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THE *DEDITICII* IN *P.GISS.* 40 I 7–9*

Abstract: The paper holds that the *dediticii* ([δε]δειτίκιοι) mentioned in the famous *Constitutio Antoninina* (P.Giss. 40 I 9) are to understand as slaves who were severely punished by their masters and afterwards manumitted. The *lex Aelia Sentia* excluded these freedmen of any kind of Roman citizenship (Gaius, *Inst*. I 26). This view, so far advanced only by a minority of scholars, seems to be backed now by Macedonian manumission inscriptions. Therefore, the attempt to restore the lacunae in the papyrus according to the *tabula Banasitana* seems to be misleading.

Keywords: *Constitutio Antoninina*, Roman citizenship, manumission, *ius civile*, *tabula Banasitana*

Questions of personal status were an important topic in elementary literature of classical Roman legal science, reflecting their importance in everyday life during the Principate. In this paper I will address the thorny problem of the *dediticii* mentioned in the *Constitutio Antoniniana* and present a possible solution based on the classical status distinctions determined by the time-honored Roman *ius civile*, the *lex Aelia Sentia*; not at all an original or new solution — already Wolfgang Kunkel pointed to it in a footnote in his textbook of Roman law[1] — however, to my mind, it is now indirectly corroborated by Macedonian manumission inscriptions.[2] As far as necessary, I have to deal also with the *Constitutio* itself.

Undecayed by alterations due to Byzantine law in Justinian's *Corpus Iuris* the Institutes of Gaius, written about 160 AD, provide the most comprehensive picture of the *dediticii*'s position within the contemporary status distinctions. For better understanding my following analysis I quote some of Gaius' most relevant remarks on this topic coherently (*Inst*. I 9–17, 25–27[3]):

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1 Kunkel 1935/1949, 58 n. 10, as far as I know, differently from all views before him (see below n. 39). Generally, if authors discuss this topic they deny explicitly any connection between *lex Aelia Sentia* and *Constitutio Antoniniana*.

2 Petsas et al. 2000 (*I.Leukopetra*).

3 Manthe 2004.

[III. De condicione hominum.] 9. Et quidem summa divisio de iure personarum haec est, quod omnes homines aut liberi sunt aut serui. 10. Rursus liberorum hominum ali*i* ingenui sunt, ali*i* libertini. 11. Ingenui sunt, qui liberi nati sunt; libertini, qui ex iusta seruitute manumissi sunt. 12. Rursus libertinorum ‹*genera tria sunt: nam aut cives Romani aut Latini aut dediticiorum*› numero sunt. de quibus singulis dispiciamus; ac prius de ‹*de*›diticiis. [IIII. De ded*i*ticiis vel lege Aelia Sentia.] 13. Lege itaque Aelia Sentia cavetur, *ut*, qui servi a dominis poenae nomine vincti sunt quibusve stigmata inscripta sunt deve quibus ob noxam quaestio tormentis habita sit et in ea noxa fuisse convicti sunt quive, *ut* ferro aut cum bestiis depugnarent, traditi sint, inve ludum custodiamve coniecti fuerint et postea vel *ab eodem* domino vel ab alio manumissi, eiusdem condicionis liberi fiant, cuius condicionis sunt peregrini dediticii. [V. De per*æ*grinis ded*i*ticiis.] 14. Vocantur autem ‘peregrini dediticii’ hi, qui quondam adversus populum Romanum armis susceptis pugnaverunt, deinde victi se dediderunt. 15. Huius ergo turpitudinis servos quocumque modo et cuiuscumque aetatis manumissos, etsi pleno iure dominorum fuerint, numquam aut cives Romanos aut Latinos fieri dicemus, sed omni modo dediticiorum numero constitu*i* intellegemus. 16. Si vero in nulla tali turpitudine sit servus, manumissum modo civem Romanum modo Latinum fieri dicemus. 17. Nam in cuius personam tria haec concurrunt, ut maior sit annorum triginta et ex iure Quiritium domini et iusta ac legitima manumissione liberetur, id est vindicta aut censu aut testamento, is civis Romanus fit; sin vero aliquid eorum deerit, Latinus erit. – – – 25. Hi vero, qui dediticiorum numero sunt, nullo modo ex testamento capere possunt, non magis quam quilibet peregrinus; [quia] nec ipsi testamentum facere possunt secundum id quod magis placuit. 26. Pessima itaque libertas eorum est, qui dediticiorum numero sunt; nec ulla lege aut senatus consulto aut constitutione principali aditus illis ad civitatem Romanam datur. 27. Quin etiam in urbe Roma vel intra centesimum urbis Romae miliarium morari prohibentur, et si qui contra ea fecerint, ipsi bonaque eorum publice venire iubentur ea condicione, ut ne in urbe Roma vel intra centesimum urbis Romae miliarium serviant neve umquam manumittantur, et, si manumissi fuerint, servi populi Romani esse iubentur. Et haec ita lege Aelia Sentia conprehensa sunt.

By the procedures of ancient *ius civile*: *manumissio vindicta*, *censu* or *testamento*, Roman citizens were able to manumit their slaves — if they were free of *turpitudo* — directly to Roman citizenship (§§16–17). By other forms of manumission, additionally recognized by the *praetor*, the freedmen got only the citizenship of *Latini* according to the *lex Iunia* of 19 AD (§17).[4] In accordance with the *lex Aelia Sentia* of 4 AD, freedmen, who as slaves had been punished — by their masters (!) — e.g. by being confined or fighting with wild beasts in the arena (and survived), were excluded from every Roman kind of citizenship (§§13 and 15). They were counted among the *peregrini dediticii*, enemies[5] “who, having formerly taken up

[4] For manumissions under *ius honorarium* see Kaser 1971, 285–6.

[5] Kaser 1971, 282 is using the descriptive term “Kriegsfeinde.”

arms and fought against the *populus Romanus* afterwards have been conquered and have surrendered at discretion" (§14). That means, dishonorable freedmen were classed *dediticiorum numero* (§15). They suffered serious disadvantages in inheritance law (§25).[6] Furthermore (§26): *Pessima itaque libertas eorum est qui dediticiorum numero sunt; nec ulla lege aut senatusconsulto aut constitutione principali aditus illis ad civitatem Romanam datur.* (The worst kind of freedom is given to them who count among the *dediticii*; nor is any way afforded to them of obtaining Roman citizenship either by a law, by a Decree of the Senate, or by an Imperial Constitution.) Surprisingly for us, still in the high Principate the civic status of freedmen was completely at the discretion of their former masters (*domini*, §§13 and 16), the 'independent' Roman citizen (being *persona sui iuris*, *paterfamilias*).

In the Greek East of the Roman empire the *peregrini* numerically prevailed. As hundreds of inscriptions and papyri demonstrate, since pre-Roman times peregrine people have used special sacral or private forms of manumission. In contrast to Roman rules these freedmen never received the citizenship of their former masters' home-poleis,[7] not to mention the Roman one. Roman and local freedmen were neatly distinguished. This is demonstrated by two second century inscriptions from Syllion in Pamphylia honoring a lady Menodara for distributing donations to the general public, including οὐινδικτάριοι καὶ ἀπελεύθεροι (*manumissi vindicta*, that means freedmen who were *cives Romani*, and simple non-citizen freedmen).[8] Thus, Roman and peregrine manumissions were two different worlds, and the Roman administration had to face this problem.

The so-called *Fragmentum Dositheanum*[9] shows how Roman magistrates managed the problem of peregrine manumissions (§12): *Peregrinus manumissor servum non potest ad Latinitatem perducere, quia lex Iunia, quae Latinorum genus introduxit, non pertinet ad peregrinos manumissores, sicut et Octavenus probat. At praetor non permittet manumissum servire, nisi aliter lege peregrina caveatur.* (A peregrine *manumissor* cannot provide *Latinitas* for a slave because the *lex Iunia* that introduced the kind of *Latinitas* does not refer to peregrine *manumissores*, which also Octavenus approves. However, the *praetor* will not allow that a freedman will serve as slave unless otherwise stipulated in a *lex peregrina*. — Octavenus wrote under Domitian and Hadrian.)

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6 For this topic see Kaser 1971, 682. 684. 701.

7 Ricl 2001, 143 n. 63; Zelnik 2005, 301–306; Youni 2010, 313. At the Symposion Lene Rubinstein generously communicated to me three Delphic inscriptions where manumitted women were entitled to *politeuein* (SGDI 1718, 170-157/6 BC; 1844, 186 BC, and 2133, 182 AD). She conjectures that the first two had been enslaved in connection with an armed conflict. So, their former civic status may have been restored (after being ransomed?).

8 *IGRR* III 801, 20–21, cf. 802, 25–6; see Kantor 2016, 51 (where Menodora is misunderstood as male).

9 Its pattern is dated in the second century, Wieacker 2006, 119.

Just as manumissions by peregrines did not result in the citizenship of a polis, they did not result in the Latin one, not to mention the Roman. However, the *praetor* (Gaius I 28 refers also to the *praeses provinciae*) protected the peregrine freedmen from services requested by their former masters, unless stipulated by a *lex peregrina*. This *lex* is not a peregrine statute but rather a contract clause, *lex contractus*, referring to the variously shaped *paramonē* clauses in the Greek manumission documents. The services inflicted on the freedmen (scilicet: freedpersons) are sometimes so onerous that prominent scholars seriously question the effect of freedom.[10] Thus, disputes were inevitable, and the Roman authority decided according to the Greek documents. Anyway, the freedmen's peregrine status was beyond doubt.

Important for my further analysis are the manumission inscriptions from the sanctuary of the "Mother of the Autochthonous Gods" in Leukopetra in Macedonia.[11] They date from 141 to 313 AD and contain excerpts from documents of sacral manumissions kept safe in the temple archive. The manumissions took place through fictitious dedications or donations of slaves to the goddess (ἀνατίθημι or δωροῦμαι, χαρίζομαι). On the one hand the deed provided safety against re-enslavement. On the other hand it guaranteed the manumittor's or third persons' claims against the former slave for complying with his or her *paramonē* duties; all this was additionally reinforced through the public display of the inscription on the temple wall. Luckily, most of them are dated by year and month.[12] So, we can see that even before the year 212 Roman citizens made extensive use of this peregrine kind of manumission.[13] At most these acts could have brought Latin citizenship about. Surprisingly, exactly with the date of 212/13 in the form of the Leukopetra documents a modest variation occurred that seems important for understanding the *dediticii* mentioned in the *Constitutio Antoniniana*.

At this point, to continue my analysis I have to sketch my personal view of Caracalla's *edictum* itself. It is impossible even to summarize all the interpretations proposed for *P.Giss.* 40 col. I since its *editio princeps* in 1910.[14] Due to the changing Zeitgeist, in more than a century, one can observe two general lines of thought. German scholarship at the beginning of the 20th century was guided by the recently enacted Civil Law Code, Bürgerliches Gesetzbuch. After centuries this law code

[10] Ricl 2001, 143; Zelnik-Abramovitz 2005, 339.

[11] Petsas et al. 2000 (*I.Leukopetra*).

[12] Dating is mostly according to the Augustan era, which starts 32 BC, and/or to the Macedonian one starting 148 BC, the year of the conquest of Macedonia by L. Aemilius Paulus; see Youni 2010, 318.

[13] Meyer 2002, 138 counted 23 out of a total of 52 instances previous to 212.

[14] A most useful summery gives Kuhlmann 1994, 217. Concerning more recent literature I rely foremost on Buraselis 2007 (in modern Greek already 1989), Kantor 2016 and van Minnen 2016. [Among many others, in my oral Symposion paper I omitted Weber 2009; since this article is a basic argument of my respondent, I will add now some comments on it, see below n. 38.]

unified the civil statutes that had been until then completely splintered amongst the former sovereign German territories. The ideology was that one empire was ruled by one comprehensive civil law. This was realized within the Deutsches Kaiserreich, established 1870, when, in the year 1900, the Civil Law Code entered into force. This law code followed the *ratio scripta* of the classical Roman jurists in the shape that the 'Pandektenwissenschaft' had enucleated from Justinian's *Corpus Iuris*. Consistently — and anachronistically — *P.Giss.* 40 I was interpreted in the sense that Caracalla's intention was to unify law within his empire. However, more than one hundred years later we know that in the Roman empire such a uniform, comprehensive civil law, "Reichsrecht" in the sense of Ludwig Mitteis (1891), had never existed. Concerning Roman Egypt already Hans Julius Wolff remarked: "Die Bevölkerung bediente sich weiterhin (after 212, G.Th.) der altvertrauten Rechtsformen und Formulare,"[15] and recently Georgy Kantor (2016) painted a highly differentiated picture of Asia Minor. Regrettably this view is not yet communis opinio. 'Unity of law' prevails, in private and public matters, and the *dediticii* are understood in the sense of conquered external enemies due to Gaius' historical explanation inserted in §14.

A turning point against 'unity of law' approach has been the book *Theia Dorea* by Kostas Buraselis, after a Modern Greek version from 1989 published in German 2007 in the series of the present acts. In *BGU* II 655 (215 AD) the *Constitutio Antoniniana* is casually called "divine gift" (θεῖα δωρεά) and this was how common people felt. Proudly they accepted the name *Aurelii* and the elevation of their status. Caracalla's ambition was not to achieve abstract unity of law or increase public finances, but rather to consolidate the Severan dynasty, and his own position during the crisis resulting from murdering his brother Geta. To found an empire like that of Alexander the Great he wanted to assemble a great mass of free inhabitants personally grateful to him and his dynasty. The tenor of the *constitutiones* preserved in *P.Giss.* 40 is highly rhetorical, religious and political, and in no way bureaucratic. Furthermore, Buraselis has observed that on the one hand one can neglect the financial loss through shortfall of the poll tax and on the other hand that in the 3rd century the legal value of Roman citizenship had already decreased. Then, the decisive distinction was *splendidiores* or *honestiores* versus *humiliores*.[16] When ordering the rebellious non-resident Egyptian mob out of Alexandria in a *constitutio* of 215/16, Caracalla himself disregarded his act of granting *politeia* by rebuking the "un-civic behavior" of these lower-class people.[17] Awarding Roman citizenship does not mean granting civil rights in the modern sense.[18] Generally, I think one should

[15] Wolff, Rupprecht 2002, 125.

[16] Buraselis 2007, 120–136.

[17] *P.Giss.* 40 col. II 28–29: ἐναντία ἤθη | ἀπὸ ἀναστροφῆς [πο]λειτικῆς; "totally different from civic behavior;" translation by van Minnen 2016, 209, see also his p. 207 n. 11 and 216 n. 47.

[18] Bryen 2016 made a good point of this but neglected the *humiliores*.

follow Buraselis, albeit questioning his — and many others' — opinion that Caracalla's *dediticii* were conquered barbarian enemies.[19] Who else could they have been?

To get one step closer to an answer I propose to have another look at the papyrus itself, not at its reading, but rather at the most probable restorations of the text lost in the lacunae of lines 8 and 9 of the first column. I quote some prominent examples (*P.Giss.* 40 I 7–9):

Meyer, *Jur.Pap.* 1 (1920)
(7) Δίδωμι τοί[ν]υν ἄπα-
(8) [σιν ξένοις τοῖς κατὰ τὴ]ν οἰκουμένην π[ολιτ]είαν Ῥωμαίων [μ]ένοντος (54 lett.)
(9) [παντὸς γένους πολιτευμ]άτων χωρ[ὶς] τῶν [δε]δειτικίων.

Wilhelm 1934, 180 (1984, 218; Buraselis [1989] 2007, 10)
(7) Δίδωμι τοί[ν]υν ἄπα-
(8) [σιν τοῖς κατοικοῦσιν τὴ]ν οἰκουμένην π[ολιτ]είαν Ῥωμαίων [μ]ένοντος (55 lett.)
(9) [οὐδενὸς ἐκτὸς τῶν πολιτευμ]άτων χωρ[ὶς] τῶν [δε]δειτικίων.

Kuhlmann 1994, 222
(7) Δίδωμι τοῖς συνάπα-
(8) [σιν κατὰ τ]ὴν οἰκουμένην π[ολειτ]είαν Ῥωμαίων μένοντος
(9) [τοῦ δικαίου τῶν πολιτευμ]άτων[20] χωρ[ὶς] τῶν [..]δειτικίων.

All these (and many other) authors insist on πολιτευμ]άτων (political communities) and hold that in the [μ]ένοντος | [–]άτων clause, in addition to the grant of citizenship and to the exclusion of some [..]*diticii* Caracalla had disposed a further basic constitutional order. Magie disputed the context with political communities and restored a word in close connection with the grant of citizenship, indicating its consequences: δικαιωμ]άτων ("exceptional rights," privileges):

Magie II 1950, 1556
(8) [μ]ένοντος
(9) [οὐδενὸς ἄνευ τῶν δικαιωμ]άτων[21] χωρ[ὶς] τῶν [δε]δειτικίων.

Because the left edge of *P.Giss.* 40 is broken away, to restore the text in the lacunae of the first column a problem arises with the length of lines. The prevailing opinion

[19] Buraselis 2007, 7.

[20] Apparently well based on the "reservation clause" in the so-called *tabula Banasitana* (lines 12, 18–19, 35–37, quoted below, at n. 30). However, see the following discussion.

[21] Magie referred to *P.Oxy.* VIII 1119.15 (Antin. 253 AD; WChr 397): ... τῶν ἐξαιρέτων τῆς ἡμετέρας πατρίδος δικαιωμάτων ("... the exceptional rights claimed by our native city," transl. *P.Oxy.*; in Latin: *privilegia*).

has been that *P.Giss.* 40 contains three edicts: the first one extending citizenship, the second allowing exiles to return and the third ordering the rebellious Egyptian mob out of Alexandria. Recently Peter van Minnen contested this view, holding that there are only two *constitutiones*, one *edictum* running from column I to II (containing both citizenship and amnesty) followed by an *epistula* to the *praefectus Aegypti* (about the rebellious mob) in column II, separated by a blank line and beginning in line 16 of col. II with the heading ἄλλο in ecthesis.[22]

Already Joseph Mélèze demanded an analogous heading at beginning of the first line in column I,[23] and van Minnen reconstructed, without abbreviations, a line length of 80 letters.[24] He (and Mélèze) assume different line lengths for columns I and II. However, an additional heading "ἀντίγραφον διατάγματος" (even abbreviated) does not seem necessary because λέγει (*dicit*) in the first line of col. I clearly points to an *edictum*. I cannot imagine that the scribe used different line lengths in copying one and the same document over two columns — if van Minnen is right about that; and he has good arguments.

Therefore, depending on the line lengths supposed by van Minnen his restoration of lines 8–9 is too copious:

van Minnen 2016, 209. 217 (tentatively)

(7) .....δίδωμι τοῖς συνάπα-

(8) [σιν ξένοις Ἕλλησι τε καὶ βαρβάροις τοῖς κατὰ τὴ]ν οἰκουμένην π[ολειτ]είαν Ῥωμαίων μένοντος (76 lett.)

(9) [τοῦ δικαίου τῶν πόλεων – – καὶ ἐθνῶν καὶ δήμων καὶ – –]άτων χωρ[ὶς] τῶν [δε]δειτικίων.

Here, in no way does "the text get down to business".[25] On the contrary, taking the *edictum* on the whole — with van Minnen running over to column II — the language continuously remains rhetorical. Thus, for line 9, the sample of the bureaucratic *Monumentum Ephesenum* enumerating "the various categories of communities recognized by Roman law"[26] is misleading here. Van Minnen is unnecessarily demanding juridical precision. Therefore, also in line 8 I would prefer a short restoration with about 55 letters like the earlier authors have suggested, and one should easily find the proper wording.

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22 Van Minnen 2016, 209–15.

23 Mélèze Modrzejewski 2011, 482 restores the beginning of *P.Giss.* 40 col. I line 1: [ἀντίγρα(φον) διατά(γματος)· = 12 letters, followed by Caracalla's official titulature, in abbreviated form (not to be discussed here) of 59 letters, that makes 71 letters (in ecthesis). The lines of col. II have between 57 and 64 letters.

24 Van Minnen 2016, 209 restores tentatively, not abbreviated: [ἀντίγραφον διατάγματος· = 21 letters in addition to the 59 of the titulature, that makes 80 letters (in ecthesis).

25 To quote van Minnen 2016, 217 n. 55.

26 So van Minnen 2016, 218.

The main problem is the lacuna in line 9. I am following the restoration [δε]δειτικίων against [ἀδ]δειτικίων, *dediticii* and not *additicii*, and hold with Mélèze[27] and van Minnen[28] that in line 9 the phrase χωρ[ὶς] τῶν [δε]δειτικίων goes with δίδωμι ... | ... π[ολειτ]είαν Ῥωμαίων (l. 7–8): the *dediticii* (whoever they may be) are excluded from the gift of Roman citizenship. Since Kuhlmann scholarship has agreed that the phrase μένοντος ... [– – –]άτων in line 8–9 means a 'reservation clause'[29] that now generally has been restored after the *tabula Banasitana*[30] (l. 35–7): *civitatem Romanam de|dimus salvo iure gentis sine diminutione tributorum et vectigali|um populi et fisci* (we granted Roman citizenship free of the legal status of the *gens*, without any decrease in *tributa* and *vectigalia* for the *populus* and the *fiscus*); summarily and stylishly expressed in the Greek restoration: μένοντος | [τοῦ δικαίου τῶν πολιτευμ]άτων.[31] Anyway, the following phrase excluding the *dediticii* from citizenship seems odd because χωρ[ίς] linguistically goes with μένοντος (l. 7) and not — as logically required — with δίδωμι (l. 8). Mélèze remarks: "La construction est lourde, mais elle est parfaitement acceptable; les rédacteurs de lois, dans l'Antiquité comme de nos jours, ne sont pas tous d'irréprochables stylists."[32] He quotes a single instance of a poll tax receipt of 40 *drachmai* paid in the year 248.[33] This seems to back the reservation clause in Caracalla's *edictum*. However, to solve this problem a general study of the imperial financial policy in the Severan time would be necessary, that I cannot provide.[34] Following Buraselis[35] I hold that poll tax collection from non-Roman population had lost its importance. Meanwhile the emperors had learned to exploit their Roman citizens too.

Therefore, in the same way as the *Monumentum Ephesenum* seems misleading for restoring line 8 the sample of the *tabula Banasitana* "*salvo iure gentis*" (μένοντος | [τοῦ δικαίου τῶν πολιτευμ]άτων) — as tempting as it may be — is not conducive to restoring line 9. The reservation clause in the *tabula* stands in the tradition of granting Roman citizenship to single persons or small groups since

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27 Mélèze 2011, 487.

28 Van Minnen 2016, 219.

29 Kuhlmann 1994, 229–232, "Salvationsformel," p. 229.

30 *AE* 1971, 534 (Banasa, Mauretania, 177 AD).

31 However, the — alleged — Greek translation in *P.Giss.* 40 is missing the addition *sine deminutione tributorum et vectigali|um populi et fisci*, that makes clear that *ius gentium* encompasses foremost the communities' and their members' obligations toward the Roman state. Indeed, this is the case in *tab. Ban.* lines 12 and 18–19, too, but should not occur in a general provision.

32 Mélèze 2011, 487.

33 Mélèze 2011, 491: P.Batav. (= Pap. Lugd. Bat. XIX) 14 (248 AD, Ars.), with general reference to (Mélèze) Modrzejewski 1989 (=1990); see also Mélèze 2014, 323 n.11.

34 [Also the additional source quoted by my respondent in his note 14 cannot substitute detailed economic investigations.]

35 Buraselis 2007, 143–54.

republican and Augustan times. Mélèze gives a good overview.[36] Also the tablet from Banasa concerns just the family of a notable Berber, chief of a tribe, and not the whole *gens*.[37] Here, the 'reservation clauses' — granting citizenship without fiscal privileges — originated from republican foreign and fiscal policy.[38]

By no means did Caracalla tread this path. Aiming for a monarchy like that of Alexander the Great he intended to allure "his people" (col. I 6) by a splendid gift: Roman citizenship (and receiving personal gratitude vice versa). Therefore, it is hardly plausible that he inserted a fiscal reservation clause in his *edictum* immediately after the generous δίδωμι … π[ολειτ]είαν Ῥωμαίων phrase. More likely the next phrase, ending with χωρ[ὶς] τῶν [δε]δειτικίων is dealing exclusively with a status question — flattering the broad mass by excluding outsiders. In his *edictum* Caracalla had no need of going into bureaucratic details about financing his empire. At the most, for such a provision there would have been space enough within the following lines 10–27 of col. I, where only a few letters at the right edge are preserved. By adjusting most of his people's legal status Caracalla consequently, by unification, created subjects to his empire.

To sum up: linguistic and historic doubts speak against the prevailing restorations of lines 8–9 of the first column. It does not seem helpful creating a linguistical odd text by adopting an out-of-time clause — at least at an improper place. In the following I will try to propose — hypothetically as any previous attempt — a restoration that might satisfy on both counts.

After this long introduction, at last, I come to the question: who are the *dediticii* in Caracalla's *edictum*? Looking again at Gaius, we see that in the 29 lines of his section on *libertini* (comprising *cives Romani aut Latini aut dediticiorum numero*,

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[36] Mélèze 2011, 489–91.

[37] So erroneously van Minnen 2016, 217.

[38] [Out of the huge literature on *P.Giss.* 40, in my oral presentation I did not deal with Ekkehart Weber especially referred to by my respondent. Weber 2009, most inventively, considers the reservation clause of lines 8–9 a reminiscence to the *lex Plautia Papiria* of 89 BC that after the Social War granted Roman citizenship to nearly all inhabits of *Italia* (see now Lavan 2019, 26; Laffi 2019, 171). Correctly he holds that this statute was the first general award of Roman citizenship. However, its text is not preserved; and audaciously Weber suggested a restoration based on the — most hypothetically restored itself — *Constitutio Antoniniana*, owing to the reservation clause, well documented indeed in the *tabula Banasitana*. Weber 2009, 161 conjectured for the *lex Plautia Papiria*: *… concedit omnibus hominibus per Italiam ceivitatem Romanam salvo iure ceivitatum exceptis dediticieis*. Thus, allegedly, in the third century AD the imperial chancellery took the *dediticii* somewhat "nonsensically" (p. 162) from the republican *lex* — then really indicating conquered enemies (cf. Gai. inst. I 14); for this topic see the following discussion. Furthermore, the *Italici* had to be registered within 60 days with the *praetor* in Rome (Cic. *Arch.* 7), and *tab. Ban.* documents the complicated bureaucratic procedure for becoming Roman citizens in the Principate; after 212 AD nothing like that is preserved. My conclusion is that Caracalla composed his text without republican models.]

§12) only three lines deal with the conquered barbarians (§14), and — due to Gaius' antiquarian interests — only as historical digression. From the beginning, these three lines blurred our view of the *Constitutio Antoniniana*. Only Wolfgang Kunkel[39] held that the edict concerns freedmen, who were *dediticiorum numero* under the *lex Aelia Sentia*. However, one cannot go with his further statement "*deditícii* im eigentlichen Sinne, d.h. mit Waffengewalt unterworfene Feinde des römischen Staats, denen jede bessere Rechtsstellung verweigert wurde, gab es im 3. Jh. schwerlich noch." In this regard, already Herbert W. Benario, who follows Kunkel's main thesis, corrects Kunkel by referring to an inscription from 232 AD that mentions *dediticii Alexandrini*, troops garrisoned at the *limes Germanicus*,[40] discussed also by van Minnen[41]; already Mélèze had added some more instances belonging to the Roman army.[42] In my opinion, it is to be questioned whether the military organization was relevant at all to Caracalla's general citizenship policy. His army and the status of the soldiers were directly subject to his *imperium*. Extending the imperial favor personally to all free inhabitants was a civilian affair and a matter of mutual goodwill. There was neither reason nor need for Caracalla to mention *peregrini dediticii* in his *constitutio*.

One wonders why — contrary to Gaius' Institutes — in Justinian's Digest no manumission cases concerning *libertini dediticiorum numero* are preserved from classical times. Obviously, we cannot find them in the Digest because Justinian completely extinguished this feature in a reform constitution, *Codex Iustinianus* 7.5 (a. 530 AD). Under the rubric *De dedititia libertate tollenda* he directed: *Dedititia conditio nullo modo in posterum nostram rempublicam molestare concedatur, sed sit penitus deleta ...* This does not prove that there was still a practical problem with *dediticii* in the 6th century; Justinians *quinquaginta decisiones* intended nothing but a reform of academic law studies.[43] At least, *C.* 7.5 admits indirectly that earlier there were a lot of controversies. And one can find them, beside Gaius, in other pre-Justinianic legal sources. The widespread *Pauli Sententiae* finally composed about 300 AD[44] are the best example. In the whole title *De manumissionibus* (IV 12) six of the nine paragraphs (§§3–8) deal with *iusta libertas*; and also *dediticium facere* (§6) and *dediticiorum numero non efficitur* (§7) sound like an immediate answer to the problems effected by Caracalla's *edictum*.[45] Significantly, the *Codex Theodosianus*

[39] Kunkel 1935/1949, 58 n. 10.

[40] *CIL* XII 6592 (*Dessau* 9184; *ILS* 9184; 232 AD, Germania Superior: Walldurn /Frankfurt); Benario 1954, 194 n. 21 holds that such *dediticii* in no way were excluded from becoming Roman citizens (for the inscription see already Magie II 1950, 1556).

[41] Van Minnen 2016, 220 n. 69.

[42] Mélèze 2011, 487–8.

[43] See also *Inst. Iust.* I 5.3, III 7.4.

[44] Wieacker 2006, 172–4.

[45] For the content of PS IV 12 see Liebs 1993, 106–7.180–81 ([2]2005, 125). For example: a slave confined by command of a *dominus furiosus* or a *pupillus* will not become *dediticiorum numero* (§7).

from 438/9 does not mention *dediticii* at all; in contrast to the second and third century, already in the fourth century they were of no more importance.[46]

This result, obtained thus far from well-known sources, backs Kunkel's opinion that the core of Caracalla's *dediticii* is not to be found at the extreme edges of the empire but rather in its center, in the personal status of the inhabitants: harmonizing Roman and peregrine, primarily Greek, ways of manumission. The emperor opened his goodwill to all free inhabitants of the *orbis Romanus*. Freedmen were included. From ancient times different kinds of citizenship were acquired by Roman manumissions, but in no way a polis citizenship by a Greek manumission — so far, there was no problem of *turpitudo* for peregrine freedmen. Now, peregrine manumissions got the same impact as a Roman one. Therefore, also the exception through *lex Aelia Sentia* and *ius civile* had explicitly to be extended to peregrine manumissions: no dishonorable freedman, no person *dediticiorum numero*, should become Roman citizen. No unworthy person should be among the people honored to receive the privilege of the θεία δωρεά. In this regard I would call Caracalla a 'conservative revolutionary.'

To these findings, I should think, one can add a new and maybe decisive piece of evidence. As I mentioned at the beginning, in the year 212/13 in the form of the manumission documents from Leukopetra a modest variation occurred, beyond doubt caused by Caracalla's edict. At that time *proconsul* Marcus Ulpius Tertullianus Aquila was appointed governor of Macedonia.[47] In his term of office an inscription was published that the herewith documented manumission took place according to his 'order': κατὰ κ[έ]λευσιν τοῦ | κρατίστου ἡγ[εμό]νος μου Τερ|τυλλιανοῦ Ἀκ[υλάο]υ (*I.Leukopetra* 63, 3–5). From the next 40 years 18 inscriptions are preserved, containing the phrase κατὰ τὴν ἀπόφασιν of Tertullianus. Probably Maria Youni is right in translating ἀπόφασις as *edictum*.[48] Unfortunately, the content of Tertullianus' order is never explicitly quoted; the phrase is placed at different positions in the text and does not refer automatically to the clause immediately preceding it. Definitely one innovation has been introduced: all manumissions had to be preceded by public notification, by means of a document containing all the required information, which was displayed in public 30 days prior to manumission. The time-limit is mentioned in *I.Leukopetra* 100;[49] other details were the slave's 'nation' — this was also an essential entry in any sale contract[50] —,

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[46] From *manumissio in ecclesia* indistinctively results *civitas Romana* (*CTh.* IV 7.1pr., a. 321); where one would expect *dediticii* one reads *victi hostes* (*CTh.* IV 8.5.5, a. 322) or *servi poenae* (*CTh.* X 12.2.5, a. 368/370/373).

[47] For Tertullianus see Ricl 2001, 142; Youni 2010, 328.

[48] Youni 2010, 337. Beside the usual term διάταγμα also ἀπόφασις occurs, for instance, in *I.Eleusis* 489.32: ἀπόφασις ἐπάρχου (169/70 AD).

[49] Lines 10–13: ... καταλ|χθείσης τριακονθημέρου, κατὰ τὴν ἀπόφασιν | Τερτυλλιανοῦ Ἀκύλα (244 AD).

[50] Jakab 1997, 140–141; *D.* 21.1.31.21 (Ulp. 1 *aed. cur.*)

the kind of acquisition: by birth in the house or purchase, in the last case preceding owner and guarantors. A particular place at the Caesarium, the temple of the imperial cult, was assigned for exhibiting such documents.[51] A good example is *I.Leukopetra* 93[52] (239 AD):

> Ἔτους ΑΟϹ τοῦ | καὶ ΖΠΤ, μηνὸς | Δείου ΗΙ· Ἀυρήλιος |[4] Οὐαλέριος ὁ πρὶν | Ποσιδωνίου, Δρο|γεάτης οἰκῶν | ἐν Βάρῃ Νικίο, χωρίῳ[8] τῷ γεγενομένῳ | Κλαυδίου Μαρκέλλιω, χαρίζομαι παι|δάριον Μητρὶ Θεῶν |[12] Αὐτόχθονι ὀνόμα|τι Μαξιμιανόν, ὡς | ἐτῶν Ν?, γένι Μακε|δονικόν, ὃν ἠγόρα|[16]σα ἐν Πελεγονικῇ | παρὰ Αὐρελίας Ἰου|λλίας ἐπὶ βεβεωτῇ | Αὐρηλίῳ Οὐαλερί|[20]ῳ τῷ πρὶν Φιλίππου·| ἔστω δὲ ἔπειτα καθὼς | ἡ ὠνὴ περιέχι, ἥντι|να ὠνὴν τῇ αὐτῇ |[24] ἡμέρᾳ ἔθκα εἰς τὰς | ἀνκάλας τῆς θεοῦ,| κατὰ τὴν ἀπόφασιν τὴν | Τερτουλλιανοῦ Ἀκύλα·|[28] ἐπιμελομένου Ἰουλι|ανοῦ Ἐνδήμου, εἰερω|μένου Εἰουλιανοῦ Δη|μητρίου.

There has been some discussion about the reason for Tertullianus' edict. Ricl supposes that the governor was protecting the slave against abuses through re-enslavement, financial liabilities, or bailment.[53] However, this does not explain the thirty-day deadline. Reasonably the editors hold that the deadline should enable the raising of objections.[54] More precisely Youni states that the thirty days, starting from the first day of the display, were provided for anyone who wished to claim ownership of or any right to the slave.[55] Juridically this makes good sense. However, this problem existed already before the year 212 and the governor didn't care about these private matters. Rather, the coincidence with the *Constitutio Antoniniana* suggests another explanation: immediately responding to Caracalla's edict the governor took measures to avoid freedmen *dediticiorum numero* becoming Roman citizens. This was, as the cases in the *Pauli Sententiae* demonstrate, of utmost public interest. The best way of surveillance was public announcement, posting the intended manumission up for thirty days like the marriage bans "Eheaufgebot" in canon law to find impediments to marriage. It was not the government that was

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[51] *I.Leukopetra* 103 (253 AD).

[52] *I.Leukopetra* 93 "In the year 271 which is also year 387, on the 18th of the month Dios, I, Aurelios Oualerios formerly son of Poseidonios, originating from Droga, living in the Tower of Nikias, a farm belonging to Claudius Marcellus, donate (χαρίζομαι) a slave to the Mother of the Gods, by the name of Maximinianos, about fifty years of age, born in Macedonia, whom I bought in Pelagonia from Aurelia Julia with Aurelios Oualerios formerly son of Philippos acting as guarantor. From now on, let everything be according to the contents of the document of manumission (ὠνή!!!), which I deposited on the same day in the arms of the goddess. (The manumission took place) in accordance with the edict of Tertullianus Aquila. Curator of the temple Ioulianos Endemos, priest Ioulianos Demetrios." Translation follows Youni 2010, 333–4; for the dates see above n. 12.

[53] Ricl 2001, 142.

[54] Petsas et al. 2000, 162.

[55] Youni 2010, 332.

responsible for checking whether the slave was without *turpitudo* and worthy to become Roman citizen, but rather one counted on social control. Therefore, specifying nation and way of acquisition was ordered so that every concerned or interested person could make inquiries.

What happened when someone, for instance in Leukopetra after 212 AD, had manumitted a slave being under *turpitudo*? In no way the *manumissio* was void. As the *Pauli Sententiae* show, the freedman didn't get 'lawful freedom,' *iusta libertas* (§3), but rather the worst status of freedom as *dediticius* (§6) or more correctly he was *dediticiorum numero* (§7). This makes clear that even after 212 these free underclass inhabitants did exist all over the *orbis Romanus*. Because Justinian extinguished the respective juristic sources, we do not know whether all the civil restrictions enumerated by Gaius, who wrote about 160 AD, were still in force in the third century. In any event, in the fourth century the *dediticiorum numero* gradually merged into the *humiliores*[56] and definitely did not exist anymore in Justinian's time.

By the way, the edict of Tertullianus opens also a view to the character of Roman law in the provinces. We have learned from the Leukopetra inscriptions that Roman citizens used peregrine manumissions before and after the *Constitutio Antoniniana* as well.[57] And the *Fragmentum Dositheanum* demonstrated how Roman authority came to terms with it.[58] When Tertullianus enacted his *edictum* he did not transfer a peregrine institution into Roman provincial law.[59] The Leukopetra manumissions didn't change their character after 212, and there was no need to do so. Given the extension of citizenship also to peregrine freedmen, the governor just countered a possible misuse: no dishonorable slave, being under *turpitudo* (Gai. 1.16), should advance to a co-citizen by this peregrine kind of manumission. *Lex Aelia Sentia* about excluding freedmen *dediticiorum numero* from any kind of Roman citizenship belonged also for Caracalla to the Roman 'ordre public,' to the 'red line' that even the emperor was afraid of transgressing, as Gaius I 26 writes: *nec … constitutione principali aditus illis ad civitatem Romanam datur*.

Finally, I hazard to add my own, very simple, restoration of *P.Giss.* 40 col. I lines 7–9 to the dozens of attempts that already exist:

(7) Δίδωμι τοῖς συνάπα-
(8) [σιν ἐλευθέροις καθ' ὅλην τὴ]ν οἰκουμένην π[ολειτ]είαν Ῥωμαίων μένοντος (58 lit.)
(9) [οὐδενὸς ἄνευ τῶν δικαιωμ]άτων χωρ[ὶς] τῶν [δε]δειτικίων.

(Comments see next page)

[56] No more mentioned in the *constitutiones* of the 4th century, see above n. 46.
[57] See above n. 13.
[58] See above n. 9.
[59] So Youni 2010, 337.

The Latin text could have read as follows:

Cunctis liberis per totam oecumenen civitatem Romanam dono ne quo manente sine privilegiis praeter dediticios.[60]

Some comments:[61]

Δίδωμι — the Latin text could have run (*civitatem*) *dono*, not as the official *do*; see θεῖα δωρεά "divine (= imperatorial) gift" in *BGU* II 655, 6 (215 AD); Buraselis 2007, 115. With *dono* also the Latin prose sounds smoother.

[ἐλευθέροις] — already Kuhlmann 1994, 228 considered ἐλευθέροις as possible restoration; it corresponds with my view of the *dediticii*. *Liberi* designates both *ingenui* and *libertini* (Gai. I 10), so that Caracalla had to exclude from the freedmen expressively the *libertini dediticiorum numero*. It is evident that the *edictum* did not concern persons who were already Roman citizens (see Weber 2009, 157 and 159 n. 20 for the *Latini Iuniani*).

μένοντος — above I have excluded the phrase *salvo* (*iure gentium*) for the Latin text of Caracalla's *edictum*. Here, such a 'reservation clause' is linguistically odd and the use of μένοντος for *salvo* in private papyrus contracts (Kuhlmann 1994, 229–31) is irrelevant for an official Roman *constitutio*. With Wihelm, Magie and Buraselis (quoted in the text above, between n. 19 and 21) I consider the whole clause as a somewhat wordy but linguistically correct 'exclusion' of the freedmen *dediticiorum numero*. The position of [οὐδενὸς] after instead of before the verb μένοντος emphasizes the close connection with χωρ[ὶς]. The Latin equivalent of μένοντος should be *manente*. In juristic texts *manere* mainly means 'remain *in suo statu*,' e.g. *D.* 17.2.3pr. (Paulus 32 *ed.*): *manent in suo statu*, *D.* 8.2.7 (Pomponius 26 *Quint. Muc.*): *quia non ita in suo statu et loco maneret*, *D.* 2.14.47 (Scaevola 1 *dig.*): *ceteras obligationes manere in suas causas*; similar: *civis* or *in civitate manere* (*D.* 49.15.5.1, 28.3.9, 34.5.19(20)).[62]

[ἄνευ] — for *manere* with modal preposition *sine* see *Nov.Iust.* 22.22pr.: *si igitur sine filiis manserit* (*Authenticum*; Greek: εἰ μὲν οὖν ἄπαιδες μείναιεν); generally Columella 12.38.7: *morbi sine febri manent*, Ovid *Met.* 3.62: *serpens sine vulnere mansit.*

δικαιωμ]άτων — s. *P.Oxy.* VIII 1119.15 (Magie, above, at n. 21). Mason 1974, s.v., translates *ius* (Dio Cassius 5.2.6. and 38.12.2).

[δε]δειτικίων — the full terminology *dediticiorum numero* have Gai. I 11, 15, 25, 26, III 74, also Epitome Ulpiani (*UE*) I 5, 11; VII 4; XX 14; XX 2, Sententiae Pauli (*PS*) IV 12.7 and *Inst.Iust.* I 5.3. Without *numero* already *PS* IV 12.6 and also *Inst.Iust.* 3.7.4. Thus, Caracalla's chancellery could easily have omitted *numero*.

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[60] "I donate every free person all over the (Roman) world Roman citizenship so that nobody shall remain without the privileges except dishonorable freedmen."

[61] Only if divergent from Kuhlmann 1994, 228–37.

[62] For more examples see Heumann, Seckel 1971, s.v. *manere*, and generally for juristic use *VIR* III 2, s.v. *maneo* (columns 1764–77).

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