

Book XII.  
Title X.

Concerning the Counts of the Imperial Council.  
(De comitibus consistorianis.)

12.10.1. Emperors Arcadius and Honorius to Severinus, Prefect of the City.

We decree, generally, that those who have been elevated to become members of the imperial council (consistorium) of Our Tranquility, shall be equal in rank with the worshipful proconsuls.

Given at Constantinople September 25 (399).

C. Th. 6.12.1.

12.10.2. Emperor Anastasius to Eusebius, Master of the Offices.

The worshipful counts (comites) of the imperial council, and their wives and children, as well as their slaves and serfs (colonos), shall enjoy the same privileges in regard to answering the complaints of others against them, and in regard to their own complaints against others, as are enjoyed by the chiefs of the imperial messengers by the terms of the pragmatic sanction of Zeno,<sup>1</sup> of blessed memory.

Note.

Counts.

The term "comes," count, meant, literally, a companion, and was first applied to the persons who accompanied a governor of a province. In Justinian's time, the name sometimes designated an official, sometimes it was merely titular, and counts were classified in three orders of dignity. There were military and civil counts. The military counts were the persons, generally speaking, who acted as dukes. The counts of the imperial exchequer and of the crown domain, and the counts of the imperial household troops called the domestics (C. 12.17), were of illustrious rank. The others were not. Most of the counts of the first order were of worshipful rank, all the others of honorable rank (clarissimi).

Imperial Council.

Prior to Diocletian, the Roman Senate was frequently consulted by the emperors on state affairs in general. An imperial council, however, had existed under most of the emperors, but up to the time of Diocletian or Constantine did not consist of permanent members. With Diocletian an absolute monarchy began, the senate lost its importance, and the imperial council was consulted not only on legal matters, but also on matters of state, the senate, however, continuing to be consulted to some extent, as will be mentioned again later. The former name of the council had been consilium, which, after Diocletian's time was changed to consistorium, apparently, because, while the emperor sat, all the others stood.

The regular members of the imperial council were the quaestor, who, in the absence of the emperor, presided, the two ministers of finance, the master of offices, and probably the praetorian prefects and the masters of the soldiers at court, all of whom were

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<sup>1</sup> [Blume] C. 12.21.8.

of illustrious rank, and in addition to these, certain persons of worshipful rank, considered in the instant title, called simply counts of the imperial council. They came to be all counts of the first order, but not all counts of that order were members of the council. According to Novel of Valentinian III, 6.3.1, there were 20 of these. Others of the nobility were called in on special occasions. 3 Bethmann-Hollweg 95, 96.

The council acted, as already stated, both in matters of state generally, as well as high court of justice before which important cases, particularly those on appeal, were tried. See headnote C. 7.62. It is not unlikely that it met at stated times, as well as on special occasions. The technical term for the meeting was silentium (silence). If the senate met with the council it was a silentium et conventus, but as will be noted by Novel 62, the term silentium came to be applied also to a meeting when these bodies met together. If the council sat as a court, its clerks were the clerks from the imperial bureaus of letters or appeal cases referred to in title 19 of this book. C. 7.62.32.37 and 38; C. 7.63.3; C. 3.24.3; Novel 20 pr, and c. 9. If it met as a council of state, its clerks were the tribunes and notaries referred to in title 7 of this book. Its bailiffs were the lifeguards and their captains mentioned in title 16 of this book. See in general: Bury, 1 Hist. Later Roman Empire 18-24; 3 Bethmann-Hollweg 94-103; 1 Karlowa 850-852; 1 Cambridge Med. Hist. 46-48; Dunlap, Grand Chamberlain; Roman and Byzantine Studies 179; 4 Pauly-Wissowa 635; 926-932.

Senates.

The power of the Roman Senate during the Republic is well known. During the Empire, it gradually lost its influence, and that was still more true after the monarchy became absolute under Diocletian toward the latter end of the third century of our era. Constantine established a Senate at Constantinople, modeled after that in Rome, and from that time on there were two senates in the Empire. As already stated, the senate at times met with the imperial council, the technical term used for such meeting being really a larger council - all the members of the council also being senators. At a meeting of that kind, the prefect of the city presided. The specific provisions in regard to this were made for the senate in Constantinople, but it is well attested that the Roman Senate retained more or less influence, at least during the time that there existed a separate government in the West, either under emperors, or the Goths. See Hodgkin, Letters of Cassiodorus 26.

In 446 Theodosius II provided that when a new law was to be enacted, it should not alone be laid before the imperial council, but also before the senate, and that thereafter it should again be laid before the council, to determine whether it should be adopted. C. 1.14.8. And before that, certain so-called "orations," or constitutions had been read in the senate. These orations were, of course, the law, since that was true with everything said by the emperor. It would seem that the senate was summoned to meet with the imperial council to sit in matters of state and as a high court of Justice whenever that was deemed proper by the emperor. In cases of treason, doubtless, the emperor summoned the whole body, so as to relieve himself, as far as possible, from the odium of any unpopular conviction. Other functions performed by the senates of the capitals (called Greater Senates) were municipal in character, the chief of which were the supervision of the bread supply and the giving of the games of the circus. 1 Cambridge Med. Hist. 49.

The senatorial order was originally recruited through the men who occupied the various offices in Rome; men who had been quaestor, tribune, aedile, praetor or consul. The offices of tribune and aedile disappeared, and later the office of quaestor. And when the empire was established the main membership of the order was derived from the men who occupied or had occupied certain offices. Ultimately all who had the title of clarissimi, honorable, the lowest of the three titles of nobility, belonged. This included, of course, also all who had the higher rank of worshipful and illustrious. The senatorial rank was hereditary as far as grandsons (1 Kuhn 178; 1 Karlowa 889; C. 12.1.11), so that the senatorial order counted in the neighborhood of 2,000 members in each the Western and the Eastern portions of the empire. Not all the members of the order were entitled to sit in the senate and the privilege seems to have been more and more abridged. While theoretically their residence was in the capital, those from the provinces were permitted to stay at home - in other words, they were encouraged not to participate the deliberations of the senate. C. 12.1.15. Later still the right of deliberating in the senate seems to have been confined to the highest dignitaries. Bury, 1 Hist. Later Roman Empire 21; 1 Cambridge Med. Hist. 49.

While the senatorial order conferred a number of privileges (See C. 12.1.4 and 5; headnote C. 9.41), it also entailed its burdens, which for some time, seem to have been extremely heavy. Thus they had been forced to pay a special tax, called follis or gleba, which was in addition to the regular tax assessed against everyone. They further had been compelled to perform the office of praetor, which during the empire practically meant nothing more than the duty to exhibit games for the pleasure of the people or make contributions for public works, the expenses of which at times ran up to thousands of dollars. There were some exemptions from these burdens, including the tax above mentioned. (1 Karlowa 893.) And in order to exempt a man from the praetorship, he could be made a senator by the emperor by making him what was called an allectus (specially chosen), which was frequently done as a reward for services. See C. 12.18.1 and note. The tax above mentioned was abolished in the middle of the fifth century. C. 12.2.2. And in 450 A.D., it was provided that the men of honorable and worshipful rank in the provinces should not be called to the praetorship; further that only a limited number of men should be selected as praetors, and that they should not be compelled to incur expenses, but that whatever contributions they would make toward the exhibition of games and public works should be left to their voluntary action. C. 1.39.2; C. 12.2.1. They were further required to give a New Year's gift to the Emperor of a pound of gold, according to an enactment of 395 A.D., and this provision continued in force and was embodied in the Justinian Code. C. 12.48.1.

For a general discussion of the subject, see 1 Cambridge Med. History 49; 1 Karlowa 888, 894; Bury, supra; 1 Kuhn 174-226.

Novel 62 deals especially with the Senate.