

Book I.
Title XL.

Concerning the office of rector of the province.
(De officio rectoris provinciae.)

Headnote.

Provincial Governor. The proconsul who was a provincial governor, but with the rank of worshipful, has already been considered. The instant title deals with provincial governors in general, including those that were commonly called consular, rector, corrector and president. The Register of Dignitaries already mentioned indicates that in the East there were 40 presidents, 15 consulars, and 2 correctors, and that in the West there were 22 presidents, 31 consulars, and 3 correctors. All of these were of honorable rank (clarissimus). The most complete review at hand of their powers and duties is contained in the book on The Roman Provincial Governor as He Appears in the Digest and Code of Justinian by Herbert Edward Mierow (1926). These governors were the executive, administrative and judicial heads of their respective provinces, and a brief outline of their powers, duties and status should here be given.

The powers of the provincial governor were confined to his province, except that he might exercise voluntary jurisdiction, as in the case of manumissions and adoptions. D. 1.16.2; D. 1.18.7. He was required to issue a proclamation announcing his arrival one day before that event, evidently with the thought not to disturb the provincials in their business by reason of the indefiniteness thereof. C. 1.40.13. He held office for a year. The retiring governor administered his office until his successor arrived at the boundary of the province, and even after the arrival of such successor, was required to remain in the province for fifty days to answer accusations for misrule and appear in public during this time to enable such accusations to be brought without difficulty. C. 1.40.1. The officiating governor had the right to leave the province during his term of office. If he did, he was in the position of a private citizen. The emperors attempted to get men for these positions who were honorable and upright. For some time they were, by custom, compelled to give compensation for recommending their appointment, which was, as might be expected, generally through the praetorian prefect. But that custom was attempted to be abolished from time to time, as noted in C. 9.27.6, and by various provisions of Justinian, particularly Novel 8. If such money was paid, the appointees would naturally attempt to get it back from the provincials by one method of extortion or another. Numerous laws were enacted against maladministration and heavy punishment threatened for violations in various Novels relating to them, as found in Book 1 of this Code. The governor had a staff similar to that of the praetorian prefect, more particulars of which are found in C. 12.57. In view of the fact that he was the administrative as well as the judicial head of the province, his clerks were naturally such as the performance of the various functions required.

1. Judicial Power. The provincial governor was judge of first instance, with plenary powers. He was called the ordinary judge, in civil as well as criminal cases. The manner of commencing an action and prosecuting it is set forth in C. 7.43, and subsequent titles. C. 7.44 shows in what manner a judgment was to be rendered. He had a large discretion in delegating civil cases and minor criminal cases to a referee, a subject more fully considered in Book 9 of this Code, and many matters

connected with civil procedure will also be found in Book 3. Upon the governor rested the duty to uphold the law, see that no extortions were permitted, and prevent powerful men from exerting too much influence in legal matters. See C. 2.13. Titled persons could sit with him, except when engaged in litigation (C. 1.45.1), and if he was unable to cope with the insolence of persons of influence, he could call on the praetorian prefect for help. C. 1.40.2. He had a special counselor of law, called assessor, to sit with him, who advised him in all legal matters, but the governor himself was required to give the final decision. See C. 1.51. He could not, as was also the case with other magistrates having plenary power, be cited into court during his term of office. C. 2.4.2. He had numerous clerks to assist him in these duties.

2. Administrative Powers. The governor looked after matters of taxation. He was held responsible for the full collection of the taxes. This subject is fully considered in Book 10. He also collected the rents from the imperial domains, a subject considered in Book 11. See particularly headnote to C. 11.62. He also had control of the water supply and a general supervision over the municipalities of the province. (See C. 10.32-72.) And without going into details here, it may be stated generally that he was the administrative and executive head of the province, and had assistants to assist him in the various departments.
3. Their selection. They were selected by the emperor and received their certificates of appointment—called letters-patent (codicilli) from the emperor, but they were, doubtless, generally appointed upon recommendation from the praetorian prefects. A radical change was made later, under which the governors were selected by the bishops and the local nobility, to be confirmed by the emperor. It may be noted in several laws, including Novel 134, c. 2, and Novel 145, that governors were compelled to give a bond for every appointment, see Novel 145, appended to this title, and note thereto.

1.40.1. Emperor Alexander to Julia.

The president of the province may, while investigating a case of forgery (falso), decide the incidental question of ownership arising therein.¹

Given March 27 (234).

1.40.2. Emperor Constantine to Maximus.

If some person of power becomes insolent, and the presidents of the province personally are unable to punish, try, or pronounce sentence against him, they should report his name to us, or at least to the praetorian prefecture, so that means may be taken as to how to protect the public interest and the injured common people.

Given at Treveris (Treves) December 29 (328).

C. Th. 1.16.4.

1.40.3. The same emperor to the provincials.

We give full liberty to all to applaud, by public acclamation, judges who are just and vigilant, so as to promote the progress of their honor.² On the other hand, we give

¹ [Blume] Note C. 3.8.1.

liberty to accuse, by complaining voices, the unjust and the evil-doers, in order that the vigor of our punishment may destroy them. For if the voices speak truly and are not poured forth simply at the caprice of hangers-on (of an enemy), we shall investigate the matter. The praetorian prefects and the counts appointed in the provinces shall make us acquainted with the voices of the provincials.

Promulgated at Constantinople November 1 (331).

C. Th. 1.16.6.

1.40.4. The same emperor to Pericles, President.

We have given you authority to punish the officials of the (praetorian) prefect, who interrupt the public post or are engaged in wrongful acts against the public good; but you must inform the prefect of their acts.

Given at Nicopolis October 23 (335).

1.40.5. Emperors Valentinian and Valens to Apronianus, Prefect of the City.

Proper deference must be paid by inferior judges to those of higher rank. However, when the public interest is involved, no harm is done the superior in rank by the fact that the inferior judge has investigated the truth. But whoever employs the insignia of his office to inflict unworthy insults on others in positions of power and dignity will not escape the stings of our displeasure.

Given at Ancyra May 28 (368).

1.40.6. Emperors Gratian, Valentinian and Theodosius to Cynegius, Praetorian Prefect.

The city of Rhodes has complained of wrong toward it, not only in an unseemly manner, but also too late. Hence we unalterably ordain that since navigation in winter time is often perilous and always uncertain, the judges shall, by turns, pass the winters in the five cities recognized as the principal cities. If any inclines to scorn our order, he shall pay fifty pounds of silver and his staff 100 pounds of silver into the fisc if anything to the contrary is done.

Given at Constantinople December 9 (385).

Note.

The instant law was undoubtedly intended to relieve litigants from expensive and dangerous journeys by reason of the judicial magistrate residing in one place in the island of Rhodes. Beyond that, however, the novel is obscure. Cujacius connects the law with Novels 41 and 50. The Justinian quaestor of the army had under his jurisdiction lower Moesia and Scythia on the Danube and in addition Cyprus, Caria and the Cyclades Islands in the Aegean Sea. The two former provinces were a long distance from the three latter and Novels 41 and 50 provided that appeals from these places might be heard in Constantinople. See also note to Novel 26. Cujacius thinks that the union of provinces mentioned in these novels existed at the time of the writing of the instant rescript, and that it was intended to provide that the quaestor of the army should live part of the time in each of the five provinces under him. Obs. 16.6 and on C. 1.40 (Bk. 10, 809).

That this is the meaning is at least doubtful. The rescript deals apparently only with one province. This province was the one of which Rhodes was a part, namely the

² This is the language of the typewritten original. Blume has placed a question mark in the margin and has written "in my name, their public processions richer in honor" above the original, after "just and vigilant," without striking that phrase.

Cyclades Islands. The intention of the rescript probably was that the governor of this province should live in one of the islands part of the time and in other islands (i.e. the four other principal cities) at other times, so that the litigants should have ready access to court.

1.40.7. Emperors Valentinian, Theodosius and Arcadius to Cynegius, Praetorian Prefect.

Whoever occupies an ordinary dignity and draws on the income of a future (tax) levy will lose his fair name and position, and must while in the province make indemnification out of his own property.

Given at Constantinople May 26 (386).

Note.

The “ordinary dignity” was the position of provincial governor. He held office only for a year, and particularly for that, if no other, reason it was highly undesirable that he should expend more than the annual income.

1.40.8. The same emperors to Cynegius, Praetorian Prefect.

No judge (governor) shall employ in his province any apparitor of the praetorian prefect or of the ministers of finance (palatines) or soldier, or anyone who formerly occupied that position, as an enforcement officer (intercessor, executor), on request of any litigant in any private or public transaction. The violator of the imperial order, and his official staff, not only lose their good name but will also sustain a loss of property.

Given at Constantinople August 7 (386).

1.40.9. The same emperors to Polemius, Praetorian Prefect of Illyria.

No provincial moderator shall dare to come to the most august city without permission. And if anyone shall appear to have come in violation of the precepts of our decree, he shall be visited with suitable punishment.

Given at Milan December 23 (390).

1.40.10. Emperors Arcadius and Honorius to Limenius, Count of the Imperial Exchequer.

We want no palatines serving under you to have anything to do with the provincials. Governors should know that it is their special duty to call upon the provincials and collect the customary tribute. The land owner should not tremble before a palace official who has orders to urge to performance of duty, not him, but the governors and their officials.

Given March 27 (401).

Note.

The provincial governors were primarily responsible for the collection of taxes. Note C. 10.19.9; C. 10.19.6. The palatines were apparitors in the offices of the ministers of finance. Some of them were sent out from time to time to urge the governors to collect the taxes. But they were forbidden to deal directly with the taxpayers. C. 10.19.7 and 9; C. 10.23.2.

1.40.11. Emperors Honorius and Theodosius to Theodorus.

Moderators of provinces must take care that procurators of persons of power commit no wrong or unlawful act.³

³ [Blume] See C. 2.13; C. 2.14; C. 11.54.

Given at Ravenna November 25 (408).
C. Th. 1.16.14.

1.40.12. The same emperors to Monaxius, Praetorian Prefect.

All provincial apparitors shall, pursuant to ancient authority, whenever the occasion demands it, be stripped naked upon order of the governor and subjected to lashes, so that public business may be expedited, the insolence of the official staff suppressed, and proper respect paid to the authority of the governor.
Given December 27 (412).

1.40.13. No decrees for rewarding presidents shall be made, but shall be suppressed by the latter themselves. The edict announcing a president shall not be sent until one day before his entrance of the province, and if he is caught in any theft or other crime, not only his safety, but his property also will be imperiled.

Note.

The decrees here mentioned doubtless contemplated decrees of provincial assemblies and of cities rewarding a governor. The governors received their reward from the public treasury and were forbidden to take any other. The theft mentioned in this law referred to extortions committed by the governors.

1.40.14. Emperor Leo to Constantinius, Praetorian Prefect.

The provincial apparitors (cohortales or cohortalini) are more fully considered in C.12.57. They were bound to their position just as serfs were bound to the soil and decurions to their city. They were not permitted to leave their position to seek a place in the "milita," that is to say, imperial service, civil or military, or a position of dignity. The "militia" as here mentioned did not embrace service as provincial apparitors, though in the broad sense of the term it did. See further C. 12.57.12 and note and references there given. Part of this law is duplicated in C. 12.57.14.

1.40.15. The same emperor to Constantinius, Praetorian Prefect.

No judges (governors) who govern provinces shall, in the cities which have imperial palaces or praetorian edifices, abandon these and occupy private residences as administrative buildings. They shall live in the imperial or praetorian palaces so that they will be compelled, through necessity, to see to the repair thereof. Where there is an imperial palace and also a praetorian edifice, the imperial palace shall be used as the residence of the president, and the praetorian edifice as a storehouse to receive and preserve products of the soil belonging to the treasury, or for any other necessary purpose. If anyone attempts any violation hereof, he and his staff shall immediately pay a fine of 50 pounds of gold, to be used for the repair of the imperial palace which he neglected.
About 471.

1.40.16. [No Heading]

The president shall not neglect the taxpayer, nor injure him, nor inflict damage on him, under fear of imperial displeasure and the necessity to make whole the damage inflicted.

1.40.17. [No Heading]

The presidents shall seize robbers and similar delinquents and inflict proper punishment on them. If any of them are in the imperial service, their chiefs shall deliver them up. Whoever violates this shall pay 10 pounds of gold.