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The Will of Gaius Longinus Castor

The document under discussion has recently been called "one of the very few examples of pure Roman law found in Egypt."¹ It is the will of Gaius Longinus Castor, resident of the Egyptian village of Karanis, veteran of the praetorian fleet of Misenum, who died in the year 194.² The will itself provides a freeze frame, a still point in time in Longinus Castor's life; but it also allows for some imaginative extension in space and time. The results are a brief, outline biography of the testator with some speculation on his career and family, and on the special objectives he hoped to achieve for his family by means of his will.³

The will was made in the 30th year of the reign of the emperor Commodus, late in A.D. 189.⁴ On February 7th of a subsequent year, perhaps less than two weeks before his death,⁵ Longinus Castor added to the will codicils in his own hand. Neither the waxed tablets (*tabulae ceratae*) of the original Latin version of the will nor those of the holographic codicils have survived. What remains is a papyrus containing Greek translations of both will and codicils made after Longinus Castor's death, and after the formal opening of his will, by one Gaius Lucretius Geminianus, an expert in Roman law; the translations must have been commissioned by one of Longinus Castor's heirs or by his legatary.⁶ As in the dozen or so other

¹P.W. Pestman, *The New Papyrological Primer* (Leiden 1990), p. 202. (Hereafter cited as *New Pap. Primer*.)

²Ed.pr. *BGU* I 326. Most recent re-edition: *New Pap. Primer* 50, with corrections against a photograph of the original (see *BL* VIII 23-24). Earlier re-editions: *Jur. Pap.* 25, *Sel. Pap.* I 85, *FIRA* III 50.

³As will be seen below, the principal speculation (I am convinced of its truth) belongs in fact to Alan Watson. The present article was delivered first as a talk to the Department of Classical Studies, Loyola University Chicago, on November 6, 1991; later as a paper for a panel on "Legislation and Morality" at the Annual Meeting of the American Philological Association in Washington, D.C., December 30, 1993. For the latter invitation I am grateful to Dr. Jacqueline Long of the University of Texas-Austin. Lively discussion followed both presentations, inspired in part by problems yet unresolved. I have incorporated here several suggestions made during those discussions, but have not always been able to identify the persons responsible for the suggestions; to them, my sincere thanks and apologies. Special thanks are due to panel commentator Professor Susan Treggiari for written comments on the APA version of this article.

⁴Either on October 18 or on November 17; the Roman and Egyptian datings in the document are in conflict.

⁵Edward Champlin, *Final Judgments: Duty and Emotion in Roman Wills, 200 B.C.-A.D. 250* (Berkeley 1991) 64.

⁶Whether the translation is a complete verbatim rendering of the originals (the will and codicils) may be doubted; Geminianus merely claims his copy (*ἀντίγραφον*) was in conformity (*σύμφωνον*) with the original will (*τῆ ἀϋθεντικῆ διαθήκῃ*). The generic nature of some provisions and the rather extensive details of the will's legacy point to the legatary as the one in whose interests, for probative purposes, the translations were made.

legal documents on papyrus that explicitly identify themselves as translations from Latin into Greek,⁷ there shine through in Geminianus' translations numerous Roman legal terms and phrases. In fact, they occur in such profusion that the exercise of backtranslating the entire Greek text into its lost Latin originals would seem an easy accomplishment.⁸

But more important for present purposes than the Latin vocabulary and phrasing underlying the Greek are the formalities of the Roman mancipatory will, *testamentum per aes et libram*, "will by copper and scales," that the Greek text presupposes. Present, or at least fictively present on that day in 189 when the will was made, were all the requisite actors in the ceremonial drama of the mancipatory will. Besides the testator himself there was the *familiae emptor*, the "purchaser of the estate," Julius Petronianus, who by legal fiction "bought" the estate on the understanding he would execute the testator's wishes. Present was the "scale-holder," *libripens*, Gaius Lucretius Saturnilus, against whose balance, to simulate payment according to the old ritual, a single sestertius, the fictive purchase price, would be struck. Apparently present were five more witnesses to the oral proceedings who also served as "sealers" (*σφραγισταί*) of the written document, all of them, as required by law, Roman citizens, evidently either Longinus Castor's kinsmen or former "brothers-in-arms."⁹ The will, as required, names heirs and formally disinherits anyone not so named. The provisions of a legacy enjoined on the heirs and provisions for the testator's burial are set forth, the first at length, the second in brief. There is allusion toward the will's beginning to the Lex Aelia Sentia, the Augustan law of A.D. 4 that set thirty as the minimum age for slaves not being formally and ceremonially manumitted "by the rod."¹⁰

Even if the *mancipatio* ceremony was not actually performed, but merely assumed to have taken place (the issue is in doubt),¹¹ the framework of Longinus Castor's will was Roman. The setting, however, was Egyptian. For both will and codicils were made out in the Egyptian village of Karanis in the northeast corner of the Arsinoite nome, the present-day Fayum.

⁷They all seem to concern matters of Roman civil law and all date between 150 and 300; see R. S. Bagnall, *Egypt in Late Antiquity* (Princeton 1993), chapter 7, esp. 233-34 and 234 n. 16. See, for example, *SB VI 9298* (A.D. 249), an *agnitio bonorum possessionis* (a request to be granted possession of an inheritance according to praetorian as opposed to strict civil law), and *P. Oxy. IX 1205* (= *C.P.Jud. III 473*; A.D. 291), a manumission *inter amicos*.

⁸See *FIRA III 50*, cf. the notes in Meyer's (*Jur.Pap.*) and Pestman's (*New Pap.Primer*) editions. Even Roman-law wills in Greek that had no Latin originals adhered closely to the basic Latin formulas: thus *P. Oxy. VI 904*, the will of Aurelius Hermogenes, A.D. 276.

⁹Champlin, *Final Judgments 78-79*. For problems with the placement and significance of their translated attestations: *FIRA III*, p. 152 n. 2.

¹⁰Gaius, *Institutes 1.18*, with de Zulueta's *Commentary* (Oxford 1953) 26-27.

¹¹John Crook, *Law and Life of Rome* (Ithaca, NY, 1967) 128.

When, after Longinus Castor's death, the will on 21 February 194 was formally opened and read aloud, this took place "in the Arsinoite metropolis [that is, the nome or district capital] in the Augustan Forum in the office of the five percent tax on inheritances and manumissions." The properties that Longinus Castor distributed by the legacy in his will were all located in or near Karanis: five arouras of grain land in the place called "Ostrich"; one and a quarter arouras of basin land; a two-thirds share of a house in Karanis; one-third share of a palm grove near the "Old Canal"—modest holdings in a prosperous Egyptian village of some 2300 inhabitants and 12,300 arouras of productive land,¹² but suggestive that Longinus Castor's full holdings, not detailed in the will proper, were far more extensive. Similarly, the will's codicils, giving 4,000 sestertii to his kinsman, Julius Serenus, suggest Longinus Castor had, besides his landed property, relatively extensive assets in cash. Some of this had come to him from a fellow-veteran of the Misenum fleet, Gaius Fabullius Macer, who, as is known from another Berlin papyrus, had, in or before A.D. 166, died after having named Longinus Castor as his heir.¹³

Longinus Castor's property and his return or retirement to Karanis on completion of military service speak loudly for his own Egyptian geographical origins. His naval service presumably took him early on to Misenum (not far from Naples) and from there to other ports on the Mediterranean coast, east and west. Since it is known from Macer's will (just mentioned) that Longinus Castor was already a veteran by March 166, it is possible that one of his last duties was on transport service for the co-emperor Verus' army, departing Brundisium in 162 for the Parthian war. Some of the Misenum fleet was still at Seleucia on the Syrian coast in 166, the year the war was ended. So perhaps Longinus Castor was discharged from there and returned in early 166 (or before) to Karanis by way of Pelusium or Alexandria.¹⁴ If he had fulfilled all 26 years' required service and not been kept beyond term, we can calculate that Longinus Castor, probably born around the year 120, enlisted about A.D. 140. He would have been 69 years old or thereabout when he drew up his will and 74 at the time of his death.

¹²Most recent estimates by Dominic Rathbone, "Villages, Land and Population in Graeco-Roman Egypt," *Proceedings of the Cambridge Philological Society* 36 (1990) 114, 130, 132, 134.

¹³*BGU* I 327 = *M. Chr.* 61 (Pharmouthi [= roughly March] 166). In this document, a petition to the acting prefect of Egypt, Longinus Castor is allegedly recalcitrant in paying out a 2,000-sestertius legacy, enjoined by the will, to a woman, apparently Macer's former mistress. For C. Fabullius Macer, see also *FIRA* III 132: on May 24, 166, at Seleucia, he purchased a 7-year-old slave boy of "trans-Euphrates origin," perhaps from spoils of the Parthian campaign.

¹⁴Chester G. Starr, *The Roman Imperial Navy, 31 B.C.-A.D. 324* (repr. New York 1960), esp. 13-20, 188-89. The factual details are from Starr, the speculations about Longinus Castor are mine.

All this, though not implausible, is dangerously speculative. We are on firmer ground when we return to the details of Longinus Castor's final dispositions. Of these, most important is that he named as heirs two slave women whom he freed by the terms of his will. One bore the Roman name Marcella, the other the Greek name Cleopatra. If Marcella died before Longinus Castor, she was to be represented in succession by Sarapion, Socrates and Longus; Cleopatra was to be represented by Nilus. Only the names of the secondary heirs appear, a Greco-Egyptian, Greek and Roman mix. No connection to Longinus Castor is stated (though the name Longus is suggestive); but it is hard to resist some speculative leaps, and not very daring ones at that—even though scenarios different from that offered here may be imagined.

First, Longinus Castor while on active service was like all Roman soldiers barred from marriage.¹⁵ Second, he bought Marcella and Cleopatra while on service and took them as concubines.¹⁶ Marcella, named first in the will, was presumably the older of the two women. Both are stated to be over thirty (they may in fact have been considerably older). Consequently they were not barred from testamentary emancipation by the already-mentioned Lex Aelia Sentia.¹⁷ Cleopatra's daughter, Sarapias, had, as noted many years ago,¹⁸ probably been fathered by Longinus Castor himself. If so, her status as a slave would have been doubly insured by Roman law. First, as a child not born of a civil-law marriage (*iustae nuptiae*), she would have had to have assumed her mother's status (the rule of "progeny following the womb"—*partus sequitur ventrem*). Second, as the child of a slave woman (*partus ancillae*), she would have belonged *ipso facto* to her mother's master. And so, by his will, Longinus Castor solved both problems in one stroke, conferring freedom upon Sarapias and, by legacy, the Karanis property listed above, perhaps for her maintenance, perhaps for a dowry.

Years earlier, on his honorable discharge from the fleet, in or before 166, Longinus Castor, probably a peregrinus by birth, would have received his diploma, the bronze tablets that proved his status as veteran and Roman

¹⁵Starr, *Roman Imperial Navy* 88-96; G. R. Watson, *The Roman Soldier* (Ithaca, NY, 1969) 133-42. Legionaries may have been allowed marriage by 197, men of the fleet, earlier, possibly around 166—probably too late for Longinus Castor, even had he been inclined toward marriage, since he was already a veteran in that year (*BGU* I 327 = *M. Chr.* 61).

¹⁶Alternatively, he took one or both as concubines after his honorable discharge from service. This first possibility would complicate the picture I am suggesting; the second would dismantle it.

¹⁷See above, and cf. also the Gnomon of the Idios Logos (*BGU* V 1210), parags. 19-21, for thirty as the minimum age for slaves being manumitted by testament.

¹⁸V. Arangio-Ruiz, *La successione testamentaria secondo i papiri greco-egizii* (Naples 1906) 227 and n. 2, cited by Alan Watson, in *The Irish Jurist* 1 (1966) 315 n. 9.

citizen (assuring exemption from poll-tax and liturgies); these would have given him the opportunity to formalize one of his informal unions. But he evidently allowed things to stay as they had been. Perhaps long-term ties of affection kept him from choosing between Marcella and Cleopatra. Additionally, the formula of his diploma would have included a clause against bigamy—*dumtaxat singuli singulas*. Accordingly, the right to Roman civil-law marriage, *conubium*, was conferred on a veteran provided "one man took one woman." Thus, Longinus Castor could, had he chosen, have secured *conubium*—but with only one of the two women, with Marcella or with Cleopatra, not with both.¹⁹ And, of course, he would have had to emancipate her first—but he did not. Instead, the very simultaneity of Marcella and Cleopatra's heirship and freedom signals, in Edward Champlin's words, "highly extraordinary circumstances"; it reinforces the notion that *both* slave women had been Longinus Castor's concubines.²⁰

Given, then, the supposed, and in fact likely, relations between Longinus Castor and his slave women, and given the fact that our "rather extensive documentation of inheritance is overwhelmingly a matter of transmission from parents to their children,"²¹ the secondary heirs named in his will, all of them male with no stated kinship connection, were, as remarked some time ago by Alan Watson,²² likely to have been Longinus Castor's own sons. Since they, like Sarapias, would, as children of his slave women, also have been his slaves, and since the will makes no reference to their manumission, Longinus Castor had presumably manumitted them at an earlier date, though without adopting them. Perhaps this early manumission was done out of favoritism to his male children, or perhaps to anticipate the restrictions on testamentary manumission established by the *Lex Fufia Caninia* (2 B.C.).²³ Whatever the case, as children not the issue of a recognized marriage, Sarapion, Socrates, Longus, and Nilus, and Sarapias, too, would have been labelled as "fatherless," *ἀπάτορες*, in Greek, or as "spurious," *spurii*, in Latin. In other words, they were, like other soldiers' children whose circumstances were described in a famous article by Herbert Youtie,²⁴ technically without a father, though their father's identity was well known; they were therefore illegitimate for purposes of Roman government and law, including the laws of inheritance. Further, the fact

¹⁹*FIRA* I 27-29; Watson, *Roman Soldier* 136, 211 n. 474.

²⁰Champlin, *Final Judgments* 137. For such manumissions from a comparative angle (which fits in well here): Orlando Patterson, *Slavery and Social Death* (Cambridge, MA, 1982) 228-32 ("The Cohabitational Mode").

²¹The felicitous wording is Roger Bagnall's (*Egypt in Late Antiquity* 203).

²²In *The Irish Jurist* 1 (1966) 13-15.

²³Gaius, *Institutes* 1.42-46.

²⁴H. C. Youtie, "ΑΠΑΤΟΡΕΣ: Law vs. Custom in Roman Egypt," *Le Monde Grec: Hommages à Claire Préaux* (Brussels 1975) 723-40 (= *Scriptiunculae Posteriores* I [Bonn 1981] 17-35).

that there was no legally recognized kinship between Longinus Castor and his heirs (primary and secondary), and the fact that his will included manumissions, explain why the estate was subject to special taxes originated by Augustus, and why, when it was opened and read after his death, the reading took place where it did, "in the office of the five percent tax on inheritances and manumissions" (*statio vicesimae hereditatum et manumissionum*).²⁵

In sum, Longinus Castor's will reveals a native of Egypt, of probably Hellenized background, attempting to provide for his "common-law" wives and children to the extent that the constraints of purely Roman civil law allowed. Longinus Castor's service to Rome had no doubt brought him relative wealth and local status. At the same time, his acquired "Romanitas" kept him in his will from openly acknowledging what were possibly his life's closest personal attachments and—with what seems an especially perverse irony—taxed his estate for not having heirs in the family and for emancipating his very own "wives" and daughter. These women, if all the connections suggested in this paper are right, together with the sons who were Longinus Castor's secondary heirs, formed a family that might nowadays be termed a moral community—but it was a moral community without legal standing.

The setting for the story of Longinus Castor and his family may, then, have been Egyptian, but the rules were Roman—so rigidly Roman that they may mislead one into thinking that it always worked this way in Egypt. But it only worked this way in Longinus Castor's case because he was a Roman citizen and the principle of legal personality applied—that is, Roman citizens were subject to Roman law, non-Romans to other, non-Roman legal traditions. Moreover, especially as expressed in the set of rules, mostly of Augustan date, that go under the name of the Gnomon of the Idios Logos, it was Roman policy to keep Egypt's status groups isolated and separated from one another, to impede communication between them and thus, according to a common view, to diminish the possibility of concerted revolt.²⁶ The system is one labeled by Naphtali Lewis as "a veritable ancient apartheid."²⁷

Whether one agrees with the analogy (I find its modern associations too strong), or adduces others,²⁸ it is clear that, in the case at hand, Longinus

²⁵Crook, *Law and Life of Rome* 127-28, A. Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia 1953) 364 (s.v. *Apertura testamenti*) and 764 (s.vv. *Vicesima hereditatum* and *Vicesima manumissionum*). See also *M. Chr.* 372 IV 1-15.

²⁶H. C. Youtie, "BGU XI 2018," *ZPE* 9 (1972) 133-37 (= *Scriptiunculae Posteriores* I, 61-65).

²⁷Lewis, *Life in Egypt under Roman Rule* (Oxford 1983) 34.

²⁸John Weaver-Hudson, in conversation, offers as a potentially more apt analogy the *millet* system of Ottoman Turkey, for which, in brief, see Wayne S. Vucinich, *The Ottoman Empire: Its Record and Legacy* (Princeton 1965) 59-60, and John A. Garraty and Peter Gay (eds.), *The Columbia History of the World* (New York 1981) 609-10. But the *millet* system's basis, unlike that in Roman Egypt, was primarily religious or "confessional," secondarily ethnic or racial.

Castor's adherence to purely Roman rules led to what we from our perspective may judge to be oddly unnatural results. Yet adherence to those rules must have affirmed for him his supposed "innate superiority" over most of his fellow villagers. And, as far as any attendant hardship goes, as David Daube, one of the most perceptive disentanglers of such conundrums once put it, "There is no limit to the hardship people will bear for the sake of status." By this view, Longinus Castor's will illustrates "the self-imposed discipline of an elite . . . [and rules which] symbolize and strengthen the select and noble over against the common"²⁹ —or, to address Longinus Castor head on, the superiority of the provincial Roman veteran over his non-citizen neighbors, relatives and friends.

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²⁹David Daube, *Roman Law: Linguistic, Social and Philosophical Aspects* (Edinburgh 1969) 85-86, writing about the larger Roman arena.