

TWO NOTES ON IMMUNITIES: *DIGEST* 27, 1, 6, 10 and 11

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The movement that commonly goes under the name of the Second Sophistic extends far beyond mere literary affectation. It is as much a social phenomenon to be understood within the context of the Roman Empire of the second and early third centuries as a cultural development basing itself upon the models of an earlier Greece. Evidence drawn only from orations and *belles-lettres* does not suffice to do justice to all its complexities, and recent authors have rightly adduced inscriptional and legal references to supply both background and explanation.¹ Among them Professor Bowersock has discussed with clarity and perspicience the immunities granted to sophists and men of learning by successive emperors in the second century, and has attempted to relate these grants to the social and intellectual life of the time.² His account of their development is unexceptionable: the lavish immunities given by Hadrian were curtailed by Antoninus Pius,³ and the modifications of later emperors brought no appreciable change. But the self-imposed limitation of his survey to the period covered by Philostratus' *Lives of the Sophists* occasionally hinders his argument, and one passage in particular which appears to cause him difficulty is illuminated by a discussion of the Severan lawyers which receives no mention.

The jurist Herennius Modestinus in his *Liber Secundus Excusationum* included a catalogue of those persons who were not liable for *tutela, cura* and similar *munera*, which was based upon a long series of imperial decisions. The first section which is to be discussed reads as follows: ⁴

τοὺς μὲν ἄγαν ἐπιστήμονας καὶ ὑπὲρ τὸν ἀριθμὸν καὶ ἐν ἀλλοτρίᾳ πατρίδι τὰς διατριβὰς ποιουμένους εἶναι ἀλειουργήτους Παῦλος γράφει, λέγων τὸν θειότατον Ἀντώνιον τὸν Εὐσεβῆ οὕτω κεκελευκέναι.

Bowersock's remarks, which I give in full, are neither a translation, although they come close to being one, nor an exhaustive commentary: ⁵

'The immunity provisions of Pius included one further clause. Members of the four relevant groups (grammarians, *rhetoires*, doctors and philosophers) might be released from liturgies above the allowed number of ἀτελεῖς if they were not practising in their native territory and if they were ἄγαν ἐπιστήμονες. The latter condition is reminiscent of the provisions for philosophers in its discouragement of exceptional awards of immunity. It must be observed that under the terms of Pius' edict the designation of the permitted ἀτελεῖς in a city was to be made by the local βουλή in each case. It is hard to imagine that such a body would ever decide to include in its list men of outstanding wealth. In short the arrangements of Hadrian were evidently seen to be a mistake, for Pius' substantial modifications made it very difficult for a man who mattered to a city's economy to secure immunity.'

In the first part of this article I shall show that, far from tightening the privileges of immunity, this clause opened the way for the exploitation of immunity by the wealthiest sophists and that it was a concession to them, in law at least, rather than to the city. In the second part I shall discuss the exemptions granted to men who practised away from their native city, in Rome.

I

Bowersock's interpretation of *Digest* 27, 1, 6, 10 suggests that he believes that residence abroad by a learned sophist was an accepted ground for exemption from certain duties and offices, and he adduces Aelius Aristeides and, more doubtfully, Claudius Rufinus to prove his case.⁶ Yet the numerous regulations relating to *incolae* which were designed, as Ulpian points out, to prevent a man escaping from one city to another to avoid higher *munera*, make

¹ F. Millar, 'P. Herennius Dexippus: the Greek World and the Third-Century Invasions', *JRS* LIX (1969), 12-29; E. L. Bowie, 'Greeks and their part in the second sophistic', *Past and Present* XLVI (1970), 3-41, esp. 35 f.

² G. W. Bowersock, *Greek Sophists in the Roman Empire* (Oxford 1969), especially 30-42.

³ Compare the restrictions imposed by him on provincial embassies, W. Williams, 'Antoninus Pius and Provincial Embassies', *Historia* XVI (1967), 470-483.

⁴ *Dig.* 27, 1, 6, 10.

⁵ Bowersock, op. cit. (n. 2), 34.

⁶ *Ibid.* 36-41.

it quite clear that absence abroad on any but state business generally did not excuse a man from executing his obligations to his native community.⁷

An *incola* is defined as a man who has his domicile away from his native city, and his civic responsibilities are the object of many legal rulings.⁸ This is hardly surprising, for, in a society where the costs and performance of many public amenities and services were born by the wealthy, it was in the interest of every city to retain for itself as many men of wealth as possible. A man abroad was still liable for *munera* at his *origo* and he could be compelled by the governor of the province in which he resided to return and fulfil them.⁹ Just as he had to obey the magistrates of the city both where he resided and where he had his *origo*, so he was also liable for public service in both.¹⁰ Antoninus Pius raised no objection to an *incola* undertaking a *munus*, provided that he had not migrated thither to avoid such liturgies elsewhere, and Alexander Severus ruled that a man who had established a domicile could not refuse the liturgies imposed upon him.¹¹ Once he had accepted a *munus*, the *incola*, like the native decurion, was prevented from leaving until it had been discharged, and Ulpian records little difference between *incolae* and *municipes*.¹² When a conflict arose between the claims of a man's native city and that in which he resided, the native city took precedence: 'sed eodem tempore non sunt honores in duabus civitatibus ab eodem gerendi. cum simul igitur utrobique deferuntur, potior est originis causa.'¹³ This is cogent proof that residence abroad did not excuse a man from fulfilling his obligations to his native city and, while there seems to have been frequent dispute about what constituted a *domicilium* and thus made a man an *incola*, there is none about the propriety of service and liturgies at a man's *origo*.¹⁴ Indeed the suggestion that a sophist or doctor resident abroad and possessing immunity there was exempt from *munera* at his native city is expressly rejected by the decision of Severus and Caracalla recorded by Modestinus at *Digest* 27, 1, 6, 9. 'It should further be recognized that this immunity [at his *origo*] is given only to a man who teaches or practises medicine in his native city. Severus and Antoninus laid it down that if a man from Comana was a sophist or a doctor or a teacher at Neocaesarea, his immunity did not apply at Comana.'¹⁵ Although it is possible that this was a new restriction introduced by these emperors, it seems more likely that it was a clarification of an already existing regulation whose ambiguity had been brought into prominence by social changes.

Since it is clear that both a sophist excluded from the select body of ἀτελεῖς and a *municipes* domiciled abroad were liable for liturgies, Bowersock's interpretation of *Digest* 27, 1, 6, 10 becomes doubtful, the more so when it is observed that the relative weight of the phrases of the Greek has been altered in his translation. My alternative rendering would be: 'Those who are exceedingly learned are immune even when they are superfluous to the *numerus* and when they are practising abroad.' This places the emphasis entirely upon the degree of learning as the grounds for exemption.¹⁶

As few sophists or doctors would refrain from indicating their own great learning, this clause thus provides an opportunity for those who had been excluded from the privileged *numerus* because of their great wealth to demand exemption and to avoid the offices imposed

⁷ *Dig.* 50, 5, 1, 2 (Ulpian, lib. 2 Opinionum). The chief magistrates of provinces, the Asiarchs and Bithyniarchs, and of cities were also freed from the duties of *tutela*, as were those absent on military service or upon legations: *Dig.* 27, 1, 6, 14; *Dig.* 50, 5, 12; *Dig.* 50, 7, 8, pr. Cf. also *Dig.* 50, 7, 14 (Ulpian, lib. 74 ad edictum praetoris): 'Qui libera legatione abest, non videtur reipublicae causa abesse: hic enim non publici commodi causa sed sui abest.'

⁸ 'Incolas vero . . . domicilium facit' (Hadrian, reported at *Cf.* 10, 39, 7). Note the whole title 'Ad municipalem et de incolis'. *Dig.* 50, 1.

⁹ *Dig.* 50, 1, 17, 6; 50, 2, 1.

¹⁰ *Dig.* 50, 1, 29, 1. F. E. Abbott and A. C. Johnson, *Municipal Administration in the Roman Empire* (Princeton 1926), 96-97.

¹¹ *Cf.* 10, 40, 1; 10, 40, 2.

¹² *Dig.* 50, 1, 34; 50, 4, 6, 5 (Ulpian, lib. 4 de officio proconsulis) differentiates *municipes* and *incolae* from mere *possessores*, cf. J. S. Reid, *The*

Municipalities of the Roman Empire (Cambridge 1913) 518-519.

¹³ *Dig.* 50, 1, 17, 4. The principle is upheld by Caracalla in a dispute between Philadelphia and Sardis, *IGRR* IV, 1619 (= Abbott and Johnson, op. cit., 134.)

¹⁴ Notice the following texts: *Dig.* 50, 1, 17, 5 ('Mere possession of property does not incur *munera* unless the city has been given special rights'), cf. *Cf.* 10, 40, 4 and *Dig.* 50, 1, 17, 3; *Dig.* 50, 1, 17, 12; 50, 1, 17, 20; 50, 1, 35, 1 ('A man who resides within a city's territory but does not use its facilities is not an *incola*'); *Dig.* 50, 1, 37, on the governor's jurisdiction in cases of disputed attribution.

¹⁵ *Dig.* 27, 1, 6, 9.

¹⁶ As Mommsen made clear in his translation in his edition of the *Digest*: 'Attamen valde doctos etiam super numerum et in aliena civitate morantes immunes esse Paulus scribit.'

on them by a city council eager to make use of their riches.¹⁷ Such a stand would not be extraordinary, for the Digest records other instances of rich citizens manipulating the requirements of the law to escape duties, by suggesting a rotation of civic offices according to seniority or by making fictitious adoptions and manumissions.¹⁸ Thus this clause, which probably came from an edict different from that of *Digest* 27, 1, 6, 7, formed the sole ground for the appeal of Aelius Aristeides on the occasion when liturgies were imposed upon him by the people of Smyrna, of which his father was a citizen and where he was domiciled, and of Hadriani, his *origo*.¹⁹ The eloquent testimony of influential friends was gathered to impress a doubting governor, and Severus consented only after much convincing evidence of Aristeides' pre-eminence as a sophist had been paraded.²⁰ A similar case later came before Severus and Caracalla. The wealthy orator, Claudius Rufinus, whose native city of Smyrna had imposed liturgies upon him which he had previously accepted voluntarily, now petitioned for relief from those burdens, from which he was actually legally exempt. It is clear that he had not been enrolled among the exempted rhetors of Smyrna and, since there is no evidence, *pace* Bowersock, that he was practising abroad, his claim consisted in being ἄγαν ἐπιστήμων.²¹ The emperors decided that he should be left in peace to enjoy the freedom from liturgies granted to sophists by the divine ordinances of their predecessors.

To be and to remain recognized as ἄγαν ἐπιστήμων was very difficult. Only when Aristeides' plea had been upheld by two governors of Asia were the attempts to impose liturgies upon him discontinued, and the generosity of Rufinus was often exploited before he was released by the imperial decision. But for those who were included among the ἀτελεῖς their immunities were a little less precarious. Once granted they seem rarely to have been revoked, and the ruling of Severus and Caracalla that civic approval might be withdrawn from an *immunis* following a reassessment is to be regarded only as a cautionary reminder to those who might be tempted to neglect their duties.²²

The immune teachers and doctors were chosen by the decurions or *possessores* of a city, not imposed from above by a governor eager to foist a nominee onto an unwilling population, who would have both to pay and to suffer him.²³ Ulpian demands two qualifications, *probitas morum* and *peritia artis*, both broad terms in theory yet suited to the small cities where the ἀτελεῖς performed.²⁴ As Galen says, the doctors in small cities preserve their learning intact because they are not seduced by hopes of great gain and because even the least of their errors does not pass unrecognized.²⁵ In such a city every one knows every one else, their family, their training, their wealth and their habits, and the true doctor or teacher will gain an appropriate reward.²⁶ Experience of a man would serve to guarantee both

¹⁷ We do not know enough about the composition of city councils to be able to deny that no wealthy man could browbeat his fellow members into granting immunity. Cf. the examples of privilege in litigation given by J. M. Kelly, *Roman Litigation* (Oxford 1966) and by P. Garnsey, 'Legal privilege in the Roman Empire', *Past and Present* XLI (1968), 3-24 and *Social status and legal privilege in the Roman Empire* (Oxford 1970).

¹⁸ *Dig.* 50, 1, 15, 3; 50, 1, 22, 2; 50, 4, 6. Cf. A. H. M. Jones, *The Greek City* (Oxford 1940), 185 f.; A. J. Marshall, 'Pompey's organization of Bithynia-Pontus; two neglected texts', *JRS* LXVIII (1968), 107-109.

¹⁹ Aelius Aristeides 50, 63 ff. (ed. Keil); the whole question of Aristeides' immunities is discussed by Bowersock, *op. cit.* (note 2), 36-40, and by C. A. Behr, *Aelius Aristeides and the Sacred Tales* (Amsterdam 1968), 77-86. His obligations to Smyrna may either be to his domicile or be as a citizen, which is implied at 50, 73. The law relating to citizens whose country area had been reorganized into a new city is doubtful, cf. *Syll.*³ 883 with *Dig.* 50, 1, 6. There is confusion about the identity of the city which appointed him *eirenarchos* and which is undoubtedly recognized by the governor as his *origo*, 50, 72; Philostratus, *Vitae Soph.* 214 (Loeb), followed by the Suda, s.v. Aristeides, calls the city of his birth Hadriani; accepted by Behr (p. 3), as Philostratus follows a good source. W. M. Ramsay, *The Historical Geography of Asia Minor* (London 1890), 157 and 437,

suggested that the data of his journey agree better with Hadrianoutherae which he assigns as his birthplace. His opinion has been accepted by many including Bowersock, despite the warning of Magie (*Roman Rule in Asia Minor* (Princeton 1950), 1477) that part of Ramsay's argument was based upon a wrong conjecture by Keil. It is not sufficient to say that Aristeides owned property near Hadrianoutherae, which might have incurred obligations for *munera*. Following Behr, *op. cit.* 3 f. and 142 f., I keep Philostratus' statement and call the city Hadriani, thus doubting some of Ramsay's geographical arguments, but the fact that when Aristeides was born his birthplace was not yet organized as a city makes it impossible to be totally certain. From his own report of the case the city was his *origo*, not his domicile: cf. *Dig.* 1, 17, 5 and *Cy* 10, 40, 4—'Possession of property by itself is no ground for *munera*.'

²⁰ *Or.* 50, 75; 78; 84.

²¹ *IGRR* IV, 1402; Bowersock, *op. cit.* 41.

²² *Dig.* 27, 1, 6, 6; but cf. *Dig.* 50, 4, 11, 3 and the discussion by K.-H. Below, *Der Arzt im römischen Recht* (Munich 1953), 42-43, who is probably right to assign *Dig.* 27, 1, 6, 6 to the compilation of Tribonian.

²³ *Dig.* 50, 9, 1; 50, 13, 1.

²⁴ *Dig.* 27, 1, 6, 4; 50, 9, 1.

²⁵ Galen (ed. Kühn) XIV, 622. He calculates the size of Pergamum his home city as 40,000, women and slaves included, V, 49.

²⁶ XIV, 624.

his qualifications and, if there was any doubt of his professional competence, or if he appeared to be neglecting or despising his duties, rumour or public opinion could easily secure his removal. Galen's master, Quintus, was forced to leave Rome by the hatred of his colleagues who had spread around the suspicion that he had murdered some of his patients.²⁷ A young doctor who was born at Pergamum and who had studied at Alexandria attempted to treat the wife of a wealthy fellow townsman for childlessness in accordance with the precepts of his teacher, the Hippocratic Metrodorus. A huge fee was agreed upon, should he be successful, and the money deposited with a trustee. His medicine gave the woman a severe stomach disorder, and he was thrown out of the house. His previously high reputation prevented this episode from being kept secret, and he had to leave Pergamum and become a travelling doctor. But even on his travels the story of his discomfiture accompanied him: in every city people laughed and scoffed at him, and none would accept his treatment despite his skill in other aspects of medicine.²⁸ The insistence in the writings of Hippocrates and Galen of the need for a doctor to be able to give an accurate prognosis, and to forecast not only the cure but also the death of a patient, reflects this side of medical practice, since by showing that the natural end of a particular disease is death, the doctor not only avoids the responsibility for it but gains credit for his accuracy.²⁹ Celsus went even further in advising doctors to treat only those patients whose illnesses they thought curable.³⁰ Success was the guarantee of a further successful practice, failure brought shame and ignominy.

But when a city council decided to approve a physician or a grammarian and to elect him into the *numerus*, had they means whereby to assure themselves of their good judgment? Although we have no definite information, it seems clear that no institution handed out certificates of proficiency or attendance such as are found for the law school of Berytus in the fifth and sixth century.³¹ This does not mean to say that patronage and personal commendation by a teacher were not employed—the correspondence of Libanius bears sufficient witness to this in the fourth century—and few candidates would have arrived with no credentials, however weak.³² Influential friends were always important: Galen's senatorial acquaintances mentioned him to the emperor as a possible imperial physician, and his name was always on the lips of the leading citizens in Rome who were interested in medicine.³³ A successful term of office as a public doctor in a city might earn a testimonial in the form of an honorary decree which could be introduced as evidence.³⁴ It mattered too what family an aspiring doctor or rhetor came from; obviously a son of a respected local doctor would raise an expectation of competence, and there are several examples of families serving as civic doctors in one city or region. At Beneventum, the son of a Greek immigrant doctor was himself elected as *archiater*, and was rich enough to obtain the rank of an *eques*:³⁵ Attalus Priscus, the son of a doctor and local worthy at Ephesus, describes himself as ἀρχίατρος διὰ γένους: at Thyateira, Hermophilus the *archiatros* is further commemorated as the father, uncle and brother of *archiatri*.³⁶ A letter from one's master or membership of a local *collegium* would also be a help. A *collegium* of doctors at Aventicum seems to have been the headquarters for those who travelled the surrounding countryside, while the doctors at Ephesus held medical contests and laid down regulations for the conduct of their members.³⁷

²⁷ XIV, 602.

²⁸ Galen, *Comm. in Epid.* II (ed. Pfaff) in *Corpus Medicorum Graecorum* v, 10, 1, 401 f.

²⁹ Galen XVIII B, 6 (= *CMG* v, 9, 2, 200). L. Edelstein, *Ancient Medicine* (Johns Hopkins 1967), 76 f.

³⁰ Celsus, *De Medicina* v, 26, 'Est enim prudentis hominis primum eum qui servari non potest, non adtingere, nec subire speciem eius ut occisi quem sors ipsius intermit.'

³¹ *CJ* 2, 7, 11, 2; 2, 7, 22, 4; 2, 7, 24, 4.

³² P. Petit, *Les Étudiants de Libanius* (Paris 1957), 154–165.

³³ Galen XIV, 649 f.; XIX, 18.

³⁴ L. Cohn—Haft, *The public physicians of Ancient Greece* (*Smith College Studies in History*, XLII: Northampton, Mass., 1956), 56–61, and his list of honorary decrees, 76–85.

³⁵ *CIL* IX, 1655 (= *ILS* 6496); *NdS* 1913, 311.

³⁶ For Priscus, see *CIG* 2987, where the inscription was erroneously dated to the late first century B.C.; the true date was suggested by P. Le Bas, *Voyage Archéologique* III (Paris 1870), 161, and confirmed as being shortly after A.D. 160 by *Forschungen in Ephesos* IV, 3 (Vienna 1951), no. 27. On Hermophilus see J. Keil and A. von Premerstein, *Denkschriften der Österreichischen Akademie der Wissenschaften, philo.-hist. Klasse* LIV (1911), p. 39, n. 70 (= *IGRR* IV, 1278).

³⁷ *CIL* XIII, 5079 (= *ILS* 7786) with which compare the oculist's stamp, E. Howald and E. Meyer, *Die römische Schweiz* (Zurich 1940), n. 446; M. A. Dollfus, 'L'exercice de l'ophtalmologie à l'époque gallo-romaine', *BSNAF* 1963, 111; J. Keil, 'Ärzteinschriften aus Ephesos', *JÖAI* VIII (1905), 128–138; P. Wolters, 'Ἀρχίατρος τὸ δ', *JÖAI* IX (1908), 295; J. Keil, *JÖAI* xxx (1937), *Beiblatt* 200.

But when these guides were absent the city council had to take what practitioners it could find.³⁸ The list of teachers of liberal studies and doctors given by Ulpian includes such specialists as *obstetricae* and, more doubtfully, *auricularii* and dentists, and excludes exorcists, wizards and magicians, even though some have stated that they have derived medical benefits from them.³⁹ This implies that anyone believed to possess medical ability—and the range of abilities, services and statuses was very wide—could be considered worthy to be recognized as a doctor, always provided that he could satisfy the twin requirements of moral probity and practical skill. Whether he retained these privileges depended upon his performance, upon his success.

It is with this in mind that we must consider two cases of sophists who were deprived of their immunities by the emperor. Philiscus, the holder of a sophistic chair at Athens, made a disgraceful exhibition of himself when pleading before Caracalla, and it was thus only right that if this 'miserable little speech' was the best that the occupant of an important and exemplary office could produce, he should lose his immunity.⁴⁰ Similarly Heraclides, who failed in a rhetorical contest before Septimius Severus in Rome, displayed no *peritia artis* and his deprivation could be legally justified.⁴¹ The imperial action was swift and decisive, and therefore appeared harsh. In this respect, at least, those intellectuals who were investigated and approved by a more tardy city council in the provinces obtained a surer immunity than those who performed before the emperor, or those whose claim rested upon the vague phrase *ἄγαν ἐπιστήμων*, which depended upon their continuing reputation and success. Thus although this decision of Pius may have made a loophole in the otherwise tight legislation on immunities, it required also great determination in the face of social pressure to keep it open.⁴²

Although this cannot be said to restrict the immunity of sophists or doctors, it does recall in one way the provisions made for philosophers. The wit of Antoninus Pius when considering their immunities is justly famous. 'I feel sure that those who are wealthy will voluntarily provide financial assistance for their cities: if they quibble about the size of their estates, they will thus make it quite clear that they are not truly philosophers.'⁴³ It is not improbable that *ἄγαν ἐπιστήμων* offers a similar deflation of sophistic claims: 'great' or 'excessive learning' aptly denotes those sophists whose knowledge was too refined to profit the city by their employment and who might best be left to antiquarian scholarship. The ability to recite the hymns of Amphion, to assemble textual variants in the Hippocratic corpus or to compile an Aristophanic dictionary had small relevance to the activities of an *airenarchos*.⁴⁴

II

So far I have demonstrated that sophists and doctors were only immune if they had been enrolled in the number of civically approved practitioners or if they were extremely learned. Absence abroad, except on state business, did not prevent a man from performing a liturgy in his native city. Modestinus continues his exposition by citing an exception to the last rule: τὸν ἐν Ῥώμῃ σοφιστεύοντα ἢ σαλαρίω ἢ καὶ χωρὶς σαλαρίου ἄφεσιν ἔχειν νενομοθέτηται ὑπὸ τῶν θειοτάτων Σεβήρου καὶ Ἀντωνίνου οὕτως ὡς ἂν εἰ ἔτυχεν ἐν ἰδίᾳ πατρίδι διδάσκων· αἷς νομοθεσίαις δύναται τις ἐκείνον προσαγαγεῖν τὸν λόγον ὅτι κοινῆς οὐσῆς καὶ νομιζομένης πατρίδος τῆς βασιλευούσης εἰκότως ὡς ἐν ἰδίᾳ πατρίδι χρήσιμον ἑαυτὸν παρασχῶν ἀλειτουρησίαν καρπώσεται.⁴⁵—'The deified Severus and Antoninus laid it

³⁸ *Frag. Vat.* 149 restricts the number of doctors in a city who are to possess immunity to five.

³⁹ *Dig.* 50, 13, 1.

⁴⁰ Philostratus, *Vit. Soph.* 300 f.

⁴¹ *Ibid.* 254.

⁴² Although immunity might be granted, voluntary performance of duties could also be expected: see Aristeides 50, 78; *P. Fayum* 106; and the evidence collected by N. Lewis, 'Exemption from Liturgy in Roman Egypt, I', *Actes X congr. intern. de papyrologie* (Warsaw 1964), 69-79; II, *Atti XI Congr. Pap.* (Milan 1966), 512 f.

⁴³ *Dig.* 27, 1, 6, 7. The joke was an old one and reappears at *Dig.* 50, 5, 8, 4 (Papinian, Lib. I.

Respons.): 'philosophis qui se frequentes atque utiles per eandem studiorum sectam contententibus praebent, tutelas, item munera sordida corporalia remitti placuit: non ea quae sumptibus expediuntur: etenim vere philosophantes pecuniam contemnunt, cuius retinendae cupidine fictam adseverationem detegunt.'

⁴⁴ For these cases, see Philostratus, *Vit. Soph.* 290; Galen, *Corpus Medicorum Graecorum* v, 10, 2, 2, 293 and 413, on which see F. Pfaff, 'Rufus aus Samaria, Hippokrates-commentator und Quelle Galens', *Hermes* LXVII (1932), 356-359; Galen xix, 48 (Kühn).

⁴⁵ *Dig.* 27, 1, 6, 11.

down that a man who is a sophist at Rome with or without a civic salary is exempt just as if he were teaching in his own city. One may add as the reason for this that since the imperial city is and is considered to be the common fatherland, a man will fitly enjoy immunity just as if he had made himself useful in his own fatherland.' The substance of this was repeated by Paul in his *Liber primus responsorum*: 'eos qui Romae profitentur proinde in patria sua excusari muneribus oportere ac si in patria sua profiterentur.'⁴⁶

Before investigating in detail the workings of immunity and the organization of the teaching and medical professions within Rome, it is important to examine the argument used by Modestinus to justify the decision of the emperors, and implicitly accepted as well by Paul, that Rome can be at least compared with a man's own *patria*, that 'the imperial city is and is considered to be the common fatherland'. It is necessary to separate the reasoning of the jurist from the decision of the emperors. Modestinus clearly did not know the grounds for the imperial ruling, if any indeed were given, and his δύνανται τις ἐκείνον προσαγαγεῖν τὸν λόγον represents his own conjecture.⁴⁷ Whether he was right to do so is impossible to tell: the decision was taken before 211, the work 'On exemptions' was not written before 217, and may be much later.⁴⁸ Modestinus had possibly used the same arguments earlier in his '*Liber de manumissionibus*' where he stated dogmatically, 'Roma communis nostra patria est'.⁴⁹ The context of this declaration is unknown, and its application is disputed. Some have believed that it applied to all the inhabitants of the Roman Empire, others only to *cives Romani*, although the practical distinction between the two was minimal even before the Constitutio Antoniniana.⁵⁰ Its significance lies above all in its ascription to Modestinus, a jurist with close links with the Eastern provinces.⁵¹

Professor Stein has attempted to characterize the methods of the jurists in formulating definitions and rules whereby to interpret and to advance the law, and has concluded that Modestinus and his contemporary Marcian display a greater schematization and use of theoretical material than their predecessors.⁵² Thus the general statement of *Digest* 50, 1, 33 and its application to a particular problem as in 29, 1, 6, 11 show a procedure typical of Modestinus, the construction of a theory and its employment to resolve an existing anomaly. This definition can in no way be said to be normative or to bind future legislators, but by its enunciation of a principle it reveals a persuasive or an educative intention on the part of its author.⁵³

The question of the purpose and originality of this declaration can only be solved by looking at the general ideas that lie behind the theory of *communis patria* and at the social context in which it is set. On the one hand there is the Hellenistic literary tradition represented by Aelius Aristides, on the other the legal developments arising out of the extension of Roman citizenship in the provinces. Neither can be neglected in a discussion of the sources of this legal theory, for as Nörr has pointed out, legal notions such as *origo* and *patria* must be explained as much in terms of ideology as in those of strict law, and, on the other hand, many of the orations of Dio of Prusa and of Aristides, despite their apparent platitudes, had an immediate political purpose.⁵⁴

The loss of many of the Hellenistic writings on political theory renders the charting of ideas included in them extremely hazardous. Occasional appearances do not constitute a firm tradition, and individual instances may attract greater attention than they deserve. The relationship between a ruling city and its dependencies seems to have first been described in terms that recall the *communis patria* argument in the Hellenistic period, when a

⁴⁶ Ibid. 50, 5, 9 pr.

⁴⁷ Compare *ibid.* 11, 7, 14, 9 (Ulpien, Lib. 25 ad Edictum), 'fortassis quis possit dicere . . .', and *ibid.* 9, 4, 8; 39, 2, 13, 2; 47, 2, 41 pr.

⁴⁸ A. M. Honoré, 'The Severan lawyers: a preliminary survey', *SDHI* xxviii (1962), 214. *Dig.* 26, 7, 21 and 27, 1, 6, 9 and 11, show that the work was not completed before the death of Caracalla, but offer no further dating. Νομοθεσία may indicate two separate decisions.

⁴⁹ *Dig.* 50, 1, 33.

⁵⁰ E. De Ruggiero, *La patria nel diritto pubblico Romano* (Rome 1921), 70 and 71, n. 3.

⁵¹ H. Peter, 'Zur Schrift Modestins παραίτησις ἐπιτροπῆς καὶ κουρατορίας', *ZSS* xxxiii (1912),

511-513; W. Kunkel, *Herkunft und soziale Stellung der römischen Juristen*, (Weimar 1952), 259-261; J. Altmann, 'Die Wiedergabe römischen Rechts in griechischer Sprache bei Modestinus *de excusationibus*', *SDHI* xxi (1955), 1-73.

⁵² P. G. Stein, *Regulae Iuris* (Edinburgh 1966), 86-88.

⁵³ A. Carcaterra, *Le definizioni dei giuristi Romani: metodo, mezzi e fini* (Naples 1966), 194 and 205 ff.

⁵⁴ D. Nörr, 'Origo, Studien zur Orts-, Stadt- und Reichszugehörigkeit in der Antike', *Tijdschrift voor Rechtsgeschiedenis* xxxi (1963), 525-600, esp. 577, 580, summarized in *P-W Suppl.* x (Stuttgart 1965), 433-473, s.v. *origo*.

fragmentary papyrus of the first century B.C. describes the position of Alexandria in these words: αἱ μὲν γὰρ ἄλλαι πόλεις τῆς ὑποκειμένης χώρας πόλεις εἰσὶν, Ἀλεξανδρείας δὲ κῶμοι· τῆς γὰρ οἰκουμένης Ἀλεξανδρεία πόλις ἐστίν.⁵⁵

This idea that dependent cities could share in some way in the political life of the ruling city reappears in the writings of Dio and Aristeides, and this particular conceit finds an exact parallel in Aristeides' speech in Rome.⁵⁶ 'What another city is to its own boundaries and territory, this city is to the boundaries and territories of the entire civilized world, as if the latter were a country district and she had been appointed the κοινὸν ἄστυ. It might be said that this one citadel is the refuge and assembly place of all *perioeci* or of all who dwell in outside demes.' Aristeides sees the Roman Empire as something κοινός; there is the κοινή τῆς γῆς δημοκρατία, there is a κοινὸν ἄστυ; the word Roman indicates membership of κοινόν τι; the city is a κοινόν τι τῆς γῆς ἐργαστήριον or ἐμπόριον; and Roman auxiliaries on obtaining citizenship are released from their own πατρίς to join a greater city, τὸ κοινὸν τῶν ἀρχόντων.⁵⁷ It is the Romans who have best proved the assertion that Earth is mother of all and common fatherland, πατρίς κοινή πάντων.⁵⁸ Sherwin-White concluded on this evidence that Aristeides was looking at the Roman or Ciceronian idea of 'communis patria' and that he was here adapting an argument that dealt primarily with individual citizens to one dealing with the relationship between Rome and the cities of the provinces.⁵⁹ But it is Earth, not Rome, which is the *communis patria* of all, and there is nothing to suggest that the orator knew anything of the legal disputations over double citizenship. The traveller going ἐκ πατρίδος εἰς πατρίδα is passing from one home to another within the κοινόν of the Roman Empire, and neither he nor Aristeides nor the audience would have stopped to consider the implications that would arise through his possession of multiple citizenship.⁶⁰ As Oliver has rightly insisted, there are Greek models for this oration even though the suggestion of a Greek league may be giving too great a precision to a traditional and tactful way of praising a powerful city.⁶¹

Indeed, it seems to have been part of the stock of the panegyrist to refer to a great city as having something κοινός. Aristeides describes Corinth as the κοινὸν ἄστυ τῶν Ἑλλήνων and the κοινή πάντων καταφυγή⁶²; and Dio of Prusa praises Alexandria as 'the market of the world, as it were of a single city, bringing together all manner of men . . . and making them a kindred people.'⁶³ The Elder Pliny joins these Greeks when in the course of his geographical summaries he breaks out into lavish praise of Rome.⁶⁴

'Nec ignoro ingrati atque segnisi animi existimari posse merito, si obiter atque in transcurso ad hunc modum dicatur terra omnium terrarum alumna eadem et parens, numine deum electa quae caelum ipsum clarius faceret, sparsa congregaret imperia, ritusque molliret et tot populorum discordes ferasque linguas sermonis commercio contraheret ad conloquia et humanitatem homini daret breviterque una cunctarum gentium in toto orbe patria fieret. sed quid agam? tanta nobilitas omnium locorum quos quis attigerit, tanta rerum singularum populorumque claritas tenet.'

Dio of Prusa develops another aspect of the community of the Roman Empire by dwelling upon the opportunities granted by Rome to others to share in her citizenship and her offices. Her prosperity and her power rest upon charity and fairness; by granting to all who deserve it a share in citizenship, in laws and in offices, Rome preserves justice for all alike.⁶⁵ Thus by being shared by all, The Roman Empire becomes something κοινός, something in which the Greeks also can take a pride and an interest.

The rhetorical or panegyric tradition, if such it may be called, speaks of the Roman

⁵⁵ P. Berl. 13045, 28 f., and see *Archiv für Papyrusforschung* VII (1923), 240.

⁵⁶ Aristeides, *Or.* 26, 61 (Keil).

⁵⁷ *Ibid.* 60; 61; 63; 11; 7; 78.

⁵⁸ *Ibid.* 100.

⁵⁹ A. N. Sherwin-White, *The Roman Citizenship* (Oxford 1933), 184; he treats Aristeides' speech at length on pp. 258-264.

⁶⁰ Aristeides, *Or.* 26, 100.

⁶¹ J. H. Oliver, *The Ruling Power (Transactions of the American Philosophical Society XLIII, 1953)*, 871-1003, esp. 889-892. His view was accepted by

H. Bengtson, 'Das Imperium Romanum in griechischer Sicht', *Gymnasium* LXXI (1964), 164 but denied by J. Bleicken, 'Der Preis des Aelius Aristeides auf das römische Weltreich', *NGA* 1966, 243, n. 40. See also Nörr, art. cit. (note 54), 584, 590 ff., and *Imperium und Polis in der hohen Prinzipatszeit* (Munich 1966), 94 ff.

⁶² Aristeides, *Or.* 46, 23.

⁶³ Dio, *Or.* 32, 36.

⁶⁴ Pliny, *NH* III, 39.

⁶⁵ Dio, *Or.* 41, 9.

Empire, and possibly the Alexandrian kingdom formerly, as something to which all contribute and in which all share but without defining its terms with precision. Aristeides looks to the past for his models, possibly to the Greek leagues, yet his flaccid language prevents any certain understanding of the resulting construction. To say that he is taking an argument which applies primarily to individuals and turning it to deal with cities is to overlook the earlier parallels and to credit him with a greater awareness of contemporary legal argument, and with a greater power of innovation, than is warranted by the evidence. The idea of a community of Empire exists in the first century B.C. and is revealed not only in such diverse authors as Pliny and Dio of Prusa but also in a contemporary of Modestinus. Cassius Dio, as Millar shows, uses just such a theme when, in the course of a programmatic speech put into the mouth of Maecenas, he proclaims that by a grant of universal citizenship all men would be brought to regard their own cities as villages in the territory of Rome.⁶⁶

The gradual extension of Roman citizenship throughout the provinces brought its own social and legal difficulties. Roman citizenship when acquired was at least a second set of legal relationships existing alongside those of local citizenship, and it involved both obligations and privileges.⁶⁷ The demands of a local town upon a wealthy inhabitant who had exchanged his local citizenship for that of Rome had to be reconciled with those of the law and required a justification, at least in theory. Cicero produced a formula which satisfied by its high-sounding philosophy but whose meaning could not be defined with exactitude:⁶⁸ 'ego me hercle et illi et omnibus municipibus duas esse censeo patrias, unam naturae, alteram civitatis: ut ille Cato, cum esset Tusculi natus, in populi Romani civitatem susceptus est, ita, cum ortu Tusculanus esset, civitate Romanus, habuit alteram loci patriam, alteram iuris.' A more practical line than this was taken by Julius Caesar and his successors when they refused to permit new citizens to be exempt from local liturgies, indicating by special grants those who were entitled to this immunity.⁶⁹ Rome was indeed the common fatherland of all Roman citizens, yet they were never permitted to forget their individual one: the existence of a *communis patria* did not rule out the existence and demands of an individual *patria*. Moreover, as the legal variations in the rights and obligations of cities towards Rome became fewer, as the number of Roman citizens in provincial municipalities increased, so the old legal boundaries were broken. Nörr has shown how the concept of *origo* is introduced in the second century, and has suggested that the doctrine of Rome as the *communis patria* could be made to harmonize discordant interpretations of rights and duties.⁷⁰ But attitudes towards the performance of such duties may well have been unaffected by new theories. Fries' hypothesis, that by this doctrine and by offering a new formulation of the relationship between a central authority and its provinces, Rome averted the fragmentation of authority and jurisdiction implicit in the multiplication of *fora*, neglects political and social developments in favour of an extreme and unjustified belief in the effectiveness of this one piece of legislation or legal theory, which makes only a rare appearance in the Digest.⁷¹

The idea of Rome as the fatherland of all men is found in a legal text of dubious origin even before the writings of Modestinus. The jurist Callistratus, in a passage extant only in the *Basilica* and ascribed by Lenel to his sixth book *De Cognitionibus* of A.D. 197-198, makes the following statement:⁷² 'Relegatus non potest Romae morari, licet hoc sententia comprehensum non sit, quia omnium est patria. Sed neque in civitate in qua versatur Princeps vel per quam transit; eis enim dumtaxat Principem intueri licet, qui Romam ingredi possunt. Est enim Princeps pater patriae.' The peculiar textual transmission of this

⁶⁶ F. Millar, *A study of Cassius Dio* (Oxford 1964), 104 f.

⁶⁷ This formulation is that of Nörr, art. cit. (note 54), 555; see also A. N. Sherwin-White, *Roman Society and Roman Law in the New Testament* (Oxford 1963), 181 ff. and J. A. Crook, *Law and Life of Rome* (London 1967), 37-40.

⁶⁸ Cicero, *De Legibus* II, 2, 5; Nörr, art. cit. (note 54), 555 f. and 583 f. See also M. Hammond, 'Germana Patria', *HSCP* (1951), 148 and 159, and H. Braunert, 'Verfassungsnorm und Verfassungswirklichkeit im späterepublikanischen Rom, eine Interpretation zu Ciceros Rede für Balbus', *Der altsprachliche Unterricht* IX (1966), 51-73.

⁶⁹ *IGRR* IV, 33, col. b, 33; *FIRA* ² I, 55.

⁷⁰ Nörr, art. cit. (note 54), 566 f.; J. Gaudemet, 'L'étranger au Bas-Empire', *Recueils de la société Jean Bodin*, I (Brussels 1958), 209-210.

⁷¹ B. Fries, *Formen in der Rechtssprache* (Munich 1963), 34-46.

⁷² *Dig.* 48, 22, 18 pr. = *Basilica* (ed. Heimbach) 60, 54, 19; the same text appears in the scholium to *Bas.* 21, 2, 2.; O. Lenel, *Palinogenesia Iuris Civilis* I (Leipzig 1889), 93-94, fr. 53. On the date, R. Bonini, *I libri de cognitionibus di Callistrato*, I (Milan 1964), 14-15.

passage casts some doubt on its authenticity, and only if it can be shown that the legal rulings there included go back to the time of Callistratus or earlier can the appended reason be regarded as genuine.⁷³

Relegatio, as Brasiello has demonstrated, gradually came to embrace both relegation to a given place and relegation from a given place.⁷⁴ The first to forbid all those who were banished or exiled to enter Rome or even Italy seems to have been the emperor Claudius, and this law was never repealed.⁷⁵ Ulpian records that a man banned from his own *patria* had to be barred also from Rome, the *urbs*, although the converse was not true.⁷⁶ Similarly the freedman of a *relegatus* was also banned from Rome, and soldiers who were ignominiously discharged were not permitted to remain in Rome or to exercise any *tutela* there, presumably, as a Byzantine scholiast says, to forestall any attempt upon the life of the emperor by disaffected and discharged soldiery.⁷⁷ Thus it is clear that the first provision of this passage already existed by A.D. 197, and there must be a presumption that the reason added to it also goes back to Callistratus. But there is also evidence for the confusion of the pragmatic reason given by the scholiast, that this was done to protect the emperor, with another section in the law of *relegatio*. Ulpian makes it clear that a man who was banned from his place of domicile was also banned from his native province, describing this as *relegatio* or *interdictio* from his *patria*.⁷⁸ Throughout *Digest* 48, 22, 7, Ulpian speaks of a man's *patria*, and if this formula was already current, Callistratus may be assumed to have combined it with the popular ideas already mentioned, to explain a long standing regulation whose origin may have been more practical. As De Ruggiero pointed out, the reason given by Callistratus has no effective content and merely serves to lend greater weight to the prohibition.⁷⁹ It is a theoretical statement added as an explanation of a long-standing regulation, and, like *Digest* 27, 1, 6, 11, is introduced after the making of a decision by a jurist concerned to interpret it. Even if other sections in this passage do not offer such proof of authenticity, there is small reason to doubt the ascription of this first section to Callistratus who can thus be seen as the first jurist to introduce the rhetorical idea of Rome as the fatherland of all into legal argument.⁸⁰

Where then does Modestinus come in? Is his interpretation of the imperial decision similar to the reasoning of Callistratus, or does it differ in some way from that of his predecessor? The antecedents of his declaration that Rome is our common fatherland are substantially the same as those of Callistratus, on the one hand the rhetorical panegyric tradition represented by Aristeides, on the other the legal interest in problems concerned with the rights and obligations of Roman citizenship. He therefore creates his theoretical conclusion as a summary of opinions, and then uses it to explain an anomaly. His knowledge of the reasons behind the imperial judgement was limited, but it is important to note that he believed that, in a dispute over so precise and concrete a subject as immunity from liturgies, an appeal could be made to a theory which is more a descriptive than a normative explanation. By so doing he gave an opportunity to later writers such as Paul to equate the city of Rome with a man's *patria*, by relying both upon the precedent of an imperial decision and upon a theory which could be adapted to future situations. This formulation of the idea of Rome as *communis patria*, which appears only in two limited contexts, the law of immunities and possibly the law of *relegatio*, indicates that its effective importance was small. It is of greater value as a stage in the development of the idea of Rome as a world state, particularly appropriate in the age of the *Constitutio Antoniniana*, and as a further

⁷³ Bonini, op. cit. p. 84, n. 1, promises a discussion of the transmission of this text; compare the treatment of *Dig.* 48, 22, 18, 1 by U. Brasiello, *La repressione penale in diritto romano* (Naples 1937), 320, n. 87.

⁷⁴ Op. cit. 282, 307, citing *Dig.* 48, 22, 7 pr. and 48, 22, 14 pr. Compare the definition of Marcian, *Dig.* 48, 22, 5.

⁷⁵ Suet., *Claudius* 23, 2: 'sanxit ut . . . ii, quibus a magistratibus provinciae interdicerentur, urbe quoque et Italia summoventur.' Cf. M. V. Braginton, 'Exile under the Roman Emperors', *CJ* xxxix (1944), 391-407, and *Dig.* 3, 2, 2, 4; 27, 1, 8, 9; 48, 22, 7, 11.

⁷⁶ *Dig.* 48, 22, 7, 15.

⁷⁷ *Dig.* 48, 22, 13; 27, 1, 8, 9 (= *F. Vat.* 177a); 3, 2, 2, 4.

⁷⁸ Scholiast on *Bas.* 21, 2, 2; Ulpian, *Dig.* 48, 22, 7, 10.

⁷⁹ De Ruggiero, op. cit. (note 50), 70 f.

⁸⁰ The ban on *relegati* residing in the same place as the Emperor is paralleled by *Dig.* 3, 2, 2, 4, but the addition of 'any place on the emperor's route' is found only in the *Basilica* and its scholia. Both this and the following explanatory sentence imply that the emperor regularly moved around accompanied by his *comitatus*. Although the emperor in the late second century travelled about, this was a time of crisis, and *Dig.* 48, 22, 18 pr. appears to accept this as a normal situation. As for 'est enim princeps pater patriae', this fits uneasily with what precedes, and may be a late and antiquarian addition.

example of the constructive methods of Modestinus and his contemporaries in advancing the law.⁸¹

III

Modestinus' opinion that those who taught in Rome and had immunity there were also immune from liturgies at home was accepted by Paul in his *Liber primus Responsorum*.⁸² Yet this argument by analogy is only strictly valid if the two sets of *munera* are identical, and, as I shall show, this is not necessarily so.

The city of Rome enjoyed an anomalous position: the scale of public duties to be performed and the importance of its offices were greater than in any other city; its magistrates governed a vast *territorium*; the town council, the senate, was the supreme legislative body of the empire; and the confusion of imperial government and local administration, such as that carried on by the aediles, demanded special regulations for its enforcement. The *munera* of the *cives Romani*, being shared by all Roman citizens both in the city and in the provinces, were universal, and the city itself possessed neither liturgies nor compulsory magistracies. Thus it was only in Rome that the rule that an *incola* was liable for *munera* did not apply, and those who had the *origo* in Rome, if they were domiciled elsewhere, were obliged to undertake liturgies.⁸³

What then are the *munera* of the residents of Rome implied in the Digest? De Ruggiero concluded his discussion of them by lapsing into doubt, and certainly the public obligations which interest Modestinus and which are listed in detail at *Digest* 27, 1, 6, 8 cannot have applied in Rome, where they did not exist in that particular form.⁸⁴ There are two possibilities which would give plausibility to the argumentation of the jurists. The first is that there were no *munera* at all in Rome: those sophists and doctors who performed there could thus regard themselves as immune and claim by analogy a similar freedom in their native cities. But Modestinus' distinction between ἀφείσις and the more specific ὀλιγουργησία suggests that he believed some general immunity to exist, and the second suggestion must be considered, that there were *munera* in Rome but only the *munera* of private law. Modestinus is concerned not only with public liturgies such as the office of *agoranomos* but also with the duties of *cura* and *tutela*, which being essentially the creations of private law were similar throughout the empire.⁸⁵ We know from Ulpian that *tutela* was found within Rome, and a passage in Justinian's *Institutes* specifically grants immunity from it to those who practise in Rome: ⁸⁶ 'Item Romae grammatici, rhetores et medici et qui in patria sua id exercent et intra numerum sunt, a tutela vel cura habent vacationem.' As with Modestinus and Paul, there is here the equation in terms of immunity of grammarians, rhetors and doctors in Rome and those who both practise at home and are included within the *numerus*. The transition from the immunities in private law, which are common to all, to immunity from local, public and compulsory liturgies is simple: it was only fair that those who had obtained some exemption by their active presence in Rome should retain it throughout the empire, even when the nature of the immunities differed. On either possibility, therefore, Modestinus' argument, which demands the identity of two types of exemption, is not entirely valid.

But the decision of the emperors did not depend on the theoretical arguments of the lawyers: it had a more practical purpose, a display of favour towards the city of Rome by the deliberate attraction to it of the best practitioners of learning. Such a policy went back a long way. Julius Caesar, according to Suetonius, offered citizenship to all doctors and teachers of the liberal arts then in Rome in order to encourage them to remain and to persuade others to follow.⁸⁷ Modestinus confirms that teachers of law in Rome enjoyed an

⁸¹ The idea of Rome as βασιλεύουσα was already common in the second century: see Athenaeus, *Deipn.* 98 C; *IG* XIV, 1 109 (time of Antoninus Pius); *IG* XIV, 830 (A.D. 174), and the comments of J. and L. Robert, *REG* LXXI (1958), p. 306. The reference in Liddell—Scott—Jones to Galen, xiv, 796 for the use of βασιλις is unfounded. Although *Dig.* 50, 1, 33 forms the introductory superscription to F. Schulz's chapter on 'Nation' in his *Principles of Roman Law* (Oxford, 1936), he does not attempt to work out its implications or problems. The reference to Rome as

communis patria at *CT* 6, 2, 25 reflects the excessive deference of the emperors towards the senate of Rome, and is too late in date to affect the present discussion.

⁸² *Dig.* 50, 5, 9 pr.

⁸³ *Cf.* 10 62: *Dig.* 50, 4, 3 pr.

⁸⁴ De Ruggiero, op. cit. (note 50), 71.

⁸⁵ *Dig.* 27, 1, 6, 1 and 5.

⁸⁶ *Dig.* 27, 1, 8, 9 and 27, 9, 5, 12; *Institutes* 1, 25, 15.

⁸⁷ Suetonius, *Julius* 42, cf. Cassius Dio LIII,

immunity in their native city that was denied to those who had merely moved to teach elsewhere in the province.⁸⁸ Although *Digest* 27, 1, 6, 11 refers especially to sophists in Rome, the evidence of the *Institutes* and of the other legislation in which doctors are granted exemptions as great as, if not greater than, those given to teachers and professors makes it probable that all useful intellectuals were included in the grant of such privileges.⁸⁹ Their colleagues who merely migrated to the next city, as we have seen, did not receive such preferential treatment. The contrast between a provincial city with its restricted number of privileged *literati* and Rome with an apparently blanket grant of immunity is thus greater than is sometimes thought, and is owed as much to the emperors' practical concern for the populace of Rome as to their enlightened encouragement of education.⁹⁰

The organization of intellectuals within Rome and the arrangements which had to be made before immunity was granted remain deeply obscure. Almost all that is known of the teaching profession in Rome is that salaries were given to some sophists, presumably the holders of the sophistic chairs, and not to others, and further conclusions can only be derived by analogy with the physicians of the city.⁹¹ Although a *schola medicorum* existed in the second century, and although there are many examples of a master and his pupils, there is no evidence that there was any *numerus* or a *collegium* of doctors until one was created in A.D. 368 by Valentinian.⁹² Antoninus Pius' edict, although it applied throughout the empire, was directed in the first instance to the council of the province of Asia, and there is nothing to suggest that the *numerus* system applied in Rome at this date.⁹³ An argument *ex silentio* is always dangerous but the absence of any reference in Galen to any approved or select body of doctors resident in Rome to which he or his opponents belonged lends greater weight. There are sects, whose members hold acrimonious debates and demonstrations, there are certain well defined meeting-places like the Temple of Peace or the Baths of Trajan, but there is nothing to imply any superior group other than the imperial doctors.⁹⁴ If any organization existed, the term 'iatromea regionis suae', if it is to be dated before A.D. 368, and if it is not simply a geographical description, suggests that it was based upon the individual regions rather than upon the city as a whole.⁹⁵

To obtain immunity in a provincial city, a doctor had to be included in the *numerus* or to be given a special exemption, but the large numbers of doctors serving the population of Rome would have been selected for such a group only with difficulty.⁹⁶ A papyrus from Egypt, where all doctors were immune from some liturgies and where the *numerus* system when it was introduced seems to have provided further immunities for a few, offers a parallel, and a suggestion of the method of obtaining immunity.⁹⁷ In A.D. 142-3 a native

30, 3; Suetonius, *Augustus* 59. The doubts of H. Gummerus, *Der Ärztestand im römischen Reiche* 1, (Helsinki 1932), 7, still remain unallayed, and there is slight evidence that any citizen doctor in the East obtained his citizenship by residing in Rome; see below, n. 99.

⁸⁸ *Dig.* 27, 1, 6, 12. These regulations do not mean, as J. Scarborough implies, *Roman Medicine* (London 1969), 216, n. 87, that the physician- or lawyer-teacher had to perform in his home town, or that he was a 'politician'.

⁸⁹ The whole section *CT* 13, 3 is relevant, showing how the immunities of doctors keep pace with those of teachers and professors and how those of the imperial *archiatri*, whose relationship with the emperor may have been more intimate, even outstrip them. This will have been helped by the doctors' participation in the Second Sophistic movement, Bowersock, *op. cit.* (note 2), 59-75. The comments of Scarborough, *op. cit.* esp. 109-122, on the social position of doctors make no allowance for the diversity of social groups within the Empire.

⁹⁰ A useful collection of material will be found in T. O. Martin, 'Aids to education in the Roman Empire,' *Seminar* x (1952), 60-70. See also *CT* 13, 4, 1 and 2, and C. Pharr, 'Roman Legal Education', *CJ* xxxiv (1939), 257-270.

⁹¹ On civic salaries in general see *Dig.* 34, 1, 16, 1; 50, 9, 4, 2; and *CIL* xi, 3087 (= *ILS* 2542).

⁹² *CIL* vi, 29805 (= *ILS* 5581) and 9566 (= *ILS* 7817): see also A. Pazzini, 'La Schola Medicorum ad Aesquilinas e l'origine di una falsa denominazione', *Atti III Congr. di Studi Romani* 1 (Rome 1935), 467-472. On Valentinian's reform, *CT* 13, 3, 8 and 9 (cf. Symmachus, *Rel.* 27) and the emendations and discussions by A. Pazzini, *L'organizzazione sanitaria in Roma imperiale* (Rome 1940), 12, and L. Robert, *Hellenica* v (Paris 1950), 25-27.

⁹³ Public doctors, *archiatri*, only appear in the fourth and later centuries, *CIL* vi, 9562-5.

⁹⁴ Galen, *Corpus Medicorum Graecorum* v, 10, 22, 486; x, 909 f. (Kühn). H. Schoene, 'τὸ τοῦ Τραιάνου γυναικίου bei Galenos', *Hermes* LII (1917), 105-111.

⁹⁵ *CIL* vi, 9477 (= *ILS* 7806) 'D. M. Valeriae Berecundae iatromeae regionis suae primae...' The language suggests at least a date in the fourth century, possibly later: 'prima' may refer to the number of the region, or, more probably, to her pre-eminence. The *collegium* of Valentinian was based upon the regions.

⁹⁶ Note the views of Galen on the size of Rome in *De partibus artis medicativae* 62 (*CMG Supplementum Orientale* II, 29). On the whole question of the immunity of doctors, see also Below, *op. cit.* (note 22), 41-51.

⁹⁷ *P. Oxy.* 40, which has been re-edited with a new and important reading by H. C. Youtie, 'A reconsideration of *P. Ox.* 1, 40', *Studien zur Papyrologie*

doctor, Psaanis, complained to the Prefect, Valerius Eudaemon, about a liturgy imposed upon him by men whom he had attended. He gained slight sympathy, for Eudaemon cuttingly suggested that possibly his inefficient treatment had convinced the patients that he was no doctor and thus not entitled to immunity. To recover his immunity Psaanis must declare to the *strategos* that he is a competent practitioner, δημοσ[ι]εύων ἐπιτη[δείως]. There is no question of the governor making an examination of the doctor's competence, and all that is necessary is an attestation before a suitable magistrate. I suggest that this procedure was to be found in Rome; a doctor or a grammarian would appear before the Prefect of the City or some lesser official, from whom a record of his residence and thus of his qualification for immunity would be transmitted to his home city. Unsuccessful or unlucky practitioners might well be compelled to leave by the hostility of their patients or colleagues, although Galen believed that many of these crooks and charlatans simply moved to prolong their rapacity elsewhere in the city.⁹⁸

The effect of these grants of immunity made to sophists, grammarians and doctors in Rome may have encouraged many to move thither, few of whom seem ever to have returned home.⁹⁹ Galen scornfully describes his colleagues' flight to Rome to escape obloquy at home, but it should not be forgotten that Galen's first visit was precipitated by *stasis* at his native Pergamum.¹⁰⁰ He also condemns those who enter the medical profession for the immunities it provides.¹⁰¹ But an uncharitable critic might point out that neither the many inscriptions of Pergamum nor his own voluminous writings have so far revealed any trace of any public benefaction such as might reasonably have been expected of a wealthy citizen of a well-to-do family, and might even suggest that he sheltered behind his immunities, whether derived from his great learning or his residence at Rome.¹⁰²

These two sections from Modestinus furnish two exceptions to the general rule that residence away from one's *origo*, except on official business, was no bar to the performance of a public liturgy. One of them recalls the influence of the powerful sophists who could oppress a city, or expel a proconsul with impunity from their household, the other the pre-eminence of the city of Rome and of its practitioners. The argument used to justify the latter by Modestinus, which derives both from popular and traditional ideas of empire and from the debate on the rights and duties of Roman citizens towards their native city, on the one hand reflects that jurist's technique of theoretical schematization, on the other hand presents a succinct formulation of an important principle, the relationship between an imperial city and its provinces. It is significant that this profession of the unity of the Roman Empire appears in law for the first time in the age of the *Constitutio Antoniniana*. Some of the ideas which lie behind the grant of almost universal citizenship are now revealed by a contemporary lawyer, himself a provincial, whose interests bring closer together the cities of the distant provinces and the imperial capital.¹⁰³

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und antiken Wirtschaftsgeschichte: Festschrift für F. Oertel (Bonn 1964), 20–29. This was unknown to Scarborough whose discussion, *op. cit.* (n. 88), 100, is therefore outdated; even so, I am unable to agree with the conclusions that he draws from this payprus, which he ascribes to 'the declining years of the Empire' when 'the dry rot was apparent (in native medicine?)'.

⁹⁸ Galen, xiv 621 ff. (Kühn).

⁹⁹ Of nearly three hundred doctors in the Eastern provinces recorded epigraphically before A.D. 212, only 52 are Roman citizens, either freedmen or citizens by grant or family. Of these, ten show some connection with the imperial household (although this does not necessarily mean that they had practised in Rome), and only one of the rest, C. Iulius Epianactis f. Mnesicleides from Paros (*IG* XII, 5, 199), offers a really convincing possibility of service in Rome. If those with *origo* at Rome had to undertake liturgies if they were domiciled abroad (*Dig.* 50, 4, 1.), an *incola* returning to his home city can hardly have been more privileged.

¹⁰⁰ Galen, xiv, 623 (Kühn); 648 (although a later version, xix, 16, ascribes his departure to an outbreak of plague).

¹⁰¹ Galen, v, 751; cf. Lucian, *Abdicatus* 180: πατρικῆς δὲ ἀνάγκης ἀμοιρος ἢ ἀτελῆς τέχνη, ὅπου γε τοῖς ἰατροῖς καὶ δημοσίᾳ αἱ πόλεις τιμᾶς καὶ προεδρίας καὶ ἀτελείας καὶ προνομίας διδῶσι.

¹⁰² On the wealth of Galen's father, Aelius Nicon, see Galen, v, 41; x, 561; xiv, 17 and the inscriptions *IGRR* IV, 502–506. Galen in his defence says that he has spent most of his inherited wealth and of his income, first upon cultural expenses, such as books, materials and scribes, and secondly on works of charity (v, 48), but the latter appear to be small, cf. *Sudhoffs Archiv* xxii (1929), 84. It is possible that he was a decurion at Pergamum (v, 44); certainly he can in no way be called poor, even if not as wealthy as some of his friends (v, 48 f.).

¹⁰³ I should like to thank Professor P. G. Stein and Mr. J. A. Crook for their advice and encouragement in the preparation of this paper: the errors and inconcinities that remain are my own.