

moral-politischer Ideen anzugehören. Bei Cicero vollzieht sich ein Übergang<sup>4)</sup>, aber wie zu seiner Zeit Anerkennung und Verurteilung miteinander ringen, zeigt amüsant ein Vergleich von drei Stellen in *de oratore*. Da heißen die Griechen zunächst (1, 22) *non solum ingenio et doctrina, sed etiam otio studioque abundantes*; dann (3, 59) *doctissimi homines . . . otio nimio et ingenii uberrimis adfluentes*; und schließlich (3, 131) *nati in litteris ardentisque his studiis, otio vero diffluentes*. Unter dem Prinzipat hat *otium* jedes Stigma verloren. Die Gründe sind im wesentlichen politisch und sozial, aber die Entwicklung darf auch als ein Triumph griechischer Ideen angesehen werden. Den ersten Einbruch dieser Ideen sehen wir in dem Chor der Iphigenie. Daneben aber stellt sich der Ausspruch Scipios, *numquam se minus otiosum quam cum otiosus, nec minus solum quam cum solus esset*<sup>5)</sup>. Der Gedanke der Tätigkeit in der Muße erscheint hier wie dort in sprachlich zugespitzter Form. Sieht es nicht aus, als liege der Keim des berühmten Wortes in der Übersetzung und Deutung des sophokleischen Chores durch Ennius?

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## IUDEX SELECTUS\*)

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In the course of his discussion on the use of the *anulus aureus* the Elder Pliny deals in a few significant sentences with the composition of the *iudicia publica* in the early Principate. He writes (*N. H.* XXXIII, 30—1):

divo Augusto decurias ordinante maior pars iudicum in ferreo anulo fuit iique non equites, sed iudices vocabantur. equitum nomen subsistebat in turmis equorum publicorum. iudicum quoque non nisi quattuor decuriae fuere

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4) Marianne Kretschmer, *Otium, studia litterarum . . . im . . . Denken Ciceros*, Diss. Leipz. 1938, ist mir nicht zugänglich.

5) So Cic. off. 3, 1; in rep. 1, 27 heißt es weniger genau: *numquam se plus agere quam nihil cum ageret*.

\*) I am indebted to Dr. G. E. F. Chilver for reading this paper in manuscript and for helpful criticism.

primo..... decuriae quoque ipsae pluribus discretarum nominibus fuere, tribunorum aeris et selectorum et iudicum. praeter hos etiamnum nongenti vocabantur ex omnibus electi ad custodiendas suffragiorum cistas in comitiis. et divisus hic quoque ordo erat superba usurpatione nominum, cum alius se nongentum, alius selectum, alius tribunum appellaret.

When one considers that this account, brief as it is, provides the most extended treatment of the subject to be found in any ancient authority, and, further, that its author was a near-contemporary and himself a Roman *eques*, one must necessarily be struck by the scant attention it has received from modern scholars who have made a special study either of the function of the *equites* or of jurisdiction during the Principate. Neither Madvig in his section on the *iudices*<sup>1)</sup> nor A. Stein in his book *Der römische Ritterstand*<sup>2)</sup> make more than passing mention of Pliny's words and the part played by the *equites* in the *decuriae iudicum* of the post-Augustan age. Kübler, who in his article on *equites Romani* devotes over two columns to 'Richteramt'<sup>3)</sup>, is also silent. Mommsen is indeed the exception in that he twice refers in notes to part of the passage quoted: but in one case his concern is with a subsidiary matter, the history of the *nongenti*, and in both he accuses Pliny of serious confusion<sup>4)</sup>.

Whether or not Pliny be guilty of confused thinking or false statement, it is certainly true that this section of his work is fraught with ambiguity. If, then, anything of value is to be derived from a study of the quoted passage, and if Mommsen's arguments are to be met, some attempt must first be made to establish the writer's exact meaning. He begins with the assertion that in Augustus' time the majority of jurors wore the *anulus ferreus* and were not called *equites*, adding that the name *equites* was given to those who served in the *turmae*. There would be no difficulty of interpretation here, were it not for a later statement in § 33 to the effect that in times before his own *equites* were to be found wearing the *anulus ferreus*: *passimque ad ornamenta ea etiam servitute*

1) *Die Verfassung und Verwaltung des römischen Staates* (Leipzig, 1882), II, pp. 218-28.

2) München, 1927.

3) *R. E.*, VI, 299-301.

4) *Römisches Staatsrecht*, III, p. 533, n. 3; p. 537, n. 1.

*liberati transiliant, quod antea numquam erat factum, quoniam in ferreo anulo et equites iudicesque intellegebantur.* There might appear at first glance to be some inconsistency between the two references to the *anulus ferreus*. In § 30 Pliny seems to regard it as a mark of non-equestrian rank: in § 33 he testifies to its use by *equites*. In fact, however, the apparent contradiction is to be explained by a difference of emphasis. In § 33 the theme is the growth of the equestrian order — and more immediately the consequent wearing of gold rings by freedmen. This for Pliny is an astounding abuse: and he points out by way of emphasis that in earlier times there were those even among the *equites* who did not wear them (although, of course, they had the right). In § 30 the language is slightly more legalistic. The writer has made the point that the use of *anuli* — by which undoubtedly he means the *anuli aurei*<sup>5)</sup> — served to distinguish a *tertius ordo* between *plebs* and *patres*, and he is speaking about the qualifications for membership of that *ordo*. Now, he says, wealth is a criterion, but in Augustus' day those who did not possess equestrian rank included more than half the jurors.

Pliny's next assertion that there were at first four decuriae in all is a simple statement of fact and requires no comment. After a few remarks concerning the rights of provincials to serve as jurors which have been omitted as irrelevant to the present theme, he goes on to relate that the *decuriae* were *pluribus discretis nominibus*. It is possible that *decuriae* is here used as a mere synonym for the entire *album iudicum*, in which case there is no clue given as to how or by reason of what qualifications the three groups named were distinguished one from another. It is more natural, however, to translate *decuriae* literally and so to render the phrase 'the decuries were distinguished by the use of several names'. This would mean that the title by which a juror chose to style himself was determined by the decury to which he belonged.

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5) This is clear both from the fact that Pliny's central theme in this section of his work is the gold ring, and from the references in § 30 and § 33 to the *anulus ferreus*, which, as is explained in the text, are made only by way of contrast. On the close connection of the right to wear the *anulus aureus* with possession of equestrian rank or at least equestrian census compare Cassius Dio, 48.45; Suetonius, *Divus Iulius*, 33.39, *Divus Augustus*, 27, *Galba*, 14; Horace, *Satires*, II, 7.53; Tacitus, *Histories*, I, 13. For a discussion of these and other references, and of the whole subject in general, see particularly Mommsen, *St.* III, pp. 514 ff.; Stein, *o. c.*, pp. 31 ff.

Pliny then goes on to speak of a similar distinction in nomenclature within that section of the body of jurors who acted as *nongenti*<sup>6</sup>). Some, he says, called themselves *selecti*, some *tribuni*, and some simply *nongenti*. It must be recognized that the writer is here speaking in terms of practice rather than law, practice which, as he explicitly states, was dictated by *superbia*. Those jurors who held the status of *selectus* or *tribunus* apparently preferred to use these titles even if elected to serve among the smaller band of *nongenti*. It was no doubt regarded as a mark of higher distinction to belong to the decuries of *selecti* and *tribuni* than to be chosen *nongentus*. Those, on the other hand, who by reason of belonging to a less distinguished decury could only use of themselves the epithet *index* would naturally boast their inclusion among the *nongenti*, if elected to serve in that capacity.

Such, then, is the testimony of Pliny. On what grounds did Mommsen refuse to give it serious consideration? His objections appear to be two: and of these it is the first, resting as it does upon his views concerning the composition of the decuries in the early Principate, which calls for the most detailed examination. Considering the first sentence of the quoted passage, he writes (*St. III*, p. 537, n. 1): 'Was Plinius sagt, darf schon wegen der *maior pars* nicht mit den *ducenarii* entschuldigt werden'. The great force of this objection, as Mommsen admits, derives from the assumption that of the four decuries functioning under Augustus there was only one, that of the *ducenarii*, which was not composed of *equites*. What reason is there for such an assumption?

The evidence of inscriptions suggests that at one time membership of the first three decuries was regarded as a mark of esteem. The titles are found *ex quinque decuriis*, *dec(uria-rum) III* and *index selectus decur(ius) trib(us)*<sup>7</sup>). These three decuries Mommsen understandably believed to be those of *equites*, and his assumption is borne out by the fact that both

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6) That *hic ordo* here refers to the *nongenti* of the previous sentence and not to the *tertium ordinem* of § 29 follows not only from the general sense of Pliny's words but also from the natural interpretation of the Latin. The use of *hic* points to a subject recently mentioned, while the wording *et . . . . . quoque* suggests that this sentence should be taken very closely with that preceding. On the *nongenti* compare Mommsen, *St. III*, p. 406, n. 2, p. 533, n. 3, and the *Tabula Hebana*, 11. 14-16 (*Notizie degli Scavi*, 8th. series, I (1947)).

7) *I. L. S.* 5016, 6862.

the men so designated are recorded also to have held the *equus publicus*. As the inscriptions are certainly post-Caligulan, however, it would only follow that the *decuriae equitum* were already three under Augustus if it could be shown that the fifth decury recruited by Gaius was not drawn from the *equites*. This is by no means indicated by Suetonius. He writes of the fourth decury added by Augustus (*Div. Aug.*, 32.3): *ad tres indicum decurias quartam addidit ex inferiore censu quae ducenariorum vocaretur indicaretque de levioribus summis*. But in his reference to the fifth decury (*Gaius*, 16.2) the census required of its members and the cases on which they were to sit in judgment are left undefined. Pliny, on the other hand, rather indicates that the new decury was recruited from the equestrian order. At least its institution by Gaius is ascribed to the increased number of those who sought the right to wear the gold ring<sup>8</sup>). Yet Mommsen believed that this fifth decury, like the fourth, was drawn from men of *inferior census* and concerned with *levioribus summis* (*St. III*, p. 528, n. 1; p. 535, n. 5). For his reasons we must consider his views concerning the legislation of Julius Caesar.

The *lex Iulia* of 46 B. C. abolished the jury service of the *tribuni aerarii*<sup>9</sup>). According to Mommsen (*St. III*, p. 535) — and he is not alone in his opinion<sup>10</sup>) — it also retained three decuries in being, one of senators and two of *equites*. These three decuries Augustus took over, unaltered except in that the senators of the first decury were gradually supplanted by members of the now much larger body of *equites equo publico*<sup>11</sup>). This further assumption is in no way justified and is, if anything, discredited by several passages in Cicero's *Philippics* upon which Mommsen relies (*St. III*, p. 192, n. 4). In late 44 B.C. Antony proposed a law providing for a *tertia decuria* to be composed of centurions, claiming for it the authority of the dead Julius<sup>12</sup>). Could that claim have had a semblance

8) Pliny, *N. H.*, XXXIII, 33: *postea gregatim insigne id (scil. anulus) adpeti coeptum. propter haec discrimina C. princeps decuriam quintam adiecit, tantumque enatum est fastus, ut, quae sub divo Augusto impleri non potuerant, decuriae non capiant eum ordinem.*

9) Suetonius, *Div. Iul.*, 41.2; Dio, 43.25.1.

10) Cf. Madvig, *o. c.*, II, p. 226; Lengle, *R. E.*, VI A, 2434.

11) Mommsen's view (*St. III*, p. 535, n. 3) that senators were replaced by *equites* in the first decury under the Principate is sound and has met with general approval. Cf. Kübler, *R. E.*, VI, 299.

12) Cicero, *Phil.*, I, 19-20, V, 12-16, VIII, 27, XIII, 3 and 37.



of plausibility if Caesar had two years before provided for a *tertia decuria* to be filled with *equites equo publico*, as Mommsen believed? And, even if it could, would Cicero have been slow to mention what Julius had in fact done about the *tertia decuria*<sup>13)</sup>? Surely it was Antony's wish to bring back into being a decury which Caesar had in fact abolished and to fill it with those who would serve his own ends on the pretext that the *lex Iulia* had only half embodied Caesar's plans. If Augustus did find three decuries in being, as Suetonius supposes, it can only be that the threefold division of the *lex Aurelia* was reintroduced at some date unknown after 44 B. C.<sup>14)</sup> Whatever be the history of the jury courts in these troubled years of civil war, however, it is surely true that there is no evidence relating to it which would warrant the arbitrary dismissal of Pliny's testimony that the *tribuni aerarii* composed a separate decury in Imperial times<sup>15)</sup>.

Despite Mommsen, then, the position would seem to be that one of the Augustan decuries was composed of *tribuni aerarii*<sup>16)</sup>. Another was that of the *ducenarii*, while the *decuriae equitum* were two in number, supplemented in the Principate of Gaius by a third. Pliny's assertion that the greater number of *iudices* wore the *anulus ferreus* admittedly still wears the appearance of falsity, but now at least a reasonable explanation can be provided which allows of its truth. It may well be that the author is considering the numbers of those engaged on jury service in any one year rather than the numbers of those actually enrolled in the four decuries. There was

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13) Cicero's argument in *Phil.*, I, 19-20 is particularly noteworthy. The orator can speak favourably of the *lex Iulia* but cannot refer to any provisions made therein for the composition of a third decury. Indeed his rhetorical question *at quae est ista tertia decuria*, considered in its context, most naturally suggests that Antony's law dealt with a new creation.

14) This view is accepted by Rice-Holmes, *The Roman Republic* (Oxford, 1923), I, p. 391, n. 6.

15) Yet not only Mommsen but Madvig also asserts quite dogmatically that the *tribuni aerarii* vanished from the scene with Julius Caesar (*o. c.*, I, p. 183, II, p. 227, n. 1).

16) It is not my concern here to consider the qualifications required for membership of the decury of *tribuni aerarii*. For a discussion of this matter see Mommsen, *St.* III, pp. 189 ff.; Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford, 1912), II, pp. 90-5; Rice-Holmes, *o. c.*, I, pp. 391-5; Lengle, *R. E.*, VI A, 2434-5. Suffice it to say that I agree with Rice-Holmes for reasons stated by him that the class of *tribuni aerarii* was defined by a property qualification of 300,000 HS.

a difference: for, as Suetonius records, Augustus provided that one decury each year should observe a *vacatio*<sup>17</sup>). If, as the conclusions of this paper would seem to render more probable, this system of *vacatio* was not applicable to the lower decuries<sup>18</sup>), it would indeed be true that in Augustus' day the *equites* formed a minority of *iudices* available for duty in any one year.

Mommsen's second expressed criticism of Pliny's account is of far less weight and need not detain us long. He writes (*St.* III, p. 533, n. 3): 'daß Plinius Angabe arg verwirrt ist, namentlich die Benennungen *selecti* und *iudices* keiner einzelnen Decurie, sondern nur der Gesamtheit der Geschworenen zukommen, liegt auf der Hand'. It is true, as Mommsen says, that *iudex* is a generic name applicable to a member of any decury: but that this title rather than *ducenarius* should be applied in particular to the lowest decury by common usage is understandable enough. No mention is made of the title *tribunus*, although, as has been argued, it was certainly applicable to members of a distinct decury in the early Imperial period. Why not then *selectus* also? In what remains it is hoped, first, to show that other evidence supports Pliny's trichotomy and suggests that in fact the *selecti* were members of the *decuriae equitum*, and, second, to attempt an explanation of the use of this epithet to describe them.

The only literary allusions to the *iudex selectus* which decidedly post-date the Augustan reorganization are two. Ovid classes the judgment of a court of *iudices selecti* with a *decretum senatus* as an alternative means by which he might have received his sentence<sup>19</sup>). This is perhaps significant<sup>20</sup>). It can at least be said that the case of Ovid would

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17) *Div. Aug.*, 32.3: *ac plerisque iudicandi munus detractantibus vix concessit, ut singulis decuriis per vices annua vacatio esset.*

18) The need for *vacatio* presupposes the abandonment of an annual change-over in the composition of the decuries concerned. Unless the conclusions reached below are mistaken, the non-equestrian decuries were at least *subject* to annual revision.

19) *Tristia*, II, 132: *nec mea decreto damnasti facta senatus, nec mea selecto iudice iussa fuga est.*

20) It may of course be that Ovid is not here using the term *iudex selectus* in the restricted sense in which it is used later in the Principate. Compare Horace, *Satires*, I, 4, 121-3, for a reference to *iudices selecti* in pre-Augustan times. *Selecti* must here be used to denote enrolment in the general *album iudicum*, or possibly, as by Cicero, *Verr.*, II, 32, selection

not have been regarded as one of the *levioribus summis* to be relegated to the decision of the *ducenarii*. The allusion of Seneca (*De benef.*, 3.7), however, to a *iudex ex turba selectorum quem census in album et equestris hereditas misit*, is far more explicit. Here possession of equestrian rank is cited as being among the qualifications required for preference as a *iudex selectus*.

According to Madvig (*o. c.* II, p. 227, n. 2) epigraphical evidence lends no support at all to the view that the *selecti* formed a distinct class within the body of *iudices*. Were this so, the view would not thereby be discredited. The onus of proof is with those who would discard the testimony of Pliny. In fact, however, inscriptions do tend to support it. Two relevant and by no means unimportant facts may be mentioned which emerge from an examination of the mass of epigraphical material. The first is that, in addition to the regular formulae denoting membership of the *decuriae*, of which the most common is *iudex ex quinque decuriis* — or, for the period before Gaius, *ex quattuor decuriis*<sup>21</sup>) —, there appear in certain cases further titles which serve to define the status of the *iudex* more closely. These are three in number<sup>22</sup>), the phrase *decuriarum III* (or *decuriis tribus*)<sup>23</sup>), *quadrigenarius*<sup>24</sup>), and *selectus*<sup>25</sup>). Now it is generally agreed that 400,000HS was the equestrian census<sup>26</sup>) and that the *tres decuriae* were in fact the *decuriae equitum*. It is not, therefore, an unreasonable assumption that all three titles distinguish the same group within the generic category *iudices*. It may be noted, further, that in one inscription the two titles

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for service at a particular trial. It should be noted that *legere* rather than *seligere* is the verb more commonly used to denote enrolment in the *album* in Republican times (cf. below p. 210).

21) There are numerous minor variations on these formulae, for which see the index to *I. L. S.* (III, 1, pp. 364-5).

22) This is to exclude the two cases (*C. I. L.*, II, 4275, IX, 5567) and possibly a third (*C. I. L.*, VIII, 1147) in which the actual number of the decury is given.

23) See above, note 7.

24) *I. L. S.*, 4093 *iudici CCCC selecto*, 6523 *iudex CCCC Romae decur(iarum) V*, 6772 *ex quinque decur(iis) iudicum inter quadrigenarios adlecto*.

25) Cited in notes 28-30 below.

26) See in particular Mommsen, *St.* III, pp. 499-500; Stein *o. c.*, pp. 21 ff.



*selectus* and *decur(iis) trib(us)* are found together, in another *selectus* and *quadrigenarius*<sup>27</sup>).

The second fact is perhaps more revealing. In ten of the fifteen cases known to me in which a *index* is entitled *selectus* he is further explicitly stated to have been an *equus*<sup>28</sup>), in another he is credited with equestrian census<sup>29</sup>), while in at least three of the remaining four his career is recorded to have been such as to leave no doubt concerning his possession of equestrian rank<sup>30</sup>). Further, it can be shown in almost every case that the conferment of equestrian dignity preceded service among the *indices selecti*<sup>31</sup>). It is true indeed that there exist numerous examples of *indices* known either from their titles or their careers to have been *equites* who are not styled *selecti* in the inscriptions. This is quite to be expected. Just as many *equites* failed to note their rank, although it must have been a prerequisite of their various offices, so, no doubt, many were content not to parade by the inclusion of the word *selectus* what must have been obvious to one who examined their remaining titles. It is sufficient for our purpose that we know from inscriptions of no *index selectus* who was not also at the same time an *equus*.

What then is the significance of the epithet *selectus*? Has it reference merely to the fact that the person to whom it is applied had been honoured by the bestowal of the *equus*

27) *I. L. S.* 4093, 5016.

28) Possession of the *equus publicus* is attested in *I. L. S.* 5006, 5016, 6572, 6726, 6744; *C. I. L.*, IX, 5303; *Bulletin de Correspondance Hellenique*, X (1886), p. 456. The title *equus* appears in *I. L. S.* 6747, 7122; *C. I. L.*, IX, 5841.

29) *I. L. S.* 4093.

30) *I. L. S.* 1397, 1419; *C. I. L.*, V, 7373. *C. I. L.*, IX, 3023 is altogether too fragmentary.

31) In all the inscriptions cited in note 28 above with one single exception the title *equus* or its equivalent precedes the title *index*. The exception is *I. L. S.* 5016, where, however, membership of the equestrian decuries is proved by the full title *index selectus decur(iis) trib(us)*. In *I. L. S.* 4093 the census figure is coupled with the title *index* (see above, note 24). In *I. L. S.* 1397, 1419 and *C. I. L.*, V, 7373 the title *index selectus* either immediately precedes or follows further undoubted equestrian titles. Of course it cannot be ascertained with certainty in many cases that ascending order is consistently observed, but a study of the fullest inscriptions in which there is little doubt that the order is ascending throughout suggests that in general appointment to the equestrian decuries came soon after the conferment of the *equus publicus* and in many cases preceded entry on the *militia equestris* (cf. *I. L. S.* 2713, 2730, 2733, 2739, 6457, 6573, 6644, 6747).

*publicus*<sup>32</sup>)? It would not appear so. *Selectus* directly qualifies *index*: it says something about the process by which the *index* was appointed to serve in that capacity. Yet it is not an adjectival participle applicable generally to all *indices*. That is indicated by the evidence which has been considered. Only members of the *decuriae equitum*, it appears, did in fact use this title. In what sense, then, were these *indices* who were chosen from the ranks of the *equites* more fitted to style themselves *selecti* than those others who were recruited from among the *tribuni aerarii* and the *ducenarii*? A satisfactory answer to this question can, I believe, be given.

In Republican times since the passing of the *lex Aurelia* in 70 B.C. it had been the custom for a general *album indicum* to be drawn up annually, on which each of the three classes qualified under the provisions of that law to serve were represented by 300 members<sup>33</sup>). This general *album* was compiled by the *praetor urbanus*<sup>34</sup>). Its composition was not determined in any way by the censors or by those possessed of censorial authority, except, of course, in that the wider classes from which the *indices* were drawn were defined by a property qualification. This is made manifestly clear by Cicero. In the course of his defence of Cluentius (§ 141) he tries to convince his audience that *ensoria ignominia* should not and does not in fact prejudice a man's political advancement. It is ignored, he says, by, among others, the *praetores urbani qui iurati debent optimum quemque in lectos indices referre*. Again in his speech of 55 B.C. against Piso (§ 94) he speaks of the effects of Pompey's measure which in some way narrowed the classes from which the *album* was to be recruit-

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32) I accept the view of Mommsen and Stein that all *equites* of the Imperial age possessed the *equus publicus*. The restoration *ii qui ordini equestri adscripti privatum equum habebunt* made at lines 55—6 of the Tabula Hebana by the original editors and preserved by, among others, F. De Visscher (*Revue Historique de droit français et étranger 4th. series*, XXIX (1951)) is certainly wrong. For one thing, the word order *privatum equum* is unparallelled in Latin literature. For another, the *equites equo publico* are mentioned later at line 57, and it is therefore required that the persons alluded to in 55—6 should be of a higher status. They must in fact be those destined for the Senate, the *lati clavii*. Compare the revised text and notes in *La Parola del Passato*, XIV (1950), pp. 106, 155—6.

33) Cf. Cicero, *ad fam.*, VIII, 8. 5.

34) Cf. Mommsen, *Römisches Strafrecht*, pp. 210—11; Strachan-Davidson, *o. c.*, II, pp. 75 ff.

ed<sup>35</sup>). *Neque legetur quisque voluerit, nec quisque noluerit non legetur*, he writes. *Iudices indicabunt ei quos lex ipsa, non quos hominum libido delegerit*. Mommsen affirms dogmatically (*St.* III, p. 536; *Straf.* p. 211) that with the advent of the Principate this right of the *praetor urbanus* lapsed. The *princeps* himself, acting in a censorial capacity, took over responsibility for the composition of the decuries. Is this assertion justified? Or should it rather be said that the *decuriae equitum* alone, the *selecti*, were subjected to the censorial authority of the *princeps* and his staff?

Suetonius writes (*Tib.* 41) that during the period of Tiberius' absence from Rome *curam usque adeo abiecit ut postea non decurias equitum umquam supplerit, non tribunos militum praefectosque, non provinciarum praesides ullos mutaverit*. Tacitus (*Ann.* III, 30) speaks of a certain L. Volusius *censoria etiam potestate legendis equitum decuriis functus*. There can be no doubt as to the implication of these passages. It is that the process by which the *decuriae equitum* were filled was in some way different from that by which the other decuries were filled. The non-equestrian decuries could apparently be made up despite Tiberius' absence: they were presumably not enrolled by the same censorial commission as the *decuriae equitum* and perhaps by no such commission.

Other evidence, though less decisive, gives further reason for supposing that the composition of the *decuriae equitum* was the special concern of the *princeps* in a sense in which that of the other decuries was not. As Stein has satisfactorily shown against Madvig (*o. c.* I, pp. 173 ff.) and Mommsen (*St.* III, pp. 493—5), there took place at regular intervals, in addition to the annual *recognitio* of the *turmae* of *iuniores*, a censorial *recognitio* of the entire *ordo equester*<sup>36</sup>). Significantly enough it is with this general review of the *equites* that several of the recorded instances of the interest of the *princeps* in the composition of the decuries is closely con-

35) Cf. Asconius, *In Pisonianam*, p. 15: *ut amplissimo ex censu ex centuriis aliter atque antea lecti iudices, aequae tamen ex illis tribus ordinibus res indicarent*.

36) In his discussion of the matter (*o. c.*, pp. 63-9) Stein argues with some plausibility that, when Suetonius refers to a frequent *recognitio* as opposed to an annual review in the phrase *equitum turmas frequenter recognovit* (*Div. Aug.*, 38. 3), he is thinking confusedly of the *recognitio* of the entire *ordo*.

nected. Stein points out that the L. Volusius mentioned by Tacitus can well have been and probably was one of the ten Senatorial *adiutores* who assisted Augustus in his review of the *ordo equester*<sup>37</sup>). It was in connection with his *recognitio equitum* that Claudius withdrew the name of a *vir splendidus* from the *album iudicum*<sup>38</sup>). The man against whom Domitian took the same action was a Roman *eques*<sup>39</sup>).

There are three further literary references to the activity of the *princeps* in filling or reviewing the *decuriae iudicum*, two in the works of Suetonius (*Div. Aug.* 29.3; *Tib.* 51.1), and one in the Natural Histories of Pliny (XXIX, 18). All that can be said of these is that, although it is impossible definitely to identify the decuries concerned with those of *equites*, it is equally impossible to prove that they cannot be so identified<sup>40</sup>). Inscriptions lend stronger support. In all cases in which a *iudex* is referred to as adlected by a *princeps* it can be shown that he was also an *eques*<sup>41</sup>).

Unfortunately the strong probability which these facts induce that the equestrian decuries alone were made up by the *princeps* and subjected to censorial *recognitio* cannot be confirmed by any undisputed reference to the method employed in recruiting the *tribuni* and the *ducenarii*. Discussion of this matter would not be complete, however, without some mention of the words of Aulus Gellius (*N. A.* XIV, 1. 1) — *a praetoribus lectus in iudices sum ut iudicia quae appellantur privata susciperem*. Mommsen believed (*St.* III, p. 538; *Straf.*, p. 211, n. 1) that Gellius was here referring not to his enrolment on the general *album* but to his further selection for

37) Suetonius, *Div. Aug.*, 39: *impetratisque a senatu decem adiutoribus unum quemque equitum rationem vitae reddere coegit atque in exprobratis alios poena, alios ignominia notavit, plures admonitione sed varia.*

38) Suetonius, *Div. Claud.*, 16. 2.

39) Suetonius, *Dom.*, 8. 3.

40) Mommsen believed that the decury of *ducenarii* was included by Pliny, when he wrote (*N. H.* XXIX, 18) *decuriae pro more censoris principum examinantur, inquisitio per parietes agitur, et qui de nummo indicet a Gadibus arcessitur*. His reason was that civil suits were the concern of the lowest decury (cf. *St.* III, p. 537, n. 7). That the equestrian decuries also concerned themselves with civil suits is proved, however, by *I. L. S.* 6747 which speaks of a *iudex de IIII decuriis eques selectorum publicis privatisque*.

41) *I. L. S.* 6863, *C. I. L.*, II, 4275, VIII, 1147, X, 53, *L'Année Epigraphique*, 1925, No. 44, 1939, No. 81 (*equus publicus*); *I. L. S.* 1397, 1403, 1419; *C. I. L.*, VIII, 1494; *L'Année Epigraphique*, 1924, No. 30 (tenure of equestrian posts).

service on a particular court. He may be right. It is perhaps true that in the last century of the Republic the praetor in charge of each *quaestio* selected from the *album* a smaller group of *iudices* who would be available for service on his court during the year, and that this practice was observed during the Principate<sup>42</sup>). There appears to be no good reason, however, for denying that Gellius is alluding to his original appointment as *iudex*. As has been seen, *lectio* was the term used of enrolment in the general *album iudicum*<sup>43</sup>). The specification of his activities in the phrase *ut iudicia quae appellantur privata susciperem* most certainly does not necessitate the acceptance of Mommsen's interpretation: for, as Mommsen himself admits, the lower decuries never transgressed into the field of criminal law. If Gellius is referring to his original *lectio in decurias*, there is here confirmation of a view which we have seen to be decidedly encouraged by the other evidence. The *tribuni aerarii* and the *ducenarii* were chosen not by the *princeps*, but, as in the first century B. C., by the praetors.

The force of the epithet *selectus* now becomes evident. A *iudex* of the *decuriae equitum* was so called because, unlike his fellows from lower decuries, he owed his adlection to the *princeps* and was subjected during his period of service to his censorial scrutiny. It is possible to detect an air of superiority reflected in the title which he chose. He was, however, amply justified. Not only did he judge the more important cases brought before the *iudicia publica*. During the Principates of Augustus and Tiberius at least, as is now known<sup>44</sup>), he sat with senators on that distinguished body to which was entrusted so important a part in the appointment of the major magistrates.

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42) Cf. Mommsen, *Straf.*, pp. 211-2; Strachan-Davidson, *o. c.*, II, pp. 102 ff. Although each praetor before 70 B. C. seems to have had an *album* of *iudices* from which he could draw for his own *quaestio*, there is in fact no decisive evidence that this system remained in being *after* the passing of the *lex Aurelia*.

43) See above, p. 210.

44) Cf. Tabula Hebana, 11. 7-8. Those who are to give their vote on the *destinatio* of consuls and praetors are cited as *senatores itemque equites omnium decuriarum quae iudiciorum publicorum causa constitutae sunt erunt*.