

5. Number of Lawyers.

Permit me to say a few words as to the number of lawyers in the Roman Empire in its heyday, a question in which, as a former practitioner, I am naturally interested. The best treatise which I have seen on the subject is by Bethmann-Hollweg, but it is fragmentary. We have little information, but we have some. The point cannot be answered by the Code alone; neither can it be answered without the Code. I shall take the period before the empire was finally divided, toward the end of the fourth century. There were four prefectures, within which were 13 dioceses, and which, in turn, embraced 116 provinces. Each official at the head of these divisions had his own court, the court of the governor of the province constituting, generally speaking, the court of first instance with plenary jurisdiction. The advocates of the courts of the praetorian prefects of the East and of Illyria numbered at one time, and were limited to, 150.⁽¹²¹⁾ Figuring 150 for each prefecture, makes 600. There were two city-prefectures, one at Constantinople and one at

(121) C.2,7,8-17.

Rome, the advocates of the former⁽¹²²⁾ being limited to 80, or say 160 for both. The advocates of the Augustal Prefect at Alexandria numbered, and were limited to, 50,⁽¹²³⁾ and the advocates of the Count of the Orient numbered and were limited to 40.⁽¹²⁴⁾ Taking the Augustal Prefect and the Count of the Orient as representatives of the governors of dioceses, and striking an average of 45 for each diocese, makes 585 for all. We have a record of the lawyers of one provincial court⁽¹²⁵⁾ where 30 advocates were permitted to practice. Taking this as an average would make 3480 for all of the provincial courts, or a total of 4825 for all the high courts of the empire. The average last mentioned may be somewhat high. Thus Nov. Valent. 2,2,2 states that if there were 16 or more at a provincial court, one might be permitted to go to Constantinople. This was in 442 A.D. Nov. Val. 32, of 451 A.D., permitted provincial lawyers to go to Constantinople, if there were four lawyers at the provincial court, and these were deemed sufficient. These Novels were enacted after many ravages had been committed by the barbarians.

(122) C.2,7,26.

(123) C.2,7,13.

(124) C.2,7,22.

(125) C.2,7,24.

In addition to the advocates above mentioned, there were supernumeraries, persons on the waiting list, who were admitted to the regular number only when vacancies occurred. We do not know their number. Nor do we know whether there were not some who belonged to neither the supernumeraries nor to the regulars. There were courts other than those mentioned. There were other judges besides the Augustal Prefect in Alexandria, before whom lawyers not of the regular number could practice. (126) The prefect of food supplies at Rome had jurisdiction in many cases, and so had the prefect of the watch, though apparently only in cases of minor importance. (127) That lawyers practiced before the latter appears from C.Th. 2,10,1-2. Comptrollers (rationales) of the imperial exchequer and of the Crown Domain (res privata) must have tried numberless cases involving fiscal matters. (128) Again, many cases were delegated to petty judges or referees -- lawyers being able to serve as such. (129) Municipal courts, too, had jurisdiction in certain cases. (130) It is hardly safe to assume that cases tried before these

- (126) C. ~~2,10,1~~^{2,10,2} C.1,57,1.
(127) Bethmann-Hollweg - C.P. 3, 64.
(128) C.3,26.
(129) See C.3,3.
(130) C.1,55.

several tribunals were ordinarily tried without the assistance of lawyers. It is certain that lawyers appeared in the courts of the petty judges or referees, and they were at one time forbidden to appear both before them and also in the court of the governor. (131) Whether they were the supernumeraries or others is also uncertain. If we may make a bold conjecture -- and that is all it can be -- it is not probable that the number of lawyers not of the regular number exceeded 25 per cent of the latter, making the total number of practicing lawyers in the empire in its heyday not to exceed approximately 6000 to 7000, although, doubtless, there were more persons than that who were educated in the law and who were called to other positions.

We do not know the population. A modern historian believes that at the lowest estimate it must have been fifty millions. (132) Accepting this estimate, we would find no more than about one practicing lawyer to a population of over 7000 people, as contrasted with one lawyer for about 700 people or less in the United

(131) C.2,12,27.

(132) Bury, Hist. of Later Roman Empire 1, 53.

States. We should not forget in this connection that the drawing of documents was, in general, entrusted to notaries, who, accordingly, in a measure, performed much of the work frequently performed by lawyers in our country. (133)

(133) C.4,21,14; Nov. 44.