

Administration and Jurisdiction in Cyprus in the 6th Century AD

The later Roman Empire, beginning with the reign of the emperor Diocletian, is universally known as the Dominate. This word - Dominate - expresses the legitimation of the power of the Emperor. From now on Diocletian and his successors claim to be domini, owners or rather lords of the Roman Empire and its inhabitants, whereas the subjects are related to the Emperor by the chain of servitudo, slavery or rather serfdom. The constitutional framework which gave absolute power to the Roman Emperor was constructed largely by Diocletian. True to Roman type, he did not abolish anything; he kept intact the fiction of the republic and its functions. The consuls, praetors, quaestors were still there, but their real task was reduced to almost nothing. The Senate too still functioned, although more against than on behalf of the Emperor and was for that reason stripped of its real power. In the chaos of the time of the soldier-emperors the only institution that functioned normally was the army. The military ranks were accessible to everyone who demonstrated military courage and leadership and military promotion was not restricted by the narrow rules of background and tradition that came to regulate the usual cursus honorum. Consequently civil power came to be wielded by high ranking army officers and in due course the military offices exercised civil authority. The most powerful civil minister of the later Roman Empire, for example, would be the praetorian prefect, who played an often dangerous part in the history of the Principate as head of the imperial guard.

Diocletian changed the map of the empire by creating new geographical and administrative units, the dioceses. Cyprus also underwent a change. Although Cyprus remained a separate province, she was made a part of the great diocese of the East, Oriens, headed by a vicar, whose name after 331 was comes Orientis, Count of the East and who had his seat in Antioch.¹ The rank and title of the provincial governor of Cyprus also changed. Cyprus had been a

1. See A.H.M. Jones, *The later Roman Empire*, Oxford 1973, Appendix III: The Verona List and the Notitia dignitatum, p. 1459.

senatorial province since 22 A.D.² which meant that the governor of Cyprus was chosen by the Senate from its older members, whose career was already over. He was given the title of proconsul. In the course of the third century, however, it became the practice of the Emperor to ban all senators from governmental posts and give those to functionaries chosen from the ordo equester. Between the members of this equestrian order, who could achieve the highest rank and title of vir perfectissimus and the old Senate, whose members were vir clarissimi, there existed a wide and socially impassable gulf. As a result of the constitutional innovations made by Diocletian - who, by the way, was himself a staunch opponent of the Senate - and of the reforms and adaptations of Constantine, the wall between the two classes was beginning to crumble. Equites were admitted into the Senate after having filled the high offices of the state, whereas on the other hand the administration of several provinces, including Cyprus, was given to men of senatorial rank. To achieve this, Constantine had to upgrade the post of provincial governor, making it acceptable to senatorial members. He did so by giving the governor the name consularis³ and the title vir clarissimus, which means that only a member of the Senate could become a consularis. Cyprus was made such a consularian province and thus became one of the more important provinces of the Empire.

Constantine did more, as we know. He changed the seat of the Empire and chose Byzantium as the new Christian capital, the second Rome. He named the city after himself and gave it the administration and the institutions of old Rome. One of the difficult tasks was the creation of a new Senate, the counterpart of the venerable Roman Senate, and to achieve this he gave the members of the curia, i.e.

2. Cassius Dio 54.4.1; Strabo 17.3.25.

3. A.H.M. Jones, The Date and Value of the Verona List, *Journal of Roman Studies* 44 (1954), pp. 27-28. During the reign of Constantine there existed three types of provincial governors: the newly created consularis, who always was a senator, the corrector, who generally was a senator but might be an equestrian and the praeses, who always was an equestrian. They all were controlled by the vicars of the dioceses. Three proconsular governors were independent from the vicars, the proconsul of Asia, of Achaia and of Africa. See also J. Ferluga, *L'amministrazione bizantina in Dalmazia*, Venice 1978, p. 49.

the community council of the new capital, the title virī clari,⁴ an ambiguous title, which the Emperor Constantius upgraded to virī clarissimi. It was, however, difficult to create a body of nobles from nothing; the body of wealthy families of the East, invited to take part in the Constantinopolitan Senate did not match the Roman Senate. Constantius II made great efforts to enlarge the aristocracy of the East. In 357 a repartition took place between the Western and Eastern parts of the Empire and the provinces of Achaëa, Macedonia and Illyricum were added to the East. The emperor ordered all the clarissimi who were domiciled in these provinces to be incorporated in the Byzantine Senate.⁵ By means of another measure the circle of the senatorial members was widened. A person who was chosen to govern a consularian province, for example Cyprus, automatically obtained senatorial rank and the title vir clarissimus, although until that moment he had not belonged to the clarissime. The situation was now the reverse; while formerly only a member of the Senate was eligible for the post of consularis, now a commoner who was appointed consularis ipso facto received senatorial membership.⁶ By this process the hereditary nobility developed into a professional nobility. Three noble titles emerged, corresponding to three classes of officials, at the top the vir illustris, in the middle class the vir spectabilis and last the vir clarissimus, once the only aristocratic title of the Empire. The consulares belong to the third class, the clarissimi, that is to say to the lower nobility. But within the class of the provincial governors, the consularis occupied first place.

Let us examine for a moment the position of the consularis of Cyprus. He was appointed for one year by the Emperor, generally on the recommendation of the praetorian prefect of the East.⁷ During the

4. Anonymus Valesianus 30.

5. C.Th.6.4.11 (357).

6. C.Th.6.2.13 (383): Imppp. Gratianus Valentinianus et Theodosius AAA. ad Hypatium....Quique consularitatis insignia fu(erit) adsecutus, digni)tatis obeundae atque exercendae a(dministrationis) huius copiam non habeat, nisi prop(ria adnotatione) digesserit (se) senatorium nomen ag(noscere)...

7. C.J.9.27.6 (439): Impp. Theodosius et Valentinianus AA. Florentio pp..Sancimus eiusmodi viros ad provincias regendas accedere qui honoris insignia non ambitione vel pretio, sed probatae vitae et amplitudinis tuae solent testimonio promoveri...

ceremony of his installation he took an oath stating that he had not paid money to any high magistrate in order to have a recommendation and consequently his appointment.⁸ A hundred years later Justinian was obliged to reiterate this rule, which is an indication that the habit of buying a recommendation was a deep-seated one.⁹ In the Notitia that is added to this law the Emperor fixes the fee the newly appointed consularis of Cyprus has to pay to the imperial chancelleries: together 76 solidi, somewhat more than one pound of gold.¹⁰ The consularis had his seat in the metropolis of the island, Constantia, named after Constantius II, and accomplished a threefold task. He governed the island and headed the officium, the office of the provincial clerks. In the second place he was nominally responsible for tax-gathering and lastly he had the normal jurisdiction over the inhabitants of the island. Yet he was far from independent in the fulfilment of his tasks. As to tax-gathering he had no real power; while the gathering of the tax went too slowly and many abuses occurred, the praetorian prefect of the East stationed in the provinces his own officials, who in fact held much of the power at the expense of the competence of the consularis.¹¹ As to government the consularis was controlled, sub dispositione, by two superiors in hierarchical order, the spectabilis Count of the East and the illustris praetorian prefect of the East. In the fourth century the supervision exercised by the count was a close one; he sent on all the reports of the consularis to the praetorian prefect after his approval¹² and investigated the complaints of the inhabitants about the administration

C.J.2.7.9 (442): Impp. Theodosius et Valentinianus Apollonio pp... Si quis...electione tuae sedis regendae provinciae munus potestatemque suscepit...

8. C.J.9.27.6.1 (439). Cf.D.Liebs, Aemterkauf und Aemterpatronage in der Spätantike, ZSS (Rom.Abt.) 95(1978), pp. 158-186.

9. Novel 8, cap. 8 (535).

10. Novel 8, Notitia 13 (535).

11. E. Stein, Histoire du Bas Empire I, Amsterdam 1968 (1959), p. 221 (340).

12. C.Th.1.15.3 (352/3): Imp. Constantius A. Ilico consulari Numidiae. Cum aliquid rectores provinciarum ad nos referre voluerint id prius ad vicarium referatur...

C.Th.1.15.4 (362): Imp. Iulianus A. ad Mamertinum p.p.

Rectores provinciarum sublimitas tua conveniat, ut cunctis de rebus,

of the governor.¹³ In the course of the fifth century the supervision of the count decreased. The watch kept by the prefectural tax-gatherers living in the province was more than sufficient. Of course the praetorian prefect was the real master; on his recommendation the consularis was appointed, it was by him that he was deposed and even punished if necessary.¹⁴ The prefect fixed his salary and dealt with all matters of administration in the final instance.

In his capacity of judge the consularis is iudex ordinarius, ordinary judge. He is judge of first instance in all civil and criminal cases that happen in the island. Only minor civil cases not exceeding the value of 50 solidi,¹⁵ since 535 of 300 solidi,¹⁶ are tried in first instance by the defensor civitatis, the local justice of the peace, and received in appeal by the consularis. From the decision of the consularis in the first instance appeal was possible and went either to the Count of the East or to the praetorian prefect. The appellate jurisdiction of the count coincided with that of the prefect; there seems to be no clear

de quibus ad nos et ad vestram scientiam crediderint referendum, vicarios esse participandos sciant.

13. C.Th.1.16.6 (C.J.1.40.3) + C.Th.1.16.7 (331): Imp. Constantinus A. ad provinciales.... Iustissimos autem et vigilantissimos iudices publicis adclamationibus conlaudandi damus omnibus potestatem, ut honoris eis auctiores proferamus processus, e contrario iniustus et maleficus querellarum vocibus accusandis, ut censurae nostrae vigor eos absumat; nam si verae voces sunt nec ad libidinem per clientelas effusae, diligenter investigabimus, praefectis praetorio et comitibus, qui per provincias constituti sunt, provincialium nostrorum voces ad nostram scientiam referentibus.

... Qui si de civilibus causis quidquam putaverint esse poscendum, aderit armata censura, quae nefariorum capita cervicesque detruncet, data copia universis qui concussi fuerint, ut praesidium instruant notionem. Qui si dissimulaverint, super eodem conquerendi vocem omnibus aperimus apud comites provinciarum, aut apud praefectos praetorio si magis fuerint in vicino, ut his referentibus edocti super talibus lactrociniis supplicia proferamus.

14. C.J.1.26.3 (C.Th.1.5.9) (389): Imppp. Valentinianus, Theodosius et Arcadius AAA. Tatiano p.p..... his ab administratione remotis et vice eorum aliis subrogatis...

15. C.J.1.55.1 (C.Th.1.29.2) (365): Impp. Valentinianus et Valens AA. Senecae defensori ... in minoribus causis, id est usque ad quinquaginta solidorum summam... 'Id est... summam' is an interpolation of Justinian.

16. Novel 15 cap.3,2 (535): ... εὑπερ εὔσω τῆς εἰρημένης τῶν τριακοσίων νομισμάτων ποσότητος ἢ δέκῃ καθεστῆκος.

distinction between the competence of the two instances.¹⁷ The reason is that both are supposed to represent the Emperor, who has the only appellate jurisdiction. In this respect there exists no hierarchy as in administrative matters because the Emperor has delegated his right to receive appeals to several of his ministers, *ex aequo* to the praetorian prefect and to all the vicars of the dioceses, including the Count of the East.¹⁸ From suits tried by the Count of the East in the first instance the praetorian prefect of the East received appeals together with the quaestor of the sacred palace.¹⁹

It was possible to request a final decision from the Emperor, not by means of a second appeal but by a *supplicatio*, a petition. The Emperor did not try the case himself, but delegated this highest competence to his minister, the praetorian prefect, who tried the same case for the second time, first *ex appellato*, secondly *ex delegato*.²⁰

It became the custom of the Cypriots to request appeal directly in Constantinople and not to go to Antioch to the Count of the East. The court of the count, like most of the courts of the vicars was of low repute and probably corrupt.²¹ Moreover, one needed a final decision and therefore preferred to appeal from the consularis directly to the praetorian prefect. This was indeed the usual practice at the

17. Cf. note 13, C.Th.1.16.7 (331) and Nov.Marc.1.2 (450):... *deficiente rectore provinciae spectabilis iudicis, qui in locis vel proximo deget, vel amplissimae potestatis vel aliorum maiorum iudicum auxilium postuletur.*

18. C.J.1.38.1 (C.Th.1.15.7) (377): *Imppp. Valens, Gratianus et Valentinianus AAA. Antonio p.p..... si quidem, cum praefecturae meritum ceteris dignitatibus antestet, vicaria dignitas ipso nomine eius se trahere indicet portionem et sacrae cognitionis habeat potestatem et iudicationis nostrae soleat repraesentare reverentiam.*

19. C.J.7.62.32 (440): *Impp. Theodosius et Valentinianus AA. Cyro p.p.. Sed si a proconsulibus vel Augustali vel comite Orientis vel vicariis fuerit appellatum, virum illustrem praefectum praetorio, qui in nostro est comitatu, virum etiam illustrem quaestorem nostri palatii sacris iudiciis praesidentes disceptionem iubemus adripere...*

20. C.J.7.62.19 (C.Th.11.30.16) (331): *Imp. Constantinus A. ad universos provinciales. A proconsulibus et comitibus et his qui vice praefectorum cognoscunt, sive ex appellatione sive ex delegato sive ex ordine iudicaverint, provocari permittimus, ita ut appellanti iudex praebeat opinionis exemplum et acta cum refutatoriis partium suisque litteris ad nos dirigat.*

21. Novel 82 (539); A.H.M. Jones, *The later Roman Empire*, Oxford 1973, p. 281.

beginning of the sixth century, as appears from the preface of Novel 20 (18-3-536) in which the prefect is called the only appellate judge and the court of the Count of the East is not mentioned.

In 527 Justinian became the sole ruler of the Roman Empire. He is known to have had a talent for choosing able and faithful collaborators who stayed in office for an unusually long time. The two ablest ministers were John of Cappadocia who was an expert in squeezing taxes out of people and held the most powerful office of praetorian prefect of the East and Tribonian, who held during the same period the office of the quaestor of the sacred palace. Only for a short time had they to be dismissed by the emperor as a result of the famous Nike revolt; apart from this short period they held their offices continuously. Tribonian took care of justice and legislation, John headed the civil service. Between the two men there existed a bitter rivalry²² that may have had its consequences for Cyprus.

With the help of Tribonian, Justinian realised an old dream, the codification of all Roman Law. In 529 appear the Digest and the Institutes in the form of one imperial constitution, probably the most voluminous law ever edited. From that time on there exists only one source of law: the imperial constitution of the Roman Emperor. In 529 the codification is completed by the second edition of the Codex, the so-called Codex repetitae praelectionis. This edition does not mean the end of legislation. On the contrary, the mainstream of new law, the so-called Novels, continues to flow. Several of these Novels, nominally issued by the Emperor, in reality made by John or Tribonian, to whom they are addressed, contain measures affecting the population of Cyprus. We shall see that the Count of the East loses his supervisory task in Cyprus in administrative matters but regains the lost appellate jurisdiction in cases that are tried in the first instance by the consularis of Cyprus.

Novel 23 formulates the new rules concerning the appellate jurisdiction. It dates from January 3rd 535²³ and is worded in the

22. E. Stein, *Histoire du Bas Empire II*, Amsterdam 1968 (1949) p. 405.

23. The conjecture of Stein, *Histoire du Bas Empire II*, Excursus K (pp. 805-810) concerning the date of the Novel is very plausible.

Latin tongue, which is an indication that it is made by Tribonian, to whom indeed it is addressed. The Novel divides the civil cases into two categories. The consularis of Cyprus tries in the first instance all cases except those tried in the first instance by the defensor civitatis, i.e. cases up to 50 solidi, since Novel 15 (13-8-535) up to 300 solidi, and judged by the consularis in ultimate appeal. In a case valued at more than 300 but less than 500 solidi,²⁴ since Novel 103 (1-7-536) less than 10 pounds of gold = 720 solidi, appeal is received only by the Count of the East in Antioch, whose decision is final.²⁵ If the case is valued at more than 500/720 solidi, one has to appeal to Constantinople and one is tried not only by the praetorian prefect but by a court composed of the praetorian prefect in combination with the quaestor of the sacred palace.²⁶ This could be a move from Tribonian in order to enlarge his power at the expense of that of John of Cappadocia. Already one year later we hear of complaints from the clerks of the bureau of the praetorian prefect; they now have to share the fees the client pays for his suit with the clerks of the quaestura.²⁷

The Count of the East having thus been given by Tribonian an appellate jurisdiction of Cyprus in cases valuing from 300 to 500/720 solidi, was, on the other hand, stripped of his supervisory powers in the same year by John of Cappadocia. In May 535 the great office of the Count of the diocese Oriens was reduced and united with that of the governor of the province of Syria prima.²⁸ He was from then on more or less a provincial governor like the consularis of Cyprus, but kept his name, his rank and his title spectabilis.²⁹ The administration

24. See note 23.

25. Novel 23, cap. 3 (535): *Orientalem autem tractum causas appellatione suspensas et usque ad decem librarum auri quantitatem limitatas ad virum spectabilem comitem Orientis mittere simili modo audientiam et finem eis impositurum.*

26. Novel 23, cap. 4 (535): *Sed ad illustrissimam praefecturam illorum appellationes, cuiuscumque sint quantitatis, ut dictum est, dirigantur, qui una cum viro excelso pro tempore quaestore eas dirimat; utroque officio subministrante, id est tam ex sacris scriniis more solito quam praefectorio.*

27. Novel 20, prooemium (536).

28. Novel 8, cap. 5 (535).

29. More provincial governors are in these times promoted to the rank of *spectabilis*. See N. van der Wal, *Manuale Novellarum*,

of Cyprus was from then on directly responsible to the praetorian prefect.

These changes did not last very long. The following year a far greater reform caused the population of Cyprus a good deal of trouble. On May 18, 536, one year after the reform of John, a completely new magistrate was created in whose name the vain emperor Justinian is represented: it was the quaestor Justinianus exercitus, the Justinian quaestor of the army. From the name one would expect the quaestura to be a military office; it also however includes civil and judicial powers. The new quaestor united the civil power of the praetorian prefect and the military competence of the master of the soldiers. He was the highest civil and military authority in the territories he governed and belonged to the illustres, the highest nobility of the empire. The institution of the new magistrature is ordered by Novel 41, which has unfortunately been lost.³⁰ Yet we know something of its contents from the different epitomes written for the law students by several law teachers Athanasius, Theodorus and Julianus. From Athanasius³¹ we learn the Novel was written in Latin and was addressed to the first quaestor of the army, Bonus. Under his authority fell Cyprus, already detached from the diocese of the East, the Cyclades and Caria, detached from the diocese of Asiana and Moesia Secunda plus Scythia, along the Danube frontier, which had belonged until that moment to the diocese of Thracia. Several reasons have been given to explain the rather strange union of such different provinces. The generally accepted reason is that Moesia and Scythia had to be strengthened against the threats of the Bulgarians and Slavs by means of the new magistrate. His seat was in Odessus (Varna) as we happen to know from Theodorus. The three southern provinces, including Cyprus, were rich³² and provided the necessary funds plus the materials (wood) for the ships that were to

Groningen 1964, p.27 note 9 and p.28, nr 134.

30. Instead of Novel 41 the Greek manuscripts of the collection of 168 Novels reproduce the text of Novel 50. See the edition Schoell-Kroll, pp. 261-262.

31. Athanasius 4.12.

32. Johannes Lydus, De magistratibus 2.29.

control the Danube. And, as we know, Cyprus was rich in wood and possessed the biggest shipyards of the eastern Roman empire.

So John of Cappadocia lost his civil authority and at the same time the appellate jurisdiction over Cyprus that he shared with Tribonian. For appeal in all important cases went direct to the new quaestor of the army. This appellate competence gave the Cypriots a good deal of trouble. They were obliged to travel to the utmost North of the Empire and appeal to the new quaestor in Odessus. No wonder they protested against this uncomfortable measure and asked for the undoing of the regulation. Justinian reacted a year later in Novel 50 (1-9-537). Many people, says the Emperor, many people from Cyprus, Rhodos and Caria have indignantly complained they were forced to suffer hardship, to cross the wild sea even in wintertime and to arrive in places threatened by the barbarians. He therefore stipulates that the population of these areas can appeal to a court in Constantinople, composed of the quaestor of the army, if he happens to be there, or his vicar, if he is not in the capital, together with the quaestor of the sacred palace.

It seems to have been a matter of some dispute whether this new measure applied to all appellate cases or whether jurisdiction of the Count of the East in cases valued less than 10 pounds of gold was kept intact. People complained they were forced to make the dangerous voyage for petty cases - οὐδὲ ὑπὲρ μεγάλων χρημάτων. They seem to have reasoned that since Cyprus had been detached from the diocese of the East and constituted together with the other four provinces a diocese of its own, as Theodorus says, ἰδικὴν ἔχουσιν διοίκησιν, all appellate cases should have gone to the quaestor of the army. Justinian therefore expressly stipulates that only cases that of old went up to the praetorian prefect are now tried by the two quaestores or their vicar and if a case used to be tried in second instance by another judge, for example by the Count of the East, this rule remains valid.³³

33. Novel 50, cap. 2 in fine (537): ... εἰ δὲ ἐξ ἀρχῆς οὐ παρὰ τοῦς ἐνδοξοτάτοις ἐπαρχοῖς ἢ ἔφεσις ἐκ τινων ἐπαρχιῶν ἀνεπέμπετο, ἀλλ' εἰς ἕτερον δικαστήριον, τὴν ἀρχαιότητα παντελῶς οὐ καὶνύζομεν.

One interesting reflection arises. The quaestor of the sacred palace, i.e. Tribonian, acquires or rather regains the competence to receive appeals. The praetorian prefect, i.e. John, whose position is taken over by the quaestor of the army, is excluded. It would be interesting to know from whom the measures taken in Novel 50 stem. Maybe it has something to do with the well-known rivalry between John and Tribonian. Novel 41, in which the new magistrate was instituted, is written in Latin, which means it comes from Tribonian. John knew little or no Latin. It could easily be that Tribonian, not John, is the brain behind the regulation of Novels 41 and 50. If so, it explains at the same time the curious name of the new magistrate, which has puzzled many scholars. The quaestor of the army was a sort of praetorian prefect and one would have expected a name like *praefectus praetorio exercitus* or something like it. Theodorus (41.50) and Athanasius (7.4) call him ἑπαρχος. Officially he is called quaestor and this name could indicate the connection with the other quaestor, in fact with Tribonian.³⁴ It is also Tribonian's character to flatter the emperor by giving the new quaestor the cognomen Justinian; one only has to read the constitutions introducing the codification.

The Justinian system of jurisdiction had the advantage for the people of Cyprus of clarity. One knew where to go for justice in first and in second instance. It is not known whether the system really worked. One is inclined to say it did, for if not, the people would not have complained so much in the year 536 about going to Bulgaria for appeal. One should however never forget that there was always another possibility of obtaining justice, if the litigants could consent to it. If they did agree, all cases could be submitted to the local bishop, whose decision was final³⁵ and it is more than probable that this episcopal court was preferred to the official court of the

34. In the late Republic and in the Principate there was also a military quaestor who however never was called quaestor exercitus. He was a staff-officer of the consul. See Mommsen, *Römisches Staatsrecht* 2, p. 527, 529 note 4; see also R. Bonini *Ricerche sulla legislazione giustiniana dell'anno 535: Nov. Iustiniani 8*, Bologna 1976.

35. C.J.1.4.29.3 (530): Κατὰ γὰρ δὴ τῶν τοιοῦτων ἐπισκοπικῶν ἀποφάσεων οὐκ εἶναι χώραν ἐκκληίῳ τοῖς πρὸ ἡμῶν νενομοθέτηται.

consularis, which was tainted with corruption, and notorious for high fees, long waiting times and long dangerous journeys in case of appeal.

The administration and jurisdiction of Cyprus underwent no further important change until the invasion of the Arabs in the seventh century.

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