

## **Hadrian's cosmopolitanism and the Nazi legal policy**

Kaius Tuori

Original version of the article that is accepted for publication at the *Classical Receptions Journal* (Doi 10.1093/crj/clx003)

1.11.2016

### **Abstract**

The idealization of Hadrianic Rome has a long heritage from the writings of contemporaries like Aelius Aristides to the works of Gibbon and the nineteenth century enthusiasm for imperial sovereignty. Hadrian's enlightened rule where peace and prosperity reigned coincided with the enlightened tradition of law, where principles like the protection of the weaker parties or equality before the law became prominent. After the Nazis took power in Germany, legal scholars of Jewish heritage faced an ever increasing repression, leading many to seek their fortunes abroad in exile. For most, this transfer was simply a change of venues, while for others the repression and prospect of exile meant a change in the understanding of the scholarly tradition that was processed in their works. The purpose of this article is to examine one example of such a change by historian of ancient Roman and Greek legal history Fritz Pringsheim. Before being exiled in Britain, Pringsheim sought to reinterpret the history of Roman law and to seek a starting point for the cosmopolitan idea of legal equality in the Roman empire. For this, he used the existing tradition glorifying Hadrian's Rome to present an alternative to Nazi racist authoritarianism.

### **Introduction**

Aelius Aristides started a tradition of the idealization of Hadrianic Rome that resurfaced with Gibbon and later in nineteenth century historical scholarship. This idealization extended to the glorification of Hadrian's legal policies in the Roman law tradition. After the NSDAP took power in Germany in 1933, legal scholars of Jewish heritage faced an ever increasing repression, leading many to seek their fortunes abroad in exile. For most, this transfer was simply a change of venues, while for others the repression and prospect of exile meant a change in the understanding of the scholarly tradition that was processed in their works.<sup>1</sup>

The purpose of this article is to examine one example of such a change by German historian of ancient Roman and Greek legal history Fritz Pringsheim (1882-1967). Before being exiled in Britain, Pringsheim sought to reinterpret the history of Roman law and to seek a starting point for the cosmopolitan idea of legal equality in the Roman empire. For this, he used the earlier tradition glorifying Hadrian's Rome to present an alternative to the racist authoritarian state being constructed by the Nazi<sup>2</sup> regime. What this article demonstrates is that the understanding of a historical tradition is essentially situational and malleable, able to be reconfigured to suit new expediencies. Drawing from theories of narrativism, it is argued that exiled scholars sought not only to gain

---

<sup>1</sup> Fermi 1968; Ash and Söllner 1996; Rösch 2014. On exiled lawyers, see also Graham 2002: 777; Lutter, Stiefel, and Hoeflich 1993; Breunung and Walther 2012, vol. 1 and Breunung and Walther, forthcoming, vol 2.

<sup>2</sup> Following the contemporary convention, this article uses the collective term Nazi to denote both the NSDAP and its allied organizations, their supporters and the regime that these contributed to.

recognition in their new environments, but also to formulate a narrative to explain their personal experiences.

Fritz Pringsheim was a leading scholar in the very specialized field of the Egyptian law of the papyri and especially the Greek law of sale.<sup>3</sup> However, Pringsheim had another field of interest, Roman legal scholarship and tradition, upon which he wrote numerous important articles.<sup>4</sup> In them, he strongly favored Classical Roman legal thought and idealized it against the post-classical. Though Pringsheim was a war hero from the First World War and a Christian, he was nevertheless persecuted by the Nazis and dismissed from his chair in Freiburg in 1935 due to his Jewish heritage. He escaped to Britain in 1939, after being briefly held at a concentration camp. After the war, he taught both at Oxford and at Freiburg. The impact of Pringsheim is reinforced by the fact that Franz Wieacker, one of the most influential post-war German historians of Roman law, was a pupil of Pringsheim, as was Tony Honoré, the leading historian of Roman law in Britain after the war.

The issue of classical receptions revolves often around the questions of reuse and repurposing of themes, ideas and texts to serve new purposes. As in all questions of the influence of the context in the works of the author, the central difficulty is that of intent. We shall in this article take one example of the glaring contrast that Pringsheim's ideas were becoming to the official Nazi ideology to

---

<sup>3</sup> Honoré 2004: 205-233; Pringsheim 1950.

<sup>4</sup> Pringsheim's main works are collected in *Gesammelte Abhandlungen*, showing his combative and assertive style of scholarly debate. The jurisprudential works here cited are Pringsheim 1934 and Pringsheim 1933.

see how Pringsheim utilized the classical heritage as well as the later scholarly tradition to present a contrast to the Nazi theories and practices of segregation and repression. However, the issue of whether Pringsheim intended his work as a criticism of anything contemporary is impossible to say. In the end, it is of secondary importance here, as the work presents such a contrast despite or beyond the intention of its author. In his lectures, he was highly critical of Nazi policies and especially their legal reforms and the Nazi opposition to Roman law.<sup>5</sup> Scholars like Leo Strauss have maintained that writing under persecution operates under a different technique, where “writing between the lines” becomes the way in which crucial things are expressed in a shared understanding between the author and the readers knowledgeable to recognize the intended meanings.<sup>6</sup>

### **The Cosmopolitan Idea of the Empire**

To describe an ideal state, the Rome of the time of Hadrian has been a popular model ever since the Greek orator Aelius Aristides lauded Roman peace and justice at the time.<sup>7</sup>

Thus it was fitting that Pringsheim would in 1934, the year of the onslaught of Nazi terror and repression, use the Rome of Hadrian it as a model for the cosmopolitan empire. This article, published in the *Journal for Roman Studies* in 1934, depicted Hadrian’s Rome as an empire of peace, prosperity and law. An empire where the emperor would personally ensure that justice was

---

<sup>5</sup> Pringsheim 1960: 534-535.

<sup>6</sup> Strauss 1988: 24-25.

<sup>7</sup> On the idealization, see Schiavone 2000: 3-19.

served even to the lowliest of people. Where a highly professional class of legal officials would bring about a rule of law. Even slaves and other persons with limited rights were protected against abuse.<sup>8</sup>

Romanists who sought to reconcile Roman law with Nazi ideology usually focused on earlier periods such as archaic Rome. The themes they emphasized were martial, underlining military prowess, virtues and loyalty to the state. The Roman virtue of *fides* was translated to *Treue*, loyalty, and interpreted according to the Nazi ideology. While a number of German Roman law scholars became eager Nazi supporters, many others began to explore themes relevant to the movement, such as Max Kaser, who wrote about Roman law as social ordering or Franz Wieacker, Pringsheim's student, who extolled the militaristic virtues of early Roman law. However, these attempts to reconcile Roman law with Nazism were defensive works seeking to alleviate the hostility of the regime to Roman law. This was in stark contrast with the Italian end of the Fascist alliance, where the glory of Rome, Roman law and Romanness were integral part of the self-understanding of the Italian Fascist state.<sup>9</sup>

---

<sup>8</sup> The same themes come up in both Pringsheim 1933 and Pringsheim 1934, but the conclusions drawn and the explicitness that they are presented are markedly different, the German text being much more technical and withdrawn.

<sup>9</sup> Kaser 1939: 8-9: 'Das stolze Bild das Schönbauer hier von echtem Römertum entworfen hat, erinnert in manchen Zügen stark an die ältere deutsche Rechtsgeschichte, sind es doch die gleiche Tugenden, "männliche Selbszucht, nationaler Instinkt, starkes Sendungsbewußtsein, Größe im Unglück und Opferbereitschaft für das Gemeinwesen", die den Character beider Völker

While German scholars close to the Nazi regime were eager to present early Romans as some sort of quasi-Germanic warriors, Pringsheim idealized the cosmopolitanism, the rule of law, bureaucratization and the professionalization of legal administration. Needless to say, these were things that the Nazis disliked on many levels.

Pringsheim's article at the JRS presented emperor Hadrian as an ideal sovereign, a cosmopolitan ruler who wanted to 'bring order and peace to the land'. He considered himself to be a Stoic 'first servant of the state, whose primary duty was to protect his subjects, the poor as well as the rich'. This policy was prompted by the aggressive wars of expansion by his predecessor Trajan, which had overstrained the resources of the empire and led to the disappearance of the small peasant farmers that were the backbone of the Roman culture and prosperity.<sup>10</sup> From this background Pringsheim builds up to a crescendo of praise for Hadrian:

His aim was to maintain eternal peace in his eternal and world-wide Empire, and to secure the happiness of his people by the wisdom of their omnipresent ruler. A statesman had succeeded a soldier, and stress was laid rather on practical wisdom than military virtues. (Pringsheim 1934: 141-142.)

---

bestimmen.' Wieacker 1944. On the approaches to Roman law, see Miglietta and Santucci 2009 and Nelis 2007.

<sup>10</sup> Pringsheim 1934: 141. The destruction of the peasant farmers was one of the great explanations of the fall of the Roman empire.

However, and Pringsheim does go on for a while on the virtues of Hadrian, the greatest achievement that the emperor produced was the reform of the administration of justice.

According to Pringsheim, Hadrian was the first emperor to defend the poor against the rich, helping those in distress by hearing their cases and offering legal recourse. He would take the Stoic philosophical doctrine of the general rights of man and to put it in practice in administration and legislation.<sup>11</sup> The Roman emperor was at this point a central figure in the administration of justice, being at the same time the highest judge and the chief legislator.<sup>12</sup>

Pringsheim repeats the often told anecdote (without mentioning the source) about the old lady who stopped Hadrian on the street to present him with a petition. When Hadrian says that he is in a hurry and does not have time to listen to her grievance, she retorts that he should stop being emperor then. Chastened, Hadrian stopped and listened to her case.<sup>13</sup> The story is one of the great narratives of kingship in the ancient world. Variations of it are known not

---

<sup>11</sup> Pringsheim 1934: 143. How much Hadrian was actually influenced by Stoicism is hard to estimate, in contrast to his successors like Marcus Aurelius.

<sup>12</sup> On the emperor's legal capabilities, see Bleicken 1964; Millar 1977; Honoré 1994; Peachin 1996; Corcoran 2000; Tuori 2016.

<sup>13</sup> The source of the story is the epitome of Dio's *Roman history* (69.6); Pringsheim 1934: 143.

only from Hadrian, but the same story is repeated with near identical wordings on both king Philip II of Macedonia and king Demetrius Poliorcetes by Plutarch.<sup>14</sup>

Pringsheim presents the enlightened way how Hadrian would advance law through the theme of equality and leniency. Punishments are measured against the intent of the perpetrator, the misuse of the father's power over his family is prevented and the use of torture is restricted. He would unify the law by consolidating the praetor's edict, one of the main sources of Roman law. In order to ensure that the law was applied with consistency, Hadrian set up a solid administrative structure where trained civil officials would work. His own legal service was equally strengthened with the addition of trained lawyers to his council.<sup>15</sup> He continues about the ways in which the lawyers would then be integrated to the civil service and ends this paean with a final word of praise about the deliberate care that are evident in Hadrian's reforms:

No hasty acts, no violent reforms born of the moment deface this picture. Everywhere appears the careful guiding hand which weighs all the consequences and acts many points with the same aim---the cautious hand of the true statesman. The collection of all the available forces for the well-being of the Empire, discipline instead of confusion, order and clearness---those were his aims for the army and for the defenders of the frontiers as well as for the administration of justice, the amendment of the edict and the furtherance of legal science. (Pringsheim 1934: 152-153.)

---

<sup>14</sup> The references in Plutarch are *Mor.* 179 C-D, *Demetr.* 42.11. The spread of the story in other ancient literature, see Millar 1992: 3-4.

<sup>15</sup> Pringsheim 1934: 143.

The vision of Pringsheim for the Rome of Hadrian was one of a golden age, one of an empire at peace with itself. While there had been a number of ancient authors who praised Hadrianic Rome, none had the gusto and intensity of Aelius Aristides.

Aristides was a Greek rhetorician from Mysia in Asia Minor. He is best known from his so-called speech to Rome, in which he lauded the Roman empire and its government.<sup>16</sup> He praised it for bringing about an era of peace and prosperity, a golden age much like one presented by Pringsheim later. Like with Pringsheim, Aristides would see the administration of justice as a central part of the appeal. A clearly fascinated Aristides writes about appealing to the emperor:

Cases under judicial review, like an appeal from one's demesmen to the courts, take place with no less fear in regard to the verdict on the part of those who institute the appeals, so that one would say that people are now governed by those sent out to them in so far as it pleases them. How is this form of government not beyond every democracy? There it is not possible after the verdict is given in the city to go elsewhere or to other judges, but one must be satisfied with the decision, unless it is some small city which needs outside judges. But among you, now a convicted defendant or even a prosecutor, who has not won his case, can take

---

<sup>16</sup> The speech is conventionally titled Oration 26. On Aristides and the speech on Rome: von Wilamowitz-Möllendorf 1925; Oliver 1953; Bowersock 1969; Brunt 1978; Nutton 1978; Klein 1981a; Klein 1981b; André 1982; Stertz 1994; Carsana 1990; Behr 1994; Klein 1995; Volpe 2001; Whitmarsh 2001; Flinterman 2004; Whitmarsh 2005; Harris and Holmes 2008.

exception to the verdict and the undeserved loss. Another great judge remains, who no aspect of justice ever escapes. And here there is a great and fair equality between weak and powerful, obscure and famous, poor and rich and noble. And Hesiod's words come to pass: 'For easily he makes one strong and easily he crushes the strong', this great judge and governor, however justice guides him, like a breeze blowing on a ship, which does not, indeed, favour and escort the rich man more and the poor man less, but equally assists him to whomever it may come.<sup>17</sup>

---

<sup>17</sup> Aristid. *Or.* 26.37-39: '(37) ὥστε ὑποχωρεῖ μὲν ἄρχων ἄρχοντι, ὅταν αὐτοῦ ὁ χρόνος ἐξήκη, καὶ οὐδ' ἂν ἀπαντήσῃε ῥαδίως: τοσοῦτον ἀπέχει τοῦ διενεχθῆναι ἄγαν, ὡς αὐτοῦ τῆς χώρας οὔσης. ἔκκλητοι δὲ ὡσπερ ἔφεσις ἐκ δημοτῶν εἰς δικαστήριον σὺν οὐκ ἐλάττονι τῶν δεξαμένων φόβῳ περὶ τῆς κρίσεως ἢ τῶν ποιουμένων γίνονται. ὥστε φαίη τις ἂν τοσαῦτα ἄρχεσθαι τοὺς νῦν ὑπὸ τῶν πεμπομένων, ὅποσα ἂν αὐτοῖς ἀρέσκη. (38) πῶς οὖν ταῦτα οὐκ ἐν τοῖς ἐπέκεινα πάσης δημοκρατίας; οὐκ οὖν ἐκεῖ ἔξεστι μετὰ τὴν ἐν τῇ πόλει ψῆφον ἐνεχθεῖσαν ἐλθεῖν ἄλλοσε οὐδ' ἐπ' ἄλλους δικαστὰς, ἀλλὰ στέργειν ἀνάγκη τοῖς ἐγνωσμένοις, εἰ μὴ τις ἐστὶ μικρὰ πόλις, ὥστε προσδεῖσθαι δικαστῶν ὑπερορίων παρὰ τὴν ἀξίαν, ἢ καὶ διώκοντα μὴ κρατήσαντα, μηδὲ τῷ νενικῆσθαι: ἀλλὰ μένει δικαστῆς ἕτερος μέγας, ὃν οὔποτε οὐδὲν ἐκφεύγει τῶν δικαίων: (39) κἀνταῦθα δὴ πολλὴ καὶ εὐσχήμων ἰσότης μικροῦ πρὸς μέγαν καὶ ἀδόξου πρὸς ἔνδοξον καὶ πένητος δὴ πρὸς πλούσιον καὶ γενναῖον ἀγεννοῦς, καὶ τὸ τοῦ Ἡσιόδου συμβαίνει, "ῥεῖα μὲν γὰρ βριάει, ῥέα δὲ βριάοντα χαλέπτει" οὗτος ὁ δικαστῆς τε καὶ ἡγεμῶν, ὅπως ἂν τὸ δίκαιον ἄγῃ, ὡσπερ πνεῦμα ἐν νηϊ, οὐ δὴ πλουσίῳ

It should be noted that Pringsheim does not quote Aristides in his text, even though it is hard to imagine that he would be unaware of it or of the poignant similarities that the two texts have. As a lawyer, Pringsheim does refer to a number of legal cases from Hadrian in the Digest of Justinian, in which the emperor is clearly writing in the first person and advancing enlightened legal policies. In these, Hadrian curbs the abuse of a father's power, emphasizing compassion, not cruelty (*Dig.* 48.9.5.) He likewise punished a woman for abusing horribly a slave girl, likewise demonstrating his outrage at the injustice (*Dig.* 1.6.2.) Finally, he quotes sources on how Hadrian had the best jurists of the land as his advisors.<sup>18</sup>

The speech of Aristides was presented to an audience of notables from the high society in Rome itself in the year 143 or 144. The venue was most likely the Athenaeum of Hadrian in the Roman Forum, a monument to the learning and civilization of Hadrian and the linkage he wanted to make between Rome and the Greeks.<sup>19</sup> The audience of Pringsheim was the faculty of law at the university of Cambridge. There is a reason why the audience matters. For Aristides, the chance of performing in Rome at the age of 26 was an opportunity, a chance to make it. As has been shown in studies on roman provincial elites, they were the staunchest supporters of the empire and not coincidentally its greatest

---

μὲν μᾶλλον, πένητι δὲ ἦττον χαριζόμενόν τε καὶ παραπέμπον, ἀλλ' ὅτω γένοιτο ἀεὶ, τοῦτον ὁμοίως ὠφελοῦν'. Translation by Behr 1981-1986.

<sup>18</sup> SHA *Hadr.* 18.1, 22.11-12; Cass. Dio 69.7.1-2.

<sup>19</sup> Schiavone 2000: 3; Pernot 2008: 178. The date of the speech is contested.

beneficiaries.<sup>20</sup> By making a good impression, Aristides had a chance of gaining imperial patronage and with it a position as the emperor's advisor. If he played his cards right, he would soon be rich and powerful. For Pringsheim, the setting was similar. He was talking to an audience of British academics, presenting like Aristides his own learning and culture. But while Aristides sought to present the advantages of Rome in the language of Greek philosophy and kingship theory, Pringsheim had a more distressing subtext of the rise of the Nazi regime and the distress it of Jewish scholars and Roman law. Both had a clear agenda, to establish a new beginning and open new possibilities.

### **Reinterpretations of a Historical Tradition**

Pringsheim's Rome or his ideal of Rome was not born in a vacuum. On one hand, there was the lawlessness of the Nazi repressions that influenced him, on the other, the extensive idealizing tradition.

At first sight, the presentation of Pringsheim was one of demonstrating the advances made by Hadrian and Rome in the administration of law, a fairly typical outline of facts. What made it different was the context of the speech and the weight that he put on the almost liberal virtues of Rome. Simply put, the exemplarity of Rome shows everything that was wrong in Germany since the Nazi takeover.

The paper was presented at Cambridge on October 27, 1933 and published the following year in an expanded form. After a tumultuous period, Adolf Hitler was appointed Reichschancellor of Germany on January 30, 1933.

---

<sup>20</sup> Flinterman 2004: 362-365.

After the fire in the Reichstag building, the president's Degree on the Protection of State and People on February 28, 1933 gave the chancellor unprecedented powers, which were fortified even further on March 24 with the Enabling Act. This law gave Hitler the power to enact laws without the help of the parliament. All parties except the NSDAP were soon banned and on July 14 it was the only party allowed. In the elections held in November 12, 1933 the voters were given just one option, to confirm the NSDAP takeover.<sup>21</sup>

Behind these simple dates was a nation gripped by confrontation and paralysis. The fear of communists staging a coup, until recently a very real danger, had subsided but the realization of the Nazi seizure of power had not quite set in. What lawyers like Pringsheim would comprehend was that the emergency degrees enabled Hitler to act without restraint of the law. The innocently named Law for the Restoration of Professional Civil Service, enacted in April 7, 1933, dictated the expulsion of Jewish civil servants, including university professors. In this early phase, Pringsheim himself was excluded from the scope of the law, as he was protected by both his status as a front soldier in the First World War and his long employment at the university. How much he considered that to be a lasting relief is impossible to say, but the writing was already on the wall. What was clear from early on is that the constitutional guarantees on civil rights were no longer to be trusted and the replacement of civil servants with adherents of the new regime meant that the laws were to be applied according to the aims of the state. One of the main results was that the

---

<sup>21</sup> The process has been dealt with extensively in literature, see for example Broszat 1984; Evans 2003.

limits placed by the forces of order on the ability of the SS and the SA to terrorize opponents disappeared. Even earlier, few of the culprits were punished. Now, gangs would forcibly remove civil servants, judges and professors, beat them up and throw them on the street.<sup>22</sup>

The narrative of Pringsheim on the reforms of Hadrian are a counterpoint to these alarming developments. Like so much of the art and scholarship that addresses sensitive issues during a time of crisis and repression, this too operates with an elegant ease that avoids making any reference to current circumstances. It is also entirely possible that Pringsheim never intended it as a criticism of Nazi policies. However, there are earlier examples where Pringsheim writes about the dangers of politically motivated influences to the legal order. In his German writings in the 1920s and early 1930s he warned of the departure from the letter of the law, of using general concepts to derive solutions that were only nominally within the law. In those debates, he had framed the contradiction between Byzantine and Roman law, where the Byzantine way had been to use general concepts like equity to form new law. The danger of such a practice is that it enables the judges to use this flexibility to advance political aims. By resorting to general principles, an unscrupulous judge could bring about tyranny by using them to override legal protections. In these contributions, Pringsheim

---

<sup>22</sup> An interesting contemporary view, see Hartshorne 1937, more recently Koontz 2003. On the legal process of gradual exclusion, see Stolleis 1998; Stolleis 1999.

makes similar clothed references to totalitarianism, while others made direct links to Soviet Russia.<sup>23</sup>

Though the way Pringsheim would discuss the impact of loosening of the legal standards and the criteria of law were by and large oblique and visible only to specialists, he did not shy from controversy. He sent in November 20, 1933, a month after his lecture in Cambridge, an open letter to Carl Schmitt, asserting the enduring value of Roman law and contradicting the party program calling for its suppression. The Party Program of the NSDAP (1920) called for the abolition of Roman Law and its replacement with national German law. Schmitt was at that point at the height of his power, a professor in Berlin and holder of the title *Staatsrat*. He would press the issue in his notes to a very reluctant Schmitt, asserting that the heritage of Roman law was an essential part of German legal tradition, sweeping aside imaginary Germanic frameworks and ethnic categories.<sup>24</sup>

The use of Hadrianic Rome as an idealized counterpoint to the emerging totalitarian state was a novel idea, but it did have a number of precedents. Ever since the works of Gibbon, the idealizing tradition of Hadrianic Rome has been

---

<sup>23</sup> Pringsheim 1930: 160-162; Haferkamp, forthcoming.

<sup>24</sup> Paragraph 19 of the NSDAP party program from February 24, 1920: 'We demand that Roman Law, which serves a materialistic world order, be replaced by a German common law.' The debate between Pringsheim and Schmitt is now reproduced in Pringsheim 1960: 532-538. On Schmitt's position, see Mehring 2009; Cumin 2005; Balakrishnan 2000; Koenen 1995.

strong. Gibbon himself famously presented the Rome of the four good emperors as the happiest state of mankind. Gibbon had written that

In the second century of the Christian era, the Empire of Rome comprehended the fairest part of the earth, and the most civilised portion of mankind. The frontiers of that extensive monarchy were guarded by ancient renown and disciplined valour. The gentle but powerful influence of laws and manners had gradually cemented the union of the provinces. Their peaceful inhabitants enjoyed and abused the advantages of wealth and luxury. The image of a free constitution was preserved with decent reverence: the Roman senate appeared to possess the sovereign authority, and devolved on the emperors all the executive powers of government. During a happy period (A.D. 98-180) of more than fourscore years, the public administration was conducted by the virtue and abilities of Nerva, Trajan, Hadrian, and the two Antonines.<sup>25</sup>

Gibbon would in his influential chapter 44. present Roman law as the foundation of this remarkable social peace.<sup>26</sup> Similar points were raised in the literature of the nineteenth century, where the peace and happiness of the empire was combined with it reaching its largest extent geographically. Gregorovius and other painted Hadrian with admiring terms as a true enlightened sovereign, their

---

<sup>25</sup> Gibbon 1845, vol. 1: 27.

<sup>26</sup> Gibbon 1845, vol. 3: 209-258.

works not so subtly building into the general theme of the admiration of all things imperial prevalent in the era.<sup>27</sup>

What Pringsheim did was to use this earlier tradition to prove his point. He presented Rome as a cosmopolitan empire that embraced as citizens people of different ethnicities and backgrounds. It protected even the lowliest of people such as slaves against abuses. It guaranteed the independence of the law and the legal profession, even though the legal administration was centralized and professionalized. All of these were issues where the contrast to the state of the law after the Nazi takeover was strong. For the Nazis, law was a continuation of political will. Thus rights were not something that were guaranteed to all citizens. Rather, they were determined by racial and ethnic factors. Carl Schmitt himself had denied the existence of universal human rights, or even value, by stating that not every being with a human face is human.<sup>28</sup>

The ideas outlined by Pringsheim were not necessarily liberal in themselves and he was certainly not a liberal himself. Pringsheim was a member of the conservative academic classes that formed the backbone of the civil service and legal academia in Germany. He had served as an officer in the First

---

<sup>27</sup> Gregorovius 1851; Henderson 1923; Birley 1997. On the idealization of empires, see Stahlmann 1988: 303-319.

<sup>28</sup> Lepsius 2003; Koontz 2003. Quotation reproduced by Koontz 2003: 2. Schmitt's original words were a criticism of Fichte's phrase 'Gleichheit alles dessen, was Menschenantlitz trägt', but it became a general Nazi way of implying the worthlessness of the lesser races.

World War and was clearly a proud German nationalist.<sup>29</sup> His embrace of the cosmopolitan ideal was thus not self-evident and it is worth looking at the way that it is outlined. The vision he presents is in fact a conservative one, where the learned and professional civil service and legal administration were central in fulfilling the ideals of Hadrian's empire. There was very little in the way of popular engagement. The egalitarianism that Pringsheim praised was in essence the theoretical legal equality of the same rules being applied to all.

The interesting feature was that Pringsheim's pupils like Franz Wieacker would continue developing this idea. What makes this remarkable is that Wieacker joined the Nazi party and wrote extensively about how to combine the Nazi ideas with the legal historical scholarship and the study of Roman law. Despite this inherent controversy, Wieacker's article on the reforms of Hadrian was published the following year (1935) and made a number of similar points about the value of the legal elite and the professionalization of the law.<sup>30</sup> What was missing, however, were the references to cosmopolitanism. Wieacker, who became one of the Nazi 'young lions' in the legal academia, would only return to this theme after the war and his rehabilitation with the help of Pringsheim.

### **Scholarship and Exile**

The repression of academic scholarship and scholars has often been seen as a simple process in which scholars facing repressive measures either flee into exile or are imprisoned or marginalized. What this overlooks is that the formation of

---

<sup>29</sup> Honore 2004: 212; Giltaij and Erkkilä 2015.

<sup>30</sup> Wieacker 1935.

totalitarianism is a gradual process and thus repression should equally be approached as a process. When thinking about scientist exiled by Nazi Germany, Albert Einstein has become to symbolize the massive transfer of scientific know-how at a terrible human cost. Theorists like Horkheimer and Adorno fled. Others, like Walter Benjamin, died trying. As a result, leadership in science was inexorably passed from Germany to the United States. But exile did little to change the content of the studies of people like Einstein.<sup>31</sup> What I am suggesting is that there is a moment during which criticism of the regime is still possible and these texts can be read as having double meaning, one at the surface level and a deeper, concealed political meaning.

What was this political meaning? The text of Pringsheim and its similarity to the text of Aelius Aristides are about the praise of ancient Roman law and legal administration, hardly a politically volatile topic at the outset. However, at the heart of the planned Nazi reconfiguration of the German legal system was the position of Roman law. The idea of the abolition of Roman law was according to Nazi ideology, that the law should reflect the German national spirit, the feeling of justice as imagined by the Nazis. As such, the onus of the law should be the people and the community, not the elite structure of legal profession. Roman law was not only materialistic, but to many it represented a Semitic influence.

Not surprisingly, scholars of Jewish heritage like Pringsheim and Fritz Schulz lauded the autonomy of Roman law and its scientific nature as a contrast

---

<sup>31</sup> On scholarly change, see Ash and Söllner. On the transmission of scholarly excellence in law, see Mattei 1994: 195-217.

to the oppression and lawlessness of the Nazi regime.<sup>32</sup> This is also the moment when they were able to do that, as after 1935 the journals and publishers had effectively stopped publishing texts from scholars that were either Jewish or from a Jewish heritage.<sup>33</sup> Even in 1933-1934 open criticism was dangerous, as the universities were a target of purges from student organizations who were critical of the slowness with which the universities performed the process of Arianizing.

Pringsheim would go into exile only at the last moment, in 1939. During the Reichskristallnacht on November 9, 1938, he was arrested and put into a concentration camp as the Nazis wanted to keep hostages in case of a reaction from abroad. He was released after three weeks due to pressure from friends and pupils, but his mother died during his imprisonment. This was the last straw that removed all illusions of his status and security.<sup>34</sup> While his exile started only in 1939, the actual process of marginalization began already in 1933. It manifested itself in small and gradually larger ways until the true impact of the regime became visible. The most visible forms of exclusion were the difficulties

---

<sup>32</sup> Schulz, a fellow exile to Oxford, would process his path into exile in the book *Principles of Roman Law* (1936) and his *History of Roman Legal Science* (1946).

<sup>33</sup> A forthcoming study by Finkenauer and Herrmann, 'Coming to Terms – The Study of Roman law between Adaptation and Collaboration, 1933-1945', examines statistically how the principle of self-censorship led to the gradual elimination of references to Jewish scholars and how this was reflected in the scientific journals of legal history and Roman law.

<sup>34</sup> Honoré 2004: 220.

with regards to teaching and publishing. With regards to teaching, Pringsheim was protected by his status and was suspended only in 1935, being officially fired the following year. On publishing, his last published work in Germany is from 1934, the same year as the article on Hadrian in *JRS* came out.

### **Narratives and How to Read Them**

Historical writing on the origins and foundations of a legal culture can be seen as much more than a way to present the factual history. Such historical writing operates as a foundational narrative, emphasizing not only the origins, but also the fundamental nature of a tradition.<sup>35</sup> As such, historical lineages are a choice. When analyzing the way Pringsheim presents the origins of the themes of cosmopolitan law, the ideas of equality and legality, this approach opens ways to discuss the text beyond the purely historical level. The issue of origins has near mythical connotations, despite the insistence of modern law of being rational and scientific.<sup>36</sup> The stories of origins are foundational narratives, stories of belonging that reveal the essential nature of the legal culture. By doing so, they define not only the past, but seek to demarcate the potential for the future.<sup>37</sup>

Pringsheim, like Schulz, wanted to show a different kind of past, a tradition of law and legal scholarship that reflected also a vision for the future, perhaps unknowingly. Thus a historical narrative is not only an attempt at

---

<sup>35</sup> Tuori 2007.

<sup>36</sup> Fitzpatrick 1992.

<sup>37</sup> Anderson 1991.

depicting reality, it is a normative reformation of tradition. A vision of a golden age, like Pringsheim's, is a way to project to the past ideals of the present.

For Pringsheim, to present these to a new audience in Britain was an opportunity to develop new themes and to continue old ones. He would continue the narrative of legal scholarship as a self-referential pursuit that should set the standard for law, even while it was in conjunction with state power. For the British audience, that particular narrative was less familiar than to the German audience, making it important that the underlying theme of the glorification of Hadrian was so well established in Britain by Gibbon.

Pringsheim would appeal to tradition, of continuity and heritage as a criticism towards the present and the policies that it entailed. The glorifying narrative that he creates is not only a vision of an imaginary golden age, but rather an alternative to the policies of reform, the *Gleichschaltung* of the state around the principles of the Nazi racial hierarchies.

Fundamentally, the narrative of Pringsheim was a narrative of the role of law and the legal profession in society. He, among many others, including many former Nazis (including his own pupil Franz Wieacker) would later present the narrative of the long tradition of legal scholarship, the primacy of law and legal learning, as a shared European heritage.

## **Conclusions**

The idealization of Hadrianic Rome was a theme with a long heritage from the writings of contemporaries like Aelius Aristides to the works of Gibbon and the nineteenth century enthusiasm for imperial sovereignty. An important part of that idealization was the realization that the enlightened rule under which peace

and prosperity reigned coincided with the enlightened tradition of law, where principles like the protection of the weaker parties or equality before the law became prominent. As Hadrian himself was the author of numerous legal opinions and resolutions where he emphasized the ideas of humanity and justice, the historical theme of Hadrian as the wise emperor judge had both sound footing in historical sources and a solid following among scholars.

Faced with the beginning of repression of Nazi Germany, Fritz Pringsheim began an intellectual exodus towards safety and freedom. Part of the beginning of his process of exile was, in addition to his marginalization in Germany, laying the groundwork for the move to Britain by traveling there and giving talks at British universities. In one such talk, given at the Faculty of Law at Cambridge and later published at the *Journal of Roman Studies*, he reformulated the idea of Hadrian as good king to Hadrian as the enlightened Stoic philosopher and cosmopolitan ruler. His Hadrian was judge and legislator, but equally an administrator that created a nearly modern professional legal administration.

The way Pringsheim took the historical figure of Hadrian and presented him in a new light may be considered as a reaction towards the coming Nazi repression and the violations of constitution, law and legal tradition it entailed. Like most writers under threat by repressive regimes, Pringsheim does not mention the threat, nor the Nazi regime in general. However, the context of the text and his other contemporary writings make the reference clear.

## **Bibliography**

Anderson, Benedict. 1991. *Imagined communities: reflections on the origin and spread of nationalism* (London: Verso).

- André, Jean-Marie. 1982. 'La conception de l'État et de l'Empire dans la pensée gréco-romaine des deux premiers siècles de notre ère', *Aufstieg und Niedergang der römischen Welt*, 2.30.1: 3-73.
- Ash, Mitchell G., and Alfons Söllner (eds.). 1996. *Forced Migration and Scientific Change: Émigré German-Speaking Scientists and Scholars after 1933* (Cambridge and New York: Cambridge University Press).
- Balakrishnan, Gopal. 2000. *The Enemy: An intellectual portrait of Carl Schmitt* (London: Verso).
- Behr, Charles A. (ed.) 1981-1986. *P. Aelius Aristides: The Complete Works*, vols. 1-2 (Leiden: Brill).
- Behr, Charles A. 1994. 'Studies on the Biography of Aelius Aristides', *Aufstieg und Niedergang der römischen Welt*, 2.34.2: 1140-1233.
- Bleicken, Jochen. 1964. *Senatsgericht und Kaisergericht: Eine Studie zur Entwicklung des Prozessrechtes im frühen Prinzipat* (Göttingen: Vandenhoeck & Ruprecht).
- Birley, Anthony R. 1997. *Hadrian: The Restless Emperor* (London: Routledge).
- Bowersock, Glen W. 1969. *Greek Sophists in the Roman Empire* (Oxford: Oxford University Press).
- Breunung, Leonie, and Manfred Walther. 2012. *Die Emigration deutscher Rechtswissenschaftler ab 1933*, vol 1 (Göttingen: De Gruyter).
- Breunung, Leonie, and Manfred Walther. forthcoming. *Die Emigration deutscher Rechtswissenschaftler ab 1933*, vol 2 (Göttingen: De Gruyter).
- Broszat, Martin. 1984. *Die Machtergreifung. Der Aufstieg der NSDAP und die Zerstörung der Weimarer Republik* (München: Deutscher Taschenbuch-Verlag).

- Brunt, Peter Astbury. 1978. 'Laus imperii', in *Imperialism in the Ancient World*, ed. by Peter D. A. Garnsey and C. R. Whittaker (Cambridge: Cambridge University Press), pp. 159-191.
- Carsana, Chiara. 1990. *La teoria della costituzione mista nell'età imperiale romana* (Como: Edizioni New Press).
- Corcoran, Simon. 2000. *The Empire of the Tetrarchs: Imperial Pronouncements and Government AD 284-324* (Oxford: Clarendon Press).
- Cumin, David. 2005. *Carl Schmitt* (Paris: Cerf).
- Evans, Richard J. 2003. *The Coming Of The Third Reich* (London: Allen Lane).
- Fermi, Laura. 1968. *Illustrious Immigrants: The Intellectual Migration From Europe 1930-1941* (Chicago: University of Chicago Press).
- Flinterman, Jaap-Jan. 2004. 'Sophists and Emperors: A Reconnaissance of Sophistic Attitudes', in *Paideia. The World of the Second Sophistic*, ed. by B. E. Borg (Berlin and New York: De Gruyter), pp. 359-376.
- Finkenauer, Thomas, and Andreas Herrmann. forthcoming. 'Coming to Terms – The Study of Roman law between Adaptation and Collaboration, 1933-1945'.
- Fitzpatrick, Peter. 1992. *The Mythology of Modern Law* (London and New York: Routledge).
- Gibbon, Edward. 1845. *The Decline and Fall of the Roman Empire*, vol. 1 (New York: International Book Company).
- Gibbon, Edward. 1845. *The Decline and Fall of the Roman Empire*, vol. 3 (New York: International Book Company).
- Giltaij, Jacob, and Ville Erkkilä. 2015. 'An interview with Tony Honoré', *Forum Historiae Iuris* 26/02/2015. <http://www.forhisiur.de/2015-01-erkkila-giltaij>.

Graham, Kyle. 2002. 'The Refugee Jurist and American Law Schools, 1933-1941', *American Journal of Comparative Law*, 50: 777–818.

Gregorovius, Ferdinand. 1851. *Geschichte des römischen Kaisers Hadrian und seiner Zeit* (Königsberg: Bon).

Haferkamp, Hans-Peter. forthcoming. "'Byzantium!' – *bona fides* between Rome and 20th century Germany', in *Roman Law and the Idea of Europe*, ed. by Kaius Tuori and Heta Björklund.

Harris, William V., and Brooke Holmes. 2008. *Aelius Aristides between Greece, Rome, and the gods* (Leiden and Boston: Brill).

Hartshorne, Edward Y. 1937. *German universities and national socialism* (Cambridge, MA: Harvard University Press).

Henderson, Bernard W. 1923. *The Life and Principate of the Emperor Hadrian* (London: Methuen).

Honoré, Tony. 1994. *Emperors and Lawyers: With a Palingenesia of Third-century Imperial Rescripts 193-305 AD* (Oxford: Clarendon Press).

Honoré, Tony. 2004. 'Fritz Pringsheim', in *Jurists Uprooted*, ed. by Jack Beatson and Reinhard Zimmermann (Oxford: Oxford University Press), pp. 205-233.

Kaser, Max. 1939. *Römisches Recht als Gemeinschaftsordnung* (Tübingen: Mohr Siebeck).

Klein, Richard A. 1981a. 'Zur Datierung der Romrede des Aelius Aristides', *Historia*, 30: 337-350.

Klein, Richard A. 1981b. *Die Romrede des Aelius Aristides* (Darmstadt: Wissenschaftliche Buchgesellschaft).

- Klein, Richard A. 1995. 'Zum Kultur- und Geschichtsverständnis in der Romrede des Aelius Aristides', in *Prinzipat und Kultur im 1. und 2. Jahrhundert*, ed. by B. Kühnert, V. Riedel, and R. Gordesiani (Bonn: R. Habelt), pp. 283-292.
- Koenen, Andreas. 1995. *Der Fall Carl Schmitt* (Darmstadt: Wissenschaftliche Buchhandlung).
- Koontz, Claudia. *The Nazi Conscience* (London and Cambridge, MA: The Belknap Press).
- Lepsius, Oliver. 2003. 'The Problem of Perceptions of National Socialist Law or: Was there a Constitutional Theory of National Socialism?', in *Darker Legacies of Law in Europe*, ed. by Christian Joerges and Navraj Singh Ghaleigh (Oxford and Portland, OR: Hart Publishing), pp. 19-41.
- Lutter, Marcus, Ernst C. Stiefel, and Michael H. Hoeflich (eds.). 1993. *Der Einfluß Deutscher Emigranten auf die Rechtsentwicklung in den USA und in Deutschland* (Tubingen: Mohr Siebeck).
- Mattei, Ugo. 1994. 'Why the Wind Changed: Intellectual Leadership in Western Law', *The American Journal of Comparative Law*, 42: 195-217.
- Mehring, Reinhard. 2009. *Carl Schmitt: Aufstieg und Fall* (München: Beck).
- Miglietta, Massimo, and Gianni Santucci (eds.). 2009. *Diritto romano e regimi totalitari nel '900 Europeo* (Trento: Università di Trento).
- Millar, Fergus. 1977. *The Emperor in the Roman World 31 BC-AD 337* (London: Duckworth).
- Millar, Fergus. 1992. *The Emperor in the Roman World 31 BC-AD 337*, 2nd edn (London: Duckworth).
- Nelis, Jan. 2007. 'Constructing Fascist Identity: Benito Mussolini and the Myth of Romanità', *Classical World*, 100: 391-415.

- Nutton, Vivian. 1978. 'The Beneficial Ideology', in *Imperialism in the Ancient World*, ed. by Peter D. A. Garnsey and C. R. Whittaker (Cambridge: Cambridge University Press), pp. 209-223.
- Oliver, James H. 1953. 'The Ruling Power. A Study of the Roman Empire in the Second Century After Christ through the Roman Oration of Aelius Aristides', *Transactions of the American Philosophical Society*, 43: 871-1003.
- Peachin, Michael. 1996. *Iudex vice Caesaris: Deputy Emperors and the Administration of Justice during the Principate* (Stuttgart: Franz Steiner).
- Pernot, Laurent. 2008. 'Aelius Aristides and Rome', in *Aelius Aristides between Greece, Rome, and the gods*, ed. by William V. Harris and Brooke Holmes (Leiden and Boston: Brill), pp. 175-201.
- Pringsheim, Fritz. 1930. 'Aequitas und bona fides', reprinted in *Gesammelte Abhandlungen 1* (Heidelberg: Carl Winter & Universitätsverlag, 1961), pp. 154-172.
- Pringsheim, Fritz. 1933. 'Höhe und Ende der Römischen Jurisprudenz', reprinted in *Gesammelte Abhandlungen 1* (Heidelberg: Carl Winter & Universitätsverlag, 1961), pp. 53-62.
- Pringsheim, Fritz. 1934. 'The Legal Policy and Reforms of Hadrian', *Journal of Roman Studies*, 24: 141-153.
- Pringsheim, Fritz. 1950. *The Greek Law of Sale* (Weimar: H. Böhlau Nachfolger).
- Pringsheim, Fritz. 1960. 'Die Haltung der Freiburger Studenten in den Jahren 1933-1935', *Die Sammlung*, 15: 532-538.
- Pringsheim, Fritz. 1961. *Gesammelte Abhandlungen 1* (Heidelberg: Carl Winter & Universitätsverlag).

- Rösch, Felix. 2014. *Émigré Scholars and the Genesis of International Relations. A European Discipline in America?* (Basingstoke: Palgrave MacMillan).
- Schiavone, Aldo. 2000. *The End of the Past. Ancient Rome and the Modern West* (London and Cambridge, MA: Harvard University Press).
- Schulz, Fritz. 1936. *Principles of Roman Law* (Oxford: Oxford University Press)  
[The German original: 1934. *Prinzipien des römischen Rechts* (München: Duncker & Humblot).]
- Schulz, Fritz. 1946. *History of Roman Legal Science* (Oxford: Oxford University Press).
- Stahlmann, Ines. 1988. 'Vom Despoten zum Kaiser. Zum deutschen Augustusbild im 19. Jahrhundert', in *L' Antichità nell'Ottocento in Italia e Germania*, ed. by Karl Christ and Arnaldo Momigliano (Bologna: Società editrice il Mulino), pp. 303-319.
- Stertz, Stephen A. 1994. 'Aelius Aristides' Political Ideas', *Aufstieg und Niedergang der römischen Welt*, 2.34.2: 1248-1270.
- Stolleis, Michael. 1998. *The law under the swastika: studies on legal history in Nazi Germany* (Chicago: University of Chicago Press).
- Stolleis, Michael. 1999. *Geschichte des öffentlichen Rechts in Deutschland. 3. Band, Staats- und Verwaltungsrechtswissenschaft in Republik und Diktatur 1914-1945* (München: Beck).
- Strauss, Leo. 1988. *Persecution and the Art of Writing* (Chicago and London: University of Chicago Press).
- Tuori, Kaius. 2016. *Emperor of Law* (New York and Oxford: Oxford University Press).

- Tuori, Kaius. 2007. *Ancient Roman lawyers and modern legal ideals: studies on the impact of contemporary concerns in the interpretation of ancient Roman legal history* (Frankfurt am Main: Klostermann).
- Volpe, P. 2001. 'Armonia e taxis nell'Encomio a Roma di Elio Aristide', in *L'idea di Roma nella cultura antica, Atti del Convegno di Studi (Salerno 14-16 ottobre 1996)*, ed. by F. Giordano (Napoli: Edizioni scientifiche italiane), pp. 305-312.
- Whitmarsh, Tim. 2001. *Greek Literature and the Roman Empire: The Politics of Imitation* (Oxford: Oxford University Press).
- Whitmarsh, Tim. 2005. *The Second Sophistic* (Oxford: Oxford University Press).
- Wieacker, Franz. 1944. *Vom römischen Recht. Wirklichkeit und Überlieferung* (Leipzig: Koehler & Ameland).
- Wieacker, Franz. 1935. 'Studien zur Hadrianischen Justizpolitik', *Romanistische Studien: Freiburger Rechtsgeschichtliche Abhandlungen*, 5: 43-81.
- von Wilamowitz-Möllendorf, U. 1925. 'Der Rhetor Aristeides', *Sitzungsberichte der preussischen Akademie der Wissenschaften*, 28: 333-353.