MAKING CITIZENS: THE OPERATION OF THE *LEX IRNITANA*

By
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In southern Spain in 1981 six bronze tablets and some lesser fragments were discovered. They contained substantial portions of a copy of the Flavian municipal law, relating to a town called Irni (or possibly Irnium), which supplemented portions already known from other Spanish centres. Until then our knowledge was scanty of the nature and effects of the 'Latin right' or *ius Latii*, conferred in the late Republic and early empire on some communities in the western Roman provinces.

From a few scraps of literary evidence, we knew that individuals who had held local magistracies received individual grants of Roman citizenship; a few inscriptions commemorated individuals who had received citizenship by the benefit of Vespasian, Titus or Domitian, through having served as *duoviri*.¹ Vespasian made a general grant of *ius Latii* to the whole of Baetica; what can be reconstructed of the whole law is now generally known as the *lex Irnitana*.² The communities as a whole were reorganised along the lines of Roman *municipia*.

Surviving portions of the Flavian law from the *municipia* of Salpensa (FIRA⁷.30a) and Malaga (FIRA⁷.30b) had already revealed that the inhabitants as a whole had Roman-style legal institutions, particularly *patria potestas*, *tutela*, forms of manumission and patronal rights. In addition, not only the magistrates, but specified members of their families, received Roman citizenship (Salpensa 21). There were two tantalising references to citizens who were Latins (Salpensa 28, Malaga 53).

With the exception of a few lone voices, such as that of Millar and more tentatively Humbert³, it has been widely assumed that not merely ex-magistrates and their families, but the inhabitants as a whole underwent a change of status. It is asserted, e.g. recently by Le Roux⁴, that a new category

¹ CIL II 1945 (Domitian), 2096 (Vespasian and Titus): CIL II² 5. 291 (Domitian), 292 (Vespasian) - this man's wife is also stated to have received Roman citizenship.

² J. Gonzalez, 'The *Lex Irnitana*: a new copy of the Flavian Municipal Law', *Journal of Roman Studies* 76 (1986), 147 ff.

³ F. Millar, *The Emperor in the Roman World* (London 1977), 406, 485-6, 630-5; M. Humbert, 'Le droit latin impérial: cités latines ou citoyenneté latine?' *Ktema* 6 (1981), 207 ff.

⁴ P. Le Roux, *Romains d'Espagne: cités et politiques dans les provinces, IIe siècle av.J.-C. - IIIe siècle ap. J.-C.* (Paris 1995), 85; c.f., on *conubium*, A. Kränzlein, 'Statuswechsel nach der *lex Irnitana*', *Tradition und Fortentwicklung im Recht*, ed. K. Slapnicar (Berlin 1990), 47 ff.

was created of provincial 'Latin', half-way between *peregrinus* and Roman citizen. Their rights are believed to have resembled most closely those allegedly possessed by the Latins of Rome's early alliance with their neighbours in Italy, complete with *commercium* (the right to make contracts enforceable in Roman law) and *conubium* (the right to intermarry with Romans), the only real difference being that the *ius migrandi*, the right of obtaining Roman citizenship by physically moving to Rome, was replaced by that of obtaining citizenship *per honorem*, by holding local office.

For all of this, Millar pointed out ⁵, there is no real evidence. The only securely attested right is that of obtaining citizenship *per honorem*. The new fragments have in fact substantially changed the old picture, but so far, in the flood of subsequent publications⁶, there is little or no sign of awareness of this. On the contrary, old ideas are held to have been reinforced.

This paper sets out to challenge this assumption. I shall do so mainly by examination of the legal implications of the text of the law itself, supported by some epigraphic evidence. Briefly, the conclusions which I hope to demonstrate are:

First, for *ius Latii* to be workable, there must be full dual citizenship for those receiving Roman citizenship. That is, they must also retain their local citizenship, both the public rights (i.e., the franchise and the right to hold office), and the private. Otherwise, there would be an unacceptable level of disruption to the personal lives of the local community, in marriages, family relationships and transmission of property, and it would rapidly become impracticable to perpetuate a municipal governing élite (so frustrating Roman intentions).

Secondly, the 'Latins' of the Spanish charters, as Millar suspected, were nothing more nor less than Junian Latins⁷ (and, I would add, their freeborn descendants).

The idea of dual citizenship was mooted, long before the discovery of the Irni fragments, by de Visscher in his essay on the Augustan edicts from

⁵ Millar 1977, op.cit. (n.3), 485-6, 630-5.

⁶ References to important publications are conveniently assembled in F.Lamberti, *Tabulae Irnitanae: municipalità e ius Romanorum* (Naples 1993).

⁷ 'Junian Latins' were the slaves of Romans, who were not properly manumitted under Augustan regulations (the *lex Aelia Sentia*), but were allowed *de facto* freedom, becoming, in effect, stateless *peregrini*. They were accorded, by Augustus and several subsequent emperors, various means of access to Roman citizenship. (Gaius, *Institutiones* 1.28-35).

Cyrene⁸. While it met with some support, there was strong opposition, particularly from Jolowicz⁹, and it did not gain general acceptance. *A priori*, it is hard to see why the Romans should object if someone who acquired the Roman citizenship through *ius Latii* still retained a local citizenship which was after all only that of a single town, not of an entire province, let alone of a sovereign power - especially since there was already a partial parallel in the standardisation of municipal government in Italy after the Social War. Inhabitants of *municipia* there had full political franchise locally as well as private citizen rights. They were all Roman citizens anyway; but, as I shall argue below, the private law in the Spanish *municipia* was now a mirror image of Roman law, save a few modifications necessary to adapt to local conditions.

The question now arises, how granting citizenship to ex-magistrates and members of their families could further Rome's presumed purposes in doing so. The relationship between Roman and local citizen rights is crucial. If the idea of dual citizenship is rejected, and if it is held that acquisition of Roman citizenship put an end to the recipient's local citizenship, this would, from a Roman point of view, be counter-productive. It would be likely to antagonise the locals, because of the disruption to family arrangements, and it would create practical difficulties for the perpetuation of the local élite from whom magistrates were to be drawn in the future.

Clause 21 lists those eligible to receive Roman citizenship: "*R(ubrica). Quae ad modum civitat[em] Romanam in eo municipio consequantur. Qui ex senatoribus decurion[ib]us conscriptisve municipii Flavii Irnitani magistratus, uti h(ac) l(ege) [co]mprehensum est, creati sunt erunt, ii, cum eo honore abierint, cum parentibus coniugibusque ac liberis, qui legitimis nuptiis quaesiti in potestate parentum [fu]er[i]nt, item nepotibus ac neptibus filio [n]atis, qui quaeue in potestat[e par]entium fuer[i]nt, ciues Romani sunt, dum ne plures ciues Romani sint, quam quod ex h(ac) l(ege) magis[t]ratus creare oportet*" (= "Rubric. How they may acquire Roman citizenship in that *municipium*. Those amongst the senators, decurions or *conscripti* of the Municipium Flavium Irnitatum who have been or are appointed magistrates, as is laid down in this statute, when they have left that office, are to be Roman citizens, along with their parents and wives and any children who are born in legal marriages and have been in the

⁸ F. de Visscher, *Édits d'Auguste découverts à Cyrène* (Paris 1940), 108 ff.

⁹ H. F. Jolowicz, *Historical Introduction to the Study of Roman Law* (Cambridge 1965, 2nd ed.), 542 ff.

power of their parents, likewise their grandsons and granddaughters born to a son, who have been in the power of their parents, provided that no more may become Roman citizens than the number of magistrates it is appropriate to appoint under this statute").

Gonzalez¹⁰ alleges in a comment on this clause that the law 'transfers the entire family structure into the Roman citizen body'. It does not - far from it. Adoptive children are excluded, not surprisingly; that would be too easy a way for the locals to smuggle in a few extra Roman citizens. Excluded also are emancipated children (although, once Roman-style law was in force, we may assume that the institution of *emancipatio* also would be available). In Roman law, by this time, one should remember, emancipated children, though no longer *in potestate*, retained virtually the same inheritance rights as those not emancipated¹¹; and so, presumably, they would in this imitation of Roman law.

Certain other exclusions could have serious consequences.

(i) The magistrate's brothers and sisters did not become Romans. Under their own new Roman-style law they were entitled to a share of their father's property on his death; but if the rule was single citizenship, they, as *peregrini*, could receive nothing from the property of either of their Roman parents, either on intestacy or under a will. The most they could hope for was that there would be a *fideicommissum*, a testamentary request, to their Roman brother to give them something - if, that is, the deceased had troubled to learn enough about the Roman-style legal system to do this

Unfortunately the non-Roman members of the family first of all lost the ability to force the Roman heir to fulfil the *fideicommissum*, probably by the *Senatusconsultum Pegasianum* under Vespasian, and later under Hadrian such trusts in favour of foreigners were made illegal and the property confiscated for the fisc. It was not until the reign of Antoninus Pius, by which time *ius Latii* had been extended to decurions and their families, and Roman citizenship had become more widespread, that this was revoked¹². Such a situation was scarcely likely to foster good-will towards the scheme foisted on the townsfolk by the Romans, and was therefore hardly a good way of recruiting future magistrates.

(ii) The wives of the magistrate's married sons were not made citizens, and so in Roman law their marriages would no longer be valid, and

¹⁰ Gonzalez 1986, op.cit. (n.2), 204.

¹¹ J.F.Gardner, *Family and Familia in Roman Law and Life* (Oxford 1998), 20-24.

¹² Gaius *Institutiones* 2.285-286a, with D. Johnston, *The Roman Law of Trusts* (Oxford 1988), 37-9.

future children would not be Roman - again creating inheritance problems. Unmarried sons of the magistrate would find themselves unable to find brides except among what was likely to be a small local pool of Roman females. Citizenship, therefore, would be likely to die out in the family within a generation or two, and there might also be for a time at least the disruption to family property rights caused by illegitimacy.

Of course, those who assume that all the inhabitants received 'Latin status' mostly also assume that this included the right of *conubium*, traditionally believed to have been possessed by Rome's Latin allies in the early Republic. However, this belief also rests on very shaky foundations. There is nothing to show the existence of any such general right either throughout the Latin League or in the Latin colonies in Italy, merely some instances of individual grants¹³.

As for the communities with *ius Latii*, the surviving text of the Flavian law does not help to settle the question, one way or the other. The first 18 chapters, which may have dealt, amongst other matters, with the composition of the citizen body, are missing. The mysterious 'letter of Domitian' affixed to the end of the inscription refers to marriages, but is too vague and ambiguous in its wording to admit of any confident interpretation.¹⁴

Names have been used to try and establish the presence or absence of *conubium*. Recently, Chastagnol¹⁵ has suggested the existence of *conubium* to explain the apparently anomalous nomenclature of married couples in some inscriptions from Narbonensian Gaul. Males with *tria nomina* he assumes to be Roman, and also females with *gentilicium* and cognomen. Males with apparently Roman names are married to women with peregrine names, and their children have Roman-type names and are therefore, he

¹³ P. E. Corbett, *The Roman Law of Marriage* (Oxford 1930), 25 (after Th. Mommsen, *Römisches Staatsrecht* [Leipzig 1887-1888], 3.1.633-4).

¹⁴ J.-L. Mourgues, 'The So-called Letter of Domitian at the end of the *Lex Irnitana*', *Journal of Roman Studies* 77 (1987), 78 ff., argues erroneously that the letter was intended to clarify clause 97, the final clause of the law (which was also, he suggests, a later addition). The reference, he believes, is to freedwomen who received citizenship as the result of offices held by their husbands. However, this is not, as he claims, the subject of the rubric of clause 97, which concerns the retention by patrons of paternal rights, over freed slaves of *both* sexes who received citizenship either as the parents or the wives of magistrates. The letter, on the other hand, is about the legal validity of any marriages (with no qualification about the status of the persons concerned) made after the application of the *lex Flavia*, but not in conformance with the new-style law. It is only to be expected that there would have been some initial confusion in such matters.

¹⁵ A. Chastagnol, *La Gaule Romaine et le Droit Latin: recherches sur l'histoire administrative et sur la romanisation des habitants* (Lyon 1995), Chapters IV and VI.

assumes, Roman citizens; the children of peregrine men married to women with Roman-type names have Roman-type names. The former phenomenon he explains (op.cit., 106) by the suggestion that, in communities with Latin right, there was no *conubium* between the local citizens in general and Roman citizens, but that only ex-magistrates who became Roman citizens, and their male descendants, had *conubium*. This is a curiously asymmetric situation, and he does not consider either the inheritance problems, or the various possible alternative explanations for the names of the women's children.¹⁶ *Tria nomina*, as is now well-known, are not necessarily an indication of Roman citizenship. Arguably, in a community containing individuals with a variety of statuses, Roman-style nomenclature cannot be relied upon as an indication either of Roman citizenship or of Junian Latinity. That Junian Latins adopted Roman-style names is already well-established, and my own instinctive view is that in towns like Irni the sons of ex-magistrates, married to non-Roman women, would tend to give their children Roman names. That, however, is properly a topic for another paper, and cannot be elaborated here.

According to Ulpian, *Regulae* 5.4 (a late text) Romans have *conubium* with *Latini* and *peregrini* if it is especially granted. It is commonly assumed that 'Latins' in classical jurists covers both Junian Latins and the citizens of provincial colonies and towns endowed with *ius Latii*¹⁷. The assumption that the latter were known as Latins was, as will be shown presently, unfounded.

In any case, to grant *conubium* with Romans to all the inhabitants of these *municipia* would have worked against the Romans' presumed purpose in granting citizenship *per honorem*. Any male descendant of an ex-magistrate could then create new Romans simply by marrying a local woman and having children, and in due course Roman marriage partners would be easier to find. The likelihood is that marriage would have become the commonest method of creating citizens, leaving little incentive to undertake public office. That it continued to be an incentive is indicated by the extension, probably under Hadrian, of *ius Latii* to the decurionate of certain

¹⁶ In a later paper, 'L'empereur Hadrien et la destinée du droit latin provincial au second siècle après Jésus-Christ', *Revue Historique* 592 (1994), 218 ff., he supposes that Hadrian's *senatusconsultum* mentioned in Gaius, *Institutiones* 1.30, waiving the *lex Minicia* for unions between Latin men and Roman women, accounts for the children of Roman women and non-Roman men having Roman names; this theory is demolished by J.Gascou 'Hadrien et le droit latin', *Zeitschrift für Papyrologie und Epigraphik* 127 (1999), 294 ff.

¹⁷ See, e.g., Corbett 1930, op.cit. (n.13), 27.

communities (Gaius, *Institutiones* 1. 96). In any case, the grant of *conubium* was unnecessary if, as I hope to demonstrate, the new Roman citizens (and their Junian Latin freedmen) retained full local citizenship, since in that case their marriages with their fellow townspeople were fully valid in local law.

(iii) The third difficulty is that not only the magistrate, but also his sons and any existing grandsons became Roman citizens. If this terminated their local citizenship, then they had no prospect of public office in their home town. The Romans can scarcely have intended to cut off a source of future magistrates.

If, however, acquisition of Roman citizenship was accompanied by retention of local citizenship, then the entire picture changes. Inheritance problems are solved, since the inheritance rights of all blood and marital kin are covered under local - say Irnitani - law. Marriage problems are solved, since marriages between those Irnitani who are Romans and those who are not are legally valid in the law of Irni, and the resulting children are legitimate, *in potestate*, and can in their turn, as citizens of Irni, qualify for Roman citizenship *per honorem*. Eligibility for local office also survives, since all, whether Roman citizens or not, are citizens of Irni.

The likelihood of dual citizenship can be demonstrated in more than one way. First, there is a good deal of significant epigraphic evidence. The holding of a magistracy in a Flavian *municipium* twice was a strong indication that Roman citizenship did not exclude local.¹⁸ A considerable number are epigraphically attested from Baetica, and others from Tarraconensis and Lusitania, including some stated to have held office three or even four times.¹⁹ Gascou²⁰ has recently discussed those found in Narbonensian Gaul, but without fully pursuing the implications, though he does remark that, given exclusive single citizenship, magistracy would deny to the holders' sons any future local political careers.

Interestingly, one magistrate from Singilis Barba, in an inscription dated A.D.109, and one from Ulia in the early second century A.D., have not only Roman filiation, but apparently Roman fathers, grandfathers and even

¹⁸ This was pointed out to me by Dr. Andrew Fear of the University of Manchester, who kindly supplied a number of references from Baetica.

¹⁹ CIL II 52, 493 (?), 798, 1029, 1185, 1378, 1470, 1478, 2030, 2105, 2113, 3008, 5438, 6014 ; CIL II² 5. 30, 897, 1025. Three times: CIL II 896, 3711, 4199. Four times: 1258, 3696. These are all dated by the editors to a period well before the edict of Caracalla.

²⁰ J. Gascou, 'La carrière des magistrats dans les villes latines de la Gaule Narbonnaise', in A. Chastagnol, S. Demougin and C. Lepelley, edd., *Splendidissima Civitas: études d'histoire romaine en hommage à François Jacques* (Paris 1996), 119 ff.

greatgrandfathers as well.²¹ Singilis Barba describes itself as a *municipium liberum* (presumably, exempt from paying tax to Rome), whereas Ulia (Julia Fidentia) was probably a Roman colony. The magistrate from Ulia could therefore be a descendant of a Roman immigrant. He could also - as the man from Singilis Barba probably was - be the grandchild of a man who became a Roman citizen through the magistracy.²² If so, then we see Roman policy successfully in action.

The strongest evidence, however, for dual citizenship is legal, and rests on the content of the *lex Irnitana* itself.

Clause 93 informs us that the legal system (*ius*) to be used between citizens of Irni is to copy the system used among Romans (that is, Roman civil law).

Rubrica. De iure municipum.

Quibus de rebus in h(ac) l(ege) nominatim cautum{ue} scriptum<ue> non est, quo iure inter se municipes municipi [Flavi] Irnitani agent, de iis rebus omnibus ii inte[r se] agunto, quo ciues Romani inter se iure civili agunt agent (= "Rubric. Concerning the law of the *municipes*. On whatever matters there is no specific provision or rule in this statute, by what *ius* (system of law) the *municipes* of the Municipium Flavium Irnitatum should deal with each other, they are to deal with each other by that *ius* (understanding '*eo iure*' as implied antecedent to the following '*quo*') by which Roman citizens deal or will deal with each other according to civil law").

According to clause 85, the local system is also to be updated to follow changes in the Roman *ius honorarium*. Presumably there was some machinery for keeping the *municipia* informed of changes in the provincial edict.

The crucial evidence comes in the first phrase of clause 93, *quibus de rebus in hac lege nominatim cautumve scriptumve non est*. In other words, the Flavian law itself deals with those situations, arising from local conditions, which are *not* covered in Roman law.

²¹ CIL II² 5.497 (Ulia): *Q. Caesio M.f. P.n. P.pron. Gal. Hirrio Aelio Patruino Fabiano*; 789 (Singilis Barba): *M. Valerio M.f. M. n. G. pron. Quir. Proculino*. 497 may be a descendant of an earlier *duumvir*, P. Aelius P.f. Fabianus (CIL II² 5.495).

²² R. Syme, *The Provincial at Rome* (Exeter 1999), 53 observes: "Such a distinction [between the colonial Roman and the native Spaniard] would be effaced by the passing of time, the spread of the Roman franchise and by intermarriage, until it became impossible, were it not pointless, to make exact enquiry".

Let us now turn to Clause 28, which is the key clause for those insisting that all the *municipes* were *cives Latini* (whatever that is supposed to mean).

R(ubrica). De ser{u}uis apud Iluiros manumittendis.

*Si quis munic[eps] municipi Flavi Irnitani, qui Latinus erit, apud Iluiri iure dicundo eius municipi, ser[u]um suum seruamue suam ex ser[ui]tute[m] in libertatem manumiserit, l[i]b[er]um liberamue e[s]se iusserit, dum ne quis pupillus neue quae uirgo mulierue sine tutoris auctoritate quem quamue manumitt[a]t, liberum liberamue esse iubeat, qui ita manumissus liber{um}ue esse iussus erit, liber esto, quaeque ita manumissa liberaue esse ius[s]a erit, libera esto, uti qui optum[o] iure Latini libertini liberi sunt erunt, dum {is}s qui minor XX annorum erit ita manumittat, si causam manumittendi iustam esse is numerus decurionum, per quem decreta h(ac) l(ege) facta rata sunt, censuerit (= "R(ubric). Concerning the manumission of slaves before the *duumviri*. If any *municipes* of the Municipium Flavium Irnitani, who is a Latin, in the presence of a *duumvir* of that *municipium* in charge of the administration of justice manumits his male or female slave from slavery into freedom or orders him or her to be free, provided that no ward or unmarried or married woman may manumit or order to be free anyone, male or female, without the authority of a guardian, any male slave who has been manumitted or ordered to be free in this way is to be free, any female slave who has been manumitted or ordered to be free in this way is to be free, in the same way as Latin freedmen with the fullest rights shall be free; provided that someone who is under 20 may only manumit if the number of decurions necessary for decrees passed under this statute to be free shall decide that the grounds for manumission are proper").*

First, I should note the minor point that *qui Latinus erit* is superfluous if the expression merely means any ordinary citizen of Irni; that it does not mean this is, as Millar pointed out²³ indicated by the different form of expression, simply *municipes municipi Flavi Irnitani*, omitting the reference to Latinity, used in the following chapter of the law. More telling is the point that, if all citizens of Irni were Latins, we are merely being told here that if a citizen sets free a slave before a magistrate, the freedman takes the manumitter's status; but that is the same as in Roman law. See also clause 72 (below), where the award of Latinity to a freed public slave is mentioned

²³ Millar 1977, op.cit. (n. 3), 633.

separately from, and before the statement that he or she is to be a citizen of Irni.

According to clause 93, however, clause 28 should describe a situation not found in Roman law - and that is exactly what we have if 'Latin' here means Junian Latin. Junian Latins could not manumit in classical Roman law, but in the law of Irni they could, as full citizens of Irni. Junian Latin is a status which has meaning only in a Roman context.²⁴ The Romans therefore have to intervene to specify what status such a person's freed slave would have, in places where Roman law itself operated. They are to be Latins too (and, presumably, liable ultimately to the same obligations to the original Roman patron).

Note that only manumission *vindicta*, before a magistrate, is mentioned, not manumission by will, *testamento*. Junian Latins, in Roman law, could not make wills. At death, all their property went to their former owners, or to the latter's children, or, if they left no children, to their heirs.²⁵ In clause 72, discussed below, by which Latin status is conferred on municipal slaves by the local council, it is explicitly stated that their estates are to go to the council.

Junian Latins, as we know, had Roman-style names.²⁶ So, presumably, would their own freedmen in Irni, and their freeborn descendants. Their marriages with other citizens of Irni would be valid in local law, whether or not the latter were also Latins or Romans. The effects of the passage of time noted by Syme, *op.cit.* (n.22), would tend to diminish or obliterate the awareness in a Spanish *municipium* of the distinction between a citizen of Irni with a Roman-style name who was in fact Roman, one who was Latin, and one who was neither. This helps to explain the kinds of confusion as to the legal status of marriage partners, on which it was found necessary to take action under Hadrian.²⁷

Clause 28 is one of several clauses (the others are 22, 23, 53, 72 and 97) in which the Roman law-givers are intervening to clarify the situation for those individuals among the local citizens who also have a certain status in a Roman context.

In clauses 28, 53 and 72, it is a question of Roman intervention to uphold what, though in a Roman context it is an inferior status, in

²⁴ The legal status of Junian Latins is described in Gaius, *Institutiones* 1.17-35.

²⁵ Gaius, *Institutiones* 3.55-71.

²⁶ Pliny, *Epistulae* 10.104; *Tabulae Herculanenses* 5 and 89

²⁷ Gaius, *Institutiones* 1.67-71; J.F.Gardner, 'Hadrian and the Social Legacy of Augustus', *Labeo* 42 (1996), 83 ff.

communities like Irni carries a privilege, that of having an avenue of access to Roman citizenship. A Junian Latin was created if a Roman citizen did not manumit his slave properly, but merely informally declared him free (such a person would not be a citizen of Irni, but merely a stateless *peregrinus*); but one would also be created, *and* become a local citizen, at places such as Irni if an Irnitani who was a Roman citizen manumitted his slave before the local magistrate, instead of taking the trouble of going to the Roman governor. As a full citizen of Irni, this Junian Latin could then set a slave free before the local magistrate, and that ex-slave would have his former owner's status (viz Irnitani *and* Junian Latin).²⁸

Clause 53²⁹ includes *cives Latini*, as well as *cives Romani*, among those categories of privileged *incolae* who receive preferential voting rights in the *municipium* of which they are not themselves citizens. There is the implication that, in their own *municipia*, Latins as well as Romans had local franchise. I see no way of determining the question of how far this voting right extended, or whether it was confined to Romans and Latins who were citizens of other *municipia* in the same province. Junian Latinity, although an inferior status in Roman society, would carry privilege in peregrine communities, since it afforded access to Roman citizenship, other than by office-holding.

In clause 72³⁰ it appears that the Romans themselves are ordering that public slaves who are manumitted by the local town council are to receive

²⁸ Presumably if someone who was simply a citizen of Irni, without other status, informally declared a slave free, that ex-slave, would, in imitation of Roman law, be protected in freedom, although without any *civitas* of his own - but he would not be a Junian Latin.

²⁹ *R(ubrica) In qua curia incolae suffragia ferant.*

Quicumque in eo municipio comitia Iluiris, item aedilibus, item quaestoribus rogandis habebit, ex curiis sorte ducito unam, in qua incolae, qui ciues Romani) Latiniue ciues erunt, suffragi[a] ferant, eisq[ue] in ea curia suffragi latio est (= "Rubric. In which curia (voting division) incolae (resident aliens) may cast their votes. Whoever holds an election in the municipium for choosing duumviri, likewise aediles, likewise quaestors, is to draw one of the curiae by lot, in which incolae who are Roman or Latin citizens may cast their votes, and the casting of their vote is to take place in that curia").

³⁰ *R(ubrica). De seruis publicis manumittendis.*

Si quis [duumuir] seruum publicum seruamue publicam manumittere volet, is de eo deue ea ad decuriones conscriptosue, cum duae partes non minus decurionum conscriptorumue aderunt, referto censeantne eum eam[que] manumitti. Si e[or]um qui aderunt non minus duae partes manumitti censuerint et si is eaue eam pecuniam, quam decuriones ab eo eaue accipi censuerint, in publicum municipibus municipi Flau[i] Irnitani dederit soluerit satisue fecerit, tum [i]is Iluir[is] i[ure] d[icundo] eum seruom eamue seruam manumittito, liberum liberamue esse iubeto. Qui ita manumissus liberue esse iussus liber et Latinus esto, quaeue ita manumissa liberaue esse iussa erit libera et Latina esto, ei[dem]que munic[i]pes municipi Flau[i] Irnitani sunt, neue quis ab is amplius quam quod decuriones censuerint ob libertatem capito, n[e]ue facito quo quis ob eam rem eoue nomine quid ca[p]iat, inque

not only local citizenship, but also the reward of (Junian) Latinity, in consideration of their public service. One may compare the various types of public service, in the form of contributions to the well-being of the city of Rome, for which emperors from Tiberius to Nero rewarded Junian Latins with citizenship (Gaius, *Institutiones* 1. 32-34). The local town council, which would, at least initially, be primarily made up of non-Romans, would still have the right to their ex-slaves' inheritance; this parallels the retention of patronal rights in clause 97. The ex-slave, however, was accorded by the Romans a possible avenue of access to Roman citizenship.³¹

The remaining clauses, 22, 23 and 97 are concerned with the consequences of change of status within the free community, and preserve certain rights which would normally, under Roman law, be terminated by such a change.

Clauses 23³² and 97³³ concern legal relations between Roman citizens and *peregrini*. They insist on the retention of patronal rights when either the

eius, qui ita manumissus manumissaue erit, hereditate(m) bonorum possessione petenda operis dono munere idem iu(r)i s municipi Flau(i) Irnitani esto, si municipi Italiae libertus liberta esset (= "If any [magistrate] wishes to manumit a male or female public slave, he is to raise with the decurions or *conscripti* when not less than two thirds of the decurions or *conscripti* are present concerning him or her, whether they believe that he or she should be manumitted. If not less than two thirds of those who are present decide that the manumission should take place and that if he or she gives and pays to the public account for the *municipes* of the *municipium* Flavium Irnitum the sum which the decurions decide should be received from him or her or gives security for it, then that magistrate in charge of the administration of justice is to manumit that male or female slave and order him or her to be free. Whatever man or woman has been manumitted and ordered to be free in this way is to be free and a Latin, and they are to be *municipes* of the *municipium* Flavium Irnitum, nor is anyone to receive from them for their freedom more than the decurions decide nor act in such a way that anyone receives anything for this reason or on this account; and the rights of the *municipium* Flavium Irnitum in claiming the inheritance of the possession of the goods of the man or woman who has been manumitted in this way or over their *operae* or gifts or services are to be the same as if he or she were a freedman or freedwoman of a *municipium* of Italy").

³¹ A.T.Fear, 'Cives Latini, servi publici and the *lex Irnitana*', *Revue Internationale des Droits de l'Antiquité* 37 (1990), 150 ff. notes (162-3) the relatively privileged standing of public slaves in the servile community. However, his conclusions as to the basis of this status depend on the view that magistrates were already Roman citizens.

³² *R(ubrica.) Vt, qui ciuitatem Romanam conseq[ue]re[n]tur, iura libertorum retineant.*

Qui quaeue ex h(ac) l(ege) exue edicto imp(eratoris) Caesaris Vespasiani Aug(usti) imp(eratoris)ue Titi Caesaris Vespasiani Aug(usti) aut imp(eratoris) Caesaris Domitiani Aug(usti) ciuitatem Romanam consecutus consecuta erit, eis in libertos libertas suos suas paternas(q)ue, qui quaeque in ciuitatem Romanam non venerint, deque bonis eorum earum, et is, quae libertatis causa impo[s]ita sunt, idem ius eademque condicio esto, quae esset, si ciuitate mutati mutatae non essent. (= "Whoever, male or female, acquires Roman citizenship under this statute or according to an edict of the Emperor Caesar Vespasian Augustus or the Emperor Titus Caesar Vespasian Augustus or the Emperor Caesar Domitian Augustus, is to have the same rights and the same position, as they would have if they had undergone no change of citizenship, over their own and their parents' freedmen and freedwomen, who

municeps who was the former owner (23), or his freedmen or freedwomen (97), through their sons or husbands having held office, have acquired Roman citizenship. In clause 23, as in 22, it might be argued, the Romans were merely protecting the rights of their own new citizens, so that they should not lose by becoming citizens; this cannot, however, be said of 97, which is to the advantage of the local owner, whether he also has become a Roman citizen or not.

Clause 22³⁴ applies only to those becoming Roman citizens. It provides that the *potestas* of a *pater* over his children, which he had under the new Roman-type local law, would not be terminated, as was normal in Roman law, when both underwent a change of status by *ius Latii* and became Roman citizens. As we learn from Pliny *Panegyricus* 37.7, no similar

have not acquired Roman citizenship, also over their goods and the obligations imposed in return for freedom").

³³ *Rubrica. Ut in liberos libertas ciuitatem Romanam consecutos consecutas per honores liberorum suorum aut virorum patroni id ius habeant, quod antea habuerunt.*

Qui libertini quaeue libertinae ex h(ac) l(ege) per honores libertorum suorum aut uirorum ciuitatem Romanam consecuti consecutae erunt, in eos eas inque bona eorum earum is qui eos manumiserint, si non et ipsi ciuitatem Romanam consecui erunt, idem ius esto quod fuisset si eieae ciues Romani Romanae facti essent. Si ciuitatem Romanam patroni patronaeue consecuti consecutae erunt, idem ius in [eos] liberos easque libertas inque bona eorum earum esto, quod esset si a [cui]bus Romanis manumissi {manumissa} manumissae essent. (= "Rubric. That patrons should have the same rights as they had before over freedmen or freedwomen who have obtained Roman citizenship as a result of the offices of their sons or husbands. If any freedmen or freedwomen have obtained Roman citizenship under this statute as a result of the offices of their sons or husbands, the persons who manumitted them are to have the same rights over them and their goods, even if they themselves have not obtained Roman citizenship, as they would have had if they had not been made Roman citizens. If the patrons, male or female, have (also) obtained Roman citizenship, they are to have the same rights over those freedmen and freedwomen and their goods as they would have if they had been manumitted by Roman citizens").

³⁴ *R(rubrica). Vt, qui ciuitatem Romanam consequentur, maneant in eorundem manu mancipio potestate.*

*Qui quaeue ex h(ac) l(ege) exue ed[i]cto imp(eratoria) Caesaris Vespasiani Aug(usti) imp(eratoris)ue T(iti) Caes(aris)Vespasiani Aug(usti) aut imp(eratoris) [C]aesaris Domitiani Aug(usti), p(atris) p(atriciae), ciuitatem Romanam consecutus consecuta erit, is ea in eius, qui ciuis Romanus h(ac) l(ege) factus erit, potestate manu mancipio, cuius esse deberet, si ciuitate mutatus mutata non esset, esto it{a}que ius tutoris optandi habeto, quod haberet si a ciue Romano ortus orta neque ciuitate mutatus mutata esset. (= "Rubric. That those who acquire Roman citizenship should remain in the *manus* and *mancipium* and power of the same persons (as before). Whoever, male or female, acquires Roman citizenship under this statute or according to an edict of the Emperor Caesar Vespasian Augustus or the Emperor Titus Caesar Vespasian Augustus or the Emperor Caesar Domitian Augustus, father of his country, he or she is to be (as before) in the power and *manus* and *mancipium* of the person who has become a Roman citizen under this statute, in whose power and *manus* and *mancipium* he or she would be if he or she had undergone no change of citizenship. And he or she is to have that right of choice of guardian which they would have if they were born from a Roman citizen and had undergone no change of citizenship").*

provision was made for fathers and children receiving citizenship by individual grant from the emperor. This meant that the magistrate's children would continue to be in his *potestas*, or he and they in his father's *potestas*, and so, even as Romans, they would retain their inheritance rights from him (though not, under the Flavian law, their rights as cognates, from the magistrate's wife and his mother - see Pliny, *Panegyricus* 37.3 and 6). They would also, incidentally, be exempt from paying the Augustan *vicesima hereditatum* on paternal inheritances.

However, it should also be noted that the magistrate's wife is affected. His maternal grandfather was perhaps unlikely to be still alive, but his wife's father might well be. He, however, would not become a Roman citizen. In consequence, the wife would cease to be in his *potestas*, and would become legally independent, *sui iuris*. Roman citizenship would therefore be, for her, a mixed blessing, unless she had dual citizenship. On the one hand, she would have legal independence, with free choice of tutor, though that would be of little practical significance unless she acquired some property of her own. On the other, she would lose her inheritance rights from her father and kinsfolk, unless she remained also a citizen in Italian law.

All three clauses have the air of afterthoughts, and may first have been introduced under the Flavian law, by which time it had become evident that even the retention of dual citizenship failed to remove some of the undesirable consequences which, under the Roman legal system, change of status entailed.

Most of the extant text of the Flavian law is concerned with public law, and deals with details which are necessarily different from the situation in Roman communities, especially concerning the competence of magistrates and the composition of the governing body. Clauses 22, 23, 28, 53, 72 and 97 are concerned with situations which do not arise in Roman private law, and all of these clauses involve directly or indirectly legal rights between individuals, or groups, one of which has some status in Roman law, and the other does not. Clauses 28 and 53 in particular, strongly indicate the possession of dual citizenship, and the rest imply it.

A few years ago, on the basis of an inspired phrase of John Richardson's, who described the legal system being given the Spanish *municipia* as 'a mirage of Roman law', I touched briefly upon the situation in

places such as Irni, as I conceived it.³⁵ This was to illustrate my contention that for Roman society an agreed set of rules, ie., Roman private law, provided a convenient *modus vivendi*, and for practical purposes it did not matter whether individuals thought to be Roman citizens actually were or not. This idea has been figuring more and more prominently in my work for a number of years now, and it informs the thinking of the present paper. The apparently relaxed attitude of Rome towards dual citizenship in communities such as Irni is paralleled by a relative unconcern over technically irregular assumptions of Roman status, when purely private concerns were involved (Gardner 1996).³⁶

For the people of Irni, I said then, the legal fiction that they were all 'pretend-Romans' gave them a perfectly adequate system to live by. 'Most of the time (that is, while they are in Irni)," I said, 'It does not matter whether individual Irnitani are in fact Romans or not; if they go elsewhere, it does.'³⁷ Some, I assumed, were merely citizens of Irni; some had both Roman and Irnitani citizenship; some were Junian Latins with Irnitani citizenship. With what I now realise was breath-taking simple-mindedness, I took that as self-evident. I hope that this paper succeeds in providing some proof.

Reading, September 2000

³⁵ J.S. Richardson, 'The reception of Roman law in Spain: the evidence of recent epigraphic discoveries' (unpublished seminar paper, 1992); J.F.Gardner, *Being a Roman Citizen* (London 1993), 188-191.

³⁶ J.F.Gardner, *Labeo* 42 (1996), 83 ff.

³⁷ Gardner, op.cit. (n.35), 191.