

## XII.—The *Dediticii* of the *Constitutio Antoniniana*

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In the year 212 A.D. the culminating step in the extension of Roman citizenship was taken. The emperor Caracalla issued the *Constitutio Antoniniana*, whereby all the free inhabitants of the empire became citizens. It appears, at least from the literary evidence, that there were no exceptions, and yet the publication some four decades ago of a papyrus which undoubtedly contains the text of the decree in a Greek translation has given rise to controversy which still rages, for the document specifically excludes a group known as the *dediticii* from something. The identity of this group and the nature of the exclusion are the major cruxes of the problem.

The most recent contributions to the problem apparently fail to take into consideration the conclusions concerning the *dediticii* reached by two scholars in the mid-thirties, which were presented almost as *obiter dicta* in the course of wider studies, and hence were not supported by detailed argumentation. Yet the identification of the *dediticii* established by Kunkel and Miller<sup>1</sup> seems worthy of acceptance; it is my endeavor in this paper to present arguments in support of their common conclusion.

The literary tradition which records the grant of citizenship is relatively meager in quantity, and, in addition, the quality of the sources varies in value. Dio Cassius and Ulpian, who were both contemporaries of the emperor, are quite specific in emphasizing the universality of the grant, as are the later Augustine, the author of the *Vita Severi* in the *Historia Augusta*, and Aurelius Victor. Dio tells us (77.9.5) that the emperor's purpose was to increase the revenue by increasing the number of citizens subject to taxation: Οὐδ' ἕνεκα καὶ Ῥωμαίους πάντας τοὺς ἐν τῇ ἀρχῇ, λόγῳ μὲν τιμῶν, ἔργῳ δὲ ὅπως πλείω αὐτῷ καὶ ἐκ τοῦ τοιούτου προσίη διὰ τὸ τοὺς ξένους τὰ πολλὰ αὐτῶν μὴ συντελεῖν ἀπέδειξεν. If a significant portion of the population had been barred from the "enjoyment" of the emperor's gift, Dio would, in all likelihood, not have failed to mention it, since he was a bitter enemy of the ruler. Indeed, he assigns an ulterior and

<sup>1</sup> See below, note 26 for citations and discussion.

concrete motive to the latter, rather than magnanimity and thanksgiving for his safety after the struggle with Geta. Ulpian, on the other hand, one of the leading jurists of the day and a confidant of Caracalla, was probably a member of the imperial council that helped draft the *Constitutio*. He must have known not only that the decree in its published form embodied no exceptions but also that the emperor intended none. His statement (*Digest* 1.5.17), "In orbe Romano qui sunt, ex constitutione imperatoris Antonini cives Romani effecti sunt," that all inhabitants of the Roman world became citizens is of the greatest significance.

Augustine, although writing some two centuries after the event, is even more emphatic than Ulpian; he states (*De civ. dei* 5.17): "fieret . . . ut omnes ad Romanum imperium pertinentes societatem acciperent civitatis et Romani cives essent ac sic esset omnium quod erat ante paucorum." The *Historia Augusta*, probably dating from the latter half of the fourth century,<sup>2</sup> is notoriously unreliable, and yet contains much that is of importance. Its brief notice (*Vita Severi* 1.2), "civitatem omnibus datam," appears to be accurate. Victor (*De Caesaribus* 16.12), although falsely attributing the grant to Marcus Aurelius, states: "data cunctis promiscue civitas Romana."

There is, then, on the basis of this evidence, no possibility of introducing any interpretation of the *Constitutio Antoniniana* that denies the universality of its gift of citizenship. And yet the above-mentioned papyrus has presented a basis for a contrary view.<sup>3</sup>

<sup>2</sup> See N. H. Baynes, *The Historia Augusta, Its Date and Purpose* (Oxford 1926), and W. Hartke, "Geschichte und Politik im spätantiken Rom. Untersuchungen über die Scriptorum Historiae Augustae," *Klio* 45, Beiheft (Leipzig 1940).

<sup>3</sup> The literature dealing with this papyrus, known as PGiss. 40, is enormous. First published by P. M. Meyer in the *Griechische Papyri im Museum des oberhessischen Geschichtsvereins zu Giessen* (Berlin 1910), his final text appeared in his *Juristische Papyri* (1920) as number one. For a relatively complete bibliography on the subject, see David Magie, *Roman Rule in Asia Minor* (Princeton 1950) 1555, and the references cited there, particularly Jones, *JRS* 26 (1936) 223, who presents a survey of the work done up to his time. In addition, Schönbauer in *Ztschr. d. Savigny-Stiftung, Romanist.* Abt. 57 (1937) 309, Keil in *Anzeiger der österreichischen Akademie der Wissenschaften, Phil.-hist. Klasse* 85 (1948) 143, Kunkel in *Römisches Privatrecht auf Grund des Werkes von Paul Jörs* (Berlin 1935) 57, Schulz in *Principles of Roman Law* (Oxford 1936) 123, Taubenschlag in *The Law of Greco-Roman Egypt in the Light of the Papyri* (Warsaw 1950) 2.25 (but in opposition to Taubenschlag see Bell in *JRS* 37 [1947] 17), Berger in *Encyclopedic Dictionary of Roman Law* (Philadelphia 1953 = *Trans. Amer. Philos. Soc.* 43.2) s.v. "Dediticii" and "Constitutio Antoniniana de Civitate."

The text of the papyrus which I propose to follow reads as follows:<sup>4</sup>

- [Αὐτοκράτωρ Καῖσαρ Μᾶ]ρκος Αὐρήλι[ος Σεουήρος] Ἀντωνῖνο[s] Σ[εβα-  
στο]ς λέγει·  
[Ἐπειδὴ οὐκ ἔστ' εἰς δν χρ]ῆ μᾶλλον ἀν[αφέρειν καὶ τὰ]ς αἰτίας κ[α]ὶ το[ύς]  
λ[ογ]ισμοὺς,  
[δικαιοῦτατα ἂν καὶ ἐγὼ θ]εοῖς τ[οῖς] ἀθ[αν]άτοις εὐχαριστήσαιμι, ὅτι τῇ[s]  
τοιαύτης  
[ἐπιβουλῆς γενομένης σῶω]ν ἐμέ συνέ[τῇ]ρησαν· τοιγαροῦν νομίζω [ο]ύτω με-  
5 [γαλοπρεπῶς τε καὶ εὐλαβ]ῶς δύ[να]σθαι τῇ μεγαλει[ό]τητι αὐτῶν τὸ  
ικανὸν ποι-  
[εῖν, εἰ τοσάκις χειλίους ὁσ]άκις ἐὰν ὑ[π]εισέλθ[ω]σιν εἰς τοὺς ἔμοις  
ἀν[θρ]ώπους,  
[τῇ λατρείᾳ τῶν Ῥωμαίων]ν θεῶν συνέ[π]ενέγ[κοι]μι.—Δίδωμι τοίνυν ἅπα-  
[σι τοῖς οὖσι κατὰ τὴν ἐμ]ῇν οἰκουμένην π[ολιτ]είαν Ῥωμαίων [μ]ένοντος  
[οὐδενὸς ἄνευ τῶν δικαιομ]άτων χωρ[ὶς] τῶν [δε]δειτικίων. ὁ[φ]είλει [γ]ὰρ  
τὸ  
10 [πλήθος οὐ μόνον συνυπομέ]νειν πάντα, ἀ[λλ]ὰ ἡδὲ κ[α]ὶ τῇ νίκῃ ἐνπεριει-  
[λήφθαι — —]

The papyrus on which this document appears contains three others, this being the first. All four are decrees of the emperor Caracalla and were undoubtedly copied in chronological order. Since the third is dated July 11, 212, and the fourth 215,<sup>5</sup> our document is certainly to be dated in the first half of the year 212. The νίκη, therefore, for which the emperor desires to thank the gods by increasing the number of their worshippers, must be considered the crushing of the revolt of Geta and the latter's subsequent death.<sup>6</sup> Although Bickermann claimed that the decree was not the *Constitutio*, but a supplementary edict of the year 213,<sup>7</sup> his view has now been universally rejected.<sup>8</sup>

<sup>4</sup> This is the restoration of Josef Keil (above, note 3) with one exception: the gap in line nine has been filled with Magie's suggestion (*Roman Rule* 1556). This gap, the backbone of the controversy concerning the identification of the *dediticii*, has been said by Heichelheim (*JEA* 26 [1940] 14) and Roberts (footnote on p. 225 of Sherwin-White's *The Roman Citizenship* [Oxford 1939]) to have had a maximum of either nineteen (Roberts) or twenty-one (Heichelheim) letters. Accepting twenty-one as the maximum, since it agrees better with the number of letters missing at the beginnings of other lines where it can be determined with some accuracy, we find that almost all of the restorations which have been proposed in the past have been too long.

<sup>5</sup> See line 12 of column II of the papyrus, Heichelheim (above, note 4) 11 and 21

<sup>6</sup> See Heichelheim (above, note 4) 13.

<sup>7</sup> *Das Edikt des Kaisers Caracalla in P. Giss. 40* (Berlin 1926) 8.

<sup>8</sup> Cf. for example Jones (above, note 3) 225.

Although the papyrus is approximately one-third mutilated on its left side, restorations of the first eight lines undoubtedly express the thought, if not the exact words, of the original decree. But the gap in the ninth line has caused students of the problem no end of difficulty, for following it are the words χωρ[is] τῶν [δε]δειτκίων. Any identification of these people must, of course, depend upon the meaning of the restoration. A few of the attempts to identify this group will be mentioned here.<sup>9</sup>

Paul M. Meyer, in his studies concerning Egypt previous to his publishing of the papyrus, had shown that the bulk of the population, excluding the citizens of Alexandria, was divided into two classes, the ἐπικεκριμένοι and the λαογραφούμενοι. The former were subject to service in the Roman army and exempt, in varying degrees, from the poll tax, the *tributum capitis*, while the latter were subject to the tax and prohibited from serving in the army. The ἐπικεκριμένοι were the Hellenized part of the population, the λαογραφούμενοι the native Egyptians; these he identified with the *dediticii*.<sup>10</sup>

In his careful study of the problem, Bickermann differentiated three kinds of *dediticii*: barbarians who had surrendered to Rome, the freedmen who came under the jurisdiction of the *lex Aelia Sentia*, and *peregrini* who had settled within the empire. The exception of the papyrus could not have been the last group, since it would have included all provincials. Similarly, the ex-slaves did not come into question, since they were never called *dediticii*, but always were designated as *libertini qui dediticiorum numero sunt*. That left only the barbarians, those who belonged to no civic organization, such as a *municipium*, *colonia*, or *praefectura*.

Stroux<sup>11</sup> argued vigorously that, since the purpose of the decree was to increase the μεγαλειότης<sup>12</sup> of the Roman deities by increasing the number of their worshippers, Caracalla could not have included within his gift freedmen who were legally disqualified by the *lex Aelia Sentia*. The inclusion of such a group of people would not have redounded to the glory of the gods. Consequently, all except the *dediticii* received citizenship, and these included not only the ex-slaves but all *dediticii*, since the distinguishing characteristic of this status was ineligibility for citizenship. There were no differ-

<sup>9</sup> Unless cited elsewhere, the references for the various discussions will be found in notes 3 and 4.

<sup>10</sup> For a contrary view, see Bell, cited in note 3.

<sup>11</sup> *Philologus* 88 (1933) 272.

<sup>12</sup> See line five of the papyrus.

ences of status in the three groups of *dediticii* recognized by Bickermann; all had the same rights and the same disabilities.

According to Jones' interpretation, the exception was included in the decree to insure that those people who were directly subject to Rome should remain so and not come under the jurisdiction of individual communities, in order "to safeguard the interests of the State against any possible encroachment by the cities. Being under the immediate administration of the State the *dediticii* owed obligations directly to the State; thus in Egypt they were liable to liturgic offices in the State service. In point of fact *dediticii* were normally also tenants of the State, since directly administered areas were for the most part public land. It was therefore contrary to public policy to impair their capacity to fulfil their obligations to the State by making them liable to civic obligations."<sup>13</sup> "It was," he says, "logically necessary to state that *dediticii* were not to be enrolled in any citizenship body, even though in fact they had no citizenship body in which to be enrolled."<sup>14</sup>

Sherwin-White, although he accepted Bickermann's theory that the *dediticii* who were excluded were barbarians who had settled within the empire, recognized that it was just a theory, since it was chiefly based on evidence which concerns the fourth century, not the beginning of the third.

Heichelheim, in an article in which he presented a text not only of the document under discussion but also of the three others contained on the papyrus, stated that the *dediticii* included "several small groups of inhabitants of the Roman Empire, e.g., freedmen of minor status, prisoners of war as well as barbarian settlers and soldiers of minor status."<sup>15</sup> Nevertheless, since Ulpian and Dio knew of no exceptions to the grant of citizenship, "we may be fairly certain that the exclusion of certain groups from the franchise, in spite of being an indisputable fact, could not be found at the first glance in an explicit reference of the main sentence of the law, but was stated only indirectly."<sup>16</sup>

Berger, in his definition of *dediticii*, includes mention of Caracalla's decree; *dediticii* are: "the citizens of a foreign state or community who, vanquished in a war with Rome, surrendered to the

<sup>13</sup> See above (note 3) 235.

<sup>14</sup> *Ibid.* 233.

<sup>15</sup> See above (note 4) 17.

<sup>16</sup> *Ibid.* 18.

power and protection of Rome (*deditio*). They constituted a specific group of the Roman population; they were free but lacked all public rights and citizenship (*nullius civitatis*). Their legal status as *peregrini dediticii* could be improved by unilateral concessions granted by Rome to individuals or groups. But even the general grant of Roman citizenship to peregrines by the constitution of the emperor Caracalla excluded the *dediticii*. The status of *dediticii*, termed by Justinian *dediticia libertas*, was abolished by him (C. [= *Corp. Iust.*] 7.5.1).<sup>17</sup> He further states that the *constitutio* was: "A constitution of the emperor Caracalla (A.D. 212) by which all inhabitants of the empire, organized in *civitates* with local autonomy, were granted the Roman citizenship, except the so-called PEREGRINI DEDITICII."<sup>18</sup>

We are, thus, presented with the conclusion, based on the almost unanimous support of all past writers on the subject, that, although the *dediticii* cannot be identified with even the smallest degree of certainty, people of that status were excluded from the grant of citizenship. Be they barbarians living within the borders of the empire, be they inhabitants thereof who belonged to no *civitas*, be they the Egyptians, their numbers must have been considerable. Further, since there were several categories of *dediticii* in existence, as Bickermann has shown, would not some specific identification as to the category meant have been required in the decree? For, since it is now agreed that the document is the decree itself and not a supplementary one,<sup>19</sup> the emperor must be accused of extreme carelessness in the formulation of his gift, for how could it be accurately determined which *dediticii* were meant? And yet this is extremely unlikely, for it was undoubtedly drawn up with the assistance of some of the leading jurists of the day.

It is unfortunate that, in the attempt to identify this excluded group, the evidence of the literary tradition has been generally ignored. As has been seen, the literary evidence knows of no exception to the grant, and it seems to me that the conflicting testimonies of literature and papyrus can be reconciled. This, however, can be accomplished only if we recognize that the *dediticii* who were excluded must have been very limited in number and easily identi-

<sup>17</sup> See above (note 3) s.v. "Dediticii."

<sup>18</sup> *Ibid.* s.v. "Constitutio Antoniniana de Civitate."

<sup>19</sup> As, e.g., by Bickermann and Sherwin-White.

fied. Otherwise, the universal grant recorded in our sources must be ignored.

Who, then, were these *dediticii*? It must be realized that, originally, the status of *dediticius* was a temporary one, under the disabilities of which people remained only until Rome granted them rights and laws,<sup>20</sup> and that there was no bar to their admission to some form of citizenship.<sup>21</sup> This is the crucial point. Further, barbarians living within the empire, although often serving in the army in groups of their own as *numeri*, also served in the regular army and gained citizenship as a reward of service.<sup>22</sup> Not all of them did become citizens, but there was no legal prohibition to the bettering of their status.

But there was one group of *dediticii* which was unable to gain citizenship by any means, and this group consisted of the freedmen who came under the jurisdiction of the *lex Aelia Sentia*. Our information concerning them comes from Gaius, whose *Institutiones* were written some fifty years before the appearance of the *Constitutio Antoniniana*. It will be advantageous to quote the pertinent passages.

1. 13 Lege itaque Aelia Sentia cavetur, ut, qui servi a dominis poenae nomine vincti sunt, quibusve stigmata inscripta sunt, deve quibus ob

<sup>20</sup> Cf. Schulten, *RE* 4.2359, s.v. "Dediticii."

<sup>21</sup> It has been said that the different categories of *dediticii* were alike in their inability to become Roman citizens: Jones (above, note 3) 230 and H. T. Rowell, "The Honesta Missio from the Numeri of the Roman Imperial Army," *YCS* 6 (1939) 104. But Rowell has failed to notice that Gaius 1.26, on which he bases his conclusion, deals not with *dediticii* but with those *qui dediticiorum numero sunt*. This is a fundamental distinction: see note 24. Further, the existence of the status after 212, chiefly in the army, has been submitted as evidence that all *dediticii* were excluded from Caracalla's grant. Rowell (97) has shown that a *numerus* of Britons called *dediticii* which still existed in 232 had been stationed in Germany by Severus between 209 and 211, and from this concludes that "the *gentiles* within the army as well as without remained legally the same after the *Constitutio* — that is, simple *peregrini*" (104). But this is by no means certain, for there is no evidence that the Britons captured by Severus were the ones on the German *limes* in 232 (see Momigliano, *JRS* 31 [1941] 163). Also not to be ignored when the eligibility of *dediticii* for citizenship is considered is the testimony of Granius Licinianus, the annalist of perhaps the second century A.D., who, drawing his material from Livy, states (p. 21.9 Flemisch) "*dediticiis omnibus civitas data*"; the *dediticii* in this case were the Italians during the Social War (cf. Sherwin-White [above, note 4] 131). Since they had originally been defeated in war by Rome, they were *dediticii* in the strict sense of the term, who certainly were able to become citizens. See also Sherwin-White, *ibid.* 57, 224.

<sup>22</sup> Sherwin-White (above, note 4) 215; for their position as *δούτιμοι* see Aelius Aristides, *Eis 'Pῶμην* 75, 78 (ed. J. H. Oliver, *The Ruling Power* [Philadelphia 1953] = *Trans. Amer. Philos. Soc.* 43.4).

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. 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 constitui intellegemus.

1. 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.

Furthermore, their freedom was subject to still other limitations. "They were compelled to live at least a hundred miles from Rome under pain of return to slavery for life (Gaius 1.27), they could neither take under the will of someone else nor (according to the best opinion) make one of their own (1.25), and at death their property passed according to various rules of intestate succession (3.74-76)."<sup>23</sup>

It must be noted that there is a distinction between *peregrini dediticii* and *qui dediticiorum numero sunt*.<sup>24</sup> The former are those who, at one time, had been enemies of Rome and had surrendered at discretion. In this status, they had no rights save those granted by the victor. The latter, the ex-slaves, who are never called *peregrini dediticii* but always *dediticiorum numero*, of course strictly had nothing to do with *dediticii*. In order, however, to prevent their acquisition of citizenship, either Roman or Latin, they were relegated to this status which was legally without certain rights.

The passages of Gaius which are quoted above deal exclusively with the freedmen who are under the jurisdiction of the *lex Aelia Sentia* with the exception of the definition of *peregrini dediticii*.<sup>25</sup> But their relegation to the status of the latter would not, *per se*, have prevented their attaining the status of citizens. Therefore, the extra proviso was added which especially forbade it: "nec ulla lege aut senatus consulto aut constitutione principali aditus illis ad civitatem Romanam datur."

<sup>23</sup> H. Last, *CAH* 10.433; cf. F. de Zulueta, *The Institutes of Gaius* 2 (Oxford 1953) 133.

<sup>24</sup> This distinction has been pointed out by Bickermann (above, note 7) 21.

<sup>25</sup> This paragraph, 1.14, is parenthetical in sense and is not part of the discussion concerning the freedmen; cf. Schulz (above, note 3).



The *Constitutio Antoniniana* was a *constitutio principalis*; it could not have granted citizenship to the ex-slaves under any circumstance, unless Caracalla had intended to ignore the prohibition of the two-hundred year old law. Certainly, as Stroux pointed out, to increase the number of worshippers of the Roman gods by including criminals would not have done the gods honor. To be certain, however, that his universal grant of citizenship would not, in any case, be construed to include these criminals, Caracalla included his brief exception  $\chi\omega\rho[is] \tau\hat{\omega}\nu [\delta\epsilon]\delta\epsilon\iota\tau\iota\kappa\lambda\omega\nu$ . Nothing more was needed, since this group was the only legally recognized one which was denied citizenship. No confusion could possibly have resulted in spite of the brevity of the grant of the decree.

This interpretation, that the *dediticii* of the papyrus are the former slaves who are under the jurisdiction of the *lex Aelia Sentia*, squares with the literary tradition, since the freedmen were undoubtedly a relatively small group and the problem of citizenship for them had not, and could not have, come into question. Hence, Ulpian and the others were right in relating that citizenship had been given to all, since the only ones who did not receive it were, in the eyes of the law, *personae non graetae*.<sup>26</sup>

<sup>26</sup> This is the conclusion reached by Kunkel (above, note 3), who says, "Allerdings dürfte die Kategorie der *dediticii* zur Zeit der *const. Ant.* praktisch nur noch diejenigen Freigelassenen umfassen haben, die nach der *lex Aelia Sentia dediticiorum numero erant*; *dediticii* im eigentlichen Sinne, d.h. mit Waffengewalt unterworfenen Feinde des römischen Staats, denen jede bessere Rechtsstellung verweigert wurde, gab es im dritten Jahrhundert schwerlich noch." See also Schulz (above, note 3), Sherwin-White (above, note 4) 224, and S. N. Miller, *CAH* 12.45. Jones and Rowell (see note 21) make use of the fact that there were groups of *dediticii* in the Roman army in the fifth, fourth, and early third centuries to support their theories that the *dediticii* of the *Constitutio Antoniniana* were a group other than the freedmen. But Miller writes (46): "We know of no class of this status at the time of the issue of the edict except the freedmen of the Lex Aelia Sentia, but the retention of the status or category meant that new classes could be assigned to it subsequently; and, in fact, we encounter at a later date a non-citizen class of *dediticii* other than the freedmen referred to, as well as a non-citizen class which continued to arise as the result of defective manumission (the Junian Latins)." Although it is to be questioned whether there was only one class of *dediticii* in the year 212, the point to be emphasized is that the instances of this category of which we have testimony after that date occurred subsequent to the decree, and that those free inhabitants of the empire in 212 who had the status of *dediticii* lost it and gained citizenship, leaving the freedmen as the only group which still lacked the franchise. With regard to Kunkel's statement that the *dediticii* who were former enemies of Rome were prevented by law from becoming citizens or otherwise improving their status, see page 194.