EMPIRE AND CITY, AUGUSTUS TO JULIAN: OBLIGATIONS, EXCUSES AND STATUS

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I. INTRODUCTION

The early Roman Empire rested on a network of cities, which were capable both of conspicuous expenditure locally, in the form of public buildings, shows and festivals, and of carrying many of the functions of government; but by the fourth century their capacity to perform these roles had drastically declined. Both the capacity and the decline depended in part on the availability or inavailability of the richer classes to undertake expenditures associated with public offices or with liturgies. These remarks are of course mere commonplaces. They have become so, in the first place, because precisely these changes were noted, and the issues relating to them consciously formulated, in the fourth century itself. So Libanius writes in his *Funeral Oration* for Julian: [1]

> He showed the same care also in relation to the councils in the cities, which formerly flourished in both numbers and wealth, but by that time had come to nothing, since their members, except for a very few, had switched course, some into military service, some into the Senate ... The remainder were all but sunk, and for the majority of them undertaking public services (*to leitourgein*) ended in beggary. Yet who does not know that the vitality of its council is the soul of a city? But Constantius, while in theory aiding the councils, in practice was their enemy, by moving elsewhere men who sought to evade them, and granting illegal exemptions (*ateleiai*).

Three points should be noted here: Libanius assumes an evolution which was, if not universal, at any rate general throughout the Empire; the crisis is regarded as having been caused by the availability of roles or statuses which offered an alternative to the obligations of city councillors; and this availability itself is seen as a product of imperial actions, which (as Libanius goes on to say) Julian had taken steps to reverse.

This paper has the aim of analysing the main features of the evolution in the relations of city and Empire which lay behind Julian's measures. As regards the three points just made, we certainly cannot *assume* an exactly similar development in all parts of the Empire. The uneven distribution in time and space both of literary and documentary evidence and of the results of excavation clearly rules out any such confident generalization; it has recently been argued, for instance, that the cities of North Africa do not show the 'decline' in the late Empire which we normally tend to presume.[2] But, as the following pages will illustrate, it is beyond question that evidence which can indeed be located in space and time shows that the tensions and issues described by Libanius were felt in many different parts of the Empire. Much more significant than that, however, is the presupposition that the Empire was a unified system, whose workings at a local level were directly and effectively subject to rulings made by the Emperors.

For the fourth century itself it is only necessary to look at any page of the *Codex Theodosianus* to see that the role of Emperor included the function of issuing general rules, even if many of their pronouncements were in form replies to office-holders, provincial leagues or city councils. For the earlier Empire the situation is not so clear: it can be argued that Imperial activity typically consisted in the formulation of responses to individual cases.[3] Yet it can also be suggested with some justice that to concentrate on the form or occasion of typical Imperial pronouncements is to miss the extent to which these pronouncements did in fact have the function of formulating general rules.[4] Even a response to a particular issue might serve as the basis for a more general ruling by the same Emperor, or a later one; or, as is evident throughout the classical juristic writings

[1] Libanius, *Or.* XVIII, 146–7. For the general issue a → *Or.* XLVIII, 17 ff.

[2] C. Lepelley, *Les cités de l'Afrique romaine au Bas-Empire* I–II (1979–81).

[3] F. Millar, *The Emperor in the Roman World* (1977); henceforward *ERW*.

[4] See the interesting observations, which require further discussion elsewhere, by J. Bleicken, *Der Regierungsstil des römischen Kaisers: eine Antwort auf Fergus Millar* (*Sitz.-Ber. Wiss. Ges. J. W. Goethe-Univ. Frankfurt* 18, 5, 1982).

excerpted in the *Digest*, it might give rise to a general principle or a new, generalized exception to a standing principle. It may be useful to take an example, from Papinian, writing under Septimius Severus: [5]

> In the conferment of *honores* neither being over 70 nor being the father of five children affords exemption. But in Asia those who can claim five children are not compelled to undertake the High Priesthood of the province, as our best and greatest *princeps* Severus Augustus ruled in judgment (*decrevit*), and afterwards laid down (*constituit*) that this should be the rule in the other provinces.

In this case it is clear that Severus in the first instance made a particular exception for Asia, when judging a dispute about liability, and then generalized it so far as to include all provincial High Priesthoods (but without abandoning the overall rule). When others subsequently claimed exemption from *honores* on the grounds of the number of their children, they found their petitions rejected, as for example by Severus Alexander (*CJ* x, 52, 1). We can thus regard even the giving of individual responses by the Emperors as contributing to the formation of a body of rules which were in principle valid throughout the Empire.

Three important characteristics of this system must however be emphasized. Firstly, the body of rules thus created was not so much enforced by any apparatus of government as available for use by interested parties making claims or bringing suits, and then by officials, or Emperors, giving rulings in response. How, to what extent and to whom the content of the constantly evolving case-law of Imperial rulings was known in the provinces is a question which—if there were any way of answering it—would be of fundamental importance for the nature of the Empire. Second in importance is the operation of what has been called the ' beneficial ideology ',[6] that is the role of the Emperors in dispensing favours, exceptions and exemptions, usually in response to requests from individuals or groups. It lay in the nature of such a role that the Emperors should frequently, but not invariably, assent to such requests. There was thus a clear contradiction between the Emperor's function in formulating rules, and his role as the dispenser of individual benefits. The tension between rule and exception is fundamental to the nature of Imperial law-giving.

Thirdly, Imperial law-giving was by no means confined to Roman civil or criminal law; on the contrary, a significant part of the content of our standard sources for ' Roman law ' involves far wider issues of the social and communal life of the provinces. The *Digest* above all is thus a major document of social history, primarily that of the later second and early third centuries. In particular, Imperial law-giving and rule-formulations profoundly affected the framework of provincial city life, and nowhere more so than in the area of the obligation to undertake offices (*honores/archai*) or duties (*munera/leitourgiai*). As Libanius emphasizes in the passage quoted, the availability of men rich enough to undertake ' liturgical ' functions, imposed directly on them as individuals, was of crucial importance to city life. It was by this means, and not by the extraction of revenue via taxation, that the cities had been able to deploy for communal advantage the surpluses evident in the second century, to which Libanius looks back.

That being so, it was inevitable that the rules for liability to, or exemption from, offices and functions should also have been of central importance. At the same time the spread of the citizenship, culminating in Caracalla's universal grant, will have given added importance to the closely parallel issues of liability to, or exemption from, *cura* and *tutela* under Roman civil law. Thus it was that the earliest work of Roman law written in Greek of which any substantial extracts survive, Herennius Modestinus' Παραίτησις ἐπιτροπῆς καὶ κουρατορίας (*Exemption from tutela and cura*), written perhaps in the 220s,[7] goes beyond its title and deals repeatedly with exemption from city liturgies, as being dependent on

[5] *Dig.* L, 5, 8, *pr.*

[6] See V. Nutton, ' The Beneficial Ideology ', in P. D. A. Garnsey and C. R. Whittaker (eds.), *Imperialism in the Ancient World* (1978), 209.

[7] Text in O. Lenel, *Palingenesia Iuris Civilis* I, cols. 707–18; for a sketch of some issues relating to the adoption and reception of Roman law in the Greek East see F. Millar, ' Culture grecque et culture latine dans le Haut-Empire: la loi et la foi ', *Les Martyrs de Lyon* (177) (1978), 187.

almost exactly the same conditions. So, for instance, Modestinus writes '*Grammatici*, sophists, rhetors and those doctors called *periodeutai* enjoy exemption from the other *leitourgiai*, as they do from *tutela* and *cura*' (*Dig.* XXVII, 1, 6, 1). Shortly after, he quotes an extract from the *diataxeis* of Commodus, paraphrasing a letter of Marcus Aurelius, which gives a vivid impression both of the exercise of the imperial will and of the range of functions from which exemptions might be sought (XXVII, 1, 6, 8):

> In a manner similar to all these cases my most divine father, immediately upon assuming power, confirmed in an edict the existing privileges and exemptions, writing that philosophers, rhetors, *grammatici* and doctors should be exempt from gymnasiarchies, *agoranomiai*, priesthoods, providing lodgings, buying corn or oil, acting as a judge, going on an embassy, being enrolled in the army against their will, or being forced to undertake any other provincial or other service.

Modestinus is actually quoting this extract in order to prove by analogy that philosophers were exempt from *cura*, which is not explicitly mentioned. Moreover, in an extract from Antoninus Pius' letter to the *koinon* of Asia, which Modestinus quotes immediately above (*Dig.* XXVII, 1, 6, 7), philosophers are not listed among the exempt categories. Yet, in fact, from the moment when Flavius Archippus, summoned by Pliny the Younger to act as a *iudex*, began to 'claim exemption as a philosopher', apparently with success, no entirely consistent view ever was evolved. The question remained a disputed area of case-law, in which exemption could be asserted or denied, or restricted to functions involving personal effort, leaving financial obligations intact.[8]

But even the exemptions granted to the other learned professions required interpretation at a local level, which Modestinus proceeds to supply:

> It is necessary to be clear as to the following, that it is the man who is responsible for teaching or healing in his native city who gains this exemption from liturgies (*aleitourgēsia*). For if a man who is from Comana acts as a sophist, doctor or teacher in Neocaesarea, he does not benefit from *aleitourgēsia* among the Comanans (XXVII, 1, 6, 9).

These extracts, which involve complex issues which need not be discussed further here,[9] are enough to illustrate, firstly, the extension of Imperial law-giving beyond the sphere of Roman law proper, and its potential importance in the distribution of functions within any provincial city; and secondly, the close analogies between *cura* and *tutela* as obligations of Roman private law, offices and burdens imposed for the benefit of a city, and services demanded by the Roman state as such.

In the nature of the case *munera* or *leitourgiai*, personal or financial obligations imposed on individuals, without being actual offices, and performed either for the city or (directly or indirectly) for the Roman state, defied all accurate categorization; the two attempts at classification which survive, by Hermogenianus (*Dig.* L, 4, 1) and Arcadius Charisius (L, 4, 18), are both no more than *ex post facto* attempts to describe a complex reality with infinite local variations; and in any case they adopt different principles. Moreover, the distinction between *honores* and *munera*, though never entirely lost (see for example p. 86 below), was often little more than a matter of form; as Callistratus put it, *honores* conferred *dignitas* and *munera* did not (*Dig.* L, 4, 14). The important point was that both were liable to involve expenditure—which made them, depending on the circumstances, the privilege or the burden of the upper classes. G. E. M. de Ste Croix, in *The Class Struggle in the Ancient Greek World*, 305, has pointed to the importance of the passage of Aristotle (*Pol.* VI, 7) in which he recommends precisely the state of affairs in which public office will involve a liturgical element, so that the poor will be content to be ruled by the rich.

Thus when Libanius came in 362 to defend one Aristophanes, charged with evading his obligations as a member of the town council of Corinth, he spoke quite naturally of

[8] Pliny, *Ep.* X, 58; Philostratus, *VS* I, 8 (Favorinus' unsuccessful case before Hadrian); *Frag. Vat.* 149 (general immunity); *Dig.* XXVII, 1, 5–7 (*excusatio* from *tutela*; liability for obligations on property); *Dig.* L, 5, 8, 4 (philosophers, if they teach actively, excused *tutela* and personal duties, not expenditure); → *Cf.* X, 42, 6 (Diocletian and Maximian refuse a philosopher exemption from 'onera quae patrimonio tuo iniunguntur').

[9] Compare V. Nutton, 'Two Notes on Immunities: *Digest* 27 1, 6, 10 and 11', *JRS* LXI (1971), 52.

Aristophanes ' spending on the *leitourgiai* of the so-called general ' (*stratēgos*, or in Latin *duovir*, of the colony). But circumstances had profoundly changed, and Aristophanes had dropped out of his appointed rank (*taxis*) and, fleeing the life of a city politician, had entered on that of a soldier. In fact, he had gone to Syria and gained the post of *agens in rebus*; thus his patron, as Libanius says, had ' established him in the immunity (*adeia*) gained by a rank '.[10]

That brings us back to the third crucial feature of what Libanius says in the *Funeral Oration* about Julian's measures for the cities. For one of the most important aspects of the way the Empire evolved in the third and fourth centuries is that, on top of all the other conditions of immunity available in the High Empire (see below), a whole range of official positions and ranks in the Imperial Service came to be regarded as conferring a lifelong immunity, as they had not done before. Since in his major work, referred to above, G. E. M. de Ste Croix has recently claimed that the class struggle offers the most effective explanation of the fall of the Empire, it is important to stress that the divisions which thus appeared at *this* level of society at any rate were not ones of class; on the contrary, they were, in the strictest sense, ones of status. The relevant statuses were acquired by individuals in the course of their lives as a result of specific official action, bore either a genuine or a nominal relation to actual office-holding, could be subject to deprivation, and were not transferrable to the next generation. What is more, we see in this period not only the emergence of a set of ranks and statuses with very specific and important social consequences, but a precise example of something brilliantly analysed some years ago by David Daube,[11] the formation of concepts by the creation of abstract nouns from the related verbs, or in this case adjectives. As we shall see in more detail below, the period from the second to the fourth century saw the emergence, first, of honorific appellations in adjectival form, *egregius*, *perfectissimus*, *clarissimus*, and then of the related nouns denoting formal statuses or ranks, *egregiatus*, *perfectissimatus*, *clarissimatus*. As was the case within so many other systems of rank or privilege in the Roman Empire, these ranks, once conceived of as such, could be petitioned for from the Emperors; and, as elsewhere, the Emperors found themselves simultaneously using these gradations of rank as a framework for the granting of individual exceptions and privileges, and making repeated attempts to impose new rules and limitations on their acquisition, and prevent abuse. But before the significance of this linked set of changes can be grasped it is necessary to look at the cities in the early Empire and at a selection of the patterns of obligation and exemption which prevailed in them.

II. THE CITIES UNDER THE EARLY EMPIRE: OBLIGATIONS AND EXEMPTIONS

Most of the cities on which the early Roman Empire rested were not created by Rome. *Coloniae* (and even, in terms of their constitutions, titular *coloniae*) of course were, as were a significant number of newly-founded, or refounded, Greek cities.[12] Whether *municipia* are to be regarded as having been, in a constitutional sense, ' created ' by a charter (*lex*) issued from Rome, or by the Emperor, must remain uncertain.[13] The network of self-governing *coloniae*, *municipia*, *civitates* or Greek *poleis*, some enjoying various degrees of collective immunity or freedom,[14] which covered the provinces, thus exhibited a considerable variety of constitutions, from the presence or otherwise of an effective popular assembly to the size, function and method of appointment of their council and the nature and number of their annual offices (*honores/archai*). They varied most of all in the character and distribution of functions (*munera/leitourgiai*) which were not annual offices

[10] Libanius, *Or.* XIV, 9–12.

[11] D. Daube, *Roman Law: Linguistic, Social and Philosophical Aspects* (1969), ch. 1.

[12] See the survey by A. H. M. Jones, *The Greek City* (1940), ch. 1.

[13] To my knowledge there has been no detailed reply to the heretical suggestion in *ERW*, 397–407; 485–6 and App. IV, that *municipia* were not centrally ' created ' by charter and that the ordinary citizens of ' Latin ' communities were *peregrini*.

[14] Modern work renders our conception of the real content of these terms if anything more complex and obscure than before. See e.g. L. Bernhardt, *Imperium und Eleutheria* (1971); idem, ' Die Immunitas der Freistädte ', *Historia* XXIX (1980), 190; ' Immunität und Abgabenpflichtigkeit bei römischen Kolonien und Munizipien in den Provinzen ', *Historia* XXXI (1982), 343.

and conferred no *dignitas* (see p. 78 above), but which involved personal effort or expense, or both. None the less, as was stressed earlier (p. 76), the Emperors did issue legal pronouncements which were held to be valid equally for all types of community; consonantly with this, lawyers came to use first *res publica* and later *civitas* as a term to denote any of these communities without distinction.[15] In this general sense it is therefore possible for us also largely to ignore local variations, to focus on the content of Imperial rule-giving and hence to think of *honores* and *munera* as having a collective history under the Empire.[16] But although it is to the fact of Imperial rule-giving that we owe the possibility of gaining any conception of this history, it is essential to see the entire process not as a one-sided series of pronouncements from the centre of power, but as a constant dialogue of petition and response in which interested individuals and groups sought to gain exceptions for themselves, to have an existing exemption extended to them or to have it generalized. Since an exemption for group A necessarily meant increased burdens for group B, both particular and general claims to exemption were frequently contested by the cities, verbally or in writing, before the Emperor. Thus in at least two cases which happen to have survived in our evidence, the process which I have called metaphorically a ' dialogue ' appears as a quite literal dialogue between the Emperor and interested parties. It is in this context of a dynamic interchange between the subject population and the Emperor that we can look at some aspects of the wider background of claims and counter-claims over immunities in the cities, before turning to the specific question of Roman ranks and statuses. Handlists of the conditions and categories which conferred immunity are available,[17] and it will only be necessary to pick out a few salient issues.

In a world made up of innumerable local communities, each with its own citizenship, the first question which arose was what factors determined one's citizenship of, or obligations to, a particular place.[18] Hadrian laid down by *edictum* that local citizenship was created by *origo*, manumission (by a citizen of the place), adlection or adoption, while the status of *incola* (non-citizen resident) arose from the establishment of *domicilium* in a place (*CJ* x, 40, 7). *Origo* normally meant descent from a male citizen of the town (e.g. *CJ* x, 39, 3), but there were places which retained the right to claim men's services on the basis of maternal descent;[19] on these grounds, for instance, the Heordaioi in Macedonia brought a case before Caracalla, to claim liturgies from the sophist Philiscus. They were apparently successful, although he held a chair of rhetoric in Athens.[20] But if *origo* could give rise to disputes, the problem of the definition of *incolatus* was insuperable. In the earlier Empire, indeed, the principle that *incolae* were liable to *munera* seems not yet to have been generally established. At any rate a well-known inscription from Aquileia shows that C. Minicius Italus, Prefect of Egypt in 100/1, had petitioned Trajan to allow the town to impose *munera* on *incolae* there.[21] Similarly, in the same period, the *colonia* of Tuder is reported as having gained from its founder (Augustus) the right that *incolae* owning land in its territory should hold all *honores* there, as the *colonia* of Fanum had subsequently ' before the Emperors '.[22] But when the principle of the liability of *incolae* became generally accepted, how was *incolatus* to be defined? The Imperial replies in the *Codex Justinianus* show the Emperors engaged in a constant process of restatement in answer to the claims of interested parties. Diocletian and Maximian were to lay it down that temporary residence did not make one an *incola*; nor did buying a house, even from the estate of a town-councillor there (*CJ* x, 40, 3–4). ' Antoninus ' (probably Caracalla) stated, in reply to one Paulinus, that the status of *incola* could be extinguished by moving

[15] See A. Mócsy, ' Ubique Res Publica ', *Act. Ant. Acad. Sc. Hung.* x (1962), 367; J. Gascou, ' L'emploi du terme *respublica* dans l'épigraphie latine d'Afrique ', *Mel. éc. fr. Rome, Ant.* xci (1979), 383.

[16] See L. Neesen, ' Zur Entwicklung der Leistungen und Ämter (munera et honores) im römischen Kaiserreich des zweiten bis vierten Jahrhunderts ', *Historia* xxx (1981), 203.

[17] See e.g. W. Langhammer, *Die rechtliche und soziale Stellung der Magistratus Municipales und der Decuriones* (1973), 262–77; Neesen, op. cit. (n. 16), 216–23.

[18] For a detailed treatment see D. Nörr, ' Origo ', *Tijdschr. v. Rechtsg.* xxxi (1963), 525; *RE* Supp. x (1965), 433.

[19] e.g. *Dig.* l, 1, 1, 2. See A. J. Marshall, ' Pompey's Organisation of Bithynia: Two Neglected Texts ', *JRS* lviii (1968), 103.

[20] Philostratus, *VS* ii, 30.

[21] *ILS* 1374; R. K. Sherk, *Municipal Decrees of the Roman West* (1979), no. 2.

[22] Agennius Urbicus, *de controversiis agrorum*, in *Corpus Agrimensorum Romanorum* i, 1, ed. Thulin, p. 45.

one's domicile: 'It is not to your disadvantage if, while you were an *incola*, you undertook some *munus*, provided that you transferred your domicile before being summoned to other *honores*' (*CJ* x, 40, 1). This principle, however, in no way affected the claims of one's *origo*; so, for instance, Caracalla replied to a man from Byblos who was resident in Berytus that he was liable to *munera* in both cities (*CJ* x, 39, 1). What of students living in another city for the sake of their studies? Hadrian laid down a limit of ten years within which students could enjoy immunity in their place of study. When Severus Alexander replied, quoting this, to a man named Crispus, his words allow us to glimpse the tensions and suspicions to which the system inevitably gave rise: 'Nor are those persons themselves who stay in any place for the sake of their studies regarded as having their *domicilium* there—unless after the lapse of ten years they establish residence there, as laid down by a letter of the deified Hadrian—nor is a father who frequently travels there because of a son who is a student. But if it is shown that you have other reasons for *domicilium* in the most splendid *civitas* of the Laodiceans, your deceit will not help you to avoid performing *munera*' (*CJ* x, 40, 2). By contrast, Diocletian, replying to a group of students from Arabia at Berytus, preferred an age-limit of 25 (x, 50, 1).

Then there were groups who were permanently established in the area of a city, but were either constitutionally or geographically marginal to it. Here too our evidence provides instances which are clearly located in space and time. A well-known inscription from Tergeste shows that a senator from there, Fabius Severus, had won a case before Antoninus Pius to establish that people from the 'attributed' tribes of the Carni and Catuli could be admitted to the town-council, and thus share the '*munera* of the *decurionatus*'.[23] Elsewhere the division of *munera* might be at issue between towns and neighbouring large estates.[24] Ulpian, however, sets out the principle that country-people should be exempt, on the grounds that *munera* are the obligation of those who enjoy the delights of city life, its forum, baths, spectacles and festivals (*Dig.* L, 1, 27, 1). The same thought recurs in Modestinus' Greek work, *Exemption* (*Dig.* L, 1, 35), and perhaps lies behind the claims made in the famous papyrus record of a case before the Prefect of Egypt *c.* A.D. 250. The issue concerned the resistance by villagers to the imposition of *leitourgiai* by officials of a metropolis; reference is twice made to a ruling by Septimius Severus that villagers (*komētai* or *geōrgoi*) were to be exempt.[25]

The gradual spread of Imperial estates introduced a further complication. Were the contractors (*conductores*) for the rents of the estates, or the actual tenants (*coloni*), liable to the *munera* of local towns? Or were the claims of the *fiscus* overriding? Our sources of the second and early third centuries give confusing answers. Or, on the contrary, might the local councils be obliged to *appoint* superintendents for such estates, as a liturgy, as happened in Panopolis in 298?[26] By A.D. 342 the principle that Imperial tenancies overrode local obligations had re-emerged; as a result it was reported to Constantius that city councillors in the diocese of Oriens were actively seeking such tenancies as a means of gaining exemption.[27]

Different problems were created by the existence, above all in the Greek East, of professions which were by their nature peripatetic, or which enjoyed a prestige which allowed successful individual practitioners to move about freely, or be attracted to the major cities. Thus, to take an obvious example, our evidence for Roman grants of exemption from taxation, liturgies and the quartering of troops, as made to members of the association (*synodos*) of stage performers devoted to Dionysus, goes back to a pronouncement by an unnamed Roman office-holder in the late second century B.C.[28] Very similar privileges were granted to a *synodos* of athletes in Asia by M. Antonius as Triumvir; among other things they had asked for 'exemption from military service, all liturgies and

[23] *ILS* 8860; Sherk, op. cit. (n. 21), no. 1. For 'attribution' see U. Laffi, *Adtributio e contributio* (1966).

[24] Agennius Urbicus, op. cit. (n. 22), pp. 45–6.

[25] T. C. Skeat, E. P. Wegener, 'A Trial before the Prefect of Egypt Appius Sabinus, *c.* 250 A.D.', *JEA* XXI (1935), 224.

[26] See *ERW*, 180.

[27] *CTh* XII, 1, 33. See F. Millar, 'The *Privata* from Diocletian to Theodosius', in C. E. King (ed.), *Imperial Revenue, Expenditure and Monetary Policy in the Fourth Century A.D.* (*BAR. Int. Ser.* 76, 1980), 125.

[28] *IG* VII, 2413–14; R. K. Sherk, *Roman Documents from the Greek East* (1969), no. 44.

providing lodgings '.[29] It is characteristic that the exemptions granted cover both the internal life of the cities and services provided directly for the Roman state. Thereafter the privileges of the *synodoi* of athletes and stage-performers, as reaffirmed by successive Emperors, can be traced until the Tetrarchic period.[30]

Similar exemptions, intended to be valid everywhere, and in all categories of city, were granted under the Empire to members of various learned professions: doctors, rhetors or sophists, *grammatici*. The details, partly illustrated above (p. 78) and often discussed elsewhere, need not be repeated here. What is important to stress is that Imperial rulings and replies show comparable claims being made by other professional groups, and being either partially or wholly rejected by the Emperors. Philosophers were not included among the professions for which each city (in Asia) could grant a specific number of immunities. Their claims for exemption from financial burdens on their property were also generally rejected; but the Emperors did normally accept that they should have immunity from *munera* involving personal duties.[31] Members of other groups, however, received wholly negative answers: *hydraulae* (*CJ* x, 48, 4); *venatores* (x, 48, 6); *calculatores* (x, 53, 4); doctors not on the list made up by the local council (x, 53, 5); poets (x, 53, 3); *geometrae* and teachers of law (*Frag. Vat.* 150)—unless the latter taught in Rome (*Dig.* xxvii, 1, 6, 12)—and teachers of *primae litterae* (*Dig.* l, 4, 11, 4; 5, 2, 8). The Emperors thus faced repeated attempts to have immunities extended by analogy to wider groups, and (in this area) succeeded in keeping relatively clear boundaries. By contrast, as regards the favoured group, Constantine both reaffirmed their immunities and ordered that salaries should be paid to them ' so that they may the more easily train many in liberal studies and the above-mentioned skills ' (*CTh* xii, 3, 3; *CJ* x, 53, 6).

As regards occupations of more obvious and literal utility a rather different range of issues arose. It also made some difference whether their functions were purely internal to the cities, involved supplies or services for Rome, or were performed in Rome itself (the latter category will not be considered here). In all cases it was a question of ensuring that groups which had been granted exemptions in respect of useful functions really were devoting their resources to those functions. As regards the purely local aspect, our best evidence is the inscription listing all the names of those registered as *centonarii*, or firemen, at Solva in Noricum in 205.[32] The preceding letter by Severus and Caracalla, probably addressed to the governor of the province, is worth quoting in full; for it provides the perfect illustration of the fact that the Imperial rulings of this period, of a type familiar from the *Digest*, could in fact affect even the internal arrangements of small towns in the western provinces:

> [Imp(erator) Caes(ar) L(ucius) Sept(imius) Severus] Pert(inax) P(ius) [Aug(ustus) and I]mp(erator) Caes(ar) M(arcus) Aur(elius) Antoninus Pius Aug(ustus) [to . . . ?]. The privileges (*beneficia*) which [on the orders] of the Senate or any Emperor have been granted to the [associations (*collegia*)] of *centonarii* ought not to be rashly revoked. [But as for what the laws] enjoin, let it be observed, and let those who you state [are enjoying] their wealth without burden be compelled [to undertake public] obligations (*munera*); nor should the privilege of the *collegia* benefit [either those who] do not practise [that profession] or those who possess resources which are greater than the stated limit. The [legal] remedy is [therefore] to be applied in relation to [such people], rather than reducing the (fixed) number on their account. Otherwise let [all the others enjoy] an exemption (*vacatio*) which it is not appropriate to delete from the privileges of the *coll(egia)*.

There followed a list of the 93 members of the *collegium*, or association, of *centonarii*, as constituted in the *res publica* of the Solvenses in 205. Both the general principle and the particular application of the rule are thus quite clear. Those who possessed the resources adequate for the performance of *munera publica* must *either* undertake those obligations *or*, if they wished to enjoy the exemptions granted to the *collegia*, must genuinely practise the relevant trade or profession. What is more, this exemption was not to apply beyond a

[29] Sherk, op. cit. (n. 28), no. 57; see *ERW*, 456.
[30] *ERW*, 456–63.
[31] See p. 78 above.
[32] *FIRA*² I, no. 87; revised text and commentary in E. Weber, *Die römerzeitlichen Inschriften der Steiermark* (1969), no. 149.

stated limit (*praefinitus modus*) of wealth. This principle closely resembles that which we find in the *Digest*, in an extract from Callistratus' *de cognitionibus*, written in the Severan period: 'Immunity is granted to certain *collegia* . . . but it is not given to all those who are co-opted in those *collegia*, but only on the condition that they are (genuine) practitioners. But it has often been noted that those who (subsequently ?) increase their resources and are capable of undertaking the *munera* of the *civitates* may not enjoy the privileges granted to the poorer men who are members of the *collegia*' (*Dig.* L, 6, 6, 12).

So far as can be seen, these rulings represent a general and (in intention) universally applicable intervention in the system of obligations and exemptions within the cities, without there being any direct interest on the part of the Empire as a governing superstructure. The *collegia* of (for instance) firemen were therefore regarded as performing services to their cities which were mutually exclusive alternatives to the general *munera publica*.

Different considerations applied to the exemptions enjoyed by shipowners (*navicularii*) and traders (*negotiatores*), for it is clear that these only applied, in the High Empire, to those who were engaged in bringing supplies to Rome: 'the deified Hadrian stated in a rescript that those enjoy the immunity associated with seagoing ships who are serving the *annona* of the City' (*Dig.* L, 6, 6, 5; cf. L, 5, 2, 3). Here too the question arose of people who either invested a small proportion of their wealth in ships with the express purpose of avoiding *munera*, or, on becoming wealthier, kept the same investment in ships in absolute terms (*Dig.* L, 6, 1; 6, 6, 8–9). A local application of these general principles is visible in a letter written in Greek by Marcus Aurelius and Lucius Verus, evidently to a Greek city: 'There have been others who on the excuse of belonging to the shipowners or to the traders in corn or oil for the market of Rome, who are immune, have claimed to escape *leitourgiai*, although they neither sailed themselves nor had the majority of their property in shipowning or trade. Let their immunity be removed' (*Dig.* L, 6, 6, 6).

The principle of the exemption of *navicularii* was still maintained in the fourth century; Constantine confirmed this in writing to the *navicularii* of Oriens in 334, mentioning Constantinople and referring specifically to *munera*, *honores* and *tutela* (*CTh* XIII, 5, 7). Without pursuing the details, it is important to emphasize that claims to exemptions on the one hand, and on the other the determination on the part of the Emperors that, *as regards those with sufficient wealth*, that wealth should be devoted *either* to specific services *or* to *munera publica* forms the background to some aspects of the creation of the so-called 'caste-system' in the fourth century.[33] What the Emperors of this period were attempting to do was to reinforce the principle mentioned above, by attaching the obligation to fulfil the functions of a shipper specifically to any *property* owned by a *navicularius*, whether it passed to a son or to anyone else. Hence there emerged the rule that the property of a *navicularius* should not be alienated to avoid fulfilling the relevant functions—and that, *if it were*, the obligation should fall on the purchaser (*CTh* XIII, 6, 1); or (a rule promulgated in the same year, 326) that if a *navicularius* died intestate and without heir, his property should go to the association (*corpus*) of *navicularii* (*CJ* VI, 62, 1). Even someone of a 'higher dignity' (see below), if he owned a *property* which was liable to the functions of a *navicularius*, was liable to the obligations in respect of that property (*CTh* XIII, 5, 3).

The objective of retaining *resources* for particular functions, above all the *munera* of the cities, quickly emerged when Constantine in 313 defined a new category as performing essential services for the state, namely the Christian clergy, and used immunity from *munera* as their reward. Clerics were to devote their services to the worship of God, and to receive the due reward for their labours; hence 'I wish them to be constituted once and for all as exempt (*aleitourgētous*) from all *leitourgiai*'.[34] Once again a vast case-law on the limits and conditions of clerical immunity quickly built up. All that needs to be noted here is that within a few years it proved necessary to *prevent* decurions, or their sons, or

[33] See A. H. M. Jones, 'The Caste System in the Later Roman Empire', *The Roman Economy* (1974), 396. The connection is also made in the detailed and useful article by W. Liebs, 'Privilegien und Standeszwang in den Gesetzen Konstantins', *RIDA* XXIV (1977), 297.

[34] Eusebius, *HE* X, 7, to the proconsul of Africa, Anullinus, in 313. See most recen→ T. G. Elliott, 'The Tax Exemptions granted to Clerics by Constantine and Constantius II', *Phoenix* XXXII (1978), 326.

simply persons of adequate wealth for undergoing public *munera*, from being enrolled as clerics (*CTh* XVI, 2, 3); to impose limits and conditions on ordination; and 'if in doubt as between *civitas* and *clerici*' to prefer the former. The Emperors were in this case, as in so many others, in a self-contradictory posture, wishing to divide resources between functions which were held to be essential but to be mutually exclusive, and thus limiting with one hand the very privilege which they had given with the other. So Constantius in February 361 proclaimed that *res publica nostra* was sustained more by the observance of the Christian religion than by secular efforts, and so justified clerical immunity (*CTh* XVI, 2, 16); but in August of the same year he issued rules for the ordination of clerics, involving the reservation for the town council of part of the property of newly-appointed presbyters, deacons and sub-deacons (*CTh* XII, 1, 49). That was merely an extreme instance of the process by which those felt to be of service to the state were offered exemptions on which the state itself had constantly to place limits.

III. SERVICE TO THE STATE, CITIZENSHIP AND EXEMPTION

As we have seen above (p. 81), even under the Republic Rome might grant or confirm a general exemption from liturgies to favoured groups. It might also do so for named individuals who had performed exceptional services, as in the *senatus consultum* of 78 B.C. rewarding three Greek ship-captains, Asclepiades of Clazomenae, Polystratus of Carystus and Meniscus of Miletus. The Senate decreed, among other things, that as a reward for their services in the 'Italian War', they and their descendants should be exempt from liturgies (*aleitourgētoi*) in their native cities, and free of tribute.[35] The grant was thus both a *beneficium* conferred by the sovereign power and a direct intervention in the functioning of the cities concerned. Some forty years later another Greek *nauarchus*, Seleucus of Rhosus, received comparable privileges, with the addition of the Roman citizenship, for himself and his descendants, as a reward for his activities in the Triumviral wars (the privileges he gained are thus relevant to those for ordinary veterans, see p. 85 below). In the surviving text of the inscription the references to citizenship and freedom from tribute are fully preserved, while that to freedom from all liturgies is largely restored.[36] What is clear, however, is that any such attendant privileges were listed separately, and therefore were not seen as automatic consequences of the Roman citizenship itself. This distinction was to be of crucial importance for the evolution of the Empire. The fact that it was with the coming of monarchy that the citizenship began to be widely extended to provincials is one aspect of the use of Republican institutions, ranks and privileges by the Emperors as the material of patronage.[37] The consequences of individual grants of citizenship to richer provincials, and hence their descendants, might have been disastrous for the working of *honores* and *munera* in the provincial cities. For it might well have been assumed or claimed that the Roman citizenship exempted a man from his local obligations. In fact it is quite clear that it was so argued, and Augustus' third edict from Cyrene is an emphatic answer to just such claims:[38]

> If any persons from the province of Cyrene are honoured with the (Roman) citizenship, I declare that these must none the less undertake liturgies in their turn within the community of the Greeks, with the exception of those to whom, in accordance with a *lex* or *senatus consultum*, exemption from tribute (*aneisphoria*) has been granted along with citizenship by the decision of my father or myself. Furthermore it is my pleasure that those persons to whom exemption from tribute has been given shall be immune (*ateleis*) as regards those properties which they then owned, but as regards subsequent acquisitions they should pay whatever is due.

Once again we see here an implicit rather than explicit correspondence between different forms of exemption, from Roman tribute and from local liturgies. But the key point is

[35] Sherk, op. cit. (n. 28), no. 22, Greek text l. 12.

[36] P. Roussel, 'Un Syrien au service de Rome et d'Octave', *Syria* XV (1934), 33; *IGLS* III, 718; Sherk, op. cit. (n. 28), no. 58. Col. ii, ll. 22–3: [. . καὶ στρατείας, λει]του[ργία]ς τε δημοσίας ἁπάσης πάρε[σις ἔστω].

[37] For this aspect of the ambivalent role of the Emperors *vis-à-vis* the institutions of the Republic, → A. Wallace-Hadrill, 'Civilis Princeps: between Citizen and King', *JRS* LXXII (1982), 32, esp. 46 f.

[38] *SEG* IX, 8; *FIRA*² I, no. 68, iii.

the clear refutation of the idea that either or both of these exemptions would follow necessarily on the acquisition of the Roman citizenship. The principle of a dual citizenship (or Cicero's notion that each man has two *patriae*, his home town and Rome) [39] was thus conclusively established, and was to form the social basis of the running of the Empire for three centuries. The spread of the citizenship was to provide a rich harvest of rules and exceptions, petitions and responses, as regards, for instance, the law of inheritance or *patria potestas*.[40] But it does not seem ever to have been claimed subsequently that the Roman citizenship affected a man's obligations to his native city. Given the wide extension of individual grants, the existence of the privilege of *latinitas* by which the annual magistrates (or the whole council) of a city automatically became citizens, and above all the evolution in the first century of a system by which discharged auxiliaries were granted the citizenship, the maintenance of the principle of dual citizenship was of fundamental importance.

IV. VETERANS AND IMMUNITY

But was it in fact true that each of several thousand discharged auxiliaries, returning home (or settling elsewhere) each year with a grant of the citizenship was liable to local liturgies? Certainly no such exemption is recorded among the *beneficia* listed in the *diplomata* given to discharged auxiliaries.[41] But some veterans certainly benefited from various immunities, and a badly damaged papyrus of the first century records that a veteran recited (presumably in court) an edict of Octavian as Triumvir: he had granted veterans immunity (from tribute?) for all their property, the citizenship for themselves and their families, exemption from further military service and from performing *munera publica*, as well as, among other privileges, that of being neither an ambassador (i.e. one sent by a city), nor *procurator* (?), nor contractor for collecting the tribute.[42] Another veteran, from the legion X Fretensis, recorded in A.D. 94 that he had copied from a bronze tablet at the great Caesareum in Alexandria an edict by which Domitian in 88/9 had declared that all veterans and their families were immune from indirect taxes (*vectigalia* and *portoria*) and (probably) that their properties were immune from receiving official travellers.[43] These wide-ranging grants are not fully confirmed by other evidence; but both documents show that, here as elsewhere, it was up to the interested party to produce evidence for privileges or exemptions which he claimed. The exemption from *munera publica* does, however, reappear on a papyrus of 172, in which a veteran settled in the Arsinoite Nome complains that liturgies have been imposed on him in spite of the five-year relief (*anapausis*) granted to them.[44] Other evidence shows that this particular veteran had served in the Cohors I Apamenorum, and hence was an ex-auxiliary. But if there was indeed a general five-year exemption for them, this is the only place where we hear of it. Otherwise our evidence from before the Tetrarchy speaks of 'veterans', without distinction between legionaries and auxiliaries, and exhibits once again a complex case-law which itself reflects the social pressures on a veteran settled among other persons all too eager to share the burden of *munera* with him. They enjoyed an immunity, without (in this evidence) any stated time limit, provided they had served at least twenty years. Those honourably discharged after between five and nineteen years' service earned, says Modestinus, a proportional period of relief from *tutela*, as they did from other *politikai leitourgiai* (for this term cf. p. 92 below).[45] However, those obligations, such as road-repair, which fell on owners of property as such, could not be avoided (*Dig.* XLIX, 18, 4). The immunity applied in a community where a veteran was an *incola*, and was not affected by his voluntarily undertaking an *honor* or *munus* (XLIX, 18, 2, *pr.*). But if a veteran allowed himself to be enrolled in the town council (*ordo*), then he was liable for further *munera* (XLIX, 18, 5, 2). Even here there was a way out, as Severus Alexander said in a reply to one Felicianus: 'Veterans, who when they

[39] Cicero, *de leg.* II, 5.
[40] See e.g. *ERW*, 483–5.
[41] *CIL* XVI; M. M. Roxan, *Roman Military Diplomas 1954–1977* (1978).
[42] *BGU* II, no. 628; *CIL* XVI, App. no. 10; S. Daris, *Documenti per la storia dell' esercito romano in Egitto* (1964), no. 100.
[43] *ILS* 9059; *CIL* XVI, App. no. 12; Daris, op. cit. (n. 42), no. 104.
[44] *BGU* I, no. 180; *Sel. Pap.* II, no. 285; Daris, op. cit. (n. 42), no. 105. See N. Lewis, 'Exemption from Liturgy in Roman Egypt', *Actes X cong. int. Pap. 1961* (1964), 69, esp. 72–3.
[45] *Dig.* XXVI, 1, 8, 2–3.

could have protected themselves by the immunity granted to them, have preferred to be made *decuriones* in their home towns, cannot return to the exemption (*excusatio*) which they have abandoned, unless by a formal rule and agreement for the preservation of their immunity they have accepted (only) a part of that burden' (*CJ* x, 44, 1). Moreover, as Caracalla replied to one Verinus, those ignominiously discharged were debarred from *honores*, but not excused from *munera civilia* (x, 55, 1). Finally, it did need to be stated that the sons of veterans enjoyed no immunity.[46] It is an important characteristic of the early Empire that, in spite of the obvious presence of a variety of ranks and statuses, the tendencies to inheritance of status, or even individual privileges, were very strictly limited.

From the Tetrarchic period onwards various changes occur in the values attached to the status of veteran, or the situation of being a veteran's son. In principle veterans continued to enjoy immunity, subject to a full period of service; so Diocletian and Maximian replied to a veteran named Carus (*CJ* x, 55, 2). But in another rescript, to a veteran named Philopator, they refer to the principle that this immunity, after twenty years' service, was confined to soldiers from legions or *vexillationes*: 'Hence, since you record that you have served in a cohort (of auxiliaries) you understand that it is pointless for you to wish to demand exemption' (x, 55, 3). Yet Valentinian and Valens were later to note that Diocletian himself had made an exception to this rule, and had granted immunity to the *cohortales* of Syria.[47] It is not clear whether it was only to those *cohortales* that Constantine referred when after his victory over Licinius he cancelled the municipal obligations to which 'the tyrant' had 'most wickedly' exposed them (*CTh* VII, 4, 1). Enough has been said to illustrate the significance of this form of reward for service, and the delicacy (and, for us, obscurity) of the borderlines surrounding it. If Constantine was in any doubt on the point, a group of veterans brought it home to him in a dialogue preserved in the *Codes* (*CTh* VII, 20, 2; *CJ* XII, 46, 1).

> The veterans shouted all together: 'Constantine Augustus, what is the point of our having become veterans if we have no *indulgentia*?'
> Constantine Augustus said: 'I ought to be increasing the good fortune of my fellow-veterans more and more, rather than decreasing it'.
> The veteran Victorinus said: 'Let us not be compelled to undertake *munera* or burdens in any place. . . .'

Constantine concluded the dialogue with a general confirmation of the veterans' privileges, and a reference to the sons of veterans. However, in this area too a shift of attitude had taken place whereby, *if* they had the required property, the sons of veterans were compelled *either* to accept the obligations of a town councillor *or* (*if* physically fit) to join the army.[48] Once again, the nature of the system, in regarding the two desirable forms of service as mutually incompatible, involved the Emperors in unresolvable contradictions. Diocletian and Maximian had already expressed the idea of the sons of decurions (and others) fraudulently joining the army to avoid *civilia munera* (*CJ* XII, 33, 2). By 319 Constantine was requiring men of curial origin who had been accepted into the army, or into provincial *officia*, to be returned to their town council. Thereafter the provision was repeated with variations,[49] until Julian, going to some extent against his usual principles, allowed ten years' service to confer immunity.[50] Thus the very privilege which, as the veterans had shouted to Constantine, was one of the principal *rewards* of military service, became a reason for *preventing* men from entering the army, even in a period of intense military activity on many fronts. Yet there are indications that men were also undergoing a purely nominal military service (*CTh* XII, 1, 40), gaining by influence a supposedly honourable discharge after a short time (XII, 1, 43), or finding their way on to the staffs of provincial governors. The relation of civilian service to city obligations presents an even more complex evolution, with even more drastic consequences, than that of military service.

[46] *Dig.* L, 5, 8, 2; *Frag. Vat.* 143 (*tutela*).

[47] → *CJ* VII, 64, 9; *CTh* VII, 20, 6. For *cohortales* as soldiers see e.g. *CTh* VII, 20, 4.

[48] *CTh* VII, 22, 2–5; XII, 1, 13; 18; 32; 35 (A.D. 343).

[49] *CTh* VII, 22, 1–6; XII, 1, 10–11; 13; 22; 32; 37; 40; 43; 45.

[50] *CTh* XII, 1, 56 (the date is 21 December 362—12 days before the kalends of January in the consulship of the Emperor and Fl. Sallustius—363).

V. RANKS, DIGNITIES, AND IMMUNITY IN THE FIRST THREE CENTURIES

Like the spread of the citizenship, the rise of men from the provincial cities into equestrian posts and the Senate can be regarded as a fundamental aspect of the Early Empire. It can also be assumed without question that under the principle of ' absence on public business ' (see *Dig.* IV, 6, 32–3), those actually in post at any time will have been excused *honores* and *munera* in their home towns.[51] But, like the citizenship, attachment to one of the two higher *ordines* might have carried with it the privilege of lifetime exemption, perhaps even extending to the next generation, or to successive generations. That it did not in fact do so is one of various indications that statuses under the earlier Empire were more limited in their consequences and far less easily transferable to descendants than we often assume.

Let us take equestrian posts first, confining ourselves to the pre-Tetrarchic period. As mentioned below (n. 51), it is only in the more marginal cases of ' absence on public business ' that immunity needed actually to be stated; so Paulus writes, ' The *comites* of governors and proconsuls and procurators of Caesar are exempt from *munera* and *honores* and *tutelae* ' (*Dig.* L, 5, 12, 1). For the *procuratores* and other officials themselves it did not need to be explicitly stated. But what permanent privilege, if any, was conferred by either membership of the equestrian order (or possession of the ' public horse ', if that is a narrower category) or the fact of *having held* equestrian military or civilian posts? No explicit rule is stated anywhere until Carus, Carinus and Numerianus write in 282, with an unhelpful delicacy and ambiguity: ' Those also, who are proved to have acted as *procuratores* of our possessions, ought to perform *munera civilia* which are appropriate to their dignity ' (*CJ* X, 48, 1). The implication seems clearly to be that there was at that time no general rule exempting former *procuratores* from city *munera*. Much more significant, however, is the fact that the career-inscriptions of scores of men of equestrian rank from the High Empire combine city offices, including duovirates and priesthoods, and *munera* such as embassies, with equestrian posts in the Imperial Service.[52] The issue might seem to be decided in favour of non-exemption but for the possibility that (as Eric Birley argued in a classic article) the city posts normally came first in order of time, and that hence equestrian military officers as a group can be seen as mature ex-holders of municipal posts.[53] Moreover, as in the case of veterans (p. 85 above), we have to allow for voluntary acceptance of *honores* or *munera*; so individual cases of the performance of these functions cannot strictly prove that there was no legal exemption. But a considerable volume of evidence, especially from the Greek East,[54] shows that former equestrian office-holders held priesthoods and presidencies of games, spent large sums in their native cities, and in some cases held actual city magistracies; and this strongly suggests the absence not only of a legal exemption but (more important) of any general conception of the incompatibility of the two spheres of activity. Moreover, if the acceptance of city or provincial functions had involved a temporary renunciation of a standing exemption, it would be reasonable to expect that some honorific inscriptions would at least occasionally mention this. The provisional conclusion must be that in the High Empire there was no concept of permanent exemption from city functions either for the possessors of equestrian status (however defined) or for the ex-holders of equestrian military or civilian offices. We may note the contrast between this and the exemption from ' plebeian ' punishments and forms of judicial torture reported to have been granted by Marcus Aurelius to the sons and grandsons of *eminentissimi* and *perfectissimi*—honorific equestrian statuses to be discussed below.[55]

[51] The principle is specifically related to exemptions in a few relatively marginal cases, see e.g. Hermogenianus in *Dig.* XXVII, 1, 41, *pr.*—2. Cf. *Frag. Vat.* 131: a *libertus* seeing to the affairs of a senator, excused from *tutela*, but not from *munera sordida*, ➞ *CJ* V, 62, 13.

[52] See e.g. Pflaum, *Carrières*, nos. 1; 3; 5; 7; 11; 13 *bis*; 16; 24 *bis*; 25; 37; 55; 59; 63, etc. From the third century note esp. Pflaum, no. 319, L. Caecilius Athenaeus, *flamen perpetuus* at Sufetula, whose duovirate there, involving shows (*voluptates*), is commemorated on his inscription (*CIL* VIII, 11340) and clearly followed his equestrian career.

[53] ' The Equestrian Officers of the Roman Army ', *Roman Britain and the Roman Army* (1953), 133.

[54] See F. Quass, ' Zur politischen Tätigkeit der munizipalen Aristokratie des griechischen Ostens in der Kaiserzeit ', *Historia* XXXI (1982), 188; pp. 198 f. for holders of equestrian posts.

➞ *CJ* IX, 41, 11 (Diocletian and Maximian), see P. D. A. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (1970), esp. 142 ff.; 241 ff.; P. A. Brunt, ' Evidence given under Torture in the Principate ', *ZSS* XCVII (1980), 256, esp. 262.

Even in the case of senators, the exemptions attested from the early Empire are strikingly specific and limited. This fact must of course be seen in the light of the restricted number of senators (in principle 600) and the fact that it took time for senatorial status to extend into the upper reaches of provincial society (or rather that of some provinces), in the course of the first three centuries. None the less it is significant that it had to be stated that a *legatus legionis* was exempt from *tutela* while in office (*Frag. Vat.* 222) and therefore by implication was not exempt *qua* senator as such. Senators were indeed liable, though not while holding office in Rome (*Frag. Vat.* 146), but only within the 200th milestone from Rome (147)—or the 100th according to Marcianus (*Dig.* XXVII, 1, 21, 3). This last point of course relates to the presumption, which began to be unrealistic in the third century, that senators were in principle resident in Rome; by analogy it may well have been held to affect liability to public functions in provincial cities. Moreover, personal status did certainly affect liability to *tutela;* precisely this is shown by the fact that Modestinus gives as evidence for the fact that *dignitas* did not confer exemption a rescript of Marcus Aurelius and Commodus stating that a senator was obliged to accept the *tutela* of persons of senatorial status, but of lower rank within the Senate. Modestinus goes on to say that a person, when made a senator, was released from existing *tutelae* unless the children concerned were of senatorial status (*Dig.* XXVII, 1, 15, 2–3). Similar presumptions might well have affected liability to the public *munera* of a senator's provincial or Italian home town. But it is highly relevant that this last point is presented simply as a personal *opinion*, on the part of a jurist writing in the early third century. It is essential to remember that what we read in the *Digest* is not the remains of a 'code', but of a number of academic legal works, expressing a variety of points of view.

The same is true of the other juristic views preserved in the *Digest* concerning the relation of a senator to his *patria*.[56] These are by no means identical, and also show every sign of being personal reflections, or rationalizations, in the face of an evolving reality. So Paulus writes (*Dig.* 1, 9, 11):

> Senators, although they seem to have their *domicilium* in the City, none the less are understood to have *domicilium* also in the place of their origin, since their *dignitas* seems to have conferred an addition rather than a change of domicile.

The *Sententiae Pauli* expresses a much more general principle, and is the only text to relate the question of senatorial domicile to the second, third, and fourth generations (*Dig.* L, 1, 22, 5):

> Senators and their sons and daughters, wherever born, and likewise their grandsons, [granddaughters], and great-grandsons and great-granddaughters by a son are removed from their *origo*, even though they retain municipal *dignitas*.

Finally, Hermogenianus, writing in the Tetrarchic period, puts it as follows (L, 1, 23 *pr.*):

> A man ceases to be a *municeps* on gaining senatorial *dignitas*, as far as regards *munera*; but as regards *honor* (*honores*?) he is regarded as retaining his *origo*.

It will be obvious at once how frail a basis these passages are for any conception of a long-established general principle that senators were legally exempt from *honores* and *munera* in their home towns. By contrast, a surprising volume of epigraphic evidence from the first three centuries shows senators in fact holding regular *honores* and priesthoods, or (in a few cases) being town-councillors in their native cities (or others), as well as (less surprisingly) spending large sums by way of munificence.[57] Once again, this cannot prove that a legal exemption was not available, for a sense of obligation to a man's home city

[56] On this problem see D. Nörr, opp. citt. (n. 18); A. Chastagnol, 'Le problème du domicile légal des sénateurs romains à l'époque impériale', *Mél. L. S. Senghor* (1977), 43 (*non vidi*).

[57] See Quass, op. cit. (n. 54), 188–98, and esp. W. Eck, 'Die Präsenz senatorischer Familien in den Städten des Imperium Romanum bis zum späten 3. Jahrhundert', *Studien zur antiken Sozialgeschichte: Festschrift F. Vittinghoff* (1980), 283.

might well have prevailed. In this connection it is worth recalling a reply given by Diocletian and Maximian: 'A man who enjoys exemption (*vacatio*) from public *munera*, if he freely undertakes any *honor* other than the decurionate, does not, on account of the fact he has been influenced by the needs of his native city, or through eagerness for *gloria* has conceded his public rights, lose the relevant privilege' (*CJ* x, 44, 2). But here, too, as with *equites*, the absence of any statement on any of the inscriptions to the effect that these senators were not availing themselves of a recognized exemption must create a presumption that none such was known.

Whatever may have been the normal rule in relation to personal *honores* and *munera*, there is no clear evidence that senators enjoyed a general exemption from obligations on property as such. In this connection a well-attested provision, laid down by a *senatus consultum* of uncertain date, and attested by inscriptions from three different places, ordained that senators were exempt from the *munus* of receiving official travellers against their will. These inscriptions, from Paros (in both Latin and Greek), from Phrygia and from Satala in Lydia, are all copies of a single letter to an unknown addressee written by Severus and Caracalla in Rome at the end of May 204; the Emperors firmly remind the addressee of the provisions of the *S.C.*[58] This exemption itself seems to represent a specific exception to the general rule stated by Ulpian, that the *munus* of receiving official travellers was one which lay on properties as such, without regard to the person of the owner.[59] This therefore represents a rather specific area of obligation/exemption, with no necessary implications for the wider question of civic obligations. But the fact that disputes could arise, and that the personal rights even of senators could be in need of protection is clear from the fact that the letter of Severus and Caracalla, shorn of its original address (perhaps to a provincial governor) was found worth inscribing by different people (presumably senators or their agents) resident in several different places. We may compare the letter of Valerian and Gallienus to a senator from Smyrna named Iulius Apellas, evidently in reply to complaints from him about some infringement by the local magistrates of his rights in relation to his property there. Almost certainly the issue at stake here too is the reception of *hospites*.[60] A century later the issue was still alive: in 361 Constantius wrote to the Senate: 'If it is against the will of our senators, let no one stay in their houses by the right of *hospitium*' (*CTh* VII, 8, 1). If this very specific right had to be repeatedly re-stated, we can be reasonably sure, at least, that no general rule exempted senatorial properties as such from local obligations.

The roles performed by senators in their native cities in the first three centuries, and their need to seek Imperial protection for the one exemption which is clearly attested, at least from the early third century onwards, illustrate an important truth about the Roman empire. It is a clear and accepted fact that the Augustan period saw a number of concrete steps to define the senatorial and equestrian orders, partly in terms of a property qualification; to devise for them forms of social and ceremonial precedence, for instance in the elections and public shows at Rome; and to introduce, in the case of the Senate, a certain element of heritability of status.[61] This meant, strictly speaking, no more than that sons of senators had the automatic right to assume the *latus clavus*, while their actual membership of the Senate was still dependent on their gaining the quaestorship. None the less it was a step towards the creation of a *senatorius ordo*. In consonance with this, for instance, the Augustan marriage laws forbade a senator, or his descendants for three generations, to marry a freedwoman; and the new *senatus consultum* of A.D. 19 from Larinum forbids activity in the arena to the descendants, down to the third generation, of both senators and *equites* (defined by the right to sit in the equestrian seats).[62] But these steps were not followed either by a consistent tendency for the two orders to become hereditary over long

[58] T. Drew-Bear, W. Eck, P. Herrmann, 'Sacrae Litterae', *Chiron* VII (1977), 355.

[59] *Dig.* L, 4, 3, 14. See Eck in art. cit. (n. 57), 379.

[60] *CIL* III 412 = *IGR* IV 1404, see *ERW*, 421, and for the reading [ξ]ενίας ἑνοχλεῖ[ν] in l. 17 see Eck, art. cit., 367, n. 53.

[61] On these points see ➞ A. H. M. Jones, 'The Elections under Augustus', *JRS* XLV (1955), 9 = *Studies in Roman Government and Law* (1960), 27; ➞ P. A. Brunt, 'The Lex Valeria Cornelia', *JRS* LI (1961), 7 ➞ C. Nicolet, 'Le cens sénatorial sous la République et sous Auguste', *JRS* LXVI (1976), 20.

[62] M. Malavolta, 'A proposito del nuovo «S.C.» da Larino', *Sesta Miscellanea greca e romana* (1978), 347; *AE* 1978, 145; see now also B. Levick in this volume, pp. 97 ff.

periods of time or by further steps marking off a distinctive status or distinctive privileges. Even in the crucial area of obligations in the cities, while ' absence on public business ' necessarily gave exemption to senators and *equites*, and senators were also held in some sense to have either their main, or an alternative, domicile in Rome, men of both orders did in fact hold *honores* and undertake *munera*. Alone of our legal sources the *Sententiae Pauli*, a text of unknown authorship written some time in the third century, categorically affirms that senators and their descendants to the fourth generation were removed from their native *origo*.

Rather than further legal steps to define the two *ordines*, what actually happened was a gradual process by which honorific appellations came to be attached, never with complete consistency, to *equites* holding posts of differing ranks and to senators as such. Following that, the adjectives used gave rise to the related nouns, and simultaneously to the concept that the nouns denoted statuses to which legal privileges might be attributed.

The sketch of the evolution of the equestrian status-appellations which follows is not based on a rigorous re-examination of all the sources—which themselves are the product of the chances of survival. For the earlier period in particular an impressionistic selection of the evidence, based on the work of others, will suffice.[63] As regards *equites*, two different scales of honorific appellations appear. One, derived from the level of pay given to different ranks, runs *sexagenarius*, *centenarius*, *ducenarius* and (very rarely) *trecenarius* (denoting a payment of 60,000 or 100,000 etc. sesterces p.a.).[64] The most commonly attested is *ducenarius*, which also gave rise to related nominal forms or phrases: ' procuratorem principis ducenaria perfunctum ' (Apuleius, *Met.* VII, 6); and ' ducenariae procurationis splendorem ' (*AE* 1962, 183, *codicilli* of Marcus Aurelius). In the third century *ducenarius* functions also as a noun to designate a high-ranking procurator (e.g. Eusebius, *HE* VII, 30, 8). Perhaps more significant, *ex ducenariis* appears as a rank or status of former holders of the office (e.g. *apo doukēnariōn*, *AE* 1966, 446).

These terms, as we shall see (p. 93 below), occasionally reappear in the Constantinian period along with those derived from the other scale of status-appellations which evolved in the High Empire. This ran as follows:

(1) *Eminentissimus* (*exochōtatos* in Greek), apparently reserved for Praetorian Prefects, and some Prefects of the *Vigiles* in the third century, is found in use from Marcus Aurelius (*CIL* IX, 2438) until the middle of Constantine's reign (*CTh* VII, 20, 2, ? A.D. 320).

(2) *Perfectissimus* (*diasēmotatos*) is used of other high equestrian officials. According to Diocletian and Maximian (*CJ* IX, 41, 11, see p. 87 above), it was these two groups whose descendants Marcus Aurelius wished to protect from ' plebeian ' punishments and tortures. In documents, however, *perfectissimus* is not attested until 201 (*ILS* 1346), used of a Prefect of the *Annona*. In the course of the third century its use extended to equestrian governors and procurators.[65]

(3) *Egregius*, in the form of its (eventual) Greek equivalent, *kratistos*, is used in the later first century of Prefects of Egypt (*P. Oxy.* 3240; 3335) and in the early second of an Idios Logos (*P. Oxy.* 3275), and even of a proconsul of Asia (*SEG* XXVIII, 1566). But after the appearance of the other, more honorific, terms, it settled into use for the lower equestrian officials; it is used in this way under Marcus Aurelius (e.g. *ILS* 6885) and thereafter continues through the third century;[66] its last known uses come in the 320s, both in legal sources (*CTh* VI, 22, 1, A.D 325/6), and in inscriptions.[67]

Legal sources reveal, furthermore, that by the early fourth century nouns denoting statuses had been derived from both *perfectissimus* and *egregius*. These two nouns, *perfectissimatus* and *egregiatus*, are both attested for the first time in legal sources in the

[63] For surveys of the evolution of these appellations see O. Hirschfeld, ' Die Rangtiteln der römischen Kaiserzeit ', *Kleine Schriften* (1913), 646; A. Stein, *Der römische Ritterstand* (1922), 47 f.; H.-G. Pflaum, ' Titulature et rang social durant le Haut-Empire ', in C. Nicolet (ed.), *Recherches sur les structures sociales dans l'Antiquité* (1970), 159.

[64] → *JRS* LIII (1963), 197–8.

[65] See the list in Pflaum, *Carrières* II, 624.

[66] See the list in Pflaum, op. cit. (n. 63), 178–9.

[67] *IRT* 467 (Lepcis Magna) of 324–6, see T. D. Barnes, *The New Empire of Diocletian and Constantine* (1982), 168: ' curante Cl. Aurel. Generoso v.e., cur. r.p.' I owe the reference to H. Löhken, *Ordines Dignitatum: Untersuchungen zur formalen Konstituierung der spätantiken Führungsschicht* (1982), 131, and n. 102.

scattered fragments of an extensive Imperial reply addressed ' to the Bithynians ' on 21 July 317. The *Codes* attribute it to Constantine, but it must in fact have been issued by Licinius. All the fragments concern the conditions for admission to higher *dignitates*, and some involve the consequent release from city *munera* (see p. 93 below).

Before we examine the significance of this, it is necessary to look at the parallel evolution in senatorial status-appellations. The term *clarissimus* (in Greek *lamprotatos*) which could be used in a variety of contexts, came to be a characteristic appellation for a senator about the beginning of the second century (*TLL*, s.v. ' clarus ' III); *clarissimus vir*, regularly abbreviated as *c.v.*, was soon followed by *clarissimus puer*, and *clarissima femina/puella*. The corresponding notion of a specific rank or dignity also evolved. An inscription from Ureu in Africa, apparently of the early third century, honours a *c(larissimus) p(uer)*, whose father was an *e(gregius) v(ir)* and who is described as ' having gained the *clarissima dignitas* '.[68] The same *clarissima dignitas*, Ulpian states, is conferred by senatorial husbands on their wives (*Dig.* 1, 9, 8). Here too, therefore, there evolved the concept of a status or quality, which could be referred to by a nominal phrase. But, perhaps surprisingly, the final shift from *clarissimus* and *clarissima dignitas* to the abstract noun *clarissimatus* was relatively slow in coming. When Constantius, writing from Milan in 354, replied to the town council of Caesena, he still used *clarissima dignitas*: '. . . but if anyone has acquired the insignia of the *clarissima dignitas*, and if he has not been able to obtain confirmation of the gift granted to him by producing *codicilli* (the letter of appointment), he shall lose the fruit of the *dignitas* he sought ' (*CTh* XII, 1, 42).

Clarissimatus is perhaps less well attested precisely because it did not normally belong in the most contentious area, namely the borderline between city and Imperial functions, but at a higher level. It first appears in legal sources in the 370s;[69] but Ammianus, writing in the 390s, looks back to the reign of Constantius (337–61), when *duces* were (as they should be) mere *perfectissimi*, and did not (as was known to happen later) gain the *clarissimatus* (XXI, 16, 2).

It was the two lower ' equestrian ' grades, the *perfectissimatus* which lasted through the fourth century, and the *egregiatus*, which disappeared almost as soon as attested in legal sources, which stood immediately above the decurionate, with its heavy attendant burdens, and afforded a possible escape route from it. But to say that is to assume precisely that change which had evidently happened before 317. For, as we saw, in the first three centuries there is no clear proof either that *equites* as such, or former holders of equestrian posts, enjoyed any general exemption from municipal burdens. At some point, therefore, not only had the two abstract nouns, *perfectissimatus* and *egregiatus*, come into use, but the idea had become accepted that possession of either of these two qualities entitled a man to enjoy precisely that exemption which had previously been conferred only by being ' absent on public business ' in specific posts. This shift in the conditions for exemption, from actual temporary functions to a formal and permanent status, was a crucial one, with immense consequences. It would be of considerable significance if we could identify some evidence which would even illustrate, if not explain, the process of transition. As it happens, we have such evidence, in the form of a papyrus which has long been known, but seems never to have been fully re-examined since its first publication in 1912.[70] It will be worthwhile to present a translation of the bulk of the text, with some comments on the essential points.[71]

VI. *P. OXY.* 1204: AURELIUS PLUTARCHUS

In the consulships of our lords the Emperors Diocletian for the seventh and Maximian for the sixth time, *Augusti* (A.D. 299), to Aurelius Zenagenes, *stratēgos* of the Oxyrhynchite nome,

[68] J. Peyras, L. Maurin, *Ureu: Municipium Uruensium* (1974), 37, no. 5 = *AE* 1975, 879.

[69] *CTh* XII, 1, 74, 5 (371 → *CJ* XII, 1, 11, 1 (377).

[70] *P. Oxy.* 1204; partially quoted by A. H. M. Jones, *The Later Roman Empire* (1964), 70; cf. *ERW*, 289. There is nothing to support the suggestion of J.-M. Carrié, *ZPE* XXXV (1979), 221–3, that Aurelius Plutarchus had the rank of *primipilaris*.

[71] Dr. J. Rea has kindly re-read the papyrus for me from a photograph and assures me that only minor amendments of the published text are required: (1) Ζηναγένει for Ζηνογένει in line 2, see *P. Oxy.* 3246; (2) in l. 25 (not translated here) τῷ ἐλαμέ[νῳ αὐτὸν εἰ]ς τὴν δεκαπρωτείαν, see *Berichtigungsliste* I, p. 313, and *P. Oxy.* XLV, p. xviii under 3105, ll. 3–4.

from Aurelius Plutarchus, also called Atactus, *kratistos* and however he is styled. Since I was nominated to the *dekaprōteia* by Aurelius Demetrianus, *dekaprōtēs*, improperly and in contravention of all the laws, I made an appeal through the agency of my father, Aurelius Sarapammon, also called Dionysius and however he is styled, on the grounds that at that time I was in the Small Oasis for the discharge (*eksphungeusis*) of the soldiers stationed there, on the orders of my lord the *diasēmotatos* Prefect of Egypt, Aelius Publius, and having done all that was required for the appeal, I fled to my lord the *diasēmotatos katholikos*, Pomponius Domnus, and petitioned him via memoranda, setting these same facts before him. Consequently his Greatness ordered me through his judgement to give notice to the aforesaid person. The relevant part of the judgement runs as follows:

In the consulships of our lords the Emperors Diocletian for the seventh time and Maximian for the sixth time, *Augusti*, on the 14th day before the kalends of September (19 August 299), in Alexandria in the *sēkrēton*: When Plutarchus, *kratistos*, had been called in, Isidorus said: 'Plutarchus, *kratistos*, who stands before your Virtue, attempting to find relief from city liturgies (*politikai leitourgiai*), previously petitioned the divine Fortune of our masters, the *Augusti* and *Caesares*, to grant him the dignity of the *kratisteia*, and their divine Fortune assented and granted it to him, and it is now in him. He subsequently continued to serve your office, my Lord, and the orders of you great ones. But already, when he was spending time at the Small Oasis, after my lord and your brother, Publius, the *diasēmotatos* governor, had sent him to discharge the soldiers, a certain Demetrianus, an Oxyrhynchite of the same city, made an attack on him and dared to nominate him to the *dekaproteia*, being unaware that he had gained a higher dignity (*axiōma*), which probably (*isōs*) relieves him of city liturgies . . .

The various parties to the transaction are clear. There are the Emperors, who can grant the rank described in Greek by the abstract noun *kratisteia*. Then there is the Prefect of Egypt, Aelius Publius, and the *katholikos* (*rationalis*) of Egypt, Pomponius Domnus, both given the honorific appellation *diasēmotatos* (*perfectissimus*); Domnus receives the petition and hears the case in Alexandria. The town of Oxyrhynchus is seen attempting to discharge the tax-gathering functions laid on it, and other Egyptian towns, by the reform of Septimius Severus a century earlier.[72] One of the existing *dekaprōtoi*, or committee of ten wealthy men with the obligation of collecting (and guaranteeing) the taxes, makes the nomination which is the subject of the appeal. Finally, there is Aurelius Plutarchus himself, who had already conceived the notion that the dignity (*axiōma*) of the *kratisteia* (*egregiatus*) would serve to relieve him of city liturgies. This idea, which he had successfully brought to fruition (possibly during Diocletian's campaigns and journeys in Egypt in 297–8),[73] was a personal initiative with a clearly defined aim. It is noticeable that his actual service to the administration of Egypt is emphasized, but seems not to be regarded as a sufficient condition in itself either for exemption from the *dekaprōteia*, or for the dignity of the *kratisteia*. That is gained independently by a petition, notionally directed to all four *Augusti* and *Caesares*. The favourable response to it confers an abstract quality or status which can be conceived of as inhering 'in' him and which confers immunity. Or does it? Plutarchus' advocate, Isidorus, strikes an unexpected note of uncertainty at the end of his submission. It would be invaluable if we could be sure what degree of certainty, uncertainty, suggestion or persuasion is implied by the word *isōs* (perhaps? probably? surely? fairly? reasonably?)—'the *kratisteia* which *isōs* relieves him of city liturgies'.

The importance of *P. Oxy.* 1204 should now be clear. For it is, firstly, the earliest example so far known of the use of an abstract noun formed from *kratistos* = *egregius*, and in fact the earliest such formation attested for any of the status-adjectives. It is also, it seems, the only known instance of *kratisteia* in Greek in this sense. More important still, the document contains the earliest known evidence—or perhaps better suggestion or implication—that this status as such conferred immunity from city obligations (*politikai leitourgiai*—see p. 85 above). More important still, the right thus claimed had been gained by a personal petition to the Emperors, and was then quoted, in the man's interest, with some apparent hesitation, by his advocate in court.

[72] See A. K. Bowman, *The Town Councils of Roman Egypt* (1972).

[73] See T. D. Barnes, *Constantine and Eusebius* (1981), 17–18; *The New Empire of Diocletian and Constantine* (1982), 54–5.

VII. *DIGNITATES* AND OBLIGATIONS IN THE FOURTH CENTURY

P. Oxy. 1204 of A.D. 299 is, of course, no more than a chance item of evidence, which happens to illustrate very clearly a complex process of conceptual and social change relating to status and obligation. Other equally accidental items of papyrus evidence of this period from Egypt seem to indicate that no universal and absolute correlation between status and exemption had been established. In (probably) 293/4 a *perfectissimus* (*diasēmotatos*) acted as *prytanis* in Oxyrhynchus (*P. Oxy.* 3297); in probably 322 two men each described as *diasēmotatos* and one described as *kratistos*, were in charge of public bakeries in the Thebaid (*P. Oxy.* 3124). Under Constantine two men described as *diasēmotatoi dekaprōtoi* acted as ambassadors of the Sicilian cities to a former *corrector* of Sicily in Rome,[74] while in 346 a *v(ir) p(erfectissimus)* was responsible for the erection of a statue on behalf of the *ordo Spoletinorum* (*ILS* 1229). None the less it is surely of some significance that Lactantius, writing perhaps in about 313/14, speaks of Galerius, after 305, putting to the torture not only *decuriones*, but the *primores* of the *civitates*, that is *egregii* and *perfectissimi viri*, a process which he sees as the removal of *honores*.[75] The implication is clearly that these were ranks whose holders belonged to the cities, but were superior to and distinct from the town councillors.

There is no surviving formal statement of this distinction, however, until we come to the extensive document mentioned above (p. 91) and addressed by Licinius in 317 'to the Bithynians'; [76] it is likely therefore to have been a letter in reply to an embassy from the province, in which his 'capital', Nicomedia, lay. It is not unreasonable to imagine that particular tensions had arisen in Bithynia between the claims of the cities and the availability of posts and ranks at court and in the army.

The letter reflects a situation in which various statuses could be granted by letters of appointment (*codicilli*) issued to former holders of various offices (other than *monetarii*) and in which, by a consequential development, such *codicilli* could also be acquired by the exercise of influence, without the holding of any relevant office. Licinius' treatment of this aspect recalls many of the aspects of city life discussed above, while also confirming certain new bases for exemption claimed by interested parties:

> But if a town-councillor by exercising influence (*suffragium*) has gained the *dignitas* of the *perfectissimatus* or *ducena* or *centena* (see p. 90 above) or *egregiatus*, in the hope of avoiding his *curia*, he shall lose his *codicilli* and be restored to his rank, so that, having undergone an examination of his *honores* and *munera civilia*, he may obtain some privilege within the terms of the city law. Nor may a man who, on the basis of *origo* or *incolatus* or of owning property there, is [summoned] to the *curia*, be protected by the *dignitas* of the *perfectissimatus* if it has been obtained by influence; the *dignitas* should be removed and he be consigned to the town-council (*CTh* XII, 1, 5).

Subsequent Imperial pronouncements continue to assume the existence of a system whereby *codicilli* granting the *perfectissimatus* could be issued (the *egregiatus*, as mentioned above, p. 90, disappears immediately); the Emperors' aim appears as that of limiting the categories of persons eligible and of invalidating *codicilli* gained by *suffragium* or bribery.[77] Once again we can see attempts being made to enforce the Imperial rules in different regions, in the face of individual initiative in acquiring the ranks which would confer exemption. Thus Constantius wrote to the proconsul of Africa in 339: 'You have complained that the senate of the splendid city of Carthage is depleted, and only a few *curiales* remain, while all are buying, at the cost of shameful strains on their resources, the *insignia* of a *dignitas* which is not due to them. So such men shall be deprived of their nominal ranks . . . and be subjected to city *munera*' (*CTh* XII, 1, 27). Writing to Caesena in 354, Constantius, before coming to the *clarissima dignitas* (p. 91 above), had tried a different

[74] *ILS* 8843, re-edited by L. Moretti, *Ins. Gr. Urb. Rom.* I, no. 60.

[75] Lactantius, *de mort. pers.* 21, 3. For the date, → T. D. Barnes, 'Lactantius and Constantine', *JRS* LXIII (1973), 29.

[76] *CTh* VIII, 4, 3 + X, 7, 1 + X, 20, 1 → *CJ* XI, 8, 1) + XII, 1, 5, all with the same dating: 'dat. XII Kal. Aug. Gallicano et Basso conss.'.

[77] e.g. *CTh* VI, 38, 1 → *CJ* XII, 32, 1 (Constantine); *CTh* XII, 1, 15 (Constantine, 327); *CTh* XII, 1, 41 (Constantius, 358).

solution: 'If any are found to have been honoured with the rank of *ex praesidibus* (former provincial governor) or of the *perfectissimatus*, they shall, while retaining the *dignitates* which they gained by *suffragium*, none the less remain members of their *ordo*, perform *officia curialia* and submit to the obligation of the municipal *munera* which they share with you' (*CTh* XII, 1, 42).

That was the other side of the picture. The rulings issued by Emperors were open to use not only by those who sought a means of escape, but by those in communities all over the Empire who wished to lighten their own burdens by imposing a share of them on others. However, this very reply, intended to assist the town council of Caesena, itself reflects another novelty of the Tetrarchic period, the existence of a category or status of ex-holders of a particular post.

VIII. FORMER OFFICE-HOLDERS, STATUS AND EXEMPTION

In this area also it seems clear that the general use of honorific terms preceded the attachment of privileges to them. In the course of the third century we can observe on occasion, recorded on inscriptions, terms indicating the fact that a man is classed among the former holders of a particular post: *ex procuratoribus* (*apo epitropōn*); *ex protectoribus* (*apo protektorōn*) and *a ducenariis* (*apo doukēnariōn*).[78] Once again, however, it is not until the Tetrarchic period that we have a specific indication that any formal privileges were attached to such a status. As late as 282, it will be recalled (p. 87 above), Carus, Carinus and Numerianus had laid down that ex-*procuratores* should perform *munera civilia* suitable to their *dignitas*. But a different principle was enunciated, at an uncertain date, by Diocletian; when addressing what was evidently an embassy of *principales* from Antioch, he stated: 'To certain *dignitates* there has been granted by us *indulgentia* from civil and personal *munera*, that is to those who are ex-*protectores* and ex-*praepositi*. Such persons therefore will not be summoned to perform personal or civil *munera*' (*CJ* X, 48, 2). A few remaining traces of the utterance in Greek by the embassy, preserved in this fragmentary extract from the Imperial *acta*, are enough to identify this as the second of the two known literal dialogues over obligation and exemption; the implication is clearly that the *principales* had come to object to the exemption claimed by these categories of ex-officers. In this case, as it seems, the Emperors had deliberately introduced exemption from civil burdens as a novel means of reward for those in their service. In a sense they were thus merely extending upwards the principle long adopted for ordinary veterans (pp. 85–6 above). But in doing so they also created the possibility, as with other ranks, that the *nominal* status of ex-*protector* or ex-*praepositus* would be sought by influence or bribery for the sake of the immunity it conferred: 'It cannot be tolerated that men should insert themselves into titles of military honour who have neither seen a line of battle nor looked on the standards nor borne arms. So if any have obtained for themselves letters of appointment as ex-*protectores*, or ex-*praepositi*, or ex-*tribuni*, they shall not enjoy the privilege, which is earned by those who have reached this *honor* by due military service and by undergoing the effort of bearing arms'.[79] None the less, Constantine in 314 extended this privilege to persons who had retired from the Imperial *cubicula*, from Palatine posts and from the *scrinia* of the *memoria*, *epistulae* and *libelli*; for these categories alone the privilege of exemption was granted to sons and grandsons, as well as to the men themselves.[80] This remarkable extension may serve to remind us how very exceptional it was for any of the status-distinctions of the Imperial period to acquire even a limited hereditary character. But the use of immunity as a reward, or permanent privilege of status, for ex-holders of offices, was soon applied, for instance, to ex-*comites*, ex-*praesides*, ex-*rationales* and others. Once again, therefore, we see that a form of status-designation comes into common use first, and has specific

[78] e.g. 'ex protectoribus'; *CIL* III, 7440; VI, 32945; *ILS* 5695 (A.D. 280). Examples of the Greek form (which seem to be more common) in H. J. Mason, *Greek Terms for Roman Institutions* (1974), s.v. ἀπό. Note Bryonianus Lollianus of Side, δουκηνάριος, ἀπὸ ἐπιτρόπων, etc. (*AE* 1966, 471); see C. Foss, *ZPE* XXVI (1977), 161; J.-M. Carrié, *ZPE* XXXV (1979), 213. Note also *AE* 1965, 195, 'ex p(rimi) p(ili)'; *AE* 1966, 429, ἀπὸ ἐπιτρόπων; 446, ἀπὸ δουκηναρίων; *AE* 1972, 579, ἀπὸ ἐπιτροπῆς δουκηναρίας.

[79] *CTh* VII, 21, 1 (either Constantine or Constantius).

[80] See *ERW*, 109.

privileges attached to it subsequently. This development had two immediate effects. Firstly, we find the Emperors trying, exactly as with *clerici* (pp. 83–4), to *prevent* town-councillors from acquiring the relevant ranks (and with them prospective immunity) until they had fulfilled their local functions.[81] Secondly, as we would expect, men came to acquire *codicilli* giving them the formal or nominal rank of ex-office-holder. So Constantius was to write in 353 to the town council of Carthage:

> All ' ex-*comites* ' and ' ex-*praesides* ', and the others who, without holding them, have acquired nominal *codicilli* of the implied *dignitates*, if it is proved that they have been of your number, will remain members of your body, and will undertake all the burdens and *honores* which the needs of the town demand, while retaining the titular *dignitates* which it is established that they had been granted (*CTh* XII, 1, 41).

IX. CONCLUSION

As we saw at the beginning, fourth-century observers were well aware that the altered presuppositions about office in the Imperial service and consequent exemption had critically affected the conditions under which the cities functioned. However, Julian's measures, to which Libanius briefly alludes, give, if anything, an indication of how limited were the steps which could now be attempted even by an Emperor who was deeply committed to the restoration of the cities.[82] Removing the immunity enjoyed by the Christian clergy was easy.[83] But beyond that his measures were modest and conservative. The immunities enjoyed by chief doctors (*archiatri*) were immediately confirmed.[84] Moreover, what Libanius (*Or.* XVIII, 135–45) says about Julian's dismissal of *agentes in rebus* and *curiosi*, who had gained these posts partly in order to avoid city obligations, does not seem to mean that they in principle lost their immunity from such obligations; the *Theodosian Code* shows that Julian in fact confirmed the immunity of *agentes in rebus* who had served three years, or been dismissed in his fourth consulate (363);[85] he did the same for those who had served for fifteen years in the *scrinia* of the *memoria*, *epistulae* and *libelli* (*CTh* VI, 26, 1). We cannot determine the precise content of his general ruling ' that everyone should be summoned to the council and be enrolled, unless he had valid reason for exemption ';[86] though his own claim to have made the richest former officials of his finances and of the mint liable for service in the council of Antioch may serve as an example (*Misop.* 367 D). However, Ammianus represents him on two separate occasions, at Naissus in 361 (XXI, 12, 23) and at Ancyra in 362 (XXII, 9, 12), as giving judgement personally in favour of the city councils and against individuals trying to escape *munera*, and thus disregarding the claims of *dignitates*, *stipendia* and *origo*. It is striking that his steps to strengthen the claims of city-councils on men's services were seen by Ammianus, in his final summing-up, merely as harsh and oppressive (XXV, 4, 21).

That comment reflects the fact that throughout the Imperial period rulings and decisions given by the Emperor could have significant effects in altering the legal framework to which individuals and communities appealed in contested areas. In this sense the innumerable self-governing cities of the Empire had always lived within a common framework of rules issued from the centre. But, equally, the Emperor, in issuing his rulings, was subject to pressures from below, ranging from demands for the settlement of disputes to requests for individual exceptions and exemptions and for the extension of existing privileges to cover wider groups. Since ancient cities functioned not by the imposition of direct taxation, but by social, and later legal, pressure for the performance of expensive *honores* and *munera* by individuals, the conditions of obligation and exemption were of central importance; and hence this area was always one in which the Emperor's rulings

[81] e.g. *CTh* XII, 1, 4 (*praesidatus*, 317); XII, 1, 20 (*procurationes* and *curae civitatium*, 331); XII, 1, 14 (*honores*, 326 or 353).

[82] See e.g. P. Athanassiadi-Fowden, *Julian and Hellenism: an Intellectual Biography* (1981), 98 ff.

[83] *CTh* XII, 1, 50 = XIII, 1, 4; Sozomenus, *HE* V, 5, 2; Philostorgius, *HE* VII, 4. See Bidez-Cumont, *Ep.* 54.

[84] *CTh* XII, 3, 4; *Ep.* 25b Hertlein = 75b Bidez-Cumont = 31 Loeb. See V. Nutton, ' Archiatri and the Medical Profession in Antiquity ', *PBSR* XLV (1977), 191.

[85] *CTh* VI, 27, 2. On *agentes in rebus* see now A. Giardina, *Aspetti della burocrazia nel Basso Impero* (1977).

[86] Libanius, *Or.* XVIII, 148, Loeb trans.

had a vital place. For a surprisingly long time Roman statuses and the fact of having occupied posts in the service of the Empire did not play much part in providing the conditions for exemption. But the growth of the Imperial service and of the army meant in the end that the Empire and its constituent cities were in direct and continuous competition for the same human and financial resources. In that situation the Emperors, under pressure both to reward those in their own service and to protect the interests of the cities, were pursuing aims which were bound to be mutually contradictory. In this delicate area of conflicting rights, duties, claims and immunities, various forms of status, conferred (in principle at least) by the Emperor and at least loosely related to roles in the Imperial service, came to represent the key area of dispute. Whether there was a class struggle, and if so how much it contributed to the decline of the Empire remain unresolved questions. But *this* area of conflict was categorically not a matter of class struggle, but of the formal statuses and privileges available under certain circumstances to members of the propertied classes. Imperial initiative, in the form of the desire to use immunity from city obligations as a reward for service, played some part in the sudden evolution of formal status-distinctions, with definite legal consequences, which took place in the late third and early fourth centuries. But it is surely significant that versions of the status terms themselves had entered the common stock of honorific vocabulary, typically employed on inscriptions, before legal consequences became attached to them. An earlier stage in the consciousness of status, as associated with official roles, is perfectly captured in the recently-published inscription of a man who in the third century rose through equestrian posts into the Senate: the inscription retrospectively attaches the successive status-appellations of *egregius*, *perfectissimus* and *clarissimus* to the successive stages of his career.[87] But the step from adjectives to nouns denoting statuses, as abstract qualities which might inhere in a person, arrived simultaneously with the conception that such a status might confer immunity from the obligations imposed by a man's native city. It is surely suggestive that our earliest expression of both of these conceptions is a document which records a petition to the Emperors. Aurelius Plutarchus deserves a small place in history.

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[87] *AE* 1979, 506.