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LEGAL ENLIGHTENMENT IN THE SEVERAN ERA

The accumulated evidence of Greek papyri published in the past hundred years has transformed our perception of the Severan era, most notably in the areas of social history and law.[1] Up to and through most of the first half of the twentieth century — Rostovtzeff's *Social and Economic History of the Roman Empire* being a prime example — the rule of the Severi was regarded as that of military brutes whose policies drove the empire into a deplorable decline from the preceding era of the "Good Emperors" idealized by Gibbon and since;[2] a decline, what is more, that paved the way to the anarchy of the mid-third cen-

[1] This paper further illustrates a topic that I broached in *Historia* 45 (1996) 104-13. Characteristic instances of Septimius Severus's choice of a humane or equable solution in preference to a narrow or literal application of the law are noted also by T. HONORÉ, *Emperors and Lawyers*, Oxford 1981, 17-21 and 62.

[2] The concept is not original with Gibbon, who found it in a work written during the Severan era, Cassius Dio's monumental *Roman History*, which ran in eighty books from Aeneas's legendary landing in Italy almost to the end of Dio's own life, in A.D. 235. Scion of a distinguished family in Bithynia, Dio had a public career that culminated in the offices of senator and consul. Arrived in his chronological history at the death of Marcus Aurelius and the sole rule of Commodus (A.D. 180), which he regarded as the watershed of the Principate, he wrote, "Our history now falls from a reign of gold into one of iron and rust" (*Hist. Rom.* 72.36.4).

A revisionist move away from the Gibbon outlook made itself felt from the middle of the twentieth century: As H.J. MULLER, for example, observed in 1952, "[Today's historians] have a deeper insight than the great Gibbon had, and perceive the dry rot that had set in during the Golden Age he celebrated" (*The Uses of the Past*, New York 1954, 32). Or, in the words of Harold MATTINGLY "... the quiet reign of Antoninus, if closely examined, betrays features of interest, that tend to escape notice, because their manifestations were not violent. ... They are worth looking for; even if inconspicuous in themselves, they may be related to movements that attained obvious significance in later times", *Harvard Theological Review* 41 (1948) 151.

tury, from which the empire was rescued and restored by Diocletian and his establishment of the Dominate, successor to the Principate. More recently a fundamental shift of emphasis is to be found in writings on the Severan era. In the light of the new evidence the Severan era emerges as — politically, fiscally, legislatively[3] — more evolutionary than revolutionary, a harbinger foreshadowing the Dominate.

In 1997 Jean-Pierre Coriat published a monumental volume in which he subjected the sources on the Severan era — jurists and other authors, papyri, inscriptions — to minute and multiform analysis.[4] Exhaustively indexed, that book is now our gateway to almost any study of law and its administration, to a degree even to society more generally, in the Severan era. An example follows.

On pp. 38-67 Coriat lists and discusses "les lois géminées", that is laws cited in more than one source. In one group of 33 instances, tabulated on pp. 39-40, all but two of the doublets consist of two citations in the legal sources. The two exceptions are (A) *Cod. Just.* 14.2 = Augustine, *De coniugiis adulterinis* 3.7, and (B) *Cod. Just.* 10.61.1 = *P. Giss.* 40 II.1-5 (= *M. Chr.* 378) + *P. Oxy.* XXXVI 2755. (B) is the subject of the following pages.

I

Cod. Just. 10.61.1 (A. D. 212): *Pars edicti. Quibus posthac ordine suo vel advocationibus ad tempus interdicetur, post impletum temporis spatium non prorogabitur infamia.*	Part of an edict. Henceforth, for those who are barred for a time from their rank or from pleadings, after the period of time has elapsed the deprivation of privileges will not be prolonged.

It is worth pausing briefly to savor the full impact of *posthac*. In *Digest* 49.16.4.4, quoting the (probably Severan-era) jurist Arrius Menander, the distinction is

[3] In the apt expression of M. COURBIER, *Dévaluations et fiscalité 161-235*, the legislation of the Severan era presents "les signes d'une remise en ordre plutôt que d'un alourdissement de la pression fiscale globale" (quoted by CORIAT [cf. note 4] 486). Monographs on Septimius Severus have dealt either exclusively or primarily with military and political affairs. A. BIRLEY's biography (*Septimius Severus, the African Emperor*, London 1972, rev. ed. 1988) is typical, touching only glancingly on such questions as concern us here. In his "Preface" BIRLEY notes that "it was an era of upheaval and change" (p. XI), but social and economic change are all but absent from the book. In the "Conclusion" (p. 290) he quotes with approval (1) a remark of G. CHARLES-PICKARD, "It is not excessive to say that the Roman Empire [was] never more democratic than under the 'Dominate' of the Lepcitane Emperors" (BIRLEY's translation), and (2) M. PALLOTTINO's characterization of the era as manifesting "un indebolimento del Senato e delle classi urbane e tentativo di instaurare anche sul piano giuridico una più vasta giustizia sociale." But these themes are not developed in BIRLEY's book.

[4] *Le Prince législateur: la technique législative des Sévères et les méthodes de création du droit impérial à la fin du principat* (= *Bibl. écoles franç. d'Athènes et de Rome*, fasc. 294), Roma 1997, XVI + 771.

drawn between *infamia perpetua* and that which allowed *in ordinem redire*. The above-quoted edict makes clear that temporary *infamia* had in the past been illegally prolonged, and it orders and end to that abuse.

Dig. 50.2.3.1 (A. D. 212-222) *Imperator enim Antoninus edicto proposito statuit ut cuicumque aut quacumque causa ad tempus ordine vel advocationibus vel quo aliquo officio fuisset interdictum, completo tempore nihilo minus fungi honore vel officio possit.*

For the emperor Antoninus (Caracalla) laid down expressly by edict that anyone who, for whatever reason, had been barred for a time from his rank or pleadings or any other service, can, when the time has elapsed, function without stint in an office or service.

This is Ulpian's paraphrase of the above-quoted edict of Caracalla. Especially noteworthy are the places where the jurist varies from or goes beyond the language of the edict: (1) Where the edict has *ordine vel advocationibus* Ulpian adds *vel quo aliquo officio*. (2) Where the portion of the edict quoted in the *Codex* ends with simply prohibiting the prolongation of a temporary *infamia*, Ulpian gives us, with no mention of *infamia*, *nihilo minus fungi honore vel officio possit*. (3) Then Ulpian adds, *Et hoc recte, neque enim exaggeranda fuit sententia, quae modum interdictioni fecerat*, "And rightly so, for a sentence that had placed a limit on a ban was not to be added onto."

Are we able to pinpoint the source of these supplements to or deviations from the language of the edict? Not, I think, with any assurance of certainty. It is, on the one hand, at least conceivable that some or all of these variations were drawn from the part of the edict not included in the *Codex*. But it seems to me on the whole much likelier that they are expository or interpretative remarks, originating with the jurist. This appears most strongly in element (2) above. Here the jurist omits mention of *infamia* and expounds instead the effects of its cessation, viz. the complete restoration of honors and privileges. It is also noteworthy that in a similar context Arrius Menander (probably a contemporary of Ulpian's) describes the end of a temporary *infamia* in similar language, *in ordinem redire potest et honores petere* (*Dig.* 49.16.4.4). At all events, Justinian's compilers obviously deemed Ulpian's statement sufficiently authoritative for inclusion in the *Digest*.

The Greek Version

Portions of a Greek version of the edict have turned up in two papyri, *P. Giss.* 40 II.1-5, published in 1910 (reprinted in 1912 as *M. Chr.* 378), and *P. Oxy.* XXXVI 2755, published in 1970. Why the Greek version bears the date of A.D. 215, three years later than that given in the *Codex*, remains a matter of conjecture. This is not likely to have been a simple error. Was the edict issued in

212 and promulgated again (for the eastern provinces?) in 215? We do have examples of imperial legislation being reissued after a relatively short interval, presumably when the original promulgation did not produce the desired result.[5]

Following is a conflation of the essential part of the two Greek texts.

ἀποφάσεως εἰς τὸ διακατέχειν ἢ λα[μ-βά]νειν τὰς πολ[ιτι]κὰς [τ]ιμὰς καὶ τού-τοις τοῖς μετὰ ταῦτα τῆς τα[ξε]ως ἑαυ-τῶν ⟨ἢ⟩ συ[νη]γορίας πρὸς χρόνον κωλυ-θεῖσι μετὰ τ[ὸ] π[λ]ηρωθῆναι τὸ τοῦ χρ[ό]νου διάστημα οὐκ ὀνειδισθήσεται ἡ τῆς ἀτιμ[ί]ας παρασημεί[ω]σις.	... statement for the holding or taking up of public offices, and for those who are hereafter barred for a time from their rank or from advocacy, after the period of time has elapsed the notation of the deprivation of privilege will not exist to shame them.

Notabilia:

(1) The Latin text represented by the first ten Greek words does not appear in the excerpt of the edict in *Cod. Just.* 10.61.1.

(2) The next twenty words are a verbatim translation of the Latin, even to such details as μετὰ ταῦτα = *posthac* and τὸ τοῦ χρόνου διάστημα = *temporis spatium.*

(3) In startling contrast, the last three words of the Latin are presented in five words of circumlocution *ad sensum.*

II

Although the above edict was issued by Caracalla, the same principle or imperial attitude is traceable to Septimius Severus in papyri of another context, that of *cessio bonorum.* That was the practice whereby a man fearing financial ruin if he discharged a liturgy for which he had been nominated, surrendered his estate to the nominator, who was thereupon obligated to accept the property and the service. An example first appeared in *CPR* I 20, published in 1895. Three years later came *BGU* II 473, dated in March/April of A. D. 200. In that document the emperors, replying to such an estate-ceder, state, it seems[6] "we have taken cognizance that persons who cede their property have been unjustly deprived of their privileges."

[5] *SB* XIV 11863, perhaps also *P. Oxy.* XII 1405 and XLIII 3105 (see my comment in *Historia* 45 [1996] 109).

[6] See my reconstruction of the fragmentary document in *RIDA* 25 (1978) 273-78 (= *Collected Papers* [*American Studies in Papyrology* 33, 1995] 236-41).

Next came the duplicates *P. Oxy.* XII 1405 and XLIII3105, published in 1916 and 1975, respectively, and also dating from A.D. 200, the year Septimius Severus and Caracalla spent in Egypt. Here the emperors write to another estate-ceder, ἡ δὲ ἐπιτειμία σου ἐκ τούτου οὐδὲν βλαβήσεται, ουδὲ εἰς τὸ σῶμα ὑβρεισθήσει. What, exactly, are the emperors saying here? The editors of the Oxyrhynchus volumes translated ἡ ἐπιτιμία σου as "your citizenship." That, I think, misses the target. A man lost his ἐπιτιμία when he suffered ἀτιμία (*infamia*). It follows that ἐπιτιμία (equated in *CGL* with *honorificentia*) denoted one's regular status of honor or privilege, comparable to *ordo* in *Cod. Just.* 10.61.1. That status, the emperors here rule, is not impaired or diminished by *cessio bonorum*. Accordingly, I offer the following revised translation: "Your status will in no wise be impaired by this (procedure), nor will you suffer bodily harm."[7]

III

The Severan pronouncements reviewed above reflect, it seems clear, a common underlying concept, viz. that a penalty or impairment of limited time or scope may not without cause be extended beyond the limit imposed. That such an obvious legalism required repeated restatement reminds us that in these as in other aspects of their work, local officials often applied, or did not apply, the law as they saw fit or wished. The above-noted orders to terminate such abuses constitute an element of Severan legislative euergetism.

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[7] Here again I depart from the Oxyrhynchus editors, whose translation reads, "nor will you be subjected to corporal punishment." The expression "corporal punishment" connotes a legally inflicted penalty. What the emperors refer to here is the illegal physical violence into which disputes over liturgies, including the resort to *cessio bonorum*, frequently erupted: cf. my *Compulsory Public Services* (= *Papyrologica Florentina* XXVIII[2] 100 (= XI[1] 105).