

# The Solonian Constitution and a Consul of A.D. 149

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WITH APOLOGY for the bizarre title the writer presents two studies which need not have any connection and then again may be more significant when read together. There may be a close connection. The fact that the Areopagus and the Demos of the Athenians honored in a rather unusual manner their distinguished Roman friend indicates that this and the boon of initiation for his sons were expressions of gratitude for services rendered. That is to say, he came to Athens for a public rather than a private and selfish purpose, or he worked somewhere for Athens and his sons came without him.

## Military and Political Units Called *Gene* in Archaic and Roman Athens

In (Etruscan, pre-Servian) Rome the creation of thirty *curiae*<sup>1</sup> marked the introduction of a new military system to produce a total levy of 3,000 men from a larger number of *adsidui*.

In Athens a reform of the *γένη*, as the writer once argued, or the creation of a new system of *γένη*, as he would now argue alternatively, occurred in the archaic period in order to provide a total levy of 10,800 men from the families of modest (or more) wealth. The *Lexicon Demosthenicum Patmium*, s.v. *γεννήται*, offers fragment 3 of Aristotle's *Constitution of Athens*. This fragment, which, I think, implies that the military companies called *γένη* were, like the *curiae* of Etruscan (and later) Rome, thirty in number, not three-hundred and sixty, reads as follows:

φυλάς δὲ αὐτῶν συννεμηθεῖσθαι δ' ἀπομιμησάμενων τὰς ἐν τοῖς  
ἐνιαυτοῖς ὥρας, ἐκάστην δὲ διηρῆσθαι εἰς τρία μέρη τῶν φυλῶν,

<sup>1</sup> The reader will find all the ancient evidence and criticism of many modern theories in the lively book by R. E. A. Palmer, *The Archaic Community of the Romans* (Cambridge 1970).

ὅπως γένηται τὰ πάντα δώδεκα μέρη, καθάπερ οἱ μῆνες εἰς τὸν ἐνιαυτόν, καλεῖσθαι δὲ αὐτὰ τριττῦς καὶ φατρίας, εἰς δὲ τὴν φατρίαν τριάκοντα γένη διακεκομῆσθαι, καθάπερ αἱ ἡμέραι εἰς τὸν μῆνα, τὸ δὲ γένος εἶναι τριάκοντα ἀνδρῶν.

Adapting the translation by von Fritz and Kapp,<sup>2</sup> I should render Aristotle's indirect discourse as follows: "that they were distributed into four tribes in imitation of the seasons of the year, and that each of the tribes was divided into three parts so that there would be altogether twelve parts like the months in the year, and that they were called 'trittytes' or 'phratryes', and that levies for thirty clans were imposed on the phratry like the days in the month, and that the clan quota (of the phratry) consisted of thirty men."

As von Fritz and Kapp note, "Aristotle was not concerned with the *γεννήται*, but with the alleged analogy of the numbers of tribes, trittytes and clans with the numbers of seasons, months and days respectively . . . and . . . was probably quoting other people."

The inventor, like Cleisthenes, used an old word for something new. The 'clans' cut across the old division into tribes and phratryes, as later the tribes of Cleisthenes cut across the regions of Attica. The phratryes were equalized for the levy by adding or, at a later date, shifting *ὄργεῶνες* (Philochorus, *FGrHist* 328 F 35a Jacoby).

Plutarch, *Pericles* 12.5, quotes Pericles as contrasting τὸν ἀκύντακτον καὶ βάναισο νόχλον with the men who served in the army and navy. The scholia which cite Aristotle, *Ath. Pol.* fr.3, say that τοὺς εἰς τὰ γένη τεταγμένους (men) call *γεννήτας*. There was a distinction between *γεννήται* (roughly those eligible or once eligible for military service as hoplites before Cleisthenes) and the ἀκύντακτος ὄχλος, which must not be confused with a distinction between nobles and commoners. It might better be described as the difference between the descendants of those with and without visible property of a certain value.

The systems of thirty *curiae* at Rome and of thirty *γένη* at Athens began as military organizations and served as political organizations. There was also a religious aspect, inseparable in the archaic city.

Was the organization of the levy at Sparta so very different? A need for two armies, one for service abroad, came with the conquest of Messenia. Was the levy based on three kinship groups called *φυλαί*

<sup>2</sup> K. v. Fritz/E. Kapp, *Aristotle's Constitution of Athens and Related Texts* (The Hafner Library of Classics 13, New York 1950) 208f.

and five territorial groups called *ᾠβαί* to form two armies of fifteen units each? And did not the thirty trittyes of Cleisthenes make the superseding of the thirty clans seem less drastic in a military reorganization of Attica?

Cleisthenes did not touch the phratries, but he admitted the *ἀκύντακτος ὄχλος* of native Athenians to ten new tribes by enrolling them in demes. The political and military organization of Athens was altered to fit the ten tribes. In later periods other tribes were added to the Cleisthenean tribes so that there were twelve or thirteen of them. The number of these Cleisthenean and post-Cleisthenean tribes was not as sacred as the basic Solonian constitution itself, which reflected a compromise between rich and poor, noble and commoner. The essential elements were two anchors<sup>3</sup> (namely an élite council and a popular council) and an assembly of the Demos. The clans never recovered their military significance, but their religious significance always remained, and their old political potential, lost for generations, was not forgotten.

During reactions against failures of an extreme democracy citizens below a certain census requirement were occasionally stricken from the rolls, but the old clans are never mentioned in connection with these reductions in the number of first-class citizens. The oligarchic ideal, at least in the fourth century, found its most meaningful criterion in a property qualification. After Sulla's capture of Athens an oligarchical constitution was established in a version which doubtless placed power in the hands of the Areopagus and included certain property requirements, but an openly oligarchical constitution could not have lasted very long, once the reaction against the Sullan reforms occurred at Rome. In 70 B.C. with the humiliation of the Senate and re-establishment of the tribunes' importance things happened at Rome which would have frightened the oligarchs of Athens and disposed them to conciliate the common people of Athens by a display of democracy. I think that the Areopagus had to take action and restore the old democratic institutions, at least in a selective or superficial manner, and that they did so in a decree now carefully published by D. J. Geagan, *Hesperia* 40 (1971) 101–08, under the heading, "A Law Code of

<sup>3</sup> The author's views on the historicity of the Council of the Four Hundred and on the place of Solon and Cleisthenes in the history of the Athenian constitution have been presented in *Marcus Aurelius, Aspects of Civic and Cultural Policy in the East* (= *Hesperia* Suppl. 13 [1970]) 63. On the number of clans, however, he has altered his view.

the First Century B.C.” It returns to sortition and looks to the totality of Athenians. In other words, it is democratic. My date for that code is 70/69 B.C. (with a prytany secretary from Antiochis).

A generation later we find a new interest in the old clans with consultation of the oracle at Delphi lending religious support.<sup>4</sup> Then around 23 B.C. the archon of the clan of the Amynandridae put up a list of members in a way to prove that the Amynandridae were drawn equally from all the twelve Cleisthenean and post-Cleisthenean tribes<sup>5</sup> as the military clans of the sixth century were drawn (according to my interpretation) from all the twelve phratries. The phratries and the four old Ionian tribes are not attested in Roman Athens.

In the second century after Christ the community of the Athenians enrolled in tribes and clans seems to have been a smaller community than that of the Athenians enrolled in tribes and demes. On religious occasions the tribes and clans came into their own. At least Philostratus, VS 2.1.3 (p.57 Kayser), reports that Claudius Atticus frequently sacrificed a hecatomb to Athena and entertained the demos by tribes and clans, while Aelius Aristides in the *Panathenaic* 261 speaks of the demos as being divided by Apollo into tribes and clans. In IG II<sup>2</sup> 1077 for Geta’s elevation the Athenians were to θύ[ει]ν πα[ν]γενεῖ.

The constitution of Athens was overhauled and the laws of Draco and Solon, as it was called, were redrafted professionally in the Hadrianic period, though the publication of some sections may have occurred under Antoninus Pius. It probably took a long while, and certain areas may have been under study during the reigns of Hadrian, Antoninus Pius<sup>6</sup> and even Marcus Aurelius.

<sup>4</sup> An inscription of ca. 37/6 B.C., published by B. D. Meritt, *Hesperia* 9 (1940) 86–96, no.17, attests the consultation. See also *Inscriptions de Délos* 2516–2518 and 1624 bis.

<sup>5</sup> IG II<sup>2</sup> 2338. See also J. H. Oliver, *The Civilizing Power: A Study of the Panathenaic Discourse of Aelius Aristides . . . with Text* (= *TransAmPhilosSoc* 58 [1968] 1) 22f. The fragmentary catalogue originally listed about a hundred names. If there were thirty clans, the total of all thirty came to about 3,000, a likely number of first-class citizens.

<sup>6</sup> For the interest of Antoninus Pius in Athens see P. Graindor, “Antonin le Pieux et Athènes,” *Revue belge de philologie et d’histoire* 6 (1927) 753–56, IG II<sup>2</sup> 3390–3397, CIL III 549, and L. Moretti, *Inscriptiones Graecae Urbis Romae* I (Rome 1968) no.27=IG XIV 1053. See also the edition of IG II<sup>2</sup> 1104 by Edward W. Bodnar, S.J. *Cyriacus of Ancona and Athens* (Collection Latomus XLIII [Brussels 1960]) 145–50, no.50. For the affection that Antoninus Pius felt toward Herodes Atticus, who more or less dominated Athens in this period, see IG XIV 1392=SIG<sup>3</sup> 858.

Above all the prytany system worked badly with its annually shifting Council of the Five Hundred chosen in the demes of the thirteen tribes. It was harder to find rich men who would bear the burdens, especially in the third century. After the capture of Athens by the Herulians in 267 the whole superstructure, which went back in some sense to Cleisthenes, was abandoned once and for all.<sup>7</sup> The Solonian constitution with its two anchors and assembly survived, but we never hear of the Cleisthenean tribes again. The popular council was no longer the Council of the Five Hundred but a council divisible by thirty, at first a Council of Seven Hundred and Fifty (*IG II<sup>2</sup> 3669*, A.D. 269/70), then a Council of Three Hundred (*IG II<sup>2</sup> 3716* and *4222*, *fin. saec. IV*).<sup>8</sup> The clans had probably become the basis of Athenian political life. Clan quotas rather than tribal quotas determined the size and character of the Council. Clan lists may have been connected with taxable real estate ever since the reform of the first century B.C.

### L. Sergius Salvidienus Scipio Orfitus, a New *Curio Maximus*

*IG II<sup>2</sup> 4213* at Eleusis has just been reedited with new fragments by Kevin Clinton, *ArchEph* 1971, 133–34, as the inscription across the curved wall or large base supporting three statues. It has, he points out, the kind of lettering which occurs on a securely dated inscription, also at Eleusis, from the period A.D. 145–161. Prosopographical problems arise that concern three old patrician families and invalidate part of the stemma offered by Groag, *PIR<sup>2</sup> 2*, table opposite p.54. In fact, it raises doubt about the article on a Scipio Orfitus in *PIR<sup>2</sup> C 1447*, wherein two men are perhaps conflated, L. Sergius Salvidienus Scipio Orfitus and Ser(vius) Cornelius Scipio Salvidienus Orfitus.

L. Sergius Scipio Orfitus, consul of A.D. 149, known from *IG XII 3*, 325 = *SIG<sup>3</sup> 852* at Thera (*Λ. Σεργίω Σκειπίωνι Ὀρφίτῳ, Κ. Σοκείῳ Πρείσκῳ ὑπάτοις*) appears also in *CIL VI 644* = *ILS 3537* and in *IGR III 705* at Cyanae in Lycia Pamphylia: *ἐπὶ ὑπάτων Σαλβιδιηνοῦ Σκιπίωνος Ὀρφίτου καὶ Σοκείου Πρείσκου*. His name, therefore, was L. Sergius

<sup>7</sup> H. A. Thompson, "Athenian Twilight," *JRS* 49 (1959) 61–72.

<sup>8</sup> D. J. Geagan, *The Athenian Constitution after Sulla* (*Hesperia* Suppl. 12 [1967]), has collected and sifted the abundant epigraphical evidence. On the prytany system see S. Dow, *Prytaneis* (*Hesperia* Suppl. 1 [1937]).

Salvidienus Scipio Orfitus, but whether the elements L. Sergius came into his name through an adoption or from his natural father and whether the elements Salvidienus Scipio Orfitus came into his name from his mother's family or from that of his natural father are unknown. Some connection with the Cornelii surely existed, and his son, to judge from the names of his freedmen (as we shall see), received the *praenomen* Ser(vius) of the Cornelii Scipiones Orfiti.

Since L. Sergius Salvidienus Scipio Orfitus belongs to the *gens* of the Sergii, he cannot be identified with the proconsul of Africa of A.D. 163/4, Ser. Cornelius Scipio Salvidienus Orfitus (Cagnat-Merlin, *Inscr. d'Afr.* 80 and *ITR* 232),<sup>9</sup> whose *praenomen* was Ser(vius) like that of the proconsul of Africa under Nero, Ser. Cornelius Ser. *f. Lem(onia tribu)* Orfitus in *ITR* 341 at Lepcis. The Sergii were an old patrician family, and L. Sergius Plautus was a *salius Palatinus* in the time of Augustus. The fact deserves attention, because in priestly colleges like the *salii Palatini* the same families tend to be represented from generation to generation. They were still important. L. Sergius Paullus for instance became consul for the second time in 168.

The new edition of *IG II<sup>2</sup>* 4213 by Kevin Clinton shows a first line in large letters across the inscribed surface:

Ἡ ἐξ [Ἀρείου πάγου βουλή καὶ ὁ δῆμος ὁ Ἀθηναίων]

Below line 1 come three citations side by side. The first, A, reads as follows:

Σέργιον [Σαλβιδιηνὸν Σκει]  
 3 π[ί]ωνα Ὀρ[φίτον ὕπατον, κου]  
 [ρί]ωνα μέγ[ιστον Ῥωμαίων],  
 [ἀ]ρετῆς κα[ὶ εὐνοίας ἔνεκα]

In lines 2–3 Clinton restored [Καλπούρνιον Σκει]|π[ί]ωνα Ὀρ[φίτον], and the last two names are, though not obvious, quite certain. For 4–5 he suggested something like μεγ[αλοψυχίας καὶ | ἀ]ρετῆς κα[ὶ εὐνοίας ἔνεκεν], but did not put it into the text. Titles seem to follow the

<sup>9</sup> The identification of the consul of 149 with the proconsul of 163/4 received the support of E. Groag, *PIR<sup>2</sup>* C 1447. It was not challenged by R. Syme, "Proconsuls d'Afrique sous Antonin le Pieux," *REA* 61 (1959) 318, H.-G. Pflaum, *MemAcInscr* 15.2 (1967) 153, B. E. Thomasson, "Praesides provinciarum Africae," *Skrifter utgivna av Svenska Institutet i Rom*, 4<sup>o</sup> 30 (1969) 172, or apparently by anyone else. See also *Année épigraphique* 1966, no.18.

name, first ὑπατον, which often means *consularis* (there is not enough room for ὑπατικόν), and a Greek rendering of *curio maximus*.<sup>10</sup> The Greek for *curio* is cited from Dionysius by David Magie, *De Romanorum iuris publici sacrique vocabulis sollemnibus in Graecum sermonem conversis* (Diss. Leipzig 1905) 147. In restoring the titles I considered and rejected the title *VIIvir epulo*.

B and C, the two other citations of the same wall or base, read according to Clinton as follows:

|   |                           |    |                    |
|---|---------------------------|----|--------------------|
|   | [Καλπούρνιον]             |    | Καλπούρνιον        |
| 7 | [Σκειπίωνα Ὁρφίτον]       |    | [Πεί]ωνα Σκειπίω   |
|   | [Σκ]ε[ιπίωνο]ς Ὁρφί[ίτον] | 12 | [νο]ς Ὁρφίτου υἱὸν |
|   | υἱὸν μύστην               |    | μύστην             |

The interpretation of the second citation (B) as that of a son, Calpurnius Scipio Orfitus, brother of Calpurnius Piso, is supported by the implication of the water pipes from the joint property of Scipio Orfitus and Piso. Father and son are not likely to have joint property. Under *PIR*<sup>2</sup> C 317 Groag naturally assumes that they are brothers who have jointly inherited the property. *ILS* 7388 shows their freedman's full name, *Ser. Calpurn[io] Gemello, Orfiti et Pisonis lib. et procuratori*. The first brother too has the *nomen* Calpurnius as we see also from the name of the freedman *Ser. Calpurnius Helius Scipionis Orfiti* in *CIL* VI 14239. And he is the elder brother because Gemellus, freedman procurator of the joint property, chose his *praenomen* rather than Piso's, and the name of Orfitus came first. Orfitus<sup>11</sup> became consul in 172 with Quintilius Maximus; *ILS* 9042 and 8377 show L. Calpurnius Piso and P. Salvius Julianus as consuls together in 175.

Since the father has the *nomen* Sergius and the sons have the *nomen* Calpurnius, an adoption has occurred. Since it clearly did not disturb family life, it may have been a testamentary adoption, and the easiest explanation would be that the maternal grandfather wished to leave his property directly to his grandsons. It occasionally happens that a *cognomen* takes the place of a too widely diffused *nomen* in an aristocratic family, but if that were the case here, one would expect the

<sup>10</sup> On this priesthood the reader may consult Palmer, *op.cit.* (*supra* n.1) *passim*, esp. 98, 238, 274–76, 292. The *curio maximus* had to be at least fifty years old.

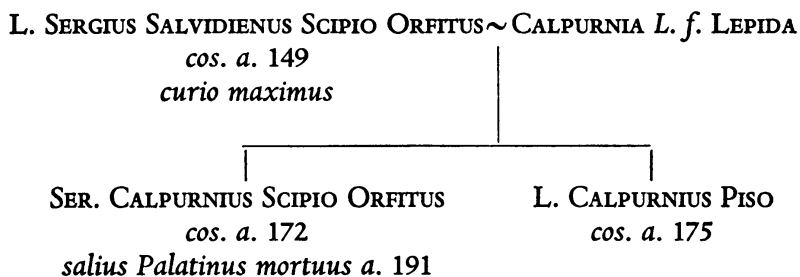
<sup>11</sup> Clinton, influenced by what seems to me confusion in *PIR*<sup>2</sup>, identifies the consul of 172 with the father instead of the son.

freedmen to bear the original *nomen*. The patrician *nomen* Sergius was not widely diffused, and it was too late to be sensitive about Catiline's reputation. It may, therefore, be inferred that Sergius Salvidienus Scipio Orfitus had married into the great family of the Calpurnii Pisones. We have virtual proof of it from *CIL* VI 14235 at Rome, *Calpurnia Luci filia Lepida Orfiti (uxor)*.

Her elder son, Calpurnius Scipio Orfitus, if he obtained the consul-ate *suo anno*, was born in A.D. 139. We know also the date of his death. The *fasti saliorum Palatinorum* in *CIL* VI 1980 have the following notation for A.D. 191:

[Popil]io Pedone Aproniano M. Valerio Bradua  
[cos] L. Annius Maximus · locum Calpurni Sci  
[pionis Orfi]ti (mortui).

The stemma in the lower right-hand corner of the table in *PIR*<sup>2</sup> 2, opposite p.54, should read accordingly:



It is interesting to see what kind of men were chosen for the post of *curio maximus*. The *Dizionario epigrafico* 2 (1910) 1402f cites only three known incumbents of this priesthood from the Empire, and additions to the list seem not to have been reported since then. The three were:

T. Statilius Taurus (*RE*, STATILIUS 34), who was consul for the second time in 26 B.C. with Augustus himself as colleague and is attested by *ILS* 893a = *CIL* X 409 of 26 B.C. or later;

C. Calvisius Sabinus (*PIR*<sup>2</sup> C 353), who was consul in 4 B.C. and is attested by *ILS* 925 = *CIL* XI 4772 in 4 B.C. or later;

T. Clodius Eprius Marcellus (*PIR*<sup>2</sup> E 84), who was consul for the second time in A.D. 74 and is attested by *ILS* 992 = *CIL* X 3853 in A.D. 74 or later.

To these three consulars we should now add the name of another:



L. Sergius Salvidienus Scipio Orfitus, consul in A.D. 149, who is attested as *curio maximus* by the above inscription at Eleusis (Clinton, no.30) from the fifties of the second century.

### Tentative Conclusions

At some early period a military reform, perhaps brought about by the so-called hoplite revolution, led to the establishment of a system of thirty clans which probably included old clans (except the Eumolpidae and Ceryces, possibly other exceptions too) and added to them *θίακοι* of *ὄργεῶνες*. For purposes of the levy these were integrated with the system of phratries, so that all the thirty clans cut across all the twelve phratries. Clan companies replaced tribal regiments and phratry companies. With a military reform in the period of Cleisthenes an army with a new type of tribal regiment replaced an army of clan companies, and the clans lost forever all their military significance. In the first century B.C. for religious purposes the clans (*i.e.* the 'curia' clans, not the Eumolpidae and Ceryces) were reorganized and integrated with the system of Cleisthenean and post-Cleisthenean tribes. Probably at this time the four old Ionian tribes and their phratries went out of existence at Athens.

A man could belong to only one 'curia' clan. He might, however, belong also, *e.g.*, to the Ceryces.

In the time of Antoninus Pius the 'curia' clans of Athens attracted Roman interest, and the Roman *curiae* attracted Athenian interest. The divine origin (= Delphic sanction) of the 'curia' clans was re-asserted by Aelius Aristides under Marcus Aurelius. After A.D. 267 in the much reduced public life the 'curia' clans replaced the tribes and demes of Cleisthenes.

BALTIMORE

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