Peregrini, Barbari, and Cives Romani: Concepts of Citizenship and the Legal Identity of Barbarians in the Later Roman Empire

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In recent years, and particularly since the end of the Cold War, increasing attention has been paid to changing concepts of citizenship in the context of the globalization of the economy, politics, and society.\(^\text{1}\) The interrelationships among citizenship, nationality, ethnicity, and identity have evolved as a consequence of factors such as a renewed role for religious identity and mass migrations that have altered the ethnic composition and influenced the cultural norms of the society of nearly every modern nation.\(^\text{2}\) Traditionally, in order to become a citizen of an established nation-state, a foreigner has been expected to profess the acceptance of certain moral, cultural, and political views.\(^\text{3}\) At a 2005 press conference, for example, British Prime Minister Tony Blair stated, “People who want to be British citizens should share our values and our way of life.”\(^\text{4}\) In this model, citizens receive certain privileges and are liable to certain obligations.\(^\text{5}\)

A model of citizenship based on geographically delimited nation-states now is sometimes considered to be unsuited to modern multiethnic, multiracial, and supranational societies.\(^\text{6}\) Rather than a formal juridical status based on fixed principles, citizenship also can be viewed as a process of negotiation between established values and the values of newcomers into a society.\(^\text{7}\) Increasing attention likewise has been

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\(^\text{1}\) E.g., Ellie Vasta, ed., Citizenship, Community, and Democracy (Basingstoke, 2000), vii: “The notion of citizenship is currently under scrutiny both in terms of its theoretical significance as well as its practical application.”


\(^\text{5}\) Nussbaum, “Kant and Stoic Cosmopolitanism,” 6.


given to metaphorical or philosophical forms of citizenship, and to the “relationship between . . . citizenship and moral and intellectual integrity.” Thus, one can be a citizen not only of a nation, but also of more diffuse and inclusive bodies, such as the European community or even the world. Cosmopolitanism, it has been suggested, now denotes a “world community . . . where relations between individuals transcend state boundaries” and a belief in “basic human rights that all individuals should enjoy.” As noted by April Carter, “The idea of world citizenship is fashionable again.” All of these manifestations of citizenship can supply unifying elements that are otherwise lacking in diverse societies, where citizenship “fosters social cooperation and identification that avoid the divisiveness of racial, religious, and ethnic affiliations.” Citizenship thus can provide forms of personal identity that are defined either narrowly, by how the population of a nation is defined and treated under the law, or broadly, by the acceptance of a set of philosophical and moral concepts.

Similar ideas were discussed or even implemented in antiquity in ways that have much to teach us. Although one must take care not to press apparent parallels too far, the ancient world, and in particular the later Roman Empire, can provide us with a laboratory for investigating what does and does not work in dealing with the interlocking issues of citizenship, ethnicity, and identity. It permits us to inform our understanding of emotionally charged phenomena from a more distanced and objective perspective. The concepts of cosmopolitanism and world citizenship go back at least to Hellenistic philosophies of the fourth and third centuries B.C.E. The Cynic Diogenes, for example, stated that he was “a cosmopolite”: “a citizen of the world.” The Stoics believed that the whole world constituted the only true city, whose citizens were of necessity “good” people. In the Roman Empire, in the early second century C.E., the Stoic philosopher Epictetus likewise spoke of being a “citizen of the world.” Even the philosopher-emperor Marcus Aurelius (161–180) called himself a “citizen of the world-city,” opining that “under its laws equal treatment is meted out to all.”

In general, however, universal citizenship that transcends traditional legal, social, or national boundaries, that presupposes that all citizens are “good people,” or that does not distinguish between citizens and noncitizens (or between “haves” and “have-nots”) exists only in the mind and spirit, not as a formal juridical status. Not
even Marcus Aurelius, fortified with the authority of a Roman emperor, manifested his concept of world citizenship in Roman legislation. And in the modern day, the recent problems with the passage of a European constitution, which states that “every citizen of a Member State is a citizen of the Union and enjoys dual citizenship, national citizenship, and European citizenship,” provide just one example of the practical difficulties inherent in creating forms of citizenship that transcend the borders of traditional nation-states.

It may be, in fact, that the closest the world ever came to implementing a form of world citizenship was during the later Roman Empire. Beginning in the early third century, the Roman government worked to maximize the number of persons to whom Roman ius civile, the law of Roman citizens, applied. Emperors and jurists created a practical manifestation of universal citizenship that was rather different from the views of the philosophers. In the process, a number of problems with a curiously modern feel had to be confronted, including how to create a form of citizenship that was not predicated on an antithesis between “citizens” and “noncitizens,” how to deal with new concepts of Christian religious identity, and how to integrate multitudes of foreign immigrants (otherwise known as “barbarians”) with different cultural values who created a more ethnically diverse society.

In the world of Roman officialdom during the Roman Republic (509–27 B.C.E.) and the first few centuries of the Roman Empire, citizenship denoted an elite legal status to which certain rights, privileges, and obligations accrued under the law. For example, in private life, citizens could marry, make wills, and carry on business under the protection of Roman law. Noncitizens, or peregrini (“foreigners”), generally remained subject to whatever legal system was in effect when their provincial communities were annexed by Rome. Beginning with the reign of the emperor Augustus (27 B.C.E.–14 C.E.), institutionalized practices permitted provincials to become citizens, generally by serving either in the Roman army or on a city council. And because citizen rights were inherited, the number of Roman citizens quickly increased.

The extension of Roman citizenship to noncitizens was an unqualified success. As the Greek orator Aristides proclaimed in the mid-second century, “Neither sea nor intervening continent are bars to citizenship. No one worthy of rule or trust remains an alien, but a civil community of the World has been established as a Free Republic.” Aristides, of course, was telling the emperor Hadrian (117–138) just what he wanted to hear, but a wealth of other evidence makes it clear that a multitude

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of provincials profited from the legal benefits and career prospects provided by Roman citizenship.21

As the centuries wore on, the Roman citizen body continued to expand.22 Roman citizenship, and access to Roman ius civile, became less a special status and more a lowest common denominator. This process culminated in the issuance in 212 C.E. of the Antonine Constitution, in which the emperor Caracalla (211–217) granted citizenship to nearly all of the remaining free peregrini in the Roman Empire.23 The only surviving copy of Caracalla’s law, a papyrus Greek translation of the Latin original, is very fragmentary, but the crucial words are clear: “I grant to all those in the Roman world the citizenship of the Romans.”24 All that can be said with any certainty about the rest of the text is that people known as dediticii were excluded from citizenship.25

Modern writers often have downplayed the significance of Caracalla’s grant and suggested that Roman citizenship had little value thereafter.26 Peter Brown, for example, suggested that “The brittle privileges and self-respect once associated with the notion of citizenship slipped away.”27 According to Peter Garnsey, “For some modern observers, it was all over for Roman citizenship after Caracalla’s edict . . . citizenship had lost whatever residual value it formerly possessed.”28 Systematic studies of what it meant to be a “citizen” in the Roman world almost invariably stop at this point, on the assumption that once everyone who was eligible had Roman citizenship, citizen status ceased to be a meaningful component of personal or legal identity in the Roman world.29 Even though the literature is replete with discussions of “identity” in the late and post-Roman worlds, with abundant attention devoted


25 “κατακεραυνῖκας τῶν [καὶ] διευτυχενίων . . .”; the dediticii are discussed below.

26 Sherwin-White, The Roman Citizenship, 444: it “introduced no material alteration”; Garnsey, “Roman Citizenship and Roman Law,” dismisses it as “an accident of history” (133), a “whim” that “came out of the blue” (135, 137); W. Williams, “Caracalla and the Authorship of Imperial Edicts,” Latomus 38 (1979): 67–89, 69–72, deems it an “impulsive measure.”


29 E.g., Giacomini and Poma, Cittadini e non cittadini, 165.
to gender, religious, cultural, and, in particular, ethnic identity, a continued sense of personal identity based on citizenship status (Roman or otherwise) and the legal rights associated with it is not thought to have persisted.

A close examination of the evidence, however, challenges the prevailing opinion and suggests that concepts of citizenship, from the personal, legal, and metaphorical perspectives, continued to play a vital role in defining personal and legal identity after 212 C.E. In particular, Roman citizenship continued not only to be a factor in how people perceived themselves, but also to entail legal rights that were available only to persons who were identified as “Roman citizens.” The issuance of the Antonine Constitution did not put an end to distinctions created either by differences in citizenship status or by degrees of difference within a particular citizenship status. It rather encompassed various manifestations of citizenship—civic, provincial, religious, and ethnic—that could create different kinds of personal and legal identities and interact in different ways. In addition, evolving concepts of citizenship facilitated the integration of foreign, barbarian, populations into the western Roman world during the fifth and sixth centuries.

FROM SOME PERSPECTIVES, one is justified in suggesting that the Antonine Constitution had little impact. Although the number of citizens was increased, perhaps by quite a bit, the new citizens did not acquire as many benefits as they would have in the past. On the one hand, now that nearly everyone had it, Roman citizenship no longer conveyed higher social status vis-à-vis most other persons. And the differential treatments in criminal law that once had favored Roman citizens now were based on the distinction between honestiores (more distinguished people) and humiliores (more humble people), which was determined empirically on the basis of social and official position. The extension of citizenship did, however, permit the new citizens to use Roman ius civile, a not inconsequential benefit. It no longer was as necessary for lawyers to navigate the differentiations between citizens and many categories of provincial nonscitizens that before 212 C.E. had made lawsuits, inheritances, property transfers, and contracts a nightmare. Having access to Roman ius

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31 Pace Wolf Liebeschuetz, “Citizen Status and Law in the Roman Empire and the Visigothic Kingdom,” in Pohl and Reimitz, Strategies of Distinction, 131–152, 134–137.


33 See Jones, The Later Roman Empire, 17; Rolf Rilinger, Humiliores-Honestiores: Zu einer sozialen Dichtiometie im Strafrecht der römischen Kaiserzeit (Munich, 1988); and Peter Garnsey, Social Status and Legal Privilege in the Roman Empire (Oxford, 1970), 118.

civile became a default status that applied not only to cives Romani (full citizens), but also to legally disadvantaged persons, including servi (slaves) and three classes of liberti (freed slaves): full citizens, Junian Latins (who could not make wills), and dediticii (stigmatized freedmen). It took a while for Caracalla’s edict to be fully implemented, but once it had been, it incorporated other kinds of citizenship and legal identity. In particular, there continued to be a parallel concept of municipal citizenship. The territory of the Roman Empire was subdivided into a multitude of municipalities, county-sized territories under the jurisdiction of civitates (cities), which were responsible for overseeing much of Roman administration at the local level. Nominally, every Roman citizen also was a citizen of a city and, if sufficiently well-to-do, liable for the performance of munera (services) on its behalf. After Roman citizenship became essentially universal, people generally no longer identified themselves as “Roman citizens” but as citizens of cities. In the late fourth century, for example, the poet Ausonius could write, “I love Bordeaux, I esteem Rome: I am a citizen of the one, a consul in both.” The late-fourth-century historian Ammianus Marcellinus even used the term cives Romani to refer to citizens of the city of Rome as opposed to the Roman Empire. Nor did municipal citizenship provide the only kind of local identity that could be cited in conjunction with Roman citizenship. Even Rhine frontier villagers in 230 C.E. could call themselves “Roman citizens and inhabitants of Taunus by paternal descent.” In a similar manner, mid-third-century Thracians could identify themselves ethnically as “Roman citizens and Bessi.” One also could be a “citizen” of a province, a status that has received virtually no attention in the scholarship. During the later empire, people increasingly iden-

in the Roman World, 481; and for the legal “simplification that common citizenship would bring,” see Honoré, Ulpian, 85. As seen throughout Justinian’s Digest; contrary to the assumption that ius civile applied only to “free peoples” (Honoré, Ulpian, 80).


41 Ausonius, Carmina 11.20.40–41: “Diligo Burdigalam; Romam colo; civis in hac sum / consul in ambabus.”

42 Ausonius, Carmina 27.9.9; also Novella Valentiniani 5 (440).


tified themselves as inhabitants of provinces. Justinian’s sixth-century Digest cites earlier examples of Campanian and Pontic legal identity. Roman law even refers to “citizens” of a province, a usage also found in popular parlance, with references to citizens of Africa, Gaul, or Spain. But just what it meant to be a citizen of a province is not clear. It seems to have been based upon residence and obligation. The legal term provinciales (“provincials”) usually referred generically to all non-servile inhabitants of one or more provinces, and many late imperial enactments were addressed simply “To the provincials.” Selected provincials had a collective identity as members of a provincial council. Provincials had an identity separate from citizens of cities with regard to vectigales (tax imposts), military requisitions, munera (such as maintaining the imperial post system), the assignment of tabularii (imperial accountants), making public benefactions, pursuing lawsuits, sending embassies to court, and obtaining favors from imperial administrators. Responsibilities incumbent upon provincials included keeping tabs on provincial governors, sending petitions to the emperor, promulgating imperial initiatives, and renewing their loyalty oaths to the emperor at the annual provincial council meetings.

The adoption of Christianity as a state religion during the fourth century brought additional ways of defining citizen status. As Christian clerics, administrators, and emperors became increasingly intolerant of anyone who was not an orthodox Christian, the possession of full citizenship came to be based on Christian confessional status. Pagans, Jews, and heretics suffered a diminution of their citizenship rights and their ability to avail themselves of Roman civil law: they could “pursue the decisions of no judge in private business.” And in a metaphorical sense, the Christian concept of being a citizen of some supernal community, such as heaven or the “City of God,” was similar to, and even replaced, the classical philosophical sense of being a citizen of the cosmos: Christians were “citizens of the heavenly Jerusalem.”

Persons who were Roman citizens thus also could be identified by their municipal,
provincial, ethnic, or religious citizenship or status. This created multiple legal identities related to the legal jurisdiction under which different categories of citizens fell. Even though all Roman citizens could use *ius civile*, not all of them did so. Parallel legal systems, variously referred to as provincial, vulgar, civic, or common law, continued to be valid alongside Roman civil law. In addition, the official recognition of the Christian church brought with it an acknowledgment of Christian legal jurisdiction in cases involving the maintenance of proper Christian belief and behavior. The result was a growing body of canon law that sometimes competed with or contradicted Roman civil and criminal law.

**Caracalla’s Grant** was applied to all those living in the Roman Empire at the time it was made. But the population of the Roman world was not static. Many immigrants arrived after 212. Did they then constitute a new class of noncitizens, or were they permitted to become citizens by some formal or informal process, or at least to be absorbed into the population that was covered under *ius civile*? This question has been rarely asked and never answered. To begin to deal with this question, it might be noted that one characteristic that nearly all manifestations of real citizenship share is that citizens are juxtaposed, explicitly or implicitly, with noncitizens (in this case foreign *peregrini*) who supposedly do not share the benefits, duties, status, and sense of identity that accrue to the citizen body. Post-Caracallan Roman citizenship, however, did not follow this model. Even in the legal sphere, the status of *peregrinus*—several manifestations of which continued to exist—did not disqualify a person from many of the opportunities or obligations that putatively were available only to members of a particular citizen group. For example, a ruling of 364 declared, “Knights of Rome shall be chosen from native Romans and citizens (ex indigenis Romanis et civibus), or from those *peregrini* (noncitizens of the city) whom it is not proper to attach to the guilds”; and according to a law of 400, judges could have on their council either “citizens of the province” or *peregrini* (that is, non provincials). In a like vein, Jews and Samaritans, even if prohibited from holding other kinds of dignities, were nevertheless compelled by the emperors to fulfill any municipal offices and obligations to which they were liable, “lest We seem to have granted the benefit of immunity upon these execrable persons.” Such legislation


57 E.g., Garnsey, “Roman Citizenship and Roman Law,” 136–137.

58 *CTh* 6.37.1 (364).

59 *CTh* 1.34.1 (400).

60 *Nov. Theod.* 3.6 (438).
demonstrates that, in order to maximize the numbers of those eligible for the performance of public services, the Roman government instituted flexible eligibility requirements, including putting in abeyance restrictions that otherwise would have kept noncitizens, however defined, from participating.

One also might ask whether there continued to be any procedures for granting Roman citizenship after 212. Once again, this is a question that rarely has been raised in the scholarship, on the assumption that in 212 nearly everyone already had been made a citizen. Yet one discovers that even after Caracalla’s grant, there still are many references to the means by which one could “become” a citizen. Several late Roman laws discuss how liberti, or even servi, became full cives Romani. A law of 349, for example, decreed that manumitted mothers, “for whom, of course, the rights of Roman citizenship had been obtained,” could have their cases heard in court, as could any freed sons and daughters who had become “Roman citizens in a similar manner.”

In 447, a novella (new law) of the emperor Valentinian III (425–455) spoke of the testimentary rights of “a libertus, who will have obtained the privilege of Roman citizenship.” In exceptional cases, slaves could become citizens directly, without any intermediate process. Indeed, nearly all, if not all, of the acquisitions of citizenship attested after 212 resulted from promotions from servile to free status. This is what really was at issue; citizenship was merely the legal vehicle used to enable these changes.

Nor were all changes of citizenship status a one-way street, from lesser to greater legal privilege. Citizens also could be reduced in status, or they could lose their citizenship altogether and thus become part of a legally underprivileged class. Indigent guardians who had abused their authority were “punished with a diminution of status and ceased to be Roman citizens,” the same penalty that befell jurisconsults who failed to participate in ecclesiastical hearings. Loss of citizenship rights, in total or in part, often accompanied the penalty known as infamia (infamy). High-ranking Romans who attempted to legitimate lowborn offspring were sentenced “to suffer the stain of infamia and to be made peregrini (alien) from Roman laws.” Some of the penalties associated with infamia were specified in a law of 381 regarding Manichaeans: “We remove from them, under a perpetual note of branded infamia, all opportunity of giving testimony and living under Roman law, nor do we allow them to have the power to bequeath or receive any inheritance.” In addition, anyone “who has lost the dignity of Roman citizenship and has been made a [Junian] Latin” forfeited his testamentary rights. A ruling of 333 was especially Draconian: procurators who stole from the imperial weaving factories were summarily “removed

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61 A point missed, e.g., by Liebeschuetz, “Citizen Status and Law,” 135.
62 CTh 8.13.1 (349).
63 Nov.Val. 25 (447).
64 E.g., CTh 9.21.2.1 (321), 4.7.1 (321).
66 CTh 3.30.4 (331); Nov.Val. 35.2 (452).
68 CTh 4.6.3 (336); also CTh 16.5.36 (399).
69 CTh 16.5.7 (381).
70 CTh 2.22.1 (326); for Junian Latins, see n. 36 above.
from the number of Roman citizens” by being “smitten by the sword.”

Furthermore, those who fell into enemy hands and had been removed from Roman territory also lost their citizenship, with the proviso that they could regain it, and their property, by the ius postlimini (“right of return from beyond the frontiers”) should they be able to get back home.72 There also were regulations permitting freed slaves who had lost their citizenship to regain it upon their demonstration of the proper penitence.73

These examples show that there were different ways in which servi, liberti, and cives Romani could change their citizenship status and either use or lose some or all of the components of ius civile. Roman citizenship was not a package deal. Rather, different elements of citizenship status could be granted or revoked depending on a person’s degree of legal privilege or disadvantage. For many, therefore, the gain or loss of Roman citizenship and the extent to which they could exercise it still meant a great deal after 212.

That leaves the peregrini. Even if liberti and servi were able to “become” Roman citizens, this says nothing about the opportunity of peregrini, however defined, to do the same. One class of peregrini, the peregrini dediticii, was specifically forbidden from gaining citizenship.74 During the Roman Republic, peregrini dediticii, a term meaning “surrendered foreigners,” were foreign peoples who had surrendered to Rome.75 But by the third century, the legal definition of dediticii had changed. Peregrini dediticii now were stigmatized freedmen who had been branded or tortured, or who had fought in the arena.76 They remained forever excluded from citizenship. But there were other peregrini—not provincial natives, for they had been made citizens, but foreign peregrini who had settled on Roman territory.77 Surely there were many of them, yet there is no clear exposition of their status in the thousands upon thousands of surviving laws. This must mean one of two things: either they remained in some kind of legal limbo or we have simply been mistaken regarding what kinds of legislation we would “expect” to find dealing with them. Given the Roman penchant for legal precision, the former seems unlikely. The following model will therefore be based on the premise that after 212, Roman law did have a place for foreigners who settled in the Roman Empire.

Contrary to some scholarly assertions,78 the meaning of peregrinus as “noncitizen” in a legal sense was alive and well in the later empire.79 Just as there were different

71 CTh 1.32.1 (333).
72 Just. Digest 50.7.18, 49.15, 32.1.2; CTh, Title 5.7; also Maria Virginia Sanna, Nuove ricerche in tema di postliminium e redemptio ab hostibus (Cagliari, 2001).
73 Codex Justinianus [hereafter CJ] 6.7.2.1 (326).
76 Gaius, Institutionum 1.13–14; see Sasse, Die Constitutio Antoniniana, 104–110.
77 Pace Jones, “The dediticii and the Constitutio Antoniniana,” 135, that after 212, “no distinction between peregrini and dediticii . . . was . . . made.”
categories of cives, there also were different categories of peregrini. Many were “foreign” with respect to provincial or municipal citizenship or residence. But with regard to Roman citizenship, an insight into the distinction between Roman citizens and foreigners comes from Sidonius Apollinaris, who in the late fifth century said about Rome, “In this state (civitas) alone of the entire world only barbarians and slaves are peregrini.” Now, servi (not to mention liberti) were “foreign” to Roman citizenship in a sense for which there always had been remedies in ius civile. That leaves foreign barbarians as the only peregrini who were not part of the Roman civitas, a point also made in the mid-sixth century by the poet Corippus, who contrasted the cives Romani of the Roman army to the barbarian gentes of North Africa whom they were fighting. And this is exactly what we would expect: after 212, those who were peregrini with respect to Roman citizenship were foreigners from beyond the frontiers, the peoples known collectively as “barbarians.”

WE THEREFORE NOW CAN CONCENTRATE on clarifying the legal status of barbarians who had settled in the Roman Empire. During the Principate, there had been established procedures whereby provincial peregrini living in the empire could become Roman citizens. Were there similar procedures after 212 for foreign, barbarian, peregrini to become citizens, and in this way (or in some other manner) to be covered by Roman ius civile? Whereas current scholarship has given great consideration to barbarian cultural identity, to Roman and barbarian legal administration and practice, to Roman attitudes toward barbarians, and to Roman-barbarian interactions in general, discussion of the legal status of late Roman barbarians has been very sparse. So a thorough look at the legal status of barbarians in the late Roman world seems called for if we are to understand any effect that it may have had on the ability of barbarians to be integrated into Roman society.

Barbarians resident outside the Roman world were identified as belonging to a barbarian gens (people, family), natio (nation), or populus (people). This is consistent with Roman thought and terminology, which recognized not only citizenship (civitas) but also ethnicity (gens, natio, populus) as a basis for establishing identity. The

80 Provincial: CTh 1.34.1 (400), 8.1.9 (365), 12.1.161 (399); municipal: CTh 6.37.1 (361), 13.11.13 (412); also, Noy, Foreigners at Rome, 25; and Liebeschuetz, “Citizen Status and Law,” 138.


86 Even Romans belonged to a gens: e.g., CJ 4.42.2 (457/465); CTh 7.16.3 = CJ 12.44.1 (420); CTh 8.5.57 = CJ 12.50.16 (397); CTh 5.6.3 (409); CJ 4.41.2 (455/7), 1.17.2 (533).
greatest modern attention has been given to the legal status of barbarians who served in the Roman army. As of the fourth century, barbarians appear throughout the Roman military.87 Barbarians rose to hold high Roman offices, including not only military offices, such as *Comes rei militaris* (Count of Military Matters) and *Magister militum* (Master of Soldiers), but even the consulate.88 Many barbarian soldiers remained inside the empire after their military service.89 What was the legal status of barbarian soldiers and settlers? Did they have access to Roman *ius civile*? Were they able to cross the divide from *peregrinus* to *civis Romanus*?

It sometimes has been assumed that by an unspecified process, some barbarians, perhaps only military officers, became Roman citizens.90 Emilienne Demougeot, for example, conjectured that barbarians who became members of the field army, held Roman military or civilian office, or married Romans must have become citizens.91 She also argued that the honorific title “Flavius,” borne by many barbarians, indicated a grant of Roman citizenship, a suggestion that was seconded by Garnsey.92 But there is nothing to prove that the title “Flavius”—an inherited title held not just by barbarians but by a multitude of imperial officials—carried citizen status.93 Demougeot also suggested that barbarians held some kind of special *civitas sine conubium* (“citizenship without the right of marriage”).94 But this kind of halfway house is both unprecedented and undocumented in Roman law. Demougeot even estimated that about seventy high-ranking barbarians had Roman citizenship.95 Peter Heather suggests, without citing any evidence, that late Roman “citizenship was limited only to the most important Goths.”96 And Garnsey repeats Demougeot’s estimate of seventy barbarian citizens and asserts—without giving any examples—that “a few individual Goths were honoured with Roman citizenship.”97 Indeed, no one provides a single example of a barbarian who was expressly granted Roman

87 E.g., Julian, *Oratio* 5.11, where an officer “exhorted his troops, both peregrines and citizens”; see Garnsey, “Roman Citizenship and Roman Law,” 144.
89 E.g., Dietrich Hoffmann, “Die spätromischen Soldatengrabsschriften von Concordia,” *Museum Helveticum* 20 (1963): 22–57, for twenty-seven epitaphs from a military cemetery near Aquileia, with barbarian names such as Fl. Fandigildis and Fl. Sindila.
96 Demougeot, “Restrictions,” 388.
97 Garnsey, “Roman Citizenship and Roman Law,” 144.
citizenship, and this in spite of a wealth of available legal and prosopographical material (the purported seventy barbarian citizens seem to have come from counting Flavii who had barbarian-sounding names).98

A diligent search of the sources turns up only a handful of references to barbarians described as Romans or Roman citizens. In 383, the orator Themistius opined that Goths were “no longer called barbarians but Romans,” a sentiment seconded by Pacatus, who stated in 389 that Theodosius I (379–395) had ordered defeated barbarian soldiers to “become Roman.”99 It is difficult to see how “becoming Roman” would not entail having some degree of Roman citizenship. Citizenship specifically is mentioned by Claudian, who, in his panegyric to Stilicho in 400, observed of Rome, “She calls together as citizens those whom she has conquered.”100 This view survived in the mid-sixth century, when Corippus could say, in a North African context, “Whatever gentes the Roman Empire sees being faithful and subject, it considers them to be Latin citizens.”101 More specifically, the rhetor Synesius stated that Theodosius I “considered the Goths worthy of citizenship.”102 The only person of barbarian ancestry specifically called a Roman citizen is the Master of Soldiers Stilicho, the son of a Roman mother and a Vandal father, of whom Claudian said, “Rome rejoiced that she deserved to have you as a citizen.”103 But how Stilicho gained this status—whether through his mother, through some action of his own, or by default—we are not told. We still, therefore, have no examples of barbarians actually being “made” citizens; nor do we know what kind of reality lies behind the rhetoric. How was the “citizenship” described here obtained, and what form did it take? What did it mean in the real world of Roman law?

This raises some additional questions. During the later empire, were foreign 
*per-egrini* who resided or settled in the Roman Empire—nearly all of whom would have been barbarians—able to make use of Roman *ius civile*? And if so, to what extent could they do so, and did they need to be Roman citizens? These questions can be approached by looking for examples of barbarians’ actual use of various elements of Roman law. One very widespread way in which barbarians participated in Roman legal procedures was related to landholding and the tax liabilities on property. Beginning in the early Principate, large numbers of barbarians were resettled on Roman territory in order to bring unoccupied lands under cultivation and to provide taxes and military recruits.104 Augustus reportedly settled 50,000 Getae on the Danube;
Tiberius (14–37) “transferred forty thousand captives from Germany and settled them on the banks of the Rhine in Gaul”; and Nero (54–68) granted land in the Balkans to more than 100,000 Transdanubians “for the purpose of providing tribute.”¹⁰⁵ A century later, Marcus Aurelius (161–180) settled numbers of Quadi, Vandals, Iazyges, Naristae, and Marcomanni.¹⁰⁶ The descendants of these barbarians would have become citizens in 212. Subsequently, barbarian settlers continued to pour into the empire. The *Augustan History* claims that after Claudius II’s defeat of the Goths ca. 270, “the provinces were filled with Gothic farmers; the Goth became a *colonus* (tenant farmer).”¹⁰⁷ In 297/298, a panegyrist of the emperor Constantius Chlorus (293–306) reported that “captive processions of barbarians” were “distributed to the provincials and conducted to the cultivation of deserted lands assigned to them,” where they attended markets, paid taxes, and were liable to military service.¹⁰⁸ A lead proof of a non-extant gold medallion showing barbarian families entering the Roman Empire at Mainz is thought to depict this very event.¹⁰⁹ (See Figure 2.)

Many such settlements were established in the fourth century. In 310, a panegyrist congratulated Constantine I (306–337) because “Frankish nations have been settled in deserted areas of Gaul and sustain the peace of the Roman Empire by their cultivation and its military by their levies.”¹¹⁰ Constantine also settled more than 300,000 Sarmatians “throughout Thrace, Scythia, Macedonia, and Italy”; in 359, a group of Sarmatians promised to “undertake the name and burden of tributaries (*tributariorum*)” if they were allowed to settle on Roman territory; and Ausonius in 368 spoke of “fields recently harvested by Sarmatian *coloni*.”¹¹¹ Ammianus reports that in the 360s and 370s, Alamanni were relocated to Gaul, where they became “subject to taxes and a source of income,” and to Italy, “where, having received fertile fields, they now cultivate the Po as taxpayers”; and that in 377, defeated Goths and Taifals “were settled around the towns of Mutina, Rhegium, and Parma in Italy as cultivators of the fields.”¹¹² In 386, “the nation of the Greuthingi was brought as

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¹⁰⁴ Ralph W. Mathisen, *AMERICAN HISTORICAL REVIEW* October 2006

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¹⁰⁶ Dio Cassius, *Historiae* 71.11.4–5, 71.12.1–3, 71.16.2, 71.31; *Historia Augusta* [hereafter *HA*] Marcus Aurelius, *Meditations* 22.2, 24.3.

¹⁰⁷ *HA* Claudius 9.4; also *HA* Aurelian 48.2 for the settlement of “captive families” in northern Italy for the creation of a viticulture industry.


¹¹¹ *Anonymus Valesianus* 32; *Amm.Marc. Res gestae* 19.11.6: *tributararius* was another name for *colonus*: *CTh* 5.11.9 (364/5), 10.12.2 (368/373), 11.7.2 (319), 12.6.21 (368); Ausonius, *Mosella* 9.

¹¹² *Amm.Marc. Res gestae* 20.4.1, 28.5.15, 31.9.4.
captives onto Roman soil.”113 Barbarian immigration also is attested in the legal sources. A ruling of 409 noted that groups of Scirians were settled as coloni in the eastern empire; they were granted special protection from enslavement and from being put to work on city public works projects.114

The legal or citizenship status of these barbarian settlers and landowners never has been convincingly elucidated.115 Yet, they farmed land either as tenant farmers or as landowners in their own right, statuses that certainly were covered under ius civile.116 By the third century, some of them and their descendants had the status of laeti, individual barbarians who were allowed to settle on land within the empire in exchange for the payment of taxes and as-needed military service.117 Laeti soon gained legal rights that approximated those of Roman citizens, for the aforementioned panegyric to Constantius of 297/298 also spoke of “the laetus, who has been restored by postliminium.”118 The right of postliminium allowed Roman citizens to

113 Consularia Constantipolitana s.a. 386; Monumenta Germaniae historica [hereafter MGH], Auctores antiquissimi 9.214.
114 CTh 5.6.3 (409): “They have been received by no other right than that of the colonate.”
115 E.g., Heather, Goths and Romans, 113, suggests that groups from beyond the frontier submitted “not as full citizens but as dependent subjects.”
116 For coloni as Roman citizens, see Liebeschuetz, “Citizen Status and Law,” 136.
118 Pacat. Pan.Lat. 8/5.21.1; Nixon-Rodgers, In Praise of Later Roman Emperors, 105.
recover property that had been lost, either because they had been forced into exile or because their property had been seized by foreign invaders. For laeti to have had this right, they must have been covered by Roman law. And a law of 409 mentioned North African gentiles (barbarian auxiliaries), in a status similar to the laeti, who had been “granted extents of lands on account of their guarding and fortification of the frontier.” Barbarian generals in Roman service also are attested as owning land, without, however, any indication of how they obtained it. In general, then, after settling in the Roman Empire as farmers or soldiers, barbarians were certainly assimilated into the Roman legal system, at least as regards land tenure and tax-paying.

Barbarian soldiers also were eligible for veterans’ benefits. The law codes record several instances of land grants and tax breaks being awarded to army veterans. Although ethnicity is mentioned in only a few cases, they show barbarians being treated the same way as citizens. One regulation stated that “any Alamannic laetus or unattached Sarmatian or son of a veteran” who was liable to the draft and falsely claimed veterans’ benefits was to be enrolled in the military—a necessary corollary to which would seem to be that any Alamanni, Sarmatians, and sons of Roman vet-

120 CTh 7.15.1 (409). Similarities to laeti: Notitia dignitatum occidentarium 42.
121 Such as Ellebichus, Master of Soldiers 383–388; Libanius, Epistulae 898; Areobindus, Master of Soldiers 434–449; Theodoret, Epistulae 18.23; and Fl. Valila qui et Theodobius (discussed below). See Blockley, “Roman-Barbarian Marriages.”
122 For barbarian taxpayers, see also Themist. Orat. 167.211–212.
123 E.g., CTh 7.20.3 (320), 7.20.4 (325), 7.20.8 (364), 7.20.11 (373).
124 CTh 7.20.12 (400).
erans who had legitimate claims could be the legal recipients of these benefits. In a like manner, a fragmentary ruling granted something unspecified to “retired veterans and gentiles.”  

These settlements of barbarians on Roman territory also reveal an aspect of Roman policy vis-à-vis barbarians that has rarely been appreciated. There has been a growing understanding of the role of “bad barbarians” in imperial propaganda. Simply put, the empire needed its violent, threatening barbarians to justify massive expenditures on the Roman military and to provide emperors with a validation of their very existence. The continued presence of dangerous barbarians, punctuated by reports of barbarian attacks followed by the de rigueur imperial victories, played a large part in imperial ideologies. But there is another, usually unacknowledged, side of the barbarian propaganda coin. Just as the empire needed its warlike barbarians, it also needed its peaceful ones. The emperors advertised their ability to turn bad barbarians into good ones by magnanimously introducing them to life as peaceful farmers and taxpayers on Roman soil. This policy was manifested iconographically.

125 CTh 5.11.7 (365). Because the following four constitutions dealt with deserted land, this one probably also did.

not only by scenes of gracious receptions and barbarian families being relocated into the Roman Empire, but also by coins depicting a Roman soldier, now the barbarians’ friend, leading a barbarian from his hut, no doubt to enjoy the benefits of life under Roman authority, including, at least as regards land tenure, access to Roman civil law. (See Figures 1–5.) Indeed, a law of 399 demonstrates the emperor’s personal role in granting lands to laeti newly welcomed into the Roman fold: “Because those seeking Roman felicity from among many barbarian peoples betake themselves to our Empire, on whose behalf the laetic lands must be administered, no one should merit any of these fields unless through Our personal dispensation.”127 In this way, potentially hostile barbarians were co-opted into the Roman system. The descendants of some of these settlers did very well for themselves. For example, Magnentius, a descendant of laeti, rose to high command in the Roman army and was proclaimed emperor at Autun in 350.128 (See Figure 6.)

The legal distinction between barbarians and Romans often is thought to have meant something in the case of marriages. A law of the 370s addressed to the Master of Soldiers Theodosius decreed, “For none of the provincials (provincialium) may..."127 CTh 13.11.10 (399). See Ralph Mathisen, “Adnotatio and petitio: The Emperor’s Favor and Special Exceptions in Early Byzantine Law,” in Denis Feissel, ed., La pétition à Byzance (Paris, 2004), 23–32.

Zosimus, Historia nova 2.54; Aurelius Victor, Caesares 41.25; see Jones, Martindale, and Morris, The Prosopography, 1: 532.
there be a marriage with a barbarian wife (barbara uxore), nor may any provincial (provincialis) woman marry any of the gentiles.” The law is very anomalous. Not only does no other Roman legislation even hint at any such prohibition, but many marriages between Romans and barbarians also are attested without any indication

FIGURE 5: A Roman soldier, with his spear pointing downward to indicate a lack of hostile intent, leads a barbarian from a hut under a tree for resettlement on Roman territory. The legend reads “Fel(icium) temp(orum) reparatio” (“Happy times are here again”). Centenionalis of Constans I (337–350). Mint of Rome. Mathisen Collection.

of legal complications. So what to do with the law? One might note that it does not distinguish between Romani and barbari, but between people classified more specifically as provinciales and barbari who are further described as gentiles. Indeed, the title of the section in the Theodosian Code for which this is the only entry, “On the Marriages of Gentiles,” indicates that the law is not about barbarians in general but about barbarians who also were gentiles, a specialized term referring to barbarian army units. This is consistent with the law being addressed to an army general: it must have had something to do with soldiers.


For a similar distinction, compare CTh 3.4.1 (374), “non solum in barbaris, sed etiam in provincialis servis.”

Military gentiles are attested in Africa in legal sources (CTh 7.15.1 [409], 12.12.5 [364], 11.30.62 [405]), and in Italy and Gaul in Not. dig. occ. 42.
Rather than being a blanket ban on Roman-barbarian marriages, this law is probably but one more example of the Roman fondness for prohibiting or regulating marriages between persons from different social, legal, or even religious backgrounds. As a general policy, marriages were to be “between persons equal in status, with no law impeding them.” Roman law forbade marriages, for example, between certain family members, between Christians and Jews or pagans, between slave and free, and so on. In the case of the law in question, some inconsistency involving the status and obligations of provinciales and gentiles may have arisen in the area where the law was directed. Gentiles had special duties relating to their military service, and, as seen above, provincials were liable to other kinds of obligations.

134 CTh 3.7.3 (428).
Gentiles who married provinciales perhaps could claim that they, or their offspring, were not liable for military service, and provinciales who married gentiles might claim that they were no longer liable to provincial munera. All kinds of problems could arise.\textsuperscript{137} Marital restrictions had been imposed on soldiers in the Roman past; this could be a late imperial manifestation.\textsuperscript{138} If this interpretation is correct, then this law provides an example of one category of barbarian soldiers being integrated into the Roman legal system in a manner similar to how other legally restricted groups—slaves, freedmen, women, and Jews—were incorporated. An unappreciated legal parallel is provided by a western law of 465 dealing with laeti who had illegally married coloni.\textsuperscript{139} The illegality, however, had to do not with ethnicity but with legal status: coloni were bound to the land that they worked, but laeti were not, and they were claiming that the children of these marriages did not have tenant farmer status. The law grandfathered in existing children but stated that any future offspring of such marriages would be under the authority of the owner of the tenant farmer’s land. In this case, then, barbarian laeti not only had recognized legal status, but even ranked above coloni on the Roman social and legal scale.

With regard to intermarriage, then, the empirical evidence is correct. Barbarians and Romans were perfectly free to marry each other so long as the marriages were “between persons equal in status, with no law impeding them.” This notion of marital non-exclusivity was current in other spheres of contemporary Roman thought. The late-fourth-century Spanish poet Prudentius, for example, stated: “A common law makes us equal . . . the native city embraces in its unifying walls fellow citizens (cives congenitos) . . . Foreign peoples now congregate with the right of marriage (ius co-nubii): for with mixed blood, one family is created from different peoples.”\textsuperscript{140} Even though Prudentius was speaking metaphorically about the city of God, his words, which described people as far away as India, seem uncannily applicable to the world of late Roman multiethnic marriage.

Barbarians also received other kinds of acknowledgment in Roman law. Three laws indicate that slaves described as “barbarians,” on the one hand, and “provincials,” on the other, received essentially the same treatment.\textsuperscript{141} A law of 405, regarding barbarian soldiers involved in legal cases and addressed to the Proconsul of Africa, stated, “In cases that come on appeal, we desire the ancient custom to be upheld, making this addition (illud addentes), that, if ever an appeal is introduced by gentiles or by their prefects, let a sacred examination of a proconsular hearing be awaited.”\textsuperscript{142} The phrase illud addentes suggests that an exception was being made to

\textsuperscript{137} The barbarian general Fravitta needed special permission from the emperor to marry a Roman ca. 400 (Eunapius, fr. 59) probably not because of his barbarian ethnicity but because he was a pagan (see n. 144 below).
\textsuperscript{139} Nov.Sev. 2 (465).
\textsuperscript{140} Contra Symmachum 2.598–614.
\textsuperscript{141} CTh 3.4.1 = CJ 4.58.5 (386); CTh 13.4.4 (374); CJ 4.4.2 (457/465).
\textsuperscript{142} CTh 11.30.62 (405). Pace Sirks, “Shifting Frontiers,” 149, “Barbarians were not subjected to Roman courts.”
accommodate barbarian soldiers. Even high-ranking barbarians recognized that they were liable to Roman law. When asked ca. 400 what reward he would desire after winning a victory, the barbarian general Fravitta requested, and received, the liberty to practice his pagan beliefs. And in 408, after the emperor Honorius (393–423) enacted a law forbidding pagans from holding high office, the barbarian general Generidus resigned his post in protest. Honorius eventually relented and annulled the objectionable law.

The customary Roman imperial attitude that barbarians could be included under Roman law also is seen in the panegyric to Constantius, which spoke of “the Frank, who has been received into the laws (receptus in leges),” a statement that can mean only that Frankish immigrants were covered by Roman law. This attitude also was reflected in a fictitious prophecy of the 390s suggesting that the emperor “would place the Franks and Alamanni under Roman law,” and in Zosimus’s report about barbarian soldiers of Theodosius I who had robbed the provincials: “This was not the behavior of men who were ready to live according to the laws of the Romans.”

The idea that barbarians who acknowledged Roman suzerainty should be sheltered under Roman law also is suggested by a novella of Theodosius II (402–450), issued in 439, which began, “Thus, it is advantageous that barbarian peoples be taken possession of (mancipari) by the empire of Our Godliness, thus our victories will seem most fruitful for those who are obedient (oboedientibus) if the advantages of peace are regulated by the rule of law. Therefore . . . we considered it fitting . . . that each one may make a testament according to his own wishes.” The law then went on to provide a summary of Roman testamentary practices. If, as seems likely, the word oboedientibus refers to the aforementioned barbarians, the mention of barbarians might be more than just a manifestation of traditional Roman victory ideology. It also could reflect a desire to incorporate newly settled barbarians under the umbrella of Roman ius civile.

Nor is it mere speculation to suggest that barbarians were interested in making wills under the protection of Roman law. A law of Leo I of 468 stated, “But if a testator of a barbarian nation leaves a bequest or trust of this sort without a person having been designated, and if some ambiguity appears regarding his patria (home), the bishop of his city, in which the testator died, likewise shall oversee the petition of the bequest or trust, in order to fulfill in all ways the resolution of the deceased.” Here, Roman ius civile is made available to someone of a barbaria nation, a term that, as seen above, was the legal designation of a barbarian foreigner. And one notes that the issue under consideration was not whether the barbarian had the right to des-

143 Yves Modéran, Les Maures et l’Afrique romaine (Rome, 2003), 500 (cf. 348, 510), however, suggests that these gentiles already were citizens; contra: Ste-Croix, Class Struggle, 515.
144 Eunapius, fr. 82; Jones, Martin, and Morris, The Prosopography, 1: 372–373.
145 CTh 16.5.42 (408); Zos. Hist.nov. 5.46: James J. Buchanan and Harold T. Davis, trans., Zosimus: Historia nova—The Decline of Rome (San Antonio, Tex., 1967), 243–244.
146 Zos. Hist.nov. 5.46.2–4; Martin, The Prosopography, 2: 500–501.
147 Pacat. Pan.Lat. 8/5.21.1; Nixon-Rodgers, In Praise of Later Roman Emperors, 105.
148 HA Tacitus 15.2: “sub Romanis legibus.”
150 Nov.Theod. 16 (439).
151 Cf J.3.28.3 (468). Significantly, this law was included in two barbarian law codes, the Visigothic Breviarium and the “Roman Law of the Burgundians” (45.2).
ignate an executor or trustee under *ius civile*—that was taken for granted—but what to do if he failed to do so. The question of the barbarian’s *patricia* suggests another way in which barbarians might have been legally integrated into the Roman world. In Roman legal terminology, *patricia* usually referred to one’s native city, occasionally to the Roman Empire, but never to a foreign land. So how could the aforementioned barbarian have a Roman *patricia*? A tantalizing law of 364, addressed “To all the provincials,” suggests one way that this could have happened, stating, “We grant to all well-deserving veterans the *patricia* that they wish.” The opportunity to choose one’s own *patricia* would have been most applicable to those who did not already have one, a criterion that would have fit barbarian veterans. Citizens of a municipality were ipso facto Roman citizens. In addition, if one was sufficiently well-to-do, becoming a citizen of a municipality also could make one liable to municipal *munera*. Retired soldiers, however, were hardly ever in that category, so we would not expect to find these barbarians on city councils.

We do, however, have evidence that high-ranking barbarians participated in traditional Roman civic activities. Most of the evidence for barbarians on city councils comes from Constantinople. In the late fourth century, Synesius lampooned barbarian generals who exchanged their sheepskins for togas when they attended meetings of the Senate at Constantinople. Zosimus was more sympathetic, and spoke of the Gothic general Gaianas responsibly attending Senate meetings. The barbarian general Aspar even rose to hold the position of *princeps senatus* (“first man in the Senate”). But not until the Ostrogothic occupation of Italy after 493 are barbarians clearly attested as members of the Senate in Rome. Barbarians also participated in traditional senatorial euergeticism. In the east, during the 460s, the aforementioned Aspar provided Constantinople with a new cistern. And in Italy at about the same time, the barbarian patrician Ricimer decorated the Arian church of St. Agatha in Rome with mosaics. In 471, the barbarian Master of Soldiers Fl. Valila qui et Theodobius dictated, proofread, and subscribed to an extant *donatio* (deed of gift) that established a church at Tivoli. Wealthy barbarians also disposed of their property using Roman testamentary law. Aspar named another barbarian, the Ostrogoth Theoderic Strabo, as one of his heirs. The emperor Leo, however, refused to allow Strabo to claim his inheritance, perhaps because of the strained political relations between the two, or perhaps because Strabo was not covered by *ius civile*. And Valila bequeathed to the church a house on the Esquiline Hill in

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152 Municipality: *CTh* 6.4.21.4, 8.12.3, 12.1.98, 12.1.119, 12.1.146, 12.18.2, 14.9.1, 15.1.42; Empire: *CTh* 9.37.2, 10.10.25.
153 *CTh* 7.20.8: “quam volunt patriam damus.”
154 De regno 19/23C.
156 John Malalas, *Chronicon* 371; *Chronicon paschale* s.a. 467.
158 *Chronicon paschale* s.a. 459. My thanks to one of the referees for this example.
In this way, very important barbarians, who often had a family history of imperial service, fulfilled the traditional civic roles expected of wealthy and influential Roman citizens. And their ability to make property transfers and testamentary bequests demonstrates that they had full access to Roman *ius civile*.

Barbarians who lived under the Roman legal umbrella, moreover, did not necessarily give up their barbarian identity. Although multitudes of barbarian settlers no doubt were absorbed into Roman society and retained at most sentimental attachments to the old country, other barbarians who served in the Roman Empire had dual residences, living part-time in the empire but also returning home. Barbarians thus were able to maintain dual citizenship, just as one could hold Roman citizenship along with municipal or provincial citizenship without any contradictions. A ruling of 398 specifically permitted Jews to choose their legal identity. In civil cases, they could use their own laws within their own religious communities or when both parties agreed, but if they were “living by Roman common law” (*Romano et communi iure viventes*), they were expected to “initiate and conclude all legal actions according to Roman law.”

Nor is there any indication that the Jews who chose to live by Roman law did so in any other manner than by simply doing so. Even prior to the Antonine Constitution, the opportunity to hold dual citizenship was formally extended to barbarians. During the 160s, Roman citizenship was granted to North African *gentiles salvo iure gentis*, that is, “with the law of their people preserved.” These barbarians retained whatever legal obligations or benefits accrued from their belonging to a barbarian people at the same time that Roman *ius civile* became available to them. They, like the Jews, could use their own law when they identified themselves as *gentiles*, or Roman law when they identified themselves as *cives Romani*. Nor did this kind of dual citizenship create any problems of political allegiance, for by the later Roman Empire, being a Roman citizen had become purely a state-ment of legal status and coverage. It no longer had anything to do with politics. There were other institutions—military oaths for soldiers and provincial council meetings for civilians—that dealt with declaring oneself a loyal subject of the emperor.

Indeed, in late Roman popular usage, barbarians were recognized as bearing a form of ethnic citizenship. A Roman of Florence, for example, described his deceased wife as a *civis Alamanna* (“citizen of the Alamanni”). The Arian Modaharius, who debated Bishop Basilius of Aix in the 470s, was depicted as a *civis Gothus*.

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162 *Liber pontificalis* 49: Duchesne 250.
165 *CTh* 2.1.10 (398).
168 Military: Vegetius 2.5; provinces: n. 53 above.
169 *CIL* 11.1731 (423).
And a soldier buried near Budapest said on his epitaph, “I am a civis Francus [Frankish citizen] and a Roman soldier in arms.” But this usage never appears in any extant Roman legal sources, and it is unclear what being a barbarian civis meant. It may have been the functional or metaphorical equivalent of Roman civic or provincial citizenship. It also may have had as much, if not more, to do with ethnic identity as with legal status. One’s personal identification with a city, a province, a religion, or a barbarian people could be expressed in terms of “citizenship” that in no way conflicted with holding Roman citizenship.

So where does this leave barbarians who settled on Roman territory and were assimilated under the umbrella of Roman law? Can they be deemed “Roman citizens”? There is no evidence of any peregrinus being formally granted Roman citizenship after 212. If this ever did happen, it is fair to expect that we would continue to find evidence for it. Given the great number of references to such awards during the Principate, the lack of them during the later empire has to be significant, and cannot be dismissed as an argument from silence. After 212, the only formal grants of Roman citizenship were to freedmen and slaves, who thus experienced not so much a change from “noncitizen” to “citizen” as a transfer to a greater measure of legal freedom under ius civile. It was a difference of degree rather than of kind. But peregrini no longer received grants of citizenship. Thus, when considering the question of whether barbarians were considered to be Roman citizens, one must not assume that this happened as a consequence of some legal act. If it happened, it must have been in some other manner.

And happen it surely did, for, as just seen, we have plenty of evidence for barbarians behaving as if they were Roman citizens. They held office, owned and transferred property, made wills, went to Roman courts, and generally made use of ius civile, all without formally receiving citizenship. The most reasonable explanation for this is that the Antonine Constitution was meant to be self-perpetuating. All free foreign peregrini who settled in the Roman Empire and took up the obligations and identity of cives of a municipality or a province were potential Roman citizens. Being a foreign barbarian did not exclude one from access to some if not all elements of Roman ius civile and from other citizen privileges. What counted was not ethnicity but distinctions among slaves, freedmen, and full citizens, who had different levels of access to ius civile. Indeed, the primary distinction in Roman law now was not even between citizen and noncitizen, but between free and degrees of legal disability, as denoted by being, for example, a slave, a freedman, a colonus, a dediticius, or a person under a sentence of infamia. Free status conveyed full access to ius civile, whereas nonfree status, as always, brought noncitizen status in the sense of incomplete access to ius civile. Conversely, non-full-citizen status necessarily implied legal disability. It therefore was a contradiction to suggest that a free person could be a noncitizen. This

170 Sid.Apoll. Epist. 7.6.2–3.
171 CIL 11.3576 (Aquincum, near Budapest).
172 Except for a few early examples of bureaucratic inertia; see Herodian, History 8.4.2, and Sherwin-White, The Roman Citizenship, 388.
173 And to hold the office of Consul certainly implied that one had the ius honorum, the right of Roman citizens to hold office.
would explain why there are no cases during the later empire of anyone being denied access to *ius civile* on the basis of ethnic, or any other nonservile, status, a stark contrast to the Principate, when accusations that noncitizens were passing themselves off as citizens were rampant.\textsuperscript{174}

It thus is no surprise that free barbarian *peregrini* had access to *ius civile*. But this does not mean that all barbarians automatically were considered citizens. It was making use of the “law of Roman citizens” that made someone both *de facto* and *de iure* a citizen. Citizenship was a matter of participation and self-identification:\textsuperscript{175} one could just as easily identify oneself as a *civis Francus* as a *civis Romanus*. Indeed, given the concept of dual identity, one could do both. There was no process by which a foreigner became a Roman citizen except by functioning as one. Caracalla’s edict truly intended that *ius civile* would apply to everyone, and that included new residents. Roman law united everyone in the world. As expressed by the third-century jurist Modestinus in his work “On Manumissions,” “Roma communis nostra patria est” (“Rome is our shared homeland”).\textsuperscript{176} The same ideology lay behind the *Augustan History*’s proud observation, in the late fourth century, about the emperor Probus: “Did he not defeat all of the barbarian nations and make almost the entire world Roman? There is peace everywhere, Roman laws are everywhere, our judges are everywhere.”\textsuperscript{177} Rhetoric, yes, but a rhetoric based on imperial ideology. By making their law available to all, the Romans manifested their claim to rule all that mattered of the whole world and established the closest thing ever known to a “citizenship of the world.”\textsuperscript{178}

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DURING THE FIFTH CENTURY, the carefully crafted unity of the Roman world disintegrated. The western half of the empire gave way to several barbarian successor states, which assimilated many Roman concepts of law, citizenship, and legal identity.\textsuperscript{179} For more than four hundred years, the Roman Empire had been the only Mediterranean or European government that offered the benefits of a system of law. The barbarian states now issued laws and law codes in their own names that applied to all the residents of their kingdoms.\textsuperscript{180} But they also continued to recognize laws
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\textsuperscript{175} A point made by Ando, *Imperial Ideology and Provincial Loyalty*, 352, for the pre-212 period.


\textsuperscript{177} *HA Probus* 18.4–5.

\textsuperscript{178} For Roman rule of the “orbis terrarum” (“circle of the lands”), see Ando, *Imperial Ideology and Provincial Loyalty*, 278.

\textsuperscript{179} E.g., Cassiodorus, *Variarum* 1.1, to the Byzantine emperor Anastasius, “Regnum nostrum imitatio vestra est.”

associated with other kinds of legal identity. In the words of the Ostrogothic king Theoderic (493–526), “For each his own laws are preserved and under a diversity of judges a single justice embraces everyone.”181 The introduction of barbarian legal systems thus put one more selection in the legal smorgasbord. Someone identified as a Roman could continue to use Roman ius civile while at the same time functioning under the jurisdiction of barbarian law. Things could get complicated. For example, the Visigothic Breviarium (“Summary”) of 506 preserved, and commented upon, the Jewish access to Jewish law that had been available in the Roman Empire: “All Jews who acknowledge that they are Romans may pursue in the presence of the elders of their religion . . . the statutes that are in the Hebrew laws. Other matters, which are contained in our laws and relate to the courts, they shall pursue in the presence of the governor of the province where all do so.”182 In this case, a Jew enjoyed triple legal identity: as a Jew, as a Roman, and as a subject of the Gothic kingdom.

Barbarian kingdoms also preserved concepts of citizenship that sometimes, but not always, were related to legal jurisdiction. They gave particular attention to safeguarding the rights of those identified as Roman citizens. Both the Visigoths and the Burgundians preserved a law of Constantine dealing with slaves who were made “Roman citizens.”183 Regarding inheritances, the Visigothic interpretation of a law of Valentinian III referred to “the succession rights of liberti who are Roman citizens.”184 And the “Burgundian Law of the Romans” included regulations dealing with witnessing procedures and the wills of Roman citizens.185 In late-sixth-century Italy and seventh-century Spain, slaves still were being formally manumitted and granted “Roman citizenship.”186 And well into the ninth century, legal forms in the Frankish kingdom continued to convey “Roman citizenship,” which “included the right to make a will, to give testimony, to buy, to sell, to endow, and to commute,” just as in the Roman period.187 Usually, however, in the post-Roman world, as during the later Roman Empire, generic references to “citizens” meant citizens of cities.188 But there also was a more generalized usage, referring to citizens of “the Republic,” that is, Romans (and perhaps Ostrogoths as well) now subject to the Ostrogothic monarchy.189 And the Visigothic kingdom of the seventh century issued laws “for the utility of all citizens.”190

So just what was a “citizen” of a barbarian kingdom? The best hint at a direct answer comes from the 470s. After the Gallo-Roman Lampridius had his property restored by the Visigothic king Euric, Sidonius Apollinaris wrote to him, “I, until now

181 Cass. Var. 7.3.1.
182 CTh 2.1.10 = Breviarium Alarici 2.1.10 (506).
184 Nov.Val. 25, interpretatio (506).
185 Lex Romana Burgundionum 45.2 (derived from Nov.Theod. 16, also included in the Visigothic Breviarium), 45.4.
188 For Gaul, see Gregory of Tours, Historiae 7.31, 8.20, 10.31, 9.6, 2.11, 4.16, 9.13, 6.13; CTh 1.29.6 = Brev. Alar. 1.10.1 interpretatio; for Italy, see, e.g., Cass. Var. 1.21.1, 2.37.1, 3.44.1, 6.23, 7.8, 7.11–12, 7.29, 7.44, 8.30.3, 8.31, 9.2.4–6, 9.5.1, 9.14.2, 11.12, 12.13.1, 12.15.6; special attention was given to the citizens and Senate of Rome: e.g., Cass. Var. 1.41, 2.32, 3.10, 9.17, 10.13.
189 Cass. Var. 6.11.1, 7.37.1; cf. 4.16.1, 6.1.1–4, 11.13.3, 11.5.4.
190 Lex Visigothorum (= Liber iudiciorum) 1.3.
(ad hoc), act as an exile; you yourself now act as a citizen.” In whatever sense that it entailed, Lampridius had become a citizen of the Visigothic kingdom, and the word ad hoc suggests that Sidonius hoped to do the same. There is no indication of any formal process for becoming a citizen of a barbarian kingdom. It is likely that, just as in the Roman Empire, one did so by a process of residence, participation, and self-identification. Romans now had the opportunity to exercise a dual citizenship of their own. Just as it had been possible during the Roman Empire to be both a gentiles and a civis Romanus, in barbarian kingdoms one could retain Roman citizenship while at the same time identifying oneself as a citizen of a barbarian kingdom.

The permeability of various forms of citizenship status in the barbarian kingdoms helps to explain why the transition from Roman to barbarian administrations just before and after the year 500 was not nearly as disruptive as it might have been. Roman administrative systems were preserved, as were institutions relating to personal legal status and procedures for all citizens of a kingdom. An additional consideration is that being identified as a Roman citizen was simply a statement of coverage under Roman ius civile. It did not carry any sense of political loyalty to the Byzantine emperor or the old Roman Empire.

Over the longer term, however, the Roman concept of universal citizenship was lost. After all, barbarian kingdoms had none of the ideological or conceptual underpinnings that had led to Roman ideas of inclusive citizenship. In particular, they had no claim to universal political hegemony. Quite the contrary. Each was confronted by a welter of other kingdoms, not to mention a resurgent Roman Empire in the east, with which they usually competed. Exclusivity rather than inclusivity was their watchword. As the Roman afterglow petered out, Roman concepts of citizenship, whether of a world, a nation, a province, or a city, did likewise, to be replaced in the Middle Ages by models of subjugation to bishops and kings. Any idea of universal citizenship now was transferred from the cosmopolitan city of the secular world to the heavenly city of God, more meaningful in the context of the world to come than in the here and now. Not until the later Middle Ages did ancient appearing forms of citizenship based on city centers begin to reemerge. And it was only in the Renaissance that Roman concepts of individual citizen liberty, not to mention ideas of world citizenship, reappeared.

In sum, during the later Roman Empire, the Roman government, in the belief

191 Sid.Apoll. Epist. 8.9.3.

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that it ruled as much of the orbis terrarum (“circle of the lands”) as was worth ruling, created a functional equivalent of universal citizenship. This was done largely for purposes of administrative streamlining, but even the streamlining could not have happened if there had not been a pervasive belief in the world of Roman officialdom that people living under Roman authority ought to have access to Roman law. In the conceptual framework of Roman claims to political jurisdiction beyond whatever the effective extent of Roman political control happened to be, there was nothing inconsistent in permitting immigrating foreigners from beyond the frontiers to live under the umbrella of Roman ius civile. As a result, a Frank or Visigoth could become just as much a Roman citizen as a Numidian, Sardinian, or Egyptian. Since the fall of the western Roman Empire, no nation has been so grand that it could claim to encompass the whole world or attempt to create a form of universal citizenship that was open to all comers. But now, at the beginning of the twenty-first century, there is again much discussion of the different forms that universal citizenship could take. In spite of, or perhaps because of, the chronological gap between the ancient and modern phenomena of world citizenship, it may be that the Roman model for dealing with issues of ethnicity, identity, and religion in the context of legal definitions of citizenship has much to teach us.196 In particular, the time may have come once again for a form of citizenship unburdened by the baggage of nationalism or political allegiances.


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