

THE OFFICE OF COUNT OF THE PRIVY PURSE
IN THE LATER ROMAN EMPIRE

by

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INTRODUCTION

A detailed study of the office of Count of the Privy Purse in the Later Roman Empire is interesting and important for several reasons.

In considering these, it is necessary first of all to remember that the Privy Purse of the Sovereign in the Late Roman Empire was much larger than the corresponding treasury in any of the monarchies that have existed in Europe subsequent to the fall of the Roman Empire. In fact, properly speaking, the res privata was not a privy purse at all, but a public treasury on a par with the State Treasury (Sacrae largitiones), and the official in charge of its administration was equal in rank and honor with the Comptroller of the State Treasury (comes sacrarum largitionum).

The numerous and comprehensive categories of property which passed into the Privy Purse affected every province of the Empire, and in certain areas were so extensive as to make the res privata of the Emperor perhaps the dominant economic factor. The public expenses, both regular and extraordinary, were paid in part from the revenues of the Privy

purse. The Count of the Privy Purse, therefore, has no exact equivalent in the European monarchies which succeeded the Roman Empire and existed to our own times. The study of the office and its administrative competence thus constitutes the study of an important phase of the financial administration of the Late Roman Empire.

The nature of the imperial office in relation to several of the categories of property which fell to the Privy Purse, as well as the avarice of the officials and the rich, and the corruption of the bureaucracy lend also a sinister aspect to the administration of the res privata, especially under weak or suspicious sovereigns, which is by no means so marked a feature of the corresponding office under later European monarchies.

The effort of the Government to check official corruption in the financial and judicial administration is only too apparent in the legislation of the Codes. Administrative changes in the management of the res privata are almost consistently made in the hope of putting an end to the abuses of previous methods. The study of the office of Count of the Privy Purse, therefore, from one point of view, assumes the complexion of an inquiry into the causes for the collapse of the Roman Empire whose fall has long been considered more the result of internal decay than external pressure. It reveals

in detail official corruption in one of the most important imperial ministries, potentially affecting every citizen of the Empire, and the inability of the Government to place any effective check upon it.

Finally, the study of the functioning of the office of Count of the Privy Purse is important as a detailed examination of a single office of the bureaucratic system of the Late Empire which, if an element of weakness, was even more so an element of strength and one of the secrets of the longevity of the surviving fragment of the Empire in the East.

The principal sources for the study of the office which forms the subject of this dissertation are the Codes of Theodosius II and Justinian, the collected Novels of Theodosius II, Valentinian III, Majorian, Anthemius, Marcian and Justinian, and the Notitia Dignitatum utriusque Imperii. The codices and the novellae contain numerous administrative edicts, most of them addressed directly to the Count of the Privy Purse or his subordinates which enable us to establish many of the details of his administration, and trace the development and decline of the office as well as the various fluctuations in its competence. They are valuable for almost the entire period of three centuries during which the office existed, although decreasingly so for the period after the middle of the fifth century. The Notitia Dignitatum, compiled

in its present form by about 425 A.D., presents an incomplete and somewhat confused and contradictory list of the provincial subordinates of the Count of the Privy Purse at the beginning of the fifth century A.D., and also the personnel of the central officium of the res privata established at the Court. In the use of these works, Godefroy's extensive and impressive commentaries to his edition of the Codex Theodosianus and the Novellae of the fifth century Emperors, and Böcking's notes to his edition of the Notitia Dignitatum are of inestimable value.

The formula comitivae privatarum contained in the sixth book of the Variae Epistolae of Cassiodorus, as well as several of the letters themselves are important as showing the Count of the Privy Purse and his functions in the Ostrogothic Kingdom established in Italy by Theodoric, and may also be considered as reflecting the contemporary character of the office in the Empire, upon the model of which the Ostrogothic administration was closely modelled.

In addition, incidental references are found scattered throughout the other literature of the period, particularly in the works of the historians, both secular and ecclesiastical. Of these, by far the most important is Ammianus Marcellinus. The portion of his history that has survived covers the period from the reign of Constantius to the death of

Valens and is useful, therefore, for material relating to the Count of the Privy Purse as that office existed in the fourth century.

The inscriptional evidence is almost negligible, except for the period of Diocletian and Constantine, where it forms an important link in tracing the change of title from the period of the Principate to that of the Autocracy.

Various aspects of the history and functions of the res privata have been treated by modern writers, beginning with Wiart's Le Regime des terres du fisc au Bas-Empire (Doctoral Thesis in Law, Paris, 1894), His' Die Domänen der römischen Kaiserzeit (1896) and Schulten's Die römischen Grundherrschaften: eine agrarhistorische Untersuchung (1896). Wiart concerned himself exclusively with the period of the Late Empire. His devoted a preliminary chapter to the study of the domain under the Principate. Both, in effect, deal almost exclusively with the imperial domain lands. Schulten's work embraces the periods of both Early and Late Empire. It is concerned with the large estate in general and not only the imperial domain, and deals, furthermore, with the juridical and economic character of the large estates as well as the functionaries in charge of their administration and the methods of exploitation. It is the largest and most general treatment of the subject.

His' discussion, however, has the merit of being exceptionally clear. In 1899 Beaudouin's "Les grand domaines dans l'empire romain d'apres des travaux recents" summarized the work of his three predecessors on this subject, included new inscrip-tional material (notably Toutain's L'inscription d'Henchir Mettich : un nouveau document sur la propriete agricole dans l'Afrique romaine, published in the Revue historique de droit, 1897, p. 373 f. and in the Memoires presentes par divers savants a l'Academie des inscriptions et Belles-Lettres, Series I, Vol. XI, part 1, 1897), and established the background against which the Count of the Privy Purse and his officium functioned. Karlowa's Römische Rechtsgeschichte (1885), and such standard general histories as Seeck's Geschichte des Unterganga der antiken Welt (1895-1911) and Stein's Geschichte des spät-römischen Reiches (1928) offer a brief account of the office of Count of the Privy Purse at the height of its power without any consideration, of course, of its development or the numerous fluctuations in its competence. Seeck's treatment in his article Comites in Pauly-Wissova's Real-encyclopädie der klassischen Altertumswissenschaft (Vol. IV, 1901) gives the best account of the origin of the office and the essential features of its administration at the height of its power. Bury's Imperial Administrative System in the Ninth Century (1911) and Stein's Studien zur Geschichte des byzantinischen Reiches (1919)

are of prime importance in tracing its decline and the probable reasons and occasion for its disappearance.

The present study undertakes to trace the development of the office from its roots in the period of the Principate to its disappearance at the beginning of the seventh century, and to treat in as great detail as possible from the surviving evidence the development and decay of the various aspects of the competence of the Count of the Privy Purse, many phases of which have scarcely been touched upon hitherto.

PART I

**THE HISTORY OF THE OFFICE OF COUNT
OF THE PRIVY PURSE**

Chapter I
ESTABLISHMENT OF THE OFFICE OF COUNT OF THE
PRIVY PURSE

It seems well to preface the present chapter on the history of the development of the office of the Count of the Privy Purse in the Late Roman Empire with a short sketch of the history of the administration of the private means of the Emperor from the foundation of the Empire until the creation of the office in question by Constantine.

Under the Republic the sole treasury of the State was the aerarium Saturni whose funds were administered by the Senate. With the establishment of the Principate by Augustus and the division of the provinces into Senatorial and Imperial, the aerarium became the treasury of the Senatorial provinces, while a new treasury - the fiscus - was created by Claudius to support the administration of the Imperial provinces. In Greek the former is called τὸ δημόσιον, the latter, τὸ βασιλικόν.¹ The fiscus was exclusively under the Emperor

1. Dio Cassius, LXXI, 32.

and his control of it was so complete and effective that it almost constituted in itself a "private" fund; thus we read in Ulpian : Res enim fiscales quasi propriae et privatae principis sunt.¹ Indeed, the deified Julius had virtually treated the State revenues as his own private property, as we read in Appian,² and at his death left a full purse and an empty treasury. According to Suetonius he placed his own private slaves in charge of the mint and the public vectigalia.³

However, it is apparent that Augustus, independent of his position as princeps, but solely as heir of Julius Caesar and a descendant of one of the oldest families in the State, had a strictly private patrimonium in the same sense that any other Roman citizen might possess such an inheritance. Such was the origin of the patrimonium principis or Caesaris which ultimately, as the res privata, came to have so great an importance in the social, economic and financial structure of the Roman Empire.

Augustus administered the patrimonium, as did any other Roman gentleman, by means of his own freedmen. Egypt occupied a peculiar position in the Imperial organization. There the Roman administration was conditioned by the wealth

1. Digesta, XLIII, 8, 2, 4; "Le fisc est aussi, au debut, la res familiaris" (Lecrivain, in Daremberg et Saglio, Dictionnaire des antiquites grecques et romaines, vol. IV, p. 350, s.v. patrimonium principis).

2. Bellum Civile, III, 20-21.

3. Suetonius, Julius, LXXVI, 3.

and strategic importance of the country, as well as the immemorial tradition of its natives who had always regarded the land and all that it sustained as the personal property of the Pharaoh. Augustus himself in his Res Gestae declares that he "added Egypt to the dominions of the Roman People."¹ However, although he nominally handed it over to the Roman People, he took good care to keep it exclusively under his own control. It was governed by an equestrian Prefect instead of a man of senatorial rank, and both Strabo and Tacitus were under no illusions as to the real nature of the government of Egypt when they described the Prefect as a viceroy.² Even in the case of Egypt, however, a distinction was made between two types of revenue, the one derived from the so-called $\gamma\eta$ βασιλική, having a larger and more public character,³ being the property of the Emperor as successor of the Pharaonic and Ptolemaic Kings, which was administered by the Prefect; the other being in a more special sense the private property of the Emperor, known variously as the $\lambda\omicron\gamma\omicron\varsigma$ οὐσιακός or $\kappa\alpha\iota\sigma\alpha\rho\omicron\varsigma$, $\kappa\upsilon\rho\iota\alpha$ καὶ $\psi\eta\phi\omicron\iota$, or $\psi\eta\phi\omicron\iota\kappa\omicron\iota$ $\lambda\omicron\gamma\omicron\iota$, and administered by the Idiologus, the former δ $\pi\rho\omicron\varsigma$ τῷ ἰδίῳ $\lambda\omicron\gamma\omicron$ or Steward, of the Ptolemies,⁴ who resided at Alexandria and administered

1. Monumentum Ancyranum, V, 24; 15, 1.

2. H. Idris Bell, in Cambridge Ancient History, Vol. X (1934), chapt. 10, p. 284.

3. Indeed, the terms $\gamma\eta$ βασιλική and $\gamma\eta$ δημοσιακή were commonly used interchangeably, and the first was in effect but a subdivision of the second.

4. Lecrivain, in Daremberg et Saglio, vol. IV, p. 354, s.v. patrimonium principis.

the imperial estates through his own bureaus, independent of and even serving as a check upon the financial activities of the Prefect. This distinction persisted into the Late Empire when we find the magister privatarum Aegypti by the side of the rationalis.¹

It was probably Claudius who created the office of procurator Augusti a patrimonio² at the same time that he created the office of a rationibus. This official was at first a freedman as were the incumbents of the other State offices created by Claudius; later a knight. He was often procurator a hereditatium or ab epistolis or a libellis at the same time that he filled the office of procurator a patrimonio.³

Even under Augustus, however, the Patrimony, due to the exalted station of its proprietor and enormous accumulations through legacies, was almost bound to assume the proportions of a department of state, and under the successors of Augustus the idea of private property in the administration of the patri- monium Caesaris gradually lost ground in favour of the idea of the law of the State and the Patrimony came more and more to be considered the property of the Principate as such. Naturally,

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1. Lecrivain, in Daremberg et Saglio, vol. IV, p. 354; cf. Hirschfeld, Untersuchungen auf dem Gebiete der römischen Verwaltungsgeschichte, p. 39, note 4.
 2. Mattingly, Imperial Civil Service of Rome, p. 15; cf. the earliest inscription that can be approximately dated, C.I. L., VI, 8501 : TI . CLAUDIUS MARCELLINUS (PROC . A)UG . A PATRIMONIO.
 3. C.I.L., VI, 31, 863, 8499, 8500, 798; XI, 5028; cf. Hirschfeld, op. cit., p. 41.

this altered view made no practical difference so long as the Principate remained within the same family, but the extinction of the Julio-Claudian House with the death of Nero and the accession of a new dynasty in the person of Vespasian made it at once apparent. The Patrimony of the Julio-Claudians passed intact to the Flavian House, and this transmission of the patrimonium principis from one Emperor to the next regardless of their family connection, proposed already by Caligula,¹ was confirmed by Antoninus and became a juridical rule : all legacies in favor of the Emperor even when expressly designated by his name, passed to his successor.² Therefore, in order to leave their own private goods either in part or in their totality to heirs who were not designated to succeed to the Principate, the Emperors were reduced to making special dispositions either while yet living or in their wills. Thus, Antoninus abandoned during his lifetime the usufruct of his private fortune to the State, but reserved the possession of it by will to his daughter;³ Marcus Aurelius ceded his paternal patrimony to his sister and a portion of the goods inherited from his mother to his

1. Dio Cassius, LIX, 15.

2. Digesta, XXXI, 56 (This did not, however, apply to the property of the Empress, l. 57); cf. Ulpian, Dig. (XXX, 1) fr. 39, #9, 10 : Item Campum Martium aut forum Romanum - legari non posse constat. Sed et ea praedia Caesaris, quae in formam patrimonii redacta sub procuratore patrimonii sunt, si leguntur, nec aestimatio eorum debet praestari, quoniam commercium eorum nisi iussu principis non sit, cum distrahi non soleant.

3. Vita Ant., VII & XII.

nephew,¹ while Pertinax and Didius Julianus freed their sons from the paternal authority in order to bestow their patrimony upon them.²

Such was the juridical condition of the patrimonium principis when Septimius Severus formally recognized it as the inalienable property of the Principate, and reorganized his own personal property by the creation of a new department in the financial administration - the ratio or res privata.³

Since both of these departments of the treasury exist side by side and both alike have to do with the administration of the private property of the Emperor it is often difficult to distinguish which was regarded as the property of the Principate as such and passed from Emperor to Emperor with the Principate, and which was the personal property of an individual Emperor. The above interpretation of the relative significance of the two treasuries is now the generally accepted one, namely, that the patrimonium was the property inalienably attached to the Principate, the res privata the personal fortune of the Emperor as an individual.⁴ This was precisely the case under

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1. Vita Marc., VII, 4; VIII, 9.
 2. Vita Pert., XI, 12; Vita Did., VIII, 9; Dio Cassius, LXXIII, 7.
 3. Spartianus, Vita Severi, XII, 4 : Tuncque primum privatarum rerum procuratio constituta est.
 4. Mattingly, The Imperial Civil Service of Rome, p. 22; Beaudouin, Les grandes domaines dans l'empire romain, p. 32; Platnauer, The Life and Reign of the Emperor Lucius Septimius Severus, p. 183; Parker, A History of the Roman World from A.D. 138 to 337, p. 76. Karlowa (Röm. Rechtsg.,

Septimius Severus whose personal fortune, built up chiefly by confiscation of the property of the adherents of his rivals Pescennius Niger and Clodius Albinus, constituted the res privata. However, it was inevitable that the new private treasury should ultimately undergo the same evolution as the old patrimonium upon the extinction of the Dynasty of the Severi. The tendency almost at once was for the patrimony to be simply absorbed into the fiscus and its place to be taken by the ratio privata.

Both Platnauer and Parker suggest that Septimius may have made this innovation on the model of Egypt where, as mentioned above, the *γῆ βασιλική* which was the domain land of the Emperor as successor of the Ptolemies was distinguished from the *γῆ οὐσιακή*, his private property more strictly speaking.

The new treasury was placed under the control of an official who at first held the title procurator patrimonii privati,¹ a designation which in itself suggests a "private"

I, p. 505), Wiart (Le regime des terres du fisc au Bas-Empire, p. 7, note I), and His (Die Domänen der römischen Kaiserzeit, p. 6, note 1) all assert the reverse which Beaudouin is inclined to accept though he admits the opposite to be generally held. Karlowa's thesis has been refuted by Hirschfeld (Der Grundbesitz der röm. Kaiser., p. 311-314) by the interpretation of Dig., XXX, 39, 8-10; C.I.L., X, 6657; XV, 7333.

1. For this early form of the title see the inscription from Antium, C.I.L., X, 6657 : M . AQUILIUS FELIX PROC . OPERUM PUBLICUM (A.D. 193) PROC . HEREDITATIUM PATRIMONII PRIVATI . . PROC . PATRIMONII BIS. This same Felix was one of the

patrimony as distinguished from the former patrimonium principis which had become a part of public law. The title very soon after became procurator rei privatae, rationis privatae, or simply privatae.¹

The new procurator was a trecenarius,² i.e. he belonged to the highest salaried class in the Equestrian Service, receiving 300,000 HS, and was thus equal in rank to the Secretaries of State. Thus the procurator rei privatae becomes of equal rank with the procurator a rationibus,³ while the procurator Augusti a patrimonio remained a minor official, more or less the subordinate of the fiscus.⁴ This difference in relative importance between the two offices is at once apparent when we come to trace the typical cursus honorum in the inscriptions. Whereas the procurator patrimonii is advanced to one of the provincial procuratorships or put in charge of the vigesima hereditatum, we find the procurator rationis privatae promoted to be vice praefecti vigilum,⁵ or even praefectus

two patrimonial procurators in Egypt in 201, B.G.U., 156; cf. Rostowzew, Dizionario epigrafico, III, p. 100.

1. C.I.L., XV, 7333, on a water pipe of Alexander Severus : STATIONIS PROP(R)IAE PRIVATAE DOMINI N(OSTRI) ALEX . AUG. In Greek, ἐπιτροπείου λόγων πριβάτης, in the bilingual inscription, C.I.L., X, 6569.
2. C.I.L., X, 6569, inscription of S. Varius Marcellus, the father of Elagabalus (Eckhel, D.N. 7, 244), PROC . RATION . PRIVAT . CCC.
3. Ulpian, Digesta, XLIX, 14, 6, 1 : Quodcumque privilegii fisco competit hoc idem et Caesaris ratio et Augustae habere solet.
4. Beaudouin, op. cit., p. 33.
5. C.I.L., VIII, 822; IX, 12345.

praetorio. Thus, Opellius Macrinus was Intendant of the Private Domain, succeeded Papinian as Praetorian Prefect upon the latter's fall, and in this capacity brought about the assassination of Caracalla whom he succeeded in the Principate itself.¹

In the meantime, the old aerarium had sunk practically to the level of a municipal chest for the city of Rome,² and all of its functions were absorbed by the fiscus, and since the old patrimonium principis began almost at once to decline after the establishment of the res privata, from the time of Septimius Severus on there might be considered to be but two important treasuries in existence - the fiscus and the res privata, and it is characteristic of the autocratic tendencies of Septimius Severus that the Comptroller of the State Treasury and the Intendant of his Private Purse should be equal in rank.

With the advent of the procurator rei privatae, the old procurator a rationibus in charge of the fiscus becomes generally known as the rationalis.³ Aelius Achilles and Cl. Perpetuus Flavianus Eutyclus, called rationales in C.I.L., VI,

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1. Parker, op. cit., p. 96; Capitolinus, Vita Macrini, II, 7.
 2. Parker, op. cit., p. 76.
 3. For some time the two titles occur side by side; indeed, there is a dedication to Maximianus (C.I.L., VI, 31384) on which is still found the title a rationibus, while rationalis occurs as early as the Flavian (C.I.L., X, 6092) and Antonine (C.I.L., XV, 7741, 7742) periods.

1585 (A.D. 193) are clearly respectively the procurator a rationibus and his adiutor, the procurator summarum rationum.¹

One of the problems in connection with the establishment of the res privata is to determine just what became of the patrimonium, or, more exactly, its precise relationship to the fiscus. Platnauer² concludes that the fiscus "swallowed up" a part of the patrimonium from the fact that we find no patrimonial officers in Rome or Italy mentioned in the inscriptions after Caracalla's reign while plenty of instances of officials of the res privata do exist.³ He regards it as possible, therefore, that the patrimonium in Italy was absorbed in part by the fiscus, in part by the res privata. In the provinces the patrimonium continues to be mentioned, although apparently in the smaller provinces at least, as a part of the res privata. Thus, in C.I.L., XIII, 1807 we have a PROC(URATOR) PROV . BITHYNIAE PONTI PAPHLAGO(NIAE) TAM PATRIMONII QUAM RAT(IONUM) PRIVATAR(UM), and in C.I.L., VIII, 11105, 16542 and 16543 an official who was at the same time procurator patrimonii in the region of Leptis and procurator rationis privatae in the region of Tripoli. These facts are in accordance with the tendency of the res privata to undergo the same evolution as the patrimonium

1. Platnauer, op. cit., p. 184.

2. Op. cit., p. 183, note 1.

3. C.I.G., 6771 (Regiones VIII & IX); C.I.L., III, 1464 (Regiones VII & V); C.I.L., XI, 6337 (Regio VIII); etc; Hirschfeld, Verwaltungsgeschichte, p. 44, note 2.

principis until there should really be no distinction left between them, both being inalienable property of the Principate.

The next period in the history of the Privy Purse opens with the wide-spread reforms of Diocletian, when after the fifty years of anarchy that had preceded him, he undertook the entire reconstruction of the Empire (284-305 A.D.).

The chief aim of Diocletian was to prevent the renewal of the disorders of the third century which had brought about the temporary dissolution of the Empire. When this chaos had been reduced to some order once more, Diocletian and his immediate successors were faced with the imperative necessity of reconstructing the entire administrative service of the Empire. Their solution of the problem kept the Empire as a whole intact for another hundred and fifty years and enabled a dwindling, yet still glorious and supremely important fragment of it to go on for a thousand years more.

Henceforth the government was frankly and without pretense an Autocracy and every attempt was made to hedge round the throne with that aura of glory and awful sanctity which it might be hoped would "shield the civil power from the lawless soldiery"¹ who had tossed the Principate from one head to another for a hundred years. Concomitant with the development

1. Cambridge Mediaeval History, Vol. I, p. 25.

of a theory of the autocratic and divine right of the Sovereign was the breaking down of the provinces into smaller administrative units and the separation of civil and military powers in an effort to prevent sufficient power from being concentrated in any single man's hands to enable him to start a rebellion. Thus, the forty-five provinces of Trajan's time were shredded up into some hundred and twenty in the new organization, and in each of these were two officials with entirely separate powers - a military governor (dux, comes rei militaris) and a civil governor (praeses, corrector, iudex).

Perhaps the single great official whose power was most curtailed in the new administration was the Praetorian Prefect whose vast military, civil and judicial power in the period of the Principate had enabled him too often to secure the assassination or fall of the reigning Emperor and mount the throne in his stead. Almost immediately Diocletian abandoned any attempt to govern the entire Roman world alone. Maximian was appointed co-ruler, at first with the title of Caesar, after 286 with that of Augustus conferred by his troops and ratified by the senior Emperor. After eight years on the throne Diocletian decided that the college of rulers must be still further enlarged in order to control the situation and appointed two Caesars, one for each of the Augusti. This arrangement resulted, not in the formal division of the Empire to be sure, but in the creation of four distinct spheres of influence. Each

Augustus and each Caesar was accompanied by his own Praetorian Prefect.¹ The old Praetorian Guard was reduced to the status of a garrison of Rome,² and removed from the command of the Prefects. Under Diocletian, however, they continued to hold the supreme command of the respective forces of each Prince and retained all the judicial and administrative powers within the sphere of each Prince which had accrued to their office during the course of the third century. This arrangement, however, lasted only until the early part of Constantine's reign. In 318 A.D., when his son, the Caesar Crispus, as a mere boy was sent to govern Gaul, the Prefect who accompanied him would be in all but name ruler of that part of the Empire and the temptation to make away with his ward and assume the purple might prove too great for human frailty to resist. The same situation presented itself when the other sons of the Emperor were raised to the rank of Caesars while still children and set up in different parts of the Empire. Constantine removed this danger by depriving the Prefects of all military power which was placed in the hands of the newly-created military Counts.³

Thus, not only were the Prefects deprived of their military power and the sphere of their activity reduced by the

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1. Seeck, Geschichte des Untergangs der antiken Welt, II, p. 64.
 2. Parker, op. cit., p. 265.
 3. Zosimus, II, 33; Lydus, De magistratibus imperii Romani, II, 10; III, 40; Seeck, op. cit., II, 83 f.; Stein, Geschichte des spätrömischen Reiches, pp. 178-179, 186-187.

administrative division of the Empire between several Princes, but the Prefect was severed from that close association with the Sovereign which had hitherto characterized his office. For the youth of the sons of Constantine meant that the actual administration of their respective establishments was conducted by their Prefects. Such was the origin of the great Praefectures of Gaul, Italy, Illyricum, and the Orient whose boundaries ultimately chrystallized under the successors of Constantine. In this way the Prefects became separated from the person of the ruler and associated rather with definite administrative districts. Their position within the Praefecture was now almost that of Viceroy of the Emperor and in an edict of Constantine of 331 A.D. addressed to all the provincials appeal from the judicial sentence of the Prefect to the Emperor is denied.¹ It is interesting to observe, in this connection, that as early as the reign of Philip (243-249 A.D.) that Emperor's brother, Priscus, was created commander-in-chief in the East with the title praefectus praetorio rectorque Orientis,² and it appears to have been policy and statesmanship with Gallienus and not indifference and neglect which prompted him to tacitly recognize the usurpers in Gaul and the East so long as the nominal unity of the Empire was secured and its defence against the

1. Codex Theodosianus, XI, 30, 16.

2. Zosimus, I, 20, 2; Dessau, I.L.S., 9005 : C . JUL . PRISCO
V . EM . FRATRI ET PATRUO DD . NN . PHILIPPORUM AUGG . ET
PRAEF . PRAET . RECTORIQ . ORIENTIS, TRIBONIUS SOSSIANUS P .
P . DOMO COL . HEL . DEVOTUS NUMINI MAIESTATIQ . EORUM.

enemies pressing in on all sides guaranteed thereby.

The result of this transformation in the character and powers of the Praetorian Prefects was the "creation of new offices and change in the rank and competence of offices already existing."¹ Thus, as a result of the Constantinian reforms, a group of new officials emerge bearing the general title comes to which is appended additional phrases indicating the chief function and general nature of their office. There were two groups of these officials, one military, comprising the comes et magister equitum, the comes et magister peditum, the comes domesticorum equitum and the comes domesticorum peditum, - the other civil, comprising the comes et quaestor sacri palatii, the comes et magister officiorum, the comes sacrarum largitionum, and the comes rerum privatarum.² We are concerned only with the civil Counts. It will be seen at once that the quaestor sacri palatii and the magister officiorum are entirely new officials. They were largely created to fill the functions previously performed at Court by the Praetorian Prefect. Thus, the quaestor sacri palatii took the place of the Prefect in his juridical capacity and aided by the imperial scrinia was responsible for the drawing up and issuing of imperial legislation. The magister officiorum, with whose rise Lydus specifically connects the decline in the power of the Praetorian Prefect,³ held a general

1. Boak, The Master of the Offices in the Late Roman and Byzantine Empires, p. 29.

2. Ibid.

3. De Magistratibus, II, 10.

supervision over the provision of arms and was commander of the new Palace Guard - the Scholae Palatinae; he was also what nearly corresponds with a modern Minister of Foreign Affairs, and in connection with this function was Master of Ceremonies. He exercised control over the four imperial secretarial offices and over the Court servants in general except in the case of those who came under the direct supervision of the Grand Chamberlain. In addition, he was in command of the newly organized schola agentum in rebus.¹ It is at once apparent by the mere summary of the competence of these two officials how far the Quaestor and the Master went toward taking over the functions lately exercised by the Praetorian Prefect.

The comes sacrarum largitionum and the comes rerum privatarum, on the other hand, are old officials of the Principate with new titles and higher rank in the official hierarchy, but with little actual change in functions. The former is the successor in the Late Empire of the rationalis of the Principate and the latter the successor of the procurator rei privatae.

It is somewhat difficult to trace the first steps in the creation of the office of comes rerum privatarum. In the period of drastic change and reconstruction during the reigns of Diocletian and Constantine, there was naturally considerable confusion in titles and a variety of names to designate the same office before their chrysalization into an official and

1. Boak, op. cit., p. 32; Parker, op. cit., pp. 267-268.

invariable form. Thus in the inscriptions and imperial consti-
 tutions we find mention of officials with the titles magister
privatae,¹ magister privatae rei,² magister rei summae privatae,³
 possibly (magister summ)ae rat(ionis) priv(atae),⁴ rationalis
privatae,⁵ rat(ionalis) s(ummae) p(riolatae),⁶ and p(rae)-
p(ositus) rerum privatarum.⁷ It is impossible to tell from the

1. Edict of Constantine, 314 A.D. (Murat. 580, 1 = Haenel, C.Theod., IX, 9, p. 834) : [de istis] itaque omnibus tam ad praefectos nostros quam etiam et praesides et rationales et ad magistrum privatae scripta direximus; Codex Theodosianus, XII, 1, 14, 326 A.D.; C.I.L., III, 13569; cf. Eusebius, Historia Ecclesiastica, VIII, 11, 2 : *Ἀδελφεὸς . . . διὰ πάντων*
ἀδελφῶν ἡμῶν, τῆς παρὰ βασιλεῦσι τιμῆς, ὡς καὶ τὰς
καθολοῦ, διοικήσεις τῆς παρ' αὐτοῖς καλούμενης μαγισ-
τροπίας τε καὶ καθολικῆς ἀμεμπτῶς ἀδελφῶν.
2. Codex Theodosianus, X, 1, 2.
3. C.I.L., VIII, 822 : C . ATTIO . ALCIMO . FELICIANO . P . V .
 VICE PRAEF . PRAET . PRAEF . ANNONAE . VICE . PRAEF . VIGILUM
 . MAG . R(oi) SUMMAE . PRIVATAE .
4. C.I.L., VI, 1630 : summ?AE . RAT . PRIV . Proc; cf. Hirschfeld
 op. cit., p. 44, note 3.
5. C.I.L., VI, 1704 : DOGMATII HONORI C . CAELIO SATURNINO V .
 C . ALLECTO PETITU SENATUS INTER CONSULARES . COMITI D . N .
 CONSTANTINI VICTORIS AUG . VICARIO PRAEFECTURAE URBS .
 IUDICI SACRARUM COG(NITIONUM) . VICARIO PRAEF(ECTORUM) PRAE-
 TORIO BIS . IN URBE ROMA ET PER MYSIAS . EXAMINATORI PER
 ITALIAM . PRAEFECTO ANNONAE URBS . RATIONALI PRIVATAE . . .
6. C.I.L., VI, 1133 :

~~C O N S T A N T I O~~
 NOB CAES .
 TACITUS FELIX . V . P .
 RAT . S . P . D . N . M . Q . EIUS .

7. C.I.L., VI, 1135 :

D O M I N A E . N O S T R A E . V E N E R A B I L I
 H E L E N A E . A U G U S T A E
 GENETRICI . D . N . CONSTANTINI . MAXIMI
 VICTORIS . ET . TRIUMPHATORIS . SEMPER . AUGUSTI
 FL . PISTIVS . V . P . P . P . RERUM PRIVATARUM
 PIETATI . EORUM . SEMPER . DEVOTISSIMUS

texts whether the magistri in Codex Theodosianus, X, 1, 2 and XII, 1, 14 refer to provincial subordinates or to the great Minister in charge of the Privy Purse at the Court; those in X, 1, 2 would appear to be most certainly provincial subordinates, since the constitution itself is addressed to the rationalis of Africa and X, 1, 4 of 320 A.D. is addressed to a magister privatae rei Africae. However, in Eusebius, in the Edict of Constantine, in C.I.L., III, 13569 and in C.I.L., VIII, 822 there can be no doubt that the head of the Privy Purse is referred to. Likewise, the rationalis in C.I.L., VI, 1704 and in C.I.L., VI, 1133 is the central Minister at Court.

From the instances where it is possible to date the documents, it would appear that the title magister was an earlier usage than rationalis. Thus Adauktos who appears as magister in Eusebius was one of those who perished in the Diocletianic persecutions (circa 302-305 A.D.), and a magister privatae appears in 314 A.D. in the Edict of Constantine. The first use of the title rationalis that can be even approximately dated is after the defeat of Licinius in 323. Thus Hirschfeld considers Caelius Saturninus to have been rationalis privatae sometime between 323 and the death of Constantine¹ whose name alone is given in the inscription with the surname Victor. From his dedication to Constantius as nobilissimus Caesar it is

1. Op. cit., p. 38, note 2.

apparent that Tacitus Felix was rationalis summae privatae sometime between 324 when Constantius was elevated to the rank of Caesar and 337 when he succeeded his father as Emperor in the East. However, it is quite possible that both titles were used side by side indiscriminately. The title rationalis rerum privatarum is found as late as 354 (353) referring apparently to the head of the administration of the Privy Purse and not to one of his subordinates in the provinces.¹ There is only one instance of the use of the title praepositus rerum privatarum, that of Flavius Pistius who served the mother of Constantine in this capacity.

The full title in its official form, i.e. comes rerum privatarum, does not appear until the reign of Constantius. In the year 339 A.D. we find a constitution addressed ad Eusebium com(item) r(erum) p(rivatarum),² and again in 345 we find another addressed ad Eustathium com(item) r(erum) p(rivatarum).³ However, it is probable that the official in charge of the res privata had the honorary title of comes long before, and received it, indeed, from Constantine himself. Thus, as early as 319 A.D. we find an official performing the duties of the later comes rei privatae who is designated by the Emperor as comes et amicus noster.⁴ Another constitution, dating from 340,

1. Codex Theodosianus, VIII, 7, 6.

2. Codex Theodosianus, X, 10, 6, cf. Seeck, Regesten der Kaiser und Päpste, p. 187.

3. Codex Theodosianus, X, 10, 7.

4. Codex Theodosianus, X, 8, 2.

reveals how the comes et amicus noster of Constantine might well have been the comes rei privatae without being designated by his full title in the imperial salutation; the constitution of 340 is addressed to Nemesianus comes and has to do specifically with the res privata, decreeing that the curiales shall not be obliged to undertake any extraordinary burdens on behalf of the private estate since it is sufficient if they manage to fill their municipal obligations. Nemesianus' full title might have been comes rei privatae. As we shall presently see, the title comes was one whose use was very general at the Court of Constantine, and the high official in charge of the Privy Purse would very likely already have possessed it previous to and independent of his elevation to that office. Thus, C. Caelius Saturninus was a comes d. n. Constantini Victoris Aug. and filled in his long official career, among other offices, that of rationalis privatae.¹

This brings us to the question of the origin and significance of the title comes which was borne by so many officials of the Late Empire. In the days of the Republic the word was loosely employed to designate persons who were attached to the staff of a provincial governor, especially such of these as had no definite office or function connected with the administration. Something of this original sense of "companion" was

1. C.I.L., VI, 1704.

retained throughout the Principate, and the word acquired only in the first half of the fourth century the sense of a definite and official title with definite duties and rank attached to it. During the Principate various semi-official functions came to be associated with the designation comes Augusti, at first judicial and advisory, and then, from the time of Trajan, military. In the middle of the third century the title suddenly changed its character. From the period of Maximinus Thrax the title comes Augusti was no longer employed in reference to human beings, but was attached to the divinities, thus forming another step in that process by which the Emperor finally, under Diocletian, assumed while yet living not actual divinity, to be sure, but a sort of divine ancestry by fictitious association in the assumption of the title Jovius for himself and that of Herculus for his colleague Maximian.¹ When Constantine was elevated to the purple by his troops upon the death of his father, Galerius refused to recognize his status as being above that of a Caesar, but Maximian accepted him as Augustus and gave him his daughter Fausta. Constantine thus became the representative of the dynasty which was under the tutelary guardianship of Hercules and it is this deity who appears on the coinage as conservator and comes, and in a panegyric delivered in A.D. 307 hopes are expressed for the eternal endurance

1. For a detailed discussion of the title comes see Seeck's article comites in Pauly-Wissowa, Real-Encyclopädie der klassischen Altertumswissenschaft, vol. IV.

of the imperatores semper Herculii.¹ In 310, however, this association was broken by the death of Maximian and the subsequent condemnation of his acts and memory. Constantine then associated himself with the Sun-god who was extensively worshipped throughout Gaul, and at the birthday celebrations at Augusta Treverorum in 310 a florid panegyrist represents him as repairing to Apollo's temple to find Apollo tuus,² and he later speaks of the temple as the seat of the Emperor's numen.³ On the coinage issued at this period Sol invictus comes is the common legend and in a panegyric of 311 Apollo is spoken of as ille quasi maiestatis tuae comes et socius.⁴

However, after the conversion of Constantine to Christianity, this usage was dropped and the title comes suddenly reverts to its former mundane employment. While Constantine and Licinius were joint Emperors (315-317 A.D.) we find a comes Augustorum nostrorum.⁵ After they had elevated their sons to the rank of Caesars (317-324 A.D.) very likely the title, although an example does not appear to survive, would have been comes dominorum nostrorum Augustorum et Caesarum; at any rate after the fall of Licinius in 324 A.D. we find a comes dominorum

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1. Pan. Incert., VII, 2, 5; Maurice, Num. Const., II, pp. 81-91, 217, 230.
 2. Pan. Incert. VII, 21, 4.
 3. Pan. Incert. VI, 22, 2, *numinis tui sedes*.
 4. Pan. Incert. V, 14, 4; cf. Batiffoll, Les etapes de la conversion de Constantin, Bull. d'ancienne litterature et d'archeologie Chretiennes, III (1913), pp. 179-183.
 5. Dessau, 1217.

nostrorum Augusti et Caesarum,¹ or simply comes Flavialis.²

Thus, under Constantine and Licinius a person was no longer a count of an individual Emperor, but of all the Emperors and Caesars together, and, after the downfall of Licinius, of the Flavian House itself.

From this point began the development of the comitiva into a decisive factor in the organization of the imperial service of the Late Empire. At first the title was not attached to definite functions but was conferred upon persons entrusted with some temporary or extraordinary employment as in the case of C. Caelius Censorinus who was comes domini nostri Constantini maximi Augusti et exactor auri et argenti provinciarum III.³

Seeck sees in the elevation of the sons of Constantine as Caesars over portions of the Empire which was such a significant event, as we have already seen, in the development of the Praetorian Praefecture, likewise an important circumstance in the definite establishment of the functions of the individual comites.⁴ The Princes were too young to govern on their own initiative and the institution of the comitiva, vague as it was,

1. Dessau, 1223.

2. Dessau, 1224 : Q. Flavius Maesius Egnatius Lollianus in both 1223 and 1224.

3. Dessau, 1216 - the three provinces were Sicilia, Sardinia and Corsica (Not. Dig. Occ., X).

4. Pauly-Wissowa, Real-Encyclopädie, Vol. IV, p. 630, s.v. comites.

was at hand to be utilized as the implement of their guidance. However, it was necessary to define the competence of the office to ensure the despatch of the routine business of the different portions of the Empire over which the Caesars ruled since they lacked sufficient judgment at their tender age to employ the comites in the loose general manner of their father. This would seem to be the most likely reason for the definite development of the comitiva under Constantine, though we do not find it fully developed in the texts until the reigns of his sons. However, since they were still but young men at his death, it is unlikely that they did much more than add the finishing touches to the system already developed by their father.

In the provinces, we note the appearance of comites, qui per provincias constituti sunt,¹ or comites provinciarum.² In a vague way these comites of Constantine despatched into the provinces with extraordinary powers and functions seem to resemble the Missi dominici of Charlemagne. Their functions were sometimes so extensive as to embrace an entire diocese.³ It would appear that one of their chief purposes was to

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1. Codex Theodosianus, I, 16, 6 (331 A.D.).
 2. Codex Theodosianus, I, 16, 7 (331 A.D.).
 3. Octavian comes Hispaniarum in 316/17 (C.Theod., IX, 1, 1), Tiberianus comes Hispaniarum in 332 (C.Just., VI, 1, 6), Severus, comes Hispaniarum in 333 and 334 (C.Theod., VIII, 12, 5; XI, 39, 2; VIII, 18, 3), Acacius comes Macedoniae in 327 (C.Theod., XI, 3, 2) and Tertullian comes Dioeceseos Asianae in 330 (C.Theod., II, 26, 1).

strengthen the control of the central government over the provincial governors and officiales, and to place a check upon their maladministration, especially in the matter of justice.¹

Whereas the comites provinciarum on the whole preserved their extraordinary character and did not become a permanent feature of the administrative system of the Late Empire, at the Court was established a group of counts who had definite and permanent spheres, functions, titles and privileges and a regular order of precedence in rank. These counts have already been listed and the probable reasons for their appearance discussed.

1. Cf. Codex Theodosianus, I, 16, 6; 7; XI, 30, 16; 34, 1.

Chapter II

THE RES PRIVATA AND THE COUNT OF THE PRIVY PURSE
IN RELATION TO THE
CONSTITUTION OF THE LATE ROMAN EMPIRE

The title of the Count of the Privy Purse in its most official form, i.e. as it appears in the imperial constitutions, is most usually comes rei privatae or rerum privatarum. It also appears as comes privatarum,¹ comes largitionum privatarum,² comes privatarum remunerationum,³ comes aerarii privati,⁴ and comes divinae rei privati.⁵ In Greek there is an equal variety of expressions to designate the office. Ὁ κόμης τῆς ἰδικῆς περιουσίας⁶ and ὁ κόμης τῶν ἰδικῶν τοῦ βασιλέως⁷ appear in the Codes. Among the historians are found a number of expressions which are either transliterations of the Latin title,⁸ or somewhat loose and clumsy Greek

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1. Codex Theodosianus, XII, 1, 120.
 2. Codex Theodosianus, VI, 9, 1; 30, 16; X, 1, 13; 9, 3; Dessau, 1290.
 3. Codex Theodosianus, VII, 12, 2.
 4. Codex Theodosianus, VI, 9, 2; XI, 18, 1; XII, 6, 32; Codex Justinianus, XI, 71, 5.
 5. Novellae Justiniani, XII.
 6. Codex Justinianus, I, 33, 4.
 7. Codex Justinianus, X, 11, 8.
 8. Ἁλεξανδρον δε ποιει (Zeno) τῶν περιβάτων κόμητα, Malchus, De legationibus gentium ad Romanos, V (ed. Bonn, p. 240, l. 8); κόμητας προβάτων ἢ Ρωμαίων γλῶττα καλεῖ Philostorgius, VII, 10.

constructions, such as προετώτα τῆς αὐτοῦ βασιλέως περιουσίας,¹ τῆς βασιλικῆς οἰκίας προεστῆς,² οἱ τῶν βασιλικῶν ταμιείων φύλαξ,³ τῶν βασιλικῶν ἐφέστος ταμιείων φροσίδι,⁴ and κόμισις . . . τῶν λεγομένων περιουσιῶν.⁵

Likewise, the treasury administered by the Count of the Privy Purse was designated by a great variety of names, such as privatum aerarium,⁶ privatum nostrae maiestatis aerarium,⁷ privatae largitiones,⁸ privatae nostrae largitiones,⁹ and sacrae nostrae privatae.¹⁰ Even aerarium used alone and fiscus noster in certain cases designated the Privy Purse.¹¹ In Greek οἱ Οὐεῖοι τῶν πριβατοῦ, ¹² ταμείον, ¹³ and τὸν ἱερώτατον ταμείον were used.

The term domus divina was employed to designate (1) a single estate of the res privata, (2) an agglomerate of such estates, or (3) the entire establishment. Variations of this

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1. Menander, De legationibus Romanorum ad gentes, II (Corp. Scrip. Hist. Byzant., Vol. XIV, p. 345, line 20.)
 2. Philostorgius, VII, 10.
 3. Sozomen, V, 8.
 4. Zosimus, IV, 14.
 5. Philostorgius, III, 12.
 6. Ammianus Marcellinus, XXIX, 1, 5.
 7. Novellae Theodosii, XIX.
 8. Novellae Martiani, III; Novellae Majoriani, VII.
 9. Codex Justinianus, XI, 78, 2.
 10. Novellae Justiniani, CXLVII.
 11. Aerarium, Ammianus Marcellinus, XXIX, 1, 5; fiscus noster, Novellae Theodosii, XVII, 1.
 12. Novellae Justiniani, CXLVII.
 13. Novellae Justiniani, XII.

expression are augustissima domus nostra,¹ domus augusta,² domus regia,³ and domus aeternalis.⁴ The domus divina per Cappadociam was an aggregate of imperial estates sufficiently important to merit treatment in a separate chapter (cf. Chapt. III).

The imperial estates were separated and set apart from all other land; their administration was conducted by a separate establishment of officials, and the dwellers upon them constituted a class distinct from the rest of the subjects of the Empire, the "men of the House of Augustus" as they are styled in the Theodosian Code.⁵ Though frequently described as lying "in the territory" (in territorio)⁶ of some city, they were strictly extraterritorial,⁷ and the expression is to be understood as having a purely geographical or topographical significance for convenience in locating a given property,⁸ for the domains of Caesar were carefully set apart from the municipal territorium by inscribed stones marking the boundaries,⁹ and

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1. Codex Theodosianus, X, 26, 1; Symmachus, Epistolae, X, 41.
 2. Codex Theodosianus, X, 26, 1; Codex Justinianus, XI, 71, 1.
 3. Codex Theodosianus, X, 26, 1.
 4. Codex Theodosianus, V, 16, 32.
 5. Codex Theodosianus, X, 26 : De conductoribus et hominibus domus Augustae.
 6. C.I.L., XIV, 2934, 11, 19 & 19; Marini, Papiri, nos. 82, 83, 86; Vita Silvestri (Liber Pontificalis, ed. Duchesne), pp. 173-174, etc.
 7. Mommsen, Hermes, XV, 392.
 8. Beaudouin, op. cit., p. 18.
 9. C.I.L., VIII, 8811 (Bordj Medjana in Mauretania Sitifensis): limes agrorum a Gargilio . . . goddo dec(urione) p(ublice) p(ositus) secundum iussionem v(iri) p(erfectissimi) Jucundi

within these the municipal officials exercised no authority. The curiales were forbidden to participate in the administration of the domain land on the ground that their property was already liable to the municipality.¹ Likewise, the domain was exempt from municipal levies,² and its cultivators could not be called upon to fill the municipal honores and munera.³ Even the officials of the provincial governor were for a time forbidden to enter the domains for the purpose of collecting the taxes or making arrests.⁴

Except in the case of Egypt, no statistics or land registers survive enabling us to determine the actual extent of the res privata at any given time or in any particular area

Peregrini p(raesidis) n(ostri) inter territorium Aureliense et privata(m r)atione(m); op. cit., 8810 : Ex aucto(ritate Imp. C)aes. T. Aeli H(adriani Antonini Aug. pii) procura . . . (rationis) privatae Asculer. . . . termin(os) posuit; op. cit., 8812 : terminac(iones a)grorum definicionis Matidiae adsignantur colonis Kasturrensi(bus) iussu v(iri) e(gregii) Axi Aeliani proc(uratoris) Aug. r(ationis) p(rivatae) per Cae(lium) Martiale(m) agrimesore(m); op. cit., 10567 (Vaga in Africa Proconsularis) on one side : Caes(aris) n(ostri); on the other : E. M. R. (probably : fines municipii R....); Bull. Corresp. Hell., 1883, p. 313 (slab of stone found lying on the roadside near the village of Paradis, two hours from Kelchiburlu on the road to Isbarta) : Finis Caesaris N.

1. Godefroy, ad Codicem Theodosianum, XI, 7, 21.
2. Codex Theodosianus, X, 4, 2; VI, 3, 2.
3. Codex Justinianus, XI, 68, 1.
4. From 365 (C.Theod., XI, 7, 11) to 395 (C.Theod., VIII, 8, 5) and again from 397 (C.Theod., I, 11, 1) to 398 (C.Theod., I, 11, 2) the collection of the taxes was entrusted to the rationales rei privatae, cf. p. 237 f.; and from 383 (C.Theod., XI, 30, 41) to 398 (C.Just., XI, 74, 1) the inhabitants of the domain were tried only in the courts of the rationales.

of the Empire. In Egypt we have the actual figures of a land and tax register for five localities in the Fayum drawn up in the year 167 A.D. "by the komogrammateus of Hieria and other towns."¹ The register embraces a total area of approximately 12,600 arouras,² of which about 3,671 arouras or 29% was privately owned (ἰδιωτικὰ ἔσφαζον); 3,428 arouras or 28% (4,112 arouras or 33.5% if we include the προσοδικὰ ἔσφαζον) γῆ βασιλική; and 4,536 arouras or 36.8% pertaining to the οὐσιακὸς λόγος³ or strictly private estates of the Emperor (under a procurator usiacus since about the time of Vespasian)⁴ as distinct from the γῆ βασιλική or old domain land of the Ptolemies which, under the administration set up in Egypt by Augustus, had a more public character than hitherto as shown above (cf. p. 3). Egypt, however, occupied a singular position and is not to be considered as typical of the rest of the Empire.

In other provinces, nevertheless, the proportion of domain land as compared with the entire acreage must have been very large, indeed.⁵ If we are to believe Pliny, Nero acquired half of Africa Proconsularis by putting to death the six persons

1. Collart, P., Les papyrus Bouriant, Paris, 1926, No. 42.

2. Op. cit., p. 159.

3. Op. Cit., cf. Tables 11 (p. 145) and 16 (p. 150) for the significant figures.

4. Cambridge Ancient History, vol. X, p. 293 (H. Idris Bell).

5. Cassiodorus, Variae, VI, 8 (Formula comitivae rerum privatarum): Habes quoque per provincias de perpetuo iure tributorum non minimam quantitatem.

who owned it.¹ Certainly the imperial domains in Africa were enormous at all times in view of the concern of the Emperors for the alimentation of Rome, and may well have amounted to half the land.² In Cappadocia one half the total acreage was domain land in the reign of Justinian.³ About one fifth of the municipal territorium of Kyrrhos in Euphratensis belonged to the imperial estates, or 10,000 *βυα̃ ταμιακὰ* as compared to 50,000 *βυα̃ ἑλευθερικὰ*.⁴ Estates of the Emperor are mentioned in the sources for practically every region of the Empire,⁵ and, in fact, by the very nature of these estates and the means of their acquisition, it is apparent that property in every province of the Empire must have fallen from time to time to the res privata.

At the beginning of the Late Empire the administration

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1. Pliny, Natural History (ed. Jahn), XVIII, 6, 35.
 2. Schulten (Die römischen Grundherrschaften; eine agrarhistorische Untersuchung, Weimar, 1896, p. 119, note 120) has pointed out that the greater part of the constitutions contained in the Theodosian Code relative to the administration of the domains are addressed to African officials and the African provinciales.
 3. Novellae Justiniani (ed. Zacharia von Lingenthal), I, p. 263.
 4. Theodoretus, Epistle XLII, Migne, P.G., vol. 83, 1217-1220.
 5. See the list of horti, villae, praedia, fundi, etc. possessed by the Emperors in Italy and the provinces drawn up by Hirschfeld, Verwaltungsgeschichte, pp. 24-26; the list of procurators of various districts scattered throughout Beaudouin, op. cit., pp. 40-57; the lists of procurators and rationales in the Notitia Dignitatum, occ., XI; the interminable enumeration in the Liber Pontificalis of the donations with which Constantine endowed the churches of Rome and Italy (Vita Silvestri, ed. Duchesne, I, 170 ff.); also the lists in His, op. cit., pp. 45-48 and 71-72; and numerous references in Rostovtsev's Social and Economic History of the Roman Empire.

of this entire vast aggregate was centralized under the authority of the Count of the Privy Purse residing with his officium at the Imperial Court. He governed in the provinces through the instrumentality of the rationales¹ (sometimes also called magistri²) and the procuratores rerum privatarum,³ or saltuum.⁴ When we undertake to establish the hierarchical arrangement of these officials and the circumscriptions of domain land administered by each we at once encounter difficulties, for, whereas the dioecesan and provincial subordinates of the Praetorian Prefects and magistri militum are carefully arranged in the Notitia Dignitatum, there is considerable confusion and contradiction in the lists of the provincial subordinates of the Counts of the Sacred Largesses and the Privy Purse. Beaudouin places the rationales over the dioeceses and procurators over the provinces in certain cases.⁵ In the Notitia of the West we do find a rationalis rerum privatarum over each of the six dioeceses which formed the two praefectures of the Western Empire,⁶

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1. Cassiodorus, Variae, VI, 8 : Comitiva privatarum, sicut nominis ipsius sentitur insonare vocabulum, per rationalium curam quondam principum privatam fertur gubernasse substantiam.
 2. Codex Theodosianus, X, 1, 4 ad . . . magistrum privatae rei per Africam; op. cit., X, 1, 2 : . . . rationales et magistros privatae rei.
 3. Notitia Dignitatum occ., XI.
 4. Notitia Dignitatum or., XIII.
 5. Beaudouin, op. cit., p. 46.
 6. Op.cit., Sub dispositione viri illustris comitis rerum privatarum : rationalis rerum privatarum per Italiam; rationalis rei privatae per Urbem Romam et Suburbicarias Regiones; rationalis rei privatae per Africam; rationalis rei privatae per Hispanias; rationalis rei privatae per Gallias; rationalis rei privatae per Britannias.

and likewise a rationalis of the Sacred Largesses.¹ The Notitia of the East simply lists rationales rerum privatarum sub dispositione comitis rerum privatarum. However, it mentions comites largitionum per omnes dioeceses as subordinates of the comes sacrarum largitionum. It would seem, therefore, that as a general rule each diocese of the Empire formed a large administrative unit of the res privata under a rationalis. Thus far, then, we have a certain co-ordination between the civil administration and that of the Privy Purse with respect to the diocesan divisions.

The diocese was further subdivided into smaller aggregates of imperial estates which were placed under provincial procurators subject to the rationales. Thus the administrative regulations of the Count at the summit of the structure were addressed to the rationales who made them generally known to the procurators subject to them. The term rationalis, however, was frequently employed in a more general sense which did not indicate a diocesan official at all but was rather more the equivalent of procurator. Such were the rationalis rerum privatarum per Illyricum, the rationalis rerum privatarum per Siciliam, the rationalis rerum privatarum per Quinque Provincias, and the rationalis rei privatae fundorum domus divinae per

1. Notitia Dignitatum occ., X : Sub dispositione viri illustris comitis sacrarum largitionum : rationalis summarum Italiae; rationalis summarum Urbis Romae; rationalis summarum Africae; rationalis summarum Hispaniae; rationalis summarum Galliarum; rationalis summarum Britanniarum.

Africam in the Notitia of the West,¹ and the rationalis Numidiae² and rationalis trium provinciarum³ of the Theodosian Code. In fact, we even find a constitution addressed to the Count of the Privy Purse which speaks of the rationales in each province.⁴ This can only mean the local administrative representatives of the res privata and is therefore equivalent to procurator.

The question then arises, was there a procurator of the Privy Purse stationed in each of the provinces into which the Empire was divided for purposes of the civil administration, i.e. were the administrative units of the res privata co-ordinate with those of the civil administration with respect to the provinces as well as the dioceses? In answering this question the Notitia is of little use. It lists but a few procurators for the West,⁵ several of whom are capable of special explanation (cf. below, p. 44). For the East it simply mentions in

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1. Notitia Dignitatum occ., XI; cf. the comes largitionum per Illyricum, rationalis summarum Pannoniae Secundae, Dalmatiae et Saviae, rationalis summarum Pannoniae Primae, Valeriae, Norici Mediterranei et Ripensis, rationalis summarum Trium Provinciarum, id est Siciliae, Sardiniae et Corsicae, rationalis summarum Numidiae, and the rationalis summarum Quinque Provinciarum who were subordinates of the Count of the Sacred Largesses (Not. Dig. occ., X).
 2. Codex Theodosianus, X, 8, 4.
 3. Codex Theodosianus, II, 25, 1; X, 10, 5.
 4. Codex Theodosianus, X, 9, 1 (369) : rationales in singulis quibusque provinciis commorantes.
 5. Op. cit., Sub dispositione viri illustris comitis rerum privatarum : procurator rei privatae per Siciliam, per Apuliam et Calabriam sive Saltus Carminianenses, per Sequanicum et Germaniam Primam, per Dalmatiam, per Saviam, per Italiam, per Urbem Romam, per Urbicarias Regiones rerum Iuliani, per Mauretanium Sitifensem.

a general way the procuratores saltuum as being sub dispositione comitis rerum privatarum. The best explanation seems to be that put forward by His¹ and accepted by Beaudouin,² namely, that the procurators listed in the Western Notitia were for some reason answerable directly to the Count without the intermediary of the diocesan rationalis; it is a question, therefore, not of provincial subordinates of the rationalis of the diocese, but, on the contrary, of persons entrusted for some special reason with a circumscribed group of imperial estates with which the rationalis was not concerned at all.³

If the Notitia is of little use in determining the provincial districts administered by the procurators subject to the diocesan rationales, no less so are the inscriptions which are rare for the Late Empire. However, numerous inscriptions attest typical procurators of districts and provinces for the period of the Principate and these in their essential features are probably characteristic of the Late Empire as well. They reveal that the administrative divisions - tractus, regiones, stationes - of the res privata were not co-ordinate under the Early Empire with those of the regular civil administration. Since the procurators of the Privy Purse were subordinates of the diocesan rationales and not of the provincial governors, such

1. Op. cit., pp. 62-63.

2. Op. cit., p. 48.

3. Ibid.

co-ordination was unnecessary and pointless; rather the divisions of the Empire for purposes of administering the res privata were made with reference to the number and importance of the imperial estates in a given area.¹ Likewise, the various districts were not always included in the same procuratorial circumscription, but were variously grouped together from time to time.² There were, however, procurators for entire provinces and for groups of provinces as well,³ and here we have a parallel for such officials of the res privata in the Notitia of the Late Empire as the rationalis rerum privatarum per Illyricum, per Siciliam, per Quinque Provincias and the procurators per Siciliam, per Apuliam et Calabriam (a single province) per Sequanicum et Germaniam Primam (two provinces), per Dalmatiam, per Saviam, per Mauretanium Sitifensem.⁴ As for the rationales

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1. In Africa, for instance, where the domain lands were very numerous, there was a relative large number of tractus; besides Carthage, Hadrumentum, Hippo, Theveste, Leptis, Thugga were all centers of separate procuratorial districts (Mommsen, Hermes, XV, 399; Eph. Epig. V, III, and VII, 220, 229).
 2. Proc(urator) stat(ionis) priv(atae) per Tusciam et Picenum (C.I.L., III, 1464), Regiones VII & VIII; proc(urator) privatae regionis Ariminensium (Wilmanns, 1291), Regio VIII; procurator privatae per Salarium, Tiburtinam, Valeriam, Tusciam (C.I.L., VIII, 822), parts of Regiones I & IV & Regio VII; procurator per Flaminiam, Umbriam, Picenum (Wilmanns, 1295), part of Regio VIII & Regiones VII & V; ἑπιτροπὸς τοῦ ἐπιφανῆς τῆς Δαλματίας Ἀρμινίας Σιγυρίας. (C.I.G., 6771), Regiones VIII & IX.
 3. Proc(urator) prov. Bithyniae Ponti Paphlago(niae) . . . item vice proc(uratoris) patrimonii prov. Belgic(ae) et duarum Germaniarum . . . proc(urator) ration(um) privat(arum) per Belgicam et duas Germ(anias) (Wilmanns, 1293); proc. rat(ionis) priv(atae) prov. Maur(etaniae) Caes(ariensis) item per Belgicum et duas Germanias (C.I.L., III, 1456).
 4. Notitia Dignitatum occ., XI.

in singulis quibusque provinciis commorantes of Codex Theodosianus, X, 9, 1, we need not necessarily understand thereby that each province constituted an administrative unit of the res privata; it is perfectly true that there would be in each province one or more representatives of the domain but his district would not necessarily be conterminous with the provincial boundaries.

Mention was made above of special procurators of certain estates which were apparently responsible directly to the Count of the Privy Purse without the intermediary of the diocesan rationalis. Such were the comes Gildoniaci patrimonii, and the procurator rei privatae per Urbicarias Regiones rerum Iuliani in the Notitia and for a long time the comes domorum per Cappadociam. Gildo was magister militiae in Africa. After his revolt, condemnation and death in 398 his immense property was confiscated and placed under the administration of one Peregrinus, a special and extraordinary official entitled comes et procurator divinae domus,¹ who seems to be identical with the Flavius Peregrinus appearing in C.I.L., VI, 1727 as comes ordinis primi moderans inlustrem sacri patrimonii comitivam. In 405 the property of Gildo's adherents likewise fell to the res privata,² and this whole immense aggregate of estates was placed under the comes Gildoniaci patrimonii who appears in the Notitia of

1. Codex Theodosianus, IX, 42, 16.
2. Codex Theodosianus, IX, 42, 19.

the West sub dispositione comitis rerum privatarum.

The rationalis rei privatae per Urbicarias Regiones rerum Iuliani appears to have been an extraordinary official in charge of the private property of the Emperor Didius Iulianus¹ who was the richest of the Senators before his elevation to the purple. Similarly the private estate of Antoninus Pius which he left by will to his daughter Faustina and which apparently reverted to the Patrimony possibly for lack of heirs remained intact and reappears in the Notitia of the West as the special charge of the rationalis rei privatae for the diocese of the City of Rome.² There is also under the Principate another striking example of this separate administration for a portion of the res privata, which, however, did not persist. When Septimius Severus condemned the Prefect Plautianus to death, he placed his extensive properties under the administration of a procurator ad bona Plautiani.³

The rationales and other heads (praesidentes) of local districts of the res privata, at the time of their appointment, had to show that they qualified for the office in the presence of an advocate of the fiscus.⁴ What the specific qualifications were is not mentioned, but the fact that the examen

1. His, op. cit., p. 66; Beaudouin, op. cit., p. 48.

2. Notitia Dignitatum occ., XI : rationalis rei privatae per Urbem Romam et Suburbicarias Regiones cum parte Faustinae.

3. C.I.L., III, 1464.

4. Codex Justinianus, II, 8, 4 (383) : Rationales privatae rei causis vel sacri aerarii praesidentes examen praesente fisci advocato suscipiant.

took place in the presence of an advocate of the *fiscus* would indicate that the chief object in mind was to secure some guarantee for the revenues due in each district from the property of the official charged with its administration. Possibly he had to supply sureties whose property was also responsible, as in the case of the tax-collectors, the praepositi horreorum, and the conductores.

The rationales and procurators administered the districts entrusted to them through a regular officium, the members of which are sometimes referred to in the Codes as caesariani,¹ or catholiciani.² Although little is known of the officium of the rationales it may be assumed quite safely that it corresponded very closely to that employed by the local procurators, except inasmuch as it had to accommodate a vastly greater amount of business. These bureaus were ordinarily stationed in the principal town of the procuratorial district, at Ariminum,³ Pola,⁴ Carthage,⁵ etc., and consisted of the ordinary staff of registrars and their assistants (tabularii, adiutores tabularii), assistant accountants (adiutores a commentariis), scribes (librarii), notaries (notarii), the stewards and procurators of the subdivisions of the district (dispensatores regionis, procuratores regionis), public heralds and

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1. Codex Theodosianus, X, 8, 2; Codex Justinianus, IX, 49, 9.
 2. Codex Justinianus, IX, 49, 9.
 3. C.I.L., XI, p. 77 : procurator privatae regionis Ariminensium.
 4. Mommsen, C.I.L., V, p. 3.
 5. Beaudouin, op. cit., p. 44.

auctioneers (praecones), surveyors (agrimensores), cartographers (chorographi), mounted couriers (cursores), footmen (pedisequi), and soldiers (milites).¹

In the records kept by these officials were all documents relating to the estates within the district, maps and surveys containing the boundaries, tax registers containing the assessment, sums paid and receipted, and sums still in arrears, inventories of the slaves and coloni, cattle and livestock, orchards, and vineyards, i.e. everything on the estate which was taxable, the leases fixing the conditions of the grant to the conductores and the "forms" under which the coloni held their lands.² Upon the incorporation of any property into the res privata a complete inventory was taken for purposes of determining its value and assessing the taxes to be levied upon it. Copies of the briefs containing these inventories were despatched to the rationalis to be kept in the archives of his bureau, whence further copies were sent to the central office of the Privy Purse.³ Thus, each administrative unit of the res privata possessed complete records of the domain property

1. Sepulchral inscriptions of the officiales of the procurator tractus Carthaginiansis, C.I.L., VIII, 12590-13214 (pp. 1335 ff.) with commentary by Mommsen, pp. 1335-1338; cf. Beaudouin op. cit., p. 44; texts cited by Schulten, op. cit., pp. 67-74. Cf., also, the inscriptions relating to the procuratorial staff stationed at Pola in Istria (C.I.L., V, 12-43) and Mommsen's commentary thereto (C.I.L., V, p. 3); and finally the inscriptions cited by Hirschfeld, Verwaltungsgeschichte, p. 42 f.

2. Pelham, Essays on the Roman Empire, p. 280.

3. Cf. Chapter VIII.

within its limits, and the central bureau at the Capital possessed a complete inventory of all the property administered by it throughout the Empire.¹ On the basis of these inventories the taxes were assessed and the tax registers prepared.

In addition to establishing the claims of the res privata over the various types of property which fell to it and affecting their incorporation, assessing and collecting the taxes upon them, the various officia were also responsible for the exploitation of the domain, for leasing it to conductores, and preparing the documents containing the terms of the lease. The keepers of all these records² are sometimes referred to generically as chartarii.

Over all of these officials extending from his own immediate officium to the depths of the provinces the Count of the Privy Purse was chief and ultimate source of reference. The provincial governors and other officials of the civil and military administration were ordinarily and sometimes absolutely forbidden to intervene in the affairs of the domain or the officials administering it. The res privata constituted an administration quite separate from the rest of the Empire and the Count of the Privy Purse possessed the ultimate judicial

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1. Codex Theodosianus, X, 9, 2 : . . . Et cum officii palatini brevibus fuerint cuncta competenter inserta, omne illud quod ex quibuslibet corporibus est repertum, nostris auribus intimetur.
 2. Chartae; Codex Theodosianus, XI, 28, 6 (410) mentions the chartae containing the arrears of taxes due the Privy Purse in the province of Africa.

and administrative authority over all the officials employed in governing the domain as well as over all the persons who dwelt upon it. He constituted, then, one of the principal Ministers of State and was equal in rank and importance to the Count of the Sacred Largesses.¹

It is at once apparent that so vast an aggregate of estates, extending over the entire Empire and requiring such a vast administrative system concentrated in the hands of one of the chief Ministers of the Crown who was a permanent member of the Imperial Council,² served something more than a merely private purse of the Emperor strictly speaking. Rather, the greater part of the res privata constituted a public treasury as much as the Sacred Largesses and its funds were expended for public purposes.³

It is not apparent, however, especially for the earlier period of the Late Empire, just what expenses were met by the Privy Purse. First of all, of course, would be paid from its revenues the costs of administration,⁴ including the

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1. Cf. chapter XX for a discussion of his rank and privileges and the general character of his office.
 2. The comes rerum privatarum was a consistorianus, cf. p. 384.
 3. Bury, History of the Later Roman Empire from the Death of Theodosius I to the Death of Justinian, vol. I, p. 52. Codex Theodosianus, XI, 36, 32 : Et publicarum necessitatum et privati aerarii poscit utilitas, ne commoda, quae domui nostrae debentur, callidis debitorum artibus differantur; op. cit., XI, 7, 11 : Omnes provinciis praesidentes ius-simus conveniri, ut a rei nostrae conventionem cessarent, ne principales necessitates in publicum proferentes eadem, qua hactenus, in colonos iniquitate saevirent.
 4. Cassiodorus, Variae, III, 53 supplies a curious detail of

salaries of the army of officials employed in this task. Also certain portions of the domain lands served to provision the Imperial Court.¹ The surplus, in Bury's opinion,² was handed over to the Sacred Largesses, or if not actually transferred, at least the accounts were submitted to the Count of the Sacred Largesses so that he might know the reserves on which he could draw. The latter conjecture may be true, but I think the evidence all points to the maintenance of two completely separated treasuries. In 382 Theodosius I established two tabularii in each province of the Empire to see that the two accounts were kept separate and that nothing pertaining to one passed into the other. The tabularii were threatened with heavy penalties for concealing a guilty governor,³ and when Honorius transferred the

the costs of administration: the Count of the Privy Purse has reported that a water-finder has come to Rome from Africa. He is instructed to employ his services, pay his travelling expenses and relieve his wants, and also to associate with him a mechanician able to sink for and raise the water when he has pointed it out.

1. Godefroy, ad Codicem Theodosianum, XI, 16, 2; His, op. cit., p. 23.
2. Op. cit.
3. Codex Theodosianus, VIII, 1, 12 (C. Just., XII, 49, 4) : In provinciis singulis duo tabularii collocentur, quo ad unum fiscalis arcae ratiocinium, ad alterum largitionales pertinere tituli iubeantur, scituri, quod, si ex alienis quicumque actibus ad alteram partem illicita fuerit usurpatione translatum, is, qui iudicis culpam dissimulatione texerit, gravissimo sit supplicio subiugendus; cf. Godefroy, ad loc. cit. Similarly, in 408 two tabularii and susceptores were stationed in each province to keep separate the revenues flowing into the Sacred Largesses and the Chest of the Praetorian Prefect. The penalty was five pounds of gold upon the governor and death for the bureau chiefs (primates officiorum) (C. Theod., XII, 6, 30 = C. Just., X, 72, 13).

collection from the rationales back to the provincial governors in 399 he warned them upon pain of the severest penalties¹ not to transfer the revenues of the res privata to any other public treasury.²

The critical situation of the Empire, however, following the death of Theodosius the Great tended to break down the distinct and privileged character of the res privata. The immunity from extraordinary burdens which it at first enjoyed was removed, largely during the crises which developed in the reigns of Arcadius and Honorius, and soon we find portions of the revenues of the Privy Purse assigned to other treasuries and administered, therefore, by other officials than the Count of the Privy Purse. By 425, i.e. by the time the Notitia Dignitatum was compiled in its present form, we find a portion of the patrimonial estates in Africa withdrawn from the control of the Count of the Privy Purse and placed under that of the praefectus fundorum patrimonialium, a subordinate of the Praetorian Prefect of Italy. Such, at least, would seem to be the inference from the appearance of this official in the Notitia of the West. This transference was probably connected with

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1. Apparently death and confiscation; cf. Codex Theodosianus, X, 24, 2; XI, 14, 3; XV, 1, 12.
 2. Codex Theodosianus, XII, 9, 3 (C. Just., X, 75, 3; XI, 65, 5): Sciant iudices nihil sibi ex privatae rei canone vel eo, quod ex isdem titulis exegerint, ad necessitates alias transferre licere, nisi malunt gravissima severitate suam licentiam coherceri; cf. Codex Justinianus, X, 23, 4 (468), which concerns the Sacred Largesses and threatens the curiales, the

the administration of the grain supply of Rome for the prefect of the fundi patrimoniales is listed in conjunction with the prefect of the grain supply in Africa.¹ In 430 A.D. Theodosius II decreed for the Eastern Praefecture that the extraordinary tax upon the estates of the res privata amounting to a fifth part of the annual income should be paid into the Prefect's Chest and the Sacred Largesses; this law applied to all estates alienated since the beginning of the reign of Arcadius.² In 444 Theodosius further decreed that one third of any property falling to the res privata by any title whatever should go into the Chest of the Prefect, one third into the Sacred Largesses, and the remaining third into the Privy Purse. The Praetorian Prefect was entrusted with the distribution.³ This apparently means one third of the revenues derived from this property for there is no indication that anyone other than the Count of the

provincial governors, proconsuls and vicars, the Count of the East and the Augustalis of Egypt with a fine of twenty pounds of gold for violation. Cf. also, Stein, Studien, p. 145.

1. Notitia Dignitatum occ., II; cf. Stein, op. cit., p. 173.
2. Codex Theodosianus, XI, 20, 6 : Eorum iugorum sive capitum sive quo alio nomine nuncupantur privati iuris vel patrimonialis sive civilis sive templorum, quae a principio imperii divae recordationis Arcadii genitoris mei quinta pars commodi, quod ex eo beneficio ad dominos fundorum pervenit, ex eodem tempore exacta pro aestimatis per singulos annos habitis arcae et sacrarum largitionum viribus ex aequo societur.
3. Novellae Theodosii, XVII, 2 : Plane si quem vel si quam intestato ac nullis propinquis extantibus vel uxore marito-ve diem obisse contigerit, sive eius sectae mortuus vel mortua fuerit, ut eius bona ex divalibus sanctionibus fisci viribus vindicanda sint, seu caduca sit res vel alio titulo fiscalis vel in causam caduci ceciderit, cuius rei cognitionem iudicio viri illustri p(raefecti) p(raetorio)

Privy Purse was entrusted with the actual administration of such properties. Also this law seems to have been a temporary measure for the pertinent part was omitted when it was included in the codification of Justinian.¹ Finally, in 498 the loss to the revenues resulting from the abolition of the Chrysargyrum by Anastasius was made up from the Privy Purse.²

During the fifth century, then, we find the Privy Purse contributing to the regular expenses of the government, both in the Empire, and, later, in the Ostrogothic Kingdom. In the first place certain of the patrimonial estates along the frontiers, i.e. the fundi limitotrophi, were assigned throughout the period of the Late Empire to the service of the frontier and the maintenance of the troops garrisoned there, and as early as 398 Honorius compelled all the domain lands in the West to contribute half the extraordinary tax contributed by the rest of the Empire to the needs of the northern limites; this was the so-called onerum Rheticorum.³ Later, we find the

specialiter delegamus, huius bona ex parte quidem tertia praetorianae praefecturae arcae, ex altera vero tertia sacris largitionibus, ex residua portione, eadem praefectura distribuyente, privato vindicabuntur aerario.

1. Codex Justinianus, X, 12, 2.

2. John Malalas, XVI, p. 398; ὁ δὲ αὐτὸς βασιλεὺς ἐκούφισε τὴν λειτουργίαν τοῦ λεγομένου χρυσαργύρου... ἀρτεισάσας ταῖς θείαις λαγυτιῶσι πρὸς ὅσον ἀντ' αὐτοῦ ἐκ τῶν ἰδίων αὐτοῦ; cf.

Bury, Later Roman Empire, vol. I, p. 442; Stein, Studien, p. 146.

3. Codex Theodosianus, XI, 19, 4.

domains contributing their share to all public works such as the upkeep of the military roads, the arms factories, the restoration of walls, and the preparation of military annona,¹ as well as the actual pay of the troops.²

In the Ostrogothic Kingdom, which made a genuine attempt to continue the old Roman administration, we find the royal patrimony contributing to the expenses of the provincial governors. Thus, Theodoric instructed the Count of the Patrimony to supply annonae to Colossaeus the new Governor of Pannonia and his suite "according to ancient custom" (iuxta consuetudinem veterem) as well as provide markets for his army so that they might buy their supplies en route rather than plunder the provincials,³ and in 526 Athalaric, in order to alleviate the

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1. Novellae Valentiniani, X (441), cf. p. 285. The walls of Vaga in Proconsular Africa were restored by Justinian at the expense of the domus divina (C.I.L., VIII, 14399 : (aduena semp)ER GAUDE QUI TALEM MURORUM SAEPEM (prospexisti, et lauda Iustinianum glor)IOSISSIMUM PRINCIPEM (qui ab omni parte oppidum) CIRCUMDABIT EX OPERE ET INVIOLEBILE (reddidit, item in eius mu)NIMEN INMINENTEM PAULUM COM (fecit ration)ARUM DOMUS DIBINE.
 2. Agathias, III, 2, p. 140. In 579, after Philippicus had replaced Priscus and restored order among the mutinous troops who had already gone so far as to proclaim a rival Emperor, Maurice sent Aristobulus, *κουράτωρ τῶν βασιλικῶν ὀπλῶν*, to renew the oath of loyalty and distribute largess (Theophanes, sub anno 579, p. 401-402).
 3. Cassiodorus, Variae, IV, 13 : Senario v. ill. comiti privatarum, Theodoricus rex. . . . ordinasse cognosce, ut Colossaeo viro illustri pro laboribus et meritis ad Sirmiensem Pannoniam destinato, iuxta consuetudinem veterem victualia praebeantur, quatenus dum memorato viro necessaria fuerint praeparata, locus iniustis praesumptibus abrogetur. Disciplinam siquidem non potest servare ieiunus exercitus, dum quod deest semper praesumit armatus. Habeat quod emat, ne cogatur cogitare quod suferat.

oppression of the provincials by the guards (domestici) who served in the train of the governors, ordered the Count of the Patrimony to pay from the private account of the King an annual sum of fifty solidi in addition to the inadequate 200 solidi and ten rations (annonae) which formerly constituted the emolumenta of these troops.¹ The domus divina was also called upon to contribute timber, ship-builders and sailors when Theodoric undertook to build a navy.²

If the Privy Purse contributed to various regular expenses of the government it also constituted at all times a reserve designed to meet extraordinary expenditures, and this was perhaps always its chief function.³

The Privy Purse likewise contributed to the numerous charitable enterprises of the Emperor,⁴ especially in connection

1. Cassiodorus, Variae, IX, 13 : Willae v. ill. comiti patrimonii Athalaricus rex. Magnitudinis tuae suggestione comperimus de domesticorum excessibus qui destinatis comitibus obsequuntur provinciales damnis plurimis ingravatos; quod credimus emolumentorum parvitate nutritum, . . . Et ideo speciali beneficio generalia compendia largientes, magnitudini tuae praesenti auctoritate praecipimus ut supra ducentos solidos et decem annonas quas hactenus acceperunt, a quinta feliciter indictione quinquaginta eis solidos annuos faciatis incunctanter adiungi, qui nostris rationibus debeant imputari; ut cummater criminum necessitas tollitur, peccandi ambitus auferatur.

2. Op. cit., V, 18 & 19.

3. See Chapter XII.

4. Theodore the imperial referendarius was provided with funds by Justinian to see to the proper interment of the dead during the great plague of 542 A.D. (Procopius, De bello Persico, II, xxiii, 9 :

Θεόδωρος ἔχει τὰ τε βασιλέως ἰσθμῶν χρήματα, καὶ τὰ οἰκεία προσαναδίσκων τοὺς ἀνημελημένους τῶν νεκρῶν ἐθαύτην.

with the Church and the institutions operated by it such as hospitals, orphanages, homes for the aged, monastical establishments. Constantine liberally endowed the Church with domain land.¹ Shortly after the promulgation of the Edict of Milan, we find him instructing the catholicus of Africa to pay 3,000 folles to Caecilianus, Bishop of Carthage, for distribution among the orthodox clergy; "but if you should learn, perhaps, that any thing is wanting to complete this my purpose, you are authorized, without delay, to make demands for whatever you may ascertain to be needful from Heraclides, procurator of our estates. And I have also commanded him when present, that if Your Authority should demand funds of him, he should see that they be paid at once."² Honorius speaks of the numerous alienations of domain land made by his predecessors and himself in favor of the Church.³ Pulcheria's opulent endowments from her private means are attested,⁴ and Justinian speaks especially of the many donations made by the Augusta Theodora and himself from their Privy Purse.⁵

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1. Liber Pontificalis, Vita Silvestri, ed. Duchesne, I, 170 f.; Cassiodorus, Variae, XII, 13.
 2. Eusebius, Historia Ecclesiastica, X, 6 : *παρὰ Ἡρακλῆδα τοῦ ἐπιτρόπου τῶν ἡμετέρων κτημάτων ἀναμειδέκτως*
 3. Codex Theodosianus, XVI, 10, 20 (415) : Ea (patrimonia) autem quae multiplicibus constitutis ad venerabilem Ecclesiam volumus pertinere, Christiana sibi merito religio vindicabit.
 4. Sozomen, Historia Ecclesiastica, IX, 1.
 5. Codex Justinianus, VII, 37, 3 : 3. Quia igitur multa scimus tam nosmet ipsos quam serenissimam Augustam conjugem nostram variis personis iam donasse et vendidisse . . . et maxime sacrosanctis ecclesiis et xenonibus et ptochotrophis et episcopis et monachis.

The points presented in a general way in this chapter will be developed at length in subsequent chapters treating each phase of the functions of the Count of the Privy Purse in detail.

As already indicated, the officium of the res privata, along with the rest of the Roman administrative system, survived into the Ostrogothic realm where we find it functioning in the official correspondence of Cassiodorus very much as in the Empire. A notable development of this period is the building up by Theodahad, the nephew of Theodoric, of an immense appanage in Tuscany, consisting of almost the entire area.¹ This he managed to accomplish during the vacillating regency of his cousin Amalasantha by invading not only private property, "but more especially those estates belonging to the Royal Household which the Romans are accustomed to call patrimonium."² When the Regent attempted to place some restraint upon his avarice he began to intrigue with the ambassadors of Justinian and actually formed the project of handing over to the Emperor the whole of Tuscany in return for the senatorial dignity and a sum of money sufficient to enable him to retire for the rest of his life to Constantinople.³ At this point he was denounced

1. Procopius, History of the Wars, V, iii, 29.

2. Op. cit., V, iv, 1-3 : και ουχ ἡκιστα γε τὴν βασιλείου οἰκίαν αὐτῶν, ἣν δὲ πατρῴνιον Ῥωμαῖοι καλεῖν νενομικασί.

3. Op. cit., V, iii, 29.

before the Regent and by her compelled to restore all that he had illegally gained possession of.¹ The Regent, however, upon the death of her son was compelled to elevate Theodahad to the throne as the only surviving male of the Royal House. Her subsequent murder was employed by Justinian as a pretext for the invasion of Italy. After the loss of Sicily and Dalmatia, Theodahad opened negotiations and offered to resign his Kingdom provided he might retain the patrimonium.² Before this could be accomplished Theodahad had fallen in turn, and the war was continued. The last surviving Goths were permitted to retire from Italy and seek their homes elsewhere. All property formerly held by them must have reverted to the res privata. In a law which he addressed to Narses and the Prefect of Italy Antiochus in August, A.D. 554 Justinian decreed that all grants made to individuals or corporations by Athalaric, Amalasantha and Theodahad should remain valid, but all grants made by Totila were annulled.³

In Africa the slaves and chattels of the conquered Vandals were distributed among the soldiery, but not their landed estates which were added to the Privy Purse. This did not take place, however, without serious difficulty. Many of the imperial troops contracted legal marriages with the wives and daughters of the Vandals, and "each of these women kept urging her husband to lay claim to the possession of the lands

1. Procopius, History of the Wars, V, iv, 1-3.

2. Op. cit., V, vi, 26.

3. Bury, Later Roman Empire, Vol. II, p. 282.

which she had owned previously."¹ Consequently, when Solomon, whom Belisarius had left in charge of the Army of Libya, began in the spring of 536 A.D. to register this property as belonging to the domus divina a mutiny arose among his troops. He proceeded to explain that "while it was not unreasonable that the slaves and all other things of value should go as booty to the soldiers, the land itself belonged to the Emperor and the Empire of the Romans, which had nourished them and caused them to be called soldiers and to be such, not in order to win for themselves such land as they should wrest from the barbarians who were trespassing on the Roman Empire, but that this land might come to the commonwealth, from which both they and all others secured their maintenance."² This apparently then was

1. Procopius, op. cit., IV, xiv, 7-11.

2. Ibid. : . . . Ταῦτα δὲ οἱ στρατιῶται ἐν τῷ ἔχοντες Σολομώνι, εἰκὲν οὐκ ἔωρτο χρῆναι τὰ βασιλέων χωρία ἔς τε τὸ δημόσιον καὶ ἔς τὸν βασιλέως οἶκον ἐθέλοντι ἀναγράψασθαι, φάσκοντί τε ὡς τὰ μὲν ἀνδράποδα καὶ τὰ ἄλλα πάντα χρήματα τοῖς στρατιώταις ἔς λάφυρα ἵεσθαι οὐκ ἀπεικός εἶναι, γῆν μὲντοι αὐτῆν βασιλεῖ τε καὶ τῇ Ῥωμαίων ἀρχῇ προσήκειν, ἢ περ αὐτοὺς ἐξέθρεψέ τε καὶ στρατιώτας καλεῖσθαι τε καὶ εἶναι, πεποιήκεν, οὐκ ἐφ' ᾧ σφίσι αὐτοῖς τὰ χωρία κεκτῆσονται ὅσα, ἀν

the principle applied throughout the reconquered territory. We may be fairly certain, likewise, that any property which could be shown to have once paid taxes into the Privy Purse was required to do so still.

Βαρβάρους ἐπιβατεύοντας τῆς Ῥωμαίων
Βασιλείας ἀφείλαντο, ἀλλ' ἐφ' ἧς ἐς τὸ
σημῶσιον ταῦτα ἵεναι, ὅθεν οἰσίσι τε
ῤυμβαίνει καὶ τοῖς ἄλλοις ἅπασιν τὰς
σιτῶσεις κομιζέσθαι.

Chapter III

THE DOMUS DIVINA PER CAPPADOCIAM

We have already noticed the various meanings of the expression domus divina, ranging from its earliest meaning of a single estate of Caesar¹ to its use in the second and following centuries as a designation for the entire domain.² From time to time certain important domus divinae or aggregates of "divine houses" were set apart under special administrators with the title of Count. Such were (1) the domus divina per Cappadociam, (2) the confiscated estates of Gildo and his adherents which formed an aggregate of properties in Africa governed by an official variously entitled comes Gildoniaci patrimonii,³ comes et procurator domus divinae,⁴ and comes ordinis primi moderans inlustrem sacri patrimonii comitivam.⁵ There appears to have been in Syria also a domus divina

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1. C.I.L., XII, 4449 mentions the FAMILIA TABELLARIORUM CAESARIS NOSTRI QUAE SUNT NARBONE IN DOMU, dating from the period of Augustus or at least the first century.
 2. Pelham, *op. cit.*, p. 280.
 3. Notitia Dignitatum, *occ.*, XI.
 4. Codex Theodosianus, IX, 42, 16.
 5. C.I.L., VI, 1727.

administered by a comes; at least an officium comitiacum is attested for the Syrian domus divina.¹

Of these, the most important and apparently the earliest to be so set apart² was the domus divina per Cappadociam. "The Crown Lands in Cappadocia" consisted chiefly of the estates that once belonged to the Cappadocian Kings or served the temples of the numerous cults that had flourished in Asia Minor from time immemorial.³ They were so numerous as to constitute one half of the total acreage of the area.⁴ The great importance of the domus divina per Cappadociam would seem to date from the period of Constantine; from this period must date the confiscation of the vast temple properties there, for the cults of Asia Minor were of the type particularly offensive to the moral concepts of the Christians which was the first to suffer. It is likely that so extensive and sudden an accretion of estates would necessitate an extraordinary official to set in order their administration, and Godefroy is of the opinion that the comes domorum dates from the reign of Constantine,⁵ an opinion with which Seeck is in agreement.⁶ This comes is not

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1. Theodoretus, Ep. 42, Migne, P.G., Vol. 83, 1220; cf. p. 96.
 2. Beaudouin, op. cit., p. 39.
 3. Pelham, op. cit., p. 278. Archelaus, the last King, died at Rome in 17 A.D. and Tiberius reduced his kingdom to the state of a province.
 4. Novellae Justiniani (ed. Lingenthal), I, p. 263; cf. p. 38.
 5. Godefroy, ad Codicem Theodosianum, VI, 30, 2 (Vol. II, p. 207).
 6. Pauly Wissowa, Vol. IV, p. 651, s.v. comes domorum.

attested in the Codices, however, before 379 A.D.¹ In the fifth and sixth centuries he was a spectabilis.² As we have already seen, the domus divina per Cappadociam, like the other domus divinae, was originally under the Count of the Privy Purse, from which position it was later removed and placed sub dispositione praepositi sacri cubiculi, probably during Eutropius' incumbency of that office.³

The Cappadocian domus divina was divided into thirteen "houses" or administrative districts. Over these were placed thirteen πρωτεύοντες (primates), or magistri primi et secundi, one for each district, who ranked first among the officials forming the Count's officium (officium comitiacum), and were, perhaps, the chiefs of as many bureaus which went to make up the officium.⁴ In each of the thirteen "houses" the magister responsible for its administration was represented by a procurator (ἐπιτρόπος) and a tabularius (τρακτευτής).⁵

In judicial matters the Count of the Crown Lands possessed unusual competence and was singularly independent of the governors and other civil authorities. The edict of Arcadius

1. Codex Theodosianus, VI, 30, 2.

2. Codex Justinianus, III, 26, 11 : vir, spectabilis comes domorum; Novellae Justiniani, XX : ὁ περιβλεπτός νόμιος τῶν δικιῶν

3. Cf. p. 44; also, below, p. 75.

4. Novellae Justiniani, XXX : Tutorum (ἐπιτρόπων - procuratorum) vero et tractearum nomen neque esse penitus volumus, . . . Nominari autem volumus per domum unamquamque periculo totius comitiani officii et tredecim priorum (πρωτεύοντων), quos scilicet magistros primos et secundos vocant, . . . Cf. His, op. cit., p. 77.

5. Ibid. Cf. Seeck, Pauly-Wissova, Vol. IV, pp. 651-652.

and Honorius in 398, abrogating the legislation of Valentinian II which gave the rationales of the Privy Purse rather than the provincial governors judicial competence over cases involving the domain and its cultivators¹ did not effect the domus divina per Cappadociam, for Theodosius II in 442 expressly decreed that any legal action, civil or criminal, involving the coloni, renters and slaves of the Crown Lands in Cappadocia should be tried by none other than the comes domorum, and, in case of appeal, his superior, the Grand Chamberlain.²

Thus completely separated from any intervention on the part of the Praetorian Prefect or any of his subordinates in the provinces, with its administration concentrated in the hands of the Grand Chamberlain, the domus divina per Cappadociam was especially deputed to serve the needs of the Imperial Court at Constantinople and bears some resemblance, as His has pointed out, to the modern Civil List.³

Very early corruption and mis-management began to undermine the administration of the Cappadocian crown lands, and in this respect the comes domorum seems very frequently to have been principally at fault. To act as a check upon his misconduct, Theodosius I in an edict addressed to the Count of the

1. Codex Theodosianus, I, 11, 2 (C. Just., XI, 74, 1); cf. p. 241.

2. Codex Justinianus, III, 26, 11 : Hac lege sancimus, ut, sive agat domorum nostrarum colonus aut inquilinus aut servus seu pulsetur ab aliquo super criminali vel civili negotio, non alibi quam tui culminis ac viri spectabilis comitis domorum petatur examen: nullius adlegatione super fori praescriptione penitus admittenda.

3. His, op. cit., p. 29; cf. p. 74 and p. 82.

Privy Purse as early as 379 revoked the usual arrangement (prisco iam nunc ordine revocato), by which one of the corps of agentes in rebus had probably been princeps officii to the comes domorum as in the case of other principes officiorum,¹ and decreed that each year one of the mittendarii of the officium palatinum of the res privata should be sent out to act in this capacity,² and in 390 he enjoined the procurators, praepositi gynaeci, tabularii, collectores, coloni and all from whom extortions were made by the Count of the Crown Lands to appear before his superior, the Count of the Privy Purse, within a year and make their accusations. If they failed to appear they themselves were held liable for any losses sustained by the revenues through the fraudulence of the Count.³

The interior of Asia Minor was almost exclusively a

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1. Codex Theodosianus, VI, 27, passim; Novellae Valentiniani, XIV.
 2. Codex Theodosianus, VI, 30, 2 : Prisco iam nunc ordine revocato de palatino potius officio ad gerendum principatum officii comitis domorum per Cappadociam mittantur, quales comes etiam domorum, se secus se gesserit, vereatur. Idoneos itaque singulis annis e numero mittendariorum ad hoc eligere debebis et mittere. After the transfer of the administration of these estates to the Grand Chamberlain one of the members of his officium probably continued to fill this function for we find the edict included in the legislation of Justinian (C. Just., XII, 23, 3).
 3. Codex Theodosianus, IX, 27, 7 (C. Just., IX, 27, 5) : Unusquisque procurator praepositus gynaeci tabularius susceptor colonus vel quicumque se a comite domorum meminerit esse concussum, cum ipse cui pecuniam numeraverit administratione decesserit, intra anni spatia ad iudicium spectabilitatis tuae quidquid dederit repetiturus adcurrat, ut prosit pensionibus quidquid ille reddiderit. Sin vero ex tempore depositae administrationis praestituti temporis curricula

land of enormous estates. Those which were not held directly by the Emperor were in the hands of persons of great wealth and power who surrounded themselves with armed retainers (bucellarii) and became the local magnates (*Σύρατοι*, potentiores), exercising an influence which enabled them to overawe the local officials and ignore even those of the central government. They were guilty of constant encroachments upon the domain land and their usurpations were often effected with the connivance or active cooperation of the Count and his officials.¹

In 396 Arcadius ordered the comes domorum to restore to the domain all such properties as had been illegally removed. Rescripts which improperly established ownership contrary to the laws governing locatio of the domain were to be cancelled and destroyed, and neither long occupation nor inclusion in a new census list was to be allowed to injure or be prejudicial to the right of proprietorship possessed by the Emperor.² This

transfluxerint, nulla vox advocacionis emergat, sed ipsos procuratores praepositos colonos tabularios susceptores obnoxios ad solutionem iubemus artari.

1. Novellae Justiniani, XXX, 7, 1.
2. Codex Theodosianus, X, 1, 15 (C. Just., VII, 38, 3; XI, 67, 2) : Si qua usquam loca ad sacrum dominium pertinentia cuiuslibet temeritas occupavit, secundum veteris census fidem in sua iura retrahentur. Rescripta igitur obreptionibus inpetrata cum praescriptione longi temporis et novi census praeiudicio submovebit auctoritas tua atque ita omnia suo corpori quae sunt avulsa restituet. Neque enim aut precatio colorata aut incubatio diuturna aut novella professio proprietatis nostrae privilegium abolere potuerunt.

edict only too well reveals the collusion of the officials themselves, and by the reign of Justinian the administration of the domus divina per Cappadociam was so hopelessly corrupt as to require a complete reorganization, "particularly since we perceive that this province is perpetually in an uproar against the established administration of our estates."¹ Since the domus divina per Cappadociam by the reign of Justinian had long since passed under the control of the Grand Chamberlain, the measures taken at that time to effect its reform do not properly pertain to the subject matter of this dissertation.

1. Novellae Justiniani, XXX, 1 : proinde etiam tumultuantem eam semper et adversus institutam nostris domibus videmus administrationem.

Chapter IV

THE PRIVATE ESTATE OF THE EMPRESS AND OTHER MEMBERS OF THE IMPERIAL HOUSE

Whereas the res privata of the Emperor was so extensive as to constitute one of the principal sources of the public revenues and was employed to defray public expenses, each member of the Imperial House had a private estate more strictly speaking, whose revenues were for his personal maintenance and which, in fact, amounted to a sort of appanage.

The ratio Augustae, i.e. the administration of the private estate of the Empress, was established at the same time as the ratio privata by Septimius Severus, and apparently, from the statement of Ulpian, enjoyed the same privileges as the fiscus and the Emperor's res privata.¹

When the title of the administrative head of the res privata was changed to comes by Constantine, a similarly entitled officer was apparently placed over the Empress's private estate also. At least, in the reign of Zeno we find a comes privatarum

1. Digesta, XLIX, 14, 6, 1 : Quodcumque privilegii fisco competit, hoc idem et Caesaris ratio et Augustae habere solet.

for both Emperor and Empress.¹ Likewise, when Justinian created the curatores dominicae domus, he also established a "Curator of the Divine House of the Most Serene Augusta."² Indeed, Theodora, who almost occupied the position of joint Sovereign with Justinian rather than merely that of wife, drew tribute in gold and rich vestments from the domus divina per Cappadociam,³ and the newly-created Proconsul of Cappadocia, on the occasion of the conferring of his belt of office, presented fifty pounds of gold to "the pious house of the Most Sacred Augusta, Our Consort."⁴

Other members of the Imperial Family, likewise, had extensive private estates. Suetonius mentions a procurator of Domitilla, the niece of Domitian.⁵ The Empress Helena, mother of Constantine the Great, left many properties,⁶ and those pious recluses, the daughters of Arcadius, had extensive properties throughout the provinces.⁷ Valentinian III refers to the estates (praedia) of his "sacred necessities" meaning his mother the Empress Galla Placidia, his wife and his sister,⁸ and the

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1. Codex Justinianus, X, 32, 64 : . . comitum privatarum nostrae vel Augustae partis.
 2. Codex Justinianus, VII, 37, 3 : curator divinae domus serenissimae Augustae.
 3. Novellae Justiniani, XXX, 6.
 4. Novellae Justiniani, XXX, 11, 1 : inferre piae domui sacratissimae Augustae nostrae coniugis, trifariam quippe quinquagenis libris auri inferendis.
 5. Suetonius, Domitian, XVII.
 6. Eusebius, Vita Constantini, III, 46.
 7. Codex Theodosianus, X, 25, 1.
 8. Novellae Valentiniani, X.

Domus Placidiae in Constantinople was so valuable a property as to require a special Curator, apparently of considerable rank.¹

These estates were owned absolutely and could be freely disposed of by will. Thus the Empress Helena "prepared and executed her last testament in favour of her only son the Emperor and her grandchildren, the Caesars, his sons, to whom severally she bequeathed whatever she possessed in any part of the world."²

Very little is known about the administration of these estates, but it must have been modelled very closely upon that of the Emperor's res privata. They were often so extensive as to require a regular hierarchy of officials. Thus, the daughters of Arcadius had procurators of their several estates scattered through the provinces,³ and an inscription from Mylasa in Caria mentions the Director-General of the Goods of Placidia (γενικός κούρατωρ τῶν προσ(ηκόν)των πραγμάτων Πλακιδία) whose subordinate was ὁ λαμπρότατος φροντιστὴν πραγμάτων τῆς αὐτῆς ἐπιφανεστάτης οἰκίας.⁴

We find mentioned the palatini rerum privatarum partis Augustae

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1. Chronicon Paschale, sub anno 610. A.D.
 2. Eusebius, Vita Constantini, III, 46.
 3. Codex Theodosianus, X, 25, 1 (406) : procuratores per singulas quasque provincias nobilissimarum puellarum filiarum mearum.
 4. Zacharia von Lingenthal, Monatsberichte der Akademie zu Berlin, 1879, pp. 159-169, lines 2 and 3.

whose probatoriae were issued by the scrinium memoriae.¹ Regular and official records were kept and Sozomen, in attesting the good works of the Princess Pulcheria, the churches, hospitals, monastical establishments, etc., which she endowed, calls upon his reader to examine the registers kept by her procurators if he is inclined to be incredulous.²

The res privata of members of the Imperial House was exploited in the same way as that of the Emperor, that is, it was leased out in parcels to contractors or conductores on one of the various types of contract then in vogue.³ Valentinian III refers to estates received on these terms from the females of his family.⁴

All such properties would, of course, almost inevitably revert ultimately to the Crown.

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1. Codex Justinianus, XII, 59, 10, 3.
 2. Sozomen, Historia Ecclesiastica, IX, 1.
 3. Cf. pp. 189-201.
 4. Novellae Valentiniani, X : . . . omnes, quicumque ex iure domus regiae vel a pietate mea vel a qualibet persona sacrarum necessitudinum mearum praedia adepti sunt, sive usufructuaria largitate, seu donatione directa, seu commutationis vel emptionis ratione quaesita.

Chapter V

THE DECLINE IN POWER AND COMPETENCE OF THE COUNT OF THE PRIVY PURSE AND THE DISAPPEARANCE OF THE OFFICE

The first fundamental step in the dissolution of the office of Count of the Privy Purse occurred when the administration of the large and important domus divina per Cappadociam was transferred to the Grand Chamberlain.¹ It is not known when this took place. In 379 the Count of the Crown Lands in Cappadocia was still the subordinate of the Count of the Privy Purse,² and he remained so as late as 390.³ But in 414 we quite abruptly find the Crown Lands and their revenues subject to the Grand Chamberlain. In that year Theodosius the Younger decreed a general cancellation of arrears of taxation for the past forty years, applying to all the revenues including those of the Crown Lands. To the edict addressed to

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1. Notitia Dignitatum or., IX : Sub dispositione v. illi praepositi sacri cubiculi : domus divina per Cappadociam.
 2. Codex Theodosianus, VI, 30, 2.
 3. Codex Theodosianus, IX, 27, 7 (C. Just., IX, 27, 5). This law is dated from Milan and Godefroy considers it a law of Valentinian II for the West, but it must be remembered that Theodosius was in Milan in this year and governed the East from Italy. This law has reference to the Crown Lands in Cappadocia; cf. Seeck, Pauly-Wissowa, Vol. IV, p. 651, s.v. comes domorum.

Anthemius the Praetorian Prefect was appended a subscript stating that in regard to this same subject a proclamation had been written to the people; to the Count of the Sacred Largesses; and "to Musellus the Grand Chamberlain inasmuch as it pertained to the taxes of the Crown Lands."¹ Similarly, in 450 Marcian addressed another edict cancelling arrears to Palladius, Praetorian Prefect of the East; to Hermogenes, Count of the Sacred Largesses; to Gennadius, Count of the Privy Purse; and to Maximinus, the Grand Chamberlain.² In 442 we find the jurisdiction in both civil and criminal cases over the slaves, coloni and renters (inquilini) of the domus divina in Cappadocia pertaining solely to the Count of the Crown Lands and his superior the Grand Chamberlain.³

The reason for this transfer is not mentioned but it is not too difficult to infer. The res privata, in spite of

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1. Codex Theodosianus, XI, 28, 9 ; De eadem re scriptum edictum ad populum; ad Marcianum comitem sacrarum largitionum; Musellio praeposito sacri cubiculi de titulis ad domum sacram pertinentibus.
 2. Novellae Martiani, II : Scripta Palladio viro illustri Praefecto praetorio orientis; Hermogeni viro illustri comiti sacrarum largitionum; Gennadio viro illustri comiti rerum privatarum; Maximino viro illustri comiti et praeposito sacri cubiculi.
 3. Codex Justinianus, III, 26, 11 ; Hac lege sancimus, ut, sive agat domorum nostrarum colonus aut inquilinus aut servus seu pulsetur ab aliquo super criminali vel civili negotio, non alibi quam tui culminis ac viri spectabilis comitis domorum petatur examen; nullius adlegatione super fori praescriptione penitus admittenda.

its designation, "was treated as State property of which the income was used for public purposes,"¹ and previous to the transfer of the Cappadocian estates the Grand Chamberlain, so far as we know,² had no treasury or source of revenue directly at his disposal although he was the chief of the personal attendants of the Emperor and director of most of the ceremonial life in a Court which was fabulously luxurious and extravagant. The transference of the revenues of the estates in Cappadocia to the chest of the sacrum cubiculum indicates that the domus divina henceforth filled the same functions as the modern Civil-list,³ though the establishment of a civil-list can in no sense be understood as limiting the autocratic control over all the revenues of the State exercised by a Late Roman Emperor.⁴ For several years during the reign of Arcadius the notorious Grand Chamberlain Eutropius had absolute control of the Court and the mind of the Emperor. His extravagance was

1. Bury, Later Roman Empire, Vol. I, p. 52.

2. Dunlap, The Office of the Grand Chamberlain in the Later Roman and Byzantine Empires, p. 187.

3. His, op. cit., p. 29; Stein, Studien, p. 171 : Spätestens damals wurden die kappadocischen Domänen der Verwaltung des Comes rerum privatarum entzogen und dem Praepositus s. cubiculi unterstellt. . . . Die Kompetenz des Praepositus s. cubiculi zeigt deutlich den Zivillistencharakter dieser Besitzungen.

4. Cf. Codex Justinianus, VII, 37, 3 (531) : la. Quae enim differentia introducitur, cum omnia principis esse intelligantur, sive a sua substantia sive ex fiscali aliquid fuerit adquisitum? Cf. Stein, op. cit., p. 174.

such that the regular revenues assigned him must have been most inadequate to meet his needs. Bury¹ and Dunlap² have pointed out that it was most probably during the incumbency of Eutropius that the Grand Chamberlain secured the transfer of the rich domus divina in Cappadocia from the Count of the Privy Purse to himself. If such be the case that event must have occurred between the assassination of Rufinus in 395 and the overthrow of the eunuch himself in 399 A.D. Hereafter, we find the canonicarii of the Grand Chamberlain despatched into the region from time to time to supervise the collection from the Crown Lands.³

Stein quite unnecessarily⁴ assumes that a similar transfer occurred in the western half of the Empire and that the domus divina per Africam, as the occidental equivalent of the domus divina per Cappadociam, was transferred to the western Chamberlain at the same time that the Cappadocian crown lands were transferred to the eastern Chamberlain; but that it was restored to the Count of the Privy Purse again sometime before 409 A.D. because of the occupation of the Gallic praefecture by barbarians and usurpers and the consequent loss to the revenues of the Privy Purse.⁵ The only evidence that he is able

1. Loc. cit.

2. Op. cit., p. 188.

3. Novellae Justiniani, XXX, 7, 1 : τῶν κατὰ καιρὸν ἐκτελεσσομένων κανονικαρίων παρὰ τοῦ ἐνδοξατάτου Πραιποσίτου κτλ.

4. Bury, Later Roman Empire, Vol. I, p. 52, note 2.

5. Stein, Studien, p. 172.

to produce in support of this theory is (1) the fact that there appear in the Notitia of the West, subordinate to the Count of the Privy Purse, a rationalis rei privatae per Africam and a rationalis rei privatae fundorum domus divinae per Africam, one of whom had supposedly been the representative of the Count of the Privy Purse and the other the representative of the Grand Chamberlain; and (2) the fact that other estates of the res privata in Africa were apparently removed from the control of the Count and placed under a praefectus fundorum patrimonialium subject to the Praetorian Prefect of Italy. Stein himself, however, suggests that the domain in Africa was perhaps so large as to require two rationales. As for the prefect of the fundi patrimoniales, his significance has already been tentatively indicated.¹

There was no further alteration in the competence of the Count of the Privy Purse for the next hundred years. But, at the end of the fifth century or thereabouts Anastasius effected a change which must have considerably reduced the authority of that office, by creating the comes sacri patrimonii.² There is no definite information relative to the date

1. Cf. Chapt. II, p. 51.

2. Lydus, De magistratibus imperii Romani, II, 27; Codex Justinianus, I, 34 (De officio comitis sacri patrimonii), 1 & 2 : ΚΟΜΗΣ ΤΗΣ ἸΔΙΚΗΣ ΚΤΙΣΕΩΣ as distinct from the ΚΟΜΗΣ ΤΗΣ ἸΔΙΚΗΣ ΠΕΡΙΟΥΣΙΑΣ, or comes rei privatae; Novellae Justiniani, CXLVII & CXLVIII : ΣΕΙΟΥ ΠΑΤΡΙΜΟΝΙΟΥ.

for this event other than the limits of Anastasius' long reign (491-518 A.D.). If, however, it resulted from the sudden acquisition of the extensive properties of Zeno and the Isaurian rebels (cf. below, p. 79), it must have followed the final suppression of the revolt which was not achieved before 498. In the Ostrogothic realm we find one Julian, Count of the Patrimony, as early as 508,¹ and if this date is uncertain, Senarius was appointed to the office for the year beginning September 1, 509 A.D.²

The organization of the new office was an exact replica of that of the res privata, the officials of both enjoyed the same privileges,³ and the Count of the Sacred Patrimony, like the Count of the Privy Purse, was an illustris.⁴ But what the precise distinction between them was and what properties each administered or upon what basis the division was made remains obscure. The sources throw little or no light upon the problem. Bury is of the opinion that we may well doubt

1. Cassiodorus, Variae, I, 16.

2. Op. cit., IV, 3 & 4.

3. Codex Justinianus, I, 34, 1 : ΚΟΜΙΤΗΣ ΤΗΣ ΊΔΙΗΣ ΚΤΗΣΕΩΣ, ΚΑΤΑ ΚΙΜΗΡΙΟΝ ΤΟΥ ΚΟΜΗΤΟΣ ΤΗΣ ΊΔΙΗΣ ΠΕΡΙΟΥΣΙΑΣ ΑΥΤΗΝ ΔΙΚΗΩΝ . . . ΟΙ ΔΕ ΤΟΥ ΤΗΣ ΊΔΙΗΣ ΚΤΗΣΕΩΣ ΤΑΞΕΩΤΑΙ ΤΟΥ ΚΟΜΗΤΟΣ ΤΗΣ, ΑΠΛΑΥ- ΤΑΧΟΥ ΊΔΙΗΣ ΠΕΡΙΟΥΣΙΑΣ ΕΧΕΤΩΣΑΝ ΠΡΟΝΟΜΙΑ.

4. Cassiodorus, Variae, IV, 3; 15; V, 7; 18; VIII, 23; IX, 3; 9; 13; Ennodius, Epistolae, IV, 7.

whether there was any important principle of distinction between the two offices and suggests that the res privata had become so large through landed property falling to the State during the disorders of the declining Empire, that Anastasius placed recent acquisitions and all that should be acquired in the future under the control of a new minister.¹ In fact, from Lydus' words it would appear that the Sacred Patrimony as organized by Anastasius consisted of his own property and ancestral estates,² to which would likely be added all future acquisitions. This suggests an analogy with the creation by Septimius Severus of the res privata as distinct from the patrimonium principis. The parallel can be drawn still further. As we have seen, the ratio privata of Septimius was created to administer the vast acquisition of property which fell to the Emperor by the condemnation of Albinus and Niger and their adherents. A similar mass of property fell to Anastasius after the suppression of the Isaurian rebellion.

In order to rid himself of the Ostrogothic mercenaries and foederati who were beginning to hold the Eastern Court in the same thralldom which the Western was unable to cast off, the Emperor Leo turned to Isauria and made use of the services of the Isaurian magnate Tarasicodissa who assumed the name Zeno,

1. Bury, The Imperial Administrative System in the Ninth Century, p. 79.

2. Lydus, loc. cit. : ὥσπερ ὁ λεγόμενος πατριμάνιος ἀντὶ τοῦ Φύλαξ τῆς ἰδίας πῦς ἀνηκούστης τῷ βασιλεῖ καὶ τυχόν ἐκ προγόνων περιουσίας . . .

married Ariadne the daughter of the Emperor and succeeded to the throne upon the death of Leo II, the infant child of that union. When Zeno himself died his Isaurians constituted the same threat to the supremacy of the civil government at Constantinople that the Ostrogoths had previously, and the measures which Anastasius took to deprive them of control at the seat of government produced a rebellion in Isauria. It required five years to suppress this revolt. The ancestral properties of Zeno and of all the Isaurian rebels whose number is said to have been 100,000 were confiscated and constituted a sudden increase to the res privata. Bury definitely attributes the creation of the Sacred Patrimony to this fact.¹ As early as the beginning of the fifth century an official with the title comes sacri patrimonii and the rank of illustris was created to administer the sudden increase to the res privata occasioned by the confiscation of Gildo's enormous property in Africa,² although his office was not detached from the regular administration of the res privata. Both Privy Purse and Sacred Patrimony continued to exist side by side with an identical organization. It is even possible that a distinction was still preserved between the old patrimonium principis of the period anterior to

1. Later Roman Empire, Vol. I, p. 442.

2. C.I.L., VI, 1727 : COMES ORDINIS PRIMI MODERANS INLUSTREM SACRI PATRIMONII COMITIVAM. Cf. above, p. 44 and p. 61.

Severus, and the estates incorporated after his creation of the res privata, and that the estates belonging to the original patrimonium were incorporated in the new one created by Anastasius. This seems rather unlikely, however. It is therefore likely that the creation of the new office simply amounted to this : the res privata had grown too large to be adequately administered by a single person and was therefore divided. This is in line with the repeated efforts of the Emperors to secure as equitable and profitable an administration of their private domain as possible and is, in a way, a prelude to the complete reorganization of the domain lands made by Justinian with a view to securing as large a revenue from them as possible apropos of his plans for recovering the lost western provinces.

So little difference was there between the two offices of Count of the Privy Purse and Count of the Sacred Patrimony that it is difficult to say whether the two were not identical in the Ostrogothic Kingdom. Indeed, there is no apparent reason why there should have been such a duplication of offices in a realm which was so contracted relatively speaking, whereas there was a definite occasion for the creation of the new office in the Eastern Empire as we have seen. Thus, we find Senarius in Cassiodorus, Variae, IV, 3 appointed comes patrimonii from the IVth Indiction, i.e. September 1, 509,¹ and in IV, 7 and 13 he

1. Seeck, Pauly-Wissova, Vol. IV, p. 676, s.v. comes sacri patrimonii.

is addressed as comes privatarum. Variae, IV, 7 relates to some grain supplies destined for Gaul and very likely dates from the year 510 at the beginning of which Count Ibbas inflicted a severe defeat upon the Franks, raised the siege of Arles, and gained for Theodoric dominion over the lower valley of the Rhone. This area had been ravaged by war for three years and was, in consequence, afflicted by a famine which Theodoric undertook at once to relieve. On his tombstone Senarius employs the designation comes patrimonii.¹ Seeck attempts to explain these contradictions by assuming that the new office of comes patrimonii was created while Senarius was Count of the Privy Purse.² It has been indicated, however, that Senarius was addressed as comes privatarum in 510 and according to Seeck's own opinion as to the beginning of the IVth Indiction Senarius was made comes patrimonii the first of September, 509 A.D. Furthermore, a certain Julianus was comes patrimonii apparently as early as 508.³ In this letter some Apulian conductores petition to be excused from their taxes since their crops have been burned by hostile invaders. The Vandal expeditions had ceased, and this can only refer to the raid on the Apulian coast by the Byzantine fleet which Marcellinus Comes mentions for the year 508.

On the other hand, we find among the Formulae of

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1. Cassiodorus, ed. Mommsen, 499 : VIR INLUSTRIS COMES PATRIMONII ET PATRICIUS.
 2. loc. cit.
 3. Cassiodorus, Variae, I, 16.

Cassiodorus' Vith Book both the comes privatarum¹ and the comes patrimonii,² and after reading his own explanation of his purpose in writing these Formulae in the preface to the Variae Epistolae it is difficult to believe that they can be anything but separate offices; Senarius may have been both Count of the Privy Purse and Count of the Patrimony at the same time as Marcellinus was Count of the Sacred Largesses and Count of the Privy Purse in 439,³ or Florus was comes rerum privatarum and curator dominicae domus in 531.⁴

It also appears from the Variae Epistolae that in the Ostrogothic Kingdom the revenues of the Sacred Patrimony served the purpose which was filled by those of the domus divina in the Eastern Empire, i. e. the maintenance of the Household Establishment, and particularly of the royal table.⁵ Thus, in the formula of his office the Count of the Patrimony is enjoined at length to attend to the provision of rare delicacies for the royal board, chiefly, so we are led to believe, to impress the ambassadors. "Let the envoys," runs the formula of the complacent Cassiodorus, "who come from almost every part of the world be amazed when our banquet begins at finding in such abundance that which in their own country is most rare. Let them be struck with wonderment that so great a throng of servants

1. Cassiodorus, Variae, VI, 8.

2. Op. cit., 9.

3. Novellae Theodosii, XVII, 1.

4. Codex Justinianus, VII, 37, 3.

5. Beaudouin, op. cit., p. 39.

is capable of satisfying the abundance of but a single table, so that they may imagine that that which has been consumed grows again in the kitchens whence it came. Let them really have something to talk about in their own country when they eagerly tell of the sights they have seen. Thus he who provides for our state shall be celebrated in almost the entire world."¹ The banquet of the King was also the hour for the Count of the Patrimony to approach his Sovereign with business when no one else was allowed to do so.²

And elsewhere, we have another elegant piece of Cassiodorean fustion on the subject of the royal banquets. It begins with a catalogue of fishes, for "it becomes a King so to regale himself that he will be supposed by foreign ambassadors to possess well nigh everything."³ Coming to the point at last our erudite Praetorian Prefect informs the canonicarius of the Venetiae that the reports of the Count of the Patrimony indicate that the wine called Acinaticium has fallen very low in the

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1. Cassiodorus, Variae, VI, 9 : Legati pene ex tota orbis parte venientes, cum nostris coeperint interesse convivii, admirantur copiose repertum, quod in patria sua norunt esse rarissimum. Stupent etiam abundantiam unius mensae tantas servientium turbas posse satiare, ut iudicent consumpta recrescere, unde tanta probantur exire. Habent nimirum in sua patria quod loquantur, dum parentibus suis dicere gestunt, quae viderunt. Sic propemodum in toto mundo celebrissimus redditur, qui providus nostris apparatibus invenitur.
 2. Ibid. : Adde quod tempora nostrae laetitiae secretaria tua sunt, cum pectus redditur curis alienum; et tunc tibi tribuitur suggerendi locus, quando cunctis adimitur.
 3. Op. cit., XII, 4 : Sic decet Regem pascere, ut a legatis gentium credatur pene omnia possidere.

royal cellars. "We therefore order you to proceed to the cultivators of Verona where this wine is chiefly prepared and let no one delay to sell for a sufficient price that which he ought to offer without price to his gracious Sovereign."¹ This letter is to be compared with an edict of Constantius to the curiales of Caesena in 354, bidding all the possessores of Italy furnish as usual the wine which was customarily paid into the imperial cellarium or the monetary equivalent of this tax. It is to be observed that this edict effects Italia annonaria which was especially deputed to the maintenance of the Imperial Court. It is possible that the Ostrogothic Count of the Patrimony may have had some especial authority in this part of the Kingdom, for we usually find him exercising his authority over the domus divinae along the banks of the Po and its tributaries. Thus, he informs the King that twenty-one of the dromonarii, or rowers on the express boats,² which probably conveyed the products of the domain to Ravenna have been removed by what Cassiodorus calls "the inconvenience of death." The Prefect orders a certain Senator Benenatus to supply others in their stead.³ When Theodoric determined to construct a navy of 1,000

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1. Cassiodorus, Variae, XII, 4 : Comitibus itaque patrimonii relatione declaratum est, acinaticium, cui nomen ex acino est, enthecis aulicis fuisse tenuatum. . . . ad possessores Veronenses, ubi eius rei cura praecipua est, vos iubemus accedere; quatenus accepto pretio competenti, nullus tardet vendere quod principali gratiae deberet offerre.
 2. Patrologia Latina, Vol. 61, p. 621, note a : Dromones navigia celerrima quasi cursoria a Justiniano vocantur in l. 4 C. de off. praef. praet. off., quos celones Latini appellant a celeritate, ut testatur Nonius.
 3. Cassiodorus, Variae, IV, 15.

dromones in order to protect his coasts from the Vandals and Byzantines he instructed the Count of the Patrimony to search the domus divina for ship-builders to be sent to Ravenna; also to find suitable timbers in the royal estates (praediis regalibus) along the Po for ship-building and to permit the men sent for the purpose by the Prefect to cut them.¹ The domus regia was required in addition to furnish its quota of sailors for the new navy.²

In view of the scanty and contradictory condition of the evidence, Stein's view of the nature and origin of the Sacred Patrimony in the Ostrogothic Kingdom is as good as any. In this respect, it is necessary to bear in mind the events upon which hinged the extinction of the Empire in the West. The immediate cause of this event was the refusal of Orestes to confiscate one-third of the lands of Italy and distribute them among the barbarian foederati who had helped him to place his son Augustulus on the throne. The foederati found a leader in Odovacar who overthrew Orestes, deposed Augustulus and terminated the imperial government in the West de facto if not de iure.³ It is Stein's opinion that Odovacar made a distinction between the old res privata inherited from the Empire and the

1. Cassiodorus, Variae, V, 18.

2. Op. cit., V, 19.

3. Hodgkin, Italy and Her Invaders, Vol. II (The Hunnish and Vandal Invasions), p. 519 f.; cf. Thierry, Recits de l'histoire romaine au V^e siecle, pp. 257-267.

newly acquired estates, and that when the latter were enlarged still further by Theodoric, they were organized under the separate government of the comes sacri patrimonii while the res privata was made over in principle to the State.¹ Inasmuch as the patrimonium in the Ostrogothic Kingdom appears, as we have seen, to have had somewhat the character of a civil list possessed by the domus divina in the East, it would seem to corroborate Stein's viewpoint.

The reign of Justinian was marked by an extensive series of administrative reforms which went far toward transforming the government of the Empire from what it was as organized by Diocletian and Constantine to what it became in the Byzantine period.² These reforms were instituted chiefly, it is quite clear,³ to secure sufficient revenues to conduct the wars for the recovery of the lost western provinces; they,

1. Stein, Studien, p. 173.

2. Bury, Later Roman Empire from Arcadius to Irene, Vol. I, p. 25.

3. Novellae Justiniani, VIII : (A part of the oath taken by provincial governors upon entering office, which is among the notitia appended to the edict) . . . Et primum omne habebō studium ut fiscalia vigilantēter inspiciam, et indevotos quidem et indigentes necessitate cum omni exigam vehementia; Nov. XXIV (De Praetore Pisidiae), 4; Nov. XXVII (De Comite Isauriae, 1 : . . quia providendum ei sit et fiscalium omnium et privatorum instrumentorum et disciplinae alterius et ut in nullo laedatur fiscus; Nov. XXVIII (De Moderatore Helenoponti), 5 : Oportet igitur eum . . . fiscum augere et utilitatis eius omnem ponere providentiam; Nov. XXIX (De Praetore Paphlagoniae), 2 : . . . et fiscum exigat cum omni alacritate; Nov. CIII (De Proconsule Palaestinae), 2 : . . . et praecipue omnium providebit, ne desit fiscalium illatio; Edictum IV (De Magistratu Phoeniciae Libanicae), 2.

therefore, seriously affected the entire financial structure, the Privy Purse not excepted, and it is from this period that we must date the real decay of the office of Count of the Privy Purse and the beginning at least of the substitution for it of an entirely different organization for the government of the domain lands.

The object of the reforms of Justinian was to put an end to the administrative chaos and inefficient government of the provinces by concentrating in the hands of the governors greater authority and supervision over every aspect of the government of their province, and to render them more directly responsible to the central government by abolishing in several instances the diocesan governments of the vicars who stood as intermediaries between the local administration and Constantinople. At the same time in several instances two provinces were united to form a larger one, still further concentrating the administration. Also the governorship of certain provinces was raised in rank and in all these cases both civil and military authority was united in the hands of the new governors, and they had in addition a more definite supervision of the revenues than hitherto.¹ Thus, on the 15th of April, 535, three diocesan governors were abolished. The Vicar of Asiana became the

1. Nov. XXV (Lycaonia), 5; Nov. XXIV (Pisidia), 3; Nov. XXVI (Thracia), 1 & 2; Nov. XXVII (Isauria), 1; Nov. XXVIII (Helenopontus), 3; Nov. XXIX (Paphlagonia), 1; Nov. XXX (Cappadocia), 1; Nov. CIII (Palaestina), 2 & 3; Edictum VIII (Pontica), 1.

Comes Justinianus of Phrygia Pacatiana; the Vicar of Pontica became the Comes Justinianus of Galatia Prima, both with the rank of Spectabilis; the Comes Orientis became the civil governor of Syria Prima retaining his "respectable" rank.¹ A similar reform was effected in Thrace where the two Vicars, one civil and subordinate to the Praetorian Prefect, the other military and subordinate to the magister militum were perpetually quarrelling and bickering.² In view of the military importance of Thrace and the necessity of guarding the Long Walls and the approaches to the Capital in the face of the Slavonic invasions which had commenced, this state of affairs was abolished and a Praetor Justinianus in Thracia created with combined civil, military and financial powers.³ The praesidial provinces of Helenopontus and Pontus Polemoniacus were united to form a single large province called Helenopontus under a Moderator Justinianus.⁴ Likewise, Honorias and Paphlagonia were united to form Paphlagonia under a Praetor Justinianus.⁵ These changes were made July 16th, 535. On the ensuing 18th of March, the two provinces of Cappadocia were incorporated under a Proconsul Cappadociae.⁶ In addition, the praesides of Pisidia

1. Novellae Justiniani, VIII, 5.

2. Novellae Justiniani, XXVI, praefatio : ambo autem isti complent alius quidem gloriosissimorum praefectorum illic officium, alius autem fortissimorum magistrorum militum, concordant autem numquam adinvicem, sed fiscus quidem singulis et annonas ministrat et aliud impendit solacium, illi autem unam habent perpetuam et infinitam actionem litigandi inter alterutros immortaliter.

3. Ibid.

4. Novellae Justiniani, XXVIII.

5. Novellae Justiniani, XXIX.

6. Novellae Justiniani, XXX.

and Lycaonia were elevated in rank with the new title of Praetor Justinianus and invested with authority over the forces stationed in their provinces.¹ In Phoenicia Libanica the civil governor was elevated in rank and given command of the band of Tertiodelmati who were stationed in the province. His authority thus reinforced, he was ordered not to yield to the military Dukes, the Phylarchs or to any of the powerful provincial families, but to guard the Sacred Patrimony, the Private Estate and the domus divinae from all damage.² In Armenia, Justinian divided the region into four provinces in place of the previous three. Third Armenia, which lay on the Euphrates frontier and was therefore important from the point of view of military defence, received especial attention and was placed under a Comes Justinianus³ with combined civil, military and financial powers. His authority extended expressly over those dwelling on the imperial domain.⁴

1. Novellae Justiniani, XXIV & XXV.

2. Edictum IV, 2 : . . . και μη συχωρεῖν τοῖς περι-
βλέπτοις δουξί μήτε τοῖς λαμπροτάτοις φυλάρχοις
μήτε γινι τῶν λυκατῶν οἰκῶν, ἀλλὰ
μήτε τῷ θεῷ ἡμῶν πατριμονίῳ ἢ τοῖς θεοῖσι
ἡμῶν πριβάτοις ἢ τῷ θεῷ ἡμῶν οἰκῶ τῆν
οἰανούν ἐπαγαγεῖν τοῖς ἡμετέροις ὑποτελέσι
ζημίαν, οὔτε κατακλίεσθαι οὔτε τρέμειν . .

3. Novellae Justiniani, XXXI, 1, 1.

4. Op. Cit., 3 : Hac igitur potestate non privamus penitus eum in nulla persona quae in provincia sunt, sive privata seu militari sive aerarii.

Along with the establishment of the new governors with combined civil and military authority and extended supervision over the financial administration, there was passed an edict by which appeals from the judgment of all the newly created governors of the rank of spectabilis were directly only to the Prefect and the Quaestor.¹ This measure would greatly curtail, of course, the functions of the Count of the Privy Purse, the Count of the Sacred Patrimony, and the Grand Chamberlain.

At the same time, by increasing the judicial competence of the new governors and insisting upon greater honesty in the administration of the law, the Emperor undertook to lessen the conjection in the courts of the Capital. Thus, when investing the new Praetor Justinianus of the Thracian Diocese with authority to hear all cases the Emperor wrote : "Let him

1. Novellae Justiniani, XX, 4 : Quoniam et Lycaoniam et Pisidiam et Isauriam sub iudicibus primitus constitutas et appellationes destinantes ad sedem tuam nunc decorari praetorum cingulo contingit, licet videatur quodammodo permixtum quoddam ei etiam militare officium, quoniam prius et dux in utraque harum provincia fuit, necessaria nobis se habere placuit propter novitatem soli sedi tuae et gloriosissimo quaestori tradere appellationum examinationem, cedere quoque et clementius tuo officio, ut, his, quae super hoc aguntur, ministrent; Nov. XXVII, 2 : Sciat autem solum, quia et ipse inter spectabiles iudices ordinatus est, et appellationes ab illo factas et gloriosissimi praefecti sacrorum nostrorum audient praetriorum et gloriosissimus noster quaestor, sicut augustalis et proconsulis utriusque et praetorum trium nunc a nobis statutorum Pisidiae et Lycaoniae atque Thraciae et comitis Orientis, insuper et comitis Pacatiana Phrygiae Galatiaeque primae.

judge justly and according to our laws and dispassionately so that no one, fleeing thence, disturb Our Tranquillity," for "we do not wish our subjects, disdained by the provincial governors, to leave their province and rush hither."¹ Those who brought their case to the Capital before taking it into the court of the Proconsul of Cappadocia were abruptly dismissed to their province without a hearing.²

Thus, the power of the Prefect and the provincial governors over the imperial domains was increased at the expense of the Grand Chamberlain in Asia Minor and of the Counts of the Privy Purse and of the Sacred Patrimony wherever lands subject to them were situated in provinces where the reforms of Justinian were operative.

Apparently the creation of the Proconsul of Cappadocia did not suffice to check the spoliation to which the imperial domain and the smaller proprietors of Asia Minor were liable. "We have learned," writes the Emperor, "that men inhabit these provinces given over to brigandage and murder and collecting armed bands of retainers, and that when action is taken against

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1. Novellae Justiniani, XXVI, 3, 1 : Oportet autem eum etiam lites sive ad pecunias respicientes seu ad crimina sive ad quodlibet aliud audire et iudicare recte et secundum nostras leges et sub nulla passionis causa, ut nullus inde diffugiens nostram inquietet tranquillitatem. Neque enim volumus nostros collatores relinquentes provinciam huc currere a provincialibus despectos iudiciis.
 2. Novellae Justiniani, XXX, 9 : Nos enim si quem viderimus venientem, qui suas ei non prius defleberit passiones, hunc rursus ad provinciam cum contumelia dirigimus.

them, they flee into another province, and since the governor does not venture to pass beyond the boundary of the province entrusted to him, we have often been obliged to send agents into the province and thus aggravate the public expenses."¹

In 548, therefore, Justinian deemed it expedient to restore the Vicariate of Pontica and invest the vicar with more extensive powers than ever. His authority extended "from this neighbouring Bithynia even unto the Armenias and Trapezuntum and the Persian limits of our Republic."² Within this area he took the place not only of the Praetorian Prefect, but also of the Master of the Offices, the Master of the Soldiers, and those in charge of the imperial estates.³ His military authority was expressly modelled on that of the magistri militum⁴ and

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1. Edictum VIII, praefatio : Sed mox ut ab ipsis cognovimus rerum, quod viri habitant provincias has latrociniis et homicidiis dediti et viros armis utentes semper colligentes, et adversus invicem utentibus his diffugiunt quae pro his sunt poenas, ut provincias mutent, in quibus delinquent, nemine provincialium iudicum traditam sibi provinciam exire praesumente, ut multotiens quidem nos viros destinemus ad provinciam et gravare expensis publicum.
 2. Op. cit., 2 : a vicina hac incipienti Bithynia usque ad Armenios ipsos et Trapezunta et eorum nostraeque reipublicae ad Persas finium.
 3. Op. cit., 1 : τον Βικάριον δὲ πάλιν ἐπιστῆσαι πάσαις ταῖς τῆς Ποντικῆς διοικήσεως ἐπαρχίαις, ὥστε αὐτὸν τὸν τόπον πληροῦν οὐ τῆς ἐπαρχότητος μόνης, ἀλλὰ καὶ τοῦ ἐνδοξοτάτου μαγίστρου τῶν θείων ἡμῶν ὀφφικίων, καὶ πρὸς γὰρ τῶν ἐνδοξοτάτων στρατηγῶν ἐπι γέ μιν, καὶ τῶν μεγαλοπρεπεστάτων ἀρχόντων, οἱ τῷ θεῷ ἡμῶν πατρίμονιῳ καὶ τα ταμίαια κτλ.
 4. Op. cit., 3, 4 : ei iubemus ministrare ad imitationem gloriosissimorum nostrorum magistrorum militum.

all the troops stationed in the Pontic Diocese were placed at his command.¹ No one, whether a private citizen, an official or an ecclesiastic was exempt from his authority and legal cognizance,² and he was licensed to visit all places "whether they pertained to the most sacred churches and monasteries, our private estates, the sacred patrimony, or the domus divina."³ This is an extraordinary concentration of power which places the Vicar of Pontica almost in the position of a viceroy. We have come a long way from the civil praeses of Diocletian.

The new principal of combined civil and military power was applied to the recovered western provinces, though only after the necessity of such a combination had been demonstrated by experience. At first the African and Italian provinces were placed under the jurisdiction of Praetorian Prefects with civil powers, and thus co-ordinated with Illyricum and the Orient.⁴ The incursions of the Moors in Africa and the Franks

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1. Edictum VIII, 3, 3 : Obediet vero ei omnis militia in illis constituta locis, et obedient his, quae dicuntur ab eo, domestici et protectores et scholarii et milites, non egentes praeceptis iudicialibus aut iussionibus nostris, sed hoc ipso . . . iurisdictione.
 2. Op. cit., 1 : ut neque dignitas neque sacerdotium neque cingulum neque militia neque cuidam ex omnibus alteri iurisdictionis huius exceptari aliquem, sed omnem subiacere secundum similem modum, sive privati sint, sive quodam circumdati sint cingulo aut dignitate aut militia aut sacerdotio.
 3. Op. cit., 2 : Superesse ei concedentibus timorem omnibus locis et vicis, sive sacratissimarum ecclesiarum sive sanctissimorum sint monasteriorum vel sacrorum nostrorum privatorum, aut sacri patrimonii aut nostrae domus, et simpliciter dicere, nullum locum foras eius iurisdictione relinquentibus.
 4. Cambridge Ancient History, Vol. II, chapt. 1 (Diehl), pp. 20-24.

and Lombards in Italy soon made it necessary, however, to concentrate authority in the new praefectures if a successful resistance was to be offered. The command of the troops and the direction of the civil administration were ultimately combined in the hands of a new official who was entitled Exarch. The Exarchs of Italy and Africa now wielded the powers of viceroys and at times constituted a menace to the central government itself.¹

The island of Sicily was independent of either praefecture and constituted in the West a praetura (σπραιτεγία) under a praetor (σπραιτηγός) whose competence was similar to that of the Justinianian praetors in the newly organized eastern provinces, and who was directly responsible to the Emperor without intermediary. The island as revealed by the 75th Novel of Justinian occupied a singular position in 537. It is described as "having always been as something peculiarly attached to the needs of the Emperors,"² and we learn that by ancient custom the collection of the public taxes (publicas functiones) was under the sole jurisdiction of the comes sacri patrimonii per Italiam.³ The purport of the Novel is to inform the quaestor sacri palatii that appeals from the judgment of any official on

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1. Cambridge Ancient History, Vol. II, chapter vii (Hartman) pp. 226-227.
 2. Novellae Justiniani, LXXV : quia semper Sicilia quasi peculiare aliquod commodum imperatoribus accessit.
 3. Ibid. : Nam publicas eiusdem insulae functiones sub iurisdictione viri excellentissimi comitis sacri patrimonii per Italiam esse antiqua consuetudo tradidit, cuius auctoritate tam exactio quam illatio earum procederet.

the island are to be sent to him to be referred to the Emperor or decided by him acting in the Emperor's name (vice sacri cognitoris). The object of this law seems to be to secure a more direct control of the domain lands in Sicily.

It is not possible to determine the full effect of these reforms upon the government of the domain land and the administrative competence of the officers in charge of it. The greatly extended authority of the governor, both administrative and judicial, must have considerably restricted the independence of the officers of the Counts of the Privy Purse and of the Sacred Patrimony and of the Grand Chamberlain within the domains, and the transfer of appeals must have resulted in the practical abolition of the judicial functions of these officials so far as the administration of the domain was concerned, leaving them little more than judicial authority over the officials attached to their own officia. The tendency of the whole series of reforms seems to be to concentrate the financial administration in the hands of the Praetorian Prefect of the East. Indeed, John of Cappadocia, the notorious Prefect to whom all the reform edicts are addressed, appears in history chiefly as concerned with the financial administration and he was universally hated for the cynical and outrageous extortion which served to support the wars of his master.¹ The exigencies

1. Lydus (ed. Bonn), p. 250, ll. 13 ff.; Evagrius, V, 3.

of the Empire necessitated a greater concentration of the control of its resources than was possible under the earlier system, especially in the financial structure.

The original unity of the government of the domain lands was still further broken up by the creation by Justinian of two curatores dominicae domus. The vagueness and inadequacy of our information on the subject of the curators of Justinian has given rise to so many conjectures that it is difficult to come to any conclusion as to the precise nature and limit of their competence. Beaudouin¹ and His² think that until the creation of these officials the domus divinae, with the exception of that in Cappadocia, continued to be administered by the comes rerum privatarum. Seeck³ believes that the comes domorum per Cappadociam governed all the domus divinae throughout the Orient and quotes in support of his contention the 42nd Epistle of Bishop Theodoretus which mentions an officium comitiacum (ἐκ τῆς κομητιανῆς τάξεως) and the comitiani (τοῖς κομητιανοῖς) entrusted with the collection of the taxes in gold from the Syrian domus divina.⁴ Now the Notitia Dignitatum for the Orient, compiled about 425 A.D., i.e. after the definite transfer of the domus divina per Cappadociam to the

1. Op. cit., p. 40.
2. Op. cit., pp. 79-80.
3. In Pauly-Wissova, Vol. IV, p. 653, s.v. comes domorum.
4. Theodoretus, Epistolae, XLII, Migne, P.G., Vol. 83, 1217-1220.

Grand Chamberlain, places domus divinae sub dispositione viri illustris comitis rerum privatarum, and it is more likely that several of the domus divinae in the East were under a subordinate of the Count of the Privy Purse entitled comes which thus explains the officium comitiacum in Syria. It appears, therefore, that the domus divinae (with the exception, of course, of that in Cappadocia) remained under the Count of the Privy Purse until Justinian transferred them to the curatores dominicae domus, of which there were apparently three, two for the Emperor's estates, and one for those of the Empress. Like the Count of the Privy Purse they were illustres. It is impossible to say when this occurred, but we have a constitution addressed in 531 "to Florus comes rerum privatarum and curator dominicae domus, to Peter the illustrious Curator of the Divine House of the most serene Augusta, and to Macedonius, also illustrious curator dominicae domus."¹ Since the comes domorum and his officium are mentioned as existing in 536,² we must suppose that the domus divina per Capadociam was not included in the competence of the new officials. Its reform followed with the creation of the Proconsul Cappadociae, as we have seen.

It also appears that the Count of the Sacred Patrimony

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1. Codex Justinianus, VII, 37, 3 : Imperator Iustinianus Aug. Floro comiti rerum privatarum et curatori dominicae domus et Petro viro illustri curatori divinae domus serenissimae Augustae et Macedonio viro illustri curatori et ipsi dominicae domus.
 2. Novellae Justiniani, XX, 1.

whose office had been created by Anastasius was replaced by the new curatores dominicae domus of Justinian and that the fundi patrimoniales were henceforth a part of the domus divina,¹ and appear as such under the designation πατριμωναδική οἰκία in a Novel of Tiberius II.² The patrimonium itself, however, seems to have continued to exist and it does not seem to me that Karlowa's citations of Codex Justinianus, VII, 37, 3, #1a and Edicts IV, 2, #2 and VIII, 2 are in any way conclusive evidence that the word patrimonium was sometimes used to indicate the Sacred Largesses.³ Similarly, it is difficult to assume that the Θείον πατριμῶνιον of Novel 148, the πατριμωναδική οἰκία of the Novel of Tiberius,⁴ and the πατριμῶνιον of Procopius' Secret History⁵ refer to the sacrum patrimonium per Italiam as Stein believes,⁶ although the phrases used in describing Sicily in Novel 75⁷ would seem to corroborate his

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1. Karlowa, Römische Rechtsgeschichte, I, p. 842; Stein, Studien, p. 174 f.; Bury, Later Roman Empire, II, pp. 354-355; cf. Procopius, History of the Wars, V, iv, 1: τὴν βασιλείου οἰκίαν αὐτῆν, ἣν δὲ πατριμῶνιον Ῥωμαῖοι, καλεῖν νενομίκασι; op. cit., V, vi, 26: τὰ μὲν χωρία τῆς βασιλέως οἰκίας, ἣν πατριμῶνιον καλοῦσι
 2. Zacharia von Lingenthal, Ius Gr-Rom., III, col. 1, Nov. 12, 1, p. 26.
 3. Karlowa, op. cit.; Stein, Studien, p. 177.
 4. Op. cit.
 5. Anecdota, XXII, 12.
 6. Op. cit., p. 178.
 7. Sicilia quasi peculiare aliquid commodum imperatoribus accessit. Esse enim non indignum putavimus, ut Siciliam nostrum quodammodo peculium constitutum nostrorum particeps consiliorum quaestor sub iurisdictione sua suscipiat.

view. Be that as it may, we hear no more of the Count of the Sacred Patrimony. There is no mention of him in Codex Justinianus, VII, 37, 3 (A.D. 531) where he ought to appear if he still existed, or in Novel 22 (A.D. 536), while nostri curatores per quos res divinarum domuum aguntur appear in the edict of 531 and henceforth take an increasingly important role.¹

Karlowa believed the curatores dominicae domus of Codex Justinianus VII, 37, 3 to be identical with the much earlier comites and procuratores domorum.² He overlooked the fact, however, that Justinian's curators were illustres, whereas the earlier officials were only clarissimi or spectabiles.³ The curatores dominicae domus were of equal rank with the Count of the Privy Purse and were central controllers to whom the other curatores divinarum domuum were subordinate.⁴ Indeed, the duality of the office seems soon to have been abandoned, and we find but a single Curator. Thus, in 557 Anatolius is described by Agathias as having charge of the imperial houses and possessions, an office whose incumbents are called Curators by the Romans. His language seems to imply that there was only one at the time.⁵ At any rate, in 566 under Justin II there was

1. Stein, Studien, p. 174 f.; Bury, op. cit., p. 354.

2. Röm. Rechtsgesch., I, p. 844.

3. Stein, loc. cit.

4. Bury, op. cit., p. 355, note 2.

5. Agathias, V, 3 : πρὸς γὰρ τὴν φροντίδα τίθεσθαι καὶ ἐπιμέλειαν τῶν βασιλέως οἰκῶν τε καὶ κτημάτων ἀρχὴν εἰληχότα. κορυφαῖοι δὲ τοὺς καλοῦσι Ῥωμαῖοι.

but a single Curator of the Divine Houses,¹ and Aristobulos was ὁ κούρατωρ τῶν βασιλικῶν οἰκῶν in the reign of Maurice.²

It is interesting to note that in the first appearance of the curatores dominicae domus one of them was also comes rerum privatarum, thus preserving a recollection and last remnant of the former dependence of the domus divinae upon the Count of the Privy Purse. It is also curious that Philostorgius at an early date (he died in 412) refers to Julian's comes rerum privatarum as τῆς βασιλικῆς οἰκίας προστώς "which is called in the Roman tongue κόμητα πριουάτων (comitiva privatarum)."³ And herein may lie the key to the explanation of the final disappearance of the comes rerum privatarum. The constitution of 566⁴ which is a proclamation by Justin II of a general and universal cancellation of arrears, when mentioning in detail the treasuries affected thereby does not seem to mention that of the res privata. Τῶν θείων ἡμῶν θησαυρῶν is the Sacred Largesses; τοῦ ἱερώτατου ἡμῶν ταμείου almost certainly the domus divina per Cappadociam;⁵ τοῦ θείου πατριμονίου

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1. Novellae Justiniani, CXLVIII, 1 : τοῦ μεγαλοπρεπεστάτου κούρατωρος τῶν οἰκιῶν.
 2. Theophanes (ed. Bonn), p. 402, l. 4.
 3. Philostorgius, VII, 10.
 4. Novellae Justiniani, CXLVIII.
 5. Justinian always meant the Crown Lands in Cappadocia when he used the term ταμειακά or tamiaca and the ταμίας τῶν βασιλικῶν θησαυρῶν as we shall see presently was most likely a subordinate of the Grand Chamberlain and the

the Sacred Patrimony; and τοῦ . . . κουράτωρος τῶν οἰκιῶν the Curator of the Houses.

Yet, in this same year Petrus was comes rerum privatarum¹ and a certain Eudaemon also filled the office at an unknown date in the reign of Justin II.² In fact, the last references to the Privy Purse are found in the letters of Pope Gregory the Great as late as 603 A.D.³ In Registrum, IX, 72 we find one Maximus vir clarissimus palatinus privatarum, and in 603 Gregory complained of the activities of one Beator, qui quasi comes privatarum dici vult.⁴ But shortly thereafter the office of Count of the Privy Purse must have ceased to exist, and the estates which composed the res privata have passed under the control of the κουράτωρ τῶν βασιλικῶν οἰκῶν of the later Byzantine sources who is also designated as ὁ μέγας κουράτωρ and his office τὸ μέγα κουρατωρικίον, apparently to distinguish him as the head of the numerous curators of individual estates of the domain land.⁵ This change must have occurred during or soon after the disruption of the Empire

Intendant of the strictly private purse of the Emperor whose revenues were derived from the praedia tamiaca in Asia Minor.

1. Stein, Studien, p. 186, citing Ius Gr-Rom., III, col. 1, Nov. 3.
2. Ibid., citing John of Ephesus, II, 11, p. 55.
3. Ibid., p. 147.
4. Registrum Epistolarum, XIII, 26.
5. Such as Φῶτις ὁ κουράτωρ τῶν Πλακιδίας (Chronicon Paschale, A.D. 610) and Δουμνιζιολος κουρ. τῶν Ὀρμιοδου (Ibid., A.D. 605); cf. Bury, Administrative System in the Ninth Century, p. 101.

produced by the army revolt that raised Phocas to the throne and opened the frontiers of the East to Persia. At about the same time we find the last reference to the Count of the Sacred Largesses,¹ and somewhat later the praefectus praetorio per Orientem appears also for the last time.²

It is possible to trace the earlier steps in the amalgamation of the offices of comes rerum privatarum, a strictly Latin title, and the more Greek title of *κουράτωρ τῶν βασιλικῶν οἰκῶν* in an undated Novel of Tiberius II (578-582 A.D.).³ This novel is the reply of that Emperor to the numerous complaints from almost all the provinces as to the unjust appropriation of private property by the officials of the imperial estates. It is entitled *Περὶ τῶν θείων οἰκῶν* and refers to the *ἐνδοξότατοι καὶ μεγαλοπρεπέστατοι κουράτωρες τῶν θείων ἡμῶν ἢ τῆς εὐσεβειστάτης βασιλείου οἰκῶν, οἷς συναριθμητέον τὴν τε πατριμωναδικὴν τὴν τε τῶν νέων ἐκκλησιῶν προεστῶσαν βασιλικὴν οἰκίαν*. It is apparent that *θεῖοι οἶκοι* is a general term and includes all the estates of the imperial domain, for among these are reckoned those of the Empress as well as the *πατριμωναδική οἰκία*. His,⁴ therefore, suggests that

1. Athanasius, 605 A.D., Chronicon Paschale.

2. 626 A.D., Chronicon Paschale.

3. Ius Gr-Rom., III, col. 1, Nov. 12, 1, p. 26.

4. Op. cit., p. 81.

both the comes patrimonii¹ and the comes rerum privatarum are included among the *κουράτωρες*, and that *ἐνδοξότατος* (gloriosissimus - a predicate employed by Justinian and applied only to the highest officials) refers to the two Counts while *μεγαλοπρεπέστατος* (magnificentissimus) refers to the Curator. If the Count of the Privy Purse and the Count of the Sacred Patrimony still survived in the reign of Tiberius II, and the Latin forms of the title and office, as we have seen, existed in Papal correspondence as late as the reign of Maurice, it is at least apparent that they were well on their way to amalgamation with the office of the *κουράτωρ τῶν βασιλικῶν οἰκῶν* of the Byzantine period. Indeed, in 588 A.D. a letter was addressed by the Merovingian King Childebert II ad Megantem curatorem.² He is referred to by such lofty titles (celsitudo vester; gloriosus magnitudo vester; vestra magnificentia) as to seem to Stein almost to anticipate in the sixth century under Maurice the *μέγας κουράτωρ* of the ninth.³

Important in this connection, also, is the history of the Byzantine official entitled Sakellarios.⁴ The title, meaning

1. As we have seen, Stein and following him Bury believe that the comes patrimonii had already been displaced by the new curatores dominicae domus as early as 531 A.D.
2. Monumenta Germ. Hist., Epp. III, p. 143, no. 36; cf. Reverdy Revue historique, CXIV (1913), 76 f.
3. Stein, Studien, p. 178.
4. Cf. Bury, Administrative System in the Ninth Century, pp. 80-81, 84-85. For Stein's view that the *ταμίας τῶν βασιλικῶν χρημάτων* and the *σακελλαριος* are to be identified with each other and with the Count of the Sacred Largesses rather than the Count of the Privy Purse, cf. Studien, pp. 163-165.

"Keeper of the Purse" is derived from *σακελλα* or *σακελλάριον* meaning purse. The large public character of the res privata has already been indicated and it is obvious that the Emperor must have had a private purse in a stricter, more personal sense, as well as an official to take charge of it. Since he was only a minor officer and most likely one of the chamberlains the fact that he nowhere appears in the Notitia Dignitatum may be explained by his insignificance or the lacunae in the text which occur in the pertinent part relating to the officium of the Grand Chamberlain. However, in the sixth century we find an official bearing the designation *τάμιος τῶν βασιλικῶν χρημάτων*. Narses, the famous eunuch-general and Grand Chamberlain appears first in history about the year 530 where he is designated by Procopius as *ὁ βασιλέως τάμιος*.¹ In 531 he appears as a chamberlain despatched by Justinian into Armenia to take in the name of the Emperor the immense treasure stored in a Persian town captured by the Byzantine troops.² In this instance his connection with the Privy Purse of the Emperor is particularly apparent. In 538 he was sent to Italy to assist, or act as a check upon, Belisarius. At this time he is designated by Procopius as *τῶν βασιλικῶν χρημάτων τάμιος*,³ and the Emperor in a letter to the army refers to him

1. History of the Wars, I, xv, 31.

2. Malalas, (ed. Bonn), p. 469, l. 15 f.

3. Op. cit., VI, xiii, 6.

as τὸν ἡμέτερον ταμίαν.¹ Besides Narses we find at least one other official of the period of Justinian bearing this title; a certain Rusticus appears in Agathias as τάμιος τῶν βασιλικῶν χρημάτων sent by Justinian with money to the army in Lazica.² It is carefully explained that he was οὐ μὴν τῶν ἐκ τῆς δασμοφορίας ἐρανιζομένων (i.e. he was not comes sacrarum largitionum), ἀλλὰ τῶν ὅσα ἐκ τῶν βασιλείων θησαυρῶν.³

In the reign of Heraclius the office of σακελλάριος appears for the first time.⁴ The office is found again in the reign of Constans II (641-668 A.D.), and it was held by Stephen in the reign of Justinian II (685-711 A.D.).⁵

Bury has drawn up the data which make the equation of the two titles τάμιος τῶν βασιλικῶν χρημάτων and σακελλάριος indubitable.⁶ Since the word Sakellarios is obviously of Latin

1. Procopius, History of the Wars, VI, xviii, 28.
2. Agathias, III, 2, p. 140.
3. That this distinction was necessary is apparent from the fact that both Sozomen (IV, 19) and Theodoretus (III, 12) refer to the Count of the Sacred Largesses as τάμιος; Theodoretus (IV, 22) calls Magnus, who appears as ὁ τῶν θησαυρῶν ταμίης in Sozomen, ὁ τῶν κομητατησίων δε' ἰαργιτιονῶν κομης; and Felix, Julian's Count of the Sacred Largesses he calls Φίλιξ μὲν ταμίος ὢν τῶν βασιλικῶν θησαυρῶν.
4. Leontios was ὁ ἀπὸ σακελλαρίων in 610; Theodore βασιλικὸς σακελλάριος in 635 (Bury, Administrative System, p. 84).
5. Bury, loc. cit.
6. Op. cit., p. 85; in substance the data consist of the following facts: Nicephorus in his Chronicle applies the term τάμιος τῶν βασιλικῶν χρημάτων to Theodore and Stephen whom Theophanes designates as σακελλάριοι; he also applies the expression to Leontios who is described as ὁ ἀπὸ σακελλαρίων in the Chronicon Paschale, sub anno 610.

derivation, Dunlap believes it quite possible that the official of that name may date from a period much anterior to the reign of Justinian.¹ Bury is of the opinion, based, however, upon no evidence whatever, that in the fifth and sixth centuries "we may take it that the Sakellion was the receptacle of the net profit arising from the imperial estates" after administrative expenses and "certain standing charges" had been paid.²

Bury also observes "that in the seventh century, while the Sakellarion is ascending in rank and prominence, we cease to hear of the comes rei privatae."³ As a matter of fact, we cease to hear of the comes rei privatae before the reign of Heraclius. The evidence for supposing that the office may have been absorbed in that of the curatores dominicae domus has already been presented. If the office did not suffer absorption at that time it certainly was replaced in the course of the seventh century during the reorganization of the restricted Byzantine world by the dynasty of Heraclius, at which time the management of the private estates "seems to be divided between two departments, that of the *σακέλλιον* and that of the Great Curator - the general administration of the estates being presumably under the latter, and the revenue being dealt with by the *σακέλλιον*."⁴ Thus, the official who began as the humble

1. Dunlap, op. cit., p. 223.

2. Bury, Administrative System, p. 81.

3. Ibid.

4. Ibid.

subordinate of the Grand Chamberlain (at least, such was the beginning of Narses' career) arose to replace the Count of the Privy Purse in the course of the seventh century, if the latter had not already been displaced before, and ended in the eighth century as "a sort of Comptroller, with authority over all the financial ministries, while his place as head of the bureau of the Sakellion is taken by the *χαρτουλάριος τοῦ σακελλίου*."¹

Finally, in the ninth century we find the following financial bureaus : the *γενικόν, σακέλλιον, στρατιωτικόν, βεστιάριον, μεγάλη κουρατωρεία, ἀγέλαι, στάβλον* and *εἰδικόν*. Of these the *σακέλλιον* and *μεγαλή κουρατωρεία* have already been shown to be the successors of the res privata. The *γενικόν* filled the place of the sacrae largitiones, the *στρατιωτικόν* served in the capacity formerly filled by the chest of the Praetorian Prefect so far as the finances of the army were concerned, the *βεστιάριον* was the vestiarium sacrum formerly subject to the Count of the Sacred Largesses; the *ἀγέλαι* and the *στάβλον* were the greges and stabula originally under the Count of the Privy Purse, and the *εἰδικόν* was concerned with the State factories formerly controlled by the Master of the Offices and the Count of the Sacred Largesses.²

1. Bury, Administrative System, p. 85.

2. Op. cit., p. 80.

PART II

**THE COUNT OF THE PRIVY PURSE
AND THE
ADMINISTRATION OF THE RES PRIVATA**

Chapter VI

THE OFFICIUM OF THE COUNT OF THE PRIVY

PURSE *

The Count of the Privy Purse like all of the great administrative officials resident at the Court had his own officium¹ through which he governed the imperial domains. The officiales who served therein are sometimes referred to as privatiani² to distinguish them from the largitionales of the Sacred Largesses.³

The officium for the East and that for the West as given in the Notitia Dignitatum are practically identical and must be considered to have been so. They consisted of the following officials:

* In view of the absence of any formal treatise on the subject surviving from contemporary times we are dependent upon the skeleton outline of the Notitia and incidental references for our picture of the officium of the comes rerum privatarum. Naturally, therefore, there are gaps in our information and the interworking of the various officiales can only be surmised in many instances.

1. Officium sacrarum privatarum, Codex Theodosianus, VI, 30, 18; Codex Justinianus, X, 11 refers to the *κόμης τῶν ἰδικῶν τοῦ Βασιλέως καὶ ἡ πειρομένη αὐτῆς σχολή*; cf. articles officiales, officium by Lecrivain in Daremberg et Saglio, Vol. IV, part 1, pp. 155-159; and Boak, Pauly-Wissowa, Vol. XVII, part 2, pp. 2048 ff.
2. Codex Theodosianus, VI, 30, 24; VIII, 7, 6.
3. Similarly, the officiales of the Praetorian Prefect were

A Chief Clerk of the Whole Staff (primicerius totius officii)

A Chief Clerk of the Benefits (primiscrinus beneficiorum)

A Chief Clerk of the Fixed Taxes (Not. or., primiscrinus canonum; occ., primiscrinus rationum)

A Chief Clerk of Receipts (primiscrinus securitatum)

A Chief Clerk of the Private Largesses (Not. or., primicerius scrinii largitionum privatarum; occ., primiscrinus largitionum privatarum)

An Assistant Clerk of the Whole Staff (secundicerius totius officii)

Each of these officials had a staff of palatini and scriniarii at his disposal.¹

The primicerius had general supervision of the functioning of the entire officium of the Count of the Privy Purse and corresponded to the princeps officii of other officia such as those of the Prefects, the magistri militum and the provincial governors. Also, the bureau-chief was sometimes referred to as adiutor,² a title easily derived from his position as principal assistant to the great administrative officers in the performance of the duties of their office. In the case of the Privy

called praefectiani, those of the Urban Prefect, urbaniciani, of the Master of the Office, magistriani, etc., cf. Boak, op. cit., p. 2048.

1. Scriniarii etiam reliqui suprascriptorum scriniorum : ceteros etiam palatinos.
2. Cf. Boak, Pauly-Wissowa, Vol. XVII, part 2, p. 2054; Lecrivain, Daremberg et Saglio, Vol. IV, part 1, p. 157.

purse, he is supposedly to be identified with the primicerius totius officii of the Notitia Dignitatum, and the primicerius is apparently meant by Honorius when he refers to the adiutores officii palatini who prepare the matriculae of their staff,¹ and when he confers immunities upon the adiutor and primicerii diversorum officiorum of the sacrarum remunerationum ratio.²

Whereas the bureau-chiefs (principes) in many officia were customarily appointed from the schola agentum in rebus,³ this does not appear to have been the case in the officia of the Sacred Largesses and the Privy Purse. It appears from a constitution of Honorius of 413 A.D. that the chief of staff (adiutor) as well as the heads of the scrinia into which the officium was divided (primicerii diversorum officiorum) were promoted from the ranks of that same office, for not until they had reached the summit of that service did they enjoy the immunities lately granted to the agentes in rebus.⁴ In this constitution a clear distinction is made between the schola agentum in rebus and those who had reached the summit of the service in the officia of the Sacred Largesses and the Privy

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1. Codex Theodosianus, VI, 30, 16 : adiutoribus quoque, qui matriculas tractant.
 2. Codex Theodosianus, VI, 30, 20.
 3. Boak, op. cit., p. 2054.
 4. Codex Theodosianus, VI, 30, 20 : Palatinos qui sacrarum remunerationum rationem tractantes inculpatim ad calcem terminumque militiae pervenerint, nec non etiam adiutorem et primicerios diversorum officiorum praecepimus ea habere privilegia, quae nuper agentum in rebus scholae a nostra

Purse, although their rank and reward are equivalent.

The clerks who appear as primiscrini of the various bureaus of the Count's officium in the Notitia are referred to as primicerii in the Codices,¹ and the primicerii likewise appear as primates officii.²

The scrinium beneficiorum handled all matters pertaining to the alienation of imperial estates by gift of the Emperor or Empress or the letting of such properties by one of the various forms of contract elsewhere discussed (chapt. IX); also any immunity or indulgence granted as a special favor to holders of imperial estates by imperial rescript. Thus, in Honorius' edict of 423 fixing the amounts to be levied as extraordinary taxes in accordance with the length of time an estate had been held as a gift from the Emperor, Godefroy believes that the scrinia beneficiorum is referred to when the Emperor decrees that not only those of the scrinium concerned with such matters but everyone from all of the scrinia of the entire officium shall be held liable to the sixty pound fine for violation of the terms of the edict.³ This scrinium was of very

sunt mansuetudine contributa, scilicet ut a tironum praebitione memorati reddantur exortes ceteraque onera non agnoscunt, quae antea, cum nihil de hac re statuissemus, ad dignitatis dispendium sustinebant.

1. Codex Theodosianus, VI, 30, 3; 14; 20; 24; Codex Justinianus, XII, 23, 14.
2. Codex Theodosianus, XII, 20, 4; Codex Justinianus, XII, 23, 14.
3. Codex Theodosianus, XI, 20, 4.

ancient origin in the imperial service. We find a certain freedman of Trajan who was a commentariis beneficiorum¹ and there are early references to the liber beneficiorum in which were recorded special gifts of the Emperor to cities or individuals.² The memoriales who received petitions for bona caduca³ and prepared the rescripts granting possession⁴ were very probably members of the scrinium beneficiorum.

The scrinium canonum had to do with the registers of the regular fixed annual taxes of the domain lands.⁵ The word canon ordinarily denoted the fixed rental agreed upon between tenant and owner.⁶ In the case of the Privy Purse, it was the amount established under the terms of the contract at the time of the farming out of the domains by auction to the persons who offered to remit the largest amount in taxes (cf. p. 210). To

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1. Godefroy, Vol. IV, p. 160 : M . ULPIO . AUG . LIB. PHAEDIMO DIVI . TRAIANI . AUG . A . POLIONE A COMMENT . BENEFICIORUM.
 2. Ibid., quoting Hyginus, De limitibus constit., "Si qua beneficio concessa aut assignata coloniae fuerint, in libro beneficiorum adscribemus." Dolabella in Script. rei agrar. quaeris, "Si in libro beneficiorum regionis illius beneficium alicui Augustus dederit."
 3. Novellae Theodosii, XVII, 2.
 4. Codex Justinianus, X, 12, 2.
 5. Böcking ed. of Notitia Dignitatum, Annot. ad Notit. Orient. cap. XII, note 25 (p. 255) : Canon est sollemnis praestatio seu illatio aut pensitatio vel ordinarium tributum; a singulis provinciis quotannis in arcas ss. largitionum sive rerum privatarum inferendus fuit.
 6. Leonhard, in Pauly-Wissova, Vol. III, p. 1486, s.v. canon.

the scrinium canonum presumably belonged the canonicarii who were sent into the provinces from time to time to press for collection.¹

The scrinium securitatum dealt with the receipts (securitates) for taxes paid and was thus the bureau in charge of calculating arrears and keeping the records pertaining thereto.

The scrinium largitionum privatarum was concerned with the expenditure of the revenues raised from the domain lands.²

The secundicerius totius officii, in spite of his title, seems to have ranked sixth in order among the officials of the Count's officium and is not mentioned along with the chief of staff and the heads of the scrinia in the edicts conferring rank and privileges upon them after they leave the service. He was in charge of all the documents (chartae) or archives of the Count's officium³ and the cartarii of the sources were probably his subordinates. When Theodosius II threatened with a heavy fine any tractator who ventured to set aside his dispositions regarding estates of the Patrimony in Asia and Pontica,⁴ he was presumably referring to the secundicerius, qui

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1. Cassiodorus, Variae, XII, 4; 13; Novellae Justiniani, XXX, 7, 1.
 2. Bury, Imperial Administrative System, p. 82.
 3. Notitia Dignitatum : secundicerius totius officii qui tractat chartas ipsius officii.
 4. Novellae Theodosii, V.

tractat chartas officii, and his subordinates.

In addition to the scrinia given in the Notitia, we find references in the Codices to two other groups of officials in the officium of the res privata - the exceptores and the mittendarii, who are variously referred to as scrinia and schola.¹ The exceptores were scribes occupied with the preparation of documents and imperial diplomas, and were perhaps subordinates of the secundicerius. The mittendarii, however, seem to have constituted a definite group or schola.² They were despatched into the provinces on a variety of missions and His draws an analogy between them and the imperial agentes in rebus.³ They served in a given capacity for two years until 419 when Theodosius II, on the model of the exceptores, limited their function to one year.⁴ They were classified into two groups - ducenarii and centenarii - and Theodosius I in 385 decreed that each year one of the ducenarii and three of the centenarii should be relieved of their belt of office and go out from the officium palatinum (i.e. by promotion), the places thus made vacant to be filled by successors.⁵ As we have seen, it was one of the mittendarii who was sent each year to act as princeps

1. His, op. cit., p. 53.

2. Although Godefroy thinks they belonged to the scrinium canonum since they so often appear in the provinces pressing for payment, ad Codicem Theodosianum, VI, 30, 2 (Vol. II, p. 207).

3. His, op. cit.

4. Codex Theodosianus, VI, 30, 22.

5. Codex Theodosianus, VI, 30, 8 & 9; renewed by Theodosius II in 422 (Codex Theodosianus, VI, 30, 23).

officii to the comes domorum per Cappadociam.

Service in the officium of the res privata as elsewhere, in accordance with the military character of the Principate, was organized as a militia, that is, along the lines of military service, and preserved a strict discipline, so far as the imperial legislation could maintain it, with regard to appointment, limits of service, promotion and discharge.

No one was permitted to enter the service without the warrant of the Emperor (adnotatio divina, divina probatoria, authentica sacra),¹ apparently a written approval, though in the case of such a large body of officials actual examination by the Sovereign cannot have been practicable; the adnotatio, then, must have been a purely formal procedure and we find many quite unqualified persons making their way into the officia.² By edict of Leo I the probatoriae were issued upon the responsibility of the bureau-chiefs (primates) by the scrinium memoriae for the officials of the Privy Purse and by the scrinium

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1. Codex Theodosianus, VI, 30, 18 (C. Just., XII, 23, 9) : Non aliter quilibet in officio sacrarum privatarum cingulum militiae sibi sumendum existimet, nisi nostrae mansuetudinis adnotationem meruerit; Codex Justinianus, XII, 59, 10 : Hac sanctione decernimus, ut in posterum nemini licentia sit edendi exemplaria his, qui sociandi sunt cuicumque militiae, quam sine divinis probatoriis adipisci non possunt, sed periculo primatum uniuscuiusque officii ipsas authenticas sacras, quae divinam nostrae pietatis continent adnotationem, cum subscriptione administrantium, sub quorum iurisdictione consistunt, his qui militare volunt praestari.
 2. Cf. Codex Justinianus, XI, 64, 1 in which fugitive coloni from the imperial estates or the sons and grandsons of such who take refuge in the army or palace service are recalled to their original condition.

epistularum for the office of the comes domorum.¹ The names of persons thus accredited were inscribed on the official roll or matricula of the officium. They constituted the regular members of the officium in actual service - the statuti.² In addition to the regular officiales there was an indefinite number of supernumerarii awaiting an opportunity to fill the vacancies created by promotions. Through connivance of the officials in charge of the matriculae many of the latter were fraudulently enrolled on the lists as regulars (statuti) and the officium of both financial Counts became so overgrown by the year 399 that Honorius undertook a great purging of this branch of the imperial service in edicts addressed to the Praetorian Prefect and the comes sacrarum largitionum.³ At this time if not before the officium of the Sacred Largesses was limited to 546 and that of the Privy Purse, which had fewer scrinia, to 300 persons. The law simply assumes that the super-numerarii have fled from the municipal curias, corporations and colleges, and the officia of the provincial governors; the Prefect therefore is instructed to inform the provincial governors and authorize them to draw back to their original functions

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1. Codex Justinianus, XII, 59, 10 : 3. Et est notitia. Scrinii memoriae probatoriae agentium in rebus, palatinorum largitionum, palatinorum rerum privatarum partis Augustae. Item scrinii sacrarum epistularum sic : . . . in officii comitis divinarum domorum.
 2. Boak in Pauly Wissowa, Vol. XVII, part 2, p. 2051; Lecrivain in Daremberg et Saglio, Vol. IV, part 1, p. 156.
 3. Codex Theodosianus, VI, 30, 16 & 17.

all in excess of the established numbers. To facilitate this process, the name of each person inscribed on the matriculae must be accompanied by his native city (patria) and province. Those who were bound by no obligations were retained, the remainder dismissed to their former functions; the curiales were empowered to claim a renegade from their ranks; likewise, the corporati and collegiati, as well as the governors their fugitive apparitores. The adiutores officii palatini who prepared the matriculae were threatened with exile and confiscation if they allowed more than the fixed number to enter the service.¹

Service in the various scrinia of the Privy Purse was carefully graduated and each palatinus passed through in order of seniority based upon the time of his entrance into the service.² In order to preserve this order intact and prevent

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1. Codex Theodosianus, VI, 30, 16 : Salutari definitione censuimus DXL et VI de officio comitis sacrarum largitionum, trecentos privatarum, qui tamen nullis sunt corporibus obligati; reliquos suis officiis et ordinibus esse reddendos singulis tamen ita matriculis retinendos, ut patriae provincia pariter conscribatur, iudicibus admonendis de numero statuto, ut ceteri ad sua officia retrahantur nec posthac sub specie militiae intra provinciam possit delitescere qui sibi nec indultum comestum nec publicam necessitatem docuerit esse mandatam. Curialem suum municipes vindicent, collegiatum proprium corpus adstringat, nec iudicem suum apparitor quondam desertor evadat. Sibi quisque, iure tamen, obnoxium exsequatur, adiutoribus quoque, qui matriculas tractant, supplicium deportationis cum amissione facultatum subeuntibus, si quemquam ultra numerum praestitutum sinerint militare.
 2. Boak, op. cit., p. 2050; Codex Theodosianus, VIII, 7, 1 : promotionis ordo custodiendus est, ut primus in officio sit, qui prior fuerit in consequendo beneficio principali; VI,

confusion in its ranks, a person was compelled to remain in the scrinium in which he was first enrolled and forbidden to transfer to another.¹ Likewise, a person who had performed the office of princeps in one scrinium was forbidden to seek employment in another.²

Service in the officia palatina carried with it certain immunities while in office and the bestowal of a certain rank and the attached privileges after completion of the term. To begin with, while in office the palatini were amenable to justice both criminal and civil only in the court of their chief in accordance with the administrative axiom of the Late Empire that the officials of each department of the government were accountable only to the head of that department;³ He exercised over his officials complete disciplinary power and the right of dismissing offenders from the service in disgrace

26, 11 : locum per ordinem succedentibus dantes; Cassiodorus, Variae, XI, 17 : iuxta matriculae seriem. How precise this gradation was is apparent from a constitution of 379 A.D., fixing the penalties for over-staying leave of absence. If a palatinus over-stayed his furlough by six months, he was degraded five places; if by a year, ten places; two years, twenty places; three years, thirty places; four years, forty places; and beyond four years he lost his place in the service altogether (Codex Theodosianus, VII, 12, 2).

1. Codex Theodosianus, VI, 30, 5 : Quidam post inpletum ordinem militiae palatinae, quam gesserant, honoremque transactum ad exceptorum scrinia transire nituntur. Hac igitur lege sancimus, ut nulli prorsus dehinc ista audendi relinquatur occasio, sed unusquisque eius scrinii, quod primum militando delegit, ordinem persequatur.
2. Ibid., nec in alterius loco finem militiae requiratur, qui iam proprii ordinis transegerit principatum.
3. Bethmann-Wollweg, Der römische Civilprozess, Vol. III, p.

(missio ignominiosa),¹ and from his judgment there was no appeal.² This privileged position pertained only to the statuti, not to the supernumerarii.³ The provincial governors had no authority over the privatiani in either civil or criminal matters unless it was expressly delegated to them by the Count of the Privy Purse at their request,⁴ although Theodosius II gave the Prefect of the City cognizance over the palatini in cases involving buildings in the Capital, slaves, and the Grain Supply.⁵

In addition, though liable to the regular taxation of the Empire, they, their sons and nephews were immune from

139 f; Lecrivain, Daremberg et Saglio, op. cit., p. 156; Boak, Pauly-Wissova, op. cit., p. 2053, citing Codex Theodosianus, I, 7, 4 (C. Just., I, 29, 2); Codex Justinianus, XII, 52, 3, #2; 54, 5.

1. Lecrivain, op. cit., p. 156.
2. Lecrivain, op. cit.; Boak, op. cit., p. 2053, citing Codex Theodosianus, VIII, 4, 15; XI, 36, 17; Codex Justinianus, I, 40, 12; III, 2, 3; Lydus, De Magistratibus, III, 57.
3. Lecrivain, op. cit.; Boak, op. cit., p. 2051, citing Codex Justinianus, XII, 54, 5.
4. Codex Justinianus, XII, 23, 12 (addressed to Maximinus comes sacrarum largitionum, who occupied that office from 423 to 425 A.D. - Seeck, Regesten) : Rectoribus autem provinciarum intra administrationis suae fines inter praesentes palatinos nec causis publicis occupatos cognoscere tam pro civili quam pro criminali causa permittimus, sic tamen, ut non aliter criminalis sententia adversus eos proferatur, nisi ex suggestione provincialis iudicii vir illustris comes sub quo militat certioratus hoc ei permiserit.
5. Ibid., viros devotos palatinos non oportere in hac regia urbe apud virum illustrem praefectum urbis litigare compelli, nisi de aedificatione domorum et servitutibus et annonis orta videatur causa; in aliis vero causis tam pecuniariis quam criminalibus apud viros illustres tantummodo comites suos respondere.

extraordinary and "sordid" burdens.¹ This immunity meant that those enjoying it could not be called upon to undertake the honors or burdens (and both were now the same) of the municipalities, they were not liable to provide a certain number of turmarii (cavalry men and their equipment), horses and recruits for the army, or pay the extraordinary taxes in money or in kind.² From this privileged position Valentinian and Valens in 364 decreed that they could not be drawn ad alicuius corporis molestiam without the express permission of the Emperor.³

Finally, if fugitives from the hereditary obligations attached to each rank in the social structure of the Late Empire made their way into the civil service and remained there undetected for a sufficiently long period they could not be

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1. Codex Theodosianus, VI, 35, 3 (C. Just., XII, 1, 3 & XII, 28, 2); Codex Justinianus, XII, 23, 1 (346) : Palatini pro capitibus seu iugis suis tantum pensitationem atque obsequia recognoscant, extraordinariis et sordidis muneribus et susceptionibus et temonariis oneribus liberati.
 2. Codex Theodosianus, VI, 35, 3 (C. Just., XII, 1, 3 & XII, 28, 2) (319) : De diversis obsequiis palatinis aut scriniis memoriae epistularum libellorumque vel officio largitionum comitatensium singularumve urbium, sed et officio admissionum ad legum nostrarum privilegia volumus pertinere, ut nec ipsi nec filii nec nepotes eorum ad curiam vel honores vel munera municipalia devocentur. . . . Quibus omnibus condonamus, ne exactorum vel turmariorum, quos capitularios vocant, curam subeant vel obsequium temonariorum vel prototypiae. In the crises which perturbed the last days of the declining Empire, however, these immunities were frequently cancelled, cf. p. 285 f.
 3. Codex Theodosianus, X, 7, 2 : Non convenit Caesarianos inconsultis nobis ad alicuius corporis molestiam devocari. Quapropter si alicui corpori necessarii fuerint, visi, ad nostram mansuetudinem referatur, ut nobis decernentibus his iubeantur adiudicari, quibus eos rectissima ratione postulari nostra mansuetudo perspexerit.

dragged back to their original status. This period varied in length from time to time. Constantius first decreed that in the officium of the Privy Purse (among others) persons could not be recalled to their curia after twenty years; but very soon thereafter he raised the length of time to twenty-five years.¹ Theodosius I in 389 ordered everyone of curial origin serving in the officia of the Master of the Offices, the Sacred Largesses and the Privy Purse to be recalled to their former functions regardless of the length of their service apparently.² Theodosius II in 423 finally fixed the time at fifteen years for those in the schola agentum in rebus, and the officia of the Praetorian Prefects, the Master of the Offices, the Sacred Largesses and the Privy Purse after which "they were secure and freed from the stain of their former condition."³

Upon honorable discharge from the service (honesta missio),⁴ but not during incumbency, various honorary ranks with the privileges attached were bestowed upon the palatini.⁵

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1. Codex Theodosianus, VI, 27, 1; VIII, 7, 6.
 2. Codex Theodosianus, XII, 1, 120.
 3. Codex Theodosianus, VI, 35, 14 : Qui intra nostra scrinia vel agentum in rebus vel palatinorum tam comitis largitionum quam comitis privatarum, vel ad apparitionis amplissimae praefecturae praetorianae sacramenta se devoverit et quindecennii transcurso curriculo nulla fuerit a collegis conventionione pulsatus, adsumpti cinguli honore laetetur nec emensa militia relictas originis invidia quatiatur. . . . ipsi quoque securi sint et a prioris condicionis macula liberentur.
 4. Lecrivain, op. cit., p. 156; Boak, op. cit., p. 2051.
 5. Codex Theodosianus, X, 7, 1 (317) ; Caesarianos in actu dumtaxat constitutos ad perfectissimatus vel ducenae vel

In the reign of Constantine gradations of such honorary rank were the "egregiate" (egregiatus), the "centenate", the "ducenate" and the "perfectissimate" (perfectissimatus).¹ These orders of rank were survivals from the period of the Early Empire; viri egregii and viri perfectissimi appear in the inscriptions from about the time of Marcus Aurelius onwards. The two financial classes of centenarii (those receiving a salary of 100,000 sesterces) and ducenarii (those receiving salaries of 200,000 sesterces) existed by the principate of Claudius, at which time the latter were rewarded with the consular insignia.² For a long time, except in the case of the Praetorian Prefect who was a vir eminentissimus, the perfectissimate was the highest rank.³ Thus, after the reforms of Diocletian and Constantine, minor officials took the place of the former Equestrian Order which no longer existed after the abolition of the distinction between senatorial and imperial provinces, whereas the higher officials, as we shall see, attained to the rank of clarissimus and thus entered the Senatorial Order.

centenae vel egregiatus dignitates non oportet admitti. Sed si inculpate compleverint suum officium et ab omni vacent ratione fiscali iudicio, datam huiusmodi dignitatem prodesse eis oportet.

1. Ibid.

2. Suetonius, Claudius, XXIV : Ornamenta consularia etiam procuratoribus indulisit; on the subject of the rank, salaries and honors of the imperial procurators, cf. Mattingly, Imperial Civil Service of Rome, pp. 98-101.

3. As appears from Codex Theodosianus, VI, 35, 7 (367) : . . . cum a palatinis mitterentur obsequiis, a primis quibusque gradibus usque ad perfectissimatus ordinem.

In 367 Valentinian I, in an edict which pertained probably to the Western Empire only, still further enhanced the rank and privileges of the palatini. Those of all ranks below and including the perfectissimate who passed through the palatine service with approved merit and probity, upon the expiration of their term were adlected among the Senators of Rome by a privilege pertaining exclusively to the ancient Capital and seat of Empire.¹ At the same time they were relieved of the exhausting burdens pertaining to this rank (such, for instance, as the very expensive matter of furnishing inaugural games in case of their election to the praetorship) as the just reward of their long labours in behalf of the State. These privileges were effective with or without the prosecutoria or sacred rescripts in the Emperor's own hand attached to the codicilles of rank and addressed to the Prefect of the City, lauding the official career of the bearer. Persons above the rank of perfectissimus, i.e. comites and tribunes must be in possession of these prosecutoriae to obtain the privileges since they may have secured their rank by bribery rather than service.²

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1. Codex Theodosianus, VI, 35, 7 (This constitution is fragmentary, but it is quite clear from the context that adlectio inter Senatores is what is meant by the expression accessu istius fuerint splendoris ornati) : Haec peculiariter Romae servantur, ut habito loci honorisque delectu, .
 2. Ibid. : Omnes, qui intra consistorii secreta veneranda notariorum funguntur officio quique in scriniis militant quique inter agentes in rebus plenum vigiliarum munus exercent, admissionales etiam et qui sub castrensi officio sive comitatensibus sive privatis largitionibus obsecundant,

Those who attained the office of chief of staff or chief of any of the bureaus into which the officium was subdivided (i.e. the primicerii) enjoyed yet higher honors. In 408 Arcadius bestowed as a special favour upon Domninus ex-primicerius sacrarum largitionum the rank of a vicar, while decreeing at the same time that ordinarily for the future primicerii of the scrinia and totius officii should be adlected among the consulares.¹ This law applied only to the Sacred Largesses; in 425, however, Theodosius II decreed that the privatiani should attain to the same privileges as the largitionales and invested the primicerius totius officii and the primicerii of the four scrinia of the Privy Purse with the enjoyment of consular rank in the City and the provinces.² Shortly

cum pro merito probitatis et fidei accessu istius fuerint splendoris ornati constetque eos tunc temporis honoratos, cum a palatinis mitterentur obsequiis, a primis quibusque gradibus usque ad perfectissimum ordinem, tametsi prosecutoriarum adiumenta non habeant, praerogativa concessi honoris utantur. Comitibus autem, quorum iam celsior locus est, et tribunis ita demum prosit allectio, si sacra ad urbanae officium praefecturae scripta pertulerint, quibus eorum vita laudetur. Haec peculiariter Romae servantur, ut habito loci honorisque delectu, habito etiam virium fortunarumque discrimine, et laboribus singulorum congrua praemia rependantur et hi ad impetratam adlectionem pertineant, quos post gloriosum laborem exhauriri senatoriis sumptibus non oportet. Cf. Godefroy, ad loc cit.

1. Codex Theodosianus, VI, 30, 19 : Domninum ex primiceriis sacrarum largitionum speciali beneficio ex vicariis ad similitudinem proximorum sacrorum scriniorum esse praecipimus. Ceteros primicerios scriniorum et qui post illum primicerii totius erunt officii palatini, ex consularibus inter allectos esse decernimus.
3. Codex Theodosianus, VI, 30, 24 : Nostrae moderationis arbitrio praestitutum est, ut privatiani privilegia largitionalis officii perpetuo consequantur, hoc est ut tam

after,¹ the same Emperor permitted the primicerii officii and primicerii of the scrinia of the Privy Purse "to adore Our Clemency" among the ranks of the praetorian military tribunes.²

By the reigns of Arcadius and Honorius the immunities of the palatini had been practically abolished, due, no doubt, to the increased burden placed upon the administration by the chain of misfortunes which over-taxed the weak government of these princes (cf. p. 290). Immunity was now bestowed only upon those who reached the summit of their respective services. Thus, in 413 Honorius granted immunity from the obligation to furnish recruits and the other onera to those palatini who arrived at the summit of the treasury service with blameless records, i.e. the adiutor and the primicerii diversorum

primicerius officii privatarum quam alii quattuor reliquorum primicerii scriniorum eiusdem contemplatione militiae ex consularibus inter allectos esse mereantur et tam in hac alma urbe quam in provinciis honore potiantur, cum illustres viri memoratarum comites dignitatum ita simili iugiter insularum splendore decorentur, ut non culmine distinguantur aequali, sed tempore.

1. The constitution is undated, but addressed to the Praetorian Prefect Florentius who filled that office between April 21, 428 and February 11, 430 (Seeck, Regesten).
2. Codex Justinianus, XII, 23, 14 : Iubemus viros devotos palatinos rei nostri numinis privatae isdem privilegiis decorari, quibus etiam palatini qui in sacris largitionibus deferuntur. Cum enim par similisque militia sit, iustum et competens videtur isdem utrumque officium privilegiis gloriari. Primicerios itaque officii tresque primates scriniorum rerum privatarum finito tempore militiae inter tribunos militares praetorianos, salvis isdem praestitis privilegiis sacris constitutionibus, nostram clementiam adorare decernimus. I am at a loss to explain why only three primates scriniorum rerum privatarum are mentioned.

officiorum.¹

The length of service in a given function was apparently indefinite at first and dependent to considerable extent upon good behaviour. It tended, however, to become shorter and shorter in view of the mad rivalry for places in the civil service as the means of making one's fortune or attaining to the coveted privileged status of the officiales. Thus, in 379 Gratian ordered the primiceriate to be triennial. This included both the primicerii totius officii and the primiscrinii of the various bureaus.² In 396 Arcadius reduced the term of office to two years,³ and in 416 Theodosius II made the office annual.⁴ As we have already seen, the mittendarii and the exceptores by 419 served in a single function only a year rather than two as theretofore.

Promotions, in accordance with a practice instituted by Theodosius I, took place "on the venerable natal-day of Our Perennity", i.e. the Emperor's birthday, a device to lend

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1. Codex Theodosianus, VI, 30, 20 (C. Just., XII, 23, 10) already cited, cf. p. 110.
 2. Codex Theodosianus, VI, 30, 3 : Primicerii scriniorum, receptoriorum etiam, per triennium iuxta instar sacrorum scriniorum administratione fungantur, ita ut nullus ambitu tempora aevi longioris usurpet.
 3. Codex Theodosianus, VI, 30, 14 : Officiorum palatinorum scriniorumque primicerii biennio transacto discedant nec ulterius in eadem militia commorentur. Eos sane, qui ante hoc statutum in locis memoratis inventi sunt, ad metas triennii concedimus pervenire.
 4. Codex Theodosianus, VI, 30, 21 : Ad similitudinem sanctionis quam de proximis sacrorum promulgavimus scriniorum, etiam in officio sacrarum largitionum atque privatarum pro biennio annum sub perpetua observatione praecipimus custodiri.

greater joy to the occasion, at which time also were bestowed the codicilles conferring titles of rank and the privileges pertaining thereto.¹

In order that his officium might function efficiently the Count of the Privy Purse was entitled to issue as many evectiones to his officials for the use of the Public Post as his needs required.²

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1. Codex Theodosianus, VI, 30, 21 : In venerabili natali perennitatis meae Theodosii exemplo proximorum annus suscipiat exordium promotionis, et privilegia, quae huiusmodi officiis vel primicerio sacris legibus deferuntur, integra inlibataque servantur.
 2. Notitia Dignitatum or., XIII : Comes rerum privatarum quotiens usus exegerit.

Chapter VII
THE ORIGIN OF THE LANDS AND REVENUES OF THE
PRIVY PURSE

The sources of the lands and revenues of the res privata were many and shall be discussed in the following order:

1. bona proscriptorum vel damnatorum
2. bona vacantia et caduca
3. temple property
4. municipal estates
5. property of heretics and pagans
6. property of those contracting forbidden marriages and
of those guilty of the spoliation of graves
7. legacies
8. miscellaneous confiscations
9. fines

In the first place, however, it should be noted that in the Late Empire there were no longer any domain lands attached to the successor of the fiscus, i.e. the sacrae largitiones. Whatever landed property had hitherto been attached to the fiscus was at an unknown date, but most likely already before Constantine, transferred to the chest of the res privata.¹

1. His, op. cit., p. 24.

1. Bona proscriptorum vel damnatorum

The constitution of the Late Roman Empire being what it was, namely, an undisguised autocracy, but one with no fixed law of succession and what has been called a "legal right of insurrection" almost implicit in it, the frequency of military revolts was correspondingly great. These were suppressed with a necessarily ruthless hand and the penalty for treason or maiestas, to use the Roman term, was death or exile with the confiscation of all one's property. All such "goods of the proscribed or condemned" (bona damnatorum vel proscriptorum) were incorporated into the res privata.¹ Such proscriptions mark the civil strife of the Empire and the downfall of usurpers and rival claimants with all their followers. And under weak Emperors who were themselves incapable of governing and therefore fell into the hands of a succession of Ministers, this succession had a tendency to become merely a series of proscriptions of fallen Ministers by their rivals and successors; such were the reigns of Arcadius and Honorius, punctuated in the Codes by a succession of confiscatory edicts which mark the fall of Rufinus,² Gainas, Eutropius,³ Stilicho,⁴ etc. one after the other. The crime of magica, or employing supernatural means to unveil the future, involved the same penalty as maiestas.⁵ The

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1. Codex Theodosianus, IX, 42, 3; 7; X, 10, 15; Novellae Majoriani, V; Ammianus Marcellinus, XV, 5; XXIX, 2, 3.
 2. Codex Theodosianus, IX, 42, 14.
 3. Ibid., IX, 40, 17.
 4. Ibid., IX, 42, 20, 21, 22.
 5. Ibid., IX, 42, 2 & 4 : ex crimine maiestatis aut magicae.

Emperors assumed that their subjects were eager to unveil the future chiefly for the dangerous and unflattering reason of knowing who their successors would be, and the pages of Ammianus are full of cruel inquisitions and proscriptions on this score. It is at once apparent how liable to abuse such a law might become. The fear of treason led even the most just Emperors to excessive cruelty in punishing those guilty or suspected. We will discuss later the frightful excesses which a weak and suspicious Emperor might commit, when urged on by greedy officials and delators.

The extent of the proscription was modified from time to time and made to fall more or less heavily upon the family of the proscribed. In the first place, it was several times enacted that a wife's dowry and her own property were to be left her intact, as well as any gifts that her husband may have made her before the action against him arose.¹ In addition, whatever gifts he may have made to emancipated sons before his crime were guaranteed to them.² Exception was made, however, in both respects in the case of officials of the Privy Purse; they were responsible for the revenues thereof on the liability of their property and they enjoyed these privileges only after their accounts had been inspected and approved by the Emperor.³

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1. Codex Theodosianus, IX, 42, 1 (321); op. cit., 15 (396); Codex Justinianus, IX, 49, 9.
 2. Codex Theodosianus, IX, 42, 1; Codex Justinianus, IX, 49, 9.
 3. Codex Justinianus, IX, 49, 9 : Exceptis dumtaxat Caesarianis, id est catholicianis, qui ab omni iuris beneficio excluduntur, nisi probata a me purgataque ratiocinia fuerint, ut, quod innoxie habuerint, transmittendi copiam habeant.

Constantius and Julian in 356 A.D. decreed that the property of persons condemned for maiestas and magica should go to their heirs even to the third degree of relationship and that the fiscus should yield to the claims of children and parents.¹ This law was modified two years later, however, to include all except those condemned for maiestas and magic,² and Valentinian I in 364 confirmed the second edict of Constantius that children of persons condemned for treason should not inherit.³

In 380 Theodosius I sequestered half the property of a person condemned for treason and allowed the other half to go to his children and grandchildren in both male and female line of succession. If the man had no children or grandchildren, two thirds fell to the res privata, and the remaining third was divided between his parents and kindred.⁴

In the West Honorius in 421 rescinded this law, assigning all the property of the proscribed to the res privata,⁵ but in the East it was reenacted by Theodosius II with some further specifications and passed finally into the Code of Justinian.⁶ The law of Theodosius II assigned half the property to the Privy Purse and half to the surviving children or grandchildren of the proscribed. Further, if the proscribed were a

1. Codex Theodosianus, IX, 42, 2.

2. Ibid., 42, 4.

3. Ibid., 42, 6.

4. Ibid., 42, 8 & 9.

5. Ibid., 42, 23 : *scelere maiestatis excepto, cuius atrocitas nihil relinquit heredibus.*

6. Codex Justinianus, IX, 49, 10.

curialis and had a son capable of performing the public functions pertaining to his status the son inherited the property intact. If his heir were a daughter, only half the property devolved upon her. If he had no heir at all the entire estate went to the curia.¹ This exception in favor of the curia is but another indication of the attempt to bolster up the decaying municipal system of the Empire. It might also be noted here that the apparent mercy of the law in allowing a son to retain all or a portion of the property of a condemned person only too often resulted in his being innocently condemned to perish with his father that his property might not escape the avarice of those who petitioned for it from the Emperor. Or the son might be ordained and thereby divested of his worldly goods, as in the case of Basiliscus who was created Bishop of Cyzicus in 484 when his father, Harmatus, was put to death by Zeno and his property confiscated.²

Occasionally the injustice of a proscription was recognized and restitution made. When in 393 the Praetorian Prefect Tatianus incurred the hostility of Rufinus and was deposed an edict of Theodosius restored their property to the victims of his confiscations, or if executed, to their heirs, and constrained those to whom it had been alienated to restore it.³ This was exceptional, however, and in 396 the Privy Purse

1. Codex Theodosianus, IX, 42, 24 (C. Just., IX, 49, 10).

2. Chronicon Paschale, sub anno 484.

3. Codex Theodosianus, IX, 42, 13 : Omnia proscribitorum bona, quae fisci nomine singulis quibusque Tatianus eripuit, vel

retained intact all the confiscated property of Rufinus who had notoriously acquired it by foul means; upon the news of his assassination all whom he had robbed apparently rushed to resume possession of their own, but an edict of Arcadius was promptly promulgated, undoubtedly dictated by the avarice of Eutropius, which blandly informed all such misled persons that those who had at the time remained silent and conceded their property to Rufinus should now suffer the Privy Purse to possess it in tranquillity sine praeiudicio, threatening with the loss of all their property anyone who endeavoured to recover anything from the estates possessed by Rufinus when alive.¹ In 401 Arcadius forbade anyone to petition for bona damnatorum within the space of two years in order to allow "the innate humanity of the Emperor" to assert itself and mollify the misfortunes of the condemned or his heirs.² In view of the law

ipsis, qui gladio acerbiorum stilum passi aerumnas suas nuditatemque fleverunt vel eorum filiis ac propinquis, qui cruentas excepere sententias, restitui mox iubemus, ita ut omnes, qui aliquid ex huiusmodi bonis nostra liberalitate meruerunt, restituere cogantur.

1. Codex Theodosianus, IX, 42, 14 : Serenitatis nostrae provisione solita commonemus, ut ea, quae Rufinus quondam, cum viveret, quoquo pacto possedit, in eodem statu interim maneant nec quisquam sibi post eius obitum spontaneam vindicandi tribuat potestatem. Nam qui transacto tempore siluit ac Rufinum tenere concessit, fiscum quoque nostrum sine praeiudicio possidere patiatur. Hoc edictis propositis per omnes provincias praecipimus divulgari, quo cuncti sciant iacturam se perpessuros graviorem totiusque rei familiaris periculum, nisi ante praeceptum nostrum manus ab his, quae Rufinus vivus possederat, voluerint abstinere.
2. Ibid., IX, 42, 17 : Ne quis proscribitorum bona vel eorum, qui publicam videntur excepisse sententiam, intra biennium aestimet postulanda. Abstineant facultatibus intra id temporis expetendis, ut aut proprias quis recipiat, si, ut nobis ingentum est, duriores casus et tristiores fortunam imperatoria humanitate molliamus, . . .

just discussed this edict assumes a less admirable complexion, for in preparing this paper we have learned to suspect baser motives whenever the diction of the constitutions becomes unusually unctuous. Ostensibly inspired by such charitable considerations, the edict under discussion may have been motivated by the most undignified avarice, and Arcadius, or rather his wife and ministers, may have sought to reap the profits of the greed of their fallen ministers. It is suggested by Godefroy that this law may have reference to the property of Eutropius and his satellites for it was precisely two years from the law which contained their proscription to the day on which this law was promulgated. Or it may have reference to Gainas whose head arrived in Constantinople in January or February of that year. Now, it was well known that possession established the claims of the Privy Purse over property and stamped it almost indelibly as Domain land. Thus, when the pagans requested the restoration of the confiscated funds which supported the pagan ceremonials, Augustine, in the beginning of his first book in reply to Symmachus wrote, "That upon which has once been established the claim of the treasury would seem to be conferred as a gift on your part, rather than as the restoration of what was his own."¹

1. Quod enim iam dudum vel fisco vel arcae est vindicatum, de tuo magis conferre videbere, quam de suo reddere. Cf. Godefroy's Commentary to Codex Theodosianus, IX, 42, 17.

2. Bona vacantia et caduca

Originally, both bona damnatorum and bona caduca went into the aerarium. Under Hadrian bona caduca were occasionally transferred to the fiscus, and under Marcus Aurelius they were regularly assigned to it. Bona damnatorum continued until the reign of Septimius Severus to pertain to the aerarium, with, however, numerous exceptions in favor of the fiscus. But from the time of Septimius onwards the property of condemned persons went into the fiscus except in the case of the goods of Pescennius Niger and Claudius Albinus which, as we have seen, went to form a large part of the res privata whose organization Spartianus seems to associate definitely with their proscription.¹

Two passages in the Variae of Cassiodorum clearly define bona vacantia or caduca as property to which no heir, natural or testamentary, was forthcoming. Such properties went into the res privata. Thus, in Variae, V, 24, we learn of one Joanna, wife of Andreas, who succeeded to her husband's estate and died herself intestate without heirs, whose property is claimed by the res privata,² and in Variae, IX, 14, we hear of complaints from the citizens to the effect that the Count of

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1. Lecrivain in Daremberg et Saglio, vol. IV, p. 352, s.v. patrimonium principis.
 2. Joanna Andreae quondam jugali suo successisse legis munere perhibetur; quae intestata, nullis existentibus proximis, luce dicitur esse privata. . . Et quia caduca bona fisco nostro competere legum cauta decreverunt, ideo te praesentibus oraculis admonemus, ut huius rei veritate discussa, si revera, ut ad nos perlatum est, nullus ei aut testamento haeres exstitit, aut proximitatis iure successit, fisci nostri eam facias compendiis aggregari.

Syracuse "is claiming for the res privata under the name of fiscus caducus the estates of deceased persons without any regard for justice whatever, whereas that title was only intended to apply to the case of strangers to whom no heir, natural or testamentary, could be found."¹

But, just as an exception was made in the case of the property of proscribed curiales in order that the capacity of the order as a whole for meeting the obligations placed upon it might not be lessened, so in the case of bona caduca, the Count of the Privy Purse was instructed by Theodosius II in 438 not to admit any petition for the property of a fabricensis who died without heirs and intestate; his goods must go to the corporation to which he belonged and which was responsible in a body toward the State like the curial order.² Likewise, according to Procopius, whenever a municipal senator died without male issue a fourth of the property passed to the curia, while the rest was enjoyed by the natural heirs (in this instance, a daughter and her husband), and he reproaches Justinian with having reversed this "ancient law", i.e.

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1. Quorundam etiam substantias mortuorum, sine aliqua discretione justitiae, fisci nomine caduci te perhibent titulo vindicare, cum tibi hoc tantum de peregrinis videatur esse commissum, quibus nullus haeres, aut testamentarius, aut legitimus invenitur. Cf. Symmachus, Epistolae, X, 41 : Statuerat receptus in caelum germanus numinis vestri, cum Marcianus dudum protector Aggareae bona tamquam vacantia postulasset, ut, si ea hereditas scriptum successorem vel legitimum non haberet, in ius fisci tamquam domino nuda concederet.
 2. Novellae Theodosii, VI; cf. also, the edicts of Honorius in which all property in Africa alienated within the past

allotting to the heirs of a curialis, deceased without male issue, but a fourth part of his property, the rest going to the res privata (τὸ δημόσιον) and the curia (τὸ τῆς πόλεως λεύκωμα).¹

Under bona caduca, too, should be included treasure-trove; in the Formula of the office, Cassiodorus informs the Count of the Privy Purse, "Deposited moneys, also, the proper owners of which have been lost by the long passage of time, are searched out by you and brought into our private treasury."²

3. Temple property

From the time of the conversion of Constantine the property and endowments of the pagan cults were in jeopardy. Constantine and his sons nominally preserved a tolerant attitude toward paganism, which, in fact, became more and more one of hostility. Under Constantine himself began the closing and demolition of the temples, the destruction and melting down of the sacred images and the confiscation or transfer of the temple property.³ During the persecutions the property of the martyrs

twenty years and once liable to the functio navalis, or transport service for the provisioning of Rome, was restored to its former condition (C.Theod., XIII, 6, 9; op. cit., XIII, 11, 16).

1. Procopius, Anecdota, XXIX, 17-20.
2. Cassiodorus, Variae, VI, 8 : Depositivae quoque pecuniae, quae longa vetustate competentes dominos amiserunt, inquisitione tua nostris applicantur aerariis.
3. Eusebius, Vita Constantini, III, 54; Sozomen, Hist. Eccl., V, 5; Codex Theodosianus, X, 1, 8 - in this constitution of Valentinian I the praedia quae nunc in iure templorum sunt quaeque a diversis principibus vendita vel donata can only have reference to alienations from confiscated temple property by Constantine and his sons.

had been confiscated. Constantine not only ordered its restitution to the heirs of the proscribed or, in case no heirs survived, to the church nearest the scene of their sufferings,¹ but he also transferred to the endowment of the churches temple estates which in their turn had been confiscated when the tide turned. From the accounts of Eusebius, it seems that the temples whose rites were morally offensive to Christian sentiment were the principal ones to suffer demolition and confiscation.²

This process became more general in the reign of Constantius who, though heretical, was less tolerant and whose financial exigencies were more pressing besides. He made numerous confiscations of the temple estates not only to endow Christian churches, but also to reward his friends and officials,³ and the eternal host of petitores who haunted the palace. Thus, much of the ancient temple property passed into private hands.⁴

Such was the state of the temple property when Julian ordered these estates to be restored to the temples.⁵ His

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1. Eusebius, *op. cit.*, II, 21 - actual words of the edict quoted in II, 35, 36, 37, 39 & 41 : whatever had been alienated from the res privata by sale or gift as well as whatever yet remained in it was also restored.
 2. *Ibid.*, III, 55, 56, 58.
 3. Ammianus Marcellinus, XXII, 4, 4 : *Pasti enim ex his quidam templorum spoliis.*
 4. Aggenus Urbicus in Lasaulx, Untergang d. Hellenismus und d. Einziehung seiner Tempelgüter durch d. christl. Kaiser, München, 1854 : *In Italia multi crescente religione sacratissima Christiana lucos profanos sive templorum occupaverunt et serunt.*
 5. Codex Theodosianus, V, 13, 4; *op. cit.*, X, 1, 8.

edicts affected not only temple property which had been alienated from the res privata to private individuals, but also that which was still a part of it.

Valentinian I revoked Julian's edicts, however, and affected a general incorporation of former temple property into the res privata. The property restored to the temples from the imperial domain by Julian was revoked and placed once more in the res privata.¹ Also the former temple property which Constantine and his sons had alienated to private persons by gift or sale and which Julian had restored to the temples was not given back to its former owners but incorporated in the private domain.²

Finally, in 382 A.D.³ Gratian promulgated an edict for the general confiscation of all the remaining temple property and of all endowments for the maintenance of the pagan cults. The constitution itself is not extant, but is cited by Honorius in Codex Theodosianus, XVI, 10, 21. In 384 Valentinian II enacted the same for Italy and at about the same time⁴ Theodosius declared that all the temple property everywhere throughout the

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1. Codex Theodosianus, V, 13, 3 : Uni(versa, quae) ex patrimonio nostro per arbitrium divae me(moriae Jul)iani in possessionem sunt translata templorum, (sollicitud)ine sinceritatis tuae cum omni iure ad rem privat(am nostram) redire mandamus.
 2. Codex Theodosianus, X, 1, 8 : Universa loca vel praedia, quae nunc in iure templorum sunt quaeque a diversis principibus vendita vel donata sunt retracta, ei patrimonio, quod privatum nostrum est, placuit adgregari.
 3. His, op. cit., p. 38.
 4. The date is lost but the constitution is addressed to Nebridius who was comes rer. priv. in the East from 382 to 384 A.D.

East was subject to the administration of the rationales of the Privy Purse.¹ Again, in 407 or 408 when Alaric was threatening Rome it was enacted that the endowments of the temples, which apparently still maintained the pagan cults in the Eternal City in spite of Gratian's general edict, should be appropriated to the needs of the army, and that all of the temple property everywhere be transferred to the imperial possession for "suitable uses".² And finally in 415 Honorius, citing the edict of Gratian, renewed its provisions : all the properties and funds appropriated to the ancient cult were incorporated into the res privata. All gifts made by Honorius or his predecessors to the churches or to private individuals from this confiscated property were to remain valid forever.³

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1. Codex Justinianus, XI, 66, 4 : Universi fundi templorum ad rationalium rei privatae sollicitudinem curamque pertineant; cf. His, op. cit., p. 38.
 2. Codex Theodosianus, XVI, 10, 19 : Templorum detrahantur annonae et rem annonariam iuvent expensis devotissimorum militum profuturae. . . . Arae locis omnibus destruantur omniaque templa in possessionibus nostris ad usus adcommodos transferantur.
 3. Codex Theodosianus, XVI, 10, 20 : Omnia etiam loca, quae sacris error veterum deputavit, secundum divi Gratiani constituta nostrae rei iubemus sociari. . . . omnis expensa illius temporis ad superstitionem pertinens, quae iure damnata est, omniaque loca, quae frediani, quae dendrophori, quae singula quaeque nomina et professiones gentiliaciae tenuerunt epulis et sumptibus deputata, possint hoc errore submoto compendia nostrae domus sublevare. . . quod autem ex eo iure ubicumque ad singulas quasque personas vel praecedentium principum largitas vel nostra maiestas voluit pervenire, id in eorum patrimoniis aeterna firmitate perduret. . . . Ea autem, quae multiplicibus constitutis ad venerabilem ecclesiam volumus pertinere, Christiana sibi merito religio vindicabit, . . .

4. Municipal property

The exigencies of the Imperial Government during the crisis of the third century fell heavily upon the municipalities and at that period began the spoliation of their territories on a large scale.¹ Even the virtuous Alexander Severus appropriated the municipal revenues to his own purposes.² The needs or rapacity of the Emperor and his officials must have resulted in widespread confiscation of the municipal estates. The municipal senators (curiales, decuriones), hard pressed by the ever increasing burdens laid upon them, usurped possession of portions of the municipal territorium as the only means of meeting their obligations. We must conclude this from the edict of Theodosius I which deprives of their estates those tenants holding property which formerly belonged to the temples or municipalities who refuse to be responsible for adjacent waste land, and restores it to its former owners, namely, the decurions and others,³ and also from the edict of Valentinian forbidding curiales to lease the municipal estates either of their own city or another city.⁴

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1. His, op. cit., p. 37.
 2. Lampridius, Vita Alex., XXI : vectigalia civitatibus ad proprias fabricas deputavit.
 3. Codex Theodosianus, X, 3, 4 (393) : Ut quisque conductor fuerit inventus, possessor fundi, qui ex publico vel templorum iure descendit, huic cum augmento oblato ager iungatur inutilior. Quod si contra id reluctandum existimaverit, alius possessor sub eadem praestatione quaeratur, vel si voluntarius quis conductor non invenietur, tunc ad possessores antiquos, id est decuriones vel quoslibet alios, loca iuris praedicti adiunctis inutilibus revertantur sine adiectione tertia, idoneis fideiussoribus praebitis.
 4. Codex Theodosianus, X, 3, 2 (372) : Curialibus omnibus conducendorum rei publicae praediorum ac saltuum inhibeat facultas : illo etiam observando, ne quis curialium vel de extraneis civitatibus fundos aut loca huiusmodi conductione suscipiat.

Much of the territorium of the cities must have been confiscated or usurped by the time Julian undertook to arrest the decay of the municipalities by restoring to them their properties and the income derived therefrom, except in the case of such as had been lawfully sold by previous Emperors.¹ For instance, those who raised horses for the city of Antioch (presumably for the races in the famous hippodrome situated there) under the administration of Julian's uncle and namesake received nearly 3,000 lots of land exempt from taxation, and the city itself, upon the request of its citizens, received from Julian another 3,000 lots which they represented as uncultivated, although they were subsequently taken back due to their unsatisfactory administration.²

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1. Codex Theodosianus, X, 3, 1 (362) : Possessiones publicas civitatibus iubemus restitui ita ut iustis aestimationibus locentur, quo cunctarum possit civitatum reparatio procurari; Ammianus Marcellinus, XXV, 4, 15 : vectigalia civitatibus restituta cum fundis, absque his, quos velut iure vendidere praeteritae potestates.

2. Julian, Misopogon, ed. Loeb, vol. II, p. 508 f. : γῆς κλήρους οἶμαι τρισχιλίουσ ἐφέτε ἀσπόρους εἶναι καὶ ἠτήσασθε λαβεῖν, λαβόντες δ' ἐνείμασθε πάντες οἱ μὴ δούμενοι. τοῦτο ἐξετασθέν ἀνεφάνη σαφῶς. ἀφελόμενος δ' αὐτοὺς ἐγὼ τῶν ἐχόντων οὐ δικαίως, καὶ πολυπραγμονήσας οὐδὲν ὑπὲρ τῆς ἐμπροσθεν, ἔν ἔσχον ἀτελεῶσ μάλιστα ἐχρήν ὑποτελεῖς εἶναι, ταῖς βαρυστάταις ἐνείμα λειτουργίαις αὐτοὺς τῆς πόλεως. καὶ νῦν ἀτελεῖς ἔχουσιν οἱ καθ' ἕνασ τον ὑμῖν ἐνιαυτὸν ἱπποτροφούντες γῆς κλήρους ἐγγύς τρισχιλίουσ, ἐπινοία μὲν καὶ ἀκονομία τοῦ Θεοῦ τοῦμοῦ καὶ ὀμωνύμου, χάριτι δ' ἐμῇ. . . .

These salutary measures lapsed upon the death of Julian. Fresh spoliation of municipal territories began at once. In 379 A.D. Theodosius I, as a part of his determined attempt to suppress paganism, withdrew from the cities that part of their estates known as the agonotheticae possessiones which served to support the pagan rituals and celebrations in connection with the games.¹ Several constitutions of this same Emperor refer to the locatio by emphyteusis of estates in which little if any distinction is made between those of the patrimony and those of the municipalities.²

However, there were spasmodic attempts, at least on the part of the Eastern Emperors, to check this spoliation and stem the decay of the municipalities which was accelerated thereby. In the year 443 Theodosius II, on his way back from the East, was tarrying at Aphrodisiada preparatory to entering Heraclea Thraciae (Perinthus) when a deputation arrived from the citizens of the latter city petitioning him to restore their walls and aqueduct. Since this year was also his Quinquennalia, Theodosius determined to make a general largess to all the cities of the Empire. "Having long revolved every plan in our mind," he proclaims solemnly, "we have found no more salubrious means

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1. Novellae Martiani, III; cf. Godefroy's Commentary thereto.
 2. Codex Justinianus, XI, 62, 7 (386) : Quicumque ad emphyteusin fundorum patrimonialium vel rei publicae iussu nostri numinis venerit, . . . ; Codex Theodosianus, V, 14, 33 (393) : Jus emphyteuticum, quo iuris patrimonialis vel rei publicae praedia possessoribus sunt adjudicata perpetuariis, . . . ; cf., also, Codex Theodosianus, X, 3, 4 (C. Just., XI, 59, 6), already cited, p. 141.

of recalling ancient blessedness than to restore all the estates which pertain to the ius civile from whatever persons have held them in detention for the past thirty years to all the cities." He excepts, however, such as have been subtracted by a procurator of the domus divina or the Count of the Privy Purse on the imperial command, or by the common consent of the citizens.¹ Thus, the inevitable exceptis videlicet in this law as in so many others deprives the enactment of half its value to those whom it is supposed to benefit.

Eight years later Marcian undertook further measures to preserve to the municipalities their dwindling territories. His edict has reference to the "lands belonging to the municipalities and from which the municipalities raised the canon, as well as the agonotheticae possessiones, and especially such properties belonging to Constantinople itself." All those who by gift or purchase or in virtue of any other title have gained possession of these lands dempto civili canone, i.e. without the obligation of paying the taxes due to the city, since the Consulship of Ausonius and Olybrius (A.D. 379 in which year Theodosius the Great confiscated the agonotheticae possessiones, cf. p. 143) are to retain them and transmit them to their heirs, the canon, however,

1. Novellae Theodosii, XXIII, 1 : Omnibus itaque consiliis diu nostro animo voluntatis, nullam salubriorem causam revocandae pristinae beatitudinis invenimus, quam si praedia tam urbana, quam rustica, quae ad ius civile pertinent, et a quibusdam quolibet modo intra triginta annos, abhinc retro numerandos, detentae sunt, universis civitatibus assignentur; exceptis videlicet tantum his, quae vel a procuratore divinae domus vel a viro illustri comite rerum privatarum iussu nostrae clementiae vel communi consensu civitatum cum ascripturae interpositione distractae sunt.

being re-imposed from the present IVth Indiction and the arrears to be cancelled.¹ It was in express accordance with this edict of Marcian "of blessed memory" that Zeno, about 480 A.D. confirmed the right of Nicaea to exact 400 solidi annually as the return of the canon civilis due from certain estates pertaining to that city.² The utilitas rei privatae nostrae, so often mentioned in other constitutions, however, was not neglected by Marcian either, and exception was made of those municipal territories which paid the canon into the "private largesses."

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1. Novellae Martiani, III : 1. Celsitudo igitur tua (the Praetorian Prefect of the East) id nobis placuisse cognoscat, ut, si qui vel ex titulo donationis, vel ex emptione, sive ex alio quolibet titulo possessiones iuris civilis tantummodo et cuiuslibet civitatis, et praecipue huius aeternae urbis, cui maiorem debemus favorem, tam civilis, ut dictum est, iuris quam etiam agnotheticas possessiones, ex consulatu Ausonii et Olybrii dempto civili canone acceperunt, impositum praediis canonem iuxta fidem publicorum monumentorum civitati, ad quam praedia pertinuerunt, praebere iubeantur, ex praesenti quoque quarta indictione, cessante praeteriti temporis canonis exactione, manente penes eos successoresque eorum et detentatores illibato dominio.
 2. Codex Justinianus, XI, 70, 6 : Hac in perpetuum valitura lege sancimus et Nicaeensium civitati seu habitatoribus eius tam ius exactionis quadringentorum solidorum annui canonis civilis redditus ad suam patriam pertinentis ex possessionibus, id est Calamo et Heliobomo nec non emptorio Variario cum emptio eorum sub territorio Apamenae civitatis constitutis, ex nuper lapsa tertia indictione cum ipsa restitui, quam si quid, ex quo sanctio Marciani divinae memoriae lata est, ad eiusdem civitatis praeiudicium gestum est, infirmari et, quod ex eadem provisione civitatibus delatum interea qualibet occasione imminutum est, ex auctoritate constitutionis nostrae serenitatis isdem civitatibus redhiberi, ita ut neque iudicialia auctoritas nec imperiale rescriptum, quacumque videlicet adiectione munitum, saepe dictae generalis legis vires possit refringere. Quod si quis aliter fecerit, poena gravi plectetur.

They were to continue to do so as before and the possession of the estate remained with them and their heirs.¹ Thus, we note in an edict of Anastasius of 496 that a portion of the taxes raised from the municipal estates (τὰ πολιτικὰ χρήματα) went into the municipal chest and the rest into the Privy Purse,² and even then they might be diverted to other uses with, it not without, the express command of the Emperor.

Finally, Procopius accuses Justinian in his financial rapacity of diverting the entire municipal revenues to his own purposes to such an extent that physicians and teachers were deprived of public support, municipal buildings lapsed into a state of disrepair, the street lamps could no longer be kept burning at night and the theatres and hippodromes were for the most part closed.³ On pretext of undertaking himself the defence of the pass at Thermopylae in the best interests of the Peloponnesians, he removed the garrison which the local farmers had always maintained there and replaced them by imperial troops, and thereupon, to provide for their maintenance, confiscated the entire civic funds (τὰ πολιτικὰ) and the funds for the public amusements (τὰ θεωρητικά) of all the cities of Greece.⁴

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1. Novellae Martiani, op. cit., 2. Si quae tamen possessiones iuris civilis canonem privatis largitionibus in praesenti praebent vel nunquam ademptum vel postea impositum, ad hanc pragmaticam iussionem non pertinebunt, sed privato aerario canonem, quem nunc agnoscunt, inferre ex more debebunt, dominio firmiter apud eos successoresque eorum et detentatores pari modo permanente.
 2. Codex Justinianus, X, 16, 13, #3. Μήτε δὲ τὰ πολιτικὰ χρήματα, ὅσα ἢ τῷ δημοσίῳ εἰσφέρεται ἢ τοῖς πόλεσιν ἀφαιροῦνται εἰς ἕτερας μεταφερόμεναι χρείας ἢ προσωπῶν, τισὶν ἀφορίζεσθαι χωρὶς θεῆς κελεύσεως. His (p. 40) considers τὸ δημοσίον to mean the res privata.
 3. Procopius, Anecdota, XXVI, 6-9.
 4. Ibid., XXVI, 31-34.

In the West the imperial constitutions in rather haughty terms claim the entire revenues of the municipal estates for their own use, but customarily allow a third part of the total amount raised annually to be retained by the cities for the repair of their walls, etc.¹ Thus, we read : "For the restoration of the public walls a third part of the canon which is raised annually from the municipal estates is sufficient. For of the municipal vectigalia which in their entirety have customarily been devoted to the expenses of our private treasury we generally permit nothing to be deducted to the account of the cities,"² and "For the restoration of their walls let the cities know that they are not to presume to take more than one third from the tax (canon) which is annually raised from the municipal estates." This latter law professes to reenact a provision of Valentinian I.³

Both of these edicts date from 395 A.D. A few years

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1. Codex Theodosianus, XV, 1, 18 (371); op. cit., XV, 1, 32 (C. Just., VIII, 11, 11) (395); V, 14, 35 (C. Just., XI, 70, 1) (395); XV, 1, 33 (395).
 2. Codex Theodosianus, V, 14, 35 (C. Just., XI, 70, 1) : Restaurationi moen(ium) publicorum tertiam portionem eius canonis, qui ex lo(cis fun)disve rei p(ublicae) annua praestatione confertur, certum (est satis posse sufficere. De vectigalibus itaque publicis, quae (sem)per ex integro nostri aerarii conferebant expens(is, ni)hil omnino decerpi nomine civitatum permittim(us).
 3. Codex Theodosianus, XV, 1, 33 : Singuli igitur ordines civitatum ad reparationem moenium publicorum nihil sibi amplius noverint praesumendum praeter tertiam portionem eius canonis, qui ex locis fundisque rei publicae quotannis conferri solet, sicut divi parentis nostri Valentiniani senioris deputavit auctoritas.

later in 400 and 401 the government of Honorius issued two constitutions which in effect meant the confiscation of all the remaining municipal estates,¹ at the same time, however, securing to the cities the benefit of the income derived from them by altering the system under which they were leased. Three types of property were affected : (1) the public gardens, public buildings and their sites within the city itself; (2) the public land, either enclosed by the walls or lying outside and adjacent to the walls, and finally (3) all of the temple property, whether inside the walls, adjacent to them or anywhere within the municipal territorium. The earlier laws forbidding the decurions to act as conductores on the domain lands were abrogated, and henceforth the remaining municipal estates could be leased only by the municipal senators, colleges and corporations iure perpetuo, reserving, however, to the Privy Purse its regular tax (salvo dumtaxat canone). These estates were not to be transferred to any bidder from outside under any circumstance, and the palatine office was threatened with a fine of ten pounds of gold for any contravention of the terms of the edict.² The

1. His, op. cit., p. 41.

2. Codex Theodosianus, X, 3, 5 (400 A.D.) : Aedificia, hortos adque areas aedium publicarum et ea rei publicae loca, quae aut includuntur moenibus civitatum aut pomeriis sunt conexas, vel ea quae de iure templorum aut per diversos petita aut aeternabili domui fuerint congregata, vel civitatum territorii ambiuntur, sub perpetua conductione, salvo dumtaxat canone, quem sub examine habitae discussionis constitit adscriptum, penes municipes, collegiatos et corporatos urbium singularum conlocata permaneant omni venientis extrinsecus atque occulte conductionis adtemptatione submota. Officia etiam palatina decem librarum auri multae subiaceant, si cui adversus praecipua huius sanctionis venienti aditum adsentatione praestiterint.

palatini were forbidden absolutely to enter these properties, and any question arising from the incidents of their administration was referred to the governor or to the Prefect himself. Likewise, petitioners were denied a hearing except under the following conditions : any vacant area which was suitable for neither the use nor ornament of the city might be leased to a petitioner upon the joint responsibility of the curial order and the officium of the provincial governor. The rents raised from this property were applied, however, to the maintenance of the city, except for the amount due the Privy Purse as in former times, by which is apparently meant two-thirds of the revenue.¹

This system of disposing of the municipal lands is

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1. Codex Theodosianus, XV, 1, 41 (401 A.D.) : Omnia aedificia publica sive iuris templorum intra muros posita vel etiam muris cohaerentia, quae tamen nullis censibus patuerit obligata, curiales et collegiati submotis competitoribus teneant adque custodiant, suarum non inmemores fortunarum, ita ut eos nullus penitus inquietet, qui aliquem locum publicum aut per sacram adnotationem meruerit aut in areis vacantibus, quae nullum usum civitatibus ornatumque praebent, insinuata auctoritate rescripti propriis sumptibus aedificaverit. Si qua vero super huiusmodi locis fuerit orta dubitatio, non aliquid municipes sive collegiatis volumus sponte praesumere, sed a rectore provinciae ortam dirimi quaestionem vel sublimen consuli praefecturam, si iudicandi exegerit difficultas. Palatina sane officia ab his locis abstinere oportet nec praebendae instructionis gratia cuique subripiendi aditum reserari, cum, si quando a quopiam vacans locus aut area postulatur, consultius ad ordinarios iudices nostri mittantur affatus, ut, si neque usui neque ornatui civitatis admodum videtur esse quod poscitur, periculo ordinis et provincialis officii absque ullius gratiae conludio competitori sub gestorum testificatione tradantur. Pensiones autem, quae deinceps sublatae a competitoribus fuerint, rationabiliter inpositas reparationi iubemus proficere civitatis, exceptis videlicet pensionibus praeteriti temporis, quae iam sollemniter sacro privatoque debentur aerario.

a typical illustration of the ingenuity of Roman fiscality; the Privy Purse of the Emperor derived a rent from all the municipal estates thereby, and, at the same time, the resources of the decurions and other municipal bodies were enlarged to enable them to meet more adequately the burdens placed upon them.

It is to be noted that the temple property and the municipal territories, when they passed into the res privata of the Emperor did not therefore lose their former character or designation; they continued to be called praedia templorum and praedia rei publicae, and appear as a separate class of fundi patrimoniales and fundi rei privatae.¹

5. Property of heretics and pagans

(a) Heretics : In an Empire in which Church and State were so closely allied and in which religious questions received such ardent support from their partisans, heresy was looked upon not only as an affront to the Divine Majesty but as a political danger as well. We may be fairly certain that Constantine's very genuine desire to secure unity in the Church at Nicaea was not so much due to any personal conviction with regard to the Homo-ousion formula as to his concern for the

1. His, op. cit., p. 42; Codex Theodosianus, X, tit. 3, de locatione fund. iuris enfyteutici et rei publicae et templorum; Codex Justinianus, XI, tit. 71, de loc. praed. civilium vel fiscalium sive templorum sive rei privatae vel dominicae; op. cit., tit. 74, de coll. fund. fiscal. vel rei privatae vel civitatum vel templorum; C. Just., XI, 62, 7 (386); C. Theod., V, 13, 33 (393); C. Just., XI, 70, 4; C. Theod., X, 10, 32 (425); op. cit., XI, 20, 6 (430); C. Just., XI, 62,

political welfare of the Empire; he hoped that the Church would be a great moral force exerted everywhere to strengthen the State, not another impetus to its falling asunder.

The East which was the more intellectual half of the Empire (and, incidentally, the less effete half in spite of Claudian's amusing tirades against eunuchs) gave birth to all the major heresies, and consequently we find the Eastern Emperors more concerned with the problem of heresy. Constantine himself decreed against the heretics, ". . . we have commanded that you be positively deprived of every gathering point for your superstitious meetings, I mean all the houses of prayer, if such be worthy of the name, which belong to heretics; and that these be made over without delay to the Catholic Church; that any other places be confiscated to the public service."¹ Arcadius in 396 likewise made over to the Catholic Church all properties and buildings in which heretical services were conducted.²

There were no further edicts against heretics under

14 (491) : fundos patrimoniales vel templorum aut agono-
thetici seu relevatorum iugorum vel cuiuscumque iuris.

1. Eusebius, Vita Constantini, III, 65 : . . . πάντων φημι
τῶν αἰρετικῶν τοὺς εὐκτηρίους, εἰ γε εὐκτηρίους
ὀνομάζειν οἴκους προσήκει, ἀφαιρεθέντας
ἀναντιρρήτως τῇ καθολικῇ ἐκκλησίᾳ χωρὶς
τινὸς ὑπερθέσεως παραδοθῆναι, τοὺς δὲ
λοιποὺς τοιοῦτους τοῖς δημόσιοις προσκρίθῆναι.
2. Codex Justinianus, I, 5, 3.

Constantius who was himself heretical. Julian maliciously restored all the heretical exiles in order to add fuel to the flames of discord in the Christian camp. Valens, also heretical, did not legislate against his coreligionists. His brother, Valentinian, however, confiscated the meeting places of the Manichaeans,¹ and Gratian decreed that the meeting places of all heretics generally should be confiscated.² With the accession of the orthodox Theodosian Dynasty the edicts against heretics multiply in the Codes. In 381 Theodosius I decreed that the Eunomians and the followers of Arrius and Aetius should be denied the right to build churches and that if they presumed to do so the property should be at once appropriated to the res privata.³ The meeting places of the Montanists and Eunomians were also confiscated by similar edicts of the second Theodosius in 415.⁴ In 423 Manichaeans and other heretics who dissented in respect to the celebration of Easter were threatened with exile and confiscation.⁵

In 386 Theodosius I decreed that those who ventured to disregard the command of "our Tranquillity", occasion

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1. Codex Theodosianus, XVI, 5, 3 (372).
 2. Codex Theodosianus, XVI, 5, 4 (376).
 3. Codex Theodosianus, XVI, 5, 8 : Nullum Eunomianorum atque Arrianorum vel ex dogmate Aeti in civitate vel agris fabricandarum ecclesiarum copiam habere praecipimus. Quod si temere ab aliquo id praesumptum sit, domus eadem, ubi haec constructa fuerint, quae construi prohibentur, fundus etiam vel privata possessio protinus fisci nostri viribus vindicetur atque omnia loca fiscalia statim fiant, quae sacrilegi huius dogmatis vel sedem receperint vel ministros.
 4. Codex Theodosianus, XVI, 5, 57 & 58.
 5. Codex Theodosianus, XVI, 10, 24.

seditions and disturb the peace of the Church should expiate their temerity with their own blood on the charge of treason.¹ In 392 the turbulent Egyptians, whose latent nationalism found vent in heresy, were threatened with deportation.² Confiscation, of course, was the concomitant of both condemnation for treason and exile.

In 404 Arcadius undertook to purge the palace service itself of heretics and wrote to the Master of the Offices that all the officiales should abstain from attending heretical assemblies and that those who "in a sacrilegious state of mind dared to expugn the authority of Our Divinity" should be deprived of their office and their property confiscated.³

Honorius, who was inclined to believe that edicts in favour of orthodoxy could save him from Alaric, in 407 legislated against the Donatists (who had all but captured the African Church), the Manichaeans and the Priscillianists. Such persons might be accused and convicted of heresy even after their death and their property confiscated into the Privy Purse. Their sons could inherit only if they abandoned their father's heresy, and

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1. Codex Theodosianus, XVI, 4, 1 : His, qui sibi tantummodo existimant colligendi copiam contributam, si turbulentum quippiam contra nostrae tranquillitatis praeceptum faciendum esse temptaverint, ut seditionis auctores pacisque turbatae ecclesiae, maiestatis capite ac sanguine sint supplicia luituri.
 2. Codex Theodosianus, XVI, 4, 3.
 3. Codex Theodosianus, XVI, 4, 4: Cuncta officia moneantur a tumultuosis se conventiculis abstinere, et qui sacrilego animo auctoritatem nostri numinis ausi fuerint expugnare, privati cingulo bonorum proscriptione multentur.

failing this, persons in ascending, descending or collateral branches to the second degree might inherit on the same condition. These heretics were also denied the right of gift, sale or contract. They were forbidden to petition property of the Emperor or receive it, and slaves informing against them were to be heard if they transferred to the Catholic Church.² Theodosius II in edicts addressed to the Praetorian Prefect and the Count of the Privy Purse applied this law to the Eunomian heretics in 410 A.D.³ and in 435 threatened the Nestorians with confiscation.⁴ In 445 Valentinian III also declared the Manichaeans to be incapable of willing or inheriting, their goods to pass into the Privy Purse. He also deprived them of service in the militia⁵ and residence in the Capital.⁶ Leo I promulgated a general edict against all heretics confiscating their property into the Privy Purse.⁷

The Donatists in Africa merited a special edict from Honorius in 412. Every order of society was threatened with a fine proportionate to their rank and wealth, to be paid into the Privy Purse. Unless the procurators, conductores and executores

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1. Cf. Codex Theodosianus, XVI, 5, 49 (Theodosius II, 410). This same provision passed into the Basilica and became a permanent part of Byzantine law (lib. XII, obser. 30).
 2. Codex Theodosianus, XVI, 5, 40 (C. Just., I, 5, 4).
 3. Codex Theodosianus, XVI, 5, 49 & 50.
 4. Codex Justinianus, I, 5, 6.
 5. Theodosius II in C. Theod., XVI, 5, 65 allowed cohortalina et castrensis militia to Manichaeans and heretics in general.
 6. Novellae Valentiniani, XVIII.
 7. Codex Justinianus, I, 5, 10.

enforced this exaction they themselves were held liable for the sum. If the persons involved refused to pay, their entire property was to be confiscated. Slaves and coloni were to be forced back into the Church by their master with "more frequent" beatings and their masters, even though Catholics, were liable to the above mentioned penalties if they did not do so.¹

Finally, in 425, Valentinian III decreed that all heretics should not only be driven out of the city of Rome but from all the cities of the Empire. Since this law is addressed to the Count of the Privy Purse, we may assume that the expulsion was to be accompanied by the confiscation of at least whatever property was owned in the cities by the heretics.²

Each new heresy that cropped up thereafter was threatened with the application of all the existing laws.³ Justin and Justinian in 527 issued a fresh general edict applying all former laws and adding further penalties upon heretics.⁴ In 430 Justinian addressed yet another edict commanding the Count of the Privy Purse to forbid all heretical assemblies and baptisms in the capital or provinces. His rage is especially great against the Montanists who are to be driven from the Capital. Anyone

1. Codex Theodosianus, XVI, 5, 52.

2. Codex Theodosianus, XVI, 5, 64. Of course, we are to see in this law the hand of the Empress-mother Galla Placidia for the Emperor was but a child under the tutelage of his mother. All of the women of the Theodosian House were great benefactors of the Church.

3. Cf., for example, C. Just., I, 5, 8 (Marcian against the Eutychians).

4. Codex Justinianus, I, 5, 12.

who aided such a heretic was fined ten pounds of gold, including the officials of the Count and the provincial governors.¹

(b) Pagans : During the persecutions the property of the martyrs was confiscated. After the triumph of the Church the tables were turned. We have already seen how the temple property was confiscated. The penalty of the law also fell upon the persons of the pagans. Under Constantine many of the shrines most offensive to the Christians were closed as we have seen. In 346 (354?) Constantius issued a general edict closing all of the temples everywhere and forbidding access to them. At the same time he forbade anyone to offer sacrifice with death and confiscation as the penalty for doing so. The provincial governors were threatened with the same penalty if they neglected to enforce this edict.² Theodosius I in 381 reenacted this law,³ and in 392 once more forbade everyone of whatever rank to sacrifice; any house in which a sacrifice was performed or the odor of incense detected was to be confiscated to the Privy Purse.⁴ Theodosius II in 423 decreed that if any of the pagans who were still left were found sacrificing they should suffer exile and confiscation.⁵

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1. Codex Justinianus, I, 5, 20.
 2. Codex Theodosianus, XVI, 10, 4.
 3. Codex Theodosianus, XVI, 10, 7.
 4. Codex Theodosianus, XVI, 10, 12 : Namque omnia loca, quae turis constiterit vapore fumasse, si tamen ea in iure turificantium probabuntur, fisco nostro adsocianda censemus.
 5. Codex Theodosianus, XVI, 10, 23: Paganos qui supersunt, si aliquando in execrandis daemonum sacrificiis fuerint comprehensi, quamvis capitali poena subdi debuerint, bonorum proscriptio ac exilium coercebit.

6. Property of those contracting forbidden marriages and of those guilty of the spoliation of graves.

The confiscations and fines resulting from cases of incestuous or forbidden marriages and the spoliation of graves went into the Privy Purse.¹

Persons of senatorial rank were forbidden to marry slaves; likewise, persons within certain degrees of relationship were forbidden by canon law to marry each other.

Valentinian II, Theodosius I and Arcadius addressed to the Count of the Privy Purse an edict to the effect that in the case of marriages against the laws no gifts made at the time of the marriage, before or after should be valid, but everything should be claimed by the fiscus, except in the case of persons who were unaware that the forbidden relationship existed between them, in which case the marriage upon discovery was to be dissolved without delay.²

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1. Cf. p. 321 for the curious and typically absurd reason presented by Cassiodorus (Variae, VI, formula 8) for assigning the jurisdiction in such cases to the comes rei privatae.
 2. Codex Justinianus, V, 5, 4 (undated - must have been promulgated between 383 when Arcadius was elevated to the rank of Augustus and 392 when Valentinian II perished) : Qui contra legum praecepta vel contra mandata constitutionesque principum nuptias forte contraxerit, nihil ex eodem matrimonio, sive ante nuptias donatum sive deinceps quoquo modo datum fuerit, consequatur, idque totum, quod ab alterius liberalitate in alterum processerit, ut indigno indignaeve sublatum fisco vindicari sancimus: exceptis tam feminis quam viris, qui aut errore acerrimo, non adfectato insimulatoque, neque ex causa vili decepti sunt . . . Quos tamen ita demum legis nostrae laqueis eximi placuit, . . . errore comperto, . . . coniunctionem huiuscemodi sine ulla recrastinatione diremerint.

By edict of Constantine women who married their own slaves or were detected in illicit relations with them were cast into the flames and their property transferred to the nearest legitimate heirs.¹ The high-born and aristocratic Anthemius, however, who was grieved at the raisons d'etat which compelled him to marry his daughter to a barbarian Master of the Soldiers (Ricimer), in 468 decreed that women of Senatorial rank who married their own slaves should be condemned to exile and the confiscation of all their property, their children by the marriage to lapse into the condition of slaves.²

In 535 Justinian addressed an edict to the comes divinae rei privatae that if a person contracted a forbidden marriage and had no children by a former legitimate marriage, his entire property should go to the Privy Purse including also that which was given as a dowry. If he were an official this confiscation was to be accompanied by deprivation of his belt of office, and if a person of low condition, by corporal punishment as well. If, however, within two years he abandoned this illegal marriage, only a quarter of his goods were confiscated by the fiscus; and if he had issue by a legitimate marriage,

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1. Codex Theodosianus, IX, 9, 1.
 2. Novellae Anthemii, I, #3 : Circa eas vero, quae in libertorum suorum vota convenerint, custodiri in aeternum duratura lege sancimus, ut coniunctio vetita ne nomen quidem matrimonii sortiatur, sed ad illicita consortia execrabiliter adspirantes publicatione omnium facultatum et perpetua deportatione plectantur; his, qui ex huius modo societate nascuntur, non solum iure, sed et vocabulo libertorum privandis, servili quoque conditioni probabiliter addicendis, ita ut in his dominium sibi noster fiscus usurpet.

such heirs were not deprived of the paternal succession and might inherit three parts of their father's property.¹

Constantius seems especially to have concerned himself with the security and sanctity of the last resting places of the dead. In A.D. 340 he decreed that persons guilty of demolishing tombs should be sent to the mines and if any portion of a sepulchral monument be found in his house or villa the property was confiscated.²

In 349 he legislated against persons found removing columns, marbles or stones for making lime from tombs and imposed a fine of twenty pounds of gold to be paid into the

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1. *Novellae Justiniani*, XII : 1. Sancimus igitur, de cetero, si quis illicitas et contrarias naturae, quas lex incestas et nefandas et damnatas vocat, contraxerit nuptias, si quidem non habuerit filios ex prioribus legitimis et inculpabilibus sibi contractis nuptiis, mox ei suarum rerum casum imminere, simul autem et ea, quae nomine dotis data sunt ei, in nullo potiri, sed omnia aerario assignari, sitque ei poena non confiscatio solum, sed etiam conculi privatio et exilium, et si vilis fuerit, etiam corporis verberatio Muliere quoque . . . sub eadem constituenda poena. 2. . . . si vero haec nostra lex invenerit aliquem post tales nuptias, licentiam ille habeat, ex quo omnibus insinuata est, intra duos annos sic sibi copulatam dimittere coniugem, non reversuram ulterius ad eum neque separatam quidem figuraliter, pro veritate vero coniunctam (forsan enim sic prioribus satisfaciat), sola quarta eius substantiae parte ad fiscum deferenda, et ad filios, quoniam eis tanquam innoxiiis concedimus ut, si quidem soli et non cum aliis et ipsis legitimis sint ex aliis nuptiis inculpabilibus existentibus, non priventur paterna successione. . . . Si vero etiam nuptiae sint aliae prius factae et non offendentes legem, et filii inde oriantur, tres quidem partes hereditatis undique inculpabilibus et innoxiiis relinqui filiis, . . .
 2. *Codex Theodosianus*, IX, 17, 1 (C. Just., IX, 19, 2) : Si quis in demoliendis sepulchris fuerit adprehensus, si id sine domini conscientia faciat, metallo adiudicetur; si vero domini auctoritate vel iussione urgetur, relegatione

privy Purse,¹ and in 357 he imposed a fine of ten pounds of gold upon anyone caught robbing tombs of stones, marble or columns either for building or selling.²

7. Legacies

Under the Principate legacies in favor of the Emperor were an important source of increase to the Patrimony. Augustus received numerous legacies in both landed property and movables, from Maecenas his famous gardens, his slaves (the Maecenatiani) and an estate in Egypt,³ others from Horace, from Virgil, Agrippa, and Kings Herod of Judaea and Archelaus of Cappadocia, to mention only a few of the names cited in Daremborg and Saglio.⁴ In the last twenty years of his reign Augustus received in legacies from his friends some 1,400 million sesterces.⁵ The custom of naming the Emperor in one's will became so much the rule that to fail to do so was considered an affront, almost treason, and might lead to the entire will being suppressed. The pages of Tacitus and Suetonius are full of such incidents. Persons on trial often removed themselves by suicide without waiting for the outcome in the hope that a part of their property would be left to their children.⁶

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1. plectatur. Et si forte detractum aliquid de sepulchris ad domum eius villamque pervectum post hanc legem repperietur, villa sive domus aut aedificium quodcumque erit fisci viribus vindicetur.
1. Codex Theodosianus, IX, 17, 2 (C. Just., IX, 19, 3).
 2. Codex Theodosianus, IX, 17, 4 (C. Just., IX, 19, 4).
 3. *Οὐσία Μαικηνατῶν*, Wilchen, Ostraka, I, p. 392.
 4. Lecrivain in Daremborg & Saglio, vol. IV, p. 351, s.v. Patrimonium principis.
 5. Suetonius, Augustus, 101.
 6. Dio, 58, 16; Tacitus, Annales, 16, 11; Hirschfeld, Römische Verwaltungsgeschichte, p. 53.

Nero's insane extravagance led him to such straights that he enacted that the estates of those who had been ungrateful to their Emperor (i.e., had left him less than he expected or nothing at all) should be confiscated to the Privy Purse and the lawyers who had written or dictated such wills should not go unpunished either.¹

Tiberius placed one of his freedmen in charge of the sums received in inheritances.² Beginning with Domitian this official had the title procurator³ and was sometimes also a procurator of the Patrimony.⁴ We also find a freedman of the Empress Domitia with the designation exactor hereditatium legat(orum) peculior(um).⁵ Under Hadrian the procurators of the legacies were all of the Equestrian Order with the rank of ducenarii,⁶ and after the creation of the res privata by Septimius Severus, the legacies left the Emperor were administered by a procurator hereditatium patrimonii privati.⁷

In the Late Empire monies left the Emperor by will no longer appear to have formed a very important source of revenue to the Privy Purse. However, they did continue to exist and the

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1. Suetonius, Nero,
 2. Hirschfeld, Römische Verwaltungsgeschichte, p. 54; Scribonius Largus, 41 : hoc Anthero Tiberii libertus supra hereditates remediatus est.
 3. C.I.L., VI, 2, 8433 : PROC(URATOR) HEREDIT(ATIUM).
 4. C.I.L., VI, 2, 8499 : PROCURATOR PATRIMONII ET HERED(ITATIUM).
 5. C.I.L., VI, 2, 8434.
 6. Lecrivain in Daremberg & Saglio, vol. IV, p. 351, s.v. patri-monium principis.
 7. C.I.L., X, 6657 : M . AQUILIUS FELIX PROC . OPERUM PUBLICORUM PROC . HEREDITATIUM PATRIMONII PRIVATI . . . PROC . PATRIMONII BIS.

Digest contains laws relating to legacies left both the Emperor and Empress.¹ Constantine received by legacy from Festus, his Grand Chamberlain, the Massa Festi near Praeneste and an estate near Falisca in Etruria from a certain Hercules,² and the Secret History of Procopius contains in several places denunciations of the unworthy, illegal and tyrannical means employed by Justinian and Theodora in securing the inheritance of large masses of property.³

8. Miscellaneous confiscations

In addition to the above regular and permanent channels through which revenue flowed into the Privy Purse, edicts were promulgated from time to time to correct certain abuses and threatening the offenders with confiscation. The following examples are not intended to be an exhaustive list of such cases, but merely illustrative; they will only be listed here since a number of them will be further discussed in other parts of this dissertation in connection with the laws of which they often form only a penal clause.

Constantine, to hasten the growth of the new Capital, ordained that all those who owned estates in the adjoining Dioceses of Asia and Pontica should build a palace or residence in Constantinople and that whoever neglected to do so should suffer confiscation of his estate.⁴

1. Digesta, XXXI, 56 & 57.

2. Liber Pontificalis (ed. Duchesne), p. 170 f.

3. Anecdota, XII, 5-11; XXIX, 12-16; Ibid., 17 ff.

4. Novellae Theodosii, V, 1; cf. Codex Theodosianus, V, 14, 36 which seems to refer to this law.

In A.D. 458 Majorian, to stay the flight of the curiales, decreed that whatever possessor received a curial and did not surrender him within a year's time forfeited his estate.¹

Athalaric decreed that those who affixed tituli to the property of others should make restitution of the property with a fine of equal value. If they were unable to pay the fine they were to suffer exile and confiscation.²

In 389 Theodosius decreed that anyone who tapped the public aqueducts supplying Constantinople to divert the water to his own estate should forfeit that same property to the res privata proscriptioe fiscalis tituli.³ This is but a specific instance of a general law in effect since the days of Frontinus.⁴

In 424 Theodosius II decreed that if within four months of the demand the possessor of bona caduca by gift of the Emperor did not remit the extraordinary taxes upon it, his property was to be confiscated.⁵

Arcadius in 397 decreed that anyone who purchased the rank of Illustris and attempted fraudulently to secure those court honors which were conferred only with the Emperor's approval should suffer the confiscation of their goods by the Privy Purse.⁶

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1. Novellae Majoriani, VII, #4.
 2. Cassiodorus, Variae, IX, 18.
 3. Codex Theodosianus, XV, 2, 4.
 4. Frontinus, De Aquaeductibus, art. 97 : Agri qui aqua publica contra legem essent irrigati, publicabantur.
 5. Codex Theodosianus, XI, 20, 5.
 6. Codex Theodosianus, IX, 26, 1.

Anyone who removed grain from the granaries which supplied the troops stationed on the threatened Illyrian limites paid for his crime with death and confiscation.¹

Officials of the treasury (palatini) and subordinates of provincial governors were often threatened with punishment in a vain effort to restrain their corruption.

In 444 the avarice of the petitioners had become so great that Theodosius II forbade anyone to petition for bona caduca at all and the memoriales and palatini who received such petitions or drew up the rescripts relating to them were threatened with the confiscation of their goods.²

In 408 those officials who neglected to affect the proper incorporation of the goods of Stilicho and his followers were threatened with exile and confiscation.³

In 440 Valentinian III menaced the palatini with proscription, death and confiscation for over-exaction of taxes,⁴ and in 535, when Justinian undertook to reform the system of provincial administration, he condemned to deprivation of their office and confiscation all subordinates of the provincial governors who purchased their office or were found guilty of patronage and accepting bribes.⁵

In Ammianus Marcellinus occurs the curious case of Hymetius, Proconsul of Africa, who opened the public granaries

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1. Codex Theodosianus, XI, 14, 3.
 2. Novellae Theodosii, XVII, 2 (C. Just., X, 12, 2).
 3. Codex Theodosianus, IX, 42, 20.
 4. Novellae Valentiniani, VII, 1.
 5. Novellae Justiniani, VIII.

in Carthage to the people during a famine and in a subsequent time of plenty replenished them. "But as at the time of the scarcity ten bushels had been sold to those who were in want for a piece of gold, while he now bought thirty for the same sum, he sent the profit derived from the difference in price to the Emperor's treasury. Therefore, Valentinian, suspecting that there was not as much sent as there ought to have been as the proceeds of this traffic, confiscated a portion of his property."¹

9. Fines

It remains to discuss the passages scattered throughout the Codes imposing fines. It is not always clear whether these went into the local chest of some governor or vicar, into the chest of the Praetorian Prefect, the Sacred Largesses or the res privata; the terminology for the various treasuries is often quite loose, but the following are instances of fines paid into the Privy Purse either specifically or by implication from the context.

First of all, we find numerous heavy fines imposed upon the palatini in the officium of the res privata itself for malperformance of their duties, and especially for violating the laws relating to the alienation and leasing of domain land.²

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1. Ammianus Marcellinus, XXVIII, 1, 18.
 2. Codex Theodosianus, IX, 42, 11 (10 pds. of gold); Novellae Theodosii, V, 1 (50 pds. of gold); Codex Theodosianus, XI, 20, 4 (60 pds. of gold for disregarding provisions of law relating to amount of extraordinary taxes). Fines of 10 (Novellae Theodosii, XVII, 1), 50 (Ibid., V, 2; XIX; Codex Theodosianus, X, 10, 22; Codex Justinianus, XI, 66, 7) and 100 pds. of gold

These are discussed elsewhere in greater detail.

Anyone who was at the same time an advocatus and a consiliarius of any magistracy in the City or in the provinces was condemned to pay ten pounds of gold into the Privy Purse and be expunged from the matriculi of the advocates.¹

A fine of five pounds of gold was imposed upon those who affixed tituli to their own estates and ten pounds upon those who affixed them to another's property.² Fifty pounds was demanded from anyone who presumed to arrogate to himself the legal cognizance due the Count of the Privy Purse.³

A fine of five pounds of gold was imposed upon anyone, including the Alytarch himself, who ventured to cut a tree from the famous Grove of Daphne in the suburb of Antioch⁴ and upon anyone who bought or sold such a tree.⁵

If a sacrifice were performed in any public or private place, the owner, even though he might be unaware of the procedure, was fined twenty-five pounds of gold into the res privata⁶ and the governor who permitted such sacrifices was fined fifteen pounds by decree of Theodosius I in 391.⁷ The following year a

(Novellae Theodosii, V, 3; Codex Justinianus, XI, 71, 5) for preparation and issuing of documents relative to improper or forbidden alienations.

1. Codex Justinianus, I, 51, 14.
2. Novellae Valentiniani, XIII, #6 (ed. Haenel, XVIII).
3. Codex Justinianus, I, 33, 3.
4. Codex Justinianus, XI, 78, 2.
5. Codex Justinianus, XI, 78, 1.
6. Codex Theodosianus, XVI, 10, 12.
7. Codex Theodosianus, XVI, 10, 11.

general edict imposed a fine of thirty pounds of gold upon the governor and his officium, upon the defensores and the curiales who failed in their duty through connivance or neglect to prevent sacrifices.¹

A provincial governor was fined five pounds of gold for violating the immunity of the Patrimony,² and the Count of the Privy Purse himself was subject to a fine of ten pounds for neglecting to recall an exorbitant and plundering palatinus.³

Anyone who diverted the waters of the Aqua Augusta after its restoration by Honorius to his own private uses was fined five pounds of gold,⁴ and anyone usurping for his own purposes a horse designated by gift of the Emperor for the circuses of Rome was liable to a fine of one pound into the res privata.⁵

We have already discussed the fines imposed upon grave robbers (cf. p. 159).

In 412 A.D. Honorius endeavoured to stamp out the Donatist heresy in Africa as we have had occasion to mention, and, as a prelude to more stringent penalties, applied a whole series of fines varying according to the rank of the offender - illustres, 50 pounds of gold; spectabiles, 40 pounds; senators, 30 pounds; clarissimi, 20; priests, 30; principales, 20;

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1. Codex Theodosianus, XVI, 10, 12.
 2. Codex Theodosianus, XVI, 16, 20.
 3. Codex Theodosianus, VIII, 8, 9.
 4. Codex Theodosianus, XV, 2, 8.
 5. Codex Theodosianus, XV, 7, 6.

decurions, 5; negotiatores, 5; common people, 5; and the so-called circumcelliones, 10.¹

The enumeration of the above cases illustrates the wide range of fines from which the Privy Purse profited.

1. Codex Theodosianus, XVI, 5, 52. The circumcelliones were itinerant monks who journeyed about, spreading the seeds of the Donatist heresy wherever they tarried, cf. Godefroy, ad Codicem Theodosianum, op. cit.

Chapter VIII

THE PROCESS OF INCORPORATION OF PROPERTY IN

THE RES PRIVATA

The incorporation of property into the res privata of the sacrosanct Autocrat of the Romans was a process affected rite atque sollemniter, to use the almost religious phrases of the Codes,¹ according to a formal procedure of considerable elaboration, falling into three main phases : (1) an inventory² of the property complete in every detail which was submitted to the office of the Count of the Privy Purse; (2) the sending out of palatini to confirm this inventory and make the formal incorporation of the property after means had been provided for any legal owner to present his case;³ and (3) the final imposition of the tituli of the Emperor, once the validity of the imperial claims had been established.

The initiative was taken either by the central bureaus of the monarchy or by the provincial governor, depending

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1. Codex Theodosianus, X, 9, 1; Codex Justinianus, X, 10, 3.
 2. variously referred to as brevis (C.Theod., X, 8, 2), instructio (C.Theod., X, 10, 14; 16; 26), descriptio (C.Theod., IX, 42, 7; X, 10, 11), investigatio (C.Theod., IX, 4, 2; 7).
 3. Codex Theodosianus, X, 8, 5; 10, 11; 23; 27; Ammianus Marcellinus, XXXI, 14, 5; Symmachus, Epistolae, X, 55.

largely upon the circumstances of the individual case. Bona vacantia or caduca would almost certainly come first to the attention of the governor and it was part of his duty to take cognizance of such occurrences, which would appear on the property registers, etc., and inform the nearest officials of the res privata. Thus, Majorian in 458, in view of the case of one Severina in the province of Picena who had murdered her husband and whose property should have fallen to the res privata either as bona caduca or bona damnatorum, but for some suspicious reason had failed to do so, strictly enjoins the guilty governor to make a complete investigation of Severina's property and its present holders' claims, and despatch an account of the whole to the Count of the Privy Purse so that he may vindicate the claims of the treasury; and at the same time he takes occasion to enjoin the provincial governors in a body to inform the palatini of such frauds at once in the future: they refrain from doing so at their own peril.¹ And in the case

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1. Novellae Majoriani, V : Cum enim caduca bona, vel proscriptorum, sed et eorum, quos in scelere deprehensos sine legitimo herede iuris vigor insequitur, privato aerario competere videantur, occultata quibusdam fraudibus aerarii nostri commodis abiurantur; quod specialiter factum nuper in damnatione Severinae mulieris, quae peregrisse assertur necem mariti in Piceni provincia, indiscussum praeteriri non debet. 1. Unde auctoritas tua, cuius suggestiones providas comprobamus, pragmatici nostri secuta praeceptum, ordinatis in articulo palatinis, entelato nostrae serenitatis oraculo, provinciarum iudices interminatione proposita auctoritatibus propriis admondebit, ut, ab huius modi fraudibus temperantes, venalitatis studium aestimationis suae periculo anteferre non debeant, curaturi post haec, ut, ubi similis casus occurrerit, palatinum instruatur officium. 2. Ad Piceni vero consularem districtior praeceptio dirigatur, ut omni censu praedictae

of the property of Joanna, wife of Andreas, who inherited his property and in her turn died intestate without heirs, the governor is ordered to investigate the claims of those now holding it, and claim it for the fiscus if their title is found to be invalid.¹

In the case of bona damnatorum the initiative might be taken either in the central offices of the government or in the provinces. Apparently, in the earlier period, a man might incur proscription and confiscation in the provinces without the express action of the central government, in which case the governor was to inform the procurator of the Patrimony by letter at once that he might take the proper steps to affect the incorporation.² In 425, however, Theodosius II forbade any

mulieris disquisitio, investigatis quoque vel in unam substantiam reductis, quae ex eo intercipi aut perire potuerunt a tempore quaestionis vel poenae, qua nocens perit, fructus quoque vel pensionum emolumenta discutiat. Si qua etiam apud diversos retentatores sunt, conventis his, quibus non poterint iure conquiri, ad utilitatem fisci reducta, ac de omnibus missa relatione, instruat amplitudinis tuae iudicium, ut, sicuti fisco commoda provisione repertum est, quod latebat, ita aerario profuturum nulla fraude aut dissimulatione deperat.

1. Cassiodorus, Variae, V, 24 : . . . Cujus substantia a diversis nullo legitimo iure suffultis usurpatione voluntaria suggeritur possideri. Et quia caduca bona fisco nostro competere legum cauta decreverunt, ideo te praesentibus oraculis admonemus, ut huius rei veritate discussa, si revera, ut ad nos perlatum est, nullus ei aut testamento haeres exstitit, aut proximitatis iure successit, fisci nostri eam facias compendiis aggregari. . . . Si quid autem contra repereris, quietos dominos habere patieris, quia magis illa nostra sunt patrimonia quae a subiectis legitime possidentur.
2. Codex Theodosianus, IX, 42, 3 (357) : Caelestino consulari Baeticae : Ubi aliquis pro qualitate criminis vivendi sententiam passus fisco fecerit locum, super occupandis rebus

provincial governor to presume to condemn anyone to death and confiscation for any crime whatever without first submitting the case and relevant documents to his judgment, and reserved this power to the highest court dignitaries alone.¹ The great treason trials, involving the confiscation of large tracts of land usually took place in the court of the Praetorian Prefect or in a special court on the scene under the presidency of persons sent down for the purpose by the Emperor.² The provincial governors would learn of the condemnations and would either on their own initiative inform the local officials of the Privy Purse of bona damnatorum under their jurisdiction,³ or themselves be apprised of such by the appearance of the palatini come to take inventory and incorporate such properties.

Also, it was at all times part of the functions of the palatini of the Privy Purse and the advocates of the fiscus to take cognizance of bona caduca within their district; indeed, in

eius statim officium procuratoris patrimonii litteris tuis conveniatur, ut eadem corpora fisci viribus vindicentur et protinus super occupatione eorum scribtis competentibus intimetur.

1. Codex Theodosianus, IX, 41, 1 : Nulli iudicum exceptis his, qui in summa administrationis sunt positi potestate, vitae quoque noxiis ius adimendae sortiti sunt, quemquam omnino inconsulta nostra clementia in ullo genere criminationis tristi liceat proscriptionis tempestate percellere. Ad nos insimulationum genera, quaestionis ordo, criminum moles, documentorum probationumque pensanda libramenta mittantur. Nemo sibi praesumat moderatorum provinciarumque rectorum sub quibuscumque infulis potestatis quemquam patrimonii universis privare subsidiis. . . .
2. Ammianus Marcellinus, XIX, 12, 7.
3. Codex Theodosianus, IX, 42, 3 - just quoted.

an edict promulgated about 500 A.D. it is stated that the schola palatinorum alone is properly entitled to lodge denunciations.¹ In addition, anyone might lodge information or a denunciation with the Count of the Privy Purse, one of the palatini, one of the advocates of the fiscus, or the provincial governor, provided he was prepared to establish the truth of his assertions in a court of law.²

Constantine, in 319 A.D., enacted that the inventory was to be taken as soon as the officials of the rationalis took possession and sent to the Count of the Privy Purse (ad virum perfectissimum comitem et amicum nostrum), the object being to prevent subsequent fraudulent alienations by the palatini.³

An edict of Valentinian I in 369 drew up in considerably greater detail the procedure to be followed. This constitution provides for a double inventory to prevent fraud and venality : (1) by the governor of the province and his officials. This describitio is to contain a full account of the "extent and quality of the land, what part of it is cultivated and what not, what is found in vineyards, olive-orchards, plowlands, pastures and forests, how gracious and pleasing the property is, adorned

1. Codex Justinianus, X, 11, 8, #3, cf. p. 367.

2. Ibid., #9.

3. Codex Theodosianus, X, 8, 2 : Ne principali liberalitate praeventa dominium quis rei alienae affectet, iubemus, quotiens iure suadente aliquorum bona ex officio tuo fuerint occupata, breves eorum plenissimos ad virum perfectissimum comitem et amicum nostrum mitti, ne fraudibus caesarianorum imminuantur vel petentibus aliquid abiuretur. . .

with what buildings or possessions, how many slaves are held on urban or rural estates and in what skills they are trained, how many casarii or coloni there are, how many oxen submissive to the exercise of the land and the plough-share, how many herds of cattle and oxen and in what variety they are numbered, how much gold and silver, garments and jewelry, in coin or in weight, and in what coinage, or what is found in enthecis, i.e. stored up in barns in the way of farm produce and farm implements."¹ This detailed document is to be sent to the bureau of the rationalis rei privatae, everything contained in it to be attached to the Patrimony. The Emperor is at once to be informed of every detail by public letters under the seal of the governor; any delay being subject to a fine. (2) The rationalis is then

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1. Codex Theodosianus, IX, 42, 7 : Si qui intra provinciam pro qualitate delicti stilum proscritionis incurrerit, per ordinarii officii sollicitudinem bonorum eius indago diligentissime celebretur, ne quid rei privatae commodis per gratiam atque concludium furto subducatur. Et plena descriptio comprehendat, quod spatium et quod sit ruris ingenium, quid aut cultum sit aut colatur, quid in vineis olivis aratoriis pascuibus silvis fuerit inventum, quae etiam gratia et quae amoenitas sit locorum, quis aedificiis ac possessionibus ornatus, quotve mancipia in praediis occupatis vel urbana vel rustica vel quarum artium generibus inbuta teneantur, quot sint casarii vel coloni, quot boum exercitiis terrarum atque vomeribus inservientium, quot pecorum et armentorum greges et in qua diversitate numerati sint, quantum auri et argenti, vestium ac monilium vel in specie vel in pondere et in quibus speciebus quidve in enthecis sit repertum. Honorius also decreed that whatever yield from the confiscated estates of Stilicho and his retainers had been garnered by their procurators should be at once transferred to the res privata (Codex Theodosianus, IX, 42, 20, 408 A.D. : Proscritorum satellitumque fortunas aerario nostro iubemus accedere. . . . Quidquid sane ab eorum procuratoribus ex praediorum fructibus congregatum est, largitionibus nostris protinus copuletur.

to make a second investigation and if anything by chance is found to have been subtracted by the governor or his officials, it is to be restored from their own means.¹

It is to be observed that no distinction is made in this document between movable and landed property; both go into the res privata. It was formerly believed by some that money and precious stones and such valuables went into the Sacred Largesses, and only landed property into the Privy Purse,² but, as Godefroy points out, this and many other documents may be cited to prove that such was not the case. Of course, there are instances in which confiscated movables were at once bestowed as gifts and the immediate rewards of service rendered, and only the landed property incorporated formally into the private domain. Thus, Constantius in 346, after the fall of some unnamed public enemy in Numidia, ordered the rationalis to bestow as gifts at once upon deserving petitores the "gold, silver and urban slaves, garments and other movables," but to reserve for the treasury the farm slaves, estates and houses,³

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1. Tum demum omnia ea, quae velle nos perspicis, inquisitione constricta rationalis rei privatae tradantur officio nostro nectenda patrimonio. Mox vero ad nos sub litteris publicis iudicis singillatim de omnibus nominatimque perferatur, procul dubio negligentia multanda. Nam si quid post factam a praedicto officio investigationem rationalis rei privatae, cui inquisitio secunda mandata est, amplius fortassis invenerit, officium fraudulentum ea condemnatione ferietur, ut aliud tantum, quantum fuerat subtractum, ex propriis facultatibus inferat.
 2. Godefroy, ad locum cit., vol. III, p. 362.
 3. Codex Theodosianus, X, 8, 4 : Quamvis plurimis petentibus facultates eorum, qui sub hoste publico egerunt adque in

and Julian ordered the money (τὰ χρήματα ἅπαντα) confiscated from the church of Edessa to be distributed among his troops, whereas the landed property of the Edessan church was incorporated into the private domain (καὶ τὰ κτήματα τοῖς ἡμετέροισι πριβάτοις).¹ But both the Count of the Sacred Largesses and the Count of the Privy Purse of this same Emperor were entrusted with the removal of the sacred treasures of the Cathedral of Antioch.²

Apparently the procedure laid down by Valentinian I did not adequately guard against fraudulent practices in the preparation of the inventory, and in 435 Theodosius II attempted to reform the process of incorporation in a law addressed to the Count of the Privy Purse relating to bona caduca in Achaëa. By

proelio poenas debitae pependerit, liberalitas nostra largita sit, tamen volumus, ut aurum argentum et mancipia urbana et vestes ceteraque mobilia petitores habeant, qui iam meruerunt vel postea inpetraturi sunt, mancipia autem rustica et possessiones et domus ad fiscum pertineant officii tui instantia.

1. Julian, Epistolae, 43, ad Hecebolium.

2. Sozomen, V, 8; Theodoretus, Historia Ecclesiastica, III, 12 :

καὶ τὰ τε ἱερά σκεύη τοῖς βασιλικαῖς ταμείοις ὁ τύραννος παραδοθῆναι προσέταξε καὶ τῆς μεγάλης ἐκκλησίας, ἣν Κωνσταντῖνος ἐδείματο, καθελώσας τὰς οὐράς, . . . Ἰουλιανῶ δὲ τῷ τῆς εἰσῆς ὑπαρχῷ συνεισηλθεὶν εἰς τὸν Θεῖον νεὼν Φίλιξ μὲν ταμίας ἂν τῶν βασιλικῶν θησαυρῶν, Ἐλπίδιος δὲ τῶν ἰδίων τοῦ βασιλέως χρημάτων τε καὶ κτημάτων τὴν ἡγεμονίαν πεπιστευμένος. Κόμητα δὲ πριβάτων τὸν τοιοῦτον Ῥωμαῖοι προσαγορεύειν εἰώθασιν.

this edict palatini of the Privy Purse were selected, bound by oaths, and sent into the province under threat of losing half their personal wealth if any detriment befell the treasury; the proconsul, at their instance, was diligently to investigate the matter in the presence of a patronus fisci. The inventory was sent by the governor to the Emperor and incorporation effected upon the latter's approval. Means of reclaiming or refuting the claims of the Privy Purse (contradictio) were allowed those who asserted the properties in question to belong to them,¹ and the wretched patronus fisci was placed in a very equivocal position, being liable alike to restore from his own pocket any detriment that befell the treasury as well as refund any loss sustained by any provincial in an unjust trial.² This law was incorporated into the Code of Justinian as a general measure, omitting the reference to Achaia and substituting praeses pro-

1. Cf. Codex Theodosianus, X, 10, 11 (Valens).

2. Codex Theodosianus, X, 8, 5 : Si vacantia vel caduca bona delata legibus ad aerarium in Achaia perhibeantur, certi palatini electi et iure iurando obstricti mittantur, ut eorum instantia v. s. Proconsul praesente fisci patrono diligenter inquirat, cuius vacans caducumque fuerit patrimonium quantumque vel quale videatur. Et cum data reclamandi copia nullum id iure possidere vel vindicare constiterit locumque aerario factum esse tam ipsius relatione quam publicorum monumentorum fide constiterit, rerum nobis notitia intimetur, ut iussu nostro vacantia vel caduca nomine occupentur aerarii, Nam si quid per fraudem in dispendium aerarii fuerit admissum, missi quidem executores, non vitante indignationem Proconsule, parte facultatem dimidia multabuntur: fisci vero patronus detrimentum, quod vitio eius fisco ingeritur, resarcire urgebitur aut si litem inprobe cuiquam intenderit, redhibitione sumptuum damnorumque cohercebitur.

vinciae for Proconsul.¹ Also the palatini are this time threatened only with the imperial indignation (non evitant indignationem) and the loss of half his goods is reserved for the governor in case any detriment befalls the treasury. The patronus fisci is still liable to make restitution to the Privy Purse, but the loss which the provincial may sustain in an unjust suit is no longer mentioned.²

The influence of Theodosius II's reform is also apparent in the altered version of Valentinian I's law of 369, which is incorporated in the Codex Justinianus, where the inventory prepared under the supervision of the governor is to be submitted to the rationalis rei privatae or to the palatini sent for this purpose (aut palatinis super hac causa missis).³

The Privy Purse also fell heir to the legal documents pertaining to confiscated property and debts, contracts or any other legal relation or obligation to the former owner were still valid and in force when the property passed into the res privata. This is apparent from an edict of Valens in 377 : "Among the chartulae of a proscribed or deported person a certain brief

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1. Codex Justinianus, X, 10, 5 : Si vacantia vel alio modo bona delata legibus ad aerarium perhibeantur, certi palatini electi et iureiurando obstricti mittantur, ut eorum instantia praeses provinciae praesente fisci patrono diligenter inquirat, etc.
 2. Nam si quid per fraudem in dispendium aerarii fuerit admissum missi quidem executores non evitant indignationem, praeses autem facultatum parte dimidia multabitur, fisci vero patronus detrimentum quod vitio eius fisco ingeritur, resarcire urgebitur.
 3. Codex Justinianus, IX, 49, 7.

may be found perchance, which contains the names of debtors or persons under contract; since the money due is neither proved by witnesses, nor what is asserted shown by warranty, we perceive that anyone under annotation of his own hand may easily make another his debtor. Occasion, therefore, for this calumny we wish to prevent by our present command, that the brief be rejected and none of those whose names are inscribed therein be compelled to make payment."¹

After the approval of the inventory, and the investigation of the case provided some one appeared to contest the claims of the res privata, the incorporation was affected by order of the Count of the Privy Purse and locally by the rationales in each province.² This act was completed by the formal affixing of the imperial tituli on the property itself,³ and those who held the property of a condemned person must

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1. Codex Theodosianus, X, 16, 3 (C. Just., X, 2, 5) : Inter chartulas deportati brevis quidam adseveratur inventus, qui nomina continebat debitorum seu contractorum. Cum tamen neque testibus credita pecunia probaretur neque cautionibus quae inserta sunt doceantur, facile esse perspeximus, ut sub propriae adnotationis manu unusquisque faciat debitorem. Occasionis igitur huius calumniam praesenti volumus iussione cohiberi, ut brevis vanitate reiecta nullus ad redhibitionem de his, quorum nomina conscribita sunt, urgeatur.
 2. Codex Theodosianus, X, 9, 1 (C. Just., X, 10, 3) : Si quando aut alicuius publicatione aut ratione iuris aliquid rei nostrae addendum est, rite atque sollemniter per comitem rerum privatarum, dein rationales in singulis quibusque provinciis commorantes incorporatio compleatur et diligens stilus singillatim omnia adscribat.
 3. Codex Theodosianus, XV, 2, 4 (389) . . . signatum privatis rebus nostris adgregandum. The regular expression in Latin was : titulos adfigere; in Greek, ἀποσφραγισθεὶς ὅσας or ἀποσφραγισθεὶς ὅσας σήματα

surrender it within two months if in the Capital, and within eight months if in the provinces, or make quadruple restitution.¹ These tituli were wooden tablets² or pieces of purple cloth³ inscribed with the name of the Emperor or Empress⁴ or other members of the Imperial Family.⁵ They were affixed to the boundary markers and door posts of both fields and buildings belonging to the res privata.⁶ Each of the great treason trials is marked in the sources by the terrifying appearance of the imperial officials sealing up the houses of the accused or condemned and affixing the tituli of the Emperor after expelling wives and children and leaving them to wander through the streets seeking shelter from whomever ventured to endanger himself by giving it.⁷

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1. Codex Justinianus, IX, 49, 11; cf. Ροπ., 14, 11; 21, 1.
 2. Tabulae, Novellae Justiniani, XXVIII, 5, 1; γραπταὶ σαρδέες, Agathias, V, 4.
 3. τὰ βασιλῆα ὑποπόρφυρα, Agathias, V, 4; vela regia, Codex Justinianus, II, 15, 2.
 4. Novellae Justiniani, XXVIII, 5, 1 : . . . solius enim proprium hoc fisci et imperialium domuum est et nostrarum et piissimae Augustae.
 5. Novellae Valentiniani, XIII, #6 : . . . titulos in praediis propriis, vel alienis, vel Pietatis nostrae nomine, vel sacrarum necessitudinum nostrarum, . . . fas sit affigere. By "our sacred necessities" are meant his mother and wife, the Empresses Galla Placidia and Eudoxia.
 6. Codex Theodosianus, IX, 42, 20 : Ideoque per agros, per cuncta domicilia titulos nostrae serenitatis adfigi praecipimus; Chrysostom, Homilia ad populum Antiochenum, XIII, 2 : σημαντρα ἐν ταῖς οὐραῖς; Ammianus Marcellinus, XXIX, 2, 3 : signatis domibus.
 7. Ammianus Marcellinus, op. cit., Et, ne vel coniugibus maritorum vacaret miserias flere, immittebantur confestim, qui signatis domibus inter scrutinia supellectilis poenis addicti; Chrysostom, op. cit., ἑτέρας κυρίας λαμπρότερας ἔχοντες ἀριθμεῖν λειτουργίας, καὶ τὰς οὐσίας ἐσημεῖον καὶ σημαντρα ἐν ταῖς οὐραῖς πάντων ἦν ἰδεῖν. καὶ αἱ γυναῖκες αἱ τούτων

The tituli could legally be affixed only on an order from a competent official,¹ and we are to understand from such phrases as tituli . . . non sine publica testificatione ponantur² and Omnes igitur intellegant publico iuri esse deputandum id, cui nomen dominicum praescribitur³ that the tituli could only be affixed to a property after the process of incorporation described above had been completed and the validity of the claim of the Privy Purse established.

Private persons often resorted to the device of affixing the imperial tituli to their own property to share the privileges of the res privata and escape taxes by collusion with the officials. Still others simply affixed imperial tituli to the property of others and occupied it in the Emperor's name as if it had been property of the Privy Purse allocated to them for cultivation. Frequent legislation failed to check these practices and the device of invading another's property by affixing the tituli upon it became a real evil.

τῆς πατρῶας ἐκβαλλόμεναι οἰκίας . . . οἰκίαν γὰρ ἐξ οἰκίας καὶ τόπον ἐκ τόπου περιέρχοντο καταγωγίου θεόμεναι. Καὶ γὰρ οὐδὲ τοῦτο αὐτὸ αὐταῖς εὐκόλον ἦν, ἐκάστου δεδαικότες καὶ τρέμοντος τῶν προσηκόντων τινὰ τῶν ὑπευθύνων ὑποδεξασθαι καὶ θεραπεῦσαι . . .

1. Codex Justinianus, II, 15, 2 (439) : Ne quis vela regia suspendere vel titulum audeat sine praeceptione iudicis competentis.
2. Codex Theodosianus, X, 9, 1 (369).
3. Codex Justinianus, II, 15, 1.

The penalty against those setting up tituli on their own property was slight,¹ but the rage of the Emperors burst out against those who attempted to invade another man's property in such a manner. In 369 Valentinian I decreed that tituli "by the affixing of which estates are consecrated with out name" are to be set up only by the proper authority (non nisi publica testificatione) and those who by this means attempt any usurpation shall suffer the most grievous penalties.² In 393, in an endeavour to prevent such usurpations Theodosius I forbade tituli to be fixed to bona damnatorum at all and ordered the office of the res privata to be fined ten pounds of gold if it disobeyed this injunction.³

In 439 Theodosius II forbade anyone, without an order from a competent official, to affix tituli to another's property. The penalty was death to a common person and proscription and exile to a clarissimus, curialis, soldier or cleric.⁴ Shortly

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1. By Valentinian III they were fined five pounds of gold to be paid into the Privy Purse, *Novellae Valentiniani*, XIII, #6 (445).
 2. *Codex Theodosianus*, X, 9, 1 (*C. Just.*, X, 10, 3) : *Tituli vero, quorum adiectione praedia nostris sunt consecranda nominibus, non nisi publica testificatione ponantur; gravissimis statim subdendis suppliciis, qui huiusmodi aliquid propria usurpatione temptaverint.*
 3. *Codex Theodosianus*, IX, 42, 11 : *Si qui pro atrocitate commissi formam eiusmodi sustinebunt, ut bona eorum proscriptionis nomine vindicata fiscalibus sint socianda corporibus, commemorationem nostrorum nominum in his titulis nolumus fieri, qui eorum postibus adfigentur, vel his, quorum ius ac proprietates auferetur. Officium etenim palatinum decem librarum auri multae dispendio vexabitur, si hoc deinceps crediderit neglegendum.*
 4. *Codex Justinianus*, II, 15, 2 : *Ne quis vela regia suspendere vel titulum audeat sine praeceptione iudicis competentis*

after his accession Athalaric undertook the reform of several abuses in the Ostrogothic Kingdom, among others that of pervasio or illegal and forcible appropriation of other persons' property. By a law of Valentinian III the punishment for this offence was the loss of all claim to the property, and a fine equal to the value of the property wrongfully seized. Athalaric renewed the law of Valentinian and decreed in addition that anyone who was unable to pay the fine should suffer banishment (deportatio) on the ground that "he ought to have been more chary of disobeying the laws if he knew himself to be in no position to pay the penalty."¹ The same penalty is inflicted upon anyone guilty of setting up tituli upon another's property and the royal indignation is especially great against the sacrilege of trying to couple the majesty of the King's name with the iniquity of his own usurpation.²

rebus alienis imponere, quas quocumque modo qualiscumque persona possideat, licet non dominus, licet iniustus possessor ac temerarius invasor qui possidet doceatur. Eum autem, qui hoc facere ausus fuerit, si plebeius est, ultimo subdii supplicio, si clarissimus, vel curialis vel miles vel clericus, proscribendum deportandumque non solum civitate Romana, sed etiam libertate privari censemus, exsecutoresque huius legis omnes iudices esse oportere.

1. Cassiodorus, Variae, IX, 18, 1 : Primum humano generi noxiam pervasionem severitate legum, et nostra indignatione damnamus : statuentes ut sanctio divi Valentiniani adversum eos diu pessime neglecta consurgat, qui praedia praesumpserint, expulso possessore, violenter intrare; nec aliquid de eius districtione detestabili volumus temperatione mitigari : insuper addentes ut si quis ingenuorum ad satisfaciendum legi superius definitae idoneus non habetur, deportationis protinus subiaceat ultioni : quia plus debuit cogitare iura publica, qui se noverat alibi non posse sustinere vindictam.
2. Ibid., Et quia summis principibus iuris communione vivendum est, si quis legum ordine praetermisso, nomine publico

Finally, Justinian, in his novel reforming the government of Pontus, legislated against this type of usurpation. In speaking of the duties of the newly-created Moderator of Helenopontus, he wrote to the Prefect, "However, in respect to that which is chiefly at fault in Pontus,¹ let him observe that there be given to no one leave to place tituli upon the estates and possessions of another; for this is appropriate solely in the case of the treasury and the imperial houses, both our own and those of the most pious Augusta."² If the governor finds such tituli set up, he shall remove them and search out the guilty person. If that person claims to be the owner of the estate on which the tituli were found, the tablets are to be broken over his head and fresh ones set up on his own property claiming it for the Privy Purse. If the guilty person be the procurator of another, he is to suffer torture and the breaking of the tablets over his head so that all may know that neither by them nor any of their retainers ("spear-bearers" is the significant word in the Greek text - *σπουδαῖοι*) are the subjects of the Empire to be injured.³

titulos praesumpserit affigere, in tantum possidenti fiat obnoxius, quantum sanctio superius memorata testatur. Merito enim et sacrilegii poena percellitur, qui iniquo pervasionis pondere ausus est maiestatem regii nominis ingravare.

1. Cf. p. 91 f. for an account of the state of anarchy and violence rampant in Asia Minor when Justinian undertook to reduce that area to order once more.
2. Novellae Justiniani, XXVIII, 5, 1, op. cit.
3. Ibid. : Quod autem maxime in Ponto delinquitur, observet, ne ulli det licentiam aut titulos imponere praediis aut possessionibus alienis Si autem in alterius cuiuslibet

The officials themselves were sometimes guilty of affixing titles to private property for no sufficient reason and claiming it for the treasury without due process of law. Thus, we find the procurator of the Privy Purse Eusebius, on insufficient grounds, "threatening with the sacred titles" the property in Rome of a certain Lady Porphyria,¹ and Pope Gregory the Great complained to the Empress Constantina that in the island of Sicily a certain Stephanus, "chartulary of the maritime parts", was invading private property and affixing the tituli of the Emperor upon estates and houses in the name of the fiscus.² The Roman Church had extensive patrimonies in Sicily which served for the alimentation of Rome and the Pope may have begun to grow nervous on this score. And, most flagrant of all, we find Anatolius, of consular rank and actual Curator of the Imperial Houses, i.e. an official of Justinian newly-created to take over a part of the functions formerly pertaining to the

inveniat appellationem tabulas impositas, eas quidem repente deponat, investiget autem, qui eas fixit. Et siquidem ipse qui dicit se dominum rei hoc agat, repente illius rebus titulos imponat publicos, in caput ei frangens ab eo positos titulos; si vero curator fuerit rerum alienarum, et titulos, sicut praediximus, confringat eius capiti verberibusque eum subiciat amaris, ut haec discens cui competit persona cognoscat, quia non licet neque per se neque per aliquos obsequentium aut ad avaritiam susceptorum subiectos laedere; cf. Nov. XXIX (De Praetore Paphlagoniae), 4, in which almost identical language is used.

1. Symmachus, Epistolae, V, 54.

2. Registrum epistolarum, V, 41 : In Sicilia autem insula Stephanus quidam, marinarum partium chartularius, tanta praeiudicia tantasque oppressiones operari dicitur, invadente loca singulorum, atque sine dictione causarum per possessiones ac domos titulos ponendo.

Privy Purse, who was in the habit of affixing the imperial tituli to the most opulent houses in the Capital, right under the Sovereign's nose, so to speak, and claiming them for himself with the excuse that they were gifts of the Emperor as tokens of his good will (εὐνοια). He was the only person of rank killed in the great earthquake of 557 A.D. and when his corpse was carried out for burial a murmur of satisfaction went through the crowd that so many ill-gotten pieces of property would now revert to their proper owners.¹ For a similar

1. Agathias, V, 3-4 : τῶν γε μὴν συρατῶν καὶ ἐν τῇ συγκλήτῳ βουλῇ ἀναγεγραμμένων Ἀνατόλιον μόνον διαφθαρῆναι ζυνέβη, ἄνδρα τῆ τε τῶν ὑπᾶτων ἀξία τετιμημένον, καὶ πρὸς γε τὸ φροντίδα τίθεσθαι καὶ ἐπιμέλειαν τῶν βασιλέως ἀκῶν τε καὶ κτημάτων ἀρχὴν εἰληχότα. κουράτωρας δὲ τούτους καλοῦσι Ῥωμαῖοι. . . . ἐπεὶ δὲ Ἀνατόλιος νεκρὸς ἐφέρετο, καὶ ἐπὶ τὴν ταφὴν ἀπεχώρει, τότε δὴ ἐνίοι τοῦ ὀμίλου διεφύλλου, ὡς ἄρα ἐνδικώτατα εἶη ἀνηρημένος, ἄδικός τε ἐς τὰ μάλιστα γεγόνως καὶ πολλοὺς πολλὰ ὅσα τῶν οἰκείων ἀφηρημένος, ὅτι τε αἱ γραπταὶ σάνιδες, ἐκεῖναι καὶ τὰ ῥάκη τὰ ὑποπόρφυρα, ἐς τὸδε αὐτῷ ἀπετελεύτησαν, ἃ δὴ πολλὰ τοῖς τῶν εὐδαιμόνων οἴκοις θαμὰ ἐπέβηλε, τὴν εἰς βασιλεῖα εὐνοίαν προῖσχομενος, καὶ ταῦτα ἅπαντα ἐσφετερίζετο, διαβομενος μὲν ἀνάστην καὶ ἀναρρηγνύς τὰ βουλευμάτων τῶν ἀποικομένων, χαίρειν δὲ πολλὰ λέγων τοῖς νόμοις, οἳ δὴ

offence Aetherius, who was also *κουράτωρ τῆς βασιδικῆς δίκης* under Justinian, was put to death by Justin II upon the accession of the latter to the throne of his decrepit and negligent uncle.¹

Finally, the Church itself, which inherited only too often the fiscal methods of the Empire, was unable to restrain its officials from such fraudulent usurpations, and we find Gregory addressing an epistle to the subdeacon Anthemius with respect to the house of Petronius, formerly a Notary of the Holy See, which had been "titulated" upon his death by Constantius who was Defensor ecclesiae at the time.² The Pope commands the tituli to be removed at once without delay or excuse and the property restored to Theodora, the widow of Petronius and its rightful owner.³

τοὺς παῖδας κληρονομεῖν ἐθέλουσι τῆς τῶν
φύσικων περιουσίας.

1. Evagrius, V, 3 : *Ἡθερίος δὲ διὰ χάριτος ἰῶν συνοφαντίας, καὶ τὰς τε τῶν βίωντων τῶν τε τελευταίων τὰς οὐσίας ληϊζόμενος ὀνοματι τῆς βασιδικῆς δίκης, ἧς ἐπὶ Ἰουστινιανῶ προστήκει.*
2. For a discussion of the defensores ecclesiae and the officials of the patrimonium Petri, see the prolegomena to the selected works of Gregory in "The Nicene and Post-Nicene Fathers", 2nd series, vol. XII, p. vii. The defensor might also be rector patrimonii and Constantius may have held this double office. The chief duty of the defensor was the protection of the poor, but he was also somewhat equivocally commissioned to maintain the rights and property of churches.
3. Registrum epistolarum, I, 65 : . . . Et quoniam edocti sumus domum Petronii notarii sanctae Romanae Ecclesiae, cui Deo auctore praesidemus, a Constantio tunc defensore irrationabiliter titulata, experientiae tuae praesentis

This practice, "a new and most reprehensible custom in the Church," became so frequent and so liable to abuse that a synod held at Rome during the pontificate of this same Gregory formulated a decretal forbidding the rectores of the patrimonium Petri to affix tituli "after the usage of the fiscus" to urban or country estates, upon pain of anathema.¹

praecepti pagina demandamus ut, omni excusatione vel dilatione omissa, deposito titulo eadem domum praesentium latrici Theodoraе relictæ antedicti Petronii sine mora restituas, ne, quod absit, viduis inde praejudicium oriatur, unde consolationis debent invenire solatium.

1. Patrologia Latina, vol. 77, Appendices to Epistolae, V, Decreta Sancti Gregorii Papae I, col. 1334 : 3. Consuetudo nova in Ecclesia hac (Gratian., 16, qu. 6, c. 1) valde reprehensibilis erupit, ut cum rectores eius patrimonii, urbana vel rusticana praedia iuri illius competere posse suspicantur, fiscali more titulos imprimant, . . . Proinde praesenti decreto constituto ut si quis ecclesiasticorum unquam titulos ponere sive in rustico sive in urbano praedio sua sponte praesumpserit, anathema sit.

Chapter IX

THE METHOD OF LEASING THE ESTATES OF THE PRIVY PURSE

The lands of the Privy Purse were cultivated by tenants (conductores, locatores, actores, *μιο θωται*) who held from the government by several types of lease (locatio, conductio).

Perpetual locatio does not seem to have existed under the Republic; in fact, the lex coloniae Iuliae Genetivae promulgated by Mark Antony upon an order of Caesar prohibits in express terms a locatio of more than five years.¹ But, by the middle of the first century A.D. it had become customary in Egypt for the administrators of the domain to compel the conductores on the domain lands (*μιο θωται ούσιακαί*) to continue their conductio after the expiration of their lease, and the Edict of the Prefect Tiberius Julius Alexander in 68

1. Girard, Textes de droit romain, p. 89 : Qui agri quaeque silvae, quaeque aedificia c(olonis) c(oloniae) G(enetivae) I(uliae), quibus publice utantur, . . . ne quis eos agros neve eas silvas vendito neve locato longius quam in quinquennium.

expressly forbids this.¹ The practice soon became so widespread that Hadrian was obliged to forbid it in a general edict,² and by 244 A.D. it was frequently necessary to forbid the retention of unwilling conductors or their heirs after the lapsing of the lease.³ In the end, however, forbidden practice triumphed over legal enactment and the general character of leases on the imperial domains in the Late Empire was perpetual and hereditary.

This type of tenure originated on the imperial domains and the agri vectigales of the municipalities, and in the legislation of the Late Empire the two types of land are practically identical.⁴ It resulted in a distinction between tenure iure perpetuo and locatio conductio,⁵ i.e. between perpetual and hereditary tenure and temporary tenure which continued to exist.⁶ So long as the perpetuarius fulfilled

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1. C.I.G., add. 4957; O.G.I.S., 699; I.G.R.R., 1263; No. 440 in Johnson, A.C., Roman Egypt (Vol. II of the Economic Survey of Ancient Rome, ed. by Tenny Frank); cf. Beaudouin, op. cit., p. 248, note 1.
 2. Digesta, XLIX, 14, 3, 6 (Callistratus) : Divus etiam Hadrianus in haec verba rescripsit : Valde inhumanus mos est iste quo retinentur conductores vectigalium publicorum et agrorum, si tantidem locari non possunt. Nam et facilius inveniuntur conductores, si scierint fore ut, si peracto lustro discedere voluerint, non teneantur.
 3. Codex Justinianus, IV, 65, 11 (Philippus, 244) : Invitos conductores seu heredes eorum, post tempora locationis impleta, non esse retinendos saepe rescriptum est.
 4. Cf. the Rubric of Dig., VI, 34 : Si ager vectigalis, id est emphyteuticarius, petatur; Codex Justinianus, V, 71, 13 : vectigale vel patrimoniale sive emphyteuticum praedium, etc.
 5. Codex Justinianus, XI, 66, 3 (376) : Quicumque possessionem rei privatae nostrae acceptam suo nomine, vel iure perpetuo vel titulo conductionis.
 6. Codex Justinianus, XI, 71, 5.

the terms of the original contract his right of possession was guaranteed, and in 428/429 Valentinian III, in an edict to the Prefect of Italy decreed that it was not permissible to revoke and give to another an imperial estate once granted by the Emperor or the Count of the Privy Purse iure perpetuo. If the Count should do so he was fined 100 pounds of gold from his own means, and his officium the same amount. "Thus the contract shall be valid and the perpetuarius shall be secure knowing that neither he nor his heirs nor those to whom he shall alienate the land by succession, gift, or sale shall have it withdrawn from them."¹ This same edict, however, preserves the distinction between an estate held iure perpetuo and one ad tempus locatam, and the Emperor reserves his right to confer upon another at the expiration of the term an estate leased for a definite fixed time. In such cases, if another offered more

1. Codex Justinianus, XI, 71, 5 : Praedia domus nostrae, si semel iure perpetuo vel nostra praeceptione vel auctoritate illustris viri comitis aerarum privati apud aliquem fuerint vel iam dudum sunt collocata, ad alium transferri perpetuarius non oportet. Aperte enim definimus hoc edicto, ut a perpetuario numquam possessio transferatur, etiamsi alteri eam imperator vel exoratus vel sponte donaverit sive adnotatione sive pragmatica. Cui si forte contra perpetuarius vir illustris comes privatarum, dum adlegabitur, adquiescet, et ipse de proprio centum libras auri et alias centum fisci viribus palatinum inferre cogatur officium. . . . Iure igitur perpetuo publici contractus firmitate perpetuarius securus sit et intellegat neque a se neque a posteris suis vel his, ad quos ea res vel successione vel donatione sive venditione, vel quolibet titulo pervenit sive aliquando pervenerit, esse retrahendam.

at the termination of the contract the estate might be transferred. The former conductor, however, was given the option of raising his offer to meet that of his competitor.¹ The practice outlined in this edict was derived from precedents established in the administration of the Egyptian domain lands. In Egypt, however, the contract was for no specified period, but might be revoked at the will of the government upon the receipt of a higher bid, and "in actual bidding a clause was not infrequently inserted regarding higher bids (ἐπιπρομήματα)."²

There was yet another type of contract used in exploiting the domain lands. This was the ius privatum salvo canone. Whereas the ius perpetuum, like the locatio ad tempus, was merely a location or letting under lease, the ius privatum salvo canone was definitely an alienation. In the first two

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1. Codex Justinianus, XI, 71, 5 : Sane si quis non perpetuo iure, sed ad tempus locatam ab illustri viro comite rerum privatarum possessionem videtur adeptus, non erit obstaculo principali largitati, si voluerit in alterum donatione transferre, quod ad definitum tempus alter forte conduxit. Si vero pro tali praedio ab altero conductore offeratur augmentum, sit in arbitrio conductoris prioris, cui res ad tempus locata est, ut, si ipse quod alter adiecit obtulerit, maneat penes eum temporalis illa conductio. Cf. Codex Justinianus, XI, 71, 4 (Honorius and Arcadius) : Congruit aequitati, ut veteres possessores fundorum publicorum novis conductoribus praeferantur, si facta per alios augmenta suscipiant.
 2. Wilcken, Grundzüge und Chrestomathie der Papyruskunde, Vol. I, part 1, chapter vii, pp. 290-291; Johnson, op. cit., p. 76; Cambridge Ancient History, Vol. X, chapt. 10 (Bell), p. 293, and Vol. XI, chapter 12 (Bell & Romanelli), p. 655.

types the estate still remained an integral part of the res privata of the Emperor under the administration of the Privy Purse; in the third it was sold and became thus the private property of the purchaser subject to the regulations of private law. Thus, we read in an edict of Honorius promulgated in 398, "Let everyone know that there is nothing in common between estates purchased iure privato salvo canone and the estates of the Patrimony."¹

But if the ius privatum salvo canone was an alienation, it was not an absolute one, nor did it give the purchaser full and absolute right of propriety. The original, fixed annual tax (canon) imposed upon the estate must still be paid into the Privy Purse (salvo canone), not into the Sacred Largesses, and thus the ius privatum salvo canone, like the ius perpetuum, was in effect a sort of permanent location. In both cases the property could descend to heirs or be alienated by gift or sale, but always remained liable to the Privy Purse for the original canon. It must, therefore, have been inscribed in the tax registers of the scrinium canonum and still subject to the authority of the Count of the Privy Purse so far as its taxes were concerned.

The ius privatum salvo canone is strangely reminiscent of a form of tenure devised by Hadrian in 117 A.D., whereby some

1. Codex Justinianus, XI, 62, 9 : Universi cognoscant nihil privato iure salvo canone fundis emptis cum patrimonialibus esse commune.

of the domain land in Egypt was transformed into holdings similar to private property with lowered rent and a guarantee of long tenure, apparently in an attempt to stimulate the royal tenants to greater interest in their holdings and greater effort in making them productive. Such tenure was called βασιλική γῆ ἰδιωτικῶς δικαίῳ ἐπικρατούμενη or βασιλική γῆ ἐν τάξει ἰδιοκτητοῦ ἀναγραφομένη.¹

Whereas the ius perpetuum is usually associated with the res privata, the ius privatum salvo canone is found most commonly in connection with the fundi patrimoniales.² It must, in fact, be considered as a device employed for raising an immediate sum from the private estate, and His has pointed out that in a time of disorder, when the expenses of the State could not be foreseen, the ius privatum salvo canone permitted the Emperors, in case of urgent necessity, to raise money at once by the sale of lands from their own Patrimony, without this sale constituting an absolute alienation.³ That is, by this peculiar and typically ingenious legal device, they could raise an immediate sum and still preserve their annual rent. This method was regularly employed in spite of occasional edicts revoking⁴ or forbidding⁵ such alienations of the domain land,

1. Rostovtsev, Social and Economic History of Rome, p. 320.

2. Cf. Beaudouin, op. cit., p. 257 for references.

3. His, op. cit., pp. 96-97.

4. Codex Theodosianus, V, 15, 17; Codex Justinianus, XI, 62, 8.

5. Codex Theodosianus, V, 12, 2 (Theodosius II, 415) : Nulli penitus liceat, sive salvo canonis servato iure sive cum imminutione canonis patrimonialis, vel limitotrofes sive

and Zeno expressly guaranteed the undisturbed possession of such estates acquired by purchase from the res privata with due formality and through the agency of the competent bureau.¹

Ius privatum dempto canone, i.e. complete alienation without the obligation to pay the canon into the Privy Purse, was at all times forbidden. In 440 Theodosius II thus addressed the Count of the Privy Purse : "It is not permitted that our possessions which we hold for the general good be abused by certain persons who exhaust our Patrimony by gaining possession piece-meal of the property belonging to the domus divina under pretext of contract by surreptitious theft."² He then proceeded to forbid anyone to obtain possession of imperial property dempto canone. Anyone securing possession by such "interdicted contract" was condemned to forfeit the price paid, restore the property, surrender the crop without recompense, and receive no compensation for amelioration. The officium palatinum which received the petition for such an alienation and drew up the

saltuenses per Orientem vel fundos patrimoniales postulare; Novellae Theodosii, V, 2 (C. Just., XI, 62, 13) (439) : 1. Praecipimus itaque, nulli iam in posterum licere patrimoniales seu limitotrophos vel saltuenses fundos, . . . ad ius transferre privatum, sive dempto, sive salvo canone iuris fundorum immutatio postuletur.

1. Codex Justinianus, VII, 37, 2 : 2. Ad haec fiscalium rerum emptoribus cum ratione iustitiae consulentes iubemus, quotiens competens scrinium gestis intervenientibus distractarum rerum pretia sese deposuerit suscepisse, minime post huiusmodi solutae pecuniae depositionem emptores quasi non numeratis pecuniis molestari vel necessitatem isdem emptoribus imponi, licet non sollemnem consecuti fuerint securitatem, soluta fuisse pretia probare.
2. Novellae Theodosii, XIX : Occupationibus etenim nostris, quibus pro mundi commoditatibus occupamur, abuti quorundam

documents or ratified them was subjected to a fine of fifty pounds of gold to be paid into the Privy Purse. Not even the authorization (adnotatio, divina pragmatica) of the Emperor himself was valid for such a sale or for the remittance of the penalty to the officium.¹

Anastasius in 491 promulgated an edict granting secure and unmolested possession to anyone who had enjoyed occupation for forty years on any title whatsoever, even to those who had acquired patrimonial estates iure privato dempto canone.² This law, however, must have been affected by Justinian's re-enactment of the edict of Theodosius II just discussed.

noxia cupiditas non desinit, qui paulatim canonem possessionum ad divinam nostri numinis domum pertinentium comparantes sub specie contractus furtiva subreptione patrimonium nostrum exhauriunt.

1. Op. cit., quod si quis post hanc legem ad interdictum contractum accesserit, eum volumus pretia perdere fundos reddere fructus redhibere perpetuo nec expensarum vel melioratae rei fructuum exactioni compensationem obponere nec temporis sibimet contra nostra commoda praescriptione blandiri. Palatinum etiam officium, si quoquo modo contractus eiusmodi fuerit celebratus vel si talem petitionem instruxerit, quinquaginta pondo auri poenae nomine inferre privato nostrae maiestatis aerario, nulla liberalitate nostrae clementiae, nulla sanctione contra tanta privatae rei commoda valitura, licet adnotatio vel divina pragmatica sit, quae contra vetitum canonem vendi concedit vel poenam palatino remittit officio.
2. Codex Justinianus, XI, 62, 14 : Hoc etiam adiciendo, ut illi quoque, qui dempto canone huiusmodi fundos ab initio principali iussione datos sibi fuisse confirmant, si per quadragentos annos adepti canonis beneficium iugiter possederunt, nec canonem, cuius ademptionem quadraginta, sicut dictum est, annorum possessio testatur, possint penitus profligari, eo quod nostrae pietati placuit in utroque casu, id est tam salvo quam dempto canone, possessorum iura nostrorum in eo statu, in quo per quadragentos sicut dictum est iugiter annos manserunt, absque ulla innovatione durare.

Yet another type of tenure developed which became at last almost the sole method of exploitation on the estates of the Privy Purse. This was the ius emphyteuticum or emphyteusis. The word itself is of Greek origin,¹ and the system was adopted by the Romans from very ancient Greek practice.² Like the ius perpetuum it was a perpetual and hereditary lease on a fixed annual rent with the additional obligation of putting under cultivation the waste or uncultivated lands on the estate or adjacent to it.³

In Roman usage the practice arose and developed on the domain lands in the period of Trajan and Hadrian, and appears with all its essential details in the lex Hadriana de rudibus agris.⁴ This law permitted those who wished to do so to occupy

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1. From *ἐμψυεύειν*, to plant.
 2. Beaudouin, *op. cit.*, pp. 261-268; Cambridge Ancient History Vol. I, chapt. XIX (Paul Vinogradoff), pp. 561-562.
 3. The system was also called *adiectio* (C. Just., XI, 59) or *permistio* (*op. cit.*, XI, 59, 5); *ἐμψυεύειν* in Greek, apparently the earliest example of which occurs in 46 A.D. in Egypt (P. Mich. Tebt. 123 recto, xi, 43 : *ἔμψυεύειν* . . . *ἐμψυεύειν* *ἐμψυεύειν* *ἐμψυεύειν*); cf. Cambridge Ancient History, Vol. XI, chapt. xii (Bell), p. 654.
 4. Inscription of Henschir Mettick dating from the principate of Trajan - C.I.L., VIII, 25902, cf. list of editions and commentaries of which the most important are : A. Schulten, *Die lex Manciana, eine africanische Domänenordnung* (Abh. d. K. Ges. d. wiss. zu Göttingen) Berol., 1897; and Toutain, *L'inscription d'Henchir-Mettich* (Memoires presentes a l'acad. des inscr. ser. I, Vol. II, 1, p. 31 f; and in the *nouv. revue historique de droit*, 1897, p. 373 f). Text published by Girard, *Textes de droit romain*, part III, chapt. 6. Lex Hadriana de rudibus agris - C.I.L., VIII, 25943 (Inscription of Ain el Djemala); *op. cit.*, VIII, 26416 (Inscription of Ain Ouassel). Texts of both in Girard, *op. cit.* Inscription of Ain Ouassel discussed at length by Schulten in Hermes,

the waste or untilled lands of the imperial domain on the following conditions: whoever simply raised a crop on it from seed paid a tax; if he planted fruit trees he was exempt from all taxation for seven years, and if he planted olive trees the exemption was extended to cover a period of ten years. In addition, the occupant, by the mere fact of his having put the land under cultivation, secured for himself and his family permanent and hereditary tenure. Hadrian's law had reference only to Africa. The Emperor Pertinax (198 A.D.), in a general edict allowed those who put waste lands under cultivation the permanent possession of them and exemption from taxation for ten years.¹ Aurelian compelled the curiales to undertake the cultivation of ownerless estates, presumably in the territorium of the cities, thus introducing the obligatory character of the later ius emphyteuticum, and as recompense exempted them for three years only from the public imposts.² The ius emphyteuticum appears in Roman law for the first time under that name in a

XXIX (1894), pp. 204-230, and in Klio, VII, pp. 188-212. Cf. also, Heitland, William E., Agricola, Cambridge University Press, 1921; Henschir Mettck, pp. 343-346; Ain Ouassel, pp. 349-351; Ain el Djemala, pp. 351-352, and Rostovtsev, Social and Economic History of Rome, pp. 321-322.

1. Herodian, II, 4, 18.

2. Codex Justinianus, XI, 59, 1 : Cum divus Aurelianus parens noster civitatum ordines pro desertis possessionibus iusserit conveniri et pro his fundis, qui invenire dominos non poterunt quos praeceperamus, earundem possessionum triennii immunitate percepta de sollemnibus satisfacere, servato hoc tenore praecipimus, etc.

constitution of Constantine of 315 A.D.¹ A law of Valentinian, Theodosius and Arcadius gave everyone leave to take possession of deserted land; if the former owner did not assert his right within two years and compensate the new occupant for ameliorations, his property right was deemed extinguished to the profit of the new cultivator.²

At first, the distinction was preserved between the ius perpetuum and the ius emphyteuticum, but by the time of Justinian the latter had completely absorbed the former and the ius emphyteuticum, i.e. perpetual and hereditary tenure with the obligation to ameliorate, was the rule on the imperial domains. The two terms persist, but their meaning is identical.³ If the emphyteuticarius failed or declined to fulfil his engagements and make the required amelioration, the estate was revoked and

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1. Codex Justinianus, XI, 62, 1.
 2. Op. cit., XI, 59, 8 : Qui agros domino cessante desertos vel longe positos vel in finitimis ad privatum pariter publicum-que compendium excolere festinat, voluntati suae nostrum noverit adesse responsum: ita tamen, ut, si vacanti ac destituto solo novus cultor insederit, ac vetus dominus intra biennium eadem ad suum ius voluerit revocare, restituitis primitus quae expensa constiterit facultatem loci proprii consequatur. Nam si biennii fuerit tempus emensum, omni possessionis et domini carebit iure qui siluit.
 3. As appears from a comparison of Codex Theodosianus, I, 11, 1 and Codex Justinianus, I, 33, 2. This constitution is addressed to Minervius Count of the Privy Purse and reads in the Theodosian Code : Manentibus fideiussorum atque subsignationum meritis et possessoribus in eadem, qua nunc habentur, conductione durantibus ad palatinorum curam et ad rationalium officia omnium rerum nostrarum et totius perpetuarii, iuris exactio revertatur, etc. In the Code of Justinian the words hoc est emphyteuticarii are inserted after the et totius perpetuarii of the Theodosian Code, ample indication that the two terms were synonymous by the time of the later codification.

assigned to another. This practice dates from as early as the principate of Trajan; in the inscription of Henchir Mettich, if the person who acquires an estate by placing waste land under cultivation ceases to cultivate it, he forfeits all claim to it after the lapse of two years.¹ In the legislation of Justinian three years were allowed after which the right of ownership lapsed in ordinary tenures,² and two in case the emphyteuticarius held from the Church.³ As a special case, in 383 Theodosius I decreed that to the estates of any conductor found in possession of an estate which he had received from the temple or municipal property of the res privata should be added the adjacent "more useless" fields with an accompanying augmentum or increase in taxation. This increase, as appears later in the edict, was apparently commonly fixed at one third the assessment of the original property. If the conductor showed himself reluctant to assume this additional burden, another was found in his stead under the same condition, and if no conductor were forthcoming, the land was then restored, without the increase of one third (sine adiectione tertia), to the original owners, i.e. the curial order "or any others";⁴ apparently the

1. C.I.L., VIII, 25902, IV, 11. 10-17.

2. Codex Justinianus, IV, 66, 2, 2 : triennio elapso suo iure is qui emphyteusin suscepit cadat.

3. Novellae Justiniani, VII, 3, 2 : Scire autem emphyteotas convenit quia, si in biennio continuo non exolverint emphyteoticum canonem (hoc enim tempus pro triennio aliorum hominum sufficere ad casum ecclesiarum aut ptochicarum emphyteosium pro non soluto canone ponimus), etc.

4. Codex Theodosianus, X, 3, 4 (C. Just., XI, 59, 6) : Ut quisque conductor fuerit inventus possessor fundi, qui ex publico

temples were not included among the "vel quoslibet alios" of the decree, for we could not expect the temple property to be restored by the orthodox Theodosius.

In an effort to exploit the domain to the fullest extent and guarantee the revenues levied upon it, the government was inclined to prefer as conductor a person of means, whose wealth and property could be held responsible for the cultivation of large tracts of the domain. The palatini of the Privy Purse were forbidden to act as conductores either for themselves or for another;¹ their official character would place them in a position to gain illegal possession of property by corrupt means, as well as enable them to avoid the fiscal obligations recumbant upon it by connivance with their fellow officials. Likewise, the curial order was forbidden by Valentinian I,² and again by Arcadius³ to act as conductores

vel templorum iure descendit, huic cum augmento oblato ager iungatur inutilior. Quod si contra id reluctandum existimaverit, alius possessor sub eadem praestatione quaeratur, vel si voluntarius quis conductor non invenietur, tunc ad possessores antiquos, id est decuriones vel quoslibet alios, loca iuris praedicti adiunctis inutilibus revertantur sine adiectione tertia, idoneis fideiussoribus praebitis.

1. Codex Theodosianus, X, 3, 2 (372) : Curialibus omnibus conducendorum rei publicae praediorum ac saltuum inhibeat facultas; illo etiam observando, ne quis curialium vel de extraneis civitatibus fundos aut loca huiusmodi conductione suscipiat.
2. Codex Justinianus, XI, 73, 1 (401) : Nullus palatinorum, qui in officio rei privatae nostrae militat, conductoris nomine vel per se vel per quamlibet personam possessionum huiusmodi conducendarum habeat facultatem, cum neque militi neque curiali hoc faciendum permittimus.

of domain lands; their property was responsible to their municipality and ought not be otherwise encumbered.¹ Thus, the characteristic conductor on the res privata was a person of wealth, frequently a member of the senatorial order, usually included in that vague designation, the potentiores, whose opportunities for abusing the humble folk about them and bringing the entire rural neighbourhood into dependence upon themselves is discussed below (cf. p. 229).

Lands of the Privy Purse were, however, leased to more humble persons and even to the coloni themselves, but in such cases it was the practice to make over the estate to several such persons who were responsible in a body. Thus, Constantine, in an edict to the magister rei privatae Africae in 321 A.D., decreed that several persons in joint occupation of a fundus patrimonialis were responsible in a body for the

1. Codex Theodosianus, XI, 7, 21 (Honorius, 412) : Grave et contra rerum ordinem iudicamus, ut idem municeps et civitatis necessitatem et exactoris publici subire cogatur officium. Quod ne contingat generali lege sancimus cognit- oris, cuius interest, iussione ad praedia mansuetudinis nostrae vel quae sub fisci nomine coeperint retineri moderanda vel ex suo corpore idoneos quosque dari debere vel ex his, si qui perfuncti sacramento militiae absolu- tione potiuntur. Ab his namque convenit, a quibus ratio ob praedam discuti consuevit, administrationem sustineri huius- cernodi praediorum. Iudicibus itaque adque officiis poenam quinquaginta librarum auri inponimus, nisi commode obtemp- eraverint definitis. Although the text reads et exactoris . . . officium, Godefroy believes it to be an error on the part of the original compilers of the Code, and feels that the wording of the rest of the constitution makes it quite clear that the reading should be actoris.

canon or tax for which it was liable.¹ And Theodosius II in 425 made it a general rule that sales of property from the Patrimony should be made not to a single colonus "who may perhaps be burdened with dependents, but let several coloni of the same condition be associated together in the purchase."² Valens also resorted to a similar device, but employed it in the case of a different type of beneficiary and for a different purpose. Of his locations we read in Ammianus, "As in palaces there are always some persons covetous for the possessions of others, if any one petitioned for lapsed property, or anything else which it was usual to apply for, he made a proper distinction between just and unjust claims, and when he gave it to the petitioner, while reserving full liberty to anyone to raise objections, he often associated the successful candidate with three or four partners, in order that those covetous petitioners might conduct themselves with more moderation, when they saw the profits for which they were so eager diminished by this device."³

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1. Codex Theodosianus, XI, 19, 1 : Quotiens plures fundum patrimonialem possident, pro portionibus fieri a singulis non vetetur inlatio. Quorundam enim probata industria ceterorum culpa poterit coherceri.
 2. Codex Justinianus, XI, 68, 6 : Quotiens alicui colonorum agrum privati patrimonii nostri placuerit venundari, non unus tantum, qui forte consortibus suis gravis ac molestus existat, sed alii quoque duo vel plures ex simili origine ac iure venientes in supra dicta emptione socientur.
 3. Ammianus Marcellinus, XXXI, 14, 3 : Ut sunt in palatiis nonnulli alienarum rerum avidi, si qui caducum vel aliud petisset ex usu, cum magna iustorum iniustorumque distinctione contradictori copia servata, donabat ei, qui petierat, tres

The locatio might be made by various persons. First of all the Emperor personally rewarded his friends and servants with the bestowal of extensive properties from the Privy Purse. Only those, however, immediately about his person would be in a position to receive such favors. The authority of the Count of the Privy Purse and that of the Praetorian Prefect was also associated with that of the Emperor in such allocations,¹ and it was these officials and their subordinates who would ordinarily make the distribution of the various properties of the Privy Purse, for it was the duty of the Praetorian Prefect to supervise the general civil administration of the provinces and his subordinates the provincial governors at all times possessed more or less supervision over the domain lands in their province as well as over privately owned estates. Per-aequatores were periodically sent out by the Count of the Privy Purse to survey the land and assign conductores to uncultivated or ownerless properties of the res privata, and in 422 A.D. Honorius, after a general survey of Africa, informed the Count of the Privy Purse that lands not yet assigned to definite

vel quattuor alios absentes aliquoties impetratorum participes iungens; ut castigatius agerent inquieti, lucra, quibus inhiabant, hoc minui commento cernentes.

1. Codex Justinianus, XI, 71, 5 : si semel . . . vel nostra praeceptione vel auctoritate illustris viri comitis aerarum privati apud aliquem fuerint vel iam dudum sunt collocata; Novellae Theodosii, XXVI, 4 : Verum et si quis ex auctoritate nostri numinis vel praeceptis amplissimae praefecturae de fundis patrimonialibus . . . susceperit.

owners in the appended edicts should be provided for by the provincial governors.¹ This edict apparently provided for the general application of the system of ἐμβολή or "the imposition of sterile lands to fertile" to the entire diocese of Africa.

Grants of estates by gift of the Emperor were irrevocable,² although the edicts which various Emperors issued from time to time confirming the alienations of their predecessors show that such alienations were often apt to be questioned. Thus Constantius confirmed the numerous and important alienations made by his father from the res privata.³ The edicts of Julian restoring the temple and municipal property were abrogated, but Theodosius the Great in 384 issued an edict which confirmed the alienations made by himself and the dynasty of Valentinian from the patrimonial estates in the Asian and Pontic dioceses⁴ and decreed that they should not only be possessed without interference and transmitted to the heirs, but also that those who held them under lease from the original beneficiary

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1. Codex Theodosianus, XI, 28, 13 : De his vero, quae edictis pendentibus nondum sunt certis adsignata personis, rectores provinciarum decernimus providere, ut mentibus remediis, quae fides supra dicta adtribuit, idoneis conlocentur.
 2. Codex Theodosianus, X, 8, 3; cf. Novellae Anthemii, III.
 3. Codex Theodosianus, X, 10, 6 (342) : Donationes a divo genitore nostro ex privatis rebus factas valere praecipimus.
 4. Codex Justinianus, XI, 62, 2 : Hi, quibus patrimoniales possessiones per Asianam ac Ponticam dioecesin vel a nobis vel a divis parentibus nostris sacra largitate donatae sunt, inconcusse possideant atque ad suos posteros mittant.

should possess in security.¹ In 423 Honorius in a general edict addressed to the Count of the Privy Purse decreed that all imperial gifts should be irrevocable, held in firm possession and transmitted to the owner's heirs.² Nevertheless, the Emperors, in practice, always reserved the right to recall estates alienated from the domain since such alienations were never regarded as absolute and outright, but as being held on a peculiar kind of contract, as we have seen. Naturally, the gifts of unsuccessful or unrecognized usurpers were cancelled.³

A difficulty arose when the same property was bestowed upon different persons, either by negligence or the bribery and importunity of the petitioner. In such a case the property went to him who first received the gift of it.⁴ The same principle was applied in the case of leases of domain land; Theodosius I in 380, in accordance with a law of the deified Valentinian, informed the Count of the Privy Purse that

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1. Codex Justinianus, XI, 62, 2 : quod quidem non solum in heredibus, sed et in contractoribus omni genere volumus custodiri.
 2. Codex Theodosianus, XI, 20, 4 : Largitates tam nostrae clementiae quam retro principum ex eo tempore, quo in bene meritos de re publica conferuntur, tenere perpetem firmitatem praecipimus, ut, quod unusquisque meruit et recte transmisit, nec ad heredem nec ad originem filiorum nepotumve sollicitudinem revocetur; nec quisquam pro his possessionibus quae largitate principali iam dudum in singulos quosque conlatae sunt, damnosae conventionis molestiam pertimescat.
 3. Cf. Codex Theodosianus, XV, 14, 10 in which Honorius in 495 revoked alienations made iure perpetuo by the rationales rei privatae of the usurper Maximus, lately overthrown.
 4. Codex Theodosianus, X, 10, 5 (340) : Donatarum rerum dominium his tradatur, quos anteriores tempus imperialis donationis ostenderit.

he should under no circumstance transfer to another a property already under contract, but that an estate should remain permanently attached to him who obtained it by prior right of conductio.¹ Again, in the midst of the disorders of the Western Empire which it was hoped Anthemius supported by the Eastern Court would be able to resolve, many persons appeared before the new Augustus claiming bona caduca to which there had supposedly been no heirs, or claiming their property on the ground that they were liberated from captivity. In such cases the law of Constantine in the Theodosian Code under the title De bonis vacantibus was produced guaranteeing secure possession of imperial gifts and Anthemius re-enacted it.² Therefore, in cases where property alienated from the Privy Purse was involved the first owner upon his return from captivity, or the heir of a person whose property had been granted away on the erroneous belief that no heir existed received back his property. In the instance, which occasioned the Novel of Anthemius, then, we must assume that Domnina was the unknown or defrauded heiress of a person holding a property originally alienated from the res privata who appears to state her claim when the property is

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1. Codex Theodosianus, X, 3, 3 : Secundum legem divi Valentiniani, quae semel conductas possessiones nulla ad alios constituit ratione transferri, nullum priorem conductorem a secundo patiaris excludi, sed penes eos iugem permanere iubeas possessionem, quos priore conductionis iure eandem meruisse constiterit.
 2. Novellae Anthemii, III.

given away a second time by imperial bounty to one Fortunatus. By judgment of Leo in the name of his protégé Anthemius the property is restored to Domnina on the ground that the first alienation is valid to the beneficiary and his heirs forever.

The procedure followed in leasing the estates of the Privy Purse, when they were not the direct gift of the Emperor, was derived both from the ancient practices of the censors in letting the ager publicus of the Republic,¹ and the system developed in the Ptolemaic period on the domain lands in Egypt. Under the Republic the public land of the Roman people was let out at auction by the Censors.² The auction took place formally (sub hasta) in the Forum with the assistance of a public herald (praeco).³ The estates were knocked down to the highest bidders who were required to give security (praedes) and pledge their property (subsignatio praediorum).⁴ But even more than from the practice of the Republic was the locatio of the

1. Beaudouin, op. cit., p. 234.

2. Karlowa, Römische Rechtsgeschichte, II, pp. 27-59; Hahn, De censorum locationibus, pp. 16-21.

3. Cicero, De lege agraria, I, 3, 7; op. cit., II, 21, 55; Livy, XXXIX, 44; XLIII, 16; Karlowa, op. cit., p. 29, note 1 cites numerous textes; for the praeco, cf. Cicero, op. cit., II, 21, 56.

4. Mommsen, Die Stadtrechte der latinischen Gemeinden Salpensa und Malaca, pp. 466-478; Karlowa, op. cit., II, pp. 47-59; Girard, Manuel de droit romain (2nd ed.), p. 732, note 3 749, note 2; Beaudouin, op. cit., p. 234.

estates of the res privata in the Late Empire derived from the system employed on the γῆ βασιλική of Ptolemaic Egypt, and retained and further developed by the Roman government during the Principate. The Ptolemaic government was accustomed to issue a proclamation calling for bids. These were submitted in writing (ὑποστάσις) and the best offer accepted.¹ The procedure was retained by the Roman administration.² In the Roman period, when the distinction was made between γῆ βασιλική and γῆ οὔσιακή, usiac property was leased to private tenants on the surety of their other holdings. There is an interesting instance of a purchaser of catocic land who wrote to the procurator to inquire whether the former owner who had at one time held a lease of usiac land, was under any obligation to the government in respect to that lease, for "until all debts to the fiscus were satisfied, the private property of the debtor was sequestered even if it had passed into other hands."³ A similar responsibility lay upon the property of whoever stood as surety for the tenant of crown land as well as upon the

1. Wilcken, Grundzüge und Chrestomathie der Papyruskunde, Vol. I, part I, chapter vii, p. 274.

2. Wilcken, op. cit., pp. 290-291; Cambridge Ancient History, Vol. X, chapt. 10 (H. Idris Bell), p. 293. B.G.U. 656 (Chrestomathie, 342) is an invitation for bids in a particular case - "If any wish to lease the nine ar. crown land in the locality of Petsenosei, etc. etc. . . let his appear before the officers charged with the leasing and give his bid;" a general proclamation of this sort has not as yet been found.

3. Johnson, Roman Egypt, p. 80.

officials who drew up the lease.¹

Turning now to the procedure employed in the Late Empire, we find that imperial estates, other than those which were alienated by direct action of the Emperor in favour of personal friends and deserving officials, continued ordinarily to be let out at public auction and assigned to the person who agreed to pay the largest amount in annual taxes. The sum agreed upon in the contract was fixed and permanent for the period specified according to the type of lease. This tax was called the canon, and the levy was referred to as the pensitatio canonica.² A triple responsibility guaranteed the revenues to be raised from the estate; (1) the conductor himself must

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1. Documents in Johnson's Roman Egypt, op. cit., attest the sequestration of the property of one Flavius Hermaiscus "former lessee of the estate of Embre() and debtor to the fiscus" (No. 61 = B.G.U. 106, A.D. 109); the sequestration of the property of the surety for lessees of certain garden lands of the imperial estates (No. 79 = B.G.U. 599; Wilcken, Chr. 363, second century); and the responsibility of the officials concerned in the granting of leases for crown land (Nos. 38 = P. Tebt. 325, A.D. 145, and 60 = Meyer, Gr. Texte, 3, A.D. 148).
 2. Codex Theodosianus, V, 15, 18 : Quotienscumque enfyteutici iuris praedia in vitium delapsa commissi actis legitimis ac voci fuerint subicienda praeconis, super facto licitationis et augmento nostra perennitas consulatur, nec prius eius dominio, qui ceteros oblatione superavit, perpetuae firmitatis robur accedat, quam si super pensionis modo, conductoris nomine, enthaecae quantitate nostrae tranquillitatis arbitrium fidei ratione consultum observanda praescripserit; Codex Justinianus, XI, 70, 4 : Eos, qui auctione prima fundorum iuris patrimonialis sive templorum possessores effecti sunt vel fuerint, firmum dominium tenere decernimus, ne ulterius vacillet uniuscuiusque possessio, sed teneat quisque ius proprium, quod dato pretio roboratum est vel fuerit. Codex Justinianus, XI, 71, 1 refers to the pensitatio canonica.

hypothecate his own property; (2) he was obliged to present vouchers or fideiussores whose property, likewise, was liable;¹ and (3) the locatio was formally made upon the responsibility of the officium which issued the documents as a whole; the combined property of its members was guarantee for the canon, and from it the government received indemnity in case of loss to the revenues.²

The system of exploitation as outlined above

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1. Codex Theodosianus, V, 16, 34 (425) : Thebaide qui ...bric-
alis emit ad rem dominicam pertinentem ex a.. deinceps qui-
busque eiusdem condicionis, qui iuxta p...turae constitut-
ionis tenorem emit, fundos tute liceat possideri, ita ut
fideiussores ab huiusmodi mercatu ex tranei quidam ea
proprium patrimonium, etc.; Codex Justinianus, XI, 59, 3
(C.Theod., V, 13, 14) (364) : Quicumque deserta praedia
meruerint sub certa immunitate, ad possessionem impetrat-
orum non prius sinantur accedere, quam vel fideiussoribus
idoneis periculo curialium datis vel fundis patrimonii sui
maxime utilibus obligatis idonea cautione firmaverunt
susceptam a se possessionem nullo detrimento publico relin-
quendam; op. cit., XI, 62, 7 (386) : Quicumque ad emphyteusin
fundorum patrimonialium vel rei publicae iussu nostri
numinis venerit, is si redundantia fortunarum idoneus fuerit
ad restituenda, quae desertis forte possessionibus requir-
entur, patrimonium suum publicis implicet nexibus. Si vero
minor facultatibus probabitur, datis fideiussoribus idoneis
ad emphyteusin accedat: scientibus his, quos talium rerum
cura sollicitat, in se negligentiae damna, si huiusmodi
cautio defuerit, esse vertenda; Codex Theodosianus, X, 3, 4
(Theodosius I, 383) : idoneis fideiussoribus praebitis;
cf. op. cit., X, 5, 1 (Arcadius and Honorius, 398) : ne . .
fideiussores in suscipiendis possessionibus darent. Codex
Theodosianus, I, 11, 1 mentions the subsignationes of the
fideiussores.
 2. Codex Justinianus, XI, 71, 1 : Divi patris nostri aperta
praeceptio est fundos ex re privata nostra ita tradi per-
petuariis, ut periculo collocantium officiorumque tradantur.
Neque enim quicquam potest ex devotionis plenitudine vacil-
lare, si apparitione iudicaria et fundi idoneis attributi
sunt et sit fiscalis indemnitas idonea fideiussione munita.

illustrates the tenacity with which the Emperors clung to their Patrimony and their reluctance to alienate any part of it absolutely. An estate which once formed a part of the res privata was all but indelibly impressed with that character. St. Augustine is aghast that an emphyteuticarius who had "purchased" a property from the imperial domain should dare to force the coloni upon it to receive Donatist baptism, and that "on the estates of the catholic Emperors."¹ One of the letters of Cassiodorus illustrates very well the anxiety over their title entertained by holders of domain land. Theodoric the Ostrogoth had desired to give to one John a favourite referendary the house of Agnellus² in the Castrum Lucullanum, but was in no position to do so, having already given it to the Patrician Tulum. Tulum, however, seconding the wishes of his master, formally conveyed the property to John. King Athalaric some years later solemnly confirmed this transfer, guaranteeing the undisturbed possession of the property to John and his heirs forever and imposing the large fine of 100 pounds of gold to be paid to John or to the person to whom he may have assigned the said property by anyone who dared to raise any question

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1. Contra litteras Petilianis, II, 184 : Nonne Crispinus . . . cum emisset possessionem, et hoc emphyteuticam, non dubitavit, in fundo catholicorum Imperatorum, uno terroris impetu, octoginta ferme animas miserabili gemita mussitantes, rebaptizando submergere.
 2. Hodgkin is of the opinion that Agnelli is very possibly an error for Augustuli, cf. The Letters of Cassiodorus, p. 374.

thereafter in this matter either on behalf of the treasury or any private individual. "Why the necessity of this royal confirmation of a transaction between two private individuals and this tremendous penalty on all future impugners of it?" asks Hodgkin.¹ "Evidently because the property had been impressed with the character of state domain, and it was therefore doubtful how far Tulum's alienation of it might stand good against the claims of future Sovereigns. This becomes clear when we reflect what is the property to which this letter refers. It is either the whole or a part of the Lucullanum to which the deposed Emperor, Romulus Augustulus, was banished in 476. On his death, as we may conjecture, this property . . . was given by Theodoric to Tulum, perhaps just after he had distinguished himself in the Gallic campaign of 508. Tulum has alienated it to John, who is nervous over his title." And may well be, we may add, considering the diabolical ingenuity of the discussores of the Privy Purse in hunting up flaws to one's claims. In the case of the transfer of estates formerly the patrimony of his mother to Theodohad the King's cousin, a solemn royal edict was required guaranteeing absolute ownership free from any claims to the inheritance on the part of the King.²

1. Loc. cit.

2. Cassiodorus, Variae, VIII, 23 : Athalaric to Bergantinus, v. ill. comes patrimonii.

The process of making the formal transfer of property from the private domain either by gift or locatio was most elaborate and performed with minute attention to detail. It is best illustrated by the fortunate survival of an actual deed of gift and the detailed description of the steps involved in the transfer. This is Odovacar's Deed of Gift to the Illustrious and Magnificent Pierius, Count of the Domestics, a document which dates from 489 A.D.¹ The King had promised to bestow upon his minister properties yielding an annual revenue of 690 solidi, the larger part of which had already been accomplished including a farm called the massa of the Pyramid in the territory of Syracuse yielding 450 solidi. The King now completes his promise by the gift of three small farms in the neighbourhood of Syracuse. These, in spite of the comparatively insignificant revenue derived from them (40 solidi, 18 siliquae), are solemnly conveyed to Pierius by the King with full liberty of use and possession, of alienating or transmitting the same to his heirs, the only condition being the regular payment of the fiscalia tributa by his actores,² i.e. ius privatum salvo

1. Published with a facsimile in Marini, Papiri Diplomatici, (Rome, 1805, nos. 82 & 83) and in Spangenberg's Iuris Romani Tabulae Negotiorum Solemnum (Leipsig, 1822, pp. 164-173) with copious commentary, and partially reproduced and discussed by Hodgkin in Italy and Her Invaders, Vol. III, Bk. iv, note B, pp. 165-170.

2. In te cum omni iure suo omnibusque ad se pertinentibus iure directo transcribimus adque ad tuum dominium optima profitemur lege migrasse quos utendi possidendi alienandi vel ad posteros transmittendi livero potiaris arvitrio.

canone. The document is signed by the notary Marcian and Andromacus the Master of the Offices.

Then follows the process of transfer. The actores of Pierius first present "the page of the royal generosity" (pagina regiae largitatis) to the magistrates of Ravenna that the same may be received by the competent officium, read and entered in the acta.¹ Since the Magnificent Andromacus was absent in Rome and unable to attest his own signature, they pray that some of the magistrates (principales) will go with them to the other attesting witness and subsignatory the notary Marcian. This group proceeds, then, accompanied by a short-hand writer (exceptor), to the clarissimus Marcian. The deed of gift is presented to His Nobility (eius Nobilitati) and read over. He is asked if it will not trouble him to state without injurious intent² whether he and the Magnificent Andromacus subscribed that document and receive his reply that they did by the King's command. It remains now to proceed to Sicily itself to take corporal possession of the property. There the acta of the proceedings in Ravenna are duly entered on the public records of Syracuse.³ Inasmuch as public business is pressing and will not permit all of the magistrates of Syracuse to leave the city,

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1. Ut eandem a competenti officio suscipi iubeatis legi et actis indi.
 2. Si edicere non gravetur absque sui iniuria.
 3. Magistratus dixerunt, "Gesta gestis nectentur, adque si quid aliud est agendum, inter acta designetur."

Gregory the chartarius, along with Amantius, one of the decem-primi, is ordered to receive the royal page with devotion and go forth with the actores of Pierius to make the traditio corporalis.¹ This group walks out to each of the estates named in the deed, traverses all their boundaries and every field whether cultivated or lying waste. "Corporal tradition" of the whole is made to the actores of Pierius, no one raising any objection or appearing to present contrary claims.² They then return to Syracuse and Amantius reports that all the formalities had been properly performed. The agents of Pierius are then asked if they are willing to undertake the fiscal obligations attached to the properties, and they reply that they are prepared to raise the fiscalia competentia each year for the same, requesting that the name of the former owner be removed from the public registers and that of their master substituted.³ When this is done Amantius appends his signature and the process is complete.

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1. Magistratus dixerunt, "Quoniam nobis insistendum est in actibus publicis, et non possumus egredi omnes, pagina regia suscipiatur cum devotione, et a Gregorio, Amantioque et praesentibus actoribus Pieri viri illustris traditio corporalis proventum suum accipiat."
 2. Et cum hodie ambulassent et pervenissent ad singula praedia, adque introissent . . . et circuissent omnes fines, terminos, agros, arvos, cultos vel incultos seu . . . et traditio corporalis celebrata fuisset actoribus Pieri v. ill. nullo contradicente, et alio die ad civitatem reversi fuissent.
 3. Et parati sumus, singulis annis pro eadem praedia fiscalia competentia solvere, unde rogamus uti iubeatis a polyptichis publicis nomen prioris domini suspendi et nostri domini adscribi.

Chapter X

THE COLLECTION OF THE TAXES OF THE PRIVY PURSE

The annual taxes in kind were paid in three installments, once every four months.¹ This form of collection was apparently first originated in 364 by Valentinian I on the emphyteutic estates of the Privy Purse in Byzacene Africa.² It was then applied to the rest of the domain,³ and soon to the Empire as a whole.⁴ The purpose of this tripartate collection was apparently to guarantee that the entire revenue

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1. Codex Theodosianus, XI, 19, 3 : annonariam quidem solutionem per quattuor menses; Ibid., XI, 7, 11 (365) : tripartita inlatio . . . fiscalium pensionum; Ibid., XI, 1, 15 (366) : Unusquisque annonarias species . . . per quattuor menses anni curriculo distributo tribus vicibus summam conlationis implebit; Ibid., 16 (367) : tributa fiscalia per anni curriculum tripartita; Ibid., XII, 6, 15 (369) : A possessoribus per tres vices petatur annona; Codex Justinianus, XI, 65, 4; Novellae Majoriani, II (458): fruges . . . trinia per annum vice . . . et quadrimenstriis illationibus annuae functionis celebretur exactio.
 2. Codex Theodosianus, XI, 19, 3 : Ab emphyteuticariis possessoribus annonariam quidem solutionem per quattuor menses ita statuimus procurari, ut circa ultimos anni terminos paria concludantur.
 3. Codex Theodosianus, XI, 7, 11 (365) addressed to Florianus, Count of the Privy Purse : . . . Illud etiam moderationi adiecimus, ut tripartita esset inlatio fiscalium pensionum.
 4. Codex Theodosianus, XI, 1, 15 (366) addressed to the Praetorian Prefect : Unusquisque annonarias species pro modo

would be in at the end of the year without any arrears.¹ Also, the problems of storing and conjection would be simplified, and the grain would not be so apt to spoil in storage. As in so many other instances this practice in the administration of the domain land, and ultimately of the whole Empire, was derived from Egyptian usage, in which all of the taxes whether in money or in kind, except the smallest, were paid in several installments,² as many as eleven in the case of the poll-tax.³

The system established by Valentinian I, although occasionally modified,⁴ persisted in the Codex Justinianus, where we find included a law of Valentinian of 366 A.D. which concerns the taxes of the fundi emphyteutici and patrimoniales. The possessores, when they had a portion of their annual tax stored and ready to be delivered over to the government officials, were instructed to present themselves at the office of the rationalis, not oftener than three times a year, pay their tax and receive

capitationis et sortium praebiturus per quaternos menses anni curriculo distributo tribus vicibus summam conlationis implebit.

1. Codex Theodosianus, XI, 1, 15, just cited, and Codex Theodosianus, XI, 19, 3, op. cit., . . . ut circa ultimos anni terminos paria concludantur.
2. Wallace, Taxation in Egypt, p. 37; cf. P.Oxyrhynchus, XII, 1444; P.Tebtunis, II, 338, 368, 369; P.Columbia 1 recto 6.
3. Keyes, Clinton W., Syntaximon and Laographia in the Arsinoite Nome, American Journal of Philology, Vol. LII (1931), pp. 263-270; cf. also, Greek Papyri, Columbia Univ. Press, 1926, no. 21.
4. Codex Theodosianus, XI, 7, 19 (412), in which Honorius ordered a third part of the tax on the fundi privati in Africa and a sixth part of the fundi emphyteutici to be raised on the Calends of March, and the rest, i.e. the remaining two thirds on the private fundi and five-sixths on the fundi emphyteutici, on the Calends of July.

the receipt. The entire sum due was to be paid by the Ides of January. The office of the rationalis was severely punished for delaying to receive the tax or give the receipt and in such cases the possessor was instructed to appeal to the local procurator or magistrate or whatever official was in the neighborhood with sufficient power to coerce the rationalis and complain of the insolence of that office.¹

In addition to the tax a certain percentage over and above it was collected as good measure² to allow for loss by attrition during transport. This additional tax was collected in hundredths (centesimae) of the original sum due and might vary in amount from time to time or in proportion to the distance the annona had to be transported. In 367 Valens decreed that the coloni of the domus divina should pay the arcarii of

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1. Codex Justinianus, XI, 65, 4 : Placuit, ut emphyteuticorum fundorum patrimonialiumque possessores, quo voluerint tempore et quantum habuerint pensionis paratum (dummodo non amplius quam in tribus per singulos annos vicibus) officio rationalis adsignent ac de suscepto ab eodem securitatem eodem die pro more percipiant, modo ut intra Ianuariarum iduum diem omnis summa ratiociniis publicis inferatur: gravissimae poenae subdendo officio, si cuiquam quolibet anni tempore (dummodo nequaquam numerum trinae illationis excedat) solutionem facere gestienti negaverit susceptionis officium, vel si moram fecerit in chirographo securitatis edendo. Super quo possessores apud curatores vel magistratus aut quicumque in locis fuerint, qui conficiendorum actuum habeant potestatem, conveniet contestari, ut et de officii insolentia constet, in quod exercenda vindicta est, et his possit esse consultum.
 2. In Greek - *ἐπιμετρον* ; Latin - diametrum (C.Theod., XIII, 5, 38).

the Privy Purse but a single centesima for good measure, i.e. one hundredth part of the tax due for the year. The arcarii, however, were instructed to send to the Count of the Privy Purse a separate account of the centesimae so that from the amount of centesimae could be reckoned the amount of taxation due for that year from each colonus.¹

This amount, however, was unusually low and we know from Themistius² that Valens sought to alleviate the burden of tribute pressing upon the coloni. It is likely that the tax was usually considerably higher. In 386 Theodosius I fixed the amount of the *ἐπιμέτρον* at a fiftieth part for grain (frumentum) except for barley (hordeum) for which it was fixed at a fortieth, and a twentieth part for cured pork and wine. More was allowed for Armenia because of its great distance from the Capital; on grain and barley a fortieth part and on wine and cured pork a fifteenth part.³ It is probable that this

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1. Codex Theodosianus, X, 1, 11; XII, 6, 14 : Ut perspicue colonorum utilitatibus consulatur, decima indictione singulas tantum dependant centesimas, qui reditus domui nostrae debitos quodamnis iuxta consuetudinem arcariis tradunt; ita tamen, ut singularum quoque centesimarum ratio semper evidens scientiae tuae digesta referatur; videlicet ut erogationibus cunctis aperta instructione patefactis reliquorum ratio ex centesima possit agnosci.
 2. Themistius, Orat. X ad Valentem.
 3. Codex Theodosianus, XII, 6, 21 (C. Just., X, 72, 9) : . . . et submotis, quae contra utilitatem populorum omnium hactenus gesta sunt, frumenti quinquagensimas, hordei quadragensimas, vini et laridi vicensimas susceptoribus dari praecipimus. Humanitatis autem necessitate commoniti susceptoribus in Armeniae susceptionibus longinquitatis causa frumenti et hordei quadragensimas, vini et laridi quintas decimas dari praecipimus.

edict applied to the imperial domain as well as the rest of the Empire.

For the African grain supply four centesimae or more than one-twentieth of the original tax was exacted. In 412 Honorius, who was much concerned at the time for the food supply of Rome, enacted that the navicularii, the provincial governors, the Proconsul, the Vicar of the Prefect of the Grain Supply for Africa, and their officials should be mulcted ten pounds of gold each if they suffered the centesimae to be subtracted from the grain supply, and the recipient be compelled to make fourfold restitution.¹ In 414 Honorius again undertook to guarantee the collection and delivery of the centesimae on the grain supply from Africa. He enacted that within five days of the arrival of the navicularius at Portus three officers of the Urban Prefect were to inspect his cargo in the presence of a voucher (cognitor annonarius). If the navicularius was found to have subtracted any of the centesimae he was sent back to Africa as a criminal (sub eulogio) for trial in the court of the praefectus annonae per Africam, accompanied by an officer to make the indictment against him. If the inspectors did not take cognizance of the fraud within the allotted five days, the Prefect of the City

1. Codex Theodosianus, XIII, 5, 36 : Illud etiam addimus, ut decem librarum auri multa tam naviculariis quam iudicibus nec non proconsuli et vicario spectabilibus viris et viro clarissimo annonae praefecto officiisque eorum proponatur, si umquam ordini memorato, vel ipsi coegerint vel sponte cupienti quod non potest fieri, de centesimis suis auferri permiserint vel de propria substantia quidquam sportulae

and his officium were fined five pounds of gold, his apparitores three, and the Prefect of the Grain Supply two. The Urban Prefect, his officium and apparitores paid their fines into the Privy Purse (aerario nostro), but that of the Prefect of the Grain Supply went into the Sacred Largesses.¹

In addition to the taxes in kind and, later, liability to the various extraordinary burdens, considerable sums in gold and silver were raised from the imperial estates.² Valentinian I at the same time that he established the tripartite collection of the taxes in kind, decreed that the taxes in money should

nomine cuiquam donare vel offerre personae, ut a singulis constitutum multae pondus non ambigant exigendum. Accipientem quoque quadruplum fisco nostro iubemus exsolvere.

1. Codex Theodosianus, XIII, 5, 38 : Dissimulationi et corruptelae urbani vel annonarii officii exquisitis remediis mansuetudo nostra prospexit, ut, si quando navicularius extra modum centesimarum diametrum incidisset, intra quinque dies, ex quo Portum venerabilis urbis esset ingressus, adhibitis tribus illustribus viris urbana praefectura, praesente quoque annonario cognitore, quid evenisset detrimenti, inquireret et quicumque in hac fraude fuisset inventus, sub eulogio, adiuncto idoneo executore, mox ad Africam adque ad viri clarissimi praefecti annonae iudicium deduceretur, soluturus instantia memorati, quidquid debere fuerit deprehensus. Hac itaque lege decernimus, ut, si ultra diem praefinitum permiserit navicularium protelari, quinque libras auri se adque officium suum sciat aerario nostro debere inferre. Apparitionem quoque praefecturae urbanae multa trium librarum auri feriendam esse censuimus. Praefectus annonae duas libras auri sacris largitionibus inferre cogetur, nisi eius praecipue instantia intra diem constitutum fuerit adcelerata cognitio.
2. Codex Theodosianus, XI, 16, 1 (319) : . . . et auri speciem . . . plurimum modum constet persolvere.

be paid into the Privy Purse within the last forty days of the current year.¹

Ordinarily, the property of fiscal debtors was sold at auction for taxes.² People endeavoured to save their property by the device of ceding it to another, against which practice Theodosius I legislated in 385.³ In the case of the estates of the Privy Purse, however, which were held from the Emperor, if the possessor was unable to meet the fiscal obligations placed upon the property by the terms of the contract, it was revoked and the property transferred to another. There is a very full and interesting illustration of this in Cassiodorus. One Thomas who held certain estates of the domus divina in Apulia under Theodoric had long defaulted. The debt finally reached the sum of 10,000 solidi (£6,000⁴). Repeatedly summoned to pay he continued to procrastinate until threatened with the confiscation of his entire substance to the Privy Purse.⁵ At this point his

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1. Codex Theodosianus, XI, 19, 3 : . . surum vero non ex die X kal. Dec. in prid. kalendarum Ianuariarum, sed per annum solidum, prout quisque pendere potuerit, inferetur.
 2. Codex Theodosianus, X, 16, 1.
 3. Codex Theodosianus, X, 16, 4.
 4. Hodgkin, The Letters of Cassiodorus, p. 269.
 5. Cassiodorus, Variae, V, 6 : . . Viri itaque clarissimi Joannis querela comperimus Thomatem domus nostrae certa praedia suscepisse, id est illud atque illud, et nunc decem millia solidorum reliquatores nostris utilitatibus exstitisse, et per diversas ludificationes non implere debitam quantitatem : quod apud nos quoque procerum nostrorum suggestione perclaruit. Ideoque causam tali credimus remedio muniendam, ut universam substantiam supradicti Thomatis sub hac conditione fixis titulis iuri publico debeas applicare : quatenus si intra cal. Septembrium diem, quod rationabiliter exponitur

son-in-law John petitioned to have the estates transferred to him on condition that he pay the 10,000 solidi due from them. This transfer was authorized, reserving to Thomas the right to pay the debt at any time before the ensuing Calends of September and thus redeem his property. In case of his failure to do so the property passed finally and definitely into the hands of John upon his paying the 10,000 solidi to the Illustrious Count of the Patrimony.¹

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- a Thomate minime fuerit exsolutum, praedicta substantia Joanni viro clarissimo contradatur, qui eius debitum luere nostro promisit aérario. Quod si obligationem suam praedictus Thomas solvere intra praefinitum tempus fortasse potuerit, universa ei quae sublata sunt illibata reddantur.
1. Cassiodorus, Variae, V, 7 : . . . Tua igitur suggestione comperimus, per illam indictionem patrimonii nostri praedia in Apulia provincia constituta, id est illud atque illud, honesto viro Thomati libellario titulo commisisse; sed eum male administrando suscepta, usque ad decem millia solidorum de indictionibus illa atque illa reliquatores publicis rationibus exstitisse; qui a proceribus nostris frequenter admonitus, debita reddere detestabili calliditate neglexit. Et ne tibi aliqua imposterum quaestio nasceretur, publicis utilitatibus debitam quantitatem, sub hac ratione satisfacere te velle testaris, si tibi praedia supradicti debitoris loco pignoris contradantur. Hinc est quod desiderium tuum iusta ratione conceptum praesenti iussione firmamus. Primum, ut nullam ex hac re nomine publico metuas quaestionem; deinde sub hac conditione tibi universam substantiam, quam vel nunc tenet, vel primo tempore possidebat, cum nostris rationibus obnoxius esse iam coeperat, Thomatis debitoris addicimus, quam pridem nostro nomine fixis titulis fecimus vindicari. Hoc tantum humanitatis intuitu relaxantes; ut usque ad cal. Septembrium spatium habeat reddendi debitam quantitatem; minusve, cum ad supradictam diem tu pecuniam viro illustri comiti patrimonii nostri, quae debetur, intuleris, facultas eius universa, sicut diximus, tuis compendiis applicetur. Quod triste non credimus esse perdenti, quando nec ex toto videtur amittere, quod te generum suum cognoscit acquirere.

The taxes of the Privy Purse were collected by the various groups of palatini known as susceptores.¹ There were susceptores canonis, or collectors of the tax fixed by the various types of contract under which the estates of the Privy Purse were leased, sometimes called, therefore, canonicarii;² susceptores specierum or collectors of produce in kind; susceptores annonariarum or collectors of the annona which were assigned to the support of the army, the civil service and the alimentation of the Capitals. There were also susceptores vestium and susceptores auri argentique who received the precious metals and splendid robes destined for the Privy Purse.

The susceptores were selected from the different bureaus which functioned outside the palace service.³ They might be recruited from the officials of the provincial praeses⁴ or Proconsul,⁵ or those who had served as municipal tax-gathers might enter the ranks of the imperial collectors.⁶ The tabularii and numerarii were admirably trained by their duties as revenue accountants to act in this capacity.⁷ The curiales,

1. Cf. Godefroy, Paratitlon ad Codicem Theodosianum, XII, 6 (De susceptoribus).

2. Cassiodorus, Variae, XII, 4.

3. Ex officialium diversorum corpore, C.Theod., XII, 6, 6; Ex corpore igitur diversorum officiorum quisquis idoneus reperitur tam moribus quam facultatibus, veluti matriculae per singulas provincias nomen suum adscribat, ut hac ordinatione dispositi annuas susceptiones peragant, C.Theod., XII, 6, 7; Susceptores specierum idcirco per Illyrici provincias ex officialium corpore creari praecepimus, Ibid., 9.

4. Ex officio praesidali, C.Theod., XII, 6, 5.

5. Ex officio proconsulari, C.Theod., XII, 6, 31.

6. Ex largitionibus civitatum, post militiam, C.Theod., XII, 6, 6.

7. Ex tabulariis, numerariis, C.Theod., XII, 6, 7.

although the government was reluctant to take them from their municipal obligations on the ground that their property upon which their responsibility to the municipality rested ought not be otherwise encumbered,¹ appear to have been frequently employed as tax-collectors.² Negotiatores were also appointed to fill the office.³

The susceptor was appointed for one year,⁴ and those who appointed him (nominatores susceptorum) were responsible for the amount he was assigned to collect.⁵ The susceptores of the Privy Purse were appointed by the local procurators, and in

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1. Codex Theodosianus, XI, 7, 21 (412) : Grave et contra rerum ordinem iudicamus, ut idem municeps et civitatis necessitatem et exactoris publici subire cogatur officium; op. cit., XII, 6, 7 : Ad susceptionem specierum veniant, qui ante omnia sciant se decuriones non esse; Ibid., 31; cf. Codex Theodosianus, XII, 6, 5 (365) in which Valens decreed that the susceptores and praepositi horreorum should be generally selected ex praesidali officio, but since the Governor of Cilicia asserts that there are not an adequate number of such officials available, the Prefect is instructed to allow curiales to serve as susceptores. At the same time he enjoins the Prefect to search out those curiales who have absconded and found service in the various governmental bureaus, put them to death, and hand over their property to their curia.
 2. Dill, op. cit., p. 273. Ex decurionibus provincialibus in the Praefecture of Gaul, C.Theod., IX, 35, 2; in Africa, C.Theod., XII, 6, 4; ex principatium sive ex honoratorum; C.Theod., XII, 6, 9; 31.
 3. Codex Theodosianus, XII, 6, 29.
 4. Codex Theodosianus, XII, 6, 4; 7; 10; 11; 22; 24.
 5. Codex Theodosianus, XII, 6, 1 : Si quem susceptorem evertisse constiterit rationem et ad solvendum non esse idoneum, creator eius hac necessitate teneatur, ut, quidquid ille dilapidavit, ipse de propriis rebus instauret compellaturque damnum omne sarcire, quod non esset inlatum, si in idoneis nominandis competens adhibitum esset examen; op. cit., 8 : Iuxta inveteratas leges nominatores susceptorum et eorum, qui

420 Theodosius II enjoined the Count to keep close watch over the creation of the collectors who were chosen on the responsibility of the procurators.¹

The office of tax-collector was universally looked upon as an opportunity to begin one's career and by over-exaction or theft of the revenues collected purchase one's way to the higher offices and the privileges attached to them.² A careful inventory, therefore, of the goods and resources both of the susceptor and his fideiussores or vouchers was despatched to the central record office (officium palatinum) of the Privy Purse before he was invested with his functions in order to prevent loss to the treasury through the fraudulent appropriation

ad praeposituram horreorum et pagorum creantur, teneantur obnoxii, si minus idonei sint qui ab iisdem fuerint nominati, nec quicquam ex eorum substantia celebrata per interpositam personam emptione mercentur; op. cit., 9 in which the whole curial order is responsible; 20 : . . . Et animadvertant quicumque nominaverint, ad discrimen suum universa quae illi gesserint redundare; 29.

1. Codex Theodosianus, X, 1, 17 : Super creandis susceptoribus dispositionem tuae sublimitatis firmam esse praecipimus periculo procuratorum rei dominicae.
2. Codex Theodosianus, X, 1, 14 (397) : Auri atque argenti maximum pondus plurimis diversisque temporibus usurpatum et ad aerarii nostri rationes non relatum cognovimus; VI, 29, 11 (414) : Curiosos praecepimus removeri. Curialibus insuper et naviculariis omnibusque corporibus ita subveniri volumus, ut nihil apparitoribus universorum iudicum liceat, qui ex collecta provincialium praeda ad maiores militias festinant. Cf. C.Theod., X, 1, 16 (399) in which the exactores and compulsores have diverted large amounts of the African grain supply to their own profit; and Cassiodorus, Variae, XII, 13 in which the canonicarii have robbed ecclesiastical endowments in Bruttium and Lucania in the name of the numerarii of the Prefect's staff but have really appropriated them to their own profit.

of its revenues by the collectors.¹ Upon completion of his term he must submit his accounts to be audited and himself undergo a judicial inquiry. When he came to retire from the service, his record must be entirely clear of obligations to the treasury before he was entitled to receive the honors and immunities due for his services to the state.²

Armed with the right of free quarters wherever he traveled,³ the susceptor was despatched into the province. At the end of the year, having made his collection, he returned to his superior and made a report of what he had accomplished, the amount he had raised, what was still in arrears and by whom owed, and what recalcitrant tax-payer or law suit he had left behind him.⁴ It was then the task of the officials of the Privy

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1. Codex Theodosianus, XII, 6, 25 (399) Honorius to Firmin, Count of the Privy Purse : Palatinum iubemus procurare officium, ut nullus praepositurae vel cuiuscumque susceptionis subeat munus, antequam iuxta legem divinae memoriae Gratiani et susceptorum substantiae et fideiussorum facultates diligenti descriptione collectae ad eiusdem officii notitiam perferantur, cessante responso, quod per subreptionem in aerarii nostri dispendium elicatum est.
 2. Codex Theodosianus, X, 7, 1 (317) : Caesarianos in actu dumtaxat constitutos ad perfectissimatus vel ducenae vel centenae vel egregiatus dignitates non oportet admitti. Sed si inculpate compleverint suum officium et ab omni vacent ratione fiscali iudicio, datam huiusmodi dignitatem prodessse eis oportet; op. cit., VI, 35, 7 (367) : . . . cum pro merito probitatis et fidei accessu istius fuerint splendoris ornati. . .
 3. Codex Theodosianus, VII, 8, 10; Novellae Valentiniani, VII, 1, #1.
 4. Codex Theodosianus, VIII, 8, 9 : Sive ex praetoriano officio sive inlustri comitivae sedis largitionum nec non et rei privatae nostrae vel ex quacumque apparitione ad quamcumque necessitatem profligandum quis fuerit destinatus, sciat intra anni metas debere collectis ratiociniis ad

purse to employ more stringent means of coercing recalcitrant tax-payers and enforcing the collection of arrears.

In the case of the rich landed aristocracy it was often found absolutely impossible for the treasury officials to collect the revenues. As Dill remarks, "it is difficult to conceive a powerful and wealthy class, many of whose members must have known the responsibilities of government, and of all of whom might have known the overwhelming difficulties of the time, so lost to all sense of public duty."¹ Salvian inveighs against the rich who escaped their just burdens which fell all the more heavily upon the poor who were less able than they to support them.² The potentiores bribed the officers of the census to make false entries of their property and the peraequatores to relieve them of the necessity of cultivating unproductive estates. They induced the tabularii by bribes or influence to transfer the burden of taxation to the shoulders of the poor.³

proprium iudicem remeare eique suam efficaciam ostendere, quid eius instantis exactum fuerit quidve in debitis habeatur vel penes quos resederit vel cuius culpa aut causa in eadem provincia fuerit derelictum.

1. Dill., op. cit., p. 272.
2. Salvianus, De gubernatione Dei, V, 7.
3. Codex Theodosianus, XIII, 10, 1 : Quoniam tabularii civitatum per conclusionem potentiorum sarcinam ad inferiores transferunt; 8 : His nostrae serenitatis edictis civitatum tabulariis erit flamma supplicium, si cuiusquam fraude ambitu potestate iniusta cuiuspiam profiteretur immunitas, ac non secundum praecedentem definitionem omnes omnino, abolita specialium immunitatum gratia, necessitas tributariae functionis firmata censorum peraequatorum provincialium iudicum peraequatione constrinxerit.

They even went so far as to allow the navicularii of Egypt and Africa to enter their vessels in their name and thus escape their obligations at a time when famine threatened in Rome and provision for the troops in Gaul was urgent.¹ They simply ignored the demands of the tax collectors and maintained a retinue of armed retainers who could be employed to expel even the imperial officers from their estates. As early as 383 the taxes of the possessores potentiores in the Pontic diocese (the same potentiores who throughout the Byzantine Era continued to constitute a standing menace to the supremacy of the central government) had to be collected by the provincial governors and their staff,² supported by the local garrison if need be.

Many of the estates of the Nobility law in remote and widely separated parts of the Empire and were managed in absentium by agents (actores, procuratores) who, to quote Symmachus, lived "as though they were above the law,"³ paying little heed to the injunctions of distant masters. In 398 Honorius found it

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1. Such vessels were confiscated by the government; Codex Theodosianus, XIII, 7, 1 : Cunctis per Aegyptum intimetur viginti librarum auri multae esse subdendos eos, qui naves suo nomine vel defensione a transvectionibus publicis excusare temptaverint, publica iactura navium quoque dominis ferendis, qui neglectis necessitatibus publicis potiorum voluerunt patrociniis excusari; op. cit., 2 (406) : Multi naves suas diversorum nominibus et titulis tuentur. Cui fraudi obviantes praecipimus, ut, si quis ad evitacionem publicae necessitatis titulum crediderit adponendum, sciat navem esse fisco sociandam. . . . Nisi igitur intra triginta dies haec fraus fuerit remota, universa navigia, quae ad exceptiones confugiunt, dominis auferantur.
 2. Codex Theodosianus, XI, 7, 12 : to Constantianus, Vicar of Pontica : Potentiorum possessorum domus officium provinciae rectoris exigere debet.
 3. Symmachus, Epistolae, IX, 6 : Actores absentium quibus res longinqua committitur, tanquam soluti legibus vivunt.

necessary to instruct the Count of the Privy Purse to hold the masters of the estates themselves responsible for the tribute if their agents delayed making payment. If within six months of the end of the fiscal year when the tribute was due the agents had failed to make payment, the owners themselves must assume the responsibility for collecting. The dignitates themselves are not exempt from the operation of this law.¹ Thus we find Symmachus quite concerned over the sums due from his estates in Campania and Apulia.² Finally, Majorian made the governors generally responsible for the collection from contumacious actores and procurators of the senatorial estates.³

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1. Codex Theodosianus, XI, 1, 25 : Obsistere commodis publicis et statutis necessitatibus non possunt privilegia dignitatum. Unde ut quisque praedii emolumenta consequitur, si non evolutu anni spatio intra sex menses omnem, cui esse constrictus dicitur, reliquorum intulerit cumulum, ad ipsos, qui sunt domini praedii, exactionem volumus pertinere; cf. C. Just., X, 16, 10.
 2. Symmachus, Epistolae, V, 87 : Nostrorum duritiam ferre non possumus, qui cum reliqua superiora nec dum solverint, etiam pensionem proximi anni ferre detrectant. Idcirco, quaeso ut homine meo, quem ad exactionem titulorum misi, curam communicare digneris, et reliquosam operam libenter adripias: grave est enim, nos quidem pro agris nostris functionibus publicis esse munificos, actores autem locorum, ne id quidem velle redhibere, quod sciunt per annos singulos esse solvendum.
 3. Novellae Majoriani, II : 4. Habenda sane ratio est potentium personarum, quarum actores per provincias solutionem fiscalium negligunt, dum pro sui terrore fastidii minime perurgentur, ac se in praediis retinent contumaces, ne ad eos praeceptum iudicis possit aut conventio pervenire, et idcirco clarissimarum domorum vel potentium iubemus actores seu procuratores in his civitatibus iudici per provinciam discurrenti sui facere et exhibere praesentiam, in quarum territoriis praedia suorum sciant esse patronorum, et tam diu publicis inhaerere conspectibus, quam diu in eodem oppido morari viderint cognitorem: quod etiam sacrae domus nostrae observare iubemus actores.

The rich holders of estates of the Privy Purse who failed to pay the tribute within a year were condemned to pay fourfold; the poor, however, were held only to the original sum.¹

In the case of persons less powerful or protected and less able to offer resistance, the office of the Privy Purse itself undertook to collect arrears. Exactores, compulsores and discussores were sent out from the palace as the representatives of the "illustrious power" of the Count of the Privy Purse, armed with powers which gave them endless opportunities for fraud and oppression.² Their terrifying appearance in the provinces marked the beginning of a veritable inquisition and reign of terror, and their outrageous demands were enforced by the troops of the local garrison.³ Of these palatini the most dreaded were the discussores, extraordinary officials whose business it was to discover and call up all arrears of taxation.

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1. Codex Theodosianus, XI, 1, 27 (400) : Opulentos, quos annua solutione debitas inferre convenerat pensiones, cum eo, quod resedit in debitum, quadruplum iubemus inferre. Ii vero, quos forte mediocritas a contumaciae huius excusat invidia, simplam debiti summam omni maturitate redhibere cogantur.
 2. Codex Theodosianus, VIII, 8, 7 : e palatio nostro . . . compulsor, exactor, admonitor, portitorve praecepti, agens in rebus vel palatinus vel apparitor inlustrium potestatum. . .
 3. Codex Theodosianus, VIII, 8, 6 (395) : Ne per diversas provinciarum partes aut palatinus exactor accederat aut inlustrium virorum apparitor vagaretur vel militaris terror inferret formidinem; Novellae Valentiniani, I, 3, (450) :
2. . . collega furtorum palatinus hortatur, instat apparitio turbulenta, urget immitis executio militaris; Novellae Majoriani, II (458) : 2. . . et exsecutio militaris pro commodo suae cupiditatis exercet.

Ordinarily they were appointed on a regular system,¹ and normally people would not be very willing to undertake so invidious a task, but in the administrative confusion and disorder of the last days of the Empire men struggled to secure the office by rivalry and bribery. Their object, of course, was simply to gain for themselves an opportunity to plunder the provinces in the absence of any effective control.² Persons of the lowest origin were thus making their way into the palace militia by fraudulent, illegal and surreptitious means and a constitution of 416 A.D. states that many, whose lives were culpable and whose origin was ignoble, bursting forth as it were from the very dregs of slavery, were concealing themselves in the schola agentum in rebus, the Imperial Secret Service Corps, as though in some sort of a refuge or sanctuary.³ It is to be presumed that the same condition was rampant in the other services of the State. Thus Palladius, whose delations occasioned such extensive treason trials under Valens, was a man of the lowest birth in the train of Anatolius and Spudadius who were palatini of the Privy Purse.⁴

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1. Novellae Valentiniani, I, 3 : discussores ad provinciam non electi, sicut comperimus, sed ambientes ire dicuntur, etc.
 2. Cf. Novellae Valentiniani, op. cit.; and Codex Theodosianus, VIII, 8, 9 (416) in which Honorius refers to a susceptor as eius regionis visceribus praedor insidens deprehensus.
 3. Codex Theodosianus, VI, 27, 18 : Ad scholam agentum in rebus passim plurimi velut ad quoddam asylum convolarunt, quos vita culpabiles et origo habet ignobiles et ex servili faece prorupisse demonstrat.
 4. Ammianus Marcellinus, XXIX, 1, 5.

In the midst of the dislocation of the life of the Empire occasioned by the barbarian irruption, property was constantly changing hands, private documents and public registers were being lost, the census lists destroyed or in need of constant revision. The resultant confusion was the happy hunting ground of the discussor who obtained his office by intrigue and arrived on the scene to collect arrears with a powerful retinue, and a mass of cooked accounts. By demanding old tax receipts which had been lost,¹ by over-exaction,² by tampering with the census lists,³ the discussor oppressed the poor provincials and made his own fortune. The provincial apparitores were greatly overawed by the palatinus who came down from the Court as the representative of one of those Counts of the Consistory who stood immediately around the Emperor's throne. The provincials felt it futile to appeal to any of the local authorities who were all of them servile and fawning before the palace dignitary whose belt of office denoted a power superior to their own. The time and expense involved in a journey to the seat of government precluded any appeal by the provincial directly to the Court and it seemed better to suffer patiently

1. Codex Theodosianus, XI, 26, 2.

2. Codex Theodosianus, XI, 8.

3. Novellae Justiniani, XXX, 3 : . . . non valentibus eis fingere nomina et pro nominibus istis inferre damna salutationum causa aut tracteticorum aut alterius cuiuslibet occasionis sive quasi ad consuetudinem aliquam relatae sive ad quamcumque calumniam.

rather than take the risks of such a course anyway.¹

The injury and oppression which resulted from the fraudulent collection of arrears is illustrated by a concrete instance in Ammianus Marcellinus : Valens soon after his accession elevated his father-in-law Petronius from the command of a legion to the exalted rank of Patrician at a single step. Apparently with no more official designation than that he proceeded to interfere in the financial administration of the East solely with the purpose of enriching himself; "burning with an immoderate longing to strip everyone without distinction, he condemned guilty and innocent alike after exquisite tortures, to fourfold indemnities, looking up arrears going back to the time of the Emperor Aurelian (d. 275 A.D.) and greatly grieving if he was obliged to let anyone escape unscathed."² The

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1. Novellae Majoriani, II : 2. Nunc vero canonicarios superioris militiae auctoritate terribiles, et in provincialium viscera et damna saevientes nec arguere quisquam apud provincialem iudicem potest, cum resupina apparitori et totum sibi de superioris cinguli fastidio blandientes potestates provincialis examini subiecta famuletur, nec de longinquis provinciae regionibus cum magno sumptuum expensarumque detrimento ad comitatum nostrum venire audeat ille, qui queritur, cui sub duro patientiae gemitu tolerabilior videtur depraedatio saevientis, quam sub magno observationis incommodo sustinendus impetrandae ultionis eventus.
 2. Ammianus Marcellinus, XXVI, 6, 7 : Cuius diritati adiectum erat incentivum exitiale socer Petronius, ex praeposito Martensium militum promotus repentino saltu patricius, animo deformis et habitu: qui ad nudandos sine discretione cunctos immaniter flagrans, nocentes pariter et insontes post exquisita tormenta quadrupli nexibus vinciebat, debitam inde a temporibus principis Aureliani perscrutans, et impendio maerens, si quemquam absolvisset indemnem.

calm of Valen's reign was soon disturbed by the rebellion of Procopius, a relative of Julian. For a moment the revolt seemed to be carrying all before it, and Ammianus seriously states that the progress of the Usurper was materially aided by the hatred of Petronius "who was enriching himself by violence, reviving transactions that were long since buried, and debts of the misty past brought up again against all classes."¹

So great were the enormities of the officials entrusted with enforcing payment and collecting arrears that the Emperor at times felt constrained to order their entire removal from whole provinces at all costs to the revenue,² and even the restitution of their illicit collections.³ Needless to say, the revenues both of the Sacred Largesses and the Privy Purse suffered as much from the conduct of such officials as did the provincials, and both were defrauded alike.⁴

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1. Ammianus Marcellinus, XXVI, 6, 17 : Huic intimidius incedenti nec resistebat populus, nec favebat : accendebatur tamen insita plerisque vulgarium novitatis repentina iucunditate, ea re potius incitante, quod Petronium, ut praediximus, divitias violenter augentem, omnes eadem mente detestabantur, qui sepulta iamdudum negotia, et redivivas nebulas debitorum in diversos ordines excitabat.
 2. Codex Theodosianus, VI, 29, 11 (414) : Curiosos praecepimus removeri. . . . qui ex collecta provincialium praeda ad maiores militias festinant.
 3. Codex Theodosianus, VIII, 10, 4 (412) : Universa compulsorum genera ex Africanis provinciis constituimus esse pellenda, his videlicet restitutis, quae forsitan per temeritatem sustulerant.
 4. Novellae Majoriani, II : 2. . . . ac ne ulterius canonicariorum venalis improbitas publicis fortunis inferat privatisque dispendium.

Numerous enactments in the Codes were designed to control the incidence of collection. To begin with, the general supervision of the collection of the taxes at all times lay with the Praetorian Prefects¹ and their subordinates, the vicars and provincial governors.² They were responsible for the collection and had to make up any deficit from their own means.³ Their staffs (apparitores), however, were as corrupt as the palatini themselves,⁴ and the government wavered between assigning the actual collection of the revenue to either service.

Apparently in the beginning of the Late Empire the collection lay with the governor and his officials, but in 365

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1. Zosimus, II, 33.
 2. Novellae Majoriani, VII. The edicts affecting taxation, especially those of a general nature, are very frequently addressed to the Praetorian Prefects, even when they concern the res privata; cf. C.Theod., XI, 16, 13; 20, 5; 6; XII, 6, 32; Nov. Theod., XXIII; Nov. Val., VII; Nov. Mag., II.
 3. Codex Theodosianus, XI, 1, 1 (Constantine, 315); op. cit., X, 1, 16 (Honorius, 399) in which the office of the provincial governor must pay the twofold restitution enacted against those who have defrauded the annona, if it fails to bring into court those collectors who have diverted part of the revenues to themselves and then fled when they learned that an investigation was about to be made; Codex Justinianus, I, 34, 2 (Anastasius, undated) by which the Count of the Patrimony is permitted to mulct and prosecute the provincial governors and their staff for failing to watch over the Patrimony and guarantee that its revenues suffer no harm.
 4. Dill, op. cit., p. 277, points out the significant fact that in so many laws, whereas the governor is fined for his offences, his staff "are laid under far heavier penalties some of them of a kind which we should describe as savage," and he cites Nov. Maj., VI, ut *judex qui hoc fieri statuerit XX librarum auri illatione feriatur, apparitores vero . . . fustuario supplicio subditos, manuum quoque amissione truncandos.*

Valentinian I in the case of the imperial domain transferred it to the rationales and procurators of the Privy Purse to put an end to the exactions which the provincial governors were making upon the coloni of the domain lands who enjoyed certain immunities (cf. p. 277).¹ Usually, however, the governors were inclined to be indulgent to the provincials crushed under the load of taxation, and the loss suffered by the revenues in consequence resulted in the extension of the power of the palatini who were sent out from the Court to enforce the collection. Thus, in the beginning of 379 Gratian decreed that the palatini of the Counts of the Consistory sent into the provinces on various duties should fulfill them without any fear of intervention on the part of the provincial governors,² and later(?) in the same year, he reiterated this command in an edict to the Praetorian Prefect in more ample form, forbidding any apparitor provincialis to venture to come to the rescue

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1. Codex Theodosianus, XI, 7, 11 : Omnes provinciis praesidentes iussimus conveniri, ut a rei nostrae conventionem cessarent, ne principales necessitates in publicum proferentes eadem, qua hactenus, in colonos iniquitate saevirent. Sinceritas tua rationales procuratoresque commoneat, ut, quidquid pro iugatione vel capitatione deposcitur, certantibus studiis devotionis exsolvant. In a later law (369) the Vicar of the Spanish Diocese still had jurisdiction over the palatini, though perhaps only those of the Sacred Largesses (C. Theod., XI, 26, 1).
 2. Codex Theodosianus, VI, 30, 1 : Palatini omnes, quos consistorii nostri comites propter diversas necessitates ad provincias dirigendos putaverint, sine ullo metu iudicariae commotionis propter quae diriguntur impleant.

of the public debtor who was being forced to pay by the office of the rationalis.¹ In 384 Valentinian II reminded the Praetorian Prefect and especially the provincial governors that they knew it to be unlawful for them to give any orders to the palatini.²

The oppression of the palatini soon so far exceeded that of the apparitores provinciales, however, that the Emperors endeavoured to make both responsible in the hope that mutual hostility and espionage might secure a more honest collection. Thus, in 394 we find 600 apparitores assigned to the officium of the Count of the East to hasten the exaction of the taxes on the Patrimony in the Oriental Diocese.³ The weak and unsteady government of Honorius, even under the guidance of the Regent Stilicho, the most capable and honest of his Ministers, found it increasingly difficult to maintain the central government at all in the West. Official corruption got so out of hand that the administration knew not what device to use to secure an honest collection of the taxes, and entrusted the business now to the governor and his staff, now to the palatini

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1. Codex Theodosianus, VI, 30, 4 : Nec temere apparitor provincialis debiti reum, quem rationalis officium ad solutionem cogit, abducat.
 2. Codex Theodosianus, VI, 30, 6 (C. Just., XII, 23, 6) : Ab officii palatinorum excellentia tua sciat ita penitus recedendum, ut neque ipsa postmodum licitum sibi credat isdem aliquid iniungere et praeterea provinciarum rectores prohibeat quicquam ulterius tale conari.
 3. Codex Theodosianus, I, 13, 1 : In officio comitis Orientis non amplius quam DC apparitores habeantur, quos quidem

and the rationales. In 395 Honorius in a general edict to the Prefect ordered the taxes of the Sacred Largesses, the Privy Purse and the Praefectorial Chest to be collected by the provincial governor. The palatini were empowered only to urge the governors but not to make the actual collection themselves,¹ and he strictly forbade the palatini to travel in the provinces or enforce collection by employing the armed force of the local garrisons.²

Apparently, however, the governors were inclined to be indulgent at the expense of the Privy Purse, and two years later (397) the collection of the taxes from the entire domain was once more by an edict addressed to the Count of the Privy Purse restored to the care of the palatini and the officia of the rationales. And as for the provincial governors, "let their officia bear in mind that no slight loss threatens their private fortunes if they fail to see to the exaction of all arrears of time past which remain with the conductores on

publicis necessitatibus adeo novimus abunde suppetere, ut per eos patrimonialium per Orientem possessionum maturetur exactio.

1. Codex Theodosianus, VIII, 8, 5 : Sive a palatinis petantur quae sunt sacris largitionibus inferenda sive quid res privata nostra desideret vel si quod subsidium publicarum necessitatum magnificentia tua per apparitionem suam arcae nomine deposcit, remota exigentium permixtione per rectorem provinciae instantibus officiis memoratis exactionem celebrari decernimus, qui ad se intellegit vel desidia invidiam vel industriae gloriam pertinere.
2. Codex Theodosianus, VIII, 8, 6 : Ne per diversas provinciarum partes aut palatinus exactor accederet aut inlustrium virorum apparitor vagaretur vel militaris terror

account of their inactivity or connivance."¹ This second accretion of power on the part of the administration of the res privata lasted only five months (from December 23, A.D. 397, the date of Codex Theodosianus I, 11, 1, to May 24, 398). It was emphatically removed at the end of that time by an edict emanating from that same wavering chancery of Honorius, which now affected to regard as secured surreptitiously (subreptum est) during the weak rule of a child Emperor the previous legislation of Valentinian II by which the provincial governors were forbidden to produce in court any actor or conductor of the imperial domain, in consequence of which the exaction from fiscal debtors had passed into the hands of the rationales.² Finally, in 400 A.D. Honorius once more decreed

inferret formidinem, hac lege sancimus, ut omnis memoratis intentio ad provinciae rectorem sit, cum eo agant, illo insistente, disponente adque agnoscente suo periculo rem peragendam compleant universa.

1. Codex Theodosianus, I, 11, 1 (C. Just., I, 33, 2) : Manentibus fideiussorum atque subsignationum meritis et possessoribus in eadem, qua nunc habentur, conductione durantibus ad palatinorum curam et ad rationalium officia omnium rerum nostrarum et totius perpetuarii, iuris exactio revertatur nihilque omnino de exactione reddita, hoc est perpetuarii iuris vel sacratissimae domus ad ordinarios iudices pertineat. Meminerint autem officia ordinariorum iudicum non leve fortunis suis imminere dispendium, nisi omnia reliqua praeteriti temporis curaverint exigenda, quae penes conductores ipsorum desidia aut coniventia resederunt.
2. Codex Theodosianus, I, 11, 2 (Cf. C. Just., XI, 74, 1) (May 23, 398) : Divae memoriae Valentiniano iuniori subreptum est, ut ordinariorum iudicum officiis actores seu conductores dominicos conveniendi licentia negaretur; et idcirco ad rationales privatae rei exigendorum fiscalium debitorum ex illo tempore cura translata est. Ad hanc tamen inutilem praecepti novitatem etiam illud adiectum est, ut, si quid in rei privatae nostrae praediis sceleris esset admissum, quod pro sua atrocitate ulcisci potestas, nisi ferro accincta,

that the collection of the tribute pertained solely to the prefect and his subordinates the vicars and provincial governors, and ordered all of the palatini of the Sacred Largesses to be withdrawn from the provinces; if one was found presuming to make the exaction, he was to be brought into the court of the Count loaded with chains. The palatinus of the Privy Purse despatched into the provinces with public letters to admonish¹ the governor that the sums due from the domain be collected with greater expedition, was to conduct himself with the greatest circumspection. If he delayed or wandered at random, his name was to be sent in by the governor to the Prefect that he might be severely chastised.²

Similarly in the East Theodosius II in 408 forbade the agentes in rebus and the palatini of the Sacred Largesses and Privy Purse sent into the provinces to raise the taxes to

non posset, exhibendorum reorum, nisi qui per dominicos deducerentur et defenderentur actores, ordinario iudici copia non pateret. Quod ne deinceps fiat, hac sanctione prohibemus.

1. Codex Theodosianus, VIII, 8, 7 : . . . e palatio nostro . . . admonitor, portitorve praecepti.
2. Codex Theodosianus, I, 5, 13 (C. Just., XI, 74, 2) : Iam dudum e provinciis arceri iussimus palatinos, cum omnis exactio ad diligentiam magnificentiae tuae et virorum spectabilium vicariorum nec non et ordinariorum iudicum sollicitudinem debeat pertinere ; et nunc eadem confirmantes decernimus, ut si quis palatinus ex officio viri illustris comitis sacrarum largitionum per provincias repertus fuerit, qui exactionem sibi audeat vindicare, ad audentiam viri illustris comitis sacri aerarii ferro obrutus derigatur, vel si est idoneus, curiae vindicetur. Eos sane palatinos, qui a viro illustri comite rei privatae cum publicis litteris destinantur ad commonitionem iudicis, quo facilius ex praediis rei nostrae conferantur debitae pensiones, cum summa degere praecipimus disciplina; de quorum nominibus, si temere versati fuerint, ad sublimitatem tuam referri per ordinarios iudices oportebit, ut in eos severissime vindicetur.

dare to take it upon themselves to collect them, but authorized them only to press the provincial governors to do so.¹ Apparently, however, the governor often sought to spare himself the trouble by entrusting the task of collection to these very palatini, and he as well as his staff were threatened with a fine of twenty pounds of gold each if they ventured to do so.²

In 440 Valentinian III declared that "the fiscal enormities of the palatini imposed upon him the necessity of formulating an edict . . . by which those who presumed to continue their crimes, deceived by their past impunity, should incur more severe penalties."³ He therefore threatened with death and proscription those palatini who made exactions of extraordinary taxes, taxes in gold or any other form on fictitious claims. Hitherto, the subordinates of the heads of the various branches of the palace service could only be brought

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1. Codex Theodosianus, XI, 7, 17 (C. Just., X, 23, 2) : Neque agentes in rebus neque sacrarum privatarum vel largitionum palatina officia ex quacumque causa, ex quocumque titulo fiscalis debiti, cum ad provinciam mittuntur, possessores per se audeant convenire, sive id ex praeterito reliquum trahatur seu praesentis temporis tributo solvi conveniat; sed rectores provinciarum frequenter adeundo commoneant eorumque officiis incumbant.
 2. Ibid. : Quod si rector provinciae imminentem sibi memoratorum declinare molestiam quaerens vel qualibet alia ratione isdem propria auctoritate publicae exactionis permiserit curam, tam ipse quam officium eius vicena auri pondo fisco dependent.
 3. Novellae Valentiniani, VII, 1 : Palatinae exactionis enormitas . . . necessitudinem nobis formandae sanctionis imposuit, cuius obstinatio quae refugere debuit augere contendit, ad hoc praeteritae impunitatis praesumptione decepta, ut continuato scelere graviore aculeo severitatis incurreret.

to trial in the court of their chief.¹ The Counts of the Sacred Largesses and the Privy Purse are now deprived of this authority by Valentinian III. If they neglect complaints against their subordinates, then the Prefect is so to act "that we may vindicate the neglected and most just complaints of the provincials." The provincial governors are empowered without any fear of their own condemnation and mulcting to refer inveterate sinners of this type to the Prefect, and "by this constitution of ours let the Illustrious Counts of either treasury know that they are to refrain from intervention in condemnations made by the courts of the provincial governors and the curiales, whose faults shall be corrected by Our Clemency or His Amplitude, the Prefect, by which means an end shall be put to the present corruption so long pursued by the aforesaid seat,"² i.e. of the financial comites.

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1. Valentinian III himself in 429 reiterated this principle which was characteristic of the bureaucratic organization of the Late Empire, and allowed the Prefects themselves to take over a case only when the Counts of the treasuries had ignored the complaints of the provincials (C.Theod., XII, 6, 32 : *Quam si provincialis pulsare nequiverit et delata ad illustres viros aerarii comites querimonia impediante palatino officio non meruerit ultionem, tunc denu[m] licebit magnificentiae tuae possessorum querellas et probata aput se dispendia vindicare.*).
 2. *Novellae Valentiniani, VII, 1 : 2. Quam examinationem atque vindictam si aditi illustres viri comites utriusque aerarii fortasse neglexerint, amplitudinem tuam nobis oportet suggerere, ut neglectas iustissimas provincialium querimonia[m] vindicemus.* 3. *Tantum autem nos licentia huius cupiditatis offendit, ut, inveteratam usurpationem reseca[n]te cupientes, moderatores provinciarum rapinis ire obviam censeamus, et ad magnitudinem tuam sine ullo metu suae condemnationis referre.* 4. *Praeterea cunctis excusationibus aditus*

This edict, promulgated for all time (veneranda in omne aevum) like so many others, was in force only two years when the same Emperor revoked it and replaced it by another. Any attempt to alleviate financial oppression appears almost always to have resulted in immediate damage to the revenues. The government forever oscilated between a pious desire to protect the provincials and the practical necessity of filling the treasury in view of increasing anarchy and rising expenses. Therefore, on the ground that the above law was both indecorous in its treatment of the Illustrious Counts of the treasury and inefficient in view of public necessities and shown by experience to be injurious to the treasury, as well as disadvantageous to the possessores, it was revoked and the censuring power of the Counts restored so that the palatini might no longer employ as an excuse for their delay and negligence the fact that they had been deprived of the power to fine the provincial governors and curiales.¹ However, the Emperor did not propose to abandon

obstruentes, hoc constituto nostro adicimus, ut illustres viri comites utriusque aerarii a condemnationibus iudicum et curialium noverint abstinendum, delicta eorum vel dissimulationem tuam clementiae nostrae, quam sedi tuae amplitudinis, cum exstiterint, ingerentes, quo praedictae sedis tantum secuta correptio praesentia resecat, futura componat.

1. Novellae Valentiniani, VII, 2 : 1. Sed quia nunc suggestio magnitudinis tuae indecorum hoc illustribus viris et inefficax publicis necessitatibus explicandis provisione necessariae suggestionis insinuat, et experiendo cognovimus, nec satis prodesse id possessorum commodis, et plurimum consuetis aerarii exactionibus obfuisse, abrogata lege, quam prius super his rebus observari statuimus, ius omne ad praedictos illustres viros, quod longo tempore iam tenebant,

the provincials to the greed of the palatini. Any provincial injured by over-exaction or fictitious claims might carry his complaint to the proper superior of the palatini who, however, was alone permitted to examine his conduct.¹

The result of this law was to give free reign to the avarice of the palatini, everyone of whom, in the wild disorder and complete disarray of the Western Empire in the middle of the fifth century, seemed as anxious as that Romanus, Proconsul of Africa mentioned by Ammianus Marcellinus, to anticipate the barbarians in plundering the provinces.² The typical scene is only too graphically described by the Emperor himself. In 450 A.D. the Imperial Court had removed in alarm from Ravenna to Rome, and from the Eternal City, while the "Scourge of God"

illibata pristinae censurae auctoritate revocamus, ne qua illis morae aut negligentiae excusatio de expensarum distributione tribuatur, quibus non solum mulctandorum iudicium, sed et curialium (segnitiam condemnari et a rationalibus licet) auferebatur facultas.

1. Op.cit., 2. Et tamen sub hoc praecepto nullum possessorum seu curialium palatinorum mancipamus aviditati. De quorum fraudibus, si quae exstiterint, aut si modum veri census sub occasione titulorum ad se pertinentium supergressi fuerint, et aliquid commentitium praeter id, quod explorata fides chartarum continet, studio depraedationis invenerint, iubemus, gravatis patere accusandi eos liberam facultatem, sed ita, ut ad proprios iudices laesorum querela perveniat, hisque solis in eorum commissa permittatur inquirere, de quorum factis, si qua in reprehensionem venient, non modo praesentium querelis, sed et absentium relationibus instruentur.
2. Ammianus Marcellinus, XXVII, 9, 2 : . . . superare hostes in vastandis provinciis festinabat.

was penetrating deep into the heart of Gaul ravaging everything as he advanced, Valentinian III promulgated an edict which paints a picture of perhaps even more cruel savagery within his own Empire perpetrated by his own officials in the name of law and government. The edict, in the increasingly fatuous style of the late legislation,¹ affects Cicero in its salutation to the assembled Senate, "If you and your children are well, it is well; we and our army are well." It then proceeds to present a description of the tactics of the officials sent into the provinces to enforce the collection of arrears. "Discussores, having secured their office not by appointment as we have ordained, but by bribery and intrigue, are said to be going into the provinces. When such a discussor enters the terrified province, accompanied by the promoters of false charges and exalted among his sumptuous retinue, he haughtily demands the assistance of the local officia, often even adds scholares thereto, multiplying the number both of men and offices so that whatever avarice covets, terror may extract. As an exordium, as it were, the newly-come officer produces and publishes a series of terrifying edicts under a variety of different titles and presents a confused mass of minute accounts

1. The more ineffective the imperial legislation became, the more elegant and pompous its diction. It is often truly majestic and flowing in character and nearly achieves as great a verbal effect as the pontifical style of the Papal bulls when the ars dictandi was at its height, although a Honorius never succeeded in launching the sonorous thunders of an Innocent III.

engulfed in inexplicable obscurity which are the more effective the less they can be understood by persons ignorant of guile. He demands tax receipts that have been consumed by age and the long passage of the years which the simplicity and trust of the tax-payer who owed nothing neglected to preserve, and regardless of the manner in which they perished, the occasion is seized upon as opportune for plundering. . . . Whence proceed innumerable calamities, harsh detention in prison, cruel suspense and torture everywhere; all of which, in the meanwhile, is beheld with pleasure and satisfaction by the obstinate cruelty of the investigator. The palatinus urges on his train of thieves, the turbulent apparitors of the governor are at hand and merciless military execution impends. This shameful outrage, this greed for gold between fellow citizens as if they were foreign enemies, is not terminated by the justice of those sent to render it nor by the claims of compassion. And so great a harassing of the provinces, although it never profits the treasury, never ceases, for all that, to be repeated; and as though something had really been accomplished effectually, scarcely has one official departed from the province when another hastens in armed with fresh authority," to plunder anew an already exhausted population.¹ The Emperor, therefore, orders a general alleviation of

1. Novellae Valentiniani, I, 3 : 2. Discussores ad provincias non electi, sicut comperimus, sed ambientes ire dicuntur, Ubi trepidam provinciam talis discussor adierit, stipatus calumniarum ministris, superbit elatus

taxation and to this edict is appended "by the divine hand" of Valentinian himself the high-sounding adieu, "We wish you of the most sacred order of Conscript Fathers, most felicitous, most flourishing and most beloved by us, to fare well for many years."¹ Dill has pointed out the appalling similarity between this picture and the worst scenes of Turkish administration.²

In 458, Majorian, seeking to end these violent and exorbitant exactions, ordered the Prefect not to allow any canonicarius, palatinus or armed minister to enter the provinces

inter obsequia sumptuosa, expetit adminicula provincialis officii, scholares etiam saepe coniungit multiplicato et hominum numero et officiorum, ut, quantum avaritiae libuerit, terror extorqueat. Prima sunt venientis exordia, ut proferat et revolvat super diversis numerosisque titulis terribiles iussiones: praetendit minutarum subputationum caligines inexplicabili obscuritate confusas, quae inter homines versutiarum nescios hoc amplius agunt, quo minus intelligi possunt. Securitates expetunt annorum serie et vetustate consumptas, quas servare nescit simplicitas et fiducia nihil debentis. Revera enim aut quomodo pereunt, quasi iusta contingit occasio depraedandi, Innumerae deinde clades, saeva custodia, suspendiorum crudelitas et universa tormenta, quae interea laetus et crudelitatis pertinax et egregius quaesitor expectat. Collega furtorum palatinus hortatur, instat apparitio turbulenta, urget immitis exsecutio militaris. Indignum facinus, haec de civibus, velut inter hostes, pecuniae placitis, non allegationum iustitia, non miseratione finire. Tanta vexatio cum nihil unquam fisci utilitatibus prosit, tamen non desinit iterari: quasi aliquid efficaciter gestum, vix dum uno e provincia decedente cum novis auctoritatibus alter excurrit.

1. Et manu divina : Optamus vos felicissimos ac florentissimos nostrique amantissimos per multos annos bene valere, sanctissimi ordinis P.C.
2. Dill, op. cit., p. 273.

at all, but all the taxes of whatever description were to be collected by the local governors.¹ Majorian's salutary reform edicts came too late, however, to appreciably arrest the downfall of the Western Empire.

In addition to curtailing the authority of the palatini in the provinces and removing them from time to time from the privileged position of being amenable only to their superiors at the Court, the Emperors by many other enactments attempted to secure an honest financial service and minimize the opportunities for fraud.

Any given appointment in the service was for one year only and it was forbidden to repeat an office² for two reasons, (1) it disordered the service and the due promotion of others,³ and (2) it provided the official continued opportunity to plunder the provincials.⁴ Those who ventured to do so were threatened with exile and confiscation. The primates officii

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1. Majorian describes the tactics employed by the palatini in phrases very similar to those of Valentinian III; *Novellae Majoriani*, II : 2. Hinc est, quod per iniuriam compulsorum destitutae ordinibus civitates idoneum nequeunt habere curialem, quod exigentium atrocitate perterriti possessores propria rura destituunt, cum non iam amissio fortunarum, sed saeva custodia et suspendiorum crudelitas formidatur, quae immitis apparitor, et exsecutio militaris pro commodo suae cupiditatis exercet.
 2. *Codex Theodosianus*, IX, 26, 2 (400); 3 (403); 4 (416).
 3. *Codex Theodosianus*, IX, 26, 3 : non absque publicae dilacerationis incommodo officia peracta repetuntur; cf. Godefroy, *ad locum citatum*.
 4. *Codex Theodosianus*, VIII, 8, 9; XII, 6, 22 (386) : Non perpetui exactores in continuata vexandorum provincialium potestate veluti concussionum dominatione teneantur, sed per annos singulos iudiciaria sedulitate mutantur.

were especially enjoined to prevent violation of this restriction and were menaced with the same penalty for negligence,¹ as were also any assistants of the palatine bureaus who connived at persons exceeding the fixed number in the service of the Sacred Largesses and Privy Purse.² Palatini were forbidden to be conductores either in their own name or through the agency of anyone else;³ they were forbidden to function in the province of their birth or where they had formerly lived, removed from the service if they ventured to do so, and a fine of one pound of gold imposed upon the adiutores and numerarii of the offices which permitted them to serve thus, and whose duty it was to observe the statutes relating to the service.⁴

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1. Codex Theodosianus, IX, 26, 2 : Nullus omnino principatum ceteraque officia repetere audeat, cum publicae disciplinae semel gesta sufficient, ac si quispiam promotorum denuo ad id munus inrepserit, quod docebitur ante gessisse affectus gravissimis suppliciis poenam deportationis excipiat, ita ut primates officii, quorum interest ambientibus obviare, hanc propositam poenam non dubitent.
 2. Codex Theodosianus, VI, 30, 16 (399) : Sibi quisque, iure tamen, obnoxium exsequatur, adiutoribus quoque, qui matriculas tractant, supplicium deportationis cum amissione facultatum subeuntibus, si quemquam ultra numerum praestitutum siverint militare; 17 (399) : sciente adiutore officii palatini, si qui supra statutum numerum vel conviventia vel negligentia eius inrepserit, avaritiam eius proscriptio omnium facultatum ac deportatione plectendam.
 3. Codex Justinianus, XI, 73, 1 (401) : Nullus palatinorum, qui in officio rei privatae nostrae militat, conductoris nomine vel per se vel per quemlibet personam possessionum huiusmodi conducendarum habeat facultatem, cum neque militi neque curiali hoc faciendum permittimus.
 4. Codex Theodosianus, VIII, 8, 4 (C. Just., XII, 59, 3) (386) : Nullus apparitor amplitudinis tuae vel de officiis palatinis ad eam provinciam, ex qua oriundus est vel in qua conlocaverit larem, obtentu publicae necessitatis vel exsecutor privati negotii dirigatur. . . . si domesticus aut

The palatini were sent into the provinces with definite instructions to perform a specific mission. They were enjoined not to do anything other than their instructions called for or undertake to perform a colleague's task, but each was to discharge his own duty.¹ They were not to abuse their right of demanding free quarters,² but to request lodging only when on a definite mission to the locality and to make their transit as rapidly as possible (celeriter transeundum).³

Repeated efforts were made to restrain the suscitatores and palatini from fraudulent apportioning of the taxes and over-exaction. In 313 Constantine decreed that any actores or procurators of the Privy Purse who vexed the provincials by their evil acts should be publicly burned alive, "for those

protector, strator vel agens in rebus vel palatinus utriusque officii vel ad eam provinciam, in qua natus est, vel ad eam, in qua conlocarit larem, cum huiusmodi usurpatione perrexerit, matriculis quidem exemptus ipse, qui se voluit mitti, auri libram unam fisci viribus inferre cogatur, adiutores vero officiorum palatinorum ac numerarii comitum inlustrium virorum sive actuarii libram fisci viribus solvant, nisi statuta fuerint custodita.

1. Codex Theodosianus, VIII, 8, 7 (C. Just., XII, 60, 2) (395): Quicumque e palatio nostro cuiuslibet tituli ad provinciam commearit compulsor exactor admonitor portitorve praecepti, agens in rebus vel palatinus vel apparitor inlustrium potestatum, hoc tantum potestatis arripiat, quod mandatum curae suae specialiter adprobatur, nec, quod iniunctum alteri fuit, collegii iure praesumat, ne, dum hoc sibi invicem mutui officii licentia partiuntur, agant cuncti, quod singulis credebatur.
2. Novellae Valentiniani, VII, 1, #1; Codex Theodosianus, VII, 8, 10.
3. Codex Theodosianus, VII, 8, 10 (C. Just., XII, 40, 5) (413): Solam sane hospitalitatem sub hac observatione concedimus,

entrusted with mandates of the Emperor should be more gravely punished for transgressing them."¹ Valens renewed this edict, instructing the provincials to make their complaint to the prefect or the provincial governors.²

In 369 Valentinian I compelled the discussor to refund whatever he had exacted on fictitious claims;³ Honorius made the restitution fourfold,⁴ and forbade the discussores to demand old tax receipts which had been registered in the public records (polypticha) but lost by the tax-payer.⁵ Valentinian III revised the census lists in 440 and enacted that any palatinus

ut nihil ab hospite, quod vel hominum vel animalium pastui necessarium creditur, postuletur omniumque sit adceleratum iter atque continuum nec ulli liceat residere, ne diuturnitas conmanentium ulla ex parte praedium vexet.

1. Codex Theodosianus, X, 4, 1 : Si quis ab actore rerum privatarum nostrarum sive a procuratore fuerit vexatus, super eius calumniis vel depraedationibus deferre querimoniam non dubitet. Quae res cum fuerit comprobata, sancimus, ut idem, qui contra provincialem quidquam moliri fuerit ausus, publice concremetur, quoniam gravior poena constituenda est in hos, qui nostri iuris sunt et nostra debent custodire mandata.
2. Codex Justinianus, III, 26, 9 (365) : . . . deferre querimoniam sinceritati tuae vel rectori provinciae . . . publice vivus concremetur.
3. Codex Theodosianus, XI, 26, 1 (C. Just., X, 30, 1) : Quotiens in disceptatione constituerit inique discussionem fuisse confectam et fidem facti non poterit adprobare discussor, ipse in eodem titulo et in eodem modo ad solvendum protinus urgeatur, in quo alterum perperam fecerit debitorem.
4. Codex Theodosianus, XIII, 11, 11 (406) : Si quos vero rapacitate plectanda a provincialibus aliquid abstulisse constituerit, direpta in quadruplum redhibere compellas.
5. Codex Theodosianus, XI, 26, 2 (400) : Maximas praedas hoc pacto agi de provincialibus certum est, ut acceptae semel securitates et regestae polyptychis a discussoribus vel apparitoribus denuo postulentur, non quod utilitas publica flagitat, sed ut, si casu est amissa securitas, maior praeda nascatur. Decernimus itaque, ut quando insertae securitates ratiociniis publicis continentur, rursus per iniuriam non petantur.

who exacted beyond the sums declared by the present census in the lists of the scrinia on fictitious claims and compilations should be charged with sacrilege, proscribed and put to death.¹

The susceptores were accustomed to defraud the taxpayers by using false weights and measures in making their collections,² and in 386 Theodosius I ordered scales and measures to be placed in the mansiones and cities where the tribute was brought together by which it might be determined whether the collectors had raised the amount they were required to and whether they had over-exacted. The amount over and above the tax which was levied to allow for loss during transportation was fixed so that it could not be made an excuse for over-exaction.³

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1. Novellae Valentiniani, VII, 1 : 1. Quapropter sublimus excellentiae tuae saluberrimam suggestionem secuti veneranda in omne aevum lege sancimus, ne quisquam palatinorum superindicti vel aurariae ceterasque ad utrumque aerarium pertinentes exigens functiones ultra summam traditis sibi, iuxta praesentem censum, de scrinio brevibus comprehensam commodi nomine accipiendum aliquid noverit aut petendum; cessantibus caussarum titulorumque instructionibus fictis, quos odio calumniarum cessare praecipimus, et quos non in usum publicum, sed in aviditatis exemplum calliditas compulsorum minatur, sacrilegii percellendis reatu, proscriptionis etiam, supplicioque dedendis, cum huius modi usurpationem probatio confutarit.
 2. Codex Theodosianus, XI, 8, 3 (409) : Velut licito committi frequenti laesorum deploratione didicimus, ut maioribus subiectis mensuris atque ponderibus gravi possessor damno quatiatur.
 3. Codex Theodosianus, XII, 6, 21 (C. Just., X, 72, 9) : Modios aeneos seu lapideos cum sextariis atque ponderibus per mansiones singulasque civitates iussimus conlocari, ut unusquisque tributarius sub oculis constitutis rerum omnium modiis sciat, quid debeat susceptoribus dare; ita ut, si quis susceptorum conditorum modiorum sextariorumque vel ponderum normam putaverit excedendam, poenam se sciat

In 416 Honorius decreed that if at the end of his year of office any palatinus of either treasury was found to be an insidious plunderer of the region assigned to him, he should be deprived of his belt and his superior fined ten pounds of gold for neglecting to recall him. If he disregarded the order to return, he should be seized by the provincial governor and returned in chains with a statement of his guilt (sub eulogio¹), nor was he to be allowed to plead as an excuse for his contumacy that some other business detained him or a fresh task was laid upon him, since it was forbidden to function twice in the same province.²

In 369 the provincial governors, upon pain of the most severe penalty for negligence, were instructed to journey through their provinces and discover those compulsores who were

competentem esse subiturum. Et submotis, quae contra utilitatem populorum omnium hactenus gesta sunt, frumenti quinquagensimas, hordei quadragensimas, vini et laridi vicensimas susceptoribus dari praecipimus. Humanitatis autem necessitate commoniti susceptoribus in Armeniae susceptionibus longinquitatis causa frumenti et hordei quadragensimas, vini et laridi quintas decimas dari praecipimus.

1. Godefroy, ad Codicem Theodosianum, VIII, 8, 9 : Eulogium hic et l. 6 de custod. reor. est notoria criminis, de quo nota iam omnia. Isidori, Glossae, Eulogium textum malorum dictorum, quod notoriam dicunt.
2. Codex Theodosianus, VIII, 8, 9 (C. Just., XII, 60, 3) : Quod si exacto spatio anni eius regionis visceribus praedator insidens deprehensus fuerit remorari, tunc absolutus cingulo militia abicietur, primoribus eiusdem militiae decem librarum auri multa proposita. Sin redire dissimulet, ligatus ferreis nexibus cura provincialis officii sub eulogio ad debitum mittatur examen nec ei liberum sit, ut hoc se privilegio aut occasione defendat, quod sibi aliud negotium vel aliam necessitatem post iniunctam esse causetur, cum isdem licentiam auferamus in eadem provincia iterare exactionem.

insolently over-exacting,¹ and in 406 Honorius bade the Prefects make a diligent investigation of offending discussores and land-inspectors (peraequatores) and deprive them of the codicilles investing them with their authority.²

In 429 Valentinian III fixed the procedure for the collection of the tribute in gold and silver. The governor of the province was responsible as usual for the correct amount. The arcarius or susceptor must give the possessor a receipt for his tax. A report of whatever came into the treasury was then sent not only to the Count of the Sacred Largesses and the Count of the Privy Purse, but also to the Praetorian Prefect who had general supervision of the taxation. If a palatinus of either Count dared do anything in contravention of this arrangement, he was to be seized by the governor and sent to the Prefect for punishment. The provincials were given the right of rejecting excessive claims of the palatini and defending themselves in court. They might appeal to the Counts of

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1. Codex Theodosianus, I, 16, 11 : Provinciiis praesidentes per omnium villas sensim atque usitatum vicisque cunctos discurrent et ultro rimentur a singulis, quid unusquisque compulsor insolenter egisset aut cupide. Is enim, de quo aliqua ad nos querella pervenerit, ad ultimam poenam rapietur.
 2. Codex Theodosianus, XIII, 11, 11 : Per hoc quinquennium multos comites ac peraequatores nec non etiam discussores per diversas provincias constat esse directos, quos nihil profuisse utilitatibus publicis cognovimus. Ideoque sublimitas tua eorum actus diligenti examinatione perpendat et si quos neglegenter invenerit iniuncta curasse, ablati codicillis primitus et refusi faciet in duplum quae perceperunt emolumenta redhibere. Si quos vero rapacitate plectenda a provincialibus aliquid abstulisse constiterit, direpta in quadruplum redhibere compellas.

the Sacred Largesses and Privy Purse, and if their case was ignored, authority was then bestowed upon the Prefect to receive their complaints and vindicate them in his court.¹

When both palatini and provincial apparitores joined forces to fleece the flock entrusted to them, the Emperors endeavoured to make of the defensores civitatum a means of refuge for the oppressed provincials. They were instructed to prevent the employment of false weights and measures in exacting the tribute, empowered to arrest any offender and send him to judgment with the evidence of his fraud,² and enjoined to report to the Praetorian Prefects, Masters of the Horse and Foot, Masters of the Offices, and Counts of either treasury

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1. Codex Theodosianus, XII, 6, 32 (C. Just., X, 72, 15; XII, 60, 5) : Aurum sive argentum quodcumque a possessore confertur, arcarius vel susceptor accipiat, ita ut provinciae moderator eiusque officium ad crimen suum noverit pertinere, si possessoribus ullum fuerit ex aliqua ponderum iniquitate inlatum dispendium. Possessori sane securitatem sub designatione titulorum arcarius vel susceptor emittat et quidquid ex provinciis ad nostrum dirigetur aerarium, id non solum ad inlustres viros aerarii nostri comites, sed etiam ad eminentiam tuam pari relatione deferatur. Contra haec nostra si quicumque vetito ausu palatinus audebit, licebit provinciae moderatori eundem correptum ad sublimitatis tuae iudicium sub prosecutione dirigere, licebit provinciali, etsi probatur obnoxius, palatini contra vetitum exactionem sibi vindicantis temeritatem legitime repellere. Quam si provincialis pulsare nequiverit et delata ad inlustres viros aerarii comites querimonia inpediente palatino officio non meruerit ultionem, tunc demum licebit magnificentiae tuae possessorum querellas et probata aput se dispendia vindicare.
 2. Codex Theodosianus, XI, 8, 3 (C. Just., I, 55, 9) (409) : Velut licito committi frequenti laesorum deploratione didicimus, ut maioribus subiectis mensuris atque ponderibus gravi possessor damno quatiatur. Iubemus, ut cura et sollertia defensorum hoc fieri a susceptoribus non sinant deprehensoque ad iudicium dirigant, cum ipso commissae fraudis indicio.

anything committed to the injury of the possessores.¹

And yet, though threatened with every variety and degree of punishment, "the allurements or the protection of the great, the collusion of comrades equally bent on plunder, remoteness from the seat of Empire, the dumb patience of the rustic folk who could not defend themselves and whose natural protectors were often in league with their plunders² - all these things produced a sense of impunity which the distant sound of Imperial menaces seems to have hardly disturbed for a moment."³ Surely, as Dill remarks, no man was more to be pitied in the whole Empire than the Emperor himself when that Emperor was one (and there were many such) who seriously felt his responsibility, the responsibility of maintaining an orderly, civilized human existence in the face of the barbarian menace.

The state of the imperial domains in Africa during

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1. Codex Justinianus, I, 55, 8 (409) : Quod si quid a qualibet persona contra publicam disciplinam in laesionem possessorum fieri cognoverint defensores, referendi habeant potestatem ad illustres et magnificos viros praefectos praetorio et illustres viros magistros equitum et peditum, magistros etiam officiorum et comites tam sacrarum largitionum quam rerum privatarum.
 2. The defensores, for instance, ended by being just one more avaricious official in collusion with the rest.
 3. Dill, op. cit., p. 273. That the lot even of the palatinus, however, was not always an easy or profitable one may be inferred from Novellae Valentiniani, XLV, 3 (ed. Goth.), forbidding palatini of the Sacred Largesses to abandon their militia and transfer either to another service or to the ecclesiastica obsequia, and ordering him to be dragged back even within thirty years of the change.

the tumultuous reign of Honorius illustrates the anarchy into which the Western Empire was lapsing. The African provinces were of supreme importance not only for the alimentation of the Capital, but for the provisioning of the troops on the seriously threatened northern limes. A large part of the entire Diocese formed a part of the private domain of the Emperor, which was still further enlarged in the reign of Honorius by the proscription of Gildo and his followers and the Donatist heretics. Yet the entire Diocese was in a state of the wildest disorder, distracted by schism in the Church and military revolts. The protracted rebellion of Gildo resulted in great damage to the Privy Purse, and in 399, the year after the final suppression of the Usurper, Honorius in an edict to Apollodorus Proconsul of Africa declared that the greater part of the Patrimony had been snatched away by evil men.¹ At this time he was especially concerned over the grain supply,² and therefore remitted the quadruple restitution imposed upon this type of usurpation and ordered whatever had been stolen to be restored within three months without further penalty. In case of failure to make restitution within the allotted time, the penalty was twofold restitution.³ We may

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1. Codex Theodosianus, X, 1, 16 : Omnium praediorum, quae rei nostrae adgregata sunt, in diversis speciebus maxima pars passim ab improbis direpta est.
 2. Symmachus, Epistolae, IX, 14 writes to this same Apollodorus beseeching him to hasten the despatch of provisions for their common fatherland.
 3. Codex Theodosianus, X, 1, 16.

judge of the results of the attempt to rehabilitate the African provinces, when we find Honorius informing the Prefect in 406, "We know that for these five years past a multitude of counts, land-inspectors, not to mention discussores, have been sent into the various provinces who have benefited the public necessities not at all."¹

The approach of Alaric occupied the government nearer home and Honorius was content so long as Heraclian the Proconsul remained nominally faithful and withheld the annona from Attalus. After the Gothic danger was removed, Heraclian himself, somewhat tardily for his own chances of success, revolted and once more disrupted the administration of the province, which, after its recovery, was in such a state by 417 that the Emperor felt obliged to suspend for a time the authority of the Count of the Privy Purse over the very important African patrimonies and to appoint a certain Sebastius² as a special Commissioner with plenary powers to restore order in the province, with the title vir spectabilis comes primi ordinis peraequator generalis.³

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1. Codex Theodosianus, XIII, 11, 11 : Per hoc quinquennium multos comites ac peraequatores nec non etiam discussores per diversas provincias constat esse directos, quos nihil profuisse utilitatibus publicis cognovimus.
 2. Seeck, Pauly-Wissova, Vol. XVII, col. 955, s.v. Sebastius.
 3. Godefroy, ad Codicem Theodosianum, XIII, 6, 9, considers it quite certain that Sebastius' Commission had to do with Africa because of the many references to the estates of the navicularii and the well-known difficulties of Honorius with the African grain supply. Cf. Codex Theodosianus, X, 3, 7: . . probatissimi peraequatoris generalis electio.

The Commission of Sebastius is restored by Godefroy from a number of scattered laws in the Theodosian Code all addressed in this year to Sebastius, which he considers to be parts of one mandate later broken up and published under separate titles.¹ In May of 417 Honorius wrote to Ursacius, Count of the Privy Purse, informing him that his authority was temporarily suspended during an investigation of the estates of the Privy Purse, held iure emphyteutico.² Count Sebastius is instructed to traverse the entire patrimony, carefully making the peraequatio, i.e. land inspection and census. Estates without owners and waste lands were to be added to adjoining property or assigned to new owners who were not liable for arrears of taxation. Persons receiving such lands from the Peraequator were recompensed for the expenses of amelioration. Two months were allowed for anyone with a claim upon the land to bring his action into court. If no such claims were produced within the allotted time, the transfer was final and permanent.³

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1. Godefroy, ad Codicem Theodosianum, X, 3, 7.
 2. Codex Theodosianus, X, 3, 7 : *Emphyteutici iuris praedia ita locari praecipimus, ut cessante inlustri privatarum comitis iussione quanta sors in aliis functionibus fuerit sublevata, tanta etiam in pensione dematur. Illud quoque pari diligentia statuimus, ut, si quis etiam rescriptum de nostris alteribus meruerit alium inspectorem loca debere discutere, subreptio ista vacuetur et illud valeat, quod prabatissimi peraequatoris generalis electio, non specialis et gratiosa forsitan, definivit ambitio. Cf. Codex Theodosianus, XIII, 11, 17 : . . . ab spectaculitate tua convenit iterare, quatenus aliorum cessante iudicio intra provinciam, sibi commissam tuo omnia finiantur arbitrio.*
 3. Codex Theodosianus, XIII, 11, 15 : *Si qui aliarum possessionum dominus desertum praedium suum inspici forte voluerit,*

Since Honorius was particularly concerned with the grain supply, his peraequator generalis was commissioned to investigate in particular the condition of the estates of the corporation of navicularii, who were responsible for the transport service. All fundi which had been freed from the functio navalis by public auction within the past twenty years were recalled and held to this obligation;¹ and in assigning waste lands which had formerly been liable to the naval service, the new owner might, if he chose, continue in this capacity and his estate would be freed from other burdens.²

universa loca quae possidet etiamsi idonea sunt, peragrari patietur, ut sarcina destitutae possessionis, in quantum inspectio deprehenderit, possit melioribus sociari peraequatoque omni patrimonio nihil de desertis postea conqueratur. Tantum enim his praediis aperte et absoluta levamenta praestamus, quorum aut domini omnino non extant aut paupertate mediocres ipsa tantum praedia habere monstrantur. Codex Theodosianus, XIII, 11, 16 : Competitionis obreptione seclusa aput eum possessio firma permaneat, cui a peraequatore semel eam traditam fuisse constiterit.

Reliqua vero temporis ante acti a novo domino fiscum postulare non patimur. . . . qui eam a peraequatore susceperat, rei melioratae receptis sublevetur expensis. Verum ne sub specie litis dominationes semel constitutae turbentur, duorum mensum spatium censemus debere servari, intra quod is, qui putat sibi rem probabili ratione competere, debitas exerat actiones. Quod si tempus adscriptum silentio fuerit interveniente transactum, nullum penitus repetendi volumus esse principium. Quod si quis eo tempore, quo peraequator praedium alicui addicit, de suo iure vel per se vel per homines suos non crediderit actitandum, duorum mensum curriculis evolutis in perpetuum conquiescat.

1. Codex Theodosianus, XIII, 6, 9 : Navalem haeresim in omnibus volumus custodiri, ut usque ante viginti annos quaecumque possessiones sub hastaria sorte distractae sunt et propter contractum publicum navali fuerant haeresi separatae, si huic oneri ante eas subiacuissse constiterit, rursus ad debitam functionem teneantur obnoxiae.
2. Codex Justinianus, XI, 59, 15 : Si quis deserta praedia,

Also, during the cessation of all other authority in the province, Count Sebastius was instructed to investigate all special mitigations of taxation and other favours received on petition within the past twenty years and determine whether they should stand or be revoked.¹

And yet, within five years (422 A.D.), the same Emperor found it necessary to appoint a further Commission, this time consisting of several spectabiles ac probatissimi nobis viri to investigate the condition of Byzacene and Proconsular Africa, and prepare briefs regarding the condition of individual estates which were submitted to the scrinia of the Praetorian Prefect and the Sacred Largesses by which we are apparently to understand both treasuries. These briefs were made the basis of a new allocation of property and mitigation of taxes. The whole was appended in separate edicts to the present constitution and sent to the Count of the Privy Purse. Any property not accounted for in this survey was to be

quae nevaalem sustinent functionem et in desertis nunc usque remanent, sub peraequationis iure perceperit, meliore conditione in omnibus titulis convenit ea relevari, ut gravis sors navalis esse non possit pro ea quae resederit portiuncula, cum aliis fuerit dispendiis liberata.

1. Codex Theodosianus, XIII, 11, 17 : Illa, quae ante viginti retro annos speciali inpetratione diversis petitionibus inspecta claruerint, ab spectabilitate tua convenit iterari, quatenus, aliorum cessante iudicio intra provinciam sibi commissam, tuo omnia finiantur arbitrio. Eas quoque possessiones, quae ante viginti similiter annos speciale beneficium de recisione meruerunt, studiose peragrare debebis, ut, utrum a re sint postulata remedia vel his aliquid deceat functionis adiungi, aestimatio fida demonstret.

disposed of at the discretion of the respective governors of Byzacene and Proconsular Africa.¹

In the East, the condition of the whole region of Asia Minor, and especially of the extensive Crown lands which were situated there, became so bad that Justinian, as we have seen was obliged to introduce a series of administrative reforms which largely supplanted the time-worn and traditional system of the Late Empire and marks a step in the direction of the later Byzantine organization, reforms which seriously infringed upon the authority of the central officials who had hitherto administered the private estate.

1. Codex Theodosianus, XI, 28, 13 : Breves, quos spectabiles ac probatissimi nobis viri ac palatinorum sacrarum vel ad praetoriana scrinia detulerunt, et professionis modum eum, qui brevibus sedit, scribi volumus, eum vero qui recisus est de chartis publicis iubemus auferri De his vero, quae edictis pendentibus nondum sunt certis adsignata personis, rectores provinciarum decernimus providere.

Chapter XI

THE STORING AND TRANSPORT OF THE TAXES OF THE RES PRIVATA

The taxes whether in kind or money were received and receipted by the arcarii or susceptores,¹ and stored in the chief cities of the local administrative districts of the res privata ready for transport to the seat of the government or wherever they might be assigned for local consumption.²

These treasure houses and granaries were placed under praepositi or praepositi horreorum.³ The praepositi were selected from the officia of the provincial governors or, by exception, from the curial order, if necessary,⁴ although Valentinian III in 430

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1. Codex Theodosianus, XII, 6, 32.
 2. Codex Theodosianus, VIII, 5, 48 : Lineae vel amictoria, quibus hactenus onerari raedae solebant, nec ulterius raedis, sed angariis vel navibus dirigantur et si alicubi repertae fuerint huiusmodi species, thesauris eius urbis, in qua deprehensae fuerint, deputentur, per angarias, ubi facultas fuerit, destinandae.
 3. Codex Theodosianus, VIII, 5, 13 refers to those qui largitionibus praesunt.
 4. Codex Theodosianus, XII, 6, 5 (365) : Perpenso prospeximus studio, ut susceptores et praepositi horreorum ex praesidali officio, qui per diversa officia militiae sacramenta gestant, congrua ratione crearentur. Sed quoniam praeses Ciliciae adseruit deesse ex his corporibus quibus possit haec sollicitudo committi, ne in praesens tempus fisci nostri seu publica emolumenta vacillant, excellentia tua, ubi eos deesse perviderit, quos susceptores ac praepositos creari

forbade the curiales of Africa Proconsularis to act as prae-positi horreorum.¹ The nominatores were liable for their appointees to the office,² and Honorius in 399 renewed a law of Gratian by which the praepositi horreorum as well as the collectors (susceptores) were forbidden to enter upon their functions until they had hypothecated their own property and a complete inventory of that of their fideiussores had been registered in the archives of the officium they were to serve, in order to put an end to the thefts from the res privata.³

Transport of the taxes by sea was apparently undertaken upon the responsibility of the agents. At least, we find a letter of Cassiodorus which has reference to the "tearful" petition of some superintendents of grain (prosecutores frumentorum) who had apparently been entrusted with some cargoes of

scitis prioribus iusseramus, vetustum morem consuetudinemque sectabitur, scilicet ut ex eo ordine constituentur, ex quo ante consueverant ordinari.

1. Codex Theodosianus, XII, 6, 33 : A Byzacena provincia dudum impetratum fuisse comperimus, ut urbium suariorum curiales horreorum custodiam curamque susciperent; ideoque sancimus proconsularis provinciae horreis non praefici principalem.
2. Codex Theodosianus, XII, 6, 8 (365) : Iuxta inveteratas leges nominatores susceptorum et eorum, qui ad praeposituram horreorum et pagorum creantur, teneantur obnoxii, si minus idonei sint qui ab iisdem fuerint nominati, nec quicquam ex eorum substantia celebrata per interpositam personam emptione mercantur.
3. Codex Theodosianus, XII, 6, 25 : Palatinum iubemus procurare officium, ut nullus praepositurae vel cuiuscumque susceptionis subeat munus, antequam iuxta legem divae memoriae Gratiani et susceptorum substantiae et fideiussores facultates diligenti descriptione collectae ad eiusdem officii notitiam perferantur, cessante responso, quod per subreptionem in aerarii nostri dispendium elicatum est.

grain from the res privata destined for famine-relief in Gaul. They inform the King that their cargoes have perished at sea and the Count of the Privy Purse is instructed to refund to them at once the proportion (modiatio) which each of them can prove he has lost by this misfortune.¹ Of this letter Hodgkin says : "It would seem that these are not merchants supplying the famine-stricken provinces of Gaul as a private speculation, but public officers who have had certain cargoes of corn entrusted to them from the State magazines, and who, but for this letter, would be bound to make good the loss suffered under their management."²

The use of the cursus publicus, or Imperial Posting Service, for the transport of government taxes, wherever they did not go by sea, was strictly supervised to guarantee their safe delivery as well as to prevent abuse of the posting service. Due to the danger of loss by ship-wreck of which we have just had an example, there was a distinct preference for transporting the taxes by land. (except, of course, in the case of the grain supply from Africa, Sicily, Sardinia and Egypt), especially

1. Cassiodorus, Variae, IV, 7 : Atque ideo sublimitas tua persecutores frumentorum, qui de Sicilia fuerant ad Gallias destinati, lacrymabili nos aditione pulsasse cognoscat, dum susceptum onus promovissent in belagus, adversis flatibus fuisse susceptum. . . . Unde illustris sublimitas tua, praesenti auctoritate commonita, modulationem tritici quam sub hac sorte periisse probaverint, supradictis prosecutoribus sine aliqua faciat cunctatione reputari.

2. Hodgkin, The Letters of Cassiodorus, p. 239, note 3.

such taxes as were paid in gold, silver and precious vestments for the Court. Naturally, in view of the difficulties of shipping bulky things under a primitive communication system, the taxes in kind were consumed locally as much as possible and only the alimantation of the Capitals or the concentration of troops for a campaign necessitated long distance transport and the accumulation of vast stores in one place. Such things, however, as the taxes in gold and silver and the vestments and precious things which served the luxury of the Court were concentrated at the seat of government.

In the first place, to use the Imperial Post at all a pass or evectio was necessary. To prevent overburdening the system which at best was necessarily primitive, the right of issuing the evectiones was limited and strictly supervised.¹ In 362 Julian, at the suggestion of the Count of the Sacred Largesses, gave the provincial governors the right to issue evectiones for the transport of fiscal levies in case the Vicar of the Diocese was absent.² In 364 Valentinian renewed this provision,³ and in 374 he permitted the governor to issue a

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1. Cf. Boak, The Master of the Offices in the Late Roman and Byzantine Empires, p. 74 f.
 2. Codex Theodosianus, VIII, 5, 13 : Ad suggestionem comitis adque eorum, qui largitionibus praesunt, inlationi specierum largitionalium competentes evectiones rectores provinciarum, cum absit vicarius, facere debent. Quod universis rectoribus tua sublimitas indicare non differat.
 3. Codex Theodosianus, VIII, 5, 20 : Iuxta divi Iuliani consultissimam legem ad transferendas largitionum res necessarias competentia iudices evectionum subsidia perferant.

pass even for another province than his own in case pressing need did not permit waiting for the evectio from the Vicar.¹

In 382, when Theodosius removed the right of issuing evectiones from the provincial governors, he was obliged to make an exception in the case of passes for the transport of the government taxes.²

The official in charge wherever government taxes were locally received and stored for transport (praepositus largitionum, praepositus horreorum, arcarius) prepared an inventory of the things to be shipped which he submitted to the office of the governor upon requesting evectiones for a sufficient number of state wagons to convey the accumulated taxes.³ Valentinian decreed that only two or at most three persons should accompany each carriage as custodes vel prosecutores;⁴ Theodosius allowed

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1. Codex Theodosianus, VIII, 5, 33 : Evectionum emittendarum etiam per ceteras provincias dumtaxat in translationem vestium tua sinceritas habeat facultatem, ut, si forte in itinere vicarius non fuerit, cum vestes eaedem transferuntur, tarditas nulla generetur. . . . Et hoc quidem eo constituitur exemplo, quo aurum argentumque transfertur, in quo utique nullum evectionibus tuis adfertur obstaculum, quominus id, quod transmissum fuerit, ad loca statuta perveniat. Eaedem autem vestes militares . . .
 2. Codex Theodosianus, VIII, 5, 40 : His enim tantum ambulandi facultatem iudices ex suo arbitrio praebituri sunt, quos in transmissione largitionalium titularum prosecutores viderint constitutos, . . .
 3. Codex Theodosianus, VIII, 5, 18 (364) : Si quando praepositus largitionum species transmittendas necessarias esse suggererit ac brevem diversarum specierum, cui subvectio vehiculorum poscitur, designaverit, a praesidibus diversorum officiorum evectio competens praebetur.
 4. Codex Theodosianus, VIII, 5, 18 : Illud etiam sublimitas tua observari omni cautione praecipiat, ne amplius in singulis quibusque carpentis, quam bini aut ut summum terni homines

two palatini prosecutores attended by three slaves¹ to accompany each carriage conveying government funds, and gave instructions for them to take with them fifty pounds of gold and sufficient equipment to provide them for the necessities of the journey.²

The weight of the load to be conveyed in each vehicle also was carefully specified. Constantius provided that the type of carriage known as a raeda should be loaded with 1,000 pounds and drawn by eight mules in summer or ten in winter, the birota with 200 pounds drawn by three mules, and the veredus with thirty pounds.³ There was still another type of carriage, apparently the largest in the service, known as angaria which could be loaded with 1,500 pounds.⁴ It was

invehantur, quos tamen directarum rerum custodes vel prosecutores esse constiterit; op. cit., 20 : Illud quoque adiectum est, ne quicquam oneris vehiculis publicis cumulatius, quam ratio fiscalis posceret, superponeretur, si quidem non amplius in singulis quibusque vehiculis, quam binos aut ut summum ternos sedere praeceptum sit.

1. Cf. Eusebius, Historia Ecclesiastica, X, 5 in which the Bishop of Syracuse is invited to the Synod of Arles and supplied by the Consular of Sicily with the use of a public carriage and three boys to accompany him and minister to him on the road : ἄλλα μὲν καὶ τρεῖς παῖδας, τοὺς συνοσόμενους ὑμῖν κατὰ τὴν ὁδὸν ὑπηρετήσασθαι.
2. Codex Theodosianus, VIII, 5, 48 : Sint praeterea duo palatini prosecutores singularum raedarum cum tribus servis, habentes quinquagenarum librarum avertas et saga, quibus par erit eos pro itineris necessitate muniri.
3. Codex Theodosianus, VIII, 5, 8 : Statuimus raedae mille pondo tantummodo superponi, birotae ducenta, veredo triginta; non enim ampliora onera perpeti videntur. Octo mulae iungantur ad raedam aestivo videlicet tempore, hiemali decem; birotis trinas sufficere iudicavimus.
4. Codex Theodosianus, VIII, 5, 28 : . . angariae mille quingenta sufficient.

repeatedly necessary to legislate against exceeding these limitations,¹ and those who did so were most severely punished.² The purpose, of course, of these limitations was to prevent abuse of the post animals.³

Curiously enough, a sharp distinction was made between the Sacred Largesses and the Privy Purse in respect to the amount of treasure to be conveyed in a single carriage. We must assume from this that the carriages for each were of a different type and size. In the case of gold or silver of the Sacred Largesses destined for the Imperial Court, one raeda was loaded with 500 pounds of gold, or 1,000 of silver; in case of the Privy Purse, 300 pounds of gold, or 500 of silver.⁴ In the case of accumulations of linens and fine vestments, Theodosius decreed that they should no longer go by raeda, but by angaria or ship wherever possible, except in the case of the delicate

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1. Codex Theodosianus, VIII, 5, 28 : Quod iam Gallis prodest, ad Illyricum etiam Italiaeque regiones convenit redundare, ut non amplius raeda quam mille pondo subvectet, angariae mille quingenta sufficient, veredo ultra triginta nullus inponat.
 2. Codex Theodosianus, VIII, 5, 17 : Illud sane, ut penitus enormium vehiculorum usus intercidat, sancendum esse decernimus, ut, quisquis officium ultra hanc quam perscribimus normam vehiculum crediderit esse faciendum, non ambigat sibi, si liber sit, exili poenam, si servus, metalli perpetua supplicia subeunda.
 3. Codex Theodosianus, VIII, 5, 8 : Erectiones ab omnibus postulentur, quacumque conspicui fuerint dignitate; non enim debet esse unquam efficax usurpatio, quae possit animalibus publici cursus inferre perniciem . . . Statuimus raedae mille pondo tantummodo superponi, birotae ducenta, etc., as cited above.

robes for the use of the Emperor; they were to be shipped in raedae, 1,000 pounds to a load.¹

To secure efficiency in the prompt conveyance of its taxes when and where requisitioned the res privata was provided with a regularly organized Transport Department.² In the West this was apparently divided into two sections, "the transport service of the Privy Purse for the lower East" and "the transport service of the Privy Purse for the Gallic provinces," each under a praepositus.³ What is meant by "the lower East" is not clear; we surmise that it has reference to the transport of the taxes of the Privy Purse in the African Diocese. The concentration of stores of grain in the granaries at Carthage ready for shipment was an imperative necessity upon the occasion of a shortage in Rome. It was in the event of such extraordinary contingencies, as we have already seen, that the res privata was called upon. The transport service in the Gallic Diocese would, of course, be organized largely for the supply of the frontier armies.

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1. Codex Theodosianus, VIII, 5, 48 : Lineae vel amictoria, quibus hactenus onerari raedae solebant, nec ulterius raedis, sed angariis vel navibus dirigantur et si alicubi repertae fuerint huiusmodi species, thesauris eius urbis, in qua deprehensae fuerint, deputentur, per angarias, ubi facultas fuerit, destinandae; reliquae vero delicatae vestes, sed et linteamen amictorum nostrorum usibus necessarium raedis sub mille librarum ponderatione mittantur. For the weight of 1,000 pounds cf. C.Theod., VIII, 5, 8; 17; 28; 30; 47.
 2. Notitia Dignitatum Orientis, XIII : Sub dispositione viri illustris comitis rerum privatarum : Bastaga privata.
 3. Notitia Dignitatum Occidentis, XI : Sub dispositione v. ill. com. rer. priv. : Praepositus bastagae rei privatae orientalis inferioris; Praepositus bastagae privatarum Galliarum.

Chapter XII

THE IMMUNITY OF THE RES PRIVATA

It is difficult to say to just what extent the *res privata* enjoyed immunity from ordinary taxation at the beginning of the Late Empire.¹ Obscurity and contradiction in the Codes makes it next to impossible to arrive at any conclusion on this matter. Codex Theodosianus XI, 1, 1² has been used to prove that the imperial domain was immune in the reign of Constantine,³ but this law which is obscure in meaning and seems to be hopelessly corrupt cannot possibly date from the reign of Constantine; it must be assigned rather to a period late in the reign of Constantius because of the persons and titles cited in it.⁴ And yet a law of Constantius definitely indicates that by 349 the immunity of the res privata had been removed in order that the burden of the provincials might be lessened,⁵ and, by

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1. For a discussion of this problem, cf. Beaudouin, op. cit., pp. 152 ff. and the authorities cited there; His, op. cit., pp. 108-113.
 2. Praeter privatas res nostras et ecclesias catholicas et domum clarissimae memoriae Eusebii ex-consule et ex-magistro equitum et peditum et Arsacis regis Armeniorum nemo ex nostra iussione praecipuis emolumentis familiaris iuветur substantiae. Datianus enim vir clarissimus patricius, qui hanc olim gratiam fuerat consecutus, auferri sibi id cum tanta instantia depoposcit, cum quanta alii poscere consuerunt. Etc.
 3. By Beaudouin, op. cit., p. 153.
 4. Cf. Mommsen & Meyer, ed. of Codex Theodosianus, p. 571, and Seeck, Regesten, p. 207, all of whom assign the law to 360.
 5. Codex Theodosianus, XI, 7, 6 : Actores ceterique rei privatae nostrae ad solutionem specierum sollemnium debiti vigoris auctoritate cogantur, ne provinciales rei privatae nostrae fatiget immunitas.

implication, it seems true that the private estate, previous to this law, did enjoy some sort of legal immunity or advantage over the rest of the Empire. At all events by 383 the domus divina, by which we are to understand the res privata,¹ no longer enjoyed any sort of immunity from the regular taxes levied on the rest of the Empire.²

His, and following him, beaudouin³ make a definite distinction between the res privata and the patrimonium. It appears to be difficult to define the precise nature of this distinction, and texts can be cited in which all the terms referring to the private estates seem to be synonymous. Until the creation of the comes sacri patrimonii about 500, both were administered by the Count of the Privy Purse. His and Beaudouin cite Codex Theodosianus XI, 16, 2 (323)⁴ as indicating that the patrimonial or emphyteutic estates of the imperial domain were liable even under Constantine to the ordinary taxes whereas

1. Beaudouin, op. cit., p. 153, footnote 4.

2. Codex Theodosianus, XIII, 10, 8 : Nemo aliquid immune possideat; sit inritum si quid domui nostrae tale concessimus; Cf. also Codex Justinianus, VII, 38, 3 (396) which supposes that the res privata was contained in the census lists - Si qua usquam loca ad sacrum dominium pertinentia cuiuslibet temeritas occupavit, secundum veteris census fidem in sua iura retrahentur; Ibid., XI, 74, 3 (Arcadius, Honorius and Theodosius) : Omnia praedia, tam ea, quae in re privata olim tenentur, quam illa, quae ex proscriptorum bonis ad fiscum sunt devoluta, eatenus ab huiusmodi privilegiis et excusationibus submoveantur, ut omnes species annonarias, cursitationes etiam debitas atque integram opinionem scire t esse solvendam.

3. Op. cit.

4. Ab extraordinariis omnibus fundi patrimoniales adque emphyteuticarii per Italiam nostram constituti habeantur immunes, ut canonica tantum et consueta dependant ad similitudinem per Africam possessorum.

the res privata was immune. However, it has been shown that Codex Theodosianus XI, 1, 1 is not proof for the immunity of the res privata under Constantine. Likewise, Codex Theodosianus XI, 16, 2 has a special application and need not necessarily be understood as applying generally to all the patrimonial estates. It relates to Aemilia and Liguria and that part of Italy known as Italia nostra whose revenues were largely diverted to the maintenance of the Court which lay thereabouts from the time of Maximian.¹ The revenue of the imperial estates there would most naturally go to make up the expenses of the Court and since they already were subject to this burden, in itself extraordinary, they were released from all additional taxes in 323 by a law of Constantine ut canonica tantum et consueta dependant. Similarly, an edict of Constantine dating apparently from 321 would seem to indicate that the fundi patrimoniales paid the regular pensitatio auraria seu frumentaria, but this again can be shown to have a special application.² In 362 A.D., however, Julian promulgated an edict which bound all of those holding patrimonial estates to pay the ordinary taxes.³

To sum up, then, for the early period of the Late Empire the res privata appears by implication from the obscure language

1. Godefroy, ad Codicem Theodosianum, XI, 16, 2, Vol. IV, p. 13.

2. Cf. infra, p. 277.

3. Codex Theodosianus, XI, 19, 2 (C. Just., XI, 65, 3) : Omnes, qui patrimoniales fundos retinent, pro his conveniendi sunt ad universorum munerum functiones, sicut unumquemque privatorum necessitas publicae pensitationis adstringit.

of the Codes to have enjoyed something of a privileged position with respect to the ordinary taxation of the Empire. This, however, should be regarded, I believe, only as immunity from ascription on the regular census lists for the imperial domain must always have been called upon at the pleasure of the Emperor to make fairly heavy contributions to imperial expenses. This immunity cannot have been of long duration and must have been removed by the end of the reign of Constantius,¹ who also removed the Church lands from their privileged position of freedom from taxation.² The imperial estates were then enrolled in the public census lists and made liable to a fixed regular taxation like the rest of the Empire.

This regular taxation would appear to have been fairly high and in excess of that of other estates, and therefore the res privata was for a long time exempted from all extraordinary burdens in order that it might more efficiently fulfill its normal and regular obligations.³ Thus no colonus of the res

1. His, op. cit., p. 108.

2. Codex Theodosianus, XVI, 2, 15 (360 A.D.).

3. Codex Theodosianus, XI, 16, 1 (319) : Patrimoniales fundos extraordinariis oneribus vel mediae aut tertiae portionis obsequiis fatigari non convenit, cum eosdem et auri speciam et frumenti plurimum modum constet persolvere, ita ut qui violare statuta temptaverit puniatur; Ibid., XI, 16, 13 (382) : Privatae rei nostrae privilegiis permanentibus nihil extra ordinem praedia iure perpetuo consignata sustineant neque adiectis saepius ac praeter primum delegationis canonem postulatis adficiantur impendiis, quandoquidem neque aurario canoni sub privilegiis aestimato aliquid ex ea iubentibus nobis praebitionum diversitate decutitur et pari cum ceteris aestimari sorte non convenit, quos praeter annonarias functiones aestimata perpetuo pensionum praerogativa nexuerint.

privata could be called upon to fill the honores or any type of munera in the municipalities,¹ and access to the domain land was denied the governors, provincial nobles (principales) and municipal authorities (curiales). From all their claims the res privata and its cultivators were immune.² In 319 Constantine granted the extensive domain lands in Africa immunity from all extraordinary burdens since they already were liable to a very heavy tax in both grain and gold; they, of course, were called upon to make up a great part of the grain supply of Rome.³ Thus, in an edict addressed to Dracontius who was magister privatae rei per Africam in 321 he speaks of the pensitatio auraria seu frumentaria due from the estates of the Privy Purse held by minors which their guardians had neglected to pay.⁴ In 323, on the model of the edict for Africa, Constantine, in a decree addressed to the Consular of Aemilia and Liguria, bestowed the

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1. Codex Justinianus, XI, 68, 1 : Nullus omnino originalis colonus rei privatae nostrae ad aliquos honores vel quaelibet alia civitatis munera devocetur.
 2. Codex Theodosianus, X, 4, 2 (365) : Divum Iulianum hoc competentissime decrevisse conperimus, ut actores rei privatae nostrae minime necessitatibus terrentur adque adflicterentur iniuriis, quas saepenumero rectores provinciarum vel adrogatione inlicita principalium vel propriis decretis ordinis fieri censuissent. Cf. the edict of Arcadius and Honorius forbidding the curiales to enter the senatorial domains for the purpose of collecting the imposts - C. Theod., V, 3, 2 (396) : Senatoriae functionis curiaeque sit nulla coniunctio, et, ne laedendi curialibus praebetur occasio, per apparitores rectorum provinciae de senatorum fundis fisco postulentur. Cf. Ibid., XI, 7, 12 (383) and VI, 3, 3 (396).
 3. Codex Theodosianus, XI, 16, 1 (C. Just., XI, 65, 2).
 4. Codex Justinianus, XI, 62, 2 : Patrimonialis fundi pensitationem aurariam seu frumentariam intra tempus omissam minorum dominio non nocere praecipimus.

same immunity upon that part of Italy known as Italia nostra.¹ Thus, Africa, administering to the City and the canon urbicarius, was exempt, and for a similar reason was that part of Italy set apart for the normal needs of the Court (Italia annonaria) also exempted from extraordinary burdens.² In 359 Constantius as sole Augustus extended this immunity to the remainder of the Praefecture of Italy. Hence, the immunity of the res privata from extraordinary levies originated in Africa, was extended first to that part of Italy which sustained the Court and then to the regiones urbicariae and Sicily, thus covering all four dioceses of the Italian Praefecture.³ Earlier as Emperor in the East Constantius had released the res privata and its coloni and conductores from all extraordinary burdens in that portion of the Empire.⁴

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1. Codex Theodosianus, XI, 16, 2 : Ab extraordinariis omnibus fundi patrimoniales adque enfyteuticarii per Italiam nostram constituti habeantur immunes, ut canonica tantum et consueta dependant ad similitudinem per Africam possessorum.
 2. Cf. Godefroy, ad Codicem Theodosianum, XI, 16, 2, Vol. IV, p. 13. According to Sextus Aurelius Victor, XXXIX, when the Empire was divided between Diocletian, Maximian, Constantius and Galerius a part of Italy was subjected to a new annona for the support of the Emperor and his army. From this time the Court regularly lay in the north and not at Rome. All the laws of Maximian are dated from northern cities. The seat of the Court in Italy gradually gravitated first to Milan, then to Ravenna, and northern Italy or Italia nostra which supported the Court as distinct from the regiones urbicariae became known as the annonariae regiones or Italia annonaria. It was by far the most productive part of Italy and included the rich Po valley.
 3. Codex Theodosianus, XI, 16, 9 : Exemplo Africae debent fundi patrimoniales et enfyteutici per Italiam constituti ab extraordinariis omnibus excusari. Non enim per Italiam tantum, sed etiam per urbicarias regiones et Siciliam patrimonialium et enfyteuticorum fundorum vires servandas esse perspeximus.
 4. Codex Theodosianus, XI, 16, 5 (C. Just., XI, 75, 1) (343) :

In 362 A.D. Julian made the patrimonial estates liable to all the munera, extraordinary as well as usual,¹ but his legislation did not last, and the old immunity was soon restored and frequently insisted upon,² and Honorius placed a fine of five pounds of gold upon the governor, his officials and the curiales who violated the immunity of the res privata from extraordinary burdens.³

However, in due time the needs of the Empire became such that even the immunity of the private domain had to be definitely modified and finally abolished altogether. Each military campaign necessitated the preparation of enormous

Privatas possessiones nostras ab universis muneribus sordidis placet esse immunes, neque earum conductores nec colonos vel ad extraordinaria munera vel superindictiones aliquas conveniri.

1. Codex Theodosianus, XI, 19, 2 (C.Just., XI, 65, 3) : Omnes, qui patrimoniales fundos retinent, pro his conveniendi sunt ad universorum munerum functiones, sicut unumquemque privatorum necessitas publicae pensitationis adstringit.
2. Codex Theodosianus, VII, 7, 1 (Valentinian I, 368?) : Dedimus litteras ad viros clarissimos praefectos praetorio, ut ab his conventi rectores provinciarum sciarent in locis rei privatae augmenta pensionum non esse facienda; Ibid., XI, 16, 12 (Gratian, ad Theodorum C.R.P., 380) : Ad virum clarissimum et inlustrem praefectum praetorio Italiae scribta porreximus, ut ab actoribus et conductoribus patrimonii nostri atque ab his, qui iure perpetuo possederunt, extraordinarii muneris cessaret iniuria; Ibid., XI, 16, 13 (C.Just., X, 48, 10) (Valentinian II, 382); Ibid., XI, 16, 17 (Valentinian II, 385).
3. Codex Theodosianus, XI, 16, 20 (C.Just., X, 48, 15) (395?): Evidenter atque absolute iubemus, ne fundi ad patrimonium nostrum pertinentes, seu conductionis titulo seu perpetuo iure teneantur, aliquid praeter ordinem superindicti vel pretii petiti nomine vel de sordidis quibuscumque muneribus agnoscant. Nam hoc et a divis principibus impetratum est et a nostra serenitate reparatum. Quisquis igitur iudicium

quantities of supplies, and every order and profession was called upon to furnish extraordinary levies of arms, clothes, military engines, gold and silver, stores of provisions and various kinds of animals.¹ By 398 the West was so hard pressed that we find the imperial domain itself exempt from only half the extraordinary levies that the rest of the Empire was liable to. This law has special reference to the onerum Rhetorum or obligation of supplying the military annona destined for the northern frontier,² where the pressure of the barbarians was becoming constantly greater. The rationales are instructed to enforce the collection from the res privata of one half the extraordinary levy raised from the rest of the Empire.³ In 404 the military needs of the government of the West were such that all possessores were required to contribute their share to the

contra fecerit, quinque pondo auri de facultatibus, alia de officiis suis, totidem et de curialibus, qui exsequi male iussa festinant, noverit eruenda.

1. Ammianus Marcellinus, XXI, 6, 6 (describing the preparations of Constantius against the King of Persia in 361) : Omnisque ordo et professio vexabatur, vestem armaque exhibens et tormenta, aurum quinetiam et argentum; multiplicisque rei civariae copias, et diversa genera iumentorum.
2. St. Augustine, De civitate Dei, XVIII, 18 : Annonam inter alia iumenta baiulasse militibus, quae dicitur Retica, quoniam ad Retia deportatur.
3. Codex Theodosianus, XI, 19, 4 : Qui praedia patrimonialia et enfyteutica, privatae quoque rei perpetuo iure retinent et dominici actores augmenti et superindicticii et onerum Raeticorum dicuntur mediam nolle solvere pensionem. Igitur iubemus, ut moniti rationales sciant ea, quae a divae memoriae Valentiniano constituta sunt, quam primitus esse servanda.

preparation and transport of supplies for the army without exemption even for the domus divina, and threatened with four-fold exaction if they delayed.¹

Finally, a regular ratio was devised by which the extraordinary tax was fixed at a certain amount in proportion to the size of the estate and the length of time it had been held by lease from the Emperor. Thus, honorius in 423 instructed his Count of the Privy Purse that a person who had been in possession of an imperial estate less than five years should enjoy complete immunity; if in possession between five and ten years he must pay a year's assessment as an extraordinary tax upon demand in addition to the regular amount; if in possession more than ten years, he was liable to an extraordinary levy of a full two years' tax (pensio biennalis). The governor or collector who disregarded this enactment was fined sixty pounds of gold. Likewise, all palatini of the Privy Purse were liable to this penalty and not only those of the scrinia beneficiorum whose concern it was primarily. The primates or primiscriniarii of the bureaus of the res privata were deprived of their belt and dismissed for issuing instructions warranting such

1. Codex Theodosianus, VII, 5, 2 : In excoctione buccellati, quod devotissimis militibus convenit praeparari, in translatione etiam annonae nullius excipiatur persona, videlicet ut ne nostra quidem domus ab his habeatur immunis. Et si quisquam, quod non opinamur, implere quae sunt praecepta neglexerit, in procuratorem eius severissime vindicetur, ita ut, si huiusmodi contumaciae dominum conscius esse constiterit, quadruplum id, quod pro eius capitatione poscitur, posthabita dilatione solvatur.

violations and the documents publicly burned.¹

The next year Theodosius II promulgated a similar but more burdensome law which affected all persons who had received an estate from the Emperor since the death of Theodosius the Great, i.e. during the past twenty-nine years. If the beneficiarii (i.e. those who held by gift of the Emperor) had been in possession for three years, they were immune for the first year and paid a half year's taxes for the other two years. If they had possessed for from three to five, they paid an extra year's taxes; if for ten years, they paid two years' taxes and if more than ten years, three years' taxes. If within four

1. Codex Theodosianus, XI, 20, 4 : . . . Sane, quod non optamus, si umquam extiterit tanta necessitas, ut aliquid in adiumentum aerarii nostri publica requirat expensa, adiuvari nos biennali pensione praecipimus, . . . Ideoque si quando in dono datis intra quinquennium possidentem necessitas dandi forte reppererit, hunc a conlatione esse iubemus alienum; si vero post quinquennium intra decem annorum spatia fuerit possessor inventus, mediam biennalis pensionis inferat portionem. Ii vero, qui supra decennium dono data inventi fuerint praedia possidere, si emerit ulla necessitas, integra biennali nos adiuvent pensione. Quod si contra hanc formam scientia iudicis vel executoris conventio pulsandum intra haec tempora iudicaverit possessorem, ad multam sexaginta librarum auri persolvendam se noverint adstringendos. Nec officium palatinum hac excusatione utatur, ut paucos esse adserat, ad quorum partes et scrinium haec cura pertineat, sed omnes omnium scriniorum totius militiae, quod sub privato meret aerario, ad praescriptam poenam se noverint adtinendos, ita ut primates praeter damnum etiam cinguli amissione multentur, si cuiquam providentiam simulanti consensum in hac suggestionem aut instructionem praebuerint. Ipsum enim codicem causam concussionis et fraudis et universa scriptionum genera tali conexas negotio, ne vestigia timoris posthac ulla remaneant, in conventu provincialium flammis iubemus exuri eademque poena.

months of receiving the demand the possessor did not remit the extraordinary tax he was threatened with revocation of the property.¹

In 430 Theodosius published a new enactment concerning fundi transferred from the imperial property to the ownership of private persons during the past thirty-five years (since the beginning of the reign of Arcadius). A fifth part of the annual income was demanded as an extraordinary tax except in the case of estates assessed at four hundred iuga vel capita or more in which case the extraordinary tax was to amount to half the annual income.²

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1. Codex Theodosianus, XI, 20, 5 : Ab universis, qui post obitum divi avi clementiae meae ex munificentia tam divinae recordationis patris ac patris mei quam etiam serenitatis meae fundos cuiuslibet iuris petiverunt, sub hac dispositione redditus conferantur, ut, quicumque a praesenti die triennio possident, unius anni habentes immunitatem pro reliquo biennio medii anni conferant redditus; ex triennio vero usque quinquennium, unius anni; a quinquennio usque ad decennium, biennii; a decennio et ultra, triennii. . . . Scituris cunctis, quod, quisquis praedictam praestationem intra quattuor menses, ex quo fuerit admonitus, inferre distulerit, ipsas possessiones, quae donatae eidem videntur, amittet.
 2. Codex Theodosianus, XI, 20, 6 : Eorum iugorum sive capitum sive quo alio nomine nuncupantur privati iuris vel patrimonialis sive civilis sive templorum, quae a principio imperii divinae recordationis Arcadii genitoris mei ex petitionibus diversorum vel ultra datis adnotationibusque in praesentem diem qualitercumque relevata sunt vel adaerata levius vel de patrimoniali iure ad privatam vel in aurariam aerariam atque ferrariam praestationem translata, quinta pars commodi, quod ex eo beneficio ad dominos fundorum pervenit, ex eodem tempore exacta pro aestimatis per singulos annos habitis arcae et sacrarum largitionum viribus ex aequo societur. Exceptis his, quae in capitatione humana atque animalium diversis qualitercumque concessa sunt, ita ut omnium, quae praedicto tempore atque etiam sub inclytae recordationis avo nostro in terrena sive animarum discriptione

The obligation to keep the public highways in a state of repair seems at all times to have lain upon the conductores and coloni of the Privy Purse as well as upon the other subjects of the Empire. Thus, as early as the reign of Constantine, i. e. at the very beginning of the period we are studying, the emphyteutic holders on the imperial domain, though immune from extraordinary burdens, were not exempted from road-building on the ground that "no one ought to be immune from burdens which are for the general good of all."¹ We do not find this liability of the domus divina insisted upon, however, and it appears from a constitution of Honorius that it enjoyed a certain immunity² until near the end of the fourth century by which time the great public highways and the posting service of the Empire seem to have been getting into a bad state.³ In 387 Valentinian II, therefore, enacted anew the universal liability of his subjects to the repair of the roads, the domus divina not excepted.⁴ In an edict of 399 Honorius refers to "the wide

relevata sunt usque ad quadringentorum iugorum sive capitum quantitatem pars dimidia publicis censibus adiungatur, ut, si quidem usque ad quadringenta iuga vel capita relevatio facta est, dimidia tantum pars fisco reddatur.

1. Codex Theodosianus, XV, 3, 1 (319) : Emphyteuticarii possessores, qui mansuetudinis nostrae beneficio ad extraordinaria minime devocentur, sicut ceteri provinciales obsequium suum muniendis itineribus impendant. Nulla enim ratione debent ab hoc, quod in commune omnibus profuturum est, esse seiuncti.
2. Codex Theodosianus, XV, 3, 4 : Etiam istud adiungimus, ut domos etiam clementiae nostrae, quas vetusta et innumera ab huius oneris curatione privilegia vindicabant. . .
3. Dill, op. cit., p. 238.
4. Codex Theodosianus, XV, 3, 3 : A viarum munitione nullus habeatur immunis, et eorum praediorum actores, qui forte

spread destruction of the public highways" and summons all, regardless of previous privileges, to hasten to their repair, the domus divina and the illustres themselves not exempted.¹

An edict of Valentinian III, promulgated in 441, testifies to the widespread devastation and universal dislocation of the public service of the Empire. It has reference to the upkeep of the military roads, the arms factories, the restoration of walls, the preparation of military annonae and other public works and munera relating to what the Emperor chooses to call "the splendor of the public defense",² and urging "the difficulty of the times" (sub difficultate autem praesentis temporis) removes at a single stroke all immunities from all public burdens from the cultivators of the domus divina,³ ecclesiastics, the illustres and whoever possessed

iniuncto oneri privilegiorum contemplatione parere minime voluerint, nostrae domui vindicentur.

1. Codex Theodosianus, XV, 3, 4 : Dudum quidem fuerat constitutum, ut inlustrium patrimonia dignitatum ab instauratione itinerum haberentur excepta. Verum propter immensas vastitates viarum certatim studia cunctorum ad reparationem publici aggeris conducibili devotione volumus festinare, nulla ad instructum munitionis huiusce dignitate aut privatorum privilegiorum in qualibet . . . studiosius adpetita. Etiam istud adiungimus, ut domos etiam clementiae nostrae, quas vetusta et innumera ab huius oneris curatione privilegia vindicabant, par condicio et sollicitudo constringat, ita tamen, ut in ceteris quae vel inlustribus vel patrimonio nostro praecedentibus edictis beneficia fuerant adtributa, intemerata permaneant.
2. Novellae Valentiniani, X, #3 : . . . quo instauratione militarium viarum, quo armorum fabricatio, quo murorum refectio, quo apparatus annonae, quo reliqua opera, per quae ad splendorem defensionis publicae pervenitur. . .
3. Ibid., #1 : Hanc itaque iniquitatem corrigentes, primo capite huius sanctionis decernimus, ut omnes, quicumque ex

them hitherto.¹

In the East, Theodosius II likewise decreed that no one whatever his dignity and not even the domus divina nor the venerable churches themselves were exempt from the burden of construction and restoration of roads and bridges.²

This liability survived into the Ostrogothic Kingdom and on to the estates of the Church. Thus, we find Theodoric ordering the erection of a new city in the region of Tridentum (Triente), and since the work was extensive and the inhabitants

iure domus regiae vel a pietate mea vel a qualibet persona sacrarum necessitudinum mearum praedia adepti sunt, sive usufructuaria largitate, seu donatione directa, seu commutationis vel emptionis ratione quaesita, parem cum ceteris possessoribus subeant functionem; in hac sorte numerandis his quoque, qui retento sibi usufructu proprietatem iuris sui venerabilium pignorum meorum vel pietatis meae domui contulerunt: quos omnes ea conditione tributa volumus agnoscere, ut nihil sibi ex aurariis titulis vel superindictitiis vindicent, quos, ad similitudinem domus nostrae, qualibet sacri praecepti impetraverunt sanctione.

1. Novellae Valentiniani, op. cit., #2 : Secundo gradu huius legis cavemus, ut, quicumque census illustrium dignitatum, sive ecclesiasticus vel in urbe sacratissima, vel in quibuslibet provinciis, ad exemplum domus nostrae, quocumque praecepto diversam sibi ab aliis ipsius census, quem solvere videbatur, conditionem fecerit, onus consuetum absque ulla privilegii exceptione sustineat, nec in arcalibus tantum titulis, sed et his, quos sacri vel privati aerarii partibus deputavit vetustas, ut ita demum difficultati expensarum vexationique inopum, divinam moderationem secuti, gemina salutaris constituti remedia porrigamus.
2. Codex Theodosianus, XV, 3, 6 (423) : Absit, ut nos instructionem viae publicae et pontium stratarumque operam titulis magnorum principum dedicatam inter sordida munera numeremus. Igitur ad instructiones reparationesque itinerum pontiumque nullum genus hominum nulliusque dignitatis ac venerationis meritis cessare oportet. Domos etiam divinas ac venerandas ecclesias tam laudabili titulo libenter adscribimus.

few, all, not even those of the domus divina excepted, were to assist and each had his appointed length of wall (pedatura) for which he received, however, suitable pay;¹ and in the ninth century the coloni of the Papal domus culta Capracorum built a portion of the Leonine Walls of Rome to protect St. Peter's from the ravages of the Saracens.²

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1. Cassiodorus, Variae, V, 9 : In Tridentina igitur regione civitatem construi nostra praecepit auctoritas. Sed quia territorii parvitas magnitudinem operis sustinere non potest, hoc sollicitudo nostra prospexit, ut acceptis mercedibus competentibus pedaturam murorum omnes in commune subeatis, qui vicinitate iungimini; quatenus accomodato solatio securius impleatur, quod paucis inexplicabile fortasse cognoscitur. Hac conditione scilicet definita, ut nullus ab his oneribus excusetur, unde nec divina domus excipitur.
 2. Gregorovius, Geschichte der Stadt Rom, II, 383.

Chapter XIII

THE RES PRIVATA AND THE RECRUITMENT
OF THE ARMY

It is only to be expected that the Count of the Privy Purse, in view of his direct and centralized authority over a large part of the landed estates of the Empire and a numerous agricultural population, should have some part in the raising of recruits for the army. However, the best troops of the Late Empire were barbarians. Universal liability to military service existed in theory until the time of Valentinian I, but in practice had fallen into abeyance long before. The despotic government felt obliged to maintain a strict separation of the interests of its troops and overburdened tax-payers. The latter, therefore, were carefully disarmed and only the municipal plebs and humblest agricultural classes who were not liable to the land tax were taken as recruits.¹ The government had no desire to deplete the ranks

1. Lot, Fin du monde antique et le début du moyen âge, p. 120; Finlay, History of Greece, Vol. I, pp. 110, 113.

of its cherished tax-payers nor did the Privy Purse wish to lose the labour of its agricultural serfs. Therefore, Valentinian I exempted the domus divina from the obligation of providing recruits in those provinces from which personal service was demanded, such as Thrace whose hardy and bellicose peasants made excellent soldiers throughout the history of the Eastern Roman Empire. This exemption did not apply, however, in the other provinces which were called upon to make a money payment in lieu of actual service. From this tax, the so-called aurum temonarium or aurum tironicum,¹ the domain land was not immune.² Likewise, in 380 Gratian exempted the regiones suburbicariae from the duty of supplying recruits and since the edict is addressed to the Count of the Privy Purse and expressly concerns the immunity of the res privata from extraordinary burdens, we must assume that this exemption applied to the imperial domains situated there.³

This immunity did not persist long, however, and in the face of the crisis produced by the Gildonian War Honorius

1. Lot, op. cit., p. 121.

2. Codex Theodosianus, VII, 13, 2 : Domum nostram ad exhibenda tironum corpora per eas provincias, a quibus corpora flagitantur, nolumus perurgueri: ceterum sinimus conveniri, in quibus pretia postulatur, ita ut ex certa praebitione reddituum vicem concessionis istius repensemus.

3. Codex Theodosianus, XI, 16, 12 : Ad virum clarissimum et inlustrem praefectum praetorio Italiae scribta porreximus, ut ab actoribus et conductoribus patrimonii nostri atque ab his, qui iure perpetuo possederunt, extraordinarii muneris cessaret iniuria neque suburbicariis partibus tironum immineret exactio.

in 397 felt obliged to revive the antique legislation by which the iuniores, i.e. men between twenty and forty, were liable to military service, at the same time suspending the immunity of the imperial estates. The patrimony, therefore, wherever it lay in the provinces was subject to the call for men for the army. The Senators at once protested in a body and sent envoys to Ravenna to beg to be excused.¹ In reply the Emperor decreed that they should be allowed the option of supplying able-bodied recruits or paying twenty-five solidi into the Privy Purse for each recruit for whom they were liable,² and he instructed the Count of the Privy Purse that the fundi perpetuarii of the res privata should also be given this option, apparently whether held by Senators or not.³

The revolt of Gildo was but the beginning of the Western Empire's difficulties. In 406 when Radagisus and his

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1. Symmachus, Epistolae, VI, 62 : Legati ordinis nostri ex usu actis omnibus revertentur. Nam et tyronum conquievit indictio, et argenti nobis facta gratia est.
 2. Codex Theodosianus, VII, 13, 13 : Amplissimi ordinis petitionibus adnuit nostra clementia, ut pro tironibus pretia inferantur. Damus itaque optionem, ut quod conducibile senatui videtur eligendi habeat potestatem, id est aut tirones aptos officiis militaribus praestent, aut pro singulis viginti quinque solidos numerent post initam videlicet sumptuum rationem et vestium et pastus. Quod si aurum dare maluerint, mox ad nostrum aerarium deferatur; Symmachus, Epistolae, VI, 64 : Et nos quidem crebris precibus obnitimur, et diem ducimus supplicando ; iamque ad pretium argenti quinque librarum misera oblatione perventum est. Five pounds of silver equaled twenty solidi as enacted that very year (Codex Theodosianus, XIII, 2, 1).
 3. Codex Theodosianus, VII, 13, 14 : Aeternae urbis merita reverendam nobis amplissimi senatus efficient voluntatem.

horde of 200,000 swept down from the Alps into Lombardy and Tuscany, it was found necessary for the first time since the battle of Cannae, to arm the very slaves with the promise of a reward and freedom.¹ It is not likely that the immunity of the res privata escaped this crisis. In February, 410, with Attalus, Alaric's similacrum imperii,² installed as rival Augustus at Rome and Alaric himself advancing to lay siege to Ravenna, the horizon was blue-black for Honorius. The entire Praefecture of Gaul was in the hands of the tyrant Constantine and in Italy itself the authority of the legitimate Emperor extended but a little way beyond the walls and swamps of Ravenna. Africa alone remained loyal in the crisis and inaccessible to his rivals beyond the sea. He therefore called upon the officials in the officia of the African governors and upon the honorati of Africa to supply the number of recruits valued at thirty solidi apiece required of each, exempting only those honorati who were already saddled with a public burden or who had fled from their estates in Italy devastated by the passage of the Goths.³ The edict is addressed to the Count of the Privy

Ideoque pro tironibus in corporibus postulatis pretia conferri iubemus ab amplissimo ordine. Quod in fundis etiam perpetuariis nostrae rei privatae servari praecipimus; Codex Justinianus, XI, 75, 3 : Imp. Arcadius et Honorius AA. Minervio comiti rerum privatarum. Pro tironibus in corporibus postulatis pretia conferri ex fundis perpetuariis nostrae rei privatae praecipimus.

1. Codex Theodosianus, VII, 13, 16.
2. Socrates, Historia Ecclesiastica, VII, 10 : Attalus, inane imperii simulacrum.
3. Codex Theodosianus, XI, 28, 12 testifies to the widespread devastation of Italy by the passage of Alaric and his army.

purse and we must conclude that the majority of these recruits would come from the very extensive domain lands held by the Emperor in Africa.¹ This drawing of recruits from the domain lands of Africa may very possibly be a factor in the general growth of waste and ownerless lands which the Commission of Sebastius in 417, and later that of 422, endeavoured to remedy (cf. p.261).

In 443 Valentinian III removed from the regiones suburbicariae the immunity from providing recruits granted by Gratian.² The Western Empire by this time was so reduced by the barbarian occupation of most of Gaul and the loss of Africa to the Vandals that the immunity of the Italian provinces was no longer possible.

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1. Codex Theodosianus, VII, 13, 20 : *Tirones tricenis solidis aestimatos ab omnibus officiis iudicum Africae, exemplo praecedentis temporis postulamus; quod simul etiam ab honoratis memoratarum provinciarum nec non Sardiniae Siciliae et Corsicae. Eos sane honores excipi ab his conveniet, quibus aut praesenti tempore publicum munus iniunctum est aut in Italiae sive urbis solo barbara vastitate depulsi sunt.*
 2. Novellae Valentiniani, VI, 2.

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 2. Novellae Valentiniani, VI, 2.

Chapter XIV

THE RES PRIVATA AND THE CONLATIO EQUORUM

The imperial domain included extensive pasture lands on which were raised great herds of animals, especially horses.¹ These herds and pasture lands were managed by procurators² or praepositi gregum et stabulorum, who were sub dispositione viri illustris comitis rerum privatarum.³ In the Codex there is mention of horses on imperial estates in Spain,⁴ Greece,⁵ Phrygia⁶ and Cappadocia, and Procopius mentions the

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1. Codex Justinianus, XI, 67, 1 : ovium vel equarum greges; cf. Victor, Caes., XLI, 11 which mentions the revolt of a certain Calocerus who was magister pecoris camelorum and in Stein's opinion (Geschichte des spätromischen Reiches, p. 198) a subordinate official of the res privata.
 2. Codex Theodosianus, XI, 17, 1; Codex Justinianus, loc. cit.
 3. Notitia Dignitatum or., XIII; Codex Justinianus, loc. cit. cf. Procopius, Persian Wars, II, 1, 8-10 in which Justinian despatches Strategius τῶν βασιλικῶν ἀγορευῶν ἀρχῶν, to investigate the rival claims to certain pasturelands along the Eastern frontier which were disputed by Alamoundaras, Prince of those arab tribes which were in alliance with Persia, and Arethas, Prince of the arabs allied with the Empire.
 4. Codex Theodosianus, XV, 10, 1.
 5. Ibid.
 6. Codex Theodosianus, VI, 4, 19; Claudian, De Laudibus Serenae, V, 190.

ἵπποδροσίοι in Thrace.¹ The herds of the domus divina per Cappadociam were especially famous,² and particularly so for two breeds of horses, the Palmati and the Hermogeni. Godefroy is of the opinion that these horses derived their names from two persons named Palmatius and Hermogenes who for some reason incurred proscription and whose estates including fine pasture lands and an excellent breed of horses passed into imperial hands.³ The identification in the case of Palmatius seems well supported by a reference in the Itinerarius Burdigalensis to "the station of Andavilis in Cappadocia where is the villa of Palmatius whence come the horses used in the Circus."⁴ Both the Palmatian and the Hermogenian breeds, as well as the Phrygian⁵ and Grecian⁶ horses were sent all the way from the domain lands in the East to be used in the chariot races at Rome.⁷ The Palmati and Hermogeni were accustomed to

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1. From which Ildigisal the Lombard Prince helped himself during his flight from Constantinople (History of the Wars, VIII, xxvii, 8).
 2. Codex Theodosianus, X, 6, 1; Novellae Justiniani, XXX, 5; cf. the numerous references to them collected by Godefroy, ad Codicem Theodosianum, X, 6 (De Grege Dominico), Vol. III, p. 440; also Vol. II, p. 207.
 3. Godefroy, ad Codicem Theodosianum, X, 6.
 4. Auctor Itinerarii Burdigalensis : Cappadociae mansio Andavilis ; ibi est villa Palmati unde veniunt equi curules.
 5. Codex Theodosianus, VI, 4, 19.
 6. Codex Theodosianus, XV, 10, 1.
 7. Ibid. : Palmatis adque Hermogenis equis, quos in curulis certaminis sorte vel contentionis incertum vel annorum series vel diversa ratio debiles fecit, ex horreis fiscalibus alimoniam praebere decrevimus, equos vero Hispani sanguinis vendendi solitam factionariis copiam non negamus.

run in the Emperor's name, were supported from the public granaries¹ and along with the Grecian breed could not be sold to the circus factions who might, however, purchase horses from the imperial domain in Spain.² The Emperor, in addition to honouring the races by the presence in the lists of his most choice horses, was also accustomed to supply the Praetors with fine horses from the imperial domain for the chariot races which they gave at their own expense as a part of the festivities attending their inauguration, and in 372 Valens decreed that eight horses from the Phrygian herds, four each for two quadrigas, should be presented the two Praetors for the principal races.³ If, however, anyone usurped for his own purposes a horse designated by gift of the Emperor for the circus at Rome, he was fined a pound of gold to be paid into the Privy Purse,⁴ and in 371 Valentinian instructed the Prefect of the City to take particular care that the names of the Grecian

Illud quoque sinceritas tua (Praefectus Urbi) praecipiat observari, ne Graecorum equorum nomina, qui hinc missi fuerint, commutentur.

1. Loc. cit. : Palmatis adque Hermogenis equis ex horreis Fiscalibus alimoniam praebere decrevimus.
2. Ibid. : . . equos vero Hispani sanguinis vendendi solitam Factionariis copiam non negamus.
3. Codex Theodosianus, VI, 4, 19 : Satis de Frygiae gregibus equos quattuor subiugandos quadrigis, hoc est simul octo, duobus maximarum editionum praetoribus dari sancimus.
4. Codex Theodosianus, XV, 7, 6 (Gratian, 381) : Quisquis igitur ex eo, quod vel serenitas nostra vel ordinarii consules vel praetores in huiuscemodi tribunt voluptates, quamlibet commodis compendioque privato derivandam duxerit esse iacturam, unius auri librae condemnatione multatus largitionibus nostris cogatur esse munificus; cf. Codex Justinianus, XI, 41, 2.

horses which were sent to Rome for the race be not substituted for others.¹

These choice breeds of horses appear to have constituted a sort of imperial monopoly, set apart to enhance the unique honour and dignity of the Emperor in much the same manner as was that shade of scarlet since known as Imperial Purple. They are described in one place as "divine animals"² and in another as "pertaining to the sacred usage of the Emperor."³ To venture to usurp the use of one might prove as fatal as being apprehended in possession of a robe of the forbidden color, and Eutropius was accused, among other heinous crimes, of daring to harness to his consular chariot the sacred horses reserved for the Emperor alone.⁴

Besides serving to supply horses for the personal use of the Emperor and the chariot races of the Capital, the imperial pasture lands were liable to supply a quota of horses and other animals for the army according to a fixed pensio or annual prestation which the Emperors decreed should not be increased.⁵

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1. Codex Theodosianus, XV, 10, 1 : Illud quoque sinceritas tua praecipiat observari, ne Graecorum equorum nomina, qui hinc missi fuerint, commutentur.
 2. *Œta Léa* : Godefroy, Codex Theodosianus, Vol. II, p. 440.
 3. Animalia atque equos sacro usui necessarios : Codex Theodosianus, VIII, 6, 2.
 4. Philostorgius, II, 6; III, 4.
 5. Codex Theodosianus, VII, 7 (De Pascuis), 1 : Dedimus litteras ad viros clarissimos praefectos praetorio, ut ab his conventi rectores provinciarum scirent in locis rei privatae augmenta

In order that they might be able to fulfill their obligations the pasture lands were carefully protected from all usurpations. If any flock of sheep or herd of horses were illegally alienated, recompense must be made to the Privy Purse immediately and the connivance of the procurator was most severely punished.¹ The governors were strictly enjoined not to permit the provincials or the municipalities to use the imperial pasture lands.² In 398 Arcadius wrote to Simplicius, magister utriusque militiae, forbidding him to turn loose his cavalry and baggage animals (animalia militum) in the "public pastures" near Apamea in Syria. He was also forbidden to vex and over-burden the pastures of the private citizens of Antioch and the officers of his staff were threatened with fines of twelve pounds of gold if they disobeyed. The curiales were to

pensionum non esse facienda; Op.cit., VII, 7, 2 : Cum nulla ratio sit, cur in pascuis saltibus rei privatae pensio debeat ampliari, etc.

1. Codex Justinianus, XI, 67, 1 : Si quis ovium vel equarum greges in saltus rei dominicae alienus immiserit, fisco ilico vindicentur. Quod si venalis procuratorum conventia, ut id deinceps temptetur, admiserit, gravissimo eos iubemus supplicio subiacere.
2. Codex Theodosianus, VII, 7, 1 : . . neque sinerent pascua animalium ex rebus privatis nostris provincialium licitatione praebere; op. cit., 2 : Etenim idcirco graviolem pensionem inponi ab ordinibus accipimus ut animalia ex rebus privatis nostris a locorum pastibus arceantur, quod fieri non oportere divae memoriae Iulianus prorogata iussione constituit. Quare excellens auctoritas tua conventis rectoribus provinciarum non eam licitationis necessitatem patiatur inferri, quam repentinam faciunt civitates, sed eam manere decernet, quam statuit antiquitas .

provide fodder for the army animals without injury to the pasture lands of the Emperor or private citizens.¹ The "public pastures" of Apamea were very likely domain land. When most of the territorium of the cities had become such under the Late Empire it is unlikely that such pasture lands as those of Apamea should have been left intact to the city. They were famous, and in the time of the Seleucid Empire, Seleucus Nikator and his successors pastured 500 elephants and 30,000 horses there and used the place as an exercising ground for cavalry.²

In 415 Theodosius II promulgated two edicts on the same day, one addressed to the military Counts and Masters of Soldiers and the other to the Praetorian Prefect, in which he legislated against the abuse by military officers of the pasture lands of the provincials, and especially of the Privy Purse. The Praetorian Prefect, as the one who had general supervision of taxation and whose rank and authority even the army must reverence was informed that the provincials should contribute no more than the annual quota established by the

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1. Codex Theodosianus, VII, 7, 3 : Insignis auctoritas tua hac condicione a publicis pratis Apamenis animalia militum prohiberi praecipiat, ut universi cognoscant de emolumentis eorum tuique officii facultatibus duodecim libras auri fisci commodis exigendas, si quisquam posthac memorata prata privatorum Antiochenorum fuerint devastata, ita tamen, ut sine laesione provincialium provideant curiales, quo pacto animalium militarium pastui consulatur.
 2. Strabo, XVI, texts quoted by Godefroy, Vol. II, p. 340.

Emperor and himself and that the army officials should not vex the pastures of the coloni and possessores or presume to take more than they were allotted.¹ In the other edict the military Counts and Masters of Soldiers were forbidden to molest the pasture lands of the provincials and especially those of the imperial domain.²

In addition to the great ranches devoted exclusively to grazing, all the remaining estates of the Privy Purse, as well as the private estates of the Empire of course, were liable to supply horses for the use of the army.³ Thus, in 380, Gratian wrote from Treves on the northern frontier where he was operating against the barbarians to the Praetorian Prefect of Italy (then under the nominal sovereignty of the child-Emperor Valentinian II) and to the Count of the Privy Purse, instructing the latter to take the necessary measures to hasten the exaction of grain and horses for his campaign

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1. Codex Theodosianus, VII, 7, 4 : Possessores nihil plus debent, quam quod nostro arbitrio nostrae perennitatis et magnificae sedis tuae dispositione per annos singulos iubentur inferre. Nec vero milites aliquid praesumere debent, nisi quod largitate nostri numinis consequentur. Ideoque possessores vel coloni super pratis nullam molestiam patiantur.
 2. Codex Theodosianus, VII, 7, 5 : Prata provincialium nostrorum (et praecipui rei privatae nostrae - C. Just., XI, 61, 3) perniciosum est militum molestia fatigari. Ideoque lege ad amplissimam praefecturam promulgata censuimus, ne hoc deinceps usurpetur. Super qua re universos quorum interest convenire tua magnificentia non moretur, ne permittant possessores vel colonos pratorum gratia qualibet inopportunitate vexari.
 3. Codex Theodosianus, XI, 17, 2 : . . . equorum, qui curatoricio nomine flagitantur; op. cit., 3 : equos canonicos militares.

from the actores and conductores of the imperial domain whose immunity from extraordinary burdens was thereby cancelled.¹

Ordinarily, however, a money payment was taken in lieu of the animal itself, for two reasons : (1) the animals were usually needed for the proper cultivation of the fields, and (2) if actual horses were demanded all of the useless and worn out animals might be foisted off on the government, to prevent which stratores were customarily sent into the provinces to investigate their condition.² Valens in 367 fixed the monetary equivalent at twenty-three solidi for each horse demanded of the coloni and conductores on the imperial domain.³ This law is dated from Marcianopolis and marks Valens' preparations for his Gothic Wars. This price was excessively high and was considerably reduced by Honorius, at least for the African provinces, though it was perhaps lower there on account of the disordered condition of that part of the Empire and the extraordinary burdens to which it was already subject. At any rate, in February 401 Honorius instructed the Proconsul to

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1. Codex Theodosianus, XI, 16, 12 : Ad virum clarissimum et inlustrem praefectum praetorio Italiae scribta porreximus, ut ab actoribus et conductoribus patrimonii nostri atque ab his, qui iure perpetuo possederunt, extraordinarii muneris cessaret iniuria neque suburbicariis partibus tironum immineret exactio. Sane praestantia tua providere debebit, quatenus frumenti et equorum maturetur exactio.
 2. Codex Theodosianus, VI, 31, 1.
 3. Codex Theodosianus, XI, 17, 1 : Viceni et terni solidi per singulos equos, qui a colonis atque ab obnoxiiis exiguntur, ipsi magis iugiter, quam fraude procuratorum nostrorum equi, offerantur.

hasten the collection of twenty solidi per horse.¹ A month later he lowered the price by two solidi in Proconsular Africa and Numidia, and exacted only fifteen solidi from Tripolitana and Byzacene Africa.²

It is apparent that the monetary equivalent varied from time to time and from place to place depending upon circumstances.

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1. Codex Theodosianus, XI, 17, 2 : . . . ita ut viceni quidem solidi pro singulis equis a provincialibus exigantur.
 2. Codex Theodosianus, XI, 1, 29 : . . . dependat ut vicenis solidis, qui in praeteritum pro equis curatoriciis petebantur, duo solidi detrahantur, ita ut proconsularis . . . Numidiae cognoscat octonos et denos solidos pro singulis equis debere persolvere, Byzaceni etiam Tripolitanique cognoscant quinos denos pro singulis equis se debere praestare.

Chapter XV

THE COUNT OF THE PRIVY PURSE AND THE FUNDI LIMITOTROPHI

An elaborate system of fortifications was built up along the frontiers (limites) of the Late Empire, consisting of fosses, earthen embankments, walls and the fortified posts (castelli) in which were distributed the frontier garrison troops (limitanei, riparienses, castellani). Attached to these castelli was a strip of land all along the frontier for the support of these troops which was free from taxation and municipal authority. The estates of which it was composed were inalienable and passed from father to son, bearing with them, however, the obligation to military service on the part of the holder. This system of frontier defence was characteristic of the Roman administration until the last days of the Empire; it was the removal by Michael Palaiologos of such a body of troops for their loyalty to the deposed child Emperor, John IV Vatases, which opened the frontiers of Bithynia to the Ottoman Turks.¹

1. Pachymeres, I, 129; cf. Finlay, History of Greece, Vol. III, p. 349; Vasiliev, Histoire de l'empire byzantine, Paris, 1932, Vol. II, p. 282.

The government experienced considerable difficulty in holding these lands to their original function and repeated attempts were made to prevent their alienation to persons who would not meet the obligations attached to them.¹

Many of these fundi limitotrophi so-called, especially along the Eastern frontier, were domain lands of the Emperor, but even this fact did not save them from the greed and usurpations of those who did not hesitate to jeopardize the safety of the frontier by invading even these bulwarks so essential to the military defense of the Empire. As early as 386 Theodosius I found it necessary to recall to their functions those fundi patrimoniales serving the limites of Mesopotamia and Osrhoena which had been alienated or fraudulently removed, nor was the rescript or adnotatio of the Emperor himself sufficient for the alienation of these lands by ius emphyteuticum or any other type of conductio.²

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1. Codex Justinianus, XI, 62, 8 (Theodosius I, 386); Codex Theodosianus, XII, 15, 1 (Honorius, 409) : Terrarum spatia, quae gentilibus propter curam munitionemque limitis atque fossati antiquorum humana fuerant provisione concessa, quoniam conperimus aliquos retinere, si eorum cupiditate vel desiderio retinentur, circa curam fossati tuitionemque limitis studio vel labore noverint serviendum ut illi, quos huic operi antiquitas deputarat. Alioquin sciant haec spatia vel ad gentiles, si potuerint inveniri, vel certe ad veteranos esse non inmerito transferenda, ut hac provisione servata fossati limitisque nulla in parte timoris esse possit suspicio; op. cit., 2 (Theodosius II, 423).
 2. Codex Justinianus, XI, 62, 8 : Omnes fundi patrimoniales per Mesopotamiam et Osrhoenam provincias, quos constat divorum retro principum sanctionibus limiti deputatos, ad ius pristinum sine ullius adsertionis revocentur, obstaculo

The younger Theodosius especially concerned himself with the maintenance of the fundi limitotrophi and the fundi saltuenses of the Eastern frontier. In 415 he forbade anyone to petition for these estates iure privato salvo canone or with any diminution of the canon.¹ In 423 he enacted that only castellani, i.e. frontier garrison troops, might hold the lands adjacent to the castelli and fortifications along the frontier. Anyone not a miles castellanus found occupying frontier lands was condemned to death and confiscation.² In 438 Theodosius II again forbade the transfer of these estates to private law, sive dempto, sive salvo canone, and condemned anyone who petitioned for such estates as well as the office which conceded

praebituri omnia, quae antea impendenda necessitatibus limitis praebere consueverant, ita ut nulli penitus audientur, qui aut rescripto aut adnotatione dominium vel emphyteusin vel conductionem quolibet genere largitatis de nostra liberalitate meruerint.

1. Codex Theodosianus, V, 12, 2 : Nulli penitus liceat, sive salvo canonis servato iure sive cum imminutione canonis patrimonialis, vel limitotrofos sive saltuenses per Orientem vel fundos patrimoniales postulare. Nemo potiatur his ne si subreptiva quidem id promeruerit petitione per speciale beneficium, vel exquisita fraude vel quo alio artificio ultro in quemquam liberalitas nostra processerit, quandoquidem nec emphyteuticario mutari proprium ius per petitionem huiusmodi censem nec canonis aliquid detrahi vel imminui, et cum praedium ipsum revocari debuerit.
2. Codex Theodosianus, VII, 15, 2 (C. Just., XI, 60, 2) : Quicumque castellorum loca quocumque titulo possident, cedant ac deserant, quia ab his tantum fas est possideri castellorum territoria, quibus adscripta sunt et de quibus iudicavit antiquitas. Quod si ulterius vel privatae condicionis quispiam in his locis vel non castellanus miles fuerit detentator inventus, capitali sententia cum bonorum publicatione plectatur.

such petitions to a fine of fifty pounds of gold.¹

The devastation caused by the Persian invasion of 441, however, caused such dislocation of these frontier estates of the patrimony whose troops and garrisons had so long defended them,² that the Emperor at last decided to alienate them. Such was especially the case on the Armenian limites and in particular in the regions around Theodosiopolis and Satalena. In deciding to alienate these lands, however, and relieve their holders of the necessity of military service, the Emperor determined to still keep them subservient to the needs of the frontier. The alienations were therefore made "on this condition that it be permitted no one to purchase these estates by petitions insidious and derogatory to the State, or for them to be transferred to his profit at the sacrifice of public utility." A fine of 100 pounds of gold was imposed upon the petitioner and whatever official was involved in such guilty transactions. Only those deserving the imperial munificence might receive

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1. Novellae Theodosii, V, 2 : Quod evenire monstratur patrimonialibus fundis ac limitotrofis nec non etiam saltuensibus pro libidine petitorum ad ius privatum securitatemque translatis Praecipimus itaque nulli iam in posterum licere patrimoniales seu limitotrofos vel saltuenses fundos, qui per tractum Orientis positi sunt, ad ius transferre privatum, sive dempto, sive salvo canone iuris fundorum inmutatio postuletur, legis temeratores quinquaginta librarum auri poena coercentes, tam videlicet petitozem quam officium, quod petitionem concedit admitti, licet adnotatio nostra, licet divina pragmatica contra vetitum proferatur.
 2. Op. cit., V, 3 : pridem regalium fundorum copiis et praesidiis munitum.

these properties and on the following conditions : they must continue to supply the baggage trains (contatos, bastagas) and carriages for transport (paraveredos), as well as military supplies of all kinds, such as grain, horses, equipment, etc, and whatever was requested of them on the authority of the Prefect according to the ancient usage of these estates, and all the other fiscal exigencies properly and without delay. In case they failed to do so the estates were restored to the public possession for the common good.¹

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1. Novellae Theodosii, V, 3 : Quoniam igitur per consultissimam tuae sublimitatis suggestionem conperimus Armeniae tractum in ipso paene limitis aditu Persarum constitutum, pridem regalium fundorum copiis ac praesidiis munitum, in praesenti Persicis eruptionibus expositum fuisse eo, quod eosdem fundos et maxime Theodosiopolitanae et Satalenae civitati contiguos vel propinquantes quorundam petitis diversis retro temporibus in propria iura mutato pristino canone translulerit, hac in perpetuum victura lege censuimus statuendum, ut universi, qui nostram in his munificentiam meruerunt, sub ea condicione possessiones habere donatas concedantur, si contatos et bastagas et paraveredos et species nec non coemptiones secundum pristinam consuetudinem dispositione tuae magnificae sedis iniungendas et alia universa fisci calculo solemniter sine mora dependant et agnoscant aut resistentes pro utilitate communi publicae possessioni continuo praedia refundant; sub ea scilicet observatione, ut nulli deinceps eosdem fundos liceat insidiosis et derogantibus rei publicae precibus emereri aut ad sua compendia despectis publicis utilitatibus transferre, centum pondo auri poenae nomine tam his, qui preces offerre temptaverint, quam scriniariis vel aliis quorum interest, si supplicationes oblatas ausi fuerint instruere, feriendis, Cyre parens karissime atque amantissime.

Chapter XVI
THE COUNT OF THE PRIVY PURSE AND
THE IMPERIAL MONOPOLIES

The manufacture of the rich robes reserved for the wear of the Imperial Family, dyed the peculiar shade of scarlet known as Imperial Purple, and interwoven with gold, pearls and precious stones was a state monopoly from the time of Diocletian. Indeed, the use of the purple by private persons was forbidden by Julius¹ and Nero.² Valens in 369,³ Theodosius I in 382⁴ and Theodosius II in 424⁵ forbade private persons to use silk or linen robes interwoven with gold. No one of whatever rank, dignity, or profession was permitted the use of the interdicted garments. They could not be privately manufactured and any private house possessing such garments must surrender them to the treasury. Those violating this law

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1. Suetonius, Divus Iulius, 43.
 2. Suetonius, Nero, 32.
 3. Codex Theodosianus, X, 21, 1.
 4. Codex Theodosianus, X, 21, 2.
 5. Codex Theodosianus, X, 21, 3.

ran the risk of suffering the penalty for "injured Majesty" (laesa maiestas), or high treason.¹

One would expect that the factories (textrina, gynaecea) in which these garments were produced and the workers engaged in the industry² would form a part of the res privata and be subject, therefore, to the administration of the Count of the Privy Purse. Such was not the case, however. The production of these articles was entrusted to the supervision of the Count of the Sacred Largesses. At his disposition we find a "Count of the Wardrobe" (comes vestiarii), a "Chief Clerk of the Bureau of the Sacred Wardrobe" (primicerius scrinii vestiarii sacri), "Masters of the Linen Robes" (magistri lineae vestis), "Procurators of the Gynaecea" (procuratores gynaece-

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1. Codex Theodosianus, X, 21, 3 (C. Just., XI, 9, 4) : Temperent universi, qui cuiuscumque sunt sexus dignitatis artis professionis et generis, ab huiusmodi speciei possessione, quae soli principi eiusque domui dedicatur. Nec pallia tunicasque domi quis serica contextat aut faciat, quae tincta conchylio nullius alterius permixtione subtexta sunt. Proferantur ex aedibus tradanturque tunicae et pallia ex omni parte texturae cruore infecta conchylii. Nulla stamina subtexantur tincta conchylio nec eiusdem infectionis arguto pectine solidanda fila decurrant. Reddanda aerario holovera vestimenta protinus offerantur. Nec est, ut quisquam de abiurato pretio conqueratur, quia sufficit calcatae legis impunitas, nec vacet illi curare de quaestu, cui sua salus esse non debet in pretio. Ne quis vero nunc huiusmodi suppressione in laqueos novae constitutionis incurrat; alioquin ad similitudinem laesae maiestatis periculum sustinebit.
 2. Opifices (C. Theod., X, 20, 6), gynaeceii (C. Theod., X, 20, 16), linteones (C. Theod., X, 20, 6 & 8), lintearii (C. Theod., X, 20, 16), lynifarii (Ibid.), conchyleguli (C. Theod., X, 20, 5 & 17), murileguli (C. Theod., X, 20, 14; 15; 16).

orum), "Procurators of the Purple Dye Works" (procuratores bafiorum¹) and "Procurators of the Linen Weavers" (procuratores linyfiorum²).³ The corporations of the murex fishers, linen weavers, and imperial textile workers "pertained" to the Sacred Largesses,⁴ and the constitutions in the Codes under the titles De murilegulis et gynaeceariis⁵ and De vestibus holoveris et auratis⁶ are never addressed to the Count of the Privy Purse, but frequently to the Count of the Sacred Largesses. The precious silks for the use of the Emperor and his court, whether dyed or not,⁷ were by order of Arcadius (406 A.D.) stored in the treasury of the Sacred Largesses upon the responsibility of the scrinium canonum whose members were liable to a fine of twenty pounds of gold for fraudulent practices in the reception and recording of these materials.⁸ The Count of the Sacred Largesses

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1. βαφεῖα from βάπτειν - "to dip".
 2. λινούφειον from λινόν ὑφαίνειν - "to weave linen".
 3. Notitia Dignitatum or., XII; occ., X.
 4. Codex Theodosianus, X, 20, 16 (426) : Impp. Theodosius et Valentinianus AA. Acacio com. s. l. Si quis ex corpore gynaeceariorum vel linteariorum sive linyfiorum monetariorumve aut murilegularum vel aliorum similium ad divinas largitiones nexu sanguinis pertinentium, etc.
 5. Codex Theodosianus, X, 20; Codex Justinianus, XI, 8.
 6. Codex Theodosianus, X, 21.
 7. Sericoblattae ac metaxae, cf. Godefroy, ad Codicem Theodosianum, X, 20, 13.
 8. Codex Theodosianus, X, 20, 13 (C. Just., XI, 8, 10) : Imppp. Arcadius, Honorius et Theodosius AAA. Filometori com. s. l. Lota in posterum sericoblattae ac metaxae huiusmodi species inferri praecipimus; viginti librarum auri condemnatione proposita his, qui scrinium canonum tractant, prioribus, etiam eiusdem officii, si statuta caelestia a quoquam passi fuerint temerari.

was in charge of these stores of materials and Julian, when a man came before him and accused a personal enemy of treasonous designs on the ground that he had prepared for himself a purple robe, turned to the Count who was standing by and said, "Bid them give this dangerous chatterer some purple shoes to take to his enemy, . . . that so he may know how little a worthless piece of cloth can avail a man, without the greatest strength."¹

There is ample proof, however, that some of the factories for the production of such garments were situated on property of the Privy Purse and subject to the Count's supervision. These are attested for Gaul,² for Africa,³ and for the domus divina per Cappadociam,⁴ and doubtless they existed throughout the domain lands.

These factories were not limited to the production of robes for the Imperial Wardrobe. They produced also the robes of the high imperial officials which were conferred as the

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1. Ammianus Marcellinus, XXII, 9, 10.
 2. At Treves, Arles and Viviers (Notitia Dignitatum, occ., XI).
 3. Codex Theodosianus, I, 32, 1 (Constantine, 333), addressed to Felix (ppo. Africae - Seeck, Regesten), concerning the procuratores rei privatae bafii et gynaecei, although the Notitia Dignitatum contains a "Procurator of all the dye works in Africa" (procurator bafiorum omnium per Africam) sub dispositione comitis sacrarum largitionum.
 4. Codex Justinianus, IX, 27, 5 (390) mentions praepositi gynaecei as subordinates of the comes domorum; Novellae Justiniani, XXX, 6 refers to the tribute of the Cappadocian praedia tamiaca in gold and precious robes, ἐν χρυσῷ καὶ ἐσοῦντι.

outward show of rank along with the codicills of office and other insignia. In addition, the government clothed its own army and had a monopoly upon the production of clothes for the troops.¹

The actual Wardrobe of the Emperor in use (sacra vestis) was under a "Count of the Sacred Wardrobe" (comes sacrae vestis) who was the subordinate of the Grand Chamberlain.²

We must understand, I believe, that the quantities of precious fabrics stored in the magazines of the Sacred Largesses were a reserve, and also that much of this material was not made up into robes at all, but consisted of quantities of dyed material from which the court robes of the official hierarchy were prepared and from which also pieces were taken as gifts to foreign princes and barbarian chieftains. These precious materials were highly prized and 4,000 robes of silk and 3,000 pieces of fine scarlet cloth were two of the articles demanded by Alaric as the price for which he agreed to raise the first siege of Rome in 408 A.D.³ Also, in the store chambers of the Sacred Largesses were garnered the linen corslets and other articles of clothing for distribution to the troops.⁴

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1. Codex Theodosianus, X, 20, 6 : Opifices vesti linteae contextandae in usum erogationum nostrarum.
 2. Codex Theodosianus, XI, 18, 1; cf. Dunlap, op. cit., p. 218.
 3. Zosimus, V, 41.
 4. Cf. Godefroy, ad Codicem Theodosianum, X, 20, 6.

It would seem that the products of the gynaecaea of the Privy Purse were also stored in the magazines of the Sacred Largesses,¹ but were kept distinct under the supervision of the magistri privatae (vestis) whom we find as subordinates of the Count of the Sacred Largesses in the Notitia of the East.²

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1. Except in the case of those from the domus divina per Cappadociam which more likely were placed immediately at the disposal of the Grand Chamberlain and served to supply the Eastern Court.
 2. For the supplying of the word vestis or rei, cf. Böcking's edition of the Notitia Dignitatum, Vol. I, p. 253, note 13.

Chapter XVII
THE COUNT OF THE PRIVY PURSE AND THE IMPERIAL PALACES
AND OTHER STRUCTURES

The great palaces at Rome, Milan, Ravenna, Treves, Antioch or Constantinople which served as the seat of the Court and the permanent residence of the Emperor were not regarded as a part of the res privata administered by the Count of the Privy Purse. But the Privy Purse in various ways fell heir to numerous urban properties, even to structures sufficiently large and ornamental to rank as palaces. It was forbidden to petition for such properties which, on account of their high appraisalment and circuit of buildings were comparable to palaces. Whoever did so was held guilty of sacrilege. So indignant was the Emperor with the cupidity of the petitioners that he decreed such offenders guilty even if ignorant of the law "since they ought always to be solicitous in making their petitions" (quod semper in petendo debeat esse sollicitus). The Count of the Privy Purse was commanded to severely punish his officium if its officials were deceptive in preparing the

inventory of such palatial properties and thus by collusion accorded possession thereof to the petitioner. The latter was deprived of the gift.¹ Throughout the Empire, therefore, the Sovereign possessed palaces which could be put in order to receive him and his train wherever he travelled.

All these houses "consecrated" to the Emperor whether large or small, were exempt from all public or private use or habitation.² Thus exempted from private use, having no function in the administration of the Privy Purse, and rarely if ever called upon to house their Lord, many such structures must have lain empty and received little or no care. As a result they lapsed rapidly into a semi-ruinous state and declined in real estate value. Their ultimate fate was decided at the public auction block where they were knocked down to the highest bidder to prevent their becoming a total loss to the treasury. Thus, in 378 Gratian decreed that the rationales or

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1. Codex Theodosianus, X, 10, 16 (382) : Nemo eas sine summo sacrilegio possessiones existimet postulandas, quae cum magno censu tectorum ambitu palatiis sint magis aptae quam praediis, adeoque hoc nomen refugiendum sibi esse cognoscat, ut sacrilegii vereatur invidiam, etiamsi laqueos deceptae ignorationis inciderit, cum semper in petendo debeat esse sollicitus, quicumque est in inpetrandi occasione curiosus. Laudanda igitur experientia tua officio gravem poenam tali lege constituat, si unquam instructione deceperit et petenti nefaria conlusione consenserit, illi etiam ut deprehenso beneficii adimat potestatem.
 2. Codex Justinianus, XI, 77, 1 : Imp. Theodosius et Valentinianus AA. Iohanni comiti rerum privatarum. Consecratas nobis aedea, id est inclita palatia, ab omni privatorum usu et communi habitatione excipimus.

the provincial governors should institute public auctions for the sale of such domus as had fallen into ruins through the negligence of the procurators. However, if there were in the various provinces houses of a type such as there was said to be in this case in the city of Suitrana Augustensis in Mauretania Caesarensis, unusually elegant and too ample for private use, they were preserved and converted into residences or praetoria for the use of the provincial governors, in which case they were repaired at the governor's expense.¹

In 398 Honorius promulgated a similar edict, instructing the Count of the Privy Purse to send palatini to hold the auctions in conjunction with the provincial governors, and admonish the governors to secure just prices.²

The chief palace of which the Count of the Privy Purse was guardian was that at Daphne, the suburb of Antioch, along with the cypress grove in which it lay, and there are

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1. Codex Theodosianus, X, 2, 1 : Rationales vel ordinarii iudices earum domorum, quas procuratorum nequitia et rationalium negligentia labi patitur in ruinas, instituant auctionem hastis habitis ex licitatione currente. Sane si quae sunt per varias provincias huiusmodi domus, quales esse in Augustensi Suitrana civitate suggeritur vel aliis in locis, praestantes et privatis usibus ampliores, ut servari forsitan oportebit, iudicum mansionibus deputandas provincialium et eorum cura reficiendas.
 2. Codex Theodosianus, X, 2, 2 : Ne domus ad nostrum patrimonium pertinentes, quae sunt in diversis urbibus, ex negligentia nostro aerario adferant detrimentum, omnes licitatione habita volumus venundari. Palatinos autem fide probatos ire praecipimus. Ordinarios quoque iudices tua sublimitas admonebit, ut certa pretiorum fides et domorum sit iusta in auctione taxatio.

several constitutions dealing with the administration of this extensive property of the res privata. The grove itself was famous throughout the Roman world and was laid out in formal manner with pools and fountains. It was the object of much solicitude on the part of the government. The Alytarch of the city of Antioch alone was permitted to cut down a single cypress provided he planted several others in its place.¹

The branches of this tree were carried by dendrophoroi in the sacred processions at the games in honor of Apollo to whom the cypress and especially the grove at Daphne were sacred. By edict of the second Theodosius no one, not even the Alytarch might remove a tree from the grove at Daphne whether by cutting or in whatever manner it fell without the express permission of the Count of the Sacred Largesses. To console the Alytarch he was granted a pound of gold from the res privata in place of the tree "that he might not seem to be utterly deprived of his ancient privilege." A fine of five pounds of gold was laid upon those who presumed to violate this law.²

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1. Codex Theodosianus, X, 1, 12 (Theodosius I, 379) : Et mori veteri et constitutis nos maiorum accessisse cognoscas. Et alytarcae urbis Antiochenae plantandi plures, excidendae unius cupressi iubemus tribui facultatem.
 2. Codex Justinianus, XI, 78, 2 : Omnes iudices cuiuscumque dignitatis sciant posthac absque permissu magnitudinis tuae arborem ex Daphnensi luco Antiochenae civitatis praecidendi vel quolibet modo lapsas transferendi licentiam sibimet denegandam. Sed nec alytarcha unam cupressum aliis plantatis excidere sibi licere contendat. Ac ne solacio antiquitus ei concesso privari per omnia videatur, pro eo, quod ei cupressum excidere denegatur, unam auri libram eum

It seems that certain persons even ventured to cut the cypresses for the purpose of selling them, for a law of Arcadius about 397 imposed a fine of five pounds of gold upon any one who sold or purchased a tree from the Grove of Daphne.¹ The same law applied also to the Lucus Perseus in Egypt, and in the Ostrogothic realm we find that the trees on the domus divinae along the Po, when Theodoric undertook to build a fleet could be cut by the men sent for the purpose by the Prefect only with the Count of the Patrimony's permission upon express order of the King.²

The aqueduct which fed the grove and supplied the palace at Daphne was also the care of the Count of the Privy Purse. There were numerous private palaces adjoining the grove,³ and it was customary to permit them the use of the aqueduct under prescribed conditions. They were accustomed,

de privatis nostris largitionibus accipere decernimus: quinque librarum auri condemnatione huius legis temeratore plectendo.

1. Codex Justinianus, XI, 78, 1 : Si quis Daphnensis luci in Syria vel Persei in Aegypto arborem comparaverit, quinque libris auri noverit se esse multandum; non minore dispendio et illo feriendo, qui vendere arbores ausus fuerit, quas non licet emptoribus comparare.
2. Cassiodorus, Variae, V, 18 : Si qua etiam per ripam fluminis Padis ligna fabricandis apta dromonibus in praediis regalibus potuerint inveniri, artificibus huic operi a magnifico viro Abundantio praefecto praetorio deputatis abscindendi sit permissa licentia.
3. Cf. Godefroy, ad Codicem Theodosianum, XV, 2, 2.

however, to employ the device spoken of by Frontinus,¹ and enlarge the size of the pipes which conveyed the water from the main channel of the aqueduct to their own property, and it was discovered in 369 that the water intended for the use of the palace and fountains was considerably attenuated by private usurpations. Valens, therefore, promulgated an edict addressed to the Count of the Privy Purse, prescribing rules for the use of the water. In the first place, only persons having the Emperor's permission were entitled to use the water of the aqueduct. Frontinus likewise informs us that only persons with "letters from Caesar" (ne quis sine litteris Caesaris) might use the public aqueducts. The persons and the amounts they were entitled to must be placed in the public records. The penalty for illegal use of the water was fixed at a pound of gold for every obol's worth of water usurped. The three receptacles in which the water was stored were ordered restored at the public expense, and the governor of the province, i.e. the Consular of Syria, was to grant the use of the water which was to be drawn from the reservoirs and not by tapping the aqueduct itself.²

1. Frontinus, De Aquaeductibus, artic. 112.

2. Codex Theodosianus, XV, 2, 2 : Aquaeductus, qui Dafnensi palatio usum aquae praestat, quorundam aviditate tenuatur adpositis maioribus fistulis, quam ex imperiali largitate meruerunt. Consensu igitur omnium in tribus locis receptacula reparentur et singulorum nomina modusque servandus tabulis adscribatur, et si ultra licitum aliquem usurpasse

The Count of the Privy Purse also had some authority over all aqueducts the water from which served to irrigate the imperial estates, and Theodosius the Great in 383-384 informed him that the use of the water employed for this purpose was reported to have been usurped by numerous persons with the connivance of the procurators, resulting in the loss of fertility on the domain lands, and ordered him to restore all irrigation channels to their former courses.¹

constiterit, per singulos obolos librae unius auri dispendiis ingravetur. Et si sacri tenore rescripti aliqui certum modum aquae meruisse noscetur, non prius eidem accipiendi potestas aliquatenus tribuatur, nisi adito rectore ex ipso conceptaculo quantitatem quam meruit possit adipisci.

1. Codex Justinianus, XI, 66, 5 : Usus aquae, quae fundorum nostrorum utilitatibus serviebat, plurimorum dicitur usurpatione sublatus, idque procuratorum conventia vel dissimulatione perfectum, ut agrorum fertilitas destitua nullos fructus cultoribus praestet. Quia igitur satis iniustum est statum florentis ante patrimonii aridae sitis molestia fatigari, ad meatus pristinos universum aquae modum temporis praescriptione submota praecipimus revocari.

Chapter XVIII

THE JURIDICAL COMPETENCE OF THE COUNT OF THE PRIVY PURSE AND HIS OFFICIALS

The juridical competence of the Count of the Privy Purse was extensive and has already been discussed in part.¹ In the first place, he was the ultimate source of authority under the Emperor over all cases arising from the incorporation and administration of the domain lands. In the second place, his court was the only one in which the palatini of the Privy Purse could be cited, unless authority were especially delegated to the provincial governors.² Furthermore, he was authorized to mulct the provincial governors and prosecute them and their officials in his court after they had laid aside their office if during their incumbency they had permitted the revenues of the Privy Purse to suffer any loss.³ We have already described

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1. Cf. Chapter VIII, pp. 169-189 for his competence in cases arising from the incorporation of estates into the domain; pp. 48-49 for his administration of the domain; pp. 118-119 for his jurisdiction over the palatini of the Privy Purse; pp. 150-156 for his jurisdiction with respect to the property of heretics; pp. 157-159 in cases involving those contracting forbidden marriages, and pp. 159-160 for those despoiling graves.
 2. Codex Justinianus, XII, 23, 12.
 3. Codex Justinianus, I, 34, 2.

his competence with respect to the property of heretics, of those contracting forbidding marriages, and of those guilty of the spoliation of graves. The reason assigned by Cassiodorus for this jurisdiction in the case of incestuous marriages and the spoliation of graves seems somewhat fatuous, i.e. that the management of the imperial estates would give the Count jurisdiction only over slaves, and since a slave is not a person in the eyes of the law, the dignity of Latium (dignitas Latialis) would seem to require that some urban authority be conferred upon the office.¹ As a matter of fact, all of these cases would in a certain sense be associated with his authority over bona caduca and bona damnatorum, in case of illegal and improper heirs of the dead. Furthermore, the pressure of business in the courts of the Prefects who would seem the more likely judges in such cases would be relieved by distributing some of it to another office.

In 414 A.D. Honorius imposed a fine of as much as fifty pounds of gold to be paid into the Privy Purse upon any provincial governor, illustris or Prefect of the City who

1. Cassiodorus, Variae, VI, 8 : Et quia iudicis fastigium exercere non poterat inter homines extremis conditionibus inclinatos, alios quoque titulos provida deliberatione suscepit, ne dignitas Latialis causam tantum videretur habere cum famulis : sed actibus urbanis tunc se feliciter occupavit, postquam agrestium causas decenter amisit. Quid enim prius facerent inter servos iura publica, qui personam legibus non habeant?

usurped the legal cognizance due the Count of the Privy Purse.¹ Already in 365 Valentinian I had warned the Prefect of Rome against intervening in the affairs of the Privy Purse without the knowledge of the Count,² i.e. the authority of the Prefect did not extend over the rationalis privatae rei per Urbem Romam et suburbicarias regiones who was a subordinate of the comes rerum privatarum.

In tracing the judicial procedure in cases involving the estates of the Privy Purse we shall begin with the origin of any given case in the provincial locale. Under the Early Empire the procurator on an imperial estate had "rangers"³ or regular troops⁴ at his disposal and exercised rights of police to maintain order within the domain and defend it from external aggression,⁵ but he had no juridical competence to impose

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1. Codex Justinianus, I, 33, 3 : Si quis iudicum vir illustris vel praefectus urbi cognitionem comitivae privatarum examini debitam sibimet vindicandam censuerit vel tuitionem contra eiusdem sedis statuta praestiterit, ad quinquaginta librarum auri illationem poenae nomine eius officium teneatur, quam decet in articulo exigi mansuetudinis nostrae aerario sociandam.
 2. Codex Theodosianus, X, 1, 9 : Observet in posterum eminentia tua, ne quid de rebus rei privatae violetur, nisi prius comes rerum privatarum fuerit gnarus.
 3. Saltuarii fructuum servandorum gratia, finium custodiendorum causa, Digesta, XXXIII, 7, 12; the Greek equivalent was *ἑποφύλακες* (Corp. Gloss. Lat., ed. Goetz, II, 177) or *παραφύλακται* (C.I.G., 4366).
 4. MISSIS MILITIBUS, C.I.L., VIII, 10570.
 5. Digesta, I, 19, 3, 1 (Callistratus) : Si tamen quasi tumultuosum vel iniuriosum adversus colonos Caesaris prohibuerint (procuratores) in praedia Caesariana accedere, abstinere debet, idque divus Pius Iulio rescripsit.

penalties.¹ Thus, during the persecutions under Diocletian we find that St. Tymasius was arrested and dragged from his cell on an imperial estate by the procurator saltus, but brought for trial before Claudius who was then governor.²

This continued to be the procedure under the Late Empire. The offender was judged by the provincial governor, but a constitution of Constantius in 358 required that the trial be conducted in the presence of the rationalis or procurator of the estate.³ It was only logical, therefore, that the procurator should presently be obliged to bring the offender into court,⁴ which in turn led easily to an enactment expressly

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1. Digesta, I, 19, 3, pr. (Callistratus) : Curatores (i.e. procuratores) Caesaris ius deportandi non habent, quia huius poenae constituendae ius non habent; Codex Justinianus, III, 26, 1 (Septimius Severus & Caracalla) : Non defensae mortis quaestionem apud procuratores nostros non oportere tractari quis ignorat?
 2. Passio S. Tymasii veterani, Analecta Bollandiana, IX, p. 119 : Tunc praepositus saltus atque decurio eum cum, cingulo quod deposuerat . . . de eadem cellula protraxerunt, atque eum Claudio, qui tunc provinciae dux fuerat, tradiderunt.
 3. Codex Justinianus, III, 26, 8 : Cum aliquid colonus aut servus rei privatae nostrae contra disciplinam publicam adseratur perpetrare, ad iudicium rectoris provinciae venire cogendus est, sic videlicet, ut praesente rationali vel procuratore domus nostrae inter eum et accusatorem causa tractetur et, si facinus fuerit adprobatum, iuris severitas exseratur.
 4. Codex Theodosianus, X, 4, 3 (Valentinian I, date uncertain) : In negotio criminali per rationalem colonos vel conductores rei privatae nostrae, quorum repraesentatio poscitur, exhibendos esse sinceritas tua (vicarius Africae) cognoscat, in civili vero causa defensorem domus nostrae adesse debere. As an illustration of the importance of the administrative system of the Late Empire, and in particular of the administration of the Domain, in the formation of the feudal system this provision should be compared with the

forbidding the officials of the governor to enter the domain for the purpose of seizing offenders and bringing them to trial.¹ This edict of Valentinian II corresponds with the period in which the authority of the provincial governors over the domain lands was at a minimum in the effort to concentrate its administration in the hands of the comes rerum privatarum for the purpose of raising from it the greatest possible revenue.² This development reached its logical conclusion when the same Emperor in 383 transferred fiscal cases involving the Privy Purse to the rationalis who conducted the trial in the presence of an advocatus fisci. Appeals from this tribunal, as in the case of ordinary private suits, went to the courts of the regular appellate judges, i.e. the proconsuls, vicars, etc., before a final appeal to the Emperor or the comes rerum privatarum was allowed.³

Merovingian and Carolingian laws by which the feudal suzerain must bring his vassals and dependents into the public courts; cf. Beudouin, op. cit., p. 337, note 6 for citations.

1. Codex Theodosianus, I, 11, 2 (C. Just., XI, 74, 1) : Divae memoriae Valentiniano iuniori subreptum est, ut ordinariorum iudicum officiis actores seu conductores dominicos conveniendi licentia negaretur; et idcirco ad rationales privatae rei exigendorum fiscalium debitorum ex illo tempore cura translata est. Ad hanc tamen inutilem praecepti novitatem etiam illud adiectum est, ut, si quid in rei privatae nostrae praediis sceleris esset admissum, quod pro sua atrocitate ulcisci potestas, nisi ferro accincta, non posset, exhibendorum reorum, nisi qui per dominicos deducere et defenderentur actores, ordinario iudici copia non pateret.
2. Cf. p. 238.
3. Codex Theodosianus, XI, 30, 41 : Rationales privatae rei causis vel sacri aerarii praesidentes examen praesente fisci

Arcadius and Honorius in 398, in view of the abuses of the Count's unrestricted administration, abrogated the legislation of Valentinian II in an effort to restore to the governor his former authority over the domain. In the Code of Justinian this edict of abrogation is retained,¹ and we find in force the procedure established by Constantius in 358, i.e. trial by the governor in the presence of the procurator or rationalis. By this time, i.e. the beginning of the fifth century, the tendency was to remove the domain land from its privileged legal status. Codex Theodosianus, X, 26, 1 (C. Just., XI, 72, 1), dating from 426 A.D. in effect proclaimed that cases involving the men of the domain were to be treated in the same way as any others.²

The cause of the Privy Purse was maintained by an advocate of the fiscus, and Valentinian I in 367 ordered the vicars and provincial governors to provide suitable advocates.³

advocatione suscipiant. Ac si eorum sententia forte fuerit appellatione suspensa, ad eos iudices disceptationis fata transeant, ad quos privatorum hominum causae referri ex provocatione consuerunt, ita ut, si ab illis quoque fuerit provocatum, mansuetudinis nostrae expectetur arbitrium.

1. Codex Justinianus, XI, 74, 1 = Codex Theodosianus, I, 11, 2 just cited, cf. p. 324, note 1.
2. . . . quotiens de causa ad domum regiam pertinente aliquid quaestionis emergit, non aliter quam ex legum ordine, quibus similiter omne hominum genus tenetur, vel excipiant vel inferant actionem.
3. Codex Theodosianus, X, 15, 4 : Vicarios praefecturae ordinariosque rectores praecelsa sinceritas tua istius sanctionis auctoritate commoneat, ut privatae rei nostrae, quotienscumque aliquas vel denuntiaverit vel exceperit actiones, idoneos tribuant advocates.

The advocates formed a regular matricula,¹ and Anastasius at the suggestion of the Count of the Privy Purse and the Proconsul of Asia, in 497 decreed that whoever had performed the office commendably should enjoy, after laying it aside, the dignity of a clarissimus and a count of the first order.²

One of the chief problems of the local administration of the domain was that of keeping the powerful conductores under control. Very frequently they were persons of consequence independent of their position as lease-holders of the Emperor. Holding under a perpetual lease the powerful conductor emphyteuticarius was quasi dominus and inclined to assume the airs of a local potentate, attributing to himself the status of an imperial procurator and almost that of a magistrate. In 426 Theodosius II found it necessary to forbid any lease-holder on the private domain to usurp the insignia of office or assume magisterial powers.³ Passages in St. Augustine illustrate the extent to which the conductor of an imperial estate might

1. Codex Justinianus, I, 51, 14; II, 7, 20.

2. Codex Justinianus, II, 7, 20 : Suggestionem viri illustris comitis privatarum et proconsulis Asiae duximus admittendam, per quam nostrae serenitatis auribus intimavit fori sui advocatos communi petitione magnopere postulasse, ut, postquam advocacionis deposuerint officium, dignitate quadam nostra liberalitate potiantur. Iubemus itaque post depositum, ut dictum est, praefatum officium unumquemque eorum, qui in praesenti sunt vel postea matriculis eorum pro tempore fuerint inserti, clarissimi primi ordinis comitis perfrui dignitate.

3. Codex Theodosianus, X, 26, 1 : Conductores hominesve augustissimae domus nostrae nullum cuiuslibet nomen militiae

assume the position of local despot. A certain Crispinus who became by purchase conductor emphyteuticarius of an imperial estate compelled the coloni of this estate to become Donatists and rebaptized them.¹ Constantine decreed that anyone oppressed by the actores of the domain should bear his complaint to the governor and receive justice.²

The time limit for settling cases involving the Privy Purse was variously fixed. Constantine decreed that a year sufficed and "the profits of the Privy Purse ought not be vexed any longer."³ Valentinian II regarded two months as sufficient for cases involving persons resident in the same province, four in contiguous provinces, and six in transmarine provinces,⁴ and Justinian indiscriminately allowed six months, except in cases where time had to be allowed for bringing persons and documents

usurpent, nullius cingulo dignitatis utantur, ne ex hoc sibi erigendi supercilii fastus, sacro numini nostrae pietatis oriatur invidia.

1. Contra litteras Petilianii, II, 184 : Nonne Crispinus cum emisset possessionem, et hoc emphyteuticam, non dubitavit, in fundo catholicorum imperatorum, uno terroris impetu, octoginta ferme animas miserabili gemita mussitantes, rebaptizando submergere; cf. Epistolae, 66.
2. Codex Theodosianus, X, 4, 1 (C. Just., III, 26, 9) : Si quis ab actore rerum privatarum nostrarum sive a procuratore fuerit vexatus, super eius calumniis vel depraedationibus deferre querimoniam (sinceritati tuae vel rectori provinciae - C. Just.) non dubitet.
3. Codex Theodosianus, X, 1, 4 : Cum fiscus litem patiatur aut inferat, anni spatium ad determinandam causam spectari oportet, quia hoc ad instruendum satis est et diutius non oportet privatorum sive fisci emolumenta fatigari.
4. Codex Theodosianus, X, 1, 13 : In omnibus fiscalibus causis si intra eandem provinciam res agatur, duos menses satis abundeque sufficere censemus; si ex contigua personae atque instructiones necessariae putabuntur, quattuor; si ex transmarina, sex.

etc. to the capital.¹

Appeal from the judgment of the discussor or rationalis was denied until definite sentence had been given,² and was even then denied when obviously employed as the device of the guilty debtor to stave off execution. A whole series of laws is enacted to provide against this practice. Thus, in 342 Constantius refused appeals "against the utility of the res privata" when they concerned refusal to pay what was due, or the throwing off of the munera.³ In 353 he issued a constitution designed to prevent damage to the res privata by manifestly guilty persons who sought to stay the process in progress against them by appealing.⁴ In 354 the Proconsul of Africa was subjected to a fine of fifty pounds of silver if he

1. Codex Justinianus, X, 1, 11 : Πᾶσα δημοσία δίκη, ἐκτὸς ἐξ μηνῶν μετὰ τὴν προκἀταρξιν μετρούμενων πληροῦσθω, εἰ μὴ ἄρα συμβῆ κατὰ τὸ ἀναγκάϊον ἢ πρόσωπα ἢ δικαιώματα τινα ἕτερα ἐξ ἐπαρχιῶν ἀχθῆναι κατὰ τὴν βασιλῆα πόλιν. ἢ αὐτοὶ οἱ ἐναγόμενοι τὴν αἰτίαν ὑπερθέσεως παρασχῶσιν ὡς ἀπαράσκευοι.

2. Codex Theodosianus, XI, 36, 29 (C. Just., VII, 65, 7) (Valentinian II, 385) : Ante certum sententiae tempus et ordinem eventus a discussore vel a rationali appellare non liceat.

3. Codex Theodosianus, XI, 36, 6 : In fiscalibus vero vel rei privatae causis, hoc est ob debitum rennuendum vel munera respuenda, si quis appellare voluerit contra utilitatem fisci vel rei privatae, appellationem oblatam cessare oportet nec libellos huiusmodi suscipi, qui in damna fiscalia commodum sententiae latae aut dilatione suspendant aut terrore detorqueant.

4. Codex Theodosianus, XI, 36, 9 : Calliditatis auxilio perspicui debitores rei privatae nostrae solutionem cupiunt

received appeals "against the utility of the fiscus" under such circumstances,¹ and a fine of thirty pounds of gold was imposed upon his officium for a similar offence.² In 396 Honorius, in a constitution addressed to the Count of the Privy Purse, once more denied appeal to those "qui aperte manifeste-que convicti sunt, who defer the public necessity and the utility of the Privy Purse by the arts of the debtor,"³ and this law was incorporated in the codification of Justinian.⁴

The system of appeals was established by a constitution of 383 A.D.⁵ By this edict appeal from the judgment of

evitare frustratoris provocationibus interpositis. Ideoque decrevimus minime convenire huiusmodi vocem appellationis admitti.

1. Codex Theodosianus, XI, 36, 10 : Placuit quinquaginta pondo argenti fisco inferre prudentiam tuam, si frustratoriam provocationem contra commodum fisci susceperis solutionem-que vitanti praebueris culpabilem conventiam.
2. Codex Theodosianus, XI, 36, 13 : Cum constet iam dudum esse nostra sanctione praeceptum, ne aliquis, cum fiscale debitum postulatur, audeat provocare, proconsulare officium, si patientiam commodaverit, XXX pondo auri fisco cogatur inferre.
3. Codex Theodosianus, XI, 36, 32 : Et publicarum necessitatum et privati aerarii poscit utilitas, ne commoda, quae domui nostrae debentur, callidis debitorum artibus differantur. Quam ob rem eorum appellatione reiecta, qui aperte manifesteque convicti sunt, hoc observari praecepti huius auctoritate censemus, ut ei, quem constiterit esse publicum debitorem, appellationis beneficium denegatur.
4. Codex Justinianus, VII, 65, 8.
5. Codex Theodosianus, XI, 30, 41 : Rationales privatae rei causis vel sacri aerarii praesidentes examen praesente fisci advocacione suscipiant. Ac si eorum sententia forte fuerit appellatione suspensa, ad eos iudices disceptationis fata transeant, ad quos privatorum hominum causae referri ex provocatione consuerunt, ita ut, si ab illis quoque fuerit provocatum, mansuetudinis nostrae expectetur arbitrium, vel sinceritate tua vel sacrarum remunerationum comite, prout ad quem negotium pertinebit, quid super his, de quibus

the rationalis was directed to the regular judges to whom appeals were ordinarily sent in private cases, i.e. the vicars and proconsuls,¹ and thence, in the third instance, to the court of the Count of the Privy Purse. Valentinian II allowed twenty days for the settlement of appeals if within the same province, and forty if within contiguous provinces,² to which Honorius, in cases specifically pertaining to the res privata added twenty more days to the established twenty, thus allowing forty days for terminating the business in the same province; and thirty more to the allotted forty in contiguous provinces.³

Appeal in the third instance to the Count of the Privy Purse himself was allowed only in the case of the most important or extraordinary cases.⁴ In case of appeal to the comes

referatur, gestum sit, scribitis currentibus instruente, ut, sive athuc superest nostra cognitio, mansuetudinem nostram facta suggestionem commoneat, sive adquiescentibus partibus terminum negotio datum esse constiterit, plenam rei inquisitionem notitiamque eius accipiat. Sane tempora tantum volumus privatis fiscalibusque causis non esse communia, ut antiquo iure fiscalia negotia intra duos menses in eadem provincia, intra quattuor in contigua, intra sex in transmarina dicantur.

1. Cf. Codex Theodosianus, X, 1, 13 (385) addressed to the Proconsul of Africa and regulating, among other things, the time limits for rendering decisions in case of appeal.
2. Codex Theodosianus, X, 1, 13 (385) : Cum vero de causae meritis interposita provocatione tractabitur, in eadem provincia partibus constitutis intra viginti, si ex contigua, intra quadraginta dies negotium terminetur.
3. Codex Theodosianus, XI, 30, 64 (412) : Praecipimus itaque, ut praeter hos viginti dies, quos lex augusta constituit, viginti alios iungeremus. . . . In contiguis quoque provinciis, in quibus quadraginta dies dedit antiquitas, sub simili condicione alios XXX dies iungi praecipimus.
4. Codex Theodosianus, X, 1, 13 : exceptis magnificis viris largitionum nostrarum comitibus, quos extra ordinem negotia definire non multo ante lata secundam veteres mores constitutione praecipimus.

rerum privatarum, if the business were too trivial or the litigants too far away to appear in his court, he might delegate the case to a provincial governor whom he approved and trusted.¹ A year was allowed in which to settle the matter in the case of appeals from the transmarine provinces to the Count of the Privy Purse,² the usual time in case of appeals from provinces adjacent to the residence of the Court.³ Judgment in such cases was made either by the Emperor or the Count.⁴

There was a definite attempt to secure an honest judicial administration in the provincial courts and also a minimum of appeals to the courts of the great administrative officers at the Capital. Thus, after 389, the Prefect of Rome rather than the comes rerum privatarum received appeals from the rationalis rei privatae per Urbem Romam et suburbicarias regiones whenever a sum of less than 200 pounds of silver was involved,⁵ and Valentinian III in 429 renewed the edict of Valentinian II⁶ which provided that appeals from the judgment

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1. Codex Theodosianus, XI, 30, 45 (C. Just., VII, 62, 26) (385): Cum post sententiam discussoris vel rationalis fuerit provocatum, ad sinceritatem tuam negotium transferatur, ut, si mediocritas negotii aut longinquitas regionis ad iudicium tuum litigatores venire non patitur, iudici provinciae, quem ipse probaveris, negotium deleges.
 2. Codex Theodosianus, XI, 30, 45 : Appellationes vero transmarinae in iudicio tuo intra anni agantur spatium.
 3. Codex Theodosianus, XI, 30, 45 : de contiguis et non longe positis provinciis appellationes intra constituta iure tempora peragantur.
 4. Codex Theodosianus, XI, 30, 41 : mansuetudinis nostrae expectetur arbitrium, vel sinceritate tua.
 5. Codex Theodosianus, XI, 30, 49.
 6. Codex Theodosianus, XI, 30, 41.

of the rationalis privatae rei per Africam, except in the case of the fixed tax (pensio) and petitions for bona vacantia (competitiones), were to go to the Proconsul whose judgment we are perhaps to understand was final.¹ Marcian ordered cases to be tried by the ordinary iudices and appeals to the Court and its officials to be limited to the greatest and most urgent matters such as public debt; "We do not wish," he writes, "any litigant to be brought to court from near or distant provinces either by sacred summons or decree of the Magnificent and Illustrious judges (the high court officials such as the Count of the Privy Purse), unless, perhaps, on account of the power of his adversary, or the difficulty of the case itself, or the incapacity of the provincial governor to handle a case regarding the mass of public debt."²

In his Formula for the office of comes patrimonii, therefore, Cassiodorus especially enjoins the Count to discharge his judicial duties without venality and long protraction which destroy half the value of justice.³

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1. Codex Theodosianus, XI, 30, 68.
 2. Novellae Martiani, I, 2 : Has ergo ob causas nullum adversarium suum a proximis vel longinquis partibus, non per sacros affatus, non per magnificentissimorum vel illustrium iudicum sententias, volumus exhibere, nisi forsitan aut propter potestatem adversarii, aut ipsius rei difficultatem, aut publici debiti molem deficiente rectore provinciae spectabilis iudicis, qui in locis vel proximo deget, vel amplissimae potestatis vel aliorum maiorum iudicum auxilium postuletur.
 3. Cassiodorus, Variae, VI, 9 : Querimonia possessorum sine venali protractione discinge. Omne siquidem iustum celeritatis commodo transit ad beneficium.

Finally, after Justinian's provincial reforms in the East (cf. Chapt. V), appeals were directed from the judgment of the governor, not to any of the central ministers in charge of the domain, as hitherto, but to the Praetorian Prefect or the quaestor sacri palatii. This fundamental innovation affected only the newly created provinces of Lycaonia, Pisidia, Isauria, Syria prima, Galatia, Phrygia Pacatiana, Thracia, Cappadocia, and Proconsular Armenia (Armenia prima).¹ In the West appeals from all officials in the reconstituted province of Sicily were directed to the Quaestor of the Palace.² Whether the new principal was applied to the remainder of the recovered western provinces is not apparent.

The delays of the Roman law courts and the devices of the advocates to perpetuate suits are notorious. Ammianus¹ Marcellinus contains a very spirited and characteristic picture of their procedures. "Now," he writes, "one may see throughout all the regions of the East the most violent and rapacious classes of men hovering about the law courts and besieging the houses of the rich like Spartan or Cretan hounds, cunningly pursuing different traces, in order to create the occasion of a lawsuit. Of these the chief is that tribe of men who wear out the doorposts of widows and the thresholds of orphans by sowing

1. Novellae Justiniani, XX; XXVII, 2; XXX, 10.

2. Novellae Justiniani, LXXV.

every variety of strife and contest in thousands of actions, and create bitter hatred among friends, relations or connections who have any disagreement, if they can only detect the least pretext for a quarrel."¹ Of the courts he says, "When these function properly, they are temples of equity; but when they are perverted they are hidden and treacherous pitfalls, and if any person falls into them, he will not escape until after many years have elapsed, and he himself has been sucked dry to his very marrow. And when at last days and months and years have been passed in these proceedings, and the parties to the suit are exhausted, and the whole matter in dispute is worn out with age, then these men, as if they were the very heads of their profession, often introduce sham advocates along with themselves. The new-comer now seriously undertakes to preserve the fortune or even the life of the client and to turn aside calamitous ruin or the very sword of execution. He wrinkles his brows and throws his arms about like an actor and prepares for a great peroration . . . And then, when all are eager for him to make an end, he concludes his preamble with a statement that the chief advocates have as yet only had three years since the

1. Ammianus Marcellinus, XXX, 4, 8 : At nunc videre est per Eoos omnes tractus violenta et rapacissima genera hominum per fora omnia volitantium, et subsidentium divites domus, ut Spartanos canes, aut Cretas, vestigia sagacius colligendo, ad ipsa cubilia pervenire causarum. 9. In his primus est coetus eorum, qui seminando diversa iurgia per vadimonia mille iactantur, viduarum postes et orborum limina deterentes, et aut inter discordantes amicos aut propinquantes vel ad fines, si simultatum levia senserint receptacula, odio struentes infesta.

commencement of the suit to prepare themselves to conduct it; and so obtains an adjournment, as if they had to wrestle with the ancient Antaeus, while still they resolutely demand the pay due for their arduous labours."¹ While this farce was being enacted, cases dragged on for years. People were disturbed in the secure possession of their property by trumped-up claims of the palatini of the Privy Purse, by false accusations, by petitioners and their odious concomitant, the professional informers. In one of the letters of Symmachus in which an appeal is made to the Emperor on behalf of some friends we read, "It is now almost two years that the heirs have been belabored contrary to justice by the defensores and rationales of the Most August House who present edicts of the sacred Oracle, and six years already have passed since the reading of the last

1. Ammianus Marcellinus, XXX, 4, 13 : . . . cum depravantur, foveae fallaces et caecae ; in quas si captus ceciderit quisquam, non nisi per multa exsiliet lustra, adusque ipsas medullas exsuctus. . . . 19. Et cum nudatis litigatoribus dies cesserint, et menses, et anni, tandem obtrita vetustate controversia intromissa, ipsa capita splendoris ingressa alia secum advocatorum simulacra inducunt. Cumque intra cancellorum venerint saepta, et agi coeperint alicuius fortunae vel salus, atque laborari debeat, ut ab insonte gladius, vel calamitosa detrimenta pellantur, corrugatis hinc inde frontibus, brachiisque histrionico gestu formatis, ut concionaria Gracchi fistula post occipitium desit, consistitur altrinsecus diu: et in eam conclusionem cunctis finem cupientibus desinit, ut nondum se patroni post speciem litis triennium editam causentur instructos : spatioque prorogati temporis impetrato, quasi cum Antaeo vetere colluctati, perseverantur flagitant pulveris periculosi mercedes.

will and testament."¹

On the other hand, persons who received estates from the Emperors, by gift, purchase, or lease-hold, were frequently plagued by persons lodging claims to the property on the ground that it had originally been transferred illegally to the Privy Purse. To put a period to the litigation arising from such sources, Zeno enacted that any property alienated from the domain lands under any form or title was free of law suits after the lapse of four years and that any persons having claims thereto must lodge them against the Privy Purse within four years of the alienation, after which they would not be heard.²

On the model of Zeno's constitution Justinian in 531 A.D. likewise enacted that all alienations from the private estates of either Emperor or Empress on whatever title were free

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1. Symmachus, *Epistolae*, X, 41 : Annus fere secundus est, ut per defensores et rationales augustissimae domus contra iustitiam solemnem Oraculi scripti fatigantur haeredes, licet iam sextus annus a testamenti recitatione numeretur.
 2. Codex Justinianus, VII, 37, 2 : . . . nec posse contra emptores praedictarum rerum factos iam vel futuros, vel contra eos, quibus super huiusmodi rebus largitas nostra delata est vel fuerit, aliquas actiones rem domini vel hypothecae gratia vel in personam, civiles seu praetorias, vel ex legibus aut sacratissimis constitutionibus descendentes vel quaslibet alias, licet nominatim praesenti sanctione non sint comprehensae, moveri: data volentibus licentia intra quadriennium contra sacratissimum aerarium, si quas sibi competere actiones existimant, exercere, ita tamen ut post elapsum quadriennium nec sacratissimum fiscum licere sibi met quibuslibet actionibus pulsare cognoscant.

of lawsuits after four years had elapsed after which time the res privata would receive no claims.¹

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1. Codex Justinianus, VII, 37, 3 : Bene a Zenone divae memoriae fiscalibus alienationibus prospectum est, etc. Quae omnia resecantes per hanc generalem et in perpetuum valituram legem sancimus omnes alienationes de aula procedentes, sive a nostra clementia sive a serenissima Augusta coniuge nostra sive ab his, qui postea digni fuerint nomine imperiali, sive iam alienatum quid est sive postea fuerit, sine omni inquietudine permanere, sive res eis per nosmet ipsos sive procuratores, ex epistalmate tamen nostro, fuerint assignatae. Et nemo audeat eos, qui res accipiunt per quemcumque titulum alienationis sive mobiles sive immobiles seu se moventes, vel iura incorporalia vel iura civilia, iudiciis adficere vel sperare aliquam contra eos esse sibi viam apertam, sed omnis aditus excludatur, omnis motus et spes huiusmodi petulantiae. Sed adversus domos nostras habeant, intra quadriennium tamen, secundum imitationem fisci, quas existimant posse sibi competere actiones in rem vel hypothecariam, ut ex nostra iussione causa moveatur et competentem mereatur effectum. Quod si quadriennium fuerit emensum, nec adversus nostram domum habeat quis quamcumque actionem.

Chapter XIX

THE COUNT OF THE PRIVY PURSE AND THE PETITORES
AND DELATORES

Two factors, the nature of the imperial power and the means of acquisition of by far the larger part of the domain lands (bona caduca and bona damnatorum) combined to make their administration particularly corrupt. The instability of the imperial throne which was not hereditary and liable to be shaken at any moment by a rebellion which success would make perfectly legal was utilized by petitioners (petitores) and informers (delatores) who played upon the fears which even the strongest Emperor felt for his own safety, to accuse innocent persons of treason, secure their condemnation and the transfer of their confiscated property to themselves. Again, powerful persons, themselves frequently of high official rank and in collusion with both the officers who administered the patrimony and the chief Ministers of the Empire, succeeded in disregarding the legal heirs to property and successfully petitioning for their inheritance as bona caduca. The petitioners even went so far

as to revive an obsolete statute of Constantine which, in an effort to hasten the growth of Constantinople, decreed the confiscation of the estates of all possessores in the neighbouring dioceses of Asia and Pontica who failed to construct a palace or residence in the new Capital, and a special edict of Theodosius II was necessary a hundred years later (438) to guarantee these possessores against the dread of petitioners, imposing a penalty of fifty pounds of gold and dismissal from the service upon any tractator who was bold enough to contravene the iussa divalia of the Emperor in this respect.¹ In 387 when Theodosius sent Cynegius the Praetorian Prefect to Egypt to close the temples and put an end to pagan worship,² the delators at once pounced upon the property of the Senators of Alexandria apparently held iure templorum, claiming it for the res privata. The Alexandrian Senate in a body was obliged to send a special embassy to lay their complaints before the Emperor who replied with a letter to Cynegius ordering him to confirm their possession and punish the delators who were harassing them.³

1. Novellae Theodosii, V, 1.

2. Zosimus, IV, 37; Idacius, Anno Theodosii X; Fasti Consulares, 388.

3. Codex Theodosianus, X, 10, 19 : Securitati vestrae studentes et iustitia necessariae legationis animati dedimus litteras ad virum clarissimum et illustrem Cynegium praefectum praetorio, quibus iussimus, ut delatores, quos iam etiam sua sententia meritis poenis adfecit, ubi reppererit, pari supplicio persequatur, fundatis omnibus, quae super possessionibus ac terris, quas hoc nomen huc usque vexavit, idem vir illustris constituit. Cf. Godefroy, ad locum cit.

The extent to which such fraudulent practices succeeded and the widespread misery they occasioned is amply attested. The pages of Ammianus Marcellinus are full of treason trials and the proportion of edicts in the Codices relating to the abuses of the petitioners and delators as compared to the number relating to any other phase of the administration of the res privata is startling.

Those within the palace service itself, nearest the person of the Emperor and in a position where the greatest influence could be brought to bear, were the most avaricious.¹ Zosimus represents them hovering like vultures about the Court of Arcadius awaiting the opportune occasion provided by the death of any person of unusual wealth which they endeavoured to transfer to themselves by procuring imperial rescripts ignoring the legal rights of the heirs.² Ammianus scores "the

1. Ammianus Marcellinus, XXXI, 14, 3 : Ut sunt in palatiis nonnulli alienarum rerum avidi, si qui caducum vel aliud petisset ex usu, etc. . ; op. cit., XXIX, 1, 19 (speaking of Valens) Adulescebat autem obstinatum eius propositum, admovente stimulos avaritia, et sua et eorum qui tunc in regia versabantur, novos hiatus aperientium.

2. Zosimus, V, 24 : τὸ δὲ τῶν συκοφαντῶν ὡς οὕτω πρότερον ἐπιπόλασαν, καὶ τοὺς περὶ τὴν αὐλήν εὐνοχοὺς ἀεὶ περίσπον, εἶπου τις τῶν πλουσίων ἀπέθανεν, ὡς οὐκ ὄντων παιδῶν ἢ συγγενῶν, ἐμήνυον τὰς οὐσίας καὶ τοῦ βασιλέως ἐφέρετο γράμματα : τοῦδε τὴν οὐσίαν τῷ δὲ παραδωθῆναι κελευόντα καὶ παρεδίδοκτο τοῖς ἡτήκοσιν οἱ κληροὶ παιδῶν ἐζῶτων, καὶ τοὺς πατέρας μετ' οἰμωγῆς ἀνακαλουμένων.

depravity of the judges and advocates, who are all of the same mind, and who sell the interests of the poor to the military commanders, or the persons of influence within the Palace, by which conduct they themselves have gained riches and high rank."¹ In another passage he depicts the vices of the palatini of Constantius who was so much influenced by those who surrounded him that it was wittily said of him that he "possessed considerable influence, if the truth be told, with his Grand Chamberlain Eusebius."² The revolution affected by Constantine's conversion and the youth of the Emperor gave them unrestricted opportunities. "Some of them had been fed on the spoils of the temples; they had smelt out gain on every occasion, and having elevated themselves from the depths of poverty to vast wealth, set no bounds to their bribery, their plunder or their extravagance, at all times accustomed to seize what belonged to others."³

The court eunuchs were especially avaricious for the property of others which they acquired with complete disregard of the claims of children and heirs.⁴ In these intrigues, their

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1. Ammianus Marcellinus, XXX, 4, 2 : Roborantur indies iudicum advocatorumque pravitate sentientium paria : qui tenuiorum negotia militaris rei rectoribus, vel intra palatium validis venditantes, aut opes, aut honores quaesivere praeclaros.
 2. Ammianus Marcellinus, XVIII, 4, 3.
 3. Ammianus Marcellinus, XXII, 4, 4 : Pasti enim ex his quidam templorum spoliis, et lucra ex omni odorantes occasione, ab egestate infima ad saltum sublatis divitiarum ingentium, nec largiendi, nec rapiendi, nec absumendi tenuere aliquem modum, aliena invadere semper adsuefacti.
 4. Zosimus, V, 24, cr. p. 340, note 2.

chief, the Grand Chamberlain, seems only too often to have set the pace. The personal nature of his office gave him the advantage of an intimacy with the Emperor, especially in the case of weak Sovereigns, which secured complete immunity for his own misdeeds and those of his subordinates.

In addition, swarms of fortune-seekers and professional informers attached themselves to high officials as clients and worked the undoing of others under the protection of their patron. Ammianus amusingly describes such a patron in the person of Probus, of whom he says, "And as fishes, when removed from their natural element, cannot live long on the land, so he began to pine away as soon as he was not the incumbent of some praefecture or other, which he was driven to be solicitous for by the squabbles of his troops of clients, whose boundless cupidity prevented their ever being innocent, and who thrust their patron forward into affairs of state in order to be able to perpetrate all sorts of crimes with impunity."¹ Thus, this incompetent old nobleman was bundled from one praefecture into another by his own retinue whose guilty devices he felt called upon to defend as a reflection upon his own honor, "for

1. Ammianus Marcellinus, XXVII, 11, 3 : *Atque ut natantium genus elemento suo expulsum, haud tam diu spirat in terris; ita ille marcebat absque praefecturis : quas iurgiis familiarum ingentium capessere cogebatur, numquam innocentium per cupiditates immensas, atque multa perpetrarent impune, dominum suum mergentium in rem publicam.*

it must be confessed that though he was a man of such magnanimity that he never desired any dependent or servant of his to do an unlawful thing, yet if he found that any one of them had committed a crime, he laid aside all consideration of justice, would not allow the case to be inquired into, but defended the man without the slightest regard for right or wrong."¹

Finally, it was a common thing for people to seek to enrage the Emperor against their personal enemies by charging them with treason,² or to divert charges from themselves by turning state's evidence against others. The flimsiest pretext such as the possession of a robe of the forbidden color³ sufficed to bring one to trial for treason. Several examples will illustrate the appalling consequence of this state of affairs.

There was at the Court of Constantius a certain malevolent notary, Paulus grimly called Tartareus, "whose fixed and obstinate purpose was that of injuring others,"⁴ from which vile business he made his own fortunes. In 359 he was presented

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1. Ammianus Marcellinus, XXVII, 11, 4 : *Namque fatendum est, numquam illa magnanimitate coalitus, clienti vel servo agere quidquam iussit illicitum; sed si eorum quemquam crimen ullum compererat admisisse, vel ipsa repugnante iustitia, non explorato negotio, sine respectu boni honestique defendebat.*
 2. Ammianus Marcellinus, XXII, 9, 8 : *nonnulli sine respectu periculi agentes adusque rabiem, ut adversarios suos laesae maiestatis criminibus illigarent.*
 3. Ammianus Marcellinus, XXII, 9, 10.
 4. Ammianus Marcellinus, XIX, 12 : *Ut enim erat obstinatum fixumque eius propositum ad laedendum.*

an occasion for initiating a whole series of accusations made to order to fit his peculiar genius. At Abydos in the Thebaid was an oracle of such reputation that many, unable to visit such a remote place, were incautious enough to send written questions (chartulae, membranae) and received answers. Unfortunately for them, many of these chartulae remained in the shrine and an appropriate selection of them was sent by some malicious person to the court of Constantius whose suspicions and fears made him the constant prey of the insinuations of his eunuchs and courtiers.¹ Paul was at once sent down from the court to head the commission conducting the trials. He was assisted by Modestus Count of the East and as apt as Paul for the office. The Praetorian Prefect was not included on the commission as being too inclined to leniency.² "Off went Paul in panting haste and teeming with deadly fury," writes Ammianus, "and since free rein was given to general calumny, persons were brought in

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1. Ammianus Marcellinus, XIX, 12 : Materiam autem in infinitum quaestionibus extendendis dedit occasio vilis et parva. Oppidum est Abydum in Thebaidis parte situm extrema: . . . Et quoniam quidam praesentes, pars per alios desideriorum indice missa scriptura, supplicationibus expresse conceptis consulta numinum scitabantur, chartulae seu membranae, continentes, quae petebantur, post data quoque responsa interdum remanebant in fano. Ex his aliqua ad imperatorem maligne sunt missa, qui, ut erat angusti pectoris, obsurdescens in aliis etiam nimium seriis, in hoc titulo ima, quod aiunt, auricula mollior, et suspicax, et minutus, acri felle concaluit.
 2. Loc. cit., Datumque est negotium Modesto, etiam tum per Orientem comiti, apto ad haec et similia. Hermogenes enim Ponticus ea tempestate praefectus praetorio, ut lenioris ingenii spernebatur.

from almost the whole world, noble and obscure alike.¹ Scythopolis in Palestine was chosen as the "theatre of torture" as being conveniently located midway between Antioch and Alexandria from which the greater number of the accused were dragged laden with chains.² All, of course, were accused of consultations regarding the death of the Emperor; "for if anyone wore on his neck an amulet against the quartan ague or any other complaint, or was accused by the testimony of the evil-disposed of passing by a tomb in the evening, on the ground that he was a dealer in poisons, or a gatherer of the horrors of tombs and the vain illusions of the ghosts that walk there, he was condemned to capital punishment and so perished."³

The reign of Valens witnessed even more atrocious treason trials than that of Constantius. The very beginning of the reign was marked by those attending the overthrow of Procopius. The upstart Emperor and the friends who had risen

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1. Ammianus Marcellinus, XIX, 12 : Perrexit, ut praeceptum est, Paullus, funesti furoris et anhelitus plenus : dataque calumniae indulgentia, plurimi ducebantur ab orbe prope terrarum, iuxta nobiles et obscuro.
 2. Loc. cit., Et electa est spectatrix suppliciorum feralium CIVITAS in Palaestina Scythopolis, gemina ratione visa magis omnibus opportuna, quod secretior, et inter Antiochiam Alexandriamque media, unde multi plerumque ad crimina trahebantur.
 3. Ammianus Marcellinus, XIX, 12, 14 : Nam siqui remedia quartanae vel doloris alterius collo gestaret, sive per monumentum transisse vesper, malivolorum argueretur indicis, ut veneficus, sepulchrorumque horrores, et errantium ibidem animarum ludibria colligens vana, pronuntiatus reus capitis interibat.

with him were eager to plunder the wealth of others.¹ "The most distinguished men suffered proscription, exile and other penalties. . . . and in order that one might be enriched, another of noble birth and perhaps more deserving was deprived of his patrimony and driven forth into banishment to waste away from sorrow or precariously support life by beggary. And no limit was set to these cruelties until the Emperor and his nearest friends were glutted with wealth and bloodshed."²

The revolt of Procopius left Valens in a state of perpetual fear and alarm throughout the rest of his reign. In such an atmosphere the professional delators thrived. An incident in 371 A.D. resulted in very extensive treason trials. Fortunatianus, comes rerum privatarum in that year,³ demanded the restitution of certain sums appropriated from the Privy Purse by the palatini Anatolius and Spudasius. These men, in

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1. Ammianus Marcellinus, XXVI, 10 : Imperator enim promptior ad nocendum, criminantibus patens, et funereas delationes adscisens, per suppliciorum diversitates effrenatius exultavit. . . . Nam ut quisque ea tempestate ob quamlibet valuerat causam, regio imperio prope accedens, et aliena rapiendi aviditate exustus, licet aperte insontem, arcescens, ut familiaris suscipiebatur et fidus, ditandus casibus alienis.
 2. Loc. cit., Exin cum superata luctibus ferocia deflagrasset, proscriptiones et exsilia et quae leviora quibusdam videntur, quamquam sint aspera, viri pertulere summates, et ut ditaretur alius genere nobilis, et forte meritis locupletior, actus patrimonio praeceps, trususque in exilium consumebatur angore, aut stipe precaris victitabat, nec modus ullus exitialibus malis impositus, quam diu principem et proximos opum satietas cepit et caedis.
 3. Seeck, Regesten.

alarm for themselves, were persuaded by a certain Procopius about the Court to bring accusation against the Count. The latter in a rage delivered up to trial before the Prefect Palladius, a person of the lowest birth in the train of Anatolius and Spudadius, for being a poisoner, and also Heliodorus an astrologer. These two, to divert the issue, proceeded to reveal the details of a consultation by ring-necromancy regarding Valen's successor. The fear and avarice of the Emperor at once received a spur from the courtiers who were constantly seeking new sources of gain.¹ Pergamius, one of those present at the magic rites, being questioned, got up "and shouting out the names with a loud voice, and without any cessation, named several thousand persons as accomplices with himself, demanding that people be brought forward to be accused of great crimes from every part of the Empire up to the very shores of the great Atlantic."² Innumerable arrests were made and "that wives too might not have leisure to weep over the misfortunes of their husbands, officers were sent at once to seal up the houses of any one who was suspect, who, while examining all the furniture, slipped in among it old women's

1. Ammianus Marcellinus, XXIX, 1, cf. p. 340, note 1.

2. Ammianus Marcellinus, XXIX, 1, 25 : dicere audacter exorsus, multa hominum millia quasi consciorum sine fine strepando fundebat, modo non ab extremo Atlante magnorum criminum arguendos poscens aliquos exhiberi.

incantations, or ridiculous love-tokens, contrived to bring destruction on the innocent; and then, when these things were mentioned before the bench . . . those whom they thus accused, though utterly devoid of defence, without any distinction, youths and decrepit old men, without being heard in their defence, found their property confiscated, and were hurried off to execution in litters."¹

Every effort was made by the Emperors to restrain the greed of the petitioners and put an end to the vicious practices of the delators. As early as 319 Constantine ordered the officers of the rationalis, immediately upon taking possession of a property accruing to the Privy Purse, to send a complete inventory thereof to the Count to forestall any diminution of the estate by the frauds of the Caesariani in collusion with the petitores. The latter were not permitted to take possession of an estate which had been presented to them until the inventory had been sent in, and a penalty was imposed upon the rationalis and his staff if he allowed them to do so.² Valens

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1. Ammianus Marcellinus, XXIX, 2, 3 : et, ne vel coniugibus maritorum vacaret miserias flere, immittebantur confestim, qui signatis domibus inter scrutinia supellectilis poenis addicti, incantamenta quaedam anilia, vel ludibriosa subderent amatoria, ad insontium perniciem concinnata; quibus in iudicio recitatis, . . . indefensi bonis ablati, nullo contacti delicto, promiscue iuvenes, aliique membris omnibus capti, ad supplicia sellis gestatoris ducebantur.
 2. Codex Theodosianus, X, 8, 2 : Ne principali liberalitate praeventa dominium quis rei alienae affectet, iubemus, quotiens iure suadente aliquorum bona ex officio tuo fuerint

in 369, and Theodosius I in 380 issued similar instructions to the Count of the Privy Purse.¹ In 395 and again in 415 Honorius permitted the petition to be made establishing a prior claim thereby, but the gift was not valid before the inventory and formal incorporation had been completed and the Emperor informed; a second petition was then necessary and a second confirmation of the gift and transfer.² In 418, in an

occupata, breves eorum plenissimos ad virum perfectissimum comitem et amicum nostrum mitti, ne fraudibus Caesarianorum inminuantur vel petentibus aliquid abiuretur; poena contra rationalem et officium eius proposita, si petitores ante possidere permiserint id quod ei donatum est priusquam praedicti breves comaeaverint.

1. Codex Theodosianus, X, 10, 11 (Valens) : Super vacantibus ac caducis, cum forte largitatem nostram aviditas circuit postulantium, prius tua scribta mittantur. Certi etiam dirigantur, qui cuncta sollerter inquirent, et cuius fuerint facultates et si nemo eas sibi iure nititur retentare. Ac si locum fisco factum esse claruerit, occupatis prius bonis et rerum omnium descriptione perfecta serenitatis nostrae scientia protinus instruat, ut quid statuendum sit, pro legum ordine terminemus. *Op. cit.*, X, 10, 14 (Theodosius) : Nemo possit ad indultum a nobis beneficium pertinere, nisi qui ante instructionem ab officio, quod tuis meritis paret, aduentibus nobis fuerit consecutus.
2. Codex Theodosianus, X, 9, 2 (395) : Quicumque a nobis caducas vacantesve meruerit facultates, sive cum auro vel argento, quod specialiter rarum erit, nam saepius habita horum exceptione praestantur, post allegationem beneficii principalis omnium bonorum, id est immobilium moventium vel, ut plenissime loquamur, praediorum urbanorum, etc. . . . Et cum officii palatini brevibus fuerint cuncta competenter inserta, omne illud, quod ex quibuslibet corporibus est repertum, nostris auribus intimetur. Nec quicquam horum ad petentem ante perveniat, quam suggestionem sublimitatis tuae informata mansuetudo nostra traditionem secundario praecepto prioris liberalitatis impertiat; ut, nisi denuo a nobis fuerint confirmata, quae videntur impetrati noverint, qui contra geminatam praeceptionem

edict to the Proconsul of Africa, Honorius in part abrogated his previous legislation; it was no longer necessary to have the alienation twice approved by the Emperor; the second petition might be received and granted by the Count of the Privy purse.¹ This revision apparently had reference only to Africa or endured but a short time, for in 445 Valentinian III imposed a fine of ten pounds of gold upon those who affixed tituli to another's property without making the second petition.²

In 435 Theodosius II in an edict which once more laid down the process to be observed in making the incorporation into the res privata, forbade any one to petition for such properties until the inventory had been made, opportunity given for a legal owner to assert his claims, and the final and formal act of incorporation completed. If anyone took possession of

contenderint. The passage in Olympiodorus may have reference to this law, therefore, when it states as if it were something unusual, that Constantius in 414 received from Honorius at a single request (*ΕΚ ΜΙΑΣ ΑΙΤΗΣΕΩΣ*) all the property of the tyrant Heraclian (Olympiodorus, sub anno 414).

1. Codex Theodosianus, X, 9, 3 : Et moris veteris instituto incorporationem bonorum anteferri competitionis effectui decernimus et de possessore iam fisco referri ad viri illustris privatarum largitionum comitis scientiam censemus: illud competitoribus compendium relaxantes, ut, quod a mansuetudine nostra iterata supplicatione postulandum fuerat, ab eius suolimitate non expectato imperiali beneficio postuletur.
2. Novellae Valentiniani, XIII : . . . si alieno (fundo), amissa negotii repetitione quaecumque ei competit, decem libras auri qui fuerit titulos adposuisse convictus exsolvat.

such property before the completion of this process the gift was forfeit.¹

The professional informers (delatores) who found such opportunities for the lucrative employment of their talents in conjunction with the laws governing maiestas, bona damnatorum and bona caduca, are stigmatized in the Codes as "the enemies of the human race"² and "the chief evil of human life."³ Numerous laws inflicting the severest penalties were designed to check their activity. In 313 Constantine condemned them to death.⁴ Six years later he decreed that their "invidious tongues should be cut out by the roots."⁵ Constantine in 335 and Valentinian I in 365 ordered them put to the sword.⁶ Theodosius in 380 condemned to decapitation those professional delators who so much

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1. Codex Theodosianus, X, 8, 5 : Et cum data reclamandi copia id iure possidere vel vindicare constiterit locumque aerario factum esse tam ipsius relatione quam publicorum monumentorum fide constiterit, rerum nobis notitia intimetur, ut iussu nostro vacantia vel caduca nomine occupentur aerarii, quo petentes a nobis huiusmodi res sic demum, si ita visum fuerit, responsum legitimum mereantur : quorum petitiones, antequam res praedicto ordine procurentur, nec accipiendas nec instruendas esse censemus.
 2. Codex Theodosianus, X, 10, 10 : humani generis inimicos.
 3. Codex Theodosianus, X, 10, 2 : unum maximum humanae vitae malum delatorem.
 4. Codex Theodosianus, X, 10, 1 : De delatoribus iam certa statuimus; quibus si quis contra fecerit, poenam capitalem excipiet.
 5. Codex Theodosianus, X, 10, 2 : et inter primos conatus in ipsis faucibus stranguletur et amputata radicitus invidiae lingua vellatur.
 6. Codex Theodosianus, X, 10, 3 : damus omnibus, qui se laesos existimant, contra delatores severitatem iudicium inplorare ferro destinctam; ope cit., X, 10, 10 : ut delatores pronuntiatos puniri gladio iusserimus.

as appeared in the courts three times, even if in just causes,¹ and Honorius once more in 418 warned the delators that "the victory of reiterated treacheries was dangerous for them and the penalty quick and certain."² The evidence of slaves was not accepted and those who informed against their masters were put to death.³

Constantine, in a law re-enacted by Arcadius in 405 admonished those who petitioned for estates of the res privata of whatever origin and on whatever form of lease-hold to refrain from basing their petition on the depositions of the delators. They would only ruin their case thereby, for not only was their petition denied, but they themselves were held guilty of sacrilege.⁴

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1. Codex Theodosianus, X, 10, 13 : Illud etiam odio eorum ducti discernendum esse censuimus, ut, etsi vera in delationem negotia detulissent, post victoriam tertiae delationis delator capite plecteretur.
 2. Codex Theodosianus, X, 10, 28 : Delatores . . . constringimus, ut ignoscendum sibi, si semel probaverint delata, non ambigant, periculosam vero sibi futuram esse victoriam iteratae proditoris abrupto periculo recognoscant.
 3. Codex Theodosianus, X, 10, 17 : Servum domini delatorem iubemus in exemplum omnium proditorum severissimae sententiae subiugari, etiam si obiecta probaverit.
 4. Codex Theodosianus, X, 10, 24 : Pro incltyti principis Constantini sanctione, quam nos etiam hac lege roboramus, in his possessionibus, quae velut de patrimoniali vel rei publicae aut templorum aut cuiuslibet huiusmodi tituli iure subtractae a nostra liberalitate poscuntur, cesset penitus delatorum nomen infestum omnesque se ab hac nefaria petitione retineant scientes nullum ex hoc posse fructum adquiri, sed huius decreti violatores sacrilegii poenam contrahere.

In 345 Constans decreed that no delator or delatorii libelli were to be received by any palatinus in cases of petitions for gifts from the res privata, nor was access to the Court or to the Count of the Privy Purse to be granted to any delator until his assertions had first been examined by the provincial governor (ordinarius iudex) and transmitted to the comes rerum privatarum. In 352 Constantius promulgated a similar constitution perhaps in connection with the confiscations ensuing upon the overthrow of the usurper Magnentius the year before. By this law the delator must be produced in the court of the governor by the petitioner, and a suitable penalty was imposed upon those who made unfounded charges against the patrimony of others affirming that it pertained to the res privata, in order that property might be enjoyed in security without fear.² The purpose of these laws was to prevent secret intrigues by forcing the delator to face a public examination of his assertions.

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1. Codex Theodosianus, X, 10, 7 : Nulli palatino delatorios libellos de competentibus rei privatae nostrae rebus accipere liceat, nec delatori ad comitatum nostrum vel officium sublimitatis tuae pateat accessus, priusquam ordinarius iudex cognitione suscepta veram esse delatoris adsertionem probaverit adque ad tuam sublimitatem rettulerit.
 2. Codex Theodosianus, X, 10, 8 : Qui largientibus nobis aliquid fuerint consecuti, cum delatoribus suis ad iudicia veniant, in iure consistant, negotia persequantur, ut adseveratio delatorum prodant fisco debitas facultates. In eos autem, qui aliquorum detulerint patrimonia, adfirmantes ad fisci nostri dominium pertinere, si non potuerint ostendere quod adstruxerant, severitas competens exeratur. Consequens igitur erit petitiones legibus minime consentaneas a iudiciis removeri nec eos adfici metu, qui legibus possident proprias facultates.

In 380 Theodosius the Great promulgated two edicts on this subject, one addressed to the Count of the Privy Purse,¹ the other to the provincials generally.² These edicts provided that henceforth no one petitioning for bona caduca was to enter into actual possession before the rescript was despatched conferring ownership, before sentence had been given in any case arising from the transaction and before the petitioner brought the delator into court. The Count of the Privy Purse must be informed and persons sent by him to investigate the affair in the province where the estate lay. If the delator's assertions were found to be false, or if the same delator appeared in the courts three times even in good faith (cf. p. 352), he was condemned to suffer public execution in the same place.³ In 383 Theodosius found it necessary once more to remind the Count of the Privy Purse that no petition should be granted until the

1. Codex Theodosianus, X, 10, 12.

2. Codex Theodosianus, X, 10, 13.

3. Codex Theodosianus, X, 10, 12 : Qui cum ex praesenti die ut caducas poposcerit facultates ex consensu nostrae liberalitatis acceperit, non ante allegare rescriptum, non prius obtinere sententiam, non denique effectum executionis debet accipere, quam eum iudiciis introducat, a quo sibi id, quod poposcerit, delatum adserit esse patrimonium. . . . Neque sane introduci eum satis erit eo tempore, quo rescriptum allegatur ac liberalitas intimatur, verum dirigendus is erit ad eam provinciam provinciasve, in quibus patrimonia delata consistunt, ut eius instruat actiones qui nostra liberalitate nitetur et cuius se honestati per blandum ministerium iniustae delationis inmersit, ut scilicet maiore omnium plausu detecta ibi calumnia eius supplicio publicae severitati litetur, ubi securi ac tutu domini trepidavere fortunae. Illud etiam ad professionem odii, quo universas delationes exsecramur, adiungimus, ut,

delator was brought to trial,¹ and in 392 he felt obliged to place the responsibility upon all the officials including the vicars and governors themselves. If any of them received and ratified the rescript granting bona caduca even though it bore the imperial adnotatio without first seeing that the delator was produced in court he was condemned to the loss of his life, though his property was left intact.² Honorius in 398 promulgated an edict renewing all the statutes of Theodosius on this subject and imposed in addition a fine of fifty pounds of gold upon the officium palatinum which permitted the rescript conveying full ownership to be despatched before the delator was tried.³ In 418⁴ and 421⁵ we find further edicts in which Honorius reiterates the obligation of producing the delator,

si idem delator etiam in bonis causis, tertio tamen fuerit inventus, post victoriam tertiae prodictionis capitali supplicio coherceatur.

1. Codex Theodosianus, X, 10, 18 : Etsi color petitionis aut ratione aliqua aut tempore possit admitti, secundum nostras leges non debet audiri, priusquam proditum delatorem competens poena constrinxerit.
2. Codex Theodosianus, X, 10, 20 : Ideoque praecipimus, ut omnium officiorum periculo custodiatur, vicarii etiam adque ordinarii cognitores moneantur - ea animadversione proposita, quae non facultates eorum sit expetitura, sed sanguinem - ut nullum huiusmodi rescriptum mansuetudinis nostrae, nec si specialis super hoc adnotatio proferatur, nisi una cum delatore suscipiant et ante de animo eius et facto vel impletis probationibus vel desertis iuxta constituta legum, quae super hoc iam dudum a divis principibus lata sunt, iudicetur.
3. Codex Theodosianus, X, 10, 22 : Divi patris nostri statuta renovantes aeterna lege sancimus officium palatinum quinquaginta auri libras de suis facultatibus exigi, si prius allegari divalia rescripta permiserit, quam delator in iudicio fuerit constitutus.
4. Codex Theodosianus, X, 10, 28.
5. Codex Theodosianus, X, 10, 29.

and in 439 Theodosius II decreed that no one might enter upon possession until he had produced the delator of free condition under strict custody in the proper court, either in the Capital if the property petitioned for was situated there, or in the court of the provincial governor. Slaves, having no personality before the law, were not acceptable as delators. If produced as such they were thrown into the flames or to the wild beasts.¹

The petitioners, especially when their claims were not easily substantiated, endeavoured to protract the case by delaying to appear. In 386, therefore, Valentinian II decreed that the petitioner should be formally summoned three times; if he still failed to appear with the delator, the case was dismissed and he who sought to vex by superfluous litigation must pay the costs.² Honorius, likewise, in 422 compelled the

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1. Novellae Theodosii, XVII, 1 : Quare hac perpetuo lege valitura sancimus, ut nemini liceat bona defunctorum caduca vel quamlibet rem aliam ad fiscum nostrum pertinentem vel eam quae eam parit actionem ullo modo a nostra serenitate competere, nisi prius officio productum in iudicio liberae condicionis delatorem tradiderit vel in hac alma urbe, si res ad fiscum pertinentes hic inventae fuerunt competitae, quorum interest periculo sub carceralibus vinculis observandum vel moderatori provinciae sub artissima custodia transmittendum. Servos namque nec ab initio, quasi nec personam habentes, in iudicium admitti iubemus, et si hoc ausi fuerint, continuo eos flammis tradi vel bestiis.
 2. Codex Theodosianus, X, 13, 1 : Si quispiam alienae substantiae petitor mora ludificante in longum protrahere coeperit possidentem et tertio conventus cum delatore noluerit adesse iudiciis, non solum iurgii, quod exortum est, amissione multetur, verum etiam sumptus et litis expensas

petitioner who failed to appear to pay the costs of the suit.¹

After the petitioner had presented his case in court sufficient time was allowed for the owner to prepare his answer and make his appearance to contest the claims of the petitioner before the transfer became final and binding. Honorius in 414 instructed the Count of the Privy Purse to suspend execution until the owner was able to prepare his contradictio without undue and injurious haste. A year was considered sufficient for the preparation of the necessary documents and the journey to the Court from the transmarine provinces and six months from the adjacent provinces.² Again in 421 and 422 Honorius allowed

ei reddere compellatur, quem superfluo litigio credidit esse vexandum. Quod quidem etiam in absentem contumacem post trinam, ut dictum est, conventionem statuendum esse censemus.

1. Codex Theodosianus, X, 10, 31 : Quod nisi intra anni metas ex die auctoritatis intra provinciam publicatae petitionis suae demonstraverit aequitatem, careat impetratis ac possessori ad propria revertendi facultas libera tribuatur, cui desistente competitore consuli volumus etiam de sumptibus et litis expensis.
2. Codex Theodosianus, X, 10, 27 : Quicumque ex praesenti die sub specie caducorum quaecumque bona putaverit postulanda eademque consensu nostrae liberalitatis acceperit, cum ad transmarinam provinciam vel provincias, in quibus sunt patrimonia constituta, pervenerit et contradictionem domini per quamcumque personam rem propriam defendentis acceperit, effectum adepti beneficii suspensa executione non peragat et ad comitatum spondentem venire immatura profectio non urgeat. Immo ille qui pulsatus fuerit institutum sibi integri anni spatium recognoscat, idoneum satis tempus muniendae congrue tractatibus litis et instruendi quem deserit laris habiturus, nec ad iacturam veteris domini sub iniuria propeae festinationis artandus, omnium iudicum, quos locorum ratio exegerit implorari, publico muniendus auxilio, ut praedae inhiantium non dedatur. Cum vero intra contiguas vicinasque provincias bona aliqua expetuntur, quorum contradictor potuerit inveniri, ad praebendam inter

a year for the owner to make his appearance before the Count of the Privy Purse to defend his title,¹ and at the same time (422) the petitioner was similarly compelled to appear within a year of the publication in the province of the transfer of the property to him to demonstrate the justice of his petition.² During the course of this year or until the final adjudication in the court of the Count of the Privy Purse the property in question remained in the hands of its original owner.³ In 389 Valentinian II decreed that any petitioner forcefully taking possession of property before the termination of the case in court, should be compelled not only to restore the property to the original owner, but pay a sum amounting to its assessed value (aestimatio) as well by way of recompense.⁴ It is

legitimas personas audientiam et exercendum inter partes iure conflictum ex die conventionis perlatae in notitiam pulsatorum sex mensum spatium praecipimus custodiri, cuius eventum examinis adsertor iuris proprii debeat praestolari.

1. Codex Theodosianus, X, 10, 30; 31.
2. Codex Theodosianus, X, 10, 31 : Edictali lege sancimus, ut, sicut possessori unius anni spatia praestita sunt, intra quae propriis allegationibus adfuturus adsit examini, ita is, qui caduca vel vacantia bona vel quocumque nomine tamquam fisco nostro quaesita crediderit postulanda, simili sorte teneatur. Quod nisi intra anni metas ex die auctoritatis intra provinciam publicatae petitionis suae demonstraverit aequitatem, careat impetratis ac possessori ad propria revertendi facultas libera tribuatur, etc.
3. Codex Theodosianus, X, 10, 31 (421) : Sicut iam generali lege decretum est, per hunc unum annum conveniendi ad illustre iudicium (comitis rerum privatarum) intemeritatis facultatibus praestamus indutias, ut cognitione suscepta substantiam sui iuris alliget.
4. Codex Justinianus, VIII, 4, 7 (Cf. C.Theod., IV, 22, 3) : Si quis in tantam furoris pervenit audaciam, ut possessionem rerum apud fiscum vel apud homines quoslibet constitutarum

apparent, however, from Honorius' edict of 415 A.D. that unless the original owner took measures to guard against it, the petitioner might seize upon his property during his absence at Court defending his title, and this same constitution provides that the contradictio may be made by whatever person the master chooses to represent him.¹

Under the weak rule of the sons of Theodosius the Great the bureaucracy got more and more out of control. The West was never able to recover from the state into which it was precipitated by the long confusion of the reign of Honorius, and the East was for a long time in a similar danger. Everywhere corruption spread throughout the ranks of the decaying social structure of the Empire. This is reflected in the increasing number of edicts that issued from the imperial chanceries from 395 A.D. endeavouring to secure honesty and justice in the administration of the res privata, especially with respect to the activities of the petitioners and delators.

ante eventum iudicialis arbitrii violenter invaserit, dominus quidem constitutus possessionem quam abstulit restituat possessori et dominium eiusdem rei amittat: sin vero alienarum rerum possessionem invasit, non solum eam possidentibus reddat, verum etiam aestimationem earundem rerum restituere compellatur.

1. Codex Theodosianus, X, 10, 27 : pervenerit et contradicti-
onem domini per quamcumque personam rem propriam defendentis
acceperit, . . . Immo ille qui pulsatus fuerit institutum
sibi integri anni spatium recognoscat, idoneum satis tempus
muniendae congrue tractatibus litis et instruendi quem
deserit laris habiturus, nec ad iacturam veteris domini sub
iniuria propeae festinationis artandus, omnium iudicum, quos
locorum ratio exegerit implorari, publico muniendus auxilio,

To deprive them of their immediate profits Arcadius in 396 forbade them to petition for gold and silver at all.¹ This law which has reference, perhaps, to the confiscated property of Rufinus reserves largess of gold and silver to certain of the highest palace dignitaries only - summ̄is dignitatibus usque ad secundicerium notariorum, i.e. to the illustres and to the first persons of "respectable" rank (spectabiles), the primicerius and secundicerius of the notaries, as revealed by the order of titles in the Sixth Book of the Theodosian Code where, after the tituli of the illustrious dignitates occurs the first title, De Primicerio et Notariis. Honorius, likewise, rarely granted petitions for gold and silver of bona vacantia.²

As early as 380 Theodosius resorted to forbidding petitions for bona damnatorum altogether in an attempt to put an end to the litigation and misery occasioned by the delators. If, however, without anyone asking, the Emperor chose to bestow

ut praedae inhiantium non dedatur. . . . Illud sane prae ceteris providae cautionis habiturus, ut statuto tempore legitimam personam sui probaturus adveniat.

1. Codex Theodosianus, X, 10, 21 : Sit haec mensura bona poscentium, ne quis oblati precibus in petitione bonorum auri atque argenti faciat mentionem. Ac ne generaliter in omnes haec fuerit constituta, summ̄is dignitatibus usque ad secundicerium notariorum hoc servari decernimus ceteris ab hac licentia retentatis, ne, dum nimia largitas tenditur, publica commoditas neglegatur, ita ut, si qui post hanc legem textum impetratae petitionis adtulerit, effectu denegato frustretur.
2. Codex Theodosianus, X, 9, 2 : Quicumque a nobis caducas vacantesve meruerit facultates, sive cum auro vel argento, quod specialiter rarum erit, etc.

such properties, the gift was valid.¹ This law appears to be connected with the constitution addressed that same year from the same city (Thessalonica) to the same official (Eutropius, Praetorian Prefect) which provided for the order of succession of bona damnatorum to the heirs or relatives of the condemned.² Designed to restrain the "shamless avidity of the petitioners"³ the law holding them guilty if they so much as petitioned allowed the Emperor leisure to change his mind and restore property to innocent heirs.⁴ Such was avowedly the purpose of Arcadius in 401 when he forbade anyone to petition for the goods of the proscribed within the space of two years "in order that each may recover his own property, if, as is inborn in us, the imperial humanity should mollify the more grievous falls and sadder misfortunes."⁵ Honorius decreed a similar two-year

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1. Codex Theodosianus, X, 10, 15 (C. Just., X, 12, 1) : Quisquis in crimine maiestatis deprehensus fuerit et punitus bonaque eius, sicut plectendi consuetudo criminis habet, fiscus invaserit, nullus eisdem sub spe munificentiae principalis audeat proprio iuri poscere. Qui contra legem id ausus fuerit sperare quod non licet, reus violatae legis habeatur. . . . Si quid autem ex bonis, talibus nostro iudicio, nullo tamen desiderante atque poscente, concedi cuiquam voluerimus, huiusmodi tantum valeat liberalitas.
 2. Codex Theodosianus, IX, 42, 9, cf. p. 131.
 3. Codex Theodosianus, X, 10, 15 (C. Just., X, 12, 1) : Sed quoniam plerumque ita in nonnullis (causis) inverecunda petitionum inhiatione constringimur. . . .
 4. Cf. Godefroy, ad Codicem Theodosianum, X, 10, 15.
 5. Codex Theodosianus, IX, 42, 17 (X, 10, 23) : Ne quis proscribtorum bona vel eorum, qui publicam videntur excepisse sententiam, intra biennium aestimet postulanda. Abstineant facultatibus intra id temporis expetendis, ut aut proprias quis recipiat, si, ut nobis ingenitum est, duriores casus et tristio rem fortunam imperatoria humanitate molliamus; for probable ulterior motives, however, cf. p. 133-134.

period,¹ which was reduced by Theodosius II in 439 to one year after the claims of the Privy Purse had been exercised, during which time it was forbidden to petition for any property accruing in any way whatever to the res privata.²

The delators, upon the occasion of any great treason trial, or the overthrow of a usurper or minister, endeavoured to involve in the fall of the chief figure as many as possible of his friends and dependents or any one remotely associated with him, in order to make available the greatest possible amount of booty. To place a check upon this practice Honorius in 421 decreed that the goods of but a single condemned person, not of several, could be petitioned for by another.³

Theodosius II was especially concerned to restrain the abuses of the petitioners and delators; "In these most felicitous times of our reign," he writes, "this is our principal care in what way all may abound with wealth by our

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1. Codex Theodosianus, X, 10, 29 (421) : De quibus tamen, sicut divali sanctione decretum est, competi per biennium nihil iubemus.
 2. Novellae Theodosii, XVII, 1 : Quare hac perpetuo lege valitura sancimus, ut nemini liceat bona defunctorum caduca vel quamlibet rem aliam ad fiscum nostrum pertinentem vel eam quae eam parit actionem ullo modo a nostra serenitate competere, nisi annus ex die mortis defuncti excesserit vel ex quo fiscus locum habuit vel habere potuerit.
 3. Codex Theodosianus, X, 10, 29 : Uno tamen petitorio singulorum bonuscula iubemus adscribi, nefas esse censentes plurimorum uno pittacio postulari sub illicita cupiditate fortunas.

liberalities without damage to anyone. For we consider it the burden (munus) of the imperial foresight that all shall rejoice in our dispositions and no one lament, unjustly stripped of his possessions."¹ In 425, therefore, he decreed that whoever petitioned for bona caduca and vacantia must share it equally with the Privy Purse, except in the case of the temple property and the estates of the patrimony which already formed a part of the res privata. The law, then, applied only to new property which had never been a part of the temple property or the private estates. The expenses of the lawsuits attending the transfer by gift of the Emperor in case any contradictor should appear had to be borne by the petitioner. After these costs had been paid, the residue, free of lawsuits, must be divided with the Privy Purse.² This law is comprehensible only on the

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1. Novellae Theodosii, XVII, 1 : Felicissimis namque imperii nostri temporibus haec nobis praecipua cura est, quemadmodum liberalitatibus nostris sine cuiusquam pernicie omnes possint divitiis abundare. Imperatoriae quippe provisionis munus esse censemus, ut omnes nostris dispositionibus gaudeant, nemo suis inique nudatus facultatibus defleat.
 2. Codex Theodosianus, X, 10, 32 : Petitores bonorum partiri cum aerario nostro praecipimus. Ac si quis exceptis iuris templorum possessionibus vel patrimonialibus qualitercumque alicuid ad nostrum aerarium pertinens nostrae nutu clementiae meruerit, postquam efficax quod impetraverat postalatum rei ipsius eventu constituerit, ex aequa cum aerario dividere parte non dubitet; videlicet, impensis omnibus litis et sumptibus inputatis ac petitori dein summa integra tribuendis, ut, quod pure ad quaestus eius compendiumque devenerit, in eius procul dubio societatem admittat aerarium, nullo ex his, quae de temporibus possidentis vel aliis veteri observatione et competitionum auctoritate sunt tradita.

ground that the Emperor who promulgated it took it for granted that petitions for bona caduca were submitted in questionable faith; to discourage the delators and petitioners the law provided that they should reap but half the profits, whether they won their case or not. Later the cubicularii, who were often the greatest offenders in this respect,¹ were exempted from the provisions of this law.²

Finally, in 444 Theodosius absolutely forbade anyone to petition for bona caduca upon any condition whatever, regardless of whether any relatives survived the dead, regardless of the condition or sect of the deceased. Any response or legal action arising from such a petition was null and void. The Quaestor and the Count of the Privy Purse who received such petitions were condemned to the somewhat vague penalty of "sustaining the indignation of Our Divinity and becoming an example to others of avenged rashness," while the memoriales and palatini who accepted the petition or drew up the rescript in reply to it suffered confiscation of their goods. If anyone died intestate without heirs, wife or husband, the property fell

1. Zosimus, V, 24.

2. Codex Theodosianus, X, 10, 34 : Si quis ex his, qui sacro nostro cubiculo serviunt, ad petitionem caducorum ad fiscum pertinentium adspiraverit, cum impetrabile huius fuerit postulatum, lege, qua pars dimidia vindicatur aerario, protinus absolvatur primoque nutu nostrae clementiae statim integro perfruatur, nec laboret ad partis alterius, quae fisco videtur addicta, prorsus petitionem attingi, norma legis antea promulgatae in ceteris omnibus custodita.

to the fiscus. Of it, a third went to the chest of the Prefect, a third to the Sacred Largesses and the remaining third to the res privata. The judicial inquiry into such property was specifically delegated to the court of the Praetorian Prefect. Anyone contravening this law was liable "to incur the implacable displeasure of the Subernal Majesty as well as that of Our Divinity." The law also specifically mentions that none of the laws against delators are modified by this edict.¹

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1. Novellae Theodosii, XVII, 2 (C. Just., X, 12, 2) : Igitur omne semen alienas adpetendi fortunas stirpitus eruere cupientes nulli deinceps volumus petitionis rerum esse licentiam, etsi intestatus quisquam quaeve ac nullis e numero propinquorum extantibus vel uxore vel marito fati munus inoleverit et cuiuscumque sit condicionis aut sectae, seu quolibet titulo res caduca fuerit vel fiscalis vel in causam caduci ceciderit. . . . infirmetur omnisque controversia, omnis actio, quae ex huiusmodi responso orta sit, seu in iudicium sit deducta seu minime, penitus extinguatur. . . . vir inlustris quidem cuiuscumque temporis quaestor, si oblatae petitioni subscripserit vel etiam responsum dederit, virque inlustris comes rerum privatarum si vel instrui permisit vel petitionem, si qua insinuetur, admitterit, indignationem nostri numinis sustinebunt ceterisque fiet vindictae temeritatis exemplum. Memoriales vero, qui excipienda eiusmodi rescripta vel implenda curaverint, et palatinos, qui instruxerint vel gesta admissae petitionis ediderint, bonorum proscriptione puniri decernimus. Plane si quem vel si quam intestato ac nullis propinquis extantibus vel uxore maritove diem obisse contigerit, sive eius sectae mortuus vel mortuae fuerit, ut eius bona ex divalibus sanctionibus fisci viribus vindicanda sint, seu caduca sit res vel alio titulo fiscalis vel in causam caduci ceciderit, cuius rei cognitionem iudicio viri inlustris praefecti praetorio specialiter delegamus, huius bona ex parte quidem tertia praetorianae praefecturae arcae, ex altera vero tertia sacris largitionibus, ex residua portione, eadem praefectura distribuyente, privato vindicabuntur aerario. . . . Si quia autem vel aliquid contra huius sacratissimae constitutionis tenorem nobis crediderit suggerendum vel pro eo, qui dissimulatae huius legis poenae se obnoxium fecerit, intervenire temptaverit, implacabilem tam supernae maiestatis

In the epoch of Justinian the activities of the petitioners were governed by the law of the first Theodosius forbidding petitions for bona damnatorum,¹ and that of the second Theodosius just discussed forbidding petitions for bona caduca; these two laws alone appear in the Code of Justinian under the title De petitionibus bonorum sublatis.²

In respect to the delators the entire position of the Justinian legislation is summed up in the last constitution under the title De delatoribus.³ This edict in Greek is undated and does not bear the name of the Emperor who promulgated it. The fact of its being written in Greek as well as certain usages such as the employment of the expression τὸν ἱερώτατον ταμειῖον meaning the Privy Purse indicate that it must date from a period not much anterior to Justinian. It is concerned with bona caduca. In accordance with all previous legislation this edict forbids the advocates of the fiscus to claim property for the res privata on secret denunciations - the delator must be openly produced in court.⁴ Children are not permitted to inform

quam nostri numinis incurret offensam; scituris omnibus et suppliciiis, quae contra delatores promulgatis iam constitutionibus ordinate sunt, nihil per hanc legem esse penitus inminutum, Zoile parens karissime atque amantissime.

1. Codex Theodosianus, X, 10, 15 (380), cf. p. 360.

2. Codex Justinianus, X, 12.

3. Codex Justinianus, X, 11, 8.

4. Ibid., Μηδ' ἐξέστω τοῖς τοῦ δημοσίου κατηγοροῖς λέγειν, ὡς περιηχίθῃσαν τινα κατεχεῖν δημοσία και δια ταύτης τῆς ἀφανούς κατηγορίας ἐπι-
βουλεύειν ἑτέροις, ἀλλὰ και ὁ καταμηνυτής

against their parents, nor slaves against their masters.¹ In fact, the members of the schola palatinorum alone are properly entitled to lodge accusations and it is their duty to do so, bearing in mind, however, that they must stand at the trial as patronus fisci.²

Anyone accused while resident in the Capital was summoned by a decree of the Count of the Privy Purse for which he paid a fee of no more than four νομίσματα to the entire schola palatinorum, the primicerius in office and the advocate of the fiscus.³ If found guiltless, the accused was released; if guilty he must not only surrender to the fiscus the property possession of which he had usurped, but refund twice the expenses incurred by the res privata in establishing its claim.⁴

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- παρέστω και ἡ ποιότης αὐτοῦ σκοπεῖσθω.
1. Codex Justinianus, X, 11, 8 : 1. Καὶ μήτε υἱὸς πατέρα ἢ μητέρα ἢ ἀπελεύθερος πατρῶνα ἐπὶ δημοσίοις καταμηνύετω.
 2. Op. cit., 3 : Καὶ ἡ σχολή τε τῶν παλατινῶν εἰάν καταμηνύσῃ τινός (μόνη γὰρ αὐτῆ καὶ δύναται καταμηνύειν καὶ ἀναγκάζεται), ἢ καὶ ἕτερος ὁ ἐκ τοῦ νόμου συχωρούμενος μνημονεύετω τοῦ καταμηνύοντος ὁ τοῦ δημοσίου προστάς. Patronus fisci seems to be the Latin equivalent of ὁ τοῦ δημοσίου προστάς, cf. Corpus Iuris Civilis (ed. Krueger), II, p. 399.
 3. Op. cit., 4 : Καὶ εἰ μὲν ἐπὶ τῆς βασιλέως πόλεως ἐστὶν ὁ καταμηνυθεὶς, ἐκ βασιλείας τοῦ κομητῶν τῶν ἰδικῶν ὑπομνηστέσθω καὶ μηδὲν πλέον πάσῃ τῇ τῶν παλατινῶν σχολῇ καὶ τῷ κατα καιρὸν πριμικηρίῳ καὶ τοῖς τοῦ δημοσίου συνηγούροις δίδωτω τῶν τεσσάρων νομισμάτων μήτε ὑπὲρ τῆς ὑπομνήσεως μήτε ὑπὲρ προβαλῆς τοῦ ἐντολέως.
 4. Op. cit., 4b : Καὶ ἀνεύθυνος μὲν ὢν ἀπαλλαστέσθω

In case of failure to appear the accused was summoned a second and third time, ten days intervening between each summons. If no defensor or person deputed to make his defense appeared by that time, the res privata occupied the property, reserving still, however, to the absent owner the right of asserting his claims.¹

In cases where there was difficulty determining the real owner, if within the capital or its territory, the Count of the Privy Purse posted notices in conspicuous places in the City and in the locality where the property was situated, inviting all who could supply any information to appear within thirty days, whether a friend, slave, or freedman of the owner. If the ownership could not be demonstrated within the thirty days, the property fell to the res privata, but until the lapse of that time the palatini were strictly forbidden to set up the

τῆς δίκης. εἰ δὲ ὑπέυθυνος φανεῖται, μὴ αὐτὰ
μόνα ἅπερ ἔχων εὐρίσκειται πράγματα ἢ τὸ
χρεὸς ὅπερ ἐχρεώσεται ἀποδοῦναι, ἀλλὰ
καὶ τὰ συμβάντα τῷ ταμείῳ λαπανήματα
ἐκ διπλασίων δίδωται, ὅπερ ἡ μάτην ἐδικάσατο.

1. Op. cit., 7a: Ἐὰν δὲ μετὰ τὴν ἐξωμοσίαν
ἀπολειφθεῖντες τρίτον κληθεῖεν ἐνάστης
κλήσεως ὑπὲρ δεκά ἡμέρας γενομένης, γένηται
δὲ καὶ τρία κατ' αὐτῶν κηρύγματα καὶ μηδὲ
οὕτως φανεῖεν αὐτοὶ ἢ οἱ ἐντολεῖς αὐτῶν
ἢ διεκδικηταί, ἐπιβαίνετω μὲν τοῖς πράγ-
μασι τὸ ἱερώτατον ταμεῖον, φυλάττεσθαι
δὲ τὸ ἰσχυρότερον τοῖς ἀπολιμιτακόμενοις.

imperial tituli.¹

If the property lay in the provinces, the governor on his own initiative or at the command of the Count of the Privy Purse held the investigation.²

Whoever made the denunciation, whether to the comes rerum privatarum, to one of the palatini, to an advocate of the fiscus or to the provincial governor, if found guilty of calumny, was sentenced to severe corporal punishment, the loss of his

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1. Op. cit., 5 : Ἐὰν δὲ πράγματα μόνα κατα-
μηνύηται ὡς διαφέροντα τῷ ἱερῷ τῆς ταμείας,
ἀγνοεῖται δὲ ὁ ταῦτα διακράτων, καὶ ἐν τῇ
βασιλείᾳ πόλει τὰ πράγματα ἢ ὑπὸ τὴν αὐτῆς
ἐνομίαν ἢ ἀκινήτοις μὲν οὖσιν αὐτοῖς μὴ
ἐπιβαλλέτω τίτλους ἢ σχολή, τῶν παλατιῶν
μηδὲ ἐπιβαινέτω αὐτοῖς, ἀλλὰ προγράμματα
προτιθέτω ὁ κόμης τῶν ἰδιοκτητῶν τοῦ βασιλέως
ἐν τοῖς περιφανέσι τόποις τῆς βασιλείας καὶ ἐν
οἷς τὰ πράγματα διακείται, ἐπιτρέπων ἑκάστῳ
ἀκτιπιομένῳ τούτων τῶν πραγμάτων εἶσω
τριάκοντα ἡμερῶν καταλαμβάνειν τὸ αὐτοῦ δικα-
στήριον καὶ συνίστασθαι τοῖς ἑαυτοῦ δικαίοις
ἐπὶ ταῖς εἰρημέκαις λαπαγαῖς, εἴτε αὐτὸς ὁ
κατέχων τὰ πράγματα βούλεται ἀπαντῆσαι
εἴτε φίλος αὐτοῦ εἴτε οἰκέτης εἴτε ἀπελεύθερος,
ὅταν ἀπεστὶν ὁ τῇ ἀληθείᾳ ταῦτα κατέχων
πληρομένῳν καὶ ἐπὶ αὐτῷ πάντων ὅσα περὶ
τοῦ φύλακος τῆς κομῆς νενομοθεύεται.
2. Op. cit., 8 : Εἰ δὲ τὰ προσαγγελθέντα πράγ-
ματα ἐν ἐπαρχίᾳ διακείνται, καὶ ἢ ἀφ'

belt of office and the confiscation of his property in case he possessed either, and banishment from the City or the province;¹ if his assertions were proved true, he received an eighth part of the property involved.²

For every violation of the provisions of this law

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- ἑαυτοῦ κινούμενος ὁ τῆς ἐπαρχίας ἄρχων ἢ ἐκ προστάξεως τοῦ κόμητος τῶν ἰδικῶν τοῦ βασιλέως ἐξετάζει τὴν ὑπόθεσιν.
1. Op. cit., 9 ; ἐκάστος δὲ προσαγγελλῶν ἢ τῷ κόμητι τῶν θείων ἰδικῶν τοῦ βασιλέως ἢ τῇ σχολῇ τῶν παλατίκων ἢ τοῖς λαμπροτάτοις τοῦ δημοσίου συναγούροις ἢ τοῖς λαμπροτάτοις ἀρχουσι τῶν ἐπαρχιῶν γινωσκέτω, ὡς, εἴτε ἐπιμείνας τῇ δίκῃ φανεῖν συκοφάντης, εἴτε ἀποστῆ τῆς κατηγορίας καὶ ἀφανῆς γένοιτο, σύμμετρον μὲν ἔχων περιουσίαν καὶ μὴ δεδῶκε τὴν ἐν αὐτῇ πτωρίαν καὶ πλῆγας βαρυτάτας ὑπομένει καὶ δεικτικῶς ἐξορίζεται. εἰ δὲ στρατείαν ἔχη ἢ σεμνὸν ἐπιτήδευμα ἢ περιουσίαν ἀρκούσαν, ἐπιπίπτει καὶ τῆς στρατείας καὶ τῆς οὐσίας καὶ οὐδὲ τὴν βασιλίδα πόλιν οὐδὲ τὴν ἐπαρχίαν οἰκῆσαι συγχωρεῖται.
2. Op. cit., 6 : εἰ δὲ διελύξωσι τὰ μηνυθέντα, μὴ μόνον ἀπαλλάττεσθαι τῆς

the Count and his officium were fined fifty pounds of gold and the provincial governor and his officium thirty pounds.¹

τιμωρίας, ἀλλὰ καὶ οὐδὲν μόραν τῶν
προσαγγελθέντων πραγμάτων αὐτοὺς κομίσασθαι.

1. Op. cit., 10 & 11 : Παραφυλαττόντων τὸν νόμον
τοῦ τῆ κομητοῦ τῶν ἰδικῶν τοῦ βασιλέως
καὶ τῆς πειθομένης αὐτῷ σχολῆς, καὶ
τοῦ παραβαίνοντος αὐτὸν ἑφ' ἑκάστῳ
κεφαλαίῳ πενήκοντα χρυσίου λίτρας
πρόστιμον ἀπαιτούμενου. Εἰ δὲ ἐν
ἐπαρχία παραβαθεῖται τι τούτων, ἑφ'
ἑκάστῃ αἰτίᾳ ἀνα τριάκοντα χρυσίου
λίτρων καὶ οἱ τῶν ἐπαρχιῶν ἄρχοντες
καὶ αἱ πειθομέναι τάξεις αὐτοῖς
ἀπαιτεῖσθωσαν.

PART III

**THE TITLES, HONORS AND PRIVILEGES OF THE COUNT
OF THE PRIVY PURSE**

Chapter XX

THE TITLES, HONORS AND PRIVILEGES OF THE COUNT OF THE PRIVY PURSE

The government of the Late Roman Empire as established by Diocletian and Constantine was a bureaucracy which functioned by means of an elaborately constructed hierarchy of officials centering in graded subordination about a small group of ministers resident at the Court. The establishment of the bureaucracy and the growth of an intricate and ceremonious Court designed largely on the model of Persia to enhance the imperial dignity resulted in a strict hierarchy of official rank with a regular order of precedence at Court functions. During the course of the Late Empire this hierarchy underwent various elaborations occasioned by the creation of new orders of rank.

The triumph of Autocracy and the concentration of all power and authority in the hands of the Emperor abolished the old distinction between Senatorial and Imperial officials and with it disappeared, also, by the end of the reign of

Constantine, the old equestrian cursus honorum of the Principate;¹ its gradations of rank ceased to be attached to the higher officials and the perfectissimate, i.e. the highest rank obtainable in the equestrian career, was thereafter conferred only upon minor officials while the clarissimate or senatorial rank was for a long period subsequently the sole order of rank enjoyed by the higher officials.²

In the course of the fourth century, however, two additional titles of rank appear - spectabilis (πρεπιστατος) and illustris (ιλλουστριος). There is no precise information as to when either was created and the problem is still further complicated by later interpolations, by the fact that these titles appear to have been used informally before they became official and that for a considerable period they were used interchangeably without any fixed order or precedence.³ Thus, the title illustris was applied to the Prefects as early as the reign of Constantius.⁴ However, this usage appears to have been an honorary epithet rather than a title of official rank; as such it would be especially appropriate in the case of

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1. Hirschfeld, "Die Rangtitel der römischen Kaiserzeit," Sitzungsbericht der Berliner Akad., 1901, p. 588.
 2. Hirschfeld, op. cit., p. 593; Boak, op. cit., p. 45.
 3. For a discussion of the origin of these titles, cf. Hirschfeld, op. cit., pp. 594 ff., and the articles spectabiles and illustres in Pauly-Wissowa and Daremberg et Saglio.
 4. Codex Theodosianus, XI, 1, 6 (354) : Rufinus vir clarissimus et inlustris praefectus praetorio parens amicusque noster; C.I.L., VI, 1166 (355?).

Rufinus who was the uncle of the Caesar Gallus.¹ C.I.L., VI, 1166 is of little value in the matter for the date 355 A.D. is purely conjectural since it does not appear on the same side of the stone as the inscription of FABIVS FELIX PASSIFILVS PAVLINVS V . C . ET INL . PRAEF . VRBIS. As a matter of fact, the title is not authenticated in the inscriptional evidence before the end of the fourth century.² The title spectabilis appears officially as a title of rank for the first time in 378.³ It was doubtless created, however, by Valentinian I in 372.⁴ For it appears from a constitution of Valentinian II that the elder Valentinian regulated the official hierarchy by prescribing rules of precedence and reward and several edicts are extant dating from the year 372 which have to do with precisely this matter.⁵ The official use of illustris as a title of rank may or may not date from this same period.⁶ It would appear to have been Theodosius I, however, who extended it to include all the comites consistoriani.⁷

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1. Hirschfeld, op. cit., p. 596; Berger, in Pauly-Wissowa, Vol. IX, p. 1073.
 2. Hirschfeld, op. cit., p. 595.
 3. Codex Theodosianus, VIII, 5, 35 : spectabilis vir officiorum magister.
 4. Chapot, in Daremberg et Saglio, Vol. IV, part 2, p. 1421, s. v. spectabiles; Ensslin, in Pauly-Wissowa, Zweite Reihe, III, p. 1554, s. v. spectabilis.
 5. Codex Theodosianus, VI, 7, 1; 9, 1.
 6. Dunlap, op. cit., p. 194 attributes the creation of both orders to Valentinian I and the year 372.
 7. The magister officiorum first appears as an illustris by 385 (Symmachus, Relationes, 34, 8; 38, 4; 43, 2) and the Counts of the Sacred Largesses and the Privy Purse in 386 (Codex Theodosianus, VIII, 8, 4)

For a considerable period the two titles spectabilis and illustris were used somewhat carelessly and appear to have been almost interchangeable. Thus, Symmachus in the same official report (relatio) refers to a certain Olybrius as clarissimum atque inlustrem in one place and virum clarissimum et spectabilem in another,¹ and it was not until the beginning of the fifth century that the two ranks were definitely and absolutely separated, the illustres being the higher of the two. Both, however, still formed a part of the Clarissimate and both titles frequently appear together, i.e. vir clarissimus et illustris.² In such cases, "the clarissimus is to be regarded as the general title of rank of the senatorial order to which the bearer belonged, while the illustris denotes the special grade of rank conferred by the particular office."³ We then find the Clarissimate at the end of the fourth century composed of three orders of officials : (1) those who have held one of the offices conferring merely senatorial rank (clarissimi), (2) those clarissimi who have held offices of sufficient importance to confer upon them the more exclusive rank of spectabilis and (3) those who have occupied one of the nine or ten offices which conferred the highest rank of all, the Illustrissimate.

1. Symmachus, Relationes, XXVIII, 2, 3, 10 (inlustrem); 4, 9 (spectabilem).

2. C.I.L., VI, 32222 : V(IRI) C(LARISSIMI) ET INL(USTRIS) COM(ITIS) R(ERUM) P(RIVATARUM).

3. Boak, op. cit., p. 46.

From the beginning of the fifth century this distinction was carefully preserved.¹ To these three orders of rank Justinian added a fourth, the Gloriosissimate.

Having followed the establishment of the various orders of rank among which the officials of the administrative hierarchy were distributed, it remains to trace the successive elevations by which the Count of the Privy Purse, along with the other chief Ministers of State, passed through all the gradations of rank in the Late Empire from the Perfectissimate at the opening of the period to the Gloriosissimate at its close.

That he was a vir perfectissimus at the opening of the period, i.e. a member of the highest rank in the equestrian cursus honoris of the Principate, appears from a law of Constantine dated 319 A.D.² The equestrian service did not

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1. Codex Theodosianus, XI, 18, 1 : . . . inlustres viros praefectos, magistros militum vel comites domesticorum praepositum vel primicerium sacri cubiculi, castrensem, comitem sacrae vestis, ceteros cubicularios, magistrum officiorum, quaestorem vel comites sacri ac privati aerarii inlustres, virum spectabilem primicerium notariorum, Codex Theodosianus, XVI, 5, 52 (412) distinguishes inlustres, spectabiles, senatores, clarissimi; Codex Justinianus, III, 2, 3 : iudices illustres vel spectabiles vel clarissimi; IX, 4, 6 *ἐν ἐπαρχία ἐνδοξῶν ἢ περιβλέπτων ἢ λαμπροτάτων ἀρχόντων*; Novellae Justiniani, VII, ep. οἱ τε τὰς μέσας *ἔχοντες τῶν ἀρχῶν, οὓς οὐ περιβλέπτους καλοῦσιν*; Op. cit., XVII; XXIII, 4 : illustres iudices, quibus apices dignitatum super spectabilitatem sunt; XLIII, 1, 1 : *ἀρχόντων γινῶν μεγάλας ἢ μέσας ἢ ἐλαττοῦς ἀρχάς ἔχόντων*; Isidorus, Orig., IX, 4, 12 : primi ordinis senatorum dicuntur illustres, secundi spectabiles, tertii clarissimi, iam inferius quartum aliquod genus non est.
 2. Codex Theodosianus, X, 8, 2 : . . . ad virum perfectissimum comitem et amicum nostrum.

survive the reign of Constantine, however, as we have seen and was probably abolished after the defeat of Licinius in 323 A.D.¹ From that period until the reign of Valentinian I the Count of the Privy Purse was a clarissimus and as such eligible to a seat in the Senate Chamber. However, since the title comes was frequently bestowed as a favor or even purchased outright, only those comites who were armed with imperial prosecutoria, i.e. letters autographed by the Emperor and addressed to the Urban Prefect praising the official life of their holder, found their way into the actual Senate at Rome as a reward for their service.²

In 372 Valentinian gave the Count of the Privy Purse, along with the Quaestor, the Master of the Offices and the Count of the Sacred Largesses precedence over the Proconsuls.³ This was the initial step in a process by which a distinction was drawn between the great provincial offices and those which functioned at the Court with the object of raising the comites consistoriani to the rank of the Praetorian and Urban Prefects and the Masters of the Soldiers.⁴ This process which marks the increased centralization of the administration under the

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1. Hirschfeld, Die Rangtitel der römischen Kaiserzeit, p. 588.
 2. Codex Theodosianus, VI, 35, 7, cf. Godefroy's Commentary.
 3. Codex Theodosianus, VI, 9, 1 (C. Just., XII, 6) : Forum honores, qui sacrario nostro explorata sedulitate oboediunt, hac volumus observatione distingui, ut quaestor atque officiorum magister nec non duo largitionum comites proconsularium honoribus praeferantur.
 4. Cf. Godefroy, ad locum citatum.

Autocracy was completed in 380 when Theodosius I raised ex-Quaestors, ex-Masters of the Offices, ex-Counts of the Sacred Largesses and ex-Counts of the Privy Purse to a status similar if not completely equal to that of ex-Prefects (praefectoriani), which entitled them to the same reception and acclamation at Court ceremonials.¹ The Count of the Privy Purse probably received the rank of spectabilis in 372 at the same time he was given precedence with the other comites consistoriani over the Proconsuls, and as late as 390 he is still referred to as spectabilitas tua.² By this time, however, both the financial Counts had already come to be numbered among the illustres. When this took place is not known. However, the Master of the Offices was an illustris by 385 at the latest,³ and the two Counts appear as such in a constitution dating from the next year.⁴

1. Codex Theodosianus, VI, 9, 2 : Qui exquaesturae honore aut efficaci magisterio aut comitiva utriusque aerarii nostri attonito splendore vigerunt, adclamatione excipiantur solita, nec praetereantur ut incogniti atque, ut non aequandi illis, qui gesserint praefecturas, sed eo observentur cultu omni coetu omnique conventu. . . . actus depositi dignitas pares eos viros praestet atque honore consimiles. Quid enim in his quattuor dignitatibus non ex congrua diversitate putemus esse commune? Quod cum ita sit, hos viros haberi volumus, non ut qui meruerint tantum, sed quasi qui gesserint praefecturas, cum non privilegiis temporis praeferantur, sed honoris aequalitate laetentur.

2. Codex Theodosianus, IX, 27, 7.

3. Boak, *op. cit.*, p. 45, citing Symmachus, Relationes, 34, 8; 38, 4; 43, 2.

4. Codex Theodosianus, VIII, 8, 4 : adiutores vero officiorum palatinorum ac numerarii comitum illustrium virorum Yet in Codex Theodosianus, XII, 1, 120 (389) we read datis

Within the Illustrissimate itself there were several gradations of rank and the order of the dignitaries varied from time to time. In 412 a constitution of Honorius arranges the illustres in the following order : (1) the Prefects, (2) the Masters of the Soldiers, (3) the Counts of the Household Troops, (4) the Grand Chamberlain, (5) the Master of the Offices, (6) the Count of the Sacred Largesses, and (7) the Count of the Privy purse.¹ In 422 the Illustrissimate appears to be divided into two groups of which the Praetorian Prefects, the Urban Prefects, the Masters of the Soldiers and the Grand Chamberlains constituted the higher.² In a constitution of Valentinian III and Marcian three groups are distinguished with reference to the right of exemption from the quartering of troops (hospitium) : I. Prefects and Masters of the Soldiers; II. Masters of the Offices and Quaestors; III. Counts of the Household Troops, of the Sacred Largesses, and of the Privy Purse.³ Under Zeno⁴ and Anastasius⁵ the order remained the same, but the illustres were

litteris ad illustrem virum magistrum officiorum, comitem sacrarum ac privatarum as if the Finance Counts did not yet possess the rank of illustris. This passage seems, however, unusually abbreviated and it is possible that the illustrem is to be understood with comitem as well, though it would ordinarily be repeated for each title as it was in the fifth century constitutions which are more precise in this matter.

1. Codex Theodosianus, XI, 18, 1.
2. Codex Theodosianus, VI, 8, 1.
3. Codex Justinianus, XII, 40, 10.
4. Codex Justinianus, III, 24, 3; X, 32, 64.
5. Codex Justinianus, X, 32 66.

once more grouped in two gradations as follows : I. Prefects and Masters of the Soldiers; II. Masters of the Offices, Quaestors, Counts of the Household Troops, of the Sacred Largesses, and of the Privy Purse. From these lists it is seen that the Count of the Privy Purse ranked last among the illustres at all times except in the constitution of 422 where the Count of the Household Troops came after him. In the Ostrogothic realm the dignitaries ranked in the following order: I. Consul; II. Patrician; III. Praefectus Praetorio; IV. Praefectus Urbis; V. Quaestor; VI. Magister Officiorum; VII. Comes Sacrarum Largitionum; VIII. Comes Rerum Privatarum; IX. Comes Patrimonii, etc.¹

In 535 the Count of the Privy Purse appears as one of the order of Gloriosissimi newly created by Justinian.² At this period also the adjective sacer was used with increasing frequency in referring to anything connected with the Emperor and his government. The full title of the Count of the Privy Purse in its ultimate form, then, was gloriosissimus comes ubi-

que sacrarum nostrarum privatarum (μεγαλοπρεπέστατος κόμης τῶν ἀπανταχοῦ θείων πριβίων).³

In addition to the title of his office and the order

1. Cassiodorus, *Variae*, VI.
2. *Novellae Justiniani*, VIII, 7; XII.
3. *Novellae Justiniani*, VIII, 7, XII.

of his rank the Count of the Privy Purse, like all the higher officials of a Court which had become extremely ceremonious, was addressed personally in official communications from the Emperor by various courtly and high-sounding substantives. The list of those which I have found used with reference to the Count of the Privy Purse is as follows:

Amplitudo Tua

Novellae Majoriani, V (458)

Eminentia Tua

Novellae Justiniani, XII, ep.
(535)

Experientia Tua

Codex Theodosianus, XI, 16, 12
(380)

Magnitudo Tua

Cassiodorus, Variae, III, 53;
IV, 11; IX, 3; IX, 13

Praestantia Tua

Codex Theodosianus, X, 10, 16
(382)

Scientia Tua

Codex Theodosianus, X, 1, 11;
XII, 6, 14 (367)

Sinceritas Tua

Codex Theodosianus, XI, 7, 11 (365);
XI, 30, 41 (383); 45 (385)

Spectabilitas Tua

Codex Theodosianus, IX, 27, 7 (390)

Sublimitas Tua

Codex Theodosianus, X, 9, 2 (395);
X, 10, 7 (345)

ἡ σὴ ἐνδοξότης
(Gloria Tua)

Novellae Justiniani, CXXXIX; CLIV,
ep.

ἡ σὴ ὑπεροχὴ

Codex Justinianus, I, 5, 20 (530);
XII, 33, 8, 1; Novellae
Justinianus, XII, ep. (535)

Occasionally the title was rendered more sonorous and imposing by prefixing the illustris, thus:

Illustris Magnitudo Tua

Cassiodorus, Variae, VIII, 23

Illustris Sublimitas Tua

Cassiodorus, Variae, IV, 7

Furthermore, in the fifth century additional complimentary epithets developed which were commonly applied to the high officials without any implication of rank, such as

magnificus and magnificentissimus (Greek : μεγαλοτιμειότατος).¹

These titles were frequently coupled with the title of rank. An appropriate illustration of this is the illustris et magnificus vir comes patrimonii who appears in one of the epistles of Cassiodorus.² In the fifth century, also, the Emperors were accustomed to address the highest officials as frater amantissime and there are examples of this usage for the Count of the Privy Purse.³

Office was conferred upon the Count of the Privy Purse in letters of appointment couched in the grandiose style of the Late Empire, and what we may assume to be rather unusually flamboyant examples of these appear in the Formulae of Cassiodorus.⁴ Upon these codicils conveying his appointment were emblazoned the insignia of the office as they appear in the Notitia.⁵ In the case of the Count of the Privy Purse these consisted of a draped table upon which lay the Liber mandatorum with the portrait (imago) of the Emperor. This had reference

1. Among the lists of those present at the 1st Session of the Council of Chalcedon we find ο μεγαλοτιμειότατος κόμης τῶν οὐρανῶν πριβὰ των τερεβθίου (Mansi, VI, p. 563); and at the VIth Session, the vir magnificentissimus comes sacrarum privatarum Genethlius, the vir magnificentissimus ex-comes privatarum Severus, and the vir magnificentissimus ex-comes privatarum Julianus (Mansi, VII, 117, 128).

2. Cassiodorus, Variae, IV, 15.

3. Novellae Theodosii, V, 1 (438); Novellae Majoriani, V (458).

4. Cassiodorus, Variae, VI.

5. In the legislation of Justinian οὐρανία, or, παρασημια τῆς ἀρχῆς ἐν τοῖς καθουμένοις κωδικεῖσιν is the translation for insignia; cf. Boak, op. cit., p. 111, citing Böcking, Über die Notitia Dignitatum utriusque Imperii, p. 97.

to the set of instructions or principles upon the basis of which the Count was to conduct his administration. Depicted also were treasure chests with heavy metal bands, money bags, wine jars, and diverse representations of the taxes received in kind.

The actual induction into office took place when the Emperor before the assembled Court girt his officials with the belt of office (cingulum militiae). So important was this investiture that cingulum came to be used to designate the office itself, and to be deprived of the belt was the equivalent of dismissal.

The Count of the Privy Purse as one of the Palace dignitaries (dignitates palatinae) and a consistorianus belonged to the highest of the three orders of counts (comes ordinis primi).¹ As an illustris he enjoyed numerous privileges and immunities pertaining to that rank. In the first place, he was entitled to honorable reception at Court functions where he occupied a fixed rank. We have already seen how the illustres were subdivided into various groups at various times. When the Court was marshalled on solemn and ceremonious occasions the illustres were still further divided into several groups upon another basis, as a consequence of which all the illustres with

1. Karlowa, Röm. Rechtsgesch., I, pp. 848-849.

the title of comes rerum privatarum were not of the same rank within their own order. Of highest rank was the Count of the Privy Purse actually in office who was classed amongst the illustres in actu positi¹ or administratores. After him ranked such ex-Counts of the Privy Purse as had retired from the service, or received no higher appointment after holding that office; these constituted the honorati. After the ex-Counts of the Privy Purse came those who received the belt of office without having performed the actual functions pertaining to the office, the illustres vacantes; and finally those who received the codicils of honorary rank of comes rerum privatarum without, however, receiving the belt of office, i.e. the honorarii.

On this basis, then, Theodosius II in 440 established the order of precedence at Court for the entire body of the Illustrissimate, expressly including the Counts of the Privy Purse.² First came the illustres in actu positi; next the illustres vacantes who received the belt of office from the hand of the Emperor in the presence of the Court; then the illustres vacantes to whom the belt of office had merely been sent; and finally those who received the codicils of honorary rank from the Emperor's hand without the belt of office, and those to whom the insignia were merely despatched without the belt.³ The

1. Codex Justinianus, XII, 8, 2.

2. Ibid., etiam comites rei privatae.

3. Codex Justinianus, XII, 8, 2 : Omnes privilegia dignitatum hoc ordine servanda cognoscant, ut primo loco habeantur ii,

administratores were placed before all vacantes and all honorarii. However, the vacantes coming after the administratores were not all ranked before all the honorarii, but rather those vacantes before those honorarii who had attained to a similar dignity, i.e. an illustris vacans of praefectorial rank (praefectorius) before an honorarius of praefectorial rank, but not an illustris vacans of quaestorial rank before an honorarius of praefectorial rank; likewise an illustris vacans of quaestorial rank before an honorarius of quaestorial rank and an illustris vacans of the rank of Count of the Privy Purse before an honorarius of similar rank.¹ Among illustres of the same class the order of precedence was determined by the time of their appointment.²

Concomittant with their exalted rank they enjoyed

qui in actu positi illustres peregerint administrationes: secundo venient vacantes, qui praesentes in comitatu illustris dignitatis cingulum meruerint: tertium ordinem eorum prospicimus, quibus absentibus cingulum illustris mittitur dignitatis: quartum honorariorum, qui praesentes a nostro numine sine cingulo codicillos tantum honorariae dignitatis adepti sunt: quintum eorum, quibus absentibus similiter sine cingulo mittuntur illustris insignia dignitatis.

1. Ibid. : Sed administratores quidem, etiam comites rei privatae, omnibus vacantibus omnibus honorariis anteponi censemus. Vacantes autem post administratores venientes non omnes iam omnibus honorariis credidimus praeponendos, sed eos vacantes illis honorariis, qui similem adepti sunt dignitatem, ut praefectorius praefectorio, non quaestorius praefectorio praeponatur, parique modo quaestorius quaestorio, non vacans comes thesaurorum vel comes rei privatae honorario quaestorio vel ex magistro officiorum praeferatur.
2. Cf. Daremberg et Saglio, Vol. III, pp. 386 ff.

immunity from the munera sordida et extraordinaria to which the curial and lower orders were liable. In 382 Valentinian II decreed their exemption and stated specifically the burdens which they escaped.¹ These were the preparation and transport of military supplies, except in the case of those destined for the Rhaetian and Illyrian frontiers; the providing of workmen and skilled artisans, the making of lime and supplying of building materials for constructions, and coal for the arms factories; the responsibility for various public works such as the erection of public and sacred structures and the building of bridges and roads. They were exempt from the obligation of raising recruits and providing quarters for troops or officials, as well as the expenses of embassies and of those coming to the Court on public business by special summons of the Emperor.²

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1. Codex Theodosianus, XI, 16, 15 : Maximarum culmina dignitatum, consistoriani quoque comites, notarii etiam nostri et cubicularii omnes atque ex cubiculariis ab omnibus sordidis muneribus vindicentur.
 2. Ibid. : Sordidorum vero munerum talis exceptio sit, ut patrimoniis dignitatum superius digestarum nec conficiendi pollinis cura mandetur aut panis excoctio aut obsequium pistrini nec paraveredorum huiusmodi viris aut parangariarum praebitio mandetur, exceptis his, quibus ex more Raeticus limes includitur vel expeditionis Illyricae pro necessitate vel tempore utilitas adiuvatur. Operarum atque artificum diversorum, excoquendae etiam calcis obsequia nulla de talibus adiumenta poscantur; materiam, lignum atque tabulata exceptorum virorum patrimonia non praebeant; carbonis quoque, nisi eum, quem moneta sollemniter vel fabricatio secundum veterem morem poscit armorum, ab huiusmodi viris praebitio desistat; publicis vel sacris aedibus construendis atque reparandis, hospitalium domorum minime curae subiaceant; viarum et pontium tales sollicitudo non oneret; capituli atque temonis necessitas nulla mandetur; legatis atque allectis sumptus possessio huiusmodi privilegiis munita non ferat.

In 390 Theodosius I issued a constitution which was practically a repetition of that of Valentinian II,¹ and Honorius in 412 once more removed the illustres from any liability to sordid and extraordinary burdens.² These privileges were enjoyed by the official not only during his incumbency of office but as long as he lived after retirement from active service.³ In the edict of Theodosius it is expressly stated that they do not extend to the holder's wife or descend to his heirs, but are enjoyed by him alone during his own life-time as the reward of his labours in behalf of the Empire.⁴ Two years later, however (392 A.D.), the same Emperor raised wives to the rank and honors of their husbands, and we find this privileged status also transmitted to the heirs.⁵ As we have seen, it was Theodosius I

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1. Codex Theodosianus, XI, 16, 18. It is interesting to observe that these privileges applied not only to the consistoriani and the highest officials, but to the churches and professional rhetoricians and grammarians as well.
 2. Codex Theodosianus, XI, 16, 23 : Ab inlustribus personis sordida munera et extraordinariae necessitatis damna removemus. This law of Honorius appears to be a part of another constitution issued on the same day renewing the immunity of the illustres from the obligation of furnishing recruits and horses for the army (Codex Theodosianus, XI, 18, 1).
 3. Codex Theodosianus, XI, 16, 15 : Omnes autem, quorum dignitates atque personas hac lege perstringimus, non solum quamdiu militaverint, verum etiam post missionem atque etiam eos, qui simili honore perfuncti sunt, generali praerogativa a praebitione sordidorum munerum vindicamus.
 4. Codex Theodosianus, XI, 16, 18 : Quae universa ita enumerati viri ad suum noverint privilegium pertinere, ut ea nec uxorum facultatibus indulta cognoscant et suis patrimoniis cum vivendi circumscribita temporibus. Neque enim ea, quae laborum contemplatione singulis sunt delata personis, heres poterit vindicare securus.
 5. Jullian, in Daremberg et Saglio, Vol. III, pp. 383 ff.

who extended the *Illustrissimate* and under him or his immediate successors this rank and the privileges attached to it also became inheritable.

As for the right of hospitium, by edict of Valentinian III and Marcian the Count of the Privy Purse was entitled to enjoy a single residence in the Capital exempt from the quartering of troops and his heirs the central portion of a single establishment, a third part of the rest to be liable to quartering.¹

During the crises of the end of the fourth and throughout the fifth century the immunity from extraordinary burdens was frequently suspended, especially in the matter of keeping the roads in repair and supplying recruits and horses for the army.²

In addition to ceremonial honors at Court and exemption from the munera, the Count of the Privy Purse, as an illustris, enjoyed important judicial privileges. He could not be subjected to arrest and incarceration while awaiting trial;³

1. Codex Justinianus, XII, 40, 10 : 5. Comites autem domesticorum et protectorum et sacrarum largitionum et privatarum et vir spectabilis primicerius notariorum singulas domus suas ab hospitum gravamine dum vivunt gaudeant esse securas: memorati vero heredes eorum mediam partem unius domus suae sciant excusatione muniri, residuae vero dimidiae partis tertiam portionem hospitibus deputandam esse cognoscant.

2. Codex Theodosianus, VII, 13, 3; 41; XI, 16, 12; 17, 4; XV, 3, 4; Novellae Theodosii, XLI.

3. Codex Justinianus, XII, 1, 16 (422-423) : Si gravius ullum facinus admittatur, nocente persona extra carceralem custodiam substitutione habita, super illustribus quidem nobis

his word was sufficient and no bond was required.¹ He was not subject to the jurisdiction of the regular judges, but only to that of the Emperor. The Sovereign might delegate the case sacro cognitori, but he alone could pronounce sentence.²

After Theodosius II the actual Senate was recruited almost exclusively from the illustres³ and into this stately and decorous body retired for the rest of their lives the ex-officials of illustrious rank covered with the honors of their service to the Empire.⁴

sufferi iubemus, super ceteris vero quadam minore dignitate decoratis ad tui referri culminis notionem, ut ita demum, quid de admissio crimine constitui oporteat, iudicetur.

1. Jullian, in Daremberg et Saglio, Vol. III, part 1, p. 388, s. v. illustres, citing Codex Justinianus, XII, 1, 17.
2. Codex Justinianus, III, 24, 3, pr. : Quotiens cui nostra serenitas domesticorum scholam regendam mandavit cuive sacros nostri numinis thesauros aut res privatas nostrae pietatis vel serenissimae Augustae nostrae coniugis gubernandas iniunxit, post depositam videlicet administrationem crimen publicum privatumve, cui tamen non per procuratorem respondere liceat, in hac alma urbe vel in provinciis commoranti ingeratur, nullius alterius iudicis nisi nostrae pietatis huiusmodi esse cognitionem vel sacri tantummodo cognitoris, cui nostra serenitas huiusmodi negotii audientiam vice sua sacris apicibus mittendis mandaverit, Adeo autem tantarum honores dignitatum duximus augendos, ut nec sacro quidem cognitori, nec postquam crimen fuerit patefactum, contra huiusmodi viros vel eorum substantias statuendi aliquid concedamus facultatem, sed hoc solummodo in huiusmodi viros vice quoque principis audituro licebit, ut intentatum apud se crimen, si patefactum fuisset, ad principalem referat notionem. . . . Quotiens autem viri illustres in provinciis constituti . . . in querimoniam fuerint criminalem vocati, . . . criminibus ferendis contra huiusmodi viros vel facultates eorum sententiis abstineant (iudices), dum nostrae pietatis ad suas meruerint relationes responsum.
3. Novellae Theodosii, XV, 2, #2 (cf. with the rubric); Codex Justinianus, V, 4, 28 : Si . . . inter Senatores scribatur dignitate illustratus.
4. Henceforth illustris and senator were convertible terms (Jullian, in Daremberg et Saglio, op. cit., p. 387).

Finally, in the reign of Zeno (474-491 A.D.) those of curial origin who had risen from the beginning of the reign to the rank of Count of the Privy Purse of either Emperor or Empress, Count of the Sacred Largesses, Count of the Household Troops, Quaestor or Master of the Offices were declared free of the curial munera as long as they remained in office. After laying aside their office, however, their liability and that of their property and the children born before their elevation was restored unless other provision were made by special legislation. A substitute might be provided to fulfill their curial obligations, upon the liability, however, of their property; in other words, then, they were released from personal service in the municipalities, but their property was still held to its original municipal obligations. The other privileges pertaining to the rank of illustris, however, remained intact to them and their families. Those who had achieved such rank before the beginning of the reign were freed absolutely with their property and the children born after their elevation.¹

1. Codex Justinianus, X, 32, 64 : Neminem ex his, qui obnoxii curiae constituti ab initio felicissimi nostrae pietatis imperii comitis privatarum nostrae vel Augustae partis, seu comitis largitionum vel comitis domesticorum, quaestoris vel magistri officiorum ad actum administrationis gerendum proventi sunt vel in posterum provehentur, ob hoc curialium munerum laqueos volumus evitare; sed obligatos cum liberis suis quandocumque progenitis et facultatibus suis post administrationem depositam curiae commoditatibus inservire, nisi forte aliis privilegiis super hoc legibus cognitissimantur. Nam alia universa legitima vel ex constitutionibus data privilegia integra volumus illibataque observari.

Anastasius in 497/99 cancelled the special provisions of Zeno's legislation and liberated from curial obligations all of curial origin who had risen to fill the offices named, their property and their children.¹

The Master of the Offices, the Quaestor, the Count of the Sacred Largesses, and the Count of the Privy Purse composed a group of four permanent members of the Imperial Consistory² and together they are frequently referred to as the comites consistoriani. Although the Masters and Quaestors at one time appear to have constituted a separate group of illustres (cf. p. 379), the four officials are usually mentioned together and they were regarded as being of practically equal rank in

Ne tamen indulti honoris inane nomen retinere videantur, dignitatum titulis potiantur, per substitutos suarum periculo facultatum curialibus muneribus respondentes habeant integra illibataque privilegia dignitatis. Eos vero, qui vel praefatas dignitates ante initium nostri imperii consecuti sunt, cum facultatibus suis et post eam dignitatem progenitis filiis a curialibus nexibus vel onere decernimus liberari.

1. Codex Justinianus, X, 32, 66 : Divae memoriae Zenonis sacratissimam constitutionem, quae de curialibus post certas excelsas administrationes seu dignitates condicionis nexu liberandis lata est, in hac tantummodo parte duximus corrigendam, His etenim, qui memoratas administrationes vel unam ex his peregerunt, nec non liberis et rebus eorum beneficium, quod ante per illustrem administrationem peractam eis acquisitum est, intactum illibatumque iubemus servari, ut relaxatione conditionis et munerum curialium per anteriores principales dispositiones sibi concessa tam ipsi quam liberi eorum post huiusmodi administrationem adeptam procreati una cum propriis substantiis potiantur, etsi contigit eos post divae memoriae Zenonis constitutionem sive per se sive per substitutos suos curiae competentia munera subisse.
2. To whose number must be added, of course, the Grand Chamberlain.

the sense that promotions were rarely made from one to the other. That there was no distinction in rank between the Master and the Quaestor appears from the fact that now one and now the other title has the precedence in legal enactments.¹ Likewise, the Count of the Sacred Largesses and the Count of the Privy Purse were regarded as equals in rank and distinguished only by the time of their appointment.² However, when cases occur of promotion from one office to the other within the group of comites consistoriani, the promotion almost invariably, in the surviving instances, takes place from comes rerum privatarum to comes sacrarum largitionum to magister officiorum and rarely in the reverse order.³ Thus Valerius was Count of the Privy Purse in 425, Count of the Sacred Largesses in 427 and Master of the Offices in 435, and Iohannes was Count of the Privy Purse at an unknown date, Count of the Sacred Largesses in 429 and Master of the Offices in 433.⁴ There are several instances in which Counts of the Privy Purse were promoted to become Count

1. Cf. Boak, op. cit., pp. 47-48.

2. Codex Theodosianus, VI, 30, 24 (425) : . . . cum illustres viri memoratarum comites dignitatum ita simili iugiter infularum splendore decorentur, ut non culmine distinguantur aequali, sed tempore; elsewhere they are referred to as "twin judges" (Novellae Valentiniani, VII, 2 : et decus potestatis suae ad geminos iudices revertetur).

3. It is true that Felix under Julian was created Count of the Sacred Largesses after being Master of the Offices (Boak, op. cit., p. 107, note 9), but this appears to be a solitary instance.

4. Seeck, Regesten, Personenverzeichnis.

of the Sacred Largesses,¹ and Marcellinus who was Count of the Privy Purse in 438² was both Count of the Sacred Largesses and acting Count of the Privy Purse in the following year.³

Due to the comparative rarity of extant cursus honorum of Counts of the Privy Purse which include the offices held by them before coming to that honor it is difficult to say what training and experience were required for the office. In the period of Constantine C. Atticus Alcimus Felicianus was promoted from magister summarum rationum, i.e. principal subordinate of the head of the fiscus, to be magister rei summae privatae,⁴ and C. Caelius Saturninus, after a long training in provincial financial posts, was promoted from vicarius summae rei rationum, i.e. a subordinate office of the fiscus, to be rationalis privatae.⁵ Later, the Counts of the Privy Purse appear to have been

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1. Adauctus was both catholicus (the predecessor of the comes sacrarum largitionum) and magister privatae (Eusebius, Hist. Ecclesiastica, VIII, 11, 2); Severinus, C.R.P., 390; C.S.L., 391; Minervius, C.R.P., 397-8; C.S.L., 398-9; Valerius, C.R.P., 425; C.S.L., 427; Iohannes, C.R.P., (date unknown); C.S.L., 429 (Seeck, Regesten, Personenverzeichnis).
 2. Novellae Theodosii, V, I.
 3. Novellae Theodosii, XVII, 1 : Suggestionem viri illustris comitis sacrarum largitionum Marcellini, vicem agentis viri illustris comitis rerum privatarum.
 4. C.I.L., VIII, 822.
 5. C.I.L., VI, 1704 : DOGMATII HONORI C . CAELIO SATURNINO V . C . ALLECTO PETITU SENATUS INTER CONSULARES, COMITI D . N . CONSTANTINI VICTORIS AUG . VICARIO PRAEFECTURAE URBS, IUDICI SACRARUM COG . VICARIO PRAEF . PRAETORIO BIS, IN URBE ROMA ET PER MYSIAS, EXAMINATORI PER ITALIAM, PRAEFECTO ANNONAE URBS, RATIONALI PRIVATAE, VICARIO SUMMAE REI RATIONUM, RATIONALI VICARIO PER GALLIAS, MAGISTRO CENSUUM, etc.

regularly selected, however, from ex-Proconsuls or Vicars and former Chiefs of the Secretarial Bureaus. Thus, Pacatus was Proconsul of Africa in 390,¹ and Count of the Privy Purse in 393;² Petronius was Vicar of Spain in 395,³ 396⁴ and 397,⁵ and Count of the Privy Purse in 404;⁶ Theodorus was magister epistularum or Secretary for Correspondence⁷ and then Count of the Privy Purse;⁸ Claudius Lepidus was magister memoriae before becoming Count of the Privy Purse,⁹ and Eutropius the historian was both magister memoriae and Proconsul of Asia before filling that office.¹⁰ Theodoric in promoting Senarius to the office of Count of the Patrimony praised him for his elegant diction, his pure morals, his general popularity, his success as an advocate and his previous diplomatic services as an ambassador.¹¹

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1. Codex Theodosianus, IX, 2, 4.
 2. Codex Theodosianus, X, 42, 13.
 3. Codex Theodosianus, IV, 21.
 4. Codex Theodosianus, XII, 1, 151.
 5. Codex Theodosianus, IV, 6, 5.
 6. Codex Justinianus, XI, 74, 3.
 7. Symmachus, ed. Seeck, p. cxlix.
 8. Codex Theodosianus, XI, 16, 12 (380 A.D.).
 9. C.I.L., XII, 1524 (Dessau, 1279) : . . . CLAUDIO LEPIDO EX-CONSULARI GERMANIAE PRIMAE; EX-MAGISTRO MEMORIAE, EX-COMITE RERUM PRIVATARUM.
 10. Symmachus, ed. Seeck, op. cit., p. cxxxiii.
 11. Cassiodorus, Variae, IV, 3 : Subiisti saepe arduae legationis officium; restitisti regibus non impar assertor, coactus iustitiam nostram et illis ostendere qui rationem vix poterant cruda obstinatione sentire. . . . Quid studium tuum longa lucubratione sollicitum, et continui laboris inculpabile referamus obsequium? Usus es sub exceptionis officio eloquentis ingenio: . . . Pronuntiatio tua nostrum delectabat arbitrium: . . . Fuit quoque in te pars altera vitae laudabilis, quod arcana nostra morum probitate claudebas, . . . Collegis gratia, superioribus humilitate placuisti.

In 478, when ambassadors from Honoric arrived to make peace with the Empire, Zeno, as a compliment to the Vandal King, made Alexander his chef de mission Count of the Privy Purse, an office for which he was well qualified as procurator of Placidia, the daughter of Valentinian III and widow of the Emperor Olybrius.¹

In the earlier period, i.e. the reign of Constantine, Felicianus was promoted from magister rei summae privatae to be Prefect of the Watch,² and Saturninus was promoted from the office of rationalis privatae to that of Prefect of the Grain Supply of Rome.³ Thereafter, Counts of the Privy Purse were regularly promoted to become Praetorian or Urban Prefects and numerous instances are extant. The comitiva rerum privatarum and the praefectura were sometimes held in consecutive years, i.e. Caesarius was Count of the Privy Purse in 364,⁴ and Prefect of Constantinople in 365;⁵ Pancratius was Count of the Privy Purse in 379⁶ and 380,⁷ and Prefect of Constantinople in 381⁸ and 382;⁹ Proculus was Count of the Privy Purse in 422,¹⁰ and

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1. Malchus, Excerpta de legationibus gentium ad Romanos, V (Corp. Hist. Byzant., Vol. XIV, p. 240).
 2. C.I.L., VIII, 822, op. cit.
 3. C.I.L., VI, 1704, op. cit.
 4. Codex Theodosianus, X, I, 8.
 5. Ammianus Marcellinus, XXVI, 7, 4.
 6. Codex Theodosianus, X, 1, 12; VI, 30, 2.
 7. Codex Theodosianus, X, 10, 12; X, 3, 3; X, 10, 14.
 8. Codex Theodosianus, IX, 17, 6.
 9. Codex Theodosianus, II, 12, 3; XIV, 10, 1; Codex Justinianus, VIII, 4, 6.
 10. Codex Theodosianus, X, 10, 31.

Praetorian Prefect of Italy in 423,¹ succeeded in both offices in the same years by Venantius;² and Bassus was Count of the Privy Purse in 425,³ and Praetorian Prefect of Italy in 426.⁴ More frequently, however, ex-comites rerum privatarum were elevated to one of the Praefectures after the lapse of several years,⁵ or even considerably later.⁶ The Consulship might also follow the comitiva rerum privatarum, of which there is extant an instance in the case of Eudoxius who was Count of the Privy Purse in 440,⁷ and Consul in 442.⁸ In the reign of Justinian Florus was Consul before becoming Count of the Privy Purse.⁹

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1. Codex Theodosianus, XIII, 6, 10.
 2. C.R.P. in 422 (Codex Theodosianus, XI, 28, 13); Pr. P. It. in 423 (Codex Theodosianus, VI, 23, 2).
 3. Codex Theodosianus, XVI, 2, 47; 5, 64.
 4. Codex Theodosianus, IV, 10, 3; X, 26, 1; XVI, 7, 7; 8, 28.
 5. Eustathius, C.R.P., 345 (C.Theod., X, 10, 7); P.P.Gall., 349 (C.Theod., II, 1, 1; XI, 7, 6); Nebridius, C.R.P., 382 (C.Theod., X, 10, 16), 383 (C.Theod., X, 34; Just., XI, 66, 4; 71, 2; C.Theod., X, 10, 18; VI, 30, 4), and 384 (C.Just., XI, 62, 6); P.Urbis Const., 386 (C.Theod., XIV, 12; III, 4, 1); Andromachus, C.R.P., 392 (C.Just., V, 5, 4); P.Urbis, 395 (C.Theod., II, 12, 6; VII, 12, 3; VIII, 8, 7; XV, 14, 9; 11); Studius, C.R.P., 401 (C.Theod., IX, 42, 17; X, 10, 23); P.Urbis Const., 404 (C.Theod., XVI, 2, 37; 4, 5); Strategius, C.R.P., 410 (C.Theod., XVI, 5, 50); P.P.Ill., 415 (C.Theod., VI, 23, 1).
 6. Theodorus, C.R.P., 380 (C.Theod., XI, 16, 12); P.P.It., 397 (C.Theod., XI, 16, 21; 22; VII, 13, 13); Dexter, C.R.P., 387 (C.Just., VII, 38, 2); P.P.It., 395 (C.Theod., VIII, 5, 53; 54; 8, 5; IX, 23, 2; XI, 28, 2; XII, 1, 146); Petronius, C.R.P., 404 (C.Just., XI, 74, 3); P.P.Gall., before 418 (Seeck, Regesten, Personenverzeichnis); Volusianus, C.R.P., 408 (C.Theod., VI, 16, 31); P.U.Romae, 421 (Mansi, IV, S. 448c = Migne, P.L., Vol. XLVIII, S. 408 = Haenel S. 241); Taurus, C.R.P., 416 (C.Theod., VI, 30, 21); P.P.Or., 433 (C.Theod., XI, 28, 16); Thalassius, C.R.P., 430 (C.Theod., X, 10, 34); P.P.Ill., 439 (Nov. Theod., XIII; C.Just., II, 2, 7); Hermocrates, C.R.P., 435 (C.Theod., X, 8, 5); P.P.Or., 444 (Nov. Theod., XXVI).
 7. Novellae Theodosii, XVIII.
 8. Seeck, Regesten.
 9. Novellae Justiniani, XXII, ep. (535 A.D.) : *Θλάρα τῷ*

Finally, a certain Osius, at an unknown date, received the honor of Patrician, highest in the Emperor's giving, after having been both Count of the Privy Purse and Count of the Sacred Largesses,¹ and, although by decree of Zeno (474-491) this honor, within the Empire, might be conferred only upon those who had previously held the office of Master of the Offices, Master of the Soldiers, Prefect or Consul,² we find Senarius in the Ostrogothic Kingdom entitled on his tombstone VIR INLUSTRIS COMES PATRIMONII ET PATRICIUS,³ and Strategius, in the reign of Justinian, was Patrician and, apparently, Count of the Privy Purse.⁴

The comitiva rerum privatarum, like the other offices, was an annual charge; yet no restriction was placed upon the number of times it might be held by the same person. Pancratius, Eulogius, Minervius, Firminus and Genethlius were Count of the Privy Purse for two full years.⁵ Orio was apparently Count of

ἐνδοξοτάτῳ κομίτῃ τῶν θείων προβάτων καὶ
αὐτοῦ ὑπάρχοντι.

1. C.I.L., V, 6253 :

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Privatae comes atque rei provectus in altum
Sacrarum meruit sumere iura comes
Patricium culmen gradibus conscendit honoris
Crevit et ex tanto praesule census honor
.

2. Codex Justinianus, XII, 3, 3.
3. Cassiodorus, ed. Mommsen, p. 499.
4. Procopius, History of the Wars, II, 1, 8-10 : Στρατηγῶν τε
πατρικῶν ἀνδρῶν καὶ τῶν βασιλικῶν ἐποικλιῶν ἀρχοῦντι.
5. Pancratius, 379 (C.Theod., VI, 30, 2; X, 1, 12; XII, 13, 14);
380 (C.Theod., X, 3, 3; 10, 12; 10, 14): Eulogius, 395

the Privy Purse in the East from 346¹ to 348,² although he is not attested for 347. Florianus filled the office in the West from 364 to 369;³ Valens seems to have retained Alexandrianus in this capacity from 367⁴ to 369,⁵ and Fortunatianus from 370 to the end of the reign.⁶ Nebridius was Count of the Privy Purse in the East from 382 to 384,⁷ Nestorius apparently from 401 to 405⁸ and Ursacius seems to have filled the office in the West from 414 to 417 although his incumbency is not attested for 415.⁹

While in office the Count of the Privy Purse with the other comites consistoriani followed in the Emperor's train even

(C.Theod., X, 9, 2; XV, 14, 10); 396 (C.Theod., X, 5, 1 - Seeck, Regesten): Minervius, 397 (C.Theod., I, 11, 1; VII, 13, 14); 398 (C.Theod., XI, 1, 25): Firminus, 398 (C.Theod., I, 11, 2; XI, 19, 4); 399 (C.Theod., X, 2, 2; 10, 22): Genethlius, 450 (Novellae Marciiani, I); 451 (Mansi, VI, 563).

1. Codex Theodosianus, X, 10, 8.
2. Codex Theodosianus, X, 14, 2.
3. At least he is attested in the Codes for 364 (C.Theod., VIII, 5, 20), 365 (C.Theod., XI, 7, 11), 367 (C.Just., VI, 4, 2), 368 (C.Theod., V, 13, 4; 15, 18; C.Just., XI, 62, 4) and 369 (C.Theod., X, 9, 1).
4. Codex Theodosianus, X, 1, 11.
5. Codex Theodosianus, X, 10, 11.
6. 370 (C.Theod., X, 19, 5; XV, 2, 2), 371 (Ammianus Marcell., XXIX, 1; Zosimus, IV, 14). He is still found in office in 377 (C.Theod., X, 16, 3) and no other Count of the Privy Purse is known for the East in the intervening period.
7. 382 (C.Theod., X, 10, 16), 383 (C.Theod., X, 3, 4; C.Just., XI, 66, 4; 71, 2; C.Theod., X, 10, 18; VI, 30, 4), 384 (C.Just., XI, 62, 6).
8. 401 (C.Theod., X, 3, 6), 402 (C.Just., IV, 44, 18), not attested for 403 and 404, 405 (C.Theod., VI, 30, 18).
9. 414 (C.Just., I, 33, 3), 416 (C.Theod., XIII, 11, 14), 417 (C.Theod., X, 3, 7).

on his military expeditions.¹ When Justinian undertook to check abuses in the provincial administration by putting an end to the practice of suffragium in the appointment of provincial governors, the governors, upon entering into their functions, were required to take an oath before the Emperor, or in case he was not at leisure, before the Praetorian Prefect, the Count of the Sacred Largesses, the Quaestor, the Count of the Privy Purse and the Chartulary of the Sacred Bedchamber who prepared the codicils of his office that he had neither given nor promised any patronage.²

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1. Thus, Valens, when going forth to meet the Goths in 378 was accompanied as far as Hadrianople by the Prefect and the Counts of the Consistory who were left behind there to guard his treasure and regalia (Ammianus Marcellinus, XXXI, 12, 10 & 15).
 2. Novellae Justiniani, VIII, 7 : Sic igitur a nobis cingulis discretis convenit eum, qui hic acceperit administrationem, cum dei memoria coram nobis, aut si non vacat, coram tua celsitudine, et qui tuam rexerint sedem, et qui semper fuerit gloriosissimo comite sacrarum nostrarum largitionum et gloriosissimo quaestore sacri nostri palatii et gloriosissimo comite ubique sacrarum nostrarum privatarum, praesente quoque et per tempora magnificentissimo chartulario sacrorum nostrorum cubiculorum, qui codicillis his apud nos ministrat, iusiurandum dare, nihil penitus nec quodlibet se praebere neque occasione suffragii neque patrocinii, neque promittere neque de provincia profiteri dirigere neque gloriosissimis praefectis neque aliis cingula habentibus neque qui circa eos constituti sunt, nec alteri cuilibet per occasionem patrocinii; sed sicut sine suffragio accepit administrationem.

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APPENDIX A
THE COUNTS OF THE PRIVY PURSE

OCCIDENS

ORIENTS

- 319 IANUARINUS
(Seeck, Regesten)
C.Theod., IX, 1, 2; 37, 1.
- 339 EUSEBIUS
C.Theod., X, 10, 6.
- 340 NEMESIANUS
(Seeck, Regesten)
C.Theod., XII, 1, 30
(Just., X, 32, 21).
- 345 EUSTATHIUS
C.Theod., X, 10, 7.
Philostorgius, III, 12.
- 346 ORIO
C.Theod., X, 10, 8.
- 348 IDEM
C.Theod., X, 14, 2
(Just., X, 14, 1).
- 361 EVAGRIUS
Ammianus Marcellinus, XXII, 3, 7.
- 362 ELPIDIUS
Theodoretus, Eccl.
Hist., III, 12.
Philostorgius, VII, 10.
- 364 FLORIANUS CAESARIUS
C.Theod., VIII, 5, 20. C.Theod., X, 1, 8.
- 365 IDEM
C.Theod., XI, 7, 11

- 367 IDEM FLORIANUS ALEXANDRIANUS
C.Just., VI, 4, 2; C.Theod., X, 1, 11;
XI, 68, 4. XI, 17, 1; XII, 6, 14.
- 368 IDEM
C.Just., XI, 62, 4; 66, 2.
- 369 IDEM IDEM
C.Theod., X, 9, 1 C.Theod., X, 10, 11.
(C.Just., X, 10, 3).
- 370 FORTUNATIANUS
C.Theod., VII, 13,
2 (Regesten); X, 19,
5; XV, 2, 2.
- 371 IDEM
Ammianus Marcel., XXIX,
1; Zosimus, IV, 14.
- 377 IDEM
C.Theod., X, 16, 3
(Just., X, 2, 5).
- 379 PANCRATIUS
C.Theod., VI, 30, 2;
X, 1, 12. (Just., XII,
23, 3)
- 380 THEODORUS IDEM
C.Theod., XI, 16, 12 C.Theod., X, 3, 3; 10,
12; 14.
- 382 NEBRIDIUS
C.Theod., X, 10, 16.
- 383 AMMIANUS IDEM
C.Theod., XI, 30, 41 C.Theod., VI, 30, 5
(Just., II, 8, 4) (Just., XII, 23, 5);
X, 3, 4 (Just., XI,
59, 6); 10, 18.
- 384 IDEM
C.Just., XI, 62, 6.
- 385 PELAGIUS
C.Theod., XI, 30, 45
(Just., VII, 62, 26);
XI, 36, 29 (Just., VII,
65, 7).

- 386 GORGONIUS
C.Theod., X, 13, 1
- 387 DEXTER
C.Just., VII, 38, 2.
- 389 MESSIANUS
C.Theod., IV, 22, 3
(Just., VIII, 4, 7).
- 390 SEVERINUS
C.Theod., IX, 27, 7
(Just., IX, 27, 5).
- 393 DREPANIUS
C.Theod., IX, 42, 13.
- 395 IDEM
C.Theod., XI, 16, 20
(Just., X, 48, 15).
- EULOGIUS
C.Theod., X, 9, 2;
XV, 14, 10
- 396 IDEM LAURENTIUS
C.Theod., X, 5, 1. C.Theod., X, 10, 21.
- APOLLODORUS
C.Theod., XI, 36, 32
(Just., VII, 65, 8).
- 397 HYPERECHIUS
C.Theod., VII, 13, 12;
X, 1, 14.
- MINERVIUS
C.Theod., I, 11, 1
(Just., I, 33, 2);
VII, 13, 14.
- 398 IDEM
C.Theod., XI, 1, 25
(Just., X, 16, 10).
- FIRMINUS
C.Theod., X, 10, 22.

- 399 IDEM FIRMINUS
C.Theod., XII, 6, 25
- 401 STUDIUS
C.Theod., IX, 42, 17
= X, 10, 23
- NESTORIUS
C.Theod., X, 3, 6
(Just., XI, 73, 1)
- 404 PETRONIUS
C.Just., XI, 74, 3
- 405 URSICINUS IDEM
C.Theod., IX, 42, 19 C.Theod., VI, 30, 18
(Just., XII, 23, 9)
- SILVANUS
C.Theod., V, 16, 30
- SALVINUS
C.Theod., XI, 1, 27
(Seeck, Regesten)
- 406 IDEM
C.Just., IV, 44, 18 (?)
- 408 VOLUSIANUS
C.Theod., V, 16, 31
- 410 STRATEGIUS
C.Theod., XVI, 5, 50
- 411 MACEDONIUS
C.Theod., VII, 13, 20
(Seeck, Regesten)
- 414 URSACIUS
C.Just., I, 33, 3
- 415 MAXIMUS
C.Theod., X, 10, 26
- 416 IDEM TAURUS
C.Theod., XIII, 11, 14 C.Theod., VI, 30, 21
(Just., XII, 23, 11)
- 417 IDEM
C.Theod., X, 3, 7

- 420 PATRICIUS
C.Theod., X, 1, 17
(Just., X, 1, 9)
- 422 VENANTIUS
C.Theod., XI, 28, 13
- PROCULUS
C.Theod., X, 10, 31
- 423 TRYGETIUS
C.Theod., XI, 20, 4
- 425 BASSUS VALERIUS
C.Theod., XVI, 2, 47; C.Theod., V, 16, 34
5, 62; 64 (Just., XI, 68, 6);
X, 10, 32
- 430 THALASSIUS
C.Theod., X, 10, 34
- 435 HERMOCRATES
C.Theod., X, 8, 5
(Just., X, 10, 5)
- 438 MARCELLINUS
Nov. Theod., V, 1
- AURELIANUS
Nov. Theod., VI
C.Just., VI, 62, 5 (?);
XI, 10, 5 (?)
- 439 MARCELLINUS,
vicem agentis C.R.P.
Nov. Theod., XVII, 1
- 440 EUDOXIUS
Nov. Theod., XIX
(Just., XI, 66, 7)
- 450 GENETHLIUS
Nov. Marciani, II.
- 451 IDEM
Mansi, VII, p. 128
- 458 ENNODIUS
Nov. Majoriani, V

487 ALEXANDER
Malchus, p. 240

REGNUM GOTHICUM

510(?) SENARIUS
Cass., Variae, IV
7; 11; 13

531 FLORUS
C. Just., VII, 37, 3

535 IDEM
Nov. Just., XII;
XXII, ep.

558 MARTHANUS
Athanasii epitome
(Cf. Corp. Iur. Civ.,
III, p. 705, note 3)

561 PAMPHRONIUS
Menander, Frag. VIII
(Cf. Bury, Adm. Syst.,
p. 80)

. BONUM
Menander, p. 345

566 PETRUS
Ius Greco-Romanum,
III, col. 1, Nov. 3

603 BEATOR
Greg. I, Registrum,
XIII, 26 (cf. Stein,
Studien, pp. 147, 181)

UNDATED REFERENCES TO COUNTS OF THE
PRIVY PURSE

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- NEBRIDIUS, Codex Justinianus, XI, 66, 4; 5; 71, 2, 382-385 A.D.
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- DREPANIUS, Codex Justinianus, XI, 67, 1, circa 393 A.D.
- SILVANUS, Codex Justinianus, XI, 78, 1, 394-402 A.D.
- MINERVIUS, Codex Justinianus, XI, 75, 3, 395-402 A.D.
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- CLAUDIUS LEPIDUS, C.I.L., XII, 1524 (his brother was praefectus praetorio Galliarum in 409 A.D.)
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- JOHANNES, Codex Theodosianus, V, 16, 35 (C. Just., XI, 77, 1), 423-451 A.D.
- APRONIANUS, Cassiodorus, Variae, III, 53 (under Theodoric), 493-526 A.D.
- FLORUS, Codex Justinianus, XII, 33, 8; Novellae Justiniani, CXXXIX; CLIV, 527-535 A.D.
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- OSIUS, C.I.L., V, 6253.