

Book I.
Title LV.

Concerning defenders of the cities.
(De defensoribus civitatum.)

Headnote.

Municipal magistrates. Originally, the magistracies of the Roman municipalities outside of Rome were modeled after those in Rome itself. As there were two consuls at Rome, so the other municipalities had ordinarily two so-called duoviri (two chief men). Every fifth year, they took the census and then received the title of quinquennales. In the absence of duoviri, their place was taken by a prefect, appointed by the emperor. Abbot & Johnson, Municipal Administration in the Roman Empire 59. Below the duoviri were the two aediles, who superintended the markets, the games, and the repair of roads, streets, and public places. The duoviri and aediles together were at times known as quattuorviri (four chief men). The treasury was managed by quaestors, usually two in number. Abbott & Johnson, supra at 59. These officers, unless chosen by the emperor as his prefects, were taken from among the decurions, members of the municipal council or senate, which is more fully considered at C. 10.32 et seq. The officers were originally elected by the people at popular elections; but these positions soon became a burden, rather than an honor, and popular election fell generally out of use, and a nomination came to be equivalent to an election, the predecessor nominating his successor and becoming thereby responsible for the acts of his successor. The person chosen was required to accept the office, unless exempt, and acted for one year, unless, as a punishment for attempting to evade his duty, he was compelled to serve for two years. 3 Bethmann-Hollweg 194-195.

The city (civitas) consisted not only of the city proper, but ordinarily also of surrounding territory which itself had villages and districts, with their own prefects whose power was, however, limited, and confined to police and administrative duties. The judicial power was confined to the municipal magistrates, and mainly to the duoviri. Originally large, at least in some cases, it came to be confined to minor matters, not large enough to trouble the governor, the ordinary judge with plenary power, therewith. Only minor criminal matters were dealt with by the former; persons accused of larger crimes were required to be delivered over to the governor. In civil matters, too, the municipal magistrates dealt only with cases involving a limited amount and they had no power to put a creditor, or creditors, in possession of property out of which debts could ultimately be satisfied, as the governors could do; they could not require security or grant to anyone restitution of his rights. They were authorized, however, by Constantine to grant the right of possession of an inheritance to an heir, a subject fully dealt with at C. 6.9 and the headnote thereto. Appeals from their decisions in cases tried before them were taken to the governor. Headnote C. 7.61. They were further authorized to appoint guardians in conjunction with the municipal council and make and solemnize documents and records of transactions between men. 3 Bethmann-Hollweg 105-107. The municipal magistrates were, accordingly, the lowest order of judges in the empire. After them came the governors, and after them the judges or worshipful rank, the highest order being those of illustrious rank, chief among whom was the praetorian prefect. All of these are mentioned in the preceding titles. See for a general outline of the courts, headnote C. 3.13; for referees, C. 3.33, and for arbitrators, C. 2.55.

Curators (of the city—rei publicae or civitatis). Commencing with about the time of Trajan, the emperors began to interfere more and more with municipalities, and particularly with their financial and economic affairs, and this was doubtless done because it was felt that it was necessary to curb their extravagance. So we find that the office of curator of the city (rei publicae, later civitatis) became general during the course of the second century of this era. This officer came later also to be called father of the city or logistes. He was originally appointed by the emperor. In 331 A.D. (C. Th. 12.1.20), it was provided that he should yearly be chosen from among the decurions who had performed the services which they owed to their city. He did not supplant the other municipal officers, but was superior to them and may be described as the head of the city. He had charge of the administration of the finances; supervised the markets; looked after the building regulations, and over the economic affairs of the city generally. He had more or less police powers in connection with the administration of the criminal laws; but he could not assess any fines. C. 1.4.3. Grave offenses were required to be reported to the governor of the province. While he, as the head of the municipality, overshadowed the other officials and, doubtless in many cases practically supplanted them, so he in turn came to be overshadowed by the defender, of whom we first hear in 364 A.D. The office of the curator of the city, however, continued to exist, at least in many cities, down to and including the time of Justinian, for it is mentioned in both Novels 75 and 128, c. 16. At that time he was selected by the bishop, primates, and landowners, and the selection was confirmed by the emperor. But the office must have been of minor importance at that time. See also headnote C. 10.32.

Defender of the city. In the first half of the fourth century, we find the office of the defender of the city (or of the people, or of “places”) in Egypt; and this office was established in Illyria in 364 A.D. (C. Th. 1.29.1) and in other parts of the empire soon thereafter. It seems that it was created mainly to offset the growth of private patronage (C. 2.13.14; C. 10.54) on the part of magnates in the empire, which was undermining state and civil authority and imposed serious hardships on citizens. He was, at first, specially charged with the protection of the lower orders of society against illegal exactions and other abuses. In the beginning, each city probably had a defender, but in some cases a defender of a large city also acted as such in the neighboring smaller ones. He was originally nominated by the praetorian prefect and confirmed by the emperor, but later on was selected by the people of the municipality, and his nomination confirmed by the praetorian prefect. C. 1.55.8.11. Only persons of high standing could at first hold the office, but that came to be changed entirely, as is clearly shown by Novel 15. At first the office was held for life; later for five years, and according to Novel 15, for two years. The defender had free access to the governor, and these and other facts gave him such prestige that the other municipal authorities came to be completely overshadowed, and by the beginning of the fifth century A.D., he was the sole municipal magistrate in many towns. Several laws of the instant title, especially when compared with the provisions of the Theodosian Code from which they were taken, indicate that during Justinian’s time, the defender was the sole important magistrate in nearly all the cities and towns, he and the bishop absorbing all of the judicial authority vested in municipal courts, and most of the administrative authority. Among his powers may be mentioned the following: to make documents and register them—that is to say, spread them at length upon his records, and his office became, perhaps, the most important registration (recording) office

in the various portions of the empire; to take down and note upon his records various complaints that might be made against other officers of the empire; to see that no injustice was committed in connection with the assessment and levy of taxes; to force the collection of taxes in some cases; to oversee the market and see to the provisioning of the city with necessaries of life; to preserve the peace of the city, cause offenders to be arrested, punish minor offenses and send grave offenders to the governor; to exercise jurisdiction in civil cases involving not more than 300 gold pieces. By the time of Justinian, the office had fallen into decay, and the defenders had become mere tools of the governors. That emperor, accordingly, found himself compelled to reorganize the office, which he did by Novel 15. See generally, Abbott & Johnson, supra 92, 93, 195, 201, 205; 3 Bethmann-Hollweg 107-112; 4 Pauly-Wissowa 2356-2371.

1.55.1. Emperors Valentinian and Valens to Seneca, defender.

If anyone believes that he should appeal to you in small and unimportant matters, that is in an amount up to 50 solidi, you may make judicial records thereof; so that if anyone demands a just debt (to the amount mentioned) or a slave who has escaped by flight, or repayment of an amount paid beyond that authorized, or anything of that kind, you may restore that by your investigation and decision. But other matters which are worthy of a (higher) court, you will refer to the rector.

Given at Tyricus June 27 (365).

C. Th. 1.20.20.

Note.

The oral statements and the orders of the presiding judge or magistrate in a proceeding in court were taken down in writing, constituting records of the proceedings. Hence the phrase “to make records” (acta conficere) was used to express a judicial proceeding. 3 Bethmann-Hollweg 108.

Justinian extended the jurisdiction of these officers. They were authorized to try civil cases involving not more than 300 gold pieces. Novel 15, c. 3. They were also given jurisdiction over minor criminal matters. Novel 15, c. 6. Appeals from their decisions lay to the governor of the province. Novel 15, c. 5.

1.55.2. The same Emperors to Prou, Praetorian Prefect.

The defenders of cities shall be appointed to this office, not from among the body of the decurions or the officials of the governor (cohortalini), but from among other suitable persons.

Given November 3 (about 368, 370, or 373).

C. Th. 1.29.3.

Note.

This law was modified by Justinian, and all men of good standing in the city were made eligible, and were, if elected, required to serve. Novel 15, c. 1 and epilogue. No person, however, not of the orthodox faith could be elected. Laws 6 and 11 of this title.

They were originally appointed by the praetorian prefect and confirmed by the emperor. In 387 A.D. the nominations were made by the municipal council or senate subject to the emperor’s approval. C. Th. 1.29.1;3;6. Later the bishop, clergy, titled persons (honorati), landowners, and curials elected them. Laws 8 and 11 of this title. Justinian, by Novel 15, provided that they should be elected by the bishop, clergy, and other persons of good standing, by rotation from a register of suitable candidates, the election to be confirmed by the praetorian prefect.

1.55.3. The same Emperors and Gratian to the Senate.

It has been determined for good reasons that the artless and peaceful country folks should enjoy the special benefit of protection of the defender of the place, and they shall have the right to litigate civil matters before him.

Given at Hieropolis August 10 (373).

C. Th. 1.29.5.

1.55.4. Emperors Gratian, Valentinian and Theodoisus to Theodorus, Defender of the city.

The following shall be the rule of administration of all defenders (of cities) in all the provinces, who are to serve for five years (namely): you should first of all act as parent to the common people, suffer neither the country nor city folks to be afflicted by exactions, oppose insolence of officers and the impudence of magistrates while acting with due deference toward them; go before the judge at will, ward off the damage of extra exactions and the prey of those who make unjust demands from those whom you should protect as your children, and do not permit anything beyond the regular tax levy (delegationem) to be extorted from them. For it is certain that without such remedy, there is no help for them.

Given at Constantinople January (385).

Note.

The term of office of the defender was changed by Justinian, and he made the regular term two years, with the right and duty to serve again under certain conditions. Novel 15.

1.55.5. Emperors Valentinian, Theodosius and Arcadius to Potamius, Augustal Prefect.

The defenders, assuming no insolent or undue roll, shall only perform the function true to their name; they shall inflict no fines and carry on no severe investigations. They shall shield the common people and the decurions from the insolence and impudence of the wicked, so that they may not cease to be what they are said to be.

Given at Constantinople March 5 (392).

C. Th. 1.29.7.

Note.

By Novel 15, the defender was given power to [hear] criminal cases of minor importance, which, doubtless, carried with it to assess small fines.

1.55.6. The same Emperors to Tatian, Praetorian Prefect.

In the district in which a reckless madness of robbers, unmindful of their won peril, rages, the tried and stern defenders shall look after discipline and oversee the daily transactions. They must not permit unpunished crimes to grow in strength (coalescere). Patronage must be abolished, which, by imparting fervor to the guilty and giving help to criminals, has accelerated crimes.¹

Given at Constantinople April 9 (392).

C. Th. 1.29.8.

¹ This represents a mix of Blume's typed original and penciled changes, the latter of which do not make grammatical sense by themselves. His original read: "by favoring the guilty and giving help to criminals, will further crimes."

Note.

The patronage here mentioned was the patronage extended by persons of influence and power, more fully considered at C. 2.13 and 14, and C. 11.54. According to this law, the defender was expected to see that order was maintained and that the laws were obeyed.

1.55.7. Emperors Arcadius and Honorius to Caecilianus, Praetorian Prefect.

Defenders of cities, when persons apprehended in the act of robbery, in a meeting of violence, or perpetrated homicide, debauchery, rape or adultery, are brought before them, and records showing the crime having been made, they shall send those delivered to him (sibi traditos), together with their accusers, under proper escort, to the proper court.²

Given at Milan December 31 (405).

C. Th. 9.2.5.

Note.

According to Novel 15, the defenders were given jurisdiction in minor criminal cases. In all other cases, they were required to send the accused to the governor of the province, who had plenary jurisdiction. The public records here mentioned seem to have been the records of the accusation or complaint made before the defenders, for they had the right to make records of such complaints. But the passage relating thereto is obscure. See Gothofredus on C. Th. 9.2.5. When the accusers came before the defender and made complaint, and the accused were delivered over, they were sent to the president under proper escort. See generally on this subject, note C. 9.2.7 and authorities there mentioned.

1.55.8. Emperors Honorius and Theodosius to Caecilianus, Praetorian Prefect.

We direct that defenders of cities shall be selected by the reverend bishop, the clergy, dignitaries, landed proprietors, and curials from among those imbued with the sacred mysteries of the orthodox religion. The appointment must be reported to the illustrious praetorian prefect so that it may be confirmed by a letter from that high office. 1. if the defenders shall learn that anything has been done by any person whatever, contrary to public law, to the injury of landed proprietors, they shall have the right to report that fact to the illustrious praetorian prefects, the illustrious masters of cavalry and infantry, the masters of the offices, and the counts of the imperial exchequer, and of the Crown Domain.

Given at Ravenna January 21 (409).

1.55.9. The same Emperors to Caecilianus, Praetorian Prefect.

We order that thru the care and attention of the defenders, land owners shall be kept from being burdened by tax collectors (susceptoribus) by undue measures and weight, and they (the tax collectors) apprehended (in such act) shall be taken before a competent court with a statement of the fraud committed. 1. And, further, if our provincials who desire to (publicly) declare their injuries and wrongs, should, by the

² Blume made substantial changes to his original translation of this law. The original read: "Defenders of cities, when persons apprehended in the act of robbery, violence, homicide...are brought before them, and are turned over to them along with public records showing the crime, shall send them (the accused), together with their accusers..." Scott refers here to "...persons who, by favoring criminals, and by affording encouragement to wicked persons, permit offenses to be perpetrated." 6 [12] Scott 163.

defenders, be denied the right to have a record made thereof, they may post up their (written) complaint of the same tenor as the declaration above mentioned, in the most frequented place of the city, summon the scribes, the city clerk (tabularius), and other public officials, by whom the written complaint must be received even against the wish of the persons aforesaid, and shall be made (ingeri) a matter of record, by the examination of which the truth may be inquired into, and when this (the truth) is shown, judicial severity will be visited upon those who are shown to have denied the right to make the complaint a matter of (public) record.
Given at Ravenna January 21 (409).

Note.

It may be noted here that the defender, as protector of the people, was required to make a record of the complaints of the people, which was, doubtless, for the purpose of providing permanent and authentic proof of the facts of which a record was made. See Steinwenter, Beiträge 47. If they refused to make such a record, a written statement could be posted in a public place, and the scribes and the city clerk and other public officials were then required to inscribe it in their records. This shows that the officials here mentioned were concerned with public records. See C. 10.71. Such records subserved various purposes (see note C. 1.56.2), and it seems to have been a policy to require, or make public records advisable, for the purpose of furnishing proof or for other purposes.

1.55.10. Emperors Theodosius and Valentinian to Cyrus, Praetorian Prefect.

We order that no defender shall be permitted, though he wishes, to withdraw from his public function, unless he has filed an imperial rescript (relieving him) in the tribunal of your Sublimity. 1. The moderators of the provinces, the other judges, and the violators of our imperial order, shall be punished by a fine of 30 pounds of gold, if the imperial authority is neglected.

Given at Constantinople August 18 (441).

Note.

The defenders could not resign. They could be relieved only by the emperor. See also Novel 15, epilogue.

1.55.11. Emperor Anastasius to Eustathius, Praetorian Prefect.

We order that only those shall be installed to perform the functions of defenders who, initiated into the mysteries of the holy, orthodox religion, first acknowledge that fact by statement under oath, to be made of record, in the presence of the pious bishop of the orthodox faith. We direct that they shall be installed only after election by the reverend bishops, clergy, titled persons (honorati), land owners and curials.

Given April 19 (505).

Note.

This law is a duplicate of C. 1.4.19. The manner of election of the defenders is fully mentioned in note to law 2 of this title. That they were required to belong to the orthodox faith is also stated in law 8 of this title.