

Roger S. Bagnall

EGYPT AND THE *LEX MINICIA*

In a recent article¹ David CHERRY has explored the history and implications of the Minician Law governing marriage between Romans and non-Romans. He devotes a brief section (260-62) to the situation in Egypt, on the basis of the *Gnomon of the Idios Logos* (BGU V 1210). He concludes, in bafflement, "There is no reason why the rules governing marriages of mixed citizenship in Egypt should have been identical to those described in Gaius' *Institutes* and the *Tituli Ulpiani*. There are likely to have been many local variations in the application of the Minician law" (261).

That conclusion rests on Cherry's difficulty in understanding one clause (§46) of the *Gnomon*, which reads as follows:

Ῥωμαίοις καὶ ἀστοῖς κατ' ἄγνοιαν Αἰγυπ[τι]αῖς συνελθοῦσι συνεχωρήθη μετὰ τοῦ ἀνευθύ[ους] εἶναι καὶ τὰ τέκνα τῷ πατρικῷ γένει ἀκολουθεῖ.

Cherry translates this, "It has been decided that Romans and Alexandrian citizens who marry Egyptian women on account of ignorance, are, in accordance with this [?], not accountable, and their children take their father's status." He comments, "The status of these children is governed neither by the Minician law nor by the law of nations, both of which required that they take their mother's status. Much may hinge on the mysterious phrase μετὰ τοῦ, which could mean almost anything. Perhaps a noun in the genitive case has dropped out of the text."

If, however, one takes μετὰ τοῦ ἀνευθύ[ους] εἶναι as a straightforward prepositional phrase with an articular infinitive as the object, it simply means "along with being free from liability." This is how it was taken by Salvatore Riccobono jr., who translated "Ai Romani ed ai cittadini², che per errore si

¹ "Phoenix" 44, 1990, 244-66.

² See Diana DELIA, *Alexandrian Citizenship During the Roman Principate* ("American Classical Studies" 23), Atlanta 1991, 13-21, which supports the view taken here by Ricco-

fossero uniti con Egizie, fu concesso di essere esenti da responsabilità ed i figli seguono la condizione paterna."³ Riccobono cited Berger's Latin back-translation: *Romanis et Graecorum civitatum civibus qui per ignorantiam cum mulieribus Aegyptiis coierint concessum est cum impunitate, ut liberi conditionem patris sequantur*. It is an essential point that *συνεχωρήθη* does not mean simply "it has been decided" but rather "it has been conceded."⁴ It is a grant, a special concession of privilege, whether from the Senate or from the emperor. Now Cherry describes (256-60) the operations of an unnamed *Senatus Consultum* which "legitimized certain types of marriage contracted by mistake, for example, where a Roman man married a foreign woman in the belief that she was a Roman citizen." It is at least a hypothesis worth examination that §46 of the *Gnomon* represents a summary for administrative and judicial use in Egypt of that SC.

The other source of Cherry's difficulty with the Egyptian material is the coexistence in the *Gnomon* of §39: 'Ρωμαίου ἢ 'Ρωμαίας κατ' ἄγνοιαν συνελθόντων ἢ ἀστοῖς ἢ Αἰγυπτίοις τὰ τέκνα ἥττονι γένει ἀκολουθεῖ. Cherry correctly recognizes this as "the rule laid down by the Minician law." But he goes on to reason, "On the basis of what is known of the Roman law of this period, it is tempting to try to reconcile Clauses 39 and 46 by identifying the ἄγνοιαν of Clause 39 as ignorance of the law, the ἄγνοιαν of Clause 46 as ignorance of the difference in status, and μετὰ τοῦ as a veiled or much compressed reference to the terms of the senatorial decree which legitimized certain types of marriage contracted by mistake. But this is probably wishful thinking, and perhaps unnecessary."

Unnecessary it is, for reasons we have already seen. There is no great difficulty in supposing that §39 represents the main thrust of the Lex Minicia, and §46 the burden of the *Senatus Consultum*. The first is the basic Roman statute which modifies the *ius gentium*, while the second is a humane concession under some circumstances. Matters may be clarified if we set out in tabular form the results of various marriages *without* the effects of §46. The source of the status is indicated below the entry (i.c. = *ius civile*; i.g. = *ius gentium*; L.M. = Lex Minicia):

BONO that ἀστός-αστή refer to citizens of any of the Greek cities in Egypt, not only of Alexandria (as CHERRY assumes).

³ *Il Gnomon dell'Idios Logos*, Palermo 1950, 49.

⁴ See, for example, the index to *Corpus Gloss. Lat.* 6.247 (*concedo*); also 6.566, where *indulgeo* can also be represented (much less commonly) by *συγχωρῶ*.

		Husband's Status		
Wife's Status	<i>Roman</i>	<i>Roman</i>	<i>Astos</i>	<i>Egyptian</i>
		Roman (i.c.)	Astos (L.M.)	Egyptian (L.M.)
	<i>Aste</i>	Astos (L.M.)	Astos (i.g.)	Astos (i.g.)
	<i>Egyptian</i>	Egyptian (L.M.)	Egyptian (i.g.)	Egyptian (i.g.)

In cases governed by §46, however — where a mistake about status was involved — , the table alters as follows (S.C. = *Senatus Consultum*):

		Husband's Status		
Wife's Status	<i>Roman</i>	<i>Roman</i>	<i>Astos</i>	<i>Egyptian</i>
		Roman (i.c.)	Astos (L.M.)	Egyptian (L.M.)
	<i>Aste</i>	Astos (L.M.)	Astos (i.g.)	Astos (§47) ⁵
	<i>Egyptian</i>	Roman (S.C.)	Astos (S.C.)	Egyptian (i.g.)

In §46 it is clear that it is only Roman and *astos* husbands who are covered in their marriages with Egyptian wives, not Roman and *aste* wives who take Egyptian husbands. But there is still an anomaly immediately apparent from the table, namely that Roman husbands who take *aste* wives are treated less favorably than Roman husbands with Egyptian wives. That would be a paradoxical result, particularly as it is far more likely that a Roman might think that an *aste* was a Roman citizen than that he would think that an Egyptian woman was Roman.

The question still remains of the presence of *κατ' ἄγνοιαν* in §39, which has troubled previous commentators; the best view may be that it is simply an error by the person responsible for compiling this digest of regulations.⁶

While some points then remain difficult, it appears that the essentials of both the *Lex Minicia* and the SC were applied in Egypt, with adjustments to take account of the distinction between citizens of the Greek cities and the

⁵ By this section of the *Gnomon* the provision about error of status is extended to marriages of *astai* with Egyptians.

⁶ See RICCOBONO 175-77 for the older commentators and different views.

undifferentiated Egyptian population. If the redaction of §46 has in the search for brevity omitted an inclusion of Roman husband-*aste* wife marriages among those protected in case of error, the correspondence would be even closer. That there may in fact be a problem in the redaction is suggested by correction of the gender of the participle *συνελθοῦσι* (from *συνελθούσαις*) in §46. A more sweeping provision, closer to the terms of the SC, would have included both Roman husbands and Roman wives, and that may be what the redactor was trying to compress into his usual lapidary form.

Whatever the outcome of these details, however, the overall judgment seems to me clear. The law was the same everywhere; what can have varied is the extent of concessionary adjustments in the application of the SC covering cases of error. Being a matter of liberality and not of entitlement, this need not have been uniform, particularly if imperial decisions had extended the scope of the original SC. There is in any case no justification for dismissing evidence from Egypt in matters of Roman law because of its source.

[New York]

Roger S. BAGNALL