

Book XII.  
Title III.

Concerning consuls, and that money shall not be scattered by them, and concerning prefects, masters of the soldiers, and patricians.  
(De consulibus et non spargendis ab his pecuniis et de praefectis et magistris militum et patriciis.)

Headnote.

Consuls.

During the Roman Republic, the consuls, always two in number, were the highest officers of the state. During the Empire, the consulship was continued, but mainly to designate the year. Thus we find in the various rescripts and constitutions in this Code, "Given on such and such a date in the consulship of so and so." The office entailed no duties, but entailed a great amount of expense, for each consul was expected to scatter money among the people and to give spectacles of various kinds, which, according to Bury, amounted at least to 2,000 pounds of gold each year, or the enormous sum of about \$432,000. Not many men, of course, could bear such burden, and the emperor frequently made large contributions, or defrayed the whole expense. The money scattered among the people came to consist of gold, and the amount of that item alone must have been large, as may be judged by a law enacted in 452 A.D. (law 2 of this title), forbidding the scattering of such money, but directing the consul to pay 100 pounds, instead, for public works. But succeeding consuls, nevertheless, scattered money among the people, as may be seen by Novel 105. The office became so burdensome that in 535 and 536 there were no consuls, and in 537 A.D., Justinian enacted Novel 105 regulating and limiting the expenses, leaving it optional with the consuls as to whether to scatter money among the people or not. Gold, however, was forbidden to be scattered. The law is lengthy, containing repetition after repetition, is apologetic in tone, and shows that the people had been dissatisfied, and that Justinian was attempting to excuse himself for its enactment. But he told them that half a loaf was better than none. Despite this law, however, not many men were found to accept the position, and the consulship came to an end in 541 A.D. After that time, the years were indicated in three ways, by the post-consulate, the regnal year of the emperor, and the tax year. The emperor was frequently one of the consuls. See Bury, 2 History Later Roman Empire 348-350.

The instant title also mentions patricians. The title of patrician was the highest which a private person could have in the empire and ranked above all. Only the highest officials received the title. Law 3 of this title.

12.3.1. The Emperors Theodosius and Valentinian to the Senate of the City (of Constantinople).

It was formerly decreed that exconsuls give precedence to others, honored by the same splendor of the scarlet robe, also honored by the consulship, and equal as to ornaments,<sup>1</sup> only by reason of time. For who of men of the same rank should rather take precedence than he who first received the rank? The one later in time, though possessing

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<sup>1</sup> Blume first had for this phrase "but equal in dignity."

the same honor, must nevertheless give way to the consul who was such when he himself was not. This applies even if anyone ascends the heights of the consulship a second time; for a renewed right to the rods and the axe often, indeed, show the merits of a man, indeed, but does not increase his rank, because nothing is greater than the rank itself. But if an earlier consul, who gives way to one later in time but who is also a patrician, subsequently receives the title of patrician, the latter, who first became patrician, must give way, after the former who was consul first is decorated with the patrician rank.

Note.

All ex-consuls were equal in rank, but there was an order of precedence among them, according to the time in which they received the honor, in all public assemblies, the more prominent place and right to speak first being given to the one who had received the honor first. This was a general principle, announced several times in the laws of this book. The fasces, a bundle of rods and an axe, was carried before the consuls by inferior officers. They were the insignia of that and other offices. Patricians took precedence over all other officials. It was the highest title in the empire next after the imperials. Only consuls or ex-consuls and a few others could receive the title. See law 3 of this title.

### 12.3.2. Emperors Valentinian and Marcian to Sporacius, Count of Domestics and Consul.

We have restored the order of the consulate to its ancient dignity so that the populace will gather about our seat of honor out of respect, and not out of any desire of plunder, and may behold the venerable attire of the fathers, and the felicitous ornaments of antiquity, upon abandoning all desire for gain. Future consuls must conduct their processions in accordance herewith and must not squander their money uselessly. The despicable custom, therefore, of scattering it about, shall cease, and the exalted consuls shall hereafter in their processions abstain from such foolish waste, and what (heretofore) was to be foolishly thrown away, shall, according to a better plan (hereafter) be used for a necessary work. Consuls shall, therefore, during each consulship, furnish one hundred pounds of gold for the repair of aqueducts of this magnificent city, so that the consul may know that he has given something to the fatherland, and it may be known that what has been given will last forever.

(452).

Note.

This law refers to the custom of the consuls, who served, for one year, holding a procession on the first of January, when they assumed office, and at that time scattering money among the people. This custom was abolished by this law. Holmes, 1 The Age of Justinian and Theodora 109, describes the assumption of office by the consul as follows: "The person nominated assumes a gorgeous robe decorated with purple stripes and gold embroidery (trabea), grasps a scepter surmounted with a figure of Victory, and proceeds in state to the Hippodrome, where he displays his authority by manumitting a number of slaves especially provided for the purpose. He presides at the games from the Kathisma, and for the moment, if not the emperor himself, as frequently happens, the pretence is made of regarding him as the sovereign of the empire. The year is legally distinguished by his name, and that of his colleague of the West, a series of public spectacles are exhibited for seven days, he scatters golden coin as largess among the citizens, and

emissaries are dispatched in all directions throughout the provinces to announce his elevation, and to deposit in the local archives his diptychs, a pair of ivory plates inscribed with his likeness or insignia. Immediately afterwards, the office relapses into a sinecure, and the consul resumes his ordinary avocations of life."

Considerable is said about this subject in Novel 105, enacted by Justinian in 537, wherein this law was virtually repealed, but which provided that only silver money might be scattered among the people, and the expenses incurred by a consul generally, as well as the spectacles permitted to be given by him, were regulated.

### 12.3.3. Emperor Zeno.

No one shall rise to the exalted honor of a patrician, which takes precedence over all others, unless he has first received the honor of the consulship, or has actually officiated as praetorian prefect (of the Orient) or of Illyria, or as prefect of the city, master of the soldiers, or master of the offices; so that these persons only, during or after their administration, shall be permitted to receive the patrician rank, whenever it shall seem good to Our Majesty. And since we believe it our duty, on all occasions, to look out for the welfare of this glorious city, which is the capital of the world, we decree that all those who, by imperial munificence, are hereafter decorated by the insignia of the honorary consulship, shall furnish 100 pounds of gold for the restoration of the aqueducts, just like those, who during the annual, consular period, glory in the exhibition of consular games<sup>2</sup>; for it is of advantage to them also, that the flourishing city may, enriched by the munificence of 100 pounds of gold, feel that there is an honorary consulship.

### 12.3.4. Emperor Zeno to Sebastian, Praetorian Prefect.

We ordain that all present or future honorary consuls (consulares), may, if imperial permission is granted, have the lawful right to hold a procession and actually carry on the consulship for a year. In such case the procession, to which they were granted the right, shall not appear to have given them something new or which they did not already have, but the right of the consulship, which they previously acquired by the honorary consulship, shall seem to have been brought to them a second time through the favor of a procession, and in adoring our purple, and enjoying all the honors and privileges of consuls, and they may claim precedence according to the time of their first advancement. It must be, further, observed that such consul shall not be compelled to pay over again the 100 pounds of gold for the aqueducts of this famous city which he paid according to the tenor of the imperial constitution while he was honorary consul.

Note.

Consularitas here refers to the honorary consulship, and not to exconsuls, as ordinarily. Honorary consuls had the ornaments or the insignia of the consular office, but they did not actually become consuls in office. Bestowal of honorary titles or ranks was frequent. The right to adore the purple - appear before the emperor and make obeisance - was deemed a great honor. Persons who actually had been consuls were, after their retirement, designated ex-consuls ordinario – ex-consul ordinary - a form frequently

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<sup>2</sup> [Blume] "consularium editione minorum."

employed by Justinian in his Novels in addressing John, the Praetorian Prefect. See 4 Pauly-Wissowa 1137.

12.3.5. Emperor Justinian to John, Praetorian Prefect.

We ordain that the distinguished patricians, whom our august majesty shall have raised to the height of that dignity, shall, immediately upon the issuance of letters-patent, become the head of the family (patres familias), and be liberated from paternal power, lest those who are honored by us as fathers, should be subjected to another's power. 1. For who would endure that a father should be able to release a son from his bonds by emancipation, but that the imperial greatness should not be strong enough to release anyone from the power of another, whom it has selected as one of the fathers? If the contrary should be deemed to be true, the imperial majesty would seem to be diminished by some misconstruction. 2. It is certain that this will happen rarely; for few see a son advanced to the patrician rank, though that often happens in the case of consuls. But lest such a thing might happen in the course of time, without a law in relation thereto, we have deemed it best to enact these provisions.

(531-533 A.D.)

Note.

The term "patrician" meant "of the rank of one of the fathers," i.e. of the Roman fathers, nobles, who, in the early ages, governed Rome. Now, it might happen that a person made a patrician might still be under paternal power, which, according to the ordinary rule, lasted till death of the father, unless the child had become emancipated. See Note C. 8.46.2 and headnote to C. 6.60. According to the instant law, when a man became a patrician, he was by that fact alone released from paternal power. The principle of this law was extended in 539 A.D. to apply to a number of other high officials. Novel 81.