1 ADAM MICKIEWICZ UNIVERSITY LAW BOOKS

Jacek Wiewiorowski

THE JUDICIARY OF DIOCESAN VICARS IN THE LATER ROMAN EMPIRE

WYDAWNICTWO NAUKOWE UAM

The Judiciary of Diocesan Vicars in the Later Roman Empire

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JACEK WIEWIOROWSKI

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Translated by Szymon Nowak

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The study focuses on vicars of dioceses (*vicarius dioeceseos*) of the Later Roman Empire and their judiciary capacity, which occupied one of the principal places in their duties. It is the first attempt to present the issue in scholarly research. The book covers the period from the establishment of dioceses under Diocletian (reigning 284–305) until the final abolishment of vicariates by Justinian I (reigning 527–565) and his further modifications of imperial administration introduced at a supra-provincial level. It concerns all dioceses of the Roman empire, excluding diocese administrators with special status: *comes Orientis*, *praefectus Augustalis* and vicars residing in Rome (especially *vicarius urbis Romae*). The author employs historical-legal methodology, consisting in an analysis of the judicature of diocesan vicars based on legal sources, supplemented by iconographic, literary and epigraphical sources, and prosopography. He draws on the conclusions resulting from the research of sociologists, sociobiologists, and particularly evolutionary psychologists, with regard to the mechanisms which exerted influence on the evolution of the judiciary of diocesan vicars.

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De legum vel iuris confusione purganda

Divina providentia, sacratissime imperator, domi forisque reipublicae praesidiis comparatis, restat unum de tua serenitate remedium ad civilium curarum medicinam, ut confusas legum contrariasque sententias, improbitatis reiecto litigio, iudicio augustae dignationis illumines. Quid enim sic ab honestate constitit alienum quam ibidem studia exerceri certandi ubi iustitia profitente discernuntur merita singulorum?

De rebus bellicis 21

On removing the confusion of the laws and justice

Most Sacred Emperor, when the defences of the State have been properly provided both at home and abroad through the operation of Divine Providence, one remedy designed to cure our civilian woes awaits Your Serene Majesty; throw lights upon the confused and contradictory rulings of the laws by a pronouncement of Your August Dignity and put a stop to dishonest litigation. For what is so alien to decent conduct as to give vent to one's passion for strife in the very place where the decision of Justice distinguish the merits of individuals?

[Translation by E. A. Thompson]

Preface

This volume, whose original idea was conceived in 2007, is the crowning of many years of my studies of Later Roman diocesan administration and, as part of its framework – the vicars of diocese and their judicature. It offers a critical review of contemporary views and discussions concerning the beginnings of diocesan organization at the turn of the fourth century, addresses the evolution of the judiciary of vicars and the decline of their importance, from the late fourth century to their final liquidation under Justinian I (527–565). The study also briefly presents subsequent fates of Later Roman administration at supra-provincial level during the reign of that emperor. The work certainly goes beyond a synthetic, historical-legal study, elaborating on themes relating to legal iconography, epigraphy and prosopography. The analyses are supplemented with observations originating from other social sciences, such as sociology and evolutionary psychology. They were applied in particular to account for the causes of transformations of the judiciary of vicars and disappearance of that office. I do hope that thanks to the interdisciplinary nature of a part of the analyses and conclusions, the work will prove interesting not only to legal historians and historians as such, but also representatives of contemporary jurisprudence and other social sciences. This volume is a revised and amended version of a study which was published in Polish in 2012, taking into consideration the comments to that edition.[*]

* * *

The book would not have been written without the kind assistance of many people. First and foremost, I would like to thank Professor Jan Zabłocki, head of the Department of Roman Law at the Faculty if Law and Administration, Cardinal Stefan Wyszyński University in Warsaw. His very insightful review of the Polish edition and valuable detailed remarks helped me to avoid many errors and devise a more lucid structure of the work.

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[*] J. Wiewiorowski, *Sądownictwo późnorzymskich wikariuszy diecezji*, Poznań 2012. Adam Mickiewicz University Press. Seria Prawo 178. Pp. 381 + plates. ISBN 978-83-232-2496-9. ISSN 0083-4262.

Separate expressions of gratitude are due to Professor Jan Prostko-Prostyński from the Department of Source Studies and Auxiliary Historical Sciences at the Insitute of History, Adam Mickiewicz University in Poznań. In this study, I relied on his critical observations made while consulting the entire work and numerous detailed issues which the addresses.

At many stages of my research, I received support from Professor Kazimierz Ilski, currently the Dean of the Faculty of Historical Studies at the AMU. It was he who initiated the long-term, fruitful and continuing collaboration with Polish historians of antiquity and the Byzantine period, which brought forth the idea of this book.

I am also grateful to my colleagues from my home Department and the Faculty of Law and Administration, AMU. Profesor Wojciech Dajczak, head of the Department, not only seconded my studies but also assisted me in sustaining their correspondence with the principal currents of Roman studies while helping to retain scientific independence; I also benefited greatly from his thorough review of the Polish edition, which he drafted as part of the post-doctoral degree proceedings. I was also supported by other members of Department, Professors Ewa Borkowska-Bagieńska, Andrzej Gulczyński and Władysław Rozwadowski, as well as doctors – Anna Plisecka and Wojciech Szafrański. Professors Henryk Olszewski and Maria Zmierczak provided me with valuable guidelines and suggestions, especially with regard to methodological issues.

Creation of this book would not have been feasible without the cooperation with researchers from scientific centres in Poland and abroad. In this respect, I cannot fail to mention Professors Timothy D. Barnes, Johannes Koder, Maciej Kokoszka, Rafał Kosiński, Francisco Beltrán Lloris, Rudolf Meyer-Pritzl, Leszek Mrozewicz, Szymon Olszaniec, Claudia Rapp, Maciej Salamon, Francisco Javier Andrés Santos, Michał Stachura and Maria Stassinopoulu, as well as younger colleagues – Andreas Gkoutziokostas, Paweł Filipczak, Andrzej Kompa, Juliusz Rogowski, Adam Świętoń, and Paulina Święcicka.

Another element which proved indispensable for this work were stays abroad funded by the Lanckoroński Foundation as well as research grants and fellowships in Polish and international centres of research (including Kiel, London, Rome, Thessaloniki, Valladolid, Vienna and Zaragoza). In particular, the research at the libraries of the American Academy in Rome, École Française de Rome, Deutsches Archäologisches Institut in Rome, Institut für Byzantinistik und Neogräzistik in Vienna as well as the libraries at the Christian Albrecht Universität zu Kiel yielded immense benefits. Invaluable insights were also gained at the Rafał Taubenschlag Library of Papyrology, Roman and Antique Law, whose resources I was able to use on multiple

occassions courtesy of Professor Maria Zabłocka, head of the Department of Roman and Antique Law at the Faculty of Law and Administration, University of Warsaw.

I am also grateful to the participants of scientific sessions and conferences, during which I had the opportunity to present the premises of my work and the issues it discusses. The vision of the book crystallized in particular during the debates conducted by the Section of Antique Laws at the Committee for Sciences of Antique Culture, Polish Academy of Sciences; here, the remarks made by Professors Tomasz Giaro, Marek Kuryłowicz and Witold Wołodkiewicz proved singularly worthwhile. While preparing the second edition of the book, I also drew upon the comments of Professor Krzysztof Amielańczyk, Maria Curie-Skłodowska University in Lublin, and Professor Rafał Wojciechowski, University of Wrocław in Wrocław, which they included in the reviews drafted as part of the habilitation procedure. Naturally, I assume full responsibility for all controversial theses that this volume may contain.

Finally, publication of the book would not have been possible without the financial assistance granted by the Rector of the Adam Mickiewicz University in Poznań and the Dean of the AMU Faculty of Law and Administration, to whom I am immensely indebted. Expressions of gratitude are also due to Adam Mickiewicz University Press for the care and supervision of Polish edition. I owe much to Anna Baziór, editor, whose knowledge and experience prevented many errors, not only those of editorial nature. Last but not least, I would like to thank Szymon Nowak, who translated the book into English, for the attention conscientious work on the linguistic aspect of the work.

I dedicate the book to the loved ones – my wife and children, whose understanding and support aided me tremendously in successful completion of this undertaking.

Abbreviations*

a.	– anno
a.v.p.p.	– *agens vices praefectorum praetorio/agentes vices praefectorum praetorio*
PPO	– *praefectus praetorio*
PVR	– *praefectus urbi*
QSP	– *quaestor sacri palatii*
s.a.	– sine anno

Sources

AARC	– *Atti dell'Accademia Romanistica Constantiniana*
BIA	– *Bibliotheca iuris antiqui. Sistema integrato sui diritti dell'Antichità. Sistema informativa sui diritti dell'Antichità*, Direzione scientifica di Niccolà Palazzolo (ed. 2000)
CAH	– *The Cambridge Ancient History*: – vol. 12: *The Imperial Crisis of Empire, A.D. 193–324*, eds. A. K. Bowman, P. Garnsey, Av. Cameron, Cambridge 2005 – vol. 13: *The Late Empire, A.D. 337–425*, eds. Av. Cameron, P. Garnsey, Cambridge 1998 – vol. 14: *Late Antiquity: Empire and Successors, A.D. 425–660*, eds. A. Cameron, B. Ward-Perkins, M. Whitby, Cambridge 2000
CPH	– Czasopismo Prawno-Historyczne (Poznań)
CSEL	– *Corpus Scriptorum Ecclesiasticorum Latinorum*, Wien 1866–
DIR	– *De imperatoris Romanis: An Online Encyclopedia of Roman Emperors*, http://www.roman-emperors.org
DNP	– *Der Neue Pauly. Enzyklopädie der Antike. Das klassische Altertum und seine Rezeptionsgeschichte, J. B. Metzler, Stuttgart*, eds. H. Cancik, H. Schneider, M. Landfester, vol. 1–15, Stuttgart 1996–2003
DS	– *Dictionnaire des antiquités grecques et romaines d'après les textes et les monuments, contenant l'explication des termes qui se rapportent aux mœurs, aux institutions, à la religion, aux arts, aux sciences, au costume, au mobilier, à la guerre, à la marine, aux métiers, aux monnaies, poids et mesures, etc. etc., et en général à la vie publique et privée des anciens*, eds. Ch. Daremberg, E. Saglio, vol. 1–5, Paris 1877–1929

* For periodicals I have followed the conventions of *L'Année Philologique.*

EKB – *Encyklopedia kultury bizantyńskiej*, ed. O. Jurewicz, Warszawa 2002

FIURIS – *Fiuris. Archivio elettronico per l'interpretazione delle fonti giuridiche romane* (2003[2])

LSJ – *A Greek-English Lexicon*, compiled by H. G. Lidell and Scott; a new edition revised and augmented through by H. Stuart Jones with the assistance of McKenzie and with cooperation of many scholars, Oxford 1948[9]

Lewis and Short – *A Latin Dictionary,* founded on Andrew's edition of Freund's Latin Dictionary, revised, enlarged, and in part rewritten by Ch. T. Lewis, Oxford 1980

MGH – *Monumenta Germaniae Historica*, http://www.dmgh.de/

NDI – *Novissimo digesto italiano*, ed. A. Azara, E. Eula, Torino 1957–1982

ODB – *Oxford Dictionary of Byzantium*, ed. A. P. Kazhdan, vol. 1–3, New York–Oxford 1991

PG – *Patrologiae cursus completus*. *Series Graeca*, ed. J. P. Migne

PL – *Patrologiae cursus completus*. *Series Latina*, ed. J. P. Migne

PLRE – *Prosopography of the Later Roman Empire*, vol. 1, eds. A. H. M. Jones, J. Martindale, J. Morris, Cambridge 1971; vol. 2, ed. J. Martindale, Cambridge 1980; vol. 3, ed. J. Martindale, Cambridge 1992

PCBE – *Prosopographie chrétienne du Bas-Empire*, 1: *Afrique (303–533)*, ed. A. Mandouze; 3: *Italie (313–604)*, ed. Ch. Pietra, L. Pietri; 3: *Diocèse d'Asie (325–641)*, ed. S. Destephen, Paris 1982–2009

RE – *Paulys Real-Encyclopädie der classischen Altertumwissenschaft*, ed. A. Pauly, G. Wissowa, W. Kroll, K. Witte, K. Mittelhaus, K. Ziegler, Stuttgart 1894–1980

RAC – *Reallexicon für Antike und Christentum*, Stuttgart 1950–

SdR – *Storia di Roma*, vol. 3: *L'età tardoantica* (3.1: *Crisi e transformazioni*; 3.2: *Il luoghi e le culture*), ed. A. Carandini, L. Cracco Ruggini, A. Giardina, Torino 1993

TGL – *Theasurus Graece linguae ab Henrico Stephano constructus*, vol. 1–8, Parisiis 1831–1865

TLL – *Thesaurus linguae Latinae editus auctoritate et consilio academiarum quinque Germanicarum Berolinensis Gottingensis Lipsiensis Monacensis Vindobonensis auxiliantibus et aliis et curatoribus Fundationis Rockefellerianae*, Lipsiae 1900–

1

Preliminary issues

1.1. THE OBJECT AND AIMS OF THE WORK AND RESEARCH METHODOLOGY

The assumption adopted in the relevant literature presumes that the post-classical period was characterized by a considerable decrease in the knowledge of law among institutions which applied it; Roman law of that period is referred to as vulgar, in other words common, adjusted to correspond with the level represented by an average citizen; nevertheless, it still remains a vessel of Roman state tradition.[1] In spite of the fact that the requirement to ensure efficacious judiciary was a key issue precisely in Late Antiquity, it would be an exaggeration to approach the Later Roman Empire as a *Rechtstaat* in the modern understanding.[2] At that time, the notion of "law and order" was construed differently than it is today. It was associated with the existence of courts and judicial procedures as well as precise definitions of individual status, not with the principle of the "rule of law" or any notions of liberties guaranteed by the law.[3] Hence, despite superficial similarities, one should not approach administrative structures of the Roman Empire from the perspective of present-day researchers, who is cognizant of the

[1] On the origins and development of "Roman vulgar law" see synthesis by Liebs (2008c) with earlier literature. The phenomenon was an aftermath of the expanding application of Roman law and widespread Roman citizenship following the *Constitutio Antoniniana* of 212, as well as insitutions which evolved in local laws which penetrated into Roman law and continued to be employed. Among the most recent works cf.: Łukaszewicz (1990) and (1993): esp. 9–34; Spagnuolo Vigorita (1993): esp. 8–12; Garnsey (2004): esp. 140–155; Gumiela (2010); Mélèzè-Modrzejewski (2011). Osuchowski (1963) still proves relevant as well.

[2] See aptly Wetzler (1997): 200–210; Honoré (2004). On the attempts to ensure effectiveness of law cf. also: De Marini Avonzo (1975): 69; Fusci (1981) and (1989): 255–272, esp. 258; De Giovanni (2007): 333 et seq.

[3] Cf. Matthews (1989): 252 (in commentary to *civile iustumque imperium* in Amm. Marc. 14, 1, 4); Matthews (1992): 47 et seq.

realities of modern state and its hierarchical bureaucratic structures which, a fact worth bearing in mind, are not free from more or less informal connections either.[4] At least as early as the Hellenic era, the literature of antiquity cherished the vision of a just ruler, and therefore one who respects laws, among other things. On top of that, late Antiquity was distinguished by the conviction that one should respect the kind of law with which one could become acquainted and which was lucid.[5] In this sense, one of the contemporary researchers is perfectly justified in writing about "expectation of justice in the times of Augustine", which was completely different from the pagan elements of legal criticism known from earlier authors.[6]

The expectation is manifested in the motto of this work – a fragment of anonymous treatise entitled *De rebus bellicis* from the late fourth or the early fifth century.[7] This is an element of the broader tendency in Late Antiquity,

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[4] Irrespective of potential doubts, it may be assumed that the administration of the Later Empire possessed at least some of the traits defined in Max Weber's classic concept of *Bureaucracy*. On that subject see Noethlichs (1981): esp. 34–37. The author attempted a comprehensive compilation of organisational principles and rules of operation of Later Roman administration in comparative approach and conclusively demonstrated the futility of such attempts (ibidem: 207–222). The vague picture of division of juridical competences was vividly depicted by Jones (1964): 374, 481. On Weber's concept see e.g. Sokalska (2003).

[5] In view of the various forms of provisions in imperial constitutions, especially in C. Th. (cf. Mommsen [1905a]: CLIII–CLIX) it has been suggested that they entered into force upon their issuance (*datio*). See e.g. Sirks (2007b): 86–91, 116–121; Puliatti (2008): esp. 108 et seq., 112 et seq.; Kreutzsaler (2009) – the latter with the theory that publication became significant only under Justinian I an, given the context, stresses the importance of Nov. Iust 38 (a. 538); Sirks (2012). There also references to previous authors who had advanced the thesis claiming significance of publication for the binding force of imperial constitutions – e.g. Mommsen (1905a): CLVI; Seeck (1919): 9; Matthews (2000): 187–189; Kaiser (2010). On the significance of publication of statutory law in Rome see also Schwind (1940), in particular 128–184 concerning imperial constitutions. The author underlines the emphasis that *Codex Theodosianus* put on the issue especially in *Novellae Posttheodosianae*, which make imperial consitutions subject to the publication requirement that had been known in Greek πόλεις and was adopted in the practice of Eastern Roman edicts of province governors (ibidem: 177–180). Publication of imperial constitution was effected through edict issued by the official to whom it was addressed. Cf. Classen (1977): 94 et seq.

[6] Uhalde (2007). On the expectations of being ensured justice see also Matthews (2005): 10–30; Humfress (2007): 17–18. In his analysis of the idea of Rome in Late Antiquity, Kreutz (2008), stressed that in that very period it was associated with the concept of stabilization of law, drawing on the term of "legalistische Mentalität" which appears in literature concerned with Roman history (e.g. ibidem: 201). On the motifs encountered in critics of law, particularly in the Principate era, see. Nörr (1974). Incidentally, the latter author advocated the idea of propagating codification of law, as expressed in the final fragment of the anonymous *De rebus bellicis* 21 – Nörr (1963).

[7] Among recent works see esp. Brandt (1988) and very recent Sánchez Vendramini (2009) with further literature. The concerns about their actual significance are outlined and discussed in: Wiewiorowski (2012d).

which manifested itself in the need to bring order to the law, abolish the state of *obscuritas legum* depicted in period sources and to ensure imperial justice.[8] The inspiration to undertake research concerning the judiciary of diocesan vicars (*vicarius dioeceseos*) stemmed precisely from the weight of the issue of legal compliance in the Late Antique period and recognition of the importance of this area of vicars' activity, in which they represented praetorian prefects.[9]

In Late Antiquity, *praefectus praetorio* was the highest ranking official of imperial public administration, responsible for the maintenance of law and order throughout the state.[10] Diocesan vicars, who acted as deputies of PPO on the territories of diocesan prefectures established at the turn of the fourth century, also carried out numerous administrative task, yet exercising judicial powers was one of their prime responsibilities.[11]

The choice of the topic was also dictated by the fact that scientific literature to date lacks a monograph devoted to the judiciary of diocesan vicars.[12] The essential goal of my studies is to investigate an important fragment of state history of the Roman Empire in Late Antiquity. They are deliberately designed as basic research, which may provide grounds for further analyses targeting the functions and transformation of legal institutions, in that they draw upon the though expressed by Dr. George Smoot, the 2006 Physics Nobel Laureate, "People cannot foresee the future well enough to predict what's going to develop from basic research. If we only did applied research, we would still be making better spears."[13]

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[8] An approach which was to be represented e.g. by Martinus, vicar of Britain between 353 and 354, who did not consent to illegal actions undertaken with respect to the diocese inhabitants by the imperial notary Paulus, and committed suicide after the latter's attempted murder. See Amm. Marc. 14, 5, 6–8. From bibliographic studies only cf. e.g. PLRE 1 (Paulus 4; Martinus 2); Kuhoff (1983): esp. 352 (note 3), 417 (note 19). It was also no accident that vicars were recruitted as *defensores civitatis*, whose duty it was to protect citizens from oppression of state and municipal authorities: C. Th. 1, 29, 3 (a. 368) = C. 1, 55, 2. Perhaps this was also the reason why one of the constitutions concerning *defensores senatus* was addressed to the vicar of Asia– C. Th. 1, 28, 2 (a. 364). See e.g. Barbati (2012): 272, 273, 274. Dating after: Schmidt-Hofner (2008a): 504 et seq., 510 et seq. Cf. also Frakes (2001): 94, 108–110.

[9] Franks (2012): esp. 119–130, underlines the substantial role of issues associated with collection of taxes throughout the entire period of vicariates. Previously in similar vein – Williams (1997): 110, and Gaudemet (1974): 204 et seq. (Gaudemet based his views on the analysis of constitutions addressed to Dracontius, one of the vicars of the diocese of Africa from the latter half of the fourth century). In this work, I argue that Dracontius's case was symptomatic of the decline in significance of diocesan vicars as judges. The issue is discussed broader in Chapter 4.1 (s.v. Dracontius).

[10] See Chapter 2.1.

[11] On the development of diocesan organisation see Chapter 2.2.

[12] See Chapter 1.2.2.

[13] Quoted by Newton (2012) and in many other studies.

I concur with the view expressed in literature, namely that the perspective delineated by the previous vision of research on Roman law, given the multi-layered and dynamic evolution of jurisprudence has lost its viability in present circumstances. Faced with the domination of codified law, the role of Roman law is erroneously limited to being an introduction in teaching contemporary civil law[14], despite the well-established and justified conviction that it is a monument to timeless values and a source of inspiration in various areas of jurisprudence.[15] It is possible that the challenges involved in the contemporary process of de-codification of private law will restore some of its significance, at least in part.[16] The solutions developed in Roman law, particularly taking into account the Western European Roman tradition after codification of Justinian the Great, may accordingly become a new source of inspiration and a practically validated point of reference for contemporary legal debate and provide arguments promoting growth of flexibility of law.

Basic research, conducted by expanding the perspective of Roman studies which would thus cover investigations on the medieval *ius commune* and later fates of Roman law on the one hand, (including purely historical issues relating to early legal institutions), while on the other focus on the antique legal practice, including studies of private law and the Roman system (combined to a considerable degree with other currents of historical research) yields the necessary building blocks for further historical and historical-legal reflection. Thus one can continually supplement the store of contemporary legal argumentation with conclusions originating from historical experience, both in terms of private and public law. Without an in-depth knowledge of historical realities and broad acknowledgement of the achievements of other historical sciences the arguments remain merely half-truths with only a declarative value. I concur with the opinion that an expert on the past, who is not interested merely in correct reconstruction of history, may prove proficient in many things, but he is not a good historian.[17] Therefore the scope of deliberation in this work is broad, encompassing the output of numerous scientific domains concerned with the history of Rome.

The choice of the topic derived from the assumption that narrowing down the research scope of a historian of law, Roman law included, to the contemporary needs of jurisprudence downgrades historical studies and

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[14] Dajczak, Giaro, Longschamps de Bérier (2014): 25 et seq.; Dajczak (2014).

[15] See e.g. from Polish authors: Kupiszewski (1988): 176–197, 215–237; Dajczak (2000); Litewski (2001); Kuryłowicz (2003): 153–173; Kuryłowicz (2008): 129–142 with further literature.

[16] See Dajczak, Longschamps de Bérier (2012) with further literature.

[17] Judt, Snyder (2012): 295.

Roman law studies to an ancillary role and prevents one from being optimistic as to the development prospects and the status of those disciplines. After all, contemporary legal scholars have a range argumentation types at their disposal, while lack of thorough analyses in the area of legal history reduces their role to mere propeadeutics. Circumscribing historical-legal investigations, Roman law included, solely to problems that appear vital to the contemporary discussion in jurisprudence also contradicts the idea of liberty of scientific inquiry and, in a long-term perspective, undermines the position of Roman law experts or, in a wider sense, historians of state and law, who thus should only adapt to the constantly changing requirements of the present day. Therefore this study seeks to answer questions about the mechanisms according to which the structures of the late antique Roman Empire.

Similarly, the work does not draw on the fashionable practice of referring to the historical example of Rome, whose history, in view of the territorial extent and the advancement of the internal organisation, is to serve as a reference model for the contemporary dilemmas concerned with state organisation, its policies, culture, economy and supranational relationships.[18] The reconstructed functioning of the judiciary of diocesan vicars made it possible to examine the mechanism of organisational structures within the Roman state. In comparative studies, these may serve the contemporary researcher only to a limited extent, just as the experience of today will enable only a limited understanding of the Roman reality.[19] The mechanisms should not be considered alike because of the correspondences in the development of states, especially the analogies adopted with regard to the rise and fall of the empires (as conventionally analogies are drawn between *pax Romana* and *pax Britannica* or the current *pax Americana*. The links and relationships between ancient and contemporary culture, and consequently between Roman law and present-day jurisprudence grow ever more relaxed.

The universal nature of Roman experience in terms of the functioning of law and state has its roots much deeper. They are to be sought in the similarities of choices made then and now by people whose attitudes arise from biological components of human nature which were shaped by evolution

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[18] See e.g.: Luttwak (1976); Maier (1995); Lucrezi (2001); Bender (2004); Hingley (2005); James (2006); Kolb (2010); Luttwak (2009); Kuzovkov (2010). In recent Polish publications, such a superficial analogy appeared in Ruciński (2013): 13 et seq., who writes, among other things: "If anyone asked themselves a question what would have happened if Fascism, Nazism or Communism had been the winners of ideological wars of the twentieth century, they may look for answers in the history of the Early Empire!"(sic!). Cf. also Morley (2009): 141–163 (about "rhetorical uses of Antiquity").

[19] On the influence of views expressed by famous historians – "modernists" – on the perception of ancient history, see Zawadzki (1993). Cf. also Morley (2009): esp. 1–20.

and which remain in strict interaction with culture.[20] As regards the analysis of political systems, this conditioning was aptly captured by the well-known political scientist, Francis Fukuyama, in the following words: "Biology gives us the building blocks of political development. Human nature is largely constant across different societies. The huge variances in political forms that we see both at the present time and over the course of history is in the first place the product of variance in the physical environments that human beings came to inhabit. As societies ramify and fill different environmental niches across the globe, they develop distinctive norms and ideas in a process known as specific evolution. Groups of humans also interact with each other, and this interaction is as much a driver of change as is the physical environment."[21]

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[20] To a substantial degree, the author concurs with the sociobiological theses developed by Edward O. Wilson and his adherents. See Wilson (1975): esp. 547–575, and evolution of his views e.g. in: Wilson (1978); (1999) and (2012). Among other things, sociobiological concepts are developed as part of evolutionary psychology which accounts for human behaviours from the standpoint of biological and cultural evolution, thus being closest to legal-historical studies. See e.g. Buss (2001) and encyclopaedic compilations: Buss (2005); Dunbar, Barret (2007), with extensive bibliography. Nonetheless, see also differing opinions concerning sociobiological approach in social sciences: Ferry, Vincent (2003) and as an overview Mościskier (1998); Mościskier (2001): esp. 11–71; Konarzewski (2006). A decisive though unjustified criticism of sociobiology and related currents of research was expressed by e.g. Rose, Kamin, Lewontin (1984); Rose, Rose (2000). The critique is conducted from an ideological viewpoint; it relies on highlighting examples which undermine the findings of currents drawing on sociobiology and argues that they serve political goals of the conservative milieu. The critics postulate that the impact of the environment should be taken into consideration to a greater extent, while playing down the significance of biological determinism. At the same time, they seem to forget that evolutionism rejected in the first half of the twentieth century was something completely different from the evolutionism which emerged in the latter half of that century. Cf. Foley (2001): 13–29, esp. 18. The views opposing sociobiology were discussed in detail in Alcock (2001); ibidem: 8–21 (an overview of relations between various currents of sociobiological studies). See also Pinker (2002), who expresses the viewpoint of adherents of concepts derived from sociobiology in a more synthetic form and criticizes the opinions of those who today oppose the notion that a universal human nature exists. See also works quoted in subsequent footnotes, which clearly stress the significance of component elements of human nature that emerged in the course of evolution, as well as point to the limitations of studies drawing on sociobiology and evolutionary psychology. Richard Dawkins's work on the "selfish gene" was the one which popularized them the most: Dawkins (2006).

[21] Fukuyama (2011): 77. Here, one may quote the pertinent remark made by Plotkin (2007): 18, who, discussing the interaction of biology and culture wrote thus: "The power of culture is awesome. It is our universal fate that it touches virtually every aspect of our lives. And it does this because it is written deep into the fabric of our biology." See also about the problem of interaction between culture and biology e.g. Richardson, Boyd (2005) and Section VII in Dunbarr, Barret (2007): 553-681.

The need to take socio-biological perspective into account in historical investigations had already been rightly noted over three decades ago. As one of its advocates wrote, "For historians, this is the common theme – we might understand the present by understanding our written past. Darwinians add this variation – we might understand the written past by understanding our evolutionary past."[22] The demand that at least some of the findings of sociobiology and related currents be considered is advanced in jurisprudence as well, for example with respect to the origins of and enactment of law[23], although it has to be admitted that such an approach gives rise to controversy.[24]

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[22] Betzig (1991): 140. On the application of evolutionary concepts in social sciences see e.g. Alock (2001): esp. 189–216; Zywicki (2000); Barkow (2006); Stone, Lurquin (2009): esp. 11–24, 167–211; Ploeger (2010); Roberts (2012); Scheidel (2013). A bold attempt to take evolutionist concepts into account in the analysis of development and decline of the Roman state was made by Frost (2010). Since his analysis is superficial, sociobiological concepts should be addressed – critically as well – by historians and Roman studies experts. In this respect see e.g. Scheidel (1996); Pankiewicz (2001); Scheidel (2009a) and (2009b). This is by no means an easy task, due to the difficulties in transposing hypotheses advanced by various currents of evolutionism. See e.g. Nettle (2010).

[23] Cf. Beckstrom (1991); Elliott (1997); Zywicki (1999); Kuklin (2004); Jones (2005); Jones, Goldsmith (2005); Zywicki (2007); Hoffman (2008); Zamboni (2008); Dyevre (2010); Hołyst (2010); Zamboni (2010); Fruehwald (2011); Gommer (2012). With respect to Polish legal theory, a synthesis of views which support this research perspective was presented by Załuski (2009). The Gruter Institute for Law and Behavioral Research supports studies which include evolutionist concepts in jurisprudence – see http://www.gruterinstitute.org. These issues are also addressed by Society for Evolutionary Analysis in Law (SEAL), https://www4.vanderbilt.edu/seal/. In Poland, the milieu is gathered around the Copernicus Center for Interdisciplinary Studies in Cracow, http://www. copernicuscenter.edu.pl/homeen/ (related questions were disucussed in paper published in the Cracow *Studies in Philosophy and Law*, especially nos 4–5); the website offers extensive information and links to works applying those concepts in jurisprudence and Polish Society for Human and Evolution Studies (Polskie Towarzystwo Nauk o Człowieku i Ewolucji – PTNCE), http://ptnce.pl. See also the recent papers in Zumbansen, Callies (2011): esp. pp. 248–294.

[24] In Polish writings see esp. Brożek (2010); (2011) and (2012): 181–248 (set against other concepts on the essence and origins of law), with extensive bibliography. Brożek does acknowledge the achievements of natural sciences in understanding the essence of humanity, but also very aptly indicates some of their limitations. Ultimately, he opts for the compromise presented by Michael Tomasello, a concept known as mutualism (which presupposes reciprocal dependency of biology and culture in human evolution, with emphasis on the latter factor). See Tomasello (2002) and (2009). Brożek, relying chiefly on logical reasoning, comes to a conclusion that "it would be difficult to claim that there exists a clearly identifiable biological foundation of moral (and legal) norms)"; quoted after: Brożek (2012): 211. Although the disquisition does not lack logical cohesion, they have one major flaw: they fail to mention the findings of experimental studies conducted by researchers associated with currents related to sociobiology, which corroborate their principal theses, and quotes only selected studies and interpretations which undermine those theses (chiefly by M. Tomasello, which were concerned

The decision to narrow down the scope to one area of activity of diocesan vicars and to exclude special-status dioceses was inspired by the words of the well-known British historian, Felipe Fernández-Armesto: "For history is like a nymph glimpsed bathing between leaves; the more you shift perspective, the more is revealed. If you want to see her whole you have to dodge and slip between many different viewpoints."[25] The adopting a range of research perspective associated with the activities of all diocese administrators would result in a chaotic and purely descriptive compilation, yet it would fail to highlight the area which proved the most momentous in the history of the office. The organizational distinctiveness of a number of dioceses and modifications of the scope of competence granted to their administrators compared with the "ordinary" diocesan vicars would also hamper the determination of regularities which typified the transformation of the judiciary of diocesan administrators.

I was also confirmed in my decisions with respect to the topic having read a recently published work devoted to the Later Roman province governors.[26] The study aspired to be a comprehensive one, an objective the author did not accomplish as she omitted, against the claim laid by the title, a range of important research themes and failed to include all the difference and peculiarities of the Later Roman provincial governance.

The findings of research undertaken as part of this work may prove a cognitive asset for contemporary jurisprudence. The judiciary is an element of core significance in view of the increasing importance of creative interpretation of law effected by tribunals at law.[27] After all, it is legitimately held that the rhetoric of judicature, in particular case law of courts, constitutional tribunals or supreme courts contributes to the creation of constitutional community gathered around the fundamental notions of the constitution: that of law-governed state, the dignity of person, of human rights.[28]

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with differences between chimpanzees and humans – a part of those is available at: http://email.eva.mpg.de/~tomas/). In fact, it aims solely to challenge some of the too far-reaching conclusions regarding biological determinism of human behaviours, at which certain sociobiologists and related researchers have arrived. In similar vein e.g. Załuski (2009): 56–59. An unjust criticism of concepts presented in Załuski (2009) may be found in Uruszczak (2011); subsequently aptly refuted by Załuski (2011). On biological origins of morality see e.g. Singer (1981) – the 2011 re-edition comes with a revised ending, which sums up the latest research and the debates following the first book; Alexander (1987); de Waal (2006); Hauser (2006); Wilson (2012): 241–254; Boehm (2012); Bloom (2013).

[25] Fernández-Armesto (1997): 228.

[26] Slootjes (2006). The work by Franks (2012, typescript) also does not meet the requirement of a comprehensive study. See Chapter 1.2.2.

[27] See e.g. Sweet (2010); Śledzińska-Simon, Wyrzykowski (2010) with further literature.

[28] Skąpska (2008): 71, recapitulating the opinions expressed with regard to American law by Boyd White (1985): 28–48.

At the same time, I am fully aware of the difficulty associated with employing historical argument next to the much later axiological justifications of the need and significance of separate judicial power, which is treated as the foundation of the contemporary democratic system.[29] Historical argument does not rank as essential, but it remains important and relevant, given the fact that notions from Roman law still exert an influence on public law. One of the most eminent historians of law, Helmut Coing, was right in asserting that it was a mistake to attach excessive importance to the division into Roman private and public law and to the conviction that only private law is fit to be adopted in one way or another.[30] The concepts which emerged in Roman public law were subjected to renewed reading and reinterpretation in medieval Europe.[31] This brought about Romanization of legal terminology, including state-related nomenclature. As regards Poland, there is a widely held conviction that the political system of the Nobles' Republic emulated the system of the Roman one, by virtue of which *Res Publica Polonorum* was to be a direct continuation *Res Publicae Romanorum* while the "nation of the nobles" was construed to mean *populus Romanus*.[32] Since the early modern period, the development of the concept of public power reduced the impact of Roman tradition. Nevertheless, the basic set of notions and terminology relating to state law still draws upon Roman law. It would suffice to mention the term of *iurisdictio,* one of the key notions in the context of this work. Its origins date back to the archaic form of Roman law and assumed various meanings in Roman sources.[33] Today, it is understood most often as competence to examine a certain type of issues and corresponds to the notion of territorial jurisdiction. Therefore, even if the links between jurisprudence and Roman public law have become relaxed, it does not mean that the connection has been severed. Hence it has been rightly observed that „the political alphabet of notions, comprising such categories as democracy and

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[29] See general discussion in Stelmach (2003): 84.

[30] Coing (1982): esp. 132 with critical references to argumentation by Savigny [(1840): 69] and the firm opinion of the latter that "Daher gehört nicht die wichtige Ausschliessung des Staatsrecht von aller heutigen Anwendung, sondern auch die Ausschliessung ganzer, dem Privatsrecht angehörenden Rechtsinstituten, wie z. b. Des Sklavenrecht, des Colonats, der Stipulation." Although one should concur with the rejection of the possibility of appealing to such institutions as law on slaves, colonate or *stipulatio*, applying Savigny's remark to the entirety of public law would be unconscionable.

[31] The remarks concerning the impact of Roman tradition were taken from Johnson (1997): 107.

[32] Polybius (Ἱστορίαι 6, 11–18) discerned traits of three various systems in Republican Rome: monarchy, aristocracy and democracy. See Hammer (1957): XVI–XVIII. The concepts were adopted in Poland before partitions. See e.g. Axer (1995): esp. 74; Olszewski (2002): 32–35.

[33] See Szymoszek (1971).

oligarchy, constitutionalism and absolutism, monarchy and republic, unitarism and federalism, boasts antique origins", and that despite the fact that neither those nor any other terms do not "align themselves in historical institutional sequences, they still determine our perception of contemporary times, providing us with a continually present notional apparatus."[34]

Currently, one has abandoned the concept which had been the most powerfully established in Roman tradition, i.e. the striving to achieve emperor's monopoly in enacting and interpreting law, which in the past was used to legitimize various absolutist systems. One concept has nonetheless been retained, that of the less highlighted but never surrendered in Roman sources: Republican idea of limited powers of an official – the Republican magistrate followed by imperial officials and the emperor himself in the state which continued to be defined as *respublica*, despite the system having transformed into a monarchy.[35]

In terms of chronology, the work covers the period from the establishment of dioceses under Diocletian (reigning 284–305) and the initial stages of development of its governance to the end of the reign of Constantine the

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[34] Giaro (2014): 120. Cf. also a short listing of values contributed by Roman law to politicaal systems in Litewski (2001): 187–197, as well as remarks by Longschamps de Bérier (2009): regarding usefulness of Roman public law in research and teaching. The concept of employing Roman experience in administrative law has recently been advocated by Antonio Fernández de Buján (see. e.g. ibidem [2011]). See also the attempt to incorporate Roman experience in public law in Zamora Manzano (2012). The observations of some authors verge on being ridiculous, as they passionately juxtapose antique institutions directly with their contemporary equivalents. Such combination may be found e.g. in Dymowski (2013), who describes the secret service of the Later Roman Empire and the Early Byzantine Empire as the precursor of the contemporary Polish special service – the Internal Security Agency [Agencja Bezpieczeństwa Publicznego] (sic!).

[35] See esp. C. 1, 14, 4 (a. 429): "Imperatores Theodosius, Valentinianus AA. ad Volusianum pp. Digna vox maiestate regnantis legibus alligatum se principem profiteri: adeo de auctoritate iuris nostra pendet auctoritas. Et re vera maius imperio est submittere legibus principatum. Et oraculo praesentis edicti quod nobis licere non patimur indicamus. D. III. id. Iun. Ravennae Florentyno et Dionysio conss.", which contradicts the opinion which originally applied only to marital issues, contained in D. 1, 3, 31: "Ulpianus libro 13 ad legem Iuliam et Papiam. Princeps legibus solutus est: Augusta autem licet legibus soluta non est, principes tamen eadem illi privilegia tribuunt, quae ipsi habent." Cf. about medieval developments of the concept *princeps legibus solutus*: Pennington (1993): 77-90. While analysing a source concerning court proceeding taking place in 457, the constraints to which the emperor was subject are aptly described by Prostko-Prostyński (2008): 67: "[…] it is absolutely unthinkable that the emperor could have suggested the verdict to one of the highest-ranking state officials before the trial, even less without a trial." On the usage of the term of *respublica*, also without the attribut *Romana* to denote the Roman state, both in Eastern (until the downfall of the Empire in 1453), as well as Western sources (until the eleventh century), next to *imperium Romanum* and other denominations see Prostko-Prostyński (1994): 78–80 with further literature.

Great (reigning 306–337)[36] to the final abolishment of vicariates by Justinian (reigning 527–565) in the novel 8 dated 15 April, 535, as well as further modifications of imperial administration introduced by the latter at a supra-provincial level.[37]

In terms of territory, the study concerns all dioceses of the Roman empire, excluding diocese administrators with special status: *comes Orientis*, *praefectus Augustalis* as well as vicars residing in Rome, including *vicarius urbi* (*Romae*). This is justified not only in view of the sources; such a scope is also dictated by vital considerations relating to the substance.[38]

The work employs historical-legal methodology, consisting in an analysis of the judicature of diocesan vicars in the light of legal sources. Thanks to iconographic, narrative and epigraphical sources, the description of the position of diocesan vicars was supplemented with known cases demonstrating how individual vicars carried out their judicial duties in the judiciary area and how their contemporaries understood the nature of their judicature.

Since certain terms appear in the work very often, they are referred to by means of abbreviations adopted in the literature of the subject (their meanings are provided in an appropriate list). The intention to utilize all available sources resulted in an abbreviated form of bibliographic references. The author hopes, however, that this will not cause the reader any difficulty in the perusal of this study, which will additionally be facilitated by tabularized information and illustrations. With respect to names and ancient denominations, the author followed the principle whereby they are written in the form closest to the original, with the exception of those which had already been modernized and have become established in literature.

Analysis of the judiciary of diocesan vicars required very broad studies. Firstly, the author set out to determine whether it would be possible to admit the widespread view claiming that *agentes vices praefectorum praetorio* from the Tetrarchy period are identical with diocesan vicars, which. would be crucial for the establishment of the time when diocesan organization with vicars as dioceses administrators became consolidated. Subsequently, it was necessary to determine whether the thesis stating that *comes Orientis* and *praefectus Augustalis* were diocese administrators. Both are often considered to be imperial officials who held the function of vicars with a higher, honorary status.

By focusing exclusively on the judiciary, a most significant issue from the point of view of expectations of the antique era, it became possible to retrace

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[36] See Chapter 2.2.

[37] See Chapter 2.3.

[38] On the distinctiveness highlighted in the sources see Chapters 2.2.3; 4 and 5.1.

the processes associated with the practical development of judicature at diocesan level. The aim was to demonstrate how judicial duties of diocesan vicars were reflected in the composition of their *officia* (offices), as well as determine the division of cases heard by diocesan vicars in appellate and first instance proceedings, identify transformations in that area and establish which factors induced those changes. For this purpose, legal sources were analysed; the latter were also supposed to yield information about crucial moments when the rules of adjudicating disputes by vicars in court proceedings became stable. Meanwhile, non-legal sources served primarily to provide cases of judicial duties being exercised by vicars and demonstrate how the latter's judiciary was seen by their contemporaries.

The author also adopted the assumption that it would be possible to state which areas that are currently regulated by the norms of substantive and procedural law were subject to the most extensive modification within the framework of vicars' judiciary.[39]

Prior to the analysis of the judiciary of diocesan vicars, their standing within imperial administration is discussed. In the first place, the author determines their position among other civil servants, especially their relationships with praetorian prefects (Chapter 2.1). The work subsequently discusses the issue of their titulature in connection with the changes of diocesan organization to 535, thus enabling the author the determine the moment when vicars' offices had become consolidated (Chapter 2.2). Diocese administrators with different status are discussed separately (Chapter 2.3).

Chapters Three, Four and Five are entirely devoted to analysis of the judiciary of diocesan in the light of all available historical sources. Chapter Three begins with an outline of all types of vicars' duties with particular focus on the exceptional nature of their function as military commanders (Chapter 3.1). The following subchapter (Chapter 3.2) discusses the offices (*officia*) of vicars, which ensured the stability of diocesan administration given the frequent changes on the post of head administrator (Chapter 3.2).

The most extensive part of the work is devoted to the crucial legal sources – imperial constitutions (Chapters 4.1–4.2) – which represent key sources considering the discussed topic. By and large, their analysis follows the arrangement adopted in their fundamental compilations – *Codex Theodosianus* of 438 and *Codex Iustinianus* of 534.[40] This reflects the manner in which laws were perceived in the later Roman period, and thus enables one to reconstruct the status of diocesan vicars more comprehensively and obtain

[39] Apart from detailed literature, the author relied in this respect on Kaser (1975); Kaser, Hackl (1996).

[40] See also Chapter 1.2.

a more detailed picture of their judiciary. Adoption of the contemporary division into procedural and substantive law, into branches of law (and even more so an analysis according to the modern systematics of criminal and civil law) would impose a contemporary perception. In view of the fragmentariness of the surviving sources, such an approach, albeit correct in terms of methodology, would not render the essence of the antique understanding of the role played by the judiciary of diocesan vicars and would encourage conclusions corresponding with the present day classifications.

Separate subchapters provide an analysis of sections from imperial constitutions concerning the judiciary of the diocesan vicars in the *Codex Theodosianus* and the vital, given the discussed topic, first Novel of Marcian of 450 (Nov. Marc. 1), and in the *Codex Iustinianus* of 534, as well as the Justinian Novel 23 of 535 (Nov. Iust. 23), an act important for the determination of their jurisdiction. Each of the subchapters concludes with a table which recapitulates the conducted analysis.

In order to arrive at a comprehensive picture of the judiciary of the diocesan vicars, non- legal sources are analysed as well (Chapter 5). In the separate subchapters their judicial capacities are examined in the light of iconographic sources – the representations of the insignia of authority, preserved in *Notitia dignitatum* as well as in the light of other sources, i.e. literary and epigraphic sources. General conclusions are precedes by a brief presentation of the premises and the form of administrative reform effected by Justinian I in 535 which abolished vicariates, as well as subsequent transformations of supra-provincial administration during the reign of that ruler (Chapter 6).

The conviction that the judiciary was a crucial branch of state affairs had an impact on the selection of staff for imperial administration, also at diocese level. Due to the fact that personal traits of province administrators were a major criterion which guided emperors in their appointments, the work relies to a substantial extent on the findings of prosopographic research.[41] At times, I attempted to draw independent conclusions in that respect, drawing on the previous research experience and results in that field.[42] At this point, I would permit myself certain detailed remarks relating to the topic addressed in the work, which due to the their general nature could not be included in any other part of the study.

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[41] Notwithstanding its shortages, the monumental *Prosopography of the Later Roman Empire* (PLRE) is the work of seminal importance in prosopographic research. On its limitations see e.g. Morris (1965); Barnes (1974a); Martindale (1974); Mathisen (1982), (1990); Salamon (1995). Cf. also studies in: Cameron (2003). See also numerous observations in: RE and esp. Pallu de Lessert (1901); Haehling (1978); Kuhoff (1983); Bagnall, Cameron, Schwartz, Worp (1987).

[42] Wiewiorowski: (2006a); (2006b); (2006c); (2008); (2011a) and (2011b).

Appointment to the post of province administrator and formally the nomination of any other imperial official resulted from personal decision of the emperor, while changes at the post of administrator did occur very often.[43] The clerical apparatus was indispensable to emperors, ensuring efficient functioning of the Empire, and constancy of state structures.[44] Therefore, choosing diocese administrators, the emperors would most often appoint persons with adequate experience in public affairs, which they had acquired while holding other functions (*cursus honorum*), as well as those who displayed the right character traits and personal skills.[45]

The significance of the latter is indirectly attested to by the designations used in the imperial constitutions, which often employ to personal features rather than status-related epithets which were most frequently used with regard to highest ranking imperial officials.[46] During appointment certain attention was paid to the candidates competences.[47] When recruiting higher-

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[43] On the promotion system in imperial administration see remarks in recent Malavé Osuna (2005). As the brief carrier of vicar Paeonius demonstrates, even in the declining years of Roman might in the West imposing one's opinion on the emperor was impossible. In 456, during the "interregnum" following the downfall of emperor Avitus (in October 456), Paeonius tried to obtain the dignity of PPO *Galliarum* (which he was granted for a brief spell). See Sid. *Ep*. 1, 1, 16. Cf. PLRE 1 (Paeonius 2). Harries sees his action (2000): 52 as a probable expression of the aspirations of local elites, who wished to maintain Roman traditions of state and law. See also Mathisen (1993): esp. 130 et seq.; Harries (1994): esp. 93–97; Prostko-Prostyński (1998b): 432; Zołoteńki (2011): esp. 81–87, 107 et seq., 134–138, 140–144.

[44] Which simultaneously meant practical limitation of imperial authority. Cf. e.g. Wetzler (1997): esp. 154–159; Honoré (2004): 111 et seq., 124 et seq.

[45] A careers typical of the late antique *cursus honorum* is exemplified in the figure of M. Aurelius Consius Quartus, governor of the province *Flaminiae et Piceni*, *Venetiae Istriae* and *Belgicae primae*, vicar of Spain and later a proconsul in Africa (between 337 and 355 or 340–350): "Omnium inlustri/um gloriarum viro / administrationi/bus egrerio virtute / mirifico integritate / pr(a)ecipuo / M. Aurelio / Consio Quarto v(iro) c(larissimo) / correctori Flaminiae / Piceni correctori Ve/netiae Istriae consula/ri Belgic(a)e prim(a)e vicario / (Hi)spaniarum proconsule / p(rovinciae) A(fricae) v(ice) s(acra) iudicanti ordo" (Hippona). Quoted including corrections by Chastagnol (1959) with commentary. Cf. also PLRE 1 (M. Aurelius Consius Quartus Iunior 2); Kuhoff (1983): esp. 304, note 5, with further literature; Feissel (1998): 95. Most likely, to some extent the emperors were guided by the antique ideal of psychognomy, according to which proportional body and harmonious facial features reflected positive character traits. On psychognomy cf. Kokoszko (1998): 18–52 with literature of the subject.

[46] Just as with other officialls in the rank of *spectabiles* and *clarissimi*; epithets were used until the end of the sixth century. See Mathisen (2001): esp. 203–207. More broadly on honorary ranks see Chapter 2.2.1.

[47] Cf. Löhken (1982): 135 et seq. The issue of professionalism in Later Roman administration was synthetically presented in Pedersen (1976). MacMullen (1976): 48–70 was excessively critical of its level. The rules concerning promotion were more precise with regard to lower-ranking officials of imperial administration. See e.g. Kelly (2004): 44–51 and remarks in Chapter 3.2.

level administration personnel in the Later Empire period, importance was attached above all to traditional rhetorical education, which always must have included some knowledge of law.[48] Of the known vicars, a few possessed more comprehensive knowledge in that respect.[49] A significant factor which might have facilitated appointment was having connections in the emperor's entourage. However, major offices, which included diocesan vicars, were not subject to the system of *suffragium* that was widespread on the lower levels of administration.[50] The system consisted in giving recommendations and then obtaining the act of appointment and registration as official in exchange for a fee (the most often encountered term is *sportula*).[51] Their

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[48] Cf. Marrou (1969): 428–434; Matthews (1975): 84 et seq.; Maas (1992): 24 et seq. (on the example of career of John the Lydian); Goria (1995b): 299; Harries (1999): 102 et seq.; Garnsey, Humfress (2001): 74; Humfress (2007): 106–115. On the nature and significance of legal education in pursuing a career in imperial administration see recent Polish publications by Sadowski (2010); Kompa (2011): 593 et seq., 610–624. On the role of rhetoric in maintaining continuity of culture in that period see Calboli (1991) with further literature.

[49] See Chapter 3.2.

[50] On the importance of social networks on the example of Libanius' letters see Petit (1957): esp. 158–165; De Salvo (2001); Bradbury (2004a). There is an extensive literature concerning the system of fees, terminology used in the sources, the causes and the attempts to counteract the phenomenon; cf. Kolias (1939): 23–79 for the Early Byzantine period; Karayannopulos (1958): 168–177; Collot (1965); Liebs (1978): esp. 168–186; Noethlichs (1981): 69–77, 195–199; MacMullen (1988): 137–170; Malavé Osuna (2003); Kelly (2004): 138–185, esp. 158–165.

[51] Originally, the term *suffragium* denoted a kind of ballot, then an electoral assembly, while in the imperial era it became synonymous with giving informal support. See Heider (2001). *Suffragium* in the latter sense was partly recognized in imperial legislation and, under Justinian I the Great at the latest, it became additional source of income for the imperial treasury. Upon abolishing vicariates in 535, Justinian furnished public administration with official rates for actions relating to appointment: Nov. Iust. 8 (a. 535). On this constitution see also Chapter 6. It should be noted that similar solutions had been implemented the previous year in Africa: C. 1, 27, 1 (a. 534). On the fees cf. Jones (1964): 230, 394–395, 572 et seq.; Malavé Osuna (2005): 109–111. Kelly (2004): esp. 158–165, indicate that Justinian strove to gain control of the practice and the rates of fees, not to eliminate them altogether. In turn, Gizewski (1988): 223–228 expresses doubts as to the applicability of Nov. Iust. 8 in the case of offices other than province governors and questions its significance given that imperial constitutions regulating the fees had been issued previously. See also Puliatti (2011a): 9–16. Payment of analogous fees for appointment was to apply also to new offices of province governors established under Justinian I and their *officia*. Nov. Iust.: 24–27 *in fine* (a. 535); 30, 6 (a. 536); Ed. Iust. 4, 1. Cf. incomplete listing of fees provided for in the regulations dating from Justinian's times in Puliatti (1980) 117. In the light of actions undertaken by Justinian, the accusations of Procopius of Caesarea, who claimed that the practice of selling offices was propagated by the emperor, seem incredible (Procop. *HA* 21). See Cameron (1996): 61 (ibidem: 47–65, the author analyses a critique of Justinian published in a pamphlet, which does not oppose imperial rule as such). See also Puliatti (1984): 148–151 on legislation departing from the rules concerning *suffragium* which were introduced under Justinian I.

payment resembled buying offices and was inseparably associated with the essence of the bureaucratic system of the Later Empire, therefore it is often quoted as an example of corruption which allegedly consumed the state.[52] Also, persons originating from a given territory were formally prohibited from holding the function of diocesan administrator in that very place; this reflected the expectation that the officials would not prove exponents of local interests.[53]

1.2. SOURCES AND LITERATURE OF THE SUBJECT

1.2.1. Legal sources

The principal sources of Roman law used in this work include imperial constitutions.[54] These instruments were primarily concerned with civil and criminal matters as well as related procedural issues; they also specify the range of cases that could be examined by diocesan vicars. Information on the judiciary of the vicars may also be found in imperial constitutions which apparently provide for various administrative issues. Hence the constitutions which were directly concerned with the vicars' supervision of tax collection as certain strictly administrative affairs were excluded from the

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[52] The vision of overwhelming corruption is supported particularly by MacMullen (1988). Cf. also Schuller (1977); (1980); (1982) and (1989); Veyne (1981); Krause (1987): 50–58. The extent and significance of corruption in Late Antiquite are nevertheless debatable, while its scale is questioned as well; see Cameron (1993) 91–93; Kelly (1998): 175–180; Harries (1999): 153–171, associates to increase in critical approach to corruption with the impact of Christianity; Barnish, Lee, Whitby (2000): 187–190. The problem is aptly commented upon in Garnsey, Humfress (2001): 55: "Corruption through bribery was a fault of the judicial system from the earliest days of Rome's foundation." In turn, Kelly (2004): 107 et seq., 183, points to the significance of personal connections as a factor which limited access to officials and made it possible to manage the Empire through a fairly modest number of administrative staff. On their nmbers see Chapter 3.2. See also a review of opinions expressed in literature with respect to broadly understood corruption, in conjunction with other factors which fostered the decline or rather transformation of the late antique world an a tentative typology of corruption phenomena: Bravo (2008).

[53] C. 1, 49, 1 (s.a.; dated to the second half of the fifth century) Cf. Chapter 4.2. Holding an office in one's native province was a *sacrilegium*: C. 9, 29, 3 (a. 385). Cf. Dębiński (1995): 158 et seq.; Pergami (2000): 154, note 187, with further literature.

[54] The following dictionaries were used as reference during analysis of all types of sources: Dydyński (1883); Sophocles (1896); Heumann, Seckel (1914); Forcellini (1940); Du Cange (1943); Souter (1949); Du Cange (1954); Abramowiczówna (1958–1965); Plezia (1959–1979); Mason (1974); Avotins (1989); Sondel (1997); Jurewicz (2000–2001) and Lewis and Short; LSJ; TGL; TLL.

analysis. In order to maintain terminological precision, the term "law" is not used; "act" or "constitution" are used instead.[55]

Irrespective of their binding power, Later Roman imperial constitutions most often assumed the shape of letters, while their language bore the mark of increasing differences between the western and the eastern part of the Empire.[56] In view of the diversity of form in which they were drafted, the author opted for general reference to the year of the enactment, though at times the doubts as to their dating are taken into account.[57]

Constitutions were frequently issued following a *suggestio* from the official to whom it was later addressed, therefore constitutions addressed directly to diocese administrators are of the foremost importance.[58] However, this does not mean that the preserved addressee always had to be the party who initiated issuing a constitution, which became applicable law upon publication.[59] Also, one cannot fully rely on the information concerning the date and the location of issuance, receipt, or promulgation of a given imperial act.[60] Furthermore, the proposal of a new regulation might have originat-

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[55] In the course of analyses author availed himself of the compilations: Mayr (1965); Gradenwitz (1996) and databases: BIA; FIURIS; *The Roman Law Library* by Y. Lassard and A. Koptev http://webu2.upmf-grenoble.fr/Haiti/ Cours/Ak/. Since the Principate, *constitutiones* possessed the force of *leges*. See G. 1, 5. "Constitutio principis est quod imperator decreto vel edicto vel epistula constituit; nec umquam dubitatum est, quin id legis vicem optineat, cum ipse imperator per legem imperium accipiat". In Late Antiquity, the Latin term *lex* was identical with the notion of *constitutio principis*. See e.g. Kussmaul (1981): 75–77.

[56] On the types and forms of imperial constitutions see Volterra (1971), who also pointed to the continuity of forms in comparison to sources of law of Late Republic and the Principate (esp. 845–869): 885–951 – on the epistolary form of constitution, 1001–1011 – on constitutions which were fragments of verdicts returned in court proceedings before the emperor; Classen (1977): 16–41 – on types of constitutions, 60–91 – on their epistolary form, style and the organization of imperial chancery; Millar (1977): esp. 228–240, 252–259, 313–341 – chiefly on the decrees, edicts, mandates and rescripts; van der Wal (1980); Kussmaul (1981); van der Wal (1981): esp. 277–304; Voci (1985a): on changes in binding force of imperial constitutions; Liebs (1992); van der Wal (1999): 141–146. On differences in the chancery idiom, see Vidén (1984) and generally Millar (2006): 1–38. Cf. also generally Wipszycka (1999).

[57] See esp. Seeck (1919); Schmidt-Hofner (2008a) – for the years 364–375; Lounghis, Blysidu, Lampakes (2005).

[58] See Gaudemet (1971b): 228. After 438 there was an increase in imperial constitutions issued following *suggestiones* of higher imperial officials. See Millar (2006): 207–214.

[59] The information preserved in *subscriptio* includes most often details of the issuer, the location of issue, promulgation or delivery of the act, its reading, entering into register, the addressee etc. See Mommsen (1905a): CLIII–CLIX. On both predominant parts of surviving fragments of constitutions and evolution of their forms see also Volterra (1971): 925–959; Cañizar Palacios (2005): 133–140 – for C. Th.

[60] For information regarding titles and dates in C. Th., see Mommsen (1905a): CLIII–CCCVI; Seeck (1919) as well as Krüger (1921); Higgins (1935): on the margin of dispute surrounding

ed directly with the province governor, only to reach the emperor, his *consistorium* and advisers through diocesan vicars or praetorian prefects. Upon completion of a fairly complex procedure with the participation of members of the consistory and the senate, the emperor would give his response; it was read out in the *consistorium*, signed and addressed to the official who, depending on emperor's will, was deemed the most appropriate given the substance of the constitution, and who was also obliged to display it to public view.[61]

From the moment of inclusion of the constitution to the official compilation of *Codex Theodosianus* in 438 (entering into force from 1 January 439) and *Codex Iustinianus* in 534 (entering into force from 29 December 534) and their official publication, it may be assumed that a given constitution became universally binding law throughout the empire (*lex generalis*), unless the content and the context in which it was issued indicated unequivocally that it had previously possessed such a quality.[62]

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the list of PPO following the findings of Seeck (1919); Palanque (1933) and Stein (1934) with response from M. Palanque.

[61] On the possible stages of drafting a constitution: Voss (1982): 26 et seq.; Graves (1985): 177 et seq.; Honoré (1986): 135–145; Matthews (2000): 67 et seq. Debates on that issue were presented to Polish readers in Olszaniec (2007b): 55 et seq. On the mandatory promulgation of constitutions by adressees – the imperial officials – by way of their own edict and on occasion by written confirmation of receipt see Classen (1977): 94–97. Officials can also publish their own edicts when they were not contrary to imperial enactments. Cf. e.g. Olszaniec (2014): 107–114 (the example of PPO *Italiae*). One of the vicars of Africa, Macedonius, who corresponded with St. Augustine, was to issue such an edict (Aug. *Ep*. 155, 17). Cf. Maier (1989): 185 et seq. On Macedonius, see Chapter 5.2.

[62] Among recent works on both codifications see: Archi (1970) and (1974), which discuss various aspects of C.; Archi (1976b) – an cross-sectional study of various aspects of C. Th.; Gaudemet (1976) – on the political circumstances which surrounded the creation of C. Th.; Bianchini (1979) and (1980) – on the issue of *leges generales*; Fusci (1981) – on the distinct features of attempts at codification in both parts of the Empire; Manfredini (1983) – about the actual C. Th. compared with the initial design of codification; Turpin (1985), who offers an opinion of the religious motivations of Theodosius II which resulted in the inclusion of acts issued after 312 in the collection; Matthews (1986) – on the techniques used by compilers working on C. Th.; Sirks (1983) – on legal validity of constitutions contained in C. Th.; Sirks (1986) – on the evolution in legislator's approach to enacting law in the period between the creation C. Th. and C.; Falchi (1989) – a cross-sectional comparison of premises which underlay the preparation of C. Th. and C.; Harries, Wood (1993) – a comprehensive presentation of C. Th. (collective work); Sargenti (1995) – on the difficulties in analysing C. Th. and practical implementation of legislative projects of Theodosius II; Koptev (1996) – on collections compiled prior to C. Th.; González Fernández (1997) – on various aspects of C., without any sensational contributions; Honoré (1998) – chiefly in the light of participation of *quaestores sacri palatii* in drafting texts of constitutions included in C. Th.; Harries (1999): esp. 36–98, on the creation of imperial acts, their significance and binding force; Matthews (2000) – monumental, though sometimes

Imperial constitutions were preserved chiefly in fragments in the Theodosian and the Justinian Codes, though not always in the original wording, because when both codes were being compiled, the acts included underwent editorial modifications.[63] In the case of the first code, most constitutions originated probably from the resources of imperial archives in Constantinople and Ravenna; at places, the editors clearly indicated that a given fragment is a part of a larger whole, therefore it is assumed that its further sections were included elsewhere in the compilation (the fact was denoted by the use of forms such as *post alia*, *et cetera*, *pars*).[64] Only those two official collections and the later private compilations, comprising novels issued after promulgation of both codes, contain either fragments or complete texts of imperial constitutions concerning diocesan vicars.

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imitative analysis of various aspects of C. Th.; Giomaro (2001) – see below; Schlinkert (2002) – on the circumstances of codification work under Theodosius II; Sirks (2003) – on *leges generales*; Errington (2006): 87-93 – generally about the C Th. Sirks (2007b) – recapitulating author's previous studies of C. Th. – see also the thorough and critical review of the work in Liebs (2010); De Giovanni (2007) – an overview, discussing e.g. the issue of systematizing law in Late Antiquity; Lokin, van Bochove (2011): 99–118 – in codification under Justinian; collective study Crogiez-Pétrequin, Jaillette (2012) – mainly on various aspects of C. Th. (including de Bonfils [2012], who analyses two Western Roman constitution which could not have applied in the eastern Empire). Briefly on the issue and outcomes of codification of Roman law in the post-classical period also in Liebs (2000): 244–252. Cf. in Polish writings Ilski, Maciejewski (1996) – detailed observations on the legislative method while discussing anti-Nestorial legislation; Prostko-Prostyński (2008): esp. 36–49 – in connection with remarks on C. Th. 9, 1, 13 (a. 376). See also a review of literature in Rinolfi (2003). Several works on C. Th. were brought to Polish reader by Stachura (2006). The dissemination of C. Th. in the West and manuscripts are discussed in detail by Atzeri (2008): 223–286. In that respect see also Salway (2012).

[63] See Volterra (1971): 1019–1027. The author appositely summed up the essence of both collection, stating that: "I Codici sono in realtà dei mosaici di frammenti di disposizioni imperiali, scelti in guisa da racchiudere in ciascuno in tali frammenti frasi a cui attribuire il valore di disposizioni normative o di enunciazioni di principi generali o di massime e collocati, secondo la materia in essi contentuta, nei vari titoli di cui si compogno i singoli libri dei Codici" (ibidem: 1094). Comparison of both collections to contemporary codifications is therefore a doubtful practice. See pertinent observations in: Pieler (1984); Kronenberg (2007). For a listing of suggested interpolation in C. Th. and post-Theodosian novels, see De Dominicis (1953) and (1964).

[64] On the materials used during compilation of C. Th., see Mommsen (1905a): XI; more recent literature includes Matthews (2000): 55–84; Schlinkert (2002); Sirks (2007b): 109–177; Liebs (2010): 530–534; Sirks (2012). On formulas such as *post alia*, see Mommsen (1905a): CCIX–CCCVI; Prostko-Prostyński (2008): 31–33. Gothofredus (1736–1745) remains an invaluable source of knowledge about constitution in *Codex Theodosianus*. Many of his remarks still hold valid, while his commentary provided a starting point for deliberations on the majority of acts incorporated in that code. In turn, observations on the versions of imperial constitutions conveyed in *Codex Iustinianus* took advantage of the commentary of Brunnemannus (1699), a representative piece summing up the reflection on that compilation in Western European legal tradition from before the eighteenth century codification.

Codex Theodosianus comprises over 70 fragments of constitutions which mention diocesan vicars directly, of which less than one-third was issued in the fifth century *Codex Iustinianus* also offers over 70 fragments referring directly to vicars, with approximately one-seventh issued in the fifth century, and only one dating from the sixth century.[65] For editorial reasons, the fragments preserved in both collections are referred to in this work as constitutions. Nevertheless, it should be remembered that only a part of *Novellae Posttheodosianae* and *Novellae Iustiniani* as well as successors of the codes have survived in their entirety. The latter two sets of sources mention or refer to diocesan administrators directly on eight occasions.[66]

As observed above, the analysis follows the arrangement of content adopted in *Codex Theodosianus* and *Codex Iustinianus*; in the former case, it includes the interpretation in the form of private *interpretationes*, which are likely to have been drafted towards the end of the fifth century in Gaul, with its references to analysed texts of constitutions in the so-called *leges Romanae barbarorum*[67], as well as to *Institutiones Iustiniani* and, to a small degree, to the Byzantine *Basilika*.[68]

The order of constitutions in *Codex Theodosianus* and *Codex Iustinianus* was dictated by practical consideration and, to a large extent, duplicated the systematic model of praetorian edict.[69] The imperial acts dating from Late

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[65] A compilation and short description of all constitutions concerning diocesan administrators was attempted by Franks (2012): 321–327.

[66] Nov. Marc. 1 (a. 450); Nov. Iust.: 8, 2, 3 and 5 (a. 535); 20, 5 (a. 536); 23, 3 (a. 536); 27, 2 (a. 535); 157 inscr. (a. 542). Ed. Iust.: 2, 1 (s.a.); 8 (a. 548). This includes as many as four constitutions addressed to *comites Orientis*.

[67] See esp. Wieacker (1931); Matthews (2001) and the detailed analyses of a number of *interpretationes* conducted by di Cintio: (2010); (2012). There is a vast amount of literature concerning the inclusion of *leges Romanae barbarorum*, in particular the Breviary of Alaric (*Lex Romana Visigothorum*, a. 506), see Nelsen (1982). The circumstances in which the collection was made and the scope of its applicability remain debatable. To cite the more recent works only, cf. Liebs (2001b); Liebs (2003); Rouche, Dumezíl (2008). See also Gaudemet (1971a) who provides a brief comparison of the contents of C. Th. and Brev. Alaric.:, while systematics of the Brev. Alaric. itself is presented in: Rossi (1993–1994). On *Edictum Theodorici*, which was issued after 500 and which was most certainly applied on the territory of Ostrogothic Italy, see recently Lafferty (2010); Lafferty (2013): with further literature. On Theodoric the Great himself see also: Ausbüttel (2003): esp. 83 et seq. on the edict, with further literature provided. On *Lex Romana Burgundionum*, dated to the turn of the sixth century, see e.g. Liebs (2001a) with further literature. Generally on barbarian catalogues of Roman law see also Charles-Edwards (2000): 282–284.

[68] Major recent works discussing Byzantine law in cross-sectional approach include Wenger (1953): 679–725; Pieler (1978); Van der Wal, Lokin (1985); Laiou, Simon (1994); Lokin, Stolte (2011). To a minor extent, fragments of the *Digesta Iustiniani* are also taken into account in this study. See Chapters 2.1 and 4.1.

[69] See Chapter 4.1 i 4.2.

Antiquity were a vessel of the current views of the legislator and therefore represent an important source of knowledge about the values held by the emperors and their environment, which they sought to propagate (hence the sophisticated language, which was intended as an instruction to subjects and imperial functionaries, as well as multiple repetitions of similar contents in various act, which is often erroneously quoted as proof of inefficiency of the imperial laws).[70] As a means of communication between the emperor and the subjects, the constitution were a singularly significant method of disseminating those laws in a world without the media we know today, which took place despite the relatively high illiteracy and linguistic heterogeneity of antiquity.[71]

1.2.2. Non-legal sources

The fundamental iconographic source employed in this work are representation of insignia of authority of diocesan administrators preserve in *Notitia omnium dignitatum et administrationum tam civilium quam militarium* (*Laterculus maius*), originating from the turn of the fifth century.[72] *Notitia dignitatum*

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[70] See Honig (1960), where the author remarks on the significance of *humanitas* in constitutions; Voss (1982): esp. general remarks 33–81; Harries (1999): 56–98 – in the context of significance of constitutions for reinforcing imperial authority and their actual efficacy, with a critique of views claiming lack of such effectiveness, also those expressed by influential authors, e.g. Jones (1964): 741, 752; MacMullen (1976): 71–95; MacMullen (1988): 168. See also Cañizar Palacios (2005) – on various propagandistic aspects in C. Th.; Millar (2006): esp. 7–13, 34–38; Stachura (2011), where he remarks on the so-called linguistic aggression in imperial acts; Dillon (2012): 5 et seq., 35–118, 156–159 (primarily in the context of Constantine's legislation). On the distinctive style of the late antique constitutions in comparison with the era of the Principate see also Eich, Eich (2004). Despite the efforts of the commissions for codification, which strove to harmonize the constitutions, internal discrepancies are found in the Theodosian and Justinian's Code alike. The problem had already been noted in the Antiquity, which is why the ancients sought to adopt their "official" interpretations. See Noethlichs (1996).

[71] On the degree of literacy and its significance for the awareness and compliance with the law see Fröschl (1987); Harris (1991): the same issue in Late Antiquity 285–322; Kompa (2011): 583 et seq. On the changes brought about by writing in the structure of cultural tradition, albeit predominantly in the context of Greek culture see also Goody, Watt (2011). On the issue of multilingualism in Antiquity see e.g. Adams (2003); Parca (2008) with further literature. Cf. also about the problem of using the written text in societies of ilimited literacy in general Ong (2002): esp. 90-99.

[72] Seeck (1876) is the most popular edition. This monograph also relied on Faleiro (2005) and *Notitia dignitatum* (Sammelhandschrift) – BSB Clm 10291, Speyer, 1542 (http://daten. digitale-sammlungen.de/~db/bsb00005863/images/). An index of abundant literature concering *Notitia dignitatum* may be found at http://members.ozemail.com.au/~igmaier/notitia.htm. On the difficulties associated with analyses of this source see e.g. Kulikowski (2000b). The dating of its

enumerates official ranks in the Empire, covering offices subordinated to individual dignitaries and, in the case of military commanders – their the military units they are in charge of, both in the eastern and western Empire.[73]

Other sources, that is literary and epigraphic as well as a minor number of papyri supplemented and verified information obtained from legal sources and data derived from the analysis of *Notitia dignitatum*.[74] Some of those deserve to be discussed separately.

The determination of the period when vicariates and dioceses were established set out with a fragment of work by a Christian apologist, Lactantius, entitled *De mortibus persecutorum* written around 314. Confrontation of the text with other sources permitted to develop a position in this debatable issue.[75]

It is only thanks to literary sources that we may learn about the course of a trial conducted by a diocesan vicar. The trial, which was to be held in 362, is mentioned in several church and secular chronicles, and was described in detail in the acts of martyrdom of St. Emilianus.[76]

Important information is found also in the work of historian Ammianus, especially in the precise account of the so-called Leptis Magna affair. The details it provides facilitate a better understanding of the role and function of vicars in the Later Roman judiciary.[77]

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final edition is disputed in science; hence it should be assumed that it was created in the early and fifth century while its official use was discontinued after 430, when it went into private hands. The eastern part of the catalogue was drafted in 394–395, with minor supplements added later, in 406–408 at the latest. See the extensive list of references and a review of related views in Wiewiorowski (2007b): 23, note 68.

[73] See Chapters 3.2 and 5.1.

[74] The author of this monograph relied on the following general studies on antique writings: Sajdak (1933); Sinko (1959); Brożek (1969): esp. 474–515; Szymusiak, Starowieyski (1971); Croke, Emmet (1983); Jurewicz (1984); Herzog (1989); Dostàlovà (1990); Świderkówna (1990); Cytowska, Szelest (1992) and (1994); Brodka (1998); Janiszewski (1999); Wipszycka, Wiśniewski (1999); Rohrbacher (2002); Lewandowski (2007); Rosenquist (2007).

[75] Cf. more broadly Łapicki (1962): 16–40; Altaner, Stuiber (1990): 271–275; Cytowska, Szelest (1994): 85–102.

[76] Theodoret *HE* 3, 7, 5; *Chron. Pasch.* a. 363 (quoted with minor changes in Theoph. AM. 5855). On the history of Church, apart from remarks in aforementioned work cf. e.g.: Chesnut (1977); Leppin (1996). The remaining sources are discussed synthetically in Scott (1990). The procedure is depicted in detail in two surviving versions – Latin-Green and Greek – of medieval manuscripts of *Martyrium s. Aemiliani* (Codex Vaticanus Graecus 866 and Codex Parisinus Graecus 1177). The martyrdom in mentioned in Hieron. *Chron.* a. 363 (utilized by Prosper Tiro, *Epitomae chronicae* 457) and *Martyrologium Hieronymianum*. More broadly in Chapter 5.2.

[77] Amm. Marc. 28, 6. The literature devoted to the affair is immense, see Ammianus Marcellinus Online Project. Rijksuniversiteit Groningen, http://odur.let.rug.nl/~drijvers/ammianus; for instance lists of references in works in Polish: Bober (1986); Cytowska, Szelest (1992):

Several letters of St. Augustine shed light on how the contemporaries comprehended the duties of the diocesan vicar of Africa.[78]

Conclusions regarding the judiciary of the diocesan vicars have also been drawn in this work on the basis of epigraphical data.[79] Those official and private sources demonstrated how the performance of judicial duties by vicars was perceived by the inhabitants of the Empire, and helped to establish facts relating to their titulature[80]

1.2.3. Literature of the subject

Both Polish and international literature of the subject lacks a published monograph dedicated to Later Roman vicars of diocese in general, not to mention their judiciary.[81] Relevant remarks, scattered though they are, may

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563–571; Lewandowski (1993); Janiszewski (1999): 72–76; Lewandowski (2002), vol. 1: 15–58, vol. 2: 271–293.

[78] Aug. *Ep*. 152–155. According to incomplete data in WorldCat, the bibliography of related works comprises 17 878 studies in 38 102 publications, written in 68 languages! (http://worldcat.org/identities/lccn-n80-126290).

[79] The limited significance of epigraphy in the studies of vicars stems from the fact that official inscriptions mentioning that group of imperial officials are indeed few. See Feissel (2009) who notes merely three such inscriptions for the period 324-610: no. 56 (CIL III 352 = CIL III 7000 = ILS 6091; see also Chapter 2.2); no. 93 (CIL VIII 14280, 24609–24611), no. 99 (CIL VI 1783 = ILS 2948). Concerning epigraphy in general cf. Łajtar (1999): 364–416 (Late Antiquity); Kolendo (2003).

[80] To a limited extent, this author also took advantaged of papyrus editions, which served to ascertain facts relating to the titulature of diocesan vicars. For general information on papyrology see Derda (1999).

[81] A comprehensive overview of the entire period of Late Antiquity may be found in: Stein (1925); (1949) and (1959); Jones (1964); Gaudemet (1967); Ostrogorski (1967): 47–93; Bonini (1989); Cervenca (1989); Demandt (2007) as well as the CAH series, vols. 12–14. Both Bury (1958) and Piganiol (1947) remain relevant with respect to the chronology of events. Moreover, the two last decades saw the publication of a number of synthesizing studies; cf. e.g. Cameron (1993); Bowersock, Brown, Grabar (1999); Morrisson (2007); Mitchell (2007). The principles of organization of Later Roman Empire in recent work is presented with instructive diagrams in Carney (1971), vol. 1: 89–136; Liebeschuetz (1987). The compendium by Mousourakis (2003) enjoys a great popularity: organization of state and law in Late Antiquity is discussed on pp. 321–397. Other works which have not become obsolete include Bury (1910), which discusses the principles of the "Roman constitution" of the Later Empire, and the synthesis by Karlowa (1885): 822–1028. On the position of the emperor see also Dagron (2003): esp. 13–27, 59–69, 127–148. In Polish literature, Koranyi (1963): 7–45 remains indispensable with respect to organization of Later Roman Empire. General portrayals of the Roman system in recent Polish writings may be found also in: Zabłocki, Tarwacka (2005); Dębiński, Misztal-Konecka, Wójcik (2010); Jurewicz et al. (2011). Wiewiorowski (2010c) offers a brief compilation of remarks con-

be found chiefly in a number of studies on the political history and system of the Later Empire.[82]

The only published study to date which offers comprehensive information on diocesan vicars, is the extensive and now somewhat obsolete paper by Wilhelm Ensslin in *Paulys Real-Encyclopädie der classischen Altertumwissenschaft*.[83] Another voluminous study concerning diocesan vicars is being prepared by Laurence E. A. Franks; so far, the work has not appeared in print, as was made available courtesy of its author. Franks focused primarily on the financial tasks of all province administrators, setting it against too extensively depicted image of administrative transformation in the Later Empire, predominantly in the fourth century.[84] Apart from that, most attention in scientific writings was devoted to the arguable issue of consolidation of diocesan organization and the dependency between the titles of *vicarius dioeceseos* and *agens vices praefectorum praetorio*.[85] The issue of the judiciary of vicars was also raised in works discussing Later Roman court proceedings, especially on the margin of remarks relating to appeals in *cognitio extra ordinem* procedure; however, detailed observations in that respect are lacking, apart from a brief and inexhaustive fragment in the relatively recent work by Federico Pergami.[86]

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cerning the fifth century. See also the recent historical syntheses published in Poland: Ziółkowski: (2004): 536–594; Jaczynowska, Pawlak (2008): 311– 436; Ziółkowski (2009): 877–997.

[82] Karlowa (1885): 855 et seq.; Mommsen (1899): 280–286; Seston (1946): 336–340; Piganiol (1947): esp. 321 et seq.; Stein (1959): 70; Sinningen (1959); Chastagnol (1960): esp. 26 et seq.; Jones (1964): 46 et seq.; 373 et seq.; Gaudemet (1967): 675–684; De Martino (1967): 270–275; Petit (1974): 27 et seq.; Barnes (1981): 9 et seq., 256; Barnes (1982): esp. 140–147, 224 et seq.; Chastagnol (1985): 237–249; Hendy (1985): 373 et seq.; Grelle (1993): 80; De Marini Avonzo (1995): 110; Goria (1995b): 272–277; Christol (1997): 209; Williams (1997): 106–107; Carrié, Rousselle (1999): 185 et seq.; Hedrick (2000): 15–18; Liebs (2000): 241; Kuhoff (2001): 370–381; Kunkel, Schermeier (2001): 183; Odahl (2004): 51, 219; Rees (2004): 24–26; Bowman (2005a): 79; Kulikowski (2005): 41 et seq.; Lo Cascio (2005): 179–181; Errington (2006): 79–87; Kelly (2006a): 185 et seq.; Demandt (2007): 296 et seq.; Feissel (2007): 130; Puliatti (2011b): 445.

[83] Ensslin (1958). The encyclopaedia was utilized in many sections of this work, similarly *Dictionnaire des antiquités grecques et romaines* (DS). See also Lécrivain (1912). They often do not have equivalents in DNP. See e.g. Gutsfeld (2003). There are also well-compiled synthetic entries in: Berger (1953); ODB, in Polish: Wołodkiewicz (1986); Litewski (1998); EKB.

[84] Franks (2012): with respect to vicars 79–151 in particular.

[85] Cuq (1899); Pallu de Lessert (1899); Stein (1925): 377; Ensslin (1958): 2024; Arnheim (1970); Dupont (1973); Barnes (1982): esp. 224 et seq.; Noethlichs (1982); Migl (1994); Sargenti (1986): 111 et seq.; Zuckerman (2002): 49–55; Porena (2003): esp. 152–186; Potter (2004): 370–374; Kulikowski (2005): 41 et seq.

[86] Pergami (2000): 409–412. See also Bethman-Hollweg (1866): 55–57; Padoa Schioppa (1967): 15–33; Thür, Pieler (1977): esp. 431–432, 435–437; Santalucia (1992): 125–127; Santalucia (1994): 226–231; Kaser, Hackl (1996): § 78.II.4; 79.II. The appeal is also discussed in general in Orestano: (1957); (1958), and esp. Litewski: (1965a); (1965b); (1966); (1967a); (1967b) and (1968). Recently, separate observations on appeals in Constantine's legislation were made by Dillon (2012): 214–250.

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The position of diocesan vicars in administrative structures of the Empire

2.1. GENERAL REMARKS

Diocesan vicars were deputies to *praefecti praetorio*, who occupied the central position in imperial administration as early as the Principate, while the third century marked the peak of their significance.[1] Initially, praetorian prefect was the commander of the praetorian guard, while later his duties encompassed justice on behalf of the emperor, state administration, including public works, roads, and imperial post; he was also responsible for the enlistment, discipline and provisioning of the army. At the turn of the fourth century, *praefecti praetorio* were in charge of army detachments, but they prerogatives of command were on the decrease. It was only after the reforms of Constantine the Great that they lost the final powers of command in the military and praetorian guard (abolished in 312). However, other competences were extended, as *praefectus praetorio* became the highest-ranking public official, responsible for the functioning of the economy and the state finances, as well as for public order and security.[2]

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[1] From monographic studies only cf. Stein (1922) and (1925); Palanque (1933); Howe (1942); Ensslin (1954): esp. 2462–2502; Porena (2003); Ruciński (2013): esp. synthetic remarks on pp. 659–682. Cf. also Millar (1977): 122–131 (until 337). According to Franks (2012): 102: "The post of vicar evolves into an arm of the prefecture" only after 325, which relies on his theses that vicariates were established fairly early for reasons related to taxation and on identifying *agentes vices praefectorum praetorio* from the turn of the fourth century with *vicarii dioeceseos*, as well as changes in the system of tax collection in the Empire (similarly ibidem: 180 et seq.). See also Chapters 2.2.2 and 4.1 (s.v. Dracontius).

[2] On changes in the prerogatives of the office of praetorian prefect, see Ensslin (1954): 2427–2428; Chastagnol (1985): 249–253; Sargenti (1986): 156 et seq.; Gutsfeld (1998): esp. 78–95;

In the fourth century, the hitherto homogeneous prefecture was divided.[3] Only when regional prefectures had been established, dioceses were integrated as their part, while vicars became subordinates to regional prefects. At the same time, the competence scopes of both officials, which previously had not been all to precise, remained as before. It is also possible that during the reign of Constantine the Great there existed a separate prefecture in Africa.[4] Only after his death in 337 are more or less regular appointments of several "regional" prefects confirmed for certain. Ultimately, the formation of stable prefectures ended towards the end of the fourth century; in practice, however, the prefecture of Italy and the prefecture of the East counted as more important, especially the latter, due to its strong connections with the imperial court.[5] In the light of the above one can see that Jakub

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Porena (2003): 496–562. In Polish, see Sitek (1996): 87 et seq. The division into military and civilian section caused disputes over competences and resulted in attempts of military commanders to extend their powers. See Soraci (1996).

[3] Cf. e.g. Seeck (1914) – under Constantine I, with modifications after 337; Stein (1925): esp. 375–380, on the example of Illyricum, establishment of separate entities from Constantine I onwards; see also Norman (1957); Palanque (1933): 1–16 – the years 324–328 and transformations after 337; the view was then supplemented and revised: Palanque (1955); (1959) and (1969); Ensslin (1954): 2491–2431 – after: Seeck (1914); Jones (1964): thus esp. 101–103, 126, and after him Millar (1977): 128 – similarly to Palanque (1933); Dupont (1972) – identically with Palanque; Noethlichs (1982) – around 314; Sargenti (1986): 127–150 (before 324); Barnes (1987b) the years following 337; analogously Barnes (1992); Errington (1992); Gutsfeld (1998): 79 – before 325 in the East and analogously Gutsfeld (2001); Coşkun (2003) – divisions gradually from Constantine II (337–361); Porena (2003): 339–562 and esp. 571–575 – the years 324–330; Coşkun (2004c) analogously, yet broader than Coşkun (2003) with further literature (see esp. ibidem: 280–286, a review of opinions encountered in literature); Barnes (2011): 158–163 (the author attempts to recapitulate the history of prefecture under Constantine I). In Poland, the issue was discussed by Olszaniec (2010); Olszaniec (2014): 19–39 (in 324). Those disagreements notwithstanding, Demandt (2007): 296 et seq., represents the traditional view on the establishment of prefectures and dioceses under Diocletian.

[4] Among recent works cf. Dupont (1968); Porena (2003): 398–465; *contra* Salway (2007) with source documentation. Vogler (1979): 123–129 with arguments in favour of the structure being in operation until 355; *contra* Migl (1994): 118; Vera (2012) argues the prefecture was liquidated after 330. Cf. also Jones (1964): 102; Barnes (1987b) and (1992) with further literature. In all certainty, permanent prefecture in Africa was established by Justinian I in 533–534 (C. 1, 27, 1). See more broadly Chapter 4.2.

[5] According Migl (1994): esp. 39–49, 95–102, 140–175, "regional" prefectures appeared simultaneously with the appointment of several commanders of field armies – *magistri militum*, in connection with the competition with vicars' offices since the 360s. Cf. below Coşkun (2004c): 286–325, using the example of known prefects from 337–395 stresses the complex and chaotic process which produces separate "regional prefectures" emerged, with the simultaneous practice of appointing prefects who acted at emperor's side. The author argues that the prefecture of the East consolidated in 359, whereas in the western part of the state the process lasted until the reign of Theodosius II (379–395). See also generally in Feissel (2007): 130 et seq. On the relations be-

Burckhardt, attached as he was to the vision of Diocletian's and Constantine's reforms, erred somewhat claiming in the revised edition of his monograph on Constantine the Great that "Was Diocletian begonnen, hat dann Constantin durchgeführt und vollendet."[6]

According to a predominant opinion among researchers, vicariates were created as early as Diocletian's reign, accompanying establishment of dioceses.[7] Nevertheless, the notion is debatable and involves the issue of titulature of vicars and the formation of dioceses as administrative units of which they were in charge. The question is therefore discussed separately in Chapter 2.2.

However, it is certain that from the very beginning diocesan vicars occupied a lower position in the hierarchy than praetorian prefects, although various authors argue otherwise.[8] Conclusive proof is provided by the appraisal of jurist Arcadius Charisius who, most likely around 290/291, wrote a monograph devoted to the office of *praefectus praetorio*.[9] As it follows from the version preserved in Justinian's Digest, it was impossible to appeal from prefects adjudication under *principalis sententia*.[10] A similar provision

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tween prefecture of the Orient with the imperial court see esp. Gutsfeld (1998): 85–95. Cf. also synthetic observations concerning the court itself in: Noethlichs (1998).

[6] Burckhardt (1880): 61. The reforms were intended to reinforce imperial supervision of over the life of Empire's citizens. On the illusory nature of that enhanced control the late antique period, see MacMullen (1976): 71 et seq.

[7] Bethmann-Hollweg (1866): 49–55; Stein (1925): 377; Seston (1946): 336–340; Stein (1959): 70; Ensslin (1958): 2024; Sinningen (1959); Chastagnol (1960): 26–42, esp. 26–27; Jones (1964): 46 et seq., 373 et seq.; Arnheim (1970); Thür, Pieler (1977): esp. 431 et seq., 435–437; Barnes (1981): 9–10, 256; Barnes (1982): passim, esp. 224 et seq.: "It is more probable that Diocletian ordained the division of provinces and the creation of dioceses in 293 at the single stroke, that his reform were put into effect immediately, or at least with all deliberate speed, and that only minor changes were made thereafter"; Grelle (1993): 80; Santalucia (1994): 226–231; Williams (1997): 106 et seq.; Hedrick (2000): 15–18; Kuhoff (2001): 370–381; Odahl (2004): 51, 219; Rees (2004): 24–26; Errington (2006): 79–87; Kelly (2006a): 185 et seq.; Demandt (2007): 296 et seq. Traditional notions are also supported by Glas, Hartmann (2008): 672, although other concepts are presented in note 123. See also the remarks and references compiled by Palme (1999): 97–98, note 66.

[8] Migl (1994): esp. 140–151, argues that the process of demarcating competences of prefects and vicars lasted as long as the latter half of the fourth century.

[9] Among the more recent works see: Polay (1986): esp. 196–204, 217–218 – where the author finds Arcadius Charisius was a fourth century jurist whose *De officio praefecti praetorio* was written after 331; Grelle (1987): 65 – assumes that the work should be dated to the end of tetrarchy, i.e. the period when Constantine consolidated his power; Honoré (1994) with further literature confirming earlier dating, overlooks that source and focuses attention exclusively on C. Th. 11, 30, 16. Cf. also Liebs (1999); Olszaniec (2014): 15–18. See also a review of opinions expressed by various authors in Kaser, Hackl (1996): § 79, note 35.

[10] D. 1, 11, 1, 1: "His cunabulis praefectorum auctoritas initiata in tantum meruit augeri, ut appellari a praefectis praetorio non possit. Nam cum ante quaesitum fuisset, an liceret

may be found in the surviving fragment of *Iuris epitomae* by Hermogenian, another jurist of Diocletian's era, which were written around 300.[11] Both sources corroborate that the prohibition on appealing from prefect's verdicts was introduced explicitly by means of imperial constitution already in the second century.[12]

In 331, Constantine the Great confirmed once again that a praetorian prefect is fully empowered to adjudicate on behalf of the emperor – "vere vice sacra cognoscere".[13] The constitution was addressed to inhabitants of all provinces – *ad universos provinciales* – and therefore, as an edict, was binding virtually in the entire Empire.[14] When describing the position of praetorian prefect, the emperor included a provision admitting appeals from verdicts of

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a praefectis praetorio appellare et iure liceret et extarent exempla eorum qui provocaverint: postea publice sententia principali lecta appellandi facultas interdicta est. Credidit enim princeps eos, qui ob singularem industriam explorata eorum fide et gravitate ad huius officii magnitudinem adhibentur, non aliter iudicaturos esse pro sapientia ac luce dignitatis suae, quam ipse foret iudicaturos".

[11] D. 4, 4, 17: "Praefecti etiam praetorio ex sua sententia in integrum possunt restituere, quamvis appellari ab his non possit. Haec idcirco tam varie. Quia appellatio quidem iniquitatis sententiae querellam, in integrum vero restitutio erroris proprii veniae petitionem vel adversarii circumventionis allegationem continent". On Hermogenian, see Liebs (1964): esp. 13–22 and 103 on the quoted fragment; Liebs (1976): 319–321; Liebs (1987): 36–52.

[12] See also Honoré (1994): 166; Sitek (1996): 87. The only mean that was left to the parties was *supplicatio* to the emperor. See more broadly Chapter 3.1.

[13] C. Th. 11, 30, 16 = C. 7, 62, 19 – text in C. with minor corrections (a. 331): "Idem A. [Constantinus] ad universos provinciales. A proconsulibus et comitibus et his qui vice praefectorum cognoscunt, sive ex appellatione sive ex delegato sive ex ordine iudicaverint, provocari permittimus, ita ut appellanti iudex praebeat opinionis exemplum et acta cum refutatoriis partium suisque litteris ad nos dirigat. A praefectis autem praetorio, qui soli vice sacra cognoscere vere dicendi sunt, provocari non sinimus, ne iam nostra contingi veneratio videatur. Quod si victus oblatam nec receptam a iudice appellationem adfirmet, praefectos adeat, ut aput eos de integro litiget tamquam appellatione suscepta. Superatus enim si iniuste appellasse videbitur, lite perdita notatus abscedet, aut, si vicerit, contra eum iudicem, qui appellationem non receperat, ad nos referri necesse est, ut digno supplicio puniatur. Dat. kal. Aug. P(ro)p(osita) kal. Sept. Constan(tino)p(oli) Basso et Ablabio conss." Incidentally, the formulation: "A praefectis autem praetorio, qui soli vice sacra cognoscere vere dicendi sunt" did not mean that other judges were denied the right to *vice sacra cognoscere*, but it was aimed to underline the position of PPO. Correctly Kaser, Hackl (1996): esp. § 79.II.2, § 95.I. 3; Pergami (2000): 426 et seq. with a discussion of debate in relevant literature. See also Harries (1999): 114–117 on the practice of *vice sacra cognoscere* using the example of Quintus Aurelius Simmachus as PVR in 384.

[14] Its text is conclusive proof that it did not apply to the inhabitants of Rome or Constantinople, who incidentally were the most frequent addressees of constitutions directed *ad populum*. However, the question of addressees of *ad populum* constitutions is an ambiguous one. See Dupont (1971c); Cañizar Palacios (2005): 60 et seq.

proconsules, *comites* (i.e. *provinciarum*) and *vices praefectorum* (and thus certainly diocesan vicars) as well as provided for punishments in the event of refusal to allow appeals.[15] A number of authors have alleged a relationship between D. 1, 11, 1, 1 and C. Th. 11, 30, 16, consequently suggesting a late dating of the activity of Arcadius Charisius.[16] The view is currently question, mainly due to the fact that Arcadius Charisius employs the expression *principalis sententia*, which most likely refers to emperor's verdict, while C. Th. 11, 30, 16 was an edict.[17] In the Theodosian Code of 438, the constitution of Constantine's was included in Book 11, Title 30: *De appellationibus et poenis earum et consultationibus* (On appeals, punishments for filing those and emperor's consultations of court cases). First and foremost, the act regulated the principles of appeals and its admissibility in the wake of verdicts returned by the aforementioned officials, but it did not apply to the praetorian prefect. Given its importance, the constitution was repeated in *Codex Iustinianus*.[18]

Although emperor Constantine apparently made the verdicts of praetorian prefects and vicars equal in a 315 constitution addressed to Rufinus Octavianus, governor (*corrector*) of the Italian provinces of Lucania and Brumadettiorum[19], the constitution concerned a matter which was important

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[15] On the relations between a.v.p.p. and *vicarii*, see below Chapter 2.2.2. On constitution, see also Chapter 4.1.

[16] The issue had already been raised by Gothofredus (1740), vol. 4: 237–239. See e.g. Dell'Oro (1960a): 237; Dell'Oro (1962): 337–340; Polay (1986): esp. 196–204. In turn, Kunkel (1952): 263, note 565, invoked the fact that: "[…] 'Arcadius' und 'Charisius' sind weder Gentilicia noch Kognomina, die in klassischer Zeit vorkommen".

[17] As a counter-argument, authors quote the remarks in D. 1, 11, 1, 1, which compare praetorian prefect to the Republican *magister equitum*, while in 331 prefecture was a purely civilian office. Lack of connection between the constitution referred to in D. 1, 11, 1, 1 and C. Th. 11, 30, 16 was demonstrated by Litewski (1972) – as in previous works: Litewski (1966): 282–284 = Litewski (1967b): 48–50. Nonetheless, Litewski (1972) subscribed to the late dating of Arcadius Charisius. See also Cenderelli (1968); Ballestri Fumagalli (1980); Honoré (1994): 165 et seq.; as well as evolution of the views expressed by D. Liebs: (1964): 13–16, 22; (1976): 321; (1983): 504; (1987): 21–30 and, in the context of the discussed constitution, esp. 22–24. The problem is also discussed in Pergami (2000): 318–321, whose position in that respect approaches Litewski (1972); analogously Pergami (2007): 126 et seq. On the usage of the term *sententia* in sources to denote a tribunal verdict see Litewski (1966): 262, note 106 = Litewski (1967b): 42, note 106, with further literature.

[18] C. 7, 62, 19 is briefly discussed by Brunnemannus (1699): 908, who stresses the exceptional position of PPO. The fact that both texts feature in Justinian's compilation is interpreted by Litewski (1972): 276 as additional argument in favour of their distinctive status: "Ciò vuol dire che egli [i.e. Justinian – added by J.W.] avrà ravvisato una diferenza al riguardo tra i due testi".

[19] C. Th. 1, 16, 1 (a. 315): "Quicumque extraordinarium iudicium praefectorum vel vicariorum elicuerit vel qui iam consecutus est, eius adversarios et personas causae necessarias minime

to all province governors and had a bearing on the exclusive nature of proceedings before their court. Such a conclusion is warranted by the fact that it was adopted in the *Codex Theodosianus*, where it was incorporated in the Title 16 of Book 1, devoted to *De officio rectoris provinciae* (On the office of province governor).[20] The constitution offers grounds for the conclusion that vicars were *iudices ordinarii*, but that it never had any significance for distinguishing between the weight of verdicts of prefects and verdicts of diocesan vicars.[21]

Any analysis of the vicars' status must also take into account that Rome and Constantinople, founded in 324, represented special cases as they were not controlled by officials of territorial administration, which also meant diocesan administrators. Rome and area within a 100-mile radius were the domain of *praefectus urbi*; the official would be appointed by the emperor and, since the Principate, answered to the latter as well as heard appeals

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ad officium praefectorum vel vicarii pergere aut transire patiaris, sed de omni causa in tuo iudicio praesentibus partibus atque personis ita his temporibus ipse cognosce, quae ex eo die computabis, ex quo causa in tuo iudicio coeperit inchoari, ut tunc demum, si ei, qui extraordinarium iudicium postulaverit, tua sententia displicebit, iuxta ordinem legum interposita eam provocatio suspendat atque ad suum iudicem transitum faciat. Dat. III non. Aug. Trev(iris) Constantino IIII et Licinio IIII consul." Rufinus Octavianus is often identified with Octavianus, the first *comes Hispaniarum*. Cf. Chastagnol (1965): 272, no. 1; PLRE 1 (Octavianus 1, Rufinus Octavianus 5); Arce (1982a): 60; Vilella (1992): 90 et seq. See also Wiewiorowski: (2006b), (2011b) with further literature. On *corrector* and *comes provinciarum*, see below as well as Chapters 2.2.2 and 4.1.

[20] Cf. Dupont (1967): 32; Barbati (2012): esp. 166 –171. There were several types of province governors in the Late Empire. The highest-ranking was *consularis*, followed by *corrector* and then *praeses provinciae*. *Proconsules Africae*, *Asiae* and *Achaiae* possessed a separate, higher status. Province governors in Late Anitquity until Justinian's reforms are discussed in general terms in e.g. Premerstein (1901b); Ensslin (1956a); Orestano (1959); De Marini Avonzo (1964); the latter author emphasized the impact of Constantine the Great's reign on the position of province governors; Orestano (1966); De Martino (1967): 277–289. The information compiled in Hartmann (1977–1978) is also a useful one. The late antique period witnessed a reduction of their previously broad *ius gladii* and in the prerogatives to use forfeiture of property. See Liebs (1981); Cecconi (1998): 166 et seq. Cf. also the annual volume of Antiquité Tardive 6 (1998): *Les gouverneurs de province dans l'antiquité tardive* which is entirely devoted to those officials. In one of the included papers, J.-M. Carrié discusses the latest literature and suggests possible directions of further research: Carrié (1998a). The suggestions are pursued in Slootjes (2006): esp. 16–76, who adresses competences of province governors, but the text falls short of expectations. Though the title may suggest otherwise, her work is concerned mainly with the governors of provinces in Asia Minor. See also general observations by Di Paola (2012b) on province governors in *Codex Theodosianus*. The act is further investigated in Chapter 4.1.

[21] As erroneously concluded by Migl (1994): esp. 67. In the late antique sources, the term *iudex* referred primarily to province governors, but depending on the context it could denote various categories of officials. See Barbati (2012): esp. 223–237 (with regard to diocese administrators).

from adjudications of PVR.[22] With time, similar status was gained by the prefect of Constantinople (ὁ ἔπαρχος τῆς πόλεως); this functionary would hear appeal from verdicts issued by the governors of provinces *Europa*, *Haemimontus* (i.e. *Thracia secunda*) and *Rhodope*, which were parts of the vicariate of Thrace.[23]

Most province governors came under the authority of vicars; the only ones to enjoy an independent status – also from PPO – were the proconsuls of Asia (who in turn were superiors to governors of provinces *Hellespontus* and *Insulae*), Achaia and Proconsular Africa.[24] In practice, the existence of a proconsulate in Africa might have cause an overlap of competences with the local vicar.[25] Meanwhile, in the province of Asia the duties of vicars would often be assumed by *proconsules Asiae*.[26]

All province governors were the basic type of *ordinarii iudices*. In petty cases, the adjudicating role was performed by judges deputized by province governors – *iudices pedanei* and *defensores plebis/civitatis*.[27] In practice, imperi-

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[22] Prefect of the city, who presided over the Senate, was responsible, along with his officials and subordinated services, for security and the judiciary, provisioning of Rome, public edifices, organization of public events and supervision of craft and trade colleges, as well as higher education. See e.g. Sinningen (1959); Chastagnol (1960); Thür, Pieler (1977): 409–410; Kaser, Hackl (1996): § 79.III.1; Sogno (2006): 34–40 (in the light of Symm. *Rel*.). Cf. also Errington (2006): 111–168. On the urban prefecture during the Principate cf. also Ruciński (2009) with further literature. On the special relationships between *praefectus urbi* and *vicarius urbis Romae*, see Chapter 2.2.3.

[23] C. Th. 1, 6, 1 = C. 7, 62, 23 (a. 361). Cf. Thür, Pieler (1977): 421–426; Dagron (1984): 213–296, esp. 226–239; Franciosi (1998): 23–30 (Justinian's times, including changes introduced at the time); Pergami (2000): 422–424; Filipczak (2009): 41–43; Filipczak (2011): 270–288, 295–300. Initially the city was governed by a proconsul, with the first prefect confirmed only in 359 – Honoratus (PLRE 1, Honoratus 2). Theoretically, the new *urbs* did not replace the former, i.e. Rome, nor was it supposed to vie with it, while their hierarchy was retained.

[24] See works quoted in note 20. The status of governors of Achaia fluctuated at the turn of the fourth century, but after ca 314, proconsulship was permanently reinstated. See recently Davenport (2013), with earlier literature.

[25] Arnheim (1970): 599–603 suggested that this is validated only in the honorific inscription CIL VIII 10609 = ILS 763: "Clementissimo principis ac to/tius o[rbis] Aug. / [d] et seq. Valenti/ni[a]no procons/[s]ul. Festi v(ir) c(larissimus) simul /cum Antonio Dra/contio v(ir) c(larissimus) ag(enti) v(ices) p(raefectorum) p(raetorio) ordo Furnitanus consecravit". However, the mutual overlapping of competences of both officials is evident not only in the sources from the early fourth century but also later imperial constitutions, e.g. C. Th. 1, 15, 14 (a. 395). On the act itself, see Chapter 4.1. See Lepelley (2002): esp. 68–71. Jones (1964): 481, note 24, suggested that Nov. Val. 13, 12 (a. 445) also implies broad competences of the proconsul of Africa. On the organization of administration in Africa, cf. also Maier (1987): 24–31; Maier (1989): 18–20; Morgenstern (1993b): 110–112.

[26] See below. Chapter 2.3.2 and 5.2.

[27] Cases which today's nomenclature would describe as non-contentious were decided at the discretion of municipal officials, whose decisions could be appealed to the province gover-

al judiciary at provincial and lower levels had competition in the shape of *episcopalis audientia* which operated in civil law cases.[28] Upon request from the parties to litigation, the emperor could also designate judges delegated to hear cases.[29]

2.2. THE TITULATURE OF DIOCESE ADMINISTRATORS AND DIOCESAN ORGANIZATION

2.2.1. General remarks

The term *vicarius dioeceseos*, written most often in its reduced form of *vicarius* (Gr. βικάριος), combined in a phraseological compound with the name of the diocese was most often employed to denote their administrators.[30] Other equivalent terms could also be used: *agens vice praefectorum* (Gr. ὁ διαδεχομένος τὰ μέρη τῶν ἐπάρχων), *agens pro praefectis* (Gr. ὁ διεπόμενος τὰ μέρη τῶν ἐπάρχων), *agens vicariam praefecturam* (Gr. ὁ διοιήσας/διέπων τὴν ἔπαρχον ἐξουσίαν).[31]

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nor. A fundamental reform of the status of *iudices pedanei* and *defensores* was undertaken only by Justinian in his novels. For recent publications on *iudices pedanei* and *defensores civitatis* see Mannino (1994); Frakes (1994) and (2001); Kaser, Hackl (1996): § 83.I; Liva (2007) and (2012).

[28] Adjudications of bishops, who until the beginning of the fifth century had the right to judge only in *causae fidei* and *causae ecclesiasticae*, carried the same weight as verdicts of state tribunals in *causae civiles* and, from the fifth century onwards, were enforced in the same measure as the latter. *Episcopalis audientia*, having adopted certain concepts from the Later Romancourt proceedings, enjoyed popularity – though abuse did take place – due to simplicity, promptness, low expenses and efficacy guaranteed by the authority of bishops. Until the reign of Justinian, parties could not appeal against bishops' rulings, as their nature was similar to the contemporary conciliatory proceedings. Of the more recent literature only see Cimma (1989); Vismara (1995); Caron (1996); Kaser, Hackl (1996): §§ 77.II, 100.III; Jóźwiak (2004); Sadowski (2006); Rinolfi (2009); Dillon (2012): 146–155. Also, expectations with respect to late antique bishops as judges varied. See in the light of ecclesiastical sources: Hartmann (1995); Uhalde (2007): passim, esp. 20–76. Cf. also Bregman (1982): 174–176, on the example of Synesius, bishop of Cyrene.

[29] See e.g. Bethmann-Hollweg (1866): 181 et seq.; Kaser, Hackl (1996): § 78.II.1; Barbati (2011), on the example of Justinian legislation.

[30] Cf. Gothofredus (1736), vol. 1: 40 et seq.; Ensslin (1958): 2023–2044; PLRE 1: 1077–1082; PLRE 2: 1275–1282. Terms employed in the sources were compiled by Porena (2003): 177 and 177 (note 13).

[31] Greek narrative sources also use such terms as ὁ ὕπαρχος and ὁ ἔπαρχος, which were usually reserved for PPO, and very seldom the general designation ὁ ἄρχων, combined phraseologically with the name of diocese. Cf. e.g. Hanton (1927–1928): 67 et seq.; Mason (1974): 27, 45, 95.

From Constantine the Great onwards, the official title would be permanently bound with an honorary rank associated with the office, just as in the case of other *dignitates civiles* and *dignitates militares*; the rank was not hereditary.[32] Diocesan vicars who actually exercised their office belonged to the highest echelon – the group *in actu positi*.[33] Besides honorary ranks, official and private letters and documentation featured equivalent terms or other elaborate, polite forms of address.[34].

Initially, diocesan administrators were entitled to the rank of *perfectissimus* (Greek equivalent – διασημότατος), which was originally associated with *equites Romani*.[35] It was accorded to diocesan administrator along with the appointment to the post, by virtue of official letter from the emperor.

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[32] Cf. the still indispensable Koch (1903) and e.g. Guilland (1967): 23–31; Guilland (1969); Guilland (1976). For reasons why honorary titles never became hereditary, supported by examples, see Gulland (1967): 65–72. The emergence of honorary titulature was associated with the practices of the imperial chancery, which used polite forms of address with respect to specific persons. This reflected the role of honour-related bonds at every level of social life, which was characteristic of the Roman society in the imperial period. See recent publications on the causes and consequences of the phenomenon: Löhken (1982) and Lendon (1997).

[33] Other denominations would be used as well (e.g. *inter agentes*, *administratores*, ἔμπαρχοι). See esp. the classification of importance of offices comprising five categories in C. 12, 8, 2 (a. 440–441): "Imperatores Theodosius, Valentinianus AA. Cyro p.p. pr. Omnes privilegia dignitatum hoc ordine servanda cognoscat, ut primo loco habeantur ii, qui in actu positi illustres peregerint administrationes; secundo venient vacantes, qui praesentes in comitatu illustris dignitatis cingulum meruerint; tertium ordinem eorum prospicimus, quibus absentibus cingulum illustris mittitur dignitatis; quartum honorariorum, qui praesentes a nostro nomine sine cingulo codicillos tantum honorariae dignitatis adepti sunt; quintum eorum quibus absentibus similiter sine cingulo mittuntur illustris insignia dignitatis […]". More broadly on that subject in Guilland (1969) (however, on p. 88 the author erroneously asserts that there were only three official ranks, i.e. *administratores*, *vacantes*, *honorarii*); Prostko-Prostyński (1998b): 430–432. Analogous statements in C. Th. 6, 22, 7 (a. 383), stressing the superiority of *agentes* and *honorarii* among all public officials. Cf. Karlowa (1885): 870 et seq. At the same time, the sources did not distinguish between *honorarii* and *honoratii* (i.e. those whose career had already come to an end). See Gulland (1967): 25; Berger (1981): 176.

[34] Cf. abbreviated inventories in Karlowa (1885): 871 et seq.; Mathisen (2001). A general overviews of changes in honorary rank of vicars may be found in changes Ensslin (1958): 2031–2033; Franks (2012): 91–93.

[35] *Equites Romani* reached their peak significance towards the end of the third century, only to disappear altogether in the latter half of the fourth century. Cf. Kübler (1909): esp. 311 et seq.; Ensslin (1937): esp. 680–683; Stein (1927): esp. 449–459; Guilland (1976); Lepelley (1986); Lepelley (1999). Cf. also Mason (1974): 36. The status of vicars as *perfectissimi* is validated by C. Th. 2, 17, 1, 2 (a. 324) = C. 2, 44, 2, 2 (the fragment in the Justinian Code fails to mention vicars). The constitution introduced the privilege of confirming earlier achievement of the legal capacity to act for certain categories of persons and stipulated that *perfectissimi apud vicariam praefecturam* were to corroborate their status. Dating amended following Seeck (1919): 173. On *codicilli*, see Chapter 5.1.

Already under Constantine the Great, vicarship became a stage of senatorial career in the Western parts of the state; however, one did not need to be a senator to be conferred this position.[36] Descendants of old senatorial families felt a justified sense of being members of the social elite and therefore entertained the notion that assuming positions in imperial administration.[37] Hence senators predominated among higher imperial officials.[38] At the same time, representatives of senatorial families would distance themselves from individuals who gained senatorial dignities by way of promotion from lower social strata.[39] The composition of the senate depended ultimately on the decision of the emperor, although the standing of the Roman and the Constantinopolitan senate differed. In Late Antiquity, Roman Senate was a heterogeneous body, consisting of senators "by birth" (*nobiles*) and persons who joined it as higher-ranking officials. In turn, the Senate of Constantinople consisted largely of individuals nominated by the emperor, the majority of whom originated from the provincial elites.[40] The position of

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[36] Cf. Arnheim (1972): 49–79, esp. 64 et seq.; Löhken (1982): 99 et seq.; Kuhoff (1983): 112–148, with compilation of prosopographic data and recapitulating remarks, separately for the western part of the Empire (however, ibid. 129 indicated that the significance of vicariate for senatorial career should not be overestimated) and a completely different nature of careers of known diocese administrators in the eastern part (ibidem 147 et seq.). In turn, vicariate could have led to proconsular dignity and other higher positions in imperial administration. See ibidem; Barnes (1985) – on the example of proconsulship of Africa in 337–392. As regards western part of the Empire in the corresponding period see also Matthews (1975): 1–34; generally Wetzler (1997): 174–176. Cf. also Hedrick (2000): 6–10 and 15–19, quoting the example of the career of Flavius Nicomachus and his son, described in CIL VI 1783 = ILS 2948 (Leptis Magna). See also Chapter 5.2 for more information on Nicomachus himself.

[37] For examples of notions entertained by late antique senators, see Alföldy (1952) and more recent Näff (1995). The latter relies mainly on texts written in the western part of the Empire (literary sources; including the attitude to holding imperial offices – see concluding remarks, esp. 283–288). See also Sivonen (2006): esp. 131–139, with information on the attitudes of aristocracy to assuming official functions derived from sources concerning Gaul, and Styka (2008): 299–310 (on the example of epistles of Sidonius Apollinaris). Ideals shared by the pagan senatorial circles with respect to public duties and offices was presented e.g. by Quintus Aurelius Symmachus. See Matthews (1975): 1–34; and recently Gúzman Armario (2008). On the transformations in the awareness of higher social strata induced by Christianity in the western part of the Empire, see Salzman (2002).

[38] Garbarino (1988): 317. See also Mazzarino (1951): 357–365 and Roda (1973) – on the example of connection of Quintus Aurelius Symmachus.

[39] Cf. Jones (1964): 529 et seq.; Arnheim (1970): 8; Barnes (1974b). The origins of some senatorial families went back as far as the late Republic. Cf. Arnheim (1972): 103–142. The promotion of representatives of local elites to senatorial order might have been facilitated by the lower birth rates among senatorial families. See Hopkins (1965). On demographic phenomena, including fertility rates in Rome (mainly the Principate era), see Suder (2003): esp. 197–203.

[40] Cf. Guilland (1967): 23–31; Čekalova (1972); Dagron (1984): esp. 158–164; Chastagnol (1992): 258–291; Wetzler (1997): 183–191; Zuckerman (1998); Skinner (2000); Errington (2006):

diocesan administrators in the East was also most often the crowning of one's career as official.[41]

Without doubt, the first senatorial vicar was Septimius Acindinus, who received the title of a.v.p.p. in Spain after 324, future PPO *Galliarum* (between 338 and 340) and consul in 340.[42] It is debatable, however, whether in that period senator Flavius Ablabius, later prefect of the East, held the office of *vicarius Italiae* (in 315–318/319) and *vicarius Asianae* (in 324–327).[43] There were also instances where the status of senator was obtained by former vicars.[44]

Senators were entitled to the hereditary title of *clarissimus* (Greek equivalent: λαμπρότατος).[45] There was also the possibility of entrusting administration of dioceses to a person who did not have a senatorial background; in such cases senatorial status was conferred simultaneously with the

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148–161. On various issues relating to the standing and status of Roman senators during the Late Empire, see Chastagnol (1970b); Tinnefeld (1977): 59–99; Gera, Giglio (1984); Alföldy (1998): 243–262; Heather (1998); Demandt (2007): 329–343.

[41] With the exception of *comes Orientis* and *vicarius Asianae*, who might have expected higher positions. Cf. Kuhoff (1983): esp. 243–245, 253, on the examples of well-known careers of senators in the fourth century. According to the law, the office of vicar as well as other higher positions in imperial administration could be held only once. Vicariates and other offices are explicitly referred to in C. Th. 9, 26, 4 (a. 416), where violation of the prohibition is subject to penalty of forfeiture of property.

[42] CIL II 4107: "(Septimio A[cindyno, v(iro) c(larissimo)] correcto[ri Tusciae] / et Vmbri[ae, pont(ici) maio]/[r]i?, XV [vi]r[o s(acris) f(aciundis), agenti?] [per Hispanias vices?] [praef(ectorum) praet(orio), vice s(acra) / c(ognoscens)?] [---] lub 5 [vices praef(ectorum) praet(orio), v(ice) s(acra) c(ognoscens)?] / [---]". The figure is discussed in numerous publication, see PLRE 1 (Septimius Acindinus 2); Kuhoff (1983): 115, 118 and esp. Saqurete (2000) with bibliography.

[43] The constitution has survived in an extensive inscription from Oricistus in Asia Minor, dated to 324–326; CIL III 352 = CIL III 7000 = ILS 6091. See also more recent readings Chastagnol (1981) = Feissel (1999); Maier (2010). Cf. PLRE 1 (Flavius Ablabius 4); Volterra (1971): 902–904, 909; Miller (1977): 130 et seq.; Barnes (1982): 104, 132, 134 et seq., 138, 142; Kuhoff (1983): esp. 134 et seq.; Migl (1994): 43–47; Corcoran (2000): 331 et seq.; Porena (2014). Cf. also Feissel (1999): esp. 264–266, with lengthy argumentation supporting the view that at the time Fl. Ablabius was vicar of Asia. On the significance of inscriptions in determining how Constantine exercised his power see Van Dam (2007): esp. 150–162 and 368–372 (on the inscription itself and on Fl. Ablabius), with conclusions after Feissel (1999).

[44] As elegantly put by Potter (2004): 387: "Thus a man could become a senator if he had been a *vicarius*; he did not have to be a senator to become a *vicarius*".

[45] Generally on *clarissimi* cf. Koch (1903): 11–22; Ensslin (1929). As members of the senatorial order, vicars had to organize and cover the expenses of praetorian games, and if they failed to do so to make payments in silver to public works in Constantinople – C. Th. 6, 4, 13, 4 (a. 361). Cf. also C. Th. 6, 4, 15 (a. 359) = abridged in C. 1, 39, 1, emphasizes the significance of praetorship in connection with holding the functions of vicars and proconsul. See Gothofredus (1737), vol. 2: 45–50.

appointment of once the term in office was over.[46] In view of the fact that the number of people who had the right to the title *clarissimus* steadily increased, two new non-hereditary, honorary ranks appeared under Valentinian I (364–375) and Valens (364–378): *spectabilis* and *illustris*.[47] According to some researchers, the status of senator was eventually reserved only for consuls, patricians and other *illustres*.[48]

Once the *spectabiles* had emerged as a group, diocese administrators were also counted among them (Greek equivalent – περιβλεπτος or in exceptional cases σπεκταβίλιος).[49] *Spectabiles* were the second honorary rank after *illustres*, and as such was accessible to medium-level officials.[50] The group of *spectabiles* was not homogenous, since it comprised three subgroups which differed in honorary entitlements in courtly protocol: proconsuls, vicars and commanders of provincial forces – *duces*.[51] Belonging to *spectabiles* automatically meant being included among *comites primi ordinis*.[52] Vicars would also

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[46] Cf. Arsac (1969): 213–215; Löhken (1982): 131; Garbarino (1988): 347–362; Chastagnol (1992): 288–291.

[47] Guilland (1967): 31 et seq.; Arsac (1969): 217–222; Schlinkert (1996): 66 et seq., 74–83 and 103–116. On the legal terminology denoting senatorial ranks, see also Näf (1995): 12–27.

[48] D. 1, 9, 12 – text interpolated in the original excerpt from Ulpianus; C. 12, 3, 3 (a. 476/480 or 484) and C. 3, 24, 3 (a. 490). Cf. Lippold (1972): 209–210 (by way of concession to the senatorial aristocracy) Lounghis (1989): 149 (as a concession to orthodox senatorial aristocracy on the part of monophysite Zeno). Dating after Lounghis, Blysidu, Lampakes (2005): 55, 80 (reg. 34, 165). See also Nov. Iust. 62, 2, 5 (a. 537). On the late antique patricians – the new and non-hereditary title granted to persons with special merits, see Heil (1966): esp. 56 et seq.

[49] In 399 at the latest (C. 1, 54, 6). Cf. Chapot (1911); Koch (1903): 22–33; Ensslin (1929). See also Hanton (1927–1928): 116 et seq.

[50] Cf. Koch (1903): 23; Arsac (1969): 210. See also Clemente (1968): 179–182; Jones (1964): 378–379, 527. Cf. also Roda (1977) on lower senatorial offices which often originated in the Republican period (*quaestores candidati*, *quaestores armarii*, *tribunus plebis*). It is debatable whether C. Th. 6, 24, 4 (a. 387) = C. 12, 17, 1 applied to any deputies of praetorian prefects. The act stipulated for instances that the members of the palace guard corps, i.e. *domestici* and *protectores* were entitled to perform the kiss (*osculum*) during vicars' *salutatio*. See apt remarks in Dębiński (1995): 158 et seq., with reference to do Gothofredus (1737), vol. 2: 135 (ad C. Th. 6, 24, 4).

[51] Seeck (1905c) lays a contrary claim, arguing that the ranks of *vicarii* and *duces* were equal – drawing on C. Th. 6, 16, 1 (a. 413) = C. 12, 13, 1. Analogously Grosse (1920): 155; Scharf (1994): esp. 24, 29. Ensslin (1929): 1558–1559 observed correctly that dux's status was lower than that of a diocesan vicar, relying on C. Th. 11, 18, 1 (a. 409) and C. Th. 6, 13, 1 (a. 413) = C. 12, 11, 1. The contradiction between those regulations had already been noted by Gothofredus (1737), vol. 2: 97–101 vs 106 et seq. He was also legitimately observed that the sequence in *comites primi ordinis* is also supported by the order of offices in *Notitia dignitatum*, according to which vicars ranked higher than *duces*.

[52] C. Th. 6, 15, 1 (a. 413). Still, not all *comites primi ordinis* were automatically brought to equal level with vicars. See C. Th. 6, 17, 1 (a. 413) = C. 12, 14, 1; analogously in the case of *honorarii comites primi ordinis* and *ex vicarii* – C. Th. 6, 21, 1 (a. 425) = C. 12, 15, 1.

be addressed by means of *clarissimus*, *comes primi ordinis*.[53] The honorific *comes*, originally denoting the closest collaborators of the ruler, was introduced under Constantine the Great.[54] The *comitiva* was divided while he still reigned, yielding the following categories: *primi*, *secundi et tertii ordinis*, with vicars accorded a place in the first.[55]

By virtue of individual imperial privilege, some vicars were granted the highest rank of *illustris* (*inlustris*, less frequent form *illustrissimus* = *inlustrissimus*; Greek equivalent: ἰλλούστριος), which was attainable only to the highest imperial officials: both *administratores* and *vacantes*, consuls and senators.[56] Former vicars would also be conferred the honorary title of *ex praefectus*.[57]

Still, the titulature of vicars is much more complex, being linked to the development of diocesan organization at the turn of the fourth century as well as local jurisdiction of vicars. Hence the issue has to be discussed in a separate subchapter, which will also offer observations concerning the related question of changes in diocesan framework until the reign of Justinian I.

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[53] Cf. Scharf (1994): 60, with the examples of Greek versions of titles of vicars: Severus Simplicius, Fl. Anysius and Attius Philippius. See texts of inscriptions quoted in extenso in Chapter 2.2.2. Also cf. remarks on the insignia of vicars found in *Notitia dignitatum* – Chapter 5.1.

[54] Cf. Seeck (1901b): 629–636; Löhken (1982): 98 et seq.; de Bonfils (1981): 1–39; Scharf (1994); Olszaniec (2007b): 23 et seq. *Comites provinciarum*, envoyed to provinces on special missions represented a different category as well. See Chapter 2.2.2.

[55] *Comitiva* had been originally introduced as an institution to undermine the position of the former pagan senatorial aristocracy; with time, it produced a whole group of civilian officials and military ranks. See also Scharf (1996) on the subsequent divisions of the *comitiva*.

[56] Other appellations equivalent to *illustris* were known as well. See TLL, vol. 7.1, fasc. 3: 394–398, esp. 396–398. On *illustres*, cf. Koch (1903): 34–45; Berger (1914); Jones (1964): 528–536; Guilland (1969): 89; Löhken (1982): 112–147; Chastagnol (1992): 293–324. For instance, in an inscription erected on the twentieth anniversary of his *taurobolium*, a former vicar of Asia from the late fourth century is called *vir clarissimus et inllustris* – CIL VI 512 = ILS 4154: "[M.d.m.I. et Attidi menotyranno dis magnis e]t / [t]u[t]atoribus suis / Ceionius Rufius Volu[si]/anus v[ir] c[larissimus] et inlustr[is] / ex vicario Asi(a)e et Ceio/ni Rufi Volusiani v[ir] c[larissimus] ex pr[a]efecto [prae]/torio et [e]x pr[a]efecto ur[bi] et Cecine Lolliane clar[issi]/me et inlustris femin[e] deae Isidis sacerdotis fi[lius] / iterato viginti annis exp[le]/tis taurobolia sui aram constitu[it] / et consecravit X kal(endis) Iun(io) d(omino) n(ostro) Val(en)/tiniano Aug(usto) IIII et Neoterio c(onss)". Cf. PLRE 1 (Ceionius Rufius Volusianus 3); Kuhoff (1983): 137 et seq. (dates the vicariate to 382–383), 253, 373 (note 90) with literature. There is also known case of a *comes Orientis* from the early sixth century who received the title as well – C. 2, 7, 22 (a. 505).

[57] In turn, province gorvernors who obtained the title *ex praefectus* or *ex proconsul* ran lower than vicar *in actu positi*. See C. Th. 6, 22, 7 (a. 383). Cf. also a general provision – C. Th. 6, 5, 1 (a. 383).

2.2.2. Titulature of vicars – detailed remarks and changes in the organization of dioceses before 535

As previously observed, apart from the most widespread title of *vicarius dioeceseos*, often written in the abridged form of *vicarius* (gr. βικάριος), combined with the name of the dioceses, other designations were used as well: *agens vice praefectorum* (Gr. ὁ διαδεχομένος τὰ μέρη τῶν ἐπάρχων), *agens pro praefectis* (Gr. ὁ διεπόμενος τὰ μέρη τῶν ἐπάρχων), *agens vicariam praefecturam* (Gr. ὁ διοιήσας/διέπων τὴν ἔπαρχον ἐξουσίαν).

However, *agentes vices praefectorum praetorio* had been known already in the third century, when the term denoted only provisionally appointed deputies of praetorian prefects, whose territorial scope of competence remained unspecified.[58] The fact that many authors reiterate the thesis that diocesan vicars functioned at the turn of the fourth century follows from the assumption that vicars and a number of a.v.p.p. were one and the same. Researchers also advance an alternative concept, according to which vicars appeared only under Constantine the Great.[59]

This is an issue of paramount importance if one seeks to determine the period when permanent offices of diocesan vicars were established and to define their prerogatives. Hence a more thorough discussion in called for. The deliberations concerning titulature will be accompanied by observations regarding the division of dioceses and the changes they underwent until the abolishment of vicariates under Justinian I in 535.

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[58] See Ensslin (1954): 2417–2419; Ensslin (1958): 2018, 2023 et seq.; Dupont (1973): 311, note 12, 315–317; Sargenti (1986): 111 et seq.; Porena (2003): 152–162 – with sources documenting the function of *agentes* in the course of the third century.

[59] Noethlichs (1982) – after 312, his parallels to the stable principles of organization of contemporary state go too far; Migl (1994): esp. 54–68, 153–161. Nevertheless, see the critical review of the work in Liebs (1999). Migl's thesis is essentially shared by Brandt (1998): 23. See also with a different substantiation: Zuckerman (2002) – ca 314; Potter (2004): 368–371 – after 306 Kunkel, Schermeier (2001): 183 mention that vicars were a permanent element of the imperial governance system, but fail to address the dating of its establishment. Similarly in Hassal (2007): 74 et seq. In turn, Dillon (2012): passim consistently and directly refers to a.v.p.p. as "vicars". A review of opinions expressed in literature was compiled by Franks (2012): 312–320. Cf. also below. The equivalence of both titles was also disputed by earlier authors: Cuq (1899) and Pallu de Lessert (1899). See also Michon (1914): esp. 244–290 with detailed source documentation. However, those works are in part obsolete and while discussing disparity between a.v.p.p. and vicars this author quoted arguments of more recent authors. My point of view is summarized in: Wiewiorowski (2013a). See also the remarks below regarding the dioceses. It should be stressed that in the diocese of Asia, inscriptions mentioning vicars are dated only to the 340s. See Chapter 5.2.

According to adherents of such view, the crowning piece of evidence confirming that diocesan vicars existed under Diocletian is a fragment from the work by Christian apologist Lactantius. *De mortibus persecutorum,* written around 314, states for instance that the emperor "Et ut omnia terrore complerentur, provinciae quoque in frusta concisae; multi praesides et plura officia singulis regionibus ac paene iam civitatibus incubare, item rationales multi et magistri et vicarii praefectorum, quibus omnibus civiles actus admodum rari, sed condemnationes tantum et proscriptiones frequentes, exactiones rerum innumerabilium non dicam crebrae, sed perpetuae, et in exactionibus iniuriae non ferendae" (Lact. *Pers*. 7, 4.).[60]

Indeed, the text does mention *vicarii praefectorum*, which may certainly be identified with *agentes vices praefectorum praetorio*, because this is the only formulation encountered in the sources from the period of Tetrachy.[61] The *genetivus pluralis* used by Lactantius ("vicarii praefectorum") indicates that they represented the entire college of praetorian prefects instead of being subordinated to separate prefects.[62] Another curious fact is that there are no references to dioceses, merely a mention of the division of provinces under Diocletian. Hence the question whether the *vicarii praefectorum* that Lactantius speaks of are indeed diocesan vicars with a firmly established territorial scope of competence.[63]

The term "diocese", derived from the Greek διοίκησις, had been known in Roman administration previously: in the Late Empire in denoted an administrative unit consisting of several provinces and usually superintended by a diocesan vicar.[64] The view which currently predominates in science holds that fixed dioceses were created by Diocletian no later than 298. The move was compelled by the increase in the number of provinces and the need to ensure control over those, knowing that praetorian prefects were

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[60] "Besides, the provinces were divided into minute portions, and many presidents and a multitude of inferior officers lay heavy on each territory, and almost on each city. There were also many stewards of different degrees, and deputies of presidents. Very few civil causes came before them: but there were condemnations daily, and forfeitures frequently inflicted; taxes on numberless commodities, and those not only often repeated, but perpetual, and, in exacting them, intolerable wrongs." Translation taken from http://people.ucalgary.ca/~vandersp/Courses/texts/lactant/lactpers.html#VII.

[61] Cf. Noethlichs (1982): esp. 72. The author elaborates on the arguments presented previously by Cuq (1899).

[62] See Potter (2004): 370.

[63] As far as diocesan vicars are concerned, this is the most crucial criterion. Thus appositely Ensslin (1958): 2024. In Late Antiquity, Romans developed a greater awareness of the extent and boundaries of Empire as a whole. On that issue see Graham (2006).

[64] See Kornemann (1905): esp. 727–734; Scheuermann (1960): esp. 1055 et seq.; Grelle (1960); Bleckmann (1997).

already overburdened by the multitude of their tasks.[65] However, some authors conjecture that dioceses were established some time later[66], or only once Constantine the Great had assumed power.[67]

One of the first reliable sources which corroborate their existence in the late antique sense is the so-called *Laterculus Veronensis* which, according to the currently predominant view, enumerates provinces grouped in dioceses around the year 314.[68] The list of dioceses (see map on p. 86) was as follows:

– *Orientis* (17 provinces),
– *Pontica* (7 provinces),
– *Asiana* (8 provinces),
– *Thraciae* (6 provinces),
– *Misiarum* (11 provinces),
– *Pannoniarum* (7 provinces),
– *Brittaniarum* (4 provinces),
– *Galliarum* (8 provinces),
– *Viennensis* (7 provinces),

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[65] For more recent sources see: Seston (1946): 336–340; Ensslin (1958): 2024–2026; Jones (1964): 46 et seq., 373 et seq.; Gaudemet (1967): 675–684, presents how the Empire was governed as a whole; Barnes (1982): esp. 140–147, 224 et seq.; Hendy (1985): 373 et seq. – before 297; Chastagnol (1985): 237–249; Vogt (1993): 84; Christol (1997): 209; Carrié, Rousselle (1999): 185 et seq.; Kuhoff (2001): esp. 370–381; Bowman (2005a): 79; Lo Cascio (2005): 179–181; Franks (2012): esp. 19–33, 79–93 (though he clearly emphasizes the significance of tax collection). Cf. also Zuckerman (2002): 617–620, 628–637 with examples confirming that demarcating smaller provinces did not end under Diocletian. The provinces which the division affected the most were the proconsular domains of *Asia* and *Africa*, from which were diminished by the newly established provinces of *Byzacena*, *Tripolitana*, *Caria*, *Hellespontus*, *Lidia*, *Phrygia prima* and *Phrygia secunda*.

[66] Di Vita-Évrard (1985): esp. 173–175 – ca 303. The fact that nothing is stated about those in *Edictum Diocletiani praefatio* 12, 15, 17, 20, which mentions only provinces and their inhabitants, speaks indirectly against such dating.

[67] See note 59. On the changes of diocesan organization under Constantine, cf. also Dupont (1973): esp. 309–310. See also Porena (2003): esp. 173–186, who assumes that the diocesan arrangement became stable before or after 306–313.

[68] See Mommsen (1862), though some of his views on dating are nevertheless out-of-date; Bury (1923): esp. 146; Chastagnol (1960): 3 et seq.; Jones (1964): 43; Barnes (1975b) and (1982): 201–208; Noethlichs (1982): 72 et seq., 78–80; Migl (1994): 55–68; Barnes (1996); Kuhoff (2001): 338, note 865, with further literature; Zuckerman (2002): 622 et seq. Kulikowski (2005): 41 et seq., stressed recently that the text of *Laterculus Veronensis* reflects the division carried out prior to the downfall of the Tetrarchy in 305, as it applies to the entire East and West, an suggest that the diocesan refomr took place in 293, when the Tetrarchy became institutionalized. In his opinion, the dioceses of Spain existed for certain in 298; still he quotes the debatable example of Aurelius Agricolanus, a *agens vices praefectorum praetorio* (see below). Cf. also Jones (1964), vol. 3: 381–391 (Appendix II) with tabularized information on diocesan organization contained in late antique sources.

– *Italiciana* (9 provinces),
– *Hispaniarum* (6 provinces),
– *Africae* (7 provinces).

It cannot be ruled out that the formation of dioceses before 314 coincided with the establishment of regional financial administration headed by *rationales*, mentioned by the above-quoted Lactantius.[69] Meanwhile, contemporary authors question the view that creation of dioceses was associated with minting reforms in Diocletian's times, by virtue of which appearance of dioceses could be dated already to around 293.[70] In legal sources, the term of "diocese" to denote a region subordinated to a diocesan administrator appear only in 330.[71]

As regards the functioning of *agentes* with specified geographical areas of responsibility at the turn of the fourth century, authors quote a number of examples. Some of those, however, do give rise to reasonable doubt as the officials in questions may have been a.v.p.p. appointed *ad hoc*.

Particular attention is drawn to the figure of Aurelius Agricolanus who, as an a.v.p.p. in 298 was to head the trial of Marcellus. Marcellus was a centurion in *legio VI Gemina*, stationed in the Spanish province of *Gallaecia* (Galicia), while the proceedings were to be taking place in Tingitana (present-day Tangier) which later certainly was a part of the diocese of Spain (*dioecesis Hispaniarum*).[72] The text depicting martyr's death of Marcellus (*Passio s. Mar-*

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[69] Hendy (1985): 376–378. See also Migl (1994): 55–58, on the functioning of *rationales* in the fourth century, whose area of responsibility coincided with the territories of dioceses (except for the diocese of Egypt, which was established only around 380, while a separate *rationalis* had already been in office since the turn of the fourth century). The issue of financial administration on diocesan level is discussed more broadly in Delmaire (1989): 171–205. Having accepted the view that vicariates began to function early (i.e. around 298), though "sans précision de ressort" (ibidem: 171), he demonstrates that the position of the *rationales* reached its peak in 285–320, and lost it when province governors and praetorian prefects gained greater importance. Recently, Franks (2012): esp. 18–23, 27–32, 79–93, 94–99, 119–126 argued that significance of *rationales* should not be overestimated and that dioceses and vicariares were created for fiscal reasons under Diocletian. His cogent argumentation, drawing on the vision of logical reforms effected under Diocletian and their modification during the reign of Constantine the great, displays one major fault in that it tacitly accepts the thesis according to which activities of vicars is allegedly confirmed before 313 (ibidem: 88 et seq.). See below.

[70] In this sense Hendy (1972) with critical reference to the concept formulated already in the nineteenth century by Th. Mommsen and relevant discussion; afterwards Barnes (1982): 225. The views are convincingly contended by Christol (1977): 247–250. See also Franks (2012): 23–27.

[71] C. Th. 2, 26, 1 (a. 330): "[ad] Tertullianum virum perfectissimum comitem dioeceseos Asianae". See also below on the margin of remarks concerning *comites provinciarum*.

[72] *Pass. Marc.* 2, 22. For more recent editions with commentary see Lanata (1972); Musurillo (1972): XXXVII–XXXIX, 250–259; Lanata (1973): 201–208. Cf. PLRE 1 (Aurelius Agricolanus 2); Arce (1982a): 41; Barnes (1982): 145, 181, 224; Maymó (1996); Zuckerman (2002): 626 et seq.;

celli) gives account of the judicial proceedings following centurion's violation of *disciplina militaris*: on *dies festi imperatoris*, the soldier took off his *balteum* (military belt) and laid down his arms before the standards of the legion, announcing that he was a Christian. *Praeses* (province governor) Fortunatus referred the case to the emperors, and since he did not want to institute proceedings due to singular nature of the case, he turned Marcellus over by way of special procedure to *agens vice praefectorum praetorio* – A. Agricolanus, with a letter describing the event.[73] Having read the letter from the province governor (in which Fortunatus titled the a.v.p.p. as *dominus meus*) and briefly interrogated Marcellus (which confirmed veracity of the charges) Agricolanus sentenced centurion to be beheaded by sword.[74]

The use of the expression *dominus meus* in the letter is taken to attest to hierarchic relationships between Fortunatus and Agricolanus.[75] The latter most certainly held a higher rank than the province governor, but *Passio s. Marcelli* does not offer any detailed information on the relationships between the two

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Porena (2003): 163 et seq.; Arce (2005b): 345; Castillo Maldonado (2005): 161 et seq.; Kulikowski (2005): 42. Some authors believe that another a.v.p.p. – Q. Aeclanius Hermias (ca 313/314–323/324) was the first vicar of Spain. See Chastagnol (1965): 274, no. 1; Vilella (1992): 88. On Fortunatus, see PLRE 1 (Astasius Fortunatus); Barnes (1982): 182. On the history of Tingitana in the Later Roman period see Villaverde Vega (2001): esp. 339–345, where the author discusses the case of Marcellus, and considers the controversy surrounding the office of A. Agricolanus (ibidem: 343 et seq.) though without any decisive conclusions. Vega also draws on Cuq (1899): 397 and the examples of two inscriptions from which it apparently follows that a.v.p.p. could have operated within province boundaries: CIL II 2203 was erected by Q. Aeclanius Hermias, an a.v.p.p. is Spain. See below. CIL II 4107 also originates from Spain. On the latter inscription see Chapter 2.2.1.

[73] The legal nature of the transfer of defendant is a separate issue; according to *Passio s. Marcelli 3*: "Fortunatus praeses dixit: Temeritatem tuam dissimulare non possum et ideo perferam haec ad aures dominorum nostrorum Augustarumque aesarum. Ipse sane transmitteris ad audytorium domini mei Aurelii Agricolani agestis vice praefecti praetorio, prosequente Caecilio armatus officiale consularitatis". Lanata (1973): 206 believes that it probably dd not take place as *per relationem* and suggests that the case was referred to a.v.p.p. Aurelius Agricolanus as "instanza superiore". On *relatio* see Berger (1952): 412 (s.v.); Kaser, Hackl (1996): § 93.III. The legal circumstances, chiefly with regard to legal basis of centurion Marcellus's liability are analysed by Maymó (1996): 279–282. See also Barbati (2012): 597 et seq.

[74] Marcellus confirmed that the charges made against him were true and explained that the underlying motive of his actions was Christian faith, which forbids him to serve in the army. Musurillo (1972): XXXVII–XXXIX, relying on other manuscripts and editions of *Passio s. Marcelli*, claimed that it is more probable that Marcellus was a centurion in *legio II Traiana*, while Fortunatus was the *praefectus legionis*.

[75] See critical observations in Migl (1994): 60, but the notion is maintained in Maymó (1996): 279; Kuhoff (2001): 263, 380 with further literature. Ensslin (1954): 2418 had already been right on that account. The term "dominus" was employed in Latin writings to refer to officials as well. See TLL 5: 1929.

officials. Still, presuming that it was written several decades after the events, one cannot attach too much importance to the formulations used in the text.[76] Nevertheless, unlike other acts of martyrdom, *Passio s. Marcelli* is almost devoid of religious content and in all certainty relied on court files. The conciseness and accuracy of description, including the hearing before a.v.p.p, are notable features of the narrative.[77] As observed above, the account permits one to conclude that the court held by Agricolanus was a special one. The events took place in 298, when emperor Maximinus was staying in Africa, which admits the possibility that judgment over Marcellus was within the scope of actions taken by the provisional ad hoc a.v.p.p., who represented the PPO who accompanied the emperor.[78] At the same time, it is immaterial that the proceedings were held in African Tingitana, which was never a home to the office (*officium*) of the later *vicarius Hispaniarum*, as diocesan vicars often discharged their duties outside their principal seat.[79] A separate issue is that participation of a.v.p.p. in the tribunal over centurion Marcellus 298 attest to his judicial powers in cases involving soldiers, which was a derivative of the broad civilian and military prerogatives of praetorian prefects; Fortunatus also had civilian and military powers, just as most province governors at the time.[80]

Another source quoted as evidence supporting the existence of diocesan vicars is a petition, surviving in its entirety, submitted in 298 to Aemilianus Rusticianus, who was "ὁ διασημότατος διαδεχομένος τὰ μέρη τῶν ἐξοχωτάτων

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[76] Zuckerman (2002): 626 et seq., points to the fact that governor Fortunatus turned Marcellus over to the tribunal of the a.v.p.p. under the escort of "Caecilio armatus officiale consularitatis", meaning Caecilius, member of staff at the *officium* of the province governor – *consularis*. Governorns of *Gallaecia*, where *legio VI Gemina* was stationed, were conferred such a status only after 320. The location where Marcellus serves is a matter of contention; authors suggest that the fragment referring to *legio VI Gemina* was interpolated, as the event is likely to have taken place in Africa. See Lanata (1973): 205, 207; Maymó (1996): 280.

[77] On the caution required when deriving information from acts of martyrdom, see Lanata (1973): 38–40. After all, they were not written to give an account of events but serve as proof of the holiness of the martyr for faith and an example to believers. Therefore the author would omit elements he considered immaterial and added lengthy monologues of the martyr which concerned religious issues (ibidem: 204 et seq., on the sources used in compiling *Passio s. Marcelli*). See also in detail Barnes (2010) passim and articles in: Gemeinhard, Leemans (2012)

[78] So Zuckerman (2002): 627 and following him Bares (2010): 109. On Maximinus' stay in Africa, see Seston (1946): 117–122; Romanelli (1958): 498–505; DiMaio (1997); Villaverde Vega (2001): 277–278; Kuhoff (2001): 199–212.

[79] See Chapter 3.2.

[80] Cf. Seston (1946): 311, 312, 314; Van Berchem (1952): 18 et seq. (the author erroneously presumed that province goverenors were to command only *alae* and *cohortales*); Jones (1954) and (1964): 43–44; Chastagnol (1982): 242; Porena (2003): 501; as well as other works quoted in: Wiewiorowski (2007b): 327, notes 1855–1856.

ἐπάρχων".[81] The letter from inhabitants of Palmis concerned the abuse associated with the maintenance of irrigation ditches. In spite of doubts as to the nature of office held by Aemilianus Rusticianus – he is mentioned in literature as for example deputy of the prefect of Egypt or a representative of *praefectus praetorio* who temporarily acted as prefect of Egypt[82] – it is claimed that the document is the first credible proof that *agens vices praefectorum praetorio Orientis*, and therefore vicar of the Orient existed.[83] Still, it may equally well be an example of activities of a special a.v.p.p. who was appointed in the course of Diocletian's Egyptian campaign.[84] It is also possible that Aemilianus Rusticianus no one else than his contemporary Manilius Rusticianus, a PPO in 306–312, who had previously combined the function of a.v.p.p. with *praefectus annonae*, as demonstrated in a honorific inscription on the base of a statue erected in Ostia.[85] Such a accumulation of duties was permitted at the time, which is evinced in the case of anonymous founder of inscription from Ostia, dated to 276–282 or the period of the Tetrarchy.[86]

Sossianus Hierocles, who took part in the last great persecution of Christians in the Middle Eastern provinces, most likely in 303, is supposed to be yet another diocesan vicar who held his office under Diocletian.[87] Lactantius refers to him as "ex vicarius".[88] The treatise entitled *Contra Hieroclem*, attribut-

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[81] P. Oxy. XII 1469, http://www.papyri.info/ddbdp/p.oxy;12;1469.

[82] Cf. Hübner (1952): 108; Vandersleyen (1962): 12, 62 et seq., 68 et seq.; Lallemand (1964): 55, 236 et seq.; PLRE I (Aemilianus Rusticianus 1). Rightly identified as a.v.p.p. by Ensslin (1954): 2418.

[83] Barnes (1982): 141, 224 and esp. Porena (2003): 165 et seq.

[84] Cf. Vandersleyen (1962): 63, 68; Kuhoff (2001): 379 with further literature; Zuckerman (2002): 624. On the revolt in Egypt see e.g. DiMaio (1996b); Kuhoff (2001): 184–196 with further literature.

[85] CIL XIV 4455: "Manilio Rus[ticiano v(iro) p(erfectissimo] / praef(ecto) ann(onae) a(genti) v(ice) prae[ff(ectorum) praet(orio) / eemm(inentissimorum) vv(irorum) duorum) curato[ri et pa]trono / splendissim(a)e col(oniae) Ost(iensium) ob eius fidem ac / meri[ta] erga rem [pu]blicam ordo / et populus Ostiensi[um] quo civitas / titulis administra[tio]nis eius / firet inlustr[ior] decrevit adq(ue) / const[ituti]t". Cf. Ensslin (1954): 2418; PLRE 1 (Manilius Rusticianus 2); Chastagnol (1972): 226–231; Barnes (1982): 127, 137; Kuhoff (2001): 375–377, 379, 403, 908; Porena (2003): 141–148, 152, 161–163 with further literature.

[86] CIL XIV 134: "…bus Pius felix invictus Augus(tus) / [thermas]…(de)formatas ruinosa labe / Ostiensis integrav(it) [praefe]c(t)o annonae v(icem) a(gente) pra[efectorum praetorio]". Cf. PLRE 1 (Anonymus 50); Porena (2003): 161. Noethlichs (1982): 74 is mistaken in idenitfying Aelius Paulinus and another anonymous figure as a.v.p.p. from Diocletian's times (PLRE 1: Aelius Paulinus 11; Anonymus 55). See below.

[87] Cf. biograms in: Seeck (1913); PLRE 1 (Sossianus Hierocles 4); Speyer (1991). There is a vast number of publications addressing the last large-scale persecution of Chrisitians undertaken in the Tetrarchy period, see de Ste Croix (1954); Barnes (1981): 15–27, 148–163; Wipszycka (1994) with further literature.

[88] Lact. *Pers*. 16, 4: "Nam cum incidisses in Flacinum praefectum, non pusillum homicidam, deinde in Hieroclem ex vicario praesidem, qui auctor et consiliarius ad faciendam perse-

ed somewhat erroneously to Eusebius of Caesarea, indicates that the official exercised control of judicial tribunals[89], which implies that he was the superior of province governors who usually tried Christians.[90] This provided grounds for claiming that Sossianus Hierocles was a *vicarius Orientis*.[91]

However, the sources are by no means conclusive in terms of his territorial competences and the passage in *Contra Hieroclem* should not be approached all to seriously.[92] It is probable that just as other a.v.p.p., the official carried out specific tasks, all the more so that at the time Nicomedia (in 302–303).[93] Perhaps Hierocles was appointed to a.v.p.p. in view of his knowledge of Christianity; this might have also been the reason why he assumed governorship of Bithynia, which formally meant a lower status than a.v.p.p. but proved a springboard for his later career (he achieved prefecture of Egypt in 310–311).[94] The appointment of Hierocles as governor of Bithynia might be seen as another proof that he had never been a *vicarius*. Nomination to province governor would have actually meant demotion and such a course of Hierocles's career seems unlikely.[95]

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cutionem fuit, postremo in Priscillianum successorem eius, documentum omnibus invictae fortitudinis praebuisti".

[89] *Contra Hieroclem* 4 (mention) and esp. 20. For recent works addressing the dubious authorship and dating of the treatise, see e.g. Barnes (1976); Forrat (1986): 20–26; Szarmach (1992); Hägg (1997), esp. 144–150; Kotłowska (2009): 82–87.

[90] See examples from Egypt analysed by Wipszycka (2000) or instances from Lower Moesia: Wiewiorowski (2007b): 320–323 with further literature.

[91] Barnes (1976): esp. 243 et seq.; Barnes (1981): 22–24, 164–167; Barnes (1982): 141, 147 (note 21), 150, 153, 155; Barnes (1996): 550; Porena (2003): esp. 166 et seq., 208–211.

[92] Correctly Forrat (1986): 13 et seq.: "Cela se rapportait donc au fait que Hiéroclès était vicaire du diocèse où vivait Eusèbe, celui d'Orient" (ibidem: 11–18, compiles information on the biography of Hierocles, ultimately adopting th view that he held the office of *vicarius Orientis*). The notion is accepted without question by Speer (1991): 104; Hägg (1997): 145. In turn, Barbati (2012): 521 avoids stating whether Hierocles was a *vicarius* or *praeses Bithiniae*.

[93] Similarly Kuhoff (2001): 380; Zuckerman (2002): 624 et seq., who additionally (note 25) invokes the different terminology used to denote diocesan vicar in honorific inscriptions analysed by Feissel (1998). However, the examples originate from the fifth century. Meanwhile, Migl (1994): 55 (note 75), simply rejects the fact that he held the office of vicar, without engaging in any debate on the matter.

[94] Lact. *Pers.* 16, 4. Argumentation after: Barnes (1976): 243–245 with references to earlier works which present different concepts regarding the causes of "degradation". Cf. esp. J. Moreau in: ed. Lact. *Pers.* II, 292–294 oraz Format (1986): 13–15. On the term in office of the prefect, see Mahler (1976), againts earlier views assuming the period 306–308. See Hübner (1952): 24; Vanderslayen (1962): 80–84; Lallemand (1964): 239–240; PLRE 1 (Sossianus Hierocles 4); Kuhoff (1983): 88, 99, 108, 332 (note 136); Kuhoff (2001): 271 et seq., 362, 364, 368, 380, 644, 646.

[95] See on the example of *vicarii Hispaniarum* Vilella (1992). Cf. also Kuhoff (2001): 380. Stein (1959): 439, note 27, quotes the example of Hierocles's career as a doubtful proof that under Diocletian province governorship ranked higher than vicarship.

Valerius Alexander was to be another vicar from the early fourth century, whose activities as *agens vices praefectorum praetorio* in Africa in documented directly by to building inscriptions which attest to work on erecting fortifications.[96] They doubtlessly prove that praetorian prefects and their *agentes* possessed broad civilian and military competences. The official is most often identified with Lucius Domitius Alexander, the usurper of 308.[97] In the work entitled *De Caesaribus* from 360–361, Sextus Aurelius Victor states that Alexander acted as deputy of the prefect ("pro praefecto gerens"), while in his late fifth century Ἱστορία νέα Zosimos writes that he had held the prefecture in Libya, i.e. Africa ("τόπον ἐπέχειν τοῖς ὑπάρχοις τῆς αὐλῆς ἐν Λιβύῃ καθεσταμένος").[98] The terminology used in those sources are frequently considered equivalents of the term "diocesan vicar", though it would seem more reasonable to go no further than a.v.p.p., because the latter denomination was in wider use in the early fourth century.[99] It is certain, however, that the figure should not be associated with another Alexander – a *comes et agens vices praefectorum praetorio* – known from a honorific inscription from Africa Proconsularis, dated to 390–405.[100]

The beginning of the fourth century (315?) is also the approximate dating for a Greek-Latin papyrus which relates the course of court proceedings held

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[96] AE (1942–1943), 81 (Aqua Viva): "Impp. Dd. Nn. Diocletiano et Maximiano Aeternis Augg. et / Constantio ex Maximiano fortissimis caesaribus princib. / iuventutis centenarium quo aqua viva apellatur ex praecepto / Val. Alexandri V. P. Agent. Vic. Praeff. Prast. et Val. Flori v. p. p. et seq. a. solo / fabricatum curante Val Ingenuo praep limit dedicatum / dd. Nn. Diocletiano VII et Maximiano VII Augg Conss". IRT2009 464 (Leptis Magna) – quoted below.

[97] See Pallu de Lessert (1901): 153–158; Frend (1952): 15; Romanelli (1959): 534–540; PLRE 1 (L. Domitius Alexander 17; Valerius Alexander 20); Hendy (1972): 79; Barnes (1981): 33, 37; Barnes (1982): 14, 145; Kuhoff (1983): 58, 118; Hendy (1985): 380 et seq.; Migl (1994): 60 et seq.; DiMaio (1996a); Kuhoff (1998): 1510 (note 21), 1516 (note 48); Corcoran (2000): 137, 331; Kuhoff (2001): 381, 870 (note 1646); Zuckerman (2002): 627; Porena (2003): 167 et seq.; Porena (2010). See about the usurpation: Andreotti (1968); Kuhoff (1998): 1515–1519; Kuhoff (2001): esp. 863–870; Kuhoff (2012): 543 et seq.; in Polish, see Kotula (1972a): 199–201. On combating rebellion due to the role of Africa in provisioning and the resulting famine in Rome, see also Jaidi (1990): 33 et seq., 126 et seq.

[98] Aur. Vic. *Caes*. 40, 17; Zos. 2, 12, 2.

[99] Gothofredus (1736), vol. 1: 271, cites those sources as examples of designations employed to refer to diocesan vicars. In this context correctly Ensslin (1954): 2418, who finds that Valerius Alexandr was an a.v.p.p.

[100] CIL VIII 962 (Vina): "Adminini[stran]/tibus D[- - -] / v(iro) c(larissimo) amp(lissimo) pr[oco(n)s(ule) / et Alexandr[ro] / p(rimi) o(rdinis) c(omite) ag(ente) v(ices) p(raefectorum) p(raetorio) I[- - -]/nus f(lamen) p(er)p(etuus) ex [cura(atole))] / r(ei) p(ublice) ad [orna/mentum/ ?] thermarum [- - -] / pos[it]". Cf. Pallau de Lessert (1901): 230; PLRE 1 (Alexander 14) and more broadly De Vita-Évrard (1994). In an earlier work, the latter author also questioned identifying Valerius Alexander with the usurper – see De Vita-Évrard (1985): 173. On the titulature of a.v.p.p. in the second half of the fourth century, see also below.

in Egypt before "Iulianus v(ir) p(erfectissimus) a(gens) v(ices) praef(ectorum) praet(orio) [vac.]".[101] The Greek text, which also includes excerpts of statements made by the official, has survived in fragments, therefore no details are available concerning his activities; it is possible that he was an a.v.p.p. appointed ad hoc.[102]

There is one more identified provisional a.v.p.p. from Diocletian's times. The official in question is certainly a Septimius Valentio, who most likely commanded the praetorian guard in Rome between 293 and 296, standing in during absence of the prefect.[103] Meanwhile, Quintus Aeclanius Hermias, who tends to be mentioned among *agentes vices praefectorum praetorio* of the Diocletian's era, actually exercised his office in Spain approximately only in 312/314–323/324.[104]

In the light of the above, one may conclude that during the period of the Tetrarchy, it was a common practice to appoint prefect's deputies and dispatch *agentes vices praefectorum praetorio* to places located remotely from the imperial capitals, which were usually the abode of prefects; such a.v.p.p. repre-

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[101] P. Oxy. XLI 2952, http://www.papyri.info/ddbdp/p.oxy;41;2952. The edition provides 315 as the date, though with reservations. For similar texts with bibliography, see Lallemand (1964): 160.

[102] Editors suggest the he was one and the same with Iulianus, prefect of Egypt in 314 and PPO in 315 (PLRE 1, Iulianus 35), quoting concurrence with the ranks in his *cursus honorum* as they advance probable dating. Analogously Bowman (1976): 162, note 96; Martindale (1980): 487; Porena (2003): 296–300.

[103] CIL VI 1125 = ILS 619: "Magno et invicto / ac super omnes retro / principes fortissimo / Imp(eratori) Caes(ari) M(arco) Aur(elio) Valerio / Maximiano Pio Fel(ici) / invicto Aug(usto) co(n)s(uli) IIII p(atri) p(atriaue) proco(n)s(uli) / Septimus Valentio v(ir) p(erfectissimus) / a(gens) v(icem) praeff(ectorum) praet(orio) cc(larissimorum) vv(irorum) quorum / d(evotus) n(umini) m(aiestati)q(ue) eius". Cf. PLRE 1 (Septimius Valentio); Chastagnol (1972): 223–226; Barnes (1982): 225, note 61; Kuhoff (2001): 74, 80, 96, 116, 183, esp. 379 with further literature and 403; Porena (2003): 139–141, 152, 161. Various authors also presume him to have been: vicar of Italia Suburbicaria – Jones (1964), vol. 3: 4 (note 16); only an ad hoc *agens* of PPO – Seston (1946): 337, note 4; Hendy (1972) and (1985) – *vicarius urbis* or discharging that function. See also quoted in general terms as an example of vicar: Arnheim (1970): 609.

[104] CIL II 2203 (Corduba): "D(omini) N(ostri) Imp(eratori) Caes(ari) / Flav(io) Constantino Max(imo) / pio felici aeterno Aug(usti) / Q(uintus) Aeclanius Hermias v(ir) p(erfectissimus) / a(gens) v(ices) praef(ectorum) praet(orio) et / iudex sacrarum / cognitionum/ numini maiestatisq(uae)/ eius semper / dicatissimus". According to a number of researchers, he was the first vicar in Spain. See Chastagnol (1965): 274, no. 1; Vilella (1992): 88. PLRE 1 (Q. Aeclanius Hermias) suggests the general timeframe of 306–337, followed by Noethlichs (1982): 74, note 18; Kuhoff (2001): 380, 734, argues for dating to post-Diocletian period. Riciovarus, probably a fictitious a.v.p.p./*vicarius* or province governor, allegedly a persecutor of Christians in northern Gaul in the early fourth century, is ommitted here. See Ensslin (1954): 2418; PLRE 1 (Riciovarus).

sented all incumbent praetorian prefects.[105] Still, it remains doubtful whether the practice actually resulted in stabilization of the territorial scope of competence, hunt that is circumscribed to one prefecture, so as to equate all *agentes* from the turn of the fourth century with diocesan vicars.

It would seem legitimate to assume that *agentes vices praefectorum praetorio*, whose competences were becoming clearly delineated, began to be called *vicarii* in the wake of the tendency to shorten titles, with the concurrent emphasis on the nature of the office held.[106] It is also possible that the title *vicarius* became widespread relatively fast, considering that the term was used to denote imperial official responsible for the restitution of property to Christians under the so-called Edict of Toleration of 313.[107] The terminology employed by Eusebius of Caesarea, whose Ἐκκλησιαστικὴ ἱστορία (*Ecclesiatic History*) conveys the text of the edict, cannot be trusted without some reservations.[108] Even more so that in Εὐσεβίου τοῦ Παμφίλου εἰς τὸν βίον τοῦ μακαρίου Κωνσταντίνου τοῦ βασιλέως (*De vita Imperatoris Constantini*), Eusebius mentions province governors as those officials who were forbidden sacrifices associated with pagan cults: "those who surpassed the provincial

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[105] Noethlichs (1982) stresses the fact that this was a base of the later permanent organization under Diocletian. Cf. analogously Porena (2003): 168–171, but with different conclusions; see below. Similarly Grelle (1993): 80. The practice of the Tetrarchy period was briefly characterized by Zuckerman (2002): 627 et seq.

[106] Sinningen (1959): 97 et seq.; Arnheim (1970) and analogously Porena (2003): 179 (the latter only with reference to the example of Dracontius, vicar of Africa in 364–367, in favour of the concept of early identification of titles, given e.g. their interchangeable usage with respect to certain persons described as *vicarius Africae* in imperial constitutions, while the texts of inscriptions provide instances of *agens vice praefectorum praetorio per Africanas provincias*). Similarly Franks (2012): 89–91. On Dracontius, see more broadly Chapter 4.1.

[107] Lact. *Pers*. 48, 8: "Priore tempore aliqui vel a fisco nostro vel ab alio quocumque videntur esse mercati, eadem Christianis sine pecunia et sine ulla pretii petitione, postposita omni frustratione atque ambiguitate restituant; qui etiam dono fuerunt consecuti, eadem similiter isdem Christianis quantocius reddant, etiam vel hi qui emerunt vel qui dono fuerunt consecuti, si petiverint de nostra benivolentia aliquid, **vicarium postulent**, quo et ipsis per nostram clementiam consulatur. Quae omnia corpori Christianorum protinus per intercessionem tuam ac sine mora tradi oportebit" (highlight – J.W.). Euseb. *HE* 10, 5, 10: "οὕτως ὡς ἢ οἱ ἡγορακότες τοὺς αὐτοὺς τόπους ἢ οἱ κατὰ δωρεὰν εἰληφότες αἰτῶσί τι παρὰ τῆς ἡμετέρας καλοκἀγαθίας προσέλθωσι τῷ ἐπὶ τόπων ἐπάρχῳ δικάζοντι, ὅπως καὶ αὐτῶν διὰ τῆς ἡμετέρας χρηστότητος πρόνοια γένηται. ἅτινα πάντα τῷ σώματι τῷ τῶν Χριστιανῶν παρ᾽ αὐτὰ διὰ τῆς σῆς σπουδῆς ἄνευ τινὸς παρολκῆς παραδίδοσθαι δεήσει" (highlight – J.W.). Corcoran (2000): 159, note 168, argues it was a vicar of Pontus, while the imprecise formulation used by Eusebius is the aftermath of the original translations of the edict.

[108] For instance, another fragment in Euseb. *HE* 9, 1, 2, 9 mentions "ὁ γοῦν αὐτοοῖς τῷ ἐξοχωτάτων ἐπάρχων ἀξιώματι τετιμένος Σαβῖνος", who is attested in other sources as PPO of Maximinus Daia. See Ensslin (1954): 2418 et seq.; PLRE 1 (Sabinus 3). At the same time, one should bear in mind the debates on the historicity of the tolerance edict itself. See recent work by Barnes (2011): esp. 90–106, who also provides a compilation of earlier literature.

governors in rank and dignity, and even to those who occupied the highest station, and held the authority of the Praetorian Prefecture", but he did not use the term βικάριος/*vicarius* directly.[109]

Other sources attesting to the activities of officials referred to as *vicarii* in that period originate from Africa[110], while one imperial constitutions explicitly points to activities of vicars in Italy.[111]

At the time, Roman North Africa was torn by controversy of the doctrine of Donatism.[112] It is evident that Constantine the Great sought for the best organi-

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[109] Euseb. *V. Const.* 2, 44: "Μεταβὰς δ' ἐκ τούτων βασιλεὺς πραγμάτων ἐνεργῶν ἥπτετο. Καὶ πρῶτα μὲν τοῖς κατ' ἐπαρχίας διῃρημένοις ἔθνεσιν ἡγεμόνας κατέπεμπε, τῇ σωτηρίῳ πίστει καθωσιωμένους τοὺς πλείους, ὅσοι δ' ἑλληνίζειν ἐδόκουν, τούτοις θύειν ἀπείρητο. ὁ δ' αὐτὸς ἦν νόμος καὶ ἐπὶ τῶν ὑπερκειμένων τὰς ἡγεμονικὰς ἀρχὰς ἀξιωμάτων, ἐπί τε τῶν ἀνωτάτω καὶ τὴν ἔπαρχον διειληφότων ἐξουσίαν. ἢ γὰρ Χριστιανοῖς οὖσιν ἐμπρέπειν ἐδίδου τῇ προσηγορίᾳ, ἢ διακειμένοις ἑτέρως τὸ μὴ εἰδωλολατρεῖν παρήγγελλεν." Initially, the prohibition introduced by Constantine applied to the eastern part of the Empire, where it went into effect after the victory over Licinius in 324, and then was gradually extended westwards. A separate constitution concerning that issue was also addressed to a.v.p.p. in Italy: C. Th. 16, 10, 2 (a. 341). See more broadly Chapter 4.1.

[110] List of sources: Euseb. *HE* 10, 6, 1–5 – letter of Constantine the Great to bishop Cecilianus mentions *vicarius* Patricius; see Grasmück (1964): 27–29; Maier (1987): 140–142; Corcoran (2000): 153; the source is nevertheless questioned by Noethlichs (1982): 75, note 19, who suggests that the term *agens vice* was potentially replaced with *vicarius*. Aug. *Contra Cresconium* 3, 70, 81 – Verus, *vicarius praefectorum* – a mention in the letter of Constantine the Great to proconsul of Africa, Probianus; see Grasmück (1964): 65 et seq.; Maier (1987): 189–192; and below remarks on Aelius Paulinus. Opt. *App.* 3 – letter of Constantine I to vicar Aelafius of 313–314 – it is also possible that the latter is identical with Aelius Paulinus; see Barnes (1982): 144, note 18; *contra* e.g. Pallu de Lessert (1901): 159–163; Grasmück (1964): 51–56, esp. note 226; Dupont (1973): 313 et seq.; Maier (1987): esp. 153–158; Corcoran (2000): 168, 329–331; Dillon (2012): 104 et seq. Opt. *App.* 5 – mention of *vicariam praefecturam per Africam* in Constantine's letter of 314 to Catholic bishops. C. Th. 9, 18, 1 (a. 315) and C. Th. 1, 22, 1 (a. 316) – addressed to vicar Domitius Celsus; the latter was also the addressee of a letter of praetorian prefects and imperial rescript of 315 (Opt. *App.* 7, 8); cf. Grasmück (1964): 34, 70–83; Maier (1987): 187–189, 194–196. Aug. *Contra Cresconium* 3, 71, 82 – mention about a 316 letter from Constantine I to vicar Eumelius; see Dupont (1973): 315, note 30 with references to further sources in which he is mentioned; Grasmück (1964): 81–84; Maier (1987): esp. 187–189, 194–196. C. Th. 9, 15, 1 (a. 318/319). C. Th. 9, 34, 1 (a. 319). Lost constitution of 321, mentioned by St. Augustine (*Brev. coll.* 22, 40 and 24, 42; *Ad Don. post. coll.* 33, 56; *Ep.* 141). C. Th. 2, 19, 1 = C. 3, 28, 27 (a. 319) – the constitutions were addressed to vicar Verinus; see Grasmück (1964): 86, 88–91, 97, 117; Maier (1987): esp. 189–192. On those, see also PLRE 1 (Patricius 1; Aelafius; Verus 1; Domitius Celsus 8; Eumelius; Locrinus Verinus); Kuhoff (1983): 118. As regards earlier literature concerning vicars of Africa, one which still remains valuable is Pallu de Lessert (1901): 153–232 (also under Constantine I: 153–183). On some of the above vicars, see also Chapter 4.1. See also below reamarks on a.v.p.p. Aelius Paulinus.

[111] C. Th. 1, 16, 1 (a. 315). See Chapter 4.1.

[112] See Frend (1952): 141–168; Grasmück (1964): 26–108; Gherro (1970); Millar (1977): 584–590 (a review of attempts at solving the problem during the reign of Constantine); Barnes (1981): 56–61; Odahl (2004): 134 et seq.; Potter (2004): 402–410. Cf. collected sources with com-

zation and operational methods of imperial administration, so as to end the controversy dividing the Church in Africa.[113] Vicars were to play an important role in the process.[114] Of the total of 66 surviving constitutions of Constantine concerning Africa, 14 were addressed to vicars and 15 to high-ranking imperial functionaries who after 321 were granted competences encompassing several provinces (*comites provinciarum*).[115] It is therefore no accident that the title *vicarius* combined with the name of diocese appears for the first time in legal sources in connection with Africa[116], and only later with respect to other parts of the Empire.[117] The term of diocese coupled with a specific region is found in legal sources only from they 370s onwards.[118]

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mentary and relevant bibliography in (1987) – from 303 to 361; Maier (1989) – from 361 to 750. In Polish, see also Kotula (1972a): 209–212. Constantine's approach to Christianity, demonstrated in the context of Donatism is a separate issue, which remains an object of controversy among authors. See recent work by Moreno Resano (2007) – an attempt at defining Constantine's attitude to paganism; Noethilchs (2009); Harries (2010) – in connection with remarks on inheritance law. See also Constantinian enactments analysed in Chapter 4.1.

[113] The reasons why Constantine I paid such an attention to the question of Donatism (and simultaneously the role that the Church expected the emperor to play) were aptly summarized by Gherro (1970): 408: "Certo Constantino si serva della Chiesa per tentare di trovare la soluzione a problemi politici più o meno rilevanti, ma in maniera non dissimile, alla luce dei fatti, da come la Chiesa si servita dello Stato per penziare la sua organizzazione. In questo senso, se la Chiesa diveniva *instrumentum regni*, lo Stato diveniva *instrumentum Ecclesiae*". Constantine's striving to end the controvesry probably had religious motives; see Girardet (2007): 106 et seq.

[114] According to Noethlichs (1982): 75, the first offices of vicars appeared in the years following 312; the author associates it erroneously with the consolidation or regional prefectures already under Constantine the Great, See Migl (1994): 57, 64–84, who analysed steps taken by the emperor in detail, highlighting the significance of Donatism as a factor which prompted transformations in Africa. However, the author excessively stresses the distinctive nature of solutions adopted in Africe, if at the time there were other documented vicars in other dioceses. Similarly Zuckerman (2002): 627. See below. Therefore Constantine the Great may have created a separate prefecture in Africa. Cf. above in Chapter 2.1.

[115] Among the constitutions in question, 20 were strictly concerned with problems in that region, of which 11 addressed matters of religion. See Gaudemet (1992a): esp. 334, 344. Constitutions relating to Africa predominate among Constantine's regulations incorporated in C. Th.: Gaudemet (1992b): 149. Hence Corcoran (2000): 239, rightly underlined the significance of vicars in the African policies of Constantine the Great. Similarly Guizzi (2007): esp. 2393. On *comites provinciarum*, see below.

[116] C. Th. 9, 18, 1 (a. 315). Cf. also somewhat later imperial constitutions: C. Th. 1, 22, 1 (a. 316) and 9, 15, 1 (a. 318). On the constitutions, see Chapter 4.1.

[117] See below. *Valerius Maximus*, *vicarius Oriens* in 325: C. 11, 50, 1 (a. 325); C. Th. 12, 1, 10 (Maximus without indicating the office, but the enactment "pr(opo)sita V id. Iul. Antiochiae Paulino et Iuliano conss." – i.e. 11 July, 325); C. Th. 12, 1, 12 (a. 325). Dating after Seeck (1919): 174 et seq. On that figure cf. below. The group is said to include a vicar of Asia, either anonymous or identical with the aforementioned praetorian prefect, Flavius Ablabius.

[118] C. Th. 10, 19, 7 (a. 370–373?): "ad Probum praefectum praetorio" which, referring to an earlier, unknown constitution of Valens concering the prefecture of Orient, prohibited the

Also, a hypothesis has been advanced that the creation of diocesan system with vicars as their statutory heads followed definitive incorporation of the province Armenia into the Roman Empire and agreement between Constantine the Great and Licinius regarding the division of power in 314.[119] According to the hypothesis, the reform introducing fixed dioceses administered by vicars, who just as praetorian prefects had at the time purely civilian competences, would be the aftermath of division into civilian and military imperial officials, which began under Diocletian and was gradually yet consistently pursued in later years. This is additionally supported by the institution of commanding frontier forces by *duces* became widespread only in the fourth century.[120]

On the other hand, it appears erroneous to presume that the decisive factor which produced stable vicariates was the title's appearance in the version of "agens vices praefecti praetorio" after 306, that is representing one prefect, and that it was associated with a departure from the principles of the Tetrarchy, which consisted in joint rule of the imperial college and their prefects in the undivided Empire.[121] This hypothesis relies on an inaccurate reading od inscription erected by Valerius Alexander, an a.v.p.p. in Africa in 307–308.[122]

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inhabitants of provinces belonging to dioceses Illyricum and Macedonia ("per Illyricum et dioecesim Macedonicam") from taking gold prospectors (also called Thracians) as farm labourers, under severe penalties. On that constitution, chiefly in the context of dating of administrative divisions in the Empire (division of the prefecture Illyricum under Valentinian I and Valens), the scope of its applicability as well as on antique sources suggesting popularity of metallurgy in the Balkans, see Gothofredus (1738), vol. 3: 495 et seq.; Lepore (1998b); Freu (2012): 433, 441. Schmidt-Hofner (2008a): 548 dated the enactment to 373.

[119] Zuckerman (2002): esp. 636 et seq.

[120] According to Zuckerman (2002): 636 et seq., the group of fourth century *duces* included C(aius) Aur(elius) Firminianus, a leader in Scythia Minor, who nevertheless might have held command there even earlier; he also omits the instance of another hypothetical *dux Scythiae* from Diocletian's times – Latronianus. See Wiewiorowski (2008): 19–31 with further literature.

[121] It was formulated by Potter (2004): 370–374, who also drew upon the changes in how the unity of the Empire was perceived by the contemporaries, which in his opinion were reflected in literary sources (Lact. *Pers.* 23, 1–9; 24, 2; Euseb. *V. Const.*: 1, 25, 1; 26) and preserved in numerous fragments of the imperial constitution directed against cesars. See AE (1995): 1475 d; esp. Feissel (1996), Similar Porena (2010).

[122] IRT2009 464 (Leptis Magna): "Indulgentis/simo ac liber/tatis restitu/tori victori/osissimoque / imperatori / d(omino) n(ostro) Maxentio / P(io) F(elici) invicto / Aug(usto) / Val(erius) Alexander / v(ir) p(erfectissimus) a(gens) u(ices) praef(ectorum) praet(orio) / numini maies/tatiq(ue) eius dicatiss(imus)". See esp. Tantillo, Bigi (2010): 321–323 [No 5]. Cf. esp. the inscriptions from the 360s cited in the preceding footnote, which preserve the full titulature of a.v.p.p. (e.g.: IRT2009 57: "Iustitia pariter ac / pietate caelesti adq(ue) / Romanae felicitatis / perpetuo fundatori / d(omino) n(ostro) Valentiniano vic/toriossimo ac totius / orbis Aug(usto) Antonius/ Dracontius v(ir) c(larissimus) agens / vicem praefectorum prae/torio per Africanas pro/vincias numini et / maiestati eius semper / dicatissimus"; IRT2009 58:

In fact the content of the inscription does not differ from any other which mention a.v.p.p., also those from the latter half of the fourth century. After 313/314 *agens vices praefectorum praetorio* and *vicarius* were used in the sources interchangeably, though they were usually associated with a specific territory.[123] One of the first instances of such practice was Aelius Paulinus, titled *agens vicariam praefecturam*, *vicarius*, *administrans vice praefectorum* (he was to be delegate to handle the issue of Donatism in Africa in 313–314), who nevertheless might have been an example of provisional a.v.p.p.[124] However, later on the frequency of occurrence of *agens vices praefectorum praetorio* decreases compared *vicarius.*[125]

The edict *de accussationibus*, which is often attributed to Constantine the Great, offers additional evidence that neither *vicarius* nor a.v.p.p. were officials whose position had consolidated in the early fourth century.[126] At least

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"Iustitia pariter ac pieta/te caelesti adq(ue) Romaṇa[e] / felicitatis perpetuo / fundatori d(omino) n(ostro) / Valenti victori/osissimo ac totius or/bis Augusto / Antonius Dracon/tius v(ir) c(larissimus) agens vicem / praefectorum prae/torio per Africanas / provincias numini e[t] / maiestati eius semper diċ[a]/tissimus"). Cf. esp. Tantillo, Bigi (2010): 323–331 [No 9]. See also versions with singularis are in evidence as well: CIL VIII 7037: "Claudius Avitianus / comes primi / ordinis agens pro / pra(efe)ctus basilica(m) / (cons)taninianam cum / porticibus et tetra/(py)lo (con)stituend(am) / (a) solo perfi(ciendam) / q(ue) (c)ur(avit)"; CIL VIII 7038 (analogous).

[123] Compiled according to PLRE 1 (constitutions listed in chronological order): Claudius Avitianus 2 (CIL VIII 7037–7038; C. Th. 8, 5, 15; C. Th. 11, 28, 1; C. Th. 15, 3, 2; C. 8, 10, 7); Dracontius 3 (CIL VIII 7014 = ILS 758; CIL VIII 10609 = ILS 763; IRT2009: 472; 473; 558; 57; 58; CIL VIII 22830; C. Th.: 11, 7, 9; 11, 30, 33; 10, 1, 10; 1, 15, 5; 15, 1, 15 – office not stated; C. Th.: 8, 4, 10; 11, 1, 10–11; 12, 6, 9; 13, 6, 4; 12, 7, 3 – office not stated; C. Th. 11, 1, 16 – office not stated). Marius Artemius, vicar of Spain, represents a similar case: C. Th. 8, 2, 2 (a. 370) and 11, 26, 1 (a. 369) and AE (1915): 75. On the latter vicar see Chastagnol (1965): 275, no. 9; PLRE 1 (Marius Artemius 4); Vilella (1992): 87. See also Chapter 4.1.

[124] Opt. *App*. 2. See below.

[125] See PLRE 1 (*fasti*: 1077–1086); PLRE 2 (*fasti*: 1275 et seq., 1280). Arnheim (1970) asserted that identification of titles occurred at an early stage, relying e.g. on their interchangeable usage with respect to particular persons (yet the examples provided are limited to the times of Constantine). Based on the more frequent occurrence of the title since Constantine's reign, Porena (2003): 177–186 also argues in favour of prompt propagation of administrative innovations in the form of dioceses with vicars as its administrators. Meanwhile, Migl (1994): 146–151, highlights the sources which may indicate a distinction between a.v.p.p. and vicars. At the same time, the author disregards the above examples of alternative usage of the terms denoting vicars in inscriptions from the 360s, that is a.v.p.p. or *agens pro praefectis*, and *vicarii* in *Codex Theodosianus*.

[126] It is known from approximately 6 inscriptions found in various parts of the Empire. Fragments of the edict were employed in C. Th. 9, 5, 1 = C. 9, 8, 3. Among the most recent studies see Feissel (1996): 287 et seq.; Corcoran (2002a) and (2002b). Dating of the edict to 324 after Seeck (1919): 169, is disputable; see Delmaire (1989): 28–30 and particularly Corcoran (2000), esp. 288–291; Corcoran (2002a); Corcoran (2002b) and (2012) – the latter legitimately argues that it was issued in 305 and therefore it was not adopted in *Codex Theodosianus*. On the edict cf. also Morreau (1956); Sargenti (1995): 379 et seq.; Rivière (2000).

two fragments of the edict mention imperial officials to whom it had been delivered, and both are symptomatic for not referring to vicars or a.v.p.p.[127]

Instances of *agentes* appointed ad hoc are also encountered after 313/314. The previously mentioned Aelius Paulinus may serve as an example of such an envoy. The surviving manuscript of *Contra Parmenianum donatistam* by St. Optatus of Milevis refers to as *vir spectabilis* and titled alternately *agens vicariam praefecturam*, *vicarius* or *administrans vice praefectorum*; in most sources, he is thought top have been a diocesan vicar in Africa in 314.[128] It has been rightly stressed in the literature that such use of *spectabilis* did not correspond with the title of *perfectissimus* to which vicars were entitled, a fact that one should not ignore and rely on the assumption that the copyist corrected the original appellation to the honorary title which was granted to vicars since 365. It is therefore legitimately argued that Aelius Paulinus might have also been no more than a specially appointed a.v.p.p.[129]

Nothing certain may be stated about the office held by Dionysius who, as "vice praefectorum agentem" was the addressee of two constitutions of 314, preserved in various places of *Codex Iustinianus*, but which are likely to have been fragments of one enactment.[130] Dionysius is sometimes consid-

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[127] CIL III 12043 (ll. 46–50): "[S]uper i(taque o)mnibus tam ad praefectos nostros / quam (etami et p)raesides et rationalem et magistrum / privat(ae strip)ta direximus quorum exempl[ar]i alio (e)di/cto no(stro) [pr](o)dit[o], cuiusmodi lege(m s)tatutumque / cont(ineat, pl)enissime declaratur". CIL V 2781 (ll. 29–31): "/[De expositus] itaque omnibus tam ad praefectos nostros quam etiam et praesides et rati/[onales et] magistrum privatae nostro / [quid ad huius] modi legem statutumque contineat[ur], plenissime declara[nt]"; Girard, Senn (1977): 499–501, no. 25: "Super itaque omnibus tam ad praefectos nostros / quam etiam et praesides et rationalem et magistrum / priuatae scripta direximus, quorum exempl[ar]i alio edi/cto nostro [pr]odito, cuiusmodi legem statutumque / contineat, plenissime declaratur".

[128] Opt. *App.* 2. The figure is sometimes identified with another *vicarius praefectorum* – Verus. Cf. Pallu de Lessert (1901): 163 et seq.; Frend (1952): 154 et seq.; Grasmück (1964): 65 et seq.; PLRE 1 (Aelius Paulinus 11; Verus 1); Arnheim (1970): 596; Dupont (1973): 314; Barnes (1982): 146; PCBE 1 (Aelius Paulinus 1; Verus).

[129] See rightly Maier (1987): 175 (note 29) and 190 (note 12); also Migl (1994): 76. Regarding ranks, see Chapter 2.2.1.

[130] C. 7, 22, 3 (a. 314): "Exempla sacrarum litterarum Constantini et Licini AA. ad Dionysium vice praefectorum agentem. Solam temporis longinquitatem, etiamsi sexaginta annorum curricula excesserunt, libertatis iura minime mutilare oportere congruit aequitati. D. III k. Mai. Volusiano et Anniano conss." C. 3, 1, 8 (a. 314): "Imperatores Constantinus, Licinius AA. ad Dionysium. Placuit in omnibus rebus praecipuam esse iustitiae aequitatisque quam stricti iuris rationem. D. id. Mai. Volusiano et Anniano conss." See Mommsen (1905a): CLX; Krüger (1917): 27; Seeck (1919): 162; Krüger (1920): 11. Both regulations were analysed on numerous occasions in terms of significance of the first for the statues of limitations and the second as interpretative clause. See e.g. Lange (1954); Amelotti (1958): 120, 243; Kaser (1975): esp. 61, 130, 333; Silli (1980): esp. 27–29; Sitek (1996): esp. 25–43. On *sacrae litterae*, see Kussmaul (1981): 41 et seq.,

ered a vicar who held his office in the part of the Empire ruled by Constantine, although it is more probable that the constitution originated from Licinius's chancery.[131] In such a case, the conjecture that Dionysius held the office of diocesan vicar would be even more doubtful. After all, it is possible that the previously discussed hypothesis holds true: administration of dioceses with vicars superintending became stable only after the fall of Licinius in 314.

In 325–326, *agens vices praefectorum praetorio* Dracilianus was probably carrying out a special mission in Palestine, as the administration of Constantine the Great consolidated on the territories which had previously been under Licinius's rule.[132] This is not borne out by the arguable fact that he simultaneously discharged the functions of PPO's representative and Palestine's governor, which is confirmed in sources related to the construction of Christian basilica in Jerusalem[133], but by the mission he executed at the same time as a.v.p.p. – also corroborated in imperial constitutions[134] – the office of *vicarius Orientis* was certainly held by Valerius Maximus.[135]

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and Prostko-Prostyński (1998a), with further literature, who polemicizes to an extent with the views of the former.

[131] Seeck (1905a), decidedly for Dionysius having held office in the West. PLRE 1 (Dionysius 2) – inconclusive. The view is that the text was drafted in Licinius' chancery is nevertheless predominant. See works cited in the preceding footnote and Dupont (1974): 193, note 10 – with regard to C. 3, 1, 8; Corcoran (2000): 280.

[132] See in greater detail in Dupont (1972a): 823–835, 831–833. The author also comprehensively discusses changes introduced by Constantine I in the East after 324: Dupont (1971b). See also more broadly on the policy of that ruler towards Palestine in 324–326: Moreno Resano (2011).

[133] Euseb. *V. Const.* 3, 31; Socrates *HE* 1, 9; Theodoret *HE* 1, 17. So: Gothofredus (1736), vol. 1: 267 (nota b) and 271 (in favour of his having been a vicar); Cuq (1899). The argument is rightly challenged by Arnheim (1970): 601 et seq., who demonstrates that the quoted fragments may equally well confirm participation of two separate protagonists: an a.v.p.p. and an unknown governor.

[134] C. Th. 2, 33, 1 (a. 325) – which stipulates different rules of returning a loan depending on the category of the object in question; C. Th. 16, 5, 1 = C. 1, 5, 1 (a. 326) – in which heretics (and, in the version from C. Th., also schismatics) are revoked the privilege of exemption from *munera* to which Christians (i.e. clergy) are entitled. The first of those is extensively discussed in Gothofredus (1736), vol. 1: 266–271, and Dupont (1963): 190 et seq.; Dupont (1971b): 493, note 71 (chiefly in the political circumstances of its issue); Solidoro (1997), on the ensuing introduction of the concept *usurae supra modum* into Roman law, and deliberations on the possible inspirations of Constantine's. On the second enactment, see Chapter 4.1.

[135] Rightly Cuq (1899); Dupont (1973): 311. PLRE 1 (Dracilianus) seems to accept this point of view. However, the presumption that he was after all a *vicarius Orientis*, as a successor of Valerius Maximus, is based solely on the rejection of Seeck's redating of the constitution (1919): 68. This notion is accepted by Arnheim (1970): 601 et seq.; Kuhoff (1983): 142, 378 (note 108); Millar (1993): 212 et seq. On Valerius Maximus, see Gothofredus (1740), vol. 4: 354

Lucius Arcadius Valerius Proculus signo Populonius, an aristocrat and imperial official known from numerous sources, combined proconsulship of Africa around 331/332 with the duties of praetorian prefect responsible for a number of other African provinces.[136]

Nothing is known about the nature of activities of a.v.p.p. Lucillius Crispus, who erected a statue of Constantine the Great or Constance II in Galatia and provided it with a Latin inscription.[137]

Another *agens vicariam praefecturam* in Asia – most likely under Constantine the Great – was Flavius Anysius, honoured with an inscription by the βουλή (city council) and people of Laodicea in Asia Minor.[138]

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i 356. Cf. PLRE 1 (Valerius Maximus 49); Dupont (1972): 831 et seq.; Barnes (1982): 103–104, 160; Kuhoff (1983): 133, 142, 234 et seq., 237, 337 (note 107).

[136] Inscription discovered in Rome (Mons Caelius) – CIL VI 1690 = ILS 1240: "Populonii / L. Aradio Valerio Proculo v(iro) c(larissimo) / auguri pontifici maiori XV vir(o) sac(ris) / faciudnis pontif(ici) Flabiali(s) praetori / tutelario legato pro praetore prov(inciae) / Numidiae pereaequatori census pro/vinciae Callaeciae praesidi prov/inciae Byzancenae consulari prov(inciae) Eu/ropae et Thraciae consulari prov/(inciae) Siciliae comiti ordinis secundo / comiti ordinis primi procos(onsuli) prov(inciae) / Africae vice sacra iudicanti eide/(m)que iudicio sacro per provincias / proconsularem et Numidiam By/zacium ac Tripolim itemque Mau/retaniam Sitifensem et Caesa/riensem perfuncto officio praef/(ecturae) praetorio comiti iterum ordi/nis primi intra palatium praef/(ecti) urbi vice sacra iterum iudican/ti consuli ordinario / viri perfectissimi et prin/cipales et splendissimus or/do et populus puteolanorum / patrono dignissimo / curante Sept(imio) Caritone v(iro) p(erfectissimo)"; CIL VI 1693 = ILS 1241: "his bis praefectus patriae / praefectus et idem / hic Libyae idem Libyae / proconsul et ante / ter vice qui sacra / discinxit iurgia iudex / consul et aeterno / decoravit nomine fastos / cetera quid memorem / tanto sub iudice gesta / cum proculum videas / toto qui natus honori est / collegium suariorum patron / prestantissimo". On Populonius only in biographical studies see: Pallu de Lessert (1901): 42–45; Chastagnol (1962): 96–102; Malcus (1967): 105 et seq.; PLRE 1 (L. Aradius Valerius Proculus signo Populonius 11); Kuhoff (1983): passim, esp. 359 (note 26).

[137] See d'Orbeliani (1924): 37, no. 45; AE (1924), 89: "Aeterno Aug(usto) / Lucil(ius) Crispus v(ir) p(erfectissimus) a(gens) v(ices) / praeff(ectorum) praet(orio) d(evotissimus) n(umini) ma(iestatisque) / eius". Dating of the inscription is debatable: the years of independent rule of both aforementioned emperors are possible, i.e. 311/313, 324/337 or 350/361. Cf. PLRE 1 (Lucilius Crispus 5); Foss (1977b): 36; Barnes (1982): 146; Kuhoff (1983): 135, to whom he was *vicarius Ponticae*. In turn, Ensslin (1954): 2418, opted for Diocletian's times and considered him to have been an a.v.p.p.

[138] MAMA VI 13 = Corsten (1997), no. 41 (Laodicea): "[ἀ]γαθῆ τὐ[χη·] / Φλ. Ἀνὐ[σ]ιον / τὸν λαμ(πρότατον) κόμ(ητα) / διοκήσαντα / τὴν ἔπαρχον / ἐξουσίαν / ἡ βουλὴ καὶ ὁ δῆ/μος τῆς λαμ(προτάτης) / Λαοδικέον / μητροπόλεω[ς]". Cf. PLRE 1 (Fl. Anysius 3) – with the not entirely well-founded remark that: "The unusual formula suggests a date soon after the creation of the vicariate; and the name Flavius a date not before Constantine I". See Foss (1977a): 176, note 14, on the formulations used in the inscription, questions their allegedly unique characters. Analogously Corster (1997): 86 et seq., also confirming its dating to the reign of Constantine the Great. He is nevertheless mistaken assuming that Anysius was a *comes provinciarum*; it was impossible to hold both that function and the office a.v.p.p. Fl. Anysius was

Another potential special envoy of the emperor (a.v.p.p.?) was Nitentius, often considered the predecessor of Nicomachus Flavianus, the vicar of Africa in 377. He is known for a reference in the constitution addressed to the latter by Valentinus, Gratian and Valentinian II.[139]

The duties of *agens vices praefectorum praetorio* were also entrusted to Fabius Pasiphilus, who temporarily substituted the *praefecti praetorio et urbi* in 394.[140]

In the early fifth century at the latest, the Minor Asian city of Side saw erection of an inscription in Greek, which mentions the undertakings of a Attius Philippus, who sometimes is believed to have been an a.v.p.p. as well.[141]

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most likely granted the honoraty title of *comes*. On *comites provinciarum* see below. On the widespread nature of *gentilicium Flavius* in that period, see esp. Keenan (1973–1974) and (1983); Cameron (1988); Prostko-Prostyński (1994): 63–75. Cf. also Feissel (1998): 97, with other inscriptions cited there.

[139] C. Th. 16, 6, 2 (a. 377) = C. 1, 6, 1: "Imppp. Valens, Gratianus et Valentinianus AAA. ad Flavianum. Eorum condemnamus errorem, qui apostolorum praecepta calcantes christiani nominis sacramenta sortitos alio rursus baptismate non purificant, sed incestant, lavacri nomine polluentes. Eos igitur auctoritas tua erroribus miseris iubebit absistere ecclesiis, quas contra fidem retinent, restitutis catholicae. Eorum quippe institutiones sequendae sunt, qui apostolicam fidem sine intermutatione baptismatis probaverunt. Nihil enim aliud praecipi volumus, quam quod evangeliorum et apostolorum fides et traditio incorrupta servavit, sicut lege divali parentum nostrorum Constantini Constanti Valentiniani decreta sunt. Sed plerique expulsi de ecclesiis occulto tamen furore grassantur, loca magnarum domorum seu fundorum illicite frequentantes; quos fiscalis publicatio comprehendet, si piaculari doctrinae secreta praebuerint, nihil ut ab eo tenore sanctio nostra deminuat, **qui dato dudum ad Nitentium praecepto fuerat constitutus**. Quod si errorem suum diligunt, suis malis domesticoque secreto, soli tamen, foveant virus impiae disciplinae. Dat. XVI kal. Nov. Constantinopoli Gratiano A. IIII et Merobaude conss." (highlight by this author). See Gothofredus (1743), vol. 6, pars 1, 216; PLRE 1 (Nitentius); Kuhoff (1983): esp. 359, note 29. On the act and the person of Nicomachus Flavianus see more broadly Chapter 5.2. Acted as a.v.p.p. could also PVR Severus, the addressee of C. Th. 7, 18, 6 (a. 382) and C. Th. 8, 4, 13 (a. 382) as PPO, because these laws concern deserters and *primipilares,* usual business of praetorian prefect. Cf. PLRE I (Valerius Severus 29).

[140] CIL X 1692 = ILS 792 (Puteoli): "pro beatitudine temporum / felicitatemque (sic!) publici status imp(eratorum) / ddd. nnn. Theodosi Arcadii et Honori / perennium Augustorum / ripam macelli dextra lebaque / ad gratiam splendorumque / civitatis Puteloanae instructum / dedicavit Fabius Pasiphilus v(ir) c(larissimus) / agis (sic!) vicem praefectorum praetorio / et urbi". See Ensslin (1958): 2023; PLRE 1 (Fabius Pasiphilus 2); Kuhoff (1983): esp. 369, note 70, with further literature.

[141] Quoted after: Foss (1977a); SEG 27 (1977): no. 903 – with corrections: "Ἄττ(ιος) Φίλιππος ὁ λαμ(πρότατος) / κόμης πρώτου βαθμοῦ / διέπων τὴν ἔπαρχον / ἐξουσίαν καὶ τοῦτο τὸ/ ἔργον τῇ λαμ(προτάτῃ) μεγίστῃ / μητρόπολι Σίδῃ". Foss (1977a), believes him to be a vicar of Asia: esp. 175–177; contrarily PLRE 2 (Attius Philippus 8), where he is assumed to be a governor (*consularis*).

Finally, it has to be deemed significant that a sixth century author, Cledonius, demanded that *agens vices praefectorum praetorio* be treated as distinct from diocesan vicar precisely due to the extraordinary nature of the former office[142], while as late as 541 a temporary deputy was appointed to act in place of the absent prefect of the East (John of Cappadocia).[143]

In view of the above, one can be certain that a given person was a permanent province administrator only when the source uses the title of vicar next to the name of dioceses or based upon analysis of the context in which the work mentioning the a.v.p.p. was written.[144]

The question of titulature of vicars in the early fourth century becomes even more complicated given the fact that apart from *vicarii* and *agentes vices praefectorum praetorio* the echelon of administrators included *comites provinciarum* who were sent to the perform that function in the dioceses.[145] The term *comes* – already well-known in the Principate era and denoting an imperial advisor in legal and military matters – referred to a group of very close companions and associated of the Emperor.[146] *Comites provinciarum* had the task of informing the emperor about the current situation on a given territory and restore order when it proved necessary.[147] They also exercised supervision over province governors and were never mentioned in the

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[142] Cledonius *Ars grammatica* 13, 30–32: "nam vicarius dicitur is qui ordine codicillorum vices agit amplissimae praefecturae. ille vero cui vices mandantur propter absentiam praefectorum, non vicarius, sed vices agens, non praefecturae, sed praefectorum dicitur tantum". See correctly Gothofredus (1736), vol. 1: 271; Ensslin (1958): 2024. Arnheim (1970): 594 dismisses the significance of the source with an argument that the grammarian did not write about offices but, concerned with linguistic purism, about the correct usage of terms. Similarly Potter (2004): 370, note 29.

[143] Cf. Nov. Iust. 107 (a. 541): "Ὁ αὐτὸς βασιλεὺς Βάσσῳ τῷ μεγαλοπρεπεστάτῳ κόμητι τῶν καθωσιωμένων δομεστίκων ἐπέχοντι τὸν τόπον Ἰωάννου τοῦ ἐνδοξοτάτου ἐπάρχου πραιτωρίων τὸ β, ἀπὸ ὑπάτων <ὀρδιναρίων> καὶ πατρικίου". Cf. Stein (1949): 481, note 1; See Ensslin (1958): 2023; PLRE 3A (Fl. Comitas Theodorus Bassus 4). On the novel see Lounghis, Blysidu, Lampakes (2005): 305, reg. 1237, with further literature.

[144] Porena (2003): 185, finds that a.v.p.p. after 298 were definitaly vicars. Demandt (2007): 296 et seq. formulates a similar opinion: "vices agentes praefectorum praetorio oder vicarii", having omitted the diputes which have been taking place for over a century.

[145] Seeck (1901b): 631 i 655; Stein (1959): 113; Jones (1964): 105; Arnheim (1972): 70–73; Dupont (1971b): 481 et seq.; Dupont (1973): esp. 317–319; Thür, Pieler (1977): 438 et seq.; Noethlichs (1982): 78; Migl (1994): 66 et seq.; Schlinkert (1998): 144 et seq.; Dillon (2012): 42, 97-99, 113–116; Franks (2012): 211–217. Cf. Wiewiorowski: (2006a); (2006b) and (2011a) with further literature, who discusses the issue on the example of Spain.

[146] See de Bonfils (1981): 1–39; Scharf (1994): esp. 5 et seq.; Schlinkert (1996b) and (1998) with further literature.

[147] See a review of disputes in the literature concerning the detailed determination of issues that were to fall within the scope of the counts in Kuhoff (1983): 354, note 10.

sources next to vicars or *agentes vices praefectorum praetorio*.[148] The first comes was Octavianus (*comes Hispaniarum* in 316–317); from then on their competences would be described in legal sources by the addition of the name of diocese to the title of "comes".[149] The practice of sending *comites* to various parts of the state was widespread especially in 324–337, when Constantine the Great became the sole ruler of the Empire, and was discontinued by his successors.[150] Due to their extraordinary nature, the *comites* were conferred various honorary titles, which differed them from commonplace imperial officials; they did not possess a fixed *officium* either. The only count to replace a vicar permanently was *comes Orientis* (after ca 335), and the distinct status of that official, compared with other province administrators was its aftermath.[151]

The perplexities associated with the attempts to determine a list of vicars are even more complex due to the fact that sources do mention honorary vicars. Their status was essentially lower than that of active and former ad *administratores* as well as those who obtained the title by virtue of imperial *militia*.[152] Another honorary title encountered in the sources is *ex vicarius*,

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[148] Cf. esp. Arnheim (1972): 71; Dupont (1973): 315–317; Noethlichs (1982): 77 et seq.; Wiewiorowski (2006b) and (2011a) on the example of Spain, where the only case of co-existence of the offices of counts and vicars is alleged to have taken place.

[149] C. Th. 9, 1, 1 (= C. 3, 24, 1 with amendments). In that respect, see Wiewiorowski (2006a). Major works omitted in that text include Dupont (1963): 58 et seq.; Kuhoff (1983): 114 et seq.; Kaser, Hackl (1996): § 90.II.2. For the analysis of th contents of the constitution, cf. Gothofredus (1740), vol. 4: 3 et seq.; Wiewiorowski (2005); di Cintio (2010), with further literature. Migl (1994): 66 attaches excessive importance to a single instance of using the full title, i.e. "Tertullianus, comes dioeceseos Asianae" in C. Th. 2, 26, 1 (a. 330). Noethlichs (1982): 77 goes as far as suggesting that the use of the term of diocese in a constitution concerning the count of the diocese *Asianae* may have been associated with the functioning of an administrative unit of that name in the Principate era (ibidem: note 31). In turn, Gothofredus (1736), vol. 1: 229 had no such doubts.

[150] See Dupont (1973): 319. It suggested that the popularity of the practice of sending counts led resulted virtually in discontinuation of issuing constitutions addressed to vicars, which was additionally fuelled by the reluctance of Constantine the Great towards diocesan organisation – Dupont (1973): 323, 334–336. Kuhoff (1983): 112, 118, 236, also wrote about the experimentation stage under Constantine. Similarly Dillon (2012): esp. 116 et seq., 119 et seq. The last know figure from this group was T. Flavius Laetus, *comes Hispaniarum in* 337–340, mentioned in an inscription from Merida; ed.: AE (1927): 393–394, no. 165 = AE (1975): 122–123, no. 472; Chastagnol (1976) = Chastagnol (1994). On that official see also Wiewiorowski (2006b): 266 et seq., 272 et seq.; Wiewiorowski (2011a): 429, 432.

[151] See below, Chapter 2.2.3.

[152] C. Th. 6, 22, 5 (a. 381). The status of vicars who obtained the title of *ex praefectus* is treated analogously in C. Th. 6, 22, 7 (a. 383) which, in general terms, regulated the relationships between holders of honorary titles and *administratores*. Cf. Gothofredus (1737), vol. 2: 120–123. As regards honorary *vicarii*, see also the various categories of palace officials which were made equal: C. Th. 6, 2, 23 (a. 414) – providing for a complete exemption of service and fiscal duties after having

to which vicars who had completed their term in office were usually entitled.[153]

It was only after Constantine's death in 337 that the diocesan structure became fixed, while its chief officers were referred to as *vicarii dioeceseos* – with the exception of *comes Orientis* – with the continued practice of using the title of a.v.p.p. in non-legal sources. Only the dioceses *Daciae*, *Pannoniae, regiones suburbicariae* in Italy and, by no later than 407, *Galliae,* remained under direct administration of regional PPOs of *Illyricum*, *Italiam et Illyricum* and *Galliarum,* respectively.[154]

The list of dioceses conveyed in *Laterculus Veronensis* (ca 314) was prone to modifications as well (see map on p. 86). It is also possible that a separated diocese of *Pietas* existed briefly in the fourth century, having been established by Constantius II in 358 and given that name in honour of his second wife; however, the diocese in question is most often identified with the diocese *Pontica*.[155] In the wake of division of Illyricum, two new dioceses were created from the territories detached from the diocese *Moesiae*: *Dacia* and *Macedonia*.[156] The administration of the dioceses in Italy was also undergoing

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reached the rank of vicar; C. Th. 6, 10, 2 (a. 381); C. Th. 6, 10, 3 (a. 381); C. Th. 6, 16, 1 (a. 413) = C. 12, 13, 1; C. Th. 6, 22, 5 (a. 381) – higher status of some *honorarii*; C. Th. 6, 26, 2 (a. 381); C. Th. 6, 26, 4 (a. 386) = C. 12, 19, 1; C. Th. 6, 26, 10 and 11 (a. 397); C. Th. 6, 26, 17 (a. 416) = abridged in C. 12, 19, 6. In turn, Nov. Val. 2, 2 (a. 442) granted right to the rank of vicar to advocates of the praetorian and urban prefectures after 15 years of service. On the problems in the efficiency of imperial administration caused by the award of honorary titles, see e.g. Lendon (1997): 222–235.

[153] C. Th. 1, 1, 6, 2 (a. 429) – Erotius, *iuris doctor*, member of the committee drafting the *Codex Theodosianus*; C. Th. 6, 21, 1 (a. 425) = C. 12, 15, 1 (teachers from the university of Constantinople) C. Th. 6, 30, 19 (a. 408) – personal privilege awarded to the former *primicerius sacrarum largitionum*. Cf. Liebs (1976): 360, note 374e.

[154] The diocese of *Galliae* was to come under the authority of *vicarius Septem provinciarum* for as long as it took to move the seat of PPO *Galliarum* from Trier to Arles. See Not. Dig. Occ. 3 and 22. On the debates surrounding the relocation of the prefecture's seat see (1973); Schwinden (1984): 41; Heijmans (2004): 59–62. The administration of Gaul in the fourth and the fifth centuries is discussed extensively in Polish literature by Zołoteńko (2011): 43–299.

[155] Amm. Marc. 27, 7, 6; Lib. *Ep*.: 20; 21; 26; 562; 563. It administration was put in the hands of Aristaenetus, close friend of Libanius; he is said to have perished in 358 in an earthquake in Nicomedia. See Ensslin (1958): 2025; Vogler (1979a): 61 et seq., 64; Juneau (1999).

[156] C. Caelius Saturninus is certain to have been a PPO's vicar in Moesia – CIL VI 1704 = ILS 1214 (Roma): "vicario / praeff(ectorum) praetorio bis in urbe Roma et per Mysias". Cf. PLRE 1 (C. Caelius Saturninus signo Dogmatius 9); Kuhoff (1983): esp. 292 note 121. It is also certain that the diocese of Macedonia existed before 327; see C. Th. 11, 3, 2 (a. 327)*:* "Acacio comiti [i.e. provinciarum – addition by J.W.] Macedoniae". Cf. Jones (1964): 105, 107; Kuhoff (1983): 370 (note 75). In contrast, Dupont (1963): 29, 84 is convinced that in fact it applied to the province Macedonia. Cf. Chapter 4.1 regarding the above constitution. The circumstances surrounding the dating of division of Illyricum is a subject of animated scientific debate. See works quoted in Chapter 2.1 (note 3).

changes[157]. In turn, around 380, the diocese of Oriens was divided to form the independent diocese of Egypt, with the *praefectus Augustalis*, an official enjoying special status, as its superintendent.[158]

According to *Notitia dignitatum* from the turn of the fifth century, the list of dioceses (see map on p. 87) comprised the following[159]:

– PPO *Italiae*: *Italia* (17 provinces), *Illyricum* (7 provinces), *Africa* (6 provinces),

– PPO *Galliarum*: *Hispaniae* (7 provinces), *Septem provinciarum* (7 provinces)[160], *Galliae* (10 provinces), *Britanniae* (5 provinces),

– PPO *Orientis*: *Aegyptus* (6 provinces), *Oriens* (15 provinces), *Asiana* (10 provinces), *Pontica* (11 provinces), *Thracia* (6 provinces),

– PPO *Illyrici*: *Macedonia* (5 provinces), *Dacia* (5 provinces).

Researchers suggest that in general, the fifth century marks a decrease in the number of vicariates with correspondent growth of prefectural administration (excluding the special case of *vicarius urbis Romae*).[161] On the other hand, the instance of Gaul serves to argue that the persistence of the vicariate *Septem provinciarum* was due to the fact that no more governors were appointed to oversee the provinces; apart from that, the competences of PPO *Galliarum* and *vicarius Septem provinciarum* with which they were allotted in view of threats in the period of crisis and transformation of Roman power, were harmoniously complementary.[162] At the time, PPO vicars in that dioceses had also undertaken special actions, which seem to validate the forego-

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[157] See below Chapter 2.2.3.

[158] Mentioned for the first time in the second canon of the First Constantinople Council of 381. See DSP 71 et seq. and C. Th. 12, 1, 97 (a. 383). On that subject see Hübner (1952): 3; Vandersleyen (1962): 62 et seq.; Jones (1964): esp. 141; De Martino (1967): 255; De Salvo (1979). Cf. also Palme (2011) for general depiction of administration in Egypt.

[159] A general listing is provided in Ensslin (1958): 2026–2029; Kelly (1998): 166 et seq.

[160] From the fourth century onwards one observes the practice of denoting the vicar of the diocese of *Viennes* by means of the title of *vicarius quinque provinciarum*: CIL VI 1729 = ILS 1254 (Roma); C. Th. 16, 10, 15 (a. 399). In later periods, one also encounters *vicarius Septem provinciarum*: C. Th. 1, 15, 15 (a. 400); Not. Dig. Occ. 1; 3; 22. The title of that vicar is also known in the following form: *vicarius per Gallias septem provinciarum*: CIL VI 1678 = ILS 1281. On constitutions, see Chapter 4.1. On the change of nomenclature which resulted from the growing significance of Bordeaux at the expense of Vienne see Chastagnol (1970a): esp. 279–281 – the emergence of the name *Septem provinciarum* in 381, after 355 Bordeaux became the vicar's capital (ibidem: 287 et seq.).

[161] Cf. Chapter 4.2. Claude (1997) was justified in arguing that "[…] in the Roman state which waned in the West […]" they disappeared as a result of territorial losses of the Empire. The quote, which aptly conveys the changes taking place in the West was taken from Prostko-Prostyński (2008): 69. Regarding *vicarius urbis Romae*, see also Chapter 2.3.3.

[162] Zołoteńko (2011): 106 et seq., 108 et seq. Cf. also Barnwell (1992): 58–62, who discusses the extension of competences of PPO *Galliarum*.

ing.[163] There are also known instances of activities of diocesan vicars in Ostrogothic Italy (especially *vicarius urbis Romae*) where, under an agreement between Theodoric the Great and the Eastern emperors, beginning with Zeno, Roman administration functioned as before.[164]

Meanwhile, in the Eastern Empire, late fifth century saw the disappearance of the vicariate of Thrace; on the territory of the so-called Long Walls (*Longi Muri*) of Constantinople, Anastasius I introduced a mixed structure of administration (civilian-military), headed by two vicars: one was entrusted with civilian administration, the other was given command of the military forces (they were subordinated respectively to *praefectus praetorio Orientis* and *magister militum praesentalis*).[165] *Longi Muri* were built 65 km west of Constantinople, thus dividing the Gallipoli peninsula, and the area certainly did not constitute a diocese. In this case, the similarity of titulature with diocesan vicars is misleading, hence the vicariate of the Long Walls should not be taken into account in this study.[166]

One of the concepts advanced in the literature suggests a change in the diocesan administration in Asia Minor, where the vicar of diocese *Asiana*, whose importance declined, was to be replaces by the proconsuls of the province of *Asia*, which eventually led to a merger of both offices between the early fifth century (after 410) and sixth century.[167] There is an example of the office of vicar being held by a governor (*consularis*) of the province of Caria in Asia Minor, dated to the end of the fifth century or the

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[163] See also Chapter 3.1 and 5.2.

[164] Cf. Chastagnol (1963): 374; Ensslin (1958): 2029; Meier (2005): 273–276; Zołoteński (2011): 340 et seq. See esp. Prostko-Prostyński (1994): 75–101 on the controversy surrounding the naming of the state founded by Theodoric the Great in Italy; ibidem: 103–211, on his arrangements with the eastern emperors, from Zeno onwards. In turn, the office of *vicarius Hispaniarum* was not restored in 510–526, when Theodoric the Great took possession the territories formerly dominated by Visigoths. Cf. Barbero, Loring (2008): 175 et seq. In the fifth century, the structures of Roman civilian administration in Spain gradually vanished, and the diocesan level was the first to be affected. See Arce (2005a): 189–196. Kulikowski (2000a): 126, note 20, considers hypothetical possibility of the diocese of Spain having been restored around 418.

[165] Nov. Iust. 26 (a. 535). Cf. Laurent (1938): 365–368; Ensslin (1958): 2029 et seq.; Haldon (1984): esp. 271; Haarer (2006): 106; Gkoutzioukostas (2009): esp. 114 et seq.; Gkoutzioukostas, Moniaros (2009): 43 et seq.; Kelly (2004): 72, mentions him as the official responsible for the diocese of Thrace, yet without any further arguments.

[166] Extensive references concerning the Long Walls was compiled in Wiewiorowski (2012b).

[167] Feissel (1998): esp. 98–104. Lécrivain (1912): 822, suggested disappearance of the vicariate after 396. Only one of the sources quoted in this context is concerned indirectly with the judicature, but it is related merely with the exercise of proconsular duties. Bengt (1967): 102–106 suggested also an instance of combining the proconsulship of Asia with the function of *agens vicariam praefecturam* in 352–354. See Chapter 5.2.

beginning of the 6th century.[168] That the rank of the vicars of Asia diminished under Justinian is attested to by a Greco-Roman inscription from Minor Asian Didyma, which contains the full text of imperial constitution of 1 April, 533, including official ordinances concerning the 6-stage procedure of its drafting and promulgation.[169] The constitution is an example of *sanctio pragmatica*, addressed to the prefect of the East, issued following the petition of the inhabitants of Didymes (Justinianopolis) who solicited tax privileges. None of the documents preserved in the inscription mentions the vicar, an official who was formally responsible for financial affairs in the diocese of Asia, where that city was to be found. This is interpreted as a corroboration of attempts at centralising power by the prefecture of the East and the efforts of John of Cappadocia himself (incidentally a son of the last known vicar of Asia, John Maxilloplournakios).[170] Meanwhile, in 535 the vicariate was permanently attached to the office of the province governor of *Phrygia Pacatiana*.[171] Formal liquidation of the vicariate of Asia took place only on 15 April, 535, as a result of Justinian's administrative reform. With respect to that diocese, the reform was indeed an innovation, not merely a confirmation of the existing state of affairs.[172]

However, as early as 3 January, 535, upon introducing the change of deadlines for appeals and, in practical terms, establishing a rule of no appeal

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[168] ALA2004 62 (Aphrodisias): "[+] Ἀγαθῆι +Τύχηι + / Τὸν ἀνανεωτὴν / καὶ κτίστην τῆς μητροπό(λεως) / καὶ εὐεργέτην πάσης / Καρίας Φλ(άβιον) Παλμᾶτον / τὸν περίβλ(επτον) ὑπα(τικὸν) κ(αὶ) ἐπαίχο(ντα) / τὸν τόπον τοῦ μεγαλοπρ(επεστάτου) / βικαρίου, Φλ(άβιος) Ἀθήνεος / ὁ λαμπρ(ότατος) πατὴρ τῆς / λαμπρ(οτάτης) Ἀφροδ(εισιέων) μητροπό(λεως) / εὐχαριστῶν ἀνέθη / *vac*. κεν (the emblem of 'leaf')". It was placed on the plinth of a column supporting a statue erected in honour of Flavius Palmatus, governor (*consularis*) of Caria and at the same time a vicar of Asia in the fifth century. He is also presumed to mentioned in a short epigram *Anth. Gr*. XVI 35 (as Palmas). See Robert (1948): 148–149, who proves convincingly that the text originates from Late Antiquity On the person of the governor and the inscription cf. PLRE 2 (Fl. Palmatus 2); Roueché (1979); Roueché (1989): 62, 103; Slootjes (2006): esp. 138, 140, 145–146.

[169] Feissel (2004), with comprehensive critical edition and commentary. Cf. also its abridged description in Mitchell (2007): 175–177.

[170] Feissel (2004): 326–327, on the significance and the reasons why vicars were left unmentioned. The inscription also contains the full name of John of Cappadocia – *Flavius Marianus Michaelius Gabrielius Archangelius Johannes*. Similar inscription from Miletus, dated to 539–542 was discussed by that author in Feissel (2006a): 290–295, no. 1576, pl. 45.

[171] Nov. Iust. 8, 2. See e.g. Bonini (1976): 34–37. Based on that novel, Jones (1964): 374 suggested correctly that the duties of vicar overlapped with the responsibilities of the province governor, but without sufficient grounds applied the conclusion to *vicarius Ponticae* and *comes Orientis*, whose duties were allegedly to duplicate the respective jurisdictions of the governors of *Galatia Salutaris* and *Syria prima* (following Nov. Iust. 8, 3 and 5).

[172] Thus Feissel (1998): 104. See more broadly Chapter 4.

from verdicts in cases in which the value of the object of contention was below 10 pounds of gold as compared with the judgements of *praefectus Augustalis* and *comes Orientis,* Justinian omitted other administrators, the vicars of dioceses *Asianae* and *Ponticae*. Appeals in those dioceses were to be heard according to the same rules as with *praefectus Augustalis* that is by official with the rank of *spectabiles*: comites or proconsuls, praetors or moderators who had been specially commissioned to hear such cases.[173] This permits a conclusion that still extant vicariates *Asianae* and *Ponticae* were at the time offices devoid of any real significance.

2.3.3. Separate status of individual diocesan administrators

Officials who enjoyed a particular status among administrators of diocese included *comes Orientis*, *praefectus Augustalis*, to a degree *vicarius Italiae Suburbicariae* (*vicarius urbis Romae*) and probably *vicarius Britanniarum*.

As regards the tow first, the fact is validated not only in their title, the unique nature of their insignia of authority[174] or exclusive titles in the *Codex Theodosianus* (1, 13: *De officio comitis Orientis*; 1, 14: *De officio praefecti Augustalis*) and *Codex Iustinianus* (1, 36: *De officio comitis Orientis*; 1, 37: *De officio praefecti Augustalis*).[175] Such a distribution of constitutions dedicated to both officials confirms their higher status among other diocesan vicars. This is further supported in other constitutions found in both codes: most fragments of acts which enumerate imperial officials places them is precisely such a sequence.[176] The separate nature of *comes Orientis* and *praefectus*

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[173] Nov. Iust. 23, 3 (a. 535). The novel is addressed more extensively in Chapter 4.2.

[174] The insignia are analysed separately in Chapter 6.

[175] In the Justinian Code they were included in the same titles C. 1, 36 (containing a different act); C. 1, 37. A separate status of both offices with respect to vicars was also clearly emphasized by Brunnemannus (1699): 84 et seq. It may be ascertained that C. Th. 1, 13, 1 (a. 394) was concerned with the auxiliary personnel attached to *comes Orientis* – see Chapter 3.2 where that staff is discussed. In turn, C. 1, 36, 1 (a. 465) provided for the participation of *comes Orientis* in the organization of games in Syria. C. Th. 1, 14, 1 (a. 386) = C. 1, 37, 1 was devoted to the means of collecting taxes – also covering separate methods applying to veterans – in the Egyptian provinces of *Thebais* and *Augustamnica*, while C. Th. 1, 14, 2 (a. 394–395?) = C. 1, 37, 2 covered the supervision exercised by *praefectus Augustalis* over province governors, though forbidding their dismissals. Both offices retained their separate status even after the dissolution of vicariates. See Chapter 6.

[176] C. Th. 6, 28, 8 (a. 435) = C. 12, 21, 4; C. Th. 8, 7, 21 (a. 426) = C. 12, 59, 6; C. 12, 49, 7; C. Th. 9, 40, 15 (a. 392); C. Th. 11, 30, 30 (a. 362) = C. 7, 67, 2 (omitting *praefectus Augustalis*); C. Th. 11, 30, 57 (a. 398) = C. 1, 4, 6; C. 7, 62, 29; C. Th. 11, 24, 4 (a. 399) – concerning the prohi-

Augustalis had already been highlighted by Justinian in the initial period of his reign, prior to the reform of territorial administration which the emperor embarked on in 535–536.[177]

In this context, one should also draw attention to one of the acts subscribed by Arcadius and Honorius in 399, which has survived in a more extensive abstract only in *Codex Iustinianus*.[178] The regulation drew a difference between the amount of fines which could be imposed as punishment by administrators of units of territorial administration, providing, among other

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bition of *patrocinium* in a reverse order: *ex comes*, *ex vicarius*, then *ex praefectus Augustalis*; C. Th. 13, 11, 12 (a. 409); C. 1, 41, 1 (s.a. – surviving in Greek language version, in reverse order); C. 1, 49, 1 (a. 479); C. 2, 7, 11 (a. 460); C. 7, 62, 32 (a. 440) – in reverse order: *praefectus Augustalis*, *comes Orientis*, *vicarius*; C. 8, 12, 1 (a. 490); C. 10, 23, 3 (a. 468); C. 12, 59, 10 (a. 472). Compared with the above, a constitution which stands out is e.g. C. 2, 12, 25 (a. 392), which discusses vicars exclusively; on that constitution see Chapter 4.2. Hence Bethmann-Hollweg (1866): 54; Ensslin (1958): 2024 et seq., justifiably distinguish between *comes Orientis* and *praefectus Augustalis*, but ultimately find that despite the higher status they performed the duties of diocesan vicars. Such a notion is also approved without any broader debate by a number of researchers; see writings quoted in Chapter 2.2.2, note 1.

[177] Nov. Iust. 23, 3 (a. 535 – 5 January), according to which appeals in cases where the value of the object of litigation did not exceed 10 pounds of gold were to be heard by those officials – thus judgements of *comes Orientis* and *praefectus Augustalis* in such cases were not subject to appeal. The amendment was issued over two moths prior to the novels which decreed the reform of provincial administration. On that novel see also Chapter 4.2. Therefor Jones (1964) 105 is mistaken in asserting that the count of the East possessed a higher rank than the vicars but "did the same works". Barnish, Lee, Whitby (2000): 175 are thus right in using the following definition: "quasi-vicarial augustal prefect and count of orient" (in the context of remarks on vicariates).

[178] C. 1, 54, 6 (a. 399): "Imperatores Arcadius, Honorius AA. Messalae pp. Eos, qui ordinario provincias iure moderantur, erga eorum personas, quos culpa reddit obnoxios, ultra duarum unciarum auri multam condemnare non patimur. 1. Proconsularem vero potestatem, si multandi necessitas imminebit, senarum unciarum auri summa cohibebit: in qua forma etiam comes orientis atque praefectus Augustalis erit. 2. Ceteri vero spectabiles iudices et qui vice vestra administrationis gubernacula susceperunt, ultra tres auri uncias sibi intellegant licentiam denegandam. 3. Id quoque observandum a moderatore esse censemus, ut in unius correptione personae, si ad id continuatio peccati impulerit, trinae tantum in annum condemnationis sub praestituta summa severitas exseratur. 4. Quod si quis praedictum modum excesserit, huius auctor admissi condemnato ad dupli restituionem, fisco vero nostro ad inferendam eam quantitatem, quam multae nomine inflixerit, retinebitur. 5. Nec tamen ad huiusmodi legis moderationem pertinere se credant, qui in peculatibus aut manubiis, id est depraedationibus concussionibus furtis atque aliis flagitiis, quae coerceri severius convenit, fuerint deprehensi, scilicet ut scripta per iudices memoratos, in cuiuslibet fuerit dirigenda dispendium, sententia proferatur. 6. Nec putent factu facile esse, ut aut praecipiti persuasione condemnet quem culpa non ingravat, aut erubescenda varietate iudicii pro arbitrio proprio immutandum esse quod lex iusserit, nisi paupertas condemnati hoc persuaserit. D. XII k. Sept. Theodoro cons." On the addressee, the then PPO *Italiae et Africae*, see PLRE 2 (Valerius Messala Avienus 3).

things, that *comes Orientis* and *praefectus Augustalis* were entitled to impose fines of up to 6 ounces of gold (just as proconsuls – C. 1, 54, 6, 1), while other administrators in the rank of *spectabiles* (which at the time applied to diocesan vicars as well) were able to fine wrongdoers to no more than 3 ounces of gold (C. 1, 54, 6 pr. and 2).[179] The particular nature of the count of Orient and the prefect of Egypt is also borne out by their military tasks.

In view of its extensive territory, the diocese of the East had a special significance in the Empire's administrative framework. In 335 the diocesan vicar was permanently replaced by *comes Orientis*, which may have been occasioned by the complex arrangement of religious relations in the area and certainly represented a response to the military threat from the Sasanian Persia.[180] The fact that *comes Orientis* was burdened with a range of military responsibilities brought forth hypotheses claiming a mixed, civilian-military nature of the office.[181] This issue needs to be analysed in detail, in chronological order.

According to a general passage in the sixth century Χρονογραφία by John Malalas, the first (presumably) *comes Orientis*, a Christian Flavius Felicianus, appointed before 332 or around 334, was to have taken part in war against Persia.[182] For this reason, he could not remain in Antioch and appointed a deputy. The fairly vague description suggests however that Felicianus's contribution in the warfare may have been limited to billeting or supplies.[183]

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[179] In the light of C. 1, 54, 6, 5, the constitution was intended as a countermeasure against the abuses of governors. On the usage of the term *culpa* meaning the party guilty of abuse see MacCormack (1972): 152.

[180] Cf. Seeck (1901b): 631, 659 et seq.; Downey (1939); Petit (1955): 253–258, esp. 253; Ensslin (1958): 2024 et seq.; Ceran (1969): 31 = Ceran (2013): 48 et seq.; Arnheim (1972): 71; Liebeschuetz (1972): 110 et seq.; Vogler (1979): 243; Olszaniec (2007a); Filipczak (2009): 92–94, 213.

[181] On the needs of the army which led to the replacement of vicar with the count of the East from ca 334/335 onwards see esp. Downey (1939); Petit (1955): 253–258. Jones (1964): 105, is therefore mistaken in suggesting that the count took the place of the vicar for unknown reasons. See also Liebeschuetz (1972): 110 et seq.; Vogler (1979): 243. A different view of the extraordinary nature of military assignments entrusted to the count was argued recently by Olszaniec (2007a). Similarly Franks (2012): 83 et seq. The different status of the count of the East was underlined by Arnheim (1972): 71, who asserted that the official carried out only supporting tasks related to the conduct of armed warfare. The importance of those competences is also highlighted by Filipczak (2009): 92–94, 213. Also Noethlichs (1981): esp. 45 et seq., 47 is consistent in treating the count of the East and the prefect of Egypt as separate cases.

[182] Malalas 318: "[…] οὐκ ἦν γὰρ πρῴην ἐν τῇ αὐτῇ μεγάλῃ Ἀντιοχείᾳ κόμης ἀνατολῆς ἐγκάθετος, ἀλλὰ κατὰ πόλεμον κινούμενον δηληγάτωρ ἐκάθετο ἐν Ἀντιοχείᾳ τῆς Συρίας, καὶ ὅτε ἐπαύθη ὁ πόλεμος, ἐκουφίζετο ὁ δηληγάτωρ". Cf. Seeck (1909); PLRE 1 (Fl. Felicianus 5); Barnes (1982): 142.

[183] See Downey (1939): 9–11; Arnheim (1972): 72; and esp. Olszaniec (2007a): 100–102.

Ammianus, an author from the late fourth century, reports in his *Res gestae* on Nebridius, *comes Orientus* in 353–358. In spring 354, with the *magister equitum* absent, the official was ordered by caesar Gallus to marshal the troops and set out to deliver Castricius, *comes per Isauriam*, whose three legions were besieged by Isaurians in Seleucia; having found out, the invader were to abandon the siege and withdraw into the mountains.[184] The unrest or downright insurrections launched by the Isaurians were at the time virtually endemic and therefore the region was treated as an exceptional case throughout a major part of the Later Roman period.[185] The events described clearly demonstrate that Nebridius's mission was special, reflecting the extent of Isaurian threat. His successor – Domitius Modestus, count of the East in 358–362 – took active part in the combat on the Persian front between 358 and 359, as attested to by his correspondence with Libanius, with whom he was friends.[186]

According to the imperial constitution issued by Valentinian I and Valens around 369–370 and addressed to PPO Auxonius, the fleet stationed in Seleucia (*classis Seleucena*) was under the command of both PPO, who was to take care of its personnel, as well as *comes Orientis*; its tasks included keeping the river Orontes clean and navigable and carrying out other indispensable

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[184] Amm. Marc. 14, 2, 14–20. See PLRE 1 (Fl. Val. Constantinus 4; Castricius 1; Nebridius 1); Banchich (1997). On Nebridius himself cf. also Seeck (1906): 219 n; Ensslin (1940); Galletier-Fontaine (1978): 199, et seq. 20; Kuhoff (1983): esp. 379, note 114; Petit (1994): 175 et seq. The absent *magister equitum* was Ursicinus; Ammianus served in his staff at the time. See PLRE 1 (Ursicinus 2); Galletier-Fontaine (1978): 199, note 19. Cf. also the more recent: Sabbath (1978): 456–463 – on the structure of Ammianus' Book 14; Matthews (1989): 355–362; Barnes (1989) and (1998): 109 – on the chronology of events. Hopwood (1999): 226–229 discussed the causes behind the rebellion and literary means utilized by Ammianus. On the significance of personal experience in Ammianus' account, see Austin (1983).

[185] The more recent writings concerning Isauria include Burgess (1985): including the events in question 105–107, 111 (with emphasis on the remarkable scale of the invasion); Matthews (1989): 355–367, esp. 363 et seq.; Shaw (1990): 237–270, including information on Nebridius 241 et seq.; Lenski (1999): including 441 et seq., 454 et seq. on the events in 353–354; Hopwood (1999); Lenski (2002): 198 et seq.; Feld (2005): esp. 87–101, on its administrative status and the events in question: 139–144 (the author also emphasizes the extraordinary character of Nebridius' participation in the fighting); Faith (2009): 307 with further literature. On the causes of bandit activity in the region, see also Hopwood (1989); on the end of Isaurian uprisings in the late fifth century, see Elton (2000) and briefly Feld (2005): 339–340. In Polish, Isauria in Roman times until mid-fifth century is discussed by Kosiński (2010a). See also Chapter 5.1.

[186] Lib. *Ep.*: 46; 49; 367; 383; 384; 389 (a. 358); 191 (a. 360). The course of hostilities is presented in detail in Elliot (1983): 122–134. On the count, see Seeck (1906): 213–216; PLRE 1 (Modestus 2); Kuhoff (1983): 379, note 115; Petit (1994): 165–172; Bradbury (2004): 255–257; Wintjes (2005): esp. 111–114 with further literature.

works.[187] The nature of the fleet is disputed in the literature, and one should agree with the view that the *classici*, referred to in the constitutions are fleet sailors while *incensiti* and *ancrescentes* are draftees.[188] It should also be ruled out that the verb *purgare* ("purge/clean") used in the constitution had anything to do with cleanliness of the coastline, but may have rather concerned counteracting military threats, for example from the pirates (Isaurians?).[189] Thus interpreted, the constitution would be conclusive with regard to the martial capacities of *comes Orientis*, at least for the period from the end of the 360s. Its incorporation in the *Codex Theodosianus*, followed by the fact that it was adopted in unchanged wording in the *Codex Iustinianus*, would confirm that the solution still applied perhaps also after the reform of provincial administration under Justinian I in 535.[190]

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[187] C. Th. 10, 23, 1 (a. 369–370): "Impp. Valentinianus et Valens AA. Auxonio p(raefecto) p(raetori)o. Classem Seleucenam aliasque universas ad officium, quod magnitudini tuae obsequitur, volumus pertinere, ut classicorum numerus ex incensitis vel adcrescentibus compleatur et Seleucena ad auxilium purgandi Orontis aliasque necessitates Orientis comiti deputetur. Data indictione XII". On the dating of the inscription, see Pergami (1993): 478; Schmidt-Hofner (2008a): 548 et seq. PPO Auxonius, who originated from a senatorial family, had previously been *vicarius Asiae* – C. Th. 12, 1, 69 (a. 365); dating after Schmidt-Hofner (2008a): 555 et seq. On Auxonius, see PLRE 1 (Auxonius 1); Kuhoff (1983): 243, 245, 253, 317 (note 65), with further literature.

[188] When discussing the functions of the fleet, Gothofredus (1738), vol. 3: 530 et seq., already distinguished between the competences of PPO *Orientis* and *comes Orientis*, as stipulated in the constitution, and demonstrated martial nature of the service of *incensiti* and *ancrescentes* which the constitution mentions, which is validated in C. Th. 7, 13, 6–7 (a. 370 and a. 375). As regards later authors, Courtois (1939): 230–234, argued that the fleet was altogether civilian (e.g. because the constitution was addressed to the PPO and thus subordinated the fleet to the official; the author also invoked sources in which *purgare* and *curare* are treated as synonymous, or where *classici* denote civilian sailors, as well as associated *incensiti* and *ancrescentes* with tax collection issues). This was appositely opposed by Kienast (1966): 131–133 (who accepted the thesis that the text indeed referred to the regulation of the river Orontes, but, relying on the contents of the law, he argued nevertheless that it certainly mentions navy sailors of and recruits, as well as subordinated the fleet to *comes Orientis*). A recapitulation of the debate including linguistic analysis of C. Th. 10, 23, 1: Reddé (1986): 239, 576 et seq. and esp. 602–605. The author observed correctly that the act refers to navy men and recruits and – having approved of the theses advanced by Downey (1939) regarding important military functions of the *comes Orientis* – claimed that the act may be associated with transportation of recruits, which the official was to ensure.

[189] See Gothofredus (1738), vol. 3: 530 (with the observation that *purgatio* in the context of clensing river might have applied to the Nile); Reddé (1986): 604 et seq. See also Gesener (1749), vol. 4: 1182; Forcellini (1940), vol. 3: 973 (the author focuses on a narrower meaning of the term). On Isaurian piracy, see e.g. Feld (2005): 197–200.

[190] C. 11, 13, 1. Brunnemannus (1699): 1257, observes that in the light of this version of the constitution one of the PPO's duties was e.g. "ad purgandum mare, & flumina a piratis, ut navigationis sint securae, item ad alias publicas necessitates contra barbaros." See also Chapter 4.

However, the participation of the count of the East in suppressing unrest in Antioch in 387, following the introduction of new text by Theodosius the Great, cannot be seen as military action.[191] It is likely that the troops putting down the riots were simply police forces.[192]

The numerous instances of military detachments being commanded by the count of the East, especially his control of the *classis Seleucena*, demonstrate that the office was a separate one and, combined with other information to that effect, justify the need for an analysis of his competences in an individual study.

The case of *praefectus Augustalis* – the administrator of the diocese of Egypt, deserves a separate analysis as well. As observed previously, his dissimilarity from other diocese administrators is evident in the titulature, the insignia of authority an a special status of the official in the light of imperial constitutions.[193] Egypt had been a territory of exceptional position among other provinces of the Empire since the period of the Principate, a position which owed much to Egypt's significance for the economic life of the state.[194] The emperors were represented by prefects, an extraordinary and superior rank in any circumstances. On top of that, the administration inherited from the Ptolemaic dynasty was more centralized than in other provinces. Under Diocletian, Egypt was divided into provinces, of which the most important in practice was *Aegyptus*, superintended by *praefectus Aegypti* (acting as vicar to the count of the East), while the Egypt as a whole became a part of the diocese *Oriens*.[195]

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[191] Lib. *Or*.: 19, 36; 22, passim.

[192] Cf. Browning (1952); Petit (1955): 241–244; Downey (1961): 419–432; Liebeschuetz (1972): 111, note 1, presumes active participation of the count; the view is countered Seeck (1906): 107; Filipczak (2009): 81–100, esp. 92–94. On the course and social circumstances surrounding the rebellion, cf. Cracco Ruggini (1986), who claims that it was the count who held military command (ibidem: 270). Cf. also Leppin (2003): 122–124, on the measured response of Theodosius I to the rebellion; the emperor, influenced by the clerics (including John Chrysostom) sought to reconcile the inhabitants of Antioch, pardoning the Christians.

[193] Cf. Chapter 3.1; 4.1; 4.2 and 5.1.

[194] In the case of *praefectus Augustalus* Brunnemannus (1699): 84 et seq. referred directly to the introduction of extraordinary administration of Egypt under Augustus. On the economic significance of Egypt see Gelzer (1909); Lallemand (1964): 14–33; Jördens (2009): esp. 13 et seq.

[195] On the reforms implemented under Diocletion and the significance of *praefectus Aegypti*, see Lallemand (1964): 38–40, 58–60; Errington (2002); Kuhoff (2001): 366–368; Bowman (2005b): 318–322. Ensslin (1958): 2024 et seq. is justified in devoting separate remarks to the official, indicating his subordination and functioning as a *vicarius comes Orientis* in Egypt – drawing on the correct assessment of Gelzer (1909): 5, who in this context referred to C. Th. 11, 30, 30 (a. 362) = C. 7, 67, 2. On the latter constitution see Chapter 4.1.

As noted above, the separate diocese of Egypt was established approximately in the second half of the fourth century (most certainly around 380–382), while its administrator was denoted as *praefectus Augustalis*.[196] In that period, there may have been isolated instances of entrusting military functions to the prefect of Egypt, and it is likely that in consequence the civilian and military authority were eventually fused into one in the latter half of the fifth century; at the time, the office of *dux* or *comes (Aegyptiaci limitis) et praefectus Augustalis* was introduced.[197] The dissimilarity of administrative organization in Egypt is perhaps also reflected in the fact that the highest ranking officer of the Roman army there (*comes limitis Aegypti*) possessed certain civilian competences.[198]

The governance of Italy is another case apart.[199] It is certain that under Diocletian Italy was divided into provinces; provisionally appointed *agentes vice praefectorum praetorio* assumed the higher-ranking offices, a *magister Italiae* is also known to have held office in that period.[200] Subsequently, one encounters the office *vicarius praefectorum praetorio*. As the position of the *praefectus urbi* grew stronger, a subordinate office of *vicarius praefecturae urbis*

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[196] See Chapter 2.2.2.

[197] C. 2, 7, 13 (a. 468); C. 1, 57, 1 (a. 469); PLRE 2 (Fl. Alexander 23); Evagrius *HE* 3, 22 (PLRE 2, Arsenius 2). See further papyrological sources quoted by Carrié (1998b): 109 et seq.; synthetically – Hübner (1952): 82–85; Kaser, Hackl (1996): § II.1 – resolutely supporting the thesis presuming civilian competences of *praefectus Augustalis,* albeit admitting the possibility that e.g. *dux Thebaidis* (military commander) might have been his delegate, which undermines the decisiveness of this notion; Palme (2007): 248. To Franks (2012): esp. 72 et seq., *praefectus Augustalis* was a vicar functioning under a different title, while the establishment of a separate diocese of Egypt is considered by the author as a proof of usefulness of diocesan administration with respect to tax collection. Following Lallemand (1964): 56 et seq., Franks correctly assumes that this was associated with the economic role of Egypt in ensuring supplies of food for Constantinople. In that respect, see Sirks (1991): esp. 202–209. On the significance of Egypt as part of the Empire in the 5th century, see also Millar (2006): 62–66.

[198] Cf. C. Th. 6, 28, 8 (a. 435) = C. 12, 21, 4, concerning the privileges of *principes officiorum*. A copy of the constitution was to be sent to civilian officials as well as "comes [limitis] Aegypti". See Gothofredus (1737), vol. 2: 189 et seq., who suggested that the latter may be identical with the addressee of a letter from St. Isidore of Pelusium – "Theodoros Augustalis" (ibidem: with reference to Isid. Pel. *Ep*. 3, 50). The thesis is an obsolete one. Cf. PLRE 2 (Theodorus 27; Theodotus 4). Theodotus is the last officer of that category to be confirmed in sources. The insignia of *comites limits Aegypti* preserved in *Notitia dignitatum* may also indicate their civilian competences – see Chapter 5.1.

[199] Cf. Lécrivain (1912): 822; Ensslin (1936) and (1958): 2023 et seq., 2042–2044; Sinningen (1959); Chastagnol (1960): 26–42; Chastagnol (1963): 353 et seq. See also the polemic with some of the views of the latter: Arnheim (1970): 603–609; Dupont (1973): 315–317 with references to further literature. See also the general discussion in Thür, Pieler (1977): 410 et seq., 413, 417–421.

[200] C. Th. 1, 15, 1 (a. 325); on that constitution see Chapter 4.1.

appeared briefly in the 350s. Nevertheless, both *Laterculus Veronensis* and *Notitia dignitatum* refer to Italy as one diocese (Lat. Ver. 10; Not. Dig. Occ. 1; 2), while the division is confirmed in other sources.[201] Next to *Illyricum* and *Africae,* the diocese *Italiae* (*Italiciana*) was a part of the prefecture of Italy, with one vicar responsible for *regiones suburbicariae* (*vicarius urbis Romae*, with his seat in Rome), while *regiones annonariae* were under direct control of PPO *Italiae*.[202] However, the status of *vicarius urbis Romae* and the status of other vicars were not identical. The principal reason for that was the presence of PVR and the significance of Rome. The prefect of the city vied with *vicarius urbis Romae* with respect to the competence scope, seeking control of taxes and administration as well as matters related to the provisioning of Rome; also, after 365, the former won the right to appeal against the judgements of the latter, which undermined the link between that diocesan vicar and the prefect of Italy.[203]

The nature of relationships within Rome, the role played by its senatorial elites as well as the significance of the city in the life of the Empire, also in terms

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[201] Cf. also Stein (1959): 70; Cantarelli (1964): 15–21; Jones (1964): 47; De Martino (1967): 282–284, 302 et seq.; Santalucia (1992): 126 et seq.; Giardina (1997): 270–274 with further literature. In recent publications, administrative framework in Italy in the Later Roman period on levels below diocese is discussed in Ausbüttel (1988), with a reference to the complexities of diocesan administration: 138 et seq.; Cecconi (1998) also addresses the relationships between imperial administration and local elites; Cecconi (1994): passim. On the a.v.p.p. in Italy, cf. the remarks of this author in Chapter 2.2.2.

[202] Cf. recently Olszaniec (2014): 84, quotiong Jones (1964): 373 who takes correctly into consideration the absence of *vicarius Italiae* in Not. Dig. Occ.

[203] C. Th. 1, 6, 3 (a. 364) and C. Th. 11, 30, 61 (a. 400). The intricacies of competence scopes and relations between PVR and *vicarius urbis Romae* is well reflected in Symm. *Rel*. However, Symm. *Rel*. 38 quoted in this context was not concerned with competence-related dispute between *vicarius urbis Romae* and *praefectus urbi* with respect to hearing appeals, but the material jurisdiction of province governor and vicar. The document described litigation relating to seizure of property between Marcellus, the injured party, and Venantius, who alleged that he was a soldier of *schola palatina* (*strator*), and his sister Batrachia. Venantius put forward a *provocatio* without adjudication by the governor of Apulia, claiming that the case should be examined by *vicarius* (*urbis*). *Praefectus urbi* penalized the petitioning party, and having consulted the matter with the governor, referred the case to his judgement. Meanwhile, *magister officiorum*, who had the right to judge *stratores*, spoke in defence of Venantius. It transpired, however, that Venantius was in fact a curial who obtained the status of *strator* illegally. Due to the complexity of the case, Symmachus referred it to emperor Valentinian I. On that subject, see de Bonfils (1975); Vera (1981): 288–293; Garbarino (2000): 18–20; Giglio (2001): 209–211; Sogno (2006): 31–57, esp. 34–40; Hecht (2006): 554-578, with further literature. It should be noted that Symm. *Rel.* describes the activities of various categories of *iudices*; see Barbati (2012): esp. 422–466. Participation of Symmachus in the political life of the Empire is broadly discussed in Roda (1973), while other cases he judged are also addressed in: de Malafose (1951): 63–72. Appellate competences of the city's prefect dated back to the Principate. See Ruciński (2009): 152–157.

of religious and church affairs, also had an impact on the exceptional standing and different range of tasks of *vicarius urbis Romae* compared with other diocesan vicars. The official continued to perform an important role in the fifth century, when the activities of most other vicars were on the decline; what is more, the vicar of Rome remained active after 476, when diocesan administration in the West had ceased to exist altogether.[204] The different situation in Rome, in particular the separate status of *vicarius urbis Romae*, including his formal dependence from PVR (especially with respect to hearing appeals from adjudications of the vicar) have prompted the decision that detailed remarks in the vicars whose seat was in Rome, including *vicarius urbis Romae*, from further deliberation, although this author is aware that the step is disputable.

Analysis of insignia and the direct evidence of archaeological finds demonstrates that *vicarius Britanniarum* was another official whose somewhat different scope of competences – with respect to commanding army units – distinguished him to an extent from other diocese administrators. Due to specific nature of the above sources, they will be discussed in further sections of this work.[205]

There is also no doubt that *vicarius Mesopotamiae* belonged to a different category of vicars. His activities are mentioned in a fragment of imperial constitution issued in response to the *suggestio* of that official, which permitted sons of veterans or soldiers who evaded services in offices (*officium*) of province governors to be retained in the office of *dux Mesopotamiae*, with the simultaneous obligation to turn in the others.[206] The act seems to prove that *vicarius Mesopotamiae* acted as a kind of representative of *comes Orientis* in the Persian borderlands, as no separated diocese of *Mesopotamia* ever existed.[207] Apart from that, yet another example of a special form of vicariate is probably the aforementioned diocese of *Pietas*, established in 358 by Constantius II.[208]

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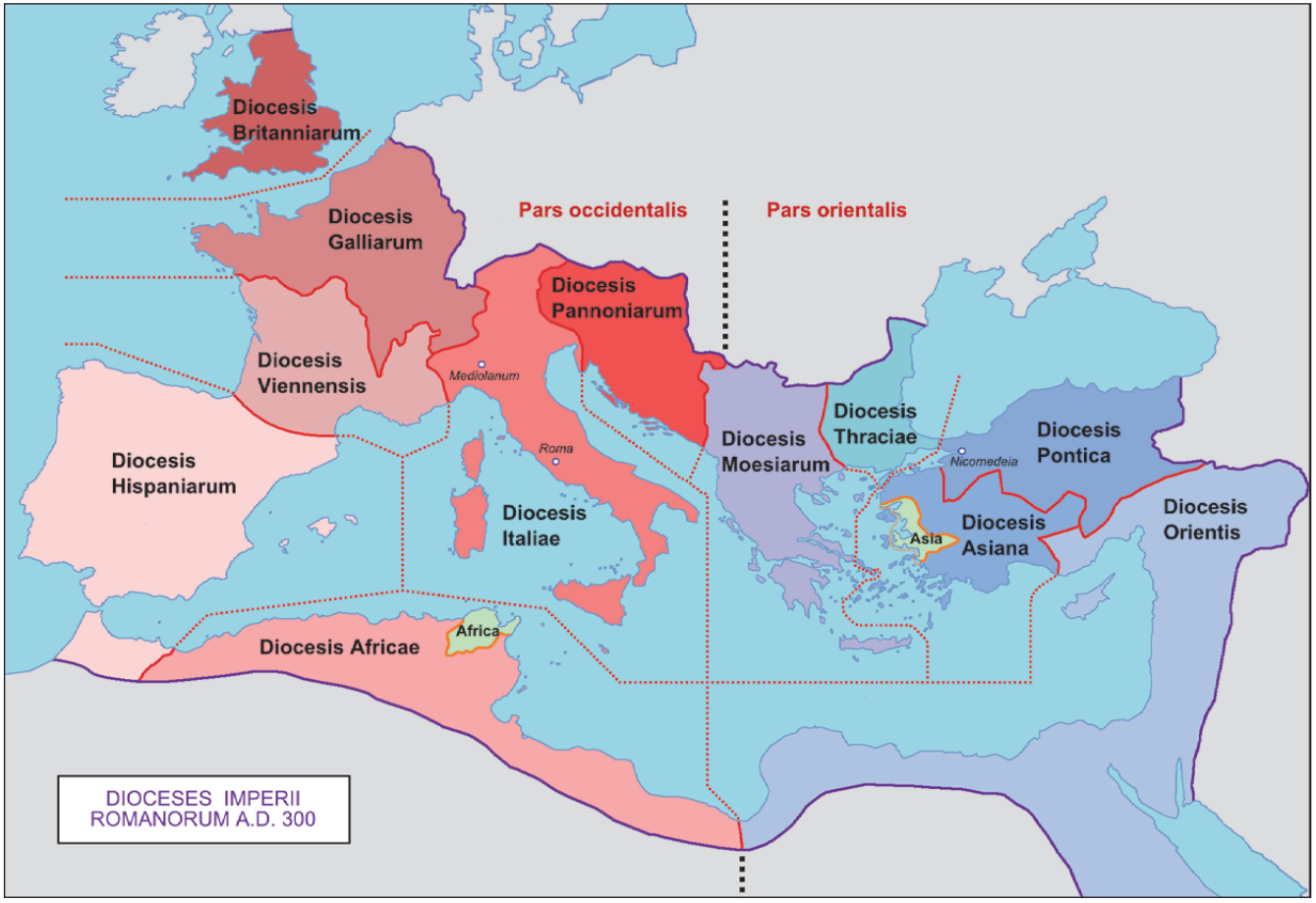
[204] See Chapter 2.2.2.

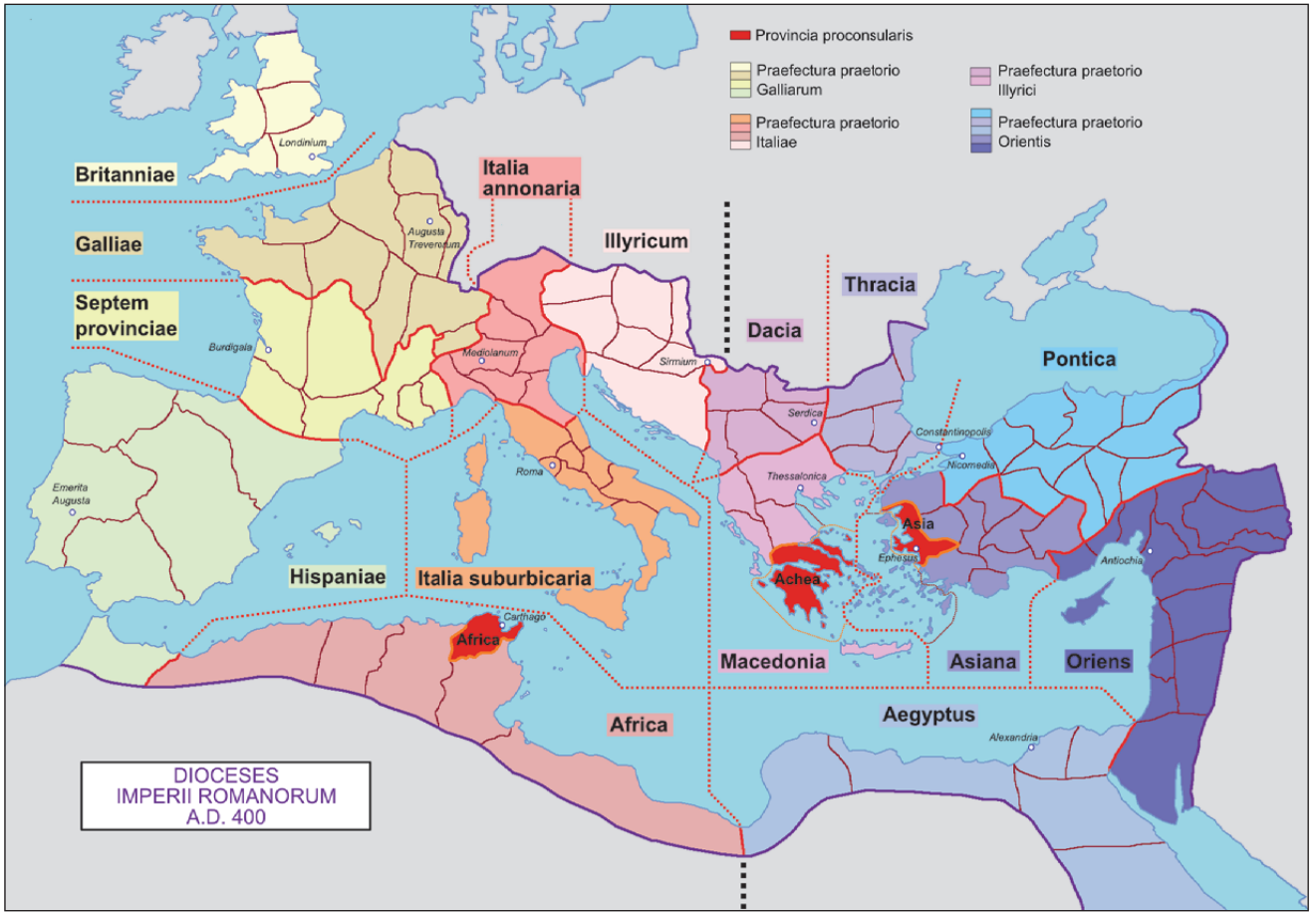
[205] See Chapter 5.1.

[206] C. Th. 8, 4, 4 (a. 349): "Imp. Constantius A. Antonio duci Mesopotamiae. Iuxta suggestionem vicarii Mesopotamiae de his, qui officia praesidalia deserentes ad sacramenta militiae adspirasse noscuntur, iteranda statuti desideratur auctoritas, ideoque etiam nunc iubemus, ut retentis his qui veteranorum seu militum filii esse noscuntur ceteros gravitas tua officiis propriis restituere non moretur. Et cetera. Dat. IIII non. Feb. Limenio et Catullino conss." Gaudemet (1971b): 228 (note 10), quotes it as an example of consitution issued following the *suggestio* of an imperial official.

[207] See Gothofredus (1737), vol. 2: 498 et seq. (esp. note d) who, on the basis of the plural form used to denote governor's office (*officia praesidalia*), asserted the existence of a separate diocese of *Mesopotamia* with the provinces *Osroene*, *Mesopotamia* and *Euphratensis*. Mommsen (1862): 496 and subsequently Ensslin (1958): 2025 argued correctly that *vicarius Mesopotamiae* was a special representative of the *comes Orientis*; similarly Kaser, Hackl (1996): § 78 (note 54), with further literature. Th. Mommsen was therefore in error in his edition of C. Th., admitting "Asiae" in place of "Mesopotamiae".

[208] See Chapter 2.2.1.


Diocesis Britanniarum
Diocesis Galliarum
Pars occidentalis
Pars orientalis
Diocesis Pannoniarum
Diocesis Viennensis
Mediolanum
Diocesis Hispaniarum
Roma
Diocesis Italiae
Diocesis Moesiarum
Diocesis Thraciae
Nicomedeia
Diocesis Pontica
Diocesis Asiana
Asia
Diocesis Orientis
Africa
Diocesis Africae
DIOCESES IMPERII ROMANORUM A.D. 300



From ca 381 Egypt (*Aegyptus*) was a separate diocese

3

Organization of judicature within the office of diocesan vicars

3.1. GENERAL ISSUES

The scope of duties of imperial officials was defined as *officium*.[1] The responsibility of a vicar was to exercise control of civilian administration in the diocese, at an intermediary level between prefects and province governors. This was also the extent of judicial competences of a vicar, who assumed the function of *iudex medii* as part of the *cognitio extra ordinem* processes.[2] As with most imperial officials, those powers were exercised by a single person.[3]

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[1] C. Th. 1, 15: *De officio vicarii*; C. 1, 38: *De officio vicarii*. A review of their contents may be found in Cervenca (1970): 212 (note 15), 218–220, 232 (note 106). See more broadly Chapter 3.2.

[2] See Gothofredus (1740), vol. 4: 289 et seq., who discusses the tiers of judicature in the light of Constantine's legislation and notes that vicars occupied the second, intermediate level between PPO, PVR on the one hand and *proconsules* and province governors. The position of vicars is also imprecisely defined in Brunnemannus (1699): 85. The competences of *iudices maiores*, *medii* and *minores* were defined with greater clarity only in the laws enacted by Justinian I: C. 1, 15, 2 (a. 527); Nov. Iust. 7 ep. (a. 535); Nov. Iust. 23, 3 (a. 535). See more broadly Chapter 4.2, Chapter 6 and below.

[3] Goria (1995b): 261, 300–303 (on the exceptions from the principle of one-person judicature). Sources fail to inform whether the institution of *recusatio* (exclusion of the judge) applied to diocese administrators; the institution in question appeared probably only around 527 and was then further developed in Justinian's legislation. See C. 3, 1, 12, 1 (a. 527 [?]). Exclusion of the judge who was deemed a suspect (*iudex suspectus*) was admissible in the case of *litis contestatio* and applied both to ordinary (*iudices ordinarii*) as well as delegated judges (*iudices dati*, *delegati* and *pedanei*). Cf. Litewski (1998) 223 (s.v.); Litewski (1999) with a critical review of previous literature. On the dating of the above constitution see Lounghis, Blysidu, Lampakes (2005): 148 (reg. 483), with further literature.

Vicars also played an important role in the procedure of tax collection[4] and had a range of other administrative responsibilities.[5]

The majority of diocese administrators were civilian imperial dignitaries, apart from the special cases of *comes Orientis*, *praefectus Augustalis* and possibly *vicarius Britanniarum*.[6] However, there are confirmed instances of diocesan vicars who were given command of military units.[7] For example, Himerius reports that in 343 *vicarius Asiae* Scilacius fought against bandits (possibly Isaurians) in the Minor Asian province of *Pisidia,* having been given temporary command of military detachments.[8] Musonius, vicar of Asia in

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[4] As demonstrated by C. Th. 7, 4, 3 (a. 357), which confirms that vicars supervised the issue of *annona militiaris* in Africa, and that in the event of his absence province governors were reponsible for supplying *largitiones* – C. Th. 8, 5, 13 (a. 362). Similar provisions apply to the proconsul of Africa with regard to the transportation of *vestis militaris* – C. Th. 8, 5, 33 (a. 374). See Grosse (1920): 159; Karayannopulos (1958): 101; Vogler (1995): 71; Kolb (1998) and (2000): 83 et seq., 106. Cf. also the remarks below accompanying the analysis of constitutions addressed to vicar Dracontius. The significance of tax collection for the assessment of vicars' position is highlighted especially in Franks (2012): 119–130. Controlling acquisition of due taxes was important in view of the relatively high taxation in the Later Roman Empire. Cf. Cameron (1993): 94–100, who outlines the debate in relevant literature. Nevertheless, one should not overestimate their importance when evaluating the situation of the empire, a fact previously noted by Jones (1959). See also the remarks in Chapter 5.1.

[5] A general list of duties of diocesan vicars was compiled by Bethmann-Hollweg (1866): 54 et seq. Ensslin (1958): 2038–2041 divided them into groups; the researcher is of the opinion that besides appellate judiciary as and judicial powers of *iudex ordinarius* in criminal and civil cases, vicars responsibilities also encompassed submission of reports to the emperor concerning protection of state religion, supervision of compliance with privileges, supervision of province governors and *cursus publicus*, tax collection, supervision of discharge of mandatory obligations and hereditary duties, as well as policing functions. One aspect that this typology does not take into account is that the aforementioned duties of vicars were interwoven with judicial duties, and therefore it has not been adopted in this study. A separate typology of vicars' responsibilities, which also proves inadequate given the needs of this work, was adopted by Franks (2012): esp. 132–136, who nevertheless pertinently observed that "Vicars waited, watched, investigated" (ibidem: 136). Cf. also Jones (1964): 47; Barnwell (1982): 64 et seq. In turn, Barbati (2012): 54-59 gives a general account of combining administrative and judicial functions by Later Roman imperial officials.

[6] Those offices are addressed in Chapter 2.2.3 and 5.1. As regards the dispute concerning development of vicariates, there is no surprise that Demandt (2007): 297, claims that vicars held military functions as late as Diocletian's reign. The distinction between the civilian and military department of Later Roman administration does not tally with today's criteria, as in formal terms all officials belonged to *militia*, either *armata* or *inermis,* which was subordinated to the emperor. Cf. Löhken (1982): 143 et seq. See also Chapter 2.1 and 2.2.2.

[7] They were briefly discussed by Franks (2012) 140 et seq.

[8] Himerius *Or*. 25, 67–68 and 95–99. See Groag (1946): 34; PLRE 1 (Scylacius 1); Barnes (1987): 215; Brandt (1992): 170; Lenski (1999): 422; Feld (2005): 139; Panella (207): esp. 207 et seq. He was also the addressee of C. Th. 11, 30, 22 (a. 343) and this is treated as basis for the dating of events in question. Cf. Chapter 4.1.

367–368[9], leading a poorly armed troop of *diogmites* (a policing unit in the Greek cities of the Roman East), attempted to curb Isaurian attacks and was killed in an ambush set by the latter.[10]

It cannot be ruled out that Exuperantius, acquaintance of the poet Rutilius Namatianus and an aristocrat of Gallic origins (PPO *Galliarum* in 424), was also a *vicarius* who, having been given extraordinary powers to act, restored peace in Armorica in 417.[11] Given the final fragment of Namatianus's work, which reads as follows: "[…] et servos famulis non sinit esse suis", those events are most often interpreted as a slave rebellion.[12] It is possible that armed forces took part in suppressing the uprising and that in the circumstances it was Exuperantius who had the command.

Science also knows the case of a hypothetical diocesan vicar who was given command of military forces. In 420, an unidentified *vicarius* Maurocellus successfully led troops while fighting Vandals in the city of Bracara.[13]

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[9] Musonius was a former sophist, teacher of rhetoric in Athens and most likely a vicar in Macedonia in 362, praised in Himerius *Or*. 39. Cf. Groag (1946): 39 et seq.; PLRE 1 (Musonius 2); Sabbah (1978): 512 et seq.; Clauss (1980): esp. 171 et seq.; Kuhoff (1983): 131 et seq., 137, 185, 370 (note 83) with further literature; Barnes (1987a): esp. 214, 221; Völker (2003): 200 (note 2), 259 (note 2); Penella (2007): 13, 38–41; Filipczak (2009): 24, 36. See also works quoted above in Chapter 2.2.3.

[10] Amm. Marc. 27, 9, 6. His heroic death is commemorated in an epigram by a Greek sophist Theodorus, whose texts is conveyed in Eunap. *frag*. 45. On the mounted police of *diogmitai*, see Fiebiger (1903); Shaw (1984): 18. The events took place during Isaurian rebellion in 367–368. Among recent works, see Hopwood (1989): 198; Hopwood (1989): 198; Matthews (1989): 364 et seq.; Shaw (1990): 243; Hopwood (1999): 173, 231, 242; Lenski (1999): 422 et seq., 440 et seq.; Lenski (2002): 198; Feld (2005): 147–150; Faith (2009): 307; Boeft – Drijvers – Hengst – Teitler (2009): 211–214. Kuhoff (1983): 137, somewhat groundlessly, claimed that his case, just as the previously discussed count Nebridius, shows "daß Vikare im Bedarsfall lokale Milizen aufstellen und führen durfen, ohne eigentlich Militärbefehlshaber zu sein […]".

[11] Rutilius Namatianus *De reditu suo* I 213–216: "[…] cuius Aremoricas pater Exuperantius oras nunc postliminium pacis amare docet; leges restituit libertatemque reducie et servos famulis non sinit esse suis". Cf. the debates whether Exuperantius held any office at the time: Stroheker (1948): 171, no. 141 (with earlier literature); PLRE 2 (Exuperantius 2). On the dating of Namatianus' journey, see Cameron (1967).

[12] Cf. de Ste Croix (1981): 478. Among recent works concerning the conditions underlying fifth century rebellions in Gaul see Drinkwater (1992) with further literature (the author questions their straightforward identification with the so-called *bagaudae*). Van Dam (1985): 41 et seq offers a different interpretation of Exuperantius' operation, finding them to be an action of a local magnate against barbarian incursion. However, Drinkwater (1989): 198 justifiably emphasizes official nature of his mission. See also general remarks in Harries (1994): 72, 197.

[13] Hydatius 74, 26: "Wandali Suevorum obsidione dimissa, instante Asterio Hispaniarum comite, sub vicario Maurocello, aliquantis Bracarae in exitu suo occisis, relicta Gallaecia ad Baeticam transierunt". Cf. PLRE 2 (Maurocellus). Relying on toponomastic analysis of the name Maurocellus, Villaverde Vega (2001): 284 et seq. suggests that he commanded troops

The events took place after the collapse of Roman administration in a part of the diocese in 409, and perhaps Maurocellus was the only person to whom military command may have been entrusted.[14] Researchers also consider whether the vicar commanded regular units, all the more so that Bracara was remote from Emerita, the seat of the vicar of Spain, while the diocese was recreated around 418; it is also possible that wielding both civilian and military powers became a practice in the face of barbarian threat.[15] Still the alternative concept is the most likely: Maurocellus was simply a deputy to Asterius, *comes Hispaniarum*, the then superior commander of the Roman army in the Iberian Peninsula.[16]

Finally, one should observe that without doubt military command was the prerogative of one of the vicar appointed by Anastasius I in the area of the so-called Long Walls of Constantinople (the second vicar would be responsible for civilian administration).[17]

However, all the above examples seem to confirm that any duties associated with commanding troops were entrusted to diocesan vicars sporadically. This distinguished them from *comes Orientis* and *praefectus Augustalis*, whose military powers were permanent in nature.[18]

As indicated above, judicial powers in the provinces and the competences to hear civil and criminal cases in the first instance belonged principally to province governors. However, the jurisdiction of the vicars also encompassed first-instance civil and criminal cases of superior importance, while appeals against their decisions would be heard by the emperor himself.[19] It is

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from African Tingitana, though there is little evidence to that effect. See Le Roux, Tranoy (2012): esp. 388 et seq.

[14] Maurocellus' case is considered by Barnwell (1992): 64 et seq., whose opinion is here repeated. Barnwell finds it less probable that vicars subordinated to the prefect of Gaul should have had broader competences. He arrived at the conclusion having compared certain military competences of that prefects with a prefect of Italy in the period of tensions from the turn of the fifth century (ibidem: 58–62). On the possible restoration of the diocese see Kulikowski (2000a): 126, note 20.

[15] See Arce (2005b): 192–194 (esp. 193) and 112, 120.

[16] Kulikowski (2000a): 126, note 20 (ibid. further bibliography concerned with Asterius) and convincigly Le Roux, Tranoy (2012). They advance the legitimate thesis that the term *vicarius* was also used in Latin sources to denote a deputy of military commander, and observe logically that such a concept would be the simplest solution to the controversy surrounding the figure of Maurocellus.

[17] Nov. Iust. 26 (a. 535).

[18] Nor do the representation of vicars' nomination briefs in *Notitia dignitatum* confirm permanent nature of their military prerogatives, as Faleiro (2005): 32 seems to suggest. Cf. Chapter 5.1.

[19] For general depiction of civil and criminal *cognitio extra ordinem*, see Litewski (1988) and (2003): esp. 62–66; and Liebs (2000): 240 et seq. on the judiciary system. The fact that vicars belonged to *iudices ordinarii* may be inferred directly from C. Th. 1, 16, 1 (a. 315). See Chapter 4.1.

universally assumed that vicars examined appeals from verdicts of most province governors, as a judge adjudicating *vice sacra* (in lieu of the emperor).[20]

The issue is directly addressed only in a constitution from 377, according to which diocesan vicar *sacrae cognitionis habeat potestatem*.[21] Formerly, such right was a privilege of *agentes vices praefectorum praetorio* and probably *comites provinciarum*.[22] Assuming that the former may be identified with vicars, one is entitled to claim that diocesan vicars acted as *vice sacra iudicans* already from 314, just as *comites provinciarum* and PPO.[23] It is certain that *comes Orientis* had also possessed such right already from the appointment

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[20] See Bethmann-Hollweg (1866): 55–57; Karlowa (1885): 855 et seq.; Mommsen (1899): 280–286; Ensslin (1958): 2030 et seq.; Padoa Schioppa (1967): 15–33 – with certain reservations; Petit (1974): 27 et seq.; Jones (1964): esp. 374, 481 et seq.; Thür, Pieler (1977): esp. 431 et seq., 435–437; Santalucia (1992): 125–127; Santalucia (1994): 226–231; Kaser, Hackl (1996): §§ 78.II.4, 79.II; De Marini Avonzo (1995): 110; Goria (1995b): 272–277; Hedrick (2000): 15–18; Liebs (2000): 241; Feissel (2007): 130; Puliatti (2011b): 445; Franks (2012): 110–118 (who suggested a typology of appeals heard by vicars, which is both arbitrary and unsupported by sources). De Martino (1967): 487 demonstrates a certain reserve in that respect. The traditional picture of the position of vicars is outlined in Demandt (2007): 296 et seq. Uncertainties as to appeals handled by vicars are addressed by Pergami (2000): 409–412 (see also 431 et seq. on the meaning of the term *vice sacra*). For general information on appeals, see Orestano (1957); Orestano (1958) and esp. Litewski: (1965a), (1965b), (1966), (1967a), (1967b) and (1968). On participation of vicars in *de accusationibus* litigations, see Giglio (2002): esp. 221. On *iudices vice Caesaris*, mainly in the Principate era, see Peachin (1996).

[21] C. Th. 1, 15, 7 = C. 1, 38, 1 (a. 377). On that constitution see Chapter 4.1. As regards appellate prerogatives of diocesan vicars, researchers also quote C. Th. 1, 5, 4 (a. 342): "Imp. Constantius A. ad Leontium p(raefectum) p(raetorio). Moneantur iudices, qui provocationes vitantes sub praetextu relationis differunt causas civiles, coepta negotia terminare, ut, si quis appellandum crediderit, in auditorio sacro aput auctoritatem tuam vel eos, qui de appellationibus iudicant, negotium audiatur. Dat. III k. Aug. Constantio III et Constante II AA. conss." However, the act referred directly only to PPO and those who act as judges in appellate processes. The following provision in C. Th. 11, 30, 28 (a. 359) is equally ambiguous: "Idem AA. [Constantius et Constans] ad Taurum. Patris nostri salutaribus imperatis comperimus dudum esse praeceptum, ut, si a rationali vel comite vel alio, qui curam fiscalis commodi gerit, fiscale debitum postulante fuerit provocatum, ad eos, qui vice nostra huiusmodi cognitionibus praesident, appellatores intra diem tricensimum perducantur, adversus sententias, quas iniquas esse contendunt, exsecuturi proprias actiones. Quapropter viginti sufficit dies intra eandem provinciam custodiri, intra quam fuerit provocatum, sic ut ex aliis quadraginta serventur atque intra eorum terminos quod patris nostri constitutio statuit explicetur. Dat. XIIII kal. Iul. Singiduno; p(ro)p(osita) X kal. Aug. Romae Eusebio et Hypatio conss." The appellate judiciary of the vicars was not regulated in the constitutions often quoted in this context, namely C. Th. 11, 30, 30 (a. 362) = C. 7, 67, 2; C. Th. 9, 40, 16 (a. 398) – fragments adopted in C. Th. 11, 30, 57; C. 1, 4, 6; C. 7, 62, 29 nor in C. Th. 11, 36, 5 (a. 341) = C. 7, 62, 20; C. Th. 11, 30, 9 (a. 319) = C. 7, 62, 15. See Chapter 4.1.

[22] See Chapter 2.2.2.

[23] So: Peachin (1996): 191–199.

of the first count, Quintus Flavius Maesius Egnatius Lollianus, which took place around 335.[24] In one of the related inscriptions, he is referred to verbatim as *comes Orientis vice sacra iudicans*.[25]

Still, this does not mean that the power in question meant only hearing appeals. With respect to all officials, including diocesan vicars, it should be noted that the emperor had the capacity to appear as judge in all cases.[26] This happened upon recognising validity of written request of a party (*supplicatio*) for the case to be heard by the ruler, or in a process initiated by legal query of the judge or following written petition of a party requesting legal opinion, as well as by way of appeal, also from judgements returned in appellate proceedings.[27] The composition of the group of officials who were able to hear appeals from first-instance verdicts fluctuated, and it would be difficult to determine the rules of those changes, which in practice limited access to the emperor.[28] One has to take into account that as the position of the vicar as the administrator of a given region took its shape, so the extent of his objective and subjective jurisdiction underwent corresponding modifications.[29]

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[24] Cf. PLRE 1 (Q. Flavius Maesius Egnatius Lollianus signo Mavortius 5); Barnes (1982): 142, On datowania; Kuhoff (1983): esp. 144, 268 (note 28); Olszaniec (2007b): esp. 22 et seq., 34 et seq., 46 with further literature. See also Peachin (1996): 194.

[25] CIL VI 1723 = ILS 1225 (Romae): "Mavortii / Fl. Lolliano v.c. q. k. praet. urb. / curat. alvei Tiberis et operum / maximorum et aquarum cons. / Camp. comiti intra Pal[atium] et / [v]ice sa[cra iudicanti comiti] Or/i[entis]"; CIL VI 37112 = ILS 1232 (Romae): "……. [comiti Ori]entis v[ice] s[acra] iudicanti procons[onsuli] / prov[inciae] Africae et v[ice] s[acra] iudicanti / praef[ecto] urbis et v[ice] s[acra] iudicanti ite/rum comiti ord[inis] primi intra Pa/latium praef[ecto] praet[orio] consuli ord[inari] / Placidus Severus v[ir] c[larissimus] filius patri religioso / et Antonia Marcianilla c[larissima] f[emina] nurus / socero sanctissimo". See also other *comites Orientis* – (ca. 340–341): CIL X 1700 = ILS 1231; cf. PLRE 1 (M. Maecius Memmius Furius Baburius Caecilianus Placidus 2); 342: CIL VI 32051 = ILS 1237 – cf. PLRE 1 (Vulcacius Rufinus 25).

[26] Millar (1977): 507–537, esp. 514–516 draws a picture of emperor burdened by the tribulations of exercising judiciary powers. See also general discussion in De Marini Avonzo (1995): 105–107.

[27] When the ruler found the *supplicatio* is legitimate, he conducted the case on his own or referred it, with attached legal instructions (*rescriptio*) to the delegated judge or judge who held relevant jurisdicition. The case would also be referred to the latter if *supplicatio* was found groundless. In a specific sense, *supplicatio* was a written motion to the emperor to review the case, which had been previously judged by a pretorian prefect, and from whose verdict there was no appeal. See Bethmann-Hollweg (1866): 338–341; Thür, Pieler (1977): 434 et seq., 444–446; Litewski (1971): 61–81; Kaser, Hackl (1996): esp. § 95 II; Litewski (1988): 79 and 115; Litewski (1998): (s.v.); Pergami (2000): 236–258; Pergami (2007): 93–139.

[28] See the comprehensive review in Pergami (2001).

[29] Migl (1994) argues that the competences of praetorian prefects, a.v.p.p., vicars and counts sent to the diocese would crystallize as a result of competition between those officials (esp. 54–69, 84–94, 140–151).

In order to ascertain the scope of judicial competences of diocese administrator requires one to examine the sources which, at least indirectly, concern their judicature. Nevertheless, such an analysis should be preceded by remarks on their office (*officium*) which, due to rotation of administrators, ensured continuity of administration in their respective territory.

3.2. THE *OFFICIUM* OF DIOCESAN VICARS

As observed previously, the *officia*, i.e. the offices of diocesan vicars, ensured continued administration, even though persons holding the post came and went fairly often.[30] Hence their composition and tasks directly reflect their duties. On the other hand, it should be remembered that *officia* were endowed with a controlling capacity with respect to the diocesan administrator himself.[31]

The seats of the office were found in major cities of a diocese, and determining their location sometimes proves exceedingly difficult.[32] For instance, researchers continue to debate the seat of the vicar of Spain (Emerita Augusta – Mérida or Hispalis – Seville)[33], Africa (Carthage or Cyrtha)[34] or Asia

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[30] On the *officium* and the auxiliary staff see general information in Boak (1937); Jones (1964): 586–606; Gizewski (1999); Kaser, Hackl (1996): § 83; Palme (1999) – on the margin of remarks about the offices of province governors. Ensslin (1958): 2033 et seq. gives account of all offices of diocesan administrators. Barrau (1987), nominally devoted exclusively to the *officium* of the vicar of Africa is nevertheless a cross-sectional study (with references to earlier works). Cf. also the synthetic review of the office of diocesan administrator in Franks (2012): 106–109. Gencheva-Mikami (2005): 289 et seq. discusses the office *vicarius Macedoniae*; while Zołoteńko (2011): 109–115 the *officium vicarius Septem provinciarum*. On the frequent rotation of diocesan administrators see Chapter 1.2.

[31] See Stein (1959): 70. Cf. Bruschi (1975): 415–418 with regard to province governors. In this respect, the most important figures were the *principes*, members of the corps of *agentes in rebus*, with *magister officiorum* as their superior. Cf. Löhken (1982): 43 et seq. See also below. The changes aimed at increasing control of that trusted imperial official over regional military commanders were implemented in the East in the fifth century as well. See Wiewiorowski (2007a). In the Western Empire, analogous transformations took place at the turn of the fifth century; they were simultaneously intended to strengthen the position of *magister peditum*; cf. Scharf (1990) and (2005): 81–111, esp. 97 et seq., 101–111, with an analysis of the debate on the issue in literature. Cf. also the structure of *officium* of PPO *Italiae* discussed in general by Olszaniec (2014): 90–103.

[32] Therefore one can hardly envisage work such as Haensch (1997), who collected data on the "capitals" of Roman provinces.

[33] See Arce (1982a): 51 et seq.; Arce (2002a); Kulikowski (2004): 75. In turn, Lanata (1973): 206, suggests Seville, which is also put forward as the seat of the *officium* of the diocese of Spain. See also Arce (1982b) who objects to the thesis that the vicar of Spain erected the palace in Emerita Augusta. On the size of Emerita Augusta in comparison with other Roman cities in Spain, see Carreras Monfort (1995–1996): 75 et seq.

(Laodicea).[35] Most likely, the vicar of Britain had his headquarters in London[36], while the vicar of *Vienne* resided in Vienne, then, once the name of the diocese had changed to *Quinque provinciarum*, and subsequently to *Septem provinciarum* – in Bordeaux, and eventually in Arles.[37] Those disputes, however, have no greater bearing on how vicars carried out their official duties in practice, as those were often discharge while they were touring the diocese.[38]

The term *officium* was coined from two separate terms: *opus* ('work') and *facere* ('act'); from the time of the Late Republic it was also used by Roman jurisprudence to denote "duty, obligation".[39] In Greek sources, its equivalent terms were ὀφφίκιον or τάξις.[40] It was only in Late Antiquity, yet no later than the reign of Theodosius II (408–450), *officium* began to denote the staff of the dignitaries. Details concerning the personnel of diocesan administration as well as its tasks may be derived from a variety of sources.[41]

Important information is contained in *Codex Theodosianus* (especially C. Th. 1, 15) and *Codex Iustinianus* (especially C. 12: 49, 52, 56, 57 and 59).[42]

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[34] See Gaudemet (1974): 200; Lepelley (2002): 69–71.

[35] See Foss (1979): 181 et seq.; Christol, Drew-Bear (1999): 41 with further literature.

[36] C. Th. 11, 7, 2 (a. 319). Cf. PLRE 1 (L. Papius Pacatanius 2). See Frere (1987): 198.

[37] Those changes are often connected with the barbarian crossing of the Rhine in 406. See Chastagnol (1970) and (1973); Heather (2009): 18, note 37 with further literature, which suggests that the seat had already moved in the late fourth century.

[38] See Gaudemet (1974): 200, on the example of Africa. Cf. also general remarks in Fäber (2014): esp. 161–173. Next to province governors, the vicars themselves were obligated, under pain of financial penalty, to ensure that unauthorized persons did not occupy imperial residences and maintain them in good repair: C. Th. 7, 10, 1 (a. 407). On imperial seats, see Alessio (2006): including 687 et seq. on the aforementioned constitution. Grodzynski (1987): 179 (with further literature) discusses the variation of penalties that the act stipulates with respect to members of different social groups.

[39] The issue is addressed in greater detail in Dell'Oro (1960a): esp. 281–286 and 290–292, who highlights the distinction between *officium*, i.e. the auxiliary staff, from *dignitas*. Cerveca (1970): distances himself from Dell'Oro (1960a) and observes that the term is used in imperial constitutions in both meanings, esp. in *Codex Theodosianus*; the author further indicates that the distinction appears only in *Codex Iustinianus*, where *officium* ('duty'), is distinguished from auxiliary personnel, referred to as *apparitores* – see esp. ibidem: 211–213, 218–220, 222–225, 230; 233–238. See also Frosini (1965): 774; Grelle (1986): esp. 52–56 with references to further literature. The term *scrinium* was used to denote the interior in which the office operated; see Seeck (1921): esp. 894; Gizewski (2001).

[40] Cf. Mason (1974): 73, 91–92.

[41] Palme (1999): 86–95, collected and discussed sources concerning all kinds of offices, including pertinent literature. However, his compilation is concerned chiefly with sources important for the studies of province governors, which prove only partially significant for the research focusing on the offices of diocese administrators. Previously, auxiliary staff in the provinces was described in detail by Bruschi (1975).

[42] Information which proves useful in comparative approach includes data on the Roman administration in the prefecture of Africa, recaptured in 534, which provides numerous details

On the other hand, literary sources, inscriptions and papyri offer little knowledge in that respect; in most cases, the information they provide may be utilized only in comparative approach, since they concern offices of other dignitaries.[43]

The most important information of all is conveyed in *Notitia dignitatum* form the turn of the fifth century. No other source offers a complete list of auxiliary personnel of diocese administrators (nor any other officials). Furthermore, the source provides a review of changes which took place in that respect after the introduction of dioceses at the turn of the fourth century. For this reason, the principal deliberations in this work will rely on data derived from that very source. However, prior to its analysis, it is necessary to make some general remarks applying to all offices of diocesan administrators.

The staff of the office of vicar was to be composed of no more than 300 persons.[44] In turn, the o*fficium* of the vicar of Asia was to consist of 200 *apparitores*.[45] In Egypt, 300 made up the staff of the office of *praefectus Augustalis* before the duties of military and civilian diocese administrator were combined in the latter half of the fifth century and the office of *dux* or *comes* (*Aegyptiaci limitis*) *et praefectus Augustalis* introduced; it is probable

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on the remuneration of lower ranking personnel (C. 1, 27, 1–2). More broadly on that subject in Krüger (1867): 138–186 (esp. on the *notitia*); Cervenca (1970): 238–240; Puliatti (1980): 82–97; González Fernández (1997): 159–179 as well as on Ed. Iust. 13, an act relating to Egypt issued after 534 – bewteen 538 and 539 or in 554. Cf. Chapter 4.

[43] As regards this groups of sources, the most valuable information comes from Lydus *De mag*. (though the work is chiefly concerned with the functioning of the prefecture of the Orient). An issue which needs to be treated separately is the disappearance of inscriptions providing details of official careers, which were characteristic of the Principate – see MacMullen (1982), as well as the fact that most texts on papyri originates from Egypt and, naturally enough, describes local realities.

[44] See C. Th. 1, 15, 5 (a. 365); C. Th. 1, 15, 12 (a. 386). Bruschi (1975): 330–331 is most likely right in suggesting that imperial authorities strove to achieve uniform numbers of diocesan clerks. The first of the aforementioned constitutions was addressed to Dracontius, vicar of Africa. Regarding that constitution see also Gaudemet (1974): 201 with further literature.

[45] C. Th. 1, 15, 13 (a. 389), according to which it was dictated by the territorial extensiveness of that diocese. The internal contradiction in the constitution's text is sometimes interpreted asa result of copyist's error. That the term *apparitores* applied in fact only to the personnel of the lowest rank, who were known under that name in the Principate era is an equally credible hypothesis. Cf. Lepelley (2002): 67, note 43. Bruschi (1975): 331, note 1 made a similar assumption. Barrau (1987): 80–83 advances a controversial hypothesis, arguing tht the staff of the vicar of Africa was more numerous than it was specified in C. Th. 1, 15, 5 (a. 365) and C. Th. 1, 15, 12 (a. 386), e.g. due to increased fiscal levies in the last decades of the fourth century. The author invokes C. Th. 1, 12, 6 (a. 389), addressed to the proconsul of Africa and the vicar of Africa, according to which the staff was 400 persons strong. However, the number of clerks in the *officium* of the African proconsul should not be taken into account here, as the functions of the latter as a province governor were more extensive than those of the vicar. See Warmington (1954): 5.

that the number of staff increased two-fold as a result.[46] The personnel attached to the office of *comes Orientis* did not exceed 600 person; notably, an entire title in *Codex Iustinianus* is devoted to that specific staff.[47]

The meagre complement of personnel assisting diocese administrators, just as the small number of those imperial officials in general, resulted from the relatively narrow range of task that imperial administration had to fulfil given the existing municipal administration.[48] It was also a derivative of the system of rule based in part on informal social relations, in which the notion of honour and the authority of the emperor played vital roles.[49] The significance personal dependencies in the system of exercising power is also corroborated by the fact that imperial constitutions were addressed directly to those who oversaw the diocese, not their offices.[50]

The status of staff of all Later Roman imperial offices was similar.[51] Initially, its members were called *cohortalini*; in time there appeared other de-

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[46] Under Justinian I, the office *dux et praefectus Augustalis* consisted of 600 people (Ed. Iust. 13 – a. 538). On the earlier merger of competences of the civilian and the military administrator of the diocese see: C. 2, 7, 13 (a. 468); C. 1, 57, 1 (a. 469); Evagrius *HE* 3, 22. See further papyrological sources quoted by Carrié (1998b): 109–110; synthetically Palme (2007): 248.

[47] C. 12, 56 (*De apparitoribus comitis Orientis*), which contains only a constitution specifying the number of auxiliary personnel: C. 12, 56, 1 (a. 394) = C. Th. 1, 13, 1. See Jones (1964): 592 et seq.; Petit (1955): 254; Ceran (1969): 31 = Ceran (2013): 48; Olszaniec (2007). Delmaire (2012): 168 suggests that the version preserved in *Codex Iustininianus* testifies to the fact that under emperor Anastasius I, the competences of *comes Orientis* with respect to tax collection were restricted.

[48] The total number of Later Roman bureaucratic apparatus of the Empire is estimated at approximately 30,000–35,000; at the same time, and authors emphasize its relative efficiency. See MacMullen (1964): 307 (civilian administration – 16,000); Garnsey, Humfress (2001): 36–47; Kelly (2004): 111 with further literature. Detailed calculations offered by various researchers were compiled by Palme (1999): 100 (note 80), 117. In 534, in the recaptured Africa, Justinian I cut down the numbers of administrative personnel, applying the norms which were in force in the eastern part of the state. Thus the staff of the province governor was reduced to 50 persons and the staff of the praetorian prefect to 396 persons; the vicariates were not introduced at all (C. 1, 27, 1, 22–38). At the time, the personnel of the prefecture of the East amounted to 4,000 people – see Kelly (2006b): 454 with further literature.

[49] On the informal relations and connections, see Lendon (1997): 107 et seq., 176 et seq., and esp. 222–235. See also general depiction of the civilian personnel of the lower rank in Jones (1960). The tension between the demand of the administrative apparatus for a consolidation of the rules according to which it was to operate, and the autocratic nature of the emperor's power was aptly captured by Kelly (1994) and (2004) with further literature. Nevertheless, see MacMullen (2006), who correctly observes that the argument of Lendon (1997) should be limited to social elites and, on the margin of remarks in Kelly (2004) demonstrates actual restrictions of imperial authority imposed by the bureaucratic apparatus.

[50] Thus Gaudemet (1974): 200 – on the example of constitutions addressed to Dracontius, vicar of Africa in 364–367. The latter is discussed in greater detail in Chapter 4.1.

[51] In recent publications, an overall review of the status of staff in imperial offices was presented by Palme (1999): 100–103. Apart from the writings quoted in the footnotes, the works

nominations, such as *palatini*, *praefectiani*, *vicariani* or *duciani*. Among those, one distinguished those who did service (*statuti*) and those without specific assignment (*supernumerarii* or *vacantes*). The personnel of diocesan administration was recruited from civilians, who nevertheless had fictitious postings to military units (hence the name *cohortalini*) and, as all other imperial officials, were granted military status under *militia inermis* (in contrast to od *militia armata*).[52] Just as with higher official, their service was referred to as *militia* (in the case of *numerarii* – accountants and other personnel involved in financial affairs only from the reign of Theodosius I[53]). From Constantine the Great, administrative staff were entitled to use the honourable *nomen gentile* of *Flavius*.[54] The rules of recruitment to the service resembled the principles which applied in conscription: candidates to imperial service in *militia inermis* had to state their place of origin as well as declare the their own and their parents' status.[55] Service in imperial administration was inaccessible to soldiers and sons of veterans, decurions, coloni, freedmen, slaves and representatives of a number of other social groups.[56] From the end of the fourth

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used in developing this section included Stein (1922): 7–30; Boak (1937); Jones (1960); MacMullen (1964); Noethlichs (1981): esp. 20–79, 97–103.

[52] Still, this did not mean militarization of the entire society, as suggested by MacMullen (1963): esp. 65–76. This is because the framework of Later Roman administration developed gradually in response to the emerging challenges, and eludes the modern, clear-cut distinctions between the civilian and the military domains. Cf. Noethlichs (1981): 20–34; Carrié (1986): esp. 449–455.

[53] See also Gothofredus (1737), vol. 2: 475 et seq.; Ensslin (1937a): esp. 1322–1323; Barrau (1987): 87; Gizewski (2000). Cf. też Morosi (1977): 121–128, 133; Palme (1999): 110 et seq. Brunnemannus (1699): 1354–1357 offers an overall review of statuses of clerical staff attached to various officials.

[54] Cf. on the significance of the appellation: Keenan (1973–1974); Cameron (1988); Łajtar (1999): esp. 385–386; Prostko-Prostyński (1994): 63–75 (on the margin of remarks concerning Theodoric the Great).

[55] Gilliam (1957): 213.

[56] C. Th. 1, 12, 6 (a. 398); C. Th. 7, 2, 1 (a. 383); C. Th. 7, 2, 2 (a. 385). According to Barrau (1987): 84, note 27, the latter, addressed to the praetorian prefect Noeterius was directly concerned with Africa. See PLRE 1 (Flavius Noeterius). The prohibitions were circumvented chiefly by the members of municipal councils, the so-called curiales (decuriones), because the service would ensure them e.g. the status *vicariani* – on the example of Africa see: Veyne (1981): esp. 339 et seq.; Barrau (1987): 83, 96–100; generally Noethlichs (1981): 72–76, 95–97; Palme (1999): 118 et seq. The premises and practical significance of prohibitions with respect to decuriones was discussed in detail by Loniado (2002): 4–26. See also Schubert (1969) for a general description of the legal status of decuriones and prohibitions on the service in imperial administration. Apart from that, public service was inaccessible to felons, adulterers and those who committed minor crimes or offences, coloni, bakers, butchers and representatives of a range of other professions.

century, the groups statutorily prohibited from service included heretics, Jews, Samaritans and pagans.[57]

Prior to entering imperial service, one had to obtain *probatorium*, issued by the imperial chancery; as of Leon I, personal participation of the emperor in thee act of appointment was additionally emphasized, and in the case of province administrators the writ was to originate from *scrinia sacrarum epistolarum*.[58] This was intended as a countermeasure against buying low-rank offices, a practice which was allowed by the imperial legislation, albeit to a limited extent, with respect to the vicar offices.[59] The fact that service in an office was treated as *militia* is also borne out by the fact that one was entered into the register of *officium* and took an oath; the personnel would don the same garments as soldiers (*chlamys* and *cingulum*).[60] Just as soldiers the staff of *officium* received remuneration defined as *annona* (food rations) and *capitum* (forage for the horses), which differed depending on the office; as of the first decades of the fifth century, it was paid in coin (*adaeratio*). However, the staff was relatively poorly paid and therefore prone to bribery.[61]

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[57] Cf. Noethlichs (1971); Joannou (1972); Dębiński (1990): 102–106, 165–167, 197–200; Stachura (2000): esp. 103–119. See also Prostko-Prostyński (2008): 42 et seq. on the service (*militia*) of Jews. Barrau (1987): 83, note 27, suggests that C. Th. 16, 5, 54, 7 (a. 414), addressed to the proconsul of Africa and providing for punishment of the staff of *diversis iudices* for Donatism, applied to"[…] *officiales* africains en général […]". Cf. in similar vein Barbati (2012): 221 (note 146). On Donatism see Chapter 2.2. The prohibition of service for non-Catholics is formally mentioned only in C. 12, 59, 9 (ca a. 470).

[58] C. Th. 8, 7, 21 (a. 426) = C. 12, 59, 6 stipulates that breach of the prohibition be punished with fine of 20 pounds of gold, if committed by diocesan administrator, while mentioning *comes Orientis*, *praefectus Augustalis* and *vicarii* separately (its twin act is C. Th. 8, 7, 22); C. 12, 59, 10, 4 (from the reign of emperor Leon I); applied to all offices – its violation carried the penalty of forfeiture of estate and capital punishment. On *probationes* cf. Classen (1977): 44 et seq. See also Chapter 4.2.

[59] C. Th. 8, 4, 10 (a. 365), addressed to Dracontius, vicar of Africa. Cf. Gaudemet (1974): 201; Liebs (1978): 159. On Dracontius see Chapter 4.1. On *suffragium*, see also Chapter 1.1.

[60] Cf. Chapter 5.1 on the attire of vicar. See also the representations of the members of Pilate's council in *Codex purpureus Rossanensis*, fol. 8–9. Cf. Loerke (1961): esp. 181 et seq., and the fourth century fresco showing a provincial offical in the tomb in Durostorum/Silistra (Bulgaria). Cf. Frova (1940); Dimitrov (1962); Miloševič, Donevski (1999): esp. 253. Atanasov (2007): esp. 452, 456 et seq., in favour of the view that the tomb may have belonged to a representative of higher military aristocracy in the rank of *illustris*.

[61] The abuses of the staff of vicars' offices in invoked expressis verbis in: C. Th. 1, 12, 5 (a. 396) = C. 1, 35, 2; C. Th. 8, 7, 11 (a. 371) = C. 12, 59, 1; C. Th. 8, 15, 5 (a. 368). On the latter cf. Schmidt-Hofner (2008b), esp. 55–57. On the practice of bribery see also C. Th. 8, 1, 4 (a. 334) = C. 12, 49, 1, which is concerned with the office staff of province governors, but it is addressed to *vicarius Asiae* Veronicianus. See Chapter 4.1. As regards province governors cf. also Palme (1999): 111–115.

Officers were personally accountable to their superiors. There were instances where the personnel was held collectively responsible for the decisions of one official and for the decisions of their superior; on the other hand, the vicar could be held liable for the abuses of his subordinates.[62] Besides, a large number of constitutions was devoted to the abused of *cursus publicus*, both by the *officium* staff as well as by the province administrators themselves.[63] Since the source fail to mention anything in that respect one can only surmise – as is suggested with respect to other offices – that the diocesan administrative staff was adequately educated and discharged their functions in a relatively efficient manner.[64]

The terms of duty in one position and the rules of promoting auxiliary personnel were provided for.[65] Having completed one's term assuming the

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[62] *Codex Theodosianus* quotes ca 100 cases of this form of collective responsibility applied to handle misconduct in various offices. The penalty was ineffective and this is perhaps the reason why it became defunct in the fifth century. See Rosen (1990). Diocesan administrators is also frequently mentioned as the official responsible for counteracting abuse: e.g. C. Th. 8, 5, 6 (a. 354); C. Th. 8, 5, 19 (a. 363) = C. 8, 10, 7; C. Th. 8, 5, 37 (a. 382) – *praefectus Augustalis* (abuses committed by influential persons); C. Th. 8, 5, 41 (a. 382) = C. 12, 50, 10 – *comes Orientis* (private persons attempting to take advantage of the *cursus publicus*).

[63] The countermeasures undertaken by the emperor are given the most attention among the attempts to curb malfeasance. See Noethlichs (1981): 150–156; Cañizar Palacios (2005): 144 et seq. The abuses of *cursus publicus* committed by the auxiliary staff at the order of vicars are mentioned in C. Th. 6, 29, 2 (a. 357) = C. 12, 22, 2 (in this version vicars are omitted); on the changes of texts between C. Th. and C., cf. Cunea (1996): 234. Seeck (1919): 202, shifts its dating to 356. The enactment does not refer to any penalties. The abuses of *cursus publicus* by the vicars themselves are addressed directly in C. Th. 8, 5, 12 (a. 362); C. Th. 8, 5, 38 (a. 382); C. Th. 8, 5, 61 (a. 400), and indirectly possibly in C. Th. 8, 5, 15 (a. 362 or 363) = C. 8, 10, 7 (abridged version); C. 12, 50, 9 (a. 382) = C. Th. 8, 5, 40. On those constitutions, see Vogler (1995); Kolb (1998): esp. 344–346, 349 et seq.; Bianchini (1999): esp. 41 et seq.; Kolb (2000): esp. 83 et seq., 99–107, 112–114, 117–122, 167; Barbati (2012): 281–288. On the vicar of Spain Macrobius, guilty of abuse according to C. Th. 8, 5, 61 (a. 400), from the most recent works see Chastagnol (1965): 277–278, no. 13; PLRE 2 (Macrobius 1); Villela (1992): 82.

[64] See Wieacker (1964): 81–93, esp. 82 et seq.; Marrou (1969): 432–434; Schuller (1975); Pedersen (1976): esp. 185–205; Nellen (1977) – for the western part of the Empire in 284–395, esp. 117–147, 345–373 (135 – doubts as to legal education); Löhken (1982): 135–147; Cameron (1996): 5; Palme (1999): 115–117; Honoré (2004): esp. 115–124; Humfress (2007): 10–21 (mainly with respect to advocates, although some remarks are concerned with officials as well). This author formulated a similar conclusion on the margin of remarks on the administration of ducal domains in the Eastern Empire – Wiewiorowski (2007a). The requirement of professionalism for the administrative staff was expressly emphasized by Justinian I: Nov. Iust. 8 pr. Until the mid-fifth century Latin was the language of the chancery; according to John the Lydian it continued to be used in the prefecture of the East in the early sixth century. (Lyd. *De mag*. 2, 12; 3, 11; 3, 20; 3, 27; 3, 42; 3, 68). Officials of the Later Empire were appointed following the language criterion, so that their competence in that respect were beyond question – see Ilski (2001): 280.

[65] See the general remarks on the system of promotion in the imperial administration in Kelly (2004): 44–51; Malavé Osuna (2005). Cf. also Morosi (1977): 114–119, 131–133, on the

same post again was forbidden.[66] Serving in several posts at the same time was prohibited as well.[67] Discharging official functions involved a range of privileges, which in the fifth century began to be circumscribed in the Eastern Empire (Nov. Th. 7).[68] In most cases, active personnel (*statuti*) was subject to the judiciary of the superior and enjoyed exemptions from contributions to the municipia and the state.[69] Another from of privilege was that the office could be passed on from father to son.[70] The duration of service did not exceed 25 years; upon completion the former *vicariani* obtained *honesta missio* release from obligations and duties to the municipal curiae.[71] The status of *vicariani* would not be granted to the lowest-ranking group of the auxiliary personnel, which included secretarial clerks (*exceptores*), messengers (*cursores*), and personal servants of vicars.[72]

Before we discuss the composition of the office of diocesan administrator and its status according to *Notitia dignitatum*, it should be noted that the source does not mention legal advisors attached to the diocesan administrators, that is *adsessores/ assesores*, who were not members of the *officium*.[73] The

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example of the prefecture of the Orient; Kelly (2006b); and staff of the province governors – Palme (1999): 117–118.

[66] With respect to *vicariani*: C. Th. 8, 5, 42 (a. 382); C. Th. 9, 26, 3 (a. 403) = C. 9, 26, 1. Cf. general observations in Kelly (2004): 81 et seq.

[67] See C. Th. 8, 1, 17 (a. 433) = C. 1, 51, 9; C. 12, 33, 5, 3 (a. 524); C. 1, 51, 13 (a. 529)

[68] The status of the staff did not release most of them from tortures, which would not be used on soldiers and veterans – see C. Th. 8, 1, 4 (a. 334); C. Th. 8, 1, 5 (a. 357); C. Th. 8, 1, 6–7 (a. 362); C. Th. 8, 1, 8 (a. 363). On the admissibility of tortures in Roman law, see e.g. Peters (1996): 18–33; Harries (1999): 122–134.

[69] Though he still could be liable to other duties, just as *cornicularii* – C. Th. 11, 15, 11 (a. 380). See below. On the other hand, upon the completion of their service officers such as *tabularii* (notaries) sought to enter municipal curia; enquiry into this practice was entrusted e.g. to Artemius, vicar of Spain – C. Th. 8, 2, 2 (a. 370). On the latter official see Chapter 4.1.

[70] C. Th. 7, 22, 3 (a. 331) = C. 12, 47, 1; C. 12, 47, 3.

[71] C. Th. 8, 7, 6 (a. 354) contains a direct reference to *apparitores* of vicars, who would be released from service after 25 years. Cf. Schubert (1969): esp. 301, note 52 (on its dating which remains a matter of dispute in literature) and 303, note 63. Jacques (1985): 326–328, compares this provision to an inscription from Africa, the so-called Album of Timgad (dated to 362–364). The text suggests that at least five decuriones (*clerici*) served as staff (*milites*) in the *officium* of the vicar of Africa. Cf. the edition in Chastagnol (1978): 5 (ll. 26–31); see also. ibidem: 33 et seq., 37 et seq.

[72] On minute clerks, who were not always mere note-takers but held more important functions in various imperial and church offices, see Teitler (1985): esp. 73–81; Gizewski (1998). See also below remarks on *exceptores*. The low-ranking personnel is discussed on the example of the prefecture of the Orient in Kelly (2006b). A member of the personal staff of vicar (of Macedonia?) was certainly a certain Euporos, a mule driver – see his epitaph from Thessaloniki, dated to the period between the third and the sixth century (no later than 535): Εὐπορος Μουλίων τοῦ Βικαρίου. See Nigdelis (2002): 86–90, no. 1. Cf. also Feissel (2006): no. 91.

[73] Those high-ranking collaborators of dignitaries, who assisted them with expert advice, primarily regarding judicial duties, had been devoted a title of their own in the Justinianic Code:

bureaucratic elite of the Empire would have had rhetorical education with some knowledge of the law acquired in its course, but most Later Roman judges needed the assistance of expert legal advisors.[74] Although it is certain that a number diocesan administrators had legal background, the above applies to those as well.

Anatolius, among other things the vicar of diocese Asia in 339 (or 352 [?]) graduated from legal school in his native Beirut.[75] In 357, when he held the office of PPO *Illyrici*, he is presumed to have proposed the function of assessor to Aristaenetus, who briefly became *vicarius Pietas* (*Ponticae*?) the following year.[76] Clearchus (vicar of Asia in 363–366) was a disciple of *grammaticus* Nicocles[77]; Domnio, another administrator of Asia (w 388), was a student to Libanius.[78] Pagan Sextilius Agesilaus Aedesius, vicar of Spain between 355 and

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C. 1, 51 (*De adsessoribus et domesticus et cancellariis iudicum*). The latter iterated constitutions concerning *assesores* which had previously been included in the Theodosian Code and addded a number of enactments which had been ommitted in that collection. In the course of Justinian's codification their duties were also discussed in a separate title in D. 1, 22 (*De officio adsessorum*). Only one imperial constitution is directly concerned with vicars' advisors. It was addressed to Caecilianus (e.g. PPO *Italiae* w 409), who is sometimes assumed to have been the vicar of the diocese of Africa in 404/405 and correspondent of Augustine – see C. 1, 51, 4 (a. 404); Aug. *Ep*. 151 and 86. Cf. Pallu de Lessert (1901): 223–225; PLRE 2 (Caecilianus 1); PCBE I (Caecilianus 6). More information is available on the career of a well educated assessor to the vicar of Rome, Floridus, who dedicated himself to teaching law after completion of his state service: CIL VI 31992 (Roma). Cf. PLRE 2 (Floridus); Liebs (1987): 66; Humfress (2007): 85. Former assessors, included in the order of *comites primi ordinis*, who advised dignitaries in the rank of *illustris*, enjoyed a rank equal to vicars: C. Th. 6, 15, 1 (a. 413). On *assesores*, cf. Seeck (1894a); Jones (1964): 500–501, 603; Ausbüttel (1988): 193–198; Hausmaniger (1996); Wieling (2000).

[74] See briefly in Chapter 1.1. Cf. also Goria (1995b): 300–303; Harries (1999): 102–103; Honoré (2004): 115 et seq., 122–124. The importance of legal education is borne out by an imperial constitution, according to which e.g. *iuris periti* acquired right to the title *ex vicarius*: C. Th. 6, 21, 1 (a. 425) = C. 12, 15, 1.

[75] Eunap. *V. Soph.* 10, 6, 1–2 and possibly Lib. *Ep*. 339 and 438. More broadly concerning that figure see Chapter 4.1.

[76] Lib. *Ep*.: 537, 563, 582. On that official, see e.g. Seeck (1906): 85–87; PLRE 1 (Aristaenetus 1); Kuhoff (1983): 371, note 81; Petit (1994): 47 et seq.; Bradbury (2004b): 231 et seq.; Wintjes (2005): esp. 92, 109, 114 et seq. See also Chapter 2.2.2.

[77] Lib. *Ep*.: 1265, 1266, 1492. More broadly concerning that figure see Chapter 4.1.

[78] Lib. *Ep*. 861–862. See Seeck (1906): 124; PLRE 1 (Domnio 2); Kuhoff (1983): 138, 374 (note 92); Petit (1994): 83 et seq. Disciples of Libanius often attained high positions in imperial administration, including the dignity of vicar. See Petit (1957 i (1994); Bradbury (2004a); Sadowski (2010): 210 et seq. The diocese was administered by Andronicus – *vicarius Thraciarum* (a. 365), Julianus – *comes Orientis* (a. 363/364). Cf. Petit (1994): 39–41, 140 et seq.; Wintjes (2005): 154, 157, 166, 168 et seq. with further literature; on the first of those cf. also Wiewiorowski (2011b): 391 et seq.

376 is certain to have been a court orator and experienced imperial official.[79] Meanwhile, Marinianus, vicar of Spain in 383, had previously taught law in Rome.[80] Another experienced and efficient administrator as well as an expert at law was Flavius Domitius Modestus – *comes Orientis* in 358–362.[81] We also know that there were colleges of attorneys attached to the offices of vicars, which were presumably composed of 40 persons.[82]

According to *Notitia dignitatum*, the offices of civilian (and partly military) dignitaries) were similarly organized, regardless of their actual level of significance.[83] This is also valid for the auxiliary personnel of diocesan administrators.

In *pars Orientis*, the structure of the office was as follows:

– *princeps*: superior of the administrative-judicial department of the *officium*[84];

– *cornicularius*: at the time exclusively civilian aide of the princeps, who handled court cases and financial affairs[85];

– *commentariensis*: clerk of the court, who dealt with criminal cases[86];

– *adiutor*: assistant, adjutant of the *princeps* – since the late fourth century the post became independent of the latter (also known as *primiscrinius*)[87];

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[79] CIL VI 510 = ILS 4152; CIL VI 31118. Cf. PLRE 1 (Sextilius Agesilaus Aedesius 7); Kuhoff (1983): no. 99, passim (esp. s. 116); Vilella (1992): 84; Rüpke (2005): 726–727. Maximinus, *vicarius urbis Romae* (a. 370/371) was an advocate as well; see PLRE 1 (Maximinus 7). Court orators were not required to possess legal education – in East the obligation was stipulated only in C. 2, 7, 11 (a. 460) – although it was becoming more widespread. Legal education proved more significant in the career at lower levels of administration, see Humfress (2007): 51 and Appendix I–II.

[80] Symm. *Ep*. 3, 23, 2. Cf. Liebs (1976): 360. See more broadly Chapter 4.1.

[81] Contrary to Lib. *Or*. 14, 19–2, Amm. Marc. 30, 4, 2 called his education into question and accused him of urging emperor Valens not to return judgements in judicial processes. On the count, see Chapter 2.2.3.

[82] Cf. C. 2, 7, 22 pr. (a. 505), was concerned with *comes Orientis*. On Roman advocates, cf. Rossi (1970); Wieling (1996), with information on colleges attached to the offices of vicars: 425, 429–433; Garnsey, Humfress (2001): 70–74; Humfress (2007): 9–28, 93–106; Liebs (2008a) – generally on educating lawyers in Late Antiquity; Jonaitis, Žalėnienė (2009).

[83] Cf. also remarks on the composition and characterization of auxiliary posts in the office of province governor of Bruschi (1975): 338–390. The view expressed by Brennan (1996), who questions the credibility of *Notitia dignitatum* altogether, seems to be an exaggeration. See Kulikowski (2000b).

[84] See Stein (1920): 195–239; Ensslin (1956c); Sinningen (1964); Giardina (1977): esp. 13–39; Morosi (1979–1980); Clauss (1980): 32–39; Delmaire (1995): 109–116; Palme (1999): 108; Kelly (2006b): esp. 437 et seq.

[85] See Fiebiger (1901). Cf. also on *cornicularii*: Stein (1922): 54, 61; Chastagnol (1960): 231–233; Morosi (1977): 111; Ausbüttel (1988): 188; Palme (1999): 109; Kelly (2006b): 437–441.

[86] See Premerstein (1901a): in particular 766–768; Jones (1960): 166–169; Gizewski (1997a). Cf. also Stein (1922): 39; Chastagnol (1960): 235–237; Ausbüttel (1988): 190; Scharf (2005): 92–96.

– *ab actis*: secretary whose responsibility was court records; it is probable that until the end of the fourth century the official was subordinated to *commentariensis*[88];

– *numerarius* (see below);

– *cura epistolarum*: responsible for official registers concerning financial affairs[89] (at this point, the list of officers attached to *comes Orientis* features a an official referred to as *subadiuva* – Not. Dig. Or. 22[90]);

– *exceptores*: minute clerks[91] *et ceteros officiales*.

Principes invariably originated from the fairly small group of *agentes in rebus* – imperial messengers and special affairs and control officers.[92] In the case of five officia *Notitia* states explicitly that they belonged to *agentes in rebus* first class (*ducenarii*), and upon termination of service were rewarded with *adoratio purpurae* and *insigniae* (*principes* in the offices of *comes Orientis*, *praefectus Augustalis*, *vicarius Asianae*, *vicarius Ponticae* – Not. Dig. Or. 22–25); in turn, *princeps officium* of the vicar of Thrace was referred to in general terms as a member of the corps of *agentes in rebus* (Not. Dig. Or. 26).[93] In addition, *comes Orientis* had a secretary who handled petitions submitted with the office – *a libellis* (Not. Dig. Or. 22).[94]

The composition of the officia in the western dioceses – including *vicarius urbis Romae* (Not. Dig. Occ. 19) – was slightly different (Not. Dig. Occ. 20–23). They comprised the following:

– *princeps*,

– *cornicularius*,

– *numerarios duos*,

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[87] See Habel (1893); Ensslin (1956b); Gizewski (1996). Within prefecture, its status remained independent until the end of the fourth century. See Stein (1922): 57–58; Palme (1999): 109. The vicar of Africa might have had two such officials – thus Stein (1922): 58, note 1.

[88] See Premerstein (1901a): in particular 766–768; Eder (1996).

[89] See Korneman (1901): 1771; Jones (1964): 450. Cf. also Stein (1922): 67–70; Chastagnol (1960): 239; Palme (1999): 109–110; Kelly (2006b): 441 et seq.

[90] *Subadiuva*, i.e. junior assistant – see Lyd. *De mag*. 3, 16. See also below.

[91] As observed above, *exceptores* were not always stenographers but did assume functions of greater importance in imperial and church offices, see Teitler (1985): esp. 73–81; Gizewski (1998). See also below remarks on *exceptores* in Not. Dig. Occ.

[92] See C. Th. 6, 28 (*De principibus agentum in rebus*); C. 12, 21 (*De principibus agentum in rebus*). On the corps which comprised over 1,000 functionaries in the East itself in the more recent works cf.: Blum (1969): 1–16; Morosi (1979–1980): 29–31; Pikulska-Robaszkiewicz (1994); Delmaire (1995): 97–118; Carlá, Castello (2010): 346–362. See also the lucid entry by M. Salamon in: EKB (s.v. *agentes in rebus*).

[93] See below.

[94] See Premerstein (1926); Gizewski (1997c); Jones (1964): 592. Cf. also Stein (1922): 61–62; Ausbüttel (1988): 191.

– *commentariensis*,
– *adiutor*[95],
– *ab actis*,
– *cura epistolarum*,
– *subadiuva*[96],
– *exceptores*[97],
– *singulares*[98] *et reliquos officiales*.

All *principes* were from the first class of *agentes in rebus* – the so-called *ducenarii*.

Within the offices one can distinguish the most numerous staff responsible for administrative affairs and matters relating to the judicial function of the province administrator as well as personnel who dealt with finances.

In the case of *pars Orientis* the former group of auxiliary personnel comprised *princeps*, *cornicularius*, *commentariensis*, *adiutor*, *ab actis*, *a libellis*. *Exceptores* and, most likely, a number of staff from the group of *ceteros officiales* belonged in that department as well. Financial matters were the domain of *cura epistolarum*, *numerarius* and again, most likely some of the *ceteros officiales*. There is hardly any difference between the office (*officium*) of *comes Orientis* and the offices of other diocese administrators across the Eastern Empire, including *praefectus Augustalis* (with the exception of *subadiuva*, who is listed instead of *cura epistolarum*). However, as noted above, the staff of *comes Orientis* was twice as numerous, which probably resulted primarily from the sheer territorial expanse of the diocese of the East.[99]

The arrangement existing in *pars Occidentis* was not particularly different. The staff supporting administrative management and judicial functions included *princeps*, *cornicularius*, *commentariensis*, *adiutor*, *ab actis*, *subadiuvae*, *exceptores*, *singulares* and, in all probability, some of the *reliquos officiales*. Meanwhile, financial affairs were essentially delegated to *cura epistolarum*, two *numerarii* and a number of *reliquos officiales*. Compared with their coun-

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[95] According to Barrau (1987): 89, in the case of the vicar of Africa he might have assisted the *cornicularius*, which would explain his high status; the author quotes documented activity of the vicar's *adiutor numerorum* in 411 (*Collatio Carthaginensis* – PL 11, 1259).

[96] They may have acted as assistants in the financial section of the office, as Barrau (1987): 89 suggested regarding the vicar of Africa. In the prefecture of the East, *subadiuva* is most often identified with *primiscrinius*. See Stein (1922): 57–61; Kelly (2006b): 438, note 38 with further literature.

[97] Barrau (1987): 89, quoting the instance from Africa in 411, suggests the possibility that *exceptores* of the vicar of Africa may have carried out special missions (*Collatio Carthaginensis* – PL 11, 1259).

[98] Barrau (1987): 89–90, identifies those with policing forces, relying on C. Th. 16, 2, 31 (a. 409) = C. 1, 3, 9, which discusses *civiles apparitores*.

[99] Similarly Franks (2012): 100, note 311.

terparts in the East, the *numerarii* enjoyed a higher standing, as they are mentioned in the lists immediately after *cornicularii*. Nevertheless, *Notitia dignitatum pars Occidentis* was made at a later point in time than the eastern part of the list, and may testify to the increase of the status of *numerarii* in the bureaucratic hierarchy, as can be inferred from other sources.[100]

The chief officer in the offices of all diocesan administrators – just as in other offices of military and civilian dignitaries discussed in *Notitia dignitatum* – was *princeps officii*, who managed both the administrative and the judicial department of the office. In the light of *Notitia dignitatum,* all *principes* of diocesan administrators had been members of the corps of *agentes in rebus*, who had been subordinated to the high-ranking officer at the imperial court – *magister officiorum*.[101] *Principes* would oversee the current activity of the *officium*, and thus the activities of the administrators of dioceses. No official steps could be taken without their approval; they were entitled to their own advisors (*domestices*) and having finished their service, they could expect as much as appointment to province governor, being granted the rank of *clarissimi*, and upon final retirement – the privileges which brought them almost on a par with the active *principes*.[102] For instance, emperor Zeno extended a range of privileges of former *principes* to the members of their families as well as their coloni and slaves.[103] The act is interesting insofar as its preamble mentions a privilege for the *apparitores* (auxiliary personnel) of vicars and province governors (*praesides*) which established the duty paid for the

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[100] The importance of *numerarii* in the offices of regional military commanders in the Eastern Empire grew likewise. See Wiewiorowski (2007a). *Numerarius* of the vicar of Rome is known from the inscription CIL VI 8405 (Roma).

[101] On *magister officiorum* in recent works see Morosi (1979–1980): 25–29; Clauss (1980); Delmaire (1995): 74–95; Castello (2005). On the other hand, *primiscrinius*, or manager of the *officium* of the vicar of Rome, was financially responsible for the levy of dues in kind (pigs): C. Th. 14, 4, 10 (a. 419). See Ensslin (1956b). On supplying pork to the people of Rome see in detail Jaillette (2012).

[102] See C. Th. 6, 35, 7 (a. 367) and constitutions contained in C. Th. 6, 28 = C. 12, 21 – esp. C. Th. 6, 28, 8 (a. 435) = C. 12, 21, 4, which granted the right to extend the advisors' duration of service, while its copy was to be delivered in the wording preserved in C. Th. to e.g. *comes Orientis*, *praefectus Augustalis*, *vicarius Asiae* and *vicarius Ponticae*. The matter of status of the *principes* is debatable – as regards the ranks, this author draws on Giardino (1977): 23–29. See also Franks (2012): 198–204 and 328–332. On *domestices*, see Gizewski (1997b).

[103] C. 12, 21, 8 (a. 484) pr.: "Imperator Zeno A. Iohanni magistro officiorum. Multis devotissimae scholae agentum in rebus aditionibus permoti viros clarissimos eiusdem scholae principes, qui finitis militiae stipendiis exeunt, quotiens ex maioris iudicis sententiis ipsi vel eorum coniuges aut liberi vel servi aut coloni sive per se sive per procuratores conveniantur, non amplius quam unum solidum exsecutoribus sportularum nomine praebere compelli, apparitoribus vicarianis seu praesidalis iudicii non nisi tertia parte solidi tantum praestanda […]".

exsecutores attached to higher courts at one-third solidus.[104] The high status of *principes* working in vicars' offices is also manifested in the fact that between 368 and 534 (at the latest) former *principes* were also eligible to be appointed *defensor civitatis*.[105] As an aside to the remarks on diocese administrators and their privileges, one may add that since 426 the status those *principes* who originated from among the *ducenarii* was equal to that of the vicars, even after the end of their service.[106] In the East, they gained the right to the title of honorary vicar in 440, while after 444 they were recognized as *comites primi ordinis* once they had completed their service.[107]

As observed above, the *principes* of offices of diocese administrators belonged to the first class of *agentes in rebus* – the so-called *ducenarii* (with the exception of *princeps officium vicarius Thraciarum* – Not. Dig. Or. 26). The formula employed in Not. Dig. Or. 22–25 was as follows: "princeps qui de schola agentium in rebus ducenarius adorata clementa principali cum insignibus exit" (in the case of *princeps officii vicarius Asianae* this was supplemented with "transacto biennio", which directly referred to the two-year term of service in the office of that vicar).[108] In turn, in the case of the *princeps officii vicarius Thraciarum* the text states merely: "princeps de schola agentium in rebus" (Not. Dig. Or. 26). Irrespective of those differences, it is suggested that the variations in the description of *principes* in *Notitia dignitatum* were only a matter of style and in fact all officers in question belonged to the *ducenarii*[109] and were entitled to *adoratio purpurae*.[110] The privilege of *adoratio purpurae* could also be bestowed on other *vicariani*.[111]

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[104] Those were lower-ranking yet influential court officers, whose duties included enforcement of the judgement under supervision of the judge, summoning the defendant and collection of fees. Cf. e.g. Berger (1953): 465; Litewski (1998): 94.

[105] C. Th. 1, 29, 3 (a. 368) = C. 1, 55, 2. O *defensor civitatis*, *see* Chapter 2.1.

[106] C. Th. 6, 27, 20 and 21 (a. 426). This was tantamount to membership in the Senate while retaining the previous privileges – C. Th. 6, 27, 22 (a. 428). On seeking the dignity of *principes* on the example of *officium comes Orientis*, see C. Th. 8, 4, 14 (a. 383).

[107] C. 12, 21, 5 (a. 440); C. 12, 21, 6 (a. 444).

[108] See also similar practice with respect to the *numerarii* of province governors – C. Th. 8, 1, 4 (a. 334) = C. 12, 49, 1.

[109] See Sinnigen (1964): 79, note 4 with reference to Stein (1920): 198, note 1; Delmaire (1995): 113.

[110] Delmaire (1995): 113 et seq. The ceremony *adoratio purpurae* consisted in paying honour to the imperial purple, which symbolized the institution of the Empire. The forms of adoration varied depending on the rank. On *adoratio purpurae* see Avery (1940); Kolb (2008): 122–124.

[111] See C. Th. 8, 7, 16 (a. 385) which, as Jones (1964): 593 rightly observed, held valid only in the West (the author draws on the modified wording of the constitution in *Codex Iustinianus* – C. 12, 53, 1). Jones circumscribed its application solely to *cornicularii*, while the text generally indicated *vicariani*. See also Collot (1965): 200 et seq. They also solicited other privileges, as was

Due to the shortage of unambiguous accounts in the sources, it may only be surmised that just as the structure of other offices tended to change, including the best documented and explored organization of the prefecture of the East and the offices of *duce*s (commanders of the provincial troops) in the Eastern Empire, the organization of vicars' offices transformed as well.[112]

Following the sources concerning the offices of vicars, two elements become evident: it is clear that the judicial aspect of their duties is extremely important; one also observes that the *officiis comes Orientis* and *praefectus Augustalis* are, to a certain degree, distinct from the *officiis* of "ordinary" vicars. However, this does not permit one to determine the type of cases heard by the diocesan administrators, which requires examination of sources which pertain to those officials. The sources in question will be analysed in the following chapters.

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the case with *cornicularii vicarii Ponticae* who sought to be included among *agentes in rebus* upon completion of their service – C. Th. 1, 15, 11 (a. 380). The constitution obliged them to perform various mandatory services, citing now unknown constitutions according to which *cornicularii* were to take care of the camels of the praetorian prefecture and the count of the East.

[112] On the changes of the structure of prefecture see Stein (1922): esp. 31–77; Jones (1960) and (1964): 586–590; Morosi (1977); Kelly (2006b) with references to sources and further literature. On the changes of administration of ducates in the Eastern Empire cf. Wiewiorowski (2007a). The most noteworthy features in the sources quoted there is lack of *princeps officium*, elevated position of *notarii* and presence of *assesores* on the payroll. Cf. also analogously in Ed. Iust. 13, 4.

4

Judiciary of the vicars in the light of legal sources

4.1. IMPERIAL CONSTITUTIONS PRESERVED IN *CODEX THEODOSIANUS* OF 438 AND *NOVELLA MARCIANI* 1 OF 450

The state of the surviving sources suggests that the first to be examined are the constitutions preserved in *Codex Theodosianus* and adopted in part in *Codex Iustinianus*.[1] Nevertheless, it should be noted that for reasons as yet unknown, the code of Theodosius II, comprising more than 2,500 fragments of legal acts, does not contain many imperial constitutions which are otherwise conveyed in other sources.[2] In view of its significance for the discussed issues, this subchapter also provides an analysis of a novel by emperor Marcian – Nov. Marc. 1.

Plans of Theodosius II concerning the layout of the subject matter in *Codex Theodosianus* are formulated in general terms: "ad formam et simultudinem Gregoriani atque Hermogeniani codicis cunctas colligi constitutiones decernimus […]"; by and large, he drew upon the structure of a praetorian edict, with an elaborate division into 16 books, further divided into titles, in which constitutions would follow chronological order, governed by the general assumption that the code should comprise that "quod ubique

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[1] On the versions of imperial constitutions see recapitulation in van der Wal (1980) and examples of changes, also in rhetorical formulations utilized in both codes: Cuneo (1996); Robinson (2000). Literature devoted to C. Th. was compiled in Chapter 1.2. On the various aspects of the reign of Theodosius II see recently Kelly (2013a). In this collection, the issue of legislation and codification is discussed only in passing; see Harries (2013); Kelly (2013b).

[2] See Sargenti (1995); Huck (2012). Data on the number of imperial constitutions in C. Th., including their number in individual books was taken from Mommsen (1905a): XIII–XXVII; Cañizar Palacios (2005): 299.

aptum est".[3] The Code was predominantly concerned with public law, which reflected the interests of the emperor and his administration.[4] At the same time, one should bear in mind that the sequence of the books is a reconstruction following, in the main, the Breviary of Alaric of 506 and Justinian's *Codex repetitiae praelectionis* of 534.[5]

In book one of *Codex Theodosianus*, containing 142 fragments of constitutions, the first regulations which are directly concerned with the competences of the vicars may be found in title 15: *De officio vicarii* (C. Th. 1, 15), while only two of those were repeated in the corresponding title 38 in the first book of *Codex Iustinianus* (C. 1, 38).[6] Of the total number of 17 constitutions, 6 enactments are concerned with the judiciary; the remaining address issues relating to the duties of vicars in the domain of tax collection and their auxiliary staff.[7]

The first of the constitutions in C. Th. 1, 15 is an act which Constantine the Great addressed to Silvius Paulus *magister* [*vicarius*?] *Italiae* in 325.[8]

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[3] C. Th. 1, 1, 5 (a. 429). On the contents and arrangement of this compilaton see the remarks in prefaces to their editions and Karlowa (1885): 960 et seq.; Scherillo (1935); Fusco (1974); Archi (1976b): 115–150; Volterra (1981); Siems (1982); Sargenti (1995); Matthews (1993) and (2000): esp. 55–120; Sirks (2007b): esp. 79–108 with further detailed literature. For comparison of the Theodosian and Justinian Codes see Giomaro (2001); esp. on C. Th.: 70–77 as well as tabulated listings: 296–512; Giomaro (2003). Du Plessis (2009) merely indicates the problem.

[4] See Pieler (1984): 252 et seq.; De Robertis (2003).

[5] On reconstruction and previous editions see Mommsen (1905a); Krüger (1913); (1917); (1919) and (1920).

[6] On this crucial volume, given the premises of C. Th. which was created to cater for the needs of imperial administration, see Archi (1976b): 119–125.

[7] On title C. Th. 1, 38, see the overview in Cervenca (1970): 218–220. Constitution adopted in Justinian's code incorporates changes made by the emperor. The acts concerned with financial matters were analysed in this work more broadly only when they pertained to issues relating to the judiciary. The participation of vicars in the collection of charges due to the state is also mentioned directly in C. Th. 1, 5, 13 (a. 400) = C. 11, 74, 2. See Boulvert (1976): esp. 166, 167, 168. The constitutions regulating the matters of auxiliary personnel are discussed more broadly in Chapter 3.2.

[8] C. Th. 1, 15, 1 (a. 325): "Imp. Constantinus A. ad Silvium Paulum mag(istrum) Italiae. Post alia: ne tua gravitas occupationibus aliis districta huiusmodi rescriptorum cumulis oneretur, placuit has solas causas gravitati tuae iniungere, in quibus persona potentior inferiorem aut minorem iudicem premere potest aut tale negotium emergit, quod in praesidali iudicio terminari fas non est, vel quod per eosdem praesides diu tractatum apud te debeat terminari. Dat. V k. Mart. Nicom(ediae) Paulino et Iuliano consul." On Paulus and related titulature see Arnheim (1970): 597; PLRE 1 (Silvius Paulus 10); Kuhoff (1983): 121, 362 (note 42). It is surmised that the constitution contains interpolations, e.g. as regards the use of the term *gravitas tua*. See De Dominicis (1953): 402. The constitutions of Constantine I directed to diocese administrators were briefly discussed and characterized in Dupont (1973), whose remarks will be cited only in debatable issues. See Chapter 2.2.3 on the transformations of diocesan administration in Italy.

It stipulated that in view of the extensive scope of Paulus's duties and in order not to burden him additionally with imperial rescripts[9], he should handle only those cases in which a more influential person exerted pressure on a lower-ranking official (*inferior*) or less important judge, cases in which the court of the province governor (*praeses*[10]) is not competent, or cases which the *praeses* had been taking too long to resolve. Generally speaking, the constitution restricted the objective scope of cases that were to be heard by diocesan vicar as a first instance judge instead of ordinary judge, i.e. province governor.[11] It clearly referred to infringements of the equality of parties to proceedings by the members of high social echelons and to exerting influence of the court of province governors, as well as to delays in the proceedings caused by the latter, which Constantine tried to counteract.[12]

The second constitution in that title dated from 357. Constantius II addressed it to Caesonianus, the vicar of Africa.[13] Thereby, the vicar was re-

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[9] The practice of soliciting imperial rescripts is discussed in general terms in Sirks (2001), while Silvestrova (2007) focuses on rescripts in *Codex Theodosianus*.

[10] See remarks on the types of Later Roman province governors in Chapter 2.1.

[11] Dupont (1971a): 564; Barbati (2012): esp. 72, 166–171, 193 et seq. The author is convinced that "L'*epistula* [i.e. C. Th. 1, 15, 1 – J.W.] poteva forse essere stata destinata pure altri vicari diocesiani, se l'*occasio legis* che l'aveva ispirata era stata occasione per la promulgazione di una ragola generale" (ibidem: 168). See also Santucci (1996): esp. 331. It is correctly associated with C. Th. 1, 16, 1 (a. 315); see below. In this context one cannot fail to mention C. Th. 2, 1, 6 (a. 385) = C. 1, 22, 4, which confirms that the role of *iudices ordinarii* was performed by province governors, whose adjudications could be invalidated through appeal, and which admitted hearing first instance cases involving minors by other judges. Cf. the discussion on the relationships between that act and C. Th. 1, 15, 1: Goria (2000): 168, note 42; Barbati (2012): 169, note 66.

[12] The subject matter of the constitutions corresponds with the already cited, though chronologically later cases described in Symm. *Rel*. 38 and *Rel*. 28 and 33, which are interpreted as evidence of use of violence towards underprivileged social groups. See esp. Hecht (2006): 360–392, 416-440. On the relations between *potentiores* and *inferiores* in the Late Empire, see Novickaja (1961): esp. 92 (who invokes the act as an example of abuse on the part of *potentiores* and contradiction-laden imperial legislation which ultimately safeguarded the position of landowners – an assessment which is nevertheless rooted in Marxist methodology); Grodzynski (1987): esp. 174 (*potentiores–inferiores* relationships discussed on the margin of remarks on the terminology in C. Th.) and generally Krause (1987): 36 et seq. C. Th. 1, 15, 1 as an example of corruption of judges is also quoted by De Salvo (1996): 490, note 23. However, Dillon (2012): 198 et seq. seems to be unjustified in his claim that it proves the vicar himself was corrupt. Kaser, Hackl (1996): § 79, note 32 quote the constitution among other exceptions from the rule which stipulated that cases were to be heard by province governors.

[13] C. Th. 1, 15, 2 (a. 357): "Imp. Constantius A. ad Caesonianum vic(arium) Africae. Relationes iudicum, qui provincias regunt, nec non et rationalium ceterorumque, qui aliquid scientiae nostrae relatum cupiunt, susceptas tua sublimitas nobis celeriter intimare debebit. Dat. IIII k. Oct. Philippo et Salia consulibus". Adjusted dating after Seeck (1919): 44, 95. On

quired to collect and convey to the emperor all *relationes*[14] from *iudicum, qui provincias regunt* (i.e. province governors[15]), *rationales*[16] as well as any other persons. Although the act was concerned with material judicial issues, it did not address the matters of jurisdiction of vicars.[17]

The third constitution in title 15 of the first book of *Codex Theodosianus*, issued in 362 by Julian the Apostate and addressed to praetorian prefect Claudius Mamertinus, also mentioned letters of province governors directed to the emperor.[18] The prefect was ordered to advise governors that attendance of vicars is mandatory in all cases in which province governors act as judges, and that those cases need to be reported to the emperor. The act is interpreted as a testimony to the competition between appellate jurisdiction of vicars and praetorian prefects.[19] The letters in question were *relationes*, used as part

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possible readings with reference to C. Th. 1, 16, 1 (a. 315), see Gradenwitz (1936): 12. See also Cuneo (1997): 161; Pergami (2007): 27 et seq. On Caesonianus, see Pallu de Lessert (1901): 188; PLRE 1 (Caesonianus); Kuhoff (1983): 119, 359 (note 29).

[14] *Relationes* were a form of official reports, employed as part of *consultatio ante sententiam*. See Litewski (1965a): esp. 26 on the analysed constitution; Litewski (1998): 224 (s.v); Demichelli (2003).

[15] See Barbati (2012): esp. 179 et seq. on the analysed enactment.

[16] *Rationalis* was an official who managed the estate of the Fiscus and *res privata*, also at diocesan level; the office reached its peak significance in 285–320. See Delmaire (1989): 171–205 with further literature (185, 187 et seq. on the sources which directly mention *rationales* in the diocese of Africa).

[17] Another act in that title, addressed to Ilicius, governor (*consularis*) of African Numidia – C.Th. 1, 15, 3 (a. 352) pertained to a similar issue: "Idem A. [Constantius] Ilico consul(ari) Numidiae. Cum aliquid rectores provinciarum ad nos referre voluerint, id prius ad vicarium referatur, cui scriptum est, ut suggestiones vel relationes per prosecutores ad comitatum meum transmittendas suscipiat et, quod faciendum viderit, expleat, quippe hoc praeter alia cursus quoque publicus magna relevatione firmabitur. Dat. III non. Dec. Sirmio Constantio A. VI et Constante C. consul." (a. 353/352?). Dating after Seeck (1919): 95 – a. 357; Cuneo (1997): justifiably – a. 352 with further literature); Pergami (2007): 27 et seq. – a. 353. The act decreed that any official writs of province governors (*rectores*) be delivered to the emperor via the vicar, to which the latter was obliged in writing by the emperor. See Barbati (2012): 180. On the possible readings while drawing on C. Th. 1, 16, 1 (a. 315), see Gradenwitz (1936): 12. On Ilicus, see Pallu de Lessert (1901): 325 et seq.; PLRE 1 (Ilicus); Kuhoff (1983): 290, note 110.

[18] C.Th. 1, 15, 4 (a. 362): "Imp. Iulianus A. ad Mamertinum p(raefectum) p(raetori)o. Rectores provinciarum sublimitas tua conveniat, ut cunctis de rebus, de quibus ad nos et ad vestram scientiam crediderint referendum, vicarios esse participandos sciant. Accepta VIII id. Iun. Mamertino et Nevitta consul." On Claudius Mamertinus, at the time PPO *Illyrici et Italiae*, author of a panegyric to Julian the Apostate (*Paneg. Lat.* 3), see PLRE 1 (Claudius Mamertinus 2); Kuhoff (1983): 247, 430 et seq. (note 27); Wirbelauer, Fleer (1995); Olszaniec (2007b): esp. 481–488 with further literature. On the panegyric, see Nixon, Rodgers (1994): 386–389. See also below for more information on Julian's legislation.

[19] De Martino (1967): 270. See also Barbati (2012): 180; Olszaniec (2014): 125.

of *consultatio ante sentantiam*[20], which contained queries of the court concerning doubts of legal nature and a report on the examined case submitted to higher court, whose subsequent answer became binding. This constitution was concerned with the reports which province governors submitted to the emperor, stipulating that they were to be delivered only via vicars.

Another act in the title *De officio vicarii* relating to the judiciary was directed in 377 to PPO Flavius Claudius Antonius by emperors Valens, Gratian and Valentinian II.[21] It introduced new rules on how court proceedings were to be conducted by vicars and military commander – *comes rei militaris* in first instance. Its issue may have been associated with the so-called Leptis Magna affair, which was described in detail by Ammianus; its particulars are therefore discussed in the chapter devoted to literary sources.[22]

The constitution issued two years later, signed by the same emperors and addressed to PPO Hesperius, was concerned with the procedure *consultatio ante sententiam* as conducted by vicars, being an aftermath of the problem which developed in the western part of the Empire.[23] The constitution underlined that any *relationes* that vicars submitted to the emperor may be reviewed by PPO, yet ultimately they should reach the emperor, because most often he is the only person competent to respond, while readily lending an ear. At the same time, such a procedure elevates their rank and does

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[20] See Litewski (1965a): esp. 26 on the analysed constitution; Litewski (1998): 224 (s.v).

[21] C. Th. 1, 15, 7 = C. 1, 38, 1 (a. 377): "Imppp. Valens, Gratianus et Valentinianus AAA. Antonio p(raefecto) p(raetori)o. In civilibus causis vicarios comitibus militum convenit anteferri, in militaribus comites vicariis anteponi: quotiensque societas in iudicando contigerit, priore loco vicarius ponderetur, comes adiunctus accedat; si quidem, cum praefecturae meritum ceteris dignitatibus antestet, vicaria dignitas ipso nomine eius se trahere indicet portionem et sacrae cognitionis habeat potestatem et iudicationis nostrae soleat repraesentare reverentiam. Dat. VIII id. Ian. Gratiano A. IIII et Merobaude consul."

[22] See Chapter 5.2

[23] C. Th. 1, 15, 8 = abridged version in: C. 1, 38, 2 (a. 379): "Idem AAA. [Valens, Gratianus et Valentinianus] ad Hesperium p(raefectum) p(raetori)o. Relationes vicariorum, si quando usus attulerit, ad nostram mansuetudinem deferantur; nam etsi plura sunt, quibus etiam illustris censura tua inconsultis quoque nobis potest dare responsum, scimus tamen aliquanta esse, quae nisi auctoritas principalis oraculi solvere non potest. Et relationes iudicum libenter audimus, ne administratorum decrescere videatur auctoritas, si eorum consulta veluti profanorum preces a nostris adytis repellamus. Dat. XII k. Feb. Gratiano A. IIII et Merobaude consul." Corrected dating after Seeck (1919): 72. Decimius Hilarianus Hesperius was PPO *Italiae et Galliarum* in 378–379. On Hesperius in purely biographical studies see Stroheker (1948): 181, no. 188; PLRE 1 (Decimius Hilarianus Hesperius 2); Haehling (1978b): 298 et seq., 426; Kuhoff (1983): esp. 162, 390 (note 34); Sivan (1993): passim; Coşkun (2002): esp. 136–147; Olszaniec (2007b): esp. 345 et seq. with further literature concerning the dating of the act and the office held by Hesperius.

no disservice to the ambitions of *administratores* themselves.[24] As previously emphasized, *relationes* were a form of legal queries relating to cases in progress addressed to the emperor. Nevertheless, neither the category of cases in which vicars participated nor the nature of their participation can be established in the light of the above constitution.

The competence dispute between vicars and proconsuls of Africa as well as tax collection were the subject of constitution issued by Gratian, Valentinian II and Theodosius in 379 to Syagrius.[25] The function performed by Flavius Syagrius, an imperial official originating from Gallic provincial elites, at the time when the constitution was issued is debatable, but vicariate of Africa is rather out of the question.[26] This is due to that fact that in the relevant aspect the constitution prohibited vicars of Africa from entering Proconsular Africa – with the exception of travelling to province assembly (*concilium*) in Theveste; thus its issue suited the interest of the administrator of Africa Proconsularis. Still, the act did not specify which issues may have been disputed by the proconsul and the vicar, though it may be presumed that it concerned tax collection exclusively.[27]

Another constitution where vicars and their participation in the judiciary is discussed may be found in the first book of *Codex Theodosianus*, at the be-

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[24] The version preserved in C. 1, 38, 2 underlined only the last of the listed aspects. On the significance of emperor's participation in proceedings at the expense of praetorian prefect, see Litewski (1965a): 27 et seq. The author legitimately suggests that the actual purpose was to constrain excessive increase of competences of the praetorian prefect. See also Olszaniec (2014): 125.

[25] C. Th. 1, 15, 10 (a. 379): "Imppp. Gratianus, Valentinianus et Theodosius AAA. ad Syagrium. Vicario Africae aditus provinciae proconsularis inhibendus est tantumque ei consilii gratia in thevestinam civitatem accessus pateat. Canoni autem cogendo annonae praefectus immineat. Vestes largitionales sinceritatis tuae cogat officium, cui negotio etiam rationalis insistat, ita tamen, ut principe loco apparitores tuos maneat et coactionis instantia et deceptionis invidia. Vectigalia sane apud Karthaginem constituta vicariae praefecturae apparitio procuret. pp. Karthagine. Dat. VII k. Sept. Auxonio et Olybrio consul." Noethlichs (1981): 106, classifies it as one of the acts devoted to competence disputes.

[26] Such an opinion was expressed by Barrau (1986), who relied on the analysis of one of the manuscripts. The predominant view is that in 379 Syagrius was probably the proconsul of Africa. On Syagrius, see Stroheker (1948): 220, no. 368; from the more recent studies see Demandt (1971); PLRE 1 (Flavius Afranius Syagrius 2 i Fl. Syagrius 3); Matthews (1975): 75 et seq.; Kuhoff (1983): esp. 390–392 (note 36); Olszaniec (2007b): esp. 429–436 with further literature.

[27] On the significance of that constitution for the competences of vicars in fiscal matters see also Cerati (1975): 68–70, 89 et seq.; Olszaniec (2014): 163. On Gratian's policy in that respect see general discussion in Fortina (1953): 145–149, esp. 147 on the quoted constitution. The contention over competences of proconsul and vicar in tax collection is also raised in C. Th. 1, 15, 14 (a. 395). See Noethlichs (1981): 123. On their subject cf. also Morgenstern (1993b): esp. 110 et seq.; Lepelley (2002): 68 et seq. On provincial assemblies and their significance, see Chapter 5.2.

ginning of title 16: *De officio rectoris provinciae* (On the office of rector, i.e. the governor of province).[28] In the said constitution, dated 315 and addressed to Rufinus Octavianus, the *corrector* (governor) of province Lucania and Bruttium, Constantine the Great stated emphatically that province governor should be the first instance judge, though a person may have been promised to have their case heard in extraordinary court held by praetorian prefects or vicars.[29] Its wording suggests that participation of *suus iudex* was only possible in appellate procedure, which may be interpreted as admitting the possibility of having appeals examined by higher ranking imperial officials.[30] However, the constitution does not mention appeals directly, in which case diocese administrator was the judge, yet it may be inferred that vicars were capable of acting as *iudices ordinarii* in cases of special nature.[31] At any rate, the constitution confirms that the parties sought to have their cases heard in first instance by the court of higher officials, a fact referred to previously on the margin of remarks concerning a different constitution of Constantine's, namely C. Th. 1, 15, 1 (a. 325).[32]

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[28] On its contents, see Cervenca (1970): 220.

[29] C. Th. 1, 16, 1 (a. 315): "Imp. Constantinus A. Rufino Octaviano correctori Lucaniae et Brittorum. Quicumque extraordinarium iudicium praefectorum vel vicariorum elicuerit vel qui iam consecutus est, eius adversarios et personas causae necessarias minime ad officium praefectorum vel vicarii pergere aut transire patiaris, sed de omni causa in tuo iudicio praesentibus partibus atque personis ita his temporibus ipse cognosce, quae ex eo die computabis, ex quo causa in tuo iudicio coeperit inchoari, ut tunc demum, si ei, qui extraordinarium iudicium postulaverit, tua sententia displicebit, iuxta ordinem legum interposita eam provocatio suspendat atque ad suum iudicem transitum faciat. Dat. III non. Aug. Trev(iris) Constantino IIII et Licinio IIII consul." On the special privilege of being judged by vicar on the example of that constitution, see Desanti (1986): 461 et seq.; – while deliberating on proceedings in fiscal cases under Constantine, Spagnulo Vigoritta (1996): 167, emphasized propagandistic tenor of the constitution. See also Chapter 2.2. As previously observed, *correctores* of Late Antiquity were civilian administrators of provinces whose status was higher that that of *praesides provinciarum*. On the controversy surrounding Rufinus Octavianus, see esp. Kuhoff (1983): 70, 115, 298 (note 144), 318 et seq. (note 71), 354 (note 9); Wiewiorowski (2006a) with further literature.

[30] Cf. Goria (2000): 168, note 42; Barbati (2012): esp. 166 et seq., 171, who notes the correspondence of its subject matter with C. Th. 1, 15, 1 (a. 325). On that act see also Litewski (1966): 311, note 6 – as an example of admissibility of appeal; Litewski (1967b): 391, note 7 – as an example of suspensive effect of appeal; Litewski (1968): 168, note 84 – on issues relating to terminology employed with respect to appeals (formulation *iuxta ordinem legum interposita* [*eam*] *provocatio*); Dupont (1973): 316; Pergami (2000): 368, note 11 (on the suspensive effect of appeal), 465, note 145 (aptly observes that it does not mention appellate judges directly).

[31] Ensslin (1958): 2034; Kaser, Hackl (1996): § 79.II.2, with an attempt to enumerate cases in which diocese administrators were capable to act as first instance judges.

[32] Hence Noethlichs (1981): 164 rightly quotes C Th. 1, 16, 1 as an example of "Missachtung des Instanzenweges".

The constitution formally dated to 329, though in fact origination from the 360s, addressed to PPO *Orientis* Secundus confirmed in its *praefatio*, that it is the duty of province governor and vicar to oppose reprehensible practices.[33] The emperor threatened dire penalties, including capital punishment, for officers of the prefecture and vicariates for partaking in tax collection, which was the sole domain of staff subordinated to province governors.[34] Hence the constitution does not have any material significance for the analysed issues, yet it points to vicars as official responsible for maintaining order in the diocese, a fact which is also directly corroborated in other imperial constitutions.[35]

In another constitution contained in the title *De officio rectoris provinciae*, addressed in 365 to the vicar of Spain, Valerianus, emperors Valentinian I and Valens forbade to direct *libelli* (submissions) to *iudices* (i.e. province governors)[36] outside the location where proceedings were taking place (just as

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[33] C. Th. 1, 16, 5: "Idem A. [Constantinus] Secundo p(raefecto) p(raetori)o, Orientis. Ordinarii iudicis provinciarum rectoris seu vicaria potestas ut speculatrix debet prave gesta corrigere. Sed officiales vestrae celsitudinis et vicariae potestatis placet ab exactionibus amoveri et per provincialia officia atque rectores cunctos exigi titulos. Nam si exactio minime impleatur, ante tribunal nostrum exhibitus capitis fortunarumque omnium periculum sustinebit. Dat. XIIII k. Mai. Constantinopoli Constantino A. VIII et Constantio IIII conss." Seeck (1919): 37 and 65, suggests 362, 364 or 365 as the date of issue. On the nomenclature employed see Gradenwitz (1936): 12. The last date advanced by Seeck is supported by Pack (1986): 83 (note 83), with further literature. Analogously Pietrini (1996): 135–137, note 196. Schmidt-Hofner (2008a): 503–504, adds 367 as a possible date.

[34] Among recent works discussing the interpretation of that act see Schmidt-Hofner (2008b): 129 (note 41) – only in the context of staff responsible for the collection of taxes and duties; Barbati (2012): 48, 195 (note 96), 196 et seq., 199, 657 (note 79). For recent biographical studies discussing pagan Secundus (Saturninius Secundus Salutius), see PLRE 1 (Saturninus Secundus Salutius 3); von Haehling (1978b): 64–67, 68; Kuhoff (1983): esp. 305, note 8; Petit (1994): 225–228; Olszaniec (2007b): esp. 297–312 with further literature. On the term *caput* which in this case means capital punishment see Giglio (2010). Valentinian I and Valens often featured in the enactments as champions of justice. See Lenski (2002): 283 et seq. (C. Th. 1, 16, 5 is also referred to on: 298, note 220).

[35] The fragments mentioning *vicaria potestas* is sometimes considered an interpolation. See De Domicis (1953): 402, with reference to Gradenwitz (1936): 12. In turn, it is certain that C. Th. 1, 15, 15 (a. 400) and C. Th. 1, 15, 17 (a. 400) emphasize the vicars have to *imminere* ('warn', 'threaten') province governors; the latter constitution in the context of reserving *totius collationis ac transmissionis cura* exclusively to the vicar of Africa, as a measure against governors who usurped that right. Cf. also Barbati (2012): 365 on the controlling function exercised by vicars over province governors. C. Th. 1, 29, 3 = C. 1, 55, 2 (a. 368) endorsed vicars as trustworthy and candidates to the function of *defensor civitatis*, asserting their trustworthiness and resilience to external pressures. Dating corrected after Schmidt-Hofner (2008a): 510 et seq. On that constitution see also 1.1.

[36] Hence Barbati (2012): 163–165 is justified in discussing it in the context of the position of province governors.

other cases – *alienae causae* – and cases concerned with status), if staff of their *officium* and the public had not been in attendance.[37] It is likely that the fragment was initially a part of the act which also included the constitution discussed below, addressed to Valerianus, vicar of Spain in 365–366.[38] The act must have given rise to doubts in practical application, and therefore it was supplemented in the fifth century with an *interpretatio* which slightly modified its tenor; the latter was also included in the Breviary of Alaric.[39] The constitution was concerned with control that vicars were to exercise over the correctness and openness of court proceedings conducted by province governors, as well as with the supervisory capacities of their *officium*, but did not discuss the participation of vicar himself in the process.[40]

The addressee of the constitution which begins title 22: *De officio iudicum omnium* (On the offices of all judges) from book one of *Codex Theodosianus* was Domitius Celsus, vicar of Africa; in the constitution Constantine the Great exempted the property of *mater familias* from execution of due tax.[41] In

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[37] C. Th. 1, 16, 10 (a. 365): "Idem AA. [Valentinianus et Valens] ad Valerianum vic(arium) Hispaniarum. Libellos iudicibus, postquam se receperint, vetamus offerri, ne super alienis causis vel statu pronuntient, quando ab officii conspectu atque ab oculis publicis recesserint. Praelata VI. id. Sept. Veronae, Valentinianus et Valente AA. conss."

[38] See below C. Th. 9, 3, 4 (a. 365). In the constitution, Valerianus is referred to as *vir clarissimus*. On the links between the act, their dating and the debatable location of its receipt (Verona?), see Seeck (1919): 106, 226; Pergami (1993): 268 et seq.; Schmidt-Hofner (2008a): 504. Valerianus may be identified with a *praefectus urbi* of that name from 381 (Symm. *Ep*.: 8, 69; 9, 13). See Chastagnol (1960): 418; Chastagnol (1965): 276, no. 8; Ensslin (1965b); PLRE 1 (Valerianus 5); Roda (1981): 119 et seq.; Kuhoff (1983): esp. 355, note 16; Vilella (1992): 94 with further literature.

[39] "Interpretatio. Iudices, postquam se de consessu publico in domum suam receperint, libellos a litigatoribus non accipiant, nec sine officio suo de causis alienis vel de statu aliquid cognoscant"; Brev. Alaric. 1, 6, 3.

[40] Cf. Pergami (1997): esp. 504, discussed it in the light of other regulations concerning criminal procedure introduced during the reign of Valentinian I and Valens, highlighting the fact that it employed terminology and rules with adversarial rather than inquisitorial nature of criminal procedure *extra ordinem* (with further literature on the debatable nature of late antique criminal proceedings – which is predominantly believed to have been inquisitorial). See also Santalucia (2002) who claims to the contrary. Adinolfi (2009, with further literature) aptly demonstrated that the traditional dichotomy is not viable in this case, and that holding on to the view that the Republican *quaestiones perpetuae* were exclusively governed by the adversarial principle while criminal process *extra ordinem* was inquisitorial is groundless. The constitution is also invoked as an exampled of corruption among the judges by De Salvo (1996): 490, note 23.

[41] C. Th. 1, 22, 1 (a. 316): "Imp. Constantinus A. ad Domitium Celsum vicarium. Nemo iudex officialem ad eam domum, in qua materfamilias agit, cum aliquo praecepto existimet esse mittendum, ut eandem in publicum protrahat, quum certum sit, debita eius, quae intra

the fifth century, this law was also provided with an *interpretatio* which modified its meaning and was then adopted in the Breviary of Alaric; it is repeated in identical wording in the analogous title 48: *De officio diversorum iudicum*, book one of the Justinian Code.[42] The act of Constantine the Great served to protect the status of *mater familias* from unlawful licence of officers from the governor's *officium*, and manifested the control that vicars exercised over enforcement proceedings conducted by those officials; however, it did not directly concern the judiciary of vicars.[43]

In book two of the Theodosian Code (containing 100 fragments of legal acts), several constitutions mention vicars, but only four are without any doubt addressed to vicars as diocese administrators.[44] Three of those were

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domum, considerato sexu, semet contineat, domus eius vel cuiuscumque rei habita distractione, publicis necessitatibus posse servari. Quod si quis in publicum matremfamilias posthac crediderit protrahendam, inter Maximos reos, citra ullam indulgentiam, capitali poena vel exquisitis potius exitiis suppliciisque plectatur. Dat. III. id. Ian. Treviris, Sabino et Rufino conss." On Domitius Celsus, see Pallu de Lessert (1901): 170–172; PLRE 1 (Domitius Celsus 8); Kuhoff (1983): 118, 357 (note 22). The constitutions may contain minor interpolations. See De Dominicis (1953): 403.

[42] "Interpretatio. Nullus iudicum matronam in domo sua residentem per quemcumque apparitorem ad publicum existimet protrahendam, sed circa eam, pro sexus reverentia, conventio honesta servetur: quum, si quid eam debere constiterit, constrictis eius auctoribus possit exsolvi. Nam si quis contra fecerit, summo supplicio se afficiendum esse cognoscat." Brev. Alaric. 1, 9, 1. Cf. Cascione (2014). C. 1, 48, 1 repeates the act in its entirety. The contents of title C. 1, 48 are summarized by Brunnemannus (1699): 90 et seq.

[43] According to Beaucamp (1990): 136, 202, this is an example of moral inspiration that guided Constantine in the matters of family. Evans Grubbs (1995): 329 underlines that in the act the emperor subscribed to the idea shared by the traditional communities of the Mediterranean, whereby one protected women who enjoyed respect as they represented appropriate social attitude which was true to their nature. Meanwhile, Dillon (2012): 189–191 draws attention to Constantine's I determination in defending the position of matron, suggesting moreover that in this case, *capitalis poena* provided for the perpetrators of such unlawful acts meant death by execution with extreme prejudice. On *mater familias* in this context see Wołodkiewicz (1964); Fiori (1993–1994) with further literature. Generally on the act, see also Dupont (1973): 326. Kaser, Hackl (1996): § 87, note 37, quote it as an example of privilege for women.

[44] C. Th. 2, 1, 5 (a. 365): "ad Felicem vicarium Macedoniae" was in fact directed to province governor – *consularis Macedoniae* (concerning a case in which the Fiscus was the defendant). See to the contrary Gothofredus (1736), vol. 1: 93 et seq., who was convinced that the addressee was a vicar; Seeck (1919): 32; PLRE 1 (Felix 4); Kuhoff (1983): 81, 328 (note 114), with further literature. The office held by Symmachus, addressee of C. Th. 2, 4, 1 (a. 318?) = C. 5, 40, 2 is also dubious (the constitution was concerned with the deadlines for delivery of procedural writs in cases involving juveniles) and C. Th. 2, 15, 1 (a. 319?) = C. 2, 20, 8 (concerning fraud proceedings). Debatable dating after Seeck (1919): 57, 166, 168. See Kuhoff (1983): 369, note 74, with references to divergent views expressed in literature (influenced by Seeck, the opinions had long vacillated

concerned with judicial issues; however, given that one was probably addressed to the vicar residing in Rome, it is not examined here in any greater detail.[45]

Title 6: *De temporum cursu et reparationibus denuntiationum* (On expiry of deadlines and restoring the right to [formal] notification), book two of *Codex Theodosianus* also contains a fragment of enactment dating from 340, addressed by Constantius II and Constans to Petronius, vicar of Africa.[46] Again, the fragment must have been doubtful in practical application, therefore it was supplemented with *interpretatio*, adopted later in the Breviary of Alaric and, slightly modified, in title 11: *De dilationibus* (On adjournment of procedural deadlines), book three of the Justinian Code.[47] The subsequent

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between acknowledging whether he had been *vicarius Macedoniae* or *Moesiae*, and identification with a consul of 330 – Aurelius Valerius Tullianus Symmachus). However, it is worth noting that already Gothofredus (1736), vol. 1: 111 (note c), was convinced that Symmachus was actually a proconsul of Achaia, in which he relied on the senatorial title of *vir clarissimus* in the inscription to C. Th. 2, 15, 1 and the place where C. Th. 2, 4, 1 was received (Corinth). On the said constitutions, see also ibidem: 111 et seq., 179–181. This view, the dating of both acts to 318 as well as the notion that Symmachus was a proconsul has recently become more widespread – see Polara (1974); Barnes (1982): 104, 160; Cameron (1999): 489 et seq.; Davenport (2013): 229 et seq. Hence this author decided to exclude C. Th. 2, 4, 1 (a. 318?) and C. Th. 2, 15, 1 (a. 319?) from his deliberations. Cf. also Wiewiorowski (2014a): 149–154.

[45] C. Th. 2, 8, 1 (a. 321), addressed to Helpidius, prohibited the proceedings to be conducted on *dies solis* (for more on this issue see remarks on C. Th. 9, 35, 4). His vicarship of Rome had already been suggested by Gothofredus (1736), vol. 1: 136 (note b), (1738), vol. 3: 195 (note b), (1743), vol. 6, pars. 1: 30 (note b). See also e.g. PLRE 1 (Helpidius 1); Kuhoff (1983): 124 et seq., 356 (note 51, 52 i 55) with further literature. Vicars are also mentioned in C. Th. 2, 17, 1, 2 (a. 324) = C. 2, 44, 2, 2 as officials before whom *perfectissimi* appeared to confirm earlier coming of age which granted legal capacity. See more broadly Chapter 2.2. One may also mention C. Th. 2, 1, 7 (a. 392) = C. 10, 40, 9; C. 12, 1, 13, addressed to "Martiniano comiti Orientis" which concerned making the statuses of wife and husband equal. In that respect cf. Chastagnol (1983) with further literature. In turn, C. Th. 2, 1, 9 (a. 397), directed to "Archelao praefecto Augustali" which, under pain of severe penalties forbade referring civil cases to military courts. Regarding such abuses see Soraci (1996) and briefly Wiewiorowski (2007b): 174, 228.

[46] C. Th. 2, 6, 5 (a. 340): "Impp. Constantius et Constans AA. ad Petronium vic(arium) Africae. Inter privatos et fiscum, si privatus actionem intendat, quattuor mensium tempora custodienda sunt: quum vero Fiscus privato inferet aliquam quaestionem, sex mensium curricula serventur, utrique parti petendae dilationis per defensores suos copia non neganda, si hoc commoditatis ratio postulaverit. Dat. V id. April. Aquil(eiae) Acindyno et Proculo conss." Regarding the vicar see Pallu de Lessert (1901): 186; PLRE 1 (Petronius 1); Kuhoff (1983): esp. 359, note 29, with further literature.

[47] Brev. Alaric. 2, 6, 5; C. 3, 11, 6. On minor changes in the enactments of 340–350, including additional information on the analysed constitution, see Brunnemannus (1699): 244; Cunea (1996): 215 et seq., 226 et seq. and Kaser, Hackl (1996): § 86 (note 18), 48 (on changes from the Justinian period).

part of the act was included in title 15: *De advocatis fisci*, book ten of the Theodosian Code, which is entirely devoted to that category of advocates.[48]

The fragment found in book two specified the deadlines for the submissions of responses of both parties in disputes between the Fiscus and private persons (4 months for private persons filing a suit, 6 for the tax authority filing a suit), while the right to submit *dilationes* was not to be restricted to any party if there was a legitimate reason not to do so.[49] The fragment in title 15, book ten of *Codex Theodosianus,* discussed the accountability of *advocati fisci* to the imperial treasury, in the event of actions to the detriment of the Exchequer and to the benefit of its opposing party. It may also be noted that in the last constitution from that title, a fragment of regulation issued in 367 by Valentinian I and Valens and addressed to the PPO *Italiae, Illyrici et Africae*, Vulcacius Rufinus, stated that all vicars and province governors were obliged to provide services of appropriate advocates when *res privata* (separate part of the imperial estate) was involved in a court case, which constituted a procedural privilege.[50]

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[48] C. Th. 10, 15, 3 (a. 340): "Imp. Constantius A. ad Petronium vic(arium) Afric(ae). Patroni fiscalium commodorum fidem cum veritate tueantur, ne, si forte intra praescriptas causae cognoscendae metas Fiscus aliqua circumscriptione fuerit irretitus, collusionis fraude vulgata ex eorum facultatibus recuperet, quidquid calliditate praevaricationis perdiderit. Subscripta V id. April. Aquil(eiae) Acindyno et Proculo conss." The text is briefly discussed in Gothofredus (1738), vol. 3: 474. *Advocati fisci*, who appeared under Hadrian, represented interests of the imperial treasury; they enjoyed higher status and remuneration than other advocates, from among whom they were appointed every two years. See Wieling (1996): 452–457; Litewski (1998): 18 (s.v.); Agudo Ruiz (2006): with further literature (including 136 on C. Th. 10, 15, 3).

[49] On adjournment in the analysed constitution as a case of *dilatio instrumentorum gratia* (in order to hear evidence), see Fernández Barreiro (1978): 122 et seq. The author argues that the section devoted to *dilationes* must have been the most important for Justinian's codifiers, given that the act was included in C. 3. 11 (*De dilationibus*). *Interpretatio* presented the matter slightly differently than fragments adopted in C. Th. and C.: it limited the scope of application to disputes between the *possessor* and the Exchequer, as well as provided for the adjournment of *dilatio* for the *possesor* to 6 months given a justified reason: "Quando inter fiscum et privatum possessorem de repetitione aliqua fuerit orta contentio, si privatus fiscum repetat, quattuor menses ad respondendum actor fiscalis habebit inducias: si vero Fiscus aliquid a possessore crediderit repetendum, sex mensium ad respondendum dilatio non negetur, dummodo ad praestandas inducias iusta ratio cognoscatur". See also Kaser, Hackl (1996): § 91.II, esp., note 14; Spagnulo Vigoritta (1996): 166.

[50] C. Th. 10, 15, 4 (a. 367): "Impp. Valentinianus et Valens AA. ad Rufinum p(raefectum) p(raetori)o. Vicarios praefecturae ordinariosque rectores praecelsa sinceritas tua istius sanctionis auctoritate commoneat, ut privatae rei nostrae, quotienscumque aliquas vel denuntiaverit vel exceperit actiones, idoneos tribuant advocatos. Dat. XIIII kal. Iun. Remis Lupicino et Iovino conss." Fernández Barreiro (1969): 304 indicated correctly that the act constituted a privilege of a kind. On participation of advocates in court proceedings see Wieling (1996): 452–457; Agudo Ruiz (2006): 46 et seq. On *res privata* and its management see esp. Delmaire (1989). On Rufinus, an important representative of senatorial pagan elites, see PLRE 1 (Vul-

Parts of the analysed constitution of 340 were either concerned with matters of procedure (first fragment of the act, although it cannot be ascertained to which stage of the proceedings it applies) or vicar's supervision over fiscal advocates (the second of the discussed fragments of the act), or the duty to ensure attendance of fiscal advocates in court cases involving *res privata* (fragment in the constitution of 367). That the duties of vicars are mentioned in the context of *advocati fisci* is interesting due to the fact that the sources do not offer – with the exception of *comes Orientis* and *praefectus Augustalis* – any other direct information on fiscal advocates attached to the office of diocesan administrators.[51]

According to the enactment in title 7: *De dilationibus* (On the adjournment of deadlines), book two of the Theodosian Code, in 314 Constantine the Great issued an order to vicar Ursus, whereby he was to deny adjournment of deadline to person which had obtained the right to extraordinary judge (*extraordinarius iudex*) by way of imperial rescript, and to grant that right to the opposing party, so that it may, if required, demonstrate that the rescript had been obtained under a false pretence.[52] In the fifth century the act was provided with *interpretatio* and adopted in the corresponding title in the Justinian Code.[53]

The constitution was concerned with special privileges granted with respect to *dilationes*, which could be used once in civil cases, as well as twice by the prosecutor and three times by the defendant in criminal process. The reference to the imperial rescript which appointed an extraordinary judge

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cacius Rufinus 25); Haehling (1978b): esp. 179; Kuhoff (1983): esp. 312, note 40, with exhaustive bibliography.

[51] Gothofredus (1738), vol. 3: 475 was right in this respect, observing that the constitution was proof for the existence of separate colleges of *advocati fisci* attached to each office listed in C. Th. 10, 15, 4.

[52] C. Th. 2, 7, 1 (a. 314): "Imp. Constantinus A. ad Ursum vicarium. Si quando quis rescriptum ad extraordinarium iudicem reportaverit, dilatio ei penitus neganda est. Illi autem, qui in iudicium vocatur, danda est ad probanda precum mendacia vel proferenda aliqua instrumenta vel testes, quoniam instructus esse non potuit, qui praeter spem ad alienum iudicem trahebatur. Dat. prid. non. Mart. Volusiano et Anniano conss." Ursus was a vicar in the Western part of the Empire, having held the office *rationalis Africae* in 313. See PLRE 1 (Ursus 2). He was also the addressee of Constantine's C. 3, 26, 5 (a. 315), which stipulated exclusive jurisdiction of *rationalis* in tax matters. On the importance of documents which the act demonstrates by providing the chain of evidence – *instrumenta vel testes* – see Kaser, Hackl (1996): § 92.II.

[53] "Interpretatio. Quando ab aliquo principe praeceptio fuerit surrepta, ut ad alium iudicem quam cui commissus est, adversarium suum pertrahat audiendum, sicut ille, qui petitor est, indutias si petierit, accipere non debuit, ita illi, qui ad iudicium adducitur, dilatio debita non negetur, ut facilius aut per scripturam aut per testes probare vale at illum a quo pulsatus est falsa supplicatione meruisse, quod petiit". See also C. 3, 11, 2 (change of *iudicem* to *iudicium* in the final verse; cf. Brunnemannus [1699]: 243) and Brev. Alaric. 2, 7, 1.

clearly indicated that the analysed act instructed Ursus how to conduct first instance proceedings in which he himself was probably presiding as *extraordinarius iudex*.[54]

Book two of the Theodosian Code also contains a fragment of an act which is certainly addressed to diocesan vicar – Locrius Verinus, although the fact that he held the office is not corroborated directly in the constitution included in title 19: *De inofficioso testamento* (On testaments which violate the right of statutory inheritors).[55] However, other imperial constitutions confirm that Verinus was the vicar of Africa in 318–321.[56] The analysed enactment was most likely applied in practice; it was provided with *interpretatio* and adopted in the Breviary of Alaric, as well as in a similar title in the Justinian Code (book three, title 28: *De inofficiosis donationibus*), though not in identical wording and form.[57]

In the constitution, Constantine I decreed that stepbrothers are not entitled to *actio inofficiosa* (i.e. *querella inofficiosi testamenti*), while the possibility of employing that measure without the assistance of praetor was to be lim-

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[54] Dupont (1971a): 564 et seq. Cf. also Dupont (1974): 200, 205 (showing that Constantine sometimes failed to specify sanctions for their breach). On the rescripts of Constantine the Great, see Simon (1977), who omits C. Th. 2, 7, 1. The solution in question is considered a singular form of privilege by Kaser, Hackl (1996): § 86, note 40, with further literature. See also ibidem regarding *dilatio* in proceedings in the post-classical period: § 91.II; Berger (1951): 437 (s.v.).

[55] C. Th. 2, 19, 1 (a. 319): "Imp. Constantinus A. ad Lucrium Verinum. Fratres uterini ab inofficiosis actionibus arceantur, et germanis tantummodo fratribus adversus eos dumtaxat institutos heredes, quibus inustas constiterit esse notas detestabilis turpitudinis, agnatione durante, sine auxilio praetoris, petitionis aditus reseretur. Dat. id. April. Sirmio, Constantino A. V et Licinio C. conss."

[56] See C. Th. 9, 15, 1 (a. 318/319) = C. 9, 17, 1; C. Th. 9, 34, 1 (a. 319) analysed below. Regarding that vicar, see Pallu de Lessert (1901): 175–178; Grasmück (1964): 86, 88–91, 97, 117; PLRE 1 (Locrius Verinus 2); Kuhoff (1983): esp. 118, 341 (note 180); Maier (1987): esp. 25. Cf. also Dupont (1973): 326 et seq.

[57] "Interpretatio. Fratribus uterinis, id est diversis patribus et una matre natis, non liceat de inofficioso contra testamentum fratris agere. Sed germanis fratribus praetermissis, id est uno patre natis, si turpibus personis, id est infamibus fuerit hereditas derelicta, hoc est aut pro libidine meretricibus, aut pro inhonesto affectu naturalibus aut certe thymelicis, vel de libertis suis, agendi contra testamentum licentia reservatur: si tamen is ipse germanus non pro crimine suo exilio fuerit deputatus, aut per captivitatem fuerit servus effectus, aut per emancipationem successionis vel actionis iura perdiderit" – see the brief mention on *interpretatio* in Waldstein (1994) 12; Brev. Alaric. 2, 19, 1; C. 3, 28, 27 (the text extended its application to siblings of both sexes, agnates, cognates as well as provided for testaments of fathers and sisters; see Brunnemannus [1699]: 272). The version adopted in Justinian's Code reflected the changes in *querella inofficiosi testamenti* introduced by the ruler in 528–531. See C. 3, 28, 28–30 (aa. 528–531); I. 2, 18;. Cf. Kaser (1975): 517-522. On the reference to the constitution in *Institutiones Iustiniani*, see Luchetti (1996): esp. 260–267.

ited to "germanis tantummodo fratribus", who lived in agnatic family.[58] According to the act, the latter may have taken advantage of that measure but only towards those inheritors who could be proved to have been branded with the mark of infamy.[59] The act was commented in literature chiefly in the light of transformation of the rules of inheritance *contra tabulas* in the post-classical period as well as limitation or corroboration of the rules of applying *querella inofficiosi testamenti* by Constantine the Great.[60] The surviving fragment of the constitution does not permit one to determine that it had anything to do with a particular case before the court held by vicar Locrius Verinus. Most probably, the recourse to *querella inofficiosi testamenti* was examined in first instance and therefore the act would not have been related to appellate proceedings. Consequently, it is possible that the vicar heard it as *iudex extraordinarius* in first instance.

Book three of *Codex Theodosianus*, containing 100 fragments of constitutions, conveys only three enactments which may involve diocesan vicars.[61] The first of those was addressed in 330 by Constantine the Great to "Valeriano agenti vicariam praefecturam" and included in title 5: *De sponsalibus et*

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[58] Calling upon the office of praetor would attest that the magistrate formally still possessed juridical authority – it is cited in this context by Kaser, Hackl (1996): § 77, note 3. It is also treated as tautology by other authors, since agnates could take advantage of *querella inofficiosi testamenti* withour praetor's assistance. See Sanguinetti (1996): 38. The formulation "germanis tantummodo fratribus" – is explicated in the *interpretatio* as "brothers born of the same father": "Sed germanis fratribus praetermissis, id est uno patre natis […]". In literature, the expression *germani* is assumed to denote brothers: "che abbiano in comune il padre […] contraposti agli *uterini*", while the reference to agnatic family is considered an anachronism given the source-attested usage of *querella inofficiosi testamenti* by cognate relatives. See Sanguinetti (1996): 37–39 with further literature. See also Sitek (2003): 78, who examines the *interpretatio* when analysing infamy. On other regulations of Constantine's in that respect cf. also Dupont (1964): 73–77.

[59] A sample list of how *turpis personae* used in the act should be construed is provided in the *interpretatio*. See also Sanguinetti (1996): 44 et seq.

[60] Among recent works only cf. Kaser (1975): 517; Sanguinetti (1996): esp. 35–46, 97–103; Castro Saez (1998): 193 et seq. with further literature.

[61] One may also quote enactments addressed to other diocese administrators which indirectly indicate their first instance jurisdiction in civil cases. C. Th. 3, 1, 3 (a. 362): "ad Iulianum comitem Orientis", concerning mandatory conditions on the validity of sale effected by underage spouses – on terminology used in the act see Grodzynski (1987): 151. C. Th. 3, 1, 7 (a. 396): "Remigio pf. Augustali", which questions the admissibility of challenging sale due to excessively low price in the case of contracs between persons with full legal capacity – see e.g. Dupont (1972b): 295; Sirks (1985): 295 et seq. C. Th. 3, 9, 1 (a. 398): "Asterio comiti Orientis", which sanctioned the admissibility of usufruct (*usufructus*) established by the fiance for the benefit of his wife-to-be and usufruct established by virtue of testament by the husband for the wife, which expired once she re-married – see Voci (1978): 75; Voci (1982): 119; C. Th. 3, 15, 1 (a. 392): "Martiniano comiti Orientis", which affirmed that pledges establishing dowry were non-actionable.

ante nuptias donationibus (On betrothals and pre-nuptial gifts).[62] Detailed scope of Valerianus's authority is unknown; various authors argue that most probably his actual function was *vicarius* PVR.[63] As observed above, after 314 the formulation *agens vicariam praefecturam* was often identified in the sources with diocesan vicars and therefore the thesis that Valerianus held that office after all cannot be unequivocally dismissed.

The first sentence of the preserved fragment of the constitution invokes earlier imperial legislation, which set forth that indeed women who do not know law ("feminis ius ignorantibus") do not require assistance when acquiring benefits or profits (*lucrum*), but the rule did not apply to underage persons. Subsequently the act underlined that if a thing had been given and transferred ("res fuerint donatae et traditae") to a juvenile fiancée, and then the marriage was dissolved ("soluta matrimonii caritate"), the ex-husband cannot demand its return claiming that he had not wished to record that fact in the register. The enactment must have aroused controversy and therefore it was supplemented with *interpretatio*; it also found its way into two *leges Romana barbarorum*: *Breviarium Alarici* (in extenso) and *Lex Romana Burgundionum*.[64] It was also adopted in *Codex Iustinianus* (abridged version), book one, title 18: *De iuris et facti ignorantia* (On ignorance of law and fact); only the first sentence of the act was taken over, and the fragment is analysed in literature with regard to application of *ignorantia iuris* in the event of acquiring *lucrum* ("profit").[65]

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[62] C. Th. 3, 5, 3 (a. 330): "Idem A. [Constantius] Valeriano agenti vicariam p(rae)f(ecturam). Quamvis in lucro nec feminis ius ignorantibus subveniri soleat, contra aetatem adhuc imperfectam locum hoc non habere, retro principum statuta declarant. Ne igitur soluta matrimonii caritate inhumanum aliquid statuatur, censemus, si futuris coniugibus tempore nuptiarum intra aetatem constitutis res fuerint donatae et traditae, non ideo eas posse revocari, quia actis consignare donationem quondam maritus noluit. Dat. IV kal. Mai. Gallicano et Symmacho conss." Valerianus might have been the addressee of C. 6, 1, 4 (a. 317) as well. See remarks on C. 6, 1, 5.

[63] The thesis that Valerianus was a PVR vicar was supported by Mommsen (1905a): CXCV; Ensslin (1936) and (1948) – with references to earlier works; Chastagnol (1960): 463, no. 8; Dupont (1973): 316; Ensslin (1965) – with a discussion in literature; Kaser, Hackl (1996): § 79, note 54. Meanwhile, the hypothesis presuming diocesan vicarship is argued by Arnheim (1971): 606; PLRE 1 (Valerianus 4). Kuhoff (1983): 125, 366 (note 56) remains undecided.

[64] "Interpretatio. Quamquam et feminis, quae per fragilitatem interdum excusari possunt, in aliquibus causis, si negligentes fuerint, lex subvenire noluerit, hic tamen specialiter voluit esse consultum, ut, si qua in pupillaribus annis marito fuerit copulata, et sponsaliciam largitatem per negligentiam actis non allegaverit, huius legis beneficio, etsi gesta desint, inviolabilem in suo dominio donationem noverit permanere"; Brev. Alaric. 3, 5, 3; Burg. 22, 6.

[65] C. 1, 18, 11. Cf. Zilletti (1961): 315 et seq., 318; Winkel (1985): 152, 156, 159 (note 84), 161 (note 97); Martini (1990): esp. 335–337. The text of the constitution was also incorporated in the

The version in *Codex Theodosianus* introduced a particular measure of safeguarding financial status of a woman if marriage were dissolved, granting her the right to retain pre-marital gift she had received, provided that she was underage at the moment of betrothal.[66] Constantine the Great's legislative intervention pertained to dispute between former spouses over property, and might have been the aftermath of an actual case.[67] The proceedings may have been theoretically presided by vicar in first instance and as part of appeal. The fact that gift-related disputes between betrothed did reach courts of appeal is attested to in title 5: *De sponsalibus et ante nuptias donationibus* (On betrothals and pre-nuptial gifts) in the Theodosian Code, in which as many as 8 of the surviving fragments are addressed to PPO, one (or two, assuming that Valerianus was a PVR) to PVR, one (or two, assuming that Valerianus was a *vicarius dioeceseos*) to diocesan vicar, including one to *vicarius urbis Romae*. None were addressed to province governors, who acted as *iudex ordinarius* in first instance proceedings. Similarly, in the corresponding book in *Codex Iustinianus* no Late Antique enactment was addressed to province governors. Thus it would make the act one of those which directly confirm participation of diocesan vicar in appellate proceedings.[68]

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first version of Justinian's Code, the so-called *Codex vetus*, which is known in fragments thanks to the index preserved in P. Oxy XV 1814 (in which Valerianus's title is "vic-"). Cf. Corcoran (2008): 111.

[66] The crucial significance of age was highlighted as early as Brunnemannus (1699): 67. Among recent works cf. Kaser (1975): 200, et seq. 64; Ferretti (2000): esp. 120–122. On *res donatae et traditae* in the context of this and other acts see Voci (1987): esp. 96. Cf. also Angelides (1973) on the margin of remarks relating to C. Th. 3, 5, 6 (see below).

[67] As the sources suggests, property disputes concerning *donatio ante nuptias* must have been a frequent phenomenon. See Astolfi (1992): 170–200; Evans-Grubbs (1995): 140–183, esp. 156–171, on Constantine's legislative interventions in this respect (164–167 on the analysed constitution); Lozano Corbi (1995); Ferretti (2000): passim; Ferretti (2003). Among earlier works devoted to Constantine's family legislation cf. the outline in Sargenti (1938).

[68] The analysed constitution is seen as a manifestation of the impact of Christian concepts, Oriental or Semitic tradition on the Roman notion of family. See e.g. Biondi (1954): 102 (regarding the contents of C. Th. 3, 5, 3, the authors observes that "Constantino invoca la *charitas*, onde evitare è che *inhumanum statuatur*") and 356. *Contra* Evans-Grubbs (1995): 172–183 with further literature, who aptly underlines that e.g. the mention about dissolution of marriage (divorce?) points to the contrary. See also Sargenti (1985) for general information on Christian marriage in the predominantly pagan society; Rudokwas (2002) exaggeratedly in favour of Christianization of Roman law under Constantine I. It is also debatable whether this meant introduction of a concept approaching *arrha sponsalicia* into Roman law. See Dupont (1976): 121–131; Astolfi (1992): 200–211; Evans-Grubbs (1995): esp. 174–181; Ferretti (2000): 203–210; Fayer (2005): 114 et seq. with a discussion in literature. On the questionable impact of Christianity on Roman private law, see also Crifò (1988) with further literature, who recapitulates previous debates concerning that topic.

The same title of the Theodosian Code contains fragment of a 336 act by Constantine the Great, addressed to Tiberianus, vicar of Spain (who received it a year later).[69] This act as well was subsequently provided with *interpretatio* and included in virtually unchanged version in *Codex Iustinianus*, in a title similar to the one in the Theodosian compilation.[70]

First of all the act provided for the inheritance of property given by the husband-to-be to his betrothed. If they exchanged the kiss (*interveniens osculum*), half of the gifts was to fall to the betrothed remaining alive while the rest to any inheritors of the deceased. If *interveniens osculum* had not taken place, the entirety of the gift of was to be returned to the giver or his inheritors. In turn, if the fiancée had given anything to her husband-to-be (which, as the preserved text underlines, was a rare occurrence), and any of the future spouses died prior to the nuptials, the entirety was to be returned to the fiancée, and in the event of her death, to her inheritors, regardless of whether *interveniens osculum* had taken place.[71]

Caius Annius Tiberianus, experienced and trusted imperial official known from numerous sources, the first administrator of the diocese of

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[69] C. Th. 3, 5, 6 (a. 335): "(Idem A. [Constantinus] ad Tiberianum vicarium Hispaniarum). Si a(b spons)o rebus sp(on)sae donatis interveniente osculo ante nuptias hunc vel illam mori contigerit, dimidiam partem rerum donatarum ad superstitem pertinere praecipimus, dimidiam ad defuncti vel defunctae heredes, cuiuslibet gradus sint et quocumque iure successerint, ut donatio stare pro parte media et solvi pro parte media videatur: osculo vero non interveniente, sive sponsus sive sponsa obierit, totam infirmari donationem et donatori sponso sive heredibus eius restitui. Quod si sponsa, interveniente vel non interveniente osculo, sponsaliorum titulo, quod raro accidit, fuerit aliquid sponso largita, et ante nuptias hunc vel illam mori contigerit, omni donatione infirmata, ad donatricem sponsam sive eius successores donatarum rerum dominium transferatur. Dat. id. Iul. Constant(ino)p(oli). Accepta XIIII kal. Mai. Hispali, Nepotiano et Facundo conss." The doubtful re-dating of the act to 332 suggested by Barnes (1982): 145, is associated with the possible presence of a Severus who held the office of *comes Hispaniarum* at the time. See Wiewiorowski (2006b): esp. 271 et seq.; Wiewiorowski (2011a): esp. 431 et seq.

[70] "Interpretatio. Si quando sponsalibus celebratis, interveniente osculo, sponsus aliquid sponsae donaverit, et ante nuptias sponsus forsitan moriatur, tunc puella, quae superest, mediam donatarum solenniter rerum portionem poterit vindicare, et dimidiam mortui heredes acquirunt, quocumque per gradum successionis ordine venientes. Si vero osculum non intervenerit, sponso mortuo nihil sibi puella de rebus donatis vel traditis poterit vindicare. Si vero a puella sponso aliquid donatum est, et mortua fuerit, quamvis aut intercesserit aut non intercesserit osculum, totum parentes puellae sive propinqui, quod puella donaverat, revocabunt". Thus it directly pointed to possible recovery of the gift. See C. 5, 3, 16 – title: *De donationibus ante nuptias vel propter nuptias et sponsaliciis* (where in the first sentence of § 1 the term *sponsalium* was exchanged for *donatio*). It was also included in Brev. Alaric. 3, 5. 5.

[71] Dupont (1977): 243, quotes C. Th. 3, 5, 6 as an example of usage of *dominium* in the classical sense, i.e. meaning "owner", in Constantine's enactments.

Spain who was directly referred to as its vicar[72], received precise guidance from the emperor which instructed him how to resolve a dispute relating to inheritance of property which constituted pre-marital gift following the formal act of *interveniens osculum*.[73] Thus Constantine I locally modified the detailed regulation of 319 which admitted return of such a gift.[74] The change may have been motivated by the wish to make amends to women whose status or virtue suffered from being betrothed.[75] The importance attached by men to virginity is interpreted from the standpoint of evolutionary psychology as one of male reproductive strategies which ensure producing their own progeny.[76] The solution adopted in the analysed constitution may even

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[72] C. Annius Tiberianus, of North African origin, is known as *comes Africae* (a. 325–326), then held like office in the diocese of Spain (a. 332); subsequently, in 335–336 Tiberianus became the vicar of Spain, and in 336–337 – PPO *Galliarum*. On Tiberianus, see Pallu de Lessert (1901): 178–181; Chastagnol (1965): 272, no. 2; PLRE 1 (C. Annius Tiberianus 5); Dupont (1973): 328 et seq.; Kuhoff (1983): esp. 114–118, 355 (note 13); Vilella (1992): 93.

[73] In Roman texts, *osculum* occassionally seems to denote kisses between lovers, yet it is more often used to means kisses of greeting and farewell. Cf. Hawley (2007): 4. On the significance and nature of *interveniens osculum* (which was probably intended as confirmation of relationship between adult persons) and the suggested Christian roots of that custom, also in the light of the discussed act see Tamassia (1969) – with an overview of sources which mention that practice, since Late Antiquity to the modern period; Angelides (1973) – also in the light of Byzantine sources; Kaser (1975): esp. 195; Voci (1978): 80 (significance in the domain of inheritance law); Evans Grubbs (1995): 170 et seq.; Ferretti (2000): esp. 113–120 (with remarks on the *interpretatio*); Ferretti (2003): esp. 170–174; Fayer (2005): 109–115 with further literature.

[74] C. Th. 3, 5, 2 (a. 319) = C. 5, 3, 15. More broadly on that act see Evans Grubbs (1995): 159–164; Ferretti (2000): esp. 98–107; Ferretti (2003): 167–170; Fayer (2005): 102–108 with further literature. Amarelli (1978): 125 argues its influence on the content of Lact. *Divinae institutiones* 6, 23, 24. See also Dupont (1962) regarding Constantine's legislation on gifts.

[75] Similar observations were made by Brunnemannus (1699): 537, when commenting on the version of the constitution incorporated in C. 3, 5, 16. In the Roman society, innocence and lack of experience in female-male relationships were also the preferred qualities in future wives. See Jundził (2001): 198 et seq., a esp. 204, with references to extensive literature. See also Blank (2008) for a comprehensive overview concerning the significance of virginity in European tradition.

[76] According to evolutionary psychology, the consequences of concealed ovulation in women (unlike e.g. in primates, our closest evolutionary relatives) and the current statistically confirmed occurrence of infidelity among males and females in stable relationships (also confirmed in historical sources), have resulted in the male preference to select women who are *virgo intacta* when choosing permanent partners. Such a choice gave them (and their relatives) the assurance that children born of such relationship would certainly be their progeny, sharing their (and their relatives') gene pool. On human reproductive strategies see Bluss, Schmitt (1993); Buss (2003): esp. 74–77; essays in: Buss (2005): 251–442; Buss (2006); Cook (2009): 28–44 and 173–190; in Polish literature, see papers compiled in: Pawłowski (2009) and Załuski (2009): 129–133; Załuski (2010): 177–182 with further references.

be viewed as unconscious reference to one of the fundamental mechanisms governing interpersonal relationships advanced by inclusive fitness theory.[77]

In this instance as well the mode in which the case was heard by Tiberianus is difficult to determine. Nevertheless, the above observation regarding the significance of addressees of the constitution cited in titles in which the fragment is preserved in *Codex Theodosianus* and *Codex Iustinianus* still holds valid. Consequently, the constitution would be a proof of participation of diocesan vicar in appellate proceedings.

In the extensive fragment of a 380 constitution drafted by Gratian, Valentinian II and Theodosius I, vicar and official of the same rank were designated as potential judges in civil and criminal cases instead of province governors, if the latter committed abuse consisting in exerting pressure on women or their families in order to conclude marriage.[78] The constitution addressed to Flavius Neoterius, the then PPO *Orientis*, is the only enactment in title 11: *Si quacumquae praeditus potestate nuptias petat invitae* (If person with *potestas* attempts to enforce marriage), book three in the Theodosian Code.[79] According

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[77] According to the theory, adaptation of a given specimen is a sum of reproductive success and the influence of that specimens on the reproductive succes of its relatives. This concept was formulated in the classic work by Hamilton (1964). On the subsequent development of the theory cf. Daly, Wilson (2005), with extensive bibliography. Wiewiorowski (2012e) offers a more comprehensive analysis of C. Th. 3, 5, 6 using arguments advanced by evolutionary psychology.

[78] C. Th. 3, 11, 1 (a. 380): "Imppp. Gratianus, Valentinianus et Theodosius AAA. Neoterio p(raefect)o p(raetori)o. Si quis ordinaria vel qualibet praeditus potestate circa nuptias invitis ipsis vel parentibus contrahendas, sive pupillae sive apud patres virgines sive viduae erunt sive et sui iuris viduae, denique cuiuscumque sortis, occasione potestatis utatur, et minacem favorem suum invitis iis, quorum utilitas agitur, exhibere aut exhibuisse detegitur, hunc et mulctae librarum auri decem obnoxium statuimus, et, quum honore abierit, peractam dignitatem usurpare prohibemus: tali scilicet poena, ut, si circa honorem eum, quo male usus est, vindicandum statuti nostri sanctioni parere noluerit, semper eam provinciam, in qua sibi hoc usurpaverit, habitare per iuge biennium non sinatur. Quia tamen contra latentem malitiam praeterea quasdam domos vel quosdam parentes intelligimus muniendos, iubemus, ut, quicumque iis et quaecumque erit latentibus per iudicem promissis minisve tentata, ad id matrimonium, cui adspernatur, praestare consensum, confestim, contestatione proposita, cum sua suorumque domo ad iurisdictionem eius desinat pertinere: curaturis hoc uniuscuiusque civitatis vindicibus et eiusdem iudicis apparitoribus. Equidem si haec pravitas ordinarii iudicis erit, universa eius domus ratio atque omnia vel civilia vel criminalia negotia, quamdiu idem in administratione fuerit, vicario competant; sin autem vicarius vel similis potestatis vim in huiusmodi contrahendo matrimonio molietur, vicissim ordinarius iudex intercessor exsistat; si erunt uterque suspecti, ad illustrem praefecturam specialiter talium domorum, quamdiu idem administraverit, tutela pertineat. Dat. XV kal. Iul. Thessal(onica), Grat(iano) A. V et Theod(osio) A. I conss."

[79] On the addressee cf. PLRE 1 (Flavius Neoterius); Kuhoff (1983): esp. 420, note 30. The book contained acts concerned with private law issues, chiefly relating to family. On Gratian's legislation in social matters see the overview in Fortina (1953): 151–170.

to some authors the constitution might have been related to the act promulgated on the same day – 17 June 380, in Thessaloniki – on pressuring persons into consenting to betrothal, addressed to Eutropius, author of the historical volume entitled *Breviarium ab urbe condita,* who at the time was PPO *Illiricum*.[80]

Given the social realities, the constitution addressed a crucial issue and tallied with other regulations which opposed marriages concluded against the will of the woman and her family (i.e. primarily those which violated *patria potestas*) as well as against relationships of public functionaries with inhabitants of the provinces (however, the constitution expressly mentioned abuse of power, for instance by province governor, but not the origin of the spouses-to-be).[81] Hence, the *interpretatio* was added in the fifth century, the constitution was adopted in the Breviary of Alaric and, with modifications, incorporated into corresponding title in *Codex Iustinianus* (book five, title 7: *Si quacumque praeditus potestate vel ad eum pertinentes ad suppositarum iurisdictioni suae aspirare temptaverint nuptias* – If one in power or his officials under him attempt to marry a woman subject their jurisdiction).[82]

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[80] C. Th. 3, 6, 1 (a. 380). See most authors cited in the following footnote. In view of other addressees the constitution is correctly mentioned separately by Seeck (1919): 255. On the PPO, see PLRE 1 (Eutropius 2); Nehring (2010) 28–35.

[81] On the analysed constitution cf. Gothofredus (1736), vol. 1: 335 (e.g. with a disquistion about types of judges); Biondi (1952): 312; Biondi (1954): 98; Wyszyński (1962): esp. 43 et seq. – the two latter authors suggest its tenor is inspired by Christianity; Matringe (1971): 214 et seq.; Kaser (1975): 168; Beaucamp (1990): 92–100, esp. 98 et seq. oraz 246; Fayer (2005): 170, note 508; GigIio (2008): 113–123; Barbati (2012): 185 (pointing to abuses of province governors although there are no terms which would directly refer to those officials). On the prohibition of marriages between Roman officials with inhabitants of the province see the synthesis in Dell'Oro (1965). On the persistence of *patria potestas* in the late antique period cf. Wierzbowski (1977): passim; Voci (1985b): esp. 5, 8 et seq., 69 (points to analogies between the analysed act and legal sources from the classical, post-classical and byzantine period); Arjava (1998b). Murga (1979): 329, drew attention to the continuous usage of terminology pertaining to the cases of *dolus* (*circuor* lub *circumvenire* – "to circumvent") compared with juridical writings of the classical period.

[82] "Interpretatio. Si aliquis de his iudicibus, qui provincias administrant, vel etiam his, quibus civitates vel loca commissa sunt, per potentiam invitis parentibus virgines aut etiam viduas, si sui iuris sint, per potestatem ad nuptias suas addixerint, aut si pupillae sint, et earum utilitatibus obviantes per terrorem aut per quorumcumque colludium addicantur, ut his personis, de quibus loquitur, invitae iungantur: quicumque hoc praesumpserit, decem pondo auri se noverit condemnandum, et in ea provincia, in qua iudex fuerit, dignitate amissa, biennio prohibeatur accedere. Beneficium tamen lex ista adversus eiusmodi homines parentibus vel ipsis mulieribus, quae in suo iure sunt, vel qui minorum aetates tuentur, indulsit, ut contestationes ad alios iudices vel civitates proximas deferant et eorum patrociniis defendantur: ut, si in eadem provincia sit alia potestas, utpote si sint duo iudices, unus privata et alius dominica iura gubernans, si ab altero sub hac condicione quaecumque persona prematur,

As regards the scope of vicars' judicial authority, it is evident that according to the constitution they possessed jurisdiction of judges presiding in first instance when province governor, referred to as *iudex ordinarius*, was guilty of exerting pressure in order to conclude marriage. On the other hand, the constitution provided for a procedure in the event that "vicarius vel similis potestatis" committed the same. In such a case, province governor would act as *intercessor*; when both sought to coerce marriage, the family was to defended by *illustra praefectura* (*praetorio*). One of the potential officials who was to act in proceedings against abuse was *vindex civitatis* or, in the version found in the Justinian Code, *defensor civitatis*.[83]

Relatively few enactments relating to diocesan administrators are to be found in book four of the Theodosian Code, which comprises 72 fragments of constitutions in total; four fragments pertain to diocese administrators, three of which are concerned with the judiciary.[84]

Petronius, descendant of a senatorial family and a devout Christian, pursued his career in imperial administration reaching the rank of PPO *Galliarum* between 402 and 408, having previously been the vicar of Spain in 395–397.[85] One of the constitutions addressed to him at the time was preserved, albeit trimmed down, among other 8 constitutions in title 6 *De naturalibus filiis et matribus eorum* (On natural sons and their mothers), book four in the Theodosian Code in the currently known version.[86] Issued in Milan by emperor Honorius (and on behalf of his brother Arcadius), the act, drawing upon the enactments adopted previously in the East which denied inheritance rights to natural children, stipulated exclusion of *filii naturales* from

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alterius tutela debeat defensari, aut certe ad magnificam potestatem, quae principis auribus hoc possit intimare, recurrat"; Brev. Alaric. 3, 11, 1; C. 5, 7, 1. Cf. Brunnemannus (1699): 552 and his analysis of version included in the latter compilation.

[83] See Mannino (1984): 108–110, 115; Frakes (2001): 115 et seq.

[84] Collection of taxes was discussed in C. Th. 4, 13, 5 (a. 358), addressed to "Martinianum vicarium Africae". On that *vir clarissimus*, influential imperial official whose career was crowned with the dignity of PVR, see: Pallu de Lessert (1901): 188 et seq.; PLRE 1 (Martinianus 5); Kuhoff (1983): esp. 325, note 110. Tax exemptions of persons involved in trade were the subject of C. Th. 4, 13, 6 (a. 369) = C. 4, 61, 7: "ad Archelaum comitem Orientis" – dating after Schmidt-Hofner (2008a): 513, with earlier literature. Nevertheless, see Delmaire (1987): 832 et seq., who opted for dating to 366. On the same act cf. also Andreotti (1969): 238, 243 (note 44).

[85] On the addressee of the constitution see: Chastagnol (1965): 277, no. 12; PLRE 2 (Petronius 1); Kuhoff (1983): esp. 357, note 20; Vilella (1992): 91 with references to further literature.

[86] Among recent works on imperial legislation concerning that issue and related circumstances see Kaser (1975): 183 et seq.; Niziołek (1980): esp. 34 et seq. – nonetheless, see the exceedingly critical review of the latter: Litewski (1982); Voci (1982): 22–25; Beaucamp (1990): 195–202, esp. 196 et seq.; Wieling (1990): esp. 461; Arjava (1994): 272–280, esp. 277 et seq.; Arjava (1998a): esp. 414, note 4; Tate (2008) with further literature. The two last works offer more comprehensive analysis of the incompleteness of title C. Th. 4, 6.

inheritance and forfeiture of the estate of a deceased who did not leave any lawful heirs to the Fiscus .[87] The constitution offered a general solution and was probably a copy of an edict sent to numerous imperial officers, as well as applied to all stages of court proceedings.

The next relevant constitution in book four of the Theodosian Code was also addressed to the aforementioned vicar of Spain, Petronius.[88] An excerpt from a law enacted in 395 by emperor Arcadius and Honorius was included in title 21: *Quorum bonorum*, book four of the Theodosian Code, concerning one of the interdicts used to protect the rights of inheritors in accordance with praetorian law (*bonorum possesor*), in the event of dispute over an item belonging to the body of inheritance.[89] It must have had practical significance, which resulted in *interpretatio*, repetition in the Breviary of Alaric and inclusion of its fragment in the equivalent title in Justinian Code (book eight, title 2: *Quorum bonorum*).[90]

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[87] C. Th. 4, 6, 5 (a. 397): "Impp. Arcad(ius) et Hon(orius) AA. Petronio vic(ario) Hispaniarum. Le[gibus] Constantini et genitoris nostri praeceptis edoc[ti prae]cipimus, ut exclusis naturalibus filiis ad fiscum tr[ansfe]ratur, quod ab ipsorum persona decidit, sin ci […] cipitur, et omne, quod legitimis competit, legis .....tia non negatur. Dat. IIII k. Mai. Med(iolano) Caesario et Att[ico conss.]". On the references to enactments of predecessors found in imperial constitutions, see Volterra (1981): esp. 105. The cited constitution drew upon the laws enacted by Constantine I and "genitoris nostri": Valens I, Valentinian I or Theodosius I – see Dupont (1962): 312; Tate (2008): 8 (note 77), 28 (note 96) with earlier literature.

[88] Petronius was the addresse of yet another constitution, this time concerning control over municipal authorities – C. Th. 12, 1, 151 (a. 396).

[89] C. Th. 4, 21, 1 (a. 395): "Impp. Arcad(ius) et Honor(ius) AA. Petronio vic(ario) Hispaniarum. Quid iam planius, quam ut heredibus traderentur, quae in ultimum usque diem defuncti possessio vindicasset, etiamsi quod possit tribui de proprietate luctamen? Constat autem, virum ab intestatae uxoris bonis, superstitibus consanguineis, esse extraneum, quum prudentium omnium responsa, tum lex ipsa naturae successores eos faciat. Insuper etiam mansura perpetua sanctione iubemus, ut, omnibus frustrationibus amputatis, in petitorem corpora transferantur, secundaria actione proprietatis non exclusa. Dat. VI. kal. Aug. Med(iolano) Olybrio et Probino conss." On the *interdictum quorum bonorum,* belonging to the group *interdicta adipiscendae possesionis*, i.e. aimed at acquiring possession, see e.g. Berger (1953): 512 (s.v.); Litewski (1998): 122 (s.v.). Interdicts in the proceeding *cognitio extra ordinem* were made equal to *actiones* – while retaining terminological distinctions – and belonged to the range of measures employed by the court. Cf. Gothofredus (1736), vol. 1: 448 et seq.; Kaser, Hackl (1996): § 99 on the act with remarks concerning interdicts and their implementation in the light of the constitution.

[90] "Interpretatio. Iustum esse decernimus, ut, quodcumque auctor usque in diem vitae suae tenuerit, petentibus heredibus debeat consignari, illi postea, cui competit, actione servata. Virum quoque intestatae uxoris suae facultatem, quae sine filiis recessit, consanguineis eius, qui legitimi sunt, tradere mox sine ulla dilatione praecipimus et maritum proponere minime prohibemus, si quas sibi competere putaverit actiones"; Brev. Alaric. 4, 19, 1. The version, adopted with minor changes in C. 8, 2, 3 contains only C. Th. 4, 21, 1, 1.

The constitution emphasized concurrence of the opinion of *prudentes* as well as the law of nature itself (*lex ipsa naturae*) with regard to excluding husband from inheritance left by a wife who died intestate in favour of her kin. The text of the act did not specify how the issue was examined by the vicar; the text of *praefatio* merely suggests a problem which may have appeared in a proceeding before his court.[91] Indirectly, the terms used in the constitution indicate a practically important question of change in the means of possessory protection in post-classical law.[92]

Just as in the case of the previously discussed C. Th. 3, 5, 6 (a. 335), the solution adopted in this constitution may be approached as a reflection of a basic mechanism governing relationships between people according to inclusive fitness theory. As previously observed, the theory accounts for why people are more inclined to support their relatives with whom they share, to a varied degree, the same gene pool.[93] Confirming the exclusion of the husband from inheriting after wife who died intestate as set out in this constitution would constitute a regulation which intuitively draws upon that model.[94] One could even venture that the text expressed felicitous sentiment of the Roman legislator that such solution was in line with the laws of nature itself (*lex ipsa naturae*).[95]

Violation of possession of real estate was the subject of constitution addressed to the very same Petronius, preserved in title 22: *Unde vi* (On the

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[91] Brunnemannus (1699): 941 was correct in pointing out directly that the example originated from actual practice. Thus Vandendriessche (2006): 178.

[92] See Levy (1951): 210 (*actio proprietatis* as an example of evading the system of *actiones* known in the classical law) as well as 243 and 246, note 255 (as a testimony to upholding possessory protection); Kaser (1975): 548 and esp. Vandendriessche (2006): 176–180, who observes *in fine* that in the light of this constitution "*Possessio* hat die Bedutung der rein tatsätzlichen Herrschaft." On the significance of the constitution for later transformations of inheritance law in the fifth century, see also Voci (1982): 5.

[93] The significance of kin selection in various human communities has been confirmed in experimental research. See Madsen et al. (2007). According to debatable views, group selection is equally important because models based on the dominant significance of kinship do not account for all the aspects of human behaviour. See Boehm (1999): 205 et seq.; Jones (2000); Boehm (2012): passim. The import of kin selection has recently been questioned by Nowak, Tarnita, Wilson (2010); Wilson (2012). The shift in Edward O. Wilson's views, whose previous works stress the significance of kin selection in humans, has sparked heated scientific polemic. See Nature 471 (2011), Bourke (2011) and http://integral-options.blogspot.com /2012/06/richard-dawkins-steven-pinker-and-david.html

[94] Wiewiorowski (2012e) offers a more comprehensive analysis of C. Th. 3, 5, 6 using arguments advanced by evolutionary psychology.

[95] The act is also debated chiefly in the context of contended evolution of the notion *ius naturale* in Roman law. Cf. Waldstein (1994): esp. 18–21 with further literature. See also Humfress (2007): 75 with a reference to the unanimous opinion of *prudentes* it invokes and the presumably conflicting practice.

interdictum *unde vi*), book four of *Codex Theodosianus*.[96] Again, the act must have had practical significance therefore it was additionally supplied with *interpretatio* and repeated in corresponding fragments in *Codex Iustinianus*.[97]

The enactment stipulated that it was inadmissible – not only under imperial rescript but also under court injunction (*interlocutio*) – to change the status of possession of property during the absence of its owner, since such cases were to be heard by means of depositions of parties, while claims arising on that account were to encumber heirs of those who committed the violation.[98] The constitution addressed to Petronius was yet another of the late antique enactments which were intended to increase protection of possession of real estate against unlicensed infringement and drew upon previously known rules of possessory protection.[99] It was included in *Codex Theodosianus* in the title comprising constitution which elaborated on the rules of *interdictum unde vi*, which since the early fourth century was referred to as *interdictum momentariae possesionis*.[100]

In the case of this constitution, one may conjecture that it focused on an issue examined by vicar Petronius in an appeal from the judgement of province governor, who may have previously issued the aforementioned injunc-

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[96] C. Th. 4, 22, 5 (a. 397): "Idem AA. [Arcadius et Honorius] Petronio vic(ario) Hispaniarum. Nec imperiale rescriptum, quod supplicatio litigatoris obtinuit, nec interlocutio cognitoris interpellare possessionis statum eo, qui rem tenet, absente permittitur, quia negotiorum merita partium assertione panduntur. Vitia autem a maioribus contracta perdurant, et successorem auctoris sui culpa comitatur etc. Dat. XV kal. Ian. Mediol(ano) Caesario et Attico conss."

[97] "Interpretatio: Nec per principis praeceptionem, si a litigatore fuerit obtenta, nec per responsum iudicis, si fuerit interpellatus, absente domino possessio ullius auferatur, quia prius conveniri debet ille, qui possidet, et nisi inter praesentes iudicium dari non potest, nec negotium terminari. Nam quicumque alienam vel absentis rem crediderit occupandam, noverit, etiam heredes suos similiter pro hac auctoris praesumptione obnoxios esse mansuros". It was found in the Code of Justinian I in: C. 8, 5, 2 (*praefatio*, in title *aquirenda et retinenda possessione*). Cf. Brunnemannus (1699): 850 et seq., 947. They were also repeated in B. 50, 3, 61 and B. 50, 2, 63 (62) respectively, although the protective measure it provides for was not employed in practice. See de Malafosse (1951): 78, 94, 101–108, 114.

[98] See Gothofredus (1736), vol. 1: 459, who considers various states of affairs which may have prompted such a solution.

[99] Cf. Levy (1951): 243–276, esp. 251; de Malafosse (1951): 31–62, esp. 57 et seq. oraz 70; Kaser (1975): 471; Voci (1982): 96. Seeck (1919): 292, suggested erroneously that C. Th. 4, 22, 5 (a. 397) was issued simultaneously with C. Th. 4, 22, 4 (a. 396); in both, the object of regulation was to be the same, namely "Besitzschutz". In fact, the first confirmed and supplied details of the rules of representing the absent owner by the judge, as formulated in C. Th. 4, 22, 1 (a. 326). See more broadly on that issue Malafosse (1951): 54–56; Voci (1982): 96, note 49.

[100] *Interdictum unde vi* – yearly possessory interdict, serving to restore estate to the faultless owner who has been dispossessed of it by force, was the most important interdict in post-classical law. See the comprehensive remarks on the interdict in Gothofredus (1736), vol. 1: 449 et seq.; de Malafosse (1951): esp. 61 et seq., 96–102; Litewski (1998): 125 (s.v.).

tion (*interlocutio*).[101] On the other hand, the enigmatic text of the constitution does not permit to state conclusively whether the vicar presided in a case of infringement of possession, in which resolution was sought by the owner of property who lost it as a result of governor's *interlocutio*; confronted with such a decision of the province governor the owner may have petitioned the court of the vicar. The conclusion that an owner, deprived of property after the opposing party had obtained imperial rescript, turned directly to diocesan vicar to hear his case sounds even more credible. Conversely, a conclusion that does not seem viable is that the constitution reflects intensification of disputes concerning real property (i.e. farmland) which resulted from pauperization and ruralization of social relationships in the diocese of Spain. That particular period, especially in the light of archaeological evidence, was a time of relative economic prosperity, at least in the European part of the diocese.[102]

In book five of *Codex Theodosianus*, containing 61 fragments of constitutions, one finds only one act pertaining to the judiciary of diocesan vicars.

The sole preserved fragment of title 19: *Ne colonus inscio domino suum alienet peculium vel litem inferat ei civilem* (No colonus may alienate their *peculium* nor file a civil lawsuit without the knowledge of their master), conveys an excerpt for the act of Valentinian I and Valens of 365, addressed to Clearchus, vicar of Asia.[103] It affirmed that coloni do not have the right to alienate lands they use, as well as cannot transfer their own property, if they possess any, to others without the advice and knowledge of their masters. Although the constitution in the surviving form was addressed to administrator of a diocese located in the eastern part of the Empire, its content proved to have greater practical significance in the West, where colonate was more widespread. Hence in the fifth century, it was provided in Gaul with *interpretatio* which modified its tenor and then repeated in the Breviary of Alaric.[104]

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[101] Regarding those see Litewski (1997): esp. 161 (note 28), 248 (note 400).

[102] See Arce (1982): 85–136; Arce (1993) and (2002b); Ariño Gil, Díaz (2002); Kulikowski (2004): 85–150 with further literature, whose observations challenge previous views in the matter. Nevertheless common banditry was in evidence there as well, which led to the formation of private militias and arms manufacturing as part of the *villae* economy. See Arce (1982): 76–79; Arce (1993): 385 et seq.

[103] C. Th. 5, 19, 1 (a. 365): "Impp. Valentin(ianus) et Val(ens) AA. ad Clearchum vic(arium) Asiae. Non dubium est, colonis arva, quae subigunt, usque adeo alienandi ius non esse, ut, et si qua propria habeant, inconsultis atque ignorantibus patronis in alteros transferre non liceat. Dat. VI. kal. Febr. Valentin(iano) et Valente AA. conss."

[104] "Interpretatio. In tantum dominis coloni in omnibus tenentur obnoxii, ut nescientibus dominis nihil colonus neque de terra neque de peculio suo alienare praesumat"; Brev. Alaric. 5, 11, 1. The phenomena of colonate and slavery continued with varying intensity throughout the Later Roman Empire and after its downfall. Cf. Garcia Moreno (2001) on the example of

The enactment confirmed the limitations imposed on actions at law to which coloni were entitled, not only with respect to the estate of their patrons but also with respect to the components of property they owned themselves ("qua propria").[105] It testified to the realities associated with the institution of *patrocinium*.[106] Apart from protecting the property of the patron, the act was aimed at protecting proprietary interests of the coloni against the abuses of the wealthy.[107] Clearchus, an experienced imperial official (among other things, vicar of Asia in 363–366), was a thoroughly educated member of the pagan elite, originating from the western part of the Empire.[108] He also must have had doubts as to extending limitations of legal capacity to items of colonus's own property. It is therefore difficult to ascertain whether the

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Visigothic Spain with an extensive introduction on the debates in the literature of the subject. See also the comprehensive study by Schipp (2009), esp. 51 on C. Th. 5, 19, 1 (which is examined in the context of coloni being bound to land).

[105] *Interpretatio* employs the term *peculium*, which meant part of the estate allocated by the owner to the slave (the owner is also directly referred to as *dominus* instead of *patronus* known from C. Th. 5, 19, 1), which they could administer on their own. See Litewski (1998): 194 (s.v.). However, the constitution speaks directly only of land ("colonis arva, quae subigunt"), not *peculium*. Nevertheless, Gothofredus (1736), vol. 1: 502 has no doubt that the constitution was concerned with *peculium*. See also subsequent footnotes.

[106] On *patrocinium*, which the imperial authorities managed to eliminate in the East and which contributed to the downfall of imperial power in the West see Hahn (1968); Giglio (2008): esp. 7–17; Krause (1987): esp. 73–87 on the relationships in the East.

[107] C. Th. 5, 19, 1 is often considered an important stage in the development of the colonate. For discussion of the act and its *interpretatio* only in recent works see: Kaser (1975): 102 et seq., 106, et seq. 47, 147; Lebedeva (1980): 105 et seq.; Mirković (1997): including 62, note 39, where the author aptly observes that *peculium* might have been treated as object of pledge (*pignus*), not as an object of sale – as suggested by Goffart (1974): 77, note 34; Panitschek (1990): 140, 146; Sirks (1993): 365; Banaji (2001): 206–212; Rosafio (2002): 184 et seq. – correctly stresses the significance of modification intorduced by *interpretatio;* Banaji (2009) examines, in a comparative approach, the status of peasantry in the West, Byzantium, Persia and Islamic Middle East until the seventh century. C. Th. 5, 19, 1 is also extensively discussed in Koptev (2009): 271–278, who argues correctly that the text of the enactment and its *interpretatio* demonstrate the different understanding of the status of colonus in the fourth century and in the early sixth century. The legislation of Valentinian I and Valens concerning colonate is briefly analysed in Lenski (2002): 284 et seq.; more broadly in Schmidt-Hofner (2008b): 269–284.

[108] He was a disciple of grammarian Nicocles and collaborated with rhetorician Themistius when the latter was proconsul of Constantinople in 358–359, and prefect of Constantinople in 372–373 and 382. See Seeck (1906): 108 et seq.; Malcus (1967): 110 et seq.; PLRE 1 (Clearchus 1); Haehling (1978b): esp. 118 et seq., 144; Kuhoff (1983): esp. 373, note 87; Penella (1990): 125–127, 132 et seq.; Petit (1994): 68–71; Kaster (1997): 214 et seq., 319. Following Lib. *Ep*. 1188, Panella (1981) suggested that the father of Clearchus, unknown by name, was also a talented vicar of Asia before 360. On Clearchus, see also Chapter 3.2. On pagan elites of the Later Empire, see the recent impressive study by Cameron (2011).

problem was considered by Clearchus at the stage of preliminary proceeding in first instance or after lodging *appellatio*.[109]

Of the 210 fragments of acts in book six of *Codex Theodosianus* only two are related to the jurisdiction of diocesan vicars.[110]

Emperor Constantius (or in fact Constans I, who ruled over Africa, Illyricum and Italy in 337–340), in an enactment addressed to Aco, vicar of Africa in 338, decreed high fines as penalty to be imposed on decuriones who through influence and bribery attempted to acquire honorary titles which would have exempted them from duties to municipal curiae.[111] An excerpt from the act was included in title 12: *De honorariis codicillis* (On honorary codicils) in the Theodosian Code, which dealt with imperial letters granting honorary titles.[112]

The preserved fragment of constitution most likely testifies to a criminal process in which Aco presided against a curio who sought to obtain an honorary title. The same case is referenced in another fragment of that constitution, the addressee of which is an Aco Catullinus; the fragment is found in book twelve of *Codex Theodosianus* (title 1: *De decurionibus* – On decuri-

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[109] Among other things, Clearchus was also tasked with safeguarding senatorial privileges in the province: C. Th. 1, 28, 2 (a. 364). See also remarks on C. Th. 8, 1, 9 (a. 365) = C. 12, 49, 2.

[110] The dignity of vicar is mentioned in the book as many as 25 times, including in one enactment addressed to *vicarius urbis Romae* – C. Th. 6, 28, 1 (a. 379). However, the title of vicar appears most often in connection with honorific titulature granted to various categories of imperial officials, twice in connection with praetorship – C. Th.: 6, 4, 13 (a. 361); 6, 4, 15 (a. 359) = C. 1, 39, 1, once presumably with courtly ceremonial – C. Th. 6, 24, 4 (a. 387) = C. 12, 17, 1 and once relating to the abuses of *cursus publicus* – C. Th. 6, 29, 2 (a. 357) = C. 12, 22, 2. See more broadly Chapter 2.2 and 3.2. Honorary *comitiva Orientis*and *Aegypti* are mentioned there as well: C. Th. 6, 10, 3 (a. 381). The book also includes C. Th. 6, 28, 8 (a. 435): its *subscriptio* names officials to whom copies of the enactment were sent, whereby e.g. *comes Orientis*, *praefectus Augustalis* as well as vicars of Asia and Pontus are listed separately. On the significance of that book in the light of "l'idea di dignitas dei commissari teodosiania", see Archi (1976b): 125–137.

[111] C. Th. 6, 22, 2 (a. 338): "Imp. Constantius A. Aconio vic(ari)o Africa(e). Ab honoribus mercandis per suffragia vel qualibet ambitione quaerendis certa multa prohibuit. Cui addimus, ut quicumque fugientes obsequia curiarum umbram et nomina adfectaverint dignitatum, tricenas libras argenti inferre cogantur, manente illa praeterea illatione auri, qua perpetua lege constricti sunt. P(ro)p(osita) V kal. Dec., acc. XVII kal. Ian. Thamugadi Urso et Polemio conss." The error regarding the person of emperor was already pointed out by Gothofredus (1737), vol. 2: 118. The enactment is discussed in literature chiefly with respect to corruption. See Collot (1965): 192; Liebs (1978): 171; Daube (1979): 236; Świętoń (2012): 190 et seq. On the phenomenon of *suffragium* see also Chapter 1.1.

[112] Cf. Karlowa (1885): 869 et seq.; Seeck (1901b); Dölger, Karayannopulos (1968): 113–115; Classen (1977): 41–44, all with references to further sources and literature. The constitution was another one of the regulations aimed against the so-called defection of decuriones, which are devoted the most attention in title 1: *De decurionibus*, book twelve of *Codex Theodosianus*. See below.

ones).[113] The proceeding may have been taking place in the North African municipality of Thamugadi/Timgad or in Carthage, which are designated in the *subscriptio* of the two fragments of constitution as the location of its receipt.[114]

Doubtful as to the amount of fine, Aco probably applied for instruction to the emperor, which is evidenced in the preserved fragment of imperial rescript.[115] It is difficult to determine whether the case was heard by him in first instance proceeding or as an appeal, although the first option seems more likely. This is due to the fact that the efforts made to obtain an honorary title under a false pretence were associated with the assessment of authenticity of imperial letters which granted it. A vicar was higher in the hierarchy than province governor and was probably already at that time competent to judge *vice sacra*.[116] Thus he was more entitled to evaluate imperial documents awarding honorary titles than province governor, who did judge on behalf of the emperor but did not possess the capacity of ruling *vice sacra*.

Iulius (Severus), probably *vicarius Italiae*, was the addressee of Constantine the Great's enactment which prohibited, under pain of penalty in kind, to force *nostri palatini* (i.e. members of the palace administration) to corvée, works for the public benefit (*munera sordida*).[117] An excerpt from the act was

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[113] C. Th. 12, 1, 24 (a. 338): "Idem A. [Constantius] Aconio Catullino vic(ario) Afric(ae). Quicumque fugientes obsequia curiarum affectaverint adumbratae nomina dignitatis, etsi eos spes falsi honoris illuserit, XXX argenti libras inferre congantur. Acc. Karthag(ine) prid. id. Dec. Urso et Polemio conss."; this is one of the sources in which the vicar is referred to as Aco Catullinus. The fact was already noted by Gothofredus (1740), vol. 4: 367. He is known to have been a pagan, attained the dignity of PPO *Orientis* (a. 341) and consulship (a. 349). Aco is discussed in Pallu de Lessert (1901): 183–185; Chastagnol (1965): 282 no. 2; PLRE 1 (Aco Catullinus signo Philomatius 3); Haehling (1978b): 290 et seq., 370; Kuhoff (1983): esp. 119 et seq., 289, note 107. See also below on C. Th. 11, 36, 4 (a. 339) and C. Th. 12, 1, 24 (a. 338). On both enactments, see also Cuneo (1997): 22–24; Garrido (2005): 467. On the official, see also remarks concerning C. Th. 11, 36, 4 (a. 339) = C. 9, 9, 29.

[114] The seat of his *officium* was Carthage or Cyrtha. See Gaudemet (1974): 200; Lepelley (2002): 69–71. Colonia Marciana Ulpia Traiana Thamugadi/Timgad was founded by Trajan around 100. On the early period of that locality, see Watkins (2002).

[115] According C. Th. 6, 22, 6 (a. 338) the fine was 30 pounds of silver and a certain amount of gold, stated in an unknown act. Meanwhile, the slightly earlier C. Th. 12, 1, 24 (a. 338), set the fine at 30 pounds of silver. See also Lepore (2000): 367.

[116] See Chapter 3.1. Two other constitutions addressed to that official, namely C. Th. 15, 1, 5 (a. 338) = C. 8, 11, 1; C. 10, 48, 7 (a. 338) were also concerned with respecting the privileges of various social groups. Dating after Seeck (1919): 187.

[117] C. Th. 6, 35, 4 (a. 321). "Idem A. [Constantinus] ad Iulium Verum vic(ar)um Italiae. Palatinis nostris, qui ob spectatum laborem otio donati sunt, sub obtentu pensitationum, quae repraesentari consuerunt, tolerantia munerum sordidorum atque indigni oneris quorundam

included in title 35: *De privilegiis eorum qui in sacro palatio militarunt* (On the privileges of those who served at the holy palace), book six of the Theodosian Code. In the constitution, the Emperor elucidated that although the crime should be punished with greater severity, he ordered – addressing the vicar directly – that the entire *officio rationum* be punished by having to supply bronze and have tablets made out of it, which were then to be inscribed with the text of the constitution, so that they may serve *palatini* as an immediate refuge ("ad eas illico") if such situations occur.

The act confirmed the privileges of *palatini* as well as the fact that they were infringed by imperial officials.[118] In contemporary assessment, the responsibility for violating their rights resembled administrative liability.[119] The administrator of the diocese of Italy, who was at a loss as to adequate penalty to impose on the members of the *officium*, must have turned with his doubts to the emperor. Constantine the Great, who incidentally did award honorary titles and other privileges in substantial quantities, confirmed the status of the *palatini*, and referred to the violation of their rights as *crimen*.[120] Subsequently, he introduced a particular kind of collective proprietary penalty – obligating *officium rationum* (the office of tax collectors) to fund bronze tablets which he considered a refuge, that is a kind of imperial asylum.[121]

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temeritate imponitur. Quod facinus licet graviore poena plectendum est, tamen ita volumus emendari, ut gravitas tua ex officio rationum aeris speciem postulet et in tabulas ei formatae legis huius apices imprimat, ut, si quid tale sustineant, ad eas illico quasi ad praesentia remedia perfugiant atque ab intentato onere liberentur. P(ro)p(osita) id. Mart. Crispo II et Constantino II CC. conss." According to Seeck (1919) dating to 318, with Iulius Severus as the addressee. On the vicar, see Chastagnol (1963): 354; PLRE 1 (Iulius Severus 35); Kuhoff (1983): 121, 362, note 41. It is debatable whether he really was the addressee of C. Th. 6, 22, 1 (a. 321): "ad Severum praefectum urbi", dated to 324 after Seeck (1919): 62, 143, 172 (concerning limitations in obtaining honorary dignities, with the suggestion that he was PPO *Galliarum*). See also critical opinion of Dupont (1973): 329, who argues that he was a vicar. Iulius was also the addressee of C. Th.: 8, 18, 2 (a. 318); 11, 30, 9 (a. 319) = C. 7, 62, 15 and possibly 10, 1, 2 (a. 319?). On these constitutions see below. On *munera sordida* (mandatory works, public duties and obligation of custodianship), see Nessen (1981); Horstkotte (1996) with further literature.

[118] The term *postulare* ("claim", "demand") used in the second sentence of C. Th. 6, 35, 4 (a. 321), was often used in Constantinian legislation with respect to the privileged position of various categories of persons. See Liebs (1977): esp. 312; Desanti (1986): 461.

[119] See Noethlichs (1981): esp. 133; Robinson (1995): 103; Barbati (2012): 276 et seq.; 327.

[120] See overview in Liebs (1977). On the privileges of *palatini*, see Neesen (1981): 221 (exemption from *munera*); Lehman (1977): esp. 51; Delmaire (1995): 24–27. See also Olszaniec (2014): 235.

[121] On the offices of tax collectors, see Jones (1960). On collective penalties imposed on the *officium* (and its head), see Rosen (1990) – on the example of province governors. On the imperial asylum in post-classical Roman law, see Mossakowski (2000): esp. 26–32, 58–73 with further literature.

Book seven of *Codex Theodosianus*, comprising 175 fragments of enactments dealing for the most part with the military affairs and status of the soldiers, also contains several fragments of constitutions which prove important from the point of view of jurisdiction of diocese administrators.[122]

The first of those – a constitution of 398, issued by Arcadius and Honorius and addressed to "Theofilo vicario Asiae", decreed apprehension of soldiers who left their unit illegally and the obligation to submit a relevant report to the emperors (who were to decide on the course of action); if it had turned out that the soldiers committed desertion, they were to be punished most severely by forfeiture of property, for which the entire *officium* was to be responsible.[123] A fragment of that constitution was included in the voluminous first title of the book, *De re militari*, which encompassed enactments concerned with various issues relating to military affairs, as well as adopted one constitution in the analogous title of book twelve in *Codex Iustinianus*.[124]

Apparently, the act stipulated that the vicar was responsible for the proceeding in desertion cases. What the constitution actually provided for was that it was the functionaries of territorial administration who were responsible for apprehending the deserters, hence the passage about the entire office, or perhaps the vicar ("periculo totius officii"[125]) being responsible. A number

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[122] Apart from constitutions discussed below, other enactments in book seven mention vicars' participation in supervising the division of *annona militaris* – C. Th. 7, 4, 3 (a. 357) and maintenance of imperial residences: C. Th. 7, 10, 1 (a. 405) – see more broadly Chapter 3.2. The book also contains a fragment of C. Th. 7, 22, 10 (a. 380): "ad Felicem comitem Orientis", regarding complusory military service of the sons of veterans. Furthermore, the book also preserved fragments of enactments addressed to the vicars of Rome, which specified the minimal height of recruits – C. Th. 7, 13, 3 (a. 367) and decreed that recruits who committed self-mutilation were to do state service – C. Th. 7, 10, 4 (a. 367). On the rules of conscription and military service in late antique period, see Wiewiorowski (2007b): 236–241 with further literature.

[123] C. Th. 7, 1, 16 (a. 398): "Idem AA. [Arcadius et Honorius] Theofilo vic(ario) Asiae. Si quos milites per prov(in)cias relictis propriis numeris passim vagari cogn(o)veris, correptos facias custodiri, donec de his cleme(n)tiae nostrae auribus intimetur et quid fieri oportea(t) decernamus; ita ut, si quis miles in provincia sine suo numero repertus fuerit ac post elapsus esse nuntiabitur, facultatum suarum, periculo totius officii, condemnatione gravissime vindicetur. Dat. V kal. Feb. Const(antino)p(oli) Honorio A. IIII et Eutychiano conss." On vicar see PLRE 2 (Theophilus 1). The constitution was incorporated in *Codex Iustinianus* as § 2 to C. 12, 35, 13, which in § 1 repeated amended C. Th. 7, 1, 17 (a. 398) on counteracting desertion. The contents of the title as compiled *Codex Iustinianus* are presented in Brunnemannus (1699): 1337–1339.

[124] On the entire book see Gothofredus (1737), vol. 2: 247–264 (Paratitlon); Giuffrè (1983). C. 12, 35, 13, 2 (a. 398): "Impp. Arcadius et Honorius Romuliano pu".

[125] According to Gothofredus (1737), vol. 2: 284, the enactment pertained to the *officium* of a vicar, whereas Pharr (1952): 157, note 58, argues that it was the *officium* of a province governor. See also Giuffré (1981): 216, note 10; Giuffrè (1983): 31–35, on the significance of the cited act.

of other sources confirm that soldiers were tried for desertion before a military court, therefore the act testifies to participation of vicars in the preliminary stages of the proceeding.[126]

A constitution from 409, issued by Honorius and Theodosius II, obligated the vicar of Africa, Gaudentius, to take care of the frontier land, which in the past had been granted to barbarians (*gentiles*) in exchange for protection and maintenance of fortifications, and decreed that whoever took them over was obliged to fulfil those duties.[127] Included in title 15: *De terris limitaneis* (On frontier lands), the enactment set forth that otherwise the land should be transferred to barbarians, if such may be found ("si potuerint inveniri"), or in particular to distinguished veterans, so that the defence of the limes remained unaffected. The constitution, originally related to an exceptional situation in Africa, reflected the post-classical development of a particular right of the borderland soldiers – *limitanei* to plots situated in the area of the limes.[128] The land adjoining the frontier had a particular status in antiquity and were out of bounds to free settlement. In the first place they were to ensure supplies in kind to frontier troops.[129] The fact that the enactment was addressed to the vicar of Africa, Gaudentius, indicates that the administrator of the diocese was supposed to supervise those who owned the aforemen-

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[126] See Wiewiorowski (2007b): 228–232 with references to sources and further literature. See also Crogiez-Pérequin, Jaillette (2009) who provide a synthesis of the image of deserter conveyed in C. Th. (not only in the context of military service)..

[127] C. Th. 7, 15, 1 (a. 409): "Impp. Honorius et Theodosius AA. Gaudentio vic(ario) Afri(cae). Terrarum spatia, quae gentilibus propter curam munitionemque limitis atque fossati antiquorum humana fuerant provisione concessa, quoniam comperimus aliquos retinere, si eorum cupiditate vel desiderio retinentur, circa curam fossati tuitionemque limitis studio vel labore noverint serviendum ut illi, quos huic operi antiquitas deputarat. Alioquin sciant haec spatia vel ad gentiles, si potuerint inveniri, vel certe ad veteranos esse non inmerito transferenda, ut hac provisione servata fossati limitisque nulla in parte timoris esse possit suspicio. Dat. III kal. Mai. Rav(enna) Honorio VIII et Theod(osio) III AA. conss."

[128] See Kaser (1975): 122, et seq. 21, 268 et seq.; and, with primary focus on the territories of the Lower Danube Wiewiorowski (2002); (2003) and (2007b): 221–225 with further literature (also addressing *limitanei* and *limes*). Also, a comprehensive commentary on *limitanei* may be found in Gothofredus (1737), vol. 2: 398–400. The latter author erroneously associated the issue of the analysed enactment (29 April 409) and its last sentence with the military expedition of usurper Attalus (hailed as emperor in the late 409), which was defeated by the troops loyal to emperor Honorius, under the command of count Heraclian in 410. See Stein (1959): 258; Kotula (1977): esp. 260 et seq.; PLRE 2 (Priscus Attalus 2); Burns (1994): 241–244. The correct interpretation was advanced by Kotula (1972b): 175 et seq., who linked the constitution with the social and economic problems in Africa; see also remarks below on C. Th. 16, 2, 34 (a. 399).

[129] Cf. e.g.: C. Th. 7, 4, 15 (a. 369) = C. 12, 37, 4; C. Th. 8, 4, 6 (a. 358); C. Th. 11, 1, 11 and 21 (a. 365 and 385.); C. 11, 60, 1 (a. 385); C. 11, 62, 8 (a. 386). Such regulations resulted from the striving to improve and streamline the system of supplies.

tioned plots of land, seize them if they had been taken by persons who did not want to perform duties associated with the land and to hand them over to subjects specified in the constitution.[130] On the other hand, it is difficult to determine the mode of the proceeding conducted by the vicar, and state whether his juridical duties were involved here, as the regulation is clearly administrative in nature.

The problem of desertion discussed above was also in evidence in Minor Asia, as attested to by a 383 act addressed by Gratian, Valentinian II and Theodosius to Constantius (who may have originated from the eastern part of the Empire) vicar of Pontus, then PPO *Galliarum* in 389[131]; its fragment was included in title 18: *De desertoribus et occultatoris eorum* (On deserters and their abettors).[132] Analysis of this constitution permits the observation that the suggestion which directly linked the issue of the previously discussed act (C. Th. 7, 1, 16, issued 28 January 398) with the trouble caused with the later uprising of Gothic leaders Trigibald and Gainas in 399 was incorrect, although it cannot be ruled out that both constitutions were related to desertions of soldiers of Gothic descent who had been settled in Asia Minor.[133]

The analysed fragment ordained the severe penalty of forfeiture of property to the Exchequer for people whose land was refuge to deserters or *latrones* (bandits)[134], and who within six months from issuance of the constitu-

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[130] Gaudentius was a pagan of senatorial descent and a friend of Symmachus; on Gaudentius, cf. Pallu de Lessert (1901): 225 et seq.; PLRE 2 (Gaudentius 3); Hahehling (1978b): esp. 471 et seq. The career of Gaudentius at the court in Ravenna is discussed in Symm. *Ep.*: 4, 38; 7, 45; 9, 133. The importance of the solution adopted in the act for the defensive potential of the African limes is also mentioned in Diesner (1971): 482. Bernardi (1965): 151, considers C. Th. 7, 15, 1 as an example of the efforts made to increase private ownership, even at the expense of the Empire's defences. He notes the African context of its issue, but simultaneously wrongly presumes that *limitanei* had already been widespread as peasants-soldiers in the fourth century.

[131] C. Th. 7, 18, 7 (a. 383): "Idem AAA. [Gratianus, Valentinianus et Theodosius] Constantiano vic(ari)o dioecesis Ponticae. Quisquis in fundo suo desertores vel latrones habere se meminerit, nisi eos ex die constitutionis emissae in sex menses prodiderit aut comprehensos etiam severitati iudiciariae obtulerit, sciat dissimulatione convictus fundum ipsum, in quo praedicti postea potuerint inveniri, fisci nostri viribus esse nectendum. Quod si forte contigerit, ut inscio domino memorati latuisse videantur, pari constituti temporis dimensione servata actores capite damnentur. Quam condicionem et circa actores rerum nostrarum volumus custodiri. Dat. IIII id. Iul. Const(antino)p(oli) Merobaude II et Saturnino conss." On the vicar, see PLRE 1 (Constantianus 2); Haehling (1978b): 345; Kuhoff (1983): 133, 371 (note 79).

[132] See Giuffrè (1983): esp. 78–83.

[133] Thus Gothofredus (1737), vol. 2: 284. See Zakrzewski (1927): esp. 69–74; PLRE 2 (Gainas; Trybigildus); Cameron, Long (1993): esp. 223–233; Hagl (1997): 46–62. Vallejo Girvéz (1996): 38 seems to be justified in associating the issue C. Th. 7, 18, 7 with securing the eastern frontiers of the Empire.

[134] The supplemented text was probably interpolated. See De Dominicis (1953): 418; De Domenicis (1964): 128.

tion failed to report the fact, apprehend or deliver the criminals to the judges, treating such persons as guilty of complicity. Capital punishment was decreed for those who sheltered deserters for the period specified in the act without the knowledge of the owners (which had to be proved) and extended application of the act to intendants of imperial estates.[135] Severity of the act, combined with as many as 17 imperial constitutions in the aforementioned title of the Theodosian Code, demonstrates the importance attached by the legislator to combating desertion, the banditry it most often led to as well as the practice of lending aid fugitives.[136] This is substantiated by the fact that the act was addressed to the vicar of Pontus, though at the same time it is not conclusive as to who was to judge persons abetting deserters and *latrones*. It seems, however, that in this case the vicar may have acted as judge in first instance.

Book eight of *Codex Theodosianus*, containing the total of 204 fragments of enactments, also contains a number of constitutions concerning the jurisdiction of diocese administrators.[137] Title 1: *De numerariis, actuarii, scriniariis et exceptoribus* (On accountants, actuaries, office clerks and secretaries) features two such fragments.

In 334, Constantine the Great instructed Veronicianus, vicar of Asia, that he should counteract the greedy and fraudulent practices of *numerarii*

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[135] On the terminology used and the interdependency of desertion and banditry see Gothofredus (1737), vol. 2: 415 (who quotes later narrative sources which suggest presence of both phenomena on the territory of that diocese); MacMullen (1966): 266 et seq.; Giuffré (1981) i (1983): 20 (note 28 *in fine*), 79; Stachura (2010): 98–100. Enactments devoted to desertion at the turn of the fifth century are cross-sectionally discussed by Vallejo Girvéz (1996). In the context of the right of citizens to self-defence, see also Manfredini (1996): esp. 521, note 125. See also the recent study by Pottier (2012) on imperial legislation directed against banditry. In turn C. Th. 7, 18, 7 pr. and PS 5, 23, 9 are only seemingly related: "Si quis furem nocturnum vel diurnum, cum se telo defenderet, occiderit, haec quidem lege non tenetur: sed melis fecerit, si eum comprehensum transmittendum ad praesidem magistratibus obtulerit". See Levy (1965): 10 et seq. with further literature.

[136] The scale of desertion (and aid rendered to the fugitives) in the Later Roman army is a matter of controversy. Richardot (1998): 68, did not hesitate to call desertion "un mal du IV^{e} siècle". On the popularity of military service in the fourth century see Nicasie (1998): 85–94 with further literature. The issue could not have been that serious during the reign of Justinian, given that the analogous title 45 in book twelve of *Codex Iustinianus* contains only three enactments compared with seventeen found in C. Th. 7, 18.

[137] Additionally, a number of fragments of enactments included there are related to participation of vicars in tax collection and matters concerning their auxiliary staff. See Chapter 3.2. Furthermore, C. Th. 8, 4, 19 (a. 396) = C. 12, 57, 8 provided that the vicars exercised control over cash equivalent of *annona* payable to soldiers (the so-called *adaeratio*). See Wiewiorowski (2007b): 241–249 with further literature. Apart from the constitutions listed below, another addressee of the enactment concerning inheritance law (*bona materna*) was *comes Orientis* – C. Th. 8, 18, 5 (a. 349) = C. 6, 14, 3. On this constitution see Voci (1978): 65 et seq., 73; Cunea (1995): 215 (note 13), 231, 232.

(accountants) in various offices of province governors (*rectores*).[138] The emperor yet again sanctioned the rule that *numerarii* belong to a group which may be subject to torture, interrogation using the breaking wheel and torment, and that their term in office cannot exceed two years.[139] The act was still applicable in the sixth century and was therefore repeated in *Codex Iustinianus*, in the title devoted to various members of auxiliary staff of civilian and military judges.[140]

The constitution confirmed the occurrence off abuse perpetrated by the auxiliary personnel of various offices, including the offices of province governor. It does not specify directly who was to adjudicate in such a case. The auxiliary staff of a given official was accountable to their superior, which in this case meant province governor.[141] The vicar would have acted here as an official called upon directly – bypassing province governor – by the inhabitants of the diocese, who suffered as a result of blatant abuses of *numerarii*. Most likely, Constantine the Great provided the vicar with guidelines as to the measures which need to be employed in the criminal proceeding taking place directly before the authority of the vicar against *numerarii* and the penalties which is to be given once the accusations against the defendant were confirmed.

A fragment of this act was also included in book eight of the Theodosian Code, in title 15: *De his, quae administrantibus vel publicum officium gerentibus distracta sunt vel donata* (On things which are sold or given to administrators or public offices).[142] The entire title was concerned with various categories of

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[138] *Numerarii* are discussed more broadly in Chapter 3.2.

[139] C. Th. 8, 1, 4 (a. 334): "Idem A. [Constantinus] ad Veronicianum vic(ari)um Asiae. Vorax et fraudulentum numerariorum propositum, qui diversis rectoribus obsequuntur, ita inhibendum est, ut et antea sanximus et nunc itidem sancimus, condicioni eos subdi tormentorum et eculeis adque lacerationibus subiacere nec ultra biennium hoc fungi obsequio. Et cetera. Dat. XIIII kal. Iun. Optato et Paulino conss." On the vicar, see PLRE 1 (Veronicianus 1); Kuhoff (1983): 135, 372 (note 83). On the mode of drawing upon earlier regulations as a method used in the enactments from the times of Constantine I (*et antea sanximus et nunc itidem sancimus*), in this and in other constitutions, see Gaudemet (1972b): 696 (note 5), 702. On the admissibility of torture in Roman law, see the bibliography compiled in Riess (2002) and Wiewiorowski (2007b): 218, note 618.

[140] C. 12, 49 (*De numerariis actuariis et chartulariis et adiutoribus scriniariis et exceptoribus sedis excelsae ceterorumque iudicum tam civilium quam militariom*), 1.

[141] The notion of the local context was supported by Dupont (1973): 332. The constitution is quoted as an example of enactment of Constantine the Great which determines the status of various categories of persons. See Liebs (1977): 312. The abuses committed by the auxiliary personnel are discussed more broadly in Chapter 3.2.

[142] C. Th. 8, 15, 2 (a. 334) "Imp. Constantinus A. ad Veronicianum vic(arium) Asiae. Post alia: Damus provincialibus facultatem, ut, quicumque sibi a numerariis, qui diversis rectoribus obsequuntur, conquesti fuerint aliquas venditiones extortas, irritas inanesque efficiant, et male

abuses associated with prohibited acquisition of financial gain by imperial officers from Roman citizen.[143] It possessed practical significance also after the decline of the Western Empire, given that it was provided at the time with a categorical *interpretatio* and repeated in the Breviary of Alaric.[144]

The discussed fragment stipulated that if an inhabitant of a province proves that they were coerced into sale by the *numerarii* of province governors, they are entitled to demand the transaction to be nullified and claim the return of its object, while the "illicites ac detestandes emptores" should be fined in the amount of the price paid.[145] Hence it may be inferred that *provinciales* were forced by *numerarii* to conclude unfavourable contracts of *emptio-venditio*. Because the contract was performed and the transfer of ownership had clearly taken place by way of *traditio*, Constantine I instructed the vicar that if it was proved in a proceeding where the latter probably presided (in first instance?) that the said abuse had taken place, the vicar was to annul the contract and its consequences. Additionally, the *numerarii* were to be fined.[146]

Title 1: *De numerariis, actuariis, scriniariis et exceptoribus*, book eight of the Theodosian Code also includes an extensive excerpt from a constitution addressed by Valentinian I and Valens to the already discussed vicar of Asia, Clearchus, whose part was then partly incorporated in *Codex Iustinianus*.[147]

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vendita ad venditoris dominium revertantur, amissione etiam pretii illicitis ac detestandis emptoribus puniendis. Dat. XIV kal. Iun. Optato et Paulino conss." See also Dillon (2012): 181 et seq., with remarks on the significance of authorising torture as a measure employed to discipline imperial officers. Veronicianus was also the recipient of C. Th. 11, 16, 6 (a. 335) = C. 12, 23, 1, which exempted *palatines* and citizens of Constantinople from "extraordinariis et temonariis oneribus". See Dupont (1963): 66, 74. On the reasons behind the modification of the latter act in *Codex Iustinianus* see Delmaire (2012): 169 et seq. Dating of the enactment corrected after Seeck (1919): 183.

[143] The phenomenon applied to vicars as well, a fact which is explicitly referred to in C. Th. 8, 15, 5 (a. 368); Dating after Schmidt-Hofner (2008a): 534. The regulation is discussed in greater detail in Gothofredus (1737), vol. 2: 670–672; Dupont (1972b): esp. 282, 309; Grodzynski (1987): 152.

[144] "Interpretatio. Haec lex expositione non indigent"; Brev. Alaric. 8, 8, 1.

[145] See Gothofredus (1737), vol. 2: 668. On that constitution compared to other sale-and-purchase laws enacted by Constantine which were aimed at restoring public order, see Dupont (1955a): 255 et seq., 260–263. See also same in the light of systematic remarks on the nature of *emptio-venditio* in the legislation from 312–535: Dupont (1972b): including 277, 281 – from the standpoint of terminology used in this and other acts, and 305, 307 – on sanctions. As an example of privilege, see Liebs (1977): 312.

[146] In greater detail on the legal means employed in this case – since *restiutio in integrum* or *actio quod metus causa* are out of the question here – see Hartkamp (1971): 67, 69, 173 et seq.; Vandenriessche (2006), esp. 268–271.

[147] C. Th. 8, 1, 9 (a. 365): "Impp. Valentinianus et Valens AA. ad Clearchum. Numerarii qui appellari consueverant consularium ac praesidum, dumtaxat tabularii posthac nostra sanc-

The constitution regulated the status of *tabularii*, or *numerarii* (accountants) in the offices of province governors, clearly sanctioning the use of torture on such officials if they delayed the submission of reports concerning the amounts of due taxes to the province governor. The constitution confirmed supervisory authority of diocesan vicar with respect to province governor and their subordinate staff, but in contrast to the previously analysed constitution addressed to Veronicianus, any information to the effect that Clearchus performed judge's duties are difficult to find.

The judiciary was also partly within the scope of a fragment of constitution by Constantius II (or rather Constans I) directed to another vicar of Africa, Eubulidas, which is found in title 10: *De confussionibus advocatorum sive apparitorum* (On the abuses of advocates and servants), book eight of the Theodosian Code.[148]

The constitution addressed the issue of abuses committed by officials and advocates (*scholastici*) on *provinciales Afri* (Africa), which consisted in

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tione vocabuntur, scientes sese tormentis esse subiectos, nisi iudicibus vel his, qui provecti nostro iudicio ad provincias venerint vel his, qui ibidem diutius fuerint commorati, debitorum ac reliquorum modum frequenter ingesserint sub actorum testificatione: quos scire oportet cum his qui debitores sunt sese ad solutionem esse retinendos, nisi omnia debita ipsis fuerint indicantibus persoluta. Triennii tamen spatio tabulariorum decet tempus omne concludi. Denique cum peregrinos deligi adque ad singulas quasque provincias oporteat destinari, peractis triennii spatiis adque hoc tempore completo biennio post administrationem in provinciis residere debebunt, obsequia iudicum praestolantes, ut edant rationem torporis adque segnitiae ac subiaceant dispendiis, quae communicari isdem cum exactoribus convenit, si detrectasse fidem praetermissis suggestionibus monstrabuntur. Dat. XIIII kal. Mart. Const(antino)p(oli) Valentiniano et Valente AA. conss." = C. 12, 49 (*De numerariis actuariis et chartulariis et adiutoribus scriniariis et exceptoribus sedis excelsae ceterorumque iudicum tam civilium quam militariom*), 2. See short analysis of its content in Gothofredus (1737), vol. 2: 479 et seq. Dating after Schmidt-Hofner (2008a): 529. On Clearchus, see remarks on C. Th. 5, 19, 1 (a. 365). On *tabularii*, see Berger (1953): 729 (s.v.); Litewski (1998): 255 (s.v.).

[148] C. Th. 8, 10, 2 (a. 344): "Imp. Constantius A. Eubulidae v(iro) c(larissimo) vic(ari)o Africae. Praeter sollemnes et canonicas pensitationes multa a provincialibus Afris indignissime postulantur ab officialibus et scholasticis, non modo in civitatibus singulis, sed et mansionibus, dum ipsis et animalibus eorundem alimoniae sine pretio ministrantur. Nec latet mansuetudinem nostram saepissime scholasticos ultra modum acceptis honorariis in defensione causarum omnium et annonas et sumptus accipere consuesse, quibus, tantis commodis fulti itinere, suam avaritiam explere nequeunt. Provinciales itaque cuncti iudices tueantur nec iniurias inultas transire permittant. Dat III kal. Iul. Leontio et Sallustio conss." On Eubulidas and his being identified with another historic figure – priest Iunius Eubulidas, see Pallu de Lessert (1901): 186 et seq.; PLRE 1 (Iulius Ebulidas); Kuhoff (1983): esp. 298, note 148; Rüpke (2005): 1066. The constitution was signed by Constantius II, although it is more likely that it was issued by emperor Constans I, who single-handedly ruled the western part of the Empire in 344. See Seeck (1919): 198; biographical notes concerning the emperor: Seeck (1900); S. Bralewski, in: Prostko-Prostyński et al. (2001): 253 et seq.

exacting additional levies (e.g. at the stations *cursus publicus* – *mansiones*) as well as taking additional fees for defence during a lawsuit, ordering province governors (*iudices*) to take action against such practices.[149] In the abridged version adopted in the analogous title in *Codex Iustinianus,* the legislator removed the direct reference to African provinces and the general remark that the emperor is cognizant of the abuses caused by the greed of advocates.[150] Thus the analysed constitution pertained to the administrative duties of province governors. Having been addressed to diocesan vicar, it corroborates his supervisory powers over province governors.

One of the important acts for the introduction of the category *bona materna*, the share of inherited estate falling to the children after their mother's death, was the constitution which Constantine the Great addressed to the aforementioned Iulius Severus, probably a *vicarius Italiae*.[151] An extensive

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[149] See Gothofredus (1737), vol. 2: 627 et seq.; Kaser, Hackl (1996): § 78 (note 13), § 85.III; Agudo Ruiz (2006): 139. Cf. also Pack (1986): 219, note 551, in the context of abuses taking place in the course of tax collection. According to De Marini Avonzo (1964): 1057, the constitution was concerned with fees charged outside licensed *sportulae*, which seems unfounded. Cf. Dillon (2012): 142 (note 83). See also other works quoted by Cuneo (1997): 125 et seq.

[150] C. 12, 61 (*De lucris advocatorum et confussionibus officiorum sive apparitorum*), 2 (a. 344): "Imperator Constantius A. Eubulidae vicario Africae. Praeter sollemnes et canonicas pensitationes multa a provincialibus indignissime postulantur ab officialibus et scholasticis non modo in civitatibus singulis, sed et mansionibus, dum ipsis et animalibus eorundem alimoniae sine pretio ministrantur. Provinciales itaque cuncti iudices tueantur nec iniurias inultas transire permittant. D. III k. Iul. Leontio et Sallustio conss." On the changes to the text of this constitution, see Cunea (1996): 229–230. Barbati (2012): 180 (note 72) argues that in this wording, the act might have pertained to different categories of *iudices,* not only province governors. Rossi (1970): 288–289 associated C. 12, 61, 2 directly with the medieval saying: *Advocatus et non latro, res miranda populo* ("A lawyer who is not a bandit – a thing that astounds people"). The saying refers to St. Ivo of Kermartin, patron of lawyers, eulogized with the following: "Sanctus Ivo erat Brito, advocatus et non latro, res miranda populo". On the saint see Waliszewska (2003): esp. 10–22; Krafft (2005): 795–836; Streck, Rieck (2007): esp. 89–97, 98.

[151] C. Th. 8, 18, 2 (a. 318): "Idem A. [Constantius] Iulio Severo. Quum ad patrem aliquid ex materna successione interposita cretione pervenerit, et ad liberos maternarum rerum successiones defluxerint, ita eas haberi placet in parentum potestate, ut dominium tantum possessionis usurpent, alienandi vero licentiam facultatemque non habeant, ut quum aetates legitimae liberorum ad emancipationem parentes invitaverint, et patresfamilias videre liberos suos voluerint, tertiam partem maternorum bonorum eis filii tanquam muneris causa offerant; quam si suscipiendam patres putaverint, faciendae divisionis arbitrium permitti oportebit iustitiae bonorum virorum, per quos facta divisione tertiam partem oblatam parentes ita accipient, ut alienandae quoque eius partis habeant facultatem, si modo ullus potuerit inveniri, cui placeat hanc amplecti licentiam, quum omni modo filios conducat anniti, ut pio sedulitatis affectu mereantur accipere eam, quam patribus dederint, portionem. Dat. VII. id. Sept. Med(iolano), acc. non. Oct. Constantino A. V et Licinio Caes. conss." Gothofredus (1737), vol. 2: 386 et seq. provided the act with a commentary, in which an extensive paratitlon is devoted to title 18 of C. Th., with a lucid outline of the division of property which, on account of marriage,

excerpt found in title 18: *De maternis bonis et materni generis et cretione sublata* (On estate inherited from mother and on mother's side and on revoking *cretio*), book eight of *Codex Theodosianus*, stipulated that if fathers came into estate left by deceased wife by way of the formal act called *cretio*[152], they had the sole right of its usufruct but not alienation.[153] If children became emancipated having reached adulthood and the father wanted them to become *pater familias* (i.e. *sui iuris*), he was to receive a third of the estate with the right of alienation *muneris causa* (i.e. due to the charges) in a special proceeding in which the estate was divided and allocated with the participation of trusted persons (*boni viri*).[154] In the latter half of the fifth century, the constitution was provided with an interpretation and incorporated in the Breviary of Alaric, which demonstrates that it proved significant for legal practice in the West.[155]

The regulation belonged to the group of Constantine the Great's family laws, and although it was addressed to Iulius Severus, the text itself does not yield proof whether it was (or was not) the outcome of a particular case heard by the vicar in the court (in first instance?). On the other hand, the fact that it supplemented details to the regime established by Constantine in the

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were to be administered by the *pater familias* in accordance with Constantinian legislation (ibidem: 682–684). Dating of the constitution after Seeck (1919): 167. On the vicar, see remarks on C. Th. 6, 35, 4 (a. 321).

[152] By virtue of *cretio,* both the children as well as the father could claim inheritance. See Berger (1953): 418 (s.v.); Litewski (1998): 61 (s.v.). On the significance of the analysed constitution in the context of inheritance law see Biondi (1948): esp. 84–91; Dupont (1964): esp. 98–101 (regarding restriction of the application of *cretio* to *filii familias*); Voci (1978): 59–75; Sargenti (1999). Cf. also regarding enduring existence of *patria potestas* in post-classical law: Kaser (1975): esp. 213, 217, 249 et seq.; Voci (1985b): 20 et seq., 53, 56, 68; Arjava (1998): esp. 146. Wierzbowski (1977): 18, merely notes that the term *pater familias* is used.

[153] In the context of development of limited property rights, regardless of the fact that the text employs the term *dominium*, which actually denoted substantially limited property right, see Levy (1951): 34–40; Dupont (1977): 240, 244–246; Vandendriessche (2006): 129–132.

[154] As the last paragraph of the constitution suggests, the proceeding did not preclude the possibility of children obtaining that part of the estate, provided that they helped the father.

[155] "Interpretatio. Materna bona filiorum defuncta uxore pater ita possideat, ut usumfructum de his habeat: sed quantum aut quam diu habeat, lex novella constituit: distrahendi tamen aut donandi ex his nullam pater habeat potestatem. Sane si filium mortua matre emancipaverit, de bonis maternis, id est de emancipati filii portione ipse filius muneris causa de maternis bonis tertiam offerat portionem: quae tamen in ipsius proprietate mansura est ita, ut eam pater bonis viris dividentibus consequatur. Si tamen tantum patris nomen ad hoc adduci potuerit, ut rem filiorum impia cupiditate suscipiat, aut aliis derelinquat: studere tamen filios decet, ut id, quod parentibus causa emancipationis obtulerint, servitio et pietate recipient"; Brev. Alaric. 8, 9, 2. *Interpretatio* invoked the changes made under the regime of *bona materna*, introduced in Nov. Theod. 14 (a. 439). See Kaser (1975): esp. 189. On the persistence of the solutions in the West, see Arjava (1994): 134–139.

constitution of 315[156] may confirm that it was the aftermath of difficulties encountered in practice. Regardless of the resolution in this particular respect, the act might have been a basis for adjudications of *iudices medii*, as apart from one exception, only *iudices maiores* and *medii* were mentioned among individually named addressees of title 18, book eight of *Codex Theodosianus*.[157] One may also tentatively state that the protection of *bona materna* for which the constitution provides, seems to be, in principle, a reflection of the theory of kin selection in Roman inheritance law, just as the previously discussed C. Th. 4, 21, 1 (a. 395).[158]

Book nine of *Codex Theodosianus*, comprising 222 fragments of legal acts, also contains constitutions which prove important for the status of vicars as judges.[159] A number of those were included in title 1: *De accusationibus et inscriptionibus* (On accusations and inscriptions).[160]

The first of the preserved fragments of enactment issued by Constantine I in 319 was addressed to an unidentified Ianuarinus.[161] Although the *acceptio* took place in Corinth, the capital of the proconsular province of Achaia, Ianuarinus might have been a vicar in the Balkans, as the next step in

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[156] C. Th. 8, 18, 1 (a. 315) = C. 6, 60, 1. On the dependencies between both constitutions, besides literature cited in previous footnotes, see esp. Archi (1981), who rightly observed that "l'innovazione constantiniana aveva sollevato in certi ambienti una reazione, per quanto concerne almeno la disposizione sul »praemium emancipationis«" (ibidem: 1754). On interpolations in both constitutions, see Gradenwitz (1917): 51, note 1; Solazzi (1944): 229.

[157] C. Th. 8, 18, 4 (a. 339) was the only one to be addressed to province governor. Cf. PLRE 1 (Flavius Dionysius 11). Likewise C. 6, 60, in which PVR and PPO were separately named as addressees: C. 6, 60, 2 (a. 395) = C. Th. 8, 18, 7 and C. 6, 60, 4 (a. 468).

[158] On kin selection cf. remarks concerning C. Th. 4, 21, 1 (a. 395).

[159] Several more fragments of enactments addressed to *praefectus Augustalis* were concerned with the judiciary: in C. Th. 9, 11, 1 (a. 388) detention of the accused in private prisons was classified as crime of lése-majestè – on this constitution see Bernardi (1965): 153. More broadly on private prisons in remarks regarding C. 9, 5, 1. C. Th. 9, 33, 1 (a. 384) = C. 9, 30, 1 decreed that *patrocinium* should be severely punished; C. Th. 9, 45, 2 (a. 397) = C. 1, 12, 1 denied Jews accused of crimes or those who were in debt to be admitted as members of Christian community or to take advantage of the right of ecclesiastic asylum – on this constitution see e.g. Mosakowski (2000): 36, 76 et seq.; 88, 118 et seq. Hence all of them also pertained to first instance court proceeding or "preliminary" proceeding.

[160] *Accusatio* – criminal complaint in criminal process under public law; *inscriptio* – introduction of the accepted criminal case into the court register of processes. Cf. Litewski (1998): 5, 120 (s.v.).

[161] C. Th. 9, 1, 2 (a. 319): "Idem A. [Constantius] ad Ianuarinum. Quicumque ex eo die, quo reus fuerit in iudicio petitus, intra anni spatium noluerit adesse iudicio, res eius fisco vindicentur et si postea repertus nocens fuerit, deprehensus saeviori sententiae subiugetur. Sed et si argumentis evidentibus et probatione dilucida innocentiam suam purgare suffecerit, nihilo minus facultates eius penes fiscum remaneant. Dat. id. Ianuar., acc. V kal. Aug. Corintho Constantino A. V et Licinio Caes. conss."

his career was vicariate in Rome, which at the time was inaccessible to senators.[162]

The constitution states that if the accused (*reus*) did not appear in court within a year, his property may be confiscated to the Fiscus. If the accused proved guilty, he would be subject to even more severe punishment, while the forfeiture would remain in force even if *contumax* proved his innocence.[163] The analysed constitution was clearly an imperial rescript pertaining to a case which was heard by Ianuarinus in first instance. In view od the general quality of the solution it stipulated, it was also included in title 40: *De requirendis* (On requisitions), book nine of *Codex Iustinianus*.[164]

Another enactment in book nine of *Codex Theodosianus*, concerning issues relating to the judiciary of vicars, was issued by Valens, Gratian and Valentinian II in 376 and addressed to the Senate of Rome.[165] The preserved fragment limited the competences of all *iudices ordinarii*, including *vicarii*, to investigating and presiding in criminal proceedings where senators stood

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[162] Named without specifying the office, Ianuarinus was probably *vicarius per Moesias* but not *Macedoniae* (first attested in 327 – cf. C. Th. 11, 3, 2 (a. 327). See Gothofredus (1738), vol. 3: 285 (note c) and Gothofredus (1738), vol. 3: 4 (note b) – as proconsul of Achaia; Seeck (1919): 62 et seq., 117 et seq., 169 et seq. (who ultimately argues for a high-ranking office at the a palace – *comes rei privatae*?); Ensslin (1936): 320 et seq.; Groag (1946): 21–24; Chastagnol (1960): 2l9, 463 (nr 3); Arnheim (1970): 604; PLRE 1 (Ianuarinus 1); Kuhoff (1983): esp. 364, note 51; Delmaire (1989): 30–32; Cameron (1999): 489 et seq.

[163] On the constitution see Gothofredus (1738), vol. 3: 4 et seq.; Liebs (1977): 326; Rivière (2000): 404, note 7. On the usage of *reus* to refer to the defendant see e.g. Berger (1953): 683 et seq. (s.v.); Litewski (1998): 231 (s.v.). Ianuarinus was also the recipient of C. Th. 9, 37, 1 (a. 319) and C. 6, 1, 5 (a. 319). See below.

[164] C. 9, 40, 2 (a. 319). On the Justinian version of the act see briefly in Brunnemannus (1699): 1139. On the layout of contents in this book compared with book nine C. Th., see Bonini (1990): 59–97 (esp. 89 – on the analysed enactment) and on the significance of its adoption in C. – 102–105, 115 (note 68).

[165] C. Th. 9, 1, 13 (a. 376). "Imppp. Valens, Gra(tia)nus et Val(entini)anus AAA. ad senatum. Post alia: Provincialis iudex vel intra Italiam, cum in eius disceptationem criminalis causae dictio adversum senatorem inciderit, intendendi quidem examinis et cognoscendi causas habeat potestatem, verum nihil de animadversione decernens integro non causae, sed capitis statu referat ad scientiam nostram vel ad inclytas potestates. referent igitur praesides et correctores, item consulares, vicarii quoque, proconsules de capite, ut diximus, senatorio negotii examine habito. Referant autem de suburbanis provinciis iudices ad praefecturam sedis urbanae, de ceteris ad praefecturam praetorio. Sed praefecto Urbis cognoscenti de capite senatorum spectatorum maxime virorum iudicium quinquevirale sociabitur et de praesentibus et administratorum honore functis licebit adiungere sorte ductos, non sponte delectos. Et cetera. Lecta in senatu III id. Feb. Valente V et Valentiniano AA. conss." In this constitution the term *caput* is used to denote a person. See Giglio (2010). It is suggested that other fragments of this enactment were incorporated into separate constitutions found in C. Th. See works cited in the following footnote.

accused of acts punishable by *poena capitis*.[166] Hearing such cases was in the purview of the emperor (and/or PPO?), and with respect to cases from the territory of *Italia Suburbicaria*, the court of competent jurisdiction was *iudicium quinquevirale* presided by the prefect of the city. The constitution introduced *privilegium fori* for Roman senators, and later probably for those from Constantinople, guaranteeing participation in the college of "five men". According to the act, the contribution of ordinary judges was reduced to investigating the case and conducting the trial ("examinis et cognoscendi causas habeat potestatem") in which charges were made against a senator, and thus reduced their participation in first instance evidentiary hearing, without the right to return verdicts.[167]

Several years later, emperors, Gratian, Valentinian II and Theodosius issued a constitution addressed to the vicar of Spain, Marinianus, which is to be found in the same title of *Codex Theodosianus*.[168] In an innovative fashion, the act established the procedural rules in the case of *actio internecivi* and charges of *mors suspecta*, stating that if such were made, the prosecutor shall oblige himself to surrender to the same penalty as the accused, whereas when accusing slaves belonging to another person, tortures could be used only when the prosecutor had made the assurance that they would reimburse financial loss to the owner when the slaves proved innocent. *Actio*

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[166] Cf. Gothofredus (1738), vol. 3: 17 et seq. Among the relevant recent works see Giglio (1990): 176, 198 et seq.; Giglio (1992); Vincenti (1992): 58–73; Flach (1996) and the exhaustive study by Prostko-Prostyński (2008): esp. 28–64 (on pp. 127–137, 163–171 the author analyses sources which, contrary to the opinion of other authors, are supposed to corroborate the functioning of *iudicium quinque-virale* in Constantinople), with further literature. The author is justified in noting that the constitution most likely pertained to *ordo senatorius*, not only actual members of the Senate, and that the expression *capitis statu* should be interpreted as reference to *poena capitis* (capital punishment), which did not necessarily have to mean death penalty (ibidem: 61). Also, relating to earlier works, Prostko-Prostyński (2008: 61 et seq.) expressed doubt as to the competence of PPO to receive reports (the author disputes the meaning of the formulation "*ad scientiam nostram vel ad inclytas potestates*"). The thesis is disputable – see in greater detail Rogowski (2015).

[167] According to Prostko-Prostyński (2008): 57 et seq., those were the powers of the diocesan vicars, particulary *vicarius urbis Romae*, that the enactment undermined in the greatest degree. There is a possibility that an account concerning participation of a vicar in such proceeding was preserved in the narrative sources. Cf. Chapter 5.2.

[168] C. Th. 9, 1, 14 (a. 383): "Imppp. Gratianus, Val(entinia)nus et Theod(osius) AAA. ad Marinianum vic(arium) Hispaniae. Qui vel internecivi exserit actionem vel crimen suspectae mortis intendit, non prius cuiuscumque caput accusatione pulset, quam vinculo legis adstrictus pari coeperit poenae condicione iurgare, ita ut etiam servos si quis crediderit accusandos, non prius ad miserorum tormenta veniatur, quam se accusator vinculo inscriptionis adstrinxerit. Appetendorum enim causa servorum aut dispendium facultatum est aut poena dominorum. Dat. VI kal. Iun. Patavi, Merobaude iterum et Saturnino conss."

internecivi was a term used for a means of indictment, introduced in the second century, which would be directed against a person giving false evidence which resulted in death. The constitution distinguished it from a separate category, namely indictment of causing death (*mors suspecta*).[169]

Marinianus, which may have originated from the Spanish province *Gallaecia* (or Minor Asian Galatia), was a vicar of *dioecesis Hispaniarum* in 383.[170] The issue of the constitution is linked with the internal situation in the province, or more precisely with the abuses committed during the Priscillian controversy.[171] The heresy was widespread in *Gallaecia*, hence it may be suggested that the enactment which was to mitigate anti-Priscillian acts may have suited Marinianus, who was most likely interested in keeping peace in his "small homeland".[172] Quintus Aurelius Symmachus, who was on friendly terms with Marinianus, compares the latter to Scaevola and observes that he was a teacher of law in Rome before 383.[173] The text of the constitution clearly indicates that it pertained to the participation of the vicar in a proceeding in which he heard the case as first instance judge, while given Marinianus's education, it may be surmised that the act was issued following his *suggestio*. In the literature, the figure of Marinianus is identified with an anonymous *vicarius Hispaniarum*, participant in the interrogations of Spanish Priscillians in 384–385.[174] This may be an additional piece of evidence supporting the idea of Marinianus's initiative which prompted the constitution of 383.

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[169] See the analysis of this constitution in connection with other sources in Gothofredus (1738), vol. 3: 19–21; Vincenti (1985): esp. 348–353; Fortina (1953): 129.

[170] Symm. *Ep*. 3, 25, 2: "uno tantem lapsu – fas sit dicere – amica vindicatio claudicavit, quo remurendum me de Gallatia polliceris, ubi ad patrium larem veneris". On familial connection of the vicar, see Chastagnol (1965): 276–277, no. 11; Matthews (1967): 500; PLRE 1 (Marinianus 2; Anonymus 58; Anonymus 59); Nellen (1977): 75 et seq.; Kuhoff (1983): esp. 116, 356 (note 17); Vilella (1992): 89–90; Pellizzari (1998): 112–124 with further bibliographic references.

[171] See Matthews (1975): 164 et seq.; Vincenti (1985): 355–357 with reference to C. Th. 9, 1, 11 (a. 368/373). Priscillianism was a movement which developed under the influence of Manichean and Gnostic notions. Its adherents considered the human body to be a work of the devil, propagated extreme asceticism, negated the incarnation of Christ and true existence of the Holy Trinity. On Priscillianism, see Conde (2004) with further literature.

[172] Nonetheless, see Pellizzari (1998): 113, who questions potential sympathies that Marinianus might have had for Priscillianism.

[173] Symm. *Ep*. 3, 23, 2: "Tenet te eruditio Scaeuolarum, dum forenses rabulas peruigil doctor instituis". Most likely, Symmachus had Quintus Muciusa Scaevola in mind (ca 159–88 BC). The six letters written to Marinianus which have been preserved – Symm. *Ep*. 3, 24–29, confirm their close acquaintance. See esp. Pellizzarii (1998): 112–124 (also on the significance of the law-teaching episode, 117 et seq.). See also Chapter 1.1. On the letters of Symmachus, see also the overview in Matthews (1974).

[174] Sulpicius Severus *Chronica* 2, 49, 3. See Kuhoff (1983): 116. Cf. also PLRE 1 (Anonymus 59); Pellizzari (1998): 113.

However, a number of authors also suggest that the incentive to issue the constitution may have had something to do with St. Ambrosius's influence (ca 339–397) on emperor Gratian.[175] As it follows from its provisions, the constitution was intended as a means to discourage making unfounded accusations, which contributed to maintaining social order. Consequently, it may have been of substantial service to persons suspected of connections with Priscillianism, but went against the interests of the Catholic Church, and it would be difficult to believe that the solution offered by the constitution was advocated by Ambrosius.

Nevertheless, the latter's influence remains viable. As Ambrosius himself was an efficient imperial official during the secular period of his life (e.g. ca 372/3–374 he was the governor *consularis* of the Italian provinces of Liguria and Emilia), while one of the core issues of his theological reflection was justice.[176]

Regardless of who was the *spiritus movens* of the constitution of 383, it is obvious that the emperor intended to mitigate social unrest and counteract raising groundless accusations. Therefore it must have proved important in practice and was provided with *interpretatio*, which changed the purport of the constitution with regard to slaves; for this reason it was also quoted, with amendments, in two *leges Romanae barbarorum*, while a fragment was repeated in the analogous title in Justinian's Code.[177]

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[175] Vincenti (1985): 356 et seq. However, it is disregarded by Sargenti, Bruno Siola (1991). More broadly on the influence of St. Ambrosius on Gratian's policy, see also Glaesener (1957); Gottlieb (1973) – chiefly with respect to enactments pertaining to religion. See also on the significance of the constitution for the admissibility of torturing slaves in Roman criminal law, Robinson (1981): 224; Pergami (1997): esp. 504 – in the light of changes in criminal procedure; Collot (1965): 186 – in the context of *suffragium*.

[176] Among Polish works only see Pałucki (1999); Ilski (2001): 244–256 with further literature. On the secular period in the life of St. Ambrosius, see e.g. McLynn (1994): 1–52.

[177] "Interpretatio. Quicumque alium de homicidii crimine periculosa vel capitali obiectione pulsaverit, non prius a iudicibus audiatur, quam se similem poenam, quam reo intendit, conscripserit subiturum: et si servos alienos accusandos esse crediderit, se simili inscriptione constringat, futurum ut supplicia innocentum servorum aut poena capitis sui aut facultatum amissione compenset". On the different meaning of the above formulations for the status of slaves, see Grodzynski (1987): 152 et seq. See also Brev. Alaric. 9, 1, 8; C. 9, 2, 13; Burg. Rom. 7, 1. In C. Th. 9, 1, 14 and in the *interpretatio* the term *caput* is given different meaning: it refers to "person" in the constitution and "capital punishment" in the *interpretatio*. See Giglio (2010). *Poena capitis* did not have mean death penalty exclusively. See Prostko-Prostyński (2008): 61. Only one sentence was adopted in C. 9, 2 (*De accusationibus et inscriptionibus*), 13: "Si quis servos crediderit accusandos, non prius ad corporum tormenta veniatur, quam se vinculo subscriptionis adstrinxerit", thus limiting the licence for the use of torture only when slaves were concerned. See Brunnemannus (1699): 1080; Bonini (1990): 138, note 140.

Another constitution concerning the exercise of judiciary powers by vicars may be found in book nine of *Codex Theodosianus*, in title 3: *De custodia rerum*, devoted to the detention of the accused[178]. In an enactment which originally constituted a whole with the aforementioned constitution addressed to Valerianus, vicar of Spain in 365, emperors Valentinian I and Vales decreed that detaining the accused in custody took place after the suitable inscription had been placed in the public ledger ("in codice publico sollemnia inscriptionis impleta sint").[179] Thus the enactment pertained to the control exercised by the vicar over correctness of the course of pre-trial proceeding, to use present terminology. Entering an inscription in the public ledger meant that persons making unfounded accusations could be held liable.[180] It may also be mentioned that the vicar himself was granted the ability to detain the defendant.[181]

It is also suggested in literature that Valerianus was the recipient of another constitution in book nine of *Codex Theodosianus*, dated in the manuscript to 366, although its addressee is stated as *p. U.* (i.e. PVR) Valerianus, with regard to whom the constitution employed the formulation "sinceritas tua".[182] The nomenclature used in imperial enactments to refer to diocese

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[178] C. Th. 9, 3, 4 (a. 365): "Impp. Vale(ntini)anus et Valens AA. ad Valerianum vic(arium) Hispaniarum. Post alia: Nullus ante carceris custodiae mancipetur, quam ab eo, qui in accusationem eius erupit, in codice publico sollemnia inscriptionis impleta sint. Praelata litteris v. c. vicarii VI id. Sep. Veronae Valentiniano et Valente AA. conss." See Gothofredus (1738), vol. 3: 37 et seq. On its links with C.Th. 1, 16, 10 in more detail see Schmidt-Hofner (2008a): 504 with earlier literature. On the content of the constitution, see Biscardi (1960): esp. 337, 342 et seq. (as an example of usage of the term *sellemnia*, a notion well-established in criminal procedure, which according to the author has equivalent meaning to *litis contestation* in civil procedure when combined with *sollemnia accusationis*) and briefly Barbati (2012): 343 et seq.

[179] C. Th. 1, 16, 10 (a. 365). On Valerianus, see the bibliography cited in connection with C. Th. 1, 16, 10.

[180] Pergami (1997): esp. 504, note 16, with the extensive literature devoted to the debatable usage of the term *accusatio*, which is linked to the question concerning the nature of criminal action *extra ordinem*. See also the remarks relating to C. Th. 1, 16, 10 (a. 365) and C. Th. 9, 36, 1 (a. 385).

[181] See Chapter 5.2.

[182] C. Th. 9, 1, 9 (a. 366): "Impp. Valentinianus et Valens AA. ad Valerianum p(raefectum) U(rbi). Non prius quemquam sinceritas tua ad tuae sedis examen iubebit adduci, quam solennibus satisfecerit, qui nititur fidem doloris asserere, quum iuxta formam iuris antiqui ei, qui coeperit arguere, aut vindicta proposita sit, si vera detulerit, aut supplicium, si fefellerit. Dat. VII kal. Dec. Remis, Gratiano et seq. p. et Dagalaifo conss." It was also repeated in Brev. Alaric. 9, 1, 4. Gothofredus (1738), vol. 3: 14 et seq. (note b); Pharr (1952): 225 (note 25), suggests incorrect spelling of the name. The PVR at the time was certainly Viventius; cf. PLRE 1 (Viventius). In turn, Seeck (1919): 119, 228 suggests a mistake in the title and maintains that the addressee was vicar Valerianus. See also analogous works cited in connection with C. Th. 1, 16, 10: Pergami (1993): 340; Schmidt-Hofner (2008a): 535.

administrators often drew on personal features, and the term *sinceritas* is one of such forms. This would speak in favour of the fact that it was addressed to a vicar.[183] Perhaps these uncertainties were the reason why the version preserved in *Codex Iustinianus*, title 46: *De calumniatoribus* (On slanderers), omitted the titulature of Valerianus.[184]

The constitution stipulated that the proceedings may begin only when the sued or accused party have declared to accept the verdict in the event of losing the case, and the plaintiff/accusing party declared readiness to submit to the penalty.[185] The act is certain to have been significant for the initiation of first instance proceedings. It was also seen as such in practice, as attested to by the preserved *interpretatio*, which granted it a broad scope of application[186].

Title 8: *Si quis eam cuius tutor fuerit corruperit* (If a person being a guardian seeks to exploit the virtue of a girl), book nine of the Theodosian Code, contains an excerpt from an enactment of Constantine the Great directed to Bassus, named in the manuscript as the vicar of Italy, which is most often dated by authors to 326.[187] At the time, Iunius Bassus, a Christian who tends

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[183] As opposed to expressions which highlighted the status, in most cases the topmost imperial officials. See Mathisen (2001): esp. 203–207.

[184] C. 9, 46, 7: "Valentinianus et Valens AA. ad Valerianum. Non prius quemquam sinceritas tua ad tuae sedis examen iubebit adduci, quam sollemnibus satisfecerit, qui nititur fidem doloris adserere, cum iuxta formam iuris antiqui ei qui coeperit arguere aut vindicta proposita sit, si vera detulerit, aut supplicium, si fefellerit. D. VII k. Dec. Remis Gratiano e.g. et Dagalaifo conss." Its contents are briefly discussed by Brunnemannus (1699): 1148. Cf. also Bonini (1990): 105 et seq., on the possible causes of incorporating that enactment in C. 9, 46.

[185] Gothofredus (1738), vol. 3: 13 et seq., noting the use of *dolor* ("anguish") and *vindicta* ("revenge") in several Latin sources in connection with adultery cases, argues that this was its purview. Such an interpretation is undermined by the fact that if this was the case, the act would have been included in C. Th. 9, 7: *Ad legem Iuliam de adulteriis*.

[186] *Interpretatio* explained that the constitution was concerned with both civil and criminal action: "Tam civile negotium quam criminale accusationis professio manu accusatoris conscripta praecedat" (nevertheless, such a formulation suggests possible opposition to such a broad interpretation in legal practice). On the significance of the act for the development of Roman law process, see Biscardi (1960): esp. 313, 337 (regarding the use of the term *sollemnia* and invoking the authority of *iuxta forma iuris antiqui*); Pergami (1997): 504; Pietrini (1996): 153 et seq. Remarks on the development of the notion of calumny in late antique legislation were also compiled by Nowicka (2013): 202–210.

[187] C. Th. 9, 8, 1: "Imp. Constantinus A. ad Bassum vic(arium) Ital(iae). Post alia: Ubi puellae ad annos adultae aetatis accesserint et adspirare ad nuptias coeperint, tutores necesse habeant comprobare, quod puellae sit intemerata virginitas, cuius coniunctio postulatur. Quod ne latius porrigatur, hic solus debet tutorem nexus adstringere, ut se ipsum probet ab iniuria laesi pudoris immunem. Quod ubi constiterit, omni metu liber optata coniunctione frui debebit; officio servaturo, ut, si violatae castitatis apud ipsum facinus haereat, deportatione plectatur, atque universae eius facultates fisci viribus vindicentur, quamvis eam poenam debuerit

to be identified as its recipient was a PPO. However, one notices curious consistency in the terminology used in the preserved manuscripts containing the constitution and the difficulties in determining the official's *cursus honorum*, which leaves room for the possibility that he actually held the office of the vicar of Italy when the constitution was issued.[188]

According to the preserved fragment of the enactment, if a girl reached maturity (i.e. 12 years of age) and wanted to marry, her guardian had to prove that her virginity was intact and, so as not to apply the provision of the act too broadly, he had to prove that he did not do anything in that respect. In such a case, the guardian was free to marry his charge. The emperor instructed the vicar subsequently that if the virtue of the girl had been violated by the guardian, the latter was to be punished by deportation of confiscation of property, although he should be subject to the penalty provided for by law in the case of *raptus* (kidnapping of a woman).[189]

The analysed constitution proved significant in later legal practice, although the interpretation that was drawn upon differed from the version preserved in *Codex Theodosianus*. It was adopted in *Breviarium Alarici* and, in a modified wording, *Codex Iustinianus*, in which it was the only constitution in the title corresponding to the one in *Codex Theodosianus*.[190]

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sustinere, quam raptori leges imponunt. Dat. prid. non. April. Aquil(eiae), Constantino A. VI et Constantino Caes. conss." See Gothofredus (1738), vol. 3: 69 et seq. (in favour of 320 as the date of issue); Seeck (1919): 176; Dupont (1973): 330; Desanti (1986): 443, note 1; Beaucamp (1990): 136, note 27; Porena (2005), esp. 211 et seq., 215 (argues in favour of dating to 318), with further literature.

[188] Among recent works see Chastagnol (1960): 293 et seq., 422, 425 et seq.; Chastagnol (1962): 149 et seq.; Évrard (1962): esp. 643–647; PLRE 1 (Iunius Bassus 14); Haehling (1978b): esp. 374 et seq.; Kuhoff (1983): esp. 366, note 59; Porena (2003): 342–356, esp. 352; Porena (2014): 268, with further literature.

[189] As argued previously, the conviction which attached substantial importance to female virginity was shared by Romans as well as many other peoples. According to the interpretation adopted in evolutionary psychology and related currents of research it is rooted in the justified concern that one would be bringing up children which have not been fathered by the woman's permanent partner. See the remarks and literature cited in connection with C. Th. 3, 5, 6 (a. 335). On the penalty of deportation in 284-476 see the recent work by Washburn (2013), passim (including on its frequent combination with confiscation of property: n. 23 and on source-attested instances of different forms of banishment employed by vicars: 72, with further literature.

[190] "Interpretatio. Ubi primum puellae sub tutore viventes ad annos pervenerint nuptiales, et quicumque petitor accesserit, non prius puella iungatur, nisi virginitas illius, quod a tutore servata sit, fuerit approbata: nam si ab ipso tutore convincitur eius violata virginitas, statim exsilio deputetur, et res illius omnes Fiscus usurpet"; Brev. Alaric. 9, 5, 1; C. 9, 10, 1 (modified arrangement of the text and changes in the content). See esp. Desanti (1986): 445–448; Bonini (1990): 155, note 170. The contents of those versions support the observations of Desanti (1986): 447 et seq., who claimed that contrary to the first sentence of the version in *Codex Theodosianus*

The enactment was another one of the series of regulations issued by Constantine the Great directed against violation of the interests of charges committed by their guardians and corresponds with the prohibition of marriages between *tutor* and *pupilla*, which had already existed in the classical law.[191] Despite the fact that untrustworthy guardian is treated as *raptor*, the constitution provided for a diminished penalty compared to *crimen raptus* (kidnapping of a free woman), i.e. deportation and confiscation of property.[192] It cannot be excluded that the enactment responded to the actual circumstance, in which the *tutor* himself petitioned for permission to marry ("cuius coniunctio postulatur"). Bassus was competent to supervise the exercise of such privileges and to conduct proceedings related to potential abuses committed by the guardian as a judge in criminal cases. It is also possible that he himself applied to Constantine the Great to resolve doubts which emerged in the course of proceeding in which the vicar presided, perhaps following *appellatio* from the adjudication of province governor.[193] If one accepts the assumption that the recipient of the enactment, Bassus, was indeed the vicar of Italy, this would be an example of his participation in appellate proceeding.

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it was the guardian who sought to marry, while according to *Codex Iustinianus*, he committed *stuprum*. The legitimacy of the penalty provided for in C. 9, 10, 1 compared with other penalties for analogous offence in other legal orders was analysed by Brunnemannus (1699): 1101.

[191] Hence Gothofredus (1738), vol. 3: 70, suggested dating to 320. Among recent works concerning those regulations see Desanti (1986): esp. 448–455; Evans Grubbs (1995): 193–202. Constantine's motivation is a particularly debatable matter. Among recent works only cf. Evans Grubbs (1995): 198–202 and 321–325 with further literature. The author points out that this regulation of Constantine's also drew upon the ideals shared by both pagans and Christians with respect to pre-marital chastity of women. See also Amarelli (1978): esp. 87–144, who carried out a detailed analysis of the complex dependencies in Constantinian legislation and the vision in relation to the vision of Christianity represented by Lactantius. This dependency was aptly encapsulated by Dillon (2012): 65: "It must be said, however, that these legal innovations, whatever their inspiration or the alleged influences behind them, were as Roman as the emperor who sanctioned them".

[192] Constantine the Great substantially modified the liability for *crimen raptus*. See C. Th 9, 24, 1 (a. 326) – here the crime carried death penalty. A woman was subject to the same punishment if she consented to the kidnapping, and the punishment was commuted if she tried to defend herself. The liability remained the same, even if the kidnapper and the kidnapped were later married, which was deemed inadmissible. On the constitution in recent works only see Evans Grubbs (1989); Beaucamp (1990): 109–120; Evans Grubbs (1995): 183–193; Puliatti (1995) with further literature. An overview of penalties in the legislation of Constantine the Great may be found in Dupont (1955b): esp. 49, 83. Cf. also in general about his penal enactments recently Reitzenstein-Ronning (2015). On *raptus* see also the remarks below relating to C. 9, 13, 1.

[193] See Desanti (1986): 461 et seq., with references to other sources from that period which employ the term *postulare*. Evans-Grubbs (1995): 198, note 188, also appears to be convinced that this was an appeal.

Constantine is also the author of enactment addressed in 319 to Verinus, vicar of Africa, which constitutes the entirety of title 15: *De parricidis* (On perpetrators of *parricidium*), book nine of the Theodosian Code.[194] It contained detailed instruction on the *poena cullei* in the case of *parricidium*.[195] The reference to the sacred nature of the penalty and recognising *poena cullei* as a mandatory penalty reflect the tendency to draw upon traditional Roman moral values, which may be detected in Constantine's enactments.[196] The act proved important later as well, both in the eastern and the western part of the Empire, although it would seem that *poena cullei* did not become compulsory until 339, at the latest.[197] This is attested to by the detailed *interpreta-*

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[194] C. Th. 9, 15, 1 (a. 318/319): "Imp. Constantinus A. ad Verinum vic(arium) Afric(ae). Si quis in parentis aut filii aut omnino affectionis eius, quae nuncupatione parricidii continetur, fata properaverit, sive clam sive palam id fuerit enisus, neque gladio, neque ignibus, neque ulla alia solenni poena subiugetur, sed insutus culeo et inter eius ferales angustias comprehensus serpentum contuberniis misceatur et, ut regionis qualitas tulerit, vel in vicinum mare vel in amnem proiiciatur, ut omni elementorum usu vivus carere incipiat, ut ei coelum superstiti, terra mortuo auferatur. Dat. XVI kal. Dec. Licinio V et Crispo C. conss. Acc. prid. id. Mart. Karthagine, Constantino A. V et Licinio C. conss." *Parricidium* denotes intentional murder of a free person, in particular a blood relative. Among recent works see the monograph by Jońca (2008) with further literature. Verinus has been discussed previously – cf. remarks relating to C. Th. 2, 19, 1 (a. 319).

[195] On *poena cullei* – the "punishment of the sack", in this case described as drowning with snakes, inflicted on those who committed *parricidium*, see Kupiszewski (1971): esp. 610; Nardi (1980); Dębiński (1994): esp. 142–146; Jońca (2008): esp. 235–276. On its reflection in narrative sources see Düll (1971): 135. The enactment is chiefly analysed with respect to paternal power of *ius vitae et necis,* which the act is alleged to have restricted. See Albanese (1948): 344–348; Biondi (1954): 486; Matringe (1971): 194, note 13; Martini (1976): esp. 105–112; Wierzbowski (1977): 31–35; Voci (1985b): 68; Jońca (2008): 210–215 with further literature. On this constitution in the context of practice of abandoning children see e.g. Harris (1994): 20 et seq.; Lorenzi (2010): 1162, 1167, 1184. Exclusively on the analysed act, see also Dupont (1953): 31 et seq.

[196] On the sacred dimension of *poena cullei*, see Dębiński (1994): 143 et seq.; Jońca (2008): 265–276. The reference to barbarian threads in the legislation of Constantine I does not seem justified. Thus Cloud (1971): esp. 49 et seq., 58 et seq. Rightly against such assessment of Constantine's enactments: Liebs (1985/2007). Hence justifiably Amarelli (1978): 108 et seq., and esp. 128 who, in the context of this and other constitutions, drew attention to the fact that Constantinian legislation invoked such notions as *clementia, humanitas, moderatio* etc. Martini (1976): 108, 114–117, without any detailed substantiation, suggested inspiration with solar cults (quoting the provision by virtue of which the convict was to be deprived of access to sunlight). That Constantine wanted to debase pagan cults by specifying the animals to be put into the sack (C. Th. 9, 15, 1 mentions only snakes!) seems a mistaken notion as well – see correct remarks to that effect in Jońca (2008): 263 et seq. with further literature.

[197] The change in the application of *poena cullei* may have taken place upon the issue of C. Th. 11, 36, 4 (a. 339) = C. 9, 9, 29 (see below).

tio attached to the act as well as its adoption in the Breviary of Alaric and in Justinian's legislation.[198]

Verinus is likely to have acted as judge adjudicating in the case of *parricidium* which was committed in the diocese of Africa. Uncertain as to the kind of punishment, he turned possibly directly to the emperor.[199] Perhaps the imperial intervention was necessitated by the drastic circumstances in which the crime was committed as well as their relation to the ongoing disputes between Catholics and Donatists. At any rate, criminal policies with regard to felonies committed in Africa evidently became more stringent at the time.[200] The text of the constitution does not permit to conclude whether the proceeding presided over by vicar Verinus was a first instance trial, or followed *appellatio* from the verdict of province governor.

Another enactment of Constantine the Great's, issued several years previously, which stipulated penalties imposed for kidnapping of children, also pertained originally to the situation in the diocese of Africa; its addressee was the already discussed *vicarius Africae* Domitius Celsus.[201] The preserved

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[198] See *interpretatio ad* C. Th. 9, 15, 1: "Si quis patrem matrem, fratrem sororem, filium filiam aut alios propinquos occiderit, remoto omnium aliorum genere tormentorum, facto de coriis sacco, qui culeus nominatur, in quo quum missus fuerit, cum ipso etiam serpentes claudantur: et si mare vicinum non fuerit, in quolibet gurgite proiiciatur, ut tali poena damnatus nullo tempore obtineat sepulturam"; Brev. Alaric. 9, 12, 1; I. 4, 18, 6 – see Kaser (1975): 204; Luchetti (1996): 561. *Interpretatio* is discussed more broadly by di Cintio (2012): 16 et seq., who observes that lack of direct reference to *parricidium* may have stemmed from the different notion of paternal power at the time of drafting the commentary. The version adopted in C. 9, 17, 1 (*De his qui parentes vel liberos occiderunt*) was extensively discussed by Brunnemannus (1699): 1109 et seq., who indicated that *conatus*. i.e. attempted *parricidium,* was to be punished in like manner as *parricidium*. See also Bonini (1990): 70.

[199] Gothofredus (1738), vol. 3: 112 et seq., suggested a relationship between its issue and the local troubles, claiming that imperial intervention sought to eliminate the bloody offerings of children to Saturn, which continued to be made in Africa in Roman times. The claim is not altogether groundless. See more broadly Wiewiorowski (2014b).

[200] Wierzbowski (1977): 33–35, correctly argued that originally C. Th. 9, 15, 1 was applied on a local scale, as the constitution was an element of implementing stricter criminal policy in Africa. Still, he did not associate its issue with the disruptions caused by Donatism, and claimed furthermore that the enactment most probably sanctioned previous practice. During his term in office, Verinus was also the recipient of C. Th. 2, 19, 1 (a. 319) = C. 3, 28, 27; C. Th. 9, 34, 1 (a. 319) and an enactment of 321, mentioned in Aug. *Brev. coll*.: 22, 40 and 24, 42; Aug. *Ad Don. post. coll*. 33, 56; Aug. *Ep*. 111. Cf. also below.

[201] C. Th. 9, 18, 1 (a. 315): "Imp. Constantinus A. ad Domitium Celsum vic(arium) Afric(ae). Plagiarii, qui viventium filiorum miserandas infligunt parentibus orbitates, metalli poena cum ceteris ante cognitis suppliciis tenebantur. Si quis tamen eiusmodi reus fuerit oblatus, posteaquam super crimine patuerit, servus quidem vel libertate donatus bestiis primo quoque munere obiiciatur, liber autem sub hac forma in ludum detur gladiatorium, ut, antequam aliquid faciat, quo se defendere possit, gladio consumatur. Eos autem, qui pro hoc crimine iam in

fragment of the constitution filled the entire title 18: *Ad legem Fabiam*, book nine of *Codex Theodosianus*, while its significance in later practice is confirmed by the brief *interpretatio*, its inclusion in *Breviarium Alarici*, *Lex Romana Burgundionum* as well as in the analogous title of *Codex Iustinianus*[202].

In the act, Constantine I proclaimed that previous penalties – with only *poena metalli* (i.e. penalty of forced labour in the mines), mentioned by name – prescribed for *plagiarii* (kidnapping and pressing into slavery) who kidnap children, are to be replaced with death penalty, which differed depending on the status of the felon: slaves and freedmen were to be punished by *damnatio ad bestias*, free people – *ludus gladiatorius* or beheading by sword.[203] The emperor also decreed that people sentenced hitherto to *poena metalli* are never to be released[204].

The enactment harshened the regime of criminal liability for kidnapping free persons which had been established by *lex Fabia de plagiariis* (91–89 BC) and underwent modifications in the first centuries of the Empire, which set forth the details of responsibility in the cases of kidnapping children.[205] The act was aimed at safeguarding family, yet it did not go against the practice

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metallum dati sunt, numquam revocari praecipimus. Dat. kal. Aug. Constantino A. IV et Licinio IV conss." Cf. remarks on C. Th. 1, 22, 1 (a. 316); Opt. *App.* 7 – cf. Grasmück (1964): 34, 70–83.

[202] The changes in the content of the constitution pertained e.g. to the mode of execution. See "Interpretatio. Hi, qui filios alienos furto abstulerint et ubicumque transduxerint, sive ingenui sive servi sint, morte punianturi". The text of the act according to C. Th. is known from Brev. Alaric. 8, 14, 1. In turn, Rom. Burg. 4, 1 contains only an excerpt and also mentions ordinary death penalty. *Leges Romanae barbarorum* which drew upon that enactment are discussed in Lambertini (1980): 186–199. As di Cintio (2012): 18 et seq. aptly noted, *interpretatio* reflects social transformations (the emergence of the category of *ingenui*), recognises *plagium* as a kind of *furtum*, while its purview is more akin to Diocletian's rescript (C. 9, 20, 7 – a. 287), suggesting that originally the commentary was drafted for this very constitution. In C. 9, 20, 16 the fragment referring to the penalty of fighting in the arena, which is otherwise preserved in C. Th., was removed; a mention is also to be found in I. 4, 18, 10. Cf. Bonini (1990): 132 (note 122), 155 (note 170); Luchetti (1996): 569–572.

[203] See the detailed analysis of penalties that the act provided for in Gothofredus (1738), vol. 3: 154–156. Cf. also Kubiak (2014): 102 et seq. *Damnatio ad bestias* was not abrogated – contrary to the widespread belief – during the reign of Constantine but possibly only under Anastasius I (ca 493?). Nor did Constantine wholly abolish *ad ludum gladiatorum*, which continued to be meted out at least until the mid-fifth century. See Carlà, Castello (2010): 264–319; Potter (2010): esp. 601 et seq.; Kubiak (2014): 93 et seq; 112 et seq., with further literature. On the legal nature of *damnatio ad bestias* see also Kubiak: (2011) and (2014): esp. 67-94; 173–199.

[204] Although *poena metalli* was a penalty whose severity approached death penalty, it was possible to reduce its duration. See Salerno (2003): 36–57, 83–85.

[205] See Dupont (1953): 59–62; Liebs (1964): 18 et seq.; Lambertini (1980): esp. 177–180; Robinson (1995): 32–35 with further literature. On the penalties provided for in the act according to both preserved versions see also Dupont (1955): 16, 18 et seq.; 30–33, 37–39, 76. Robinson (1981): 230; Salerno (2003): 68 et seq., 75.

of children being sold by *pater familias*, which was restricted and amended only by the legislation from the turn of the fourth century.[206] The issue of the act may have reflected the increasing instances of *plagium* in Africa in the period of unrest associated with the internal dispute in the African Church (the Donatist controversy), in which Domitius Celsus himself participated due to the nature of his office.[207]

On the other hand, there is a possibility that the preserved excerpt from Constantine's constitution was one of a range of decrees concerned with the kidnapping of children of persons belonging to the privileged classes by people representing bottom echelons of the society.[208] Such a notion is also supported by the fact that in the Roman times there were no larger mines in the diocese of Africa.[209] It is also supported by the content and form of the constitution, which resembles a solution of general nature, as well as by the recommendation that to a limited extent it has retroactive effect.[210] That this very version was included in the Theodosian Code may have resulted from the fact that Theodosian codifiers utilized the resources of provincial archives.[211] Regardless of whether the analysed act is classified as *mandatum* or *rescriptum*, it would be difficult to determine the mode of judicial function of the vicar when judging any of the *plagiarii* it specifies.

In a constitution of 319, Constantine the Great obliged Verinus, vicar of Africa known from previously discussed enactments, to impose penalties for forgery of coins, whereby the type of punishment differed depending on the gender and legal status of persons involved in the crime.[212] The enactment

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[206] See Wierzbowski (1977): 90–108; Harris (1994): esp. 20 et seq., with further literature.

[207] See Opt. *App.* 5, 7, 8. Cf. Grasmück (1964): 34, 70–83; Maier (1987): 187–189, 194–196. Similarly Kubiak (2014): 193 et seq., who nevertheless does not link it with Donatism.

[208] Dupont (1953): 60 treats the act as *mandatum*. Cf. also Liebs (1985/2007): 5 et seq., who presumes that there was special motivation behind Constantine's effort to counteract that phenomenon. Millar (1984) rightly observes that the exceedingly harsh penalty of hard labour was intended chiefly for the lower classes, and in the pagan period it was meted out to Christians. Analogously Salerno (2003): 64–79, with source documentation encompassing the period until the sixth century.

[209] On the functioning of mines in the Later Empire, cf. Edmondson (1989); McCormick (2007): 51–72. On their administration, see also Salerno (2003): 116–129.

[210] According to C. Th. 9, 18, 1 *in fine*, those previously convicted for *plagium* on *filii* to *poena metalli* were from then on never to be released, which implies that such possibility existed, even though formally this was a sentence for life.

[211] The extent to which provincial archives were used is debated in literature. See Chapter 1.2.

[212] C. Th. 9, 21, 1 (a. 319): "Imp. Constantinus A. ad Verinum. Quicumque adulterina fecerit numismata, poenam pro discretione sexus et condicionis suae diversitate sustineat, hoc est ut, si decurio vel decurionis sit filius, exterminatus genitali solo ad quamcumque in longinquo positam

has been preserved as the first fragment in title 21: *De falsa moneta* (On the forgery of coins), book nine of *Codex Theodosianus*. It was the first time that forgery of coinage had been recognized as felony in a legal act, which in this instance must have pertained to adjudicating in cases of forgery of small coins perpetrated by people of low social standing.[213] It is therefore possible that the constitution was issued following the *suggestio* of Verinus himself, who had failed to decide on the kind of penalty that was to be given in an appeal from the verdict of province governor.

Libel (*famosi libelli*) was the subject of another constitution addressed by Constantine the Great to Verinus, vicar of Africa in 318–321, preserved in the form of an excerpt as the first act in title 34: *De libelli famosi*, book nine of the *Codex Theodosianus*.[214] In the enactment, the emperor ordained that if defamatory publications had been found, the persons they mentioned cannot be exposed to calumny, but their author needed to be identified, and once they were found, to oblige them "cum omni vigore" to prove claims made in such text, which did not release the author from punishment.[215] The significance

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civitatem sub perpetui exilii condicione mittatur ac super facultatibus eius ad nostram scientiam referatur; si plebeius, ut rebus amissis perpetuae damnationi dedatur; si servilis condicionis, ultimo supplicio subiugetur. Dat. et pp. XV kal. April. Constantino A. V et Licinio Caes. conss." Dating after Seeck (1919): 168. On Verinus, cf. remarks on C. Th. 2, 19, 1 (a. 319).

[213] The act is discussed more comprehensively in Gothofredus (1738), vol. 3: 189 et seq.; Dupont (1963): 181 et seq. It was concerned with counterfeiting small coins, a fact attested to by the moderate penalties which were to be ruled against decuriones (exile with confiscation of property and notification of the emperor), plebeians (condemnation to labour for life and confiscation of property), slaves (death penalty). On *exilium* see recent work by Washburn (2013), passim, with further literature. On the distinct levels of penalties, upheld in I. 4, 18, 7, see Robinson (1981): 228 et seq.; Robinson (1996): 87 (note 186), 88. On the penalties for counterfeiting coins in C. Th., including the analysed enactment, see also Hendy (1985): 324–326. This title contains further constitutions aimed at combating coin forgeries, addressed to two vicars residing in Rome, namely C. Th. 9, 21, 2 (a. 320) = C. 9, 24, 1 and a fragment in C. 7, 13, 2 (a. 321) – *ad Ianuarium*; C. Th. 9, 21, 4 (a. 326) = C. 9, 24, 1 (*Helpidio*). Dating after Seeck (1919): 167, 176. It is likely that the office which Ianuarinus held earlier vicar of Moesia. See remarks relating to C. Th. 9, 1, 2 (a. 319) = C. 9, 40, 2. On Helpidius see above (the introductory remarks to book two of C. Th.). See also Mommsen (1899): 674A, for a general discussion concerning criminal liability for forgery of coins in the law of the post-classical period.

[214] C. Th. 9, 34, 1 (a. 319): "Imp. Constantinus A. ad Verinum vic(arium) Afric(ae). Si quando famosi libelli reperiantur, nullas exinde calumnias patiantur hi, quorum de factis vel nominibus aliquid continebunt, sed scriptionis auctor potius requiratur et repertus cum omni vigore cogatur his de rebus, quas proponendas credidit, comprobare; nec tamen supplicio, etiamsi aliquid ostenderit, subtrahatur. P(ro)p(osita) IIII kal. April. Karthag(ine), Constantino A. V et Licinio C. conss." On Verinus see earlier remarks in connection with C. Th. 9, 15, 1 (a. 318/319).

[215] Gothofredus (1738), vol. 3: 238 et seq., suggested that the expression means use of torture, while capital punishment was to be issued by the court.

of the constitution in later legal practice is substantiated by its comprehensive *interpretatio* and inclusion of the act in *Breviarium Alarici*.[216]

The act belongs to the series of Constantine's constitutions concerned with *famosi libelli*, a number of which pertains to Africa.[217] However, the edict *De accusationibus,* known thanks to inscriptions from various parts of the Empire, was not adopted in its entirety either in *Codex Theodosianus* or later in *Codex Iustinianus*.[218] It is also curious why *Codex Theodosianus* did not feature other constitution of Constantine the Great, whose fragment is known only from another enactment incorporated in that code.[219] Constantine's activity in this field was praised while still alive by the author of an anonymous panegyric and, a century later, in *Epitome de Caesaribus*, while his regulations are analysed in the light of introducing that category of *crimen publicum* and transformation of the Later Roman criminal process.[220]

The issue of the quoted constitution may have been associated with concrete event in which vicar Verinus took part. This may have been the case as the practice of publishing *libelli famosi* in Africa (perhaps in connection with the Donatist controversy) is reflected in the following constitution in title 34, which mentions that copies of pasquils were stored at the office of the vicar of Africa and proconsul of Africa.[221] Verinus must have been involved in the

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[216] "Interpretatio. Qui famosam chartam ad cuiuscumque iniuriam et maculam conscripserit, in secreto aut in publico affixerit inveniendamque proiecerit, illi, contra quem proposita est chartula, non nocebit, nec famae eius aliquid derogabit. Sed si inveniri potuerit, qui huius modi chartulam fecit, constringatur, ut probet, quae conscripsit: qui si etiam, quae scripsit, probare potuerit, fustigetur, qui infamare maluit quam accusare"; Brev. Alaric. 9, 24, 1. di Cintio (2012): 32–34, suggests that the *interpretatio* was based on an anonymous work devoted to accusations.

[217] C. Th. 9, 34, 1–4. This connection is also highlighted by Gothofredus (1738), vol. 3: 239. C. Th. 9, 34, 3 (a. 320): "ad Ianuarinum agentem vicariam praefecturam" was addressed to the aforementioned, hypothetical vicar of Moesia, Ianuarinus, who at the time was *vicarius praefectorum praetorio in urbe Roma* or *vicarius praefecturae urbis*. Cf. remarks on C. Th. 9, 1, 2 (a. 319) = C. 9, 40, 2. On Constantine's attitude to libel see brief discussion in Uhalde (2007): 69 et seq.

[218] See Chapter 2.2.

[219] C. Th. 9, 34, 7 (a. 365). See Gothofredus (1738), vol. 3: 243 et seq.; Manfredini (1981): 417–424; Sargenti (1995): 389 et seq.; Sitek (2003): 150–152 with further literature.

[220] *Paneg. Lat.* 12, 4, 4 – delivered in 313 by an anonymous author in Trier– see Nixon, Rodgers (1994): 288–293; *Epitome de Caesaribus* 41, 14. On the significance of Constantine's legislation see Santalucia (1998) who, contrary to other views, advances the thesis that procedding in cases of *libelli famosi* had "carattere squisitamente inquisitorio", e.g. due to the absence of police forces in the Empire. See also Dupont (1953): 84–86; Chastagnol (1960): 97 et seq.; Pietrini (1996): 76 et seq. On counteracting pasquinade as a complement to imperial propaganda, see Cañizar Palacios (2005): 52–54.

[221] C. Th. 9, 34, 2 (a. 315): "Idem A. [Constantinus] ad Aelianum proc(onsulem) Afric(ae). Licet serventur in officio tuo et vicarii exemplaria libellorum, qui in Africa oblati sunt, tamen

attempts made by Constantine the Great to resolve the Donatist controversy.[222] The appearance of *libelli famosi* in Africa is presumably confirmed by the Constantius's enactment of 338, addressed *ad Afros* (i.e. to the inhabitants of Africa).[223] At the same time, it may be conjectured that the fragment of constitution addressed to Verinus was originally included in an edict concerning the entire territory of the Empire, while Theodosian compilers used only the version which came from African archives.[224] The constitution addressed to Verinus affirms his supervisory powers with regard to the judiciary or, using present-day terms, with respect to pre-trial proceeding in the cases of libellous lampoonery.

Procedural issues were also a matter discussed in the fragment of enactment addressed in 380 to Albucianus, *vicarius Macedoniae*, by Gratian, Valen-

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eos quorum nomina continent metu absolutos securitate perfrui sinas solumque moneas, ut ab omni non solum crimine, sed etiam suspicione verisimili alieni esse festinent. nam qui accusandi fiduciam gerit, oportet comprobare, nec occultare quae scierit, quoniam praedicabilis erit ad dicationem publicam merito perventurus. P(ro)p(osita) V kal. Mar. Carthagine Constantino A. VI et Constantino Caes. conss." Dating corrected after Seeck (1919): 163. On its applicability cf. Gothofredus (1738), vol. 3: 239 et seq. See also Dupont (1967): 35 (note 17) and 36 on the links between C. Th. 9, 34, 1 and 2, as well as Pietrini (1996): 97 (note 136), 102. Santalucia (1998): 192, claimed erroneously that the act spoke of a vicar to the proconsul of Africa, as the hypothetical proconsul's vicar did not have his own *officium*. On Aelianus, see Pallu de Lessert (1901): 20–23, 29–32; PLRE 1 (Aelianus 2); Kuhoff (1983): 151 et seq., 383 (note 6), with further literature. Sitek (2003): 212 et seq., also stresses the relationship between Constantine's I legislation in this respect with current political developments and suggests indirect influence of Christian teachings on the attitude towards libellous lampoonery.

[222] Aug. *Brev. coll*. 22, 40 and 24, 42; Aug. *Ad Don. post. coll*. 33, 56; Aug. *Ep*. 141. Cf. Grasmück (1964): 86, 88–91, 97, 117; Maier (1987): esp. 25. Given this context, it is surprising that the circumstances of issuing imperial constitutions (as well as *interpretationes*) continue to be completely ignored, which appears to be an imprudent course of action. In this sense see e.g. recent work by Nowicka (2013): esp. 166–178 (while analysing imperial constitutions concerning lampoonery and their *interpretationes*). On Donatism, see Chapter 2.2.

[223] C. Th. 9, 34, 5 (a. 338): "Imp. Constantius A. ad Afros. Libellis quos famosos vocant, si fieri possit, abolendis inclytus pater noster providit et huiusmodi libellos ne in cognitionem quidem suam vel publicam iussit admitti. non igitur vita cuiusquam, non dignitas concussa his machinis vacillabit; nam omnes huiusmodi libellos concremari decernimus. Dat. XIIII kal. Iul. Urso et Polemio conss." See Gothofredus (1738), vol. 3: 242; Pietrini (1996): 112 with further literature. See another enactment of Constantine I directed *ad Afros*: C. 12, 57, 1 (a. 315). A number of authors argue than one of the earlier constitutions of Constantine the Great addressed "ad Afros" was in fact intended for a provincial assembly (*concilium*); bearing in mind that African *concilium* was certain to have functioned during the period of the Later Emprie, the conclusion seems legitimate also with regard to C. Th. 9, 34, 5. See also Miller (1977): 393 et seq., in connection with C. 12, 57, 1 (a. 315), addressing the abuses of *stationarii* (guards), which included extortions and unlawful detention. On the assemblies in Africa see more broadly Chapter 5.2.

[224] Goria (1995): 392 et seq. On the utilization of archives, see works cited in Chapter 1.2.

tinian II and Theodosius 380, found in title 35: *De quaestionibus* (On interrogation using torture), book nine of the Theodosian Code.[225] Its text, supplemented with an *interpretatio,* was used in the Breviary of Alaric and repeated in title 12: *De feriis* (On holidays), book twelve of the Justinian Code.[226]

The constitution prohibited conducting interrogation and using torture at each stage of criminal procedure in the period of 40 days preceding Easter. The provision is said to be one of the first proofs for the influence of Christian calendar on the Roman judicial process.[227] The circumstance of its issue indicate that it was probably a copy of a fragment of directive addressed to a larger number of imperial officials in the western part of the empire.[228] Thus the enactment pertained to all types of judicial proceedings in which vicars took part.

The first fragment in title 36: *Ut intra annum criminalis actio terminetur* (For the criminal action to be finished within a year), book nine of *Codex Theodosianus,* is an excerpt from the constitution directed in 385 to Desider-

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[225] C. Th. 9, 35, 4 (a. 380): "Imppp. Gr(ati)anus, Val(entini)anus et Theod(osius) AAA. Albuciano vic(ario) Maced(oniae). Quadraginta diebus, qui auspicio cerimoniarum paschale tempus anticipant, omnis cognitio inhibeatur criminalium quaestionum. Dat. VI kal. April. Thessal(onicae), Gr(ati)ano A. V et Theod(osio) A. I conss." See PLRE 1 (Albucianus); Kuhoff (1983): 132, 370 (note 77).

[226] "Interpretatio. Diebus quadragesimae pro reverentia religionis omnis criminalis actio conquiescat". Cf. Brev. Alaric. 9, 25, 1; C. 3, 12 (*De feriis*), 5. di Cintio (2012): 34 rightly observes that the *interpretatio* represents a paraphrase of the text of the act.

[227] Cf. Gothofredus (1738), vol. 3: 252 et seq. (who associates it with Theodosius I); Brunnemannus (1699): 246 (writes directly about "memoriam pasionis Dominicae"). Among recent works, see also Bianchini (1986), esp. 244–253, with further literature and Pergami (2007): 72, note 150. On religious policy under Gratian, see Fortina (1953): esp. 183–222; Watson (1995). It is certain that court proceedings could not be held on *dies solis*. See C. Th. 2, 8, 1 (a. 321), C. 3, 12, 1 (a. 321). It is nevertheless debatable whether *dies solis* was interpreted as the Christian Sunday, despite the convincing statements in the *interpretatio* to C. Th. 2, 18, 1 and as argued by Gothofredus (1736), vol. 1: 136–139 or Brunnemannus (1699): 245. See e.g. Bacchiocchi (1977): esp. 245 (and note 47). On that last constitution see also Dillon (2012): esp. 202–204.

[228] Bianchini (1986): 246 et seq., compiled the various opinions on that issue. It is contended whether e.g., inclusion of that enactment in *Codex Theodosianus* testifies to differences in liturgical traditions persisting at least until 438 between the western part of the Empire, which included the diocese of Macedonia, and *pars Orientis*, which was the focus of attention in the subsequent preserved excerpt from a constitution in title *De quaestionibus* – C. Th. 9, 35, 5 (a. 389). It is probable that the then bishop of Thessaloniki, Acholius, had some influence on the tenor of C. Th. 9, 35, 4. Incidentally, Albucianus was a representative of the elite from the Latin-speaking part of the Empire. Interestingly enough, the constitution was issued soon after C. Th. 16, 1, 2 (a. 380) = C. 1, 1, 1, which already in Late Antiquity became recognized as a crucial act for the introduction of Catholicism. On C. Th. 16, 1, 2 only in the more recent works of Polish authors, see Ilski (1999) and (2001): 267–276; Sitek (2003): 107–109; Sitek (2005).

ius, vicar of an unnamed western diocese of the Empire.[229] It is currently assumed – based on the place of promulgation of the constitution (Trier) – that he was in fact a vicar in West during the usurpation of Maximus Magnus, while the inscription provides false information regarding the issuers; therefore, it is surmised that Desiderius was a vicar of Britain, Gaul, or Spain.[230] The enactment must have been practically significant, because it was provided with *interpretatio*, incorporated in *Breviarium Alarici* and, with minor changes, in *Codex Iustinianus*, book nine, title 44: *Ut intra certum tempus criminalis quaestio terminetur* (For the criminal action to be finished within a specified period of time).[231]

The constitution confirmed a solution already known in Roman legislation, namely that the confiscation of a quarter of property and infamy was to be the penalty incurred by the accuser who placed an inscription in juridical books but did not file charges, or a person who was *contumax*, i.e. having been summoned did not appear in court on the last day of the year.[232] Given shortage of details concerning Desiderius himself, it is difficult to conclude

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[229] C. Th. 9, 36, 1 (a. 385): "mppp. Val(entini)anus, Theodosius et Arcad(ius) AAA. Desiderio vic(ari)o. Quisquis accusator reum in iudicium sub inscriptione detulerit, si intra anni tempus accusationem coeptam prosequi supersederit, vel, quod est contumacius, ultimo anni die adesse neglexerit, quarta bonorum omnium parte mulctatus aculeos consultissimae legis incurrat; scilicet manente infamia, quam veteres iusserant sanctiones. Dat. IV id. Iul. Trev(iris), Arcad(io) A. I et Bautone conss."

[230] Cf. Seeck (1919): 54, 266; PLRE 1 (Desiderius 2); Kuhoff (1983): esp. 354, note 8; Honoré (1998): 187–189; Cañizar Palacios (2002): 95; Cañizar Palacios (2005): 179 et seq.; Birley (2005): 450 et seq. At the time, Trier was considered one of the imperial seats in the West. See Wighman (1971): 67 et seq.; Schwinden (1984): 40 et seq. On that location in Antiquity see also papers collected in Demandt, Engemann (2007): 304–417.

[231] "Interpretatio. Quicumque inscriptione praemissa cuiuscumque criminis reum accusare voluerit, ab eo die, quo inscripsit, intra annum peragat propositam actionem. qui si distulerit, infamis effectus, bonorum suorum quarta parte mulctabitur". Brev. Alaric. 9, 26, 1; C. 9, 44, 1. di Cintio (2012): 34 mentions the *interpretatio* as an example of paraphase of the text of the act. On the manner of its utilization in *Codex Iustinianus* and normative import in connection with other enactments from that title, in particular C. 9, 44, 3 (a. 529) , as well as further changes in that respect in Justinians' novels, see Bonini (1968): esp. 217–228; Bonini (1990): 147 (note 157), 216–228. The contents of title C. 9, 44 is commented upon by Brunnemannus (1699): 1145, who rightly argues in the conclusion that, in the light of its provisions, the Fiscus could be sued for excessive delays in criminal action.

[232] Cf. Gothofredus (1738), vol. 3: 258; de Bonfils (1975): 300; Petrini (1996): 90; Kaser, Hackl (1996): § 93, note 5–6; Sitek (2003): 203–205 (who groundlessly attributes it to Theodosius II). The constitution is considered a manifestation of "promozzione dell'azione penale" instead of private lawsuits. See Bassaneli Sommariva (1996): 55, note 37. On *contumacia* – in the sense of unexcused absence, even though the person was duly summoned, see Berger (1953): 415 (s.v); Litewski (1998): 59 (s.v.). Wołodkiewicz (1985): 8 (note 40), 11 (note 62), quotes the constitution when analysing C. 9, 22, 12 (a 293).

what kind of circumstances induced the legislator to issue the analysed enactment. One can only surmise that the vicar was hearing a case in which the accuser neglected to file formal charges (which suggests first instance), or someone failed to appear before the court. The case must have been sufficiently peculiar to cause imperial intervention (at Desiderius's *suggestio*?).

The already discussed Ianuarinus, possibly a vicar in the Balkans in 319, was also the recipient of Constantine's I constitution included in title 37: *De abolitionibus* (On withdrawn charges), book nine of *Codex Theodosianus*. The official is erroneously titled as PVR.[233] The constitution proved practically significant, seeing that it was provided with *interpretatio*, adopted in the Breviary of Alaric and, in a considerably modified version, repeated in the analogous book in the Justinian Code.[234] The constitution was concerned with withdrawal of criminal charges and stipulated the necessity of their thorough examination before pardon was granted.[235] When there was doubt whether withdrawal of accusations against an evidently guilty defendant (*reus*) did not result from an informal agreement, the act ordered to disregard it, continue with the proceeding and inflict punishment.[236]

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[233] C. Th. 9, 37, 1 (a. 319): "Imp. Constantinus A. ad Ianuarinum p(raefectum) U(rbi). Si post strepitum accusationis exortae abolitio postuletur, causa novae miserationis debet inquiri, ut, si citra depectionem id fiat, postulata humanitas praebeatur; sin aliquid suspicionis exstiterit, quod manifestus reus depectione celebrata legibus subtrahatur, redemptae miserationis vox minime admittatur, sed adversus nocentem reum, inquisitione facta, poena competens exseratur. Dat. VI kal. Dec. Serdicae, Constantino A. V et Licin(io) C. conss." On the possible interpolation of the text of the enactment, also in the version preserved in *Codex Iustinianus*, see Wieacker (1931): 274. On the addressee, see remarks concerning C. Th. 9, 1, 2 (a. 319) = C. 9, 40, 2.

[234] "Interpretatio. Si quem poenituerit accusare criminaliter et inscriptionem fecisse de eo, quod probare non potuerit, si ei cum accusato innocente convenerit, invicem se absolvant. Si vero iudex eum, qui accusatus est, criminosum esse cognoverit et inter reum et accusatorem per corruptionem de absolutione reatus convenerit, is, qui reus probatur, remoto colludio, poenam excipiat legibus constitutam"; Brev. Alaric. 9, 27, 1; C. 9, 42 (*De abolitionibus*), 2. On the latter act see also below.

[235] *Interpretatio* elucidated the nature of *strepitum accusationis* – the inability to prove accustation which had been filed and entered in relevant court records. In this sense Gothofredus (1738), vol. 3: 285 et seq. (esp. nota d).

[236] See Spagnuolo Vigorita (1984): 56; Pietrini (1996): esp. 81 et seq., concerning the constitution as proof of the significance and limitations of *inquisitio* in post-classical law. When discussing the *interpretatio,* Di Cintio (2012): 36 reasonably observes that "Dunque l'*inquisitio* in. C.Th. 9.37.1. non può da sola esse considerata una prova della natura del processo penale al tempo do Constantino.", with further literature. The act is also briefly addressed in Santalucia (1998): 188 (as the author deliberates on Constantine's approach to *libelli famosi*). The use of *postulare* signifies that it was a kind of pardon; the verb in that particular meaning is found in various constitutions from Constantine's times. See Desanti (1986): 461 et seq. On the use of the term *humanitas* in the context of debates concerning "human rights" in Roman law, see also Gaudemet (1987): 12, note 17. On the potential Roman inspirations in that area see also Bauman (2000).

Since the preserved fragment of constitution of 319 is formulated in general terms, it is difficult to determine whether it was related to a particular case heard by Ianuarius, though it has to be noted that it had the form of a letter (*epistula*), just as most imperial enactments addressed to particular persons. For this reason, the constitution was probably a response to Ianuarius's query regarding a specific case. Still, the act must have been perceived in a broader context later, as demonstrated by the generalising content of *interpretatio*, and especially by the version conveyed by Justinian's compilers, supplemented with examples of precipitate filing of charges, methods of inducing the accuser to withdraw charges and granting the right to withdraw complaint to defamed persons and relatives of the defendant.[237] It is nevertheless certain that the analysed constitution pertained to the exercise of judiciary powers by *iudices ordinarii*, which most likely included diocesan vicars.

In 384, an office of vicar in the West (in Italy?) was held by Marcianus (later e.g. PVR in 409), which is attested by constitution issued in Milan by Valentinian II, Theodosius and Arcadius; its fragment was included in the Theodosian Code in title 38: *De indulgentiis criminum* (On amnesties), book nine.[238] It was probably a copy of an imperial edict which announced that in view of "Religio anniversariae obsecrationis" (i.e. Easter[239]) persons accused

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[237] C. 9, 42, 2 (a. 319): "Imp. Constantius A. ad Ianuarinum. Abolitio praesentibus partibus causa cognita non a principe, sed a competenti iudice postulari debet, id est si per errorem seu temeritatem seu calorem ad accusationem prosiluerit: hoc enim accusator explanans abolitioni locum faciet. 1. Sin autem per depectionem vel pecuniis a reo corruptus ad postulandam abolitionem venit, redemptae miserationis vox minime admittatur, sed adversus nocentem reum inquisitione facta poena competens exseratur. 2. Hi autem, qui suas suorumque iniurias defendunt et qui cognatos suos in accusationem deduxerunt, omnimodo abolitionem petere non prohibentur. D. VI k. Dec. Serdicae Constantino A. V et Licinio C. conss." The rules governing amnesty are briefly explained in Brunnemannus (1699): 1143. On the changes introduced in *Codex Iustinianus*, perhaps partly due to practical experience, see Bonini (1990): 144–146 with further literature.

[238] C. Th. 9, 38, 7 (a. 384): "Imppp. Gratianus, Valentinianus et Theodosius AAA. ad Marcianum vic(arium). Religio anniversariae obsecrationis hortatur, ut omnes omnino periculo carceris metuque poenarum eximi iuberemus, qui leviore crimine rei sunt postulati. Unde apparet eos excipi, quos atrox cupiditas in scelera compulit saeviora: in quibus est primum crimen et maxime maiestatis, deinde homicidii veneficiique ac maleficiorum, stupri atque adulterii parique immanitate sacrilegii sepulchrique violatio, raptus monetaeque adulterata figuratio. Dat. XI kal. April. Med(iolano) Richomere et Clearcho conss." See Gothofredus (1738), vol. 3: 276 et seq.; Lovato (1994): 203 et seq. Cf. only on the offices mentioned Chastagnol (1960): s.v. Marcianus, esp. 418; Chastagnol (1962): 268 n; PLRE 1 (Marcianus 14); Matthews (1975): 180 (vicariate) and passim; Kuhoff (1983): esp. 363, note 47. On the mistakes which Theodosian compilers made in the names of originators of constitutions see Mitthof (2013): 384.

[239] Most fragments of constitutions in C. Th. 9, 38 pertained to amnesty declared on the occasion of Easter. The idea of separate *abolitio Paschalis* introduced for the first time is debatable.

of minor *crimina* were absolved from impending punishment and imprisonment.[240] Hence, albeit directly related to the justice system, the constitution has no significance for the judiciary of vicars.

Penalties imposed on persons who made false accusations were established in constitution addressed in 385 by Gratian, Valentinian II and Theodosius I to Menandrus, vicar of Asia.[241] Menandrus is probably the official of local origin who was extolled for tax exemptions in the epigram engraved in the base of a marble column found in Aphrodisias, a city in Minor Asian Karia (on the site of Hadrian's bath) and from the inscription praising a Flavius Menandrus, found in the area of Sanaos – Apamea.[242] An extensive fragment of the constitution was included in title 39: *De calumniatoribus* (On slanderers), book nine of *Codex Theodosianus*, while the practical significance of the enactment is validated by the provision of a short *interpretatio*, repetition in *Breviarium Alarici* and, in a slightly modified form, in the analogous title in *Codex Iustinianus*.[243]

Cf. Gothofredus (1738), vol. 3: 277 et seq.; Waldstein (1964): 179 et seq., 188–195, 217; Mitthof (2013), esp. 377–379, with previous literature. See also Du Cange (1954): s.v. *obsecratio*. E.g. C. Th. 9, 38, 6 (a. 381) = C. 1, 4, 3, 4 was addressed to *vicarius urbis Romae,* Valerius Anthidius. See Gothofredus (1738), vol. 3: 275 et seq. and PLRE 1 (Valerius Anthidius); Kuhoff (1983): 126, 368, note 64.

[240] The offences in question were distinguished using examples of the gravest crimes: *laese maiestatis*, murder, poisoning, magic, prostitution, kidnapping of women, forgery. C Th. 9, 8, 7 is chiefly analysed in the context of the aforementioned crimes. See Bassanelli Sommariva (1983–1984): 103 et seq.; Venturini (1988a): 108; Venturini (1988b): 266; Alvarez (1991): 314, note 46; Haase (1994a): 459 et seq.; Puliatti (1995): 471, 473, 504. According to Robinson (2001), esp. 117 et seq. what set Theodosian compilers apart was that they saw those felonies as unpardonable crimes, a category which was unknown to the Justinian Code. On C. Th. 9, 38, 7 in the context of religious policy under Gratian, see Fortina (1953): 183–222; Watson (1995): 314.

[241] C. Th. 9, 39, 2 (a. 385): "Idem AAA. [Gratianus, Valentinianus et Theodosius] Menandro vi(cario) Asiae. Nostris et parentum nostrorum constitutionibus comprehensum est, eos, qui accusationem alienis nominibus praesumpsissent, delatorum numero esse ducendos. Atque ideo calumniosissimum caput et personam iudicio irritae delationis infamem deportatio sequatur, quo posthac singuli universique cognoscant, non licere in eo principum animos commovere, quod non possit ostendi. Dat. VIII id. Mai. Constantinop(oli), Arcadio A. I et Bautone conss." Gothofredus (1738), vol. 3: 285, was convinced that the act was issued by Valentinian, Theodosius and Arcadius.

[242] ALA2004 24 (Aphrodisias): "(leaf) ἡ βουλὴ τὸν πᾶσι προς/ηνέα τόνδε Μένανδρον / πολλῶν ἀντ' ἀγαθῶν / στῆσεν ἀμειβομένη / ὃς μεγάλῃ χαρίεντα πόλι / θρεπτήρια τίνων / δασμοὺς πρηΰνας πᾶσιν / ἔθηκε φάος" (leaf); SEG 28 (1978), no. 1203 (Sanos): "κατὰ κέ/λευσιν Φλ/αυί(ου) Μενάν/δρου τοῦ [λ]/αμπρ(οτάτου) διέπ(οντος) / τὴν ἔπαρχ(ον) / ἐξο[υ]σίαν / δ". Cf. PLRE 1 (Menander 7); Kuhoff (1983): esp. 373, note 89; Feissel (1998): 97 (with other editions of the inscriptions).

[243] "Interpretatio. Haec lex interpretatione non indiget" (which means that according to the commentators it did not require interpretation – cf. di Cintio [2012]: 41; nevertheless, see the footnote below); Brev. Alaric. 9, 29, 2; C. 9, 46 (*De calumniatoribus*), 8. Cf. Brunnemannus

In the beginning, the constitution quoted previous acts which determined that persons who bring charges while hiding their identity under a different name is a denouncer, and stipulated that if the accusation is found groundless, the penalty should be exile and infamy.[244] The enactment was clearly concerned with first instance proceedings, instituted as a result unjustified denunciation, while the rules it set forth, especially the addition of exile to infamy imposed on slanderers, were to be applied by vicars as well.[245] The act may have been an aftermath of a case heard by vicar Menandrus himself (in first instance?), since, as observed above, the extent of penalty was specified: "quo posthac singuli universique cognoscant non licere in eo principum animos commovere, quod non possit ostendi" ("so that it may be universally known that the minds of the emperors must not be troubled with matters that cannot be demonstrated").[246]

(1699): 1148. On the extent and significance of changes introduced in *Codex Iustinianus*, see broader discussion in Bonini (1968), esp. 147–151; Bonini (1990): 146–151, 160 (note 178). They aimed to reduce the likelihood of evading responsibility by the slanderer. See also Giomaro (2007) on the changes in the arrangement of solutions pertaining to *calumnia*, chiefly in late antique sources of law, resulting from practical re-interpretation of that notion. Generally on the understanding of *calumnia* in Roman law of the period, see Uhalde (2007): esp. 20–23.

[244] Regarding doubts expressed in literature as to the interpretation of the act see Gothofredus (1738), vol. 3: 285–287; Spagnuolo Vigorita (1984): 31–34, 46, 70; Pietrini (1996): 158–162; Sitek (2003): 209 et seq.; di Cintio (2012): 39-47. In the recent works in particular, the authors consider the dependencies between three constitutions in C. Th. 9, 39, which were issued in 383, 385 and 398; also note the frequently posited significance which the *interpretatio* to C. Th. 9, 39, 3 (a. 398) was to have for the analysed constitution, as it defined the categories of slanderers (C. Th. 9, 39, 3: "Impp. Arcad(ius) et Honor(ius) AA. Victorio proc(onsuli) Afric(ae). Innocentes sub specie falsae criminationis non patimur callidorum impugnatione subverti: qui si tentaverint, intelligant, sibimet severitatem legum pro commissis facinoribus incumbere. Dat. III id. Mart. Mediolano, Honorio A. IV et Eutychiano conss. Interpretatio. Calumniatores sunt, quicumque causas ad se non pertinentes sine mandato alterius proposuerunt. Calumniatores sunt, quicumque iusto iudicio victi causam iterare tentaverint. Calumniatores sunt, quicumque quod ad illos non pertinet, petunt aut in iudicio proponunt. Calumniatores sunt, qui sub nomine fisci facultates appetunt alienas et innocentes quietos esse non permittunt. Calumniatores etiam sunt, qui falsa deferentes contra cuiuscumque innocentis personam principum animos ad iracundiam commovere praesumunt. Qui omnes infames effecti in exsilium detrudentur. Hic de iure addendum, qui calumniatores esse possunt)". Cf. Wieacker (1931): 347 et seq. and esp. Sciortino (2007–2008); di Cintio (2012): 39-47 on the dependencies between between *interpretationes* to C. Th. 9, 39, 1–3 and C. Th. 9, 39, 3 itself. See also briefly in Lepore (1998): 507, 509; Lepore (2000): 367, note 65.

[245] See Bauman (1977): 63. See also Litewski (1998): 69 (s.v. *delatio criminis*).

[246] Barbati (2012): 77 (note 15) draws attention to the peculiarly general nature of that formulation. It needs to be stressed, however, that through such device the constitution gained the value of being instructive to the subjects which, as previously noted, was an important goal of Later Roman legislation. See Chapter 1.2.1.

Eumelius, vicar of Africa known for his participation in the attempts to stop the Donatist controversy in the times of Constantine the Great, was also the recipient of imperial constitution of 316; its fragment was included in title 40: *De poenis* (On punishments), book nine of *Codex Theodosianus*.[247] It was adopted without any substantial changes in the analogous title in *Codex Iustinianus*.[248] The constitution provided that persons sentenced to death penalty by participation in games[249] or *poena metalli* (hard labour in the mines) should not be branded on the face but on the hands and calves because, since as it was stated in a lyrical phrase, one should not brand "facies, quae ad similitudinem pulchritudinis caelestis est figurata" ("the countenance, which was formed in the likeness of the beauty of heavens").[250] The analysed enactment demonstrates the notion of branding (also in the form of tattoo) which was characteristic of the antiquity: as a sign of social degradation, apart from the utilitarian aspect – the tattooing of soldiers and *fabricenses* in the Later Roman period.[251]

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[247] C. Th. 9, 40, 2 (a. 316): "Idem A. [Constantius] Eumelio. Si quis in ludum fuerit vel in metallum pro criminum deprehensorum qualitate damnatus, minime in eius facie scribatur, dum et in manibus et in suris possit poena damnationis una scriptione comprehendi, quo facies, quae ad similitudinem pulchritudinis caelestis est figurata, minime maculetur. Dat. XII kal. April. Cavilluno Constantino A. IIII et Licinio IIII conss." On Eumelius see Chapter 2.2. Dating after Seeck (1919): 164.

[248] C. 9, 47 (*De poenis*), 17 – the most important modification is the introduction of the penalty *in metallum* in place of *in ludum*. The issue tends to engender controversy due to contradiction between the solution adopted in this act and in C. Th. 9, 42, 24 = C. 9, 49, 10 (a. 426). See Bonini (1990): 150, note 162, with a comprehensive analysis of views expressed in literature; Rivière (2000): 405.

[249] As observed above, Constantine did not abolish the penalty of *ad ludum gladiatorum* altogether, as it was used at least until mid-fifth century. See recent works by Carlà, Castello (2010): 264–319; Potter (2010): esp. 601 et seq.; Kubiak (2014): 112 et seq.,with further literature.

[250] This fragment is interpreted as a proof of influence that Christian concepts had on Constantine. This was already stated by Gothofredus (1738), vol. 3: 318–320, who described it as *protochristiana constitutio*; with extensive remarks on the practice in the Roman times, references to antique Christian texts – including esp. Lact. *Divinae institutiones* 2, 18 – and the abolition of other penalties which were incompatible with the Christian worldview, as well as on the location of issue. Among recent works see: Biondi (1952): 348, 435; Biondi (1954): 454–456; De Dominicis (1971): 529; Kaser (1975): 127; Salerno (2003): 107; Barnes (2011): 136. Gaudemet (1987): 14, note 36, quotes it when discussing the protection of slaves, as an act which recognized them as human beings.

[251] See the cross-sectional study on practices and methods of tattooing in Antiquity by Jones (1987): esp. 143 et seq. (where the author cites the analysed enactment) and 148 et seq. Body tattooing is a custom known since times immemorial and considerably widespread among various peoples; in contrast, it was a symbol of social degradation in the antique period. The research of evolutionary psychologists offers intriguing insights here, showing that today there exists a relationship between embellishing one's body (both with tattoos and

As observed above, there were few mines in Roman Africa, which does not make it any easier to determine whether the constitution was an upshot of a concrete case heard before the court of a vicar, or whether the preserved fragment was an extract from an edict pertaining to the western part of the Empire, which survived only in the version addressed to the administrator of the diocese of Africa.[252] Regardless of the possible resolution of this matter, the solution adopted in the analysed act defined the mode of inflicting addtional punishment, which was imposed by virtue of vicar's sentence (ruling in the first instance?).

Title 40: *De poenis*, book nine of *Codex Theodosianus* also contains an extensive excerpt from an act issued by Valentinian II, Theodosius and Arcadius and addressed to PPO *Orientis* Tatianus in 392.[253] The constitution provided the penalty of *nota deformis* (i.e. the mark of shame[254]) and severe financial consequences to particular imperial dignitaries who were responsible for territorial administration, including officials at diocesan level (*comes Orientis*, *proconsul Augustalis* and *vicarii* were specified separately), and their offices for releasing persons convicted for felony under the pretext that they had been freed by Christian priests (*clerici*) and that there was an appeal pending in their case.[255]

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piercings) and male reproductive strategy (in that interpretation both practices are signals which young males send to communicate biological health – in view of the demonstrated resistance to potential health risks associated with having skin tattooed or pierced). See Koziel, Kretschmer, Pawłowski (2010) – studies conducted in southern Greater Poland. On reproductive strategies see remarks on C. Th. 3, 5, 6 (a. 335). *Fabricenses* served in manufacturing plants producing e.g. weapons for the army. See James (1988).

[252] Rightly De Dominicis (1971): 529 et seq., who argues that the application of the constitution was restricted to the West. Cf. also remarks on C. Th. 9, 18, 1 (a. 315).

[253] C. Th. 9, 40, 15 (a. 392): "Idem AAA. [Valentinianus, Theodosius et Arcadius] Tatiano p(raefecto) p(raetorio). Si quis convictus reus maximi criminis fuerit subiectusque sententiae, competens iudicium compleatur nec exquisita commentis ars eiusmodi subornetur, ut direptus a clericis adseratur vel appellasse simuletur. Quod si quisquam post iudicium vendibili coniventia licentiae huic praestiterit adsensum, haut levia sustinebit. Nam proconsules, comites Orientis, praefecti augustales, vicarii etiam adfecti nota deformi tricenas auri libras compendiis fiscalibus conferent, iudices autem ordinarii similiter deformati quinas denas cogentur exsolvere. Officia vero eorundem isdem, quibus iudices sui, dispendiis subiacebunt, si in suggestione cessaverint ac non praeceptum legis ingesserint atque iniecta manu, ne rei auferantur, obstiterint ac nisi id quod fuerit constitutum in effectum exsecutionemque perduxerint. Dat. III id. Mart. Constantinop(oli) Arcad(io) A. II et Rufino conss." On the PPO, see PLRE 1 (Tatianus 5).

[254] TLL 5, 1: 370–372 (s.v. *deformo*).

[255] Cf. more broadly in Gothofredus (1738), vol. 3: 308-310; Ducloux (1991): 148–150 (according to whom *humanitas* was at the time "une idée chrétienne"). See also remarks below in connection with C. Th. 9, 40, 16 (a. 398).

The constitution also testifies to the abuses committed by high imperial dignitaries and their auxiliary personnel, which consisted in desisting from enforcing judgements pronounced in their courts.[256] It confirms the assessments of internal policies of Theodosius I, who attached primary importance to the interests of the Empire rather than to requirements of religious orthodoxy.[257] Indirectly, the enactment indicated the scope of jurisdiction of diocesan vicars, while making no distinction as to whether the cases were heard in first instance or as part of appeal.[258]

The same title 40 (*De poenis*, book nine of *Codex Theodosianus*) conveys an extensive excerpt from an constitution issued by Honorius and Arcadius in 398 addressed to PPO *Orientis* Eutychianus[259]. The *praefatio* was

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[256] See Gothofredus (1738), vol. 3: 310, who rightly observed that it was not directed against *clerici*, but against *iudices*. Diocese administrators and their offices were liable to a fine of 30 pounds of gold; at the same time, the act precisely enumerates circumstances in which the *officium* were to be punished. Litewski (1968): 303 et seq., notes that the premise for application was the awareness of the perpetrators – *vendibilis coniventia*, just as in a number of analogous enactments in which other terms were also employed. Robinson (1981): 251, note 373, quotes the sanction provided in the act as an example of high financial penalties imposed on privileged officials. In addition to C. Th. 9, 40, 16 (a. 398), Bassanelli Sommariva (1996): 64 et seq. qualifies it as a law intended to increase the discipline in enforcing judgements, while noting its political overtones, which differ from the later regulations of Theodosius II – C. Th. 9, 40, 22 (a. 414); C. Th. 9, 40, 23 (a. 416). See below.

[257] Leppin (2003): 117–127 and 229–239, arguing against the views expressed in earlier literature.

[258] Kaser, Hackl (1996): § 79, note 28, cites it nonetheless in the context of appellate competence of vicars.

[259] C. Th. 9, 40, 16 (a. 398): "Impp. Arcad(ius) et Honor(ius) AA. Eutychiano p(raefecto) p(raetori)o. Post alia: addictos supplicio et pro criminum immanitate damnatos nulli clericorum vel monachorum, eorum etiam, quos synoditas vocant, per vim adque usurpationem vindicare liceat ac tenere. Quibus in causa criminali humanitatis consideratione, si tempora suffragantur, interponendae provocationis copiam non negamus, ut ibi diligentius examinetur, ubi contra hominis salutem vel errore vel gratia cognitoris obpressa putatur esse iustitia: ea condicione, ut, sive pro consule, comes Orientis, praefectus augustalis, vicarii fuerint cognitores, non tam ad clementiam nostram quam ad amplissimas potestates sciant esse referendum. Eorum enim de his plenum volumus esse iudicium, qui, si ita res est et crimen exegerit, rectius possint punire damnatos. Reos etiam tempore provocationis emenso ad locum poenae sub prosecutione pergentes nullus aut teneat aut defendat, sed sciat se cognitor XXX librarum auri multa, primates officii capitali esse sententia feriendos, nisi usurpatio ista aut protinus vindicetur aut, si tanta clericorum ac monachorum audacia est, ut bellum potius quam iudicium futurum esse existimetur, ad clementiam nostram commissa referantur, ut nostro mox severior ultio procedat arbitrio. Ad episcoporum sane culpam ut cetera redundabit, si quid forte in ea parte regionis, in qua ipsi populo christianae religionis doctrinae insinuatione moderantur, ex his quae fieri hac lege prohibemus a monachis perpetratum esse cognoverint nec vindicaverint. Ex quorum numero rectius, si quos forte sibi deesse arbitrantur, clericos ordinabunt. Et cetera. Dat. VI kal. Aug. Mnyzo Honorio A. IIII et Eutychiano conss." On the PPO – see e.g. PLRE 1 (Flavius Eutychianus 5).

repeated in book eleven of *Codex Theodosianus* as *lex gemina*, in title 30: *De appellationibus et poenis earum et consultationibus* (On appeals, penalties for their filing and imperial consultation of court action), and included in a slightly modified form in two separate titles of *Codex Iustinianus*.[260] The remaining fragments of the enactment were incorporated in other parts of the Theodosian and Justinian codes.[261]

The fragment which bears significance for the position of diocese administrators is found in the *praefatio*, by virtue of which *proconsules*, *comes Orientis*, *praefectus Augustalis* and *vicarii* were obligated to refer appeals from verdicts in criminal action brought by the clergymen, monks and *sinoditae* to the tribunal of PPO ("ad amplissimas potestates"), not to the imperial court.[262] Thus the enactment clearly deprived consuls, initially only in the East[263], of jurisdiction in appeals filed by clerical persons.[264] Meanwhile, diocese administrators, initially only in the East as well, were to refer such appeals to the tribunal of PPO. The constitution affirmed the competence of those officials in criminal cases involving Christian clergy, probably as part of appeals

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[260] C. Th. 11, 30, 57; C. 1, 4, 6 (*De episcopalis audientia et diversis capitulis, quae ad ius curamque et reverentiam pontificalem pertinent*); C. 7, 62, 29 (*De appellationibus et consultationibus*). Cf. Bonini (1990): 123 et seq.; Garrido (2005): 468, 469, 474 et seq.

[261] C. Th.: 9, 45 (*De his, qui ad ecclesias confugiunt*), 3; 16, 2 (*De episcopis, ecclesis et clericis*), 33. C. 1, 4, 7. See Seeck (1919): 295. On the potential causes of the act being divided into different books in both codes see Gaudemet (1986): 260–264. Ducloux (1991) focused her attention only on fragments of C. Th. 9: 40, 16 and 45, 3. C. Th. 9, 45, 3 was the only one to be used in Edictum Theod. 70. See Lafferty (2013): 136.

[262] On the act see Gothofredus (1738), vol. 3: 310–312. On the use of the epithet *amplissimus* when referring to PPO, see Mathisen (2001). In the introductory section, clergymen were forbidden any license in releasing and detaining convicts. The fragment was repeated in C. 7, 62, 29. According to Souter (1949): 411, synodītēs (συνοδείτης) is a companion of Christian life (with no other reference but C. Th. 11, 30, 57 and C. 1, 4, 6). It is assumed that the term denotes a member of ascetic community – see Barone-Adesi Barone (1990): 245. However, Honoré (1995): 188, observes correctly that in the said enactment it means a "monk accompanying a condemned criminal". On the disapproved actions of monks in the light of imperial legislation see also Scarcella (1993–1994): including 324, note 50, on the analysed constitution.

[263] The act was addressed to Eutychius, PPO *Orientis*, and issued in the town of Mnizi, in the Minor Asian province *Galatia*. See e.g. Fabricius (1724): 89.

[264] Its versions in *Codex Iustinianus* are discussed in that very context by Brunnemannus (1699): 25, 41. The author analyses the content of C. 7, 62 superficially, remarking at the outset that there could be no appeal from the verdict of PPO (ibidem: 871). More broadly on the constitutions as well as the political and social context of its issue see Gaudemet (1986); Adeli Barone (1990): 244–252; Ducloux (1991); Neri (2001): 433–435. Robinson (1968): 395 et seq., draws attention to the possible social context of its issue while deliberating on private gaols. Cf. also Litewski (1967): 356 (as an example of regulation which stipulated the categories of people entitled to lodge an appeal); De Giovanni (1983–1984): 397 (in connection with remarks on the functions of bishops).

because province governors acted predominantly as *iudices ordinarii* in first instance. The content of the constitution may have been influenced by *praepositus sacri cubiculi* Eutropius, who was known for his reluctance towards Christianity.[265]

Book ten of *Codex Theodosianus*, comprising 144 fragments of enactments, did not contain as many constitutions pertaining to the judiciary of vicars as book nine.[266]

In order to appreciate the importance of judicial powers of vicars in general, various authors quote the example of constitutions addressed to Dracontius, vicar of Africa in 364–367.[267] Based on those, it was even hypothesized that fiscal matters were the main object of activities of diocesan vicars.[268] Admittedly, only two of the 12 preserved enactments directed to Dracontius spoke of judicial affairs, which demonstrates their considerable importance with respect to supervising tax collection and various administrative issues.[269] On the other hand, the very number of constitutions which pertained to the judiciary of diocesan vicars in the fourth century suggests that this domain was at least an equally important area of their activity. The

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[265] PLRE 2 (Eutropius 2). See Gaudemet (1986): 259 et seq.; Ducloux (1991): esp. 166–173. There was certainly an anti-clerical touch to it – thus Honoré (1995): 183 et seq.

[266] It may be noted that only three enactments were addressed to *comites Orientis*, and had no direct bearing on the jurisdiction of that official: C. Th. 10, 16, 2 (a. 369) = C. 10, 2, 4 was concerned with due taxes; C. Th. 10, 19, 2 (a. 363) imposed restrictions on the acquisition of marble – on this constitution see Kunderewicz (1971): 151. C. Th. 10, 23, 1 (a. 369–370) = C. 11, 13, 1 – mentioned e.g. the subordination of the fleet stationed in Seleucia to the count and listed its tasks. On the latter enactment see Chapter 2.2.3.

[267] See Chapter 1.1. (s.v. *Dracontius*). On Dracontius, see Pallu de Lessert (1901): 193–198; PLRE 1 (Antonius Dracontius 3); Kuhoff (1983): esp. 360, note 30.

[268] Such a thesis was advanced by Gaudemet (1974): 204 et seq., who relied on the comparison with acts directed in the same period to the proconsul of Africa.

[269] Most pertained to the affairs of taxes and fiscal issues – (7) as well as to *officium vicarii* – (2), *navicularii* and construction (one devoted to each). See in chronological order according to Schmidt-Hofner (2008a) – C. Th.: 11, 7, 9 (a. 364); 11, 30, 33 (a. 364); 10, 1, 10 (a. 365); 1, 15, 5 (a. 365); 15, 1, 15 (a. 365); 8, 4, 10 (a. 365); 11, 1, 10 (a. 365); 11, 1, 11 (a. 365); 11, 10, 13 (a. 365); 12, 6, 9 (a. 365); 13, 6, 4 (a. 367); 11, 1, 16 (a. 367); 12, 7, 3 (a. 367). See also constitutions concerning other dioceses: C. Th. 11, 7, 2 (a. 319); C. Th. 11, 7, 12 (a. 383); C. Th. 11, 1, 12 (a. 365) = C. 11, 48, 3; C. Th. 11, 28, 1 (a. 362) – relating to fiscal matters. On the constitutions concerned with *officium*, see Chapter 3.2. In this context, one may also mention another constitution in this book, i.e. C. Th. 10, 19, 9 (a. 378), which was addressed to Vindicianus, vicar of one of the western dioceses. Cf. PLRE 1 (Vindicianus 1); Kuhoff (1983): esp. 367, note 63, with further literature. The enactment notified the official about a previously issued prohibition, whereby sea voyages were prohibited to *metallarii*. The latter are most often presumed to be miners, though it is likely that in fact the *metallarii* were rather shaft lease-holders than mine workers; cf. Freu (2012), esp. 442.

constitutions addressed to Dracontius may also testify to the fact that the role of diocesan vicars in the judiciary began to diminish gradually already in the latter half of the fourth century, a process which may have resulted from the simultaneously increased controlling functions in the domain of tax collection.[270]

Among the enactments concerning the judiciary in *Codex Theodosianus*, the first to be adopted was a one-sentence fragment of a 365 constitution of Valentian I and Valens addressed to Dracontius. It decreed a fine in the amount of fourfold profit obtained as a result of fraudulent contracts with the Fiscus. It was included in title 1: *De iure fisci*, book nine, and then incorporated with a negligible modification in the analogous title in *Codex Iustinianus*.[271] The enactment directly indicates that in first instance the jurisdiction in cases of violation of rights of the imperial Exchequer belonged to diocese administrators.[272]

The enactment of 373, addressed to another vicar of Africa, pagan Crescens, also originates from Valentinian and Valens. It was preserved in book ten of *Codex Theodosianus*, in title 4: *De actoribus et procuratoribus et conductoribus rei privatae* (On the administrators, procurators and leaseholders of private imperial domains – [*res privata*]).[273] In the surviving fragment, the vicar

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[270] This is suggested by Franks (2012): esp. 119–130, who exaggerates the significance of vicars with respect to tax collection, which according to him dated back to the beginnings of vicariates. However, one can concur with his view that the role of *vicarii dioeceseos* in that respect increased after 325, while "The vicars played the role of 'fiscal cops', not only within the prefecture, but with the two fiscal departments" (ibidem: 125).

[271] C. Th. 10, 1, 10 (a. 365) = C. 10, 1, 8: "Idem AA. [Valentinianus et Valens] ad Dracontium vic(arium) Afric(ae). Qui in contractibus scelestis ac fisco perniciosis interversorum maculosis se fraudibus implicuerunt, in quadrupli redhibitionem teneantur. Dat. XV kal. Dec. Hadrumeto Valentiniano et Valente AA. conss." Dating of the act after Schmidt-Hofner (2008a): 540. Seeck (1919): 218, argued for 364. Gothofredus (1738), vol. 3: 387, observed that sometimes the fraudsters were put on a list of proscribed persons and subsequently deported. Brunnemannus (1699): 1163, discussing the version in *Codex Iustinianus,* provides instances in which the penalty imposed was lower.

[272] Bernardi (1965): 155, quotes the constitution in connection with remarks on the economic difficulties of the Empire, which was partly related to the corruption of tax collectors. In turn, Schmidt-Hofner (2008b): 141, note 68, mentions it among other anti-corruption acts.

[273] C. Th. 10, 4, 3 (a. 373): "Idem AA. [Valentinianus et Valens] ad Crescentem vic(arium) Afric(ae). In negotio criminali per rationalem colonos vel conductores rei privatae nostrae, quorum repraesentatio poscitur, exhibendos esse sinceritas tua cognoscat, in civili vero causa defensorem domus nostrae adesse debere. Dat. prid. non. April. Alteio Valentiniano et Valente AA. conss." Dating after Schmidt-Hofner (2008a): 540 et seq. On the vicar see also Pallu de Lessert (1901): 199 et seq.; PLRE 1 (Crescens 1); Kuhoff (1983): 119, 360 (note 31). It is likely that he is one and the same with a senator and pagan priest known from several Roman inscriptions (if so, the he was a person of eastern descent). See Rüpke (2005): 931, no. 1401.

was advised that in cases where the presence of the *coloni* and lessees of *res privata* was required, the following distinction applied: in criminal cases they were subordinated to *rationales*, whereas in civil actions the attendance of *defensor nostrae domus* (i.e. *rationales*) was mandatory.[274] Thus the constitution indirectly decreed jurisdiction of province governors and most likely diocesan vicars as well in first instance civil cases involving *coloni* and leaseholders of imperial domains, at the same time modifying the jurisdiction of *rationales* in this respect.[275]

Codex Theodosianus is the only source to have preserved a fragment of constitution issued by Theodosius I, Arcadius and Honorius in 392, addressed to the then PPO *Italiae et Illyricum,* (Nicomachus) Flavianus. It was included in book ten of the code, in title 10: *De petitionibus et ultro datis et delatoribus* (On petitions, property given voluntarily and denouncers/indicters).[276]

The constitution concerned all vicars and *ordinarii cognitores* (i.e. most likely province governors – perhaps until the promulgation of the Theodosian Code) whom it put under obligation to interrogate *delatores* (denouncers/indicters)[277] in specific categories of cases: vagrant slaves (*mancipia vaga*), secret agreements (*tacitae fideicomissae*) and estate subject to escheat (*bona*

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[274] See detailed analysis in Gothofredus (1738), vol. 3: 408 et seq. It is cited as a kind of court for *coloni* by Kaser, Hackl (1996): § 81, note 13. As observed above, *rationalis* was a title of officials responsible for the estate of the Fiscus and *res privata*, also at diocesan level; their office reached peak significance in 285–320. See remarks on C. Th. 1, 15, 2 (a. 348).

[275] On the changes in the jurisdiction of *rationales*, see Delmaire (1989): 201–204. C. Th. 10, 4, 3 is quoted also in connection with remarks on the development of limited property rights (*iura in re aliena*) in post-classical law, in the form of the so-called *ius perpetuum*, which was applied in the case of administration of *res privata* (in the East until the end of the fourth century). See Dupont (1977): 260. On the evolution of *ius perpetuum* see recent work by Laquerrière-Lacroix (2012).

[276] C. Th. 10, 10, 20 (a. 392): "Imppp. Theod(osius), Arcad(ius) et Honor(ius) AAA. Flaviano p(raefecto) p(raetori)o. Plerisque mancipia vaga, tacita fideicommissa, bona vacantia et caduca monstrantibus quies possidentibus abnegatur. Ideoque praecipimus, ut omnium officiorum periculo custodiatur, vicarii etiam adque ordinarii cognitores moneantur – ea animadversione proposita, quae non facultates eorum sit expetitura, sed sanguinem, ut nullum huiusmodi rescriptum mansuetudinis nostrae, nec si specialis super hoc adnotatio proferatur, nisi una cum delatore suscipiant et ante de animo eius et facto vel impletis probationibus vel desertis iuxta constituta legum, quae super hoc iam dudum a divis principibus lata sunt, iudicetur. P(ro)p(osita) VI id. April. Arcad(io) A. II et Rufino conss." On the addressee and his familial connections, see Chapter 5.2, in this context of the analysed constitution Roda (1973): 60; Honoré (1986): 211 et seq.; Errington (1992). On *petitiones*, which in the nomenclature of Later Roman chancery practice meant letters directed to the emperor and high imperial officials, see e.g. Berger (1953): 629 (s.v.).

[277] See Kleinfeller (1901); Humbert (1892); (Berger (1953): 429 (s.v.). Among monographic studies, see also Rutledge (2001) – for the period of the Early Principate.

vacanta et caduca), under pain of corporal, not financial penalty. In such cases, the aforementioned dignitaries were not to content themselves with presented imperial rescripts or even *adnotatio* (i.e. probably the certificate of the decision having been acknowledged by the emperor himself).[278] The enactment also made references to previous imperial constitutions which decreed that judgement may only be issued after conducting evidentiary proceedings.[279] The constitution restricted the possibility of unencumbered possession of the specified categories of property in the case of *delatio fiscalis*, which could pass into the hands of denouncers, and may have indirectly testified to the abuses of *delatores*.[280] Thus it confirmed that vicars were obliged to conduct evidentiary procedure in first instance in the aforementioned categories of cases.

Vicars were also taken into consideration in the enactments included in book ten, title 15: *De advocatis fisci*, which have already been discussed above, in connection with the constitution of 340 addressed to the vicar of Africa, Petronius.[281]

Another vicar of Africa, pagan Magnillus, was the recipient of an act issued in 391 by Valentinian II, Theodosius I and Arcadius, known from the excerpt included in book ten of *Codex Theodosianus*, in title 17: *De fide et iure hastae* (On lawful and trustworthy public auctions).[282] As the constitution

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[278] See Gothofredus (1738), vol. 3: 445; Turpin (1988): esp. 288, on the significance of the term *adnotatio*; Kaser, Hackl (1996): § 78, note 29, as an example of *cognitor* being used to denote the judge.

[279] Pfarr (1952): 276, note 41, mentions C. Th. 10, 10: 1–4, 7–10, 12–13, 17. However, cf. Lepore (2000): 367, note 66, where the constitution is discussed as an example of the use of references to unidentified earlier enactments.

[280] Cf. Berger (1953): 428 (s.v. *deferre fisco*); Litewski (1998): 69 (s.v. *delatio fiscalis* [*fisco*]); Johnston (2001): 70 et seq. Most fragments of enactments adopted in C. Th. 10. 10 mention the abuses of *delatores*.

[281] Cf. above remarks on C. Th. 2, 6, 5 (a. 340).

[282] C. Th. 10, 17, 3 (a. 391/392 – the year of issue and receipt are provided: "Imppp. Val(entini)anus, Theod(osius) et Arcad(ius) AAA. ad Magnillum vic(arium) Afric(ae). Si quos debitorum mole depressos necessitas publicae rationis adstringat proprias distrahere facultates, rei qualitas et redituum quantitas aestimetur, ne, sub nomine subhastationis publicae locus fraudibus relinquatur et, possessionibus viliore distractis, plus exactor ex gratia quam debitor ex pretio consequatur. Hi postremo, sub empti titulo, perpetuo dominii iure potiantur, qui tantum annumeraverint fisco, quantum exegerit utilitas privatorum. Etenim periniquum est, ut, alienis bonis sub gratiosa auctione distractis, parum accedat publico nomini, quum totum pereat debitori. Dat. XIII kal. Iul. Aquil(eiae), acc. id. Ian. Hadrumeti, post cons. Tatiani et Symmachi vv. cc." The act is one of the 22 constitutions preserved in *Codex Theodosianus* whose location and date of both issue and receipt are known. See Lepore (2000): 354. On the vicar, see below.

must have given rise to doubts in practical application, it was provided with *interpretatio* and incorporated in *Breviarium Alarici*.[283]

The enactment was concerned with controlling the correct conduct of auctions of property belonging to public tax defaulters. It underlined that the price obtained in the course of auction by tax collectors (*exactores*) should be analogous with the price of ordinary sale, as it would be unjust if during an auction in which favour was shown to one of the purchasers (*gratiosa auctione*), so little was to be gained by the public treasury while the debtor lost everything.[284] The enactment is analysed in literature chiefly in relation to the development of the notion of *laesio enormis* in the case of sales and the significance that regulations pertaining to public auction had for that process.[285] It could have acquired such a significance only in the Justinian period, given that it was included in an amended form in *Codex Iustinianus* in book four, title 44: *De rescindenda venditione* (On rescinded sale).[286]

The fact that a constitution on controlling public auctions was directed to the vicar of Africa, attests to the his role in ensuring public order on the territory of his diocese. Since this is the only known enactment concerned with

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[283] "Interpretatio. Si quicumque publici debiti enormitate constringitur, ut non possit hoc ipsum debitum nisi vendita propria facultate dissolvere, in eius modi debito hanc exactores formam servare debebunt, ut non ita rem praecipitent, ut res minore, quam valeat, pretio distrahatur, nec tales sub quolibet colludio provideant emptores, ut et debitor proprietatem perdat, et parum Fiscus acquirat"; Brev. Alaric. 10, 9, 1. The complete versions of book ten as adopted in Brev. Alaric. and C. Th. are compared in Gaudemet (1971a): esp. 366 et seq. (on C. Th. 10, 17, 3, including the *interpretatio*).

[284] See Gothofredus (1738), vol. 3: 482 et seq. On the status of purchaser of such property in the light of the formulation *possidere dominii iure*, probably meaning *possidere ex iusta causa*, see Cannata (1962): 106–109. The constitution does not highlight the contradiction between *utilitas publica* and *utilitas singulorum*. See Navarra (1997): esp. 278 et seq. About disputable post of *exactor* cf. Olszaniec (2014): 157–163, with further literature.

[285] See Dupont (1972b): 295 et seq.; Visky (1979): esp. 440 et seq.; Sirks (1985): esp. 304 (in the light of *interpretatio*); Sirks (1995): esp. 414.

[286] C. 4, 44, 16. This was already noted by Gothofredus (1738), vol. 3: 483. The rules of application and restrictions of the act in the version from *Codex Iustinianus* were discussed from the standpoint of contemporary doctrine by Brunnemannus (1699): 492. This author attempted a broader analysis of C. Th. 10, 17, 3 in Wiewiorowski (2012a). I argue that this enactment was first only the reaction directed against abuses in Africa, which was reused in C. 4, 44, 16 contrary to its original, primary meaning. In my view the discussed constitution cannot be treated as the step leading to *laesio enormis;* this opinion is rooted only in the placement of it in Justinian Code and its later, medieval interpretation. A cross-sectional approach to *laesio enormis* is presented in Visky (1983): 24–66 (including remarks on the period from the revival of Roman law teaching in the eleventh-century Europe: 57–66). On the development of that notion and its significance in European legal tradition see also Zimmermann (1996): 259–272; and the polemic in Sirks (2007a).

public auction that was addressed to vicar, it seems to have been an extraordinary reaction of the emperor to the abuses which may have been committed by tax collectors in the diocese of Africa.[287] Hence it may be presumed that the case was heard by Magnillus in first instance. Ironically enough, once his term in office was over, the same official apparently faced charges of abuse, of which he was ultimately acquitted thanks to Quintus Aurelius Symmachus, who pleaded his case with St. Ambrosius of Milan.[288]

In book eleven of *Codex Theodosianus,* several dozen of 306 fragments of enactments pertain to diocesan vicars, but a number of those discusses various administrative issues relating to tax collection.[289] The constitutions which are relevant for the judiciary of vicars are found in twelve fragments.

Tax-related disputes are the subject of an enactment of 369, addressed by Valentinian I, Valens and Gratian to the vicar of Spain, Artemius, preserved in a short excerpt in book eleven of *Codex Theodosianus*, in title 26: *De discussoribus* (On tax accountants), and later incorporated in the analogous book in *Codex Iustinianus*.[290] The act stipulated that if in the course of an action it is

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[287] See C. Th. 10, 17 and its corresponding C. 10, 3.

[288] Symm. *Ep*. 3, 34 and 9, 122. On Magnillus, for whom vicarship was the last stage of career in imperial administration, see Pallu de Lessert (1901): 214 et seq.; PLRE 1 (Magnillus); Matthews (1975): 191, 243; Nellen (1977): 78–80; Kuhoff (1983): esp. 316, note 68. On the circumstances of Symmachus's intervention, see Pellizzari (1998): 133–135, with further literature.

[289] This applies in particular to title 11: *De annona et tributis*. See C. Th. 11, 1: 1 (a. 360) – Dating after Seeck (1919): 207; 10–11 (a. 365); 12 (a. 365) = C. 11, 48, 3; 13 (a. 365); 17 (a. 371) = C. 11, 59, 4; 30 (a. 399) – on its dating, see remarks on C. Th. 16, 2, 34. Other enactments relating to financial issues in which vicars are mentioned in C. Th. 11: 6, 1 (a. 382) = C. 10, 18, 1; 7, 2 (a. 319); 7, 8 (a. 355) – which indirectly prohibits higher judges from interfering in tax-related matters reserved for province governors and *rationales*; 7, 9 (a. 364); 7, 12 (a. 383) – the constitution is discussed more broadly in Mannino (1984), esp. 110–116; 10, 2 (a. 368 lub 373) – dating after Schmidt-Hofner (2008a) 551, concerning tasks associated with collection of taxes and particular *munera* in Italy; 16, 4 (a. 328) = C. 11, 48, 1 – pertaining to observance of the privileges of municipal *principales* and imposing penalties, chiefly on province governors and the *officia*, though also stating that allowing abuse to happen is damaging to the reputation of vicars of the PPO (see Dupont [1963]: 29, 66, 73, 86 et seq.; Dillon [2012]: 174–178); 16, 6 (a. 335) = C. 12, 23, 1 – dating after Seeck (1919): 183; 23, 4 (a. 396); 28, 1 (a. 363). One of the book's enactments concerned with financial issues was addressed to *praefectus Augustalis*: C. Th. 11, 36, 27 (a. 383). As regards the latter official, there is also the noteworthy C. Th. 11, 24, 6 (a. 415) = C. 11, 59, 14. Its *praefatio* stipulates exclusive jurisdiction of those officials in cases of seizure of estate on the grounds of *patrocinium* in 397–415. More broadly on that subject cf. e.g. Mirkovič (1997): 27–39. Another omitted enactment is C. Th. 11, 1, 5 (a. 339) = C. 10, 16, 5, which concerned the obligation to pay taxes in money, as its recipient was unidentified Uranius, *vicarius* or province governor. Dating after Seeck (1919): 186. Cf. PLRE 1 (Uranius 2).

[290] C. Th. 11, 26, 1 = C. 10, 30, 1 (a. 369): "Imppp. Val(entini)anus, Valens et Gr(ati)anus AAA. ad Artemium vic(arium) Hispaniarum. Quotiens in disceptatione constiterit inique discussionem fuisse confectam et fidem facti non poterit adprobare discussor, ipse in eodem titulo et in

demonstrated that *discussor* (tax auditor) erroneously and unfairly calculated the tax, he would have to pay it to the Fiscus.[291] Based on the text, it may be inferred that the proceeding was taking place by way of appeal against the decision issued by a tax auditor. This is also indirectly confirmed by the fact that appeals from the judgements of PVR or his *vicarius* are regulated in a constitution addressed to PVR Eupraxius, which was issued several years later.[292] The same vicar Artemius in mentioned in the context of financial affairs in an inscription on a bronze measuring container, whose volume was equivalent to modius (i.e. 8.773 litre) – the so-called *Modio de Ponte Puñide*, discovered in 1913.[293] The act of 369 would thus be a proof that vicars were competent to judge in appellate proceedings in tax-related cases.[294]

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eodem modo ad solvendum protinus urgeatur, in quo alterum perperam fecerit debitorem. Dat. prid. id. Mai. Valentiniano nb. p. et Victore conss." Artemius was the governor (*corrector*) of Italian province *Lucania et Brittorum* (a. 364) and vicar of Spain in 369–370. See Chastagnol (1965): 276, no. 9; PLRE 1 (Marius Artemius 4); Vilella (1992): 87. He was also the recipient of C. Th. 8, 2, 2 (a. 370) pertaining to the supervision of auxiliary personnel. Cf. Chapter 3.2.

[291] Bernardi (1965): 136 cites it as an example of abuse perpetrated by tax collectors. On the title of *discussor* and its multiple meanings, see Brunnemannus (1699): 1194 (with an analysis of the rules governing the application of C. 10, 30, 1 to e.g. assess the property constituting the tax base); Seeck (1905b); Berger (1953): 438 (s.v.); Karayannopulos (1958): 53; Litewski (1998): 75 (s.v.).

[292] As argued by Gothofredus (1740), vol. 4: 184–186, with reference to C. Th. 11, 30, 36 (a. 374): "Imppp. Val(entini)anus, Valens et Gr(ati)anus AAA. ad Eupraxium p(raefectum) U(rbi). Post alia: cum ex causis iustis aliquid, quo minus iudicari statim possit, repperietur incertum ac debitor adversus discussoris statum coeperit reluctari, dilatione postposita super eo, quod exorietur ambiguum, vel sublimitas tua vel vicarius, prout quisque vestrum proximus erit, adhibeat examen. P(ro)p(osita) XVI kal. Mart. Gr(ati)ano A. III et Equitio conss." See e.g. PLRE 1 (Flavius Eupraxius).

[293] Ponte Puñide (district O Pino, province A Coruña, Galicia; a. 367–375): "Modii l(ex) iuxta sacram iussi[on]em dominorum nostrorum Valentiniani Valentis et Gratiani invictissimorum principium, iubente Mario Artemio v(iro) c(larissimo) a[g](ente) vic(ariam) p(raefecturam) (I)cur(antabus) Potiamo et Quentiano principalibus" (AE [1915]: 75 = AE [1916]: 64). The inscription refers to an unidentified constitution (*Lex modii*) on measures and taxes, issued by Valentinian II, Valens and Gratian. On that subject see Michon (1914): esp. 215–244, 299–312; Ureña y Smenjaud de (1915); Zurita (2011): 131 et seq. On the Roman system of measures, cf. e.g. Wipszycka (2001): esp. 582. On the use of the titulature a.v.p.p., see also Chapter 2.2.2.

[294] Among other authors, Barnes (1973): 63; Corcoran (2000): 279, 310; Porena (2014) suggest that C. Th. 11, 27, 1 was addressed to Fl. Ablabius, who is presumed to have been the vicar of Italy under Constantine I, in 315–319. Seeck (1919): 54 dated it to 329, when Fl. Ablabius was a consul. On Ablabius, see remarks in Chapter 2.2.1. The argument is based on the debates regarding the doubtful issuer of the constitution as well as problematic chronology of events during the first campaign of Constantine I against Licinius (314–316). Without a more detailed analysis, the thesis is supported by Dillon (2012): 40 et seq., who dated the constitution to 315. Given the disputability of this hypothesis, this author decided not to discuss C. Th. 11, 27, 1, which at any rate pertained to an obligation of administrative nature (announcement of the

Title 30: *De appellationibus et poenis earum et consultationibus* (On appeals, penalties for lodging appeals and consultations of court actions with the emperor), book eleven of *Codex Theodosianus* features a fragment of enactment addressed in 319 by Constantine the Great to the aforementioned Iulianus Severus, who was probably a vicar of Italy; it was repeated with minor modifications in title 62: *De apellationibus et consultationibus*, book seven of *Codex Iustinianus*.[295] It provided, under pain of eternal infamy for the judge, that records of cases which were to be judged by the emperor had to be supplied with full documentation of arguments and pleadings submitted to date by the parties, so that there was no need to hear them again. The enactment was probably the outcome of a problem which manifested itself in practice, and concerned the preparation of complete files which ensured correct and prompt conduct of the appeal; the task was within the responsibility of judges, chiefly those who heard cases in first instance. It is sometimes described as a proceeding before the court of the emperor in the mode of *per relationem – appellatio consultationum more*, which in the post-classical period was combined with a judgement issued by a court ad quem.[296]

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edict which decreed that food and clothing be ensured for newly-born children whose parents lacked sufficient means). On that regulation see also Memmer (1991): 61, 68 note 163.

[295] C. Th. 11, 30, 9 (a. 319): "Idem A. [Constantinus] ad Severum vic(ari)um. Ne causas, quae in nostram venerint scientiam, rursus transferri ad iudicia necesse sit, instructiones necessarias plene actis inseri praecipimus. Nam cogimur a proferenda sententia temperare, qui sanximus retractari rescripta nostra ad opiniones vel etiam relationes iudicum data non oportere, quoniam verendum est, ne lis incognito negotio dirimatur adempta copia conquerendi. Quare perennibus inuretur iudex notis, si cuncta, quae litigatores instructionis probationisque causa recitaverint, indita actis vel subiecta non potuerint inveniri. Dat. X kal. Iul. Aquil(eiae) Constantino A. V et Licinio C. conss." = C. 7, 62, 15. Book C. Th. 11, 30 did not exhaust all issues related to appeals. See Sirks (2007b): 98–108, with further literature.

[296] Gothofredus (1740), vol. 4: 230, discusses *ratio* of this solution in the light of C. Th. 11, 30, 6 (a. 316) = C. 1, 21, 2 and C. Th. 11, 30, 8 (a. 319). In turn, Brunnemannus (1699): 907 focuses chiefly on the question whether original records or merely copies of those were to be sent. On the procedure see remarks on C. Th. 11, 30, 11. On C. Th. 11, 30, 9 in recent works cf. Litewski (1965a): esp. 25 on this enactment, 30; Litewski (1968): 270–274, 301 and 305 (in the context of penalty imposed on the judge only); Maggio (1995): esp. 309 et seq. (as a developmental form of the rescript process). Kaser, Hackl (1996): § 78 (note 15), § 91 (note 6 – the authors find that the constitution stipulates judge's liability in the event of losing records of the proceeding and enhances the position of parties with respect to the judge): § 95.I.4; Pergami (2000): 97–99, 411 (the author correctly considers it a practice-derived example of vicar's participation in a *de facto* administrative proceeding), 444, 459 et seq. (critique of the concept of functioning of appeal forms); Pergami (2007): esp. 17–21, 45–47; Dillon (2012): esp. 207–209, 226 et seq., 243 et seq. On the proceedings based on the constitution compared with other solutions concerning appeals which were introduced under Constantine I, see also Dupont (1974): 201 et seq.; Gaudemet (1981): 54, 55, 60, 63 et seq., 67; Spagnulo Vigoritta (1996): 160, note 62; Demi-

The same title contains a fragment of a 321 enactment of Constantine I, formally addressed to PVR Maximus, which also pertained to the jurisdiction of diocesan vicars.[297] The preserved fragment of constitution dictated for instance (*pr. in fine*) that all *iudices*, including PVR, who "cognitionibus nostram vicem repraesentas", are obliged to provide the emperor with the entirety of documentation collected in the course of court proceeding when a case is referred to the emperor; the text also stressed that PVR should receive appeals. Without doubt, the constitution was concerned with PVR, but the obligation to undertake steps described therein was imposed on all imperial judges who had the privilege of *vice sacra cognoscere*, which included diocesan vicars, with respect to rulings in appellate procedures, as it follows from its inclusion in a title devoted to appeals.[298] Later on, it was clearly construed in much the same way, as demonstrated by a sentence adopted in

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chelli (2003): 336, 338 et seq. (who distances himself from Pergami's view). The constitutions are also mentioned in Dupont (1971a): 562.

[297] C. Th. 11, 30, 11 (a. 321): "Idem A. [Constantius] ad Maximum. Post alia: Nemo in refutationem aliquid congerat, quod adserere intentione neglexerit. Quod quidem saepe fit industria, si, quod quis probari posse desperet, in praesenti disceptatione dissimulet, certus se esse revincendum, si commenticia et ficta suggesserit. Propter quod cogi etiam singulos oportebit ad proferenda in iudicio universa, quae ad substantiam litigii proficere arbitrantur, atque ea ratione urgeri, ut sciant sibi ex auctoritate legis istius non licere refutatoriis tale aliquid ingerere, quod aput iudicem non ausi fuerint publicare. Nam si plena, ut iubemus, adsertio per litigatorem in iudiciis exeratur et integra instructio in consulti ordinem conferatur, stabit ratum ac fidele, quod iudicia nostra rescripserint neque ullus querimoniae locus dabitur nec occasio supplicandi, ut convelli labefactarique iubeamus quae ad relationem eius sanximus, qui neque vera neque universa suggessit. Omnes igitur partium allegationes acta universa scripturarumque exempla omnium dirigantur. Quod cum universos iudices tum praecipue sublimitatem tuam, qui cognitionibus nostram vicem repraesentas, servare conveniet. Sane etiam ex eo querimoniae litigantium oriuntur, quod a vobis, qui imaginem principalis disceptationis accipitis, appellationum adminicula respuuntur. Quod inhiberi necesse est. Quid enim acerbius indigniusque est, quam indulta quempiam potestate ita per iactantiam insolescere, ut despiciatur utilitas provocationis, opinionis editio denegatur, refutandi copia respuatur? Quasi vero appellatio ad contumeliam iudicis, non ad privilegium iurgantis inventa sit vel in hoc non aequitas iudicantis, sed litigantis debeat considerari utilitas. Dat. prid. id. Ian. Sirmio Crispo II et Constantino II CC. conss." Another fragment was incorporated in C. Th. 2, 18, 1; cf. Seeck (1919): 171. On that enactment see Barbati (2012): 68-72, with further literature. On the PVR, see PLRE 1 (Valerius Maximus signo Basilius 48); Kuhoff (1983): 377, note 107, with further literature. On diocesan vicars being included in the text of the constitution, see e.g. Kaser, Hackl (1996): § 79, note 24.

[298] Gothofredus (1740), vol. 4: 231–233 correctly underlines the broad scope of its application. Likewise de Bonfils (1975): 306, note 45, who discusses the causes why it repeats the norm set forth in C. Th. 11, 30, 6 (a. 316) – given that at the moment of promulgation and until its inclusion in *Codex Theodosianus* the enactment had "un ambito territorialmente ristretto". There is no doubt that the expression *post alia* is interpolated. See also De Dominicis (1953): 429.

a modified form in *Codex Iustinianus*: "Etiam eos, qui imaginem principalis disceptationis accipiunt, appellationum adminicula necesse est accipere" ("Apart from that, those who hear disputes on behalf of the princeps, are to accept appeals").[299] In literature, the constitution is considered as a regulation of paramount importance for one of the doctrines of Roman law, the so-called *appellatio per consultationem* (*appellatio more consultationis*), which was to guarantee a quick and error-free conduct of procedure before the emperor's court, and as an example of appeals being rejected by imperial officials, whom the emperor tried to persuade that the authority of the judge is in no way undermine when parties resort to such procedural measure.[300]

The same title of the Theodosian Code also conveys a fragment of an 331 edict of Constantine the Great, which was discussed previously in connection with the diocesan organisation. The act reaffirms the rule that appeals from the rulings of PPO are inadmissible, but that one may appeal against all types of judgements of other higher judges: *proconsules*, *comites* (i.e. *comites provinciarum*) and *vices praefectorum*, which at the time would already have meant diocesan vicars, as well as provided penalties for dismissing appeals.[301] The enactment was adopted unchanged in the Justinian

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[299] C. 7, 62 (*De appellationibus et consultationibus*), 16.

[300] The notion was conceived by Bethmann-Hollweg (1866): 294–296, 334. Among more recent works see Litewski (1965a): 23 et seq.; on the terminology denoting parties and their rights Litewski (1967): 301, 327; Litewski (1968): passim, esp. 264–281; Kaser, Hackl (1996): § 95.I.4; Pergami (2000): esp. 60 et seq., 103, 269 et seq., 380–382, 453–459 (the author criticizes the concept of *appellatio per consultationem*, arguing that the analysed act was applicable only in the case of *consultatio ante sententiam* and hence concludes that C. Th. 11, 30, 11 also applied to PPO, whose rulings were unappealable); *contra* Litewski (2002): esp. 441 et seq.; Pergami (2003) – detailed critique of the existence of said form of appeal, with earlier literature; Pergami (2007): esp. 21–23, 45–48; Barbati (2012): 68 et seq., 73-75 (sceptical of Pergami); Dillon (2012): esp. 211–213, 225 et seq., 232 (remarks chiefly in C. Th. 11, 30, 6), 218–222 (on the concept of *appellatio more consultationis*), 241–250 (on counteracting reluctance of judges to accept appeals in the enactments of Constantine I). Regarding PVR's status cf. also Litewski (1966): 285 et seq.; on the admissibility of new requests and demurrers made by parties as well as on renewed hearing of evidence during appellate procedure (the so-called *ius novorum*) Scapini (1978): 56–61. See also in the light of Constantinian enactments concerning appeals Gaudemet (1981): esp. 64 et seq., 72 et seq., 84; and civil procedure under Constantine – Dupont (1974): 204; Demichelli (2003): 339–341.

[301] See Chapter 2.1. In view of its significance it is quoted again in extenso. C. Th. 11, 30, 16 (a. 331): "Idem A. [Constantius] ad universos provinciales. A proconsulibus et comitibus et his qui vice praefectorum cognoscunt, sive ex appellatione sive ex delegato sive ex ordine iudicaverint, provocari permittimus, ita ut appellanti iudex praebeat opinionis exemplum et acta cum refutatoriis partium suisque litteris ad nos dirigat. A praefectis autem praetorio, qui soli vice sacra cognoscere vere dicendi sunt, provocari non sinimus, ne iam nostra contingi veneratio videatur. Quod si victus oblatam nec receptam a iudice appellationem adfirmet, praefectos adeat, ut aput eos de integro litiget tamquam appellatione suscepta. Superatus enim

Code, which additionally demonstrated its crucial significance for the Later Roman appeal.[302] As regards the judiciary of vicars, the act reasserted lawfulness of appeals from rulings of various diocese administrators, irrespective of the mode of judgement: "sive ex appellatione sive ex delegato sive ex ordine iudicaverint", in contrast to PPO. Thus the enactment stated explicitly that diocese administrators had the capacity to adjudicate both as appellate as well as first instance judges.

The same title 30, book eleven of *Codex Theodosianus*, offers a short excerpt from an act addressed most probably in 339 by emperor Constantius II to Anatolius, vicar of the diocese of Asia.[303] The constitution provided that if someone is appointed a curial, *duovir* or obtains another office or *munus*, the appeal proceeding should last no longer than two months, that is until

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si iniuste appellasse videbitur, lite perdita notatus abscedet, aut, si vicerit, contra eum iudicem, qui appellationem non receperat, ad nos referri necesse est, ut digno supplicio puniatur. Dat. kal. Aug.; p(ro)p(osita) kal. Sept. Constantinopoli Basso et Ablavio conss." Other fragments of the constitution were included in: C. Th. 2, 26, 3; C. Th. 3, 30, 4; C. Th. 4, 5, 1 = C. 8, 36, 2; C. Th. 11, 30, 17 = C. 1, 21, 3; C. Th. 11, 34, 1 (see below); C. 3, 13, 4; C. 3, 19, 2. A detailed analysis of the enactment was conducted by Gothofredus (1740), vol. 4: 237–239, who discussed individual types of court proceedings presided over by the listed categories of imperial officials. C. 7, 62, 19 is discussed in Brunnemannus (1699): 908, who stresses the exceptional position of PPO. See also ibidem: 72, 248, 254 et seq., 1007 on the practical aspects of respective application of C. 1, 21, 3; C. 3, 13, 4; C. 3, 19, 2; C. 8, 36, 2.

[302] C. 7, 62, 19 (*De appellationibus et consultationibus*). On the importance attached to the institution of appeal in Constantine's legislation, in comparison with his other constitutions devoted to civil procedure, see Dupont (1974): esp. 203 et seq.; Gaudemet (1981): esp. 71–74 (in the light of acts regulating appeals as well as on the exceptional position of PPO). On the significance of this constitution, especially for the appeals of the post-classical period, see e.g. Jones (1964), vol. 3: 3 (note 1) and 134 (note 23 – with a suggestion that although previously the judgements of all *vice sacra* had been unappealable, this approach was later restricted); Legohérel (1965): 93; Litewski (1966): 283 et seq., 319; Litewski (1967): 301 et seq., 325, 371; Litewski (1968): 177 et seq.; De Marini Avonzo (1975): 58–61; Gaudemet (1981): esp. 58 (note 81), 67, 71–76; Kaser, Hackl (1996): § 79.II.2, § 95; Pergami (2000): esp. 45 et seq., 100, 109–119, 399, 409, 415, 445 et seq., 452 et seq.; Demichelli (2003): 342; Pergami (2007): 108 et seq., 112, 120, 123; Barbati (2012): 236, note 23, 241 et seq. (note 36); Dillon (2012): esp. 111 et seq., 121–123, 229, 231 et seq., 248–250.

[303] C. Th. 11, 30, 19 (a. 339): "Idem [Constantius] ad Anatolium vic(arium) Asiae. Post alia: Si ad curiam nominati vel ad duumviratus aliorumque honorum infulas vel munus aliquod evocati putaverint appellandum, intra duos menses negotia perorentur. Dat. VI kal. Dec. Constantio A. II et Constante conss." A fragment was included in C. 7, 63, 1 (a. 320). Dating according to the manuscript – 339; after Seeck (1919): 199 – 352. There is some controversy involved: it is possible that literary and legal sources of the 340s and 350s actually speak of two officials of the same name. These figures are treated as one and the same person by: Seeck (1906): 59–66; PLRE 1 (Anatolius 3); Petit (1994): 33–37; suggests that there were two PPO: Groag (1946): 32 et seq.; Penella (1990): 88–91, 96–98, 130–132, 141; Cuneo (1997): 58 et seq.; Bradbury (2000); Wintjes (2005): 53, 67 (note 33), 109 (note 90). Kuhoff (1983): esp. 372 et seq., note 84, admits both possibilities.

the end of April of the year in question. This finding is supported by the interpretation of another fragment of the enactment, found in book twelve of *Codex Theodosianus*, title 1: *De decurionibus* (On decurions), which specifies that a person should acquire the dignity of decurion, as well as the associated honours and duties by 1 March, at the latest.[304] The fragment drew upon the rule of Roman law which stipulated that action based on private indictment or suit against a person holding public function was not to be instituted during their term in office, and established the deadline of any proceedings which began prior to that period.[305]

The fact that the excerpt from the constitution was included in a title devoted to appeals confirms that the act was concerned precisely with such procedure. The preserved wording of the act, which represents a supplement to a longer fragment (formulation *post alia*) does not permit to determine whether it was the vicar who actually heard the appeal or acted as judge. Anatolius had been thoroughly educated, also in the field of law, which he studied at the famous law school in his native Beirut.[306] This offers additional grounds for the claim that the constitution was not issued to address legal problems associated with his duties as a vicar. The analysed enactment may be merely one of the surviving copies of imperial instruction or edict.[307] It was exactly due to the general nature of the rule established in the preserved fragment of the constitution that it was adopted in *Codex Theodosianus*; subsequently, the same fragment was utilized in *Codex Iustinianus*, where it was incorporated in another, earlier enactment.[308]

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[304] C. Th. 12, 1, 28 (a. 339): "Idem AA. [Constantius et Constans] ad Anatolium vicarium As(iae). Constitutionibus perspicue definitum est kalendis martiis nominationes fieri, ut splendidorum honorum munerumque principia primo tempore procurentur. Et cetera. Dat. VI kal. Dec. Constantio II et Constante AA. conss." See detailed remarks on C. Th. 11, 30, 19 in Gothofredus (1740), vol. 4: 241 (indicates the moment of appointment) and in more recent works: Legohérel (1965): 102 (as a reference to the rules introduced by Constantine I); Litewski (1965b): 412, note 140 (as an example of deadline); Donatuti (1966): 168 et seq.; Bianchini (1975): 342 (as an example of typically short deadline in the case of curials); Kaser, Hackl (1996): § 95, note 23 (as an example of deadline); Pergami (2000): 359, 411. Due to doubts regarding the career of Anatolius, it is sometimes suggested that he may have been the recipient of C. Th. 12, 1, 39 (a. 349), addressed *ad Anatolium praefectum praetorio*, which forbade judges to use violence with respect to decurions. See works quoted in the preceding footnote.

[305] See e.g. Karlowa (1885): 204–206; Mommsen (1899): 83 et seq.

[306] Certainly Eunap. *V. Soph.* 10, 6, 1–2; according to some authors also Lib. *Ep.*: 339, 438. On the Beirut law school, see e.g. Collinet (1925): esp. 85 et seq. (on Anatolius); Jones Hall (2004): 195–220 (on Anatolius – 206 et seq.). Among recent works in Polish, see Sadowski (2010) on the school of law in Beirut in the light of Libanius' writings.

[307] Pergami (2000): 411. In another work, the author sees the enactment as an example of using appeals to verify the legality of administrative act of appointment: Pergami (2005): 424 et seq.

[308] C. 7, 63 (*De temporibus et reparationibus appellationum seu consultationum*), 1 (a. 320): "Imperator Constantinus ad Crispinum. Si quis per absentiam nominatus vel ad duumviratus

Another constitution found in this title and, presumably, also addressed to *vicarius Asiae* was issued almost four years later.[309] It obligated all province governors to accept appeals and refer them to those who were supposed to hear them. The act stressed furthermore that those who filed an appeal must not be intimidated and should be ensured the right to defence. Province governors and their offices were liable to a fine (the governor was to pay 10 pounds of gold, the *officium* 15), should they refuse to accept the appeal. The preserved fragment must have had a certain value for the legal practice in the Latin West, as it is echoed in a fragment of *Edictum Theodorici*, which retains its essential meaning.[310]

The act was promulgated in *Cyzicos/Kyzikos* – "Proposita Cyzico" – a town located on the Asian coast of Propontis, in the province of *Phrygia*. Its addressee, referred to by name, is Scylacius, whose activities in Asia Minor were mentioned in one of Himerius's speeches (construction work in the vicinity of Miletus in the province *Asia*, and fighting with bandits in the province *Pisidia*) as well as in an epigram (the inscription mentioned his building undertaking in *Laodicea ad Lycum*, a city which was the capital of province *Phrygia*).[311] Scylacius's vicarship in 343 is attested to primarily by

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aliorumque honorum infulas vel munus aliquod evocatus ad provocationis auxilium cucurrerit, ex eo die interponendae appellationis duorum mensum tempora ei computanda sunt, ex quo contra se celebratam nominationem didicisse monstraverit. Nam praesenti, qui factam nominationem cognovit et appellare voluerit, statim debet duorum mensum spatium computari. D. VIII id. Iul. Constantino A. VI et Constantio C. conss." The time-frame was also upheld in Nov. Iust. 82, 6 (a. 539).

[309] C. Th. 11, 30, 22 (a. 343): "Idem AA. [Constantius et Constans] ad Scylacium. Omnes praesides moneantur, ut, si quis provocatione sibi opus esse cognoscit, iuxta morem ordinemque legum accipiant libellos et ad eos qui consuerunt audire transmittant, nec appellantes iniuriarum adflictatione deterritos a suffragio necessariae defensionis expellant. Imponimus enim praesentis multae fascem, ut iudex, qui suscipere neglexerit, auri libras X et officium eius quindecim pendat. P(ro)p(osita) Cyzico VI kal. Mart. Placido et Romulo conss."

[310] Edictum Theod. 55: "Omnes appellationes suscipiant ii provinciarum iudices, a quibus provocari potest: quando optimae conscientiae conveniat etiam superfluam appellationem sine dubitatione suscipere, dum de appellationis merito sacer possit perpensis legibus cognitor iudicare. Quod si iudex suam absentiam procuravit, ne appellatorios libellos accipiat: in locis celeberrimis, qui appellare voluerit, libellum de absentia iudicis et de sua appellatione exhibere debere censemus. Iudex autem, qui aut suscipere appellationem contempserit, aut certe in custodiam dederit, aut verberaverit, aut aliquo dispendio laeserit appellantem, decem librarum auri amissione feriatur, quas fisci compendiis cura sacri cognitoris praecipimus aggregari ; officium quoque, cuius interest, mulctae legitimae subiacebit." See more broadly Lafferty (2010): 157 et seq.; Lafferty (2013): 133–135.

[311] Himerius *Or*. 25, 67–68, 95–99 (on actions against the bandits), 71–94 (describes the construction work he conducted in the area of Miletus). However, in a commentary to the latest edition of the inscription, Corsten (1997): 57–59, no. 18 (with earlier literature) expressed his doubts, hypothesizing that he might have been province governor of Hellespont. In the light of

the preserved fragment of constitution, which pertained to the reluctance of province governors (or more broadly all imperial officials) to accept appeals, which was condemned on numerous occasions by emperors.[312] The wording of the constitution implies that province governors were subordinated to its recipient, who may also have been its initiator. Also, the fact that Scylacius was a vicar rather than province governor is borne out by other evidence, which demonstrates that during his term in office Scylacius was active in at least three separate provinces – Asia, Pisidia and Phrygia.[313] The text of the preserved fragment suggests that its addressee was interested in taking steps against the aforementioned abuses of province governors and their offices. In may be inferred that the vicar was one of those imperial officials who were supposed to hear appeals.

The necessity to lodge appeals, also those against the rulings of province governors, within a specified time, is discussed in an enactment of 362, addressed by Julian to PPO *Galliarum*, Germanianus.[314] The act stipulated that appeals of persons against judgements of "praefectos Urbi seu proconsules seu comites Orientis seu vicarios", which were filed later than the

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analysis of C. Th. 11, 30, 22 such a notion seems unjustified. Cf. also Feissel (1998): 96. On that official see Chapters 3.1 and 5.2. On *Kyzikos* cf. Akurgal (1976); regarding *Laodicea ad Lycum*, cf. Bean (1976) with further literature.

[312] See Gothofredus (1740), vol. 4: 243 et seq. (with references to other constitutions devoted to that issue and observations concerning *Kyzikos*); Kaser, Hackl (1996): § 95.I.3. Cf. also remarks on C. Th. 11, 30, 11 (a. 321); C. Th. 11, 30, 33 (a. 364); C. Th. 11, 36, 5 (a. 341).

[313] The *cursus honorum* of Scylacius offers little help in solving the problem. Thanks to Himerius *Or*. 25 we know that he was the proconsul of Achaia after 350. See Groag (1946) 34; PLRE 1 (Scylacius 1). The office of vicar was most often held no longer than one year and therefore it is difficult to ascertain why Scylacius rose to consulship only after 350. See Groag (1946): 34.

[314] C. Th. 11, 30, 30 (a. 363): "Idem A. [Iulianus] ad Germanianum p(raefectum) p(raetori)o. His, qui tempore competenti non appellant, redintegrandae audientiae facultas denegetur. Omnes igitur, qui contra praefectos Urbi seu proconsules seu comites Orientis seu vicarios sub specie formidinis provocationem non arbitrantur interponendam, a renovanda lite pellantur. Nobis enim moderantibus rem publicam nullum audebit iudex provocationis perfugium iurgantibus denegare. Qui vero vim sustinuerint, contestatione publice proposita intra dies videlicet legitimos, quibus appellare licet, causas appellationis evidenti adfirmatione distinguant, ut hoc facto tamquam interposita appellatione isdem aequitatis adminicula tribuantur. Emissa XV kal. Ian. Mamertino et Nevitta conss." Dating after Seeck (1919): 214. Cf. PLRE 1 (Decimius Germanianus 4). See Gothofredus (1740), vol. 4: 250 et seq., who notes that the constitution applied in the main to the eastern part of the Empire; see also his remarks on the jurisdiction of the prefect of Constantinople. Gelzer (1909) legitimately considered it as a proof that at the time *praefectus Aegypti* was not equal to diocesan vicars and acted as *vicarius* to the count of the East; therefore the version adopted in *Codex Iustinianus* was modified by the addition of *praefectus Augustalis* to the list of officials. See also Chapter 2.2.3.

prescribed deadline, would not be taken into consideration.[315] Regarding the matter discussed in this study, the enactment admitted appeals from the adjudications of the latter officials, which were made in first instance and in appellate proceedings. It testifies to Julian's interest in the efficiency and correctness of court proceedings, and represents an attempts to counteract rejections of appeals by the judges. Incidentally, rejecting an appeal *ipso iure* constituted grounds to file it.[316] The act carried some significance in the later periods as well, as demonstrated by the inclusion of a modified fragment of Julian's enactment in book seven of *Codex Iustinianus*, in title 67: *De his qui per metum iudicis non appellaverunt* (On those who do not file appeal for fear of the judge).[317]

It may be noted at this point that the identically titled title 34, book eleven of *Codex Theodosianus,* contains a constitution which directly indicates that diocesan vicars also committed such abuse. The situation is referred to in the excerpt from an enactment of Constantius II, addressed to PPO *Galliarum* Volusianus in 355.[318] The inclusion of the fragment in *Codex Theodosianus* probably extended its applicability beyond the prefecture of Gaul, where it had been in force initially. The prime concern of the act was admissibility of

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[315] On the significance of the enactment in the context of development of appeal, see Litewski (1968): esp. 165 et seq., 223. Cf. also Legohérel (1965): 95, note 51; Litewski (1966): 287, 310 (in the context of the term *causa appellationis*); Litewski (1967): 301 (terminology used with regard to parties), 386–388 (significance of fear of an a quo judge); Gaudemet (1981): 74; Kaser, Hackl (1996): § 79, note 28, argue, somewhat groundlessly, that it mentioned all diocesan administrators with appellate competence, § 94, note 7 (on punishing parties which fail to exercise their rights), § 95.I.3 (on the example of obligating judges to accepts appeals); Pergami (2000): 144–146, 247.

[316] See above C. Th. 11, 30, 16 (a. 331) = C. 7. 62, 19.

[317] C. 7, 67, 2 (a. 363). One of the important changes was supplementing the list of officials with *praefectus Augustalis*. On the version of the act in C. cf. Sargenti (1979): esp. 370 et seq.; Tomulescu (1979): esp. 420; Goria (1995a): 448, note 5; Cuneo (1996): 239 et seq. The entire title C. 7, 67 is discussed by Brunnemannus (1699): 925.

[318] C. Th. 11, 34, 2 (a. 355): "Imp. Constantius A. ad Volusianum p(raefectum) p(raetori)o. Si a praefecto Urbi vel a proconsule fuerit dicta sententia eandemque provocatio minime fuerit subsecuta, praesidium postulare fas erit imminente iudicum metu territos se esse firmantibus. Nam quicumque necessitatis huiuscemodi laqueis beneficio meo eximi postulaverit, aut per me cognoscam aut excellentiae tuae impertiam notionem, hac videlicet condicione, qua vicariorum sententiae, quas appellatio non suspenderit, ex divi patris mei sanctione retractantur. Cum vero consularium ac praesidum aliorumve sententiae in querimoniam deducentur, prioris legis statuta sectanda sunt, quae similiter certo terrore proposito auxilium postulantibus detulit. Dat. kal. Ian. Med(iolano) Arbitione et Lolliano conss." On the PPO, see PLRE 1 (C. Ceionius Rufius Volusianus signo Lampadius 5); Kuhoff (1983): esp. 274 et seq., note 51, with further literature. Cf. also Adreotti (1972): 181, note 5, in the context of honorific titulature used to denote PPO and PVR in imperial constitutions.

appealing from the judgements of PVR and proconsuls to the emperor when *provocatio* (i.e. appeal) was not filed because the party was afraid of the reaction of those officials; further, the act delegated PPO to conduct such a proceeding. In the second part of the second sentence, the legislator states that the act "divi patris mei" (i.e. Constantine the Great's) shall apply to vicars as well as to judgements of province governors. It is correctly assumed that this is a reference to the first enactment in title 34, book eleven of *Codex Theodosianus*.[319] The preserved fragment of this latter act was previously a part of another constitution of Constantine's, which was addressed to inhabitants of province and which regulated key issues relating to appeals (another excerpt from this act has already been discussed above).[320] It is provided therein that those who claimed that failure to lodge an appeal against the rulings of *comites* and other officials adjudicating "vice nostra" was due to fear (*per metum*), were liable to deportation to an island and confiscation of property, while such cases were to be examined personally by the emperor or PPO.[321] Initially, the fragment applied chiefly to *comites provinciarum*, as well as other

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[319] Gothofredus (1740), vol. 4: 289 et seq. (who also discusses the tiers of the judiciary in the light of Constantine's legislation); Gradenwitz (1917): 51–53 – on the links between the enactments in this title and the confusion caused by simultaneous validity of C. Th. 11, 30, 17 (a. 331) = C. 1, 21, 3, which in the original tenor stipulated deportation for those who submitted *supplicatio* to the emperor "qui licitam provocationem omiserit" (the version adopted in *Codex Iustinianus* provided for "ignominiae poena" – the penalty of disgrace); Gaudemet (1972b): 696 (note 5), 704 (note 31). The constitutions in C. Th. which draw upon constitutions of the predecessors were compiled by Lepore (2000): 367.

[320] C. Th. 11, 34, 1 (a. 331): "Imp. Constantinus A. ad universos provinciales. In insulam deportandi sunt cum amissione omnium facultatum, quae fisco addicendae sunt, ii, qui provocatione omissa litem reparare temptaverint contra comitum ceterorumque sententias qui vice nostra iudicaverint, firmantes se per metum appellationis omisisse auxilium. In qua re vel nostrum vel praefectorum praetorio ex nostra erit iussione iudicium. Dat. kal. Aug.; p(ro)p(osita) kal. Sept. Basso et Ablavio conss." See remarks on C. Th. 11, 30, 16 = C. 7, 62, 19 (a. 331). Gothofredus (1740), vol. 4: 288 et seq., focused primarily on the question of *metus*. Solazzi (1944): 209 held that "vel quolibet alio iudice" was an interpolation. More broadly on the use of *in insulam deportatio* in the fourth century see Vallejo Girvéz (1991).

[321] On its signifcance for the development of the appeal in recent works see Litewski (1968): 163–165; Legohérel (1965): 93; Litewski (1966): 285 et seq. (note 167 i 170), 289; Litewski (1967): 386 et seq. (who considers whether the concerns of the parties were justified) and in the light of the entirety Constantinian procedural regulations: Dupont (1974): 204; Gaudemet (1981): 74 et seq.; Kaser, Hackl (1996): § 94, note 7; Pergami (2000): esp. 110, 115–117 (chiefly concerning the grounds for inflicting punishment), 142 et seq.; Pergami (2007): 114 et seq., 119 et seq.; Dillon (2012): esp. 232, 248. See also Dupont (1971a): 560, with a reference to the opinion expressed by other authors, who claim that it was a kind of *metus exceptio*, which was excluded altogether. As observed above, imperial legislation often combined deportation with confiscation of property. See Washburn (2013): 23 et seq.

officials who judged *vice nostra*, which included diocesan vicars.[322] This is substantiated by the already cited 355 enactment by Constantius.[323] Both analysed fragments speak therefore in favour of jurisdiction of diocesan vicars, which encompassed first instance and appellate proceedings; they are also a testimony to their abuses of the defendants.

In turn, rejections of appeals by province governors were the subject of one of the constitutions addressed by Valentinian I and Valens to the already discussed vicar of Africa, Dracontius.[324] Its brief fragment was preserved in book eleven of the Theodosian Code, in title 30: *De appellationibus et poenis earum et consultationibus* (On appeals and penalties for their filing and on consultations). It decreed that *iudices* (i.e. province governors and their *officia*) were to pay fines in the amount of 20 and 30 pounds of gold, respectively, for refusing to accept appeals. The fines were to be collected by vicars' *officium* instead of *rationalis*.[325] The constitution did not pertain to the judiciary of vicars directly, but perhaps to a case which had initially been heard by a *rationalis*.[326] It was referred to a vicar most likely as he travelled (conduct-

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[322] Correctly Pergami (2000): 428 et seq. On *comites provinciarum*, who during the reign of Constantine I were special imperial envoys acting on the territory of diocese, see Chapter 2.2.2. Convicts were often deported to small islands, though some were sent as far as Britain. See Washburn (2013): 135–137, with references to sources.

[323] On the significance of C. Th. 11, 34, 2, see general discussion in Litewski (1968): 163–165; (2000): 142, 145, 247, 412. See also Litewski (1965b): 411 et seq., note 138 (regarding terminological changes appearing in the sources with respect to appeals); other observations associated with the importance of solutions it adopts: Litewski (1966): 287; Litewski (1967): 391. Cf. też Gaudemet (1972b): 711 (note 46), 713; Gaudemet (1981): 74; Spagnulo Vigorita (1996): 165; Cuneo (1997): 254 et seq.; Pergami (2007): 114 et seq., 119 et seq. It is also quoted by Dupont (1971a): 561, as an example of *supplicatio* againts the judgements of vicar and evolution of Contantine's legislation in that respect.

[324] C. Th. 11, 30, 33 (a. 364): "Idem AA. [Valentinianus et Valens] ad Dracontium vic(arium) Afric(ae). Quicumque iudicum adversus auctoritatem legis appellationes neglexerit, protinus officio tuo, non rationalis, imminente ad viginti librarum auri exsolvendam multam cogetur, ita ut et officium eius triginta simili celeritate dissolvat. Dat. prid. id. Sept. Aquil(eiae); accepta XVIII kal. Dec. Tacapis divo Ioviano et Varroniano conss." This is one of the 22 constitutions found in C. Th., whose locations of issue and receipt have both been preserved. Cf. Lepore (2000): 354.

[325] As already noted, *rationalis* was the title given to officials who administered the estate of the Fiscus and *res privata*, also at diocesan level. The office reached peak significance in 285–320. See above remarks on C. Th. 1, 15, 2 (a. 357).

[326] Gothofredus (1740), vol. 4: 252 et seq., was convinced that it was an appeal against the ruling of a province governor heard by a vicar – with reference to C. Th. 11, 30, 16 (including remarks on the location of receipt). Similarly Padoa Schioppa (1967): 15, note 9; Kaser, Hackl (1996): § 95, note 20. Pergami (2000): 150 i esp. 410 et seq., rightly questions such thesis. On the significance of C. Th. 11, 30, 33 in connection with remarks concerning appeals see also Litewski (1968): esp. 173 et seq., on the penalties; Gaudemet (1981): 68 (transfer of powers to the vicar).

ing an inspection?), in the North African city of Tacapae (present-day Gabès), on the Tunisian coast of the Mediterranean.[327] As it follows from title 30, book eleven of *Codex Theodosianus,* province governors often refused to admit appeals and pleadings submitted by the parties.[328] The only innovation which the analysed constitution introduced was obligating the vicar to collect the fines and decide their amount again.[329] The act is certainly one of the series of constitutions of Valentinian I and Valens, which reflected the importance they attached to the justice system.[330] In this context, authors often cite the enactment of Constantine the Great of 319, addressed to Septimius Bassus, PVR in 317–319, which proves yet again that competences of imperial offices were not precisely and strictly delineated; nominally, the authority of the latter official extended no further than Rome and its immediate environment.[331]

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[327] On Tacapae, see Trousset (1982).

[328] Most enactments addressing this kind of abuse perpetrated by various imperial officials in the fourth and the fifth centuries was compiled by Noethlichs (1981): 177–179. See also Gaudemet (1981): 71; Cuneo (1996): 240 et seq.

[329] On the transfer of the aforementioned powers to the vicar, see Gaudemet (1974): 202; Delmaire (1989): 203. Kaser, Hackl (1996): § 79, note 31, are correct in this respect, although there are no grounds to cite C. Th. 1, 14, 2 (a. 394) = C. 1, 37, 2 as a proof that the governors' penal powers could be circumscribed (the constitution was directly concerned with restrictions in that respect imposed on *praefectus Augustalis*). Dating after Seeck (1919): 285.

[330] Lenski (2002): 283, with references to other sources. Cf. also general discussion of the rulers' virtue of *iustitia* in Millar (1977): 507–547.

[331] C. Th. 11, 30, 8 (a. 319): "Idem A. [Constantinus] ad Bassum p(raefectum) U(rbi). Manente lege, qua praescriptum est, intra quot dies opinionis sive relationis exemplum privatis iudex debeat exhibere et refutatorii libelli intra quot dies rursum iudicibus offerendi sint, tam in privatis quam etiam in fiscalibus causis ex eo die, quo fuerit quaestio terminata vel ex quo relationem iudex per sententiam promiserit, intra vicensimum diem quaecumque ad instructionem pertinent causae, ad comitatum nostrum properantissime volumus adferri. Quod nisi factum fuerit, ab universo officio viginti transactis diebus, quos post latam sententiam placuit supputari, intra viginti alios dies qui sequuntur tantum fisco nostro praecipimus inferri, quanti per aestimationem rationalis emolumentum litis, cuius suppressa fuerat instructio, fidelissime potuerit aestimari. Cui capitale supplicium imminebit, si rigorem legis quocumque modo mollire temptaverit. Eadem poena officio imminente, si quando appellatione vel consultatione pendente vel post decisas nostris responsionibus causas ei, quod ullo modo fuerit impetratum, damnabilem voluerit coniventiam commodare. Nam decreta nostra debet ingerere iudicanti ut ipso etiam dissimulante iudice reluctari et tamquam manibus iniectis eos de iudicio producere ac rationum officio traditos statuti prioris nexibus obligare, quorum desideriis violari nostras prospexerit sanctiones. P(ro)p(osita) IIII kal. April. Rom(ae) Constantino A. V et Licinio C. conss." See Gothofredus (1740), vol. 4: 229 et seq.; Kaser, Hackl (1996): esp. § 78, note 15; Pergami (2000): esp. 94-96, 104 et seq., 452 et seq. , 454, 458 et seq.; Dillon (2012): esp. 206 et seq., 209–211, 226, 246 et seq. The penalty for dismissing appeals had been previously established at respectively (in pounds of gold): 10 (governor) and 30 (his *officium*): C. Th. 11, 30, 22 (a. 345).

The already discussed Catullinus, vicar of Africa, was the recipient of the 339 constitution of Constantius II and Constans, which disallowed accepting appeals from persons whose adultery was proved in the course of proceeding ("adulterium manifestis probationis probatum").[332] Persons who committed the sacrilegious crime of adultery were to be punished like "manifestos parricidas" ("blatant murderers of close relatives"), that is, placed in a sack an burnt.[333] The act was included in title 36: *Quorum appellationes non recipiantur* (On those whose appeals shall not be admitted), book eleven of *Codex Theodosianus*.

The element which drew much attention of the researchers was to have adulterers suffer the penalty provided for *parricidium* (though probably without animals being put into the sack with the felon), while – despite the tougher punishments for *adulterium* introduced during the period of the Empire – *poena cullei* did not feature among the penalties for this crime.[334] The analysed constitution also refers to the practice of *moratorias provocationes* (dilatory appeals) as a means to prolong the proceeding (in this case to

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Later on, the penalty was set at 30 pounds of gold, imposed separately on the governor and his *officium* (C.Th. 11, 30, 25 – a. 355). On the addressee, see e.g. PLRE 1 (Septimius Bassus 19).

[332] C. Th. 11, 36, 4 (a. 339): "Impp. Constantius et Constans AA. ad Catullinum. Oportuerat te publici instituti respectu confessione detectos legum severitate punire nec frustra vitam differentum moratorias provocationes admittere, sed delatum adulterii crimen et quaestionibus athibitis adprobatum pari sceleri immanitate damnare. Quod deinceps in huiusmodi criminibus convenit observari, ut manifestis probationibus adulterio probato frustratoria provocatio minime admittatur, cum pari similique ratione sacrilegos nuptiarum tamquam manifestos parricidas insuere culleo vivos vel exurere iudicantem oporteat. Dat. IIII kal. Sept. Constantio A. II et Constante Caes. conss." The titulature was supplemented by Gothofredus (1740), vol. 4: 308 (note b). Liebs (1985/2007): 104 et seq. cited C. Th. 11, 36, 4 among other examples of severe punishments of the period erroneously assuming that it was addressed to the proconsul of Africa. Lepore (2000): 367, note 67, quotes its first sentence as an example of how imperial constitutions employed references to unidentified law.

[333] Hence they were to be delivered the harsher variety of *poena cullei*. See remarks on C. Th. 9, 15, 1 (a. 318/319). The term *sacrilegium* may have been used to highlight a new aspect of *adulterium* as a violation of the sacred covenant of marriage in the Christian sense. Thus Dębiński (1995): 137–139.

[334] See cross-sectional discussion in Biondi (1965); Beaucamp (1990): 139–170 (Late Antique period, including pp. 141, 148 and 167 on the analysed constitution). Moreover, the aforementioned enactment of Constantine's C. Th. 9, 15, 1 (a. 319) = C. 9, 17, 1, which stated that *parricidium* carried the penalty of *poena cullei* expressly forbade burning in this case; the suggested explanation is that Contantius II and Constans disregarded a constitution of their father, perhaps due to the fact that both were used alternately on *parricides* in Africa. See Martini (1976): 114 et seq.; Nardi (1980): 53, note 10; Dębiński (1994): 145 et seq. Both penalties shared common features – they did away with the tainted individual and offered purification which removed the stigma; in the third century, death by burning was in widespread use against those who committed *parricidium*; see Jońca (2008): 294–297.

avoid punishment).[335] The text of the constitution clearly mentions appeal being accepted (*admittere*[336]) by the vicar, who thus would be a judge hearing cases of *adulterium* in first or appellate instance (assuming that the appeal was repeated). The regulation, initially introduced in Africa, was apparently applied throughout the Empire after its adoption in *Codex Theodosianus*, yet it was omitted when *Codex Iustinianus* was being compiled.[337]

A short excerpt form the enactment addressed in 341 by Constantius II and Constans to Albinus, vicar of Spain, was also included in title 36: *Quorum appellationes non recipiantur* (On those whose appeals shall not be admitted), book eleven of *Codex Theodosianus*.[338] The act determined the amounts of court fees: 30 pounds of silver for *causae maiores* and 15 pounds of silver for *minores*. Taking into account its location in the Theodosian Code, it is certain that those were fees for filing appeals.[339] The conclusion is also cor-

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[335] It is mentioned in this context by Litewski (1966): 320, note 29. Meanwhile, Litewski (1967): 370, note 250, quotes it as an example of regulation which recognized *confessio* as a way to end appellate proceeding.

[336] See Litewski (1968): 165–167 on the terminology used in Roman sources.

[337] A fragment of the final sentence was used, in a modified form, in C. 9, 9, 29 (a. 326) = C. Th. 9, 7, 2: "[…] Sacrilegos autem nuptiarum gladio puniri oportet". Death penalty by beheading represented a mitigation of the sanction provided in C. Th. 11, 36, 4 (a. 339). See Beaucamp (1990): esp. 167; Bonini (1990): 109–111, 154 et seq. with further literature on the possible causes behind such a solution (various authors suggests that under Justinian repressive punishment would be moderated). See also Venturini (1988a): 68 et seq., 104, 108, on the relationship between the sanction in C. Th. 11, 36, 4 (a. 339) and C. 9, 9, 29.

[338] C. Th. 11, 36, 5 (a. 341): "Idem AA. [Constantius et Constans] ad Albinum vic(arium) Hispaniar(um). Cum maior substantia litigii sit, a praeiudicio provocans XXX librarum argenti pondere plectatur: in minoribus etiam negotiis quindecim pondo argenti exsolvat. Dat. VII id. April. Marcellino et Probino conss." On the vicar and his hypothetical connections with *gens Ceionia*, see: Chastagnol (1965): 274, no. 4; PLRE 1 (Albinus 1); Arnheim (1972): 194; Kuhoff (1983): esp. 355, note 15. On the usage of the term *praeiudicio* in C. Th., solely in the context of admissibility of appeals see Litewski (1997): 171 et seq. The same title conveys an interesting enactment addressed to *praefectus Augustalis*: C. Th. 11, 36, 31 (a. 392) – the act introduced a high fine of 30 pounds of gold for province governor and his *officium* for failing to report a submitted appeal. See Gothofredus (1740), vol. 4: 314 et seq.; Litewski (1966): 304; Litewski (1967): 370. Another enactments addressed to that official in the last, 39th title of the book (*De fide testium et instrumentum*) confirmed the rule of *audiatur et altera pars*: C. 11, 39, 9 (a. 384). See Gothofredus (1740), vol. 4: 330 et seq.

[339] See Gothofredus (1740), vol. 4: 297 et seq. It is also quoted in this context by e.g. Litewski (1966): esp. 250; Litewski (1967): 302 (terminology denoting appellants); De Bonfils (1975): 285; Gaudemet (1981): 52 (as an example of frequently occurring abuse), 56 (in the context of discussion concerning interpolations of legal acts in C. Th.), 58; Vincenti (1986): esp. 57–59; Pergami (2000): 121 et seq., 125 et seq., 273 et seq. Laprat (1971): 312; Kaser, Hackl (1996): § 95, note 4, mention the enactment in the context of financial penalties stipulated throughout C. Th.

roborated by the fact that a fragment of the same constitution was adopted, albeit in a modified form, in *Codex Iustinianus* in title 62, book seven, which was entirely devoted to appeals: *De appellationibus et consultationibus* (On appeals and consultations).[340] The analysed fragment stipulated that the appeal was admissible both "in maioribus et in minoribus negotiis", as the judge was not to treat its submission as an insult (*iniuria*).[341] The text confirms reprehensible practices of judges which, as observed above, were denounced in Later Roman legislation. Simultaneously, the fragment testifies to the attempts to reduce the number of appeals by introducing considerable fees. The general nature of solution adopted in the act may imply that it was a copy of a directive directed to imperial officials.[342] In an indirect manner, the fragment of the constitution certainly confirms that vicars heard cases in first instance and exercised control over province governors (*iudices*), as the practices of the latter are referred to in the fragment adopted in the Justinian Code.[343] Based on the act, it may be argued that diocesan vicars heard appeals from the judgements rendered by province governors.[344]

Book twelve of *Codex Theodosianus*, comprising 273 fragments of constitutions in total, offers numerous examples of enactments addressed directly to diocese administrators or concerning those. The very extensive title 1:

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[340] C. 7, 62, 20 (a. 341): "Imperator Constantius A. Albinum. Et in maioribus et in minoribus negotiis appellandi facultas est. Nec enim iudicem oportet iniuriam sibi fieri existimare eo, quod litigator ad provocationis auxilium convolavit. D. VII id. April. Marcelino et Probino conss." See Seeck (1919): 189; Cuneo (1996): 339. Among other things, Brunnemannus (1699): 908 discusses solutions adopted in his own times to draw a distinction between *maiores et in minores negotiis*. On its significance cf. works cited in the preceding footnote and Litewski (1967): 301 (as an example of terms used to denote parties to a legal action), 326 (as an example of term used to denote the possibility of filing an appeal – *facultas appellandi*) and 386. See also de Bonfils (1983): 301 et seq., on the errors of compilers, which led to differences in the inscriptions of both versions of the constitution.

[341] Similarly to C. Th. 11, 30, 11 (a. 321); C. Th. 11, 30, 15 (a. 329). Cf. Litewski (1968): 173. The second of these is discussed more broadly in Barbati (2012): 203 et seq.; Dillon (2012): 245.

[342] Cuneo (1997) stresses the omission of Albinus's titulature in the inscription in *Codex Iustinianus* as a proof that the act possessed general significance, though it may have originally concerned only Spain. Cañizar Palacios (2002): 94, defines the enactment directly as *mandatum*. In turn, Vincenti (1986): 57, avoids taking an unequivocal stand, and uses the term *epistula*, adding that it was addressed to a vicar, and subsequently states that originally the constitution was in force in the West.

[343] The term *iudex* was most often equivalent to *praeses*, which was a title of most province governors. See Hartmann (1977–1978) – on the example of C. Th. Cf. also Barbati (2012): esp. 131–222. As previously observed, he argues legitimately that depending on the context *iudex* could refer to various categories of officials, which goes against the views frequently presented in literature; see ibidem: 31–35, 67–130, 223-607.

[344] Vincenti (1986): 58 et seq., rightly notes that according to the constitution vicar was a judge *ad quem* (with respect to province governors) and *a que* (with respect to the emperor).

De decurionibus (On decurions) itself, contains as many as 10 such excerpts. Nevertheless, they focus on issues relating to administrative control over municipal curia and their members; their scope does not include the exercise of judicial duties of all diocese administrators.[345] Other titles in book one represent a similar case, discussing and regulating duties of diocese administrators in fiscal matters[346], or prohibiting province governors, officials discharging the duties of vicars and even praetorian prefects to control the freedom of movement of province inhabitants and their envoys.[347]

Much the same applies to book thirteen of *Codex Theodosianus*, where only six of the total of 127 fragments of constitutions are concerned with diocese administrators. The issues addressed include controlling the status of the coloni[348], supervising *navicularii*[349] and imposing the obligation to collect taxes

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[345] C. Th. 12, 1: 12 (a. 325) = C. 10, 39, 5; 24 (a. 338); 26 (a. 338); 28 (a. 352) – dating after Seeck (1919) 199; 44 (a. 358); 45–48 (a. 358); 69 (a. 365) – Dating after Schmidt-Hofner (2008a) 555 et seq.; 84 (a. 381); 94 (a. 383); 124 (a. 392); 151 (a. 396). Much the same applies to enactments addressed to *comites Orientis* – C. Th. 12, 1: 33 (a. 342); 51 (a. 362) = C. 10, 32, 22; 54 (a. 362) = C. 10, 32, 23; 63 (a. 373) = C. 10, 32, 26 – dating after Schmidt-Hofner (2008a); 90 (382/383?); 103 (a. 383) and *praefecti Augustales* – C. Th. 12, 1: 112 (a. 386); 126 (a. 392); 190 (a. 436) = C. 10, 32, 57 – which suggests jurisdiction of the prefect in the cases of five *primates* from Alexandria; 192 (a. 436) = C. 10, 32, 59. On the status of cities and decurions, see Ganghoffer (1963); Schubert (1969); Jacques (1985); on the significance of C. Th. for the description of the relations between emperors and cities – Archi (1976b): 139–146. The reasons why the first title of C. Th. (containing 192 fragments of constitutions) was so voluminous are discussed by Schlinkert (2002), who argues that it reflects the reluctant attitude towards curials which predominated at the court in Constantinople in the early fifth century. Meanwhile, the entire C. Th. 12, 2 (*De praebendo salario*) is simply a fragment of enactment addressed to *comes Orientis*, which specifies the sources of remuneration of municipal officers: C. Th. 12, 2, 1 (a. 349) = C. 10, 37, 1.

[346] C. Th. 12, 6, 9 (a. 365); C. Th. 12, 6, 24 (a. 397). The same applies to: C. Th. 12, 6, 22 (a. 386) = fragment incorporated in: C. 10, 72, 4.

[347] C. Th. 12, 12, 9 (a. 382). As regards *praefectus Augustalis,* one of the preserved constitutions provided for controlling a delegation of curials: C. Th. 12, 12, 15 (a. 416) = C. 10, 65, 6 (this version states specifically that the act concerned envoys from Alexandria).

[348] C. Th. 13, 1, 10 (a. 374). See also Schmidt-Hofner (2008a): 564 et seq., on the probable circumstances of its issue in Milan.

[349] C. Th. 13, 5, 36 (a. 412); C. Th. 13, 6, 3 (a. 368 or 370); C. Th. 13, 6, 4 (a. 367). Dating of the last two enactments after Schmidt-Hofner (2008a): 565 et seq. (with important remarks on the *fasti* of African vicars). C. Th. 13, 5, 4 (a. 324) was addressed to Helpidius, probably one of the first Roman *agentes vices praefecti praetorio* (the constitution pertained to the abuses suffered by Spanish *navicularii*). Regarding Helpidius see introductory remarks on book two of C. Th. Several enactments C. Th. 13, 5 (*De navicullariis*) were concerned with the duties of *praefectus Augustalis*: C. Th. 13, 5: 18 (a. 390); 20 (a. 392); 32 (a. 409) = C. 11, 2, 4; C. 11, 6, 6. On maritime carriers – *navicularii*, see De Salvo (1992): esp. on the above constitutions, circumstances in which they were issued and interpretation 228, 283 et seq., 327, 329, 330 et seq., 360, 362 (note 321), 366, 368, 396 et seq., 427 et seq., 464 et seq., 529, 532 et seq., 536, 541 et seq., 544, 561, 565 (note 368), 569 et seq., 580 et seq.; Schmidt-Hofner (2008b): 290–299 (esp. 292 et seq.), with

on former *apparitores* (auxiliary staff) from the offices of diocese administrators: *vicarii*, *comites Orientis* and *praefectus Augustalis*.[350] Meanwhile, the constitution of 374 on the privileges of *picturae professores* addressed, according to the manuscript, to "ad Chilonem vicarium Africae", did not pertain to any powers of a vicar.[351] Admittedly, Chilo was a vicar before 368 (Amm. Marc. 28, 1, 8), but when the enactment was issued, he is certain to have held proconsulship of Africa.[352]

Likewise, few of the 99 fragments in book fourteen of *Codex Theodosianus*, are concerned with vicars, while none of those discusses issues relating to their judiciary[353]. Similar conclusions may be drawn with regard to book

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further literature. Generally on the delivery of supplies to Rome and Constantinople see Sirks (1991): including on the above constitutions esp. 35, 110, 124, 126, 155, 159, 169, 175, 181, 182, 183, 187, 188, 189, 190, 202–208, 210 et seq., 213, 215 et seq., 225, 226 et seq., 229, 231 et seq., 235–237, 242, 288, 385, 386 et seq.

[350] C. Th. 13, 11, 12 (a. 409). See Gothofredus (1741), vol. 5: 133 et seq. (as C. Th. 13, 11, 11).

[351] C. Th. 13, 4, 4 = adopted in fragments in: C. 12, 40, 8 (a. 374). For a listing of privileges see Gothofredus (1741), vol. 5: 54–56. This interesting enactment is analysed nowadays in the context of the alleged right of a painter to a work of art in Roman law. See e.g. Visky (1974): esp. 127–134. Cf. also recently Plisecka (2011): esp. 57 et seq. with further literature.

[352] C. Th. 12, 6, 16 = C. 10, 72, 6 (a. 375); C. Th. 13, 6, 7 = C. 2, 3, 3 (a. 375). Cf. rightly Gothofredus (1741), vol. 5: 54 (note 2); Pallu de Lessert (1901): 82 et seq. (an outdated hypothesis concerning *vicarius vices agens proconsulis*); Seeck (1919): 120 (claiming mistakenly that he was a vicar); among recent works, see PLRE 1 (Chilo I); Kuhoff (1983): esp. 390, note 33; Pergami (1993): 642 with further literature.

[353] C. Th. 15, 12, 1 (a. 325) = C. 11, 44, 1, addressed to PPO Maximus, who is nevertheless identified with *vicarius Orientis*. It reaffirmed the ban on gladiator fights (which, as demonstrated above, did not entirely reflect the actual state of affairs – see remarks on C. Th. 9, 18, 1) and decreed that convicts were to be sent to labour in the mines as a way of delivering punishment. See Dupont (1963): 102, 141–143; Amarelli (1978): 120 et seq. (who suggest that the solution was influenced by a fragment of Lact. *Divinae institutiones* 6, 20, 8); Salerno (2012) – argues correctly that "Constantino, dunque nel 325, non sembra avere abolito i giochi gladiatori ma solo la condanna *ad ludum*" (ibidem: 473). Doubts as to the titulature had already been voiced by Gothofredus (1741), vol. 5: 449 (note b), who, given the notation in the PfP manuscript opted in favour of PPO. On the vicar, cf. remarks on C. 11, 50, 1 (a. 325). Furthermore, C. Th. 14, 1, 6 (a. 409), addressed to "Bonosiano praefecto Urbi", stated the necessity of recovery of levies collected from Roman decurions by the vicar of Africa – thus pertaining in fact to the *vicarius urbis Romae*. C. Th. 14, 3, 17 (a. 380) addressed "ad Titianum vicarium Africae", stipulated the amounts of fines imposed on province governors and their *officia* for defaulting on duties due to *pistores venerabilis Romae*. C. Th. 14, 15, 6 = C. 11, 23, 3 (a. 399) established the penalty of fine (*quadruplum*) and deportation for abuses committed by vicars in connection with provisioning the city of Rome (the *officium* had to pay analogous fine, but *primates officiorum* were to suffer death penalty). Meanwhile, *primates* of Alexandria were the subject of C. Th. 14, 27, 1 (a. 396) = C. 1, 4, 5, addressed to *praefectus Augustalis* (the version preserved in *Codex Iustinianus* restricted the rights of non-Christian to hold public functions – see Delmaire [2012]: 177). Cf. Gothofredus (1741), vol. 5: 144 et seq., 164, 232, 269–273.

fifteen of the Theodosian Code, which contains 115 fragments of enactments, of which only a limited number were concerned with diocesan vicars, and only one was indirectly related to their judiciary powers.[354]

Various issues from the domain of administration, criminal law and procedure are mentioned in constitutions devoted to the affairs of religion, which were directed to diocese administrators (albeit this was seldom the case).[355] These are found in the very extensive book sixteen of *Codex Theodosianus*. In the 201 fragments of constitutions that the book comprises, diocese administrators are referred to 13 times altogether (vicars and a.v.p.p. 10 times).[356] None of the enactments mentions appeals directly, while only four may be associated with the exercise of judicial powers by diocese administrators, where they act as judges.[357] One should also exclude four constitu-

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[354] C. Th. 15, 3, 2 (a. 362), directed "ad Avitianum vicarium Africae". The preserved fragment stresses the necessity of conducting road repairs by people required to perform corvée labour (*munera*) and thus indirectly confirms that the obligation was to be enforced by the vicar. The issue of the constitution is associated with the attempts to reduce tax burdens under Julian, while retaining the system of compulsory servitude; see Gothofredus (1741), vol. 5: 341 et seq.; Bernardi (1965): 155. Cf. also Andreotti (1972): 189, on the terminology used in the enactment. The constitution is an interesting one, considering that Ammianus mentions a report made by an ex-vicar of Africa, Avitianus, against Mamertinus, PPO *Illyricum*, *Italiam et Africam* in 365 (Amm. Marc. 27, 7, 1), in which the former alleged abuses committed by the latter. The outcomes of the accusation are not known, but the dismissal of PPO is considered to be a proof that the charges were legitimate. Cf. Blockley (1969); Boeft – Drijvers – Hengst – Teitler (2009): 161 et seq. On that PPO, see remarks on C. Th. 1, 15, 4. On the vicar, cf. Pallu de Lessert (1901): 191–193; PLRE 1 (Claudius Avitianus 2); Kuhoff (1983): esp. 360, note 30. The book also contains several enactments relating to *comites Orientis*: C. Th. 15, 1, 6 (a. 349) = C. 8, 11, 2; C. Th. 15, 1, 36 (a. 397); C. Th. 15, 2, 7 (a. 397) = C. 11, 43, 4 (the two first are concerned with financing and procurement of materials for public works, the last regulates the rights to watercourses). On the constitution in C. Th. 15, see also general discussion in Gothofredus (1741), vol. 5: 275–277 (Paratitlon); Baldini (1979) – only on the enactments of Valentinian I; Dubouloz (2012).

[355] See Wiewiorowski (2010d). Cf. also Morgenstern (1993b): 121 et seq., on the example of Africa. There is a very extensive literature available on constitutions regulating religious issues. Among the recent works only, see Noethlichs (1971); Dębiński (1990); Bacccara (1991); Stachura (2000); Tilden (2006).

[356] On book sixteen of C. Th., cf. Archi (1976b): 153–190 (from the standpoint of relations between the state and the Church); De Giovanni (1985) – a comprehensive discussion of the contents; recently also Cracco Ruggini (2009); Escribano Paño (2009).

[357] It may also be noted that one of the enactments addressed to *comes Orientis* sanctioned tax exemptions for *custodes ecclesiarum*: C. Th. 16, 2, 26 (a. 381); another introduced penalties for public insult of dignity of the patriarch (of Antioch) and therefore it pertained to the jurisdiction of the count: C. Th. 16, 8, 11 (a. 396). As regards *praefectus Augustalis* one enactment dealt with administrative issues, relating to sending a delegation from the people of Alexandria to the emperor: C. Th. 16, 2, 42 (a. 416) = C. 1, 3, 17. Meanwhile, judicial matters were addressed in C. Th. 16, 4, 3 (a. 392), which stipulated the penalty of deportation for those who used upset

tions which were either concerned with public taxes or issues which can be identified as administrative.[358] In part, those provisions were then repeated in book one of *Codex Iustinianus*.[359]

The first enactment which has a bearing on the judiciary was addressed by Arcadius and Honorius to Sapidianus, who probably held the vicarship of Africa in 399–400. The act is found in book sixteen, title 2: *De episcopis, ecclesiis et clericis* (On bishops, churches and clergy).[360] The enactment, as

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to *fidem catholicam et populum* and C. Th. 16, 10, 11 (a. 391), which forbade pagan practices and restated the prohibition provided in C. Th. 16, 10, 10 (a. 391) in the local context; see Gaudemet (1972a). On the latter constitution, see remarks below on C. Th. 16, 10, 2. On the circumstances surrounding introduction of the prohibition – in the wake of the slaughter in Thessaloniki in 390 and the influence of St. Ambrosius on its issue – see also Leppin (2003): 169–173 with further literature.

[358] Provisions concerning public taxes are found in: C. Th. 16, 2, 24 (a. 377) = C. 1, 3, 6, addressed "ad Catafronium", most likely the vicar of Italy – see e.g. PLRE 1 (Catafronius 2), confirmed that the clergy were not subject to *munera personalia*; C. Th. 16, 2, 29 (a. 395), addressed to "Hierio vicario Africae", categorically reaffirmed privileges associated with *munera* which had been granted by previous emperors to the holy churches and their servants. Administrative issues were regulated in: C. Th. 16, 5, 10 (a. 383) addressed to "Constantiano vicario dioeceseos Ponticae", which confirmed that the religious group called "Tascodrogitae" were to be exiled forthwith; C. Th. 16, 10, 15 (a. 399) = C 1, 11, 3, addressed to "Macrobio vicario Hispaniarum et Procliano vicario quinque provinciarum", which once more condemned pagan sacrifice, while simultaneously forbidding to pull down pagan temples, and prohibited granting access to *cursus publicus* to the unentitled, subject to fine of 2 pounds of gold. "Tascodrogitae" was a faction of the Montanists – see Stachura (2000): 90 et seq.; Tilden (2006): 224 et seq. On those enactments, see Gothofredus (1743), vol. 6, pars 1: 72 et seq., 139 (chiefly on "Tascodrogitae"), 311–314 (with deliberations concerning the offices of vicars, in particular the vicarship of *quinque provinciarum*, e.g. in connection with the title of PPO which had been mistakenly written in one of the manuscripts); also e.g. Kunderewicz (1971): 146 – where the author mentions C. Th. 16, 10, 15, discussing the protection of architectural structures in the light of C. Th.; Morgenstern (1993b): 111, 118; Michel d'Annoville (2009): 113 et seq. Regarding the vicars in question, see Pallu de Lessert (1901): 216 (Hierius); Chastagnol (1965): 277, no. 13 (Macrobius); PLRE 1 (Constantinianus 2; Hierius 6); PLRE 2 (Macrobius 1; Proclianus). C. Th. 16, 2, 5 (a. 323) was addressed "ad Helpidium", probably one of the first Roman *agentes vices praefecti praetorio*. See remarks on C. Th. 9, 21, 1. See also below in connection with remarks on C. Th. 16, 10, 2.

[359] On constitutions from book sixteen of C. Th. which were subsequently adopted in C. – Falchi (1991). The conviction that secular authority in church affairs was limited is certain to have existed at the time in the West, also as an aftermath of the Acacian schism in 484–519. See e.g. Grzelak (1922); Gaudemet (1958): 254 et seq.

[360] C. Th. 16, 2, 34 (a. 399): "Idem AA. [Arcadius et Honorius] Sapidiano vic(ario) Afric(ae). Si ecclesiae venerabilis privilegia cuiusquam fuerint vel temeritate violata vel dissimulatione neglecta, commissum quinque librarum auri, sicut etiam prius constitutum est, condemnatione plectatur. Si quid igitur contra ecclesias vel clericos per obreptionem vel ab haereticis vel ab huiuscemodi hominibus fuerit contra leges impetratum, huius sanctionis auctoritate

may be inferred from the preserved fragment, provided a penalty of fine in the amount of 5 pounds of gold for violating privileges of the Church, be it deliberate or caused by ignorance, and pronounced that actions of heretics and similar persons undertaken against the Church were unlawful.[361] Its first sentence was repeated in the analogous title of *Codex Iustinianus*.[362] It is possible that the constitution was issued in the wake of stands made against the Catholic church, which ensued at the time in Africa in connection with the Donatist controversy and the recently suppressed rebellion of Gildon.[363] Hence the constitution may have been issued upon Sapidianus's own *suggestio*. One can venture a hypothesis that the vicar requested emperor Honorius to furnish him with instructions on how to resolve an particular dispute brought before the vicar's court in first instance, while the preserved fragment of the act is a proof of such course of events.

It is difficult to determine whether any particular events prompted the issue of a somewhat earlier constitution which Arcadius and Honorius addressed to Dominator, vicar of Africa (also in 399), found in book sixteen, in the extensive title 5: *De haereticis* (On heretics) of *Codex Theodosianus*.[364] The

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vacuamus. Dat. VII kal. Iul. Brixiae Theodoro v. c. cons." The years when he held the office are debatable, given that C. Th. 11, 1, 30 and C. Th. 7, 8, 9, which were also addressed to him are dated according to the manuscripts to 406 and 409. Seeck (1919): 76, was justified in adjusting their dating to 399. See remarks above on books seven and eleven of C. Th. On Sapidianus, see Pallu de Lessert (1901): 220 et seq.; PLRE 2 (Sapidianus); PCBE 1 (Sapidianus).

[361] On that enactment cf. Gothofredus (1743), vol. 6, pars 1: 79 et seq.; Maier (1989): 104–106; Morgenstern (1993b): 111; Delmaire (2005): 188 et seq. In terms of its essence, De Giovanni (1985): 56 associates it with C. Th. 16, 2, 30 (a. 397), addressed to PPO Theodorus, which asserted the previous privileges of the Church.

[362] C. 1, 3 (*De episcopis et clericis et orphanotrophis et brephotrophis et xenodochis et asceteriis et monachis et privilegio eorum et castrensi peculio et de redimendis captivis et de nuptiis clericorum vetitis seu permissis*), 13. It is briefly discussed by Brunnemannus (1699): 25 in the context of privileges of *Ecclesiae*. Cf. also Falchi (1991): esp. 51, 81.

[363] The link had already been noted by Gothofredus (1743), vol. 6: pars 1, 79 et seq. On the rebellion in detailed studies see Komornicka (1971); Kotula (1979); Modéran (1989); Kotula (2007); Kuhoff (2012): 548-550.

[364] C. Th. 16, 5, 35 (a. 399): "Idem AA. [Arcadius et Honorius] Dominatori vic(ario) Afric(ae). Noxios manichaeos execrabilesque eorum conventus, dudum iusta animadversione damnatos, etiam speciali praeceptione cohiberi decernimus. Quapropter quaesiti adducantur in publicum ac detestati criminosi congrua et severissima emendatione resecentur. In eos etiam auctoritatis aculei dirigantur, qui eos domibus suis damnanda provisione defendent. Dat. XVI kal. Iun. Mediolano Theodoro v. c. cons." The last sentence was used in C. 1, 5, 4, 7 (a. 407). On the latter version of the act see Brunnemannus (1699): 542. See more broadly Delmaire (2005): 279, note 3; Falchi (1991): esp. 51, 92 et seq. On the vicar, see Pallu de Lessert (1901): 219 et seq.; PLRE 2 (Dominator); PCBE I (Dominator). The book also features an enactment addressed to *comes Orientis* which prohibited adherents of several heretic factions to build churches, and stipulated confiscation of the plots where they were built: C. Th. 16, 5, 8 (a. 381). Cf. Delmaire

act categorically reasserted that the abominable Manicheans and their supporters are to be prosecuted, judged and severely punished by the public authorities, which most likely also meant the tribunals of diocesan vicars.[365]

Religious strife in Africa was also the issue underlying the act published in title 6: *Ne sanctum baptisma iteretur* (On the prohibited repetition of the holy baptism), book sixteen of the Theodosian Code.[366] Emperors Valens, Gratian and Valentinian II addressed it to the already discussed Nicomachus Flavianus, the then vicar of Africa.[367] Its contents were adopted in part

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(2005): 242. On the changes in the constitution's content upon inclusion in C. Th. 16, 5 see also Escribano (2010).

[365] The legislation of Honorius may have been influenced by the anti-Manichean writings of St. Augustine. See Gothofredus (1743), vol. 6, pars 1: 170 et seq. Cf. also De Giovanni (1985): 88; Morgenstern (1993b): 111; in Polish: Dębiński (1992) – a cross-sectional review of Later Roman imperial constitutions directed against Manicheans; Stachura (2007). On the use of the insult *execrabiles* ("abominable") towards followers of Mani, see Stachura (2010): esp. 85. A recapitulation of differences in religious policies between the Eastern and Western Empires immediately after 395 is attempted in Stachura (2000): 111–113.

[366] C. Th. 16, 6, 2 (a. 377): "Imppp. Valens, Gratianus et Valentinianus AAA. ad Flavianum. Eorum condemnamus errorem, qui apostolorum praecepta calcantes christiani nominis sacramenta sortitos alio rursus baptismate non purificant, sed incestant, lavacri nomine polluentes. Eos igitur auctoritas tua erroribus miseris iubebit absistere ecclesiis, quas contra fidem retinent, restitutis catholicae. Eorum quippe institutiones sequendae sunt, qui apostolicam fidem sine intermutatione baptismatis probaverunt. Nihil enim aliud praecipi volumus, quam quod evangeliorum et apostolorum fides et traditio incorrupta servavit, sicut lege divali parentum nostrorum Constantini Constanti Valentiniani decreta sunt. Sed plerique expulsi de ecclesiis occulto tamen furore grassantur, loca magnarum domorum seu fundorum illicite frequentantes; quos fiscalis publicatio comprehendet, si piaculari doctrinae secreta praebuerint, nihil ut ab eo tenore sanctio nostra deminuat, qui dato dudum ad Nitentium praecepto fuerat constitutus. Quod si errorem suum diligunt, suis malis domesticoque secreto, soli tamen, foveant virus impiae disciplinae. Dat. XVI kal. Nov. Const(antino)p(o)li Gr(ati)ano A. IIII et Merobaude conss." On this title see De Giovanni (1985): 99–103 (where the author also briefly remarks on C. Th. 16, 6, 2); Morgenstern (1993b): 111, 116; Escribano Paño (2006); the latter also addresses the language of exclusion used with respect to heretics in C. Th. 16, 5, 6 (a. 381).

[367] On the enactment see Gothofredus (1743), vol. 6, pars 1: 214–216 (with the observation that it was issued "ex consilio et dictatu Episcoporum Gallicorum") as well as Seeck (1919): 109 et seq., 248; Maier (1989): 49–52; Delmaire (2005): 341–343. These three authors mention the corrections made in the manuscript while editing C. Th. by T. Mommsen: the latter filled the missing addressee as "Florianum vic(arium) Asiae" – in accordance with the version adopted in C. 1, 6, 1 (a. 377). The text of the enactment may have been edited by the then QSP to Gratian – Ausonius; see Honoré (1984): 82; Honoré (1986): 209 et seq., 219 et seq.; Coşkun (2001): 335 et seq.; Coşkun (2002): 52–62, 198 et seq. On the vicar and QSP, see detailed remarks below and in Chapter 5.2. The first paragraph of C. Th. 16, 6, 2 also mentions his hypothetical predecessor in the post of the vicar of Africa named Nitentius, who nevertheless might have been only a special envoy of the emperor. See Chapter 2.2.

in the analogous title 6: *Ne sanctum baptisma iteretur*, book one of *Codex Iustinianus*.[368]

The extensive surviving fragment of the constitution condemned the supporters of repeated baptism, decreed that they should be divested of churches which were to be returned to the universal church, and reaffirmed the wish of emperors Constantine, Constantius and Valentinian I, expressed in previous constitutions which have not survived, that purity of faith and apostolic tradition be upheld, and threatened confiscation of property to those who consented to dissemination of erroneous doctrine (yet it permitted it profession in private). Admittedly, the enactment addressed an issue associated with the judiciary, stipulating a fine for propagation of heresy (in this case Donatism[369]), but it is difficult to determine whether it followed a particular case which was heard by a vicar.[370] A noteworthy feature is the reference to the legislation of the predecessors, which is a measure of Gratian's respect towards those, as well as attachment to the Catholic tradition which the act conveys.[371]

Lucius Crepereius Madalianus, referred to in a 341 constitution issued by Constantius II and Constans as *agens vices praefectorum praetorio*, is certain to have been a vicar in Italy at the time.[372] This is confirmed directly in a honorific inscription from Africa.[373]

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[368] C. 1, 6, 1. Cf. Falchi (1991): esp. 31, 73, 92, 95. The contents of C. 1, 6 are concisely discussed by Brunnemannus (1699): 49.

[369] The enactment contains as many as 8 terms which have negative connotations. See Stachura (2010): s.v. *terror*, *polluo*, *furor* – esp. 124–131, *piacularis* – esp. 149 et seq., *impius*, *virus*.

[370] Incidentally, one who might have had influence on its tenor was St. Ambrosius. See Sargenti, Bruno Siola (1991): 59 et seq.; Barone Adesi (1992): 124 et seq., 135 et seq.; Watson (1995): esp. 314. However, Gottlieb (1973): 68–71 was not conviced that this was so. On St. Ambrosius' political concepts, see Ilski (2001) with further literature.

[371] C. Th. 16, 6, 2, pr. in fine: "Nihil enim aliud praecipi volumus, quam quod evangeliorum et apostolorum fides et traditio incorrupta servavit, sicut lege divali parentum nostrorum Constantini Constanti Valentiniani decreta sunt". Gothofredus (1743), vol. 6, pars 1: 216, specified that exlusion of Constans resulted from the fact that the ruler was considered a adherent of erroneous religious views. It is also quoted in the latter context by Gaudemet (1972b): 696, note 5; Lenski (2002): 103.

[372] C. Th. 16, 10, 2 (a. 341): "Imp. Constantius A. ad Madalianum agentem vicem p(raefectorum) p(raetori)o. Cesset superstitio, sacrificiorum aboleatur insania. Nam quicumque contra legem divi principis parentis nostri et hanc nostrae mansuetudinis iussionem ausus fuerit sacrificia celebrare, competens in eum vindicta et praesens sententia exeratur. Accepta Marcellino et Probino conss." The enactment was in fact issued by Constantius II and Constans. See Seeck (1919); Cuneo (1997): 88 et seq.

[373] CIL VIII 5348 = ILS 1228 (Calamae – Numidia): "mirae iustitiae atq[ue] eximiae moderationis / L. Crepereio Madaliano v[iro] c[larissimo] / procos[onsuli] p[rovinciae] A[fricae] et

An enactment from title 10:: *De paganis, sacrificiis et templis* (On pagans, sacrifices and temples) upheld the strictures on pagan sacrifices, whose performance carried appropriate penalties, which had most certainly been introduced under Constantine the Great.[374] It is difficult to ascertain whether its issue was directly linked to the exercise of judicial duties by the vicar and conclude anything as to the mode in which he adjudicated in the hypothetical case which resulted in the constitution. It is equally probable, that its issuer, Constans, who ruled over the western part of the state, merely wished to implement Constantine's prohibition in his part of the Empire.[375] It is nevertheless certain that its enforcement and delivery of punishments following judicial proceedings was chiefly within the competence of province governors, while province administrators became involved mainly as part of appeals against the judgements of the former.

It should be added that the fragment of constitution which is also found in book sixteen of *Codex Theodosianus*, addressed to the aforementioned a.v.p.p. ad

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vice sacra iu/dicanti comiti ordinis primi vicario Italiae praef[ecti] ann[onae] / urb[i] cum iure gladii con/sulari Ponti et Bithyniae / correctori Flaminiae et / comit[i] ordinis secun[di]". On that figure, see Chastagnol (1963): 354; Malcus (1967): 138 et seq.; Arnheim (1970): 596; 599 et seq.; PLRE 1 (Lucius Crepereius Madalianus); Barnes (1981): 210, 246; Kuhoff (1983): passim, esp. 122, 269 (note 30). It is possible that Madalianus was of African descent; see Levick, Jameson (1964): esp. 104.

374 On the enactment see Gothofredus (1743), vol. 6, pars 1: 289–292. On the still lively debate concerning a total ban on sacrifices introduced already under Constantine I see Bradbury (1994); Delmaire (2004): 324 et seq.; Girardet (2007): 128 et seq.; Barnes (2011): 109–111; Bleckmann (2012), with discussion in literature. Cf. also generally in De Giovanni (1977): 137–142. In its context, authors often cite the aforementioned C. Th. 16, 2, 5 (a. 323), addressed to Helpidius, probably one of the first Roman *agentes vices praefecti praetorio*. The constitution prohibited, under pain of flogging or financial penalty, to force Catholics to observe pagan sacrifices (*sacrificia lustrorum*). See the extensive commentary on the premises and applicability of the constitution in Gothofredus (1743), vol. 6, pars. 1: 29–33.

375 On the political circumstances surrounding the issue of C. Th. 16, 10, 2 see Salzman (1987): 179–181, where the author attempts to reinterpret the reasons why the term *superstitio* (religious superstition) is used in the enactment. He suggests that reference to the well-established Latin notion of *superstitio* was intended as a political cue, which would be interpreted differently by pagan and Christian subjects, and thereby ensuring the emperor leeway in undertaking specific actions. This risky thesis is rightly approached with reserve by Stachura (2010): 173 et seq., who argues that *superstitio* was an example of invective which had no bearing on the contents of the act (169–174, generally on *superstitio* with references to further literature). De Bonfils (1983): 303 et seq., drew attention to the thorough rhetorical background of the author of constitution, which upholds the tradition of antique "prosa dotta". See also other works quoted by Cuneo (1997): 88 et seq. Cf. also synthesizing remarks in comparison with other enactments concerning religion: Gaudemet (1972b): 704, 711; Dębiński (1990): 151. Cf. also Chapter 2.2.

hoc Dracilianus, was exclusively concerned with administrative affairs.[376] The constitution confirmed the privileges of Catholics and *munera* imposed on heretics (and schismatics[377]); it was issued when the official stayed in Palestine on an special mission (in 325–326).[378]

Having discussed the imperial constitutions in *Codex Theodosianus*, which were associated either directly or indirectly with the judiciary of vicars, one should analyse the imperial edict known as the first *novella Marciani*, issued in Constantinople on behalf of emperor Marcian (and Valentinian III) in 450.[379] A number of its provision was exceedingly important for the jurisdiction of all diocese administrators: it was intended as countermeasure against various abuses in civil and criminal processes, as well as in cases relating to military affairs and involving soldiers. The enactment spoke emphatically against the parties petitioning to have their disputes heard by the emperor himself or by higher judges while bypassing *iudices ordinarii*.[380] The regulation must have been applied in the West as well, as clearly demonstrated by

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[376] C. Th. 16, 5, 1 (a. 326) = C. 1, 5, 1: "Imp. Constantinus A. ad Dracilianum. Privilegia, quae contemplatione religionis indulta sunt, catholicae tantum legis observatoribus prodesse oportet. Haereticos autem atque schismaticos non solum ab his privilegiis alienos esse volumus, sed etiam diversis muneribus constringi et subici. P(ro)p(osita) kal. Sept. Gerasto Constantino A. VII et Constantio C. conss."

[377] It is suspected that the fragment "aiutem, atque schismaticos" is an interpolation. See De Dominicis (1953): 436. Amarelli (1978): 132 believes that the constitution echoes the concepts of Lactantius, expressed e.g. in Lact. *Divinae institutiones* 4, 30, 2.

[378] See Gothofredus (1743), vol. 6, pars 1: 122–124, who justifiably considered Dracilianus to be a special envoy, e.g. in view of the location of *propositio* and the fact that the office of *vicarius Orientis* was held at the time by Maximus, and who associated its issue with the First Council of Nicaea in 325. Schismatics are not mentioned in the version adopted in C. 1, 5, 1. See Falchi (1991): esp. 91. On the enactment, see also works cited in Chapter 2.2.2, in connection with remark on a.v.p.p. Dracilianus.

[379] Nov. Marc. 1. Regarding dating see Seeck (1919): 387. It is discussed as an example of Late Antique edict in Kussmaul (1981): 49. Dillon (2012): 56 et seq. stresses the propagandistic import of the novel's language, suggesting similar motives behind the language in the enactments of Constantine I. On the incomplete formula of *subscriptio* in Nov. Marc. 1, see also van der Wal (1980): 17, note 32.

[380] Stein (1959): 381, suggested that the edict reflected Marcian's struggle with corruption in the ranks of administration. On the novel in the context of developing rules of instance-based procedure see Goria (2000): 168, note 42; Barbati (2012): 170 (note 66), 193, 549 (note 64). Goria (1995a): 447 (note 2), 448 (note 8), discussed the constitution in light of delimiting the competences of military and civilian judges. See also Ziegler (1976): esp. 571, on the edict in the context of competence disputes which took place at various stages of development of the Roman process. On the internal policies of emperor Marcian in biographical studies only: Ensslin (1930): esp. 1526–1528; Nathan (1998); S. Bralewski, in: Prostko-Prostyński et al. (2001): 337–340.

the brief *interpretatio* appended to the edict.[381] Important information is conveyed especially in fragments two, three and six of the edict.

The first of those stated that seeking to have one's dispute examined by the imperial court of law or higher judges was in principle inadmissible. The exception was provided for only where the court of province governor (*rector provinciae*) was insufficient in view of the power of the opposing party, difficulty of the case or the amount of public debt; in such instances, assistance could be solicited from *spectabilis iudices* who were in the area at the time, the emperor, or other higher judges.[382] As other sources indicate, diocese administrators carried out inspection tours, therefore the *spectabilis iudices* to which the act refers were certainly *comes Orientis*, *praefectus Augustalis* or diocesan vicars.[383]

Among other things, fragment three decreed that reports of abuses of province governors and failure of court to hear a party are to be taken into account if the injured party decides to prove the case before a PPO or other higher courts.[384] In turn, fragment six was concerned with *clarissimi* and *spectabilis iudices*, which meant all province governors (regardless of rank) and diocese administrators, who were ordered to comply with the rule *actor sequitur forum rei*; furthermore, the legislator expressed their conviction that judges shall remain impartial.[385]

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[381] See below.

[382] Nov. Marc. 1, 2: "Has ergo ob causas nullum adversarium suum a proximis vel longinquis partibus, non per sacros adfatus, non per magnificentissimorum vel inlustrium iudicum sententias volumus exhibere, nisi forsitan aut propter potestatem adversarii aut ipsius rei difficultatem aut publici debiti molem deficiente rectore provinciae spectabilis iudicis, qui in locis vel proximo deget, vel amplissimae potestatis vel aliorum maiorum iudicum auxilium postuletur". See Goria (1995b): 278. In this case, the designation "magnificentissimi vel inlustri iudices" may have referred to PPO or PVR; *amplissima potestas* to PPO. See below. Appeals to the closest PPO or *comites provinciarum* were regulated in a similar manner in C. Th. 1, 16, 7 (a. 331), which was concerned with the abuses of the auxiliary personnel of province governor or the governor himself; see De Marini Avonzo (1964): esp. 1056–1062. On *comites proviciarum*, see Chapter 2.2.2.

[383] See Chapter 3.2.

[384] Nov. Marc. 1, 3: "[…] Si vero vel ab adversario tanquam excedente provinciale praesidium fuerit contemptus vel a iudice non auditus hocque in amplissimae potestatis vel alio maiore, conpetenti tamen, examine per relationem iudicis contra adversarium missam seu ipsum iudicem documentis quibusdam neglexisse nostrae maiestatis edicta sui periculi memor se promiserit probaturum, tunc post indemnitatem ei legibus servatam etiam vindicta iuri congrua in convictum protinus subsequetur". The fragment confirmed illegality of such approach on the part of province governors. See Kaser, Hackl (1996): § 78 (note 31), 58.

[385] Nov. Marc. 1, 6: "Actor rei forum sequatur. Quod sine caelesti sententia non constat esse decretum, intactum inviolatumque servetur: nemo a nostra serenitate postulet – nec enim impetrabit non rescriptum non mandatum vel iussum quod dicunt sacrum – suos adversarios

Fragment two of the novel of 450 proves highly important for these deliberations, as it betokens an attempt to define the scope of cases which were to be heard in first instance by *spectabilis iudices* – in the light of the novel the term is certain to have referred to all diocese administrators.[386] Indirectly, it also proves that they possessed jurisdiction in appellate proceedings and that this form of their judicial capacity in the post-classical *cognitio extra ordinem* was considered a rule. In turn, fragment three confirms that appeals were heard by PPO and other higher courts. Such a conclusion is additionally supported by the *interpretatio*, according to which the defendant was entitled to appeal in the case called *iudex suspectus*, i.e. suspicion of judge's partiality.[387] Province administrators belonged to the echelon of *iudices medii* and the possibility of filing an appeal with "amplissimae potestatis vel alio maiore" for which the act provides should be construed as equivalent with the right to appeal to PPO whom such expression usually denoted, or another higher court: PVR and joint tribunal of PPO and *quaestor sacrii palatii*, which was introduced in 440.[388]

The final recapitulation of the conducted analysis will be presented in the conclusion section of this work. However, one may make a preliminary observation that many fragments of constitutions in *Codex Theodosianus* corroborates, at least indirectly, that diocesan vicars acted in the capacity of appellate judges. Nevertheless, it is not possible to determine the criteria according to which cases were referred to them for examination; it was only in Nov. Marc. 1 (a. 450) which attempted to regulate the matter. With a number of constitutions, it is also difficult to conclude whether they stipu-

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in minime conpetenti iudicio respondere, maxime cum hoc tempore, quod superius dictum est, unusquisque clarissimorum vel spectabilium iudicum, si tamen propter causas praedictas ita usus tulerit, et integras adeuntibus aures praebere et omni postposita invidia, omni spreta gratia recto proposito potuerit iudicare". On the vain hopes of the emperor, see Jones (1964): 502, 504. On the principle of *actor sequitur forum rei* and exceptions from it in *cognitio extra ordinem*, see Kaser, Hackl (1996): § 90.II.2.

386 See also synthetic collation presenting known cases where PPO and vicars adjudicated in first instance Kaser, Hackl (1996): § 79.II.2.

387 "Interpretatio: Si quis adversarium suum aut repetitione aut criminis obiectione pulsaverit, in provincia, in qua consistit ille qui pulsatur, suas exerat actiones nec aestimet adversarium suum alibi aut longius ad iudicium pertrahendum: **illi vero qui pulsatus fuerit, si iudicem suspectum habuerit, liceat appellare**. Simili etiam et militantes ordine teneantur, ut et ipsi apud competentes iudices, quas conpetere sibi credunt, exerant actiones, quia omnibus legibus constitutum est, ut actor rei forum sequatur" (the key fragment is highlighted in bold – J.W.). The novel is also aptly invoked in the context of appeals in Litewski (1965): 350 (note 11), 352 (note 23); Litewski (1968): 263 (note 477 – regarding terminology), 275 (note 534 – suggesting analogies to C. Th. 11, 30, 66 [a. 419]).

388 C. 7, 62, 32 (a. 440). See below Chapter 4.2. On the use of *amplissima potestas* to denote PPO, see Koch (1903): 34–58, 75–77; Mathisen (2001).

lated the norms relating to appellate proceedings, or whether they regulated first instance process. Some of the constitutions certainly pertained to that stage of court proceedings, as well as to purely administrative responsibilities associated with the supervision of province governors and other officials. Moreover, the constitutions discussed do not yield an unequivocal objective or subjective criterion for cases to be heard by diocesan vicars in the capacity of judges. The table below presents findings of analyses conducted in this chapter.

Table 1. The judiciary of diocesan vicars according to *Codex Theodosianus* (a. 438)*. Addendum – Nov. Marc. 1 (a. 450)

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
1.	1, 15 (*De officio vicarii*), 1 (a. 325)		Constantine I – Silvius Paulus, *magister* (*vicarius?*) *Italiae*	Requirement to hear only cases of substantial importance (first instance)
2.	1, 15 (*De officio vicarii*), 2 (a. 348)		Constantius II – Caesonianus *vicarius Africae*	Collecting and conveying reports to the emperor (administration)
3.	1, 15 (*De officio vicarii*), 4 (a. 362)		Julian the Apostate – Mamertinus PPO (*Illyrici et Italiae*)	Conveying reports of province governors to the emperor via vicars (administration)
4.	1, 15 (*De officio vicarii*), 7 (a. 377)	C. 1, 38 (*De officio vicarii*), 1	Valens, Gratian, Valentinian II – Flavius Claudius Antonius PPO (*Illyrici et Italiae*)	Rules concerning joint conduct of judicial proceedings by vicar and military commander – *comes rei militaria* (first instance)
5.	1, 15 (*De officio vicarii*), 8 (a. 379)	C. 1, 38 (*De officio vicarii*), 2	Valens, Gratian, Valentinian II – Hesperius PPO (*Illyrici et Italiae*)	Vicars' *relationes* to the emperor may be reviews by PPO, but have to be submitted to the emperor (first instance/ appeal)
6.	1, 15 (*De officio vicarii*), 10 (a. 379)		Gratian, Valentinian II, Theodosius – Syagrius (*proconsul Africae*)	Competence dispute between *proconsul Africae* and *vicarius Africae* (fiscal affairs?)
7.	1, 16 (*De officio rectoris provinciae*), 1 (a. 315)		Constantine I – Rufinus Octavianus *corrector Lucaniae et Brittorum*	Competence dispute between *vicarius* and province governor (first instance)

* Following the sequence of analysis in Chapter 4.1; titulature of vicars as provided in C. Th.

Table 1 continued

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
8.	1, 16 (*De officio rectoris provinciae*), 5 (a. 362/364/365/367)		Valentinian I, Valens – Secundus PPO *Orientis*	Vicars and province governors are responsible for compliance with public order (administration)
9.	1, 16 (*De officio rectoris provinciae*), 10 (a. 365) – entirety from C. Th. 9, 3, 4	*Interpretatio*; Brev. Alaric. 1, 6, 3	Valentinian I, Valens – Valerianus *vicarius Hispaniarum*	Vicars' control over correctness and openness of court proceedings conducted by province governors and controlling functions of their *officium*
10.	1, 22 (*De officio iudicum omnium*), 1 (a. 316)	*Interpretatio*; Brev. Alaric. 1, 9, 1; C. 1, 48 (*De officio diversorum iudicum*), 1	Constantine I – Domitius Celsus *vicarius Africae*	Exclusion of the property of *mater familias* from execution due to tax arrears – controlling powers of province governor (enforcement proceedings under civil law)
11.	2, 6 (*De temporum cursu et reparationibus denuntiationum*) 5 (a. 340) and 10, 15 (*De advocatis fisci*), 3	*Interpretatio*; Brev. Alaric. 2, 6, 5; C. 3, 11 (*De dilationibus*), 6	Constantius II, Constans – Petronius *vicarius Africae*	Deadline for submitting responses in cases of dispute between the Fiscus and a private person; accountability of *advocati fisci* the imperial treasury for actions to the disadvantage of the Fiscus (proceeding in fiscal matters – first instance?/ appeal?)
12 (= 53).	10, 15 (*De advocatis fisci*), 4 (a. 367)		Valentinian I, Valens – Rufinus PPO (*Italiae, Illyrici et Africae*)	Vicars and province governors are obligated to ensure attendance of suitable advocates when *res privata* were involved in a court case (administration)
13.	2, 7 (*De dilationibus*), 1 (a. 314)	*Interpretatio*; C. 3, 11 (*De dilationibus*), 2	Constantine I – Ursus *vicarius*	Restriction of the instances of deferment (1st instance)
14.	2, 19 (*De inofficioso testamento*), 1 (a. 319)	*Interpretatio*; Brev. Alaric. 2, 19, 1; C. 3, 28 (*De inofficioso testamento*), 27	Constantine I – Lucrius Verinus *vicarius Africae*	*Querella inofficiosi testamenti* (first instance?)
15.	3, 5 (*De sponsalibus et ante nuptias donationibus*), 3 (a. 330)	*Interpretatio*; Brev. Alaric. 3, 5, 3; C. 1, 18 (*De iuris et facti ignorantia*), 11	Constantine I – Valerianus *agens vicariam praefecturam*	Disputes concerning gifts between betrothed (appeal)
16.	3, 5 (*De sponsalibus et ante nuptias donationibus*), 6 (a. 335)	*Interpretatio*; Brev. Alaric. 3, 5, 5; C. 5, 3 (*De donationibus ante nuptias vel propter nuptias et sponsaliciis*), 16	Constantine I – Tiberianus *vicarius Hispaniarum*	Inheritance of property given by the fiancé to the betrothed woman; significance of *interveniens osculum* (appeal)

Table 1 continued

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
17.	3, 11 (*Si quacumquae praeditus potestate nuptias petat invitae*), 1 (a. 380)	*Interpretatio*; Brev. Alaric. 3, 11, 1; C. 5, 7 (*Si quacumque praeditus potestate vel ad eum pertinentes ad suppositarum iurisdictioni suae adspirare temptaverint nuptias*), 1	Gratian, Valentinian II, Theodosius I – Neoterius PPO (*Orientis*)	Determination of jurisdiction when *iudex ordinarius* exerted pressure in order for marriage to be concluded (first instance)
18.	4, 6 (*De naturalibus filiis et matribus eorum*), 5 (a. 397)		Arcadius, Honorius – Petronius *vicarius Hispaniarum*	Exclusion of *filii naturales* inheritance and confiscation of the estate of bequeather who did not leave legal heirs (first instance/appeal)
19.	4, 21 (*Quorum bonorum*), 1 (a. 395)	*Interpretatio*; Brev. Alaric. 4, 19, 1; C. 8, 2 (*Quorum bonorum*), 3	Arcadius, Honorius – Petronius *vicarius Hispaniarum*	Exclusion of husband from inheriting after wife who died intestate (first instance/ appeal)
20.	4, 22 (*Unde vi*), 5 (a. 397)	*Interpretatio*; Brev. Alaric. 4, 20, 5; C. 8, 5 (*Si per vim vel alio modo absentis perturbata sit possessio*), 2 and C. 7, 32 (*De adquirenda et retinenda possessione*), 11	Arcadius, Honorius – Petronius *vicarius Hispaniarum*	Possessory protection of real estate (first instance/ appeal)
21.	5, 19 (*Ne colonus inscio domino suum alienet peculium vel litem inferat ei civilem*), 1 (a. 365)	*Interpretatio*; Brev. Alaric. 5, 11, 1	Valentinian I, Valens – Clearchus *vicarius Asiae*	Limitation of legal capacity of coloni (first instance/ appeal)
22.	6, 22 (*De honorariis codicillis*), 2 and 12, 1 (*De decurionibus*), 24 (a. 338)		Constans I – Aco Catullinus *vicarius Africae*	Penalty of fine for decurions who attempted to acquire honorary titles (first instance)
23.	6, 35 (*De privilegiis eorum qui in sacro palatio militarunt*), 4 (a. 321)		Constantine I – Iulius (Severus) *vicarius Italiae*	Punishing infringement of privileges of *palatini* (administration)
24.	7, 1 (*De re militari*), 16 (a. 398)	fragment w C. 12, 35 (*De re militari*), 13, 2 (a. 398)	Arcadius, Honorius – Theophilus *vicarius Asiae*	Participation of vicars in proceeding aimed at punishing deserters and punishments due for abuses committed by vicar and his *officium* (administration)
25.	7, 15 (*De terris limitaneis*), 1 (a. 409)		Honorius, Theodosius II – Gaudentius *vicarius Africae*	Control of the ownership of plots in frontier territory (administration)
26.	7, 18 (*De desertoribus et occultatoris eorum*), 7 (a. 383)		Gratian, Valentinian II, Theodosius I – Constantianus *vicarius Ponticae*	Punishing people aiding deserters (first instance?)

Table 1 continued

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
27.	8, 1 (*De numerariis, actuariis, scriniariis et exceptoribus*), 4 and 8, 15 (*De his, quae administrantibus vel publicum officium gerentibus distracta sunt vel donata*), 2 (a. 334)	*Interpretatio* (do C. Th. 8, 15, 2); Brev. Alaric. 8, 8, 1 (= C. Th. 8, 15, 2); C. 12, 49 (*De numerariis actuariis et chartulariis et adiutoribus scriniariis et exceptoribus sedis excelsae ceterorumque iudicum tam civilium quam militarium*), 1 (= C. Th. 8, 1, 4)	Constantine I – Veronicianus *vicarius Asiae*	Punishing abuses committed by *numerarii* of province governors (first instance) and determination of their status; abrogation (*restitutio in integrum*) of *emptio-venditio* contracts extorted by said *numerarii* and punishing of the latter (first instance?)
28.	8, 1 (*De numerariis, actuariis, scriniariis et exceptoribus*), 9 (a. 365)	C. 12, 49 (*De numerariis actuariis et chartulariis et adiutoribus scriniariis et exceptoribus sedis excelsae ceterorumque iudicum tam civilium quam militarium*), 2	Valentinian I, Valens – Clearchus *vicarius Asiae*	Status of *tabularii*, use of torture in the case of delaying submission of information regarding amounts of tax duties (administration)
29.	8, 10 (*De confussionibus advocatorum sive apparitorum*), 2 (a. 344)	C. 12, 61 (*De lucris advocatorum et concussionibus officiorum sive apparitorum*), 2	Constans I – Eubulidas *vicarius Africae*	Controlling abuses of officials and advocates (administration)
30.	8, 18 (*De maternis bonis et materni generis et cretione sublata*), 2 (a. 318)	*Interpretatio*; Brev. Alaric. 8, 9, 2	Constantine I – Iulius Severus *vicarius Italiae*	*Bona materna* (first instance?)
31.	9, 1 (*De accusationibus et inscriptionibus*), 2 (a. 319)	C. 9, 40 (*De requirendis*), 2	Constantine I, Licinius – Ianuarinus *vicarius Moesiae/ Macedoniae*	Penalty for failure of the defendant to appear at court (first instance)
32.	9, 1 (*De accusationibus et inscriptionibus*), 13 (a. 376)		Valens, Gratian, Valentinian II – Roman Senate	*Privilegium fori* of senators and *iudicium quinquevirale*; participation of vicars in collecting evidence (first instance)
33.	9, 1 (*De accusationibus et inscriptionibus*), 14 (a. 383)	*Interpretatio*; Brev. Alaric. 9, 1, 8; Burg. Rom. 7, 1; C. 9, 2 (*De accusationibus et inscriptionibus*), 13	Gratian, Valentinian II, Theodosius I – Marinianus *vicarius Hispaniae*	*Actio internecivi* and indictment of *mors suspecta* (first instance)
34.	9, 3 (*De custodia rerum*), 4 (a. 365) – entirety from C. Th. 1, 16, 10		Valentinian I, Valens – Valerianus *vicarius Hispaniarum*	Controlling the conduct of preliminary proceeding
35.	9, 1 (*De accusationibus et inscriptionibus*), 9 (a. 366)	*Interpretatio*; C. 9, 46 (*De calumniatoribus*), 7	Valentinian I, Valens – Valerianus *vicarius Hispaniarum*	Instituting proceedings (first instance)
36.	9, 8 (*Si quis eam cuius tutor fuerit corruperit*), 1 (a. 326?)	*Interpretatio*; Brev. Alaric. 9, 5, 1; C. 9, 10 (*Si quis eam cuius tutor fuerit corruperit*), 1	Constantine I – Bassus (*vicarius Italiae*?/PPO)	Restrictions of admissibility of marriages *tutor–pupilla*, punishing deceitful *tutor* (first instance/appeal)

Table 1 continued

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
37.	9, 15 (*De parricidis*), 1 (a. 318/319)	*Interpretatio*; Brev. Alaric. 9, 12, 1; C. 9, 17 (*De his qui parentes vel liberos occiderunt*), 1; I. 4, 18, 6	Constantine I – Verinus *vicarius Africae*	*Poena cullei* in cases of *parricidium* (first instance/appeal)
38.	9, 18 (*Ad legem Fabiam*), 1 (a. 315)	*Interpretatio*; Brev. Alaric. 8, 14, 1; Rom. Burg. 4, 1; C. 9, 20 (*Ad legem Fabiam*), 16; I. 4, 18, 10	Constantine I – Domitius Celsus *vicarium Africae*	Penalties for kidnapping children – *plagium* (first instance/appeal)
39.	9, 21 (*De falsa moneta*), 1 (a. 319)		Constantine I – Verinus *vicarius Africae*	Punishments for forgery of coins (appeal)
40.	9, 34 (*De libelli famosi*), 1 (a. 319)	*Interpretatio*; Brev. Alaric. 9, 24, 1	Constantine I – Verinus *vicarius Africae*	Vicar's supervision over preliminary proceeding in cases of pasquinade
41.	9, 35 (*De quaestionibus*), 4 (a. 380)	*Interpretatio*; Brev. Alaric. 9, 25, 1; C. 3, 12 (*De feriis*), 5	Gratian, Valentinian II, Theodosius I – Albucianus *vicarius Macedoniae*	Prohibition of use of torture within 40 days before Easter (first instance/ appeal)
42.	9, 36 (*Ut intra annum criminalis actio terminetur*), 1 (a. 385)	*Interpretatio*; Brev. Alaric. 9, 26, 1; C. 9, 44 (*Ut intra certum tempus criminalis quaestio terminetur*), 1	Maximus Magnus – Desiderius *vicarius*	Punishing failure to appear at court – *contumacio* (first instance?)
43.	9, 37 (*De abolitionibus*), 1 (a. 319)	*Interpretatio*; Brev. Alaric. 8, 27, 1; C. 9, 42 (*De abolitionibus*), 2	Constantine I – Ianuarinus *vicarius Moesiae/Macedoniae*	Examination of premises for withdrawing indictment (first instance)
44.	9, 38 (*De indulgentiis criminum*), 7 (a. 384)		Gratian, Valentinian II, Theodosius I – Marcianus *vicarius*	Easter amnesty (administration)
45.	9, 39 (*De calumniatoribus*), 2 (a. 385)	*Interpretatio*; Brev. Alaric. 9, 29, 2; C. 9, 46 (*De calumniatoribus*), 8	Gratian, Valentinian II, Theodosius I – Menander *vicarius Asiae*	Punishments in cases of libel (first instance)
46.	9, 40 (*De poenis*), 2 (a. 316)	C. 9, 47 (*De poenis*), 17	Constantine I – Eumelius *vicarius*	Ban on branding faces of convicts (first instance?)
47.	9, 40 (*De poenis*), 15 (a. 392)		Valentinian II, Theodosius I, Arcadius – Tatianus PPO *Orientis*	Punishing dignitaries for releasing convicts from imposed punishments (first instance/appeal)
48.	9, 40 (*De poenis*), 16 (a. 398) = 11, 30 (*De appellationibus et poenis earum et consultationibus* 57 (pr.) and 9, 45 (*De his, qui ad ecclesias confugiunt*), 3 and 16, 2 (*De episcopis, ecclesis et clericis*), 33	C. 1, 4 (*De episcopali audientia et de diversis capitulis, quae ad ius curamque et reverentiam pontificalem pertinent*), 6 = C. 7, 62 (*De appellationibus et consultationibus*), 29 and Edictum Theod. 70 (= C. Th. 9, 45, 3) and C. 1, 3 (*De episcopis et clericis et*	Honorius, Arcadius – Eutychianus PPO *Orientis*	Referring appeals against judgements in criminal cases filed by clergy, monks and *sinoditae* to the tribunal of PPO instead of imperial court (appeal)

Table 1 continued

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
		orphanotrophis et brephotrophis et xenodochis et asceteriis et monachis et privilegio eorum et castrensi peculio et de redimendis captivis et de nuptiis clericorum vetitis seu permissis), 12		
49.	10, 1 (*De iure fisci*), 10 (a. 365)	C. 10, 1 (*De iure fisci*), 8	Valentinian I, Valens – Dracontius *vicarius Africae*	Amount of fine for fraud in contracts with the Fiscus (first instance)
50.	10, 4 (*De actoribus et procuratoribus et conductoribus rei privatae*), 3 (a. 373)		Valentinian I, Valens – Crescencius *vicarius Africae*	Jurisdiction of province governors and diocesan vicars with respect to coloni and leaseholders of *res privatae* in civil lawsuits (first instance)
51.	10, 10 (*De petitionibus et ultro datis et delatoribus*), 20 (a. 392)		Theodosius I, Arcadius, Honorius – (Nicomachus) Flavianus PPO *Italiae et Illyricum*	Vicars and province governors are obligated to interrogate *delatores* – informers/ accusers under penalty of corporal punishment in cases of: vagrant slaves (*mancipia vaga*), secret agreements (*tacitae fideicomissae*) and estate subject to escheat (*bona vacanta et caduca*) (first instance)
52 (= 11).	2, 6 (*De temporum cursu et reparationibus denuntiationum*) 5 (a. 340) and 10, 15 (*De advocatis fisci*), 3	C. 3, 11 (*De dilationibus*), 6 (= C. Th. 2, 6, 5)	Constantius II, Constans – Petronius *vicarius Africae*	Deadline for submitting responses in cases of dispute between the Fiscus and a private person; accountability of *advocati fisci* the imperial treasury for actions to the disadvantage of the Fiscus (proceeding in fiscal matters)
53 (= 12).	10, 15 (*De advocatis fisci*), 4 (a. 367)		Valentinian I, Valens – Rufinus PPO *Italiae, Illyrici et Africae*	Vicars and province governors are obligated to ensure attendance of suitable advocates when *res privata* were involved in a court case (administration)
54.	10, 17 (*De fide et iure hastae*), 3 (dat. a. 391 – acc. a. 392)	Brev. Alaric. 10, 9, 1; C. 4, 44 (*De rescindenda venditione*), 16	Valentinian II, Theodosius I, Arcadius – Magnillus *vicarius Africae*	Controlling correctness of auction sale of property of persons who defaulted on their public levies (first instance?)

Table 1 continued

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
55.	11, 26 (*De discussoribus*), 1 (a. 369)	C. 10, 30 (*De discussoribus*), 1	Valentinian I, Valens, Gratian – Artemius *vicarius Hispaniarum*	Controlling decisions of *disccusores* – tax collectors (appeal)
56.	11, 30 (*De appellationibus et poenis earum et consultationibus*), 9 (a. 319)	C. 7, 62 (*De appellationibus et consultationibus*), 15	Constantine I – Severus (Iulius) (*vicarius*)	Obligation to supply complete documentation of arguments and pleadings submitted thus far by the parties with the records of cases to be heard by the emperor (first instance/appeal)
57.	11, 30 (*De appellationibus et poenis earum et consultationibus*), 11 (a. 321)	C. 7, 62 (*De appellationibus et consultationibus*), 16	Constantine I – Maximus (PVR)	Obligation binding on all *iudices* to provide the emperor with documentation collected in the course of judicial process, if their judgements are appealed against (appeal)
58.	11, 30 (*De appellationibus et poenis earum et consulta-tionibus*) 16 (a. 331) and fragments in: C. Th. 2, 26, 3; C. Th. 3, 13, 4; C. Th. 4, 5, 1; C. Th. 11, 30, 17; C. Th. 11, 34, 1 (see below)	C. 7, 62 (*De appellationibus et consultationibus*), 19 (= C. Th. 11, 30, 16) and fragments in: C. 8, 36, 2 (= C. Th. 4, 5, 1); C. 1, 23, 3 (= C. Th. 11, 30, 17); C. 3, 13, 4; C. 3, 19, 2	Constantine I – *universos provinciales*	Admissibility of appeals from judgments of diocese administrators (in 1st instance and in appellate proceeding); unappealability of verdicts of PPO (first instance/appeal)
59.	11, 30 (*De appellationibus et poenis earum et consultationibus*), 19 (a. 339)	fragment in: C. 7, 63 (*De temporibus et reparationibus appellationum seu consultationum*), 1 (a. 320)	Constantius II – Anatolius *vicarius Asiae*	2-month deadline for completion of appeal proceeding against person appointed curial, duovir, or to other office, or under *munus* (appeal)
60.	11, 30 (*De appellationibus et poenis earum et consultationibus*), 22 (a. 343)	Edictum Theod. 55	Constantius II, Constans – Scylacius (*vicarius Asiae*)	Province governors are obligated to accept appeals and refer them to those who are competent to hear them (appeal)
61.	11, 30 (*De appellationibus et poenis earum et consultationibus*), 30 (a. 363)	C. 7, 67 (*De his qui per metum iudicis non appellaverunt*), 2	Julian the Apostate – Germanianus PPO (*Galliarum*)	Rejection of appeals filed after deadline (first instance/appeal)

Table 1 continued

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
62.	11, 34 (*De his qui per metum iudicis non appellaverunt*), 2 (a. 355)		Constantius II – Volusianus PPO (*Galliarum*)	Admissibility of lodging appeals with the emperor or PVR when contesting judgements of PVR and proconsuls in cases of failure to file *provocatio* (i.e. appeal) for fear of their reaction; reference to C. Th. 11, 34, 1 (first instance/appeal)
63.	11, 34 (*De his qui per metum iudicis non appellaverunt*), 1 (a. 330)		Constantine I – *universos provinciales*	Liability for failing to file appeal against judgements due to *metus* (first instance/appeal)
64.	11, 30 (*De appellationibus et poenis earum et consultationibus*), 33 (a. 364)		Valentinian I, Valens – Dracontius *vicarius Africae*	Penalty of fine for province governors and their offices for disallowing appeals and collection of fines by the office of vicar (administrative)
65.	11, 36 (*Quorum appellationes non recipiantur*), 4 (a. 339)	fragment w: C. 9, 9 (*Ad legem Iuliam de adulteriis et de stupro*), 29 (a. 326)	Constantius II, Constans – (Aco) Catullinus (*vicarius Africae*)	Proscription on accepting appeals submitted by adulterers; types of penalties for *adulterium* (first instance/appeal)
66.	11, 36 (*Quorum appellationes non recipiantur*), 5 (a. 341)	C. 7, 62 (*De appellationibus et consultationibus*), 20	Constantius II, Constans – Albinos *vicarius Hispaniarum*	Fees for filing appeals established (appeal)
67.	16, 2 (*De episcopis, ecclesiis et clericis*), 34 (a. 399)	C. 1, 3 (*De episcopis et clericis et orphanotrophis et brephotrophis et xenodochis et asceteriis et monachis et privilegio eorum et castrensi peculio et de redimendis captivis et de nuptiis clericorum vetitis seu permissis*), 13	Arcadius, Honorius – Sapidianus *vicarius Africae*	Fines for violation of privileges of the Church, conscious or caused by ignorance; unlawful actions of heretics and other similar persons against the Church and clergy are deemed ineffectual (first instance/administration)
68.	16, 5 (*De haereticis*), 35 (a. 399)	fragment w: C. 1, 5 (*De haereticis et manichaeis et samaritis*), 4, 7 (a. 407)	Arcadius, Honorius – Dominator, *vicarius Africae*	Obligation to persecute Manicheans (first instance)
69.	16, 6 (*Ne sanctum baptisma iteretur*), 2 (a. 377)	C. 1, 6 (*Ne sanctum baptisma iteretur*), 1	Valens, Gratian, Valentinian II – (Nicomachus) Flavianus (*vicarius Africae*)	Donatists are to be dispossessed of church buildings, which are to be returned to

Table 1 continued

No.	Book, title (in parentheses), location in the title, dating	*Interpretatio*, location in *leges barbarorum* and Justinian legislation (corresponding title in C. in parentheses)	Issuer – addressee	Scope
				the universal Church; confiscation of property for dissemination of erroneous doctrine on their land (first instance)
70.	16, 10 (*De paganis*), 2 (a. 341)		Constantius II, Constans – Madalianus *agens vices praefectorum praetorio* (*vicarius Italiae*)	Confirmation of restrictions imposed on performance of pagan sacrifices under threat of proportionate penalty (appeal?)
Addendum	Nav. Marc. 1 (a. 450)		Valentinian III, Marcian – *edictum*	Counteracting various abuses in civil and criminal proceedings, as well as in martial cases and cases involving soldiers (diocese administrators – first instance, appeal)

4.2. IMPERIAL CONSTITUTIONS PRESERVED IN *CODEX IUSTINIANUS* OF 534 AND *NOVELLA IUSTINIANI* 23 OF 535

In *Codex Iustinianus,* diocese administrators – apart from *comes Orientis* and *praefectus Augustalis* – are mentioned much less often than in *Codex Theodosianus*. In addition, a substantial number of those fragments is only a repetition, often with negligible changes, of fragments of constitutions in the Theodosian Code, which have been discussed above.[389] Therefore this subchapter will analyse only those enactments which are known exclusively from the Justinian collection. As in the case of the Theodosian Code, the constitutions

[389] Codifications carried out by Justinian I are comprehensively discussed in all handbooks of Roman law and syntheses of political history of the period and his reign. Literature devoted to the code itself is nonetheless not too extensive. See Krüger (1867); Jörs (1901); Wenger (1953): 638–651; Udalcova (1965): 10–12; Bonini (1989): 749–754; González Fernández (1997): esp. 31–50; Corcoran (2008); Corcoran (2011); Lokin, van Bochove (2011): 99–118. See also remarks in: Archi (1970); (1976a) and (1978); Humpress (2005). Cf. also: Falchi (1993) – generally on the techniques of codification in 528–534; Delmaire (2012) – concise typologies of premises underlying changes made by Justinian's committee and the methods employed to process texts adopted from C. Th. (with selected examples).

are analysed in the order adopted in the Justinian Code which, similarly to the former drew upon the arrangement of a praetorian edict. Nevertheless, it was limited to twelve books divided into titles which contained, in chronological order, fragments of imperial constitutions issued in the period from the reign of emperor Hadrian to the promulgation of *Codex repetitiae praelectionis*, that is 16 November 534.[390] The novel of Justinian I of 3 January 535, an act of considerable importance for the jurisdiction of all diocese administrators, will be analysed separately.

In book one of the Justinian Code, the dignity of diocesan vicar (except title 38: *De officio vicarii*) is mentioned three times.[391] On two occasions fragments of constitutions are concerned directly with his jurisdiction. The extensive title 3: *De episcopis et clericis et orphanotrophis et brephotrophis et xenodochis et asceteriis et monachis et privilegio eorum et castrensi peculio et de redimendis captivis et de nuptiis clericorum vetitis seu permissis* (On bishops, clergymen, superiors of: orphanages, houses of prayer, monasteries and their privileges, on *peculium castrense*, on those released from hostile captivity and on permitted and forbidden marriages of the clergy), contains a long excerpt from an enactment of Justinian himself, addressed to *magister officiorum* Hermogenes.[392] Also, it mentions various categories of imperial officials

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[390] Giomaro (2001) discussed the systematics of C. in detail, confronting it with other sources from the period (esp. C. Th. and D.); ibidem extensive bibliography.

[391] The title contains fragments of previously discussed C. Th. 1, 15, 7 = C. 1, 38, 1 (a. 377); C. Th. 1, 15, 8 = abridged version in: C. 1, 38, 2 (a. 379). *Comes Orientis* and *praefectus Augustalis* are mentioned much more often in the book. Admittedly, the titles concerned with those officials contain only 1 and 2 constitutions respectively – C. 1, 36, 1 (a. 465) and C. 1, 37, 1 (a. 386) = C. Th. 1, 14, 1 and C. 1, 37, 2 (a. 395) = C. Th. 1, 14, 2. Furthermore, *comes Orientis* is the addressee of C. 1, 4, 1 (a. 364) = C. Th. 13, 1, 5 (a fragment of it is also found in C. 4, 63, 1); C. 1, 9, 7 (a. 393), in addition to being mention in C. 1, 54, 6 (a. 399) analysed above. The said act also mentions *praefectus Augustalis* who, in book one of *Codex Iustinianus*, is additionally the addressee of constitutions of which some repeat the provisions of C. Th.: C. 1, 3, 8 (a. 385) = C. Th. 11, 39, 10; C. 1, 4, 5 (a. 396) = C. Th. 14, 27, 1; C. 1, 12, 1 (a. 397) = C. Th. 9, 45, 2; C. 1, 20, 1 (a. 396) = C. Th. 1, 2, 10; C. 1, 55, 2 (a. 392) = C. Th. 1, 29, 3; C. 1, 57, 1 (a. 469). See also below.

[392] C. 1, 3, 53 (a. 533): "Iustinianus A. Hermogeni magistro officiorum: Raptores virginum vel viduarum vel diaconissarum, quae deo fuerint dedicatae, pessima criminum peccantes capitis supplicio plectendos fuisse decernimus, quod non solum ad iniuriam hominum, sed ad ipsius omnipotentis dei inreverentiam committitur. 1. Qui itaque huiusmodi crimen commiserint et qui eis auxilium tempore invasionis praebuerint, ubi inventi fuerint in ipsa rapina et adhuc flagrante crimine comprehensi a parentibus sanctimonialium virginum vel viduarum vel diaconissarum aut earum consanguineis vel tutoribus seu curatoribus, convicti interficiantur. 2. Sin autem post commissum tam detestabile crimen aut potentatu raptor se defendere aut fuga evadere potuerit, in hac quidem regia urbe tam viri excelsi praefecti praetorio quam vir gloriosissimus praefectus urbis, in provinciis autem tam viri eminentissimi praefecti praetorio per Illyricum quam magistri militum per diversas nostri orbis regiones nec non viri

and military commanders (including *vicarii* and *praefectus Aegypti*) as responsible for prosecuting and exact severe punishment on thoes guilty of kidnapping consecrated virgins, widows, and deaconesses[393]. The edict, together with C. 9, 13, 1 (a. 533) discussed below, are examples of *leges geminae*, but it contributes nothing new to the jurisdiction of diocese administrators themselves, merely corroborates indirectly their duty to judge in criminal cases. At the same time, the wording of the act, especially the enumeration of imperial judges who were obligated to implement it, gives an impression of being a customary formula employed by the imperial chancery.

Book one of *Codex Iustinianus* mentions vicars again, in a similar fashion, in a constitution addressed by Zeno to PPO Sebastianus, which constitutes the entirety of title 49: *Ut omnes tam civiles quam militares iudices post administrationem depositam per quinquaginta dies in civitatibus vel certis locis permaneant* (For the civilian and military judges retiring from office to remain for 50

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spectabiles praefectus Aegypti et vicarii et proconsules et nihilo minus viri spectabiles duces et viri clarissimi rectores provinciarum nec non alii cuiuslibet ordines iudices, qui in locis inventi fuerint, simile studium cum magna sollicitudine adhibeant, ut eos possint comprehendere et comprehensos in tali crimine post legitimas et iuri cognitas probationes sine fori praescriptione durissimis poenis adficiant et mortis condemnent supplicio. 3. Bona autem eorum, si hoc commissum fuerit vel in sanctimonialem virginem, quae in asceterio vel monasterio degit, sive eadem virgo diaconissa constituta sit sive non, eidem monasterio vel asceterio, ubi consecrata est, addicentur, ut ex his rebus et ipsa solacium habeat, dum vivit, sufficiens et res omnes sacrosanctum asceterium seu monasterium pleno habeat dominio. 4. Sin autem diaconissa cuiuscumque ecclesiae sit, in nullo autem monasterio vel asceterio constituta est, sed per se degit, raptoris eius substantia ecclesiae, cuius diaconissa est, adsignetur, ut ex his facultatibus ipsa quidem usum fructum, dum superest, ab eadem ecclesia consequatur, ecclesia vero omnem proprietatem et plenam possessionem earundem rerum nostro habeat beneficio: nemine vel iudice vel alia quacumque persona hoc audente contemnere. 5. Poenas autem, quas praediximus, id est mortis et bonorum amissionis, constituimus non tantum adversus raptores, sed etiam contra eos, qui hos comitati in ipsa invasione et rapina fuerint. Ceteros autem omnes, qui conscii et ministri huiusmodi criminis reperti et convicti fuerint vel eos susceperint vel quamcumque opem eis intulerint, sive masculi sive feminae sunt, cuiuscumque condicionis vel gradus vel dignitatis, poenae tantummodo capitali subicimus, ut huic poenae omnes subiaceant, sive volentibus sive nolentibus sanctimonialibus virginibus seu aliis supra dictis mulieribus tale facinus fuerit perpetratum. D. XV k. Dec. Constantinopoli dn. Iustiniano pp. A. III cons." On the addressee of the enactment, see PLRE 3A (Hermogenes 1).

[393] Brunnemannus (1699): 38 accounted for the severity of punishments with the fact that the perpetrators of *raptus* on the said categories of women simultaneously committed sacrilege. On this widely discussed constitution, also in recent literature, see Beaucamp (1990): esp. 119 et seq.; Haase (1994a); Puliatti (1995), esp. 517–523; Kaser, Hackl (1996): § 89, note 19 (C. 1, 3, 53, 2 as an example of *praescriptio fori*); Lounghis, Blysidu, Lampakes (2005): 250 (reg. 996); Barbati (2012), esp. 233, 234, 237. Cf. also listing of texts in Volterra (1971): 1053–1056. The regulation was echoed in I. 4, 18, 8. Cf. Luchetti (1996): 563–569. On the problem of *leges geminae* in *Codex Iustinianus*, see Rodaro (2010).

days in the cities and specified locations).[394] It refers to eastern Roman imperial officials (e.g. "praefectus Augustalis vel comes Orientis aut cuiuslibet tractus vicarius") as well as judges delegated by PPO, who were prohibited from leaving the administrative unit they had governed within 50 days from dismissal and appointment of successor or from having concluded a dispute (in the case of delegated judges). For the period stipulated in the act, the judges were to remain on its territory, in cities which were the seats of particular offices, thus enabling the inhabitants of the province to come forward

[394] C. 1, 49, 1 (a. 479): "Imperator Zeno A. Sebastiano pp. Nemo ex viris clarissimis praesidibus provinciarum vel consularibus aut correctoribus neve qui administrationis maioris infulas meruerint, id est viri spectabiles proconsules vel praefectus Augustalis aut comes Orientis aut cuiuslibet tractus vicarius aut quicumque dux vel comes cuiuslibet limitis vel divinarum comes domorum, postquam sibi successum fuerit, audeat excedere de locis, quae rexisse noscitur, antequam quinquaginta dierum constitutus numerus finiatur. 1. Sed per id tempus praesides quidem et consulares nec non correctores in metropoli, spectabiles vero iudices tam civiles quam militares in civitatibus administratae dioeceseos illustrioribus publice, nec domi vel intra sancrosanctos terminos vel regiones aut potentes domos latitantes, sed in celeberrimis locis ante omnium quos nuper gubernaverant ora versentur, ut pateat omnibus facultas libera super furtis aut criminibus querimoniam commovendi, ita ut ab omni defensus iniuria provisione post eum administrantis ac periculo officii nec minus curialium et defensoris civitatis, iuratoriae tantum cautioni commissus, postquam fuerit in querimoniam devocatus, pulsare volentibus (ut dictum est) pro legum ratione respondeat: 2. Nec ullam ante praefinitum tempus de provincia discedendi excusationem ei tribuat vel divina revocatoria vel codicilli alterius administrationis oblati vel praeceptum amplissimae tuae sedis, ut alterius provinciae moderatoris vices obtineat, aut praeceptum praefatae vel alterius civilis seu militaris cuiuscumque potestatis, ut quamcumque sollicitudinem publicam gerat aut exhibeatur vel deducatur, aut postremum cuiuslibet artis astutia, cuiuscumque occasionis excogitata calliditas excludatur, ut modis omnibus, quae pro universarum provinciarum salute sancimus, sortiantur effectum. 3. Quod si quis temeritate punienda saluberrimam legem circumscribendam vel violandam crediderit, licet et maiestatis reus non immerito iudicetur, attamen quinquaginta librarum auri multam publicis calculis inferre cogetur: simili poena plectendo, qui post eum administratione suscepta minime eum curaverit honeste retinendum aut super eius fuga protinus referendum. 4. Administrationem autem deponere non volumus decessorem, antequam successor ad provinciae fines pervenerit, licet litteris ad eum seu programmate vel edicto ad officium et provinciales usus fuerit. 5. Ipse autem, qui praesentem fugiens non observaverit legem, ubicumque repertus fuerit, licet in hac florentissima civitate, ad provinciam sine ullo penitus obstaculo praeceptione tui culminis, cura etiam viri clarissimi rectoris provinciae, in qua repertus fuerit, deducetur, per sex mensuum curricula ibidem moraturus, quatenus interea minime crimina possint vel furta celari. 6. Officium etiam, quod eum (debito tamen honore servato) non prohibuerit contra legis tenorem discedere, triginta librarum auri dispendio ferietur. 7. Quod si intra quinquaginta dierum numerum fuerit forte pulsatus et praefato elapso tempore necdum finita lis fuerit, civiliter quidem super furtorum sceleribus pulsatus dato procuratore instructo post quinquaginta dies protinus habeat licentiam discedendi: accusatione vero super criminibus facta per inscriptionum laqueos inretitus usque ad terminum causae ibidem necessario perdurabit. 8. Sciant autem universi iudices, apud quos vel administrationis iure vel ex praecepto amplissimae tuae sedis huiusmodi controversiae civiliter vel criminaliter ventilantur,

with potential complaints against imperial officials. Violation of the prohibition carried high fines (50 pounds of gold) imposed on the former administrators of a given territory, as well as on their successors, should they fail to take appropriate steps to prevent predecessors from leaving. Hence, Zeno's constitution was not directly significant for the jurisdiction of diocese administrators. Nevertheless, the solution drew upon a principle known to Roman law, whereby officials were not brought to justice while discharging their function, while guaranteeing the possibility of taking legal action against them once they had stepped down.[395] Therefore, the enactment represents an indirect proof that imperial officials committed abuse, also in their judiciary capacity, as attested to by the title in *Codex Iustinianus* in which it was found. In all certainty, the constitution testifies to the importance that Zeno attached to enabling inhabitants of the Empire to exercise their rights, and the fact that Justinian I recognized the value of his regulation.[396]

It may be added that a similar list of diocese administrators is found in a short fragment of a fifth-century enactment, preserved in Greek and representing the entirety of title 41: *Ut nulli patriae suae administratio sine speciali permissu principis permittatur* (For no one to administer their homeland without a special permission from the princeps), which applied exclusively to the following imperial officials: *praefectus Augustalis*, *proconsules* (i.e. *Asiae* and *Achaiae*), *vicarii* and *comes Orientis*.[397]

Book two of *Codex Iustinianus* contains only those acts mentioning vicars which are unknown in *Codex Theodosianus* and, just as in the case of imperial constitutions found in book one, it brings to mind a repetitively used chancery formula. The first of those – an excerpt from the enactment of Leon I,

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intra viginti dierum spatium debere se praefata litigia, postquam orta fuerint, terminare. Nam si supersederint, ipsos quidem decem librarum auri condemnationem subire censemus, accusationem vero seu civilem intentionem semel in iudicium deductam praefato modo legitime terminari. D. V. id. Oct. Constantinopoli Zenone A. II cons." The contents of the enactment are summarized by Brunnemannus (1699): 91 et seq., who also points to later novels of Justinian's, which grant further rights to province inhabitants with respect to the former governors (Nov. Iust.: 8, 9; 95; 123, 23–24; 161, 1). On the addressee of the act, see Stein (1949): 781; PLRE 2 (Sebastianus 5).

[395] See e.g. Karlowa (1885): 204–206; Mommsen (1899): 83 et seq.

[396] The general nature of the constitution is often stressed by Barbati (2012), esp. 68, 237, 238 et seq., 366 et seq., 419. In the context of abuses the act is also analysed by Barnish, Lee, Whitby (2000): 189. On Zeno and his approach to the issue of ensuring justice, see Lippold (1972); Kosiński (2010b) – from the standpoint of religious policy, with further literature.

[397] C. 1, 41, 1 (s.a.): "Μεδεὶς Αὐγουστάλιος ἢ ἀνθύπατος ἢ βικάριος ἢ κόμης Ἀνατολῆς εἰς τὴν οἰκείαν ἐπαρχίαν γινέσθω, ἰδικῆς ἐπὶ τούτῳ χηρεύων κελεύσεως". Since the constitution was written down in Greek, it is probable that it dates to the second half of the fifth century, when Greek supplanted Latin as the language of imperial administration. See Lyd. *De mag*. 2, 12; 3, 11; 3, 42; 3, 68.

contained in title 7: *De advocatis diversis iudiciorum* (On advocates of various courts) – confirmed, among other things, the existence of courts of diocese administrators as a place where advocates of praetorian prefecture were entitled to practice.[398]

Similar provisions may be found in the enactment issued by Valentinian II, Theodosius and Arcadius, addressed to PPO Tatianus, which prescribed that imperial officials of the highest and intermediate level – which included vicars – were to have *procuratores* (court representatives) in cases in which they participated, and imposed the fine of 20 pounds of gold on the judges and their *officium* for failure to comply with it.[399] The constitution contained in title 12: *De procuratoribus*, may be seen as indirect evidence of the attempts to counteract abuses of the officials it refers to, most likely also committed

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[398] C. 2, 7, 11 (a. 460): "Imp. Leo A. Viviano pp. Nemini licere sancimus aliquem sub adsidendi colore statutis centum quinquaginta advocatis, quos sibi eminentissima praefectura in consilium adsumpserit, adgregare. 1. Non aliter vero consortio advocatorum tuae sedis aliquis societur, nisi prius in examine viri clarissimi rectoris provinciae, ex qua oriundus est, praesentibus cohortalibus gesta conficiat, quibus aperte pateat cohortali statui ac fortunae eundem minime subiacere, si praesens vir clarissimus rector provinciae fuerit in eius examine: si vero afuerit, apud defensorem sui oppidi gesta conficiat. 2. Iuris peritos etiam doctores eorum iubemus iuratos sub gestorum testificatione depromere, esse eum, qui posthac subrogari voluerit, peritia iuris instructum: filios autem togatorum excellentiae tuae, qui vel nunc causas agunt vel futuris temporibus actitaverint, ceteris supernumerariis anteferri. 3. Illud insuper decernimus, ut etiam his, qui ultra centum quinquaginta advocatos eminentissimae tuae sedis reperiuntur, liceat et apud virum spectabilem proconsulem vel praefectum Augustalem vel comitem Orientis, viros etiam spectabiles vicarios et apud rectores provinciarum negotia perorare. D. k. Febr. Constantinopoli Magno et Apolonio conss." On the addressee, PPO *Orientis* in 459–460, see PLRE 2 (Fl. Vivianus 2). The act was important for the professionalization of the Roman bar, as it introduced the requirement of legal education for the advocates of PPO. See Brunnemannus (1699): 137; Rossi (1970): 295; Kaser, Hackl (1996): esp. § 85.III; Wieling (1996): 423, 430. On the advocates of *comes Orientis*, their organisation, privileges and duties, see C. 2, 7, 22 (a. 505). On the advocates in Alexandria and *advocati fisci* in the service of *dux Aegyptiaci limitis et praefectus Augustalis* – C. 2, 7, 13 (a. 468).

[399] C. 2, 12, 25 (a. 392): "Imppp. Valentinianus, Theodosius et Arcadius AAA. Tatiano pp. Quicumque praetorianae vel urbanae praefecturae sublimissimae fastigium vel magisterium militare vel consistorianae comitivae insignia meruerit dignitatis vel proconsulare ius dixerit aut vicarii fuerit administratione subfultus, si quid ab eo vel infertur iurgium vel refertur, procuratoris personam in negotii sui iura substituat. Quod si quis sanctionis huius statuta transgressus iudiciis sese iurgaturus ingesserit, careat eius litis sorte, cuius non per procuratorem expectavit eventum. Iudex nihilo minus, qui contra fecerit, noverit a se viginti libras auri, ab officio quoque suo tantundem ponderis exigendum. D. XVIII k. Oct. Arcadio A. II et Rufino conss." On the addressee, PPO *Orientis* in 388–392, see PLRE 2 (Fl. Eutolmius Tatianus 5). Kaser, Hackl (1996): § 85, note 57, suggest justifiably that the function was performed by *advocati*, while the enactment aimed to prevent undermining their authority and to safeguard their social status.

while carrying out their judicial duties.[400] As noted above, any proceedings in such cases would take place once their official function ceased. However, the analysed constitution does not offer any more detailed information on the jurisdiction of the officials it mentions.

An extensive fragment of constitution addressed in 319 by Constantine the Great to Ianuarinus, probably a vicar in one of the Balkan dioceses, was included in book six of *Codex Iustinianus*, in title 1: *De fugitivis servis et libertis mancipiisque civitatum artificibus et ad diversa opera deputatis et ad rem privatam vel dominicam pertinentibus* (On fugitive slaves and municipal freedmen engaged in craft and various work, and those who belong to *res privata* and the emperor).[401] It imposed prohibition on seizing slaves who belonged to the cities and who were craftsmen under a high private penalty (12 solidi) to be paid to city treasury with an obligation to supply another slave; freed craftsmen who had been incited to escape were to be returned following the same rule.[402] An official described as *defensor* was to be responsible for pursuing claims in the event of kidnapping a slave.[403] If he failed to take appropriate steps, he was to supply two slaves, from which he was not released by imperial privilege or sale of such a runaway slave by the city to the person who kidnapped him.

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[400] In turn, the judiciary was the subject of C. 3, 12, 2 (a. 321), addressed to *Helpidio* (one of the first Roman a.v.p.p.). It prescribed that judges, the inhabitants of cities and craftsmen should observe *dies solis* but permitted field work to be carried out on those days. On Helpidius cf. introductory remarks on book two of C. Th.; on the significance of *dies solis* see remarks concerning C. Th. 9, 35, 4 (a. 380).

[401] C. 6, 1, 5 (a. 319): "Idem A. [Imperator Constantinus] ad Ianuarium. Mancipia diversis artibus praedita, quae ad rem publicam pertinent, in isdem civitatibus placet permanere, ita ut, si quis tale mancipium sollicitaverit vel avocandum crediderit, cum servo altero sollicitatum restituat, duodecim solidorum summa inferenda rei publicae illius civitatis, cuius mancipium abduxit: libertis quoque artificibus, si sollicitati fuerint, cum eadem forma civitati reddendis: ita ut pro fugitivo servo, si sollicitudine defensoris non fuerit requisitus et revocatus, idem defensor duo vicaria mancipia exigatur, nec beneficio principali nec venditione in eius persona iam de cetero valituris. Dat. XVI kal. Mart. Constantino A. V et Licynio C. conss". On Ianuarinus, see remarks on C. Th. 9, 1, 2 (a. 319) = C. 9, 40, 2.

[402] It was the only limitation imposed on freedmen's choice of profession in Late Antiquity. On this subject see recent work by Barschdorf (2012): 128 et seq.

[403] The fragment is often suspected to contain interpolation made by Justinian compilers, given the use of the term *defensor* (i.e. *civitatis*), which is said not to have been known in 319. The thesis was formulated by Seeck (1901c): 2365. Among recent monographic works, see Mannino (1984): 28–68; Frakes (1994); Pergami (1995): esp. 413 et seq., 416 et seq.; Frakes (2001): 39–42 – with references to sources attesting to earlier functioning of *defensores* and a discussion of the views expressed by other authors. Cf. also Kaser (1975): 344, 427 (in connection with remarks on the occurrence of private penalties in kind and moneys as well as on prohibition of mutual aid).

The enactment was certainly a kind of general privilege granted to cities. This is evident in the more lenient liability provided for by Constantine I in the case of kidnapping privately owned slaves.[404] Criminal and civil cases relating to slave kidnapping were heard by *iudices ordinarii*, i.e. primarily province governors, who most likely were also responsible for enforcing that privilege.[405] In turn, in this context vicar acted as official responsible for supervision over governors, and therefore the regulation was in fact not concerned with his jurisdiction.

An extensive excerpt from an act relating to diocesan vicars, known solely thanks to *Codex Iustinianus*, is the constitution of Theodosius II, which was included in book seven, title 62: *De appellationibus et consultationibus* (On appeals and consultations).[406] The act introduced new solutions pertaining to appellate judiciary on the territory of the Eastern Empire.[407]

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[404] C. 6, 1, 4 (a. 317). Both acts are discussed more comprehensively by Brunnemannus (1699): 658 et seq. C. 6, 1, 4 might have been addressed to Valerianus, who was also the recipient of C. Th. 3, 5, 3 (a. 330) = C. 1, 18, 11. Seeck (1919): 180, dated C. 6, 1, 4 to 330. Due to controversy as to the dating and the office held by Valerianus (conclusions that he was *vicarius* PVR are justified) and suspicion of interpolation, the enactment was not discussed in the main text. For instance, according to C. 6, 1, 4, apart from returning the slave, the perpetrator was to supply another one or pay 20 solids to the owner; the sanction was even more severe in the case of second or third kidnapping: the guilty party additionally had to supply two or three more slaves or pay corresponding multiplier of the aforesaid 20 solids; if they did not have sufficient means, they were subject to flogging. In the case of underage perpetrators, their caretakers or curators were held liable. See Dupont (1963): 20, 29, 180. It is quoted as a measure of the price of slave by Bernardi (1965): 160. It may also be noted that book six of *Codex Iustinianus* contains an act of Constantine I addressed to Leontios, count of Orient, which concerned son's right to acquire inheritance, in the event of obtaining the status of a person *sui iuris*: C. 6, 30, 15 (a. 349). On the enactment see Voci (1978): 65. On the count see PLRE I (Leontius 5); Kuhoff (1983): esp. 144 et seq., 379, note 113 with further literature.

[405] See C. Th. 1, 15, 1 (a. 325); C. Th. 1, 16, 1 (a. 315) – on the enactment, see Chapter 4.1 and C. 6, 1, 4 (a. 317), which mentioned the penalty of flogging *aestimatione competentis iudicis*.

[406] C. 7, 62, 32 (a. 440): "Imperatores Theodosius, Valentinianus AA. Cyro pp. Praecipimus ex appellationibus spectabilium iudicum, quae per consultationes nostri numinis disceptationem implorant, non nostram ulterius audientiam expectari, ne nostris occupationibus, quibus pro utilitate mundi a singulorum nonnumquam negotiis avocamur, aliena fraudari commoda videantur. 1. Sed si a proconsulibus vel augustali vel comite orientis vel vicariis fuerit appellatum, virum illustrem praefectum praetorio, qui in nostro est comitatu, virum etiam illustrem quaestorem nostri palatii sacris iudiciis praesidentes disceptationem iubemus adripere eo ordine, ea observatione, isdem temporibus, quibus ceterae quoque lites fatali die post appellationem in sacris auditoriis terminantur. Et hoc, licet quidam praedictorum spectabilium iudicum iure concesso ut sacri iudices appellationes acceperint 1a. (1) quod si a duce fuerit appellatum, si idem et praeses sit, praefectura necessario tantum iure ordinario in sacro auditorio iudicabit. 2. In his autem omnibus iudiciis, quae consultationum introduximus loco, vel apostolos vel ea quae apud eum gesta sunt, contra cuius sententiam dicitur appellatum, suscipere ab appellatoribus et cognitiones inducere apud viros illustres praedictos iudices et ea

Among other things, it established a two-person tribunal of PPO *Orientis* and QSP as competent to hear *appellatio* from judgements of judges who had the right to the title *spectabiles* – for instance, fragment 2 mentions diocese administrators separately, in the following order: *praefectus Augustalis*, *comes Orientis* and *vicarii*. As regards the matter which interests us, the enactment of 440 merely affirmed that diocese administrators issued rulings from which one could appeal.[408] Meanwhile, a fragment of that act preserved in title 63: *De temporibus et reparationibus appellationum seu consultationum* (On

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quae geruntur excipere scribere scriptaque litigatoribus edere nostros epistulares praecipimus: officiis videlicet eorum, cum quibus vir illustris quaestor iudicat, exsequentibus iudicata. 3. Haec, si appellatio fuerit oblata iudici, qui non ex delegatione cognoscit. Eorum enim sententiis appellatione suspensis, qui ex delegatione cognoscunt, necesse est eos aestimare, iuste nec ne fuerit appellatum, qui causas delegaverint iudicandas 4. Huic saluberrimae legi illud etiam consultissimae credidimus inserendum, ut, si privato, non illustri, uni pluribusve, ut adsolet, nostra serenitas adita delegaverit causam et eius eorumve definitio fuerit appellatione suspensa, vir quidem magnificus praefectus praetorio, qui in nostro est comitatu, cum viro illustri quaestore temporali iudicet die. 4a. Nostri vero libellenses quae apud arbitros gesta sunt suscipiant, cognitiones inducant et ea quae geruntur excipiant scribant scriptaque litigatoribus edant: qui etiam apud arbitros, licet illustres sint, ex delegatione nostra cognoscentes excipiunt, si in sacratissimo nostri numinis comitatu causae dicantur. 5. Sane si illustrium ac magnificorum iudicum sententiae fuerint appellatione suspensae, eorum videlicet, quorum sententias licet appellatione suspendi, per consultationem nostram volumus audientiam expectari, licet antea privato homini, id est non illustri, lite a nobis delegata is postea tempore definitionis illustri decoratus dignitate reperiatur: eodem observando et si alter ei coniunctus sit arbiter, qui non illustrem meruit dignitatem. 6. Quidquid autem hac lege specialiter non videtur expressum, id veterum legum constitutionumque regulis omnes relictum intellegant". Fragments of this constitution were also included in C. 7, 63, 2 (see below) and C. 3, 4, 1 (*Qui pro sua iurisdictione iudices dare darive possunt*) which pertained to delegated judges. Both are addressed in Brunnemannus (1699): 238 et seq. (who discusses the entirety of title C. 3, 4), 911 et seq., 914 et seq. The scope of its application was modified by Justinian I in connection with administrative reform: Nov. Iust.: 20, 5 (a. 536); 24, 4 (a. 536). On the office of QSP, see Chapter 6.

[407] The constitution is broadly analysed in the context of its significance for the Later Roman appeal. See Litewski (1968): esp. 186 et seq., 192–194, 201 et seq., 215 (note 299), 232 (note 362), 260 et seq., 277 (note 545); Scapini (1978): 62 et seq. (in the context of the so-called *ius novorum*); Voci (1982): 87, 89, 105 (in connection with the territorial extent of its application); Goria (1995a): 448; Kaser, Hackl (1996): esp. § 80.I; Pergami (2000): esp. 208–213, 225, 412, 415 et seq., 45; Pergami (2003): 178–180 – regarding the critique of the view that its texts corroborates the functioning of the so-called *appellatio more consultationis*; Barbati (2012), esp. 43, 47 et seq., 194, 241, note 34, 419, 622, 667. Ensslin (1958): 2031, rightly observed that it held valid only in the East. It is also analysed in the context of powers of PPO *Orientis* by Caimi (1984): esp. 311–313, 351–359; and as an example of consolidation of the authority of QSP – Harries (1988): 170; Delmaire (1995): 61 et seq. On imperial legislation after promulgation of C. Th., see also Gaudemet (1971b).

[408] Apart from constitutions repeated after C. Th., *comes Orientis* was also referred to in C. 3, 13, 4 (a. 331), which in fact is a fragment of C. Th. 11, 30, 16 (a. 331) and C. Th. 11, 34, 1 (a. 331) analysed above.

deadlines for filing or reinstating deadlines for appeals or consultations), in the same book of *Codex Iustinianus*, mentions *spectabiles iudices* in the context of determining deadlines for hearing an appeal ("fatalium dierum") in the event of appeals from their judgements.[409] The fact that *praefatio* and fragment 3 refers to "spectabilis iudex" next to "rector provinciae" would suggest that the legislator sought to establish deadlines for appeals against first instance rulings. The conclusion is further supported by fragments 4–7, which specify detailed deadlines for filing appeals from judgements of delegated judges, including judges appointed by PPO, *magister officiorum* and other *illustres*. This would mean that the analysed fragments of the constitu-

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[409] C. 7, 63, 2 (a. 440): "Imperatores Theodosius, Valentinianus AA. Cyro pp. Tempora fatalium dierum pro saeculi nostri beatitudine credidimus emendanda ubique dilationum materias amputantes. Et primi quidem fatalis diei tempora post appellationem, sive a viro clarissimo rectore provinciae sive a spectabili iudice fuerit appellatum, sex mensuum esse iubemus. 1. Quod si primo fatali die lapsus est appellator, tricesimum primum diem alterum volumus esse fatalem. Quod si eo quoque appellator exciderit, tertium similiter totidem diebus intermissis fatalem observari decernimus. Quod si tertius quoque lapsus fuerit temporalis, quartum etiam fatalem post tricesimum primum diem similiter observari decernimur. 2. Quod si ita contigerit, ut quattuor fatalibus diebus qui appellavit exciderit, tunc intra trium alium mensuum spatium a nostro numine reparationem peti praecipimus: qua petita nec adversarium decernimus admoneri nec temporalem diem a petitione reparationis numerari, sed trium mensum spatio ex quarto, fatali numerando causam induci praecipimus, licet ante unum diem reparatio fuerit impetrata, licet adlegata in iudicio virorum illustrium praefectorum non fuerit. 3. Nec hoc parti nocebit adversae, cum non dubius, sed notus omnibus dies fatalis appareat. Haec, si adversus viri clarissimi rectoris provinciae vel spectabilium iudicum sententias fuerit appellatum. 4.(1) quod si arbitro in provincia ex delegatione sacra disceptante appellatio subsequatur, post priorem fatalem lapsum tres alii tantum fatales dies similiter ut supra dictum est servabuntur, nulla reparatione a nostro numine postulanda, ita ut nonaginta tribus diebus elapsis iudicata congruae exsecutioni mandentur. 5. Sin autem ex sententia praetorianae praefecturae vel magistri officiorum vel alio illustri dignitate decorato arbiter in hac sacratissima civitate fuerit delegatus et appellatio contra definitionem vel sententiam eius subsecuta fuerit, primus quidem fatalis dies duorum mesum, alii vero tres ad similitudinem supra dictorum fatalium numerentur. 6. Qui vero delegatum vel a spectabili iudice seu praeside provinciae arbitrum appellaverit, primum quidem fatalem diem duorum mensum, tres vero alios ad similitudinem praedictorum fatalium dierum habeat. 7.(2) illud etiam circa observationem fatalium dierum custodiri decernimus, ut, si forte temporales in feriatos quoquo modo inciderint, praecendentes eos dies ut temporales a litigantibus observentur. Quod si quis secus, ac iura praecipiunt, lapsus die fuerit temporali et hoc primo loco vel a praesente adversario vel etiam a iudice, si solus litigat, appellatori fuerit oppositum probatumque, pro eo habebitur appellator, ac si sententiam quoquo modo non coactus susceperit. D. XII k. Iun. Valentiniano A. V et Anatolio conss." On this fragment of the act cf. Donatuti (1966): 162; Litewski (1968): esp. 194 et seq., 196, 199, 201–203, 205 (note 252), 208, 210, 212–214, 216; Kaser, Hackl (1996): § 95, note 26; Pergami (2000): 211 et seq., 466, 467 et seq. (however, the author does not elaborate on the issue of whom *spectabiles* denoted).

tion also pertained to deadlines for appeals from adjudication of diocesan vicars, issued in first instance.

Another enactment relating to diocesan vicars constitutes a fragment of title 12 in book eight of *Codex Iustinianus*: *De ratiociniis operum publicorum et de patribus civitatum* (On the accounts associated with public works and on city fathers).[410] Constitution issued by emperor Zeno and addressed to PPO *Orientis* Arcadius determined penalties for abuses of various kinds of imperial dignitaries and their auxiliary personnel, which took place while supervising public works conducted in cities.[411] Among diocese administrators of the Eastern Empire it mentioned *praefectus Augustalis*, *comes Orientis* and *vicarii* separately.

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[410] C. 8, 12, 1 (a. 490): "Imperator Zeno A. Arcadio pp. Iubemus provinciarum quidem rectores et singulae dioeceseos viros spectabiles iudices, id est praefectum Augustalem et comitem Orientis et utrosque proconsules et vicarios una cum suis apparitoribus pro tenore generalium magnificae tuae sedis dispositionum discutiendis publicis operibus vel aquae ductibus, qui ex civilibus reditibus vel a quolibet spontanea munificentia facti sunt vel fuerint, modis omnibus abstinere, nec aliquid quolibet modo quolibet tempore in discutiendo civiles reditus vel facta opera vel quae fieri adsolent, unam siliquam sibi ex singulis erogandis solidis vindicando aut quodcumque lucrum captando, cum huiusmodi rebus habere commune, utpote patribus civitatium et curae eorum deputatis. 1. Qui vero opus aliquod pro sua liberalitate se facturos promiserint, licet certum sit eos ex sola pollicitatione ad implendum suae munificentiae opus necessitate iuris teneri, nullam tamen eos vel heredes eorum super facto opere ratiocinium vel discussionem aut aliquam (utpote non in integrum promissa quantitate in id opus erogata vel inutiliter facto opere, aut alia qua ratione) quocumque modo quocumque tempore inquietudinem sustinere concedimus. 2. Quod si vir clarissimus provinciae moderator vel eius officium reditus publicos vel opera publica contra vetitum discutiendo vel unam siliquam aut quodlibet ex isdem reditibus vel operibus vindicando sacratissimae nostrae legis praecepta transierint, quinque quidem officii primates exilio damnati perpetuo bona sua civitati quam laeserint non dubitent vindicanda, rector vero provinciae quinquaginta librarum auri ferietur dispendio: hac eadem poena spectabilibus quoque iudicibus, licet illustri dignitate fuerint decorati, et eorum officiis, sicut superius distinctum est, imminenda. D.....". Dating after Lounghis, Blysidu, Lampakes (2005): 80 (reg. 166). On the PPO, see PLRE 2 (Arcadius 5). Previously discussed were C. 7, 62, 29 (a. 398) = C. Th. 9, 40, 16 (a. 398) and C. 7, 67, 2 (a. 362) = C. Th. 11, 30, 30 (a. 362). It should also be noted that a similar issue was regulated in C. 8, 10, 6 (a. 321), addressed to *Helpidio agenti vicem pp.* (one of the first Roman a.v.p.p.). It prohibited, under penalty of demolition, to embellish private buildings with materials obtained from ruined public edifices. On the figure cf. introductory remark to book two of C. Th. As regards other diocese administrators, mentions relating to *comes Orientis* are also found in: C. 8, 11, 2 (a. 349) = C. Th. 15, 1, 6 – see remarks on C. Th. 15, 3, 2 (a. 362) and Dupont (1968) 519–522. Book eight of *Codex Iustinianus* also contains an enactment of Julian the Apostate addressed to *comes Orientis*, which has an important bearing on *litis contestatio*: C. 8, 35, 12 (a. 363) – see Sargenti (1979): 366–368; Tomulescu (1979): 417 et seq.; Kaser, Hackl (1996): esp. § 89, note 18.

[411] On *patres civitatum*, who are identified with *curatores*, mentioned in C. 8, 12, 1, 2, who probably administered separate municipal funds, see Jones (1964): 759 (note 104), 106; Jones (1971): 547 and esp. Rouché (1979).

In the following book of *Codex Iustinianus,* the entire title 13: *De raptu virginum seu viduarum nec non sanctimonialium* (On kidnapping virgins or widows other than consecrated ones) comprises an extensive fragment of constitution of Justinian I of 533. In the act, all imperial officials, including vicars, are obligated by the emperor to comply with and enforce the enactment[412].

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[412] C. 9, 13, 1 (a. 533): "Imperator Iustinianus A. Hermogeni magistro officiorum Raptores virginum honestarum vel ingenuarum, sive iam desponsatae fuerint sive non, vel quarumlibet viduarum feminarum, licet libertinae vel servae alienae sint, pessima criminum peccantes capitis supplicio plectendos decernimus, et maxime si deo fuerint virgines vel viduae dedicatae (quod non solum ad iniuriam hominum, sed ad ipsius omnipotentis dei inreverentiam committitur, maxime cum virginitas vel castitas corrupta restitui non potest): et merito mortis damnantur supplicio, cum nec ab homicidii crimine huiusmodi raptores sint vacui. 1. Ne igitur sine vindicta talis crescat insania, sancimus per hanc generalem constitutionem, ut hi, qui huiusmodi crimen commiserint et qui eis auxilium tempore invasionis praebuerint, ubi inventi fuerint in ipsa rapina et adhuc flagrante crimine comprehensi a parentibus virginum vel viduarum vel ingenuarum vel quarumlibet feminarum aut earum consanguineis aut tutoribus vel curatoribus vel patronis vel dominis, convicti interficiantur. 1a. Quae multo magis contra eos obtinere sancimus, qui nuptas mulieres ausi sunt rapere, quia duplici crimine tenentur tam adulterii quam rapinae et oportet acerbius adulterii crimen ex hac adiectione puniri. 1b. Quibus connumerabimus etiam eum, qui saltem sponsam suam per vim rapere ausus fuerit. 1c. Sin autem post commissum tam detestabile crimen aut potentatu raptor se defendere aut fuga evadere potuerit, in hac quidem regia urbe tam viri excelsi praefecti praetorio quam vir gloriosissimus praefectus urbis, in provinciis autem tam viri eminentissimi praefecti praetorio per Illyricum et Africam quam magistri militum per diversas nostri orbis regiones nec non viri spectabiles praefectus Aegypti vel comes Orientis et vicarii et proconsules et nihilo minus omnes viri spectabiles duces et viri clarissimi rectores provinciarum nec non alii cuiuslibet ordinis iudices, qui in locis inventi fuerint, simile studium cum magna sollicitudine adhibeant, ut eos possint comprehendere et comprehensos in tali crimine post legitimas et iuri cognitas probationes sine fori praescriptione durissimis poenis adficiant et mortis condemnent supplicio. 1d. Quibus et, si appellare voluerint, nullam damus licentiam secundum antiquae constantinianae legis definitionem. 1e. Et si quidem ancillae vel libertinae sint quae rapinam passae sunt, raptores tantummodo supra dicta poena plectentur, substantiis eorum nullam deminutionem passuris. 1f. Sin autem in ingenuam personam tale facinus perpetretur, etiam omnes res mobiles seu immobiles et se moventes tam raptorum quam etiam eorum, qui eis auxilium praebuerint, ad dominium raptarum mulierum liberarum transferantur providentia iudicum et cura parentum earum vel maritorum vel tutorum seu curatorum. 1g. Et si non nuptae mulieres alii cuilibet praeter raptorem legitime coniungentur, in dotem liberarum mulierum easdem res vel quantas ex his voluerint procedere, sive maritum nolentes accipere in sua pudicitia remanere voluerint, pleno dominio eis sancimus applicari, nemine iudice vel alia quacumque persona haec audente contemnere. 2. Nec sit facultas raptae virgini vel viduae vel cuilibet mulieri raptorem suum sibi maritum exposcere, sed cui parentes voluerint excepto raptore, eam legitimo copulent matrimonio, quoniam nullo modo nullo tempore datur a nostra serenitate licentia eis consentire, qui hostili more in nostra re publica matrimonium student sibi coniungere. Oportet etenim, ut, quicumque uxorem ducere voluerit sive ingenuam sive libertinam, secundum nostras leges et antiquam consuetudinem parentes vel alios quos decet petat et cum eorum voluntate fiat legitimum coniugium. 3. Poenas autem quas praediximus, id

Justinian I replaced the previously dispersed regulations in that respect, but the fragment mentioning vicars (C. 9, 13, 1, 1c) merely attests to the fact that diocesan vicariates existed in the Easter Empire at that time – along with *comes Orientis* and *praefectus Augustalis* – and stipulates their duty to prosecute that crime.[413]

Book nine of *Codex Iustinianus,* title 5: *De privatis carceribus inhibendis* (On the prohibition of private gaols), contains a fragment of Zeno's constitution addressed to PPO Basilius, which proscribed the practice of imprisonment by private persons. It pronounced that such action constituted *crimen laese maiestatis*, which carried death penalty.[414] As regards the matter discussed

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est mortis et bonorum amissionis, non tantum adversus raptores, sed etiam contra eos qui hos comitati in ipsa invasione et rapina fuerint constituimus. 3a. Ceteros autem omnes, qui conscii et ministri huiusmodi criminis reperti et convicti fuerint vel eos susceperint vel quacumque opem eis intulerint, sive masculi sive feminae sunt, cuiuscumque condicionis vel gradus vel dignitatis, poenae tantummodo capitali subicimus, ut huic poenae omnes subiaceant, sive volentibus sive nolentibus virginibus seu aliis mulieribus tale facinus fuerit perpetratum. 3b. Si enim ipsi raptores metu atrocitatis poenae ab huiusmodi facinore temptaverint se, nulli mulieri sive volenti sive nolenti peccandi locus relinquetur, quia hoc ipsum velle mulieri ab insidiis nequissimi hominis qui meditatur rapinam inducitur. Nisi etenim eam sollicitaverit, nisi odiosis artibus circumvenerit, non facit eam velle in tantum dedecus sese prodere. 3c. Parentibus, quorum maxime vindicta interat, si patientiam praebuerint ac dolorem remiserint, deportatione plectendis. 4. Et si quis inter haec ministeria servilis condicionis fuerit deprehensus, citra sexus discretionem eum concremari iubemus, cum hoc etiam Constantiniana lege recte fuerat prospectum. 5. Omnibus legis Iuliae capitulis, quae de raptu virginum vel viduarum seu sanctimonialium sive antiquis legum libris sive in sacris constitutionibus posita sunt, de cetero abolitis, ut haec tantummodo lex in hoc capite pro omnibus sufficiat. 6. Quae de sanctimonialibus etiam virginibus et viduis locum habere sancimus. D. XV k. Dec. Constantinopoli dn. Iustiniano pp. A. III cons." Excerpts from the same enactment were also included in: C. 1, 3, 53 (see also literature cited there); C. 5, 17, 11, possibly C. 7, 24, 1 and C. 11, 48, 24. The constitution of 533 was supplemented with Nov. Iust. 143 (=150) of 563, whose issue was occasioned by concern regarding the application of earlier regulation of Justinian I. Among the recent works only cf. Beaucamp (1990): esp. 114–118, 120 et seq.; Haase (1994a); Puliatti (1995): esp. 503–529.

413 The necessity for the enactment to be applied by all imperial official is noted by Brunnemannus (1699): 1104 et seq., who states e.g. "(…) Jubentur etiam omnes Judices tales raptores persequi, & eos probato Crimine (…)" (spelling as in original – J.W.). On the phenomenon of *raptus* in the discussed period cf. Evans Grubbs (1989); Beaucamp (1992): 71–74, and on the place of the constitution among enactments devoted to marital prohibitions in post-classical law – Kaser (1975): 169. Abduction of women, in order to marry them has been and remains a frequent phenomenon in many cultures. See Ayres (1974); Barnes (1999); Wrangham, Peterson (1999): 80–103. According to evolutionary psychology the links between violence and sex are an evolutionary heritage from the times before the emergence of *Homo sapiens*. See remarks in connection with *crimen raptus* in Late Antiquity compiled in: Wiewiorowski (2013c).

414 C. 9, 5, 1 (a. 486): "Imperator Zeno A. Basilio pp. Iubemus nemini penitus licere per Alexandrinam splendidissimam civitatem vel Aegyptiacam dioecesin aut quibuslibet imperii

here, the act certainly pertained to practices on the territory of the diocese of Egypt, more precisely in Alexandria, mentioning directly *praefectus Augustalis* as the one who was responsible for combating the crime, under pain of finding the failure to take steps as *crimen laese maiestatis* as well.[415] Most importantly, however, having acknowledged that the practice should be dealt with in other provinces too, the constitutions specified clearly that its enforcement was the duty of province governors (*rectores provinciarum/moderatores*) and superiors of their offices – *primates officiorum*.[416] It turn, it did not mention *vicarii* or *comes Orientis* at all, who therefore would only have been able to hear appeals from the rulings of province governors. In turn, in a constitution of 529, Justinian I provided that only selected categories of officials are competent to order having free persons placed in custody, mentioning "περιβλέπτων ἀρχόντων" among those officials, thus indirectly specifying that diocese administrators, who in 529 were entitled to the title, possessed that right as well.[417]

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nostri provinciis vel in agris suis aut ubicumque domi privati carceris exercere custodiam, viro spectabili pro tempore praefecto augustali, et viris clarissimis omnium provinciarum rectoribus daturis operam semperque futuris in speculis, ut saepe dicta nefandissimorum hominum adrogantia modis omnibus opprimatur. 1. Nam post hanc saluberrimam constitutionem et vir spectabilis pro tempore Augustalis et quicumque provinciae moderator maiestatis crimen procul dubio incursurus est, qui cognito huiusmodi scelere laesam non vindicaverit maiestatem: primatibus insuper officiorum eiusdem criminis laqueis constringendis, qui, simulatque nove-rint memoratum interdictum facinus in quocumque loco committi, proprios iudices de oppri-mendo nefandissimo scelere non protinus curaverint, instruendos. 2. Nam illud perspicuum est eos qui hoc criminum genus commiserint pro veterum etiam legum et constitutionum tenore tam-quam ipsius maiestatis violatores ultimo subiugandos esse supplicio. D. k. Iul. Constantinopoli Longino vc. cons." On the PPO see PLRE 2 (Basilius 5).

[415] Despite unequivocal prohibition – see Brunnemannus (1699): 1084 – on the phenomenon of private prisons in post-classical period see Robinson (1968): esp. 389, 396; Kaser (1975): 330; Bonini (1990): 207 (with a discussion concerning the applicability of the act – note 105); Lovato (1994): 224; Navarra (2009): esp. 227–231. On such phenomena in Egypt, in the light of papyri, see Taubenschlag (1959): including 718 (where the author mentions C. 9, 5, 1).

[416] The extent of territorial application is comprehensively discussed in Navarra (2009): 228, whose viewpoint was adopted here.

[417] C. 9, 4, 6 (a. 529). On the enactment, which makes important provisions for securing claims in the *per libellum* process (the latest form of *cognitio extra ordinem*) see Bonini (1968): esp. 194–207; Kaser, Hackl (1996): § 87.II; Navarra (2009): 240–251 with further literature. The noun ὁ ἄρχων was employed in Late Antique sources primarily to denote province governor. See e.g. Hanton (1927–1928): 67 et seq.; Mason (1974): 111–113; de Salvo (2001). Only in 535 did all province governors receive the title *spectabiles*, to which diocese administrators certainly had been entitled earlier. Cf. Chapter 6. On the legislation and imprisonment practices in Late Antiquity cf. Lovato (1994): 169–226; Krause (1996): 316–344. On the participation of diocese administrators in detaining the accused, see also the Chapter 5.2.

Almost all constitutions mentioning diocesan vicars in books ten and eleven of Justinian's Code pertained to issues associated with the collection of taxes. Among those, one should draw attention to three constitutions.[418]

Two enactments of Leon I in title 23: *De canone largitionalium titulorum* (On taxes on account of *largitiones*), regulated public finances during preparation of expedition against Vandals (in 468), which ended in a spectacular defeat of the Byzantine fleet.[419] They attest to the existence of vicariates in the Eastern

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[418] Fiscal and economic affairs associated with the activities of *comes Orientis* are the subject of a number of enactments in those books of Justinian's Code, to some extent repeating the provisions of C. Th. (the additional information in parentheses concern only unrelated constitutions): C. 10, 2, 4 (a. 369) = C. Th. 10, 16, 2; C. 10, 32, 22 (a. 362) = C. Th. 12, 1, 51 (rules of acquiring the status of curial of Antioch); C. 10, 32, 23 (a. 362) = C. Th. 12, 1, 54 (duties of curials); C. 10, 37, 1 (a. 349) = C. Th. 12, 2, 1; C. 11, 43, 4 (a. 397) = C. Th. 15, 2, 7 (construction of aqueducts). Furthermore, the probably interpolated C. 11, 68, 2 (s.a.) was strictly associated with the status of the coloni – cf. Seeck (1919): 118 (who nevertheless suggests that its addressee in 319 might have been *Ianuarinus*, mentioned in Chapter 4.1.); Dupont (1963): 32–34; Barnes (1982): 142 (after a. 325); Corcoran (2000): 309. In turn, C. 10, 40, 9 (a. 392) – with honorific titles of women. Meanwhile, *praefectus Augustalis* was mentioned in the context of issues relating to the rights of curials of Alexandria and judiciary they were subject to, repeating fragments from C. Th.: C. 10, 32, 57 (a. 436) = C. Th. 12, 1, 190; C. 10, 32, 59 (a. 436) = C. Th. 12, 1, 192; C. 10, 65, 6 (a. 416) = C. Th. 12, 12, 15. C. 10, 40, 8 (a. 390), addressed to an anonymous *praefectus Augustalis* confirms that Constantinople was to be the *domicilium* of senators, while C. 11, 2, 4 (a. 409) = C. Th. 13, 5, 32 demonstrates his responsibilities in ensuring vessels for the fleet which brought grain to Constantinople.

[419] C. 10, 23, 3 (a. 468): "Imperatores Leo et Anthemius AA. Heliodoro comiti sacrarum largitionum. Praecepit nostra serenitas neque veloci cursui neque alii praeter veterem consuetudinem gravamini subiacere chartularios, qui de cohortalibus officiis uniuscuiusque provinciae largitionales titulos retractare constituuntur, cum et idem amplissima praefectura disposuisse perhibeatur, ut his necessitatibus liberati fideliter largitionales titulos valeant retractare. 1. Quod si aliquo tempore nostra iussio temerario ausu ex aliqua parte fuerit violata, tam rector provinciae quam apparitio eius triginta librarum auri condemnatione plectentur. 2. Insuper virum spectabilem orientis comitem eiusque officium licentiam habere conatus nefarios inhibendi tam moderatorum quam cohortalis officii, cum de hac re admoniti fuerint a palatinis et eandem poenam formidantibus, si non omnibus modis pietatis nostrae decreta congruum mereantur effectum. 3. Illud etiam generali forma sancimus, ut in omnibus pro-vinciis tam nominatio specialium susceptorum largitionalium titulorum quam defensio tractatorum non tantum per viros clarissimos moderatores provinciarum, sed etiam per viros spectabiles proconsules et praefectum augustalem ac laudabiles vicarios una cum eorum officiis, admonentibus semper nec non imminentibus palatinis procuretur providentibus, ut post nominationem etiam specialium susceptorum largitionalium titulorum nulla minuendae exactionis ad sacrum pertinentis aerarium aut transferendi ad arcarios aut quoslibet alios extraneos titulos rectoribus provinciarum aut eorum officiis, sed etiam curialibus licentia permittatur: quadrimenstruis brevibus per idoneum tractatorem eorundem titulorum super commendandis ratiociniis publicis periculo rectorum provinciarum ad sacratissimam urbem transmittendis. 4. Nam quacumque ex parte, quam iussit nostra tranquillitas, si minus fuerit procuratum, poena superius designata tam ipsi iudices quam eorum officia se noverint esse plectendos". C. 10, 23, 4 (a. 468): "Idem [Leo et Anthemius] AA. Heliodoro

Empire, next to offices of *comes Orientis* and *praefectus Augustalis* (constitution C. 10, 23, 3 devotes more attention to the duties of *comes Orientis*) – and one may have the impression that they iterate the fixed chancery formulations used by imperial *scrinia*.[420]

The act of Constantine the Great of 325, addressed to Maximus, *vicarius Orientis*, guaranteed the coloni the right to sue their masters if they were imposed additional levies, and the right to have them reimbursed upon proceeding before an appropriate judge.[421] The constitution is analysed chiefly in the context of rights of the coloni, and this is how it must have been perceived at the time when *Codex Iustinianus* was being compiled, given that an excerpt from it was included in book eleven, as the first constitution in title 50: *In quibus causis coloni censiti dominos accusare possunt* (In which cases registered coloni may sue the proprietors).[422] The regulation was most likely associated with the additional duties imposed upon coloni, which may have intensified as

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comiti sacrarum largitionum. Praecipimus, ut, si forte delegatio, quae ab amplissima praefectura in diversas provincias ex more quotannis emittitur, minus contineat omnes largitionales titulos aut quo modo exactio eorum debet procedere, nihilo minus competentem a viris spectabilibus tam proconsulibus quam vicariis et viro spectabili comite orientis et praefecto augustali nec non rectoribus provinciarum eorumque officiis et curialibus omnium largitionalium titulorum exactionem procurari: vicenarum librarum auri condemnationem prae oculis habentibus, si quid minus exactum vel illatum sacro fuerit aerario, quam prisca et inveterata consuetudo sacris largitionibus inferri constituit. D. VIII k. Aug. Constantinopoli Anthemio A. I cons." On the expedition in 468 and its ramifications, see Stein (1959): 358–362, 389–391; Heather (2006): 461–470, 490–495.

[420] Constitutions in title C. 10, 23 are discussed in Brunnemannus (1699): 1189 et seq. On C. 10, 23, 3 see more broadly Delmaire (1989): esp. 162, 244–247; Scarcella (1997): esp. 45, 403–408, 460, 477 (note 86); Barbati (2012): on the role of vicar esp. 310 et seq., 365. On C. 10, 23, 4 (a. 468), see Scarcella (1997): esp. 47, 409, 459, 460. Cf. also Boulvert (1976): 167, 169 on the dependencies between those and terminology they employ.

[421] C. 11, 50, 1 (a. 325): "Imperator Constantinus A. ad Maximum vicarium Orientis. Quisquis colonus plus a domino exigitur, quam ante consueverat et quam in anterioribus temporibus exactus est, adeat iudicem, cuius primum poterit habere praesentiam, et facinus comprobet, ut ille, qui convincitur amplius postulare, quam accipere consueverat, hoc facere in posterum prohibeatur, prius reddito quod superexactione perpetrata noscitur extorsisse. PP. id." See also other enactments addressed to that vicar: C. Th. 7, 20, 4 (a. 325) – concerning tax exemption of soldiers, their families and veterans (see more broadly Dupont [1963]: 66, 71 et seq., 75, 91); C. Th. 12, 1, 10 (a. 325); C. Th. 12, 1, 12 (a. 325) = C. 10, 39, 5 – both pertaining to the status of decurions and their attempts to evade duties associated with their status; C. Th. 15, 12, 1 (a. 325) = C. 11, 44, 1 – affirming the prohibition of gladiator games and decreeing that convicts should be sent to labour in the mines. On Maximus, see PLRE 1 (Valerius Maximus 49); Kuhoff (1983): esp. 377, note 107, with a dispute surrounding the figure and further literature, which nevertheless does not pertain to his vicarship in 325.

[422] Regarding the rights of coloni see Brunnemannus (1699): 1284 et seq. as well as later works, Dupont (1963): 36; Kaser (1975): 146 et seq.; Panitschek (1990): 146; Sirks (1993): 365; Mirkovič (1997): 59 et seq.; Rosafio (2002): 204.

Constantine consolidated the administration in the East, after the final victory over Licinius in 324.[423] It may be surmised that Maximus was to control whether provisions of the analysed constitution were complied with. It can hardly be expected that he was to act as judge in the disputes it described. Thus the act would not be concerned with the judicial prerogative of diocesan vicars, but the need to enforce law, and to exercise their general controlling powers over province governors, which is attested to in numerous sources. Possibly, it may be concluded that the constitution indirectly corroborates their competence to hear appeals from the judgements of province governors.

A fair number of constitutions in the last, twelfth book of *Codex Iustinianus* mentioned diocesan vicars. However, most of those pertained to honorary vicars, repeating, sometimes with minor amendments, the provisions of *Codex Theodosianus*, therefore they bear little importance for the scope of jurisdiction of *vicarius dioeceseos*.[424] An act of equally negligible significance in that respect is found in title 50: *De cursu publico angariis et parangariis* (On those obligated to supply courier horses and other services for the benefit of *cursus publicus*), which repeated a fragment of constitution from *Codex Theodosianus*, relating to the abuses of e.g. vicars who took advantage of *cursus publicus*.[425]

Analogous observations may be made with respect to all three remaining constitutions in that book, contained in title 59: *De diversis officiis et apparitoribus iudicum et probatoriis eorum*, which is concerned with *officii*. The first two restate the provisions of *Codex Theodosianus* pertaining to vicars' auxiliary personnel in the context of tax collection or offices of diocese administrators.[426] As regards the jurisdiction of vicars, only the last of the constitutions, known solely from the fragment found in *Codex Iustinianus*, is worth considering.[427]

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[423] On reorganization in the East, cf. Dupont (1971b): esp. 493, note 71. Constantine's policy towards the entire prefecture of the Orient in the light of imperial constitutions was analysed by the author in a separate paper: Dupont (1972a). See also Chapter 2.2.3.

[424] C. 12, 15, 1 (a. 425) = C. Th. 6, 21, 1 (see Andreotti [1972]: 184, 202–204, 207, note 101; Delmaire [2012]: 174); C. 12, 19, 1 (a. 386) = C. Th. 6, 26, 4 (see Delmaire [2012]: 175); C. 12, 21, 5 (a. 440/441); on its significance, given that it actually restored previously restricted privileges, see Giardina (1977): 37 et seq. Furthermore, the court ceremonial was provided for in: C. 12, 13, 1 (a. 413) = C. Th. 6, 16, 1; C. 12, 17, 1 (a. 387) = C. Th. 6, 24, 4 (a. 387). Unlike in other books of the code, *comes Orientis* is referred to much less often than *vicarius*: C. 12, 50, 10 = C. Th. 8, 5, 41 (a. 382), concerning counteracting abuses of *cursus publicus* (see Chapter 3.2) and C. 12, 59, 6 (a. 426) = C. Th. 8, 7, 21 – on the latter see below. Analogously, remarks pertaining to *praefectus Augustalis* are more seldom: C. 12, 50, 14 (a. 392) = C. Th. 8, 5, 47 – concerning maintenance of places associated with the functioning of *cursus publicus*.

[425] C. 12, 50, 9 (a. 382) = C. Th. 8, 5, 40. The entire title in *Codex Iustinianus* devoted to *cursus publicus* is discussed in Brunnemannus (1699): 1350 et seq. See also remarks in Chapter 3.2.

[426] C. 12, 59, 1 (a. 371) = C. Th. 8, 7, 11 and C. 12, 59, 6 (a. 426) = C. Th. 8, 7, 21. See Chapter 3.2.

[427] C. 12, 59, 10 (a. 470?): "Idem A. [Imperator Leo] Erythrio pp. Hac sanctione decernimus, ut in posterum nemini licentia sit edendi exemplaria his, qui sociandi sunt cuicumque militiae,

The constitution confirmed personal participation of the emperor in the act of appointing officers of various *officii* – in the case of diocese administrators the writ was to originate from "scrinii sacrarum epistularum". The significance of the enactment for the jurisdiction of diocesan vicar lies in the fact that its last fragment enumerates *in extenso* the names of dioceses of the Eastern Empire existing around 470 (among other things, this is one of the last sources attesting to the existence of the vicariate of Thrace in the fifth century).[428]

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quam sine divinis probatoriis adipisci non possunt, sed periculo primatum uniuscuiusque officii ipsas authenticas sacras, quae divinam nostrae pietatis continent adnotationem, cum subscriptione administrantium, sub quorum iurisdictione consistunt, his qui militare volunt praestari: exemplaribus videlicet earum cum subscriptione eorundem iudicum apud singula quoque officia, prout convenit, reservandis. 1. Quamvis autem manifestum sit de huiusmodi probatoriarum observatione excepta esse certorum iudicum officia, tamen ne ullius ignorantiae relinquatur occasio, omnium officiorum, quibus necesse est per sacras probatorias militiae sociari, notitiam in sacris apicibus subdendam esse censuimus. 2. Sub hac igitur observatione omnes, qui sive in hoc sacro palatio nostro sive in aliis quibuscumque officiis deinceps militare cupiunt, qui tamen, ut dictum est, non possunt pro tenore sacrarum constitutionum vel vetere consuetudine nisi praecedentibus sacris probatoriis militiae sociari, sicut subnexa notitia demonstrat, adipisci praecipimus: scientibus his, qui ex aliqua parte praesentis nostrae serenitatis legis formam conventia vel neglegentia quadam colludere temptaverint, non tantum amissione bonorum omnium, sed etiam capitis periculo utpote criminis falsitatis obnoxios semet esse plectendos. 3. Et est notitia. Scrinii memoriae probatoriae agentium in rebus, palatinorum largitionum, palatinorum rerum privatarum partis Augustae. 4. Item scrinii sacrarum epistularum sic: in officiis virorum illustrium praefectorum praetorio Orientis et Illyrici et urbis, officii proconsulum Asiae et Achaiae, officii praefecti Augustalis, officii comitis Orientis, officii comitis divinarum domorum, officii vicariorum Thraciae Ponti Asiae et Macedoniae et Thesauriensium classis. 5. Item scrinii sacrorum libellorum: officii virorum illustrium magistrorum militum utriusque militiae in praesenti, Orientis et Illyrici, invitatorum, admissionalium, memorialium omniumque paedagogorum, cellariorum, mensorum, lampadariorum eorum, qui sacris scriniis deputati sunt, decanorum partis Augustae, cursorum partis Augustae, officii virorum spectabilium ducum Palaestinae, Mesopotamiae, novi limitis Phoenices, Osrhoenae, Syriae et Augustae Euphratensis, Arabiae et Thebaidis, Libyae, Pentapoleos, utriusque Armeniae, utriusque Ponti, Scythiae, Mysiae primae, secundae, Daciae, Pannoniae, officii virorum spectabilium comitum Aegypti, Pamphyliae, Isauriae, Lycaoniae et Pisidiae". See Scarcella (1997): 378–382, 460. Title C. 12, 59 was summarized by Brunnemannus (1699): 1356 et seq.

[428] C. 12, 59, 10, 4: "Item scrinii sacrarum epistularum sic: in officiis virorum illustrium praefectorum praetorio Orientis et Illyrici et urbis, officii proconsulum Asiae et Achaiae, officii praefecti Augustalis, officii comitis Orientis, officii comitis divinarum domorum, officii vicariorum Thraciae Ponti Asiae et Macedoniae et Thesauriensium classis. […]". Further existence of the diocese is borne out by later constitutions: C. 10, 27, 2 and 10 (a. 491–505?) – introducing tax privileges for Thrace; C. 7, 63, 5 (a. 529) – setting forth the longest deadlines for hearing appeals with respect to various part of the Empire. On the constitutions see Legoherel (1965): 101; Zilletti (1965): esp. 85, 247; Litewski (1967): esp. 379 et seq.; Litewski (1968): esp. 195–199, 202 et seq., 236 et seq., 269 et seq., 276 et seq., 282 et seq. Cf. also Nov. Iust 8 (a. 535) and Chapter 2.2.2.

After the brief review of constitutions comprised in *Codex Iustinianus*, separate remarks are due to the imperial novel (Nov. Iust. 23), which was issued barely two months after the compilation came into effect. The novel is an act of substantial significance for the judiciary of diocesan vicars. In the novel, on 3 January 535, Justinian I set a 10-day deadline for lodging appeals in civil cases, and prohibited the practice of submitting appeals directly to highest ranking judges and addressing appeals to judges of the same rank.[429] The *praefatio* briefly explains the rationale of the changes, invoking the necessity to depart from the too short deadlines for lodging appeals, which the previous regulations set at two or three days (in cases conducted by a representative).[430]

The third *capitulum* contains a sentence referring to the division into *iudices maiores*, *medii* and *minores* as well as to the application of rule whereby the appeals from judgments of the lowest ranking judges were to be heard by judges *medii*, not *iudices maiores*.[431] A certain amount of doubt arises given that among diocese administrators the novel mentions only *comes Orientis* and *praefectus Augustalis*, from whose rulings there was no practical possibility of appeal if the value of the object of dispute did not exceed 10 pounds of

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[429] Nov. Iust. 23 (a. 536). On the significance of the novel in recent works only: Jones (1964): esp. 483 et seq. – also on the amendment of the amount of 500 solids, provided for the appeals from adjudications of province governors appointed in Nov. Iust. 24–31 (a. 536), while Nov. Iust. 103 (a. 536), pertaining to the proconsul of Palestine, stipulated the sum of 10 pounds of gold. On the novel in the context of changes to appeal: Litewski (1966): 289, 307–309; Litewski (1967): esp. 325 et seq., 346, 348, 350, 351, 354 (regarding terminology and the right of parties and their representative to partake in a process); Padoa Schioppa (1967): 33–42; Litewski (1968): esp. 152 (on deadlines), 154, 185 et seq. (on the reduction of formalism in c. 3), 187, 278, note 549; Thür, Pieler (1977): 441 et seq.; Goria (1995b): 273–275; Kaser, Hackl (1996): esp. §§ 78, 79, 95; Franciosi (1998): 46–55; Pergami (2000): 222–232; Prostko-Prostyński (2008): 152–156. The analysis of the novel and its dating should particularly take into account the remarks in Stein (1949): 805–810, whose findings were ignored by Lanata (1984): esp. 152 (with a remark on its literary form). See also further references in literature: Lounghis, Blysidu, Lampakes (2005): 260 reg. 1044.

[430] Nov. Iust. 23 pr.: "Anteriorum legum acerbitati plurima remedia imponentes et maxime hoc circa appellationes facientes et in praesenti ad huiusmodi beneficium pervenire duximus esse necessarium. Antiquitati etenim cautum erat ut, si quis per se litem exercuerit et fuerit condemnatus, intra duos dies tantummodo licentiam appellationis haberet; sin autem per procuratorem causa ventilata sit, et in triduum proximum eam extendi. Ex rerum autem experientia invenimus hoc satis esse damnosum: plures enim homines ignaros legum subtilitatis et putantes in triduum esse provocationes porrigendas in promptum periculum incidisse et biduo transacto causas perdidisse. Unde necessarium duximus huiusmodi rei competenter mederi".The change applied to C. 7, 62, 6 (ca a. 294).

[431] Nov. Iust. 23, 3: "[…] Cum enim veneranda vetustatis auctoritas ita magistratus digessit, ut alii maiores, alii medii, alii minores sint, et appellationes a minoribus iudicibus non solum ad maximos iudices remitterentur, sed ad spectabilium iudicum tribunal quatenus et ipsi sacro auditorio adbihito litem exercerent […]".

gold; they were expected to resolve such disputes conclusively. It should be noted that at the time when the novel was issued, the vicariates of dioceses *Asiana* and *Pont* were still formally in existence; they were abolished only on 15 April 535, with the issue of Nov. Iust. 8.[432] Meanwhile, the text of the analysed Nov. Iust. 23 stated that appeals in those dioceses may be heard according to the same rules as in the case of *praefectus Augustalis* – by men in the rank of *spectabilis* (i.e. counts or proconsuls, praetors or moderators), who had been specially delegated the powers to hear such cases.[433] The novel is probably a testimony to the temporary changes in the rules governing appeals, introduced by Justinian I in the period preceding the reform of territorial administration (and thus the judiciary), which began with Nov. Iust. 8.[434] The approach of Justinian I to vicariates is manifested in his decision not to introduce that level of territorial governance in Africa (recaptured following the victorious military campaign in 533–534); at the latest, by virtue of *sanctio pragmatica* of 15 April 534, the emperor established there a prefecture and its subordinate province governments.[435]

The final recapitulation of the conducted analysis will be presented in the conclusions. At this point, one can make a preliminary observation that incorporation of most imperial constitutions which set forth the framework

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[432] Nov. Iust. 8, 2 and 3 (a. 535). See also Barbati (2012): 191 (note 92). Jones (1964): 483, justifiably argued that the reform did not apply to diocese of Thrace. Most appeals were heard by the prefect of Constantinople, whose jurisdiction extended over provinces *Europa*, *Haemimontus*, *Thracia* and *Rhodope* (see Chapter 2.2.2). There is still some doubt regarding appeals from judgments of governors of provinces *Moesia secunda* and *Scythia minor*, which cannot be overlooked as A. H. M. Jones would have it. The latter author claimed that appeals were heard by *quaestor Iustinianius exercitus*. However, the office was established only in 536. See Chapter 6. Thus it cannot be ruled out that Nov. Iust. 23 was applicable with respect to both provinces on the Danube, in the short period between its issue and introduction of the quaestura.

[433] Nov. Iust. 23, 3: "[…] Similique modo quoties in Asiana diocesi vel Pontica tale aliquid emerserit usque ad praedictam quantitatem decem librarum auri, appellationes ad viros spectabiles, comites forte vel proconsules vel praetores vel moderatores, quibus specialiter easdem lites peragendas deputavimus, remittantur, quatenus et hi ad similitudinem praefecti augustalis vice sacri cognitoris intercedant et causas sine spe quidem appellationis, dei tamen et legum timore perferant decidendas […]".

[434] As suggested by Stein (1949): 806 et seq. Cf. also Barbati (2012): 87 (note 32). Justinian also mentioned hearing appeals *vice sacra* by *vicarius Ponticae* in a constitution which in 548 reinstituted vicariate, in its new form, on the territory of this diocese: Ed. Iust. 8 (a. 548). See Chapter 4.

[435] C. 1, 27, 1 (a. 534). Among recent works see: Puliatti (1980): esp. 59–97; Maier (1989): 28–29; González Fernández (1997): 159–179; Prostko-Prostyński (1998b) – who discussed in detail the dating of establishment of prefecture already in September 533; Puliatti (2011a): 31 (note 2), 48. Authorship of the above constitution is attributed to emperor himself. See Jones (1975). On the constitution see also Lounghis, Blysidu, Lampakes (2005): 253 (reg. 1009).

of the judiciary of diocesan vicars, known earlier from *Codex Theodosianus* of 438, into *Codex Iustinianus* of 534, means that formally the status of vicars as judges did not change. They were to hear cases both in first instance and as appellate judges. However, Nov. Marc. 1 (a. 450), which introduced important regulations pertaining to the appellate judiciary, was not included in Justinian's Code. Over a dozen enactments in which vicars are mentioned, dating from the period after 438, indirectly indicates that they performed judicial duties in first instance and in appellate proceedings. Nevertheless, they are only mentioned among other imperial officials (e.g. as addressees of copies of the acts), which gives the impression that a standard editing formula of the imperial chancery was used when the texts of constitutions were drafted. Unlike *comites Orientis* and *praefecti Augustalis*, diocesan vicars are not among the addressees of constitutions. The changes in the scope of jurisdiction of diocesan vicars were introduced by Nov. Iust. 23 (a. 535), discussed at the end of the chapter. Nonetheless, its impact on the status of diocesan vicars was negligible, as the office was abolished in the Eastern Empire by Nov. Iust. 8, issued several months later. The findings of analysis conducted in this chapter are presented in the table below.

Table 2. Judiciary of diocesan vicars in the light of *Codex Iustinianus* (a. 534)*. Addendum Nov. Iust. 23 (a. 536)

No.	Book, title (in parentheses), location in the title, dating	Issuer – addressee	Scope
1.	1, 3 (*De episcopis et clericis et orphanotrophis et brephotrophis et xenodochis et asceteriis et monachis et privilegio eorum et castrensi peculio et de redimendis captivis et de nuptiis clericorum vetitis seu permissis*), 53 (a. 533)	Justinian I – Hermogenes *magister officiorum*	Prosecution and severe punishments of perpetrators of kidnapping of consecrated virgins, widows and deaconesses (edict – diocese administrators responsible for prosecuting and judging perpetrators – first instance/appeal)
2.	1, 49 (*Ut omnes tam civiles quam militares iudices post administrationem depositam per quinquaginta dies in civitatibus vel certis locis permaneant*), 1 (a. 479)	Zeno – Sebastianus *pp.* (PPO *Orientis*)	Dignitaries, incl. diocese administrators are forbidden to leave administrative unit they governed within 50 days from dismissal and appointment of successor – enabling inhabitants to indict them (indirectly judiciary)
3.	2, 7 (*De advocatis diversis iudiciorum*), 11 (a. 460)	Leon I – Vivianus *pp.* (PPO *Orientis*)	Criteria to be met by advocates of prefectures – court of diocese administrators as venue of practice (indirectly judiciary)
4.	2, 12 (*De procuratoribus*), 25 (a. 392)	Valentinian II, Theodosius I, Arcadius – *Tatianus pp.* (PPO *Orientis*)	Obligation of having *procuratores* (court representatives) imposed on imperial officials (including vicars) in the event of court case in which they are involved (indirectly judiciary)

* Following the sequence of analysis in Chapter 4.2.; titulature of addressees as provided in C.; the table includes constitutions known only from this compilation.

Tab. 2 continued

No.	Book, title (in parentheses), location in the title, dating	Issuer – addressee	Scope
5.	6, 1 (*De fugitivis servis et libertis mancipiisque civitatum artificibus et ad diversa opera deputatis et ad rem privatam vel dominicam pertinentibus*), 5 (a. 319)	Constantine I – Ianuarinus *vicarius* (*Moesiae?/ Macedoniae*?)	Prohibition on kidnapping slaves (city's craftsmen) and craftsmen who were municipal freedmen (administration)
6.	7, 62 (*De appellationibus et consultationibus*) 32 (a. 440) and 7, 63 (*De temporibus et reparationibus appellationum seu consultationum*), 2 and 3, 4 (*Qui pro sua iurisdictione iudices dare darive possunt*), 1	Theodosius II, Valentinian III – Cyrus *pp* (PPO *Orientis*)	Two-person tribunal of PPO *Orientis* and QSP is the competent court to hear *appellatio more consultationis* from rulings of *spectabiles* judges; deadlines for hearing appeals, also from judgements of *spectabiles* judges (first instance)
7.	8, 12 (*De ratiociniis operum publicorum et de patribus civitatum*), 1 (a. 490)	Zeno – Arcadius *pp*. (PPO *Orientis*)	Penalties for abuses committed by various categories of imperial dignitaries and their auxiliary personnel while supervising public works in cities (diocesan vicars mentioned; administration)
8.	9, 13 (*De raptu virginum seu viduarum nec non sanctimonialium*), 1 (a. 533)	Justinian I – Hermogenes *mag. off*. (*magister officiorum*)	Edict against *crimen raptus* – imperial officials obligated to enforce it (first instance/appeal)
9.	9, 5 (*De privatis carceribus inhibendis*), 1 (a. 486)	Zeno – Basilius *pp* (PPO *Orientis*)	Imprisonment by private persons constitutes *crimen laese maiestatis*; analogous penalty for failure to counteract on the part of *praefectus Augustalis*; other provinces – governors (appeal)
10.	10, 23 (*De canone largitionalium titulorum*), 3 (a. 468)	Leon I, Flavius Antemius – Heliodorus *comes sacrarum largitionum*	Organization of financial affairs under the administration of *comes sacrarum largitionum* (mention – administration)
11.	10, 23 (*De canone largitionalium titulorum*), 4 (a. 468)	Leon I, Flavius Antemius – Heliodorus *comes sacrarum largitionum*	Organization of financial affairs under the administration of *comes sacrarum largitionum* (mention – administration)
12.	11, 50 (*In quibus causis coloni censiti dominos accusare possunt*), 1 (a. 325)	Constantine I – Maximus *vic. Orientis* (*vicarius Orientis*)	Right of the coloni to sue masters in the event of being imposed additional levies (supervision over province governors/appeal?)
13.	12, 59 (*De diversis officiis et apparitoribus iudicum et probatoriis eorum*), 10 (a. 470?)	Leon I – Erythrius *pp*. (PPO *Orientis*)	Personal participation of the emperor in appointing officers of various *officii* – existence of vicariates attested
Addendum	Nov. Iust. 23 (a. 535)	Justinian I – Tribonianus *magister officiorum et quaestori sacri palatii*	10-day deadline for lodging appeals and prohibition on filing appeals directly to highest judges and judges of the same rank (appeals of *praefectus Augustalis* and administrators in the rank of *spectabilis*)

5

Judiciary of vicars in the light of non-legal sources

Among non-legal sources, one which deserves to be analysed above all are the representations of the insignia of authority of diocese administrators, preserved in *Notitia dignitatum*. Subsequently, the author will focus his attention on literary and epigraphic sources.

5.1. ICONOGRAPHIC SOURCES

In *Notitia dignitatum*, the information on particular vicariates – apart from few exceptions – are preceded with sheets containing illustrations which represent their insignia.[1] The insignia placed directly underneath the titles of dignitaries differ only slightly from those preserved in manuscripts.[2] They were made in accordance with Late Antique canons of decorative art and, to a greater or lesser extent, possessed a symbolic nature.[3]

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[1] On insignia, whose official nature is sometimes questioned, see Polaschek (1936): esp. 1102–1109; Grigg (1979); Berger (1981): 103–109 (on the insignia of diocese administrators); Scharf (1994): 38–55; Gencheva-Mikami (2005); Faleiro (2005): 32, 35 et seq., 497–582; Di Dario (2006): 7–20, 33. The fragment elaborates on the observations in Wiewiorowski (2012c).

[2] Analytical material comprised reproductions of insignia featured in Faleiro (2005) – manuscript O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854 – fifteenth century. Hence the remarks depart in details from observations made by Berger (1981), who relied mainly on a later Munich manuscript (M – Monacensis Latinus 10291, Palatinus 291 – sixteenth century). This work also makes use of the most popular edition: Seeck (1876). Illustration found in this work originate from *Notitia dignitatum* (Sammelhandschrift) – BSB Clm 10291, Speyer, 1542 und 1550–1551 [BSB-Hss Clm 10291].

[3] Cf. Berger (1981): 142–167; Alexander (2002). The use of the notion "art" in the context of Antiquity is at the same time a subject of some controversy, see Olszewski (2011): 11 with further literature.

The insignia are important sources for a historian and historian of law, which obviously also includes researcher of Roman law. In a symbolic manner, they convey the competences of particular officials and their position within the administration of the Later Roman Empire as well as within its specific system of honorary rank.[4] One can hardly contest the thesis that the entire Roman state art was less concerned with presenting historical realities striving instead to exemplify an idea.[5]

The insignia were probably displayed in interiors in which a dignitary carried out his official duties. It should be noted that while on duty, the status of diocese administrator was manifested in the official attire, which consisted of a short outer tunic, *chlamys* – which drew upon the notion of *militia inermis* (military cloak), *cingulum* – a decorative belt (its kind indicated the office and the position of person who wore it), *calcei senatorii* (Rome footwear) and fibula.[6] Once vicars had gained the senatorial rank of *spectabiles*, they were

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[4] See Ward (1974): 408–411; Brennan (1996) and (1998): 34–37; Di Dario (2006): 97. Therefore incorrectly the insignia of PPO in *Notitia dignitatum* were mentioned only by Ruciński (2013): 48. Admittedly, his remarks pertain to the period before 282, but in the discussed fragment the said author set out from Lydus, *De mag.*, a writer from the 6th century, whom Ruciński correctly qualified as having no significance for the history of prefecture in the period of the Principate. With an insightful analysis of representations of the insignia, rejecting the value of Lydus's observations for the quoted work would have been better justified; as it is, the conclusions of Ruciński are strikingly superficial. The insignia of PPO *Italiae* were discussed shortly by Olszaniec (2014): 40-42

[5] Hölscher (2011): 110 et seq. The opinion expressed by Brennan (1996), who questions the credibility of *Notitia dignitatum* altogether is an exaggeration. See Kulikowski (2000b).

[6] Cf. generally Amelung (1899); Domaszewski (1899); Delbrueck (1929): 36–40, 51 et seq.; Löhken (1982): 83–85; Foss (1983): esp. 209–212; Boucher (2003): 98 et seq., 102. See also representations of Pilate in *Codex purpureus Rossanensis* (fol. 8–9; see below Fig. 14). Cf. Loerke (1961): esp. 181 et seq. Following *Edictum Diocletiani* 9, 8–9; 10, 8; 19, it is possible to determine an approximate price of such attire to at least several thousand denarii (according to prices from 303). As underwear, Romans of the imperial period wore under-tunic (*tunica subucula*) and short-like trouser– *femorialia (feminalia*). See Wilson (1938): 55–75. Apart from that, they were subject to rules provided in C. Th. 14, 10, 1 pr. (a. 382): during a session of the Senate and court hearings, senators had to wear a toga, otherwise risking being stripped of senatorial rank and being denied access to sessions; they were also prohibited from wearing the military cloak (*chlamys*) and obligated to don *paenula* (a kind of hooded cape). See Wilson (1938): 87–92. Hence probably the significance of gift – a cloak received by vicar of Spain, Marinianus, from his friend, Quintus Aurelius Symmachus: Symm. *Ep. 3,* 25, 2. See Pellizzari (1998): 120 et seq. Formally, they were subject to prohibitions on wearing certain kinds of attire and hairstyles while staying in Rome: C. Th. 14, 10: 2 (a. 397); 3 (a. 399); 4 (a. 416). These prohibitions were probably intended as countermeasure against popularization of fashion whose style drew upon military outfits and soldiers' haircuts, which at the time Roman elites treated with reluctance. Cf. von Rummel (2007): 158–166. The constitutions are often erroneously interpreted as proofs of resistance to advancing barbarisation; it is assumed that they were issued in the conditions of exacerbating social conflicts and intensifying barbarian

entitled to a toga made from *latus clavus* (*toga praetexta*)[7], therefore they could officially appear in the diocese as *togati* or *chlamydati*.[8] On the other hand, dignitaries had to don *chlamys*, if they wanted to make official *salutatio* to the incumbent vicar.[9]

The first to be mentioned *Notitia dignitatum pars Orientis* are administrators of the dioceses of the East and Egypt: *comes Orientis* (Not. Dig. Or. 22) and *praefectus Augustalis* (Not. Dig. Or. 23 – Fig. 1–2). These are followed by information on vicars: *Asianae* (Not. Dig. Or. 24 – Fig. 3), *Ponticae* (Not. Dig. Or. 25) and *Thraciarum* (Not. Dig. Or. 26). The depictions of their insignia survived, but the fragment concerning the vicar of Macedonia was lost altogether (Not. Dig. Or. 27).

The list relating to the western part of the Empire features *vicarius urbis Romae* (Not. Dig. Occ. 19 – his insignia have not survived) and four other diocesan vicars: *Africae* (Not. Dig. Occ. 20 – Fig. 4), *Hispaniarum*, *Septem provinciarum* (Not. Dig. Occ. 21–22) and *Britanniarum* (Not. Dig. Occ. 23 – Fig. 9).

Just as in the case of other imperial offices in *Notitia dignitatum*, the insignia are found on pages preceding written information on vicars' offices. Above the illustration of the insignia, one finds the titles of diocese administrators. A separate nomenclature was retained for two administrators of Eastern dioceses: *comes Orientis* and *praefectus Augustalis* (Not. Dig. Or. 22 and 23). As regards the remaining Eastern Roman dioceses, the titles of their administrators were provided in full wording as *vicarius dioeceseos*: *Asianae*, *Ponticae*, *Thraciarum* (Not. Dig. Or. 24–26). For the western part, the forms include: *vicarius urbis Romae* (Not. Dig. Occ. 19) and the abbreviated *vicarii*:

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incursions in the West. In recent literature see e.g. Murga (1973) and (1995–1996) as well as Liebs (2008b) 106 et seq.

[7] In European culture, at least until the mid-ninetteenth century, clothes reflected the rank, position or profession of the wearer. See MacMullen (1964b): esp. 445–451; as well as general remark of Atanasov (2007): esp. 454 et seq. On the history of clothing and the decline of its importance for assessing position of an individual in European culture, see e.g. Boucher (2003): 309–395, esp. 313, 345–348, 354, 367, 373 et seq.

[8] This is also how e.g. province governors are presented, whose statues together with honorific inscriptions continued to be erected in the cities of the Eastern Empire until the mid-fifth century. See Foss (1983); Smith (1999): esp. 180; Smith (2002); Slootjes (2006): 129–154, esp. 141–152; Deligiannakis (2013). Cf. also Horstner (1998) – in detail on honorific inscription of province governors mounted on the base of statues. Proconsul Flavius Palmatius, who held the office of the vicar of Asia before 535 was portrayed in a toga: ALA2004 62 (cited in Chapter 2.2). In this case, the toga was rather a token of the status of proconsul. Cf. Foss (1983): 211 n; Feissel (1998): 102 et seq. See also Chapter 2.2.2. On the forms of the toga in Late Antiquity, see Wilson (1924): 110–115.

[9] C. Th. 1, 15, 16 (a. 401), addressed to Vigilius, vicar of Spain. On Vigilius, see e.g. Chastagnol (1965): 278, no. 14; PLRE 2 (Vigilius 1).

Africae, *Hispaniarum*, *Septem provinciarum* and *Britanniarum* (Not. Dig. Occ. 20–23). The bottom part of the page with the insignia of African vicars contains a text which provides information about provinces of the diocese and the composition of their *officium*.

The preserved insignia of diocese administrators in the Eastern and Western Empire display only minor differences. However, the insignia of vicars of *Britanniarum* are completely different, and therefore will be addressed separately (Not. Dig. Occ. 23).

Insignia of most diocese administrators are divided into two parts: the upper section is dominated by symbolic representations showing their place in the administrative framework of the Empire and their relation to the emperor; the bottom section contains personifications of provinces which made up the diocese. The upper band features representations of objects identified with the so-called *thecae* and tables covered with light blue fabric, on which one sees either rectangular objects (insignia of *comes Orientis* and *praefectus Augustalis*) or scrolls and *codices* (insignia of the remaining diocese administrators), arranged in a succession from left to right (insignia of the vicar of Africa show a reverse sequence – Not. Dig. Occ. 20).

The upper bands of the insignia are rectangular; in the case of vicars of *Ponticae* (Not. Dig. Or. 25) and *Septem provinciarum* (Not. Dig. Occ. 22) they were in part populated with personifications of three provinces (respectively: *Bithynia*, *Viennesis* and *Lugdonensis primae*). The background colours of the upper bands tend to vary:

– green (in the East: *comes Orientis, vicarius dioeceseos Ponticae* – Not. Dig. Or. 22 and 25; in the West: *vicarius Hispaniae* – Not. Dig. Occ. 21)[10],

– blue or dark blue (in the East: *praefectus Augustalis*, *vicarius dioeceseos Thraciarum* – Not. Dig. Or. 23 and 26; in the West: *vicarius Africae*, *vicarius Septem provinciarum* – Not. Dig. Occ. 20 and 22)[11],

– pink (only *vicarius dioeceseos Asianae* – Not. Dig. Or. 24).

Colours were an important element in Roman iconographic tradition, but those used in the analysed insignia do not count among them.[12] In Chris-

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[10] The colours have been well preserved in the manuscript O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854. Manuscript M – Monacensis Latinus 10291, Palatinus 291 is devoid of colours in the upper band in the case of *comes Orientis*; in the insignia of *vicarius Hispaniae* the colour of the upper band is red.

[11] The colours have been preserved in manuscript O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854. Manuscript M – Monacensis Latinus 10291, Palatinus 291 show no colour in the upper band in the case of *praefectus Augustalis* and *vicarius Africae*; in the insignia of *vicarius Thraciarum*, *vicarius Septem provinciarum* and *vicarius Hispaniae*, the colour of the upper band is red.

[12] In Antiquity, three colours had special sacred significance – white, black and red (along with purple, scarlet and even violet). White was the colour of celebrations, a joyful one; it was

tian iconography, light blue was a symbol of the heavenly vault and permanence while green symbolized hope, among other things.[13] However, given such a basis, it would be difficult to draw any conclusions concerning the significance of background colours in the insignia of diocese administrators which, as already observed, differ between surviving manuscripts. In contrast, the objects depicted in the upper sections of the insignia carry substantial significance for the analysed issue.

The objects identified with the so-called *theca* (gr. θήκα), or an embellished holder for pens or styluses, are presented there with an attempt to show perspective. It is assumed that they symbolized judicial powers of the official, which is associated with the written nature of the Later Roman process.[14] *Thecae* were described in sources in greater detail only by John the Lydian, while outside *Notitia dignitatum* their representations are known from two Late Antique diptychs: one of Probianus, dating to around 400 (Fig. 13) and one of Asturius, from 449.[15] It is surmised that *thecae* were up to 1.5 m high, made from ivory and richly ornamented with gemstones and gold. They were displayed in places where official functions were carried out, including courtrooms.

In the case of insignia of diocese administrators the upper part of the representation of *thecae* is divided into three segments: the uppermost features a portrait, portraits or symbolic representations of two human figures[16]; the middle segment shows figures paying homage to those or orna-

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associated with good omens and (white-coloured) sacrifices to Olympian gods. Black was usually linked with chthonic deities and mourning. Red could connote blood and death as well as health, fertility or care (as the colour of blood). In Roman theatre, matt, "broken" red meant poverty, scarlet – the military, yellow – prostitution, multiple colours – procurers and procuresses and white – old or young age. Purple of different hues was reserved for the imperial family; gold, esp. when used to depict a halo, underlined a supernatural, sacred nature of the representation. After: Kopaliński (2001): 15. Cf. Bradley (2009): esp. 189–211, also on purple being connected with the institution of the Empire: 206–208.

[13] Forstner (1990): 116 et seq., 122 et seq.

[14] Polaschek (1936): 1107; Grigg (1979): 121; Berger (1981): 33, 97, 184–190; Engemann 1988: 1020; Faleiro (2005): 497 et seq., 513. Scharf (1994): 46, treats *theca* as symbolic representation of civilian powers of an official, which distinguished it from military authority and central administration.

[15] Lyd. *De mag*. 1, 7, 6; 2, 14, 1.On Probianus's diptych see Delbrueck (1929): 250–256, no. 65; Volbach (1976): 54 et seq., no. 62. On Asturius's diptych, see Volbach (1976): 30–31, no. 3. On consular diptychs see recent work by Eastmond (2010); Cameron (2013). Cf. also general remarks in Ostrowski (1999): 452–457.

[16] The differences between representations of *thecae* of diocese administrators should not be taken into account as significant features; they may have been caused by carelessness of the copyist, which becomes conspicuous when comparing manuscript O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854 with M – Monacensis Latinus 10291, Palatinus 291.

ments; the bottom section features motifs resembling inkwells. They are light brown, which is intended to render the colour of ivory.[17] The base of the *thecae* is given the shape of a tripod. Analogous representations of *thecae* are also found in the insignia of certain civilian officials of the Eastern and Western Empire: praetorian prefect, the prefect of Rome, province governors in the rank of proconsuls and *consularis Palestinae*, *corrector Appuliae et Calabriae* and *praeses Dalmatiae* (Not. Dig. Or. 2; 20; 21; 43; Not. Dig. Occ. 2; 4; 18; 44; 45).

The representations of *thecae* in *Notitia dignitatum* are often associated with the judicial and administrative duties of the officials, also diocese administrators. Moreover, they are assumed to have highlighted the fact that the judiciary powers were exercised on behalf of the emperor.[18] However, *thecae* are missing from the insignia of civilian officials who are certain to have acted as judges, namely *comes sacrarum largitionum* and *comes rerum privatarum* (Not. Dig. Or. 11; 12; Not. Dig. Occ. 11; 12)[19], *castrensis sacri palatii* (Not. Dig. Or. 17; Not. Dig. Occ. 15)[20], *vicarius Britanniarum* (Not. Dig. Occ. 23 – see below). The same applies to province governors: *consularis Campaniae* and *praeses Thebaidos* (Not. Dig. Occ. 43; Not. Dig. Or. 44). In the latter case, this is highly surprising, as the insignia of other governors in *Notitia dignitatum* do contain representations of *thecae*.[21] Higher military commanders known from *Notitia dignitatum* were also military judges; their insignia were not provided with *thecae* either.[22] Taking the above into consideration, it may be concluded that the presence of *thecae* in the insignia of some civilian offi-

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[17] In some representations the tripod has the colour of steel; this feature also varies between manuscripts O and M.

[18] Thus Polaschek (1936): 1107; Berger (1981): 189 et seq.

[19] See Kent (1961); Delmaire (1989) and (1995): 119–140; Brandes (2002): 18–32. On the insignia – Berger 1981: 67–75; Faleiro 2005: 506–507.

[20] On the insignia of *castrenses*, see Berger (1981): 80–84; Scharf (1994): 50–55; Faleiro (2005): 503 et seq. On the status of *castrenses*, see Seeck (1899); Costa (1972), in favour of decline of their status at the turn of the 5th century; Delmaire (1995): 160–166. Their jurisdiction over some of the palace services when *Notitia dignitatum* was being made is also indirectly confirmed by the fact that they were addressees of known constitutions pertaining to the status of *castrensiani* as long as the latter half of the 5th century. See C. Th. 6, 32 (*De castrensianis*) and C. 12, 25 (*De castrensianis et ministerianis*; esp. 3 & 4 – the last one from 474, stressing the jurisdiction of *magister officiorum*).

[21] All proconsuls and *consularis Palestinae*, *corrector Appuliae et Calabriae* and *praeses Dalmatiae* (Not. Dig. Or. 2; 20; 21; 43; Not. Dig. Occ. 2; 4; 18; 44; 45).

[22] *Magistri militum* – Not. Dig. Or. 5–9, Not. Dig. Occ. 5; 6; 9; *comites domesticorum* – Not. Dig. Or. 15; Not. Dig. Occ. 13; the remaining *comites* and *duces* – Not. Dig. Or. 28; 29; 30–42; Not. Dig. Occ. 24–38; 40; 41. On military judiciary see Wiewiorowski (2007b): 227–236 with references to earlier literature.

cial may have merely underlined the role of their judicial responsibilities as part of their duties. The representations of *thecae* may be found across all official ranks, and therefore they were not linked to the honorary title.[23] These observations also apply to most diocese administrators (with the exception of *vicarius Britanniarum* – Not. Dig. Occ. 23, see below).

The presence of imperial imagery on *thecae* is an example of ruler's self-representation, which was characteristic of Late Antiquity.[24] Official portraits of the emperor were also displayed in the interiors in which Later Roman dignitaries performed their functions.[25] The imperial portraits and the person of the emperor were one and the same, which is why portraits of the ruler were in practice the object of *adoratio* due to the person of the emperor.[26]

The occurrence of effigies of two emperors on *thecae* of administrators of most dioceses corresponds with a concept which received some prominence in the fourth and the fifth centuries, namely unity of Empire which in practice was divided.[27] In fact, the fifth century witnessed the existence of two twin empires – powerfully connected but different in terms of administrative and military structures, procedures of central decision-making and above all distinct with respect to language which predominated in cultural circulation. This relationship between the Eastern and the Western Empire is also symbolized by *Notitia dignitatum* and the representations of *thecae* it contains.

The tables in the insignia of diocese administrators were depicted *en face*. They are covered by blue cloth, with the front legs of the table protruding from underneath. The cloth covers a kind of support against which representations of the following are propped:

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[23] Grigg (1979): 121.

[24] Until the third century at the outside, portraits of newly elected emperor were sent to the cities and provinces of the empire, which epitomized the taking of power and constituted a call to recognize the ruler and demonstrate loyalty. Cf. Löhken (1982): 78 et seq.; Kolb (2008): 41 et seq., 113 et seq.

[25] See on the example of palaces of province governors: Lavan (2001): 49 et seq. See also below remarks on the Rossano Gospels.

[26] Imperial likenesses were ubiquitous, they would be placed on painting, wall mosaics, official insignia, sceptres, the so-called consular diptychs, imperial gifts, legionary emblems, shields and spears of soldiers, weights used by market sellers, on coins and medallions, intaglios and cameos. See Kolb (2008): 114, who refers to the comprehensive description by Engemann (1988): s.v. *Herrscherbild*.

[27] It was highlighted iconographically on coins, whose reverse showed the effigies of rulers of the eastern and western part of the Empire. See Engemann (1988): 1025; Salamon (1999): 568 et seq. The ideal of state unity was also embodied in the joint imperial legislation, promulgated chiefly in Latin, most often on behalf of the rulers reigning in both parts of the state. See Chapter 1.1.

– white objects, framed at the top and bottom with yellow stripes, with human face in the centre, against a yellow background (quadrangular background – *comes Orientis,* Not. Dig. Or. 22 [Fig. 1] or on quadrangular background located on a band which extends to the edges of the rectangle – *praefectus Augustalis*, Not. Dig. Or. 23 [Fig. 2]) or

– yellow codices, supplied with the inscription: "fl / intall / comord / pr", and a usually white, yellow-white or yellow scroll, covered sometimes with irregular writing marks.

According to most researchers, the white objects in the insignia of *comes Orientis* and *praefectus Augustalis* are the representation of appointment documents, codicils (Lat. *codicillus,* Gr. κωδικίλλιον or κοδίκελλος), shown as diptychs (Lat. *diptychum*, Gr. Δίπτυχον).[28]

Diptychs were rectangular, double tablets, connected on the longer side with hinges. In the case of higher officials they were probably 40 cm high, which were likely to have been made from gold-plated ivory.[29] The inner parts of diptychs probably contained the written act of appointment.[30]

This form of documents of appointment was reserved for the highest officials of the state – most often *illustres* (Not. Dig. Or.: 3; 5; 6; 7; 8; 9; 11; 12; 13; 14; 15; 20; 21; Not. Dig. Occ. 2; 4; 5; 6; 9; 10; 11; 12; 13; 18). The diptychs of

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[28] In this sense, codicil was a document of nomination. Cf. generally with references to further sources and literature: Karlowa (1885): 869 et seq.; Seeck (1901b) abandons his earlier view that they were *libri mandatorum* – Seeck (1876): 23, 31; Polaschek (1936): 1106 et seq.; Dölger, Karayannopulos (1968): 113–115; Classen (1977): 41–44; Grigg (1979): 112–118, criticized the opinion of Chastagnol (1960): 196–203, who argued that these were merely representations of imperial portraits; Berger (1981): 103–105 (on both diocese administrators) and 175–183 (on diptychs); Scharf (1994): 46 et seq.; Engemann (1988): 1020–1022 (also on consular diptychs); Faleiro (2005): 31 et seq., 506 et seq.; Cameron (2013): esp. 33 et seq. Cf. also below remarks on *libri mandatorum*.

[29] Lydus, *De mag*. 3, 4. No copies of those have survived, apart from representations in *Notitia dignitatum*. Their shape is inferred on the basis of similarities to the preserved consular diptychs – see Delbrueck (1929); and presumed representation of official commissions: *Missorium* of Theodosius I of 388 – see Delbrueck (1929): 235–242, no. 62; Kolb (2008): 237–242; Gorbea (2000), in this work esp. concerning the dispute as to the interpretation of the scene on the bowl – Arce (2000); the so-called Stylichon diptych, dated to 392–393 or rather 395–402 – see Delbrueck (1929): 242–248, no. 63; Kiilerich, Torp (1989): esp. 351–353; and one of the illustration of a 6th-century manuscript – Vienna Dioscurides: Juliana Anicia, folio 6v, c. 512 (Österrechische Nationalbibliothek Cod. med. gr. 1; after: http://portal.unesco.org/ ci/en/ev.php-URL_ID=22639&URL_DO=DO_TOPIC&URL_SECTION=201.html. Cf. Kiilerich (2001). On representations of codicils see also Atanasov (2007): esp. 454 et seq.; Cameron (2013): esp. 3-6.

[30] Just as in the case of surviving consular diptychs, the text was engraved directly on the material from which the diptych was made, either on was, or, more preferably, written down on a separate sheet of papyrus. For a review of consular diptychs, see Delbrueck (1929): 81–270.

comes Orientis and *praefectus Augustalis* bear a portrait on the outside, most likely the imperial effigy, either painted or in bas-relief, just as in the case of illustrations on diptychs of other higher-ranking officials.[31] The fact that the nomination documents of *comes Orientis* and *praefectus Augustalis* were represented as ornamented diptychs, confirms the special status of both diocese administrators, which distinguished them from "ordinary" diocesan vicars.[32]

Official commissions of the latter are depicted in the preserved insignia by what is assumed to be a scroll (parchment/papyrus?) or a codex. Their representations are also found in *armaria Notitia dignitatum* (Not. Dig. Or. 45 – Fig. 5 and 6).[33] Certainly, it did serve to certify the military competences of vicars.[34] The writing-like marks on the edge of the scroll in some insignia of Eastern Roman vicars are deformed letters (Greek ones?).[35] They testify to the level of command of Greek in the West in times when the surviving manuscripts of *Notitia dignitatum* were being made.[36] Regardless of the form

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[31] In the analysed manuscripts O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854 and M – Monacensis Latinus 10291, Palatinus 291, one finds substantial differences in this respect. Also, diptychs in *armaria Notitia dignitatum* do not contain imperial portraits (Not. Dig. Or. 45). The question of portraits and differences between diptychs were analysed in detail by Grigg (1979). The author believes that a meticulous representation of the portraits underscored the rank of the official and that differences were evidently the fault of the copyist.

[32] On the position of both diocese administrators in the light of their insignia, see Scharf (1994): 46–49; Faleiro (2005): 506 et seq. with references to earlier literature.

[33] Granting an honorary position to vicar by virtue of an imperial letter (*epistula*) is referred to directly in one of the constitutions: C. Th. 6, 22, 5 (a. 381). The representation of an unfolded papyrus scroll is also known from the diptych of Probianus, vicar of the city of Rome in 400. See Delbrueck (1929): 255 – according to the author the scroll was a very sizeable one (3 m long, 20 cm wide); PLRE 2 (Rufinus Probianus 7). One is also probably found in the Rossano Gospels, see below. Polaschek (1936): 1108, suggested that codices and scrolls should be treated as separate codicils – symbols of rank and official commissions. Grigg (1979): 118 et seq., argued that codicils represented codices with inscription, while their combination with a scroll signified that the official belonged to *spectabiles*. In turn, the scroll is correctly identified with a document of appointment by: Loerke (1961): 177 et seq.; Classen (1977): 42; Berger (1981): 175–183; Marotta (1991): 12, 38 (who mistakenly holds that codicils contained *mandata principium*). Faleiro (2005): 32 and 507, 511 et seq., advances that codices are *libri mandatorum* (also in the insignia of other officials), whereas scrolls are private instructions from the emperors, which together symbolized a codicil.

[34] Faleiro (2005): 32, states, somewhat mysteriously, that: "En las ilustraciones de la *ND* junto al *Liber mandatorum* aparecen los *epistolae* o rollos de pergamino, disposiciones de la defensa militares privados dadas por el emperador a las diócesis". Taking into account other sources, which suggest that vicars assumed command on very rare occasions, the hypothesis seems misguided. See Chapter 3.1.

[35] In the insignia of *vicarius Asianae* (Not. Dig. Or. 24) in manuscript O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854, the following letters may be deciphered: ϛπωηεο.

[36] See Berger (1981): 107 et seq., who, in the Munich manuscript, identified Greek letters in three successive insignia of vicars – *Hispaniae*, *Septem provinciarum* and *Britanniarum* (Not. Dig.

of official commission, the codicils and particularly diptychs were a token of prestige and symbol of authority exercised on behalf of the emperor by his subordinate official.

Next to scrolls depicted in the insignia of all vicars there lie yellow codices. The inscription on the book is variously interpreted in literature: "fl / intall / comord / pr" symbolically affirms that vicars belonged to *spectabiles*.[37]

Representations of codices may be found in the insignia of lower-ranking officials: palace *castrenses*, *primicerii notariorum* next to *vicarii*, regional *comites*, *duces* and *consulares*, *correctores* and *praesides* (Not. Dig. Or. 17; 18; 24–29; 31–44; Not. Dig. Occ. 15; 16; 20–38; 40; 41; 43–45). The insignia of vicars belong to the group of insignia with the scroll depicted, as this emblem was assigned to the majority of officials in the rank of *spectabiles*.[38] Most codices, also those in the insignia of vicars, are yellow, sometimes with a different colour on the side and lines drawn in. Most codices have ornamental inscriptions.[39] In the case of *praeses Thebaidos*, the inscription reads: "fl. / val. / pn / iussu / au", whereas in the insignia of *corrector Apuliae et Calabriae*: "fl / vele / iussu d". In turn, the text in the insignia of *praeses Dalmatiae* is as follows: "ifls / vm / prr iussu dd".[40] The codex of a Western Roman *primicerius* was provided with: "fl / intal / comord / pr", while the codex of *consularis Palestinae* bears no inscription. If a codex was represented in the insignia featured in *Notitia dignitatum,* this most often meant that the official belonged to the group of *clarissimi* (apart from *primicerii notariorum* and *castrenses*[41]).

Occ. 21–23). On *magistri scriniorum*, cf. Seeck (1921): esp. 896; Faleiro (2005). On the knowledge of Greek in the West, see e.g. Berschin (2003): 40–74.

[37] Seeck (1901): 180: "Feliciter! inter allectos comes primi ordinis", after the latter Grigg (1979): 115; Delbrueck (1929): 255, followed by Polaschek (1936): 1108; Berger (1981): 108: "Floreas / inter / allectos / comites/ ordinis primi"; Scharf (1994): 39: "Fl(oreas) int(er) ali(is) com(ites) ord(inis) pr(imi)" – cf. also remarks in the review of that work: Delmaire (1998); Faleiro (2005): 32, note 16: "Floreas [or] Feliciter/ inter/ allectos/ comites/ primi/ ordinis"; Cameron (2013): 3: "Fl(avius) Intall(ius) com(es) ord(inis) pr(imi)". Various readings of the abbreviated formula in the case of province governors are provided by Marotta (1991): 12, note 31; Scharf (2005): 72 et seq. suggests interpretations for *duces*.

[38] Which meant vicars, counts and dukes in the Eastern Empire, while in the Western: *primicerius notarii*, *castrensis*, *vicarius*, *comites*, *duces*. See also Grigg (1979): 120.

[39] Besides the presence or absence of inscription denoting various honorary ranks, the diverse colours of codices, which may have emulated the colour of leather in which the originals were bound, constituted an additional element highlighting the range of official positions in the imperial administrative apparatus.

[40] "Floreas Vale / consularis [or *corrector*, *praeses*] / iussu / domini (dominorum)" – after: Polaschek (1936): 1108; Berger (1981): 194; Faleiro (2005): 510. On representations of insignia of province governors see also briefly in Di Paola (2012b): 297.

[41] On that subject Grigg (1979): 120 et seq.; Scharf (1994): 50–55; Faleiro (2005): 504–505 with references to earlier literature.

According to a number of researchers, codices with inscriptions represent *libri mandatorum* (books of imperial instruction) or nomination documents.[42] *Mandata principum* were precise guidelines and pieces of advice which the emperor addressed to an official, and which pertained to judicial and administrative tasks that the official was to carry out on the territory of his jurisdiction during the usually short term in office. Depending on the region, *Libri mandatorum* were compiled either in Greek or in Latin.

Scrolls and codices were also depicted in *Notitia dignitatum* in the representations of ornamental *armaria*, placed between the respective lists of offices in the Eastern and Western Empire (Not. Dig. Or. 45 – Fig. 5–6).[43] The symbols and colours (with dominant yellow-gold, imperial purple and blue for the background) of both miniatures are an epitome of the propagandistic vision presented by both lists, highlighting the supernatural, divine nature of imperial authority and the order of dignities which is derived from it. The first miniature conveys references to the eternal imperial power, in accordance with the cyclic vision of the world (in the four corners of the "bookcase", the authors placed personifications of seasons on small shields, with accompanying captions: *Vernus*, *Aestas*, *Autumnus*, *Hiems*); the second – references to the ruler's virtues, celebrated in Roman tradition (the terms: *Virtus*, *Scientia rei militaris*, *Auctoritas*, *Felicitas* along with their personification on small shields found in the four corners of the "bookcase"). In the upper sections of both miniatures, there are figures in halos, pictured on shields supported by representations of Victories (or geniuses). These are personifi-

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[42] See Dell'Oro (1960b): 73 (generally draws attention to the presence in the representations of insignia); Berger (1981): 107 et seq., 123 et seq., 191–197; Marotta (1991): e.g. 10 et seq., 35 et seq. and esp. 71 et seq.; Gencheva-Mikami (2005): 287. Grigg (1979): 110, 118 et seq., questions this view, finding that the inscribed codices are codicils, i.e. nomination documents (criticising theses of Loerke [1961]). The issue is approached slightly differently by Scharf (1994): 49, note 125; to a degree, he distances himself from the opinion of Berger (1981) On identifying codices with *libri mandatorum* and its division into insignia with diptych tablets and those containing a codex and a scroll. The German researcher argued that Berger overlooked the insignia which contained only representations of codices and the division adopted in C. Th. 6, 22, 5 (a. 381), which refers to the following types of documents: *codicilli* – for *proconsules*, *epistulae* – for *vicarii*, *insignia* – for *consulares*. In turn, Scharf claimed that Grigg (1979) went too far in his distinction between insignia containing codices and (sometimes) scroll. Perhaps Cameron (2013): 5 is right after all: "A law issued at Milan in 381 [i.e. C. Th. 6, 22, 5] appears to distinguish between *codicilli*, *epistulae* and *insignia* for different offices, perhaps just literary variants. But the instruments for conferring some offices (notably the consulship) do appear to have been scrolls rather than diptychs." See also below remarks on scrolls in insignia.

[43] See Grigg (1979): 110; Berger (1981): 134–141; Marotta (1991): 39–55; Scharf (1994): 38–41; Brennan (1996); Faleiro (2005): 511 et seq.; Gencheva-Mikami (2005). The observations below refer to the remarks made there.

cation of the formulations found above: *Divina providentia* ("Divine prudence") and *Divina electio* ("Divine choice"), referring to the imperial appointment of a given dignitary, or portraits of emperors.[44] *Armaria* show the range of offices to which diptychs, codicils and codices were directed, and probably testify to their copies being deposited in the central chanceries of the Eastern and Western Empire. The representations of documents are arranged in part in the order of their significance, beginning with diptychs in the upper left corners of bookcases. Further on, the composition is unclear and it cannot be determined whether the importance of represented objects played any role.[45] The presence of diptychs, scrolls and books in the *armaria,* together with other iconographic elements, draws upon the propagandistic vision of virtuous, eternal imperial power, which is exercised through the appointment of dignitaries, who receive instruction as to how their official duties are to be carried out.

As regards the competences of diocese administrators, one should draw attention to the representation of table covered with the blue cloth. Such table is depicted in the insignia of most officials of the Eastern Empire, with the exception of *primicerius notariorum*, *magister scriniorum* and regional commanders – *duces* (Not. Dig. Or. 18; 19; 31–42). It is also in evidence in the insignia of most officials in the East, apart from *primicerius notariorum*, *magister scriniorum*, the vicar of Britain (further discussed below) and military commanders in the rank of *comites rei militaris* and *duces* (Not. Dig. Occ. 16; 17; 23–41). Its significance is debatable.

According to one concept, the table, in particular the blue colour of the fabric with which it is covered, symbolizes the competence of official to discharge judicial and administrative duties.[46] However, it is also interpreted as

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[44] Berger (1981): 141 et seq., pointed out the similarity of both sheets to the pages at the end of the so-called Calendar of 354 and, assuming that the shields show imperial portraits, claimed that it stressed the supernatural nature of imperial authority. On the manuscript with the Calendar, see Salzman (1990): esp. 200 – on the significance of including imperial portraits by analogy to the significance of imperial effigies in *Notitia dignitatum* (ibidem: Fig. 7, 13, 14). This author chose to omit further observations of authors mentioned in the preceding footnote, which pertain to the relationship between *armaria* in *Notitia dignitatum* and other examples of Late Antique decorative art and written sources. An intriguing trait is the conservatism of the symbolism of *armaria* and other illustrations in *Notitia dignitatum*, which do not reflect the Christian nature of the Empire. Cf. Brennan (1996). In the preserved manuscripts, one can discern the symbol of the cross in the insignia to Not. Dig. Or. 28 (*signa* of military units stationed in the forts of *Babylonia* and *Theodosiana*); perhaps their presence there resulted from the mistakes of medieval copyists.

[45] The view that insignia follow the order of ranks is erroneous. Thus: Berger (1981): 42, 97 et seq., 103. The opinion was justifiably criticized by Scharf (1994): 38, note 105.

[46] Berger (1981): 106–109, 196 et seq.

a criterion distinguishing officials who obtained a particular honorary status before ca 350. It is correctly presumed that this did not apply only to the so-called *comites primi ordinis* (counts of the first rank); the table was also present in the insignia of civilian province governors whose honorary ranks were lower, i.e. *clarissimi* and *perfectissimi* (*consularis Palestinae*, *praeses Thebaidos* – Not. Dig. Or. 43–44; *consularis Campaniae*, *corrector Apuliae et Calabriae*, *praeses Dalmatiae* – Not. Dig. Occ. 43–45).[47]

An element of some importance in the analysis of this issue is that the table covered with blue cloth is essentially absent among the insignia of *comites* and *duces*, military commanders of medium rank, whose status was (almost) equal to vicars.[48] In *Notitia dignitatum,* the insignia of regional commanders, both in the eastern and western part of the Empire, were given the shape of maps. The maps were marked with captioned symbols of places where main units were stationed (drawings of forts); in rare cases there are animals and certain topographic details.[49] Next to those, in the upper left corner, there is a square, usually red, with a depiction of codex and ornamental inscription: "fl / intal / comord / pr" as well as a yellow scroll.[50]

The blue table is found only in the insignia of *comes limitis Aegypti* and *comes per Isauriam* (Not. Dig. Or. 28; 29 – Fig. 7–8).[51] Both commanders are the sole regional commanders in the East who, according to *Notitia dignitatum*, were granted the title of count and therefore they were mentioned before *duces* (see also Not. Dig. Or. 1.). *Comes limitis Aegypti*, due to the considerable significance of the province was higher in the hierarchy than "ordinary" *duces* and commanded more military units.[52] Perhaps the extent of his authority was broader than with other regional commanders, whose

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[47] Scharf (1994): 44 et seq.: "Möglicherweise ist der Tisch ein altes Rangkriterium, das den Kreis der Inhaber auf die Zeit vor der Mitte der 4. Jahrhunderts beschränkt". On the title of *comes*, see Chapter 2.2.1.

[48] See Chapter 2.2.1.

[49] Cf. Berger (1981): 111–124. In Wiewiorowski (2013e), I indicate that the animal imagery in the insignia of the *comes limitis Aegypti*, *dux Palaestinae* and *dux Arabiae* (Not. Dig. Or. 28, 34, 37) should also be considered as topographical allusions. See also Traina (2013): 158–160.

[50] Red colour is consistently used in manuscript O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854; the square's background in manuscript M– Monacensis Latinus 10291, Palatinus 291, varies in colour

[51] On insignia, see Berger (1981): 121–124. On the insignia of *comes Isauriae* see also Burgess (1995): 85–87; Feld (2005): 90–92.

[52] As a rule, two legions were stationed per province while on the territory subordinated *comes limitis Aegypti*, according to Not. Dig Or. 28, there were four. In the recent literature only see Nicasie (1998): 48 et seq.; Kuhoff (2001): 452 et seq., 463 et seq. Due to the importance of Egypt, the organization of administration there was distinct from the rest of the Empire. See remarks in Chapter 2.2.3.

competences were essentially limited to military affairs.[53] As observed above, in the latter half of the fifth century civilian and military functions in the entire diocese of Egypt were permanently merged with the introduction of the office of *dux* or *comes/ comes Aegyptiaci limitis et praefectus Augustalis*. For the most part of Late Antiquity, Minor Asian Isauria also enjoyed a special status.[54] It is certain that in view of the threat of banditry, local *comes* not only commanded substantial military forces, given the small territory of the province, but was also the head of civilian administration as well (until 492–498).[55]

Presence of the table in the insignia of *comes limitis Aegypti* and *comes Isauriae* would thus mean that with respect to some competences they had more in common with other officials whose insignia also bore that symbol, including diocese administrators, than with other regional commanders. The only competence which could have linked *comes limitis Aegypti* and *comes Isauriae* with civilian offices (*praefecti praetorio*, province governors, most diocese administrators), higher officers at the palace (*magister officiorum*, *quaestor sacri palatii*), the highest-ranking military commanders (*magistri militum*, *comites domesticorum*), are broader judiciary and administrative prerogatives with respect to civilian governance of the province. Regional military commanders, that is *comites* and *duces*, did not usually possess any broader competences in this respect.[56] The element which undermines that thesis is the lack of the symbol of table in the insignia of military commanders who, at the time were *Notitia dignitatum* was being made, certainly combined civilian and military competences: *dux et praeses Arabiae* and *dux et praeses Mauretaniae* (Not. Dig Or. 37; Not. Dig. Occ. 30). They are certain to have been responsible for civilian governance of the province, and judiciary duties were the most important ones in this area. [57]

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[53] On the example of *duces Moesiae secundae* and *Scythiae minoris* see Wiewiorowski (2007b): 217–268 with further literature. Cf. also Tantillo (2012).

[54] Cf. Chapter 5.2.

[55] Ibidem. The office of *comes Isauriae*, re-established under Nov. Iust. 27 (a. 535), also combined both authorities, yet this was the upshot of administrative reform implemented in 535–536, as opposed to threat of banditry which, since the late fifth century, did not represent a major problem. Cf. Elton (2000). On Nov. Iust. 27, cf. Lounghis, Blysidu, Lampakes (2005): 266, reg. 1067, with further literature.

[56] Cf. Berger (1981): 121–124 and Burgess (1985): esp. 51, 71 et seq. who draws upon the opinion of the former author.

[57] See Chapter 3.1. On the details of organization in Mauretania in the light of *Notitia dignitatum*, see Matthews (1976); On the final determination of competences of *dux et praeses Arabiae* since 353–367, see Kotansky (1988): esp. 55–60. Problematic interpretation of the table, with reference to the example of both *duces* is as element of argumentation in Scharf (1994): 45, who argues that the table was a "Rangkriterium".

The above interpretation of table in the insignia in *Notitia dignitatum* has an equivalent in the representation of Late Antique court in the Greek Rossano Gospels from Italy, dating to ca mid-sixth century (*Codex purpureus Rossanensis*, fol. 8–9).[58] In the scene depicting Jesus being handed over to Pontius Pilate (Matthew 27: 1–2, 12–14)[59], the latter sits on a dais, behind a table covered with light blue cloth, decorated with golden portraits (most likely imperial). Pilate is holding a scroll in his hand (a letter, a document of appointment?), while on the table one also notices a vessel with dark liquid (inkwell?) and styluses. Men standing behind Pilate are holding two tablets with portraits with two figures each (emperors)[60], and there is another group of five men on the right.[61] In the scene showing Jews insisting that Pilate release Barabbas (Matthew 27: 15–26; Mark 15: 6–15; Luke 23: 13–24 – Fig. 14), with an introduction referring to the attempt to send Jesus to Herod for judgement (Luke 23: 7), there are other gospel-related fragments (Matthew 27: 3–5; Mark 15: 6–15; John 18: 39–40). Pilate's hand is resting on a scroll /book[62]; there are more scrolls lying beside the table as well; the figure on the right of the table (probably clerk of the court) holds a diptych in his hands (wax tablets?). Christ and other characters are portrayed below the dominant figure of Pilate on the throne.

This representation corresponds in part with the order and manner of proceedings of Later Roman *cognitio extra ordinem*, when the official discharged his official duties in his palace or other building found in the city – the seat of the office.[63] Court proceedings were open, while the hearings took

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[58] See Rotili (1980): esp. 15–20 and http://www.calabria.org.uk/calabria/arte-cultura/Codex PurpureusRossanensis/codex13.htm as well as http://www.calabria.org.uk/calabria/artecultura/CodexPurpureusRossanensis/codex14.ht. The interpretation also draws on Loerke (1961); Berger (1981) 196–197 with references to earlier literature. This argumentation was omitted altogether by Scharf (1994): 44–46. On legal aspects of the judgement of Christ, see in Polish Święcicka (2012). Cf. also Liebs (2007): 89–104 with references to further literature.

[59] The bottom sections of the sheets show scenes of contrition and suicide of Judas, provided with fragments taken from Matt. 27:3–5.

[60] This representation was one of the reasons why Chastagnol (1960): 196 et seq., challenged the thesis claiming that objects placed on the tables of the highest imperial officials were imperial portraits, not diptychs.

[61] Loerke (1961): 182, considers them to be *asessores* – legal advisors. On *asessores*, cf. Chapter 3.2.

[62] In a gesture analogous to Probianus on the right side of Probianus's Diptych. An opinion has also been advanced that the scroll is a letter which Judas received from Herod (existence of the letter may be inferred from Luke 23:7); see Rotili (1980): 16.

[63] See Kaser, Hackl (1996): § 84, 1; more broadly: Dareggi (1996). At the time, one notices a tendency to hold court proceedings in closed interiors, which were nevertheless accessible to the public. Comparatively on venues of the court of province governor in connection with remarks on their palaces: Lavan (2001): 50 et seq.; Humfress (2007): 47.

place in Latin or Greek. The judge would sit, whereas other participants and the audience were standing. Thus the scene in *Codex purpureus Rossanensis* (Fig. 14) was provided with symbols which were comprehensible for the people living in the realities of Late Antiquity, and which underlined the legitimate nature of Pilate's court – the scroll, the throne, judge's table with styluses, imperial portraits.[64] For the Late Antique author of miniatures, a table covered with blue cloth connoted the execution of official duties, judicial ones in particular, and therefore that was how he envisaged the court of Pilate in the scenes from Gospels. In the sixth-century Rabbula Gospels, Pilate is also seated behind a table (fol. 12V).[65] At the peak of the Middle Ages, the scenes of Roman court were presented slightly differently: in the surviving depictions the judge often held a book and a sword, and sat on a chair, but not behind a table.[66] Also, medieval iconography shows Christ as a figure at least equal to Pilate. The majority of known images showing Pilate's court does not employ the symbol of table.[67]

The bottom part of the insignia of diocese administrators in *Notitia dignitatum* show personifications of provinces. They are indicative of Later Rome's declining iconographic tradition, which had its roots in triumphal art.[68] In the description of the eastern part of the Empire in *Notitia dignitatum*, the provinces were arranged according to their geographical location, whereas the description of the western part also takes hierarchy into account: provinces under governors with the title of *consulares* are mentioned in the first place, followed by *praesides* (just as in the text of *Notitia dignita-*

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[64] As an argument in favour of significance of tables in the imperial judiciary, Loerke (1961): 179, cites the description of Opt. 3, 12, who discussed placing imperial portraits on the tops of Christian altars, and hastily concludes that such an act was seen as transformation of altar into a judge's table. Furthermore, he advanced a somewhat far-fetched view that the miniatures show Later Roman court of appeal.

[65] Syrian codex, originating from the monastery of St. John of Zagda, made by scribe Rabbula, bearing the date 586. See http://sor.cua.edu/Bible/RabbulaMs.html Cf. Loerke (1961): 176 and Fig. 4.

[66] See miniatures collected by Ebel, Fijal, Kocher (1988): 20–27, 30 et seq., 36 et seq., 40–53, 56 et seq., 60 et seq., 66 et seq., 70–73, 76–87, 90–97, 106 et seq., 110–121, 130–141, 144 et seq., 152 et seq., 158–163, 170–173, 176 et seq., 180–183.

[67] Loerke (1961): 178 et seq., goes too far with his argumentation, suggesting parallels between the iconography in *Codex purpureus Rossanensis* (fol. 8–9) and Not. Dig. Or. 34 (scrolls in the insignia of *dux Palestinae*) and 43 (table in the insignia of *consularis Palestinae*). He states that: "In the Rossano miniature, the scroll and the table units these two offices and translate the historical Pilate, governor of Judea in the first century, into the symbolic Pilate, *dux-consularis* of the Palestinae in the fifth and early sixth century". His argumentation aimed to support the thesis that the miniatures were modelled after a fifth-century scene in the apse of a basilica in Jerusalem and that in the Byzantine tradition Pilate was an archetype of a just judge.

[68] Ostrowski (1985): 81 et seq.

tum).[69] Meanwhile, the insignia of the vicar of Spain include only consular provinces (*Betica*, *Lusitania*, *Callaecia*), while provinces governed by *praesides* (*Tarraconensis*, *Carthaginensis*, *Tingitania*, *Insulae Balearum*) were omitted.[70]

Personifications of provinces are shown in frames, mostly yellow ones. Depending on the number of provinces in the diocese, personifications of provinces are presented in one or as many as three rows. The provinces are depicted as female figures in frontal view, with loose golden, light or dark brown hair. The heads are sometimes topped with crown or other objects and surrounded by halos; personifications of provinces subordinated to the vicar of *Septem provinciarum* are the only ones without such motifs (Not. Dig. Occ. 22). The embodied provinces are dressed in variedly coloured cloaks and tunics, with pink, green and gold being the dominant colours. The women carry bowls with coins or other gifts in yellow colour (except the insignia of *vicarius Africae* – Not. Dig. Occ. 20); two figures have one of their hands raised – in a gesture of salutation (?).[71] The representations of provinces were placed on a background which contrasts with the colour of their attire; on that background one also finds horizontal or vertical caption with the name of the province, written chiefly in Latin minuscule.[72] In the insignia of vicars of *Africae* and *Septem provinciarum*, the names were placed on separate bands (Not. Dig. Occ. 21; 22).

The crowns and objects on the heads of figures which personify the provinces were drawn in a fairly careless manner; they are more meticulously made only in the case of vicars: *Thraciarum* (Not. Dig. Or. 26), *Hispaniae* and *Septem provinciarum* (Not. Dig. Occ. 21; 22). The objects adorning the head of personification of the province of Thrace show particular attention to detail. The heads of personifications of provinces *Europa* and *Thracia* bear crowns resembling the crowns known from insignia in *Notitia dignitatum*, while *Haemimontus* has a radial crown in the shape of three flames. The temples of province *Rhodopa* are embellished by a radial crown with two projecting rays and the *tau* cross in place of the third central ray.[73] *Moesia secunda*

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[69] Faleiro (2005): 507.

[70] Not. Dig. Occ. 21. The reason why they were omitted cannot be determined, given that remaining insignia comprise a much larger number of meticulously rendered provinces (with the maximum of 15 in the case of *comes Orientis* – Not. Dig. Or. 22).

[71] Left (personification of province *Libya Inferior*) or right hand (personification of province *Arcadia*) – Not. Dig. Or. 23. Berger (1981): 106 et seq., erroneously wrote only about bowls with coins.

[72] The provinces which in the dioceses of Egypt, Pontus and Spain were written in majuscule (Not. Dig. Or. 23, 25; Not. Dog. Occ. 21)

[73] The *tau* cross was a holy sign for the ancients; it denoted the centre of the world, was a symbol of the power of sun which reigned supreme. It was also used in Christian iconogra-

has three ears or leaves of grain on its head; in turn, a bird is taking flight from the head of personification of *Scythia minor*.[74]

The diversity of the colour of background and attire as well as distinct elements of decoration and lettering seem to have no greater significance for the analysis of what the bottom section of the insignia communicates. Similar personifications of dioceses and provinces, this time represented as striding women, appear in the insignia of the highest officials of the Eastern and Western Empire.[75] Personifications of provinces carrying platters of gifts symbolize homage paid by provinces to diocese administrator.[76] The representations of gifts may also refer to their supervision over tax collection; this competence is confirmed indirectly by the fragments of *Notitia dignitatum* which describe the composition of their offices as well as by other sources.[77]

One should also draw attention to the insignia of the vicar of Britain, which differ completely from the insignia of other diocese administrators (Not. Dig. Occ. 23 – Fig. 9).[78] They are rectangular, with a caption above, inscribed in Latin letters in the manuscripts, saying *vicarii Britaniarum/vicary Britanniarum*. In the centre of the rectangle, there is a fairly accurate depiction of the British mainland in green-brown or brown with five forts. The island is surrounded by the waves of blue sea. Above the variedly coloured fort, in white "cartouches" or within the motif of fortifications[79], names of five provinces were provided in a hierarchical order, without taking their geographic location into consideration. As in the text of Not. Dig. Occ. 23, the first to be enumerated are consular provinces (*Maxima Caesarensis*, *Valentia*), followed by remaining provinces administered by *praesides*. In in the upper left corner, there is a dark red rectangular frame; inside, there is a yellow codex with a following text: "fl / intall / comord / pr" and a white scroll.

Thus the insignia of the vicar of Britain resemble the insignia of most regional commanders – *comites* and *duces*, apart from the already discussed

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phy and it is also referred to as St. Antony's cross in commemoration of the saint. See Foerster (1990): 13 et seq.

[74] These details are more accurately rendered in manuscript O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854.

[75] *Praefectus praetorio per Illyricum*, *proconsules Asiae* and *Achaiae* (Not. Dig. Or. 3; 20; 21); *praefectus praetorio per Italias*, *proconsul Africae* (Not. Dig. Occ. 2; 18). In the latter case, the personification carries ears of grain; in the edition Seeck (1876) there is a dead bird in one of the hands.

[76] Berger (1981): 106.

[77] See Chapter 3.1, 4.1 and 4.2.

[78] Polaschek (1936): 1103, 1107; Berger (1981): 110; Faleiro (2005): 518 et seq.

[79] "Cartouches" may be found in manuscript O – Oxoniensis. Canonicianus Misc 378, bibl. Bodl. 19854.

cases of *comes limitis Aegypti* and *comes Isauriae*, whose insignia feature the blue table. At the same time, the forts in the insignia of the vicar of Britain symbolize provinces within his diocese, whereas in the insignia of military commanders they denote principal location where their units were stationed. Also, they lack the representation of *theca*.[80] The insignia of *vicarius Britanniarum* are almost identical with the insignia of commanders on the British Isles: *comes litoris Saxonici per Britanniam, comes Britanniae* and *dux Britanniarum* – Not. Dig. Occ. 28; 29; 40 (Fig. 10–12).

The similarity engendered the hypotheses that *vicarius Britanniarum* combined the competences of a civilian superior of the province with the competences of military commander, even though the composition of his *officium* was analogous to the composition of offices of other diocese administrators.[81] Another thesis was that he was the head of municipal garrisons or irregular detachments[82]. The conclusion is also based on archaeological finds, which suggest the presence of military units in the cities which were not mentioned among other locations of military forces in *Notitia dignitatum*, as well as on the fact that insignia of the vicar of Britain feature forts.[83] As noted above, however, those forts symbolize provinces that made up the diocese. Moreover, archaeological finds are too ambiguous to provide grounds for conclusions regarding the competences of *vicarius Britanniarum*. This would speak against the conclusion that this vicar commanded units stationed in the cities. Another element that has to be considered is that in the early fifth century, Roman forces were quite substantial and belonged to as many as three structures of command, i.e. those headed by *comes litoris Saxonici per Britanniam*, *comes Britanniae* and *dux Britanniarum* (Not. Dig. Occ. 28; 29; 40). This would lead to the conclusion that the hypothetical prerogatives of *vicarius Britanniarum* with respect to the army must have been rather limited. On the other hand, military command was indeed occasionally en-

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[80] Polaschek (1936): 1103, groundlessly assumed that lack of *theca* was only due to the copyist's mistake.

[81] MacMullen (1963): 75, note 76; Hassall (1976); Johnson (1976). See also Berger (1981): 110; Frere (1987): 346–347; Salway (1993): 283. The issue is omitted in Jones (1996): 146; Southern (2003). Its assessment should in no way be influenced by the fact that only one constitution addressed directly to the vicar of Britain has survived – C. Th. 11, 7, 2 (a. 319). Cf. e.g. PLRE 1 (L. Papius Pacatanius 2). It was concerned with taxation of decurions, and thus matters which were within the purview of civilian administration. On the constitution, see Stevens (1947); Dupont (1963): 31 et seq., 85; Scharf (1994): 44, note 111.

[82] Johnson (1976); Faleiro (2005): 519. In the Later Empire, military units were often stationed in the cities. The situation was different in the Near Eastern provinces, where the tradition of stationing of military units dated back to the period of Principate. See Isaac (1990): esp. 269–282.

[83] See Frere (1987): 346 et seq.

trusted to diocese administrators and the hypothesis should not be wholly rejected.[84]

The insignia of the vicars of Britain indicate therefore that their competences might have differed from the competences of the remaining diocese administrators. Adoption of the thesis that representations of *thecae*, especially the blue table, are strictly associated with broader judicial and administrative competences of imperial officials – which includes most diocese administrators – would suggest that those powers must have been restricted in the case of *vicarius Britanniarum*.

Recapitulating the deliberations on the insignia and titulature of diocese administrators in *Notitia dignitatum* so far, one may conclude that the location in the anthology and the titulature used in that source underlined distinct status of the vicars of Rome, the count of the East and the administrator of Egypt compared with most other vicars. The difference is particularly supported by the analysis of the upper section in the insignia of the two latter officials. Its contents symbolized the position of diocese administrators in the imperial administrative structures and some of their competences. The fact that the insignia of *praefectus Augustalis* and *comes Orientis* feature tables with imperial diptychs is particularly important. This emphasized their higher status with respect to other diocesan vicars; in this very place, the insignia of the latter – with the exception of *vicarius Britanniarum* – contain tables with a codex and a scroll. Set against the representations of insignia of the remaining diocese administrator, the distinctive nature of the upper bands in the insignia of *comes Orientis* and *praefectus Augustalis* corroborates the conclusions drawn on the basis of other sources, namely that they possessed special status which other diocese administrators lacked, and offers an additional argument in favour of excluding those two imperial officials from this study.

All diocese administrators – except for the vicar of Britain – have *thecae* in their insignia, on which imperial portrait or portraits were represented. This signified the subordination of all diocese administrators to the rulers and the extent of their powers, exercised in the symbolic presence of the rulers and on their behalf. As observed above, however, it is impossible to assume that the presence of *theca* emphasizes the judicial authority of diocese administrators exclusively. Such a role is probably performed by the representation of table covered with blue cloth.

The bottom band of insignia with the personifications of provinces bringing gift not only symbolically underlines the supremacy of diocese administrators over provinces, but possibly also their being responsible for the collection of taxes.

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[84] Cf. Chapter 3.1.

In the light of insignia of *vicarius Britanniarum*, which were represented with resemblance to insignia of regional military commanders, it may be presumed that to a limited extent this official may have commanded some of the local military units in addition to administrating the diocese.

5.2. LITERARY AND EPIGRAPHIC SOURCES

The few mentions in literary and epigraphic sources are an important supplement to the information concerning judiciary of vicars conveyed in legal sources and conclusions drawn from the analysis of representations of the officials' insignia in *Notitia dignitatum*. The most important of those is a description of a court case heard by a diocesan vicar. In 362, Capitolinus, the first directly attested vicar of Thrace, conducted proceeding in the case of St. Emilianus, the last Christian martyr in the Balkan province of *Moesia secunda*.[85]

According to the text of the passion, in 362, a zealous pagan Capitolinus went to Durostorum to see whether Christians are to be found there; at his order, a feast was organized for the local notables (on 16 July or – which seems less probable – on 3 September).[86] During the feast, soldier named Emilianus armed himself with a large hammer and went to a pagan temple, where he destroyed statues of pagan idols and knocked over a number of sacrificial tables.[87] Subsequently, seeking to release a previously imprisoned

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[85] Theodoret *HE* 3, 7, 5. Chron. Pasch. a. 363 (cited with minor changes by Theoph. AM. 5855 – without mentioning the office of Capitolinus). The process is described in detail by two surviving versions – Latin-Greek and Greek – in medieval manuscripts *Martyrium s. Aemiliani* (Codex Vaticanus Graecus 866 and Codex Parisinus Graecus 1177). The martyrdom is mentioned in Hieron. *Chron*. a. 363, in which Capitolinus in not mentioned by name (used by Prosper Tiro, *Epitomae chronicae* 457) and *Martyrologium Hieronymianum*. According to one interpretation in Ambrosius *Ep*. 40, 17, Capitolinus was still alive in 388 (see PL 16: 1154–1155, note 95.). An exhaustive bibliography on St. Emilianus was collated by Atanasov (2004) and (2008): 27, note 2. On Capitolinus, see PLRE 1 (Capitolinus 2); Pacurariu (1994): 42–44; Wiewiorowski (1999): 368 et seq. On the vicars of Thrace, see also prosopographic listing in: Wiewiorowski (2011b).

[86] Various dates are provided in the two surviving versions of *Martyrium s. Aemiliani*. Durostorum (later Dorostolum, Silistra), located on the right bank of the Danube was, in Late Antiquity as well, an important defensive point, a river harbour on the junction of trade routes and a customs station. Cf. Donevski (1990); Soustal (1997); Ivanov (2000); Atanasov (2004): esp. 204–207; Angelova, Buchvarov (2007); Bâltâc, Damian (2007): 64, note 23. See also Dorostolum/Dristra: http://www.ehw.gr/l.aspx?id=10674; in Polish – Swoboda (1961).

[87] According to a less credible version of the life of St. Emilianus, which was widespread in the Slavic world, the saint was a slave to a Roman nobleman from Durostorum and perhaps a Slav by origin. See http://www.sveta-nedelia.org/rm/zitia/e/emilian-dorostolski.html; Atanasov (2004): 206; Karavlcev (2009):

peasant from the charge of having committed the act, and being guided by religious motives, Emilianus handed himself over to Capitolinus's subordinates. He was apparently interrogated by the vicar himself; the questions were intended to determine who Emilianus was, what his motives were and whether he acted on his own. Emilianus confessed that he was a Christian, son of Sabbatianus, a city prefect (most likely the commander of legion XI *Claudia*, whose main detachments were stationed in Late Antiquity in Durostorum[88]). He also confessed that he had acted on his own, driven by the desire to destroy the statues of pagan deities. Ultimately, the vicar sentenced him to death by burning at the stake, which took place on July 18th, 362, on the banks of the Danube. Separate fines were imposed by Capitolinus on Sabbatianus and inhabitants of Durostorum for false assurances that there were no believers in Christ among them. During the execution, the fire is said to have spread onto Emilianus's persecutors while his body remained intact. At his wife's request (who secretly professed Christianity) Capitolinus gave her the body of the martyr. Anointed with fragrant oils, it was claimed to have been buried near a locality called Gedina/Getzedina.[89]

Theodoret of Cyrus, in his Ἐκκλησιαστικὴ ἱστορία calls Capitolinus: "ἄρχων ἁπάσης τῆς Θράκης" ("the governor of all Thrace")[90], but other sources usually refer to him directly as *vicarius*.[91] The martyrdom of St. Emilianus is to have taken place during the so-called persecution of Christians under Julian the Apostate, most often assuming the form of pagan unrest against Christians, in which imperial officials were seldom actively involved.[92] According to the text of passion of St. Emilianus, Capitolinus visit-

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[88] See Zahariade (1988): 58 et seq., 115 et seq. with further literature.

[89] The location where St. Emilianus was executed and buried, related in the two preserved versions of *Martyrium s. Aemiliani* is a widely discussed issue – see Atanasov (1997); Atanasov (2004): esp. 212–216; Atanasov (2008): esp. 28; Boyanov (2010). Constantinescu (1967): 14, suggested that in fact only Christian relics were burnt.

[90] Theodoret *HE* 3, 7. The term ἄρχων was usually employed in Late Antiquity to denote a province governor. Cf. Sophocles (1896): 259; Hanton (1927–1928): 67–68; Mason (1974): 111–113. Perhaps this is why Barnea (1979): 7, called him the governor of Thrace. Hence there are no grounds to call Capitolinus a prefect. See the discussion concerning the office held by Capitolinus: Atanasov (2004): 208 et seq.; Atanasov (2008): 28.

[91] In one version of *Martyrium s. Aemiliani* the following term is used: "[…] Καπετουλῖνον […] τόπον πραιφεκτουρίας […] Capitolino […] locum praefecturae […]" (Codex Vaticanus Graecus 866).

[92] Cf. Niceph. Call. *HE* 10, 8–10 with a list of locations where persecutions were taking place during the reign of Julian the Apostate. See also De Graiffier (1954): esp. 13; Gentz, Winkelmann (1966). On Julian's policy towards Christians in recent works, cf. Hardy (1968); Andreotti (1978): 152–178; Bowersock (1978): 79–93; Smith (1995): 207–218; Olszaniec (1999): 27–43 (On St. Emilianus – 31); Rosen (2006): 233–238. Atanasov (2004): esp. 210 et seq. attempts to

ed Durostorum on purpose, to enforce imperial legislation against Christians. During the persecution under Julian the Apostate, Christians were penalized for committing acts which violated the provision of the so-called edict of restitution, which pertained to pagan cults and temples.[93] Also, Durostorum had never been the seat of *officium vicarius Thraciarum*; Capitolinus's visit might have been a part of inspection tour, which was often undertaken by diocesan vicars.[94]

Assuming that the account is authentic, developed on the basis of the earlier court record, it would have to be stated that the case of St. Emilianus was heard by Capitolinus in first instance. At the time, the martyr was held liable due to having committed *sacrilegium*. St. Emilianus destroyed *res sacrae*, but his responsibility resulted from the fact that his action was deemed a violation of emperor's law.[95] It remains a mystery, however, why St. Emilianus was judged by a diocesan vicar, since contraventions committed by soldiers and officers of *riparienses* forces stationed in the province were subject to the jurisdiction of the local commander – *dux Moesiae secundae*. It is unlikely that Capitolinus's example meant that the ducate had not been yet established in Moesia Secunda. It is true that the activity of the local *duces* is attested only in the following decade, but a number of indirect sources suggest that provincial command had existed in the province since the turn of the fourth century.[96] Perhaps the judgement of St. Emilianus by a vicar of diocese stemmed from the extraordinary nature of those events and their connection with Capitolinus's feast. It may also have been a simple upshot of the fact that Capitolinus was the highest ranking imperial official who stayed in Durostorum at the time. These are nevertheless only conjectures based on the disputable presumption that the account is a historical one.[97]

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capture the context of events and link the account about St. Emilianus with other lives of saints, in particular the life of St. George.

[93] See Olszaniec (1999): 22–29 with further literature. Such a version is ultimately adopted by Atanasov (2004): 208 et seq.

[94] As probable capital of diocese authors suggest Heraclea (*Perinthos*), or rather Adrianople, which was also the seat of ecclesiastic diocese. Cf. Soustal (1991): 161–167; Sayar (1998): esp. 71–80.

[95] Cf. Dębiński (1995): esp. 55–62, 163–168, 193 et seq.; Stachura (2010): 181–184 with further literature. In post-classical Roman law, the notion *sacrilegium* encompassed various felonies against the emperor, and since mid-fourth century also against Christian religion.

[96] Amm. Marc. 31: 4, 9–11; 5, 1–9. See Wiewiorowski (2007b): 76–79, 180–187. On *causa militaribus*, cf. Jones (1964): 487–489; Sander (1958): 298; Sander (1965): 402–403; Kuleczka (1974). On the example of the Eastern Roman Empire itself see Goria (1995b): 284–287. See also in the context of provinces on the Lower Danube Wiewiorowski (2007b): 102–114, 181, 187, 227–236.

[97] The credibility of the account is undermined by description of Capitolinus as a pagan zealot and his wife as an ardent Christian. See also Delehaye (1911): 284 et seq.; Delehaye (1912): 260–265; Zeiller (1918): 126 et seq.; Constantinescu (1967): esp. 12–15; Halkin (1972):

As this author observed in Chapter 1, interesting information pertaining to the judiciary of vicars appears in Ammianus's detailed account of the so-called Leptis Magna affair (Amm. Marc. 28, 6).[98] It was associated with the accusations made by the African provincial assembly of Tripolitania (*concilium*) against a long-standing *comes Africae* Romanus, which recriminated his conduct during the raids of nomadic Austurians in 363, 364 and 367.[99]

The newly appointed count Romanus, responsible for the defence of African provinces, apparently refused to protect Leptis Magna during the first barbarian incursions, arguing that its inhabitants failed to provide supplies and 4,000 camels to the Roman army.[100] According to Ammianus, although the provincial assembly envoyed two delegations to the court of emperor Valentinian I to deliver complaints[101], Romanus, thanks to his influences (among other things, he was brother in law to Remigius, Western Roman *magister officiorum* in 367–372) long avoided responsibility for failing

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27–29 – in: (ed.) *Martyrium s. Aemiliani*. On the interdependencies between narrative sources depicting the martyrdom of St. Emilianus, see: Atanasov (2004): esp. 203–207; Burgess (2005): esp. 173. On the credibility of the act of martyrdom, see also Chapter 2.2.2 with the literature cited there.

[98] Romanus and the affair are covered in extensive literature, cf. Pallu de Lessert (1901): 248–255; Seeck (1920); Warmington (1956); Romanelli (1959): 565–581, 583–584; Demandt (1968a) and (1968b); PLRE 1 (Romanus 3); Demandt (1972): esp. 94–111 – chiefly findings relating to the chronology of events; Lepelley (1981): 354–362; PCBE 1 (Romanus 1); Marié (1984): 261–262 et seq., 266, 297–301 et seq., 451–466; Matthews (1989): 281 et seq., 383–387; Günther (1997); Coşkun (2004a); Boeft – Drijvers – Hengst – Teitler (2011): 253–301, with further literature. The highly disputable chronology of events takes into account the reservations expressed by Coşkun (2004a), with corrections introduced following doctoral dissertation in progress Rogowski (2015) as well as Boeft – Drijvers – Hengst – Teitler (2011): XXIII–XXVII, 253–301. Among Polish writings, see Kotula (1965): 112–134; Kotula (1972a): 218–231. The works quoted below are chiefly concerned with the circumstances associated with the participation of vicars of Africa in the events.

[99] Frend (1952): 72, correctly finds that the log service of Romanus as *comes Africae* was exceptional, esp. compared with other military commander at province level. Cf. Jones (1964): 381. On *comes Africae*, see also Kuhoff (2012); Di Paola (2012a), esp. 1070–1073, with further literature. On Astuviani see Felici, Munz, Tantillo (2006): esp. 600–605, with further literature.

[100] On camels in Roman Africa, cf. Shaw (1979): including 695–696 (on the excessive demands of Romanus, which showed the count in unfavourable light, and 712–713 on the significance of camels for transportation of supplies); Boeft – Drijvers – Hengst – Teitler (2011): 263 et seq., with discussion in literature on whether the number of camels was inordinate (ultimately find it to be possible) with further literature. On African curia in Polish see Kotula (1968): esp. 132–140 – chiefly on the period of Principate, pointing out that in Late Antiquity *curia* and *curiales* had utterly different meanings.

[101] On provincial and diocesan assemblies in the Later Empire, their composition and significance, see Larsen (1955): 145–161; Deininger (1965): 183–188; Martini (2001); Slootjes (2006): 173 et seq.

to fulfil his duties.[102] The account of Ammianus, which was biased in favour of Romanus, is often interpreted as an example of corruption in the Later Empire, disputes between civilian and military dignitaries as well as Valentinian's reluctance with respect to provincial elites, and a proof of actual limitations of imperial omnipotence.[103] Incidentally, it may be noted that sending envoys to the emperor was nothing unusual in the Roman Empire, whose civilian administration is sometimes called a "diplomatic system" in view of the continual exchange of letters and petitions between the inhabitants of cities or provinces and the imperial court, which competed with territorial administration, and enabled the emperors to respond directly to emerging problems.[104]

According to Ammianus, in 365, a delegation of African *concilium* was sent to the emperor with *aurum coronarium*[105], with the purpose of submitting complaint regarding the events in the province (the envoys reached their destination in winter 366, at the latest).[106] Having found out about the delegation, the count sought to have the matter entrusted to him personally

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[102] PLRE 1 (Remigius); Olszaniec (2007b): esp. 413–417 with further literature. It is likely that the events in Africa are reflected in C. Th. 11, 1, 11 (a. 365) = C. 11, 1, 11, addressed to the vicar of Africa, Dracontius (on Dracontius himself see below). The constitution reminded that the means for the protection of frontiers should be based on taxes in kind (*annona*) paid by the estates located on the frontiers.

[103] See esp. Warmington (1956); Sabbah (1978): 142, 236 et seq.; Marié (1984): 297 et seq. 451; Matthews (1989): 383–387; Günther (1997): 455–457; Coşkun (2004a): 298 et seq.; Boeft – Drijvers – Hengst – Teitler (2011): 253, 265 with references to further works, in which this image persists. Cf. e.g. Frend (1952): 72 et seq.; Grasmück (1964): 148–150; McMullen (1988): 146, 154 et seq., 179 et seq., 194; Kelly (1998): 158; Garnsey, Humfress (2001): 35; Demandt (2007): 142, 464. See also Mratschek (2007) on the conjectured role if the account, which in Ammianus' presentation was to boost Roman morale after the defeat of Adrianople. In turn, Di Paola (2012a), esp. 1073–1075 suggests that the events were associated with Romanus's in his actions against the Donatists. Ammianus would use official documents. See Tantillo (2010b): 23, with further literature.

[104] Miller (1977): 375–385 (during the Principate); Gillet (2003): 17–26.

[105] Literally *Victoriarum aurea simulacra* (Amm. Marc. 28, 6, 7), which was a form of *auurum coronarium*, i.e. an offering made by the cities of the empire to the emperor on his accession. See in details Ando (2000): 175–190, with further literature.

[106] In should be noted that among provincial and diocesan assemblies of Late Antiquity, African ones were particularly active. For instance, in 355 they were separately conferred the right to formulate petitions to the emperor, the right to convene freely and to express opinion during sessions, limited legislative competence and the right to send delegates, which was confirmed for other assemblies only several decades later. See C. Th. 12, 12, 1 (a. 355) and C. Th. 12, 12, 9 (a. 382). The latter constitution prohibited province governors, vicars and praetorian prefects to interfere with their sessions and with the right to submit petitions, as well as entitled emissaries of the assemblies to take advantage of *cursus publicus*. See Larsen (1955): 150 et seq.; Demandt (1968b): 337–346. Sending delegates to the court of Valentinian I was just an exercise of this entitlement.

and to *vicarius Africae* (most likely Dracontius, a vicar known from other sources), to whom envoys were sent as well (in 366–367).[107] In the meantime, Austurians raided Tripolitania once again (and another delegation was sent to the emperor – in 366 or 367). During the incursion, Romanus is said to have been temporarily deprived of military command, which was assumed for the time being by *praeses provinciae* Ruricius.[108]

The case was investigated by Palladius, imperial *tribunus et notarius*, sent by the emperor to Africa, as Valentinian I did not trust envoys or supporters of Romanus.[109] Palladius, blackmailed by Romanus under accusation of embezzling soldiers' pay, which he was ordered to distribute by the emperor, ultimately presented the emperor with a report which was favourable for the count of Africa.[110] Valentinian ordered, or rather issued a sentence whereby two of the African envoys were to have their tongues cut out (citizens of Leptis Magna: Erechthius and Aristomenes), who nevertheless managed to go into hiding in 367/368, and again sent Palladius to Tripolitania, together with the vicar of Africa.[111]

According to Ammianus, due to Romanus's intrigues the proceeding conducted by Palladius in 368–369 demonstrated that the accusations raised by the inhabitants of Africa were groundless. At the request of Valentinian I, the envoys were sentenced to death; Ruricius, the governor of Tripolitania,

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[107] Amm. Marc. 28, 6, 7–9 and 16–24. See Warmington (1956): 57; Demandt (1968b): 357; Poggetto della Nave Martini (1975); Marié (1984): 299, note 456; Coşkun (2004a): 295; Boeft – Drijvers – Hengst – Teitler (2011): 268 et seq., with further literature (the debate was concerned with e.g. identity of the vicar). On Dracontius on in biographical studies, see Pallu de Lessert (1901): 193–198; PLRE 1 (Antonius Dracontius 3); Kuhoff (1983): esp. 360, note 30.

[108] Amm. Marc. 28, 6, 11. Cf. Pallu de Lessert (1901): 299 et seq.; PLRE 1 (Ruricius) and discussion on the circumstances and nature of the transfer of competences: Warmington (1956): 58; Demandt (1968b): 347 et seq.; Boeft – Drijvers – Hengst – Teitler (2011): 272 et seq., Tantillo (2012): 85 et seq.

[109] On the practice of sending such special imperial emissaries to Africa in the context of religious controversies, see Morgenstern (1993b): 112 et seq.

[110] On Palladius see PLRE 1 (Palladius 10); Kuhoff (1983): 213, 216, 422 (note 36) with further literature. According to Warmington (1956): 59, he was Romanus's principal associate. Incidentally, one of the earlier counts of Africa committed unauthorized, i.e. without the required consent of the vicar, taking of *annona militaris* from warehouses – C. Th. 7, 4, 3 (a. 357). See Vogler (1979b): esp. 305, 312.

[111] The resolution may have relied on C. Th. 10. 10, 2 (a. 313), which sanctioned issuing imperial judgements on the basis of information provided by *delatores*. Thus: Boeft – Drijvers – Hengst – Teitler (2011): 285. When travelling the dignitaries most likely took advantage of *cursus publicus*. See Bianchini (1999). Vicars were responsible for *cursus publicus* to much the same degree as praetorian prefects, but little is known in that respect. See C. Th. 8, 5, 13 (a. 362); C. Th. 8, 5, 15 (a. 362) = C. 8, 10, 7; C. Th. 8, 5, 31 (a. 370); C. Th. 8, 5, 33 (a. 374). Cf. Ensslin (1958): 2038; Vogler (1995); Kolb (1998) and (2000): 113, 119, 167 et seq.

was also executed. The court was most likely presided over by Crescens, subsequent vicar of Africa; the interrogations were also attended by count Romanus.[112]

The downfall of Romanus came only after 373/374. Ammianus describes the end of his career in a fragment devoted to the circumstances surrounding the outbreak and the course of rebellion of Firmus (in 371/372–375 [?]) to which, according to the historian, Romanus contributed as well. The official sent to Africa, the then *magister equitum praesentalis,* Theodosius the Elder, arrested Romanus in connection with his conduct during the campaign against Firmus.[113] When his belongings were being searched, a letter was found revealing that Valentinian I had been misled by notary Palladius; the piece of correspondence was later read at the imperial court. Palladius committed suicide before being brought to the court (374/375 [?]).[114] However, Romanus was not tried at the time.[115]

At this stage of the affair, vicars of Africa performed controlling functions (along with the imperial envoy – the tribune and notary Palladius), or acted in the capacity of first instance judges. The account suggests that Romanus remained on good footing with those imperial dignitaries, and took part in the interrogations.[116] In the course of evidentiary hearing, witness evidence was taken, and mutilation penalties – cutting out of the tongue – as well as death sentences were meted out; some of the sentences were carried out.

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[112] Amm. Marc. 28, 6, 21–24. On the vicar, only in biographical studies, see Pallu de Lessert (1901): 199 et seq.; PLRE 1 (Crescens 1); Kuhoff (1983): 119, 360 (note 31). It is likely that he is one and the same with a senator and pagan priest known from several Roman inscriptions (if so, then he originated from the East). See Rüpke (2005): 931, no. 1401. However, it is also possible that Musophilus was the vicar in question. See Pallu de Lessert (1901): 198; PLRE I (Musophilus); Kuhoff (1983): 119, 359, et seq. 29. Cf. Seeck (1919), 240; Pergami (1993): 251.

[113] Amm. Marc. 29, 5: 2, 5, 6–8, 27, 50. See PLRE 1 (Firmus 3; Flavius Theodosius 3); PCBE 1 (Firmus 1); Roberts (1998). This issue is discussed in several studies by Professor Tadeusz Kotula: Kotula (1961): 64–70; Kotula (1970); Kotula (1972a): 225–231; Kotula (1979). In his opinion, the fighting had broken out already in 370, being a manifestation of escalating African separatism. Among recent works see also Drijvers (2007): 133, note 10; Boeft – Drijvers – Hengst – Teitler (2013): 149–220 (on Romanus esp. 156 et seq., 159, 161 et seq., 165 et seq.). On military details of the campaign of Theodosius the Elder, cf. also Matthews (1976).

[114] Amm. Marc. 28, 6, 26–27; 29, 5, 2–5. Cf. Zosimos 4, 16, 3. Another one to take his life, in unclear circumstances, was Remigius, who had previously terminated his service in imperial administration. Cf. Amm. Marc. 15, 5, 36 and 30, 2, 10–12. See Boeft – Drijvers – Hengst – Teitler (2011): 295 et seq.

[115] The reasons why trial did not take place are highly disputable. See Coşkun (2004a): 304 et seq., Rogowski (2015) with discussion in literature.

[116] Mratschek (2007): 245 draws attention to the image of Romanus's accomplices, including vicars, which Ammianus deliberately exaggerated, compared with the portrayal of associates of Theodosius the Elder. See also Boeft – Drijvers – Hengst – Teitler (2011): 290 et seq.

The charges brought by the inhabitants of Africa were investigated yet again while Valentinian I was still alive, after Palladius's fraud had come to light, and then under Gratian, in 375–376. As regards the powers of vicars, the following fragment from Ammianus appears to be the most important: "hoc fortunae secundioris iudicio plene conperto, deletoque tristium concitore turbarum, exsiluerunt Erechthius et Aristomenes e latebris, qui cum sibi iussas abscidi linguas didicissent ut prodigas, ad longe remota declinarunt et abdita, doctoque super nefanda fraude gratiano imperatore fidentius — Valentinianus enim obierat — ad Hesperium proconsulem et Flavianum vicarium audiendi sunt missi, quorum aequitas auctoritate nixa iustissima, torto Caecilio, aperta confessione cognovit, ipsum suasisse civibus, gravarent mentiendo legatos. haec acta secuta est relatio, gestorum pandens plenissimam fidem; ad quam nihil responsum est" (28, 6, 28).[117]

As can be seen, after the death of Valentinian I (17 November 375), emperor Gratian designated the incumbent proconsul of Africa, Decimius Hilarianus Hesperius and vicar Virius Nicomachus Flavianus to investigate the accusations against Romanus.[118] It was to those officials that Erechthius and Aristomenes were sent, having left their hiding place at the turn of 374 and 375 at the earliest, after the suicide of imperial notary, Palladius.[119]

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[117] "The news of this propitious event—the death of the principal cause of their sad troubles—being known, Erechthius and Aristomenes, who when they first heard that their tongues were ordered to be cut out for sedition, had escaped, now issued from their hiding-places. And when the emperor Gratian was informed of the wicked deceit that had been practised (for by this time Valentinian was dead), their fears vanished, and they were sent to have their cause heard before Hesperus the proconsul and Flavian the deputy, men whose justice was supported by the righteous authority of the emperor, and who, after putting Caecilius to the torture, learnt from his clear confession that he himself had persuaded the citizens to bring false accusations against the ambassadors. These actions were followed by a report which gave the fullest possible account of all that had taken place, to which no answer was given". Translation by C. D. Yonge, in: http://www.tertullian.org/fathers/ammianus_28_book28.htm#C6.

[118] Cf. Warmington (1956): 55–56; Kotula (1965): 127; Demandt (1968b): 360; Sabbah (1978): 162, 258; Günther (1997): 455–457; Coşkun (2004a): 296, note 14, with various concepts relating to the sources from which Ammianus took information, with further literature. On Nicomachus, considered one of the last advocates of paganism, only in recent works, see PLRE 1 (Virius Nicomachus Flavianus 15); O'Donnell (1978); Honoré (1989); Errington (1992) – on Nicomachus only as praetorian prefect; Hedrick (2000): 18–19; Coşkun (2004b): esp. 469, On vicariate in Africa; Rüpke (2005): 1377; Olszaniec (2007b): 361–373 with further literature. On proconsul Hesperius only in biographical studies, see Stroheker (1948): 181, no. 188; PLRE 1 (Decimius Hilarianus Hesperius 2); Haehling (1978b): 298 et seq., 426; Kuhoff (1983): esp. 162, 390 (note 34); Sivan (1993): passim; Coşkun (2002): esp. 136–147; Olszaniec (2007b): esp. 339–349 with further literature.

[119] Amm. Marc. 28, 6, 27–28. Considering the fact the envoys went into hiding, it may be inferred that they probably originated from among the fearful African notables, although such tasks would also be entrusted to professional orators. See Gillet (2003): 231.

Apart from a mention concerning tortures used during the interrogation of Caecilius, *consiliarius* ('advisor') to count Romanus, and his disclosure, which released the inhabitants of Leptis Magna from liability, nothing more is known about the course of proceeding, which was probably taking place in spring 376. The proconsul and the vicar are certain to have conducted it as judges, given that Ammianus himself refers to them as *cognitores* (28, 6, 29).[120] Both dignitaries requested a thorough report made for the emperor (*relatio*), to which no response was given.[121] Hence the trial conducted by the proconsul and the vicar was not concluded with a sentence.[122]

According to subsequent fragments from Ammianus, which recapitulate the entire affair, Romanus, albeit dismissed from the post of *comes Africae*, still fought for his arguments to be recognized.[123] He set out for the imperial court, accompanied by Caecilius, who intended to accuse the proconsul and the vicar of partiality. He was favourably received at the court by the influential *magister peditum,* Flavius Merobaudes and, thanks to the support of the latter Romanus was allowed to present his witnesses.[124] When upon their

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[120] See Berger (1951): 394 (s.v. *cognitor*); Litewski (1998): 44 (s.v. *cognitor*). Cf. about *consiliarius* e.g. PLRE 1 (Caecilius 1). Although having no foundation Sivan (1993): 117, suggested that taking action in Romanus's case was one of the first undertakings of Ausonius as QSP.

[121] Lepelley (1981): 362; Matthews (1986): 386 et seq.; Barnes (1998): 182; Coşkun (2004a): 305, justifiably demonstrate partiality of the judges, as well as the bias of Ammianus's account, which spoke against Romanus.

[122] In the context of this proceeding, Coşkun (2002): 141; Coşkun (2004a): 304 et seq. is convinced of an appeal. According to the author they may have hear an appeal against a hypothetical judgement of province governor, which is alleged to have been made in 375. A court case of this kind is not mentioned in Amm. Marc. 28, 6, 28. After all, Erechthius and Aristomenes, most likely staying at the imperial court in Trier, were sent to the proconsul and vicar of Africa by emperor Gratian himself, who had earlier been informed about the affair. At the time, they may have appeared again as representatives of the African *concilium*. It is debatable whether Romanus's intervention was at all successful. See Rogowski (2015) with an analysis of discussion in earlier literature.

[123] Amm. Marc. 28, 6, 29–30: "Et nequid cothurni terribilis fabulae relinquerent intemptatum, hoc quoque post depositum accessit aulaeum. Romanus ad comitatum profectus secum Caecilium duxit, cognitores accusaturum ut inclinatos in provinciae partem: isque Merobaudis favore susceptus, necessarios sibi plures petierat exhiberi. Qui cum Mediolanum venissent, frustraque se tractos obsimulatis documentis probabilibus ostendissent, absoluti redierunt ad lares […]". The dating of the events is a matter of considerable controversy, but some time must have elapsed since the report had been drafted, as suggested by the lyrical expression "post depositum accessit aulaeum" (i.e. "after the curtain was brought down"). I shall limit myself to reference to Coşkun (2004a): 305 et seq., according to whom the event may have taken place in summer 377/or 378. Nevertheless, see Boeft – Drijvers – Hengst – Teitler (2011): 300.

[124] See PLRE 1 (Fl. Merobaudes 2); Wilczyński (2001): 50, note 20. On the debatable nature of his connection with Romanus, see also Demandt (1969); Rodgers (1981): esp. 84–87; Coşkun (2004a): 306 et seq., with further literature.

arrival in Milan, it turned out that they had been brought without due reason (relying on documents, they demonstrated that personal animosities were the cause), the witnesses were released home. It may be surmised that the last stage of the proceeding was held before emperor Gratian himself, in summer 377.[125]

The rule of the Roman extraordinary process was that cases were heard by one person.[126] 377 marked a an exception in that respect, when a court presided simultaneously by *vicarius* and *comes rei militaris* (see below) was established. In 440, there appeared a two-person appellate court, headed by *praefectus praetorio* and *quaestor sacri palatii,* dealing with cases involving persons other than *illustres,* including appeals from the rulings of diocese administrators.[127] Another two-person appellate court, created in 529, handled appeals against judgements of regional military commanders – *duces* – in *magister officiorum* and QSP were the presiding judges.[128] Due to the innovative nature of solutions adopted in both constitutions, it cannot be assumed that the nature of the tribunal of proconsul and diocesan vicar described by Ammianus (28, 6, 28–29) was much the same. A multi-person bench was provided for in a constitution read in the Roman Senate on February 11th, 376 (C. Th. 9, 1, 13).[129] It served as a basis for restricting the powers of dioce-

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[125] Coşkun (2004a): 305 et seq., argued that on emperor's behalf the case was adjudicated jointly by Fl. Merobaudes, as Romanus's superior, and the current PPO *Italiae et Africae* – Fl. Claudius Antonius (on the PPO see below), while the event are sure to have taken place before July 378 in Trier (focusing chiefly on the dating and the place where the constitution was issued by Gratian, while terminus ante quem is determined on the basis of IRT2009 571, which certainly dates to 378 – on the inscription). Likewise Barbati (2012): 200. Rogowski (2015) asserts that Gratian himself might have been the judge, arguing in favour of Gratian's journey to Rome (and thus perhaps via Milan) in autumn 376 or rather in summer 377. See also particularly Barnes (1975a); Girardet (2004): esp. 111–121, 140–143. The latter dates Gratian's visit in Rome to September-October 376, supporting the thesis with the example of efforts made by Romanus. The position represented by those authors relies on vague mentions about Gratian's trip to Rome which was expected by Themistius (Them. *Or*. 13, esp. 179b–d) and the eighth century Byzantine *Breves enarrationes chronicae* ca. 50 (which suggest that Gratian journeyed to Rome after 374). Rogowski (2015) also analyses the dating and the location of issue of Gratian's constitution. The authors mentioned here draw critically upon the earlier lively debate in the literature. See also Boeft – Drijvers – Hengst – Teitler (2011): XXVII, XXIX, 300 et seq. (who nonetheless maintain that "*cognitores* must have been Hesperius and Flavianus") while the trial was held in Milan, where the imperial court moved after 379. See Seeck, 1919, 246 et seq.

[126] See Chapter 3.1.

[127] C. 7, 62, 32. See remarks in Chapter 4.2.

[128] C. 7, 62, 38. On the constitution cf. Litewski (1966): 288; Litewski (1968): esp. 256 (lexical aspects), 261 et seq., 281; Goria (1995a): 447 et seq.; Goria (1995b): 287; Kaser, Hackl (1996): esp. § 80 (note 3), § 81 (note 24–26); Pergami (2000): 225.

[129] On the enactment see Chapter 4.1. Due to its significance its text is cited again: C. Th. 9, 1, 13 (a. 376): "Imppp. Valens, Gra(tia)nus et Val(entinia)nus AAA. ad senatum. Post alia:

san vicars and proconsuls with respect to investigations and trials of senators indicted in criminal cases carrying capital punishment. In the constitution, the hearing of the case was within the purview of the emperor (or/and?) PPO, while the court competent for cases from the territory of *Italia Suburbicaria* was *iudicium quinquevirale* presided by PVR. Given this context, it may be possible that the participation of Decimius Hilarianus Hesperius and Nicomachus Flavianus in the proceeding in the summer of 376 represented an implementation of the enactment following repeated petition of the African *concilium*.[130]

Romanus, as a *comes Africae* (even after potential dismissal) possessed the status of a senator (with the title of *spectabilis*) and was entitled to associated privileges, including judicial ones, therefore he may have been subject to the special rules stipulated in C. Th. 9, 1, 13.[131] This is additionally supported by the fact that he was accused of demanding levies from the inhabitants of Tripolitania in the context of Austurian raids, and the pressures on Palladius may have been treated as treason, which carried death penalty.[132] In turn, the fact that the interrogation and the report were to be made jointly by the proconsul and the vicar of Africa, may have simply resulted from Romanus's special position, who possibly still held the office of *comes Africae*. According to Ammianus's account, the case did not culminate in a sentence. Meanwhile, in a separate proceeding, Romanus sought to indict both dignitaries for partiality towards the inhabitants of the province, but his attempts, despite the favour of Flavius Merobaudes, did not succeed.

The outcomes of the proceedings in 375–377 must have been beneficial for the cities of Tripolitania. To express their gratitude, they founded a statue to Decimius Hilarianus Hesperius – the patron of Leptis Magna, which was erected in that city in the Severan forum, in the years following

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provincialis iudex vel intra Italiam, cum in eius disceptationem criminalis causae dictio adversum senatorem inciderit, intendendi quidem examinis et cognoscendi causas habeat potestatem, verum nihil de animadversione decernens integro non causae, sed capitis statu referat ad scientiam nostram vel ad inclytas potestates. referent igitur praesides et correctores, item consulares, vicarii quoque, proconsules de capite, ut diximus, senatorio negotii examine habito. Referant autem de suburbanis provinciis iudices ad praefecturam sedis urbanae, de ceteris ad praefecturam praetorio. Sed praefecto Urbis cognoscenti de capite senatorum spectatorum maxime virorum iudicium quinquevirale sociabitur et de praesentibus et administratorum honore functis licebit adiungere sorte ductos, non sponte delectos. Et cetera. Lecta in senatu III id. Feb. Valente V et Valentiniano AA. conss."

[130] At this point, this author would like to thank Juliusz Rogowski for inspiration.

[131] Not. Dig. Occ. 25. On the status of counts, also after dismissal, see: Wiewiorowski (2007b): 122–134, 154–157 with further literature.

[132] On treason and penalties provided for the felony, see Robinson (1995): 74–78. See also Coşkun (2004a): 302.

376.[133] It was the higher imperial dignitaries who predominated among *patroni civitatis* of Late Antiquity, with province governors being the most numerous in that group.[134]

Lines 6–9 of the inscription found on the marble based of the aforementioned statue bear a clear reference to the scandal described by Ammianus.

Similar tributes were paid to Nicomachus Flavianus.[135] In 378, the cities of Sabratha and Leptis Magna chose as their patron the *praeses* of Tripolitania – Flavius Vivius Benedictus, who probably also contributed in the same case; another person to be honoured was a member of the *concilium* and envoy to the imperial court – Lucius Aemilius Quintus.[136]

The affair may have had farther-reaching consequences, which affected court procedure, given that imperial constitution of 6 January 377, preserved in fragments in *Codex Theodosianus* and *Codex Iustinianus*, established the rules of joint hearing of cases by a two-person tribunal composed of vicar and *comes rei militaris*, which is often perceived as proof of departing from the policy of Valentinian I, which considerably favoured the army.[137]

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[133] IRT2009 526 (Leptis Magna): "Esperii v(iri) c(larissimi) / Decimio Esperio viro clarissimo ex procon/sule provinciae Africae iudici / sacrarum cognitionum prosapiae dignitatum et crescenti / per gradus et merita gloriar(um) / optionorim iustitiae quam / causae Tripolitanorum / deligatae sacro iudici / exhibuit praestanti / patrono Lepcimagnen/sis cliens semper ordo / cum populo conlocavit". See also Guey (1953): 345; Matthews (1975): 69; Coşkun (2002): 140 et seq. and esp. Tantillo, Bigi (2010): 350–353 [No 23], with further literature.

[134] See Krause (1987): 68–72 with further literature (ibidem: 68 et seq., the author provides a list demonstrating that 50 per cent of all known patrons were imperial dignitaries, 40 per cent of whom were province governors). See also in the case of Leptis Magna Tantillo (2010a): 187–191.

[135] IRT2009 475 (Leptis Magna): "Flavianii v(iri) c(larissimi) / Nicomacho Flaviano agentis (sic) / tunc vicem praefectorum prae/torio per Africanas provincias / pubescente Romani nominis glo/ria et vigente fortuna / dominorum principumq(ue) nostrorum / Valentis Gratiani et Valentiniani / perpetuorum semper Aug(ustorum) ubiq(ue) / vincentium Lepcimagnensis / fidelis et innocens ordo cum po/pulo pr(a)estantissimo patrono / votis omnibus conlocavit". See also more broadly below.

[136] Inscriptions relating to the governor: IRT2009 103 and 571. Cf. Pallu de Lessert (1901): 300 et seq.; PLRE 1 (Fl. Vivius Benedictus 4). Inscriptions relating to the member of *concilium*: IRT2009 111 (Sabratha); IRT2009 588 (Leptis Magna). See also Guey (1953): 345 et seq.; Kotula (1965): 131–134; Tantillo, Bigi (2010): 395–397 [No 42], 433–435 [No 60], with further literature.

[137] C. Th. 1, 15, 7 = C. 1, 38, 1 (a. 377): "Imppp. Valens, Gratianus et Valentinianus AAA. Antonio p(raefecto) p(raetori)o. In civilibus causis vicarios comitibus militum convenit anteferri, in militaribus comites vicariis anteponi: quotiensque societas in iudicando contigerit, priore loco vicarius ponderetur, comes adiunctus accedat; si quidem, cum praefecturae meritum ceteris dignitatibus antestet, vicaria dignitas ipso nomine eius se trahere indicet portionem et sacrae cognitionis habeat potestatem et iudicationis nostrae soleat repraesentare reverentiam. Dat. VIII id. Ian. Gratiano A. IIII et Merobaude consul." On the constitution, see Grosse (1920): 160 (note 10); Alföldy (1952): 89–90; Fortina (1953): 44 (note 58), 88 (note 19); Sander (1960): 300, note 55; Sivan (1993): 130; Kaser, Hackl (1996): § 79, note 16 and 24; Soraci (1996): 226 et seq.,

The surviving excerpt from the constitution emphasizes at the outset that military and civilian judiciary are in principle two distinct entities, but at the same time admits the possibility of joint, two-person court headed by two dignitaries: in civil cases the one to adjudicate was the vicar, while the count did so in cases relating to the military.[138] Should they hear a case together: "quotiensque societas in iudicando"[139], the vicar would have a higher position, which derived from the position of praetorian prefect. For this reason vicar was granted "sacrae cognitionis […] potestatem", judging in place of the emperor.

The solution certainly applied to the western part of the Empire, as the addressee of the act, Flavius Claudius Antonius from Spain, certainly held PPO *Galliarum* until September 376, and then became PPO *Italiae et Africae* (until 378 [?]).[140] This is supported by *Notitia dignitatum*, according to which in the West there were the following offices of *comites*: *Italiae*, *Africae*, *Tingitaniae*, *Tractus Argentoratensis*, *Britanniarum* and *Litoris Saxonici per Britannias*.[141] They may have cooperated with the diocesan vicars of Italy, Africa, Britain and Spain. The eastern counts – those of Egypt and Isauria – could at the time collaborate only with *comes Orientis* and *praefectus Augustalis*, whose position was not altogether identical with that of other diocese administrators.[142] It should be added that the issue of the constitution is often associated exclusively with the internal affairs in the prefecture of Gaul; furthermore, it is suggested that the constitution tallied with the intentions of the then QSP Decimius Magnus Ausonius, an official who treated the army with reluctance and who is said to have had considerable influence at Gratian's court.[143]

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233. The text is cited in the version preserved in the Theodosian Code. In contrast to a number of constitutions adopted from that compilation to Justinian's Code, the editors subjected this one to cosmetic changes only. Cf. Bonini (1990): passim; Cuneo (1996).

[138] On *causae militaribus*, cf. above remarks regarding Capitolinus.

[139] On the Late Antique usage of *societas* meaning joint performance of duties or joint exercise of judicial capacity, see Arangio-Ruiz (1934): 585 (Greek texts employed the term κοινωνία).

[140] Debates regarding function he held at the time, cf. Palanque (1933): 49–51; Fortina (1953): 100–108; PLRE 1 (Flavius Claudius Antonius 5); Matthews (1975): 48, 65, 76 et seq., 94, 109; Kuhoff (1983): 224–227, 253, 363 (note 46); Olszaniec (2007b): 337–339; Olszaniec (2014): 250, 252–253, 284 with further literature.

[141] Not. Dig Occ.: 1, 22–35;19–29.

[142] Not. Dig. Or.: 1, 34–36; 23; 22; 28; 29. On *comes Orientis* and *praefectus Augustalis*, *see* Chapter 2.2.3.

[143] Sivan (1993): esp. 119–141 on this issue (also on legislation enacted under his influence – 123–131; Flavius Nicomachus as vicar of Africa appointed thanks to Ausonius's influences – 127 et seq.). Likewise Paschoud (1967): 30, note 33. Honoré (1984) and (1986); Olszaniec (2007b): 342 et seq. – these authors do not mention it among the enactments attributed to

Nevertheless, it cannot be ruled out that Flavius Claudius Antonius received the discussed constitution already as PPO *Italiae et Africae*.[144] It is argued that he cannot have held that post when C. Th. 1, 15, 7 was issued, i.e. on 6 January 377, given that 27 February 377, was the estimated date of issue of C. Th. 8, 5, 34 = C. 12, 50, 7, addressed to another PPO *Italiae et Africae*, the aforesaid Decimius Hilarianus Hesperius.[145] It regulated the issues associated with *cursus publicus in proconsulari provincia*. Hence various authors also suggest that when C. Th. 8, 5, 34 came out, Hesperius continued to hold proconsulship of Africa, while the mistake regarding his office was made when *Codex Theodosianus* was being drafted.[146] The argument which speaks in favour of the view that Flavius Claudius Antonius had already been PPO *Italiae et Africae* at the moment when C. Th. 1, 15, 7 was issued is that the territorial extent of his jurisdiction was mentioned only in the enactments he received as PPO *Galliarum*, while those dating to his period as a PPO *Italiae et Africae*, defined him exclusively as *praefectus praetorio*.[147] Still, it is also possi-

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Ausonius when he served as QSP. Coşkun (2001): 339 to the contrary. More broadly on Ausonius, see Sivan (1993); Coşkun (2002); Olszaniec (2007b): 339–349; Rogowski (2015) with further literature. The latter author correctly polemicizes with the views about the alleged influences of Ausonius who, incidentally, was the father of the aforementioned Decimius Hilarianus Hesperius.

[144] See the discussion on the dating of PPO offices he held quoted above in footnote 140.

[145] C. Th. 8, 5, 34 = C. 12, 50, 7 (a. 377): "Idem AAA. [Valentinianus, Valens et Gratianus] ad Hesperium p(raefectum) p(raetori)o. Quia in omnibus aliis provinciis veredorum pars quarta reparatur, in proconsulari provincia tantum detur, quantum necessitas postulaverit et quidquid absumptum non fuerit, hoc nec pro debito habeatur nec a provincialibus postuletur. Non dubitamus autem plus quam quartam ad reparationem necessariam non esse iumentorum. Praeterea in singulis mutationibus arbitramur ternis veredis muliones singulos posse sufficere. Nam ut stabula impensis publicis extruantur, contra rationem est, cum provincialium sumptu citius arbitremur et utilius adparanda. Iam vero mancipum non ab ordine nec a magistratibus accipienda videntur obsequia, sed ab officio proconsulari qui missione donantur, vel ex aliis officiis, quos idoneos adque emeritos esse constiterit. Non enim improbabilis haec dispositio est, cum et in suburbicariis regionibus haec consuetudo servetur. Dat. III kal. Mart. Treviris Gratiano A. IIII et Merobaude conss." See Coşkun (2001): 138 with critique of earlier authors, who suggested e.g. an error in its dating and claimed that at the time Hesperius was the proconsul of Africa. See the following footnote.

[146] See Olszaniec (2007b): 345 et seq., with discussion of the debate in literature. The last verse of the constitution provides that: "Disposition of this kind is impossible if such a custom is applied in *suburbicariae regiones*". Consequently, it may be argued that C. Th. 8, 5, 34 = C. 12, 50, 7 is in fact a part of enactment directed originally to Hesperius as PPO *Italiae et Africae*, which included the above territory. Cf. Chapter 2.2.3. On the other hand, the formulation does not preclude the conclusion that it simply confirmed the admissibility of applying rules provided for in the constitution by reference to a practice employed in a different part of the Empire.

[147] See C. Th. 13, 3, 11 (a. 373); C. Th. 9, 35, 2 = C. 9, 41, 16 (a. 376) – both addressed to PPO *Galliarum*; C. Th. 1, 15, 7 = C. 1, 38, 1 (a. 377); C. Th. 1, 16, 13 (a. 377); C. Th. 9, 40, 12 (a. 378); C. Th. 9, 20, 1 = C. 9, 31, 1 (a. 378); C. Th. 11, 39, 7 = C. 1, 3, 7 (a. 378); C. 2, 7, 2 (a. 378); C. 11, 59,

ble that editors of the Theodosian Code used only the copy of constitution addressed to PPO *Galliarum*, overlooking, for reasons unknown, the second copy, addressed to the current PPO *Italiae et Africae*.[148] Incidentally, the enactments pertaining to African provinces in *Codex Theodosianus* were preserved in much greater numbers than constitutions relating to other territories of the Empire.[149]

The need to underline the position of *vicarius dioeceseos* with respect to the African *comes rei militaris*[150] and the necessity to define precisely the scope of competences of civilian and military judges when they adjudicated jointly (an such a practice was in evidence exactly during the first stages of the Romanus affair) may have engendered the adoption of a particular solution.[151] It contradicted the division of competences of civilian and military dignitaries, which as a rule had been upheld in imperial administration since the reforms from the turn of the fourth century.[152] Inclusion of the constitution into the Theodosian Code and then into Justinian's Code, may be interpreted as a guideline for imperial dignitaries, which defined the nature of relationships between vicars and regional military commanders when they acted jointly as judges.[153] The enactment does not stipulate directly whether the solution applied to first instance or appellate proceeding. The thesis that the analysed constitution pertained to cases heard in first instance is supported by the fact that *comites rei militaris* did not have appellate jurisdiction in military cases, because *magistri militum* were the only ones who may have had it in the fourth century – aside from the emperor, of course.[154]

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5 (s.a.) – addressed exclusively to PPO. Cf. also Olszaniec (2014): 59-82 about the territorial boundaries of praefecture of Italy

[148] Cf. also Coşkun (2004): 306, on the possibility that the constitution may have pertained to Nicomachus Flavianus and Romanus or rather their successors. The author quoted the constitution in the context of the last stage of Romanus's affair – the aforesaid hypothetical tribunal presided by Fl. Merobaudes and Fl. Claudius Antonius in 377–378, which is to have taken place as a result of solicitations of the count to have his case examined, following the *relatio* of the proconsul and vicar of Africa in 376.

[149] Which gave way to the theory which claims that African archives were used to prepare that compilation. See Chapter 1.2.

[150] Di Paola (2012a) justifiably draws attention to the exceptionally powerful position of that regional military commander. Cf. also in the same vein Piganiol (1947): 205, note 30.

[151] Rogowski (2015) suggests that issue of the constitution coincided with Gratian's departure from policies which were unfriendly towards the military, a shift occasioned by the increase of their significance following the arrival of Fl. Merobaudes at the court.

[152] For a synthesis of the principles of organization of Later Roman administration see Wiewiorowski (2007b): 56–65, 79–83 with further literature.

[153] De Martino (1967): 259 (note 31), 270 (note 74), interprets it as a resolution of a competence conflict between civilian and military authorities.

[154] See Wiewiorowski (2007b): 278–280 with further literature.

Other literary sources do not permit drawing such far-reaching conclusions.

According to a fragment of petition defending the Luciferian schism, addressed in 384 to emperors Valentinian II, Theodosius I and Arcadius, pagan Clementinus, vicar of Spain in ca 357 is to have conducted a proceeding on the initiative of the aged St. Hosius, bishop of Cordoba, against St. Gregory of Elvira, the leader of Luciferians in the 380s.[155] The petition states that in 357 St. Gregory faced exile for speaking against St. Hosius's signing of the Arian *credo* at the synod in Sirmium in 357 and denied the latter the right to hold the dignity of bishop. The sources describing the event quote the statements of their participants, including the vicar. Clementinus is to have demanded that prior to the proceeding St. Gregory made deposition, and then, despite St. Hosius's insistence on enforcing the exile that emperor had decreed, ultimately released the accused.[156] Regardless of disputable credibility of the account, which displays apologetic approach towards Luciferians, expressed for example in the description highlighting the role of St. Gregory, it should be observed that the proceeding in which Clementinus presided was certainly taking place in first instance.[157] At the time, hearing criminal cases involving bishops by Roman secular officials was a standard, while punishment followed deposition of the accused.[158]

In turn, according to one of the letter of St. Basil the Great, purely "policing" functions were carried out by the vicar of Pontus, Demosthenes, who arrested St. Gregory of Nazianzus in 375.[159]

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[155] *Collectio Avellana* 2, 33–40; *Libellus Precum* 33-41. Cf. PLRE I (Clementinus 1); Kuhoff (1983): 116. St. Hosius (ok. 256–ok. 357/358) had previously been one of the closest advisors of Constantine the Great. See Altaner, Stuiber (1990): 486 et seq. and among recent studies e.g. Fernández Ubiña (2000), with further literature. St. Gregory of Elvira (died ca 392) is one of the less known Fathers of Spanish church. See Altaner, Stuiber (1990): 491 et seq. and among recent studies Molina Gómez (2007), with further literature. On Luciferians see e.g. Piras (2003); Escribano (2005).

[156] Cf. more broadly Sotomayor y Muro (1979): 224–227; Fernández Ubiña (1997): esp. 112–114, 119; Escribano (2005): 140–143. On the circumstances of St. Hosius's participation in the synod in Sirmium and his being forced to sign the *credo* see also more broadly Just (2003): 84–93, with further literature.

[157] The account in *Libellus Precum* 33–41 ridicules the aged bishop of Cordoba, whose figure is juxtaposed with the steadfast Gregory of Elvira. More broadly regarding partiality of that source see Canellis (2006): 53–57, esp. 56. Another author who is convinced of the credibility of court held by Clementius in the light of *Collectio Avellana* 2, 33–39 is Barbati (2012): 578–580, with critical analysis of hypothesis advanced by other researchers, namely that the bishop and the vicar presided jointly.

[158] Criminal and civil liability of the clergy was regulated in greater detail only by Justinian I in Nov. Iust. 123, 21 (a. 546). See more broadly Steinwenter (1934): 29–35.

[159] See Basil. *Ep*. 225 (addressed to Demosthenes). Probably one and the same with other vicar who supported Arians – Basil. *Ep*. 237 (a. 376) and an anonymous vicar of Pontus, re-

Meanwhile, in the West, an anonymous *vicarius Hispaniarum*, mentioned by Sulpicius Severus as a favourably disposed participant in the interrogations of Spanish Priscillians in 384–385, acted most likely as a judge hearing their case in first instance.[160]

Very little information regarding judicial prerogatives of diocesan vicars has survived in the literary sources written after 395 in the West. Most of these merely mention vicars by name, while providing no details pertaining to the functions they held.[161] Much the same applies to the sources created in the eastern part of the empire; *comites Orientis* are devoted the most attention in the sources.[162]

Among the sources pertaining to the western territories of the Empire, some important information originates from St. Augustine, who appealed directly to Seranus, vicar of Africa, to punish those responsible for Donatist riots against the Catholics with fines (in 397, Seranus became the proconsul of Africa, thanks to which it may be presumed that the described events took place probably in 395–396).[163] Thus for Augustine the vicar was a competent judge to hear a criminal case in first instance.

The judiciary of diocesan vicar is also referred to in the correspondence between St. Augustine and Macedonius, vicar of Africa in 413–414 (?).[164] The Church Father interceded with the vicar regarding acquittal of unidentified felons. Macedonius, a Christian, ultimately acquiesced to his requests (Aug. *Ep*. 154, 1), but initially expressed his doubts whether demanding grace is in line with Christian faith, observed that it may encourage potential criminals, and questioned whether a bishop is entitled to such intercession (*Ep*. 152).

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sponsible for the outbreak of riots in Caesarea after the dispute with Basil, whom he physically assaulted – Greg. Naz. *Or*. 43, 55–57. Cf. PLRE 1 (Demosthenes 2; Eusebius 19); Kuhoff (1983): 134, 371 (note 80); Vogler (1992): 453 et seq.; Lenski (2002): 283. Detention in custody was largely a rule in Roman criminal process. See e.g. Prostko-Prostyński (2008): 68.

[160] Sulpicius Severus *Chronica* 2, 49, 3. Cf. PLRE 1 (Anonymous 59); Kuhoff (1983) 116 – admits the possibility that he was identical with the vicar of Spain, Marinianus (cf. Chapter 4.1). See also Pellizzari (1998): 113; Escribano (2005): 129.

[161] Barnwell (1982): 64 et seq.

[162] Cf. Vogler (1992): 453 et seq.

[163] Aug. *Contra litteras Petiliani* 2, 83, 184: "[…] Quae res coegit tunc primo adversus vos allegari apud vicarium Seranum legem illam de decem libris auri, quas nullus vestrum adhuc pendit, et nos crudelitatis arguitis! […]". On Seranus, most likely a Christian, see Pallu de Lessert (1901): 218 et seq.; PLRE 2 (Seranus); PSBE 1 (Seranus).

[164] Aug. *Ep*. 152–155 (Macedonius is the author of letters 152 and 154). Cf. in more recent studies Dodaro (2004): 9, 132, 206–212 – who discussed the evolution of Augustine's concepts relating to the role and limitations of secular power, in the light of correspondence with Macedonius; Hermanowicz (2008): 43 et seq. On Macedonius, see also Pallu de Lessert (1901): 226–228; PLRE 2 (Macedonius 3); PSBE 1 (Macedonius 2); Morgenstern (1993a): 107 et seq.

Augustine argued that he possessed such right and had intervened in that case not because he approved of sin but because this follows from the Christian imperative of showing love to sinners, while being acquitted gave them a chance to improve (*Ep*. 153).[165] The letter does not specify the nature of the case. Given the remarks of the bishop that it was the judge's duty to be guided by the tenets of law instead of personal sentiments, and that just as other parties of the proceeding he should remember that he was also a sinner in the need of God's grace (*Ep*. 153, 8) – it may be conjectured that Macedonius was a judge hearing a criminal case in first instance.[166] Additionally, St. Augustine distinguished in the letter (*Ep*. 153, 23) between the obligations of advocates and *iurisperiti* (legal experts), which is interpreted as a testimony to the contemporary court practice.[167]

Three letters of St. Sidonius Apollinaris, originating from the period of decline of Roman rule in Gaul, offer a number of remarks on Seronatus, probably *vicarius Septem provinciarum* in 469 (the territory was partly under Visigothic control).[168] In an epistle to his friend Ecdicios, Sidonius accused Seronatus of all kinds of depravities, e.g. corruption and betrayal of Rome to Visigoths (calling him "Catilina saeculi nostri" – "Catiline of our times")[169];

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[165] Aug. *Ep*. 152–153. See also Possidius *Vita Augustini* 20, 2. On Possidius, apart from editions of sources, see Hermanowicz (2008) with a bibliography of relevant works. See also mention in Barbati (2012): 604.

[166] In the first letter addressed to Macedonius, Augustine called him "negotissimus in re publica vir et non suis sed aliorum utilitatibus attentissimus" (*Ep*. 153). This demonstrates the respect that the Church Father had for Macedonius, who diligently fulfilled his public duties for the benefit of fellow citizens. At the same time the letters are a testimony of attachment to the ideal of law and order – which is evident in all Augustine's actions, also in his interventions with imperial officials and his contacts with those – which is confirmed in his notion of punishment inflicted by earthly state as a means which also serves to reform the sinner. Thus *Ep*. 153 may be seen as an expression of St. Augustine's aversion to death penalty (against which he also spoke in e.g. *Ep*. 100). Augustine must have respected Macedonius, because he presented him with the three first volumes of the treatise *De civitate Dei*, which profoundly impressed Macedonius (Aug. *Ep*. 154). Cf. Brown (1993): 308. However, in the treatise, Augustine supported admissibility of death penalty (*De civitate Dei*: 1, 21; 19, 6). See Kołosowski (1997) on the complex attitude of Augustine to the said penalty.

[167] See Humfress (2007): 52, 69–71, 155.

[168] Sid. *Ep*.: 2, 1; 5, 13; 7, 7. See Stroheker (1948): 215, no. 352; PLRE 2 (Seronatus); Prostko-Prostyński (2008): esp. 87 et seq. Cf. Mathisen (1981) on epistolography in fifth-century Gaul; analysis of the letters of Sidonius – Styka (2008): 174–310. On Sidonius, see bibliography collated by Joop van Waarden: http://home.hccnet.nl/j.a.van.waarden/biblio graphy.htm; Styka (2008): 315–340.

[169] Cf. Harries (1992) and esp. Teitler (1992) On the attempts of higher Roman officials and military people to find their bearing in the face of Visigothic expansion and the increasingly widespread examples of collaboration with the invaders (also on the example of Seronatus).

he claimed moreover that Seronatus was a venal judge, and instead of relying on Roman laws, introduced Visigothic ones ("leges Theodosianas calcans Theodoricianasque proponens veteres culpas"), as well as showed cruelty to prisoners.[170] In a letter to another friend, Panychius, Sidonius warned the latter against the visit of Seronatus, whom he described as a beast, and who allegedly released prisoners in exchange for bribes, not out of mercy.[171] Sidonius hostility towards the official was so great that, already as a bishop of Clermont, in a letter to bishop of Marseille Graecus written after Seronatus's death, he drew upon his example as unfair judge and accused him of having committed treason ("Seronatum barbaris provincias preopinantem").[172] Consequently, it is presumed that Seronatus was ultimately convicted for treason between 470/471 and 475 and then executed. The letters of Sidonius prove, among other things, that Seronatus was a judge. Taking into account the description of his evil actions at local level (e.g. as a dishonest tax collector) in the letter to Panychius, it may be inferred that Seronatus most likely acted as first instance judge as well.

The literary sources discussed above do not suggest therefore that diocesan vicars appeared as judges hearing appeals from the rulings of province governors. In turn, it is clearly noticeable that carrying out judicial functions in first instance – primarily in non-military cases – was an important duty of diocese administrators.

One may also add that literary sources mention first instance cases being heard by *comites Orientis*. This was the mode in which Flavius Domitius Modestus examined the accusations of magic and treason in Palestinian Scythopolis in 358–359; his attitude earned him unfavourable evaluation of Ammianus, who described him as a person capable of cruelty.[173]

See also briefly Mathisen (1993): 75, 84; Harries (1994): 126, 224 et seq.; Goldberg (1995); Mathisen, Sivan (1998): 30; Wolfram (2003): 218, 246, 260, 270; comprehensively about the entire West – Heather (2006): 479–490.

[170] Sid. *Ep*. 2, 1. Cf. PLRE 2 (Ecdicius 3). Cf. also Levy (1942) on the first Visigothic laws and impact of Roman law on those. The formulation is sometimes examined as a proof that already prior to *Codex Euricianus* (issued between 471 and 476), Visigothic rulers enacted laws. See Collins (2004): 223–239. On that collection, cf. Nehlsen (1984). Liebs (2001c): 22 interprets the fragment of Sid. *Ep*. 2, 1, 3 as an expression of a sense of threat to the identity of Romans – Catholics, which was associated with the Roman law: "Hier ist die römische Jurisprudenz also nicht nur kein Gegner mehr, sondern gehört zur Identität der Römer und, wie stillschweigend mitgemeint sein könnte, der Katholiken; sie den Barbaren, die ja zudem noch Häretiker waren, zur Verfügung zu stellen, ist anstößig."

[171] Sid. *Ep*. 5, 13. Cf. PLRE 2 (Pannychius).

[172] Sid. *Ep*. 7, 7. Cf. Mathisen (1999): 105 et seq. (s.v. Graecus).

[173] Amm. Marc. 19, 12, 6. On the trial in recent works see: Funke (1967): 151–165 (who negates the hypothesis about religious incentive behind the process and suggests political moti-

A first instance trial was also conducted by *praefectus Augustalis* in Egypt, although papyrological sources do not offer direct proof of such activities. However, there in a known instance of an edict of prefect Tatianus, in which inhabitants of Egypt were prohibited from submitting complaints to local military commanders instead of province governors, under pain of severe penalties.[174] Thus the edict suggests that first instance judges were chiefly civilian province governors.

Supplementary conclusions regarding the judiciary of diocesan vicars may also be drawn on the basis of inscriptions. As noted above, however, this is not a source in which vicars feature very often.[175] Epigraphic material offers additional information concerning vicars of the diocese of Asia, who appear in several inscriptions (four epigrams and four to five other building inscriptions).[176]

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vations); *contra* Haehling (1978a). See also generally Matthews (1989): 217 et seq.; Barnes (1998): 91; Wintjes (2005): 112 et seq., 172 et seq., 174; Trzcionka (2007): 18 (with a review of opinions encountered in literature). On the significance of magic trials in the fourth century, on the example of Ammianus, see also Blockley 104–122. On Modestus, see Chapter 2.2.2.

[174] P. Oxy VIII 1101 (a. 367–370). Online text: http://www.papyri.info/ddbdp/p.oxy;8;1101. See the analysis: Palme (2011). Cf. also PLRE 1 (Tatianus 1 & 5). The text confirms the occurrence of practices which imperial legislation sought to eradicate. See Wiewiorowski (2007b): 174, 228 et seq., with further literature

[175] That epigraphy is relatively unimportant for the studies of vicars results from the very limited number of official inscriptions which mention that group of imperial dignitaries. See Feissel (2009), who reports only three such inscriptions for the period 324–610: no. 56 (CIL III 352 = CIL III 7000 = ILS 6091; see also Chapter 2.2); no. 93 (CIL VIII 14280, 24609–24611) and no. 99 (CIL VI 1783 = ILS 2948).

[176] Editions of epigrams: Le Bas, Waddington (1870): no. 629 = Robert (1948): 35–36; MAMA VI: 15; Corsten (1997): no. 18 (still uncertain whether the official in question was not a province governor after all; see more broadly Chapter 3.1); SEG 36 (1986): no. 1198. Remaining inscriptions (cited in Chapter 2.2.2): SEG 27 (1977): no. 903 (Attius Philippus); MAMA VI: 13 (FL. Anysius); SEG 28 (1978): no. 1203. Cf. Feissel (1998): esp. 96–98 with a discussion concerning identification of persons they mention with vicars as well as other editions of sources and further literature. See also ALA2004: 62 – mentioning Fl. Palmatus, who simultaneously held governorship of Caria. See Chapter 2.2.2. According to Foss (1977a): 176, note 14, Simplicius Severus, who renovated a part of the baths (aleipterion) in Sardes, was a vicar of Asia in the fourth-fifth century. Yegül (1986): esp. 12–13, 16, 48–50 (Appendix no. 6, Fig. 120–121): "Ἐπὶ Σευ(ή)ρ(ου) Σιμλίκιου τοῦ λαμπ(ροτάτου) κόμ(η/τος) / πρώτ(ου) βαθμ(οῦ) διέπ(οντος) τὴν ἔπαρχ(ον) ἐξουσίαν / καὶ τοῦτο / τὸ ἔργον τῆς ἀ[λει]πτηρίας ἀνενεώθη". In turn, Barnes (1974b): 229 finds that he was a province governor; likewise PLRE 2 (Severus Simplicius 13). See also Foss (1975); Feissel (1998): 96 et seq. Construction undertakings of vicars in attested e.g. by one inscription from the area of the diocese of Thrace. See Kaygusuz (1986): no. 4; Asdracha (1998): no. 117 (Ainos/Enez). Cf. Feissel (2006b): no. 153; Wiewiorowski (2010e) with further literature.

The epigram extolling Acholius bears little significance for the judicial prerogatives of diocese administrators.[177] The text has been preserved on the base of his statue erected in Sardes; the monument was an expression of gratitude for fortification of the local citadel, while the exercise of judicial duties denoted by the expression "καθαροῖς δόγμασιν" ("the most faithful testimony to justice") was general in nature and was employed in various versions in texts which praised imperial officials.[178] It offers little grounds for any inferences about the nature of cases heard by Acholius.

With respect to judicial powers of diocese administrators, more can be glimpsed from a honorific inscription from Phrygian Hierapolis. This one praises a Magnus as a founder/restorer of Nymphaeum, guardian of traditional laws, a just judge "ἁγνὸν ἔπαρχον" ("ritually pure vicar"), honoured with a statue and epigram.[179] The figure is identified with Flavius Magnus, proconsul of Asia in 352–354, who, on the basis of other sources, is attributed simultaneous proconsulship of Asia and vicarship of the diocese of Asia.[180]

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[177] Robert (1948): 35–36: "Οὗτος ὁ τῆς Ἀσίης / ὑψαυχένα θῶκον / ὑπάρχων πυργώσας / καθαροῖς δόγμασιν / Ἀχόλιος ὦι βουλὴ με/γάλων ἀγαθῶν χάριν / εἰκόνα βαιὴν στήσαμεν / εὐνομίης μάρτυρα πι/στοτάτην ἠδ᾽ ὅτι λαϊ/νέων δαπέδων κρη/πῖδα τορήσας τεῦξεν / Ἐλευθερίης ἐνναέ/ταις τέμενος.

[178] Currently he is also assumed to have been *vicarius Asiae* in the fourth century. Cf. Robert (1948): 35–47; Malcus (1967): 136 et seq.; PLRE 1 (Acholius); Kuhoff (1983): esp. 374, note 91; Feissel (1998): 96. Ibidem earlier discussion in literature in the office held by Acholius and the significance of virtues he was attributed.

[179] SEG 36 (1986), no. 1198 = Ritti (2007): 417–421: "[Ἀ]γαθῆι Τύχηι / Ἀγλαΐην οὐκ ε[ἶ]χε τόσην τόδε θ[έ]σκελον ἔργον / εἰσέτι, νῦν δ᾽ ε[. .]τον Μάγνος ἔθη[κε] σοφός· / λάεσι γὰρ κολλητὸν ἐῆι μητίσατ[ο . .]υληι / θεσπεσίαις τε γραφαῖς ἤνυσε λ[. . .]ομεν[.]ν / [. . . .] καὶ χ[.]ονος ἄλλο κατὰ π[. . . .]ημα Λ[. . .]ε /[. . . . . .υ]ξε καλὸν πάντα [. . . . . μ]ενος / [. .]νυ[.]φω[. . .]μενος ῥέξεν [. . . .]ν ἀγλαομήτης / καὶ θαλίαις ἐρατα῀ις θῆκεν ἀγαλλομένην / [. . . . .]ε τῶν ἱερῆς οἰκήτορες ἔνθα πόληος / [γράμ]μασι καὶ στήληι τίσαν ἀμειψάμενοι· / [ἰθυ]δίκην, σωτῆρα, θεμισσόον, ἁγνὸν ἔπαρχον, / κουροτρό[φ]οιο Δίκης ἔρνος ἀριστονόου, / Μάγνον μι[μήσ]ασθε δικασπό[λ]ο⟨ν⟩· ἡ Φρυγίης γὰρ / Μήτηρ το[῀ις] ἀγαθοῖς οἶδεν ἔχειν χάριτας". Ibidem further bibliography – see esp. Jones (1997); SEG 47 (1997): no. 1735; Trombley (1995): 169 et seq.

[180] See Malcus (1967): 102–106. Cf. C. Th. 8, 5, 6 – dated to 354; *contra* Seeck (1919) – 368: "Idem A. [Constantius?] Magno agenti vicariam praefecturam. Hoc interdicto prohibemus, ne quis agminales ac paraveredos aestimet postulandos: in eos enim, qui hoc temere praesumpserint, vindicari acrius oportebit iussione nostra cunctis provincialibus intimata. Dat. kal. Aug. Constantino A. VII et Constantio C. conss." The enactment pertained to the abuses of *cursus publicus* and this is the context in which it is analysed; cf. e.g. Vogler (1995): 77; Kolb (2000): 119, 168, 215, 301. See also CIL III 445 = ILS 733 (Tralles; Karia): "Germanias Gallias Britaneas Africam / adque Illuricum virtute gloria piegate / iustitia cunctos retro principes supergresso / d. et seq. Fl. Iul. Constantio victori maximo ac triumfatori semper Augusto / FI. Magnus [v. s]p. [vi]c. Asiae vice sacra iudican[s] / [mai]estati [ei]/us clementiaeque devotus / curante. M. Anatolium curatore". *Contra* Foss (1979): 181–182; Kuhoff (1983): 171,

The text of the epigram from Hierapolis does not provide grounds to determine more precisely how the official earned such epithets. A noteworthy element is the emphasis that the epigram puts on Magnus's attributes associated with the virtue of justice.[181]

It is also doubtful whether anything of importance in conveyed in two fifth- or sixth-century inscriptions mentioning one of the proconsuls of the province Asia which, among other things, engendered the hypothesis that proconsulship of province *Asia* and vicarship of diocese *Asia* were concentrated in one hand between 410 a 535.[182] One of the sources cited in this context pertains indirectly to the judiciary, yet it is associated only with the exercise of proconsular duties. It should be noted that in Greek epigrams dedicated to province governors, praising their qualities as just judges is the most frequent motif; apart from this, they extol their construction undertakings.[183]

In an inscription engraved in the base of a statue erected in the main street (*embolos*) of Ephesus, showing proconsul Stephanus in a toga, his hand raised and holding *mappa*[184], the official is lauded for integrity in serving as judge and incorruptibility while holding the office.[185] Stephanus is also known from at least one other inscription, in which he is referred to as honorary consul, proconsul and one who occupied the place of vicar.[186] However, the commendations of Stephanus as a fair judge from the first text cannot be taken as referring directly to the way in which he (probably) discharged his duties as vicar.

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398 (note 63) – with further literature. See also PLRE 1 (Fl. Magnus 9); Petit (1994): 151, no. 177; Feissel (1998): 95 et seq.; Skinner (2000): 374.

[181] The studies quoted in the two immediately preceding footnotes focus chiefly on the elements combining poetical devices employed in the epigram with other sources from the period, including Him. *Or*. 46, 10.

[182] Feissel (1998): esp. 98–104. See Chapter 2.2.2.

[183] See Robert (1948): 37–110.

[184] A piece of material used to give sign to commence games. See Delbrueck (1929): 61–63; Cameron (2013): 23–31. Ephesus was the seat of a proconsul. See Foss (1979): 3–21.

[185] I. Ephesos IV 1310: "Εἰθυδίκῃ Στεφάνῳ καθαρῆς μετὰ μόχθον ἀ[π]ήνης / εἴκονα λαιέην στήσατο πᾶσα πολίς / ἔπρεπε Νάξον ἔχειν τέκος ὄλβιον ἥ ῥα καὶ αὐτόν / θρέψατο κισσοφόρον Βάκχον ἐς εὐφροσύνην". See PLRE 2 (Stephanus 3). For other editions and further literature, see Foss (1983): esp. 200–202; Feissel (1998): 98–100. Ibidem other sources mentioning that figure. The inscription is also briefly discussed by Slootjes (2006): 139 et seq., in the context of qualities of province governors, with further literature. The author discusses the statue of Stephanus in detail, comparing it with other surviving effigies of province governors. See ibidem: 141–152.

[186] SEG 33 (1983), no. 940: "Ἡ βουλὴ Στέφανον / πιολίων κλυτὸν / ἡνιοχῆα ὅς θρόνον / ἀνθυπάτων ἔλαχεν / καὶ χωρὸν ὑπάρχων […]". For the remaining editions, other sources and further literature, see Feissel (1998): 91 et seq., 98 et seq.

Another righteous judge was vicar of Africa, Caecilius Severus *signo* Elpidius, who was honoured in Leptis Magna probably at the turn of the fifth century.[187] This inscription also permits the inference that vicars was treated as a judge who used to rule equitably in cases relating to the inhabitants of Leptis Magna, and thus more likely as a first instance judge.

Probably in much the same way can one approach the inscription in the base of a statue founded in the same city for Nicomachus Flavianus, erected in the Severan forum after 376.[188] The marble plinth was provided with inscription in which he is praised as patron of the "fidelis et innocens" ("faithful and righteous") curia and people of the city, to which he rendered services during the already discussed Leptis Magna affair.[189]

Following the titulature in the inscription: "agens tunc vicem praefectorum praetorio" it has been hypothesized that Nicomachus Flavianus held the office of a.v.p.p., which ranked higher than proconsuls and diocesan vicars.[190] This would concur with a letter of St. Augustine, in which he states that as a vicar Nicomachus Flavianus supported Donatists, whose prime bastion was Proconsular Africa[191], as well as with the fact that in a constitution addressed to Fl. Claudius Antonius, dated 30 November 378, the latter is titled as *praefectus praetorio*, without any indication of the territorial extent of his authority; consequently his jurisdiction over Africa became valid only after 377 (i.e. after Nicomachus Flavianus stepped down).[192] An additional

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[187] IRT2009 519 (Leptis Magna): "Elpidii / Omnium vir/tutum praedi/cabili viro et su/pra documenta / bonitatis insigni / adque magnifico / Caecilio Severo v(iro) c(larissimo) / a(genti) v(ices) praef(ectorum) praetorio / ob multiformem / iudiciorum eius in / se moderationem / ex decreto et sufra/gio [··c. 15·] / Lepcitani publice". Cf. PLRE 1 (Caecilius Severus signo Helpidius 20); Lepelley (1981): 346; Kuhoff (1983): 119, 359 (note 29) and esp. I. Tantillo, P. Porena in: Tautillo, Bigi (2010): 361–364 [No 29].

[188] IRT2009 475 (Leptis Magna): "Flavianii v(iri) c(larissimi) / Nicomacho Flaviano agentis (sic) / tunc vicem praefectorum prae/torio per Africanas provincias / pubescente Romani nominis glo/ria et vigente fortuna / dominorum principumq(ue) nostrorum / Valentis Gratiani et Valentiniani / perpetuorum semper Aug(ustorum) ubiq(ue) / vincentium Lepcimagnensis / fidelis et innocens ordo cum po/pulo pr(a)estantissimo patrono / votis omnibus conlocavit". The inscription and the circumstances in which it was erected are discussed more broadly in Guey (1950) and (1953): 344 et seq.; Matthews (1975): 69; Tautillo, Bigi (2010): 358–360 [No 27]. It should also be noted that the notions of *curia* and *populus* in Late Antiquity meant something altogether different than during the Early Empire. See on the example of Africa – Kotula (1968): esp. 60 et seq.

[189] See above Chapter 5.1.

[190] Olszaniec (2007b): 363.

[191] Aug. *Ep*. 87: "Flaviano, quondam vicario, patris vestrae homini, quia legibus serviens nocentes, quos invenerat occidebat, non communicastis?".

[192] C. Th. 9, 40, 12 (a. 378): "Imppp. Valens, Gratianus et Val(entinia)nus AAA. ad Antonium p(raefectum) p(raetori)o. Campaniae consularibus formam iudicationis adscribimus, ne in loco certa condicione finito modum animadversionis excedant neque extra provinciam suam ius

argument in favour of the above is apparently the fact that the latter official was the recipient of an enactment from the same year, which prohibited Donatists from taking repeated baptism.[193] Nonetheless, the hypothesis seems groundless.

As observed previously, until the turn of the fourth century *agentes vices praefectorum praetorio* were appointed ad hoc, but in the later period this happened much more seldom, once diocesan organization had become established.[194] In the account concerning the contribution of Nicomachus Flavianus in the so-called Leptis Magna, Ammianus refers to him directly as vicar and mentions the official after the higher-ranking proconsul of Africa.[195] Furthermore, the title of a.v.p.p. was most often used in the fourth century in African inscriptions instead of the official *vicarius dioeceseos*, which was found in imperial constitutions.[196] Nor is there anything extraordinary

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relegationis exerceant. Dat. prid. kal. Decemb. Trev(iris) Valente VI et Val(entinia)no II AA. conss." On the act, whose authorship is attributed to the influential QSP Ausonius, see e.g. Honoré (1984): esp. 84, note 39; Honoré (1986): 220; Coşkun (2001): 340. On that PPO, see Chapter 5.1.

[193] C. Th. 16, 6, 2 = C. 1, 6, 1 (a. 377): "Imppp. Valens, Gratianus et Val(entinia)nus AAA. ad Florianum vicarium Asiae. Eorum condemnamus errorem, qui apostolorum praecepta calcantes christiani nominis sacramenta sortitos alio rursus baptismate non purificant, sed incestant, lavacri nomine polluentes. Eos igitur auctoritas tua erroribus miseris iubebit absistere ecclesiis, quas contra fidem retinent, restitutis catholicae. Eorum quippe institutiones sequendae sunt, qui apostolicam fidem sine intermutatione baptismatis probaverunt. Nihil enim aliud praecipi volumus, quam quod evangeliorum et apostolorum fides et traditio incorrupta servavit, sicut lege divali parentum nostrorum Constantini Constanti Valentiniani decreta sunt. 1. Sed plerique expulsi de ecclesiis occulto tamen furore grassantur, loca magnarum domorum seu fundorum illicite frequentantes; quos fiscalis publicatio comprehendet, si piaculari doctrinae secreta praebuerint, nihil ut ab eo tenore sanctio nostra deminuat, qui dato dudum ad nitentium praecepto fuerat constitutus. Quod si errorem suum diligunt, suis malis domesticoque secreto, soli tamen, foveant virus impiae disciplinae. Dat. XVI kal. Nov. Const(antino)p(oli) Gr(ati)ano A. IIII et Merobaude conss." On the text of the enactment, see Seeck (1919): 109 et seq., 248; Maier (1989): 49–52; Delmaire (2005): 341–343. Ibidem on the corrections introduced in the text of manuscript in T. Mommsen's edition of C. Th. (who inserted "Florianum vicarium Asiae" as the addressee – in accordance with the version incorporated in C. 1, 6, 1 (a. 377). The text might have been edited by the then QSP to Gratian – Ausonius; see Honoré (1984): 82; Honoré (1986): 209 et seq., 219 et seq.; Coşkun (2001): 335 et seq.; Coşkun (2002): 52–62, 198 et seq. A noteworthy element is the reference to constitutions issued by the predecessors, which manifests respect on the part of young Gratian. Cf. Lenski (2002): 103.

[194] See Chapter 2.2.2.

[195] Amm. Marc. 28, 6, 28. Cf. also on the relations between the proconsul of Africa and the vicar of Africa: Arnheim (1970): 599–603; Maier (1987): 24–31; Maier (1989): 18–20; Morgenstern (1993b): 110–112; Lepelley (2002): esp. 68–71.

[196] See examples of interchangeable use of terms denoting vicars in the inscriptions from the 360s, in which the officials were titled a.v.p.p. or *agens pro praefectis*, whereas the Theodosian Code calls them *vicarii* (quoted in Chapter 2.2.2).

in the fact that Nicomachus Flavianus may have participated in the attempts to resolve the Donatist controversy, just as other administrators of that diocese in the second half of the fourth and in the early fifth centuries.[197] Finally, one should not attach particular attention to the fact that the surviving text of constitution addressed to PPO Flavius Claudius Antonius did not specify the extent of his jurisdiction. As noted above, in the case of that PPO only two of nine constitutions addressed to him as a praetorian prefect indicate expressly which prefecture he was in charge of. It may even be suggested that the use of abridged title (only *praefectus praetorio*) denoted in fact the title PPO *Italiae et Africae*.

In the light of this illustrative review of source material, one can easily perceive the limitations of conclusions derived from epigraphic testimonies for studies in the history of law or researchers of antiquity in general.[198] The discussed inscription only confirm the conclusions drawn on the basis of other sources, namely that vicars were most certainly judges. However, the sources in question do not permit one to determine the mode in which they conducted court proceedings. It turn, it may be observed that epigraphic sources highlight the importance of judicial duties of vicars for the inhabitants of the Roman Empire. They correspond with the examples of efforts made to be granted their justice in first instance, which are provided, at least indirectly, by a number of imperial constitutions.

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[197] See Maier (1989): 41–206.

[198] Cf. Frézouls (1995); Kolendo (2003): 17–24. See instructive sketches in Bodel (2008).

6

Territorial administration after Justinian's reforms

The principles according to which imperial administration was organized, including the judicature in the western and eastern part of the Empire did not differ significantly until the mid-fifth century, and only Justinian's reforms brought about the most profound transformations.[1] The changes of provincial administration were carried out between 535 and 539, in particular in 535–536.[2] Already during the reign of his uncle, Justin I, Justinian's position gradually grew stronger and stronger.[3] However, those were the

[1] A comprehensive picture of imperial judiciary in the Eastern Empire mat be found in Goria (1995b): 260–309 – until the early seventh century; Puliatti (2011b) – from the fifth to the ninth century. See also for the western part: De Marini Avonzo (1995).

[2] The figure of Justinian the Great enjoys continual interest of researcher who study the history of the Byzantine Empire, therefore only recent biographical works are listed here: Moorhead (1994); Rubin (1995; vol. 1 – ed. 1960); Evans (1996) and (1998); Mazal (2001) i (2003); Meier (2004); Tate (2004); Evans (2008). See also collective monograph: Maas (2005). The then legislation of Justinian's devotes most of its attention to the administration of the Empire. See Franciosi (1998): 9 et seq.

[3] According to Procopius of Caesarea, Justin was a titular ruler, while it was Justinian who exerted decisive influence on state rule (Procop. *HA* 6). Cf. Vasiliev (1950): 163; Ostrogorski (1967): 81; Meier (2003): 185–191. Rubin (1961): 67 et seq., compared the relations between Justin I and Justinian to the cooperation of a leader and his aide-de-camp. The author claims that Justin, who had little sense in civilian administration of the state, relied on Justinian while leaving the matters of the army to himself. The issue has recently been reinterpreted by Croke (2007) who, after a meticulous analysis of sources arrived at the conclusion that although Justinian's influence gradually grew, the helm of the state was always in the hands of Justin I. Similar notion had already been advanced previously by Croke (2005): esp. 405–417. The author question the formerly adopted dating of *Historia arcana* to ca 550, arguing that the work was written by Procopius between 1 April 558 and 31 March 559 (ibidem: with literature of the subject). The matter still remains debatable. See Kaldelis (2009).

constitutions issued after 1 January 535, introduced comprehensive changes in state organisation.[4]

An enactment of crucial significance for Justinian's reforms was the novel eight of 15 April 535, which, as Justinian stated in the first sentence of the *praefatio*, was motivated by his continual concern for the well-being of his subjects and contentment of God,[5] In the relevant respect, it abolished the formally existing vicariate *Asianae*, replacing it with the office of *comes Phrygiae Pacatianae* (c. 2), it removed the formally active *vicarius Pontus*, introducing *comes Galatiae primae* in his place (c. 3) as well as restricted the jurisdiction of *comes Orientis* to province Syria (c. 5). As a result of subsequent changes, the organisational structure of imperial administration was simplified by reduction to prefectures and provinces, while all province governors were elevated to the rank of *spectabiles*.[6] In most cases, the administrators of the newly created territorial units combined civilian competences with the function of military commanders.[7] Hence earlier authors erroneously assumed that Justin-

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[4] See synthesizing remarks of Justinian's novels in recent works only: Lanata (1984); Van der Wal, Lokin (1985): 37 et seq., 44–46; Lanata (1994); Kearley (2010) and (2011) with earlier literature. Noailles (1912) and (1914) discussed in particular the known and lost compilations of novels, while Van der Wal (1964) provides a review of their content. On the language of the novels, see listings in: Archi, Bartoeletti Colombo (1977–1978); Archi (1989).

[5] Nov. Iust. 8 pr. 1: "Omnes nobis dies ac noctes contingit cum omni lucubratione et cogitatione degere semper volentibus, ut aliquid utile et placens deo a nobis collatoribus praebeatur […]". The fundamental study on the novel is Bonini (1976), who also summarizes the aftermath of changes it adopted (ibidem: 82–102). The findings are recapitulated in: Bonini (1978). The significance of the novel in Justinian's designs to ensure stability of law and the rule of law is emphasized by Puliatti (2000): esp. 46, 73–77, with references to novels which introduced new offices in 535–539 as well as to other imperial constitutions. The essence of the reforms was also briefly presented by Feissel (2007) 129, 131 et seq.

[6] *Praetor Iustinianus Pisidiae*, *praetor Iustinianus Lyconiae*, *praetor Iustinianus Thraciae*: Nov. Iust. 24–26 (18 May 535); *comes Isauriae*: Nov. Iust. 27 (18 May 535); *moderator Iustinianus Helenoponti*, *praetor Iustinianus Paphlagoniae*: Nov. Iust. 28–29 (16 July 535); *moderator Phoeniciae Libanicae*: Ed. Iust. 4 (a. 535/536); *proconsul Iustinianus Cappadociae*: Nov. Iust. 28–30 (18 March 536); *proconsul Armeniae primae* and *ordinarius Armeniae secundae*, *comes Iustinianus Armeniae tertiae* and *ordinarius Armeniae quartae*: Nov. Iust. 31 (18 March 536) – on the changes in Armenia, cf. also a recent broader study in Polish: Wolińska (2008) with further literature; *moderator Arabiae*, *proconsul Palestinae*: Nov. Iust. 102–103 (27 May and 1 July 536). Dating after Lounghis, Blysidu, Lampakes (2005): 260–269, 272, 277, 279 (reg. 1064–1067, 1088, 1110–1111, 1115–116), with further literature.

[7] Apart from remarks in biographical studies cited above in footnote 2, cf. cross-sectionally in comparison with other constitutions, with emphasis on the goals pursued by Justinian I when introducing reforms: Giiti (1932): esp. 62–64; Vinsky (1975); Puliatti (1980): 34–40; Haase (1994b); Goria (1995a); Franciosi (1998): esp. 4 et seq., 9 et seq., 14–20; Rouché (1998); Meier (2003): 142–144; Haldon (2005): 50 et seq.; Sarris (2006): 210–214 (economic impact); Gkoutzioukostas, Moniaros (2009): 36–56; Puliatti (2011a): 3–51. Cf. also Bonini (1977): 64–71. Bonini

ian's reforms presaged the introduction of themes (sing. θέμα; pl. θέματα), basic territorial unit of administration in the later history of the Byzantine Empire, with stratēgos (στρατηγός), who combined the competences of a civilian administrator of a theme with command of its military forces.[8] Among new officials (who were often given the appellation *Iustiniani*, which stressed their relationship with the emperor), counts, praetors, moderators, proconsuls, ordinaries or an official with completely distinct status – quaestor of the army.[9]

The administration in Egypt underwent reforms somewhat later – between 538 and 539 or only in 554 – when *praefectus Augustalis* was replaced with *Augustalis* and *dux duae Thebaidae* in Egypt as well as *dux Libyae* introduced.[10]

It is universally assumed that the purpose of changes introduced under Justinian was to simplify the governance of the state, its centralisation and counteracting disputes between civilian administrators of provinces and military commander; at the same time, Justinian strove to reduce the scale of corruption, achieve harmony and greater efficacy in state administration as well as ensure stability of the law.[11] The nature and purview of the reforms

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(1989): 754–759, briefly discussed Justinian's constitutions from 535–542. See also the still valuable observations regarding administrative reforms under Justinian in *pars Orientis* – Diehl (1901): 270–284; introductory remarks by Ensslin (1958): 2029. Barnish, Lee, Whitby (2000): 199 et seq., provide examples showing that the practice of combining civilian and military competences had already been in evidence since the fifth century. A cross-sectional picture of the judiciary during the reign of Justinian can also be found in Franciosi (1998): 21–55; Puliatti (2011b): 424–442.

[8] See Wiewiorowski (2007b): 61–65 with references to further literature. Cf. also Feissel (2007): 131 et seq., who rightly stresses a thorough change of Byzantium's system in the 7th century.

[9] *Quaestor Iustinianus exercitus*: Nov. Iust. 41 (18 May 536), Nov. Iust 50 (a. 537). The quaestura comprised the Lower Danubian provinces Scythia Minor and Moesia Secunda, as well as Caria, the Cyclades and Cyprus. On *quaestura exercitus* in recent works only cf. Torbatov (1997); Wiewiorowski (2006c); Zahariade (2006): 58–61; Gkoutzioukostas (2008); Gkoutzioukostas, Moniaros (2009); Madgearu (2009).

[10] Ed. Iust. 13: 1, 2, 19, 23. Cf. Demichelli (2000); Lounghis, Blysidu, Lampakes (2005): 292 et seq. (reg. 1176) with further literature. See also Garbarino (2003), on jurisdiction in criminal cases in the light of the edict as well as on later changes introduced in other provinces while taking into account previously known rules.

[11] The solutions adopted at the time are treated even as "un blocco non soltanto cronologicamente, ma sopratutto idelogicamente unitario" – see Franciosi (1998): 9. Pulatti (2011a): 34–39 presents the transformation in a similar vein. See also Puliatti (2009) on the striving for harmonious cooperation of imperial offices as an expression of the idea of peace in Justinian's legislation. In another work, the author outlined the ideological premised behind the organisation of the justice system throughout the entire reign of Justinian – Pulatti (2011b): 381–424. On

may have been influenced by John of Cappadocia, a long-standing and influential *praefectus praetorio per Orientem*, to whom almost all of the novels which ordained the changes were addressed.[12] Among other things, the reforms abolished the offices of vicars who acted as substitute to the prefect of the East or limited the position of *comes Orientis*.

The titulature of new officials as well as the contents of all novels of 535–536 was in line with Justinian's propagandistic vision, which showed the ruler as *restitutor imperii*, successor of ancient tradition, and at the same time an emperor who is both efficacious and thoroughly dedicated to Christian ideals.[13] The titles of new administrators drew upon the image of the emperor that the novels presented: a restorer of the Empire, following the tried and tested Republican model; some of the novels in question provide historical justification for the undertaken projects along with disquisitions on the provenance of titles and their significance in the history of Rome.[14] It is therefore stressed that their wording was probably influenced by another close associate of the emperor – Tribonianus[15], who is considered to have been an expert and aficionado of Rome's past and who at the time, i.e. from January 535 to November/December 537, held the office of *quaestor sacri palatii*.[16]

Undoubtedly, the final abolishment of the vicariates of Pontus and Asia, which in 353 still formally existed, reinforced the position of the praetorian prefect of the East, benefiting John of Cappadocia himself. His authority suffered only due to the establishment of *quaestor Iustinianus exercitus*, as the

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the perennial competence disputes between military commanders and officers of civilian administration of the Empire, see e.g. Soraci (1996). Cf. also Wiewiorowski (2013d) on the example of *praetores Pisidiae, Lycaoniae, Thraciae* and *Paphlagoniae*.

[12] See Lamma (1947); Stein (1949): 433–437, 463–465; Lanata (1984): 129, note 80; Maas (1992): 27, 38 et seq., 44, Rouché (1998): 83 with supplements; Franciosi (1998): 5 et seq.; Maraval (2003): 26 et seq. Cf. also PLRE 3A (Fl. Ioannes 11). Nov. Iust 41 and 50 were the only ones addressed directly to Bonus, the first *quaestor Iustinianus exercitus*. On PPO under Justinian, see also Bonini (1989): 775–779.

[13] See esp. Lanata (1984): 78, 131 et seq.; Maas (1986) and (1992): 12–15, 17, 38–40; Franciosi (1998): 17 et seq. Cf. also Lanata (1994) and Jones (1988), with comprehensive remarks of Justinian's worldview in the light of his novels.

[14] Nov. Iust.: 24–30 (a. 535–536); 41 (a. 536); 102–103 (a. 536); Ed. Iust.: 4 (a. 535/536); 13 (a. 538/539?). Similarly in Nov. Iust. 105 (a. 536), pertaining to the consulate.

[15] See Stein (1968); Honoré (1978): esp. 125–138, 243–256; Maas (1986) and (1992): 38–40; Haase (1994b): 7–9. Cf. also PLRE 3B (Tribonianus 1).

[16] See ibidem. On QSP cf. also general information in recent studies: Voss (1982): 33–39; Harries (1988); Delmaire (1995): 57–63; Honoré (1998), esp. 11–23; Gkoutzioukostas (2001), more broadly in Tribonianus: 50 (note 101), 58 – in connection with remarks on the titulature of quaestors of the holy palace, 103–104, 107 (note 312). On quaestors under Justinian I, see also generally Bonini (1989): 779–783.

official equalled PPO in terms of rank. Incidentally, the extended prerogatives and more precise delineation of the competences of new province governors, in combination with the reform of the rules of appeal (Nov. Iust. 23) reduced the number of cases heard by the official of the prefecture of the East and diminished their earnings, which benefited the interests of imperial subjects.[17]

As the sources discussed above demonstrate, with respect to the removal of the vicariates of Pontus and Asia the solutions adopted in Nov. Iust. 8 were an aftermath of a previous state of affairs. Its characteristic feature was that the judiciary of vicars was being supplanted by its competitors – the judiciary of PPO *Orientis* and province governors or, as in the case of the diocese of Asia, the function of vicar would be combined with governorship of a province located in the given diocese. The judiciary of *comes Orientis* and *praefectus Augustalis* retained their significance. Justinian sought to streamline the organisation of the justice system and to ensure its effectiveness. In the case of *comes Orientis* the drive to attain a uniform imperial prevailed, therefore an analogous solution was employed, despite the sustained significance of the office, which persisted in the fifth and the sixth centuries.

From around 531/532 onwards, this striving to streamline the administration of the Empire is also manifest in the departure from the rule of drafting documentation of the prefecture in Latin, which also reduced the income and the significance of its official.[18] Use of Latin in imperial documents provided the officials with opportunity to derive profits from the inhabitant of the Eastern Roman Empire, who predominantly spoke Greek. Latin was the language of communication between the emperor and the officials as well as between the officials themselves, in spite of the fact that since the fifth century Greek was becoming more and more widespread.[19]

The organisation of imperial administration continued to change after the downfall of John of Cappadocia (in 541)[20]. At the time, Justinian withdrew from a number of administrative reforms, perhaps also due to the mili-

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[17] See Chapter 4.2.

[18] Therefore the actions were approached with reluctance by John the Lydian. Cf. Scott (1972); Maas (1992): 22, 31. Next to Procopius of Caesarea, Lydus was one of the most severe critics of the changes attributed to John of Cappadocia; perhaps both authors were on friendly terms. See Franciosi (1998): 6; Kaldelis (2004a). On the critique of reforms in the light of Procop. *HA* 21, 9–25, in which the author referred directly to Nov. Iust. 8, see Kaldelis (2004b): 150–159.

[19] See Barnish, Lee, Whitby (2000): 202 et seq. and esp. Millar (2006): esp. 7–25, 84–93.

[20] Cf. Diehl (1901): 290–295; Stein (1959): 747–756; Bonini (1985): esp. 146–156; Haase (1994b): 133; Atkinson (2000): esp. 23 et seq.; Gkoutzioukostas, Moniaros (2009): 57–65. Cf. also Bonini (1977): 71–78; Bonini (1989): 759–763, with overview of Justinian's constitutions issued in 542–565. On the fall of John of Cappadocia, see also Prostko-Prostyński (2008): 165.

tary failures in Italy, conflict with Persia and the internal crisis, exacerbated by the rampant plague.[21] It is also possible that the domestic situation deteriorated following climatic change; from approximately 500 to mid-sixth century, especially in 535–542, numerous climatic anomalies were recorded (reduced solation, severe winters, decreased precipitation), which led to poor harvests and in consequence may have aggravated the state's internal situation.[22] That was the time when the status of *comes Orientis* and certain vicariates were temporarily reinstated.

The earliest chronologically attested change is the extension of the territorial scope of jurisdiction of *comes Orientis*. Under *sanctio pragmatica* of 1 May 542, the count was made responsible for compliance with the prohibition o marriages between coloni from different estates in the provinces Osroene and Mesopotamia, although the act recognised the validity of marriages which had been entered into earlier; furthermore, the official was obligated to enforce the prohibition on seizing children of such spouses as well as to restore children which had been taken away previously to their parents.[23]

The reintroduction of vicar in the Minor Asian diocese *Ponticae*, which was effective from 15 or 17 September 548, was certainly caused by the necessity to ensure efficient judiciary at a supra-provincial level, which the new administrative organisation had failed to provide, as Justinian himself admitted in the constitution.[24] From then on, the vicar possessed full jurisdiction on the territory of the dioceses, both in cases pertaining to civilians (including clergy) as well as the military; also as a judge hearing appeals (*vice sacra*) from the rulings of province governors, where the value of the

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[21] The conflict with Persia started in 540, while another stage of fighting against Goths in Italy began a year later, See biographical studies concerning Justinian quoted above. The causes behind Justinian's defeats in the 540s were also synthetically discussed by Hassal (2007): 512–515. The opinions regarding the actual aftermath of the plague vary. See in recent studies only: Durliat (1989); Stathakopoulos (2004): 110–165; Antoniou, Sinakos (2005); Horden (2005); Stathakopoulos (2007); Sarris (2007). Meier (2003) is justified in observing that the rule of Justinian in 543–565 was a „return to theology" (ibidem: 234–293), drawing attention to lack of emperor's initiatives in secular matters, while focusing attention of religious issues, which stemmed from the tragic experiences of the early 540s.

[22] See Koder (1996); Axboe (1999); Wohletz (2000); Antoniou, Sinakos (2005); Arjava (2005). The latter, however, approaches the views regarding the significance of climate change with reserve. Economic standing of the Empire in the fifth century is cross-sectionally discussed in Morrisson, Sodini (2002).

[23] Nov. Iust. 157 (a. 542). See in comparison to other regulations pertaining to the coloni Kaser (1975): 147. The novel is also attributed to Tribonianus; cf. Honoré (1978): 127. On the addressee, see PLRE 3B (Lazarus 1). See also Lounghis, Blysidu, Lampakes (2005): 311 (reg. 1268), with further literature.

[24] Ed. Iust. 8 (a. 548) esp. *praefatio*. See Goria (1995a): 453 et seq.; Lounghis, Blysidu, Lampakes (2005): 325 (reg. 1337).

object of dispute did not exceed 500 pieces of gold. The vicar's judgement was final – no further appeals were permitted. However, the vicar was an equivalent of the former *vicarius Ponticae* only in name, as he controlled both civilian administration, including the courts, as well as the armed forces in the entire diocese. The praetura in Pisidia ceased to exist in 553, at the latest. That year, Justinian issued an enactment which restricted the jurisdiction of the newly appointed *dux et biokolytes* in *Pisidia* and *Phrygia* to civilian affairs, as well as upheld civilian and military prerogatives of the official with respect to provinces *Licaonia* and *Lidia*.[25]

Around the mid-sixth century, the ineffectual *praetor Thraciae* disappeared in the Balkans, to be replaced by the office of the vicar of Thrace: βικάρ(ιος) Θρᾴκης – *vicarius Thraciae*.[26] The official administered a part of former diocese of Thrace (northern provinces *Moesia secunda* and *Scythia minor* were subordinated to *quaestor Iustinianus exercitus*); he was a civilian officer with a broad range of administrative prerogatives. Still, it cannot be ruled out that one of his primary tasks was supervision of construction works.[27]

All these solutions demonstrated the inadequacy of reorganisation implemented under Nov. Iust. 8, which consisted in abolishing the diocesan tier of imperial administration throughout the Empire. Nevertheless, restoring broad territorial range of jurisdiction to *comes Orientis* as well as the status *vicarii Ponticae* and *Thraciae* were not a straightforward reference to the offices of diocesan vicars of the previous period.

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[25] Nov. Iust. 145 (a. 553). Cf. Lounghis, Blysidu, Lampakes (2005): 333 (reg. 1387), with further literature. See esp. Meier (2003): 302–304, who points to the pragmatic motivation of the changes, which is clearly distinct from the profoundly historical justifications of changes in the 530s.

[26] See recent studies with references to earlier works: Gkoutzioukostas (2009): 116–121; Gkoutzioukostas, Moniaros (2009): 62–64; Wiewiorowski (2010f).

[27] See Wiewiorowski (2010a): 38 et seq.; Wiewiorowski (2010b).

7

Conclusions

The collected source material permits drawing detailed conclusions, which constitute a response to the research question and enables formulating hypotheses regarding the mechanisms of evolution of the position of diocesan vicars as judges; mechanisms which also prove important from the standpoint of contemporary jurisprudence.

1. *Agentes vices praefectorum praetorio* from the Tetrarchy period (286–313) cannot be directly identified with diocesan vicars. It should be presumed that the practice of dispatching a.v.p.p. to a given territory concurred with the establishment of dioceses for tax purposes, drawing on the traditions of the Principate. After 313, *agentes vices praefectorum praetorio* were also denoted as *vicarii*, while by the addition of the name of the diocese, their titulature began to reflect the extent of territorial jurisdiction of the official, which overlapped with the diocese. Under Constantine the Great, *comites provinciarum,* whose titulature also confirmed the extent of competences limited to the territory of the diocese, would be temporarily sent to the dioceses, acting simultaneously and independently of the vicars. The diocesan structures, along with the administrating vicars became more firmly established after 337. Still, anomalies were in evidence in the West: some dioceses were directly governed by regional PPO; the fates of diocesan administration in Italy fluctuated: ultimately, since the 350s in the diocese *Italiae* (*Italiciana*) the *regiones annonariae* were under direct control of PPO *Italiae* while *vicarius urbis Romae* (who enjoyed a distinct status) was responsible for *regiones suburbicariae*; in the East, from ca 335, a separate status was granted to the *comes Orientis* in the diocese of the East, and from ca 381 at the latest, to *praefectus Augustalis* in the diocese of Egypt.

The above demonstrates clearly that administrative reform at the turn of the fourth century, which brought forth dioceses and their administrators, were introduced without a coherent vision what changes should be effected,

what offices established and what should be their competence.[1] All this stabilized itself gradually in the fourth century.[2]

2. The fact that normative sources distinguish *comes Orientis* and *praefectus Augustalis* from the group of diocesan vicars, which is further validated by information obtained through the analysis of the iconographic material (representation of insignia in *Notitia dignitatum*), as well as the twofold higher complement of their *officium*, substantiates the claim that they represent a separate category of imperial officials. The numerous instances of military units being commanded by *comes Orientis,* in particularly his command of *Classis Seleucena*, is additional proof of the distinct nature of this office. A similar hypothesis may be advanced with respect to *praefectus Augustalis*. In view of the significance of Rome, separate status was conferred on *vicarius urbis Romae*, whose judgements were appealed from to *praefectus urbi* (since 361). In turn, the evidence confirming military prerogatives of *vicarius Britanniarum* is too tenuous to speak in favour of a special status of that vicar. Meanwhile, the instances of other diocesan vicars commanding military detachments were in all likelihood rare and occurred randomly.

3. The composition of the *officium* of all diocese administrators points directly or indirectly to the tremendous significance of the judicial functions they discharged and emphasizes the importance of tasks they were entrusted as judges within the framework of imperial administration. However, the analysis of the composition of the office permit one to draw a distinction between the judicature of first instance, the appellate judiciary and the jurisdiction of diocesan vicars in specific categories of cases.

4. Constantine the Great was the first to formulate the principle that the duties of *iudices ordinarii* should be fulfilled primarily by province governors while diocesan administrators, including diocesan vicars, may do so only in exceptional cases – C. Th. 1, 15, 1 (a. 325). According to *Codex Theodosianus* of 438, the act was of key significance, and therefore it came first in the title dedicated to vicars (*De officio vicarii*). The concept is also indirectly expressed in an earlier constitution of that emperor – C. Th. 1, 16, 1 (a. 315) as well as in an act issued by Julian the Apostate – C. Th. 1, 15, 4 (a. 362).

Despite reservations expressed by various authors, many fragments of the constitutions included in the *Codex Theodosianus* confirm that at least

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[1] Cf. similarly Chastagnol (1985): 377; Noethlichs (1981): 199 et seq. This is also evident in the light of constitutions addressed to diocese administrators in times of Constantine the Great. See more broadly Dupont (1973): 335 et seq.; briefly Kuhoff (1983): 236. See also Franks (2012): 236–241, who seems to be isolated in the view that "Much of the [late Roman – J.W.] bureaucracy was rationally planned and was the result of intentional responses to general, special or local conditions" (ibidem: 136).

[2] See rightly Noethlichs (1982): 80 et seq.; Migl (1994): passim.

indirectly, diocese administrators performed the duties of appellate judges; most acts are contained in the title of *Codex Theodosianus* devoted to appeals (*De appellationibus et poenis earum et consultationibus*).[3] Nevertheless, it impossible to determine the criteria according to which certain cases were referred for hearing by diocesan vicars rather than PPO (apart from where certain territories of the Empire were excluded from the jurisdiction of vicars, falling instead to PPO *Galliarum* and *Illyricum*, PVR, the prefect of Constantinople and proconsuls). As regards some of the constitutions, it is difficult to ascertain whether they regulated issues relating to appeals, cases heard in first instance, or perhaps applied to both stages of judicial procedure.[4] With most acts addressed to diocesan vicars designated by name, it may be surmised that the constitutions were issued following their *suggestio*. Imperial constitutions surviving in the *Codex Theodosianus* also indicate that diocesan vicars exercised administrative control over the judiciary of most province governors and their offices as well as over proceedings they conducted. Moreover, they supported and controlled activities of other offices with regard to the judiciary and administration.[5] Despite the stipulation set forth in C. Th. 1, 15, 1

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[3] C. Th. 3, 5, 3 (a. 330) = Brev. Alaric. 3, 5, 3 = C. 1, 18, 11. C. Th. 3, 5, 6 (a. 335) = Brev. Alaric. 3, 5, 6 = C. 5, 3, 16. C. Th. 9, 21, 1 (a. 319). C. Th. 11, 26, 1 (a. 369) = C. 10, 30, 1. C. Th. 11, 30, 11 (a. 321) = C. 7, 62, 16. C. Th. 11, 30, 16 (a. 331) = C. 7, 62, 19 and fragments in: C. Th. 2, 26, 3; C. Th. 3, 30, 4; C. Th. 4, 5, 1 = C. 8, 36, 2; C. Th. 11, 30, 17 = C. 1, 21, 3; C. Th. 11, 34, 1; C. 3, 13, 4; C. 3, 19, 2. C. Th. 11, 30, 19 (a. 339) = fragment in: C. 7, 63, 1 (a. 320). C. Th. 11, 30, 22 (a. 343) = Edictum Theod. 55. C. Th. 11, 30, 30 (a. 363) = C. 7, 67, 2. C. Th. 11, 34, 2 (a. 355). C. Th. 11, 36, 4 (a. 339) = fragment in: C. 9, 9, 29 (a. 326). C. Th. 11, 36, 5 (a. 341) = C. 7, 62, 20. C. Th. 16, 10, 2 (a. 341).

[4] C. Th. 4, 6, 5 (a. 397). C. Th. 4, 21, 1 (a. 395) = Brev. Alaric. 4, 19, 1 = C. 8, 2, 3. C. Th. 4, 22, 5 (a. 397) = Brev. Alaric. 4, 20, 5 = C. 8, 5, 2; C. 7, 32, 11. C. Th. 5, 19, 1 (a. 365) = Brev. Alaric. 5, 11, 1. C. Th. 9, 8, 1 (a. 326?) = Brev. Alaric. 9, 5, 1 = C. 9, 10, 1. C. Th. 9, 15, 1 (a. 318/319) = Brev. Alaric. 9, 12, 1 = C. 9, 17, 1; I. 4, 18, 6. C. Th. 9, 18, 1 (a. 315) = Brev. Alaric. 8, 14, 1 = Rom. Burg. 4, 1 = C. 9, 20, 16; I. 4, 18, 10. C. Th. 9, 35, 4 (a. 380) = Brev. Alaric. 9, 25, 1 = C. 3, 12, 5. C. Th. 9, 40, 15 (a. 392). C. Th. 9, 40, 16 (a. 398) = C. Th. 11, 30, 57 (pr.) = C. 1, 4, 6; C. 7, 62, 29. C. Th. 11, 30, 9 (a. 319) = C. 7, 62, 15. C. Th. 11, 30, 16 (a. 331) = C. 7, 62, 19 and fragments in: C. Th. 2, 26, 3; C. Th. 3, 30, 4; C. Th. 4, 5, 1 = C. 8, 36, 2; C. Th. 11, 30, 17 = C. 1, 21, 3; C. Th. 11, 34, 1; C. 3, 13, 4; C. 3, 19, 2. C. Th. 11, 30, 30 (a. 363) = C. 7, 67, 2. C. Th. 11, 34, 2 (a. 355). C. Th. 11, 34, 1 (a. 330). C. Th. 11, 36, 4 (a. 339) = fragment in: C. 9, 9, 29 (a. 326).

[5] C. Th. 1, 15, 2 (a. 348). C. Th. 1, 15, 4 (a. 362). C. Th. 1, 15, 8 (a. 379) = C. 1, 38, 2. C. Th. 1, 15, 10 (a. 379). C. Th. 1, 16, 5 (a. 362/364/365/367). C. Th. 1, 16, 10 = entirety from C. Th. 9, 3, 4 = Brev. Alaric. 1, 6, 3. C. Th. 1, 22, 1 (a. 316) = Brev. Alaric. 1, 9, 1 = C. 1, 48, 1. C. Th. 2, 6, 5 (a. 340) = Brev. Alaric. 2, 6, 5 = C. 3, 11, 6 and C. Th. 10, 15, 3 (a. 340). C. Th. 6, 35, 4 (a. 321). C. Th. 7, 1, 16 (a. 398) = fragment in: C. 12, 35, 13, 2 (a. 398). C. Th. 7, 15, 1 (a. 409). C. Th. 8, 1, 9 (a. 365) = C. 12, 49, 2. C. Th. 8, 10, 2 (a. 344) = C. 12, 61, 2. C. Th. 9, 1, 13 (a. 376). C. Th. 9, 3, 4 (a. 365) – entirety from C. Th. 1, 16, 10. C. Th. 9, 34, 1 (a. 319) = Brev. Alaric. 9, 24, 1. C. Th. 9, 38, 7 (a. 384). C. Th. 10, 15, 4 (a. 367). C. Th. 11, 30, 33 (a. 364).

(a. 325) and C. Th. 1, 16, 1 (a. 315) many first instance cases were actually heard before the tribunal of diocesan vicars.[6]

5. The absence of clear-cut distinction between the jurisdiction of diocesan vicars as *iudices ordinarii* and the jurisdiction of province governors, resulted on the one hand in vicars hearing cases which indeed may be seen as more important, as Constantine the Great decreed in the two constitutions quoted above (including cases pertaining to areas which were vital for the interest of the ruler, such as tax collection, protection of the official religion, the model of relationships within the family, or broadly understood protection of social order). At the same time, diocesan vicars acted as judges in cases which were less important from the legislator's standpoint, while a constitution was issued partly as a result of efforts made by the parties to be the judged by a vicar. With regard to these enactments, one may be almost certain that the constitutions were issued following the *suggestio* of vicars. It is also true that to a degree, vicars heard cases in first instance because the emperors recognised that they may be better suited to adjudicate a given dispute or supervise compliance with the law than province governors.

6. The rulers' decisions that diocesan vicars should hear first instance or appellate cases combined with the lack of unequivocal selection criteria, produced a confusion which the parties most likely exploited. In the case of appeal, rather than to diocesan vicars they would often turn directly to higher courts, in the main to praetorian prefects, which incidentally are the most numerous group of addressees of all constitutions in *Codex Theodosianus*. However, with first instance proceedings, the parties sought judgement from diocesan vicars rather than province governors.

Such behaviour of the parties was rational. On the one hand, they aimed to arrive at a conclusive adjudication, as was the case with verdicts of praetorian prefects, the highest representatives of the emperor in appellate proceedings, from which no appeal was allowed (C. Th. 11, 30, 16 = C. 7, 62, 19 – a. 331). On the other hand, litigating parties had thus the opportunity of having the dispute being resolved in first instance by a diocesan vicar, in-

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[6] C. Th. 1, 15, 1 (a. 325); C. Th. 1, 15, 7 (a. 377) = C. 1, 38, 1. C. Th. 2, 7, 1 (a. 314) = C. 3, 11, 2. C. Th. 2, 19, 1 (a. 319) = Brev. Alaric. 2, 19, 1 – C. 3, 28, 27. C. Th. 3, 11, 1 (a. 380) = Brev. Alaric. 3, 11, 1 = C. 5, 7, 1. C. Th. 6, 22, 2 and C. Th. 12, 1, 24 (a. 338). C. Th. 7, 18, 7 (a. 383). C. Th. 8, 1, 4 (a. 334) = C. 12, 49, 1 and C. Th. 8, 15, 2 = Brev. Alaric. 8, 8, 1. C. Th. 9, 1, 2 (a. 319) = C. 9, 40, 2. C. Th. 9, 1, 14 (a. 383) = Brev. Alaric. 9, 1, 8 = Burg. Rom. 7, 1 = C. 9, 2, 13. C. Th. 9, 1, 9 (a. 366) = C. 9, 46, 7. C. Th. 9, 36, 1 (a. 385 = Brev. Alaric. 9, 26, 1 = C. 9, 44, 1. C. Th. 9, 37, 1 = Brev. Alaric. 9, 27, 1 = C. 9, 42, 2. C. Th. 9, 39, 2 (a. 385) = Brev. Alaric. 9, 29, 2 = C. 9, 46, 8. C. Th. 9, 40, 2 (a. 316) = C. 9, 47, 17. C. Th. 10, 1, 10 (a. 365) = C. 10, 1, 8. C. Th. 10, 4, 3 (a. 373). C. Th. 10, 10, 20 (a. 392). C. Th. 10, 17, 3 (a. 391/392) = Brev. Alaric. 10, 9, 1 = C. 4, 44, 16. C. Th. 16, 2, 34 (a. 399) = C. 1, 3, 13. C. Th. 16, 5, 35 (a. 399). C. Th. 16, 6, 2 (a. 377) = C. 1, 6, 1. Perhaps also C. Th. 1, 15, 10 (a. 379).

stead of a province governor whose position was usually lower and who commanded less authority (only *proconsules Asiae, Achaiae* and *Africae* had higher status than vicars). The stipulations originating in the fourth century from the imperial chancery, requiring that vicars focused their judicial activities on appeal, did not succeed in making the vicars a satisfactory appellate instance in the legal awareness of diocese inhabitants. At this point, one should bear in mind the significance attached at the time to class division (associated in part with rank and honorary titles), as well as the reluctance or even contempt with which the local elites approached province governors and their tribunals.[7]

Such an approach of the parties was in line with the hierarchical ordering of social structures and the need to appeal to the authority of individuals situated higher in the social hierarchy, so characteristic of human societies.[8] These traits are also considered some of the most typical features of male-dominated human societies, to which the Roman society undoubtedly belonged.[9]

Simultaneously, the emperors themselves lost confidence in the judiciary of diocesan vicars and, as of the latter half of the fourth century, the number

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[7] The phenomenon is vividly described by De Salvo (2001) who uses the example of Libanius. See also Ceran (1998): esp. 29–39 on the transformation of Roman administration at local level in the light of Libanius's writings,.

[8] The is also observed among some of our closest evolutionary relatives – African apes, in particular in common chimpanzees (*Pan troglodytes*). See Boehm (1999): esp. 125–148; Buss (2001): 87, 369–392; Foley (2001): 77–117 (demonstratively on the place of *Homo sapiens sapiens* among *Hominidae*) and 264–267; Załuski (2009): 137 et seq. Diamond (1998) popularised the thesis that the human being is the „third chimpanzee". The significance of biological conditioning in the organisation of political order has recently been also emphasized by Fukuyama (2012): esp. 48–66, 487–490.

[9] Summers (2005) conducted a comprehensive analysis of views regarding the dissemination of hierarchical structures in human societies, arguing that the simplest explanation for their widespread presence is the „reproductive skew theory". The theory, using mathematical formulas, attempts to account for how reproductive strategies of individuals are implemented within groups, whilst taking into account ecological conditions, the degree of social development and genetics. One of the ensuing observations is that higher-status individuals demonstrate a higher level of reproduction. See http://www.gnxp.com/MT2/archives/002883.html See Scheidel (2009b), on the example of ancient empires, including the Roman Empire. Cf. also Boehm (1999), who came forward with a comprehensive vision of why a more egalitarian social organisation emerged and persisted among some of the traditional societies before the Neolithic revolution (whereby the social organisation was based on reverse dominance hierarchy where the pyramid of power is turned upside down, with a politically united rank and file decisively dominating the alpha-male types). The concept was developed in Boehm (2012): esp. 75–87. On egalitarianism among humans from the standpoint of evolutionary psychology, see also Charlton (1997) with further literature. The issue is also addressed by Fukuyama (2012): 60–63.

of constitutions addressed to them gradually declined, supplanted by a growing number of enactments concerning diocese administrators which were addressed to PPO or other higher imperial officials. Symptomatically, almost quarter of the surviving fragments of the analysed constitutions concerning diocesan vicars dates back to the times of Constantine the Great (22 of the total of 84 in C. Th. and C.).

7. The deficit of stable regulations concerning jurisdiction of diocesan vicars was to be rectified by Nov. Marc. 1 (a. 450). The novel recognised the jurisdiction of all *iudices medii*, which included diocesan vicars, with respect to a majority of appeals from verdicts of most province governors, and reaffirmed, in line with the legislator's intentions, that vicars possessed first instance capacity in exceptional circumstances. It was also the first recorded attempt to distinguish, according to more specific criteria, between the jurisdiction of higher judges adjudicating in first instance, which also meant diocese administrators, and the jurisdiction of province governors, on those occasions when the court of the governor was insufficient due to the power of a litigating opponent, the complexity of the case or the amount of the public debt.

8. The fact that a substantial portion of imperial constitutions establishing the framework of the judiciary of diocesan vicars, known earlier from the *Codex Theodosianus,* were adopted in the *Codex Iustinianus* of 534 means that in formal terms the status of vicars as judges remained unchanged and they were to hear cases both in first instance as well as appellate judges.[10] The conclusion is borne out especially by the analysis of titles comprising constitutions repeated after the collection of Theodosius II, with *De officio vicarii* at the forefront (C. 1, 38). By and large, they duplicated or drew upon the location of the acts in *Codex Theodosianus*.[11] Among constitutions known solely from *Codex Iustinianus*, the only acts pertaining to the jurisdiction of diocesan vicars come from the fourth century: C. 6, 1, 5 (a. 319); C. 11, 50, 1 (a. 325). However, as a part of this compilation they were not perceived from the standpoint of their significance for the determination of the status of diocese administrators but, respectively, from the point of view of the privileges of cities and the protection of the coloni.

A number of the acts dating from the period after 438 merely lists vicars among imperial officials and resembles a standard formula used in the imperial chancery.[12] The constitution of 440 (C. 7, 62, 32, C. 7, 63, 2 and C. 3, 4, 1),

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[10] See Table 1.

[11] See Table 2.

[12] C. 1, 3, 53 (a. 533) and C. 9, 13, 1 (a. 533); C. 1, 41, 1 (s.a.); C. 1, 49, 1 (a. 479); C. 2, 7, 11 (a. 460); C. 8, 12, 1 (a. 490); C. 9, 5, 1 (a. 486); C. 10, 23, 3 (a. 468); C. 12, 59, 10 (a. 470?). The earlier C. 2, 12, 25 (a. 392) is similar in nature.

which set forth the rules and deadlines for appeals as well as regulated the status of delegated judges in the Eastern empire, also offers no more than a mere confirmation that vicariates existed. Only one constitution issued by Justinian the Great may indirectly refer to the duties of vicars, although this cannot be categorically asserted – C. 9, 4, 6 (a. 529). At the same time, *Codex Iustinianus* suggests sustained, considerable significance of *praefectus Augustalis* and *comes Orientis* in the administration framework of the Empire, including the justice system.

9. The Nov. Iust. 23 of January 3rd, 535, formally introduced substantial changes in the jurisdiction of diocese administrators. The novel specified an inventory of cases in which appeals could be heard by all *iudices medii*; this included cases where the value of the object of litigation did not exceed 10 pounds of gold as well as delegated cases. The enactment directly confirms the appellate capacity of *iudices medii*, and thus formally diocesan vicars as well. However, the most notable change was that the novel circumscribed the range of cases heard by appellate courts of *iudices maiores*, by means of an unequivocal criterion of the value of the object of dispute. Thereby, the act rejected the ambiguous terminology employed in previous imperial constitutions, which did not allow *iudices medii* to have appellate jurisdiction. Still, Nov. Iust. 23 did not set forth a criterion according to which they were to act as first-instance judges. Nov. Iust. 8 of 15 April 535, finally abolished the group of *iudices medii*, and thereby disposed of the empire's last formally functioning diocesan vicars – the *vicarii Ponticae* and *Asiae*, as *vicarius Thraciarum* had already been abolished towards the end of the fifth century. With the exception of *comes Orientis* and *praefectus Augustalis*, the solution adopted in Nov. Iust. 23 had virtually no practical significance for the judiciary of diocesan vicars.

10. When formulating research objectives of this work, I hoped to determine which areas currently governed by the norms of substantive and procedural law were subjects to the most extensive modifications in the judiciary of diocesan vicars. The random nature of the surviving legislative interventions and the testimonies originating from other sources proved too insufficient to ascertain any substantial regularities in this respect.[13] The analysed constitutions provide no definite subjective or objective criterion of cases heard by diocesan vicars in their judicial capacity. Among them, one encounters various, more or less important criminal and civil cases, lawsuits related to tax obligations, or issues concerning religion. The analysed

[13] On the absence of planned legislative action reflected by a greater part of imperial legislation see Schmidt-Hofner (2008b) – on the example of constitutions of Valentinian I, with further literature.

sources demonstrate prevalence of constitutions concerning: criminal law (9) family law and familial affairs as they are referred to today (9), then protection of property (6) and inheritance (5). As regards procedure, the most important group comprises constitutions dealing with the correctness of appeal procedure, and especially the admission of appeal by judges.

11. The representation of the insignia of all diocese administrators preserved in *Notitia dignitatum* demonstrate that their most important functions encompassed the judiciary administrative-financial affairs, with particular emphasis on issues relating to justice. However, they do not offer an answer as to kind and nature of proceedings in they presided. The insignia of authority of all diocese administrators, also as a symbolic representation of their judicial prerogatives, did not differentiate between appellate and first instance judiciary.

12. The few narrative sources concerning the judiciary of diocesan vicars do not suggest that they performed the function of judges hearing appeals from rulings of the province governors. In turn, first instance judiciary was an important duty of diocese administrators and thus it was perceived by the contemporaries, as attested to by the correspondence of St. Augustine with Macedonius, vicar of Africa in 413–414(?). In turn, the example of the vicar of Thrace, Capitolinus, who in 362 hold court over St. Emilianus – a soldier (probably from Legion XI *Claudia)* shows that the privileged position of *viri militares* with respect to the judiciary was not an absolute, unshakeable rule.

In the light of the conducted analysis, it cannot be ruled out that in the summer of 376, *vicarius Africae* Virius Nicomachus Flavianus participated in the proceedings which implemented the provisions of the constitution of 13 February 376 (C. Th. 9, 1, 13) which, among other things, instructed the vicars only to conduct investigation and hold hearing, but without the right to return a verdict in the case of senators charged in criminal cases subject to *poena capitis*. Sources concerning the activities of known fifth-century vicars from PPO *Galliarum* offer indirect evidence that in that barbarian-threatened region the cooperation between *vicarius Septem provinciarum* and PPO *Galliarum* was relatively harmonious.

13. The inscriptions discussed in the work support the conclusion that were in all certainty judges. Epigraphic sources also underline the importance of judicial duties performed by the vicars for the inhabitants of the Empire. Nevertheless, in their light, it is impossible to determine the nature or the mode of proceedings in which they presided.

14. Non-legal sources suggest that at the time no greater significance was attached to the difference between appellate and first instance judicature. The duties of all imperial officials, judiciary duties included, were a deriva-

tive of the omnipotence of Later Roman emperor, which was merely functionally distributed among his officials in order to ensure even greater efficacy. This approach is particularly reflected in the insignia of vicars found in *Notitia dignitatum*. In the light of the remaining sources, one may venture a claim that the contemporaries considered the judicial activities of the vicars in first instance as more important. This tallies with the evidence of legal sources, especially with the constitutions in *Codex Theodosianus*, which testify to the efforts to be judged by the vicars rather than province governors.

15. The limited number of references to vicars among the constitutions issued in the fifth and sixth centuries, particularly after the promulgation of *Codex Theodosianus* in 438, is appositely quoted in literature as an argument in favour of the decline of vicariates while the position of PPO and the role of province governors increased proportionately.[14] It has also been aptly claimed that the cause behind the phenomenon was the large extent of the dioceses and the inability to exercise effective control over province governors.[15] However, the reasons for the waning significance of the vicars go deeper, being rooted in Rome's characteristic lack of clear-cut division of competences between offices and in their confused hierarchy.

It should be remembered that the organisation of the Later Roman state suffered from numerous anomalies, which were a legacy of the past and resulted from the then, as opposed to contemporary, purposes of the state – the overriding principle was unity of power gathered in emperor's hands and directly exercised by him – as well as from the strength of more or less manifest informal connections.[16] Consequently, the rules were not interested in introducing definite criteria which distinguished competences of their officials, as this would undermine the power of the emperor.

In the case of vicars, the nature of their judiciary was chiefly influenced by the lack of established rules that the parties should follow when seeking to have their case by vicars instead of province governors, and absence of distinct criteria for hearing appeals by diocesan vicars and praetorian prefects. The exceptional character of first instance judiciary of vicars stressed by imperial enactments, as well as the limited accessibility of their tribunal to parties, as opposed to the readily available court of province governor, also in terms of geographical proximity, resulted ultimately in the gradual

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[14] Stein (1925): 377; Stein (1949): 465; Jones (1964): 281, 374, followed by Rouché (1979): 174 et seq., regarding the vicars of Asia; Rouché (1989): 103. In turn, Franks (2012): 4, 122, 174, 180, 238, 290, speaks against the thesis claiming the decline of the significance of vicariates, though without any more profound justification.

[15] Noethlichs (1981): 103–109, 219 et seq.

[16] See in recent studies only Millar (1977): esp. 59–61, 203–272; Millar (1982); Kelly (1994); (1998); (1999) and (2004): passim; Franks (2012): 169–174, 236–241.

disappearance of the former, or to coalescence of the functions of vicar and province governor, which is attested for some dioceses in the Eastern empire. The failure to set the criteria according to which appellate cases were to be heard not by vicars but by higher judges, such as PPO, created a situation where appeal was immediately lodged with the higher judges. The parties were justified in assuming that the authority, and especially the emphasized rule that verdicts of PPO were unappealable (C. Th. 11, 30, 16 = C. 7, 62, 19 – a. 331), would allow them to arrive at a conclusive adjudication. Also, one cannot underestimate the competition for the fees and charges associated with hearing an appeal, a proceeding that the officials of PPO attempted to monopolize. Thus, the judiciary of the vicars as appellate judges slowly atrophied. Analogous process was in evidence with respect to supervision over tax collection, in which province governors and praetorian prefects, being its direct supervisors, played a greater role at the expense of diocesan vicars. Only in the prefecture of Gaul does one observe sustained significance of the *vicarii Septem provinciarum*, which was associated with the different and unique circumstances on its territory. Due to the exceptional position of Rome, the significance of *vicarius urbis Romae* also remained largely unaffected.

16. The behaviour of the litigating parties was rational, and may be explained on the basis of the most fundamental foundation of moral judgement, in which moral value is determined by punishment and reward.[17] The defendants were motivated by conformity which ensured reward and favours in the shape of a quick conclusion of the trial (in the case of the judiciary of province governors) or being granted final adjudication (which was guaranteed by the tribunal of PPO or a tribunal in which he took part). The universal and powerful human inclination to conformist, which plays a substantial role in the process of cultural transmission.[18]

The decline of the judiciary of the vicars was also due to the concurrence of behaviours which consisted in resorting to the court of the province governors with a higher level of moral judgement. In his opinion, the defendants played appropriate social roles and fulfilled the expectations of the emperors; after all, the latter decreed that the first instance judiciary of province governors was a matter of course, and required that the duty be performed by the diocesan vicars only in exceptional situations. This may also

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[17] On those, see Wilson (2001): 309.

[18] See Gerrig, Zimbardo (2006): 566–572; Morgan, Laland (2012) – who justifiably argues that "It may no longer be fruitful to view conformity in a solely normative or informational world, as the human (and likely non-human) brain seemingly does not separate the two" (ibidem: 6).

have been fostered by humankind's universal proclivity to surrender to authority.[19] According to *Moral Foundation Theory*, authority/respect is one of the five basic moral foundations, together with harm/care, fairness/reciprocity, ingroup/loyalty and purity/sanctity, which together constitute the building blocks of morality, regardless of culture.[20]

Most likely, behaviours of this kind quickly became established as a social norm, which may be accounted by drawing on the concept of collective memory.[21] According to one of its interpretations, it is divided into communicative and cultural memory.[22] The first comprises collective experience of several recent generations transmitted chiefly through oral tradition and does not exceed the span of 80–100 years. Once half of this period has elapsed, its witnesses begin increasingly to share their own experiences with the representatives of successive generations and some of them may consolidate into cultural memory, which is more stable and stored longer by means of various forms which facilitate remembering, such as writing, through visual forms and places of commemoration.[23] The phenomenon is also in evidence in the case of the judiciary of the vicars. After the period when emperor entrusted diocesan vicars with hearing court cases, partly resulting from the attempts of the defendants to be judged by vicars in first instance (in the first decades of the fourth century), the number of sources confirming their exercise of judicial powers decreases. Under the influence of the experience that on the one hand the practice was questioned by the emperors (first instance judiciary) while one the other it did not prove exceedingly effective (appellate judiciary), the convention of entrusting "ordinary" diocesan vicars with the justice system failed to be preserved in the cultural memory, whose primary form at the time was written or figurative account.

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[19] See Gerrig, Zimbardo (2006): 586–590, who discuss a series of experiments conducted in the 1960s by psychologist Stanley Milgram. Participants of the experiments, unaware that the situation had been pre-arranged, readily applied increasing electric shocks to an alleged second participant is (in fact a professional actor), encouraged to do so by thee investigators, who in their eyes represented an authority. On the significance of the study and the debate provoked by this and similar experiments see Blass: (1991); (1999); (2000); Burger (2009); Elms (2009).

[20] See Graham [et. al.] (2012); Haidt (2012): esp. 111–218. Cf. also http://www.moralfoundations.org/

[21] The concept was conceived by French sociologist Maurice Halbwachs (1877–1945). See esp. Halbwachs (1925). In another work, Halbwachs aptly observed that "L'histoire n'est pas tout le passé, mais elle n'est pas, non plus, tout ce qui reste du Passé" (Halbwachs [1950]: 35). In Polish studies, see also Baczko (1994): esp. 17–46.

[22] Assmann (2003); Assmann (2008): esp. 64–71 with further literature.

[23] See Assmann (1999) on the forms or recording collective memory and their contemporary crisis resulting from the expansion of electronic media.

Since the late fourth century, the number of testimonies to judicial activities of diocesan vicars dwindles; despite their status formally remains unchanged, the quantity of normative sources mentioning the vicars visibly decreases. This confirms that the rulers as well as the circles of their top officials became firmly convinced that entrusting diocesan vicars with judicial powers was unwarranted, while the litigating parties developed a notion that soliciting adjudication from diocesan vicars was ineffectual. Imposing limitations on the judiciary of the vicars coincided with the centralising tendencies which consisted in PPO taking over appellate judiciary of the vicars; this was particularly pronounced in the Eastern empire. Such processes are universally shared by various bureaucratic structures, which seek additional objectives once those they had been established had been accomplished. One also cannot ignore the impact of the competition for profits generated by handling appellate proceedings, gained by the auxiliary personnel of PPO.

17. The decline of the judiciary of vicars in the fifth and sixth centuries is borne out by Justinian's decision not to appoint a vicariate in the recaptured Africa (C. 1, 27, 1; a. 534) and by the fact that the key instrument regulating judiciary of the vicars, Nov. Marc. 1 was not adopted in *Codex Iustinianus*. As regards the vicars, promulgation of the former was a belated action which could not mitigate the established custom, which had previously undermined the significance of the judiciary of diocesan vicars. Since the first decades of the fifth century, diocesan vicars were but a systemic embellishment, and their persistence was not justified by any actual significance of those imperial officials, their judiciary included. Nevertheless, it was associated with the mechanisms of exercising power in the empire.

The emperor, being the source of privileges and the giver of dignities, used the appointment to a vicar's rank as an additional instrument of control in the highly hierarchical Later Roman society, since the title of a diocesan vicar was perceived as an additional award and a mark of one's prestige. With the disappearance of imperial administration in the West, the vicars disappeared as well (with the exception of the singular example of Ostrogothic Italy – see Chapter 2.2.2). Meanwhile, except *vicarius Thraciarum* which had been abolished under Anastasius I, the vicariates of the Eastern empire survived by sheer inertia and as an honorary title, which still carried some significance in the Empire's power structures.[24] Meanwhile, marginali-

[24] Feissel (1998) was right in this respect, stressing that abolition of the vicariate of Asia in Nov. Iust. 8 of 535 constituted a genuine innovation, not a validation of the state of affairs: since the early fifth century, the vicariate in the diocese was permanently integrated with the proconsulship of Asia. See Chapter 5.2. Thus I withdraw from the view expressed in:

zation of diocesan vicars did not apply to *comes Orientis* and *praefectus Augustalis*; this was due to the role played by both dioceses in the administrative framework of the Roman Empire and to the scope of their competences (including military prerogatives), which was much broader than that of "ordinary" vicars.

18. The reform of the territorial administration undertaken by Justinian the Great in Nov. Iust. 8 (15 April 535) and in the subsequent novels, abolished the last formally existing vicariates in the East – *Ponticae* and *Asiae*, and undermined the position of diocese administrators in *Oriens* and *Aegypti*. The newly introduced two-tier hierarchy of territorial administration offices was a substantial change in terms of rationality and efficacy of state administration and the rules of hearing court and appellate cases, drawing on the principles set forth in the earlier Nov. Iust. 23 of 3 January 535. Due to local circumstances the change did not prove permanent. The modification introduced after 541 consisted in extending territorial competences of *comes Orientis* and creating the offices of *vicarii Ponticae* and *Thraciae*; yet despite the similarity of denominations, this did not mean reinstating diocese administration in their institutional form known from before 535. *Vicarius Ponticae* was certainly a civilian-military office, while the activities of *vicarius Thraciae* focused chiefly on strictly administrative affairs (probably related to construction). The changes taking place after 541 are indirect evidence that in, the vicariates had already been a vestigial office of the Roman Empire before 535.

19. The analysis present here offers few conclusions which may prove important for contemporary jurisprudence. This is chiefly due to the fact that Later Roman state organisation represents an utterly different experience; the conclusions stemming from application of the evolutionary approach also appear to have a limited impact.[25] Nonetheless, some of the mechanisms described above deserve a brief reflection.

Wiewiorowski (2011b): 398 et seq., which I had formulated at the beginning of my studies of diocesan vicars.

[25] Although the same terminology continues to function today, certain terms, such as the crucial procedural notion of *appellatio* (appeal) are often differently construed; in the contemporary model, there are strictly defined rules of the sequence of instances, while the Roman concept allowed for multiple appeals. See Chapter 3.1. Regarding the limitations of applying conclusions derived from contemporary currents of evolutionism, one should draw attention to the exceedingly apt observation of Vining (2011): "sociobiology is not really relevant yet to the understanding of modern, industrial society, urban civilization in general, except to show us the various restraints imposed by inborn human nature". Still, the findings of sociobiology and related currents of research must not be ignored when addressing present-day dilemmas, as convincingly demonstrated by texts compiled in Barkow (2006); Fruehwald (2011); Roberts (2012).

The imperial constitutions of the fourth century clearly evince repeated attempts of the emperors to narrow down the range of cases heard by the vicars in first instance; at the same time, there is an emphasis on appeals being examined by vicars instead of PPO. The emperor's authority condemned the efforts of the parties to be judged by the vicars in the first instance, which were motivated by the inherent sense of hierarchy and encouraged by cultural factors. Furthermore, it indicated unequivocally that only the verdicts of PPO were not subject to appeal. The lack of strictly defined criteria which would differentiate between the jurisdictions of diocesan vicars and province governors on the one hand and the jurisdiction of PPO on the other, led in practice to marginalisation of the judiciary of most diocese administrators. This corresponded with the universal mechanisms underlying the actions of the defendants who, faced with the choice of soliciting judgment from a vicar, which was censured by the imperial authority, would apply to the governor's tribunal instead. In turn, since they knew that PPO, being higher in the hierarchy, would ensure final adjudication in an appellate procedure – a conviction also engendered by the biologically conditioned need of social hierarchy – they would avoid the intermediate stage of diocesan vicar, whose verdict was not irrevocable. Consequently, as A. H. M. Jones observed, diocesan vicars were a somewhat unnecessary cogwheel within the state apparatus, especially since the establishment of regional PPO, whose functions they duplicated.[26] Meanwhile, *comes Orientis* and *praefectus Augustalis* retained their significance because their competences were broader than those of "ordinary" vicars, thus bolstering their importance within the Empire's administration; due to special local circumstances, the significance of the *vicarius urbis Romae* was also sustained. It is an explicit warning to the present-day legislator, who should clearly define the jurisdiction of offices and judges, equip them with a range of competences which grant real power, so as not to create facade institutions and avoid clashes of competences within state structures and supranational organisations. Also, the legislator should not ignore the experience stemming from the achievements of natural and social sciences with respect to motives behind human actions then and now. To a degree, they are universal in nature, even despite the utter dissimilarity of present and past social realities.

On the other hand, the change of laws should not be implemented too late, as the example of Nov. Marc. 1 of 450 vividly demonstrates; although the enactment was intended to introduce some order, it had no real impact on the functioning of the judiciary of diocesan vicars. By that time, it had become a social norm to turn to the province governors for judgment in the

[26] Jones (1964): 374.

first instance and to PPO as the appellate instance. The fates of Justinian's reforms pertaining to vicars after 535 demonstrate a difficulty in introducing uniform rules of state governance in the conditions of substantial diversity of local needs and expectations, which reflected the values approved by individual communities. Justinian I was forced to sanction those at least in part, revoking or modifying some of the introduced administrative reforms. It may be noted that the history of reforms of territorial administration under that emperor are yet another historical experience which call the causative power of the legislator into question. They cannot change the organisation of the state just as they please, while the success of institutional projects ultimately depends on their social approval.[27]

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[27] Cf. e.g. Wiewiorowski (2013b) about the limited role of legislation in shaping the reality in the case of late Roman diocese of Spain.

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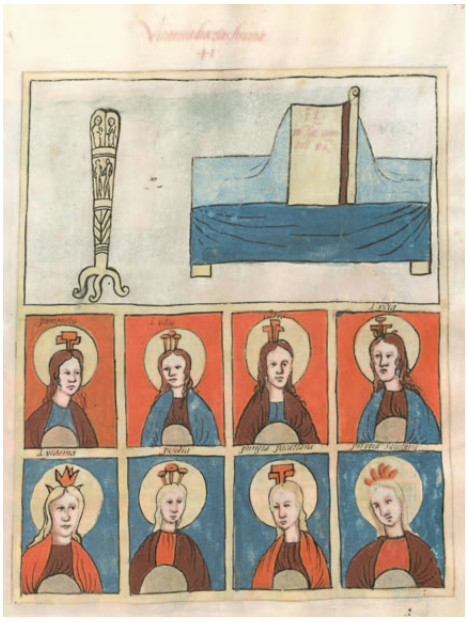

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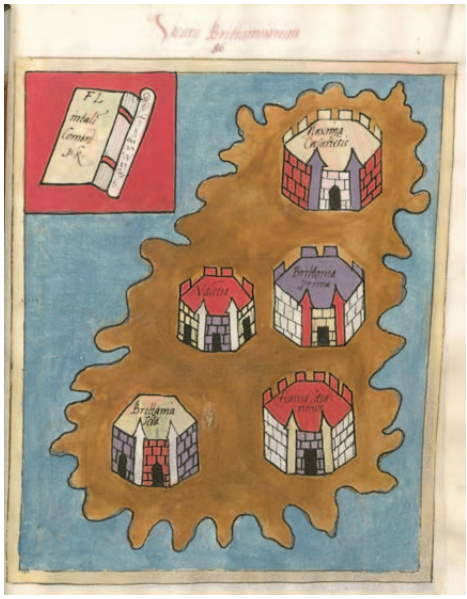

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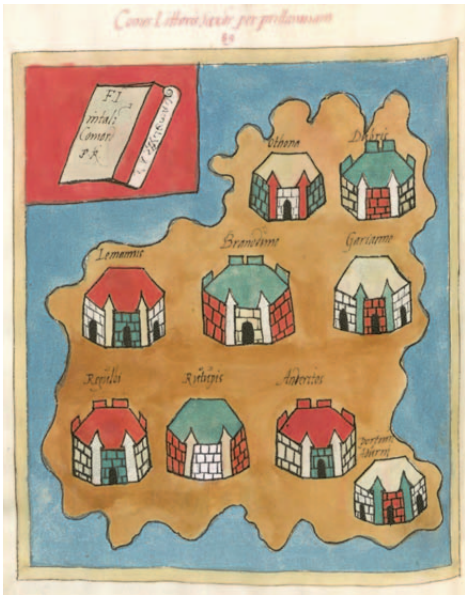

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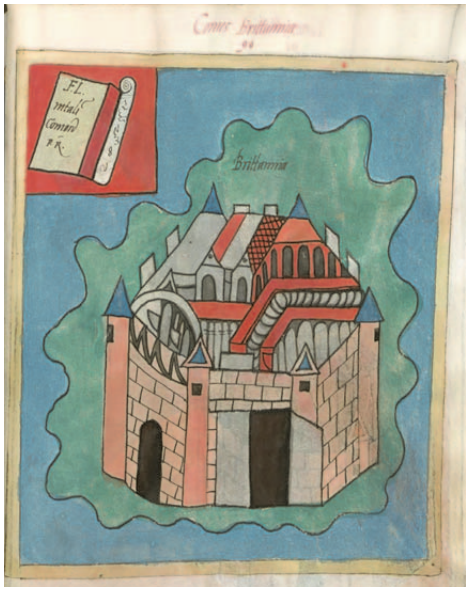

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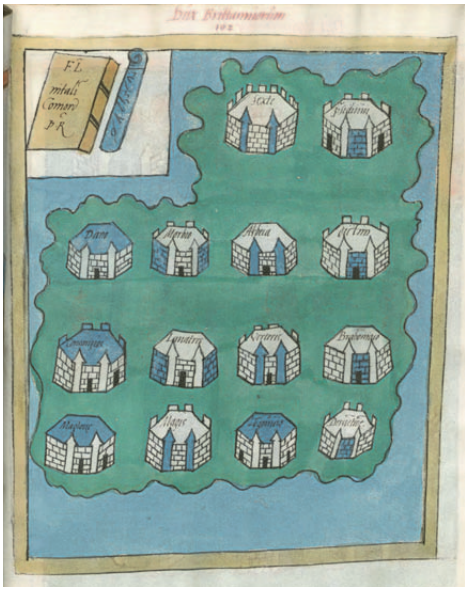

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13. The diptych of Probianus, early fifth century, Staatsbibliothek zu Berlin

14. *Codex purpureus Rossanensis* (fol. 8). Museo Diocesano di Rossano

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