

Rethinking Law and Religion. Towards a Legal Anthropology of Late Antiquity.

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Brief introductory background:

This paper is part of a new research project that I am currently developing thanks to an award from the Leverhulme Trust: *Law in Practice AD 212-800*. The broad, definitely over-ambitious, scope of this project was framed – in part – by existing historiography on law and legal practice between 212 and 1200. My research interests tend to focus upon law ‘in action’, as it were. In terms of modern scholarship on law in the Later Roman Empire, however, there seems to be comparatively little focus on legal practice on the ground. This remains the case for the later Byzantine Empire for various reasons, but it changes markedly with regard to the post-Roman successor states in western Europe. For the post-Roman West (i.e., early medieval Europe), contextual studies of dispute settlement, conflict etc. are relatively abundant, with scholars regularly adapting particular themes and concepts from legal anthropology and sociology: conflict studies, alternative dispute resolution, emotional communities, etc. The same is true, to an even greater extent, for scholars working on early medieval Scandinavian and Celtic law. In the twelfth century west, however, we seem to cross another divide, where again historiography on ‘formal’ (sometimes referred to as ‘state’) law begins to reappear, with some key medieval and early modern historians also working on legal anthropology-type topics and approaches. Obviously – if accurate - the historiographical pattern that I have just very roughly outlined charts the rise, fall and rise again of what we might identify as some form of ‘the state’. For example, under the Roman Empire we have recognisably ‘state-type’ law and ‘state-type’ institutions; so there is comparatively little focus on legal anthropological approaches. Whereas in post-Roman Europe, where many historians talk of ‘states in formation’, we have a much greater focus on legal anthropology and comparatively little on ‘formal’ law - although this balance is beginning to change (at least for the Carolingian empire). At the same time, however, much

of my research to date has focused upon the formation and practice of what we might term ecclesiastical or “canon” law in the later Roman Empire and early middle ages. This aspect of my research has constantly invited me to think in terms of ‘plural’ legal systems and multiple legal practices; it has also necessitated going beyond the concept of ‘state’ law and institutions.

This paper, then, began as an attempt to think through the kind of legal pluralism that might be implied within the terms ‘church’ and ‘state’, particularly during the formative third -fifth centuries AD. The paper rapidly developed, however, into a much more general attempt to develop a different methodology for how we, as historians, might begin to analyse and conceptualise legal practice *per se*.

Paper structure:

- I. Church, ‘State’ and ‘Legal Pluralism’ in the Later Roman Empire.
- II. Towards an Anthropological Approach to Legal Practice.
- III. Late Roman Forms of Dispute Processing and Social Organization.
- IV. Choice making and Strategy.
- V. Conclusion.

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