

***Adnotatio* and Imperial Rescript
in Roman Legal Procedure**

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The question of how far Roman emperors were involved in decisions issued in their name is a surprisingly difficult one. It is clear, on the one hand, that emperors took an active part in the administration of justice, to an extent which modern rulers would find intolerable. On the other hand, the industry of the emperors clearly had its limits; as petitioning the emperor became an increasingly routine part of the legal procedure, it became less and less likely that the emperor would have time to reply to petitioners in person. The problem for us is that this last fact was never mentioned; the established chancery routines maintained the polite fiction of imperial involvement. Professor Honoré has shown, I think, that the subscriptions in our legal sources were written not by the emperors but by the secretaries *a libellis* (1). But in my

1) Tony HONORÉ, *Emperors and Lawyers* (1981).

view it is necessary to go even further than this. By the fourth century petitioners to the emperor were receiving replies by means of a new kind of document, the *adnotatio*. In this paper I will argue that what distinguished an *adnotatio* from an ordinary subscription was the fact that it alone was a decision actually made by the emperor.

Definition

Originally, of course, an *adnotatio*, or παρασημέωσις (2), was simply a marginal comment; emperors presumably made corrections or additions to documents drafted by subordinates or submitted by petitioners (3). By the early fourth century, however, the *adnotatio* had clearly emerged as a distinct form for the emperor's decisions.

2) See *CIL*, III, no. 12134 and the translation of *CJ.* 4.59.2 given at *Basilica* 19.18. The word comes to mean simply "summary", presumably because these were originally marginal ones; see C. DUCANGE, *Glossarium ad scriptores mediae et infimae Graecitatis*, I (1688), 1114.

3) The practice is perhaps described at *SHA Sev. Alex.* 31.1: *Postmeridianas horas subscriptioni et lectioni epistularum semper dedit, ita ut ab epistolis, a libellis et a memoria semper adsisterent... relegendibus cuncta librariis et his, qui scrinium gerebant, ita ut Alexander sua manu adderet si quid esset addendum, sed ex eius sententia, quid dissertior habebatur.* This has been taken as a reference to the practice of validating imperial epistles by adding personal salutations from the emperor's hand, see Fergus MILLAR, *The Emperor in the Roman World* (1977), 221; but it seems clear that Alexander is envisioned as doing something which was beyond the ordinary routine, and involved real decision-making.

The most important evidence for this development is a law of 314. Constantine had to explain to Antiochus, his *praefectus vigilum*, how an *adnotatio* was to be treated in court:

Annotationes nostras sine rescribitione admitti non placet, id<eo>que officium gravitatis tuae observet, sicut semper est custoditum, ut rescripta vel epistulas potius nostras quam adnotationes solas existimes audiendas.
(CTh. 1.2.1) (4).

Since *rescripta* are so clearly distinguished from epistles, the word must refer here not to rescripts in general, but to subscriptions to *libelli* (5). The word *rescribitio* is apparently just a variant employed for euphony, and must also refer specifically to a subscription (6). Presumably a litigant coming before Antiochus had wanted to cite an *adnotatio* given in response to a petition - presumably his own - without the subscription with which it would normally be accompanied. It seems likely that the question arose not because the subscription had been unavailable, but because it contained some provision which was less favorable to the petitioner than the *adnotatio* alone. But it is in any case clear that by 314 an *adnotatio* could be separated from the document on which it was supposed to be a comment. Antiochus' difficulties

4) "It is wrong for our *adnotationes* to be accepted without a rescript; therefore it is your duty to follow the established practice, and consider that rescripts or our epistles, rather than *adnotationes* alone, should be heard". The manuscript date of 314 can stand, see C. HABICHT, "Zur Geschichte des Kaisers Konstantin", *Hermes* 86 (1958), 368, n. 1.

5) Contrast, e.g. CTh. 1.2.11: *Rescripta ad consultationem emissa vel emittenda, etc.*

6) *Rescribitio* is used instead of *rescriptum* in CTh. 11.12.3 and 11.22.4.

are otherwise inexplicable: it is inconceivable that a judge could allow the marginal comments of an emperor to be cited in court, but ignore the document on which they had been written.

Constantine's successors clearly made ample use of the *adnotatio*. The legal sources of the fourth and fifth centuries refer to decisions made by *adnotatio* on a variety of subjects. Fiscal concerns seem to predominate; an *adnotatio* could be used to assign public property to private individuals (7), to award monopolies (8) or the right to coin money (9), to confer posts in the government (10), and to grant exemptions from *munera* (11). But this emphasis on finance merely reflects the particular bias of these sources towards administrative matters. *Adnotationes* were also used to respond to more private concerns: to pardon convicted criminals (12), to suspend the restrictions on second marriages (13), and to confer freedom on popular actresses (14). More significant than the particular legal issues is the fact that in each case the *adnotatio* seems to be a response to a particular individual. The precise function of an *adnotatio* has, nevertheless, proved hard to define; it is not easy to see how it was different from the traditional forms for imperial replies (15).

7) *CTh.* 5.14.30; 10.8.1; 10.10.20; 10.10.27; 11.20.6; 15.1.41; *NTh.* 17.1.3; 17.2.5.

8) *CJ.* 4.59.2.

9) *CTh.* 9.21.10.

10) *CTh.* 6.27.3; 6.30.18; *CJ.* 12.59.10.

11) *CTh.* 12.1.135; 12.1.137; 12.1.139; 14.4.8; 15.3.5; *NTh.* 8.

12) *CTh.* 13.5.36; *NVal.* 19 (see below); *NTh.* 24.2.

13) *CTh.* 3.8.1; 3.10.1.

14) *CTh.* 15.7.13.

15) See, e.g., MILLAR (*op. cit.* n. 3), 266.

Scholars have been reluctant to abandon the original implications of the term *adnotatio*. According to SEECK, followed most recently by CLASSEN and KUSSMAUL, the *adnotatio* circulated as an independent document, was formulated by the *magister memoriae*, but was distinguished by the fact that it alone came from the emperor's pen (16). The problem, however, is that this explanation only works if the entire document was written down by the emperor, and that seems unlikely; we would have to imagine that the *magister memoriae* was essentially dictating to the emperor, who then was left with the arduous and unnecessary task of putting the whole thing on paper. SEECK suggested that in fact all the emperor did was write a formal epistolary closing of some kind, to authenticate the decision and show that he himself had seen it (17). But this refinement, though plausible in itself, deprives the *adnotatio* of its distinguishing feature, since other

16) Otto SEECK, "Adnotatio", *RE* 1 (1894), 382-383; Peter CLASSEN, *Kaiserreskript und Königsurkunde* (1977), 22-23; Peter KUSSMAUL, *Pragmaticum und Lex* (1981), 35-40.

17) Thus KUSSMAUL (*op. cit.* n. 16), 36 n. 57, suggests that the petition of P^Leyd. Z received, in reply, an *adnotatio*, because the closing words seem to have been penned by the emperor himself. KUSSMAUL, 36 n. 58, admits that subscriptions were "signed" by the emperor under Diocletian (*CJ.* 1.23.3) and under Leo (*CJ.* 1.23.6), but claims that the latter was introducing a procedure which had lapsed. But the main purpose of Leo's law seems to be to restrict access to purple ink, not to alter the procedures in which it was legitimately employed: *Sacri adfatus, quoscumque nostrae mansuetudinis in quacumque parte paginarum scripserit auctoritas, non alio vultu penitus aut colore, nisi purpurea tantummodo scriptioe illustrentur, scilicet ut cocti muricis et triti conchylii ardore signentur: eaque tantummodo fas sit proferri et dici rescripta in quibuscumque iudiciis, quae in chartis sive membranis subnotatio nostrae subscriptionis impresserit.* (1) *Hanc autem sacri encausti confectionem nulli sit licitum aut concessum habere aut quaerere aut a quoquam sperare: eo videlicet, qui hoc adgressus fuerit tyrannico spiritu, post proscriptionem bonorum omnium capitali non immerito poena plectendo.*

imperial decisions were "signed" by the emperor in precisely this way (18). SEECK's explanation is not, in fact, strictly logical; instead of explaining why an entire document might have been called an *adnotatio* it explains only why part of it was (19).

The difficulties in SEECK's explanation were recognized by WENGER, who tentatively suggested that an *adnotatio* was merely the emperor's draft of a decision, while the final version would have been produced by his subordinates (20). The problem with this view, which has found little favor, is that it does not account for the fact that it was the *adnotationes* themselves which were issued, and which were regarded as sources of the law.

In my view it is necessary to relinquish the assumption that in the fourth century an *adnotatio* was still handwritten by the emperor. What made an *adnotatio* special was not the person who put the words onto paper, but the person who decided on its contents. Unlike most documents issued in the emperor's name, the *adnotatio* reflected a decision actually made by the emperor himself.

18) See, e.g., the end of *NVal.* 19, discussed below: *Et manu divina: "Divinitas te servet per multos annos, p(arens) k(arissime) a(tque) a(mantissime)"*.

19) The word *adnotatio* was used to designate the emperor's handwritten closing on imperial documents; SEECK cites *CJ.* 12.59.10, a law of Leo which refers to *ipsas authenticas sacras, quae divinam nostrae pietatis continent adnotationem*. But this does not mean that the documents themselves would have been regarded as *adnotationes*; the same law goes on to use *subscriptio* to mean precisely the same thing: *cum subscriptione administrantium*.

20) Leopold WENGER, *Die Quellen des römischen Rechts* (1953), 432-434.

This suggestion is supported, first, by a manuscript gloss quoted by BRISSONIUS, unfortunately without further details: *Adnotatio sacra est illud scriptum, quod imperator proprio mentis motu alicui indulget* (21). This definition seems to me exactly right. An *adnotatio* was a response to requests for assistance from private individuals, but it was distinctive in coming from the emperor himself.

More certain, perhaps, is a passage in the *Notitia Dignitatum*. In its description of the imperial court the *Notitia* reports that all three of the *magistri scriniorum* dealt with petitions, but in oddly different ways:

Magister memoriae

adnotationes omnes dictat et emittit, et precibus respondet.

Magister epistolarum

legationes civitatum, consultationes et preces tractat.

Magister libellorum

cognitiones et preces tractat (22).

21) Barnabas BRISSONIUS, *De verborum quae ad jus pertinent significatione Libri XIX* (1721), 20. BRISSONIUS' gloss is quoted, and rejected as unhelpful, by Paul KRÜGER, *Geschichte der Quellen und Literatur des römischen Rechts* (1912), 307, n. 44; see also WENGER (*op. cit.*, n. 20), 433, n. 74.

22) *Not.Dig.Or.* 19, lines 6-11, ed. O. SEECK, *Notitia Dignitatum* (1876, rpr. 1962); on the illustrations, see Pamela C. BERGER, *The Insignia of the Notitia Dignitatum* (1981), 88-94.

The last two descriptions make perfect sense. The *magister epistolarum* deals with embassies from cities, correspondence with officials, and the petitions which were associated with these people. The *magister libellorum* deals with private lawsuits submitted to the emperor and with the petitions associated with them. The function of the *magister memoriae*, on the other hand, is rather strange: although he "replies to" petitions, his responsibilities are apparently limited to the purely mechanical ones of composing and issuing *adnotationes* (23). This lack of any real decision-making power is odd for an official who was clearly higher in rank than his two colleagues. But it makes perfect sense if production of *adnotationes* involved working closely with the emperor himself.

The third and best piece of evidence for the nature of an *adnotatio* is a *Novel* of Valentinian III; *adnotationes* are discussed in a way which makes it absolutely clear that they, more than any other imperial documents, were associated with the emperor in person. Valentinian, we are told, was alarmed to discover that convicted felons, particularly murderers, had been obtaining pardons they did not deserve :

*Criminosos quidem aversamur omnes et praecipue
humano cruore pollutos, quorum crescit audacia, cum*

23) For *dictare* as "to dictate something written by someone else" see MILLAR (*op. cit.*, n. 3), 224 and 265, citing Eumenius, *Pan.Lat.* 9 (4) 6.2, ed. MYNORS; also *SHA Carus* 8.4: *Iulius Calpurnius, qui ad memoriam dictabat*. Contra, Otto HIRSCHFELD, *Die Kaiserlichen Verwaltungsbeamten bis auf Diocletian*, 2nd ed. (1905), 335-337, who translated *dictare* as *verfassen*.

inpunitas per simplicia vel etiam personalia rescripta donatur. Nefas dictu: per ignorantiam facinora defensione vallamus! Sed quantum est, quod occupationibus nostris astutia plectendae subreptionis inludit, cum rescripta huiusmodi etiam viro inl(ustri) quaestore nesciente procedant, quem custodem statuimus esse iustitiae qua nullum carere debet oraculum (24).

The pardons were issued in rescripts of various kinds, both "simple and even personal". What this means, apparently, is that decisions would most commonly be transmitted in letters addressed directly to the relevant judges (*rescripta simplicia*), and that they could also be given as subscriptions to the petitions of the defendants themselves (*rescripta personalia*) (25). The problem was that the procedure for issuing both types of document was completely out of control. The chanceries were issuing pardons for murder without the quaestor, much less the emperor himself, having any knowledge of them.

24) *NVal.* 19. pr.: "We are repelled by all criminals, especially those polluted with human blood; and their audacity increases, when immunity is granted them through simple, or even personal, rescripts. And, horrible though it is to say it, we are, out of ignorance, providing a defence for their crimes! But how great a wrong is it, that a cleverness in creating subterfuge should take advantage of our preoccupations, as happens when rescripts of this sort come forth without even the illustrious quaestor being aware of it, although we have established him as a guardian of the justice which no decision should be without!" For the translation, see Clyde PHARR, *The Theodosian Code and Novels* (1952).

25) See KUSSMAUL, (*op. cit.*, n. 16), 39, citing *CTh.* 15.3.5: *Anti-quatis omnibus vel personalibus rescriptis vel per adnotationes elicitis per Bithyniam ceterasque provincias possessores et reparationi publici aggeris et ceteris eiusmodi muneribus pro iugorum numero vel capitum, quae possidere noscuntur, adstringi cogantur.*

Valentinian's remedy is very simple. He declares that mere rescripts shall no longer be valid in such cases, and that a pardon will henceforth require an *adnotatio* :

Merito ergo male usurpata prohibentes hac edictali lege sancimus, ut homicidii, quod tamen casibus inputaverit confessio supplicantis, non aliter indulgentia nisi nostri numinis adnotatione praestetur, quoniam rariora erunt facinora sub nostrum ventura iudicium nec ulla nisi discussis rebus venia continget (26).

The purpose of the change was to give control of these decisions to the emperor. Valentinian does not say who committed his decisions to writing, but it is clear that it is not this aspect of the process in which he is most interested. Rather, the important thing about an *adnotatio* is that it presupposes that the emperor will actually be involved in the decision: "the number of crimes which will come before Our judgement will be smaller, and no pardon will be given without a full discussion".

Valentinian goes on to say that a local judge is to satisfy himself of the veracity of the original petition before giving an *adnotatio* its force, but that the decision itself cannot be

26) *NVal.* 19.1: "Therefore, in order to prevent these abuses, we declare in this general law that a homicide, even if a suppliant has attributed it to accident, shall be pardoned only by our *adnotatio*, since the number of cases which can come to us for judgment will be smaller, and no pardon will be given without a full discussion".

challenged (27). Rescripts, by contrast, remain suspect; bureaucrats are to be fined or suspended if they issue rescripts granting pardons for homicide. An *adnotatio* was an entirely different matter, because only an *adnotatio* was a decision of the emperor.

Examples

This definition of the *adnotatio* is supported by instances in which we have details about its use in specific cases. The earliest references to the use of an *adnotatio* occur in the legal sources for the reign of Diocletian. It is an important characteristic of these documents, preserved originally in the *Codex Gregorianus*, that they were originally intended for a strictly limited audience; they therefore provide a perspective which is very different from that of the laws in the *Codex Theodosianus*, which were supposed to have a more general relevance (28). Diocletian's use of an *adnotatio* is referred to on three separate occasions; it is easy, in each case, to see why he should have been personally involved in making the decision.

27) *NVal.* 19.2: *Postquam tamen ad cuiuscumque cognitoris tribunal adnotatio nostra pervenerit, examinari fidem precum diligenter iubemus, ut, si homicidium vel casu vel vitandae mortis necessitate constiterit admissum, venia tribuatur orantibus, deprehensos vero in mendaciis ilico poena percellat. His enim tantum volumus ignosci, in quorum lapsibus sola potest fortuna culpari.*

28) See William TURPIN, "The Law Codes and Late Roman Law", *RIDA* 32 (1985), 339-353.

Perhaps the clearest evidence is a subscription to a woman called Syra, who had asked for permission to adopt a stepson by *adrogatio per rescriptum principis* :

A muliere quidem, quae nec suos filios habet in potestate, adrogari non posse certum est. verum quoniam in solacium amissorum tuorum filiorum privignum tuum cupis in vicem legitimae subolis obtinere, adnuimus votis tuis secundum ea, quae adnotavimus, et eum proinde atque ex te progenitum ad fidem naturalis legitimique filii habere permittimus (29).

The law was in fact perfectly clear; adoption, even in the form of *adrogatio*, was an extension of *patria potestas*, so it was inconceivable that a woman should be allowed to adopt (30). Syra's request was probably grounded in the Hellenic legal tradition, which had no difficulty with the concept of adoption by a woman (31). But what is important is that although the subscription grants her request, it does so only after explicitly

29) *CJ.* 8.47.5 (291): "It is certain that no one can be adopted (*adrogari*) by a woman, who does not hold her own sons *in potestate*. But since as a consolation for the loss of your sons you wish to take your stepson in place of legitimate offspring, we have agreed to your request following the conditions of which we have made note, and we permit you henceforth to hold him in the bonds of a natural and legitimate son, just as if he were born from you."

30) See, in general, J.A.C. THOMAS, "Some notes on *adrogatio per rescriptum principis*", *RIDA* 14 (1967), 413-427; M. NIZIOLEK, "The Meaning of the phrase *Liberi naturales* in Roman Law Sources up to Constantine's Reign", *RIDA* 22 (1975), 317-344.

31) See Ludwig MITTEIS, *Reichsrecht und Volksrecht* (1891), 209-212; R. TAUBENSCHLAG, "Die *materna potestas* im gräko-ägyptischen Recht", *ZRG* 49 (1929), rpt. in his *Opera Minora*, II, 323-337.

reaffirming the Roman principle. The emperor was not changing the law, but was simply exercising his *clementia*, for humanitarian reasons which were special to the circumstances (32). The subscription confirms the basic principle, and explains why it is suspended in this case. The *adnotatio*, which has not survived, presumably specified the precise conditions under which Syra's request had been granted.

The same features are evident in a subscription to a slave named Firmina, who had reported the murder of her master:

Licet servilis condicio deferendae precis facile capax non sit, tamen admissi sceleris atrocitas et laudabilis fidei exemplum super vindicanda caede domini tui hortamento fuit, ut praefecto praetorio iuxta adnotationis nostrae decretum demandaremus (quem adire cura), ut auditis his, quae in libello contulisti, et reos investigare et severissimam vindictam iuxta legum censuram exigere curet (33).

32) Failure to recognize this has created needless difficulties, e.g. THOMAS (*op. cit.*, n. 30), 418 ff.; NIZIOLEK (*op. cit.*), 335-336; Mario AMELOTTI, *Per l'Interpretazione della Legislazione privatistica di Diocleziano* (1960), 125 and 130-132.

33) *CJ.* 1.19.1 (290): "Although a servile status is not normally able to submit a petition, nevertheless the awfulness of the crime which was admitted and the example of your laudible fidelity in avenging the murder of your master impelled us to ask the praetorian prefect (whom you must be sure to approach), in accordance with the decision of our *adnotatio*, to hear the allegations made in your petition, and pursue the perpetrators and exact the severest penalty permitted by the law".

The interesting thing is that although this subscription reveals manifest approval of Firmina's conduct, it still upholds the rule that slaves were not allowed to initiate lawsuits. On the other hand, this same rule is suspended in this particular case by an *adnotatio*. It is the *adnotatio*, apparently, which contained the details about the emperor's decision. Armed with both *adnotatio* and subscription, Firmina was to bring the matter before the praetorian prefect. The two documents are, again, distinct; the subscription explains the theoretical background of the unusual decision, while the *adnotatio* apparently contained the emperor's decision to exempt Firmina from the established law.

The third law of Diocletian, an epistle to an official named Agatho, shows *adnotationes* being used in a way which was, as we have seen, to be made the rule by Valentinian III. Presented with a petition from one Iulus Antoninus, submitted in response to a murder charge, Diocletian rules that the case can be dropped if he can prove that the killing was accidental:

Have Agatho k(arissime) n(obis). Qualitas precum Iuli Antonini clementiam nostram facile commovit : quippe quod adseveret homicidium se non voluntate, sed casu fortuito fecisse, cum calcis ictu mortis occasio praebita videatur. Quod si ita est neque super hoc ambigi poterit, omni eum metu ac suspicione, quod ex admissae rei

discrimine sustinet, secundum id quod adnotatione nostra comprehensum est, volumus liberari (34).

Strictly speaking the emperor's decision in this case is not a special privilege. The law on accidental death was, at least in theory, absolutely clear; emperors from Hadrian on had ruled that judges should not regard involuntary manslaughter as murder. But in practice judges could feel a great deal of uncertainty about applying this principle (35). It was therefore natural for Iulus Antoninus' case to be considered by Diocletian in person; the emperor explained his decision and its conditions in a more detailed *adnotatio*.

Even more detailed evidence on the use of an *adnotatio* is provided, I think, by a Constantinian inscription. The inhabitants of Orcistus, in Phrygia, inscribed on a pillar four documents relating to the status of their city and a feud with their neighbour Nacoleia. On the left side of the stone is an imperial letter of 331, in which Constantine resolves a dispute about temple money in favor of Orcistus. The rest of the pillar is devoted to a single

34) *Coll.* 1.10 = *CJ.* 9.16.4 (290) : "Greetings to our dearest Agatho. The merits of the petition of Iulus Antoninus have provoked Our clemency with ease; for he claims that he committed homicide not willingly, but by an unfortunate mischance, since the cause of death appears to be a blow from the foot. Therefore if this is the case and there can be no doubt about the fact, we desire him to be freed from all fear and suspicion, to which he is subject because of confessing to the affair, in accordance with the things contained in our *adnotatio*".

35) See *Dig.* 48.8.1.3, with Th. MOMMSEN, *Römisches Strafrecht* (1899, rpt. 1955), 837, n. 1; A. WACKE, "Fahrlässige Vergehen im römischen Strafrecht", *RIDA* 26 (1979), 539-540.

dossier of 324-6, consisting of a petition to Constantine from the Orcistani, a letter from Constantine to Ablabius (who was then vicar of Asiana), and a short text which I would identify as Constantine's *adnotatio* (36).

The Orcistani had asked for their town to be made a full-fledged *civitas*. In his letter to Ablabius, who had supported the request, Constantine wrote that he had decided to grant their request, and had formulated this decision in an *adnotatio* :

... *Qui cum praecarentur ut sibi ius antiquum nomenque civitatis concederet nostra clementia, sicuti adnotationis nostrae subiec[t]a cum precibus exempla testantur, huius modi sententiam dedimus. Nam haec quae in precem contulerunt et nominis et dignitatis reparation[em iure quae]runt obtinere. P[roinde gra]vitatis tuae inte[r]cession[e] quae fuerant mu[tilata] a[d] integrum prisgi [honoris re]duci sancimus ut et [ipsi o]ppidumque diligent[ia sua t]uitum expetito legum [ad]que appellationis splen[d]ore perfruantur. etc. (37).*

36) MAMA VII, no. 305 (*Monumenta Asiae Minoris Antiquae*) = CIL III, no. 7000 = ILS no. 1336 = FIR no. 35 = FIRA² I, no. 95; translation in Alan Chester JOHNSON *et al.*, *Ancient Roman Statutes* (1961), no. 304. See now A. CHASTAGNOL, "L'Inscription Constantinienne d'Orcistus", *MEFRA* 93 (1981), 381-416.

37) MAMA VII, no. 305, panel I, line 42 - panel II, line 15: "Since they have asked that Our Clemency grant them their ancient rights and the name of *civitas*, as the subjoined copies of our *adnotatio*, along with their petition, attest, we have made a decision of this kind. For the things they included in their petition rightly demand that they obtain restoration of their name and dignity. And so we order that those things which have been diminished be restored to their earlier honor by the intercession of Your

Very similar language appears in the first document of the dossier: it is inscribed on a plinth which fits it exactly, at the top front of the pillar. The author is not identified, but it seems to me clear that this is the *adnotatio* given by Constantine in response to the petition of the Orcistani, and to which he refers in his letter to Ablabius:

*.AC.[.].(38) Hae(c) quae in precem con[tu]lis[tis et
nominis] et dignitatis reparationem iure qua[erunt] (39)
obtin]re. Proinde vicari intercessione qua[e fuerant
mut]ilata ad integrum prisgi honoris r[educta videtis] (?)
eo] citius ut et vos oppidumque dilig[entia vestra tui]tum
expetito legum adque appellationis s[plendore iam
nu(n)c] perfruamini infra scribti[s ?] (40).*

Gravity, so that they and their town, protected by their diligence, can enjoy the splendor of laws and title which they demanded".

38) This is how the stone is reported by the *MAMA* editors, who restore it as *macti estis*; compare Sidonius Apollinaris, *Ep.* 1.4.1 and Cassiodorus, *Var.* 1.3.8. I wonder, however, whether the first *A*, which they regard as certain, might not be an *R*; we could then read *Orcist[an]is*. The editors also report that two vertical lines follow the *C*, which may be consistent with reading *I* and *T*, and that the *HAE(C)* is preceded by the lower half and crossbar of a rounded *E* (*E* and *C* are squared in the rest of the inscription) which is perhaps consistent with reading an *S* before the *H*.

39) Here, in place of the *qua[eritis] obtin]re* given in *MAMA*, I have retained the restoration of the earlier editors.

40) *MAMA* VII, no. 305, panel 1, lines 1-7: "The things you included in your petition rightly demand that you obtain restoration of your name and dignity. And so we order that those things which have been diminished be restored to their earlier honor by the intercession of the vicar, so that you and your town, protected by your diligence, can enjoy the splendor of laws and title which you demanded".

The text has been identified as a letter of Ablabius, passing on to the Orcistani the burden of Constantine's letter to him (41). This is possible, but it seems awkward for Ablabius to be referring to himself in the third person with the words *vicari intercessione* (line 3). It has also been suggested that the author might be the praetorian prefect, but there is no indication in the text that this is in fact so (42). The reason no author was named is surely that no name was necessary; the whole dossier testified to Constantine's decision in favor of the petitioners, and the inscription is organized to focus attention squarely on the document in which he enunciated that decision.

Finally, two *adnotationes* of Theodosius II, along with the petitions which prompted them, are preserved in the records of the Council of Chalcedon (43). At the opening session of the council, held in October 451, transcripts of earlier proceedings involving the archimandrite Eutyches were read into the record. Eutyches had been accused of placing too much emphasis on the divine nature of Christ; in the Orthodox view Christ was of two natures, being fully human as well as fully divine. In November of 448 Flavianus, the Patriarch of Constantinople, investigated these charges along with a synod of local bishops. Eutyches was

41) This seems to have been the view of all editors of the inscription, including those of *MAMA*. See also Th. MOMMSEN, "Stadtrechtbriefe von Orkistos und Tymandos", *Hermes* 22 (1887), 309-322.

42) See A. H. M. JONES, J. R. MARTINDALE, and J. MORRIS, *The Prosopography of the Later Roman Empire* 1 (1971), 3, s.v. Ablabius, no. 4.

43) The relevance of these documents to the understanding of the *adnotatio* was observed first, I think, by KUSSMAUL (*op. cit.*, n. 16), 37 n 61.

asked to affirm his belief in the two natures, but when his response was judged unsatisfactory he was pronounced a heretic and excommunicated (44).

Eutyches immediately protested. After sending explanations of his theology to the emperor, and to the Pope and other churchmen, he sent to the emperor a petition which complained of irregularities in the November proceedings. He argued that the transcripts of the council at Constantinople contained important inaccuracies, and asked that the bishops and other witnesses - notably the scribes he suspected of falsifying the report - attend an investigation of the matter (45). Theodosius agreed to this request in an *adnotatio* :

44) For accounts of the proceedings against Eutyches see Karl Joseph VON HEFELE, *Histoire des Conciles d'après les documents originaux*, translated by Henri LECLERCQ, II.1 (1908), 499-554; Eduard SCHWARTZ, "Der Prozeß des Eutyches", *Sitzungsberichte der Bayerischen Akademie der Wissenschaften* 5 (1929), 1-93. More briefly, P.-Th. CAMELOT, *Éphèse et Chalcédoine* (1962), 88-93; Timothy R. GREGORY, *Vox Populi: Popular Opinion and Violence in the Religious Controversies of the Fifth Century A.D.* (1979), 129-143. The sources are edited by Eduard SCHWARTZ, *Acta Conciliorum Oecumenicorum* (1914-), cited here as *ACO*.

45) The petition, in Greek, is at *ACO* 2.1.1.572 (p. 152-3): "To our August and most Faithful and Christ-loving emperors Flavius Theodosius and Valentinian the eternal Augusti, from Eutyches the Archimandrite. In all things the surest confirmation of safety and truth has been, after God, your piety, which has left nothing undone for the sake of matters of faith, and which made an investigation into the charges against me. Yesterday I read the report devised about me by the most reverend bishop Flavianus and I found in the document things which were the opposite of what actually occurred. For things which he said to me are not to be found there, and they put into the same report things which I never said. Therefore I ask your serenity, in accordance with your protection of the orthodox faith and opinion of my lowliness, that you deign to order the god-loving bishops who were there assembled, the scribes of the same most reverend bishop Flavianus, the most reverend clerics sent by him to summon to the council, and Athanasius, the

κατατιθέσθω παρὰ τοῖς εὐλαβεστάτοις ἐπισκόποις οἵτινες πρώην συνῆλθον, οὐ μὴν ἀλλὰ καὶ παρὰ τῷ εὐλαβεστάτῳ ἐπισκόπῳ Θαλασσίῳ, ἵνα παρὰ τούτοις παρόντων πάντων περὶ ὧν ἡ δέησις λαλεῖ, τοῦ πράγματος ἡ ἀλήθεια ἐκζητηθεῖη (46).

The bishops and witnesses met on April 8, 449. The proceedings began when, after some procedural arguments, an *exceptor* read out the first petition to Theodosius, and its *adnotatio* (47). It was

most reverend deacon of the most holy Basil, to meet in the presence of the most holy bishop Thalassius, so that when asked they can say truthfully and in writing what they know. If I can obtain this I will with my accustomed singing give thanks to my master and to Christ the god of all and to your piety, for ever". Latin translations at *ACO* 2.2.1.143 (p. 58) and *ACO* 2.3.1.572 (p. 136).

46) *ACO* 2.1.1.575 (p. 153): "Let there be a deposition before the distinguished bishops who assembled earlier, and also before the most reverend bishop Thalassius, so that the truth of the matter can be investigated by them in the presence of all those discussed in the petition". Latin translations at *ACO* 2.2.1.146 (p. 58): *Prosequantur apud venerabiles episcopos qui iam dudum convenerunt, nec non et apud religiosissimum episcopum Thalassium, ut apud eum praesentibus omnibus de quibus preces locuntur, negotii veritas requiratur*; *ACO* 2.3.1.575 (pp. 136-7): *Deponant apud reverentissimos episcopos non solum qui dudum convenerant, verum etiam et apud reverentissimum episcopum Thalassium, ut omnibus his praesentibus quos supplicatio loquitur, negotii veritas inquiratur*.

47) *ACO* 2.1.1.573-574 (p. 153): Ὁ αὐτὸς καθωσιωμένος ἐκσκέπτωρ εἶπεν· Ἔστιν καὶ θεία ὑποσημείωσις ἐν τῇ ἀναγνωσθείσῃ δεήσει τοῦ θειοτάτου καὶ εὐσεβεστάτου ἡμῶν βασιλέως. Ὁ μεγαλοπρεπέστατος πατρικίος εἶπεν· Μετὰ προσκυνήσεως ἀναγινωσκέσθω. κ.τ.λ. For the Latin translation see *ACO* 2.2.1.144-145 (p. 58): *Idem devotus exceptor dixit: Est et divina annotatio in lectis precibus sacratissimi et piissimi imperatoris nostri. Patricius dixit: Cum veneratione legantur. etc.*; *ACO* 2.3.1.573-574 (p. 136): *Idem devotissimus exceptor d(ixit): Est in recitata prece etiam divina annotatio sacratissimi et piissimi imperatoris nostri. Magnificentis(simus) Patricius d(ixit): Summa cum veneratione percurratur. etc.*

these two documents which provided the synod with its terms of reference.

Eutyches' charges could not be proven, and his condemnation was allowed to stand. He responded, however, with a second petition to the emperor. This time he complained that the November council had been fixed in advance. According to the *silentarius* Magnus, who had been assigned to Eutyches as a bodyguard, Flavianus had composed his decision before the hearing had even started, and Eutyches argued that this was a reason for reconsidering his case (48). This petition received an *adnotatio*, which ordered that Magnus' evidence be investigated:

Κατάθηται ὁ καθωσιωμένος Μάγνος σιλεντιάριος
παρὰ τῷ μεγαλοπρεπεστάτῳ μαγίστρῳ τῶν θείων
ὀφφικίων πάντα ἃ ἐν τούτῳ τῷ πράγματι
παρακολουθήσαντα ἔγνω (49).

48) The petition, in Greek, is at *ACO* 2.1.1.834, pp. 177-178: "To our pious and most faithful and Christ-loving emperors Flavius Theodosius and Valentinian eternal Augusti, from Eutyches the archimandrite. Your piety, which has always been aware of my doctrinally pure and steadfast faith, when Eusebius, bishop of Dorylaeum, falsely accused me of incorrect thinking and attacked me, deigned to order that the worthy *silentarius* Magnus should be with me for my protection when I came into the council. He, going to the bishop's palace and announcing that I was present, heard clear things about my sentence from the most pious bishop Flavianus and he saw them. Therefore I beseech you to deign to order the same admirable Magnus, the *silentarius*, to accurately produce in writing before him who is acting on your behalf that which he heard, as I said above, and saw, so that, having received this benefit, I can offer up my customary prayers for your safety, most pious and faithful emperors". For the Latin translation see *ACO* 2.3.1.834, p. 167.

49) *ACO* 2.1.1.836, p. 178: "Let Magnus the worthy *silentarius* testify before the most magnificent *magister officiorum* about everything which he

The matter was considered on April 27 by a second commission. These proceedings, like those of April 8, were initiated by a reading of Eutyches' petition and the *adnotatio* issued in reply (50).

It is a little disappointing that the two documents most explicitly identified as *adnotationes* should be so restrained; we look in vain for any language to indicate that the emperor really took much interest in these decisions. But there is no doubt that Theodosius, and others at the imperial court, took a lively interest in Eutyches and were even in active sympathy with him (51). The emperor could not simply overturn a decision by a synod of the church. But what he could do was respond favorably to protests from Eutyches about the procedure.

Conclusions

What distinguished an *adnotatio* from an ordinary subscription, at least by the time of Diocletian, was that it alone

knows to be relevant to this matter"; ACO 2.3.1.836, p. 167: *Profiteatur vir devotus Magnus silentarius apud magnificentissimum magistrum officiorum omnia quae super hoc negotio subsecuta cognovit.*

50) ACO 2.1.1.835, p. 178 : 'Ο μεγαλοπρεπέστατος κόμης καὶ μάγιστρος τῶν θεῶν ὀφφικίων εἶπεν· Ἡ θεία καὶ δὴ ὑποσημείωσις ἀναγινωσκέσθω. κ.τ.λ. ACO 2.3.1.835: *Magnific(us) com(es) et magister sacrorum officiorum d(ixit): "Sacra subnotatio recitetur". etc.*

51) See esp. GREGORY (*op. cit.*, n. 44), 140. Kenneth G. HOLM, *Theodosian Empresses* (1982), 192-202.

was a decision actually made by the emperor. The evidence for this definition is, I think, reasonably clear, and it seems confirmed by the more direct evidence which has survived. The issues which elicited the *adnotationes* from Diocletian, Constantine and Theodosius II were very different ones, but they were all important enough to go to the emperors in person. The most interesting thing about this definition is its corollary: if an *adnotatio* was the only response to a petition which would involve the emperor himself, it follows that other replies were nothing of the sort.