

Book XI.
Title LVIII. (LVII)

Concerning assessments, and assessors, and equalizers and inspectors.
(De censibus et censoribus et peraequatoribus et inspectoribus.)

Headnote.

Listing and assessment of property, for taxation.

In order to arrive at any uniformity and equality of taxation of property, there must necessarily be some system of assessment and valuation of such property. Diocletian revised the system of taxation, under which the main revenue should be raised from the landed proprietors of the empire, including Italy, which had previously been exempt from the tribute. An assessment of all the property throughout the empire was made and a reassessment was made at intervals of 15 years, according to some authorities (1 Karlowa 908; Humbert, 2 Essai 348), or at intervals of five years according to others (probably wrongly)¹. Clausen, The Roman Colonate 314, and authorities cited. That interval will be termed tax-cycle or period. Taxes were levied annually, each year being called an *indictio*, or tax-year, based, of course, on the valuation previously made. Note C. 10.17.2. While many things in connection with the system of assessment are obscure, sufficient is known to give us some idea of it, although the opinions of the authorities on this subject are not altogether uniform, and no attempt will be made here in to settle questions in controversy.

(1) Tax-unites or taxation-units.

It seems to be agreed among the most recent authorities that the empire, at least the Orient, was divided into a number of theoretically equal taxable units on which a uniform tax was collected. These units were known as *capita* or *juga* (plural of *caput* and *jugum*), some of the authorities (See Matthias, Die Rom. Grundsteuer 17) believing that each unit was of the value of one thousand *solidi*, a view, however, not now held. Some value, however, must have served as a basis, and there is some reason for believing that after about 356 A.D. the units were of larger value than previously. Stein, Studien 152, 153. The terms *capita* and *juga* were frequently used synonymously, but sometimes a distinction is apparent, and the term *jugum* was properly applied when the taxation unit was made up of land only, while the term *caput* when the taxation unit was made up of slaves, serfs and animals. C. 12.39.2 and note; Abbott & Johnson, Municipal Administration 130. In the Diocese of the Orient, according to acres of farm land of the first class, 40 Roman acres of farm land of the second class; 60 Roman acres of farm land of the third class, 225 olive trees of the first class and 450 olive trees of the second class made up a taxation-unit (*jugum*). Abbott & Johnson, *supra* 130; 1 Karlowa 904; Marquardt, 2 Rom. Stvw. 20; Arnold, Roman Provincial Adm. 217; Jones, Roman Empire 370. That slaves, animals and serfs were taken into consideration in fixing the assessable value of a man, and determining for how many taxation-units he should pay taxes appears from various sources. We know, for instance, from a tax or assessment roll

¹ [Blume] See C. 1. 27. 1. 43; Nov. 148, speaking of the 13th and the 8th indictions, in C. J. 11.28.3, a first *indictio* follows the 15th.

of a city in Lucania that it contained the name of the owner of the land, the amount of farm land and of his vineyards, the number of juga thereof, and the number of his animals, slaves and serfs and probably the number of capita thereof. 1 Karlowa 908; see also D. 50.15.3 and 4, hereinafter again mentioned. We have no knowledge of how many of the various animals made up a taxation unit (caput), but in C. 11.48.10, which, according to Leo, refers to the land tax, it is stated that whereas formerly one man and two women made up a taxation unit (caput), two and three men and four women should thereafter make up such unit in certain portions of the empire. See Leo, Capitatio Plebeia u. Capitatio Humana 134, et seq., for a full discussion of this law. The men and the women referred to in that law were the slaves and the serfs that served as a part basis for assessment for the property tax. In Italy the taxation-unit was the millena; in Africa, the centuria, apparently containing 200 Roman acres. These units doubtless must have borne a definite relation to the other tax-units already mentioned, at least while the empire was united, though what that relation was is unknown.²

The taxation unit in the West was probably much higher. When Julian went to Gaul, the tribute on each taxation unit (caput) was 25 solidi. He reduced it to seven solidi. Amm. Marc. 16.5.14. It does not seem reasonable that land worth \$285 or even \$1000 as some authors have interpreted the millena, should have been taxed as high as \$75 annually. This nearly is the view taken by Seek in Rheinische Museum etc., Bd. 49. Heft, 4 [vol. 49, no. 4] (1894), 630, who thinks it possible that the unit upon which the assessment was made was composed of several capita.

At the end of each tax-cycle at intervals, as stated before, of five or fifteen years, there was a resurvey and revaluation of the property. We have but limited knowledge of the surveying that was done. See Marquardt, supra 211, et seq; Hyginus, Grom. p. 205, 9. The surveys after the first, were probably made only in those cases in which that was deemed necessary, and the assessment list of one tax-cycle must have been of considerable assistance in making the lists for the succeeding cycle. Each land owner was required to make a declaration of his property (professio). D. 50.15 gives us an insight into its contents, according to which it contained the name of the owner, the city-state or village in which the property was located; the names of the two nearest neighbors; the acreage of the land to be sowed in the following years; the number of vines in the vineyards; the number of olive trees; the acreage to be put in meadow in the following years; the acreage of grazing land and woodland; the number of slaves; their origin, age, service and trade; fishponds; harbors; saltworks; the names of the tenants and serfs and their ages. D. 50.15.3 and 4. In other words a detailed schedule was required showing everything subject to taxation. The requirements probably varied somewhat according to the locality, as shown, for instance by the Syrian-Roman law-book, already

² [Blume] If we accept the Syrian law book as correctly representing the taxation unit in the East, it must have been small. According to Columella 3.3.8, who lived in the first century of our era, seven jugera of vineyard were worth 8000 sesterces, or approximately \$400, making five jugera worth about \$285. (See His 32). Values of money had probably changed somewhat by Justinian's time. Slaves were valued at various prices, from \$30 to \$210. C. 6.43.3. A farm-hand probably would not exceed \$90 in value. Serfs, accordingly, if Leo's theory as to the taxation of serfs is correct, would not exceed \$285.

mentioned, as well as according to the periods. Lactantius, De Mortib. Pers. c. 23 (vol. 7 Ante-Nicene Fathers 310), speaking of the reign of Galerius, gives us a gloomy and probably overdrawn picture of the taking of a census, or assessment, and probably of that in 289 A.D. He dwells particularly on the head-tax or poll-tax, but also speaks of the assessment on which the land tax was based, and says: "But that which gave rise to public and universal calamity, was the tax imposed at once on each province and city. Surveyors having been spread abroad, and occupied in a general and severe scrutiny, horrible scenes were exhibited, like the outrages of victorious enemies, and the wretched state of captives. Each spot of ground was measured, vines and fruit trees numbered, lists taken of animals of every kind, and a capitation roll was made up. In cities the common people, whether residing within or without the walls, were assembled, the market places filled with crowds of families, all attended with their children and slaves, the noise of torture and scourges resounded, sons were hung on the rack to force discovery of the effects of their fathers, the most trusty slaves compelled by pain to bear witness against their masters, and wives to bear witness against their husbands. In default of all other evidence, men were tortured to speak against themselves; and no sooner did agony oblige them to acknowledge what they had not, but those imaginary effects were noted down in the lists. Neither youth nor old age, nor sickness afforded any exemption. The diseased and infirm were carried in; the age of each was estimated; and that the capitation tax might be enlarged, years were added to the young, and struck off from the old. General lamentation and sorrow prevailed. Whatever by the laws of war, conquerors had done to the conquered, the like this man presumed to perpetrate against Romans and the subjects of Rome, because his forefathers had been liable to a like tax imposed by the victorious Trajan, as a penalty on the Dacians for their frequent rebellions. After this money was levied for each head, as if a price had been paid for liberty to exist; yet full trust was not imposed on the same set of surveyors, but others and others were still sent round to make further discoveries; and thus the tributes were redoubled, not because the new surveyors made any fresh discoveries, but because they added at pleasure to the former rates, lest they should seem to have been employed to no purpose. Meanwhile the number of animals decreased and men died; nevertheless taxes were paid even for the dead, so that no one could either live or cease to live without being subject to imposition."

The census was taken by the censitors and their assistants, who, as already indicated by the statement from Lactantius were imperial officials. The valuation of the property seems to have been done by them. Matthias, Grundsteuer 12. They prepared a list, or register, of the taxable property, and probably divided it into taxation units. See Gothofredus, paratitlon C. Th. 13.11; Holmes, Age of Justinian and Theodora, says that the division of property into taxation-units, or 'heads' was done by the equalizers, or adjusters (*peraequatores*), who followed up the work done by the censitors (assessors) and their assistants, equalizing and adjusting the lists, generally, probably, as indicated by Lactantius, adding property. Barren and deserted lands were often added to owners owning fertile land, and shown by law 7 of this title and by C. 10.59. The adjusters, or equalizers, were frequently followed up by inspectors, in response to petitions or appeals by dissatisfied owners or communities. The right of private individuals to send petitions was apparently forbidden by C. 10.16.13. He could give relief from over-assessments and make adjustments where proper and necessary. Gothofredus, paratitle C. [Th.] 13.11. And before the assessment was complete, it was required to be examined and approved,

by the governor of the province, according to C. Th. 13.10.8, but that provision was left out of the Justinian Code, and the rule in that respect was probably changed. See, however, 1 Holmes, supra 152. Thereafter the list, or register, or rather, perhaps a copy thereof, was filed with the city clerk (tabularius, see C. 10.71). At least the total number of taxation units in the various municipal districts, if nothing more, and probably the kinds thereof, were known at the capital of each prefecture, for the tax levies were made against municipal districts, the distribution thereof among the individual tax payers being made by the municipal authorities. Note C. 10.17.2. A district might, of course, contain a lot of barren soil which was not valued at all and which did not, accordingly, go to make up the total number of taxation units counted against such district. Theodoret, Ep. 42.

When the total number of taxation units in the empire had been added up, it was, of course, easy enough to compute the amount which should be assessed against each unit, in order to raise a required amount in money. In fact the tribute, the tax payable in money, seems to have been invariable, or substantially so. Note C. 10.17.2. But there must have been some difficulties in the way of levying the annona, the tax in kind, and inequalities in taxation must have resulted. Some districts raised only grain, others only wine, others produced only metals. All levies were supposedly made according to taxation units (C. 10.25.2), yet a levy of grain, for instance, could be made only against grain-producing districts, and a levy of wine on wine-producing districts might not at all equal the levy on the former. It would have been more just, apparently, if the tax in kind had been levied on a certain percentage of all products. Whether equality was sought to be reached, as it might have been under the proper system, after taxes payable in kind were largely commuted into taxes payable in money, is not known.

Changes in the assessment rolls were possible during the tax-cycle, as shown in note to law 4 of this title. In fact transfers of property were ordinarily required to be listed, and the new owner was compelled to pay the taxes thereafter. C. 4.47.2 and note.

11.58.1. Emperor Constantine to the people.

Since the clerks (tabularii) of the cities by collusion with the wealthy transfer the burden to the lower classes, we order that whoever, proves that he is overtaxed, shall only be subject to his former burden.

Promulgated at Rome January 18 (313).

C. Th. 13.10.1.

Note.

We saw at C. 10.25.1 that city clerks were severely punished if they were guilty of any fraud, and the only payment required of tax payers was that in pursuance of the assessment and equalization of the property. The city clerk had the register of taxes or tax list, and he, therefore, would be in position to commit fraud. See C. 10.71 as to his duties. Nov. 182, c. 4, provided that if a tax payer questioned the amount of his taxes, the city clerk should be compelled by the governor of the province to show the tax roll, and it is probable that the governor, too, had authority to inquire into and correct the fraud perpetrated by the city clerk. See headnote C. 3.26 as to jurisdiction in fiscal cases, and C. Th. 13.10.5 and 8, and C. 10.25.1.

11.58.2. Emperors Gratian, Valentinian and Theodosius to Eutrapius, Praetorian Prefect.

Whoever cuts a vine or lessen the fertility of bearing branches (of trees) in order to escape a correct assessment, and fraudulently pretends poverty, shall, when detected, be subjected to suitable punishment. A person, however, who is found to have labored to increase and repair the fertility of his fields and barrenness, will not be subject to any accusation.

Given at Constantinople June 4 (388).

C. Th. 13.11.1.

Note.

The law as it was enacted threatened a person guilty of the acts here mentioned with capital punishment. That portion was left out in the Justinian Code, and the penalty therein fixed was left, in the absence of other provisions, to the discretion of the judge. It will be noted from this law that the number of vines and of trees had a bearing of the assessment.

11.58.3. The same Emperors to Cynegius, Praetorian Prefect.

If, when an equalizer is sent, anyone calls his procurator away, or contumaciously drives his serf (colonus) away, to avoid equalization, he will, by the authority of our sanction, be bound by the amount of the assessment, which in his or his procurator's absence have been fixed by the equalizer.

Given March 27 (386).

C. Th. 13.11.2.

Note.

The owner of his agent was, during equalization, or adjustment, doubtless expected to be present because of the assistance which could be rendered by him. At the time of the enactment of this law, the serfs, says Gothofredus, were put under oath, in order to properly equalize or adjust the assessment.

11.58.4. Emperors Theodosius, Arcadius and Honorius to Rufinus, Praetorian Prefect.

Whenever relief is sought on account of sterility, the whole district shall be assessed, so that the sterile and barren land may be compensated for by the land which is cultivated and rich.

Given at Constantinople April 3 (393).

C. Th. 13.11.3.

Note.

If a territory, which, usually at least, meant the district of a city-state, that is to say, a municipality with its surrounding territory, asked to be relieved from a certain amount of tax, the whole district was revalued. The municipalities were the administrative units and the amount assessed against the whole territory was distributed among the individual tax payers through the local authorities. Note C. 10.17.2. In order not to reduce the taxes of the district as a whole to any greater extent than necessary, the whole district was revalued in the foregoing case, and the fertile land was offset as against the sterile land; that is to say, the valuation of the fertile land was increased in order to offset the sterile land. Rich land had to bear the burden of poor land, as noted in C. 10.59. The 'compensation' mentioned in this law was probably either in part or for the

whole. In other words the final valuation of the district might be lessened to some extent or not at all, depending upon the facts.

It is sometimes said that the assessment roll remained immutable until the next indiction. Holmes, 1 Age of Justinian and Theodora 152. That is wrong. Revision of the assessment might be made at any time, as shown by the instant law as originally enacted and as it has been preserved in the Theodosian Code, for that provided that suspension of payment of the regular tax assessed should not be made without the consent of the emperor, clearly showing that relief might be given at any time with his consent. See C. Th. 13.11.12 and 14; C. Th. 13.10.5; D. 50.15.4.1; 1 Karlowa 908; Clausen, The Roman Colonate 314.

11.58.5. The same Emperors to Rufinus, Praetorian Prefect.

Persons who complain that they have been overburdened by the equalizers (adjusters) and state that they are not able to carry the unjust load, shall have a right to demand a judicial investigation, so that they may prove what has been remitted through favoritism and what has been suppressed fraudulently, and thereby find relief from a burden of which they complain, imposed on them by odious and criminal acts in order that others might be relieved. 1. Whoever wishes may make complaint of the unjust burden within a year from the delivery of the assessment books, accuse the equalizer of injustice, and prove in the investigation the favoritism shown, so that the amount in which he was over-assessed may be imposed upon the person who was relieved from his just duty by secret fraud. 2. But when the time above mentioned has passed, the right of complaint will be denied, except as to minors who were helpless and persons who were absent on public business. They, however, must bring action within the time fixed, after they have the opportunity to bring it.

Given at Constantinople November 29 (393).

C. Th. 13.11.5.

Note.

A tax payer had the right to complain of the assessment within a year after the equalization or adjustment had been completed, that is to say, after the assessment books were delivered to the proper authorities. A minor and a person away on public business had a longer time - the latter a year from the time of his return; the former from the time of his majority, though, probably complaint was barred if it was not lodged within the tax-cycle of five or fifteen years, though this is uncertain. C. Th. 13.10.5 (367 A.D.) had also provided for such complaints, giving only five months to the ordinary tax payer and specifically stating that the complaint should be made before the Governor of the province. That law was left out of the Justinian Code. See note law 1 of this title, as to jurisdiction of governor.

11.58.6. Emperors Arcadius and Honorius to Eusebius, Praetorian Prefect.

If the equalizers and auditing-accountants (discussores), are guilty of negligence or favoritism, they will not only lose their honors, but must also pay back fourfold the emoluments (annonarum) received by them. Whatever they are shown to have received to the damage of the provincials, they shall be compelled to repay fourfold.

Given at Milan March 29 (396).

C. Th. 13.11.8.

Note.

The equalizers (adjusters) and the examining accountants (discussores) had the rank of count of the first order. They were forbidden to extort anything out of the provincials or to do anything through favoritism. Gothofredus on this law. Another law was found to be necessary to be enacted on the same subject in 406 A.D. (C. Th. 13.11.11), which, however, was left out of the Justinian Code.

11.58.7. Emperors Honorius and Theodosius to Sebastius, Count of the First Order.

The person to whom the equalizer appears to have assigned lands (which have been waste) shall have undisturbed possession. We do not permit the fisc to demand arrears of taxes of preceding years from the new owners, lest one person be damaged by the negligence of another. 2. But if any private person alleges that he has a lien on land which has lain waste up to this time or that it belongs to him by any other title, he must make his claims known without delay either in person or through another authorized according to law, so that if the property, by reason of equity, is awarded to the claimant, the person who received it from the equalizer, must be repaid the expenses paid out in betterments. 3. But that possessions once fixed may not be disturbed through litigation, the period of six months is fixed within which a person who, for a credible reason, believes the property to belong to him, may commence the necessary actions. 4. If that time is passed over in silence all right to claim it shall cease. 5. And if a person does not deem it proper at the time that the equalizer sets over the land to another to assert his rights, either personally or through another, then he must forever remain silent after the period of six months has elapsed.

Given at Ravenna March 14 (417).

C. Th. 13.11.16.

Note.

The problem of sterile lands was acute during Justinian's time and for some years previously. Farms were constantly falling out of cultivation through the impoverishment of their owners or the deficiency of labor. The heavy public burdens, aggravated by the oppression of officials, reduced many of the small struggling farmers to bankruptcy. That meant a loss of revenue, and the government sought to avoid that loss by making others responsible for the payment. This addition to their own contribution was called the epibole, waste land tax, treated more fully in the next title. See, Bury, 1 Hist. L. R. E. 444; Clausen, The Roman Colonate 314, 315.

The instant law also dealt with sterile land, set over to a stranger to the title by the equalizers or adjusters of taxes, as they were wont to do in this period, and fixed the period of time in which the title to the property so set over should become vested in the person to whom it was set over as against a lien-holder or other similar claimant. His, Domanen 86. That period was fixed at six months. The same period was fixed as against the original owner. C. 10.59.11. If a man voluntarily took possession of sterile land, he gained a prescriptive title in two years. C. 11.59.8. The ordinary time to gain a prescriptive title to land, as shown in book 7 of the Code, was ten and twenty years, and it must be apparent, accordingly, how pressing the problem of deserted lands, and the loss of revenue consequent thereon, must have appeared to the government.