PART I

CITIES
I

ASPECTS OF THE DECLINE OF THE URBAN ARISTOCRACY IN THE EMPIRE

1. INTRODUCTION

The theme of decline and fall remains irresistible to historians of the Roman Empire. No one who has tangled with the issue can be unaware that the decline of the aristocracy of the cities was closely bound up with the decline of the Empire at large.

The main outlines are well known and uncontroversial. The members of the local councils of cities, that is, the decurions or curiales, bore the brunt of the financial burdens of the imperial administration. At one time, local office carried sufficient prestige and privilege to compensate for the expenditures it entailed. By the fourth if not late-third century, however, because of the mounting costs of government, external interference in city administration, and a decline in local prosperity, it had lost its appeal. In the early Empire service in the local council of a city was both voluntary and sought-after; by the fourth century, it was compulsory, to be evaded if at all possible. Faced with the flight of decurions from their cities, the central administration sought to block the escape-routes, both by restricting the entry of decurions into other professions or occupations, including the clergy, the army and the imperial administration itself, and by forcing sons to follow fathers into local government. This policy pointed to the eventual transformation of the local aristocracy into a hereditary order. If this was the aim of the central administration, it was never achieved. Clear evidence for this is the succession of imperial decrees which are I II collected in the ‘Theodosian Code’ ordering that errant decurions be returned to their patriae to perform liturgies. A decree that has gained its end does not have to be continually reenacted. It has even been argued, largely on the basis of the legal evidence, that social mobility was greater in the later Roman Empire than under the Principate. This is very doubtful. But at least it can be acknowledged that a considerable degree of mobility characterized the society of the late Empire.1

1 The thesis is that of Jones (1970) 79–96. It is in practice impossible to evaluate the argument on the basis of the evidence presented in the article. I am indebted to M. I. Finley
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The broad outlines of the process of decline, then, are familiar, and accounts of the general phenomenon abound. But we lack a comprehensive analysis of the stages by which:

(1) the cost of curial liturgies increased,
(2) office-holding and liturgy-performing in the cities lost their voluntary nature, and
(3) the ordo of decurions became progressively ingrown and self-perpetuating.

These three overlapping subjects are all highly complex. An adequate treatment of each would require consideration of a very large body of evidence from all parts of the empire. This article is purely preparatory. My aim with respect to the first two topics (which I propose to treat together) is to initiate what I believe to be a fruitful line of inquiry. As regards the third topic, I will attempt, by proposing a novel thesis, to make more intelligible the process by which the curial class became largely hereditary.

II. COMPULSION AND THE COST OF OFFICE

There are some well-known legal texts relevant to the Severan period which point to the existence of compulsion in municipal politics. For example, Septimius Severus in one ruling relating to the repetition of office distinguished between ‘unwilling’ and ‘willing’ office-holders. Moreover, frequent references are made to sons of decurions who have been nominated to the council, to magistracies or liturgies against the will of their fathers. These passages might have set scholars searching for others of earlier date with similar implications, or stimulated a more general inquiry into the conditions of municipal government in the preceding period. In fact, the Antonine period has virtually been passed over and discussion of the question of compulsion has revolved around a few texts from the Flavio-Trajanic age. One is a clause in the Flavian charter for Malaga, which sets up a procedure to be followed in cases where too few candidates have offered themselves for magistracies. Another is a letter of Trajan to Pliny, then governor of Bithynia-Pontus, which may refer to men who became decurions against their will (inviti . . . decuriones). and R. P. Duncan-Jones for criticisms of an earlier draft of this paper. Responsibility for the conclusions is mine.

2 Dig. 50.1.18: ‘Divus Severus rescrisit intervalla temporum in continuandas oneribus invitis, non etiam volentibus concessa, dum ne quis continuet honorem’.
3 E.g. Dig. 50.1.21 pr.; 50.2.6.4; 50.2.7.3; cf. 50.1.2 pr.: ‘consensisse autem pater decurionatai filiis videtur, si praesens nominationi non contradixit.’
4 FIRA 2nd edn, i, no. 24, p. 209, ch. 1.1. 5 Pliny, Ep. 10.113.
The clause in the law of Malaga is not good evidence of ‘the growing unpopularity of office’. We cannot assume that it was inserted in a charter for the first time on this occasion. It is more likely to have been tralatian than newly invented, either for Malaga or for the newly chartered Spanish towns in general. As for its purpose, it is best regarded as a safety clause designed to cope with emergencies. It might be invoked, for example, when famine or plague threatened to leave a state leaderless. Acræpha in Boeotia suffered some kind of natural disaster (‘the destruction of the land’) early in Claudius’ reign, and special measures had to be taken to have polemarchs appointed. It is unclear whether death or financial loss was responsible for the temporary dearth of officials there. Athens was beset with chronic ‘anarchy’ under Domitian, probably as a result of economic difficulties. Between AD 82 and 92 it seems that no Athenian served as archon. But in time conditions improved and wealthy Athenians were again prepared to take on their expensive highest magistracy.

There is no evidence that antipathy to office-holding was a permanent feature of the municipal scene in Greece or anywhere else in the late first century AD. The closing sentence of Trajan’s letter to Pliny is undoubtedly corrupt, and emendation is in order. Invitati for invit has not won support. The arguments on both sides, however, are inconclusive. Moreover, the

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6 Last (1934) 466. 7 For the last suggestion, see Sherwin-White (1966) 724.
8 S E G xv (1958), 330, l. 47ff.
9 This was not, however, the last taste Athens had of Anarchia. See Graindor (1922) 11–12 (causes); 293–8 nos. 64, 68, 127, 130, 143, 161 (examples); Day (1942) 240–1.
10 Last (1934) 466, cites, with Trajan’s letter and the law for Malaga, Dig. 50.4.12: ‘Cui munere publici vacatio datur, non remittitur ei, ne magistratus fiat, quia id ad honorem magis quam ad munera pertinent. cetera omnia, quae ad tempus extra ordinem exiguntur, veluti munitione viarum, ab huic modo persona exigenda non sunt.’ The context of this comment of the Trajanic lawyer Iavolenus Priscus is difficult to establish. Last seems to assume that it was prompted by attempts of some to avoid magistracies by pleading vacatio. Even if he is right about the background to the ruling, it must be emphasized that this is an isolated text and should not be made to bear too much weight. At the most, the passage would suggest that there was no universal scramble for magistracies. But the text can equally be interpreted as a legal clarification of an ambiguous situation, issued possibly but not necessarily in response to an inquiry, rather than as a judgement which was meant to apply in specific disputes. In this connection it should be noticed that the opinion covers extraordinary liturgies as well as magistracies.

11 See Sherwin-White (1966) 722–3; contra Jones (1968) 327–8 (cf. Bowersock (1965) 148 n. 3), argues that the grant of legal privileges to decurions (which he dates from Hadrianic times) was made to compensate them for the high costs of office. Cf. Garnsey (1970) 170, n. 1 and 5 passim. Sherwin-White appears to have the better of the historical argument. On the surface the period from Vespasian to Trajan was an age of expansion. More communities acquired municipal rights and therefore local councils (as in Spain), and existing councils grew in size (as in Bithynia, see Pliny, Ep. 10.112; Dio 40.14). Pliny, Ep. 10.79 is evidence of competition for office. It might,
whole controversy may be misdirected. Trajan may have referred in his letter to decurions who were reluctant not to serve as decurions, but to pay an entry fee.\textsuperscript{12} One could therefore retain invii\textsuperscript{ii} without committing oneself to the judgement that the letter alludes to compulsory recruitment of decurions in Bithynian cities.

There are thus no firm indications of a malaise in municipal government in the last quarter of the first century. The sources of the post-Trajanic period present a different picture. Here we turn to the legal evidence, which has been largely neglected.

A passage of Marcianus runs as follows:

‘Everyone is compelled to perform the liturgy of envoy in his turn. However, no one is to be forced to perform the liturgy unless those introduced before him into the council have done so. But if a mission demands men from the highest rank, and those who are summoned in their turn are from the lower grades, then the order should be disregarded.’ This was Hadrian’s reply to the people of Clazomenai.\textsuperscript{13}

Presumably the last sentence contains Hadrian’s rescript, or Marcianus’ summary of the rescript. It is this sentence which reveals that there was an acknowledged division between pr\textit{imos viri} and inferior\textit{es} in the council of Clazomenai, perhaps an average second-class Asian city. It is not stated in what respect the inferior\textit{es} were deficient. They may have included relatively new arrivals in the council and therefore men who lacked experience; but there is no hint in the text that they were just this group. More probably the two groups were unequal in terms of prestige and wealth.\textsuperscript{11} A second rescript of Hadrian, which may or may not be the rescript to Clazomenai in another form, is cited by Callistratus. The jurist purports to give Hadrian’s own words. The relevant sentence reads:

The Divine Hadrian sent a rescript on the subject of the repetition of liturgies which ran as follows: I am resolved that if there are no others suitable for the performance of this liturgy, men should be appointed from among those who have performed it already.\textsuperscript{14}

Idonei (suitable) is a term of approbation applied to men of position, prestige and substance. It is the last quality mentioned, however, which appears to be given emphasis in legal texts.\textsuperscript{15} It is likely that for the proper

\textsuperscript{12} Cf. Pliny, Ep. 10.39.5. For another explanation, see Plucknett (1971) 236.

\textsuperscript{13} \textit{Dig.} 50.7.5-5; cf. 50.2.7 pr. (a later text, referring to honores as well as munera).

\textsuperscript{14} \textit{Dig.} 50.4.14-6.\textsuperscript{11} E.g. \textit{Dig.} 50.4.6 pr. – 1; 50.4.11-1.

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performance of the unnamed liturgy to which Hadrian refers possession of wealth rather than experience or influence was the prime necessity.

The language of the rescripts becomes plainer. ‘It should be understood,’ wrote Marcianus, ‘that a debtor to the state cannot perform an embassy. This was a reply of the Divine Pius to Claudius Saturninus and Faustinus.’16 Pius’ successors, Marcus and Verus, faced the question of whether debtors to the state could undertake office. It is not clear whether the differentiation of two kinds of debtors is that of the jurist who cites their decision, Ulpian, or is based on this or another imperial ruling. In any case, the statement that men might fall into debt as a result of the performance of some administrative office is something of a revelation. The whole passage runs as follows:

It is certain that state-debtors cannot be invited to take up magistracies, unless they have first made reparation for the debt they owed to the state. But as state-debtors we should regard only those left in debt as a result of an administrative office. Those who are not debtors as a result of office but have borrowed money from the state are not so placed that they should be prevented from holding magistracies. Clearly it is an adequate solution that a man should give surety either in the form of security or suitable guarantors: that was the reply of the Divine brothers to Aufidius Herennianus.17

Now the provision of surety was required not only of debtors. Another rescript of Marcus and Verus rules that ‘those who perform a magistracy under compulsion no less that those who have assumed office of their own free will should give security’.18 In the late Republic sureties and securities were demanded of those magistrates who handled public money, ll as a guarantee against embezzlement.19 We may suspect that the exacting of security from all magistrates in the Antonine period had the double motivation of protecting the cities against both embezzlement and the possible insolvency of their officials.20

In general, the several rescripts cited establish that the disabilities of at least some inferiores within the curial order were pecuniary. Confirmation, if it is needed, is provided by another rescript of Marcus and Verus quoted by Ulpian immediately before his discussion of state-debtors:

The following pronouncement is made in a rescript of the Divine brothers to Rutilius Lupus: ‘The constitution in which it is laid down that the holding

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16 Dig. 50.7.5. pr.  
17 Dig. 50.4.6.1.  
18 Dig. 50.1.38.6.  
19 E.g. FIRA 2nd edn. 1, no. 18, p. 167, ll. 1–25 (Lex mun. Tar.).  
20 In Egypt in the third century there was a real danger that a magistrate might abscond because of bankruptcy or fear of bankruptcy. See P. Oxy. 12. 1415.11; cf. CP Herm. 97.13.
of magistracies should be dependent upon the time of election as a decurion should be retained as long as all the men concerned are capable and sufficient. However, if certain individuals are so weak and impoverished that they are not only unequal to public office but in addition scarcely able to maintain their standard of living from their own resources, then it is less suitable, and in fact not at all proper, that they should be entrusted with a magistracy, especially when there are some whose appointment would be consistent with their wealth and the honour of the city. Let the rich therefore be informed that they should not use the law as a pretext, and that it is right to inquire into the time of admission into the council only in the case of those who achieve the dignity of office by virtue of their possessions.\footnote{Dig. 50.14.6 pt.}

The rescript is remarkable for its length and lucidity of detail. It demonstrates the existence of a sharp cleavage between rich and poor in the council. The rich, by clinging to the rota system and insisting that what was written in the law should be implemented, were aggravating the already unhappy situation of the poor, if they had not actually brought about or contributed to their impoverishment. The verdict of the emperors is that wealth rather than seniority is the essential qualification for office.

Finally, a rescript of Marcus had the same import:

Though it be laid down by municipal law that men whose rank is sure should be preferred in office, it should nevertheless be understood that this law is to be complied with if the men concerned are suitable. This ruling is contained in a rescript of the divine Marcus.\footnote{Dig. 50.4.11.1.}

Thus affluence was not universal among the upper-classes in the cities even in the Antonine age, which is generally thought to have been a period of high prosperity. Some councilors were, relatively speaking, indigent. Their further decline could be arrested, and their curial status preserved, only if they were excused magistracies and liturgies, at least for the immediate future. We cannot of course estimate on the basis of these rescripts whether this was the lot of a sizeable number or only of a few; nor do the rescripts reveal how representative of the more prosperous group of decurions were those who showed a reluctance to take on more than their share of administrative responsibilities. It is nevertheless possible to make certain deductions of a general nature concerning conditions of office-holding in the cities. The first is that the central authorities had recourse to compulsion in order to ensure the regular performance of magistracies and liturgies. In doing so they overrode local rules. The rescripts show that the cities (or some cities) had their own regulations which had the function of maintaining a steady flow of administrators and liturgizers.
The rescript of Hadrian to Clazomenai mentions a rota system for the performance of embassies. A passage of Ulpian, citing the Augustan jurist Labeo, suggests that the system, or something like it, was known at the beginning of the Empire:

Labeo writes that if, when one man is due for an embassy, the duumvir imposes the burden on another, no action can be instituted for injury on account of the labour enjoined.23

We do not know if the rota system applied in the case of other liturgies. It did exist for magistracies: Marcus and Verus mention it, referring back to a constitution of an unknown emperor.24 There is no way of ascertaining when it was first introduced into municipal law, or how widely it was used. At any rate, by the early second century the system was in danger of breaking down, and the emperors were called upon to resolve the difficulty. The second point that emerges from the rescripts is a closely related one. It was above all the financial responsibilities of councillors which brought about the intervention of the emperors. There were members of the council who simply could not afford to hold a magistracy or perform a liturgy when their turn came to do so. Again, it was presumably the cost of office rather than lack of patriotism in itself which made men who were more comfortably off unwilling to offer themselves for iteration of office or to accept nomination for extra duties without demur.

These two facts of local politics, the high cost of membership of the council and the presence of compulsion, are perhaps by now sufficiently established. What does need further investigation is the question of whether there was a deterioration in the climate of local government in the first half of the second century. It is interesting in this connection that the rescripts thus far discussed fall within the period from Hadrian to Marcus. There is, however, additional pertinent material to be found in the juristic writings. It will be seen that it is concentrated in the same period. It concerns eligibility for liturgies.

Public liturgies were performed in the main by decurions. Others indeed were eligible.25 But their numbers were reduced by imperial grants of immunity. Decurions as such never benefited from such grants. In principle they were exempted from liturgies only by illness.26 It was illegal to pay one’s way out of a liturgy.27 An appeal against a nomination might be

23 *Dig.* 47.10.13.5. 24 *Dig.* 50.4.6. 25 Public liturgies included embassies, duty as judge of law suits or advocate for the city, preservation of public order, tax-collection, supervision of public post and of aqueducts, repair of buildings, construction of or repair of roads, heating of baths, provision of animals for transport, the sheltering and equipping of troops. 26 *Dig.* 50.4.18.11. 27 Ibid. 16 pr. – 1.
lodged. Alternatively, the nominee might attempt to pass on the liturgy to the nominator by ceding him perhaps two-thirds of his property (given the approval of the provincial governor). This, however, was a drastic step which jeopardized the status of the cedner. It was thus in the interests of city councils that the circle of those who held the privilege of immunity from liturgies should be restricted, or at least not widened. It could also be argued that an imposition of restrictions on immunity is at least prima facie evidence that councillors were feeling the pressure of liturgies and were increasingly reluctant to bear them. The earliest rescripts known to us which cut back the number of exemptions belong to the first half of the second century.

Antoninus Pius issued the quite general order to Ennius Procclus, the governor of Africa, that he should inspect the law of each city to see whether those who were immune from liturgies had been granted immunity for only a limited period of time. A time-limit was enforced in the case of traders, as a comment of Scaevola, Marcus Aurelius’ jurist, shows. But the most important condition of exemption for traders was that they should be engaged in the transportation of supplies to Rome. This regulation is ascribed to Hadrian. The same emperor excluded from immunity rich traders who did not invest a sizeable proportion of their funds in trade and did not use profits to increase the scale of their trading activities. Pius advised that whenever an inquiry was made about a trader it should be ascertained whether he was merely pretending to be a trader in order to escape liturgies. Evidently traders were watched fairly closely. In the case of philosophers, rhetors, grammarians and doctors, it was Pius who first imposed strict limitations on their immunity. Hadrian had allowed them immunity, but the privilege must have been taken up on a greater scale than had been anticipated, or else the administration, under pressure, no doubt, from local councils, had second thoughts. By Pius’ regulation, cities of small size were permitted to grant immunity to five doctors, three sophists and three grammarians. Medium-sized cities were allowed seven doctors, four sophists and four grammarians with immunity, and the largest could excuse from liturgies ten doctors, five sophists and five grammarians. Another ruling, attributed to Pius, gave grounds for hope to those

28 Dig. 50.5.1 pr. An appeal might succeed, for example, where the appellant could show that he was entitled to a short vacatio before repeating a liturgy or magistracy. See Cod. Iust. 10.41.2–3.
29 See Jones (1940) 185. 30 Dig. 50.6.6.1. 31 Dig. 50.4.5.
32 Dig. 50.6.6.3. 33 Dig. 27.1.6.8. Hadrian’s contribution may have been no more than the addition of philosophers to the group of professionals who already had immunity. See Bowersock (1969) 32ff.
34 Ibid. 6.2.
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excluded from the lists. The 'exceedingly learned' (γεγονὸν ἐπιστήμονα) could claim immunity. 37 In his long battle against public burdens Aelius Aristides seems to have appealed to this enactment, in so far as he employed legal arguments (that is, as opposed to the argument from his ill-health). 38 However, it appears that it was often less the legal situation than the applicant's standing with the authorities which counted. Philiskos the Thessalian, as professor of rhetoric at Athens, might have expected immunity. He had the privilege, until it was taken away by Caracalla. Philostratus, who tells the story, goes on to relate that Caracalla subsequently decreed exemption for Philostratus of Lemnos, aged twenty-four, as a reward for declamation. 39

In reducing exemptions the emperors were assisting the cause of the decurions, who bore the brunt of public liturgies. The space devoted by lawyers to problems connected with origin and domicile is further evidence that central and local authorities were on the hunt for potential performers of liturgies. 40 Inquiries on such matters were chiefly designed to find out whether some individual or group was liable to undertake liturgies. The Trajanic jurist Neratius discussed the question of the origo of a bastard. 41 Hadrian concerned himself with the status of incolae, or foreign residents: Diocletian knew of a Hadrianic edict which dealt with the difference between cives and incolae. 42 Furthermore, we know of one dispute concerning an incola which came before Hadrian. A city claimed liturgy-service from a man who, it alleged, was an incola. He disputed the allegation, presumably on the grounds that he had not established domicilium in the city. Hadrian ruled that the defendant should plead his case before the governor of the province to which the claimant city belonged. 43 This decision broke the principle actio sequitur forum rei and made the defeat of the defendant more likely. It should be noticed that all parties assumed that if the defendant lost he would have to submit to liturgies in two cities. The principle of the double liability of incolae was known to Gaius. 44 Perhaps the rule had not long been in existence.

To sum up: the legal developments outlined above had a bearing on the position of decurions, for they were largely responsible for the performance of liturgies. The search for extra-curial liturgizers was led by councils

37 Ibid. 6.10. See Nutton (1971).
39 Philostr. V3 p. 622ff., ed. W. C. Wright (Loeb). On veterans, see Sander (1958), 203ff. Either Pius or Marcus allowed veterans only five years exemption; see Mitteis and Wicken (1912) no. 396 (AD 172). By Severan times they were subject (apparently without restriction) to patrimonial liturgies, see Dig. 50.5.7.
40 Some of them were perhaps required for munera sordida, but liturgizers of that kind were less difficult to find. On origo see Norr (1965).
41 Dig. 50.1.9. 42 Cod. Jus. 10.40.7 pr.; cf. ibid. 2 pr.
43 Dig. 50.1.37 pr. 44 Ibid. 29.