

THE ROMAN GOVERNOR'S PERMISSION FOR A DECREE OF THE POLIS

“**M**AKING his native city at home and abroad obedient to the (Roman) rulers (the local statesman) ought not to go so far as to lower its dignity, nor as to submit the neck to the halter when the leg has been bound, as some, who refer even insignificant matters as well as more important questions to the (Roman) governors, bring the reproach of servility upon it, nay rather destroy completely the city government by demoralizing, discouraging and rendering it powerless everywhere. For just as those who have grown accustomed neither to eat nor to bathe without permission of a physician do not enjoy even as much health as nature does give them, so those who invite the (Roman) governor's decision upon every decree which the city council has passed and upon every privilege accorded in the routine administration of the polis, force the governors to be their masters more than (the governors) wish.”¹

The last words, to which I here give a new interpretation by assuming two cases of hendiadys, read in Greek as follows: *οἱ παντὶ δόγματι καὶ συνεδρίῳ καὶ χάριτι καὶ διοικήσει προσάγοντες ἡγεμονικὴν κρίσιν ἀναγκάζουσιν ἑαυτῶν μᾶλλον ἢ βούλονται δεσπότας εἶναι τοὺς ἡγουμένους.*

The passage indicates that in the time of Plutarch there was no clear rule as to just what enactments of the polis had to be submitted to the Roman government for its approval. Apparently the more important (*μείζω*) enactments needed to be submitted, but the cities were submitting more than the Roman government required or desired. The growing control by Rome resulted from psychological attitudes in the Greek polis, attitudes Plutarch denounced. The cities were afraid that without moral support from the Roman governor they could not control their own local magnates (*πρῶτοι*) who were not submissive to enactments of the local government, unless the enactments were approved by the governor. Thus the cities acquired the habit of submitting even insignificant enactments.

In 1900 in an influential article on the inscription now to be cited from Heberdey's edition, *Forschungen in Ephesos*, II, Vienna, 1912, No. 19, Th. Mommsen,² pointing to the rôle of the governor in this inscription and in the documents on the Opramoas

¹ Plutarch, *Political Precepts*, 814 e-815 a (ed. Bernadakis, *Moralia* V). Some of the problems connected with this passage have been treated in Chapter V of my book, *The Ruling Power: a Study of the Roman Empire in the Second Century after Christ through the Roman Oration of Aelius Aristides*, published as Part 4 of the *Transactions of the American Philosophical Society*, XLIII, 1953.

² “Volksbeschluss der Ephesier zu Ehren des Kaisers Antoninus Pius,” *Jahreshefte des Österreichischen Archäologischen Institutes in Wien*, III, 1900, pp. 1-8.

Monument at Rhodiapolis,³ concluded that the ordinary measures of a community were not laid before the governor, but that extraordinary measures required his consent. Perhaps the same important qualification is to be understood in David Magie's far more sweeping statement, *Roman Rule in Asia Minor*, Princeton, 1950, p. 641, "The enactments <of a Greek city> had to be approved by the Roman governor." In note 29 on p. 1504 Magie supports his statement with references to five inscriptions. One document, cited in evidence by Magie, is the inscription *Forschungen in Ephesos*, II, No. 19, containing an Ephesian decree and a letter of enthusiastic support from the proconsul. The Ephesians have voted to celebrate the birthday of the emperor Antoninus Pius on a lavish scale with a cash distribution to every citizen out of public funds. In his letter the proconsul approves this perennial demonstration of loyalty with words which read as follows: *καὶ ταῦτα μὲν ὑμῖν, ὀρθῶς καὶ καλῶς, ὥσπερ [ἄν] | ε<ι> αὐτὸς εἰσηγησάμενος ἔτυχ<ο>ν, νενομοθετήσθω.*⁴

If I am not mistaken, the proconsul says, "Let also these articles stand enacted by you: such action seems to me as right and fine as if I had just sponsored the articles myself." The word *νενομοθετήσθω* does not mean that the articles shall be enacted into Roman law; it is a hortatory perfect imperative, followed by the dative of agency (*ὑμῖν*). It refers to the law of Ephesus. The Ephesians cleared with the governor after enacting this important law which would impose a permanent drain upon the city finances, but their behavior in so important a question is no indication that they were in the habit of consulting with him in every case. After all, not every decree is accompanied by a letter of approval from a Roman governor.

A second case cited by Magie occurs in another inscription at Ephesus, *S.I.G.*³, 867 with three documents, of which the first may be rendered freely:

[C. Po]pilius Carus Peto [proconsul says:] "I learned from the decree sent to me by the splendid city of the Ephesians that the *clarissimi proconsules*, my predecessors, made the days of the festival of the Artemisia holidays and that they proclaimed it by edict. Therefore I too considered it necessary in reverence to the goddess and in honor of the most splendid city of the Ephesians to proclaim in an edict that these days shall be holidays and that the *iustitium* for the same days shall be preserved, those of the festal assembly over which T. Aelius Marcianus Priscus the agonothete, son of Aelius Priscus, presides, a most respectable man worthy of every honor and commendation."

An Ephesian decree engraved below the proconsul's edict declares the whole month a holiday but makes no reference to the proconsul. The Ephesian decree, of course, merely creates local Ephesian law.

There is in my opinion a clear difference between the action taken by the governor when the Ephesians submitted a request that he declare a holiday during the Ephesian festival of Artemis, and the action taken by the governor when the Ephesians con-

³ Now to be consulted in *T.A.M.*, II, 905.

⁴ The iota of *εἰ* was omitted; the penultimate word seems first to have been written *εὐτυχῶς* and then incompletely corrected to *ετυχῶν*. I have added the word *ἄν* at the end of line 54.

sulted with him about their plan to celebrate the emperor's birthday with a distribution of cash to all Ephesian citizens. In the first case, he was expected to do something positive, namely close the Roman courts and make the holiday a legal holiday in provincial law. In the other case, he was not expected to do anything but give his approval to an enactment by the polis of the Ephesians. In the latter case he permits a statute of Ephesian law to come into existence; in the former he creates beside the article of Ephesian law a parallel article of provincial law.

Other cases cited by Magie in note 29 on page 1504 are:

T.A.M., II, 175 (= *I.G.R.*, III, 582). Sometime between A. D. 185 and 192 the city of Sidyma voted to set up a *σύστημα γερο[ντ]ικόν* and to ask the proconsul to support actively the decision of the Council and Demos (*παρακ[λ]ηθῆναι καὶ αὐτὸν συνεπικυρωθῆναι τὴν τῆς βουλῆς καὶ τοῦ δήμου κρίσιν*). They have enacted the law, and have asked him to make it an official enactment of provincial law. But this was quite pointless and the proconsul politely refuses to give them the *ἐπικύρωσις* which they have asked. He says merely, *τὰ καλῶς γεινόμενα ἐπαινέσθαι μᾶλλον προσήκει ἢ κυροῦσθαι· ἔχει γὰρ τὸ βέβαιον ἀφ' ἑαυτῶν*. Neither the city nor the proconsul uses the word *ἐπικυρώω* or *ἐπικύρωσις*, which would have been clearer than his broad word *κυροῦσθαι*. He is using a general term, but their term *συνεπικυρωθῆναι* shows that what they have wanted from him is parallel action, an *ἐπικύρωσις*. If so, he refuses to make this an article of provincial law because such action as theirs requires no support:⁵ there is no danger that their commendable action will be set aside. The normal reason for an *ἐπικύρωσις* was, I submit, the possible unenforcibility of a good law important for the welfare of the city. I content myself with emphasizing in connection with this document that it was the Greek city and not the Roman magistrate who wanted to make Rome assume part of the responsibility for enforcing the law. The proconsul commends the law but will not open his court or that of his successors to all and sundry cases which the enforcement of the law might entail, not because he does not think it a valuable law but because he thinks that Sidyma is quite capable of enforcing the law herself, and because in a Roman court any cases arising out of the enactment could easily be settled on the basis of the law of Sidyma.

Forschungen in Ephesos, II, No. 27, of A. D. 104. The negotiations concerning the endowment of Vibius Salutaris at Ephesus. This case, which as Case I has been treated in my book *The Ruling Power*,⁶ Chapter VII, "Roman Declarations Protecting Greek Endowments," falls into a special category. The donor has asked that the endowment be not only ratified by the city but also secured with supplementary ratifications (*ἐπι[κυ]ρωθῆναι*) by the governor and his legate. The latter grant the

⁵ The word *βέβαιον* certainly suggests the word *βεβαιῶ*, which belongs to the terminology of supplementary ratifications: see *The Ruling Power*, p. 979.

⁶ See note 1 *supra*.

request as a very special favor, and they place the endowment under the protection of the Roman law and of the Roman courts of the province. In similar cases a declaration of special protection for an endowment is made sometimes by a governor, sometimes by a financial commissioner from the imperial government, sometimes by the emperor himself. As far as I can see, permission from the governor and his legate to make or accept the endowment is neither necessary nor really asked, but the supplementary ratification was most desirable and therefore requested.

Forschungen in Ephesos, II, No. 54, dated by Heberdey on the uncertain evidence of the lettering to about the time of Caracalla. It reads as follows:

Ἡ πρώτη καὶ μεγίστη μητ[ρό]
 πολίς τῆς Ἀσίας καὶ τρὶς νεωκ[ό]
 ρος Ἐφεσίων πόλις κατὰ τὸ κυ[ρω]
 θὲν ψήφισμα ἐτείμησεν
 τὴν λαμπροτάτην Κνιδίων
 πόλιν, τὴν ἀδελφὴν,
 παρ' ἑαυτοῦ ἀναστήσαντος
 τὴν τεμὴν τοῦ δήμου
 Ποπλίου Αἰλίου Συμμάχου
 καθὼς ὑπέσχετο ἐν τῇ πατρ[ίδι]
 ἑαυτοῦ

With a reference to Mommsen's article in the *Jahreshefte*, III, Heberdey interpreted the phrase κυ[ρω]θὲν ψήφισμα as meaning a ψήφισμα which had received the permission of the governor. So also Magie. The next question would then be whether the governor gave his approval or took supporting action. Since there was hardly need of supporting action (*ἐπικύρωσις*) here, and since mere approval, if my theory is right, was not *ἐπικύρωσις* or *κύρωσις*, I submit that the phrase means "decree formally passed." Both *νόμος* and *ψήφισμα* were commonly used by Greek writers to mean "bill under consideration" or "forthcoming enactment," and the phraseology here reflects the language in which the presiding officer put the bill to a vote: "Ὅτω δοκεῖ κύριον εἶναι τὸδε τὸ ψήφισμα, ἀράτω τὴν χεῖρα."⁷ Neither permission nor supporting action by the governor is implied at all.

In note 32 on page 1506 Magie cites still another case of interest to us: *I.G.R.*, IV, 1414 at Smyrna. This records the gift of four βάθ<ρ>α to φορτηγοὶ Ἀσκληπιασταί. The authority is cited with the significant words ψηφισαμένης τῆς κρατίστης βουλῆς καὶ ἐπικυρώσαντος τοῦ λαμπροτάτου ἀνθυπάτου Δολλι<αν>οῦ Ἀουείτου, who is dated by

⁷ Compare *A.J.P.*, LXXII, 1951, p. 218 and *Hesperia*, XX, 1951, p. 350.

Chapot⁸ around A. D. 206-210. Here we undoubtedly have a case of *ἐπικύρωσις* by the proconsul after a decree of the city council, but with so little evidence we cannot reconstruct the circumstances.

If my conception of the distinction between permission and supporting action, which are sometimes confused, is correct, Greek cities often wanted the Roman government to adopt something other than a sympathetically tolerant or hands-off policy; they wanted the Roman government to co-operate actively by parallel enactments which would support certain of their own enactments and so help them to enforce their law even upon persons who, though subject to the law, might be safe from local sanctions because of a privileged position either as high ranking Roman citizens or in some other way. The supporting action is sometimes called the *ἐπικύρωσις*. The free cities (*civitates liberae*) were not bound to consult the governor as frequently as the other cities, but though they did not ask his permission for their enactments, they may have been just as eager as any other polis to enlist supporting action from the Roman government.

Supporting action can be frankly mentioned because it represents an accommodation, not an infringement of Greek liberty.⁹ *Permission* is usually granted in more oblique language and is less frequently advertised, because it represents a restriction upon Greek liberty.

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⁸ V. Chapot, "Données nouvelles sur la prosopographie de l'Asie Proconsulaire," *Mélanges en hommage à la mémoire de Fr. Martroye*, Paris, 1941, p. 90. Or is this Julius Avitus (cf. Magie, p. 1585)?

⁹ A letter of mere appreciation from the governor rather resembled supporting action. It has not escaped me that referring to the document which we now cite as *T.A.M.*, II, 905, III, A, the distinguished jurist Pietro Bonfante, *Bull. dell'Istituto di Diritto Romano*, III, 1890, p. 193, note 4, thought that the legate of Lycia Pamphylia was confirming the election of Opramoas to the office of archiphylax when he replied to the city, Ὀπραμόαν . . . καὶ αὐτὸς ἀποδέχομαι τῇ περὶ τὸ σεμνότατον ἔθνος φιλοτειμία αὐτοῦ ὑμῶν μαρτυροῦντων[ν]. But that was before Mommsen's article and before Wilhelm's study of the word ἀποδέχομαι, *Wiener Anzeiger*, LXV, 1922, pp. 129-136. The legate was merely expressing pleasure at a benefaction by Opramoas in order to encourage local patriotism.