman elite, with the tenets of his rhetorical training firmly fixed in mind, turning that mind to the matter of his Princeps, and that individual's proper rights. Might it not be, in a situation like this, that our imagined aristocrat would have preferred, on some thoroughly visceral level, that these droits not be punctiliously and finally pinned down? Might this man not have opted, rather, for an open-ended discussion about the issue? At the very least, it would seem that his long years of exposure to the tenets and the workings of the rhetorical arts will have rendered him comfortable with the kinds of paradox we still readily observe in the configuration of the imperial position. That is, neither the *lex de imperio Vespasiani*, with its sixth clause, nor the goulash-like concept of a *civilis Princeps*, will have felt as disconcerting to him as these might feel to a modern observer. Against a background such as this, the incessant discourse about the emperor as a judge, for which Tuori ultimately pleads, will not seem so out of place. And of course, what brings this all effectively to an end, is the arrival at a moment when one can say, out loud, and in polite company, that the emperor simply is the law.

At this point, we must pause, so as to note that pretty well everything I have thus far discussed involves matters or concerns belonging principally

²³ U. BABUSIAUX *Papinians Quaestiones. Zur rhetorischen Methode eines spätklassischen Juristen* (Munich 2014). And, for a splendid overview of the influence of rhetoric on Roman law, see Babusiaux' forthcoming article, *Römische Rechtsrhetorik*, in K. VON SCHLIEFFEN (ed.), *Historisches Wörterbuch der Rhetorik* (Tübingen).

²⁴ Just for a start, see now, e.g., F. BERARDI, *La retorica degli esercizi preparatori: glossario ragionato dei Progymnasmata* (Hildesheim - New York 2017).

to the terrain of the elite. However, precisely as Tuori repeatedly argues, there was a wide world beyond the confines of this small circle of gentrified folk; and, the emperor was, albeit in differing degrees, visible to, and in contact with, pretty well all the inhabitants of his realm on a regular basis. Thus, while the elite may have supplied the bulk of the direction, and may also have completed the lion's share of the design, the rest of the population was also involved in making an emperor of law. Therefore, if we want to understand the phenomenon of the emperor in his judicial role, we must develop a much sharper synthetic picture than we presently have of the law at work around the empire, and then, of the emperor's exact role in all of this. Indeed, Tuori includes an extremely valuable list of the known instances of imperial adjudication from Caesar to Severus Alexander (p. 299 ss.); and this will be most useful for such a project. However, the remainder of the provincial evidence for law and legal practice will have to be considered in conjunction with all of what Tuori has now supplied us²⁵.

IV. *Conclusions*

Kaius Tuori has undertaken a gargantuan task with this book. For the simple truth is this. We may take it for granted that statutes were promulgated in 30 and 27 BC, and that these devolved some kind of adjudicative prerogatives upon Augustus. We may also assume that as others ascended to the imperial position, something along the lines of a *lex de imperio* was passed for them, too, and that these successive acts similarly bestowed those

²⁵ There is, at the moment, a good deal of interest in, and work on, this broad area; and it is being studied from various angles. So, for example: J. FOURNIER, *Entre tutelle romaine et autonomie civique. L'administration judiciaire dans les provinces hellénophones de l'Empire romain (129 av. J.-C. - 235 apr. J.-C.)* (Athens 2010); D. MANTOVANI, L. PELLECCHI (eds.), *Eparcheia, autonomia e civitas Romana. Studi sulla giurisdizione criminale dei governatori di provincial (II sec. a.C. - II d.C.)* (Pavia 2010); B. KELLY, *Petitions, Litigation, and Social Control in Roman Egypt* (Oxford 2011); K. CZAJKOWSKI, *Localized Law. The Babatha and Salome Komaise Archives* (Oxford 2017); P.F. ESLER, *Babatha's Orchard. The Yadin Papyri and an Ancient Jewish Family Tale Retold* (Oxford 2017); A. DOLGANOV, *Empire of Law. Legal Culture and Imperial Rule in the Roman Province of Egypt* (diss. Princeton 2018); R. OLMO LÓPEZ, *El centro en la periferia. Las competencias de los gobernadores provinciales romanos en Hispania durante el Principado* (Vienna - Zurich 2018); and G. KANTOR, *Law in Roman Asia Minor (133 BC - AD 212)* (forthcoming).

Caesars with some circumscribed set of juridical rights. What we cannot presently know, with any real certainty at all, is just exactly what those legally-oriented rights were. This is where Tuori comes in. What he has realized, and has tried to adumbrate, is that despite any and all statutory delimitations of the emperor's functions vis à vis the law, a bewilderingly multifarious conversation about this matter persisted for many years. Many people, of many sorts, communicating in many different ways, and pleading numerous different points of view, chimed in regarding their emperor's rights and duties in the legal realm. What is more, this mammoth dialogue had effects, and effects that could often be, or feel, normative – and again, this went on despite, or, in addition to, any and all statutory arrangements that might have existed. *The Emperor of Law* is an attempt to lay the panorama of this colloquy, as it unfolded over time, before us; and Tuori has succeeded in doing just that.

The story is not, however, finished. We will now want to go back, so as to nail down details of all kinds. And, I have tried to suggest that there are some larger issues, about which we may want to think. For it was surely not fortuitous that the Romans carved out their emperor's legal duties as they did. When all is said and done, though, what we have, in *The Emperor of Law*, is a splendid vade mecum for any and every future consideration of the Roman Princes as the supreme legal instance in his world. We owe Tuori a great debt of thanks.

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Abstract

Kaius Tuori ha prodotto un nuovo tentativo di un racconto sintetico dell'aumento della giurisdizione da parte dell'imperatore romano: l'argomento è ampio e complesso, con Tuori che discute principalmente di vari tipi di "narrativa" che hanno funzionato per creare un imperatore del diritto. La presente discussione spera di delineare chiaramente la posizione di Tuori, e quindi di aggiungere qualche sfumatura a questo argomento, suggerendo anche indicazioni in cui la discussione potrebbe ora proficuamente muoversi".

"Kaius Tuori has produced a new attempt at a synthetic account of the rise of jurisdiction by the Roman emperor. The topic is expansive, and complex, with Tuori arguing principally for various kinds of 'narrative' having functioned to create an emperor of law. The present discussion hopes to delineate clearly Tuori's position, and then to add some nuance to this whole topic, while also suggesting directions in which discussion might now profitably move".