Provinciales, *Gentiles*, and Marriages between Romans and Barbarians in the Late Roman Empire*

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I INTRODUCTION

The nature of the relations between Romans and barbarians has long fascinated students of antiquity in general and Late Antiquity in particular. As barbarians infiltrated the Roman world during the Principate, often with the support of the Roman government, and later gained political control of the entire Western Empire, barbarians and Romans interacted in increasingly intimate ways. In particular, they often married each other. Past scholarship has assumed, based primarily on a law of Valentinian I (364–375 C.E.) and Valens (364–378 C.E.), that the Roman government was strongly opposed to these kinds of unions and actively attempted to prohibit them. But this supposition flies in the face of other evidence, such as a lack of corroborating material, terminological considerations, and a large number of attested mixed marriages. It would appear, in fact, that the law in question has been misinterpreted, and that, rather than being an anomaly, it is in fact quite consistent with other Late Roman marital legislation. Properly interpreted, this law provides one more way of understanding how so many barbarians were integrated so quickly into the Late Roman world.

The law preserved as *Codex Theodosianus* 3.14.1 was addressed in the names of the emperors Valentinian I and Valens to the Master of Soldiers Theodosius, the father of Theodosius I (379–395 C.E.). It reads (and will be discussed in detail below),

> Impp. Valentinianus et Valens AA. ad Theodorum [*lege* Theodosium] magistrum equitum. Nulli provincialium, cuiuscumque ordinis aut loci fuerit, cum barbara sit uxore coniugium, nec ulli gentilium provincialis femina copuletur. quod si quae inter provinciales atque gentiles affinitates ex huiusmodi nuptiis exstiterint, quod in iis suspectum vel noxium detegitur capitaliter expietur. Dat. V Kal. Iun. Valentiniano et Valente AA. coss.[1]
>
> The imperators Valentinian and Valens, Augustuses, to Theodosius, Master of Horse. For none of the provincials, of any rank or status, may there be a marriage with a barbarian wife, nor may any provincial woman marry any of the *gentiles*. But if any relations by marriage between provincials and *gentiles* arise because of marriages of this sort, that which is detected to be suspect or distasteful in them shall be punished capitally.

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[1] For the text, see Th. Mommsen, P. M. Meyer and P. Krüger (eds), *Theodosiani libri XVI cum constitutionibus sirmondianis et leges novellae ad Theodosianum pertinentes*, vol. 1 (1905; repr. 1954), p. 155. The manuscripts all read 'Theudorum' or 'Thedorum', which, because there was no known *magister militum* named Theodorus at this time, has been emended to 'Theodosium'.

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II DATING OF THE LAW: INTERNAL CONSIDERATIONS

This ruling has long bedevilled students of Roman-barbarian relations.[2] Like all the entries in the Theodosian Code, it was heavily edited. The original explanatory preamble discussing the genesis of and reasons behind the law was stripped away, as were any other clauses. The place of issue, which accompanies nearly all other entries in the Code, has also been lost. Even the date is unclear. Valentinian I and Valens shared consulates in 365, 368, 370, and 373 C.E., and the lack of iteration numbers ostensibly would date the law to 365 C.E., as would the non-appearance of Gratian, who was named Augustus in 367 C.E. But Theodosius the Elder (who is assumed to be the addressee as opposed to the otherwise unattested 'Theodorus') is not attested as *magister equitum* until 369 C.E.; prior to that he is referred to as a *comes* or *dux*, indicating that he could not have been Master of Soldiers any earlier. The law is thus usually dated to 370 or 373 C.E.[3] Theodosius fought the Alamanni in 370 C.E., and the Alans and Sarmatians in 371 C.E.[4] In 373 C.E. he was sent to Africa against the rebel Firmus, and in 375/6 C.E. he was executed at Carthage.[5]

Attempts to date the law have also tried to put it into a broader legal context. Some scholars have connected it to a law relating to a presumed barbarian threat preserved only in the Code of Justinian and addressed to the Master of Soldiers 'Theodotus' (no Master of Soldiers of this name is otherwise attested, and this also presumably is a misspelling of 'Theodosius'):[6]

> Valentinian, Valens, and Gratian, Augustuses, to Theodotus [*lege* Theodosius], Master of Soldiers. No one shall have the right of transferring wine and oil and fish sauce to *barbaricum*, not even for the sake of consumption or for commercial purposes.

This law lacks any dating formula at all, but the naming of Gratian places it in 367 C.E. or later, and the appearance of Theodosius puts it in 369 C.E. at the earliest. But, aside from mentioning barbarians and being issued to Theodosius, who was in this office at least four years, there is no obvious connection between these two laws.[7] Indeed, a fragmentary Valentinianic law, with the same dating formula as the gentilic law and perhaps relating to land distribution, also deals with *gentiles*, viz. *CTh* 5.11.7, '[em]eritis veteranis vel gentilibus dividamus (We divide [...] with retired veterans and *gentiles*)',[8] but there is no reason to conclude that this law was directly related to the gentilic marriage law either. The most that can be concluded about the marriage law from its purely bureaucratic context, therefore, is that it was probably issued in either 370 or 373 C.E.

[2] See A. Demandt, 'The osmosis of Late Roman and Germanic aristocracies', in E. Chrysos and A. Schwarcz (eds), *Das Reich und die Barbaren* (1989), 75–86; M. Bianchini, 'Ancora in tema di unioni fra barbari e Romani', *Atti dell' Accademia romanistica constantiana* 7 (1988), 225–49; R. C. Blockley, 'Roman-barbarian marriages in the Late Empire', *Florilegium* 4 (1982), 63–79; H. S. Sivan, 'Why not marry a barbarian? Marital frontiers in Late Antiquity (the example of *CTh* 3.14.1)', in R. Mathisen and H. Sivan (eds), *Shifting Frontiers in Late Antiquity* (1997), 136–45; R. Soraci, *Richerche sui conubia tra Romani e Germani nei secoli IV–VI* (1965; rev. 1974); E. Demougeot, 'Le "conubium" et la citoyenneté conféré aux soldats barbares du Bas-Empire', in *Sodalitas. Scritti in onore di A. Guarino*, 5 vols (1984), 4.1633–43; and A. Chauvot, *Opinions romaines face aux barbares au IVe siècle ap. J. C.* (1998), 131–45.

[3] See *PLRE* I, 902–4.

[4] Amm.Marc. 28.5.15 and *passim*.

[5] *PLRE* I, 902–4.

[6] *CJ* 4.41.1, from a lost section of the Theodosian Code: 'Valentinianus Valens et Gratianus AAA ad Theodotum [*sic*] mag. mil. Ad barbaricum transferendi vini et olei et liquaminis nullam quisquam habeat facultatem ne gustus quidem causa aut usus commerciorum.' Connection suggested, e.g., by A. Demandt, 'Die Feldzüge des älteren Theodosius', *Hermes* 100 (1972), 81–113, at 108; E. Demougeot, 'Le *conubium* dans les lois barbares du VIe siècle', *Recueil de memoires et travaux publié par la Société d'Histoire du Droit et des Institutions des Anciens Pays de Droit Ecrit* 12 (1983), 6982, at 70 = eadem, *L'Empire romaine et les barbares d'occident (IVe–VIIe siècles)* (1988), 301–14; and *PLRE* I, 903.

[7] In addition, the law restricted trade deals with barbarians beyond the frontier, and it will be argued below that the marriage law dealt with barbarians in Roman military service.

[8] The manuscript reading 'gentibus' clearly, it would seem, requires emendation to 'gentilibus'.

III LACK OF SUPPORTING EVIDENCE

On the face of it, this law appears to be a blanket ban on all marriages — some of the standard words for marriage (*coniugium*, *nuptia*, and *copulo*) are used[9] — between any Roman and any barbarian, and that is how it has been interpreted by nearly everyone who has studied it.[10] But such an interpretation has some problems. For one thing, no other Roman legislation, or any other source at all, mentions any such prohibition. Only two sources could even hint that it might have existed. In the early 390s C.E., according to Eunapius, the barbarian general Fravitta 'asked for a Roman wife' and 'the emperor permitted the marriage'.[11] But the reason Fravitta needed permission is probably to be sought not in any marriage prohibition,[12] but in Eunapius' preceding words, that Fravitta 'openly declared he worshipped the gods after the ancient fashion'. As an avowed pagan, Fravitta would have been liable to the legal penalties on pagans, which included restrictions on marital rights.[13] In this case, he would have needed a special dispensation from the emperor to permit him to marry his ladylove with full rights under Roman law.[14] And Eunapius' comment that 'the father of the girl was delighted at the match and thought himself lucky to have such a son-in-law', certainly does not suggest that there was any widespread social disapprobation of such unions. It has also been suggested that Fravitta needed permission to marry because the girl was under the *patria potestas* (paternal authority) of her father.[15] But if that had been the case, it would have been the permission of the father, not the emperor, that was needed. The only other possible reference to such a ban is very late — from the tenth century — when Constantine Porphyrogenitus stated that Constantine the Great had forbidden Roman emperors from marrying any woman 'from a nation different from the Romans'.[16] But even this prohibition, for which no earlier evidence survives, applied only to emperors, not Romans in general.

[9] *Coniugium*, *copulare*, and *nuptiae* are customary legal terms for marriage, and in the Theodosian Code, *copulare* also often suggests some form of disapprobation, being used to describe marriages that were either illegal, e.g., marriages of the children of *monetarii* (*CTh* 10.20.10.2), or in some way suspect, e.g., marriages of minor women (*CTh* 3.1.3) and marriages to the detriment of children (*CTh* 8.18.3, *NTh* 11.3). By the early sixth century, however, *copulare* had become a neutral word for marriage (e.g. the *interpretationes* to *CTh* 3.5.3, 3.7.3, 3.10.1, 4.8.7). Contrary to suggestions that *coniugium* and *copulare* represent different forms of marriage, or that *copulare* does not represent marriage at all (e.g. Chauvot, op. cit. (n. 2), 136), the words 'ex huiusmodi nuptiis' ('from marriages of this sort') in the penalty clause make it clear that these words are being used synonomously. Note also that other, stronger, words for marriage, *conubium* and *matrimonium*, are not used in this law.

[10] See, e.g., J. Gaudemet, 'L'étranger au bas-empire', in *Recueils de la Société Jean Bodin IX. L'étranger, première partie* (1958), 209–35, at 223ff.; Bianchini, op. cit. (n. 2), 225, 249; J. F. Matthews, 'Interpreting the *interpretationes* of the *Breviarium*', in R. Mathisen (ed.), *Law, Society, and Authority in Late Antiquity* (2001), 11–32; Demougeot, op. cit. (n. 6), 70; Chauvot, op. cit. (n. 2), 131–45; H. Sivan, 'The appropriation of Roman law in barbarian hands: "Roman-barbarian" marriage in Visigothic Gaul and Spain', in W. Pohl and H. Reimitz (eds), *Strategies of Distinction. The Construction of Ethnic Communities, 300–800* (1998), 189–203, at 189–90; M. Kuefler, 'The marriage revolution in Late Antiquity: The Theodosian Code and Later Roman marriage law', *Journal of Family History* 32 (2007), 343–70, at 349–50; and the other writers in note 2 above. Chauvot, op. cit. (n. 2), 137–41, assumes that in the phrase 'cuiuscumque ordinis aut loci', the 'loci' is geographical. But it is merely a typical case of Roman bureaucratic hendiadys, meaning, e.g., 'of any rank and status': see, e.g., *CTh* 7.8.14 (427 C.E.), 'cuiuslibet ordinis, cuiuslibet etiam dignitatis'; 7.18.1 (365 C.E.), 'cuiuscumque loci dignitatisve sit'; 9.1.4 (325 C.E.), 'cuiuscumque loci ordinis dignitatis'; 9.26.1 (397 C.E.), 'cuiuslibet ille sit loci ordinis dignitatis'; 13.5.5 (362 C.E.), 'cuiuscumque fuerint loci vel dignitatis'; 13.5.17 (386 C.E.); 'cuiuscumque loci fuerint vel dignitatis'; *NTh* 25 (444 C.E.), 'cuiuslibet loci vel ordinis in hac florentissima urbe'.

[11] Eunapius fr. 59: Jacoby, *FGrH* 219.

[12] e.g., Chauvot, op. cit. (n. 2), 306.

[13] Demandt, op. cit. (n. 2), 79–80.

[14] For such dispensations, see R. Mathisen, '*Adnotatio* and *petitio*: the emperor's favor and special exceptions in the early Byzantine Empire', in D. Feissel (ed.), *La pétition à Byzance* (2004), 23–32.

[15] Demandt, op. cit. (n. 2), 78–9.

[16] Const.Porph., *De administrando imperio* 13.

IV POLITICAL, RACIAL, AND CRIMINAL CONSIDERATIONS

Other inconsistencies in past assessments of the law involve the *a priori* assumption that the purpose of the law was to prohibit marriages for either political or racial reasons, that is, out of fears about anti-Roman conspiracies resulting from Roman-barbarian marriages, or because of concerns about racial mixture and, perhaps, that Roman civil positions would be occupied by demi-barbares.[17] Indeed, most previous attempts to put the law into a historical context have assumed that its genesis came from the political, and in particular the military, circumstances of either 370 or 373 C.E., and presume that the law originated because of a concern about treasonous or seditious conspiracies with barbarians that might arise as a consequence of marriages between Romans and barbarians. The supporters of 370 C.E. connect the law to Theodosius' campaigns against the Alamanni on the upper Rhine and Danube.[18] And proponents of 373 C.E., on the other hand, put the law in the context of Theodosius' attempts to suppress the North African revolt and possible usurpation of Firmus, who, as the son of Nubel, whom Ammianus described as 'a most powerful kinglet among the Moorish peoples', would have been one of the barbarian *gentiles* discussed in the law.[19] Indeed, Firmus himself may have been the product of a mixed marriage, if Nubel is to be identified as the Mauretanian Fl. Nuvel, the son of Saturninus, a *vir perfectissimus* ('Most Perfect Man') and *praepositus* ('commander') with a Roman-sounding name, and the *honestissima femina* ('Most Honourable Woman') Collocial, whose name appears to be non-Roman.[20]

But imperial legislation makes only passing references, and even these in very restricted contexts, to the possibility of betrayals to or conspiracies with barbarians. An undated law of Marcian (450–457 C.E.), for example, prohibited Romans from selling weapons to foreign barbarians who came on legations to Constantinople, 'for it is dangerous (*perniciosum*) for the Roman Empire and the closest thing to betrayal to arm the barbarians with weapons'.[21] An eastern law of 397 C.E. condemned to death and confiscation of property those who 'enter a wicked faction with barbarian *milites* or *privati*' in order to plot the death of persons associated with the imperial court: it equated the crime with *maiestas*.[22] And a law of 369 C.E. issued at Trier, and which does not even mention barbarians, listed as a serious crime, after *maiestas*, 'the homeland attacked or betrayed'.[23] The only expressed concerns about seditious acts by barbarians, therefore, involved ambassadors trafficking in weapons, or attempts to assassinate members of the imperial court at Constantinople — hardly indications of pervasive worries about barbarian fifth-columnists.

[17] Demandt, op. cit. (n. 6), 108 ('un mélange des races'); Chauvot, op. cit. (n. 2), 141 ('demi-barbares'); Sivan, op. cit. (n. 10), 192 ('potential risk' for the government), 202 ('erecting internal social boundaries'); A. Piganiol, *L'Empire chrétien* (325395) (2nd edn, 1972), 173 ('défense du sang romain').

[18] e.g., Soraci, op. cit. (n. 2); Chauvot, op. cit. (n. 2), 136ff., 474; Demougeot, op. cit. (n. 6), 302.

[19] 'Regulus per nationes Mauricas potentissimus': Amm.Marc. 29.5.2, also 29.5.44; see Demandt, op. cit. (n. 6), 107–8; Sivan, op. cit. (n. 2), *passim*; J. Matthews, 'Mauretania in Ammianus and the *Notitia Dignitatum*', in R. Goodburn and P. Bartholomew (eds), *Aspects of the Notitia Dignitatum* (1976), 157–86; C. Gebbia, 'Ancora sulle "rivolte" di Firmo e Gildone', *L'Africa romana* 5 (1987), 117–29; and T. Kotula, 'Firmus, fils de Nubel, était-il usurpateur ou roi des Maures?', *Acta Antiqua Academiae Scientiarum Hungaricae* 18 (1970), 137–46.

[20] *CIL* 8.9255 = *ILCV* 1822 (from Cape Matifu in Algeria); see A. Blackhurst, 'The house of Nubel: rebels or players?', in A. H. Merrills (ed.), *Vandals, Romans and Berbers. New Perspectives on Late Antique North Africa* (2004), 59–76, at 65.

[21] *CJ* 4.41.2: 'Perniciosum namque Romano imperio et proditioni proximum est barbaros ... telis eos, ut validiores reddantur, instruere.'

[22] *CTh* 9.14.3: 'Quisquis cum militibus vel privatis barbaris etiam scelestam inierit factionem, aut factionis ipsius susceperit sacramenta vel dederit, [et] de nece etiam virorum illustrium, qui consiliis et consistorio nostro intersunt, senatorum etiam ... cuiuslibet postremo qui nobis militat cogitarit, eadem enim severitate voluntatem sceleris qua effectum puniri iura voluerunt: ipse quidem utpote maiestatis reus gladio feriatur bonis eius omnibus fisco nostro addictis.'

[23] *CTh* 9.37.2: 'Quibus aut violata maiestas, aut patria oppugnata vel prodita, aut peculatus admissus.'

Given that imperial legislation shows so little concern about barbarian conspiracies, much less about racial mixing, any supposed imperial fears about barbarian loyalty lying behind the marriage law must be inferred from the words *suspectum*[24] and *noxium* used to describe the possible results of such unions. But in laws relating to serious crimes such as *maiestas*, words like *nefaria* (*CTh* 9.38.6: 381), *nefanda* (*CTh* 9.35.2: 376), *atrox* (*CTh* 9.38.7: 384), and *temeritas* (*CTh* 9.5.1: 320/3) are used, whereas the word *suspectum* usually relates to questionable motivations, as by a guardian, merchant, or official,[25] and *noxium* is a generic term for something unpleasant or damaging.[26] So it seems that, for the government, such marriages were not treasonous or seditious, but were 'questionably motivated' or 'unpleasant', for reasons we have yet to determine.

But, one might argue, surely the assessment of a *sententia capitalis* (as indicated by the word *capitaliter*), which could bring penalties ranging from loss of citizenship to execution, for entering into such marriages demonstrates the seriousness of the crime.[27] Not necessarily. For one thing, the assessment of a capital sentence (especially without a fine or confiscation of property) did not of necessity mean that serious crime was envisaged: at this period, *sententiae capitales* were generically assessed on a multitude of crimes, such as counterfeiting, undervaluing solidi, collecting excessive *vectigales* from the provincials,[28] concealing deserters and runaway *coloni*, casting spells, and even excessive litigation,[29] and in these cases clearly were intended as a preventative rather than a punitive measure.[30] Nothing in the wording of the law, therefore, clearly denotes that it was intended to deal with crimes as serious as treason, sedition, or the betrayal of Roman territory.

Moreover, and more germane, the government seems to have used the threat of capital punishment as a means of deterring people from undertaking any kind of illicit marriage, or any activity that threatened legal marriages. One law of Constantine indicated that convicted adulterers were liable to capital punishment,[31] and another, in a section 'Regarding women who join themselves to their own slaves', commanded that 'if any woman is discovered secretly having an affair with a slave, let her be subjected to capital punishment ... Let a woman married before the law was issued be detached from such a union...'.[32] In a law in the section 'De incestis nuptiis', Constantius II and Constans decreed that anyone

[24] The editors of the *CTh*, supported by two mss., O (Oxoniensis Bodleianensis Seldenianus B 16, written by William, monk of Malmesbury between 1125 and 1137: pp. vii, lxv–lxvii) and E^{v} (Eporediensis 35: pp. vii, lxvii–lxviii: IX saec.), read 'suspectum'. The other mss. read 'susceptum'.

[25] e.g., *CTh* 3.11.1, 'si erunt uterque suspecti' ; 3.32.2, 'suspecti tutores'; 10.18.2.1, 'per famam suspecta'; 11.30.58, 'suspecti iudicis'. Note also *NVal* 5.1 (440 C.E.), 'in rebus suspectis', relating to commercial matters.

[26] e.g., *CTh* 2.8.1, 'noxiis partium contentionibus'; 9.38.6, 'noxiis quaesita graminibus'; 16.5.34.1, 'noxiorum codicum'; 16.5.35, 'noxios Manichaeos'; 16.6.4, 'temeritate noxia'; or more specifically referring to a guilty party, 9.3.1, 'noxius puniatur, innocens absolvatur'; 9.40.4, 'in noxios proferri iuris sententiam'; 11.7.3, 'carcer hominum noxiorum'; 11.7.7, 'non insontibus, sed noxiis'; 16.5.46, 'in gratiam noxiorum'.

[27] In the early third century, according to Ulpian, *Dig*.48.19.2, a capital sentence could result in 'death or the loss of citizenship (including deportation) or servitude' ('Vel mors vel etiam civitatis amissio vel servitus ... deportatio in locum aquae et ignis interdictionis successit, non prius amittere quem civitatem'). The many references to capital punishments in Late Roman constitutions nearly always leave unspoken what the punishment entailed, although one law refers to 'exquisite hurts and punishments' (*CTh* 1.22.1: 'Capitali poena vel exquisitis potius exitiis suppliciisque plectatur') and another notes a special case where it involved deportation (*CTh* 10.10.29: 'Nisi quem crimini obnoxium capitalis sententia deportationi addixerit').

[28] *CTh* 4.13.1: 'Penes illum vectigalia manere oportet ... capitali sententia subiugando, quem plus aliquid, quam statutum est, a provincialibus exegisse constiterit.'

[29] *CTh* 9.19.2.2 (320/326 C.E.): 'Ultimum autem finem strepitus criminalis, quem litigantem disceptantemque fas non sit excedere, anni spatio limitamus ... capitali post probationem supplicio, si id exigat magnitudo commissi.'

[30] Those to be punished *capitaliter* also included lawbreaking members of governors' office staffs (*CTh* 7.18.4.4), veterans who became bandits (*CTh* 7.20.7), and counterfeiters (*CTh* 9.21.6).

[31] *CTh* 9.40.1 (413/415 C.E.): 'Capitalem in quempiam promat severamque sententiam, quam in adulterii vel homicidii vel maleficii.'

[32] *CTh* 9.9: 'De mulieribus, quae se servis propriis iunxerunt'; 9.9.1 (326/329 C.E.): 'Si qua cum servo occulte rem habere detegitur, capitali sententiae subiugetur, tradendo ignibus verberone ... 1. Ante legem nupta tali consortio segregetur.'

guilty of various kinds of incest 'shall be grasped by the penalty of a capital sentence'.[33] A law of Jovian (363–364 C.E.) condemned to capital punishment anyone even attempting to marry a consecrated virgin or widow.[34] In 388 C.E., Romans who married Jews were made guilty of adultery, and thus liable to a capital penalty.[35] A law of 390 C.E. commanded that 'if a man married as a woman ... where love is altered into another form', the guilty parties were to suffer 'exquisite punishments'.[36] And a law of 393 C.E. ruled that a couple who avoided an accusation of adultery on the grounds of close relationship and later got married were to be punished 'most severely' as adulterers.[37] The capital sentence assessed in the Valentinianic marital law, therefore, was quite compatible with the punishments assessed against violators of other Roman marital laws, and also is consistent with the law being about marriage-qua-marriage, and not anything else.[38]

V CASES OF INTERMARRIAGE

With this being the case, the most striking problem with current interpretations of the marriage law is that during the Late Roman period, Romans and barbarians were in fact intermarrying in great numbers, taking no heed of any official interdiction on such unions that modern scholarship presumes existed. For example, the mother of the emperor Galerius (293–311 C.E.), whose father was a Roman from Illyricum, was described as a barbarian from across the Danube.[39] And Roman women were marrying barbarians. In the fourth century, before he became emperor in 350 C.E., Magnentius, descended from barbarian *laeti*,[40] married Justina, the daughter of the consular governor of Picenum,[41] and Nonosa, the wife of Fl. Merobaudes, the Frankish Western Master of Soldiers between 365 and 388 C.E., apparently was a Roman.[42] The half-Vandal imperial general Stilicho married Honorius' daughter Serena *c.* 384 C.E.;[43] in 467 C.E. the half-Sueve, half-Visigoth Western Master of Soldiers Ricimer married Alypia, daughter of the emperor Anthemius (467–472 C.E.);[44] Patricius, son of the Alan Master of Soldiers Aspar, married Leontia,

[33] *CTh* 3.12, 'De incestis nuptiis'; 3.12.1 (342 C.E.): 'Ad provinciales Foenices. si quis filiam fratris sororisve faciendam crediderit abominanter uxorem aut in eius amplexum non ut patruus aut avunculus convolaverit, capitalis sententiae poena teneatur.'

[34] *CTh* 9.25.2 (364 C.E.): 'Si quis non dicam rapere, sed vel attentare matrimonii iungendi causa sacratas virgines vel viduas, volentes vel invitas, ausus fuerit, capitali sententia ferietur.'

[35] *CTh* 3.7.2 = 9.7.5 (388 C.E.): 'Ne quis Christianam mulierem in matrimonium *iudaeus* accipiat, neque Iudaeae Christianus coniugium sortiatur. nam si quis aliquid huiusmodi admiserit, adulterii vicem commissi huius crimen obtinebit.'

[36] *CTh* 9.7.3 (342 C.E.): 'Cum vir nubit in feminam, femina viros proiectura, quid cupiat, ubi sexus perdidit locum, ubi scelus est id, quod non proficit scire, ubi Venus mutatur in alteram formam ... iubemus insurgere leges ... ut exquisitis poenis subdantur infames'; cf. *CTh* 9.7.6 (390 C.E.).

[37] *CTh* 9.7.8 (393 C.E.): 'Si qui adulterii fuerint accusati et obtentu proximitatis intentata depulerint ... hi si postmodum in nuptias suas consortiumque convenerint ... iussimus in eosdem severissime vindicari.'

[38] *CTh* 3.7.2 (388 C.E.): 'Adulterii vicem commissi huius crimen obtinebit'; *CTh* 9.9.1.1, 6 (326 C.E.): 'Ante legem nupta tali consortio segregetur ... Post legem enim hoc committentes morte punimus.'

[39] Lactantius, *De mort.persec.* 9.2: 'Inerat huic bestiae naturalis barbaries, efferitas a Romano sanguine aliena: non mirum, cum mater eius Transdanuviana infestantibus Carpis in Daciam novam transiecto amne confugerat.'

[40] *Laeti* were individual barbarians who were allowed to settle on land within the empire in exchange for the payment of taxes and as-needed military service: see *CIL* 13.6592; *Pan.Lat.* 8/5.21.1; Amm.Marc. 20.4.1, 20.8.13, 24.1.15; *CTh* 7.20.10 (369 C.E.), 7.20.12 (400 C.E.), 13.11.10 (399 C.E.); *Novella Severi* 2.1 (465 C.E.); also E. Demougeot, 'A propos des lètes gaulois du IVe siècle', in *Festschrift für Franz Altheim* (1970), 101–13; and C. J. Simpson, '*Laeti* in the *Notitia Dignitatum*. Regular soldiers vs. soldier farmers', *Revue belge de philologie et d'histoire* 66 (1988), 80–5.

[41] *PLRE* I, 488–9, 490, 532; Zos. 2.42; Aur.Vict., *De caes.* 41.25.

[42] See E. Vetter, 'Das Grab des Flavius Merobaudes in Trier', *Rheinisches Museum* 103 (1960), 366–72; Nonosa lacks a separate entry in *PLRE* I, but see p. 599 s.v. 'Merobaudes 2'.

[43] *PLRE* I, 824, 857.

[44] *PLRE* II, 61, 944.

daughter of the emperor Leo (457–474 C.E.), in 470 C.E.;[45] and in 478 C.E. the emperor Zeno (474–491 C.E.) offered Anicia Juliana, the daughter of the emperor Olybrius (472 C.E.), to Theoderic the Ostrogoth (she soon after married the barbarian general Areobindus instead).[46]

Roman men did likewise. In the second half of the fourth century, the *Epitome de Caesaribus* reported that the emperor Gallienus (253–268 C.E.) abandoned his Roman wife for the princess Pipa, daughter of Attalus, a king of the Germans,[47] and the *Augustan History* joked not only about Gallienus' 'love of a barbarian woman' but also about the supposed marriage *c.* 280 C.E. of the usurper Bonosus to Hunila, 'a woman of a noble family, but of the Gothic people'.[48] In the late fourth century, the emperor Arcadius (383–408 C.E.) married Eudoxia, daughter of the Frankish general Bauto.[49] Subsequently, *c.* 427/429 C.E., the Arian barbarian Pelagia married the Roman count Boniface;[50] the Roman generalissimo Aëtius later married a Gothic princess, perhaps the recently widowed Pelagia;[51] and in 550 C.E., Germanus, nephew of Justin I (518–527 C.E.), married the Ostrogothic princess Matasuintha.[52]

Nor did barbarian men have any qualms about marrying Romans, often at the instigation of the Roman government. Arsaces III, the king of Armenia, married Olympias, the daughter of the ex-praetorian prefect Ablabius, *c.* 354 C.E.;[53] in 451 C.E., Attila the Hun had his eye on an imperial match with Justa Grata Honoria, the sister of Valentinian III;[54] in the late 450s C.E., the Vandal prince Huneric fulfilled his marriage to the kidnapped Eudocia, daughter of Valentinian III (425–455 C.E.), to whom he had been betrothed *c.* 442 C.E.;[55] and Ztath, king of the Lazi, married Valeriana, grand-daughter of the patrician Nomus, in the early 520s C.E.[56] Particularly instructive is the marriage of the Visigothic king Athaulf to the kidnapped imperial princess Galla Placidia in 414 C.E.:[57] in the mid-sixth century, the Gothic historian Jordanes scrupulously insisted that the marriage had been performed 'legitimately'.[58]

Generally, only records of marriages involving highly privileged persons made their way into the extant sources.[59] Many other mixed marriages between persons of less exalted status no doubt occurred among the general population. In the early fourth century, for example, the emperor Galerius reportedly gave well-born Roman wives to barbarians in his retinue.[60] And in 423 C.E., the *vir devotissimus* ('Most Devoted Gentleman') and

[45] *PLRE* II, 667, 842; see Jord., *Get.* 239; Marcell., *Chron.* s.a. 471; Malalas, *Chron.* fr. 31.

[46] *PLRE* II, 635–6; Theoderic: Malch. fr. 16; Areobindus: Eustath. fr. 7; Joh.Mal., *Chron.* 398, 407; Procop., *Bell.Pers.* 1.8.1; *Chron.pasch.* s.a. 464, 507.

[47] *Epitomae de caesaribus* 33.67: 'Expositus Saloninae coniugi atque amori flagitioso filiae Attali Germanorum regis, Pipae nomine, qua causa etiam civiles motus longe atrociores orti.'

[48] *HA Vita Gallieni* 24.3: 'Gallienus ... amore barbarae mulieris consenesceret'; *HA Quadigae tyrannorum* 29.15: 'femina ... familiae nobilis, gentis tamen Gothicae, quam illi Aurelianus uxorem dederat'. See Chauvot, op. cit. (n. 2), 415–16.

[49] *PLRE* I, 159–60; *PLRE* II, 410.

[50] Marriage: Augustine, *Epist.* 220.4 (427/429 C.E.); *PLRE* II, 856. Pelagia: Sid.Apoll., *Carm.* 5.128, 203–4; Marcellinus Comes, *Chron.* s.a. 432; also *PLRE* II, 856–7.

[51] Sid.Apoll., *Carm.* 5.1268, 2034; Merobaudes, *Carm.* 1.1518; see *PLRE* II, 856–7. Aetius' son-in-law Thraustila is said to have been a barbarian, perhaps a Hun or Goth (*PLRE* II, 1117–18).

[52] Jord., *Get.* 251, 314; *Rom.* 383; Procop., *Bell.Goth.* 3.39.14.

[53] *PLRE* I, 4, 109, 642: Amm.Marc. 20.11.3.

[54] *PLRE* II, 568–9; see J. B. Bury, 'Justa Grata Honoria', *JRS* 9 (1919), 113.

[55] *PLRE* II, 407–8, 572–3; see, e.g., Merobaudes, *Carm.* 1.7–18; Prisc. fr. 29–30; Theod.Lect., *Epit.* 393; Joh.Ant. fr. 204; Procop., *Bell.Vand.* 1.5.6; Joh.Mal., *Chron.* 366.

[56] Theophanes, *Chron.* AM 6015.

[57] *PLRE* II, 176–7, 888–9; *Narratio de imperatoribus domus Valentinianae et Theodosianae: MGH AA* 9.630.

[58] Jord., *Get.* 31: 'Adtendens in Foro Iuli Aemiliae civitate suo matrimonio legitime copulavit, ut gentes hac societate conperta quasi adunatam Gothis rem publicam efficacius terrerentur.'

[59] For additional examples, see Blockley, op. cit. (n. 2).

[60] Lactantius, *De mort.persec.* 38.5.

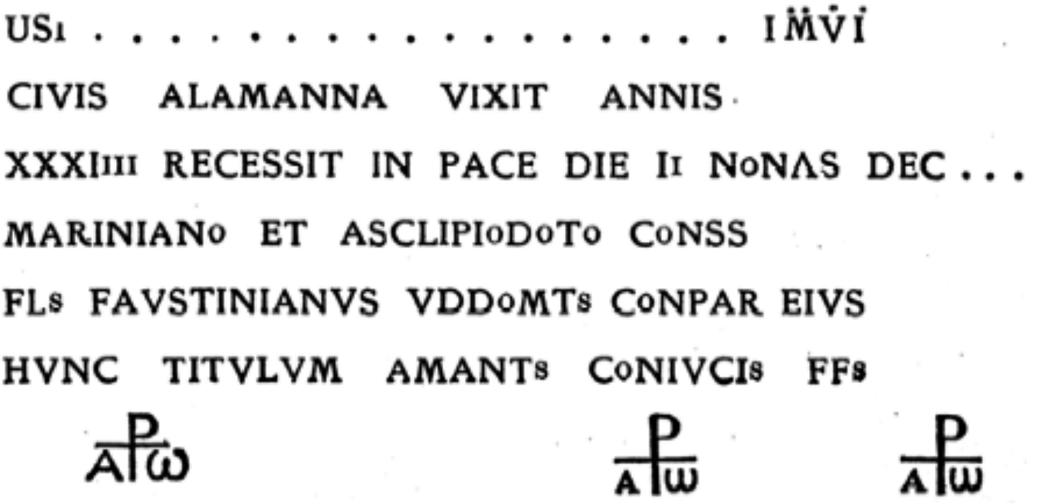

FIG. 1. Epitaph of an unnamed *civis Alamanna* from Florence (*CIL* 11.1731).

domesticus ('imperial bodyguard') Faustinianus, whose name and office both suggest that he was a Roman, put up an epitaph near Florence for his unnamed wife, whom he described as a 'civis Alamanna' ('Alamannic citizen') (Fig. 1).[61] This case is particularly interesting given the continuing emphasis on the woman's barbarian heritage even after her marriage and settlement within the Empire. Other such marriages among non-élites would have left no trace in the sources. All of these examples demonstrate the extent to which Romans were marrying barbarians, and vice versa, without any attested legal fuss.[62]

Indeed, even social disapproval of Roman-barbarian marriages is difficult to find. A possible example is the aforementioned jokes in the *Augustan History*, and one might also note the disparaging comment in the *Narratio de imperatoribus domus Valentinianae et Theodosianae*, that 'the augusta Placidia, sister of the emperor, tarnished the record of the times, first as a captive, then as the wife of a king, albeit a barbarian'.[63] But the most famous instance is Claudian's account of North African mixed marriages: 'Each disdained [Roman] aristocratic woman is given to the Moors; dragged into the middle of Carthage, Tyrian mothers suffer barbarian marriages. [Gildo] gives us an Ethiopian for a son-in-law, a Nasamon for a spouse, a discoloured infant terrifies its cradle.'[64] But this account, coming in the midst of Claudian's character assassination of Gildo, clearly had ulterior motives, and in any event the barbarians' brides are described as 'Tyrians', not 'Romans'. Thus, there is little evidence for any social pressure toward endogamy.[65]

Finally, if the Valentinianic marriage law was issued to prevent mixed marriages — and especially mixed marriages on the frontier — how is one to explain an instructive case from

[61] *CIL* 11.1731 (423 C.E.). Other possible examples include the *domesticus* Fl. Alantacus, perhaps a Goth, buried in Concordia in northern Italy *c.* 400 C.E. and married to Victoria (*CIL* 5.8738), and the Gallic deacon Ursianus, of the same date, whose epitaph was put up by his wife Ludula, a Germanic name (*CIL* 13.3787); see also Soraci, op. cit. (n. 2); Blockley, op. cit. (n. 2); and Chauvot, op. cit. (n. 2), 132–4.

[62] Demandt, op. cit. (n. 2), 80, 'In the military and political upper class nearly everybody is related to everybody . . .'.

[63] *MGH AA* 9.630: 'Soror imperatoris augusta Placidia primum captiva, deinde uxor regis quidem sed barbari statum temporum decolorat.'

[64] Claud., *Bell.Gild.* 1.13: 'Mauris clarissima quaeque / fastidita datur, media Carthagine ductae / barbara Sidoniae subeunt conubia matres / Aethiopem nobis generum, Nasamona maritum /ingerit; exterret cunubula discolor infans.' In Greek mythology, Nasamon, the grandson of Apollo, was the son of an Ethiopian nymph.

[65] Barbarians, of course, also married each other: e.g., the Master of Soldiers Agilo married the daughter of the Alamannic Praetorian prefect Araxius (Amm.Marc. 26.7.6, 10.7); and the Sarmatian general Victor married the daughter of the Saracen queen Mavia (Socr., *HE* 4.36.12).

c. 390 C.E., in which Nebridius, nephew of the empress Flaccilla, the wife of Theodosius I, married Salvina, the daughter of Gildo, who was in turn the son of the aforementioned Firmus, the Moorish instigator of the African revolt of the 370s.[66] According to Jerome, 'Nebridius was so dear to the unconquered emperor [Theodosius I] that the latter procured for him a most noble wife and thus rendered Africa, restive because of civil wars, faithful to him as if by means of this hostage.'[67] It is curious that Theodosius would have countenanced a marriage that, on the face of it, and irrespective of its political aspects, was in the clearest violation of a marriage prohibition issued to his own father at the most twenty years earlier. Thus, it would appear that even in its original temporal context, the law did not keep Romans from marrying barbarians, indeed, did not keep Roman emperors from actively supporting such marriages[68] — marriages that often, in fact, involved the imperial family. So there is a significant inconsistency between interpretations of the law as a prohibition on all Roman-barbarian marriages and the extensive evidence that such marriages were in fact occurring on a regular basis. So what is one to do with this law?

VI RE-EVALUATION

It would seem that the Valentinianic marriage prohibition needs to be reassessed, without any need for barbarian conspiracies on the one hand or a blanket ban on all Roman-barbarian marriages on the other. If the law really was about simply prohibiting marriages between any Roman and any barbarian, as most modern commentators assume, the numerous examples of such marriages would be completely inexplicable, and even more so because in the 430s C.E. this sixty-year-old law, now divorced from whatever original circumstances had led to its issue, was still thought suitable for inclusion in the Theodosian Code and thereby given universal validity, at a time when, as already seen, Romans were happily marrying barbarians. So, given all of the inconsistencies in existing political models for understanding the law, perhaps we should look for some other interpretation of the law in order to understand just what legal issues really were at stake.[69]

One might begin such an analysis with a past suggestion, that the legal justification for the law was that barbarians did not have the Roman *ius conubii* (and hence, by implication, Roman citizenship[70]), and thus were legally barred from marrying Romans.[71] It certainly was true, of course, that for a marriage to take place under Roman *ius civile*, the two parties needed to have the right of *conubium*. But if this was the legal basis for the law, one has to wonder why it did not mention that the *ius conubii* was at issue. In addition, there is not a single extant example showing that lack of the *ius conubii* ever prevented a marriage in Late Antiquity. Indeed, it would appear that, after the issuance of the Antonine Constitution in 212 C.E., barbarians resident within the Empire who did not have any restricting legal disabilities (for example, were not slaves, *coloni*, or disadvantaged freedmen) were as free to make use of Roman law as any other free provincials, and thus *ipso facto* had the right of *conubium*.[72]

[66] *PLRE* I, 620, 799, dated to the reign of Eugenius (392–394 C.E.).

[67] Jerome, *Epist.*79.2: '[Nebridius] ... invictissimo principi ita carus fuit, ut ei conjugem nobilissimam quaereret, et bellis civilibus Africam dissidentem, hac velut obside sibi fidam redderet.' The description of Salvina as an *obses*, could also suggest her barbarian origin.

[68] There is no hint of any special permission, as in the case of Fravitta, being needed or granted for this marriage.

[69] Blockley, op. cit. (n. 2), laments that 'its terminology is susceptible to different interpretations'.

[70] *Pace* suggestions that it was possible to receive *conubium* as a separate grant: Gaudemet, op. cit. (n. 10), 222; or that citizenship could be conferred without *conubium*: Demougeot, op. cit. (n. 6), 1636–7.

[71] As argued by Demougeot, op. cit. (n. 6), 75, and *passim*.

[72] See R. Mathisen, '*Peregrini*, *barbari*, and *cives romani*: concepts of citizenship and the legal identity of barbarians in the Later Roman Empire', *American Historical Review* 111 (2006), 1011–40. Barbarians thus did not need some kind of unattested special grant of Roman citizenship, as suggested, *inter alios*, by Chauvot, op. cit. (n. 2), 134; Demougeot, op. cit. (n. 6).

But even if the law does not revolve around the *ius conubii*, it very probably does relate to legal status.[73] The general policy, according to a law of 428 C.E., was that Roman marriages were to be 'between persons equal in status, with no law impeding them'.[74] As already seen, violation of this restriction usually brought a capital penalty. Roman law forbade marriages, for example, between certain family members, between Christians and Jews, and between slave and free,[75] and it appears that the Roman-barbarian marital law was one more example of, and quite consistent with, Late Roman laws regulating marriages between persons of different legal status.

VII *PROVINCIALES*

The most important thing to note is that the law does not distinguish between the *populus Romanus* or *cives Romani* and *barbari*, but between *provinciales* on the one hand, and *barbari*, who are further defined as *gentiles*, on the other.[76] To understand the law in context, we must understand what it was about the statuses of *provincialis* and *gentilis* that caused the law to focus on, and differentiate between, them.

The legal status of *provincialis* is ill-defined and rarely, if ever, discussed by modern writers; it is not addressed by any of the commentators on the marriage law save to assume that it is simply a synonym for 'Roman'[77] — presumably on the assumption that, after the Antonine Constitution, all free 'provincials' were also Roman citizens. But the legal status of *provincialis* did not, in fact, go away. After 212 C.E., Late Roman statute law continued to distinguish, for example, between *provinciales* and the *populus Romanus*. The term *provinciales* usually referred generically to all non-servile inhabitants of one or more provinces, and many Late Roman laws were addressed 'Ad provinciales'.[78] And the fact that no less than thirty-nine laws in the Theodosian Code were addressed, on the other hand, 'Ad populum',[79] surely indicates that from the point of view of the Roman government the designation *provinciales* meant something more, in a legal sense, than simply 'inhabitants of provinces'. Other evidence suggests the same. Selected provincials had a collective identity as members of the provincial council.[80] Provincials also had an identity separate from citizens of cities, such as with regard to *vectigales* (tax imposts, usually other than

[73] See J. Evans-Grubbs, *Law and Family in Late Antiquity: The Emperor Constantine's Marriage Legislation* (1995); also P. Garnsey, 'Roman citizenship and Roman law in the Later Empire', in S. Swain and M. Edwards (eds), *Approaching Late Antiquity. The Transformation from Early to Later Empire* (2004), 133–55, at 141–3.

[74] *CTh* 3.7.3 (428 C.E.): 'Inter pares honestate personas, nulla lege impediente.'

[75] e.g. *Coll. leg. Moys. et Rom.* 6.4 (incest); *CTh* 3.7.2 = 9.7.5 (Jews), 3.12.1 (342 C.E.) and 3.12.3 (422 C.E.) (Jews), *CJ* 7.20.1 (290 C.E.) (slaves); see Evans-Grubbs, op. cit. (n. 73).

[76] A distinction also made in *CTh* 3.4.1 (374 C.E.): 'Non solum in barbaris, sed etiam in provincialibus servis.'

[77] e.g., Chauvot, op. cit. (n. 2), 137, assumes that the phrase 'Nulli provincialium cuiuscumque ordinis' means that 'la partie romaine est definie de la façon la plus extensive' and that it applied to all Romans.

[78] 'Ad provinciales': *CTh* 1.5.1, 1.16.6–7, 2.26.3, 2.30.1, 3.21.1, 4.5.1, 5.15.16, 5.17.1, 7.4.26, 7.9.1, 7.13.7–8, 7.13.16, 7.20.8, 8.10.2, 11.8.3.1, and *passim*. J. A. O. Larsen, 'The position of provincial assemblies in the government and society of the Late Roman Empire', *Classical Philology* 29 (1934), 209–20, at 213, however, presumes that laws 'addressed *ad provinciales* … cannot have been intended for any agency other than the [provincial] assemblies'. But because laws make the distinctions between laws issued to 'provincials' in general, to provincials of particular provinces (*CTh* 8.4.2, 9.34.5, 11.7.4 ('ad Afros'), 8.4.3, 10.7.1, 121.1.5 ('ad Bithynos'), 12.1.59–60, 16.2.17 ('ad Byzacenos'), 3.12.1 ('ad provinciales Foenices'), 7.4.26 ('provincialibus provinciae proconsularis')), and to provincial councils specifically (e.g. *CTh* 2.19.3, 4.10.1, 11.30.15, 12.5.2; *Consult.vet.iuris.* 11.6.1, 11.7.1), this seems unlikely.

[79] e.g., *CTh* 1.2.2, 2.16.1, 2.29.1, 3.1.9, 3.2.1, 3.17.2, 4.12.3, and *passim*; these seem to be dealing specifically with *cives Romani* (see *CTh* 14.17.5, *NVal* 5.2; also *CTh* 1.32.1, *NVal* 25.2, *NTh* 16.2).

[80] *CTh* 1.16.2 (317 C.E.); 12.12.12.1 (392 C.E.); 11.20.4.3 (392 C.E.); 12.12.13 (392 C.E.); 12.12.14 (408 C.E.); see Larsen, op. cit. (n. 78). Multi-provincial diocesan councils also existed: *CTh* 12.12.9; Larsen, op. cit. (n. 78), 213; and J. Zeller, 'Das Concilium der Septem Provinciae in Arelate', *Westdeutsche Zeitschrift für Geschichte und Kunst* 24 (1905), 1–19.

tributum), assigning *tabularii* (imperial accountants), making public benefactions, pursuing lawsuits, sending embassies to court, and obtaining favours from imperial administrators.[81] Some of the particular responsibilities incumbent upon provincials included providing military requisitions and performing *munera* that included maintaining the imperial post system, 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.[82]

The legal definition of *provincialis* was paralleled by a popular trend toward identifying oneself as a resident, or even a citizen, of a particular province, such as Raetia, Savia, or Bithynia, or a generic provincial region, such as Spain, Gaul, or Greece, as opposed to a citizen of either the Roman Empire or a particular city.[83] For example, an epitaph of 389 C.E. described the *virgo* Maximilla as a 'civis Pannonia', a designation also used in an epitaph of 425 C.E. from Salona for an unnamed *clarissima femina*;[84] *c.* 400 C.E., the epitaph of Donatus, an ex-*protector*, described him as a 'civis Afer';[85] and in the mid-fifth century the chronicler Hydatius described Agrippinus as a 'Gallic count and citizen'.[86] The status of *provincialis*, therefore, was both a legal and popular condition that was different from the status of Roman citizen on the one hand and citizen of a *civitas* on the other.

VIII *GENTILES* AND GENTILIC COMMUNITIES

That leaves the barbarians. The statement that 'no provincial woman is to be united with any of the *gentiles*' might suggest that the law is about special units of the Roman army made up of barbarian soldiers called *gentiles* (on account of having been recruited from barbarian *gentes*, or peoples).[87] Marital restrictions had been imposed on soldiers during the Principate, and this would be a late imperial manifestation of the same policy.[88] This interpretation is consistent with the law being addressed to a Roman Master of Soldiers, for other extant legislation addressed to Masters of Soldiers also concerns military matters and personnel.[89] But a suggested problem with this interpretation is the mention of a 'barbara uxor' ('barbarian wife'). On the assumption that women could not be part of gentilic army units, it has been argued that the term *gentilis* must mean barbarians in

[81] *CTh* 4.13.5 (358 C.E.); 3.1.8 (399 C.E.); 7.4.26 (401 C.E.); 7.4.1 (325 C.E.); 3.1.8 (399 C.E.); 6.29.5 (359 C.E.); 8.2.5 (401 C.E.); 8.12.3 (316 C.E.); 8.12.8 (415 C.E.); 11.30.63 (405 C.E.); 12.12.11 (386 C.E.); 1.16.2 (317 C.E.).

[82] Larsen, op. cit. (n. 78); C. Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire* (2000), 359–61.

[83] See C. Roueché, 'Asia Minor and Cyprus', in A. Cameron, B. Ward-Perkins and M. Whitby (eds), *Cambridge Ancient History. Volume XIV, Late Antiquity: Empire and Successors, A.D. 425–600* (2000), 570–87, at 572, 'many people chose to describe themselves as inhabitants of their province ... rather than as citizens of particular towns'.

[84] *CIL* 6.41342 = *ICUR* (n.s.) no. 13355; *CIL* 3.09515 = *ILCV* no. 185.

[85] *AE* (1956), 251; *AE* (1995), 1115.

[86] Hydatius, *Chron.* 217, s.a. 462: 'Agrippinus Gallus et comes et civis'.

[87] North Africa: *CTh* 7.15.1 (409 C.E.), 12.12.5 (364 C.E.), 11.30.62 (405 C.E.); Egypt: *CTh* 12.12.5 (364 C.E.), to Victor, *dux Aegypti*, dealing with 'legati gentilium'; Italy and Gaul: *Not.dig.occ.* 42. See Chauvot, op. cit. (n. 2), 140. The *gentiles* have received little attention in military scholarship, being mentioned briefly in P. Southern and K. Ramsey Dixon, *The Late Roman Army* (1996), 47, 70, as possibly ranking below the *laeti*, and included anonymously as 'related units' in A. D. Lee, *War in Late Antiquity. A Social History* (2007), 84. In Roman law the term *gentilis* could also apply to a non-Christian (e.g. *CTh* 16.5.46: 'gentiles, quos vulgo paganos appellant') or to a member of a person's *gens* (extended family) (e.g. *Coll.leg.Mos.et Rom.* 16.2.17: 'lex duodecim tabularum gentiles ad hereditatem vocat'); neither of these meanings applies here.

[88] See S. E. Phang, *The Marriage of Roman Soldiers, (13 B.C.–A.D. 235). Law and Family in the Imperial Army* (2001); and P. Garnsey, 'Septimius Severus and the marriage of soldiers', *California Studies in Classical Antiquity* 3 (1970), 43–53.

[89] Note, e.g., *CTh* 1.5.10 (393 C.E.), 1.7.2–4 (393, 398, 414 C.E.), 7.4.12 (364 C.E.), 1.21.1, 2.23.1, 3.9.1, 3.14.1, 5.6.1, 6.24.5–6, 7.20.9 (366 C.E.); from the section 'De re militari', 7.1 2 (349 C.E.), 7.1.7 (365 C.E.), 7.1.8 (365 C.E.), 7.1.9 (367 C.E.), 7.1.10 (367 C.E.), 7.1.11 (372 C.E.), 7.1.13 (391 C.E.), 7.1.15 (396 C.E.), 7.1.18 (400 C.E.); and *passim*.

general, including even barbarians living in *barbaricum*.[90] This would make this law an exceptional case of a Master of Soldiers exercising civil rather than military jurisdiction.[91] But before accepting these two assumptions, one might note a few considerations suggesting that the law does, in fact, concern military jurisdiction.

First of all, the title of the section in the Theodosian Code for which this is the only entry, 'De nuptiis gentilium' ('On the Marriages of *Gentiles*'), specifies quite clearly that the law was not about barbarians in general but about barbarians who also were *gentiles*.[92] In addition, the reference in the penalty clause specifically to '*affinitates* between *provinciales* and *gentiles*' also indicates that the law is about *gentiles* in particular, not *barbarae* (or *barbari*) in general. One therefore might suggest that the word *barbara* had to be used because the law also concerned barbarian women who married provincials, but who could not be described with the technical term *gentiles* because they were not male soldiers — an observation that, incidentally, would confirm the hypothesis that the term *gentiles* referred specifically to male soldiers. The inclusion of *barbarae*, it would seem, indicates that the law applied to gentilic communities.

Several sources suggest the existence of such communities. A law of Honorius of 409 C.E., for example, discussed North African *gentiles* who were landowners, having been granted 'terrarum spatia' in exchange for guarding the *limes*.[93] And the *Notitia dignitatum* (*Not.dig.occ.* 42) cites units of *gentiles* stationed at permanent locations in Italy and Gaul, including, in Italy, Sarmatian *gentiles* at Forum Fulvii in Liguria, Patavium, Cremona, Turin, Bononia, Vercelli, Pollentia, and Novaria; and, in Gaul, units of Suevic *gentiles* at Coutances in Armorica and Le Mans, Sarmatian and Taifal *gentiles* at Poitiers, and Sarmatian *gentiles* 'in the countryside of Paris' ('chora Parisios'), between Reims and Amiens, 'in the district of Rodez' ('per tractum Rodunensem'), at Langres, and at Autun. In addition, 'gentilic *laeti*' were stationed at Reims and Senlis, and 'Suevic gentilic *laeti*' at Clermont. The dual designation of these latter as *laeti* indicates that they, in particular, had received land grants in exchange for military service.[94] *Gentiles* who became permanent settlers on their own land certainly would have had families and communities that included women. So, one might suggest that the law did not apply to all barbarians everywhere, but specifically to barbarians who were living in communities of military *gentiles* under the authority of the Masters of Soldiers.

IX MARITAL INCOMPATIBILITIES

Given that the statuses of *provincialis* and *gentilis* both had specific legal significance, one now might ask what it was about these two statuses that made emperors decide to prohibit intermarriage between those who held them. In an effort to answer this question, one might look first at another example of a law involving barbarians of one legal status marrying Romans of another legal status, a novel of Libius Severus (461–465 C.E.) dealing with barbarian *laeti* who illegally married Roman *coloni*.

[90] e.g., Chauvot, op. cit. (n. 2), 140, 'Son sens doit donc être général'; also Demandt, op. cit. (n. 6), 107ff. and op. cit. (n. 2), 77.

[91] e.g., Chauvot, op. cit. (n. 2), 141, suggests that here a law addressed to a Master of Soldiers concerns 'la juridiction civile'.

[92] As Soraci, op. cit. (n. 2), 106.

[93] *CTh* 7.15.1 (409 C.E.), to Gaudentius, vicar of Africa. For *Brittones gentiles* on the *limes* of Germania Superior in 232 C.E., see *CIL* 13.6592 = *ILS* 9184; also G. Cheesman, *The Auxilia of the Roman Imperial Army* (1914), 34–5, 52; and S. Kerneis-Poly, 'Les *numeri* ethniques de l'armée romaine aux IIe et IIIe siècles', *Rivista storica dell'Antichità* 26 (1996), 69–94.

[94] See E. Demougeot, '*Laeti* et gentiles dans la Gaule du IVe siècle', *Actes du Colloque d'Histoire Sociale de l'Université de Besançon (1970)* (1972), 101–12.

> *Laeti* have associated themselves with *coloni* without the knowledge of their masters and now attempt to free the children that have been procreated from the bond of servitude, therefore, if any [*laeti*] believe that they can be joined to *coloni*, their marital connection belongs to the masters of those whom an *inquilinus* or *colonus* is understood to be, with the exception of those who are known to have been married before this law was issued.[95]

The irregularity had to do not with barbarian ethnicity, but with legal status: *coloni* were bound to the land that they worked, but barbarian *laeti* were not, and the barbarians were claiming that the children of these marriages did not have tenant-farmer status.[96] The ruling — which pointedly refrained from using words for legal marriages, such as *conubium*, *nuptia*, or *matrimonium* — recognized existing children, thus legitimizing marriages that had occurred before the law was issued, but stated that future offspring of such marriages would be under the authority of the owner of the tenant-farmer's land.

X EXAMPLES OF POSSIBLE LEGAL COMPLICATIONS

Other laws clarify the ways in which the different legal statuses of *gentiles* and *provinciales* could result in problematic marriages. For one thing, *provinciales* and *gentiles* almost certainly differed in the degree to which they were subject to Roman law. As citizens, *provinciales* were covered by Roman civil and criminal law, but barbarian *gentiles* may well have maintained a form of dual citizenship, a tradition going back at least to the second century, when, during the 160s C.E., for example, Roman citizenship was granted to North African *gentiles* 'salvo iure gentis', that is, 'with the law of their people preserved'.[97] 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, which for other Moors may have been as early as the Antonine Constitution.[98] All kinds of complications involving legal jurisdiction and status and the performance of assigned duties could arise from marriages between *provinciales* and barbarian *gentiles*, and the legal status of children resulting from such marriages would also have been difficult to assess.

The privileged legal status of *gentiles* is demonstrated in a law of 405 C.E. addressed to the Proconsul of Africa, granting *gentiles* special rights of appeal not available to the general provincial population, stating, 'In cases that come on appeal, we desire the ancient custom to be upheld, making this addition, that, if ever an appeal is introduced by *gentiles* or by their prefects, let a sacred examination of a proconsular hearing be awaited.'[99]

[95] *Novella Severi* 2 (465): 'Laeti … se colonis … ignorantibus dominis sociassent, et nunc … procreatos liberos conantur iugo servitutis absolvere, idcirco … si qui … colonis se crediderint copulandos, agnationem eorum ad eos dominos pertinere, quorum inquilinus vel colonus fuisse constiterit, exceptis his, qui ante eam legem non taliter latam sese iunxisse noscuntur.'

[96] It is unclear who these Italian *laeti* were. They could be descendents of the Alamanni settled in Italy in the later fourth century (see above); the relevant section of the *Notitia dignitatum* (*Not.dig.occ.* 42) does not list any units of *laeti* in Italy, but it does cite Sarmatian *gentiles*, who may have received land grants and thus gained the status of *laeti*, akin to the *gentiles-cum-laeti* attested in Gaul (ibid.).

[97] 'Non cunctamur … civitatem Romanam salvo iure gentis dare': *Tabula Banasitana* (*c.* 161/169 C.E.): N. Labory (ed.), *Inscriptions antiques du Maroc II: Inscriptions latines* (1982), no. 94, 76–91. See A. N. Sherwin-White, 'The *Tabula* of Banasa and the *Constitutio Antoniniana*', *JRS* 63 (1973), 86–98. For dual citizenship: T. Honoré, *Ulpian. Pioneer of Human Rights* (2nd edn, 2002), 24; and D. Braund, *Rome and the Friendly King. The Character of Client Kingship* (1984), 39ff.

[98] Y. Modéran, *Les Maures et l'Afrique romaine* (2003), 500.

[99] *CTh* 11.30.62: 'In negotiis, quae ex appellatione descendunt, veterem consuetudinem volumus custodiri, illud addentes, ut, si quando a gentilibus vel a praefectis eorum fuisset interposita provocatio, sacrum sollemniter, hoc est proconsularis cognitionis praestoletur examen'; *pace* A. J. B. Sirks, 'Shifting frontiers in the law: Romans, provincials, and barbarians', in R. Mathisen and H. Sivan (eds), *Shifting Frontiers in Late Antiquity* (1996), 146–57, at 149, 'Barbarians were not subjected to Roman courts'

Marriages between *gentiles* and *provinciales* could have caused confusion about who was eligible for such privileges, especially in light of other evidence that African soldiers had been attempting to use their military prerogative to claim immunity from criminal prosecution in non-military courts.[100]

Other legal irregularities involving *gentiles* might be related to a regulation of 400 C.E., addressed to the Master of Soldiers Stilicho, decreeing that 'any Alamannic *laetus* or wandering Sarmatian or son of a veteran' who was liable to the draft and falsely claimed veterans' benefits was to be enrolled in the military.[101] Now, as already seen, many Sarmatians were also *gentiles*, so this hypothetical 'wandering Sarmatian' might be just what the marriage law was worried about: a *gentilis* attempting to evade his military service and, perhaps, pass himself off as a *provincialis*.

In addition, a law issued by Valentinian I contemporaneously with the marriage law and addressed directly to the Moors of Sitifensis, stated that anyone 'born in the rank of decurion' who had 'undergone the duties of armed military service' for five years, very possibly in the ranks of the *gentiles*, was released from curial duties.[102] This would have been a huge privilege for local élites who otherwise could be burdened with laundry lists of curial *munera*, and intermarriage between North African *gentiles* and provincial decurions could have resulted in further losses of the services of decurions who married *gentiles* and then had children who served for five years.[103] Indeed, the specific statement that the marital law concerned *provinciales* 'of any rank or status' suggests that marriages involving decurions were a concern. Moreover, one cannot but note that the word *obnoxius*, which recalls the *noxium* of the marital law, regularly appears in legislation to refer to an unpleasant duty incumbent on some class of persons, such as either decurions or soldiers.[104]

And the aforementioned law of 409 C.E. to Gaudentius, Vicar of Africa, discusses an imperial concern that lands granted to African *gentiles* in exchange for military service were being acquired by persons who were not *gentiles*, and states that those who acquired the lands were to take over the care of the border fortifications, 'so that, by the observation of this provision, there can be *suspicio* of fear in no part of the fortifications or the border.'[105] This law is instructive for several reasons. First of all, one way that this situation could arise would be if cagey *gentiles* and *provinciales* were contracting marriages so that land liable to military service by *gentiles* came under the control of *provinciales* not

[100] See *CTh* 9.7.9 (393 C.E.), addressed to Gildo, Master of Soldiers in Africa: 'Si quis adulterii reus factus ... nec praerogativa militari defensetur.' For discussion, see Blackhurst, op. cit. (n. 20), 67.

[101] *CTh* 7.20.12 (400 C.E.): 'Plerique testimonialibus fraude quaesitis fiunt veterani, qui milites non fuerint ... quisquis igitur laetus Alamannus Sarmata vagus vel filius veterani aut cuiuslibet corporis dilectui obnoxius ... tirociniis castrensibus inbuatur'; for further concern about 'wanderers' liable to military service in Africa in particular in 412 C.E., see *CTh* 7.18.17: 'Omnes tribunos, qui per Africam vagorum et desertorum requirendorum sumpserunt officium'; and for similar concerns in Asia in 398 C.E., see *CTh* 7.1.16: 'Si quos milites per provincias relictis propriis numeris passim vagari cognoveris'; also 7.13.6.1 (370 C.E.), 7.18.10 (400 C.E.), 8.2.3 (380 C.E.).

[102] *CTh* 7.1.6 (365/373 C.E.): 'Idem AA Mauris Sitifensibus. Si quis armatae sacramenta militiae impigro quinquennii labore pertulerit, avo licet ac patre sit decurione progenitus, ab omni nexu curiali personam dumtaxat propriam vindicaverit.'

[103] The services of the defenders of Sitifensis, however, were not lost, for as of 445 C.E., the Moors of Sitifensis were still holding out against the Vandals (*NVal.* 13).

[104] From the same period as the marriage law, note, e.g., *CTh* 12.1.74.5 (371 C.E.): 'super obnoxiis curiali origini'; *CTh* 12.1.102 (383 C.E.): 'obnoxios curiae'. The same word also appears in the law dealing with the 'wandering Sarmatian' cited above.

[105] *CTh* 7.15.1 (409 C.E.): 'Terrarum spatia, quae gentilibus propter curam munitionemque limitis atque fossati antiquorum humana fuerant provisione concessa, quoniam comperimus aliquos retinere, si eorum cupiditate vel desiderio retinentur, circa curam fossati tuitionemque limitis studio vel labore noverint serviendum ut illi, quos huic operi antiquitas deputarat. alioquin sciant haec spatia vel ad gentiles, si potuerint inveniri, vel certe ad veteranos esse non inmerito transferenda, ut hac provisione servata fossati limitisque nulla in parte timoris esse possit suspicio.' Given that most of the examples relating to legal privilege in the interpretation of the marriage law come from Africa, one might conclude that the law does indeed date to 373 C.E., during Theodosius the Elder's tenure in North Africa.

liable to military service. In addition, the difficulty in recruiting *gentiles* willing to serve under the canonical terms mentioned in the law ('si potuerint inveniri') could also be a result of these marriages. Finally, the word used to describe what the result of this could be — *suspicio* — is similar to the word used to describe what might happen if a *gentilis* married a *provincialis*, that something *suspectum* might be detected in them, and is consistent with the connotations of this word suggested above.

An example of the kinds of problems regarding landholding that could arise when Romans married barbarians and laid claim to their land was later manifested in newly reconquered Byzantine North Africa in 535 C.E. According to Procopius, after Byzantine soldiers had married the wives and daughters of, presumably deceased, Vandals, 'each one of these women kept urging her husband to lay claim to the possession of the lands that she had owned previously, saying that it was not right or fitting if, while living with the Vandals, they had enjoyed these lands, but after entering marriage with the conquerors of the Vandals they were then to be deprived of their possessions'.[106] After the Master of Soldiers Solomon decided that these lands would be deeded over to the emperor, the soldiers mutinied. When it came to combining barbarians, Romans, and landholding, mixed marriages of this sort could cause all kinds of trouble.

XI CONCLUSION

The Valentinianic marital law prohibited marriages not between all Romans and barbarians, but between provincial Roman women and male barbarians who had military obligations, and between provincial Roman men and female barbarians who were associated with gentilic communities. Imperial concerns about military service by *gentiles*, and its connection with landholding, would suggest that what made marriages between *gentiles* and *provinciales* problematic in the late fourth century was not fears about miscegenation or barbarian disloyalty, but concern over differing legal statuses and obligations. The government was concerned that as a result of such 'noxious' and 'suspect' unions, the services of decurions could be lost, provincial duties might be unfulfilled, and the *limes* could lose its gentilic sentinels. In addition, the status of the offspring of such unions, in a world where children often were *obnoxii* to the duties of their parents, could have been very confused. Given that these all were imperial hot-button issues, the prohibition on marriages between *gentiles* and *provinciales*, so different in their standing under the law, is no surprise. This law is thus one of many laws reflecting Late Roman imperial desires to prohibit marriage between persons of unequal legal and social statuses.

But in cases where barbarians and Romans were not of an incompatible status, perhaps because the barbarians in question were not under military obligation, or had placed themselves under the umbrella of Roman law, there were no restrictions against marriages. This meant any free barbarian not liable to service as a *gentilis* was free to marry a Roman, so long as there were no other disqualifying status issues and on the understanding that doing so would probably give the barbarian the status of a Roman *provincialis*, and thus make him or her liable to provincial *munera*. Which is not to say, of course, that marriages between Romans and barbarians, or prohibitions against them, never had political fall-out. Marriages between high-ranking individuals always could have political implications resulting from the differing ethnicities of the parties involved, as seen, for example, in the marriage of Galla Placidia and Athaulf, or of Justinian's nephew Germanus to Theoderic's grand-daughter Matasuintha, but this was only consistent with the nature of political marriage alliances writ large. And the anti-marriage law could well have had a side effect of inhibiting political alliances between Roman provincials and barbarian soldiers on the frontier, but if this happened, it was a result of the broader fall-out of the law, not of its narrow legal purpose.

[106] Procop., *Bell.Vand.* 4.14.8: H. B. Dewing (trans.), *Procopius* (Loeb, 1916), 329.

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, in fact, 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 ... Foreign peoples now congregate with the right of marriage (*ius conubii*): for with mixed blood, one family is created from different peoples.'[107] 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 multi-ethnic marriage, which was but one of the many results of the constant traffic across the Roman frontier. Marriages between Romans and barbarians occurred in increasing numbers, accelerating the increasing integration between the Roman and barbarian populations, and facilitating the relative ease of assimilation of barbarians into the Roman world.[108]

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[107] 'Ius fecit commune pares ... Cives congenitos concludat moenibus unis / Urbs patria ... conveniunt nunc ... / Externi ad ius connubii: nam sanguine mixto / Texitur alternis ex gentibus una propago': *Contra Symmachum* 2.598–614.

[108] Its incorporation into the Theodosian Code was not the end of the Valentinianic marriage law. After the fall of the Western Empire, it was included in the *Breviarium Alarici*, or *Lex Romana Visigothorum*, issued in the Visigothic kingdom of Toulouse in 506 C.E., accompanied by an 'interpretation' that replaced the words 'gentiles' with 'barbari' and 'provinciales' with 'Romani' (*Brev.Alar.*3.14.1). These changes in terminology clearly indicated changes in the way that the law was applied. This version of the marriage prohibition was not finally repealed until *c.* 589 C.E.: 'Ut tam Goto Romana, quam Romano Gotam matrimonio liceat sociari' (*Lex Visigothorum* 3.1.1), at the very time that the Visigoths adopted Nicene Christianity. In the post-Roman world, it would appear that the marriage ban was related to issues of ethnic (leaving aside just how ethnicity was determined), religious, and legal self-identification. But a full discussion of the nuances and implications of these is best left for another occasion.