

Classicising historians and *assessores*

(English translation of *Assessores kaj historiisto en la malfrua romia imperio*)

(p.33) The theme of this paper is autopsy, in this case on the part of historians in the later Roman empire. The importance of having been an eye-witness of events is attested by two very different historians, both of whom have cause to cite Heraclitus's dictum 'The eyes are more accurate witnesses than the ears'. Polybius, who had indeed observed many (but by no means all) of the events he recounts, quotes this passage in criticising his predecessor Timaeus; Polybius notes how Timaeus had been content to gather all his knowledge from books, and was therefore unable to give an accurate account of what he was describing.<sup>1</sup> In the late second century another (unnamed) historian also had recourse to Heraclitus's pronouncement; this Corinthian writer, however, did so only to add weight to his work. For according to Lucian, who informs us of this historian, the writer had never actually ventured outside Corinth in his life, yet claimed to have been an eye-witness to Avidius Cassius's campaign against the Parthians. As a result, for instance, he believed that the serpents on the Parthian banners were real snakes, which proved deadly to the Roman forces!<sup>2</sup>

(p.34) καί οἱ αὐτῷ ξυνηπίστατο πάντων μίλιστα δυνατὸς ὦν τάδε ξυγγράψαι κατ'

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<sup>1</sup> Cf. Polybius, *Histoire: livre XII*, ed. P. Pédech, Paris 1961, xii.27 and the comments of F.W. Walbank, *Polybius*, Berkeley 1968, 72-4 (noting that Polybius also argues for the importance of the cross-examination of witnesses). The passage of Heraclitus can be found in H. Diels and W. Kranz, *Die Fragmente der Vorsokratiker*, Berlin 1974, i 22 B 101a. Cp. also Herodotus I.8 for the same sentiment, Julian, *ep.* 11 (ed. and tr. W. Wright, London 1923), 389B and Procopius, *Anecdota*, ed. J. Haury, rev. G. Wirth, Leipzig 1963, 1.20. Note also the importance of autopsy in Sozomen's introduction, *Kirchengeschichte*, edd. J. Bidez and G.C. Hansen, Berlin 1960, I.1 (cited by J. Harries, 'Sozomen and Eusebius: The Lawyer as Church Historian in the fifth century', in *The Inheritance of Historiography*, edd. T.P. Wiseman and C. Holdsworth, Exeter 1986, 46.

<sup>2</sup> Lucian, *How to write history*, ed. and tr. K. Kilburn, London 1959, §29 on this historian; cf. also B. Baldwin, *Studies in Lucian*, Toronto 1973, 83 on this. Lucian further notes that he (like Timaeus) had no idea of what a regiment or muster-roll was, since he had never left Corinth in his life. As Lucian points out, however, his audience in Corinth was fully aware that he had not witnessed the war.

ἄλλο μὲν οὐδέν, ὅτι δὲ αὐτῷ ξυμβούλῳ ἡρημένῳ Βελισαρίῳ τῷ στρατηγῷ σχεδόν τι ἅπασι πραγμένεσθαι τοῖς πεπραγμένοις ξυνέπεσε.

Furthermore he [Procopius] had assurance that he was especially competent to write the history of these events, if for no other reason, because it fell to his lot, when appointed adviser to the general Belisarius, to be an eye-witness of practically all the events he described.

tr. H.B. Dewing

Thus Procopius justifies his decision to give an account of Justinian's wars in the east and west, with the truthfulness appropriate to the writing of history — ξυγγραφή.<sup>3</sup> It is an explicit statement of a view which was common among historians of the ancient world, from Thucydides to Ammianus and beyond: John of Epiphania, writing in the late sixth century, in a fashion which must owe a great deal to Procopius, emphasises that he too was suited to write up an account, having served — like Procopius — as an adviser (*sumboulos*), in his case of the patriarch Gregory of Antioch.<sup>4</sup>

Clearly then autopsy was of considerable importance to the classicising, as well as the classical, historian. Two avenues to autopsy may be distinguished: one could either be among the makers of events, most likely a general, or one could be an observer among the staff of such a general. Thucydides is of course an example of the former, serving as *stratēgos* in 424 B.C. (p.35) Julius

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<sup>3</sup> Procopius, *Wars* I.1.3-5; on the term συγγραφευς/ξυγγραφή, contrasted by Procopius here with poetry and rhetoric, cf. most recently J.F. Matthews's discussion, 'The Origin of Ammianus', *CQ* 44 (1994), 263-7, with regard to Libanius and Ammianus. Cp. also Procopius' desire to see Thule for himself (*Wars* VI.15.8), where he also uses the word *autoptēs*.

<sup>4</sup> Thucydides, I.22.2 for his participation in events, Polybius xii.25d-e, on which q.v. n.1; Ammianus, 15.1.1. John of Epiphania, frg.1, in *FHG* IV, 273, on whom cf. M. Whitby, *The Emperor Maurice and his historian*, Oxford 1988, 222 and *PLRE* III, s.v. Ioannes 162.

On the importance of autopsy to historiography in late antiquity, cf. two contributions to *History and Historians in Late Antiquity*, B. Croke and A. Emmett, eds, Sydney 1983: N.J. Austin, 'Autobiography and History: Some Later Roman Historians and their Veracity', 54-65, and J.F. Matthews, 'Ammianus' Historical Evolution', 30-41 esp.38.

Caesar may be cited as another instance, as well as in late antiquity his successor in Gaul, Julian, who wrote an account of his victory at Strasbourg in 357. By and large, however, the generals of the late empire were not literary men: rather, they are the 'iudices militares humanitatis litterarum rudes' of Lactantius or soldier-emperors such as Valentinian and Valens; in the sixth century generals such as Belisarius or Sittas hardly seem to have been the recipients of a literary education, while one general in the Roman army in Italy appears not to have spoken any Latin or Greek beyond his own name!<sup>5</sup>

This is not to say that there were not cultured men in the higher échelons of society, capable of writing history or other works of literature: Peter the Patrician, for instance, in the reign of Justinian, produced several works, including a history of the Roman empire up to the death of Constantius II. The diplomatic corps of the empire produced several works, including Peter's own account of his embassy to Persia, as well as that of the envoy Nonnosus to southern Arabia. Another ambassador to this region, Julian, probably also wrote up an account of his travels, and Zemarchus, during the reign of Justin II, may well also have brought out a work concerning his voyage to meet the Turks. There thus remained an area where protagonists and authors could be one and the same.<sup>6</sup> (p.36) Nor should one deny that there were some generals who were receptive to classical culture: Richomer was a friend of Libanius, while in the mid-fifth century Majorian's *magister epistularum* Peter, an author of prose and verse works, served the emperor as a military

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<sup>5</sup> Lactantius, *De mortibus persecutorum*, 22.5 for the quotation; Ammianus, 31.14.5 on the uncultured Valens, cf. Matthews, *Roman Empire*, 238. Many generals were of 'barbarian' origin, e.g. Peranius from Iberia in the sixth century, cf. *PLRE* III, s.v. Peranius, cp. others such as Gainas (*PLRE* I, s.v. Gainas) in the fourth century. On the general in Italy, cf. Procopius, *Wars* VII.26.24-7 — the Armenian Gilacius.

<sup>6</sup> On Peter the Patrician, cf. *PLRE* III, s.v. Petrus 6 and *FHG* IV, 184-91 for the surviving fragments of his work; Menander, *The History of Menander the Guardsman*, ed. and tr. R.C. Blockley, Liverpool 1985, frg.6.2.12-15 on his account of his embassy. On Nonnosus, cf. *PLRE* III, s.v. Nonnosus 1 and *FHG* IV, 179; on Julian, cf. *PLRE* III, s.v. Iulianus 8; on Zemarchus, cf. *PLRE* III, s.v. Zemarchus 3. On the matter of accounts by diplomats generally, cf. the remarks of A.D. Lee, *Information and Frontiers*, Cambridge 1993, 39, who makes the suggestion that Zemarchus published an account of his embassy himself; also B. Baldwin, 'Greek historiography in Late Rome and Early Byzantium', *Hellenika* 33 (1981), 63.

commander. And in the sixth century Aratius, the *dux* of Palestine, was addressed by Choricus of Gaza in a panegyric. But to appreciate classical works and to compose them require different degrees of learning; and no general of the fifth or sixth century appears to have attempted to write up memoirs of his own campaigns.<sup>7</sup>

Among the predecessors, as observers, of the classicising historians was Polybius, who accompanied who had the good fortune to accompany Scipio Aemilianus, for instance during his attack on Numantia. An earlier instance is Theopompus, who, according to Dionysius of Halicarnassus, 'was an observer (autoptes) of many of the events and established connections with many of the men who at that time held the first place in the military, politics and philosophy.'<sup>8</sup> In another article I discussed why the number of such historians increased in the later Roman empire and argued that there was an important link between history-writing and law in that period; those who became historians came from the urban elites of the empire, received a 'classical' education (which gave them a firm grounding in the classical historians), followed by a legal training. Such an education prepared them very well to serve in the imperial bureaucracy and thus to escape (p.37) from the heavy burdens of office-holding in their home cities. But to speed up their career, an ambitious man could compose a classicising history, by which he could

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<sup>7</sup> Although at least one attempted lighter works — Flavius Merobaudes, cf. *PLRE* II, s.v. Merobaudes and F. Clover, 'Flavius Merobaudes. A translation and historical commentary', *Transactions of the American Philosophical Society* n.s. 61.1 (1971), 7-10. I am grateful to Penny MacGeorge for drawing him to my attention.

On Richomer, cf. *PLRE* I, s.v. Richomer; on Peter, cf. *PLRE* II, s.v. Petrus 10; on Aratius, *PLRE* III, s.v. Aratius — the panegyric is *Or.*3 of Choricus. John the Lydian makes the claim that 'A man was not created Emperor of Rome unless he happened to be someone outstanding for the instruction he had received in both fields' (i.e. in literary education and weaponry'), with reference to Constantine I, *de Mag.* III.33.3, pp.121-22 (tr. T.F. Carney, *Bureaucracy in Traditional Society - Romano-Byzantine Bureaucracies viewed from within*, Kansas 1971, part 3, p.87). Justin I, on the other hand, a former general under Anastasius, and perhaps more typical of this later period 'was a man not versed in affairs and he knew absolutely nothing besides his skill, gained by experience, at arms', *ibid.* III.51.5, p.140.10-11, tr. Carney, p.101.

<sup>8</sup> On Polybius, cf. Walbank, *Polybius*, 11-13. On Theopompus, cf. C.W. Fornara, *The Nature of History in Ancient Greece and Rome*, Berkeley-London 1983, 49, quoting Dionysius, *Ad Pomp.* 6 = *FGrHist* 115 T 20a (his translation).

hope to gain the attention of the emperor or another important functionary at court.<sup>9</sup> Here it is my intention to deal in detail with one aspect of this phenomenon, since it is clear that many historians of the later Roman empire were not only lawyers, but also occupied the same post: they were *assessore*s, a term which is usually translated as ‘adviser’.<sup>10</sup> What sort of a post was it? Was it necessary to be a lawyer to occupy it? Did it change over the centuries?

From republican times Roman magistrates had employed a *consilium* for advice, particularly for important cases: thus, according to Valerius Maximus, Lucius Gellius had taken the entire Senate as his *consilium* in judging his son.<sup>11</sup> As with the *consilium* of the *princeps* in imperial times, it was a sign of favour by the magistrate to be summoned to the *consilium* and did not therefore entail legal knowledge on the part of those called upon. The number of those who could be invited to form a *consilium* could vary considerably, as could their rank: Cicero takes Verres to task for the lowly status of those he has taken onto his *consilium*.<sup>12</sup> Domitian, it is clear, had both *equites* and senators among his advisers in hearing a case between the Falerienses and Firmani. The advice of members of the *consilium* — *consilarii* — was not binding, however.<sup>13</sup> (p.38) A

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<sup>9</sup> See G. Greatrex, ‘Lawyers and Historians in Late Antiquity’ in R.W. Mathisen, ed., *Law, Society and Authority in Late Antiquity* (Oxford, 2001), 148-61. Such important people supported many types of work in the period.

<sup>10</sup> See further n.22 below on how to translate it.

<sup>11</sup> Cf. H.F. Hitzig, *Die Assessoren der Römischen Magistrate und Richter*, Munich 1893, ch.1 on the *consilium* in general, 5 on Lucius Gellius, citing Valerius Maximus 5.9.1 in *Valerii Maximi Factorum et dictorum libri novem*, ed. C. Kempf, Leipzig 1888.

<sup>12</sup> Cicero, *In Verrem*, ed. W. Peterson, Oxford 1907, II.29.71ff., esp.75.1f., as noted by Hitzig, 13 n.44. The list of those who ‘in consilio fuerunt’ to Pompeius Strabo in 88 B.C. is altogether more distinguished, apparently including both the younger Pompey and Catiline, cf. *ILS* 8888, ed. H. Dessau, Dublin-Zurich 1974, vol.3.2, xi-xii. I am indebted to Dr Sam Barnish for this reference.

<sup>13</sup> On the matter of the rank of *consilarii*, Hitzig, 12-13; idem, 13, on the status of their advice, cf. also A. Berger, *Encyclopaedic Dictionary of Roman Law, Transactions of the American Philosophical Society*, n.s. 43 (1953), 351. For the case of Domitian, cf. *CIL* IX.5420 = M. McCrum and A.G. Woodhead, *Select documents of the Principates of the Flavian Emperors*, Oxford 1961, no.462 = R.K. Sherck, *The Roman Empire: Augustus to Hadrian*, Cambridge 1988, no.96

couple of examples from this early period may be offered; one comes from the brief reign of Otho, in March 69, concerning a long-lasting dispute in Sardinia, resolved by the proconsul. At the end of the inscription comes a list of eight men who 'in consilio fuerunt'.<sup>14</sup> A more famous example, somewhat later, is Pliny the younger: from his letters it is known that he served on the *consilium* not only of Trajan, while he was holding court at Centumcellae, but also that of the *praefectus urbi*. In the latter case he describes how he enjoyed listening to the speakers for both sides in the case in question: as a *consiliarius* he had been seated with the magistrate in hearing the case.<sup>15</sup>

In the second century the position of *consilarii* appears to have undergone considerable change; the dating of these changes is a matter of dispute, but the earliest they can be placed is under Hadrian. A standing *consilium principis* emerges, perhaps in the reign of Marcus Aurelius, whereas hitherto the emperor or magistrate had called a *consilium* as and when necessary. Furthermore, *consilarii* start to receive a salary, and the term *assessor* comes into use. This did not spell the end of the old *consilium*, however: others, apart from the *assessor*, could be included in the *consilium*, which continued to function. The *assessor* for his part soon developed

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(translation); cf. also F. Millar, *The Emperor in the Roman World*, London 1977 (henceforth *ERW*), 120, on this and other examples (from Dio Cassius) of emperors and their advisers.

<sup>14</sup> *ILS* 5947 = McCrum-Woodhead, no.455 = B. Levick, *The Government of the Roman Empire: a sourcebook*, London 1985, no.50 (translation and some comments), and cf. Hitzig, 23.

B. Kübler, in his entry on 'adessor', offers the example of C. Trebatius Testa, attested in Cicero's letters to him and to Julius Caesar (*Cic. Ad. Fam.* 7.10ff.), *Reallexikon für Antike und Christentum*, vol.1 (1950), 804; but although Trebatius is clearly a lawyer, and serving Caesar in Gaul in some capacity, he is not actually termed his *consiliarius*. Cf. also *OCD* (second edition), s.v. Trebatius Testa, 1090.

<sup>15</sup> Pliny, *Epp.* 6.11 (*praefectus urbi*), 6.31 (Trajan) and the comments of A.N. Sherwin-White, *Pliny's Letters. A social and political commentary*, Oxford 1966, 107, citing other instances of Pliny fulfilling this role as well as Seneca's complaints about the time taken up in this way, *De brevitate vitae* (*Or.* 10), 7.7 in *L. Annaei Senecae Dialogorum libri duodecim*, ed. L.D. Reynolds, Oxford 1977. Cf. also Hitzig, 22 on *Ep.* 6.11, 32 on 6.31, 20-9 for a general discussion of attested examples of the *consilarii* of various magistrates.

a role beyond (p.39) merely sitting with the magistrate in judgement.<sup>16</sup>

Before considering the development of the post in the later empire, a word is needed about the various terms used to refer to it in Latin and Greek. By then the Latin terms *consiliarius* and *assessor* are equated, while the Greek words *paredros* and *sumboulos* have become the most common equivalents: Dio Cassius, discussing the government of 'senatorial' provinces, explains that the term *paredreuontes* is to be preferred to *presbeutai*, which he thinks should apply just to *legati*.<sup>17</sup>

In the late empire every magistrate with jurisdiction had his own *assessor*; hence the *quaestor sacri palatii* — in effect, the legal adviser or *paredros* of the emperor — did not have one.<sup>18</sup>

(p.40) While the *quaestor* would of course be expected to be a proficient lawyer himself, it does not follow from this that experienced lawyers fulfilling other roles might not summon *assessore*s themselves: advice was no doubt always valuable, and Papinian himself is known to have called upon *assessore*s.<sup>19</sup> It remains to examine what functions the *assessor* fulfilled, how important a

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<sup>16</sup> Hitzig, 33-47, for attributing the change to Hadrian, cf. also F. Millar, *The Roman Empire and its neighbours* (second edition), London 1981, 59-60 on these developments. *Contra* Hitzig, cf. J.A. Crook, *Consilium Principis*, Cambridge 1955, repr. New York 1975, 56-65 on Hadrian, and 73 on salaried *consiliarii* under Marcus Aurelius. Hitzig is convincing, however, in arguing that the term *assessor* does not come into use until the reign of Hadrian, 38-41.

<sup>17</sup> For a full list of the various possible terms, cf. Hitzig, 124-5; members of the emperor's *consilium* were never referred to as assessors or *paredroi*. On Dio (53.14.5) cf. Hitzig, 24.

<sup>18</sup> Hitzig, 49 and 181-2 (noting Procopius' criticism of the *quaestor* Junillus for his lack of knowledge of the law, *Anecdota* 20.17 [cp. 20.21]); cf. A. Demandt, *Die Spätantike*, Munich 1989, 235-6 and T. Honoré, *Tribonian*, London 1978, 8-9. Note also Cassiodorus, *Variae*, ed. T. Mommsen, *MGH*XII, Berlin 1894, 6.5.4-5 (tr. S.J.B. Barnish, *Cassiodorus: Variae*, Liverpool 1992), 'legal knowledge and cautious speech must accompany him [the quaestor]'... 'Other offices, indeed, may seek the help of legal assessors, but yours gives its counsels to the prince.' (pp.96-7). See also J. Harries, 'The Roman imperial quaestor from Constantine to Theodosius II', *JRS* 78 (1988), 148, on the importance of eloquence to the quaestor.

<sup>19</sup> Cf. Hitzig, 52, making the point that failure to consult might imply overconfidence on the part of the magistrate.

position he held, and finally to consider a few sample *assessore*s.

First, the role of *assessore*s. The brief section in the Digest, *de Officio Adessorum* (I.22) contains the following entry (22.1, Paulus):

Omne officium assessoris, quo juris studiosi partibus suis funguntur, in his fere causis constat: in cognitionibus, postulationibus, libellis, edictis, decretis, epistolis.

The entire office of assessor in which those learned in the law discharge their duties embraces, for the most part, the following cases: judicial enquiries, motions, statements of causes of action, edicts, decrees and epistles.<sup>20</sup>

Without going through these various functions in detail, it is evident that legal knowledge is expected; that it was not always present in practice, however, emerges from one of Justinian's Novels, where he lays down that *paredroi* must not be appointed unless they have been examined first.<sup>21</sup> As with those summoned to a *consilium* in earlier times, the choice of *assessor* lay with the magistrate; hence he was not a member of an *officium*. Unlike the earlier advisers, however, the *assessor* was paid by the state.<sup>22</sup> (p.41) Thanks to Justinian's Novels and *Codex*, it is possible to make a few remarks on their pay. Most *assessore*s received an annual salary of 1 lb. of gold (i.e. 72 *solidi*), one tenth as much as the governors they served; a few got twice this amount (such as the assessor of the *moderator Arabiae*), perhaps to be connected with the union of civil and

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<sup>20</sup> Tr. S.P. Scott, *The Civil Law*, vol.2, Cincinnati 1932.

<sup>21</sup> Justinian, *Novella* 82.2 (539) in *Corpus Juris Civilis*, edd. R. Schoell and W. Kroll (sixth edition), Berlin 1954, cf. Hitzig, 66-82. Instances of this will be noted below.

<sup>22</sup> In the Esperanto version of this article we therefore use the term *konsilisto* here, implying a profession, rather than *konsilanto*, an adviser (one who advises). As we have seen, in earlier Roman times, legal expertise was not need to be an adviser, but later this became a requirement. It should be emphasised that the office-holder chose his adviser and, even though he received a state salary, the adviser was not part of the imperial civil service. Hence the *Notitia Dignitatum* nowhere mentions the post, cf. Behrends, 'Der assessor', 219.

military powers in the hands of the governor. Assessors of higher officials received higher salaries: that of the Augustal prefect of Egypt got 5 lbs. of gold, while that of the praetorian prefect in Africa got 20.<sup>23</sup>

The legislation of successive emperors gives some insight into the powerful position of assessors. They are not to sign *libella* themselves, they are not to serve in their province of origin, nor are they to issue judgements in their own name. The potential clash of interests in being a practising lawyer at the same time as a legal adviser to the judge is legislated against by Justinian, (p.42) who also forbade anyone to be an assessor to two people at the same time.<sup>24</sup> Bribery of such an influential person was obviously a temptation — and is forbidden by *C.J.* I.53. Assessors are likewise banned from marrying during their tenure of the post; Gregory of Nazianzus has an account of how an assessor attempted to force a recently widowed Christian lady into marriage.<sup>25</sup> The legislation also informs us of the various benefits enjoyed by assessors. While they held their post they were immune from the obligation of guardianship and from paying local taxes. Such privileges they held on account of their *publica sollicitudo*, despite the fact they did not belong to

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<sup>23</sup> For these figures, cf. Hitzig, 132-44, A.H.M. Jones, *The Later Roman Empire* (henceforth *LRE*), Oxford 1964, 500-1 and M.F. Hendy, *Studies in the Byzantine Monetary Economy, c.330-1453*, Cambridge 1985, 178 and 181, and cp. the figures for the salaries of grammarians and rhetors in R. Kaster, *Guardians of Language: The grammarian and society in Late Antiquity*, Berkeley 1988, 117-8 (about half as much, also to be found in *Codex Justinianus*, ed. P. Krueger [eleventh edition, henceforth *C.J.*], Berlin 1954, I.27.1.42). In the case of Egypt and Africa, the figure for the total salary depends upon whether it is believed that one or two assessors are involved: I have followed Hitzig, 88-92, in supposing there only to have been one, while Jones, *LRE*, 501, postulates two in Africa (cf. *C.J.* I.27.1.21, but with Hitzig's note on the text, 91). Hitzig suggests, 144, that the salaries may have been higher before the reigns of Anastasius and Justinian.

<sup>24</sup> *C.J.* I.51.2 (*libella*; A.D. 320), 51.13 (cannot issue judgements in their own name, 487), 51.14 (cannot be lawyer and assessor simultaneously and not to be assessor to two people at the same time, 529). Cf. Hitzig, 145-54, for a discussion of these (and other) restrictions. He also notes the emphasis Justinian lays on the need for the 'clean hands' of assessors, *Nov.* 17.5, 80.8, 82.9.

<sup>25</sup> Hitzig, 146-7, on marriage; Gregory of Nazianzus, *PG* 36.568 for the incident.

an *officium*.<sup>26</sup> Moreover, the assessorship is referred to by Libanius as the σπέρμα πρὸς ἀρχην; for its holder it was thus an important staging post on the way to higher offices, such as the governorship of a province or the assessorship of a higher official. The high status of assessors to *illustres*, such as the praetorian prefect, is illustrated by a constitution of 413, from which it emerges that they were generally accorded the title of *comes primi ordinis* and thus on a par with vicars.<sup>27</sup>

**(p.43)** Assessors were not merely legal advisers: they were, in effect, the right-hand men of governors. They are described as κοινωνὸς ἀπάντων by Libanius, while Justinian notes their role in helping the governor deal with a huge volume of work.<sup>28</sup> A passage from Eusebius's Church History may be cited to illustrate their importance a century before Libanius; it comes from a letter of Dionysius, bishop of Alexandria, to his fellow-bishop Fabius of Antioch:

οἱ νῦν τοῦ Χριστοῦ πάρεδροι καὶ τῆς βασιλείας αὐτοῦ κοινωνοὶ καὶ μέτοχοι τῆς κρίσεως αὐτοῦ καὶ συνδικάζοντες αὐτῷ

These holy martyrs from among us, who are now the assessors of Christ, participating in his kingship, sharers of his judgement and giving justice along

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<sup>26</sup> So Hitzig, 144, citing *C.J.* I.52 (title); cf. also *C.J.* I.51.11 (444) on other privileges of the assessors of the praetorian prefect and other high officials.

<sup>27</sup> Libanius, vol.3, ed. R. Foerster, Leipzig 1906, *Or.*33.5, p.167. On the career opportunities provided by the assessorship, cf. Hitzig, 80, 186-7, and cf. Kaster, below n.70. Jones, *LRE*, 501 and 1213 n.70, on the rank of assessors (*Codex Theodosianus*, ed. T. Mommsen [third edition], Berlin 1954, VI.15.1 [413]). Note also the career of Floridus (in *PLRE* II, s.v. Floridus and Hitzig, 193 and 198), who was *consularis* of Liguria and then (probably) assessor to the *praefectus urbi* of Rome — since this carried *spectabilis* rank and put him above provincial governors.

<sup>28</sup> Libanius, vol.4, ed. R. Foerster, Leipzig 1908, *Or.*52.25, p.37; Justinian, *Nov.*82.praef (539), where he also notes the lack of legal knowledge among assessors.

with him.<sup>29</sup>

Gratitude or hatred was earned not just by the governor for his tenure of office, but also his assessor; the assessor was also supposed to remain in the province where he served for fifty days after he laid down his office. The fall from grace of an official would almost certainly involve his assessor as well.<sup>30</sup> A good instance of the close relationship between an official and his assessor is provided by the case of Tisamenus, a victim of Libanius's oratory; he is said to lack any legal knowledge, and merely to have shared in the revelries put on by the general he served. If, however, assessors were generally so incapable as Libanius makes Tisamenus out to be, then Lactantius's complaint — that uneducated and brutal military judges were sent out to govern with no assessors — rather loses its force. A more honourable example of an assessor at work is furnished by our Procopius. Like Tisamenus, he was clearly close to the general he served, as his presence on the *navis praetoria* on the expedition to North Africa demonstrates, as well as numerous (p.44) other details in his work. Given Paulus's mention of *epistolae* among the functions of an assessor, some of Belisarius's letters in the *Wars* may be versions of those originally drafted by Procopius for official use.<sup>31</sup>

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<sup>29</sup> Cited by Millar, *ERW*, 110 and n.4, from the *Histoire Ecclésiastique*, vol.2, ed. and tr. G. Bardy, Paris 1955 (SC 41), VI.42.5. The date is the 250s A.D.

<sup>30</sup> Hitzig, 123 and 151, on this, citing the case of the hatred incurred by Lucianus and his assessor according to Libanius, vol.3, *Or.*56.32; cf. the fining of Romanus, the *comes per Africam* and his assessor, Caecilius, in Ammianus, *Rerum gestarum libri quae supersunt*, ed. W. Seyfarth, Leipzig 1978 (also ed. and tr. J.C. Rolfe, London 1935-9), 28.6.11, 28, 29, and cp. the fate of Frontinus, 28.1.21, assessor of Hymetius. *C.J.* I.51.3 (403) on the obligation to remain in the province for fifty days.

<sup>31</sup> Tisamenus — Libanius, *Or.*33.4 (Foerster, vol.3, 166-7), cf. Hitzig, 168 on him and *PLRE* I, s.v. Tisamenus. Lactantius, *De mortibus persecutorum*, ed. and tr. J.L. Creed, Oxford 1984, 22.5 (with the comments on p.104, n.3), for his criticism. Procopius's position, *Wars* III.12.3, noted by Hitzig, 97. Q.v. n.13 on the duty relating to *epistolae*. Cp. also the role of the quaestors in drafting legislation, Harries, 'The imperial quaestor', 149-53.

Hitzig, 97, is mistaken, however, in supposing Olympius to be an assessor of the *consularis Syriae* in Libanius's *Autobiography*, §170 (as is Norman in her note, p.237 note a). Given that the *consularis* will have selected his own assessor, he will hardly have chosen such an untractable man as Olympius, who prevented him from flogging two students of Libanius. Olympius will rather have

Who then might be selected as an assessor? Evidently an advocate might seem to have more claim to the post than others, but the case of Tisamenus causes one to doubt whether legal knowledge was a *sine qua non*. Another instance may be cited. Ammianus tells of a certain Flavius Simplicius, who rose to be vicar of Rome in 374-5. Prior to that he had served as the *consiliarius* of Maximinus, then governor of Corsica, Sardinia or Etruria. Since Ammianus describes him as an 'ex grammatico' it would appear that he too had not undergone legal training, although this did not retard his subsequent career; it may be significant that Maximinus, for his part, had been an advocate, and could therefore perhaps afford to be with an adviser largely ignorant of legal matters.<sup>32</sup> From these two cases — and bearing in mind Justinian's complaint as to the need to examine those appointed to the assessorship — it seems fair (p.45) to infer that not every assessor had been educated in the law.<sup>33</sup>

In general, however, the assessors of whom we know were lawyers. Skilled lawyers might, one presumes, have more chance of being called upon to advise a governor or higher official, but ties of blood or patronage must be borne in mind. While the elevation of Simplicius to his post may

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been one of the notables of the city who was entitled to sit up with the *consularis* (παρεκαθητο), cf. Jones, *LRE*, 503, on these and Libanius's complaints about them in another context, *Or.* 42.4 (ed. Foerster, vol.4, p.27), referring to them as παρακαθημενοι. Unlike *quaestores sacri palatii* therefore, it is unlikely that assessors could act as any kind of check on a magistrate, *contra* Hitzig, 53; quaestors, such as Proculus (*Wars* I.11.19-24), could, and did, take issue with emperors, however, cp. Cassiodorus, *Variae*, 6.5.5.

<sup>32</sup> Ammianus 28.1.45 on Simplicius (of Emona), cf. *PLRE* I, s.v. Flavius Simplicius 7; also J.F. Matthews, *The Roman Empire of Ammianus*, London 1989, 211, Hitzig, 193, and Kaster, *Guardians of Language*, 124-5 and 359. Kaster suggests, however, that Simplicius may 'possibly [have] combined advocacy with his teaching', comparing him in this with Ausonius of Bordeaux, 124.

On Maximinus, cf. *PLRE* I, s.v. Maximinus 7: Ammianus, 28.1.6, records his mediocre performance as an advocate. Matthews, *Roman Empire*, 272, on his patronage of Simplicius.

<sup>33</sup> Q.v. n.14 on Justinian; cf. Hitzig, 81-2, on the question of legal knowledge, also Jones, *LRE*, 387. Ammianus evidently expected that assessors would usually have a legal training, cf. 23.6.82: Persian magistrates have no need of advisers, 'unde nostram consuetudinem rident, quae interdum facundos, iurisque publici peritissimos, post indoctorum collocat terga' ('therefore they ridicule our custom, which at times places eloquent men, highly skilled in public law, behind the backs of judges without learning').

be ascribed to the patronage of his fellow-countryman Maximinus, the appointment of close relatives was also not unknown. The most blatant cases are from sixth century Italy, where the young Cassiodorus served his father as a *consiliarius* at some point between 503 and 507. Since, however, he was then appointed as *quaestor palatii* by Theoderic, and described as ‘*conscientia praeditum et legum eruditione maturum*’, it appears that despite his tender years he was equipped with legal knowledge.<sup>34</sup> Another likely example is that of Cyprianus, the *comes sacrarum largitionum* in Italy between 524 and 525, who appointed his brother Opilio to some sort of advisory post, most probably that of *consiliarius*. Yet although this appears to be a further clear instance of nepotism, we know that Opilio had practised as an advocate.<sup>35</sup>

(p.46) Finally there are the more straightforward cases of assessors, appointed for their legal expertise, or — perhaps even more often — for their rhetorical ability.<sup>36</sup> Some specific careers will be examined here in order to shed more light on the role of assessors, which will in turn lead into a consideration of classicising historians — who, it will emerge, not infrequently held this post.

A good example of advancement from the role of advocate to assessor is furnished by Ambrose, who soon rose to the post of *consularis Aemiliae et Liguria* in 374 before being elected bishop

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<sup>34</sup> Cf. *PLRE* II, s.v. Cassiodorus 3 and 4 on this; the elder Cassiodorus was prefect of Italy when advised by his son. See also Barnish, *Cassiodorus: Variae*, xxxix, and Hitzig, 195, on Cassiodorus’s appointment.

<sup>35</sup> Hitzig, 195, makes this suggestion, though *PLRE* II, s.v. Opilio 4 does not describe him as the *consiliarius* of his brother, Cyprianus 2. Cassiodorus’s words — ‘*militiae ordinem sub fraterna laude didicisti; cui mutuo nexus affectus implebas laboribus socium et consiliorum participatione germanum*’ (*Variae* 8.16) — are taken by Hitzig, *loc. cit.*, to refer to the assessorship. On his activities as an advocate, cf. *Variae* 8.16-17.

<sup>36</sup> Cassiodorus, *Variae*, 8.12, is an interesting piece of evidence, being the letter of appointment of Arator to be the assessor of the general Tuluin, cf. Barnish’s remarks, *Cassiodorus: Variae*, xxxix. Barnish’s view, *ibid.* 104 n.9, that the assessorship is here in question rather than another function is more convincing than *PLRE* II, s.v. Arator. Note also Harries’s view, ‘The imperial quaestor’, 160, that eloquence was the ‘main qualification’ for the posts of *quaestor sacri palatii* and *magister memoriae* (rather than legal knowledge).

of Milan. The description of his early career in Paulinus's life is worth quoting in full:

sed postquam edoctus liberalibus disciplinis ex urbe egressus est professusque in auditorio praefecturae praetorii, ita splendide causas perorabat ut eligeretur a viro illustri Probo, tunc praefecto praetorii, ad consilium tribuendum.

But after an education in the liberal arts, he left Rome and practised law at the court of the praetorian prefect. So impressively did he plead his cases that he was chosen by the *vir illustris* Probus, then the praetorian prefect, to give him advice.<sup>37</sup>

An almost exact parallel, but given a rather more hostile slant, can be found in the early career of Maximinus, as described by Ammianus:

Is [Maximinus] post mediocre studium liberalium doctrinarum defensionemque causarum ignobilem, et administratas Corsicam itidemque Sardiniam, rexit deinde Tusciam.

(p.47) Maximinus, after some slight study of the liberal arts, and after acting as a pleader without acquiring distinction, became governor of Corsica, also of Sardinia, and finally of Tuscia (tr. Rolfe).<sup>38</sup>

Maximinus, for all his mediocrity, was able to administer provinces without ever having served as assessor. The common background of Ambrose and Maximinus, however, is noteworthy. First come the *studia liberalia*, followed by a forensic career. The young advocate practises at court, hoping to attract the attention of a high official, most likely a governor or general, by whom he

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<sup>37</sup> Paulinus, *Vita Ambrosii*, 5.1 in *Vita di Cipriano, Vita di Ambrogio, Vita di Agostino*, ed. A.A.R. Bastiaensen, tr. L. Canali, Rome 1975, my translation into English; cf. *PLRE* II, s.v. Ambrosius 3.

<sup>38</sup> Ammianus, 28.1.6; q.v. n.24 on Maximinus.

may be selected as an adviser. A few more instances may be noted.

Flavius Severus, whose career is known from an oration of Symmachus of 376/8, served for a considerable time as an advocate before being appointed *praeses* of an African province. As a result of his success in this post, he was summoned by the elder Theodosius as an adviser during his campaign against Firmus in Africa in 374/5.<sup>39</sup> Augustine's friend Alypius studied law in Rome, and served as an assessor three times. A little later, there is the case of the advocate Justinian, who in 408 was Stilicho's *sumboulos* and *paredros*. Previously he had distinguished himself in the courts of Rome, Zosimus informs us. He endeavoured to prevent Stilicho's fall, but when this proved impossible, he fled, not wishing to be implicated in his patron's demise.<sup>40</sup> Finally, another likely lawyer summoned to be a *consiliarius* is Pragmatius, noted for his rhetorical skill; when his father-in-law, Priscus Valerianus, was appointed praetorian prefect of Gaul in the mid-fifth century he chose Pragmatius as his adviser, Sidonius Apollinaris informs us.<sup>41</sup>

**(p.48)** In conclusion, autopsy was important for historians in antiquity, in the later Roman empire as earlier. While in earlier Greek and Roman times, leading men composed their own histories or commentaries, this became rare in the late empire. On the other hand, historiography certainly did not decline, but if anything grew after the difficulties of the third century. But for the most part historians of this period were functionaries, trained lawyers, who often held the post of *assessor*, which of course gave them the opportunity to observe events at first-hand. Here I have examined in greater detail this post, from which it has emerged to what degree it became more professionalised through the centuries: after Libanius' complaints about Tisamenus we have no

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<sup>39</sup> Cf. Hitzig, 196, *PLRE I*, s.v. Severus 24, Symmachus, *Or.*6 in *MGH VI.1*, ed. O. Seeck, Berlin 1883.

<sup>40</sup> On Alypius, cf. *PLRE I*, s.v. Alypius 8. On Justinian, cf. Zosimus, V.30.4-5, ed. and tr. F. Paschoud, vol.3.1, Paris 1986, and *PLRE II*, s.v. Iustinianus 2.

<sup>41</sup> Sidonius Apollinaris, ed. and tr. A. Loyen, vol.2, Paris 1970, *Ep.*5.10, cf. *PLRE II*, s.v. Pragmatius and Priscus Valerianus 8, and Hitzig, 197; Valerianus was praetorian prefect before 456.

more indications of comparable incompetents holding office, although Justinian was obliged to legislate to impose exams on those, who wished to serve as *assessore*s. It thus became an ideal post for an ambitious, well-educated young man, equipping him with the possibility of witnessing important events (depending on where he served) and then recounting them.<sup>42</sup>

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<sup>42</sup> On the change in the status of historians - professional lawyers rather than retired grandees - I have published elsewhere. There I also considered the historians individually, among whom there is not only Procopius, but also Menander, Agathias, Evagrius and Theophylact Simocatta, and I showed that they were almost without exception trained lawyers, most of whom held the office of *assessor*. See Greatrex, 'Lawyers and Historians' (n.9).