

Book X.
Title XLII.

Concerning property-liturgies.
(De muneribus patrimoniorum.)

Headnote.

Classes of liturgies.

The municipalities of the empire constituted administrative units, and, as stated in headnote to C. 10.32, liturgies were imposed on the inhabitants to help in administering governmental affairs. Liturgy may be defined as compulsory public service, consisting, however, not only of labor, but also of the performance of other duties on behalf of the public, even, at times, of the payment of money to defray the cost of labor performed by others.

Certain liturgies were personal; that is to say, they required the time and attention of the persons upon whom they were imposed, at times demanding corporeal labor and, therefore, designated as corporeal. These liturgies included looking after aqueducts, temples, archives, public buildings, heating of public baths, purchase of grain, oil and other supplies and distribution thereof, management of the municipal revenues and municipal property, convoying of gold, recruits, horses, money and provisions of the imperial government and looking after the public post, acting as guardian or curator (which was considered a private, as opposed to a public liturgy), or legate or ambassador, and looking after the collection of the imperial revenues - although this liturgy was in some places not considered a strictly personal liturgy, as noted below. The classification of liturgies was not always uniform either as to time or place, and a liturgy might be considered a charge on property at one time, or in one place, when the same liturgy might be considered personal at another time or place.

Certain liturgies were generally considered patrimonial (*munera* or *onera patrimoniorum*) - that is to say, they were a charge on property and, ordinarily, were required to be borne by all property holders regardless of whether they were inhabitants of the city or not. The Digest (50.4.6.5) states that there were two kinds of patrimonial liturgies, but the subject is obscure. Aside from some strictly municipal liturgies, as contributions toward the up-keep of aqueducts and sewers, the following may be considered as liturgies performed for the public in general, or, as we may say, for the imperial government, and which, therefore, may be denominated as "imperial liturgies," as opposed to the liturgies strictly municipal in character - that is to say, strictly for the benefit only of the inhabitants of the city or town: Billeting, or quartering of troops (or officials (see C. 12.40); providing transportation, consisting of carriages, wagons and oxen, horses and men, on the main highways of the empire, that is to say, on the public post-roads (see C. 12.50); furnishing horses and recruits for the army, or commutation money in place thereof; aiding in the construction and repair of highways. Some of the country roads seem to have been looked after by prefects of country districts (*magistri pagorum*). These prefects were accustomed to demand services - doubtless by men and teams - from the neighboring land-owners, or these landowners kept up a certain definite portion of the road at their own expense. If the road was kept up by contractors, as seems to have been true with the main highways, contributing sums of money were demanded

from the land-owners. Sicculus Flaccus, de Con. Agr., B. 136 (Corpus Agr. Rom. p. 110); 2 Smith's Dict. Greek and Roman Antiq. 946. So the "sordid" liturgies hereafter enumerated seem to have been charges on property, for the "patrimony" favored persons was stated to be exempted therefrom. C. Th. 11.16.15 and 18; C. 10.48.12. See generally on the subject of patrimonial liturgies, Kuhn 61, et seq; 1 Karlowa 603, et seq. Furnishing shipping transportation belonged to that class, but that liturgy was ordinarily performed by a special guild, the shipmasters. See C. 11.2 et seq.

Some liturgies were mixed in character; that was true, for instance, with what was called the "decaprotia" - the duty of a board of ten to collect taxes, a system to some extent at least in existence in the East. It was a personal liturgy in that it seems to have required the personal attention of the men to collect the taxes, and it was a patrimonial liturgy in that they were responsible for any deficiency. Abbott & Johnson, Mun. Adm., 94. Liturgies of this character were limited in number.

Various adjectives were used to designate liturgies and it is not always clear whether personal or patrimonial, strictly municipal or imperial liturgies, were intended. In some cases the intention is perfectly clear, for instance, when the laws mention the liturgy - or duty - of the duumvirate. When the term "curial liturgy" is mentioned, personal liturgies only seem to have been intended to be included, because they were peculiarly liturgies of the curials, while patrimonial liturgies were not. That seems to be generally, if not always, true, with other terms, as "liturgies of the native city" (C. 10.32.46), "liturgy of the city" (C. 10.40.5), "municipal liturgies" (munera municipalia - C. 12.28.2), "munera civilia," also translated as "municipal liturgies" (C. 10.32.19; C. 10. 40. 6; C. 10.43), public liturgies" - publica munera. In C. 10.42.3 it is clear that the last mentioned term referred only to personal liturgies, for the reason that it is expressly opposed to "onus patrimoniorum" - patrimonial liturgy. The term "munus" or "munera," however, is also frequently used in connection with patrimonial liturgy, the term "patrimoniorum" being added, as shown by a number of laws in the instant title. So when the term "liturgy" is used without any adjective, personal liturgies alone seem to have been contemplated, as shown by laws in C. 10.32 dealing with curials, and personal liturgies being, as already stated, peculiar to the curials, while patrimonial liturgies were not. It is possible, however, that when "municipal" liturgies are mentioned, those that were patrimonial, but strictly municipal, were intended to be included. That may be true also with "sordid" liturgies. In order to designate patrimonial liturgies in other cases, a qualifying word seems to have been used, designating them specifically as such or using the terms "extraordinary" or "sordid" in their connection. In D. 50.5.2, "civilia munera" has been even a more limited meaning than above mentioned, referring only to minor offices. But see D. 50.4.18.20, where that term seems to be opposed to "personal liturgy," as well as to "patrimonial liturgy," leaving the subject in doubt.

It has already been mentioned that some liturgies were strictly municipal in character, some were performed for the imperial government. In some cases, however, for example, in the case of the burden to act as collector of the imperial revenue, the liturgy, while strictly imperial, may have come to be regarded as strictly municipal. In connection with imperial liturgies, we find frequent mention of the terms "extraordinary" or "sordid" liturgies. These terms are joined in C. Th. 11.16, sordid liturgies referring to liturgies of a lower nature than others. We are reasonably well informed as to the latter. C. Th. 11.16. 15 and 18, and C. 10.48.12. According to C. Th. 11.16.18, they included:

Looking after making flour, assistance in a pounding mill, baking of bread, burning of lime, furnishing coal, with some exceptions, furnishing haulage and horses for byways, with some exception, furnishing lumber and wood, contributing toward expenses of legates and ambassadors, construction and repair of public and sacred buildings or of bridges and roads. This list does not mention the liturgies of a low character which must have existed in every city and town, and mentions only the liturgies performed for the imperial government. The idea as to what the term should include was not always the same. In 423 A.D., it was provided that the construction and repair of roads and bridges should not be considered a "sordid" burden, and C. 10.48.12, taken from C. 11.16.15, excluded it. The law, in fact, retraced its steps in this respect, for by a law of Constantine of 319 A.D., it had been provided that though emphyteuticaries were exempt from extraordinary burdens, they should not be exempt from the duty to construct and repair highways. That law was preserved in the Justinian Code. C. 10.65.1.

It is not altogether easy to determine just what was contemplated by the term "extraordinary" liturgy. It is at times used in the Code, especially in connection with exemptions, and the exact meaning is important. That these liturgies were something different than "sordid" liturgies is clear from C. Th. 11.16.15 and 18, for these laws had provided that no one should be exempt from the former and gave exemption only from the latter. The term did not, apparently, as already intimated, include personal liturgies, but only patrimonial liturgies not strictly municipal in character. See, however, note to C. 10.46.1. Extraordinary liturgies would seem to imply that they were an addition to "ordinary" liturgies. Some of the laws, however, seem to imply that they were "extraordinary" not in relation to other liturgies, but in relation to taxes. Thus it is said in C. Th. 11.16.6: "The palatines and the citizens of Constantinople must make payment and recognize their duty in proportion to their tax-units; but they are exempt from extraordinary liturgies and the burden of paying commutation money for recruits."

C. 11.65.2 and 3, throw some light on the subject. The first of these laws provides: "Imperial patrimonial estates should not be burdened with extraordinary liturgies, or the half or the third portion thereof, since it is clear that they already pay the greatest measure of gold and grain. And if anyone attempts to violate these orders, he will be punished." Here it is clear that these estates were exempted from all such liturgies. The rescript is dated in 319 A.D. But in 362 A.D., the emperor Julian wrote, according to the second one of these laws: "All those who hold imperial patrimonial estates, in common or alone, must, for them, be called on for the liturgies resting upon these same estates, either for their share or the whole thereof, just as the necessity for public contribution (pensitationis) binds every other persons." Overlooking the peculiar meaning given to "pensitatio" (payment), it is clear that there were some liturgies fastened on imperial patrimonial land. If the term "extraordinary burden" embraced every one outside of taxes, then, clearly, this and the preceding laws are inconsistent. But it is not probable that the compilers of the Code considered them so, and that there were in fact some burdens which were extraordinary in relation to others. What were they? That the construction and repair of highways and bridges belonged to them is probably clear. C. 12.19.4, in exemption officers in the imperial bureaus, exempts them from "extraordinary" liturgies, and in addition to that from payment of commutation money for recruits and from furnishing horses and recruits, for the army. C. Th. 11.16.12, seems to exclude the furnishing of horses for the army from among extraordinary liturgies.

C. 10.48.15 separates commutation money for recruits and horses from "superindiction," by which extraordinary liturgies perhaps were meant.

So we saw that in C. Th. 11.16.2 commutation money for troops was treated as a liturgy apart from those that were extraordinary. It is, accordingly, not unreasonable to conclude that to furnish horse or recruits, or pay commutation money instead, were liturgies apparently not included among those called extraordinary. That was true also with the burden of hauling grain and other provisions for the army. C. 10.16.6 and the references there given. The construction and repair of walls also was a liturgy, a patrimonial one, from which no one was said to be exempt. See C. 8.11.7 and 12; C. 10.49.3. Whether that was a purely municipal or an imperial liturgy is not altogether clear. In any event, it was not an extraordinary liturgy from which exemption was given.

We have arrived at the meaning of the term under discussion by a process of exclusion. Extraordinary liturgies, then, seem to have included: (1) Furnishing transportation (aside from horse) for the main highways, that is to say, on the public post-roads (angarium) and services (operae) in connection therewith. The like duty as to byways was a "sordid" liturgy. Doubt on this point is thrown by reason of C. 11.74.3. (2) Billeting or quartering of troops and officials. It is certain that it was a patrimonial duty. D. 50.3.11; C. 10.42.3. Imperial lands were exempt therefrom (C. 12.40.5), and from all extraordinary burdens, and it must accordingly have been included in the latter. (3) Again it appears - as for instance from C. 10.48.8 - that special burdens might be imposed from time to time, and these, doubtless, came within the meaning of extraordinary liturgies, if not embraced within the meaning of those already mentioned.

Whenever exemption was granted from extraordinary liturgies, exemption was also granted from "sordid" ones. It would, of course, have been incongruous that persons deserving of exemption from the former, should not have given exemption also from the latter. See C. 12.16.3; C. 12.19.4; C. 12.23.1.

At times the word "indictio" (indiction, levy) was used to express a liturgy. C. 12.9.1; C. 12.52.3. At times the term "superindictio" - superindiction - was used, the exact meaning of which is not clear. In C. 10.48.15 it seems to have been used as the equivalent of extraordinary liturgies (see also C. 11.75.5), while in other laws, as for instance C. 12.16.3, the meaning seems to have been somewhat different. In general, it designated any extra levy. See note C. 10.17.1; see also note C. 1.2.5 as to churchmen and church property.

10.42.1. Emperor Antoninus to Philocyrius.

Municipal liturgies must be performed in consecutive order, in proportion to wealth.

10.42.2. The same Emperor to Maternus.

Liturgies resting on property for the public good, must be performed by all.

10.42.3. Emperor Alexander to Atilius.

Those who have been exempted from public (personal) liturgies must, nevertheless, bear the burdens resting on property. Among these is the burden of quartering guests.

10.42.4. Emperors Valerian and Gallienus to Nero.

The decision of the president of the province that the feeding of curule horses¹ is not a personal liturgy, but one resting on property, does not seem inconsonant with reason; if it, however, was unjust, then, since you have not availed yourself of an appeal, the decision necessarily stands.

10.42.5. Emperors Carus, Carinus and Numerian to Antepistus.

No one can be exempted, either on account of age or the number of his children, from the civic burdens resting on property.

Note.

The general rule was that there was no exemption from patrimonial liturgies - liturgies resting upon property. The rule was not, however universal. Shipmasters and merchants providing public grain, owners of ships during the time that these ships were engaged in hauling public grain were exempt. D. 50.6.6.3; C. Th. 13.5.5 and 7 and 17; D. 50.5.3. That was true also with certain guild-members, physicians, grammarians and teachers. 1 Karlowa 613; C. 10.53.7. The exemption in these cases was probably not important, because they ordinarily would have little property. Philosophers were not exempt. C. 10.42.6. Veterans and advocates who had served the required time in their professions had a limited exemption. C. 10.56.1. Certain merchants in the imperial service seem also to have had such exemption. C. 10.48.7. As to palace officials, see C. 12.5.2; C. 12.16.3; C. 12.19.4; C. 12.28.1 and 2. For a complete discussion of this subject, see 1 Karlowa 610-615; and see further, headnote to C. 10.48.

10.42.6. Emperors Diocletian and Maximian to Polymnesto.

Your profession and your wish are discordant. For while you claim be a philosopher, you are blinded by avarice, and you alone attempt to evade the burdens resting on your property. That you do so in vain, you may learn from the example of others.²

10.42.7. The same Emperors to Alexander.

Even minors must customarily bear the burdens which rest on property. Whence you will understand that you vainly ask complete exemption, and you will be compelled to undertake liturgies which entail expenses.

10.42.8. The same Emperors and the Caesars to Longinus.

The burdens of the protostasia,³ the priesthood and decaprotia are clearly not personal liturgies but those resting upon property.

¹ [Blume] Race horses.

² [Blume] See C. 10.53.8.

³ [Blume] Nothing definite is known as to the protostasia. See Gothofredus on C. Th. 11.23. It seems to have been a chief-collectorship's office, resting upon members of the curia. The decaprotia was the office of the decaproti, or decemviri, the then chief men of the municipality who, as part of their duty, made the individual assessments against property-holders. The priesthood was burdened with expenses such as giving free shows and exhibitions.

Note.

The priesthood here mentioned was doubtless a priesthood in Asia, charged with the duty of giving spectacles for the benefit of the people and therefore requiring the outlay of money. Cujacius on this law. The decaprotia was referred to in headnote to C. 10.32 (4) and in headnote to the instant title. It was the duty of collecting taxes. It devolved upon ten men (called decaproti or decemprimi). It was, as stated in the headnote to the instant title, really a mixed liturgy, instead of purely a patrimonial liturgy. The system was confined to the East, and, according to Abbott & Johnson, Munic. Adm. 222, not in vogue after Diocletian. Sometimes the duty devolved on five or twenty men, in which case the liturgy bore another, appropriate, name. The protostasia seems to have been a liturgy also connected with the collection of tribute, and probably the head-office charge with that responsibility. Gothofredus on C. 11.23.1; it is also mentioned at C. 10.62.3.

10.42.9. The same Emperors and Caesar to Marcia.

The burdens resting on property must also be borne by women.

10.42.10. Copy of an imperial letter of the same Emperors and Caesars to the Prefects.

We notify the presidents that in case of extraordinary levies (indictions), all the land owners and others must be called upon to pay, since it is clear that they are burdens resting on property, and should justly be paid by all, so that public necessities may the more readily be met.

Note.

The "extraordinary indictions" mentioned in this law were, doubtless, liturgies and not taxes. Whether the term "indictions" was intended to be the equivalent of "munera," making the liturgies here mentioned the equivalent of "extraordinary liturgies" as defined in the headnote to this title or whether it was intended to have a broader meaning is somewhat doubtful. In any event, it seems to bear out the statement made in the headnote that extraordinary liturgies were patrimonial, and rested on all lands, just as the expense for the construction and repair of walls mentioned in C. 8.11.12, and were probably distributed as equally as possible, according to the land taxes. They were, accordingly, in the nature of taxes. But the equality in such case could, in the very nature of things, not reach that degree which would have been attainable under an equitable system of taxation, and under a corrupt system of government, such as we find in the Roman Empire, must have often led to gross injustice and inequality. See Cujacius on this law. The exemptions granted certain persons, as shown in note C. 10.42.5, and more fully in headnote C. 10.48, must have aggravated the inequality, especially in certain localities where the persons exempted had lands. 2 Bury, Hist. Later Roman Empire 352, mentions "descriptions," assessed in proportion to the land tax. These were evidently the extraordinary liturgies here mentioned.