

# PROCONSULS, ASSIZES AND THE ADMINISTRATION OF JUSTICE UNDER THE EMPIRE \*

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Vespasian, when he was proconsul of Africa, was pelted with turnips during a riot at Hadrumetum; Galba, when he was legate of Hispania Citerior, received the news of the revolt of Vindex while holding assizes in the far south-east of his province at New Carthage; the famous confrontation between Antoninus Pius, when proconsul of Asia, and the sophist Polemo, when the latter returned home and expelled Pius from his lodgings, occurred at Smyrna.<sup>1</sup> Such instances and anecdotes could be easily multiplied, for governors and their legates did not administer justice by permanently holding court in the capital city—be it Carthage, Tarraco or Ephesus—of their province.<sup>2</sup> Instead they toured their area of administration and held judicial sessions at certain privileged towns—assize centres—of the province. This contention is of prime importance for our conception of the administration of the Roman empire. The first purpose of this article is to assemble the evidence for the actual working of the assize system and the dispensation of justice within it, and the consequences for provincial litigants. The problems faced by a provincial litigant, wishing to gain access to the proconsul's tribunal, may provide a further control for our assessment of the practical, rather than theoretical, operation of Roman judicial procedure. Secondly, I hope, if only impressionistically, to suggest the types of constraint which this framework of a peregrinatory system of justice set on any Roman governor in his non-judicial relations with his subjects.<sup>3</sup>

## I. THE ASSIZE SYSTEM

An assize was designated in Latin by the word *conventus*, and in Greek either by ἀγορὰ δικῶν, ἡ ἀγοραῖος, or ἡ ἀγοραία.<sup>4</sup> By a natural extension *conventus* can refer to the geographic area for which assizes were held in a certain town; in Greek this sense is frequently translated by the word διοίκησις.<sup>5</sup> As in many aspects of imperial administrative and social history, the province of Asia provides the best evidence, epigraphic and literary, for the description of a single assize-system.<sup>6</sup>

Four major pieces of evidence can be adduced to show that the general pattern of assizes in Asia remained constant from the mid-first century B.C. to the Flavian period, though minor changes, involving usually the division of a large area and the elevation of a new city to the status of assize-centre, did occur. Further, it will be argued below, discrete literary and epigraphic evidence suggests the continuance of this pattern through the second and early third centuries. The first document, a letter of a republican proconsul, discovered

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<sup>1</sup> Vespasian: Suetonius, *Vesp.* 4. 3; Galba: Suetonius, *Galba* 9. 2; Antoninus Pius: Philostratus, *VS* 534.

<sup>2</sup> That this article is concerned with proconsular governors reflects merely the relatively superior quality of evidence for the 'senatorial' provinces, not any belief in fundamental differences between 'senatorial' and 'imperial' provinces.

<sup>3</sup> The existence of assizes for example in Asia, has of course, never been doubted; but standard accounts relegate discussion to learned and lengthy footnotes with little effort to integrate the evidence about proconsuls and provincial administration into this background, e.g. D. Magie, *Roman Rule in Asia Minor* (Princeton, 1950).

<sup>4</sup> Latin: Festus, *Epitome*, p. 41 (Mueller):

'Tertio, cum a magistratibus iudicii causa populi congregatur'; Greek translation: e.g. Josephus, *Ant. Jud.* 14. 10. 21 (245): προσελθὼν μοι ἐν Τρόλλεσιν ἄγοντι τὴν ἀγοραῖον. Examples are collected and discussed briefly by L. Robert, 'Études d'épigraphie grecque', *Rev. Phil.* 37 (1934), 276, with two further cases in 'Le Culte de Caligula', *Hellenica* 7 (1949), 206. The basic, if not wholly satisfactory, modern account of *conventus* is by E. Kornemann, 'Conventus', in P-W 4 (1900), 1173.

<sup>5</sup> Strabo, 13. 4. 12 (p. 628): εἰς δὲ τὴν σύγχυσιν ταύτην οὐ μικρὰ συλλαμβάνει τὸ τοῦς Ῥωμαίους μὴ κατὰ φύλας διελεῖν αὐτοῦς, ἀλλ' ἕτερον τρόπον διατάξει τὰς διοικήσεις, ἐν αἷς τὰς ἀγοραῖους ποιοῦνται καὶ τὰς δικαιοδοσίας. Though διοίκησις can also be used of the actual assize-hearings themselves (Dio Chrysostom, *Or.* 45. 10).

<sup>6</sup> The original draft of this article contained much more detailed argument, based on the admirable analysis of L. Robert, *Hellenica* 7 (1949), 206, about the identity of the Asian assizes. However, the combination of that article with the commentary of C. Habicht on the new Ephesian inscription (see above, p. 64 ff.) makes such detail redundant. The sceptical reader will find full documentation for the assertions of my text in these two lucid discussions.

at Miletus, reads at a crucial point: 'for these reasons [?] I have written to the council of the Greeks, to you, to the people of Ephesus, Tralles, Alabanda, Mylasa, Smyrna, Pergamum, Sardis and Adramyttium so that you may send to the cities in your own dioceses instructions. . .'.<sup>7</sup> These eight cities and Miletus ('you') should therefore provide the full complement of assize-centres at the date of composition of the letter. Since there is no reference to any of the Phrygian assize-centres—Cibyra, Synnada, Apamea and Philomelium—which are otherwise attested in the republic, it is reasonable to assume a date when Phrygia was temporarily annexed to the province of Cilicia, perhaps between 56 and 50 B.C.<sup>8</sup> Secondly, the elder Pliny in his description of the province of Asia, which was based to an important extent on a document of Augustan date, detailed ten *conventus* centres: Philomelium (5.95), Cibyra (5.105), Synnada (5.105), Apamea (5.106), Alabanda (5.109), Sardis (5.111), Smyrna (5.120), Ephesus (5.120), Adramyttium (5.122) and Pergamum (5.126).<sup>9</sup> These ten towns, in contrast to our thirteen republican cases, cannot be treated as the full complement, because Pliny does not consistently use his documentary source or consistently classify the whole of Asia into *conventus*; however, his description does show that Tralles had been demoted from assize-centre to membership of the *conventus* of Ephesus.<sup>10</sup> All the more important therefore for the early empire is an inscription from Didyma which records that thirteen *neopoioi*, gathered from thirteen separate towns of Asia, erected a statue to Caligula in A.D. 40.<sup>11</sup> In his brilliant article in *Hellenica*, L. Robert convincingly argued that each *neopoios* represented a separate assize district, the delegates being citizens of the assize-centre or of a leading town of their assize district.<sup>12</sup> The *neopoioi* represented therefore the thirteen areas of Synnada, Miletus, Pergamum, Alabanda, Cyzicus, Apamea, Cibyra, Ephesus, Adramyttium, Philomelium, Halicarnassus, Smyrna and Sardis.<sup>13</sup> In comparison with the late republic therefore Tralles and Mylasa have lost their status, and have been replaced by Cyzicus and Halicarnassus.

Though the new Ephesian inscription attests the continued existence of the *conventus* of Sardis, Miletus, Pergamum, Halicarnassus and Apamea in Vespasian's reign, no similar documents provide us with complete or near-complete lists of assize-areas in the second or early third centuries. However, discrete evidence of the second and third centuries can be adduced to prove that seven of the centres of Gaius' time continued to function. For example during the reign of Antoninus Pius, the proconsul, C. Iulius Severus, ordered the rhetor Aelius Aristides to appear at Ephesus where he was about to hold an assize.<sup>14</sup> In the same proconsular year and in pursuance of the same case Aristides visited Smyrna and contacted a legate of Severus who was in charge of that *conventus*.<sup>15</sup> Similarly the culmination of Aristides' search for confirmation of his immunity from local office by Severus occurred in another court hearing at Pergamum.<sup>16</sup> Apamea also provides clear converging literary and epigraphic testimony of assizes: Dio Chrysostom expatiated on the benefits accruing to the town from its status, and honorific inscriptions refer to local office-holding and benefactions 'while an assize was in session' (δι' ἀγοράς).<sup>17</sup> At Sardis the famous sophist, M. Antonius Polemo, once stayed 'to plead a case before the hundred men by whom

<sup>7</sup> R. Sherck, *Roman Documents from the Greek East* (Baltimore, 1969), no. 52, ll. 42 f.

<sup>8</sup> The possibility of a date c. 29 B.C. has recently been canvassed by G. W. Bowersock (*AJPh* 91 (1970), 226 f.), but see the comments of C. Habicht, pp. 68–9; 71 above.

<sup>9</sup> Pliny, *NH* 5, 95 ff. For his Augustan source see L. Robert, op. cit., 213 and 227, and A. H. M. Jones, *Cities of the Eastern Roman Provinces* 2 (Oxford, 1971), Appendix I, 503 f. at 506.

<sup>10</sup> On Pliny's method see L. Robert, op. cit. 235 ff. (no *conventus* for the coast of Caria and the neighbouring islands). For Tralles, renamed as Caesarea, see Pliny, *NH* 5, 120.

<sup>11</sup> *Inscriptionen v. Didyma*, no. 148.

<sup>12</sup> L. Robert, op. cit. passim.

<sup>13</sup> Robert in fact argued that the *neopoios* from Miletus was only elected because the temple to Gaius was to be built there. However the new inscription

from Ephesus (col. I ll. 29 f.) shows that there was a Milesian *conventus* in Vespasian's time, and it is therefore most economical to believe that it never lost its status attested in the republican period. For detailed argument see C. Habicht, pp. 70–1 above.

<sup>14</sup> Aristides, *Or.* 50. 78 K. Further evidence for Ephesus at *ἸΟΑΙ* 47 (1965), Beibl. p. 29, ll. 20 f. with *BE* 1968, 462; *ἸΟΑΙ* 49 (1968–71), Beibl. p. 22, no. 4, and p. 81 no. 15, and *AE* 1966, 428.

<sup>15</sup> Aristides, *Or.* 50. 85K. καὶ δὴ καὶ τότε τὴν ἐπιστολὴν τοῦτω δεικνύμεν, ἐντυχόντες πρώτῳ· καὶ γὰρ ἦν ἐπὶ τῆς διοικήσεως τῆς περὶ Σμύρναν.

<sup>16</sup> Aristides, *Or.* 50. 89–93K: (also *ibid.*, 105 f. K. for a criminal suit at Pergamum which concerned Aristides); and cf. *Anz. Akad. Wien.* 93 (1956), 219 ff., no. 6 (a lawyer—νομικός—in service of the Pergamene *conventus*).

<sup>17</sup> Dio Chrysostom, *Or.* 35. 15 f. and *IGR* 4. 788–9 = *MAMA* 6. 180.

Lydia was judged'; a periphrasis which probably refers to an assize-hearing.<sup>18</sup> At Cyzicus Aristides, again, mentions law-suits and the presence of the governor's staff, while at Miletus in the second century a στεφανηφόρος made a gift of oil to the city at a time when an assize was in progress.<sup>19</sup> Besides these seven cities, assizes are also known at Philadelphia in the second century, a town which earlier had been part of the *conventus* of Sardis;<sup>20</sup> and finally in 215 Caracalla granted Thyateira the right to hold assizes after he had stayed there in the course of his journey across Asia Minor.<sup>21</sup>

Of six, therefore, of the known assizes of the early first century—Philomelium, Synnada, Cibyra, Alabanda, Adramyttium and Halicarnassus—we hear nothing more in the second and third centuries. But it would be extremely rash to assume that any of these did *not* maintain its privileged position. Therefore we would suggest that normally a second-century proconsul and his three legates were theoretically responsible for holding courts at probably fourteen assize-centres in Asia during their tour of duty, that is Pergamum, Apamea, Ephesus, Smyrna, Sardis, Cyzicus, Miletus, Philadelphia, Philomelium, Synnada, Cibyra, Alabanda, Adramyttium and Halicarnassus. Minor alterations to this picture are possible, but nothing that would change the essential pattern.

But before we use Asia as our model in discussing the important questions of how the assize circuit operated and of the consequences for proconsul and provincial litigant alike, two rather difficult problems obtrude. First, some scholars have argued or assumed that in certain provinces a more complex two-tiered structure of judicial administration occurred, within which fixed areas, termed 'dioceses', larger than *conventus*, were *regularly* delegated to the legates of the proconsul or *legatus Augusti*. If that were true, obviously a sensibly different picture of judicial administration would emerge. Secondly, since Pliny only mentions *conventus* in two of the proconsular provinces, Asia and Baetica, it might legitimately be objected that assizes were not common to all proconsular provinces, and furthermore that it has to be shown that in practice assizes were held annually.

## 2. LEGATES AND 'DIOCESES'

E. Kornemann proposed the argument in its most general form that all provinces, 'senatorial' or 'imperial', whose governors had more than one legate at their disposition (usually 3) were divided into 'dioceses', each of which was controlled by a *legatus iuridicus*.<sup>22</sup> Discussion of the hypothesis has never led to general agreement, and, hardly surprisingly, no little confusion has been imported into the interpretation of the terms *conventus* and διοίκησις. But the original thesis rested on a mishandling of the evidence adduced for the provinces of Hispania Citerior, Africa Proconsularis, and Asia. Further subsequent discussion has persisted in neglecting some important, and decisive, literary evidence for Africa.

Kornemann's argument that in Hispania Citerior three *legati iuridici* were normally active was derived from Strabo's description of the province.<sup>23</sup> However, as Albertini, in his definitive study of the administrative organization of Hispania Citerior, has since shown, two of the legates mentioned by Strabo were in fact legionary legates, who had above all military duties to perform, and only one of the three could be described accurately as a *legatus iuridicus*.<sup>24</sup> Furthermore Strabo's account evidently refers to the early years of

<sup>18</sup> Philostratus, *VS* 524: ... και [ὁ Πολέμων] ἐπεδήμει ταῖς Σάρδεσιν ἀγορεύσων δίκην ἐν τοῖς ἑκατὸν ἀνδράσιν ὑφ' ὧν ἐδικαιοῦτο ἡ Λυδία.

<sup>19</sup> Cyzicus: Aristides, *Or.* 51. 43K. (and perhaps also 46 if the emendation of C. A. Behr, *Aelius Aristides and the Sacred Tales* (Amsterdam, 1968), 287, n. 81, is acceptable); Miletus: *Inscriften v. Didyma*, no. 279b, ll. 11 f.: ἀγορατῆς ἀγομένης.

<sup>20</sup> Aristides, *Or.* 50. 96K. and *IGR* 4. 1638, and perhaps compare *IGR* 4. 1620 which may refer to the first assizes in Philadelphia. For the town's original relation to Sardis see Pliny, *NH* 5. 111.

<sup>21</sup> Keil-Premmerstein, *Reisen* ii, no. 116. It had before belonged to the *conventus* of Pergamum (Pliny, *NH* 5. 126).

<sup>22</sup> E. Kornemann, 'Dioecesis', P-W 5 (1905), 716 f. Note that acceptance of this hypothesis already presents a formal problem in that the term *dioecesis*/διοίκησις can sometimes be a homonym for *conventus* (see Cicero, *ad. fam.* 3. 8. 4 and 13. 67. 1; and *ad Att.* 5. 15. 3, 5. 21. 7 and 6. 2. 4) and other times describe a different and larger administrative area.

<sup>23</sup> Strabo 3. 4. 120.

<sup>24</sup> E. Albertini, *Les Divisions administratives de l'Espagne romaine* (Paris, 1923), esp. 43 f. His account, which is now generally accepted, can be supplemented by the brief and lucid summary of G. Alföldy, *Fasti Hispanienses* (Wiesbaden, 1969), 236 f.

Augustus' reign, when the province had not been successfully pacified and there were three legions encamped there; it is hardly therefore good evidence for the later post-Flavian period when the province contained a single legion (VII Gemina). Two negative arguments, perhaps of some weight, can also be invoked: Pliny in his account divides the province into *conventus*, but has no reference to any putative larger units of administration called 'dioceses', while the Latin epigraphic titulature of *iuridici* also never defines their competence by 'dioceses'.<sup>25</sup> But what is clear during the period from Pius to Septimius Severus is that the single *iuridicus* of the province was normally delegated to Asturia and Callaecia in north-west Spain, an area which included three *conventus*. In short there is no evidence that in the late first and second centuries there were three *legati iuridici* active in the province, or that it was formally ever divided into three administrative circumscriptions called 'dioceses'. Rather the governor was aided by a single legionary legate, in command of VII Gemina, and one *iuridicus* who could be delegated an area of administration which embraced more than one *conventus*.

The two proconsular cases proposed by Kornemann, Asia and Africa, are even less convincing.<sup>26</sup> For Asia two pieces of evidence were originally adduced. First, Aristides, during the course of his appeal against nomination to the post of eirenarch, visited Smyrna where he gained contact with a legate of the proconsul, C. Iulius Severus, whom he described as 'in charge of the diocese around Smyrna'.<sup>27</sup> Secondly two inscriptions record the *cursus* of a L. Ranius Optatus who had acted as legate to a proconsul of Asia sometime in the second century or early third. One inscription simply designates him as 'legato provinciae Asiae', the other as 'leg. dioeceseos [...]'. That is, as legate he had charge, for some period, of a diocese whose name is now lost.<sup>28</sup> Recently two more sets of evidence have been utilized.<sup>29</sup> But one pair of inscriptions which record the career of an unknown consular are really too fragmentary to help, especially as in one the whole of the word διοίκησις has to be restored. Much more satisfactorily, two recently published inscriptions from Ephesus record proconsular legates as legate of the diocese of Ephesus.<sup>30</sup>

But nothing in this evidence compels us to believe that *dioecesis* or διοίκησις are not being used merely as synonyms of *conventus*, or in consequence that Asia was divided into three territorial circumscriptions called 'dioceses'. All these legates can simply and satisfactorily be assumed to have been holding assizes on behalf of the proconsul in the appropriate *conventus* of the province.<sup>31</sup> Also this very limited evidence should not be used to assert a proposition that of the *conventus* areas only three, Ephesus, Smyrna and Pergamum were accustomed to be assigned to legates.<sup>32</sup> The evidence for Pergamum was anyway of doubtful worth, while this schema neglects the case of Aristides' appeal against nomination to a post of tax-collector before a legate of T. Vitrasius Pollio at Philadelphia.<sup>33</sup> The proper basis for understanding this epigraphic and literary evidence is provided by a text of Ulpian. He advised proconsuls to delegate jurisdiction to their legates after entering the province. But the decision to delegate was totally in the hands of the proconsul.<sup>34</sup> Practice

<sup>25</sup> The evidence of the titulature is set out clearly by G. Alföldy, *op. cit.*, 237 f. One Greek inscription (*ILS* 8842) does refer to a διοίκησις Ταρρακωνησίας, but this evidence should be connected with the temporary division of the province under Caracalla (*ibid.* 244-5).

<sup>26</sup> E. Kornemann, *op. cit.*, 721-3 (Africa), and 724 (Asia): both provinces divided into three larger 'dioceses', each regularly controlled by a separate legate. For earlier criticism of this argument, see B. Thomasson, *Die Statthalter der römischen Provinzen Nordafrikas von Augustus bis Diocletianus* (Lund, 1960) i, 71 f.

<sup>27</sup> Aristides, *Or.* 50. 85K. It is interesting to note that the proconsul was in Smyrna at the same time, but for the purpose of attending the annual festival of Dionysus.

<sup>28</sup> *CIL* 6. 1507 and 12. 3170.

<sup>29</sup> By C. Habicht in *Gött. Gel. Anz.* 215 (1963), 193 f. (a review of Thomasson). The latter registers this evidence in 'Zum Problem der Diozesen in Africa Proconsularis', *Eranos* 62 (1964), 176. The

two fragmentary inscriptions are *ILS* 8842 and *AE* 1911, 136 which read where relevant: [ὑπα]τικόν, [ἡγε]μόνα? Ἀσί]ας διο[ικη]σεως Περγα[μ]ωνη[σί]ας . . . and [. . . λογι]στην ἐν Ἀσί]α? διοικ[η]σεως? . . .]. Note also the different restoration of the former as [λογι]στην? Ἀσί]ας at *ILS* 3. 2, p. cxc1.

<sup>30</sup> *AE* 1966, 428: 'leg. dioeceseos Ephesiacaе'; *γῶΑΙ* 49 (1968-71), Beibl. p. 22, no. 4: πρεσβευτήν καὶ ἀντιστράτηγον διοικ[η]σεως Ἐφεσισσακ[η]ς (perhaps cf. *ibid.* p. 81 no. 15).

<sup>31</sup> Similarly, B. Thomasson, *op. cit.* (n. 26) i, 72: 'Die erstgennante Provinz [Asia] hatte etwa ein Dutzend Conventstellen, eine Einteilung in Diozesen ist also nicht nur unbeweisen, sondern auch unnötig . . .'.  
<sup>32</sup> So, hesitantly, C. Habicht, *art. cit.* (n. 29), 193.

<sup>33</sup> Aristides, *Or.* 50. 96K. and above, n. 20.

<sup>34</sup> *Dig.* 1. 16. 4. 6 and 1. 16. 6. 1: 'Sicut autem mandare iurisdictionem vel non mandare est in arbitrio proconsulis' etc.

is likely therefore to have been flexible, and to have depended on custom and precedent among other factors.

In Africa the designation *legatus dioeceseos*, for a legate of a proconsul, is well-known, while, according to Kornemann and, implicitly, all other subsequent discussion, no *conventus* are known. Most analysis has therefore assumed that *each* of the three legates was assigned a fixed area of jurisdiction (diocese).<sup>35</sup> Against this view there stands the argument from silence—which I would not wish to stress—that no literary evidence exists in support. More cogently, the neglected passage of Ulpian stands in contradiction to it, while such a view also does not allow for the possibility of the proconsul being accompanied on tour by one of his legates.<sup>36</sup> Furthermore, as Thomasson noted, the titlature of proconsular legates was highly variable, and the earliest example of a legate assigned to a fixed area occurs under Hadrian.<sup>37</sup> After that date ten, perhaps eleven, more examples can be registered.<sup>38</sup> In this light Thomasson proposed a more nuanced and flexible version of Kornemann's hypothesis: 'wie in Hispania Citerior und in Asia *conventus*, so ist also meiner Meinung nach in Africa Proconsularis *dioecesis* der Teilbezirk der Provinz gewesen, dessen Verwaltung, besonders die Rechtsprechung, am Hauptort dieses Teilbezirkes konzentriert wurde'.<sup>39</sup> That is to say the systems of Asia and Africa were generally similar; but the latter was divided into areas known as dioceses at whose centres legates frequently, if not necessarily, administered justice especially in the second and third centuries.

Even such fine distinctions are, however, redundant. First, and it appears to need re-emphasizing, proconsuls of Africa, as of Asia, toured their province, and on this tour they dispensed justice. Apuleius of Madaura in a speech given in honour of the departing proconsul of 162–3, Sex. Cocceius Severianus Honorinus, after cataloguing his great virtues, pointed out that no previous proconsul had in effect spent so much time in Carthage. For while he was touring the province, his son remained as legate in Carthage.<sup>40</sup> Similarly Apuleius' own trial on charges of using magical practices is relevant. This case before the proconsul Claudius Maximus (159–60) occurred at Sabratha in Tripolitania. But Apuleius and his accuser were residents of Oea, the nearest major town to the east. Since many other inhabitants of Oea were present at the trial, there should be little doubt that Sabratha, at this time, was a judicial centre for all or part of Tripolitania.<sup>41</sup> Secondly, decisive and explicit arguments can be elicited from Tertullian and Cyprian. Tertullian, in an address to the proconsul of 212–3, P. Iulius Scapula, about the omens which had attended the persecution of Christians in Africa and the subsequent salutary fates of various governors who had persecuted Christians, reminded Scapula of an eclipse of the sun which had occurred when he was trying Christians at the *conventus* of Utica (*in conventu Uticensi*).<sup>42</sup> The exact date of this eclipse was August 14th, 212. Now Cyprian in his last extant letter of 258 wrote to his flock that he had learnt that *frumentarii* had been despatched to fetch him to Utica. He has therefore gone into hiding because he does not wish to be martyred there. The glory of the church demands that martyrdom should take place at Carthage. He will therefore remain in his safe hiding-place until the return of the proconsul to Carthage ('expectamus ergo hic in secessu abdito constituti adventum proconsulis Cartaginem redeuntis').<sup>43</sup> So it was on the Ides of September that the proconsul, Galerius Maximus, finally had Cyprian brought to him in Carthage.<sup>44</sup> Evidently the proconsul in 258, just as in 212, had been holding court at Utica during August, but was due, and Cyprian knew this, soon to move on to Carthage.

<sup>35</sup> A full survey of earlier work can be found in B. Thomasson, *op. cit.* (n. 26) i, 72 f.

<sup>36</sup> For joint dedications by proconsul and legate see e.g. *ILAlg.* i, 1230–1; *IRT* 534; *ILT* 672, *IRT* 232 and *ILA* 506 from Africa Proconsularis.

<sup>37</sup> *ILS* 1061.

<sup>38</sup> See B. Thomasson, *op. cit.* i, 79 and ii, 138 f., to which I add *AE* 1964, 178 and 1968, 109. In fact only two 'dioceses'—Carthage and Numidia Hipponensis—are clearly proved by this evidence.

<sup>39</sup> *ibid.* i, 78–9. Note also note 107 where he states 'diocesis = Bezirk eines Legaten, . . . διοίκησις = *conventus* oder *forum* in Asien'.

<sup>40</sup> Apuleius, *Florida* 9. 36 f., esp. 37: 'Nam etiam eo tempore quo provinciam circumibam, manente nobis Honorino . . .'. For the date see R. Syme, *REA* 61 (1959), 318.

<sup>41</sup> Apuleius, *Apologia* 59 for the site of the trial.

<sup>42</sup> Tertullian, *ad Scapulam* 3. 3. For the date and context of this event see T. D. Barnes, *Tertullian* (Oxford, 1971), 38 and 267 f.

<sup>43</sup> Cyprian, *Ep.* 81. 1 ff.

<sup>44</sup> *Acta Proconsularia* 2. 3.

In view of this evidence, the hypothesis that there were 'bestimmte Verwaltungsbezirke', known as 'dioceses' and distinct from *conventus*, which were regularly controlled by legates of governors appears totally inadmissible. The evidence for the two senior proconsular provinces of Asia and Africa all suggests a similar administrative organization, by which a proconsul could, but was not bound to, appoint one or more of his legates to a requisite assize-centre (*conventus*). Further, the terms *dioecesis* and διοίκησις should be accepted as synonyms for *conventus*, and as nothing more. Finally, it is possible, in view of the practice in Hispania Citerior in the second century, that this flexible procedure might allow the proconsul to delegate a legate to more than one assize in the course of a year, though, of course, there were always certain cases which only the proconsul had the judicial competence to hear.<sup>45</sup>

### 3. WERE ANNUAL ASSIZES HELD IN ALL THE PROCONSULAR PROVINCES ?

Pliny refers to *conventus* in only two of the proconsular provinces, Baetica and Asia.<sup>46</sup> Africa Proconsularis, as we have seen, had a similar assize system, and in the 'imperial' provinces assizes are well-attested in Egypt and Cilicia, though, as in the case of Africa, not registered by Pliny.<sup>47</sup> No argument from the silence of Pliny therefore has any validity against the presumed existence of assize centres in other provinces. Indeed individual assize-centres can firmly be enumerated for three other proconsular provinces. In Bithynia-Pontus Dio Chrysostom obtained for Prusa ad Olymum the right to hold an assize, one of the three major privileges he claimed to have gained for the town.<sup>48</sup> Also Pliny the Younger, whose whole tour of Bithynia-Pontus during his tenure of office is a fine example of an imperial governor at work, explicitly mentions that he is about to hold judicial hearings at Prusa.<sup>49</sup> In Macedonia assizes are attested at Beroea during the reign of Hadrian.<sup>50</sup> Finally, from Crete and Cyrene an unpublished letter of Pius to the town of Cyrene refers to a request from the city of Berenice that every town should share in the assizes.<sup>51</sup>

Direct imperial testimony is therefore lacking for only four of the proconsular provinces: Achaëa, Cyprus, Narbonensis and Sicily.<sup>52</sup> However, in the Republic assizes are known in Cyprus and Sicily, and it is difficult to believe that they were discontinued in the imperial period.<sup>53</sup> More important, such diffuse and incidental evidence as we have collected only reinforces the clear general implications of two juristic comments. For the eastern Greek-speaking provinces, Modestinus, in his work on excuses, defines towns into three categories: metropoleis, assize-centres and the remainder.<sup>54</sup> Most convincingly, in a comparison of procedure in Rome and the provinces, Gaius states that in the latter slaves are accustomed to be manumitted before a *consilium* of twenty Roman citizens, and this occurs on the last day of an assize.<sup>55</sup> Clearly, then, assizes and assize-centres were common to all the proconsular provinces, and by the mid-second century, at least, assize towns had an enduring status which marked them off from other towns.

A proconsul's tenure of office was normally a single year. If a tour took place annually, a *priori* one would expect each assize-centre to be visited and hearings held there annually.<sup>56</sup>

<sup>45</sup> See e.g. *Dig* 1. 16. 11 and 1. 16. 13.

<sup>46</sup> Asia: *NH* 5. 9 ff.; Baetica: 3. 7 ff. Cf. 3. 18 ff. (Hispania Citerior), 3. 139 ff. (Dalmatia), and 4. 117 ff. (Lusitania).

<sup>47</sup> Egypt: see the demonstration of U. Wilcken, 'Der ägyptische Konvent', *Archiv für Papyrusforschung* 4 (1908), 365 ff.; Cilicia: Cicero, *ad fam.* 3. 8. 6 and 15. 4. 2.

<sup>48</sup> Dio Chrysostom, *Or.* 40. 10 f. and 33 f.; 45. 6 and 10. The other two privileges were an enlarged council and permission for certain building-projects.

<sup>49</sup> Pliny, *Ep.* 10. 58. 1.: 'conventum incohaturus'.

<sup>50</sup> *JRS* 30 (1940), p. 148, l. 9: ἀγοραίας οὔσης. *IG Bulg.* 4. 2264, l. 9 (from Parthopolis) probably refers to markets rather than assizes.

<sup>51</sup> I would like to thank Miss J. M. Reynolds for her kind permission to refer to this text, originally discovered by the late R. G. Goodchild, which she is preparing for publication.

<sup>52</sup> Though for Achaëa note the proconsul Gallio at Corinth (*Acts of Apostles* 18. 12), and also Suetonius, *Nero* 28. 2, a reference to Nero and Sporus visiting the *conventus mercatusque* of Greece.

<sup>53</sup> Sicily: e.g. *Verr.* v. 28; Cyprus: Cicero, *ad Att.* 5. 21. 6.

<sup>54</sup> *Dig.* 27. 1. 6. 2: εἰκὸς δὲ τῶ μὲν μεγίστῳ ἀριθμῶ χρήσασθαι τὰς μητροπόλεις τῶν ἐθνῶν, τῶ δὲ δευτέρῳ τὰς ἐχούσας ἀγορὰς δικῶν, τῶ δὲ τρίτῳ τὰς λοιπὰς. This is Modestinus' own gloss on a letter of Antoninus Pius which spoke of the smaller, greater and greatest cities.

<sup>55</sup> Gaius, *Inst.* 1. 20: 'idque fit ultimo die conventus; sed Romae certis diebus apud consilium manumittuntur'.

<sup>56</sup> *Dig.* 1. 16. 7 *pr.* (Ulpien) carries an implicit expectation of an annual tour.

But some disparate evidence has been adduced to combat this assumption. First it has been doubted, at least implicitly, that the actual holding of an assize is proof of the permanent assize-status of a town. So, on these grounds, Philadelphia in Asia has been denied permanent assize-status, despite the evidence for assize justice occurring there.<sup>57</sup> Yet the special privileges in matters of exemptions, the economic benefits which accrued because of the large confluence of litigants, camp-followers and tradesmen attracted to a city, and the difficulty of acquiring the right to hold assize—it could only come from the emperor—all these factors indicate that the right to hold assizes was in principle a permanent status, and one that was jealously guarded.<sup>58</sup> Philadelphia, therefore, which originally had been part of the *conventus* of Sardis, should be assumed to have obtained a subsequent promotion in status.<sup>59</sup>

Secondly Ramsay suggested that in some areas two or three towns regularly alternated as the assize-centre of a *conventus*.<sup>60</sup> Two sets of evidence have been invoked. Inscriptions which record local magistrates holding office or making *beneficia* during an assize are held to show that assizes only occurred irregularly, or at least not at yearly intervals. On this argument only *some* local magistrates would have faced the prospect of performing their duties at times of assizes. But this argument is predicated on the assumption that magistrates who held office during an assize necessarily incurred greater expenses; in fact, however, the expense of providing oil, for example, for a city's gymnasia was borne by civil funds, not by the gymnasiarch who had supervisory duties. So at Apamea the main point of a local notable's generosity was his defrayal of the costs of his sons' gymnasium, by providing the funds which were customarily given to the gymnasiarch by the city. A benefaction which was made the more generous by the provision of oil in the first six-month period during which the assize was held.<sup>61</sup> Similarly an Ephesian benefactor provided oil for all the gymnasia and baths of Ephesus on the day when assizes were in session and a festival of Dionysus occurred.<sup>62</sup> On this interpretation therefore no information about the frequency of assizes can be inferred from these rare allusions in honorific inscriptions. Secondly, Dio Chrysostom in a speech to the Apameans noted that 'the first cities have a share in dispensing justice in turn *παρ' ἕτος*'.<sup>63</sup> Ramsay wished the 'first cities' to be those of an assize district, not of the province as a whole, and also the phrase *παρ' ἕτος* to mean 'every other year'. However, a common meaning of *παρ' ἕτος* is 'every year', and the whole sentence should be accepted as clear evidence that the courts were held in the first cities of a province every year.<sup>64</sup>

None of the traditionally adduced evidence therefore stands against the *a priori* assumption that the assizes were held annually at each centre; the passage of Dio Chrysostom, indeed, tends to confirm it. A passing comment in a work of Plutarch about one assize-centre in Asia at the time of Nero or Vespasian is also germane. In an oration the speaker complains of the crowd in front of him who jostle around the tribunal and market place. This crowd has not come for any legitimate purpose, but for litigation which inflames Asia 'at yearly intervals' (*ἐτησίους περιόδοις*).<sup>65</sup> Although the city in question cannot be identified securely, this assize was evidently held annually and also at set times (*ἐπι δίκας καὶ ἀγῶνας ἐμπροθέσμως*).<sup>66</sup> Finally the above-mentioned letter of Pius to Cyrene

<sup>57</sup> e.g. J. Keil, P-W 13 (1927), 'Lydien', 2195 f.

<sup>58</sup> Exemptions: *Dig.* 27. 1. 6. 2; economic benefits: Dio Chrysostom, *Or.* 35. 15 f. (Apamea in Phrygia). For local jealousy of assize-towns see *idem*, *Or.* 40. 33.

<sup>59</sup> See above, n. 20. This is, of course, not to deny that towns could in special circumstances be deprived of a status, as for example Philadelphia losing the status of metropolis on the *damnatio memoriae* of Heliogabalus (*SEG* 17, 528).

<sup>60</sup> W. M. Ramsay, *Cities and Bishoprics of Phrygia* (Oxford, 1897), 364 f. and 428 f.; Apamea and Eumeneia, or these two and Acmonia, as alternative centres of the Apamean *conventus*.

<sup>61</sup> *IGR* 4. 788, ll. 4 ff.

<sup>62</sup> *ἸΟΑΙ* 47 (1965, Beibl. 29 f, l. 20 f (with *BE* 1968, 462). At such a time, of course, there would be a large influx of visitors in Ephesus.

<sup>63</sup> Dio Chrysostom, *Or.* 35. 17 f.: *μέτεστι δὲ αὐτοῦ [justice] τοῖς πρώταις πόλεσιν ἐν μέρει παρ' ἕτος*. On this passage see Th. Mommsen, 'Die Einführung des asianischen Kalenders', *Ath. Mitt.* 24 (1899), 275 ff., at 281 n. 1.

<sup>64</sup> Note also that the idea that Eumeneia was an alternative assize-centre originates from a misinterpretation of *OGIS*, 458. The towns where copies of this edict were found—Apamea, Dorylaeum, Eumeneia, Priene, and Maionia—were not necessarily, *pace* Ramsay, assize-centres; see the convincing rebuttal of L. Robert, *Hellenica* 7 (1949), 233 f.

<sup>65</sup> Plutarch, *Anim. an corp. aff.* 501 E-F.

<sup>66</sup> C. P. Jones, *Plutarch and Rome* (Oxford, 1971), 14 f. suggests Smyrna as the location, and dates the speech to Plutarch's early life.

proves that in the province of Crete and Cyrene in the mid-second century annual assizes were well-established. For he informs Cyrene that he is uncertain how—under the scheme proposed by Berenice—cities which at present are of assize status will respond to a situation whereby they will no longer hold assize annually.<sup>67</sup>

There should be no doubt, therefore, that at least from the Flavian period onward a generally similar system of annual assizes across a fixed circuit operated in all the proconsular provinces. What cannot be shown in the light of the present state of our evidence is the process by which the rather haphazard method of assize justice of the Republic evolved during the early empire into the developed institution which we have tried to describe. For example Cicero in Cilicia had produced a highly flexible scheme, and one which above all enabled him to hold the assizes for the districts of Cibyra and Apamea together at Laodicea, and then all those of Synnada, Pamphylia, Lycaonia and Isauria also at Laodicea.<sup>68</sup> Evidently a proconsul of the second century was much more circumscribed in his freedom of action. Similarly, the province of Asia was not typical in its early elaboration of the organization of assizes in the late republic. We just do not know when assizes were introduced, for example, to Bithynia-Pontus or Crete and Cyrene, let alone when a governor's tour based on an assize-circuit first became a matter of standard procedure and custom in these provinces. Therefore in what follows the arguments and conclusions proposed should strictly be regarded as applicable to *all* the proconsular provinces only from the Flavian period onwards.

#### 4. THE PROVINCIAL LITIGANT AND THE ADMINISTRATION OF JUSTICE

In Egypt the assize-courts were supplemented by standing courts of the prefect and other Roman officials at Alexandria.<sup>69</sup> Modern scholars have plausibly explained these courts as a means of supplying justice between assize-sessions, and thereby of obviating some of the possible inadequacies of the assizes. By analogy similar considerations have been invoked to suggest that there were also standing courts in other provinces.<sup>70</sup> However, the only evidence which can be adduced for this view is a difficult passage of the sixth-century lawyer and adviser of Justinian, Theophilus, which compares the 'ordinary' courts of the pre-Diocletianic period (τότε), which met only at the time of the *conventus*, and those of today (σήμερον) which were extraordinary and held without interruption.<sup>71</sup> The natural interpretation of this passage appears to me to be that in the pre-Diocletianic period there were courts held at regular or customary times (*ordinaria*), in fact at assizes, but that as a result of Diocletian's reforms new standing courts were introduced which were called extraordinary. That is to say, Theophilus is merely pointing to a distinction of organization between the early and later empire.<sup>72</sup> If the argument from Theophilus is agreed to be unconvincing, the absence of contemporary references to standing courts and the frequent allusions to assize-justice should warrant the firm denial of the existence of standing Roman courts (*ständige Gerichte*) outside Egypt.<sup>73</sup>

How then did the litigant fare? At first sight, the existence of migratory tribunals,

<sup>67</sup> See above, n. 51.

<sup>68</sup> Cicero, *ad Att.* 5. 21. 9 and 6. 2. 4.

<sup>69</sup> See A. N. Coroi, 'La Papyrologie et l'organisation judiciaire de l'Égypte sous le principat', *Actes du V.º Congrès Internationale de Papyrologie* (Brussels, 1938), 615 f., esp. 638 f.

<sup>70</sup> Proposed by M. Wlassak, 'Zum römischen Provinzialprozess', *S.-Ber. Ak. Wien* 140, 4 (1919), p. 35, n. 54, and accepted, for example, in the standard handbooks of M. Kaser, *Das römische Zivilprozessrecht* (Munich, 1966), 370 and nn. 29-30, and L. Wenger, *Institutionen des römischen Zivilprozessrechts* (Munich, 1925), 72-3.

<sup>71</sup> Theophilus, *Inst.* 3. 12 pr.: *bonorum emptio* . . . τότε χάραν ἔχουσα ἡνίκα τὰ δικαστήρια ὀρδινάρια ἦν, τότεστιν ἡνίκα ἐκινούντο ἐν μόνῳ καιρῷ τοῦ κουβέντου . . . σήμερον δὲ τῶν δικαστηρίων ἐξτραορδινάριων ὄντων καὶ ἐν παντὶ τῷ καιρῷ γυμναζόμενων.

<sup>72</sup> M. Wlassak, *op. cit.* (n. 70), n. 54, almost inverts this sense by stating that the reference to

'ordinary' courts should 'unbedenklich' indicate the existence of extraordinary courts. If this is a logically sound argument—and I doubt it—it does not seem necessary or convincing to propose that any extraordinary courts before Diocletian (that is courts not held during an assize) were permanent tribunals. Because *all* the courts which met without break in Theophilus' time were called extraordinary, it hardly follows that *any* putative extraordinary courts at an earlier period were necessarily permanent.

<sup>73</sup> Note also firstly that Egypt was the only province which lacked local civil courts, and second that when the proconsul—who was the only Roman magistrate in his province with full *imperium* and *iusdictio*—and his legate(s) were on assize tour there was no theoretically competent Roman magistrate present who could have presided over the standing courts!



by which the Roman authorities in some sense brought justice to the provincial population, could have been advantageous for litigants who lived excessive distances from the provincial capital. Yet there were strong grounds for discontent among provincials who wished to obtain a hearing before a Roman tribunal. Dio Chrysostom, in a speech delivered at Apamea, after some general considerations on the advantages a town gained from assize-status, mentions in passing that the yearly interval of the assizes may be altered, because people resent constantly being driven from one place to another (πανταχοῦ) to obtain justice.<sup>74</sup> Elsewhere the same speaker describes the irritation of other communities in Bithynia-Pontus that Prusa ad Olympum had recently acquired the status of assize-centre, and was consequently the location for other peoples' law-suits.<sup>75</sup> Presumably the request of the city of Berenice in Cyrenaica to Antoninus Pius that every city should have a share in the assizes arose from a similar set of discontents.<sup>76</sup>

The types of problems which litigants might face can be specified if only partially, by a comparison of procedure in Egypt, which is unusually well documented, and that elsewhere. The assizes in Egypt were also held at fixed times of year, and the first task of a plaintiff who wished to institute a suit before the prefect was to address a petition (παρωγγεῖα or *litis denunciatio*) to the most accessible official, normally the strategus of the nome. If this request was accepted, an officer of the bureau of the strategus informed the defendant of the summons, and the suit was included in the list of those which the prefect would hear, or at least delegate, at a forthcoming assize.<sup>77</sup> The most interesting effect, from our viewpoint, of the serving of the *denunciatio* on the defendant was to ensure that he would be present at the prefect's tribunal for the whole period of the assize, or at least until the suit was heard.<sup>78</sup> Failure to attend would lead to contumacious proceedings.<sup>79</sup> A recently published prefectorial edict of A.D. 111, or perhaps extracts from such an edict, adds further valuable detail.<sup>80</sup> The prefect reminds petitioners — that is people who have already delivered their petitions (βιβλία) — who may wish to defer their cases, that they will have no excuse, as the time fixed for the assize (τὴν προθεσίαν) has long been known.<sup>81</sup> After a warning against the bribery of judges and a reference to cases connected with a previous assize, he states that if anyone whose name has been posted—presumably for the coming assize—does not obtain a hearing by its conclusion, he will be able to be judged by the strategus of the nome; if, however, the judges themselves are responsible for the delay, the prefect will detain them until they settle the cases.<sup>82</sup> The combination of these instructions and the ruling that defendants had to attend for the complete *conventus*-period, strongly indicates that, though a list of the cases to be heard by the prefect was published beforehand, they were not necessarily taken in any fixed order. Further there was apparently no general assurance that a suit would be completed, or even heard, unless the prefect, as in this instance, gave a specific ruling to that effect.

One cannot of course make a wholesale transfer of all these elements of procedure to the proconsular provinces, where local courts continued to function, and where there was no stratum of subordinate officials, equivalent to the strategus and epistrategus, who could carry out the execution of official summons in every type of case or who could act as delegated judges.<sup>83</sup> Although, as we have seen, in Africa and Asia at least the procedure had

<sup>74</sup> Dio Chrysostom, *Or.* 35. 15 f.

<sup>75</sup> *idem*, 40 33. The passage has nothing to do with local (i.e. non-Roman) jurisdiction at Prusa, as M. Kaser, *op. cit.* (n. 70), 121, n. 28.

<sup>76</sup> see above, n. 51.

<sup>77</sup> See A. N. Coroi, *op. cit.* (n. 69), 644 f. Defendants could also be summoned by *evocatio*; I fail to see the practical difference, and they were perhaps interchangeable forms of action (*ibid.*, 650 ff.).

<sup>78</sup> e.g. *P. Oxy.* 3. 484 (A.D. 138), ll. 19 f: '... παραγένηται ὅπου ἐὰν ὁ κρᾶτιστος ἡμεῶν . . . διαλογίζηται ἢ δικαιοδοτῆ, καὶ προσκαρτερῆσθαι μέχρι κρίσεως ἵνα φανῆ τὸ γεγινός.

<sup>79</sup> See A. N. Coroi, *op. cit.* (n. 69), 654 f., with references.

<sup>80</sup> *P. Oxy.* 36. 2754, esp. ll. 5 f. The document was probably issued to regulate a forthcoming assize; but the marked *asyndeton* between sections and

the reference to cases of a previous assize make the circumstantial background uncertain. However, the facts to be deduced about procedure seem certain.

<sup>81</sup> *ibid.*, ll. 5-7.

<sup>82</sup> *ibid.*, ll. 7-13.

<sup>83</sup> For the continued operation of local courts during the empire, see generally *Dig.* 50. 1. 29 and 50. 9. 6.; Plutarch, *Praec. rei publ. ger.* 815A; and Philostratus, *V.S.* 532. In specific towns note especially the charters of Malaga and Salpensa (*FIRA* i<sup>2</sup>, no. 24 and 23), and the letter of Antoninus Pius to a Macedonian community (*IG Bulg.* 4. 2263, ll. 12 ff.). For modern discussions see D. Nörr, *Imperium und Polis in der hohen Prinzipatszeit*<sup>2</sup> (Munich, 1969), 30 ff.; also note that *CIL* 3. 412 (from Smyrna), incessantly quoted in this context, has no clear connection with local jurisdiction at all.

evolved of holding assizes at fixed times of year, various items of evidence, especially that relating to Aristides, indicate important divergences from Egyptian procedure.<sup>84</sup> The proconsul of Asia, C. Iulius Severus, after he had read letters of recommendation from Antoninus Pius and others, which Aristides had sent as proof of his immunity, ordered Aristides to appear before him at Ephesus on a fixed day.<sup>85</sup> Later in the course of the same struggle for immunity, Aristides, who now also found himself appealing against his nomination to the post of prytanis by Smyrna, describes his visit to Pergamum where Severus was then in assize; but at this point he did not know when his case would be called, as the day had not been announced (οὐ γὰρ προείρητο ἡ ἡμέρα). Only after some time was his name called, and he was brought before Severus' tribunal by the lictors.<sup>86</sup> Even in cases of appeal, where the proconsul had been contacted by letter some time before, and for which local public prosecutors (those of Smyrna) were present and briefed, it was not, then, regular practice for the date of the hearing to be fixed. Two criminal suits, which relied on private accusation, also indicate this flexibility and possible lack of pre-determined order of cases. Pliny, during the second year of his administration in Bithynia-Pontus, was asked to hear a case against Dio Chrysostom by a local political rival. Pliny, who was intending to leave Prusa ad Olympum that day, offered to delay his departure and hear the case immediately; but after further representations he agreed to judge it at Nicaea at the next assize.<sup>87</sup> Similarly the proconsul of Africa of 158-9, Claudius Maximus, heard almost immediately the charges of magical practices laid against Apuleius by his Oean rival, Sicinnius Aemilianus. At the time when the charges were made, Apuleius was bringing a civil action, on behalf of his wife, against the Granii, and his final defence speech, the Apology, was delivered only four or five days later.<sup>88</sup>

The context for these random examples is again provided by Ulpian. He advised proconsuls that there should be some order of petitioners (*postulantium*) so that everybody's grievances could be attended to; otherwise the influence of status (*honos*) or corruption (*improbitas*) might prevent the less important litigant from promoting his demands.<sup>89</sup> Such advice would seem redundant if it had been a normal and necessary practice to have a fixed order of cases at assizes. Further, this advice indicates a major area of concern for prospective litigants and petitioners. In Egypt the request for a suit could be delivered to a lower-ranking permanent Roman official, the strategus, who resided in the litigant's area of domicile. No equivalent subordinate officials were appointed in the other provinces of the empire. Although the advent during the second century of the officially authorized summons (*denuntiatio*), as a normal component of Roman civil procedure, may have made the appearance of a recalcitrant defendant at court more likely, there remained a prior problem of obtaining access to the proconsul or an aide to deliver one's request.<sup>90</sup> Sicinnius Aemilianus and the enemy of Dio Chrysostom had *honos* on their side. Similarly Aristides had been in constant correspondence with the notaries (ἀγοραῖοι) of Severus before the hearing at Ephesus; and he calculated, after the final denouement at Pergamum, that the costs of the whole appeal, that is fees for the notaries and travel money for his servants, had been about 500 drachmae.<sup>91</sup> The provision of fees to governors' aides, presumably to ensure that letters and petitions were in fact passed on to the governor, must then be considered as a possible expense of litigation.<sup>92</sup>

The organization of the assizes, therefore, did not necessarily provide for a fixed order of cases even though petitions had been delivered beforehand; there was no assurance either that all litigants who gathered at an assize would gain a hearing; above all there was no formal machinery or procedure for the presentation of petitions (*libelli*) to the proconsul. These considerations apply to the preliminaries of every type of suit or grievance, which

<sup>84</sup> Africa: above, nn. 42-4; Asia: above, nn. 65-6.

<sup>85</sup> Aristides, *Or.* 50. 78 f. K.: ὡς δ' ἦκεν ἡ κυρία καὶ τοῦνομα ἐκλήθη.

<sup>86</sup> *ibid.*, 50. 88 f. K.

<sup>87</sup> Pliny, *Ep.* 10. 81. 1 f.

<sup>88</sup> *Apologia* 1. 1 f.

<sup>89</sup> *Dig.* 1. 16. 9. 4.

<sup>90</sup> For the use of *denuntiatio* in civil law see especially *Dig.* 5. 2. 7. and 48. 19. 5 *pr.* with M. Kaser, *op. cit.* (n. 70), 372 f.

<sup>91</sup> Aristides, *Or.* 50. 77 and 94K. The sum is, of course, not negligible if we think, for example, of the annual rate of pay for legionaries.

<sup>92</sup> Cf. *Dig.* 5. 1. 79 (*de officio proconsulis* 5): defendants who had been rashly brought to law should receive compensation for the costs of the suit and for travel expenses.

a provincial might wish to present to a proconsul; to the civil litigant, to the accuser in a criminal suit who had to approach the governor for leave to accuse, and then, within a prescribed time, supply a written accusation, and to the individual or community with a simple administrative complaint.<sup>93</sup> It is not hard to see why the acquisition by Prusa of the right to hold assize evoked jealousy among its neighbours, nor why Dio Chrysostom could record general complaints about the assizes.<sup>94</sup> In general it was precisely the absence of any formal structure for the preliminaries to the hearings themselves that ensured the effective operation of the informal social influences of status (*honor*) and bribery (*improbitas*).

If the impression of the deficiencies and difficulties of the assizes which we have tried to present is substantially correct, important consequences ensue for our conception of the administration of justice in the proconsular provinces. Two alternative hypotheses can be proposed. First, the importance of the proconsular court may well be exaggerated. On this argument one would suppose that the bulk of justice, especially in minor civil suits or where peregrines were involved, continued during the principate to be executed by local courts. Secondly we could accept, as indeed both the general theoretical juristic definitions of his power<sup>95</sup> and our knowledge that peregrines frequently attempted to obtain redress from Roman tribunals suggest, that any governor was faced with an immense amount of possible work.<sup>96</sup> The quality of our evidence makes it difficult to refute the first hypothesis. Not only is it impossible to define accurately the mutual responsibilities of the local and proconsular tribunals, but above all we have no real notion of the number of suits and petitions a proconsul might deal with at an individual assize or during his whole year of office.<sup>97</sup> But, whatever role we may finally ascribe to local courts, the general definitions of the proconsul's duties, the use of his tribunal by peregrines and the indications in Dio Chrysostom and Plutarch of the expectations and commotions caused by assize hearings, all point to the second hypothesis. Moreover, most explicitly, Ulpian stated that as there was only one proconsul in a province and the interests of a province demanded that there should be someone through whom provincials could expedite their business (*negotia*), a proconsul should continue to dispense justice until the arrival of his successor.<sup>98</sup> If the primary role of the proconsul is accepted, the considerations already outlined may be taken to illustrate genuine deficiencies, from the standpoint of the provincial population, of the system of justice operated by the imperial power.

##### 5. THE WORK OF THE PROCONSUL

The effect of the annual tour will have varied sensibly from province to province. Size of population and degree of urbanization will have been important differentiating factors. The problems of a proconsul of Cyprus would have been on a much smaller scale than those of a proconsul of Asia, a province reputed in contemporary literature to have boasted 500 cities.<sup>99</sup> However an examination of some examples of a proconsul personally executing his administrative duties during a tour will illuminate the manner in which a substantial amount of provincial administration was carried out. If we appreciate the importance of this means of administration and the constraints it imposed on the proconsul, we may come both to understand contemporary descriptions of governors' duties, and also to set our own analysis in a proper historical framework.<sup>100</sup>

<sup>93</sup> For the proper procedure in criminal cases see *Dig.* 48. 2. 3 *pr.* and 48. 2. 7 *pr. f.*, with, briefly, A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Oxford, 1972), 116 f.

<sup>94</sup> The sad case of the Egyptian lady who obeyed a summons to the prefect's court at Alexandria is apposite (*P. Oxy.* 3. 486). Her accuser did not appear, and while she waited in Alexandria her property was destroyed by an excessive flood of the Nile.

<sup>95</sup> See *Dig.* 1. 16. 7. 2: 'Cum plenissimam autem iurisdictionem proconsul habeat, omnium partes qui Romae vel quasi magistratus vel extra ordinem ius dicunt, ad ipsum pertinent'. Cf. *Dig.* 1. 18. 10 and 1. 18. 11.

<sup>96</sup> See now the dossier of the attempt by a widow, Babatha, in Arabia to obtain proper care for her son

from his tutors by approaching the governor's tribunal (*Eretz Israel* 8 (1967), 46 = *SB* 10288). For commentary see M. Lemosse, 'Le Procès de Babatha', *The Irish Jurist*, N.S.3 (1968), 363.

<sup>97</sup> Note however the prefect of Egypt who received 1,804 petitions in two and a half days of an assize at Arsinoe in 208-10 (*P. Yale* 61, ll. 5-7); but little can be made of such an isolated figure.

<sup>98</sup> *Dig.* 1. 16. 10 *pr.*

<sup>99</sup> See Josephus, *Bj* 2. 16. 4 (366); Apollonius of Tyana, *Ep.* 58, and Philostratus, *VS* 548; also cf. W. Eck, *Senatoren von Vespasian bis Hadrian* (Munich, 1970), 84, n. 41.

<sup>100</sup> For the Republic see A. J. Marshall, 'Governors on the Move', *Phoenix* 20 (1966), 231.

For example the question of the provision of archives in the provinces is germane. Provincial record-offices (*tabularia*) are well attested at Carthage in Africa and Ephesus in Asia, but they had been instituted for the benefit of the provincial procurators, since they were run by *tabularii* and *commentarienses* on their staff.<sup>101</sup> So it has recently been suggested that in Bithynia-Pontus in the reign of Trajan there were no organized central public archives of the governor or his staff, since during Pliny's administration it is always the interested parties in a dispute who produce the documentary evidence, be it decrees and rescripts of emperors or edicts of previous proconsuls.<sup>102</sup> This is an attractive idea, but perhaps some finer distinctions can be made. Certainly, contemporary proconsuls kept their own records (*commentarii*) of their year of office, but these probably left the province with the proconsul.<sup>103</sup> More important, in Africa and Asia at least, in the mid-second century some sort of central archives of the proconsul were in use. Aristides records that the first and ambiguous confirmation of his immunity by the proconsul, C. Iulius Severus, was announced publicly in court and then written in the minutes (ὑπομνήμασιν).<sup>104</sup> For Africa Apuleius states that a *judicial* decision of a proconsul, once it had been read out, was recorded immutably in the archives of the province.<sup>105</sup> Similarly Eusebius claimed that anyone who wished to discover the facts about the false prophet Alexander, who had been tried at Ephesus by the proconsul Aemilius Frontinus, could consult 'the public archives of Asia'.<sup>106</sup> Such archives, then, at the least maintained the judicial decisions of successive proconsuls. But other administrative and legal documents appear to have been a different matter. A second-century imperial edict from Pamphylia states that in many other provinces people had already been instructed to register all contracts in the local civil archives (δημοσία γραμματοφυλακεία), but that in this case the emperor understands that the provincials desire, because of the prevalence of forgery, to have documents of other types deposited as well.<sup>107</sup> Analogously, innumerable sepulchral inscriptions record that a copy of the interdict, inscribed on the grave-stone or tomb, has been deposited in local archives. A plaintiff who wished to claim before the proconsul that a tomb had been violated would have been expected to produce a copy of the interdict from the local archives. The public provincial archives therefore, though they contained transcripts of court records or judicial decisions, did not provide a complete central records-office for a province.<sup>108</sup> So when communities received favourable judicial or administrative decisions from a proconsul or emperor, they frequently set up in public *all* the exchanges of letters and documents which led up to that decision; if that decision were to be challenged, they, at least, maintained the circumstantial testimony in favour of their case.<sup>109</sup> Even later, in the fourth century, when the question of the προεδρία of Ephesus in Asia was again raised, the proconsul suggests that the Ephesians for their case collect together all the imperial edicts, *senatus consulta* and ancient laws which were mentioned by Ulpian in his *de officio proconsulis*.<sup>110</sup> Patently the proconsul himself could not easily lay his hands on the requisite documents. This situation was not, it should be added, peculiar to the proconsular provinces. When in 201 in Moesia Inferior the claim of the city of Tyras to a certain immunity from taxation for its citizens came under scrutiny, the emperors Septimius Severus and Caracalla, who were evidently sceptical, expected the Tyrans to prove the source of their

<sup>101</sup> See O. Hirschfeld, *Die kaiserlichen Verwaltungsbeamten*<sup>2</sup> (Berlin, 1905), 59 f., with references.

<sup>102</sup> A. N. Sherwin-White, *The Letters of Pliny* (Oxford, 1966), 604 f., who cites especially Pliny, *Ep.* 10, 31; 47; 56; 58; 65 and 72.

<sup>103</sup> e.g. Pliny, *Ep.* 6. 22. 4: the case of an adviser (*comes*) of a proconsul who had tampered with the *commentarii*.

<sup>104</sup> *Or.* 50. 78 K.

<sup>105</sup> Apuleius, *Florida* 9. 12: 'provinciae instrumento refertur'. Cf. *Dig.* 4. 6. 33. 1 (a reference to scribes who take down the *acta* of governors).

<sup>106</sup> Eusebius, *HE* 5. 18. Frontinus was probably proconsul under Marcus or Commodus (*PIR*<sup>2</sup> A 348).

<sup>107</sup> *Anatolian Studies* 10 (1960), 71, no. 124 = *AE* 1961, 24 (cf. *BE* 1961, 780). Note that the first governor of the province, Q. Veranius, had already

tried to impose more honest standards on the civic archives (*Anz. Ak. Wiss. Wien.* 99 (1962), 5 f., no. 2—which still needs a proper edition and commentary).

<sup>108</sup> Contrast again the situation in Egypt where, for example, copies of contracts were sent to the central record-offices (*P. Oxy.* 1. 34 verso). Briefly see O. W. Reinmuth, *The Prefect of Egypt* (Leipzig 1935), 41 f.

<sup>109</sup> A good example is the record of the dispute over lands at Aezani in the reign of Hadrian (*IGR* 4. 571, now re-edited by U. Laffi, 'I terreni del tempio di Zeus ad Aizanoi', *Athenaeum*, n.s. 49 (1971), 3).

<sup>110</sup> *AE* 1966, 436; cf. *Dig.* 1. 16. 4. 5 for one of the imperial rescripts mentioned by Ulpian about the privileged states of Ephesus.

claim themselves, and finally only grudgingly accepted the weight of various letters of Antoninus Pius, Marcus and Verus, and an earlier governor, Antonius Hiberus.<sup>111</sup> This method of procedure, in which the onus of keeping and furnishing the documentary proof of important decisions and privileges lay with the communities and individuals concerned, and not with the Roman authorities, should be viewed as a natural corollary of administration by a peripatetic governor without extensive bureaucratic resources.

Business, except judicial matters which needed a court-hearing and a decree, could of course be carried out by letter.<sup>112</sup> But Ulpian advised proconsuls to visit (*circumire*) sacred buildings and public works to see whether they needed repair, or to aid the completion of unfinished projects.<sup>113</sup> Explicit examples can be adduced to show proconsuls executing these and other important administrative tasks through personal visits and investigation.<sup>114</sup> For example, in the sphere of finance, a proconsul could examine personally the public accounts of any city he visited. Pliny, early in the second year of his legateship in Bithynia-Pontus, entered the Roman colony of Apamea and asked to inspect their accounts (*rationes*). The Apameans, although they claimed universally to desire such an investigation, pointed out that none of the proconsular predecessors of Pliny had carried one out because of their privileged status of managing their own affairs.<sup>115</sup> The clear implication emerges that the mass of subject cities' accounts were liable to inspection by proconsuls at any time, an implication strengthened by Pliny's doubts over his proper reaction to—and Trajan's scepticism of—the claim to privilege.<sup>116</sup> Indeed Varenus Rufus, a proconsul in Bithynia-Pontus some five years or so before Pliny, provides a case in point. Rufus was present for a day in Prusa before continuing his tour of the province. Dio Chrysostom, who wanted to invite him to a meeting of the assembly, first issued an address to that body to warn them about their conduct. Specifically they should not for the present openly discuss matters of public controversy in Rufus' presence, 'since he will enquire into your public problems even if you wish to prevent him'.<sup>117</sup> The course of Dio's address soon reveals the financial nature of the controversy. Rufus would return a little later anyway, and then, if in the meantime the argument over the retention, or otherwise, of public funds by private individuals had not been settled among themselves, they could publicly argue their case before Rufus.<sup>118</sup>

The construction of aqueducts and the maintenance of an adequate supply of water was another major civic concern which could involve the personal investigation of a proconsul. Pliny of course, when a new aqueduct was proposed at Nicomedia, made a personal visit to a spring which he considered could be used as the source of the water-supply.<sup>119</sup> Similarly a proconsul of Asia, P. Calvisius Ruso, in 92–3 was credited with taking care for (and dedicating) the construction of the duct which provided a new water-supply for Ephesus from the rivers Marnas and Clasea.<sup>120</sup>

Ulpian also, in a discussion of appeal from election to local magistracies, noted in parenthesis that the governor (*praeses*) frequently happened to be present at meetings at which new magistrates were chosen.<sup>121</sup> This phenomenon is often perceived as a particular development of the late second century.<sup>122</sup> But certainly well before the Severi individual attendances of proconsuls at meetings of cities' legislative or executive bodies can be documented. As we have seen, Dio Chrysostom intended to invite the proconsul, Varenus Rufus, to a meeting of the assembly of Prusa; further, in an earlier speech he mentions that, at the time of the debate over his plans for development in Prusa, the incumbent proconsul

<sup>111</sup> *ILS* 423.

<sup>112</sup> *Dig.* 1. 16. 9. 1 (Ulpian, *de officio proconsulis* 1).

<sup>113</sup> *Dig.* 1. 16. 7. 1.

<sup>114</sup> None of what follows, of course, is intended as a full discussion of the topics adumbrated, but merely as a demonstration of an essential means by which relations between governor and governed were mediated.

<sup>115</sup> Pliny, *Ep.* 10. 47.

<sup>116</sup> *ibid.* 10. 48.

<sup>117</sup> Dio Chrysostom, *Or.* 48. 1 f., esp. 2.: ζητήσει γὰρ αὐτὸς τὰ δημόσια, κὰν ὑμεῖς κωλύειν θέλητε.

<sup>118</sup> *ibid.* 48. 3 (Varenus' return), and 9 (δημόσια χρήματα).

<sup>119</sup> Pliny, *Ep.* 10. 37.

<sup>120</sup> *AE* 1966, 424b, ll. 2 f.: ἐπὶ Καλουεισίου Ῥούσανος ἀνθυπάτου τοῦ καὶ φροντίσαντος τῆς [εἰ]σαγωγῆς καὶ καθιερώσαντος, with *AE* 1967, 471. Cf., also from Ephesus, *Anz. Ak. Wiss. Wien.* 1961, 72 = *BE* 1963, 210 (A.D. 80–2). For a *locus classicus* see *ILS* 5795: various procurators of Mauretania Caesariensis and the construction of an aqueduct at Saldae.

<sup>121</sup> *Dig.* 49. 4. 1. 4.

<sup>122</sup> e.g. F. F. Abbott and A. C. Johnson, *Municipal Administration in the Roman Empire* (Princeton, 1926), 202.

(ἡγεμῶν) accepted the scheme, and without Dio's knowledge proceeded to convene the assembly and read out a proposal in its favour.<sup>123</sup> A letter of a proconsul of Asia, L. Venuleius Apronianus, is also relevant. At Ephesus in 138, after a motion had been passed to celebrate the birthday of the new emperor, Antoninus Pius, on a lavish scale with cash distributions to every citizen, the decree was forwarded for approval to Apronianus. He replied enthusiastically and concluded with the words 'let these correct and good decisions stand, just as if I myself had happened to have proposed them'.<sup>124</sup> The use of the technical term for proposing motions (εἰσηγέουσι) suggests that the proconsul had the right to participate in Ephesus' legislative assemblies.<sup>125</sup> Such random examples do not allow us to gauge how common these appearances at local assemblies or council-meetings may have been; however, it is typical of the vagaries of our evidence that for the period when Ulpian considers these appearances common we have no comparable specific literary or epigraphic examples! Finally Pliny in Bithynia-Pontus provides an apt coda to this section. To perform his mission in that province he toured the cities and attempted to resolve disputes and correct irregularities as he discovered them or as they were brought to his notice. This can now be seen as the normal and established mode of administration.

## 6. CONCLUSIONS

The assize-tour, therefore, presents itself as an historical institution from whose standpoint the familiar operations of provincial administration and the way they had developed can be viewed with profit. Modern accounts of these matters must therefore take the assize-tour and its effects into account. For example a proconsul on tour always had direct access to intervene in the financial and administrative affairs of the cities he visited; and, as a corollary, local politicians of those cities could bring complaints or schemes directly to him.<sup>126</sup> This factor makes it extremely hazardous for modern scholars to suggest that any individual piece of evidence for the direct involvement of governors in local administrative affairs can be used to show anything about putative directions of 'imperial policy' or the subjection of the rights of the cities.<sup>127</sup> If the assize-tour, then, meant that a proconsul, as a normal course of affairs, could be directly involved in local civic administration, paradoxically it also ensured that such control, dependent on the personal role of the proconsul, could only be sporadic and discontinuous, and variable from district to district. These deficiencies could have been remedied partially by a systematic use of delegation by the proconsul or by the appointment of a series of Roman officials of subordinate rank, as in Egypt.<sup>128</sup> But only in one domain, finance, do we meet, through the frequent appointment by emperors or proconsuls of *curatores rei publicae* (λογισταί), any clear indication of the institution of a layer of authority between the proconsul and the local civic communities.<sup>129</sup> Further, our perception of the practical weaknesses of a proconsul's power makes perfectly intelligible the occasional delegation by emperors to procurators or special legates of the tasks of repairing roads or settling boundary disputes, although of course the proconsul was in theory totally competent to undertake these activities.<sup>130</sup>

<sup>123</sup> Dio Chrysostom, *Or.* 48. 1 and 15 (Varenus); and 45. 15 f. (redevelopment scheme).

<sup>124</sup> *Forsch. Eph.* ii, no. 19 = F. F. Abbott and A. C. Johnson, op. cit. (n. 122), no. 98, esp. ll. 54 f.: Καὶ ταῦτα μὲν ὑμῖν ὀρθῶς καὶ καλῶς ὡσπερ [δὲν] εἶ(1) αὐτὸς εἰσηγησάμενος ἐτυχ[ο]ν νενομοθετήσθω.

<sup>125</sup> For the implication of εἰσηγέουσι see Th. Mommsen, 'Volksbeschluss der Ephesier zu Ehren des Kaisers Antoninus Pius', *JÖAI* 3 (1900), 1 ff. Note also Pliny, *Ep.* 2. 11. 23 for a speech made by a legate of the proconsul of Africa in the council chamber of Lepcis.

<sup>126</sup> The latter tendency is deplored by Plutarch *Praec. ger. reipub.* 814e-815a.

<sup>127</sup> So the statement of D. Magie, op. cit. (n. 3), 641, that 'the enactments [of councils and people] had to be approved by the Roman governor', rests on this kind of error. For examples of local enactments in eastern cities without sign of Roman approval see D. Nörr, op. cit. (n. 83), 23, nn. 66-73.

<sup>128</sup> Though note the members of an important Ephesian family recorded to have judged cases in place of a proconsul of the late second century (*Forsch. Eph.* 3, no. 72); the isolation of this case makes it all the more puzzling.

<sup>129</sup> For the regular λογισταί of the gerousia of Ephesus in the second century see J. H. Oliver, 'The Sacred Gerousia', *Hesperia*, Supp. vi (1941), nos. 7, 9 and 11. For *curatores* generally still see W. Liebenam, 'Curator Reipublicae', *Philologus* 56 (1897), 290 ff. I hope to return to this subject elsewhere.

<sup>130</sup> Procurators and roads: *IGR* 3. 15 and *ILS* 253 (Bithynia under Nero and Vespasian); *ILS* 4052 (Crete under Marcus); boundaries: *Ins. Cret.* 1. 8, 49 and *BCH* 93 (1969), 846 f., no. 3 (Crete under Nero and Domitian). Special legates: see the survey, unfortunately incomplete, of H. G. Pflaum, 'Légats impériaux à l'intérieur de provinces sénatoriales', *Hommages à Albert Grenier* (Brussels, 1962), 1232.

Analogously, once it was established that procurators possessed jurisdiction in fiscal cases, the problems of obtaining access to the proconsul's tribunal could easily encourage provincial litigants in civil or even criminal cases to approach the procurator, although he possessed no legitimate jurisdiction in these areas.<sup>131</sup>

In resumption, therefore, I have argued that the annual assize-tour was common to all the proconsular provinces, and that at no point in the pre-Diocletianic era was any more complex and formal structure of administrative divisions erected. Further, the assize-tour provided the real historical framework within which the proconsul not only dispensed justice, but also conducted his administrative duties. Consequently, vast though the powers of the proconsul were in theory, there were severe physical restraints upon the manner in which he could exercise them; his interventions were bound then to be unevenly spread geographically, and sporadic in their frequency. The governor's tour and the assize-system should provide the proper historical starting-point for any modern attempt to construct a convincing model of the development, operation and limitations of the civil administration of the provinces of the empire.

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<sup>131</sup> Fiscal cases: *Dig.* 1. 16. 9 *pr.* Civil cases: note especially *Cŷ* 3. 13. 1 (Caracalla) and *Cŷ* 3. 3. 1

(Gordian III). See generally P. A. Brunt, 'Procuratorial Jurisdiction', *Latomus* 25 (1966), 461 ff.