

In recent years a lively debate has arisen among historians whether the Roman economy was capable of sustained economic growth. Population and technology set basic limits on the possibilities for economic growth, but scholars also have begun to recognize the complex relationship between Roman law and legal institutions and the economy of the Roman Empire (cf. Frier and Kehoe 2007). One key issue is whether Roman law served or benefited the economy. It will have done so by defining property rights clearly and establishing predictable means of resolving disputes. Above all, the law will have served the economy well if it created governance structures that fostered the contractual arrangements that promoted their sharing of resources, labor, and managerial expertise to achieve economically productive goals. The alternative is that the law simply functioned to protect the privileges of certain groups, particularly elite property owners, without promoting economic activity and even, in some cases, inhibiting it. In this connection, the capacity of the law to respond to the immense challenges posed by risk is of crucial importance, since without a mechanism to allocate risk in an efficient way, it would be difficult for parties to contracts to negotiate mutually productive arrangements. In the face of catastrophic risk, each side would seek to impose the costs of risk on the other. This situation would come at a significant social cost, since it would lead to the breakdown of economically productive contractual arrangements, or worse, prevent them from ever occurring.

In this paper, I examine the social adequacy of Roman legal institutions by examining an area of the law in which risk was a significant factor: agriculture, in particular, in the relationships between landowners and tenants. Here, I examine the Roman government's policy in regulating remissions of rent. I explore the incentives that Roman legal policy created for landowners and tenants to engage in private bargaining that would promote their mutual interests and would also contribute positively to the agrarian economy. Building on previous scholarship, I compare the Roman approach to risk in agriculture to other approaches attested in the ancient Mediterranean, in particular in Egypt. In addition, we can gain a broader perspective on Roman legal policy by comparing it with other areas of the law in which risk played an important role, such as the employment of business managers by Roman property owners. In investigating the economic effects of Roman legal policies, I will draw upon a rich body of literature concerned with the debate about the relationship between contemporary law and the economy. This literature provides historians with useful theoretical constructs to analyze the economic aspects of ancient legal institutions. I suggest that the Roman legal authorities were concerned to respond to the needs of upper-class property owners, who, in an economy subject to severe constraints, were risk-averse and sought above all to achieve economic security. However, in addressing the issue of risk in contracts, the legal authorities also sought, to the extent possible, to encourage landowners and tenants to bargain freely to allocate risk so as to preserve mutually beneficial contractual arrangements.