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P. Ital. 10-11 and the date of emperor Zeno's novel "De donationibus" cited in Nov. Iust. 52.2

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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.
OUR ENTIRE KNOWLEDGE ABOUT the ‘chancellory’ of Odovacar rests on one text preserved in P. Ital. 10-11. In these papyri are recorded the gesta municipalia of Syracuse dated post 18 March 489. These gesta are presently extant in two fragments in which the royal document with the

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2 P. Ital. 10-11, col. 2.5-6 and p. 286.
record of the bequest for count Pierius was insinuated. Odovacar's doc-
ument was first read before the curia of Ravenna and then inscribed into
the gesta of Ravenna, dated 18 March 489 and subsequently as a result of
completing traditio corporalis for the land property given to Pierius by Odo-
vacar in Sicily, together with the Ravenna gesta, presented to Pierius' rep-
resentatives, read before the curia of Syracuse, and insinuated into the
Syracuse gesta municipalia.3

It is certain that Odovacar's document was written before 18 March
4894 though it is not known exactly when the Syracuse gesta municipalia,
into which this document was inscribed, were written. Tjäder suggests that
these may have been written in 489, of course after 18 March. Ferrari
however, is of a different opinion, arguing that the necessity of allegating
Odovacar's bequest (pagina regiae largitatis) into the Ravenna gesta munici-
palia proves that during this period royal bequests were subject, as far as alle-
gatio is concerned, to the same rules of law relating to gifts made by private
individuals. Ferrari argues further that on this basis it is possible on the one
hand to date the lost lex of Zenon cited in the Justinian novel (§2.2 from
337) which foresaw that imperial bequests be not subject to entry into the
gesta municipalia.5 On the other hand, which is less logical, the entry of
Odovacar's bequest cannot be later than the year 491. Ferrari also argues,
'Se non si volesse accertare questa ipotesi, bisognerebbe ammettere che la
predetta legge di Zenone non fosse applicata in Italia, oppure che la dona-


4 M. SANNAZARO is mistaken, "Un'epigrafe di Garlate: Il comes domesticorum Pierius e la bataglia dell'Adda del 490", MEFRA 105 (1993), p. 202 dates Odovacar's bequest to March 18 489. The date of March 18 489 is the date insinuing for Odovacar's bequest in the gesta municipalia of Ravenna. The bequest itself would have had to have therefore at least several days space before its insinuation into the Ravenna gesta.

5 Nov. Iust. §2.2.19-22: Hae autem inaequalitas (sc. between imperial bequests for private individuals and those of private individuals for emperors) facta est ex novitate quam Zenonis piae memoriae introducta constitutio, ut imperiales donationes non egeant monumentis.
zione di Odoacre non fosse considerata βασιλική. In truth, Odovacar’s bequest in its dispositio contains a clause concerned with the necessity of allegatio for the document in the municipal records and, as it seems from the presently extant gesta of Syracuse, Odovacar’s document was in fact presented to the municipal authorities in Ravenna and inscribed into the gesta. It does not follow from this, however, that Ferrari’s arguments here are convincing.

Firstly, Tjäder justifiably points out that the Syracuse gesta ought rather be dated for the year 489. In support of this speaks simply the circumstance that count Pierus who was to be endowed, or indeed his representatives (actores Pieri), most probably did not wish to wait long until the royal bequest became legally binding and for traditio corporalis relating to land property in Sicily. Moreover, the terminus ante quem of the gesta coming to be must be marked by Pierus’ death in battle at Adda, which took place on the 29/30th of August 490. There is no basis to suggest that the actores Pieri made representation on his behalf after the death of their patron.

Secondly, it needs to be emphasised that both Ferrari and Tjäder overlooked that it is possible to establish exactly the terminus ante quem for the promulgation of Zeno’s novel. It is thus almost certain that it is cited in

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7 Coll. 2.3-5: Quam donationem Marciano v(iro) c(larissimo), notario nostro, scribendum dictavitumus, cuique Andromachum v(irum) i(nlustrem) et magnificum, magistrum officiorum, consiliario nostro, pro nobis suscribere iussimus, tribuentes adlegandi fiduciam, ita, ut a tuis actoribus fiscalia tributa solvantur. TJÄDER, P. Ital., p. 289 translates the last clause as: “unter der Bedingung, daß Deine Vertreter die Steuern an den Fiscus zahlen”. The present author offers a slightly different interpretation: “so that from your administrators can be collected the taxes to the treasury”. Odovacar’s bequest gained legal force in fulfilling the conditions of allegatio in municipal records, not after paying taxes, it seems.

8 Excerpta Valesiana, rec. J. MOREAU & V. VELKOV, Lipsiae 1968: under the consulate of Faustus and Longinus (= 490) ... occisus est Pierius comes domesticorum III idus Augustas... (= 30 August 490). The funeral inscription of count Pierius gives another date of his burial: [dep(ositus) stub] d(itis) III idus Acus - 29 of August, SANNAZARO, “Un’epigrafe” (cit. n. 4), p. 192. The issue of the precise date of Pierius’ death must remain unresolved. It cannot therefore be excluded here either that no mistake was made in the transmission of the Excerpta Valesiana text, or indeed by the stonemason making the inscription, see SANNAZARO, “Un’epigrafe”, pp. 198-199.
another law of Zeno also concerning bequests, dated D. k. Mart. Constanti-
nopoli Ello vc. cons. = 1st of March 478 where it can be read:

CI 8.53.31: In donationibus, quae actis insinuantur, non esse necessarium
iudicamus vicinos vel alio\(^9\) testes adhibere: nam superfluum est privatum
testimonium, cum publica monumenta sufficiant. Verum et illas donationes,
quas gestis non est necessarium adlegari, si forte per tabellionem vel alium
scribantur, et sine testium subnotatione valere praecipimus ... .

In the case of bequests that are insinued into records [municipal], it
is ordered that there is no need [by the donor] to present any
neighbours or other witnesses for private testimony is superfluous if
proof will exist in the form of public documents. The same applies to
those bequests that do not need to be allegated in public records if
they were scribed by a tabellio of another authorised person. These
gifts too it is ordered, are legally binding without the signature of
witnesses ...

It is not the intention of this short note to provide a exhaustive comment
to the above mentioned law of Zeno. It is, however, rather obvious that as
far as bequests that “do not need to be allegated in public records” are
concerned, only imperial bequests for private individuals are affected,
about which Nov. Iust. 52.2 refers. This is so for earlier legislation of the
emperors spoke clearly that all bequests without exception, to be
recognised as legally binding, had to be inscribed into municipal records.\(^10\)
There is not the slightest indication that whenssoever or whosoever of the
emperors beyond of course Zeno, changed this legal position. It also clear
that Zeno’s constitution, which has not been preserved, cited in Nov. Iust.
52.2, has to be earlier than this emperor’s law of 1 March 478,\(^11\) where the
earlier known quote of this constitution is found. This also signifies that
for the dating of the Syracuse gesta, that is, P. Ital. 10-11, Zeno’s novel which
is referred to is not of use, since P. Ital. 10-11 are later than 18th of March

\(^9\) One of MS here have alias but other MSS: illas. A reading alias is admitted by P.
Krüger. This author therefore prefers the preposition illas, for it is in better harmony with
the construction of the sentence as a whole.

\(^10\) CI 8.53.25 (316); 8.53.27.2 (316); 8.53.29 (428); 8.53.30 (459).

\(^11\) CLASSEN, Kaiserreskript (cit. n. 3), p. 33 n. 84 is mistaken suggesting that Nov. Iust.
52.2 can relate to CI 8.53.31. Nov. Iust. 52.2 refers to Zeno’s law which is cited by CI 8.53.31.
489 and the lost novel of Zeno is earlier than 1 March 478. The dating of the *gesta* from Syracuse by Tjäder for the year 489 (after 18 March) therefore, ought to be considered as practically certain. The issue whether Zeno's legislation was at all applied in the West remains alas, an unresolved question.

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