

P. GARNSEY, Social status and legal privilege
in the Roman empire (1970)

THE VOCABULARY OF PRIVILEGE

THE jurists of the classical period of Roman law presented Imperial society as divided into two main groups, of higher and lower status.¹ This is commonly referred to as the *honestiores/humiliores* distinction.

This particular formula is in fact only one of several that occur in the sources. It is by far the most popular one in *Paul's Sentences*, but that is a late third-century work.² In texts from the Severan period or before there is no single occurrence of the terms *honestiores* and *humiliores* in combination.³ Papinian, reporting a rescript of Pius, used *honestior* and *humilioris loci*, a close approximation.⁴ Again, Marcianus, writing of the Cornelian law *de sicariis et veneficiis*, contrasted the penalty for *honestiore loco positi* or *altiores* with that for *humiliores*.⁵ It is normal for *honestiores* or *humiliores* to be balanced by another phrase altogether; or a cognate adjective is found qualifying a noun,⁶ sometimes in a participial construction,⁷ sometimes in a full clause.⁸

When lawyers dealt in general terms with the subject of legal discrimination, they preferred to say that consideration was given, or should be given, to the *persona*—in particular to the *persona* of

¹ Other divisions are also given recognition, e.g. the division between free men and slaves. See pp. 260–1.

² Refs. in Cardascia, art. cit. 324 n. 1 (*honestiores*); 325 n. 9 (*humiliores*). See G. G. Archi (and others), *Pauli Sententiarum fragmentum Leidense* (1956), 57 (R. Marichal), for the date.

³ Cardascia, art. cit. 324, thinks of *Paul's Sentences* as Severan in date.

⁴ *Dig.* 48. 5. 39. 8. Note the singular *honestior* (cf. 47. 18. 1. 2), and the use of a noun with *humilis* (cf. *Gai. Inst.* 3. 225; *Dig.* 48. 19. 28. 11). See also *Dig.* 47. 9. 12 and 47. 12. 11 = *PS* 5. 19A (both *humilior*); 2. 15. 8. 23; 48. 8. 3. 5; 48. 13. 7 (all *honestior*). For the superlative, again with a noun, *Coll.* 12. 5. 1 (*humillimus*). For *humilis* standing alone see *Dig.* 4. 3. 11. 1.

⁵ *Dig.* 48. 8. 3. 5.

⁶ See n. 4 above.

⁷ *Dig.* 48. 8. 1. 5 (*humiliore loco positum*); Pliny, *Ep.* 8. 6. 16 (*honesto loco nati*).

⁸ *Dig.* 47. 14. 1. 3 = *Coll.* 11. 8. 3 (*qui honestiore loco nati sunt*); cf. *Dig.* 48. 13. 7 (*si h. l. natus sit*).

the accused. Penalties for crimes, for example, were awarded in part *pro persona*.¹ Sometimes the word *persona* is understood: *pro dignitate* is shorthand for *pro dignitate personae*, *pro condicione* for *pro condicione personae*, and so on. In the same way, *personae* should be supplied with *honestiores* and *humiliores*. The notion of *persona*, then, is primary.

'*Humiliores*' and synonyms. Words or phrases which stand for *humiliores* include (*qui*) *humiliores loco positi (nati) (sunt)*,³ *plebeii*, *tenuiores*,⁴ and variants on these.⁵ *Liberi plebeii* and *humiles personae* have similar meanings.⁶

What is a *plebeius*? Gaius' definition of *plebs* is broad: the rest of the citizenry excluding senators (*ceteri cives sine senatoribus*).⁷ If this statement were given a provincial or municipal setting, 'plebeians' would turn out to be the bulk of the citizen population, excluding the decurions.⁸ There is a clear contrast in legal texts between penalties for decurions and those for plebeians.⁹ Indeed, a whole group of penalties is labelled *plebeiorum poenae*.¹⁰ These are the sorts of penalties which might be applied to slaves.¹¹ In addition, *plebeius* is found opposite *consularis receptae auctoritatis*,¹² *honestior*,¹³ and (in company with *humiliore loco natus*) a long list of officials.¹⁴

*Tenuiores*¹⁵ is rare in the classical period but common in later texts, where it stands for free men of low status, habitually subject to oppression by *potentiores*. Such oppression was not, however,

¹ *Dig.* 47. 21. 3. 2 (Call.); cf. 48. 19. 16. 1 ff. (Cl. Sat.). See also Gai. *Inst.* 3. 225; *IJ* 4. 4. 9.

² It is explicit in *PS* 1. 21. 5 and 12; 2. 19. 9; etc.

³ See p. 221 nn. 4-5, 7-8 above.

⁴ See nn. 7-15 below.

⁵ Add (*liberi*) *sordidiores* (*Dig.* 47. 9. 4. 1).

⁶ *Dig.* 48. 19. 28. 11.

⁷ *Dig.* 50. 16. 238 praef. The editor bracketed *senatoribus*.

⁸ Gaius' definition has an archaic flavour, perhaps due to the fact that his work is a commentary on the *XII Tables*. It would have been out of place under the Empire to call an equestrian a 'plebeian'.

⁹ *Dig.* 48. 19. 10. 2; 50. 2. 2. 2.

¹⁰ *Dig.* 48. 19. 28. 11.

¹¹ *Dig.* 47. 18. 1. 2.

¹² *Dig.* 48. 19. 28. 2 (*liberi . . . et . . . tenuiores homines/honestiores*). See Cardascia, art. cit. 308 n. 2. Note *Dig.* 50. 4. 6 praef., where *tenuis* is used of impoverished decurions.

¹⁰ *CJ* 9. 41. 11 praef.

¹² *Dig.* 4. 3. 11. 1.

¹⁴ *PS* 5. 4. 10.

a peculiar feature of the late Empire.¹ The references of *potentiores* and *honestiores* are not identical.²

'*Honestiores*'.³ *Honestiores* is connected with *honor* or *honos*. The noun itself appears occasionally in phrases that describe the privileged groups, such as *in honore aliquo positi*.⁴ Here the word *honor* seems to refer quite closely to an official position or office.⁵ Again, *propter honorem*, high-status defendants are granted a freer kind of *custodia*.⁶ The reference is apparently to the 'honour' or esteem which attaches to a member of the higher orders, whether for offices held or for high social standing. Finally, veterans and decurions are held in like *honor*, presumably because their social position is thought to be comparable:

veteranis et liberis veteranorum idem honor habetur, qui et decurionibus.⁷

Political and social predominance are closely linked with moral ascendancy.⁸ *Honestus* and *honestior* have a definite moral flavour. In Cicero's description of an *honestus* in the *Brutus*, moral superiority is nicely combined with success in politics:

cum honos sit praemium virtutis iudicio studioque civium delatum ad aliquem, qui eum sententiis, qui suffragiis adeptus est, is mihi et honestus et honoratus videtur.⁹

The addition of *et honoratus* underlines the respect which is due to the man of the type described.

¹ *Dig.* 1. 18. 6. 2; 5; 47. 22. 1 praef.; *ibid.* 3. 2 (*collegia tenuiorum*); 48. 19. 28. 7.

² On *potentiores* see Cardascia, art. cit. 308-9; J. Gagé, *Les Classes sociales dans l'Empire romain* (1964), 417-24; J. Gaudemet, *The Irish Jurist* 1, n.s. 1 (1966), 128.

³ The earliest uses of *honestiores* in a social sense are to be found in Seneca (*Ep.* 47. 15) and Petronius (*Sat.* 34. 7). Among rare synonyms are *altiores* (*Dig.* 48. 8. 3. 5); *splendidiores personae* (*Dig.* 47. 21. 2); from the fourth century, *maiores personae* (*Coll.* 15. 3. 7); *honorati* (*ibid.*); cf. ἐπιφανέστεροι/ἐλάττωτες (*Dio* 71. 27. 3²).

⁴ *Dig.* 48. 8. 16; cf. *CTh* 9. 16. 6 = *CJ* 9. 18. 7 (A.D. 358) (*honoribus praediti*).

⁵ *Dig.* 50. 4. 14 praef. (*honor municipalis*); 50. 2. 2. 2 (*honor decurionis*); cf. 50. 5. 5 (*a decurionatu, quamvis hic quoque honor est*).

⁶ *Dig.* 48. 3. 1.

⁷ *Dig.* 49. 18. 3; cf. 48. 19. 28. 5 (*honoris reverentiam*).

⁸ See below.

⁹ Cic. *Brutus* 281: 'Since honour is the prize given for virtue by the citizenry out of esteem and affection, he who has won it by their judgement and approbation is in my eyes both honourable and honoured.'

'*Dignitas*'. Cicero provides a definition:

*dignitas est aliquid honesta et cultu et honore et verecundia digna auctoritas.*¹

In this heavily loaded sentence, the emphasis is placed on moral qualities, manner of life, and the esteem which these evoke—or rather command, for *auctoritas* is a full-blooded word, meaning influence or power, the authority which in the Roman context is derived from political leadership.² The word *dignitas* may stand for a particular office, and in this sense it is found in both the singular and the plural.³ Valerian and Gallienus dealt with a case of injury to a priest who was actually wearing the *dignitatis habitum et ornamenta* at the time.⁴ Position or office is perhaps central in *in aliqua dignitate positus*, which is contrasted with *humiliore loco positus*,⁵ or *humiliores*.⁶ But it is often impossible to separate the various shades of meaning possessed by the word: the office itself, the prestige that is acquired through office, the rank in society that an office holder attains to, the quality of his life.

The word was sometimes used with reference to decurions.⁷ Paulus, reporting Pius' ruling that an ex-decurion should not be tortured, commented that the concession was given *in memoriam prioris dignitatis*.⁸ It would be idle to try to decide which sense of the word is the dominant one here. All are in play. While service in the local senate might be called an *honor* in the sense of 'office',⁹ the word *decurio* did not simply designate a particular kind of functionary. It was also an honorific title. *Dignitas* was a suitable word for another reason. *Dignitas* was non-transient and inheritable;¹⁰

¹ Cic. *de inv.* 2. 166: 'Dignity is honourable prestige. It merits respect, honour, and reverence.' Of words of similar meaning, such as *auctoritas*, *amplitudo*, *maiestas*, only the first features in the legal texts.

² See p. 227.

³ See *Dig.* 50. 2. 12. The plural does not always mean 'offices'. See *Dig.* 50. 4. 3. 15.

⁴ *Cf.* 9. 35. 4 (A.D. 259).

⁵ *Dig.* 26. 10. 3. 16.

⁶ *Dig.* 48. 10. 13. 1; 50. 1. 15 praef. Cf., not specifically of decurions, *Dig.* 48. 23. 3; 50. 1. 17. 12; *ibid.* 22. 6; 50. 2. 12; 50. 4. 14 praef.-1; cf. *Dig.* 1. 9. 6. 1; *ibid.* 7. 2; *ibid.* 9; 23. 2. 34. 3 (*dignitas senatoria*).

⁷ *Dig.* 50. 2. 14.

⁸ *Dig.* 50. 5. 5.

⁹ Ch. Wirszubski, *Libertas as a Political Idea* (1950), 37. *Dignitas* in a wife is derived from her husband: *vat. fr.* 104 (Paulus); cf. *Dig.* 1. 9. 1 praef.-1 (*consularis femina*).

a decurion served for life, and, by the Severan epoch, was normally succeeded by his son.¹

Another fringe case where an attempt to categorize achieves little is the employment of *hi qui altioris dignitatis sunt* (opposed to *inferioris dignitatis homines*) and *hi qui inferioris dignitatis sunt* (opposed to *antecedentis gradus homines*).² And is the normal sense of *dignitas* rather than the social sense paramount in the passages which describe the virtues of reliable witnesses: *dignitas, fides, mores, gravitas*?³ A text concerning the *actio de dolo* shows how closely the three senses of *dignitas* are connected:

sed nec humili adversus eum qui dignitate excelleret debet dari (sc. actio): puta plebeio adversus consularem receptae auctoritatis, vel luxurioso atque prodigo aut alias vili adversus hominem vitae emendatoris.⁴

Consular office and rank, the influence in the community which this brings, and the virtuous life all indicate *dignitas*.

'*Conditio*'. *Conditio* appears in many contexts;⁵ in some it stands for social rank. For example, some are debarred from accusing *propter condicionem suam (ut libertini contra patronos)*,⁶ in crimes relating to the pilfering of shipwrecks, as in other cases, the penalty is to be decided *ex personarum condicione (et rerum qualitate)*.⁷ Torture is permissible as a last resort, *si personarum conditio pateretur*.⁸ Those who tamper with the levée-banks of the Nile are punished *pro condicione sua (et pro admissi mensura)*.⁹

¹ See pp. 243 ff., on the social status of decurions.

² *Dig.* 23. 2. 49 (Marcellus). Other occurrences of the word in the *Dig.* in a similar sense include: *Dig.* 1. 5. 20; 1. 9. 1 praef.; 23. 2. 66 praef.; 25. 4. 1. 13; 35. 3. 3. 5; 47. 11. 10; 48. 13. 8. 1; 48. 19. 28. 9; 50. 13. 5. 2.

³ *Dig.* 22. 5. 2; *ibid.* 3. 1; 3. 2; *PS* 5. 15. 1. See J. Ph. Lévy, *op. cit.* (p. 212 n. 3), ii. 29 ff.

⁴ *Dig.* 4. 3. 11. 1 (Ulp.): 'Nor should the action be granted to a man of low rank against one of conspicuous dignity, to a commoner, for example, against a consular of acknowledged prestige, or to a man whose life is wanton and wasteful, or in some other way worthless, against one of exemplary life.'

⁵ Quint. *Inst.* 5. 10. 26: 'condicionis etiam distantia est: nam clarus an obscurus, magistratus an privatus, pater an filius, civis an peregrinus, liber an servus, maritus an caelebs, parens liberorum an orbus sit, plurimum distat.'

⁶ *Dig.* 48. 2. 8; cf. *Cf.* 9. 21. 1 praef. (*libertina conditio*).

⁷ *Dig.* 47. 9. 4. 1.

⁸ *Cf.* 9. 41. 8. 2 (Diocl. and Max.).

⁹ *Dig.* 47. 11. 10.

An attempt has been made by Cardascia to show that *condicio* was not used in any phrase that is relevant to the *honestiores/humiliores* distinction.¹ When *pro condicione personae* appears, the argument runs, it is the dichotomy of free men and slaves, or a trichotomy of *honestiores*, *humiliores*, and slaves, which is in question. Yet in *Dig.* 47. 11. 10 *pro condicione sua* is echoed by *secundum suam dignitatem*. The latter formula, and therefore the former, is one of the many that point to the *honestiores/humiliores* distinction. Moreover, there is no reference here to slaves and to free men. The trichotomy referred to above occurs in *Dig.* 47. 9. 4. 1, where Paulus quotes a rescript of Pius (the interpretation of which is disputed).² Again, the comment that follows the quotation has a wider application than the one case to which the Emperor addressed himself. The words are:

et omnino ut in ceteris, ita huiusmodi causis ex personarum condicione et rerum qualitate diligenter sunt aestimandae.³

Two possible exceptions are dismissed by Cardascia on inadequate grounds. In *PS.* 5. 25. 10 there is no hint of a distinction between slaves and free. The second text, *Dig.* 22. 5. 3 praef., runs:

exploranda . . . condicio cuiusque, utrum quis decurio an plebeius sit.⁴

This is considered irrelevant because the opposition here is allegedly between 'orders' rather than 'classes'. At this point Cardascia's discussion is coloured by his theory about the nature of the categories of *honestiores* and *humiliores*. He claims that the terms represent 'classes' rather than 'estates': *condicio* is held to be the technical term for 'estates'. At this juncture, it is only necessary to say that Cardascia's theory gains no support from the use of the word *condicio* in the legal texts.⁵

¹ Cardascia, art. cit. 336, and n. 1.

² See pp. 163-4.

³ 'In general, in cases of this kind, as in the other cases, a careful assessment should be made on the basis of the status of the person and the nature of the goods.' One of the *ceterae causae* is provided by Modestinus. In *Dig.* 47. 21. 1 he states that there is no longer a fine for moving boundary-stones, 'sed pro condicione admittentium coercionem transigendum'.

⁴ 'The status of each man . . . should be investigated, to ascertain whether he is a decurion or a commoner.' See also *Cf.* 12. 1. 1 (*privata condicio . . . clarissima*).

⁵ Cardascia, art. cit. 332 ff.; see p. 234 n. 1 for criticisms of his theory of the nature of the categories.

Brasiello gave Cardascia a starting-point for his argument, by distinguishing between *condicio* and *status* on the one hand, and *dignitas* on the other. The former, it is argued, stands for personal *condicio* or 'capacità', the latter for social *condicio* or 'stimà'.¹ The above discussion has given grounds for thinking that the distinction was not all-pervasive. *Condicio* and *dignitas* are virtual synonyms in passages that describe preferential treatment, or a difference of penalty.²

'*Auctoritas*', '*gravitas*', '*fides*'. *Auctoritas*, as has been noted, is associated with *dignitas* and is closely connected with office holding.³ Injury is *atrox* when the injured man is a senator, a knight, a decurion, or a man 'signally prestigious in some other way' (*vel alias spectatae auctoritatis viro*).⁴ The last phrase covers such officials as magistrates, aediles, and judges. Again, an action for fraud was not given to a plebeian against a consular 'of acknowledged prestige' (*receptae auctoritatis*).⁵ *Auctoritas* is a quality in a witness which recommends itself to judges.⁶ Another is *gravitas* which denotes constancy, stability, trustworthiness, or *fides*.⁷

'*Existimatio*'.⁸ It is another characteristic of a good witness that he should possess *existimatio*, reputation or good name; it also

¹ U. Brasiello, op. cit. 552 ff.; *If.* 1. 16. 5 shows that *status* and *dignitas* are not synonymous—perhaps *Dig.* 1. 5. 20 does too—but not that there is 'opposition' between the two (just as in the latter text *magistratus* and *potestas* are not opposed). *Status* is commonly used when the condition of a slave is contrasted with that of a free man. e.g. *Cf.* 9. 21. 1 praef.; *Dig.* 1. 5 pass. This applies equally to *Dig.* 40. 15. 3: 'ante quinquennium defuncto status honestior, quam mortis tempore fuisse existimatur, vindicari non prohibetur. idcirco et si quis in servitute moriatur, post quinquennium liber decessisse probari potest.' Despite Cardascia (art. cit. 336 n. 1, incorrect reference), the status of a *liber* is loftier (*honestior*) than that of a *servus* in the same sense that a decurion's surpasses a plebeian's.

² *Cf.* 9. 41. 8. 2 with *PS.* 5. 29. 2; *Dig.* 48. 8. 1. 2 with 49. 16. 6. 1.

³ See above, p. 224; cf. Lévy, op. cit. 63 ff.; F. Schulz, *Principles of Roman Law* (1936), 164 ff., with bibl.

⁴ *PS.* 5. 4. 10.

⁵ *Dig.* 4. 3. 11. 1 (Ulpian/Labeo).

⁶ *Dig.* 22. 5. 3. 2; 4.

⁷ *Ibid.* 2. See Lévy, op. cit. 48 ff. *Gravitas* and *fides* are moral qualities; *ibid.* 92: '*Gravitas* n'a aucune signification juridique.'

⁸ *Dig.* 22. 5. 3. 1; cf. 48. 18. 10. 5. See Brasiello, op. cit. 546. Other words of similar meaning occur primarily in non-legal sources: *fama*, *laus*, *decus*, *nomen*, *gloria*, etc.

connotes status, which stands or falls with *dignitas*. Callistratus writes:

existimatio est dignitatis inlaesae status, legibus ac moribus comprobatus, qui ex delicto nostro auctoritate legum aut minuitur aut consumitur.¹

Callistratus claims for *existimatio* the approbation of law and custom. He does not say that it rests on them, or derives from them.

'Qualitas'. *Qualitas* acts as a variant for *dignitas* or *condicio*, in *pro-qualitate personae*,² and similar phrases.³

'Gradus'. This is another term for social rank. *Humiliore loco* is found opposed to *in aliquo gradu*,⁴ and *in honore aliquo positi* opposed to *secundo gradu*.⁵

'Locus', 'ordo'. These are also status terms. Marcus and Commodus found one Aelius Priscus

tali . . loco atque ordine esse, ut a suis vel etiam in propria villa custodiatur.

He was thus saved from a sojourn in prison in chains.⁶ Phrases such as *honestiore loco natus* are common.⁷

'Fortuna'. In the legal sources there is one relevant passage:

humilioris quidem fortunae summo supplicio adficiuntur, honestiores in insulam deportantur.⁸

Loci might have been written for *fortunae*.⁹

¹ Dig. 50. 13. 5. 1: 'Good name is a condition of unimpaired dignity. It is upheld by law and custom, but again, by the authority of the laws, is diminished or destroyed through our offences.'

² Dig. 48. 13. 7; cf. PS 1. 21. 12; C⁷ 9. 39. 1 (A.D. 374).

³ PS 1. 21. 5 (*pro personarum qualitate*); Coll. 11. 3. 1; PS 5. 18. 1 (*pro qualitate eius*); PS 5. 22. 1 = Dig. 48. 19. 38. 2 (*pro qualitate dignitatis*).

⁴ Dig. 47. 9. 12; cf. Coll. 12. 5. 1 (*humillimo loco/in aliquo gradu*).

⁵ Dig. 48. 8. 16; cf. 23. 2. 49, and see Cardascia, art. cit. 326 n. 8.

⁶ Dig. 1. 18. 14: 'is of sufficient status and rank to be guarded by his own family and in his own house.' For *ordo* see also C⁷ 5. 4. 10 (Diocl.): *claritas/secundi ordinis virum*. Cardascia (art. cit. 336) found the term *ordo* irrelevant to the *honestiores/humiliores* distinction (cf. *condicio* and *status*).

⁷ Dig. 47. 9. 12. 1; 47. 14. 1. 3 = Coll. 11. 8. 3; 48. 8. 3. 5; 48. 13. 7; Coll. 12. 5. 1; cf. Dig. 47. 10. 45 and 48. 5. 39. 8.

⁸ PS 5. 19A = Dig. 47. 12. 11: 'Those defendants who are of humble circumstances are given the ultimate penalty, while men of rank are deported to an island.' Cf. Tac. Ann. 2. 72 (Germanicus).

⁹ For the broad application of the word *fortuna* see Cic. de inv. 1. 24. 34-5;

'Genus', 'mores', 'facultates'

For the rhetoricians birth, moral qualities, and wealth were three of the more important aspects of a person from which arguments in law courts could be drawn.¹ The legal documents reflect this.

'Genus'. In the *Acta Hermaisci*, the Emperor Trajan is represented as provoked by the insults of a defendant, the Alexandrian gymnasiarch Hermaiscus, into crying out: 'You answer me wilfully, trusting in your birth (sc. to protect you)' (*ἀσθαδῆς ἀποκρίνη πεποιθῶς τῷ σεαυτοῦ γένει*). This was Trajan's second warning. It is uncertain whether Hermaiscus thought his lineage would influence Trajan in his favour. The Emperor at least was aware of it.²

In the *Digest*, high birth is mentioned among qualifications for privilege, in formulae such as *qui honestiore loco nati sunt*.³ In addition, there are a number of texts in which sons of decurions, veterans, and others are specifically protected from 'plebeian' penalties.⁴ The implication may be that the principle that privilege was inheritable was not universally accepted; but it does seem to presuppose the existence of the principle.

2. 9. 30. Still under the heading *persona*, the age of a defendant sometimes secured a milder penalty: Dig. 47. 21. 2; 48. 13. 7; 48. 19. 16. 3; or, for that matter, it might disqualify a man from accusing: Dig. 48. 2. 8. Sex could carry the same advantages and disadvantages: Dig. 48. 13. 7; cf. 48. 2. 8; and see 1. 5. 9. But wives of *honestiores* could probably expect privileged treatment, see *vat. fr.* 104 (Paulus); so could daughters (e.g. C⁷ 9. 47. 9), if they did not marry below their station: Dig. 1. 9. 8 (daughter of senator); cf. *ibid.* 6. 1 (son of senator).

¹ *Genus*: Quint. Inst. Or. 5. 10. 24 ff.; Cic. de inv. 2. 35. 107; 1. 24. 34-5; Auct. ad Herenn. 3. 6. 10; 13. *Mores*: Quint. Inst. Or. 5. 10. 24 ff.; 7. 2. 33. *Facultates*: *ibid.* 5. 10. 26; Cic. de inv. 1. 24. 34; Auct. ad Herenn. 3. 6. 10.

² *Acta Hermaisci*, P. Oxy. 1242, col. iii, l. 44, in H. A. Musurillo, *Acts of the Pagan Martyrs* (1954), viii. 45 (text) and 177 (comm.); cf. *Acta Athenodori*, P. Oxy. 2177, fr. 2, col. ii, l. 55, in *Acts* x. 61; and *Acta Appiani*, P. Oxy. 33, col. iv-v, ll. 15 ff., in *Acts*, xi. 67.

³ Similarly, low birth was a disqualification: Dig. 47. 14. 1. 3 = Coll. 11. 8. 3; 48. 13. 7 fin.; C⁷ 9. 41. 9 (A.D. 290): 'ne alieni forte sordidae stirpis splendidis et ingenuis natalibus audeant subrogari.' ἀγενής/εὐγενής: C⁷ 2. 11. 16 (A.D. 240); cf. *Acta Athenodori* and *Acta Appiani* (last note). *Genus*: CTh 9. 35. 1 = C⁷ 9. 8. 4 (A.D. 369).

⁴ Decurions: Dig. 50. 2. 2. 2; C⁷ 9. 41. 11. 1; 9. 47. 9 (daughter). Veterans: Dig. 49. 18. 3; C⁷ 9. 41. 8; 9. 47. 5.

Eminentissimi viri, *perfectissimi viri*: C⁷ 9. 41. 11 praef. (sons, grandsons, and great-grandsons).

'*Mores*'. According to Quintilian, there is sometimes a causal connection between birth and manner of life:

genus, nam similes parentibus et maioribus filii plerumque creduntur, et nonnumquam ad honeste turpiterque vivendum inde causae fluunt.¹

Ulpian underlined the word *nonnumquam* with an example of a base father who produced an upright son. It is significant that Ulpian considered that a son's traditional subservience to a father before the law² could be waived if there was a dispute between them:

interdum tamen putamus . . . iniuriarum actionem filio dandam, ut puta si patris persona vilis abiectaue sit, filii honesta.³

That public *mores* exercised a regulative function in Roman society hardly needs stating. There is a recognition of this in a rescript of Caracalla, in which *mores* is placed beside *leges* and *constitutiones*:

pacta, quae contra leges constitutionesque vel contra bonos mores fiunt, nullam vim habere indubitati iuris est.⁴

But *mores* played this role already under the Republic. It was written in the praetor's edict that an *actio iniuriarum* would be given for *convictum* (abuse) which was judged to be *adversus bonos mores*.⁵ A ruling of Severus illustrates how *mores* could supplement *leges*. There was nothing illegal about the marriage of a freedman with his patroness, or with the daughter, wife, granddaughter, or great-granddaughter of his patron. But Severus considered it out of keeping with the *mores* of his times.⁶

¹ Quint. *Inst. Or.* 5. 10. 24: 'with regard to birth, sons are commonly thought to be like their parents and ancestors, and sometimes this is the reason for the honourable or dishonourable quality of their lives.' If possible, the defendant's counsel should demonstrate his client's *vita integra*. See *Auct. ad Herem.* 2. 3. 5; cf. Quint. *Inst. Or.* 7. 2. 27 ff.

² e.g. *Dig.* 48. 19. 16. 3; cf. *IJ* 4. 4. 9 (*atrox iniuria*); *Dig.* 4. 3. 11. 1 (*actio doli*). For the unequal relationship of *libertus* and *patronus* see *Dig.* 4. 3. 11. 1; *IJ* 4. 4. 9; *Dig.* 47. 10. 7. 2 and *ibid.* 11. 7; *CJ* 5. 4. 3. Cf. *PS* 2. 19. 9.

³ *Dig.* 47. 10. 17. 13: 'We can imagine the situation arising on occasion where an action for injury should be granted to a son, as when the father's character is base and worthless, and the son's honourable.'

⁴ *CJ* 2. 3. 6 (A.D. 213): 'It is undoubtedly part of law that settlements which are made contrary to enactments and constitutions and canons of good conduct have no force.'

⁵ *Dig.* 47. 10. 15. 2; 5; 6; 20; 23; 34; 39; cf. 4. 2. 3. 1.

⁶ *CJ* 5. 4. 3 (A.D. 196).

The *mores* of a potential accuser,¹ and also of a witness,² were subject to scrutiny by the judge. In the case of a witness, the judge was urged to make inquiry 'et an honestae et inculpatae vitae, an vero notatus quis et reprehensibilis'.³ Some would-be witnesses were ruled out 'propter notam et infamiam vitae suae'.⁴ This last statement of Callistratus follows the citation of a section of the Julian law on violence. The law contained a list of those prohibited from giving testimony. The *intestabiles* are mostly *infames*, that is, they belonged to a category of persons who lacked various legal prerogatives which citizens normally possessed. Either a criminal record or the exercise of certain sordid practices had placed them in this category.⁵ Apart from legal disqualifications, harsher penalties were traditionally their lot, according to Callistratus:

maiores nostri in omni supplicio severius servos quam liberos, famosos quam integrae fama homines punierunt.⁶

The terms *infames* and *famosi* are apparently coextensive.⁷

The concept of a man *honestae et inculpatae vitae* as one who has not besmirched his name is somewhat negative. Other texts mention more positive attributes.⁸ More interesting for present purposes is the use with a moral sense of the adjective *honestus*—and also of the noun *honestas*, for *honestas* and *existimatio* are put forward as qualities of a trustworthy witness.⁹ In Ulpian's hypothetical confrontation of father against son the *persona vilis abiectaue* of the one is pitted against the *honestas (persona)* of the other. Again, *honestum* appears as an antonym of *adversus bonos mores*, in a passage that recalls in subject-matter the rescripts of

¹ *Dig.* 48. 2. 16 (accusers); see also Gellius 14. 2. 5 ff.; 10 ff.; 21 ff. (both parties). See pp. 210–11.

² *Dig.* 22. 5. 2.

³ *Ibid.* 3 praef.: 'whether the man was of honourable and blameless life, or whether he had suffered disgrace and was deserving of censure'.

⁴ *Ibid.* 3. 5: 'because of the shame and notoriety of their lives'.

⁵ *Infames*: see, for a brief discussion, W. W. Buckland, *Text-Book of Roman Law*³ (1963), 91 ff.

⁶ *Dig.* 48. 19. 28. 16: 'Our ancestors, in every case of punishment, have awarded harsher penalties to slaves than to free men and to men of bad reputation than to men of unblemished name.'

⁷ See, e.g., *Dig.* 48. 2. 13; 48. 4. 7 praef. (*famosi*); cf. *Coll.* 4. 4 (*infames*).

⁸ *Dig.* 22. 5. 3 praef.

⁹ *Ibid.* 21. 3.

Caracalla and Severus quoted above. Modestinus ruled out certain types of marriage partners for the daughter of a senator with the words:

semper in coniunctionibus non solum quid liceat considerandum est, sed et quid honestum sit.¹

That a word with a basically moral meaning, *honestus*, should have been chosen to describe men of distinguished social position, *honestiores*, demonstrates that, in Roman eyes, there was more than a contingent connection between social position and moral values.²

'*Facultates*'. *Honestus vir* is synonymous with *vir locuples* in a passage of Ulpian:

cum Titio honesto viro pecuniam credere vellem, subiecisti mihi alium Titium egenum, quasi ille esset locuples, et nummos acceptos cum eo divisisti: furti tenearis . . .³

Idoneus is used for *honestus* in a parallel passage, and is perhaps the more common word in such contexts.⁴

Amplissimae facultates might keep a man out of prison.⁵ A wealthy defendant could be entrusted to *fideiussores*, no doubt partly because he would be less inclined to run away and abandon his estate. Again, a rich man could expect not to be beaten.⁶ This exemption was not granted simply because he could pay damages; it was a prerogative accorded to status.

In contrast with *honestus* and *idoneus*, *locuples*⁷ (*locupletior*)

¹ *Dig.* 23. 2. 42: 'With regard to marriages, it is always necessary to consider not only what is lawful, but also what is honourable.' Cf. 50. 4. 6 praef.; Tac. *Dial.* 10. 5; Pliny, *Ep.* 10. 31. 3; etc.

² Moral words were commonly used in the Republic to describe political groups, e.g. *boni*, *optimates*, *improbi*. See Cic. *ad Att.* 1. 13. 2-3; 14. 1 and 5-6; 16. 3 and 5-7; etc.

³ *Dig.* 47. 2. 52. 21: '(Suppose that) when I wanted to entrust some money to an honourable man, you provided me with someone who was poor, pretending the while that he was rich, and you then divided the money received with him. You could be sued for theft.'

⁴ *Ibid.* 67. 4; cf. 47. 9. 9, and perhaps, 48. 10. 18. See espec. *Auct. ad Herenn.* 3. 4. 7 ('ab idoneis hominibus . . . honestiori ordini'). The Greek counterpart of *locuples/idoneus* is *εὐπόρος/ἐπιτιμῆδεις*. See *P. Oxy.* 1405, ll. 22-3 (A.D. 200); cf. *PSI* 1160 (first cent. B.C.).

⁵ *Dig.* 48. 3. 1.

⁶ See pp. 138 ff.

⁷ e.g. *Dig.* 22. 5. 3 praef. (*locuples/egens*).

and *possessor*¹ are relatively neutral, descriptive terms. The use of the first two for men of means illustrates the well-known truth that the possession of wealth gave access to the governing élite; the use of the last two testifies to the significance of wealth in the eyes of the law.

¹ *Dig.* 50. 9. 1. See p. 257.

II

CITIZENS AND HONESTIORES

THE *honestiores/humiliores* distinction was not the only distinction of which Romans took account in administering the law. Callistratus wrote that slaves were traditionally punished more severely than free men, and men of bad reputation (*famosi*) more severely than men of good reputation (*integrae famae homines*).¹ The latter division is clearly not the distinction between *honestiores* and *humiliores* in one of its guises: the differential punishment of *famosi* and *integrae famae homines* reveals something about the moral and social attitudes of the Romans, but nothing directly about their view of status.² The former division was, according to Gaius, the basic one in the law of persons:

et quidem summa divisio de iure personarum haec est, quod omnes homines aut liberi sunt aut servi.³

Callistratus' statement that slave criminals were treated more severely than free men needs no elaborate comment.⁴ Certain

¹ Dig. 48. 19. 28. 16: 'maiores nostri in omni supplicio severius servos quam liberos, famosos quam integrae famae homines punierunt.'

² Cf. Dio 56. 10. 1: different penalties for bachelors and for married men. This is relevant to a discussion of Augustan social legislation, but not to the Roman view of status.

³ Gai. *Inst.* 1. 9: 'This is the basic division in the law of persons, that all men are either free or slaves.' *Servus/liber*: see Gellius, 11. 18. 8 = *XII Tables* 8, 14; *Coll.* 2. 5. 5 = *XII Tables* 8, 3; Dig. 47. 9. 4. 1; 48. 10. 8; 48. 19. 10 praef.; *Cf* 9. 47. 6; *FIRA*² i, no. 104, p. 498, §§ 5-7 (*lex metalli dicta*; Hadrian). *Servus/ingenuus*: *CTh* 9. 18. 1 = *Cf* 9. 20. 16 (A.D. 315). *Servi/liberi/sordidiores* (sc. *liberi*): Dig. 47. 9. 4. 1. *servi/liberi plebeii et humiles personae*: Dig. 48. 19. 28. 11. *Servi/honestiores/humiliores*: *PS* 5. 25. 1. *Servi/liberi humilioris loci/ceteri* (sc. *honestiores*): Dig. 47. 10. 45. For the division between slave and free in Alexandrian law of the third century B.C. see *P. Hal.* i, ll. 186-213 (= Hunt and Edgar, *Select Papyri* ii, no. 202), espec. 186 ff., 196 ff. (injury).

⁴ On the unequal punishment of the free and unfree see Mommsen, *Strafr.* 1032-3. In Imperial times it was not completely true that the slave was *pro nullo* in civil and praetorian law. But he was only brought into court to be punished or to witness under torture. See Buckland, op. cit. 64; Dig. 28. 1. 20. 7; 28. 8. 1 praef.; 50. 17. 32. See also Dig. 48. 2. 12. 3-4 (slaves in public courts); Dig.

penalties were traditionally 'servile',¹ though, significantly, some of them came to be applied to free men of low status.² But the division between slave and free is too broad for our purposes. There are other divisions that neither Gaius nor Callistratus touches upon.

In A.D. 17 when the senate rounded on astrologers, the citizens among them were exiled, but the foreigners were put to death.³ Again, during the reign of Marcus the governor of Lugdunensis separated Christian citizens from aliens, and after consulting the Emperor about their punishment, sent only the latter to the beasts, with the exception of Attalus, a citizen.⁴ Citizens, then, might secure a milder penalty than aliens for the same offence.

Further, it was a basic principle of Roman law that aliens, being outside the *ius civile*, were subject to magisterial coercion (*coercitio*). Citizens, on the other hand, could in theory seek the aid of a tribune or exercise the right of appeal (*provocatio*) against magistrates. St. Paul's cry, 'Is it lawful for you to scourge a Roman citizen, uncondemned?' alarmed the tribune and enabled him to escape a beating in Jerusalem during the reign of Nero. Previously he had caused embarrassment to the local magistrates of Philippi by revealing his citizen status after suffering a beating and imprisonment.⁵ Much later, in the reign of Commodus peasants from an African Imperial estate sent a petition to the Emperor, complaining of ill-treatment from a government official and from their overseers. They had been, among other things, beaten, although some of them were Roman citizens.⁶ Two or three decades later Ulpian cited the clause of the Julian law on public

48. 8. 11. 2 (slaves sent to the beasts only with the permission of a magistrate); *Coll.* 3. 3; cf. Dig. 1. 6. 2 (Pius); Gai. *Inst.* 1. 53 (Pius); *Coll.* 3. 2 (*PS*); *CTh.* 9. 12. 1. 2 (A.D. 326) (all four references show that the restrictions on the master were extended).

¹ Tac. *Ann.* 15. 60. 1, for the phrase *serviles poenae*; and see, e.g., p. 127.

² Dig. 48. 19. 28. 11; *Cf* 9. 47. 6 (A.D. 214, illegally used); *ibid.* 11.

³ *Coll.* 15. 2. 1; cf. Dio 57. 15. 8; Tac. *Ann.* 2. 32. 3. On citizenship see A. N. Sherwin-White, *The Roman Citizenship* (1939), and Kornemann, *RE* s. 1 (1903), 304 ff., s.v. *civitas*. On aliens (*peregrini*) see Buckland, op. cit. 96 ff.

⁴ Eus. *EH* 5. 1. 47.

⁵ St. Paul: Acts 22: 24 (Jerusalem); 16: 37 (Philippi).

⁶ *FIRA*² i, no. 103, p. 496, 11, ll. 10 ff.

violence which dealt with appeal.¹ Further, the subject of appeal is treated at length in the *Digest*. So the peasants were correct in believing that officially, at any rate, appeal was not obsolete in the late Antonine age.

Discrimination in favour of citizens as opposed to aliens was thus a permanent feature of the Roman judicial system. It was practised in all spheres of law where aliens were technically excluded, as from the *ius civile*, and where they were not, as in criminal law as administered by the *cognitio* procedure.

Within the citizen body itself there were some who possessed restricted rights, for example, the *infames* and *intestabiles*, who have already been identified. Larger and more significant than either of these groups is a third, the freedmen.² Inequalities with regard to family rights affecting freedmen were the logical result of the laws relating to slavery, and were not corrected until the second century A.D. As for intermarriage, by Augustus' regulations senators were not permitted to marry women of slave origin.³ Augustus had thus abandoned what appears to have been the Republican practice of preventing marriages between freedmen (and freedwomen) and all other Roman citizens.⁴ In public law, freedmen could not hold Roman magistracies and priesthoods or vote in elections, were forbidden access to the legions, the praetorian guard, and the urban cohorts, and could not rise into the curial and equestrian orders.⁵ In criminal law, the feeling that freedmen were inferior is reflected in punishments awarded by judges proceeding *extra ordinem*. Under Tiberius an attack was made on those who practised Jewish and Egyptian rites in Italy. The free-born were threatened with exile if they did not abandon their practices; freedmen were banished at once.⁶ The failure of

¹ *Dig.* 48. 6. 7.

² Buckland, *op. cit.* 91-2 (*infames*); 92 (*intestabiles*); 87 ff.; cf. A. Watson, *Law of Persons in the Later Roman Republic* (1967), 226 ff. (freedmen).

³ *Dig.* 23. 2. 44 praef.

⁴ Livy 39. 19. 5; Dio 54. 16. 1-2. The reason given by Dio for Augustus' change was the shortage of well-born women. Marriage between freedmen and free-born women was less popular with the authorities. Severus forbade it within the freedman/patron relationship (*CJ* 5. 4. 3). See Watson, *op. cit.* 32 ff.

⁵ A. M. Duff, *Freedmen in the Early Roman Empire*² (1958), 66-7, and refs.

⁶ *Tac. Ann.* 2. 85. 4; *Jos. AJ* 18. 65 ff.

the attempt to incriminate Agrippina, the mother of Nero, ended in the relegation of Calvisius and Iturius, presumably free-born citizens, and the execution of Atimetus the freedman.¹ When Otho wreaked vengeance on the principal supporters of Galba, he had the courage to execute publicly only one of the two powers behind the throne; the other was assassinated before he could reach the island to which he had been exiled. The latter was an equestrian, Cornelius Laco, praetorian prefect; the former a mere freedman, Icelus.² Finally, the weakness of the freedman's position was exposed if his patron was murdered: he could be tortured and put to death.³

If ordinary citizens were favoured above freedmen, citizens of high status were favoured above rank-and-file citizens. This becomes apparent when we consider, first, courts, and second, punishments.

It was suggested in an earlier discussion⁴ that defendants from the senatorial, equestrian, and curial orders gained advantages from trial before the Senate (especially in the case of senators) and before the Emperor. It was observed that 'ordinary' provincials of citizen rank were sometimes tried before Roman courts, but seldom in situations which were favourable to them, and seldom by their own choice. Those provincials who won a sympathetic hearing from the Emperor, whether as defendants or as accusers, seem to have taken the initiative and approached him in person, or to have gained access to him through a governor or through friends in Rome. But they were not exclusively citizens, and those who were citizens had other assets in addition to citizenship. Under the Empire, citizenship itself did not carry with it influence with the governor or connections in Rome, or even the capacity to bear the expense of travel to Rome. Now at an earlier stage, when citizens in the provinces were socially and economically a smaller and more select band, it is possible that the right of *reiectio Romam* was associated with citizenship. That is to say,

¹ *Tac. Ann.* 13. 22.

² *Tac. Hist.* 1. 46.

³ See *Tac. Ann.* 13. 32. 1 (*S.C. Claudianum* of A.D. 57); 14. 42 ff. (murder of Pedanius Secundus, A.D. 61); Pliny, *Ep.* 8. 14. 12 ff. (murder of Afranius Dexter, A.D. 105).

⁴ See chs. 1-3.

citizens might have been entitled to choose between trial at Rome and trial by the local courts. However, the sources give the impression that *reiectio Romam* was far from being a universal prerogative of citizens in the late Republic and early Empire, if it had been at any stage. It seems that by the Ciceronian age, in any particular case (and very few are known), the governor was not compelled to grant the request for reference to Rome, and that only members of the Roman aristocracy domiciled or with interests abroad, and a few individuals who had received the right as a special privilege, were likely to lodge a successful petition.¹

In the sphere of penalties, the legal sources make clear that citizenship did not carry much weight. This may be shown with reference to beating and execution. The African peasants protested at being beaten, but they might have expected it. They were representatives of a group in whose welfare the Emperors might seem to have lost interest long before, *homines rustici tenues*. This phrase, which the peasants applied to themselves, finds an echo in Callistratus, who stated unambiguously that 'hi . . . qui liberi sunt et quidem tenuiores homines' (free men and men of low rank) were liable to be beaten, and that only *honestiores* were exempt. The statement is authoritative, for it repeats the substance of Imperial rescripts.² A rescript of Septimius Severus may have been one of those which Callistratus had in mind. It read:

decuriones quidem, item filios decurionum fustibus castigari prohibitum est.³

Neither jurist nor Emperor was writing of a post-Commodan development. The exemption of decurions from beating was a long-standing rule (*prohibitum est*).⁴ The plea of the peasants for a recognition of their rights was thus pathetically anachronistic.

Secondly, with respect to the death sentence, citizens could hold up the execution of the penalty of death by appealing to a higher judge. However, the position of decurions and other

¹ *Reiectio Romam* is discussed at greater length in *JRS* 68 (1968), pp. 56-7.

² *Dig.* 48. 19. 28. 2.

³ *CJ* 2. 11. 5 (A.D. 198): 'The beating of decurions and sons of decurions has been prohibited.'

⁴ *Dig.* 47. 21. 2 (Hadr.) is relevant. See pp. 155 ff.

honestiores was preferable: they were not subject to the death penalty at all, except in the case of a few very serious offences such as *maiestas*.

In general, an explanation is required for the absence of reference to citizenship among the criteria for legal privilege which can be assembled from the juristic writings. Perhaps this omission is not attributable to the classical jurists themselves, but to their successors, and above all, to the compilers of the *Digest* who excerpted the writings of the classical jurists, not without alteration and condensation. This suggestion is worth careful study, especially in the light of the history of the transmission of the text of the Fabian law on kidnapping. The Fabian law seems to have been designed originally (perhaps in the second century B.C.) to protect Roman citizens and freedmen who had gained their liberty in Italy.¹ But there is no mention of either of these categories in the section of the *Digest* devoted to the law; 'Gaius' and 'Ulpian' wrote of the *liber homo*, and 'Callistratus' of the *homo ingenuus et libertinus*.² The corruption can be traced fairly securely to the sixth century, as the versions of the law given in *Paul's Sentences* (late third century) and the *Collatio* (late fourth) are evidently closer to the original.³ But the argument that the texts dealing with legal privileges were systematically rewritten is less convincing. The texts are several and scattered, and the task of purging anachronisms was thus less straightforward. (Although the compilers professed to be bent on bringing the jurists up to date, it can be shown that they fell far short of their goal.) It is as likely that the texts with which we are concerned are virtually untouched as that they are rewritten. In any case, our knowledge of the system

¹ On the Fabian law, Mommsen, *op. cit.* 780 ff. For the favourable position of freedmen emancipated in Italy, Petr. *Sat.* 57 (exemption from poll-tax and land-tax).

² *Dig.* 48. 15. 4 (Gaius); *ibid.* 1 (Ulpian); *ibid.* 6. 2 (Call.).

³ *Coll.* 14. 3. 4: 'lege autem Fabia tenetur, qui civem Romanum eumve, qui in Italia liberatus sit, celaverit vinxerit vinctumve habuerit, vendiderit emerit, quive in eam rem socius fuerit . . .' Cf. the less detailed and less accurate *PS* 5. 30B. 1 (= *Coll.* 14. 2. 1): 'lege Fabia tenetur, qui civem Romanum ingenuum libertinum servumve alienum celaverit vendiderit vinxerit comparaverit.' It is perhaps curious that these late compilations retain categories which were no longer significant. The occurrence of a concept in a legal text is of course no guarantee of its contemporary relevance.

of privilege is not derived entirely from the *Digest*. The information contributed by the *Digest* complements, and is completely compatible with, the information drawn from other sources. Possession of citizenship did not ensure privileged treatment in the law courts: there were citizens amongst the *humiliores*.

In addition, possession of citizenship was not necessary for admission into the ranks of the privileged. Just as citizens were not *ipso facto* recipients of privilege, so non-citizens were included in their number. For not all decurions were citizens; none the less, decurions were a privileged group before the law.¹

All members of local councils of 'Roman' cities were citizens. However, until the early second century A.D. decurions of cities of 'Latin' right gained the citizenship only by taking up a magistracy. The situation changed, perhaps in Hadrian's reign, with the introduction of *Latium maius*, now opposed to *Latium minus*.² Decurions of a city which had successfully sued for *Latium maius* (for the Roman authorities do not seem to have granted this status to all 'Latin' cities by decree) became Roman citizens from the time of entry into the council. The reform, however, left quite untouched the mass of cities in the East, which had not adopted Roman forms of local government (and were thus neither *coloniae* nor *municipia*). Citizenship was distributed altogether more sparsely in the East than in the West, because it was given piecemeal to individuals and families rather than *en bloc* to whole cities or ruling élites. Many of the Eastern councillors would have received such *ad hominem* grants, or inherited citizenship from their ancestors; but citizenship could not have come universally to councillors until the Emperor Caracalla conferred it on virtually the whole free population of the Empire.³

Thus the *honestiores/humiliores* distinction cuts across the citizen/alien distinction: there were citizens (and aliens) on both sides of the dividing line.

¹ There is no suggestion in any source that only decurions who were citizens were privileged in the sight of the law. For other aliens with *dignitas* see Dio 49. 22. 6 (Antigonus; M. Antonius' treatment of him was unprecedented and reprehensible); cf. 50. 13. 7 (Iamblichos, Arabian king; executed by M. Antonius after torture); Tac. *Ann.* 6. 40. 2 (Tigranes; succumbed to *supplicia civium*).

² Gai. *Inst.* 1. 96; *ILS* 6780 (Gigthis, N. Africa); Mommsen, *GS* iii. 33 ff.

³ See Chr. Sasse, *Die Constitutio Antoniniana* (1958).

We must now consider the common belief that the former distinction replaced the latter. The citizen/alien distinction, so the argument runs, was pre-eminent in the first century of the Empire, and was overshadowed, or replaced, by that of the *honestiores/humiliores* in the early second century.¹

This doctrine rests principally on two theories. According to the first, the decline of *provocatio*—with which the Julian law that dealt with appeal was peculiarly associated—was complete by about the Trajanic period. A new appeal system, *appellatio*, which grew up soon afterwards, was available to *honestiores* but not to citizens in general. According to the second theory, rescripts of Hadrian and Pius herald the emergence of the *honestiores/humiliores* distinction.

I have argued elsewhere that so-called *provocatio* and so-called *appellatio* were one and the same, and that the clauses in the Julian law applied to 'both', and had not lost their efficacy (such efficacy as they had in the first century) by the early second or late second century.² As for the emergence of the *honestiores/humiliores* distinction, the 'legislation' of Hadrian and Pius relates only to the differential-penalty system, and discrimination in favour of status involved more than this. Moreover, this 'legislation' did not institute the differential-penalty system, which was in existence in essentials by the reign of Hadrian.³

Thus the 'replacement' of the citizen/alien distinction by the *honestiores/humiliores* distinction cannot be dated to the early second century, or not by the arguments considered above. But

¹ A. H. M. Jones, *Studies in Roman Government and Law* (1960), 64-5; A. N. Sherwin-White, *Roman Society and Roman Law in the New Testament* (1963), 174.

² *JRS* 56 (1966), 167 ff., *pass.*, against Jones, *op. cit.* 53 ff. No sharp contrast can be drawn between appeal in the first century and appeal in the second. The evidence, such as it is, suggests that a more complicated system might have been evolved in the second century to handle the mounting volume of business which came before the appellate courts—but that is all. For a discussion of the two alleged appeal cases found by Jones in the pre-Hadrianic period see pp. 75-6 (with *JRS* 56, 182-5), and pp. 74-5 (with *JRS* 56, 181-2) (St. Paul; Bithynian Christians). Sherwin-White added four more cases: *EJ* 311. ii. 42-7; Pliny, *Ep.* 6. 31. 3; Tac. *Ann.* 16. 10. 2 (*Roman Society*, 60); Dio 60. 24. 4 (*Roman Citizenship*, 214). On the view that appeal became available to *honestiores* only see *JRS* 58 (1968), 54.

³ See ch. 5.

did such a development occur at any stage? If so, it would follow that the former distinction was once as fundamental as the latter 'became'; and, conversely, that the latter distinction was at one stage unimportant.

How did citizens fare in the early Empire? There are signs that the Roman authorities were not oblivious of the safety of their citizens in the provinces. Cyzicus lost its liberty once, perhaps twice, and Rhodes once, for committing violence against Romans or for putting them to death. (The status of the citizens involved is unknown.)¹ In a Roman colony it appears that arrest, beating, and imprisonment were normal for aliens, but that it was potentially dangerous to give citizens the same treatment. Citizens may also have had a freer choice of court, even under the early Empire. So much is indicated by the career of St. Paul.² It was of course not always possible to keep governors in check. Fonteius Capito made a mockery of the institution of appeal by judging an appeal lodged against himself. Galba crucified a citizen for poisoning, ignoring the man's invocation of 'the laws' and his cry that he was a Roman citizen.³ Their acts were reminiscent of Verres' treatment of Gavius, which, in Cicero's mind, shattered the hopes of all *homines tenues* who held the citizenship.⁴ The disapproval which colours the narratives of Cicero, Suetonius, and Dio may suggest that the events they describe were unusual. The comparative respect which Pliny on one occasion showed for the citizenship may have been more typical of the attitude of governors: he separated the citizen Christians from the rest, who were arbitrarily executed.⁵

The concentration of the bulk of the references of this kind in the period from the 70s B.C. to the turn of the first century A.D.

¹ Cyzicus: Dio 54. 7. 6; 57. 24. 6; Tac. *Ann.* 4. 36. 2-3; cf. Suet. *Tib.* 37. 3. Dio records loss of freedom under 20 B.C. and again under A.D. 25, where he uses the word *adibis* ('again'). Rhodes: Dio 60. 24. 4. Miletus may have lost its freedom also (*IBM* 921A), but perhaps because of *stasis*.

² Acts 16: 22 ff.; 22: 24-5 and 29; 2 Cor. 11: 25. On the sending of Paul to Rome, a possible survival of *reiectio Roman*, see above, p. 76.

³ Capito: Dio 64. 2. 3 and *JRS* 56 (1966), 176 n. 91. He was put to death, but not for this action (as Dio implied). See Tac. *Hist.* 1. 7. Galba: Suet. *Galba* 11.

⁴ Cic. *in Verr.* 5. 167; cf. *ad fam.* 10. 32. 2 (Balbus).

⁵ Pliny, *Ep.* 10. 96, and above, p. 74.

may indicate that citizenship was afforded more respect than later. Tacitus, writing under Trajan and Hadrian, remarked on a slackening of standards in the award of citizenship—which he appears to link with the growth in the citizen population.¹ The truth behind this partisan, senatorial complaint (which contrasts with the eulogy of citizenship of the provincial Aristides) is that the privileges of citizenship were the property of a broader section of the population of the Empire than ever before. It is not our concern to judge whether the moral tone of citizenship was lowered as a result; but its privileges had evidently become less tangible. For example, appeal, and the less well authenticated *reiectio Roman*, probably worked smoothly only when the citizen population abroad had the character of a closely-knit, exclusive élite. The former institution alone seems to have survived the late Republic, and its working became less and less effective: the Romans never evolved a machinery adequate to cope with the additional appeals which necessarily accompanied a large increase in the number of citizens. Meanwhile, in Rome in the early Empire, institutional changes had contributed to the downgrading of the citizen. The substitution of courts with overlapping jurisdictions for a uniform court system, and of a flexible for an inflexible penalty structure, gave judges more opportunity to exploit the social divisions within the population. The result was the widening of the gap between the privileged groups and the lower orders, whether citizens or aliens.

However, the decline of citizenship took place over several centuries, and was not confined to the period from the Ciceronian age to the reign of Trajan.² Moreover, it may be merely an accident of the sources that the evidence of consideration (and conspicuous lack of consideration) for citizens falls mainly within those 175 years. A solitary piece of information from a non-contemporary source (Eusebius, *EH* 5. 1) confirms that the differential treatment of citizens and aliens persisted into the Antonine period. Pliny's action referred to above was matched by that of the governor of

¹ Tac. *Ann.* 3. 40. 2: citizenship was once 'rare and given solely as a reward for virtue'. Cf. Pliny, *Pan.* 37. 25.

² See p. 270 n. 2.

Lugdunensis in Marcus' reign in decapitating citizen Christians and sending aliens to the beasts. In fact, the citizen/alien distinction was (largely) set aside by the judicial authorities only after the edict of Caracalla was issued. In any case, the consideration given to citizenship in the early Empire appears insubstantial, when set beside the benefits granted in the same period to those with other attributes. Praetors and judges in administering the civil law used their discretionary power to discriminate in favour of men of means and social standing; judges investigating cases *extra ordinem* awarded differential penalties on the basis of status; the courts of the Senate and the Emperor were more accessible and favourable to the aristocracy than to the lower orders.¹ In all these ways citizenship was shown not to hold the key to the most significant legal privileges. In the first century as in the second *tenuiores*, members of the lower orders, did not count for much in comparison with men of rank, whether or not these were citizens.

To sum up: it is permissible to speak of a decline in the value of citizenship in the period from Augustus to Caracalla, as long as two points are kept in mind. First, there were some practical advantages in being a Roman citizen throughout the period under discussion. The eagerness of individuals and whole communities to obtain Roman status in the second century, as well as in the first, is undeniable, and it would be wrong to imagine that the petitioners were moved simply by an empty, snobbish wish to be Roman.² Second, citizens of high status and citizens of low status were at no stage in the period on an equal footing. Gradations within the body of citizens made equality, whether political or judicial or economic, impossible to attain. Just as magistracies were not in practice open to all citizens, but only to those who were qualified financially, similarly only a minority of citizens were eligible for

¹ In general, the interest of an Emperor in the welfare of citizens in the provinces does not make it any less likely that he would aid free aliens. For the Cnidus case see *FIRA*² iii, no. 185, p. 582. Only some of the African peasants who petitioned Commodus (see p. 261 n. 6 above) were citizens. *Dig.* 48. 6. 6 may be relevant: Pius instructed a governor to investigate a physical attack on a young man whose name indicates he was a citizen, but who is described by the Emperor simply as 'freeborn' (*ingenuus*).

² On both the decline of citizenship and the continued enthusiasm of would-be citizens for it see Sherwin-White, *Roman Citizenship*, chs. 9-10, *pass.*

preferential treatment in the law courts. In Roman society legal and political capacity depended, not only upon the *persona* or character of the individual as defined or recognized by the civil law (free or slave, citizen or alien), but also upon his background or status.¹

¹ On the relationship between the concepts of citizenship, class, and status see T. H. Marshall, *Citizenship and Social Class and Other Essays* (1950), 28 ff.; also W. G. Runciman, *op. cit.* (p. 259 n. 2), 34 ff.