

di tradurre, conseguentemente, “Riconosco in Te il principio essenziale della vita”.

Rare *défaillances* si rilevano nell’ortografia del greco (ad es. p. 67 v. 170 ὑπερβάσα per -βάσα; p. 146 v. 173 ὄφεος per -εως; p. 189 v. 260 σπῖλον per σπῖλ-; e così via), talora però combinate con scelte filologiche poco fortunate, come a p. 85 v. 191 l’inutile congettura Λύμνης (con errore ortografico per Λίμνης) rispetto alla corretta (e *potior*) forma Λύμης dei codici; o a p. 97 v. 19 Αὐτοῦ (come anche a p. 126 v. 157, mentre a p. 99 v. 52 si legge la forma, più appropriata in un testo bizantino, Αὐτοῦ); e così via. Infine, tra gli altri miglioramenti che si potrebbero proporre ai testi così come editi da T., mi limito qui a segnalare che con un minimo sforzo di fantasia si sarebbe potuto almeno integrare congetturamente, restituendogli un senso, l’acrostico frammentario del secondo canone per san Teodulo (239), nella forma seguente: Ὑμν<ῶ> σου, πισ<τ>ὲ Θεόδ<ο>υλε, <τ>ὸν βί<ο>ν· ὁ π<έ>νης Φώτι<ο>ς.

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Jacek WIEWIÓROWSKI, *The judiciary of diocesan vicars in the later Roman empire*. Adam Mickiewicz University law books, 1. Poznań, Adam Mickiewicz University 2016. 387 p. ISBN 978 – 83 – 232 – 2925 – 4.

The monograph is a major study of the *judiciary* of diocesan vicars from inception (variously dated 297–313/314) to abolition in 535 and 538. The author believes his book to be the first comprehensive study of vicars since the “somewhat dated” essay of W. ENSSLIN in *RE* VIII A, 2015 – 44 (83). The book is organized into seven sections: methodology and thesis; the creation of vicars and dioceses; the position of vicars in the administrative hierarchy; the ‘special-status’ vicars; the *officium*; legal and non-legal sources; Justinian’s reforms and abolition of vicars and diocese; and post-abolition developments.

The author says that “the vicars’ responsibility was to *exercise control* of (sic) the civilian administration of the diocese” (88). Their ability to do this was compromised from the beginning. First, “The dioceses were created *without a clear vision* what they were for and what their *competencies* were”... “The *competencies* were gradually *stabilized* in the fourth century (288–289). Second which is the flaw, “The rulers’ decisions that the diocesan vicars should hear first instance cases or appellate cases combined with a lack of *unequivocal selection criteria* produced confusion which the parties most likely exploited (291 cf. 205,

294, 301). Since the vicars could not render a final verdict, litigants tried to circumvent them to get to the prefects or emperors who could (301). This is the one-for-all explanation. Rome's characteristic lack of *clear-cut division of competencies and confused hierarchy is to blame for waning influence and marginalization* (296–297). The diocesan structure was fixed in 337 (73) by which he means regular vicars were in place and ad hoc vice-prefects and comites provinciarum were discontinued (he overestimates the importance of comites provinciarum: there were less than 20 between 316–340; they were used in only six dioceses: Spain, Africa, Moesia, Achaëa, Asia and Oriens). The judiciary began to diminish gradually in the second half of the 4th century (174–175) indicated by a rise in the number of constitutions addressed to the PPO and other officials (293). The dwindling number of constitutions which refer to *judicial activities in the last years of the 4th century* “firmly convinced the emperors’ and top officials’ that entrusting *judicial powers* to the vicars was unwarranted “ (299). “From the early decades of the 5th century vicars were systemic embellishments” (299). Marcian Nov. 1 (450) is the first recorded to attempt to rectify the defect by defining first instance cases vicars could take: insufficient gubernatorial power in the face of a powerful opponent; importance of the case and amount of fiscal debt (203). The constitution may never have been enacted, ‘the times’ had already by-passed most vicars (301–302). Few references to vicars after 440 is a sure sign of decline. Three ‘special-status’ vicars of Egypt, Oriens, Rome (and “probably Britain”) retained importance because “broader competencies gave them greater significance within the Empire’s administration” (74–75, 301) – in particular Oriens and Britain for military matters. The others, the “ordinary” vicars (22) and (“facade institutions”?), failed because of flawed judicial authority. Justinian sorted out the judicial mess in 534, but decided to abolish dioceses anyway in 535 and 538. The author writes, “The *reconstructed functioning of the judiciary* of diocesan vicars made it possible to examine the *mechanism* of organizational structures within the Roman State” (19). He presents the results of his examination of the laws through 450 (109–235), “more or less important criminal and civil cases related to *tax obligations* ... religion, family law, protection of property and inheritance (294–296). An examination shows only four of 69 laws selected addressed to vicars and others from 314 to 450 deal with tax, and these are on peripheral matters, #11 (207), #52 (211), #10 and 11 (235). There are eleven from 385 to the end of the century, eight of which are addressed to vicars of which only one is about tax. This contradicts the claim for diminished trust (299).

The source of his hypothesis is found in A. H. M. JONES, *The Later Roman Empire*. Oxford 1964, 374. The author does not refer to JONES’ extended remarks (280–283): JONES (374) gives two reasons for the decline, first the judicial confusion; the second the prefects’ by-passing the vicars to deal directly with gover-

nors in fiscal matters in the 5th century is only alluded to without sourcing (297). The author states (301): “Consequently, as Jones observed, diocesan vicars were a somewhat unnecessary (cog)wheel within the state apparatus (within the administrative machine), especially since the establishment of regional *PPO* (after the evolution of territorial prefectures) whose functions they duplicated” (301, JONES’ words in parentheses). JONES did not state vicars duplicated the functions of prefects, for he wrote (LRE 47): “The vicars seem to have deputized for the praetorian prefects in all their manifold functions” without any further explanation. Vicars were functionally equivalent to proconsuls whatever the title (according to this reviewer). Other theories such as NOETLICH’S inability of the vicars to control governors and territories too large (*Historia* 31, 1982, 296) are relegated to secondary importance (296). The author offers a lesson: modern legislators should “clearly define the jurisdiction of offices and judges, equip them with a range of competencies which grant real power so as not to create façade institutions and avoid clashes of competencies within state structures and supranational organisations” (301).

The one-for-all hypothesis in fiscal matters and liturgical obligations does not hold up so well. The selection criteria and procedures are more defined especially in respect to the hated compulsory liturgies. The jurisdictional rules on first instance and appeals of manifest *debt* were strict and appeals seldom allowed, see *CTh.* 11, 36 *passim* (28–30). Repetitive prohibitions suggest frequent attempts to get an appeal. First instance fiscal cases were almost always taken by governors for tax owed the prefecture, by the regional comptrollers for the Treasury and by the regional and provincial managers for the Crown Estates for their treasuries. Governors could not take appeals of fiscal debt, *CTh.* 11, 36, 8 (347); confirmed 10, 1, 6 (348). Appeals were directed through and reserved for prefects, vicars, proconsuls and urban prefects to the exclusion of the palatine fiscal counts who acted only as advisors to the emperors on cases affecting their ministries from the late 320s until 383, JONES (485–486) and DELMAIRE (203, 707–708). In fiscal cases there was a hierarchy except where jurisdictions overlapped as in the case of the urban prefect of Rome, for Tuscia et Umbria and Valeria (before 357 the UP in all Italy and the islands); and from 361 Constantinople and in nine provinces in the dioceses of Thrace, Pontus and Asia (noted by the author 44–45).

The author does not mention the statutory restrictions which limited the vicars’ discretionary authority: vicars could not order or change a census, annual tax demands, tax rates and assessments, allocations, liturgies, compose or send a budget, issue orders for supplemental demands or grant tax remissions without imperial or prefectural approval. At the end of the 4th century prefects were allowed to make supplemental demands, grant tax remissions and dismiss

governors subject to imperial confirmation. The prohibitions made it easier for vicars to exercise their limited control capabilities. The author lists 29 laws for diocesan fiscal activities (174, 179) without assessment of content. This reviewer examined 47 laws 319–422 addressed to or pertaining to vicars on a broad spectrum of fiscal matters of which eight deal specifically with vicariate tax collection supervision and emergency direct intervention: 24 deal with tax delinquency, tax evasion, fraud, tax reports, illegal transfer of tax burden and liturgical obligations to exempt privately-held property, tax remissions and revisions, auditing tax returns, integrity of provincial accounts, doing the accounts of the SL (diocese of Africa), trials for fiscal debt, the archiving tax records of the RP (diocese of Africa) and army roster and requisition returns. The large diocesan financial branch was busy. Most of these matters required no litigation. Executive orders or administrative decisions sufficed in most instances. Conduct of state business was facilitated by the location of the diocesan office in almost every see city of the two regional fiscal headquarters (the fiscal diocese preceded the creation of the vicariate by 10–25 years). 30–40% of imperial officials in a typical diocese (300 diocesan +100 fiscal + 100 for the governor and sundry others of 1200–2000 total) were located in the see city, Rome, Trier, Milan and other prefectural sees excepted, a nexus of power under the eye of the vicar, who exercised his higher power as ring master, not sole arbiter. “Vicars watched, waited and investigated” (89 note 5, quoting the reviewer).

Although the author gives the fiscal role “equal importance” to the judicial (174–175 note 270) he mentions it only sporadically (17, 39, 55, 83, 89, 92, 179, 297), the topic is side-lined mostly to listings of constitutions in footnotes. He mentions increased diocesan activity in tax collection the 360s vs. a decline in judicial activity but gives no reason for this (175: duress in imperial finances, Julians’ extravagance and the huge cost of two accession donatives). He underestimates the importance of Constantine’s reforms 325–330 which made the vicars the senior heads of diocesan finance, a position previously shared with the regional comptrollers of the Treasury, the rationales (the author cites DELMAIRE that they were at their height from 285 to 320: 197, 204, 245, 704; author 112, 16). He concurs with this reviewer’s characterization of vicars “as ‘fiscal cops’ not only over the prefecture within the diocese but also over the two fiscal offices” (174–175) without stating to what this policing was applied judicially or by other means. He does not examine the vicars’ relationship to these offices. He cites studies which suggest that the fiscal role was primary (174), but rejects them. He does not mention that the diocese was the basic tax assessment and budgetary unit: it was the great fiscal unit of the empire. The financial branch of the prefecture was organized by diocese subdivided into provinces. Indicative of the momentous transfer of responsibility the word ‘diocese’ ceased to be used

to describe the fiscal dioceses of the Treasury rationales ca. 330 and became the specific and exclusive term for the vicar's administrative unit. The vicars' fiscal duty was to monitor, coordinate and regulate the operation of a highly complex and cumbersome tax collection and distribution system. In the course of the 5th century the vicars were gradually made redundant by direct prefectural control of governors with permanent on-the-spot deputies and the commutation of in kind tax collection to gold (85% of tax in 325), begun slowly during the reign of Constantine, gathering speed from the 360s (in 366 RP taxes were commuted), was completed in the West by 440 and in the East for the most part by 475. The *enhanced fiscal role is the important broader, more defined competence post 325*. The 'upgrade' offset the flawed judicial power that irritated emperors, top officials and tempted litigants to by-pass vicars. Everything points to vicars being in their 'salad days' post-325 until at least the end of the 4th century with some carry over into the next.

The first major indication of imperial dissatisfaction may date from 385 and it is fiscal. The emperors restored appellate jurisdiction in fiscal debt cases to the palatine counts of the SL and RP (after a first try in 381, *CTh.* 11, 30, 39) given to intermediate judges by Constantine (*CTh.* 11, 30, 28 which refers to this in a lost law possibly dated to years 327–329, cf. 11, 30, 14, and 18). The vast majority of cases would not go to appeal because of the expense of litigation, small sums involved and restrictions. The relevant laws are *CTh.* 11, 30, 41 (383) to the RP and SL = *CJ* 2, 8, 4; 11, 30, 45 (Feb. 15, 385) = 7, 62, 28 to the RP and to the SL 46 (Nov. 25, 385), cf. 11, 36, 29 (Feb. 15, 385) and 30 (Nov. 25, 385) – in the same year the count of the Treasury acquired jurisdiction over his staff in civil suits *CJ* 3, 26, 10. The change may have had to do with the huge deficits accrued from the governors' supervision of RP tax collection in the 370s which caused a turf war – cf. JONES 485–486. R. DELMAIRE, *Largesses sacrées et res privata: l'aerarium impérial et son administration du IV^e au VI^e siècle*. Paris 1989, 171–205, 707. WIEWIOROWSKI regards 28 as too ambiguous (92). DELMAIRE does not (203, 707) and regards (41) as decisive to the rise of the palatine-level SL from 385 to 430 before a sharp decline (708). The ruling created an alternative *direct* route which became the norm for the RP in 396, *CTh.* 10, 36, 32. The SL rationales in the West disappear after 455 and fade in the East as the Anatolian, Balkan, Roman and Seven Provinces dioceses decline rapidly (DELMAIRE 205).

The author says it is impossible to determine the criteria by which appellate cases were referred to a hearing by the PPO rather than a vicar except in the two dioceses occupied by prefects (290). Would not the following be criteria? Normally a trial was held in the province where a defendant was legally domiciled; the legal status of the defendant; the nature of the alleged offense; time constraints for filing an appeal; admissibility of the charge; value of the case; prox-

imity of the judge; matters of intimidation, *CTh.* 1, 15, 1 (325), *CTh.* 11, 34, 2 (355). As Symmachus said in response to a request to ask his brother, vicar of Africa, to take a case first instance instead of the consular of Numidia, *a legibus causa no discrepat et inteventus meus libram tui favoris inclinet* “... if it is not inconsonant with the laws,” ... “and if my intervention tips the scale in your favor...” (Epistles Book 3, 59).

It seems strange to this reviewer that the author did not include the vicars of Africa among the ‘specifics’ – the vicars shared the task of providing wine, grain and oil to the capital with the proconsul of Africa. They functioned well until the Vandal invasion of 429. He regards the prefects who governed the dioceses of Gaul and Italy in Milan as anomalies: they are not. Constantine assigned the then prefects of Gaul and Italy to govern dioceses when territorial prefectures were created (325–328). In the absence of the prefect a subordinate vicar, as is clear from, “your vicars,” addressed to Aemilianus, praetorian prefect, *CTh.* 11, 16, 4 (328), takes his place with superior not supreme authority. *This is a vision.* When the prefect of Italy was in the diocese of Pannonia, the vicariate lapsed; a vicar took his place in Milan (JONES 373). When Valentinian I took up residence in Paris in late 365 (then Trier until 374) a resident prefect was waiting for him. WIEWIOROWSKI does not mention that Britain was abandoned in 410, Spain, Africa and Pannonia were abandoned or lost to invaders by 440. What conditions were they in in 400 AD? The authors says the vicar of the Seven Provinces worked harmoniously with the prefect in Arles post-410 to maintain Roman rule in the Gallic dioceses until the end in 475 (74–75). The vicar governed the northern diocese (JONES I 374). This vicar had been ‘rescued’ by being given a broader competency. The Spanish diocese may have been restored in 418 (7, note 90) and lasted perhaps to 439, which to this reviewer shows the value of it in the minds of the emperor and the top officials: the need for a presence with superior authority as in Gaul. The author does not mention that the increasing domination of Constantinople from the 380s degraded the judicial functions of vicars in the dioceses of Thrace, Pontus, Asia and Macedonia.

Although the omissions do not substantially detract from the accurate and correct conclusions – the broad outlines and time-line of the decline were established decades ago – the absences of the fiscal and administrative skew the narrative in favor of a one-size-fits all hypothesis and deprive the work of the comprehensiveness aimed for. A description of the several major administrative components of the diocese would have been helpful: it is as if the vicars and dioceses exist in a partial operational and historical vacuum. There’s no assessment of the era of ‘success’ from 325 to 410; no description of the ‘bridge’ period, 385 to 425. All said and done this is a major piece of scholarship. The examination of the laws is meticulous. The footnotes are exhaustively informative (but no sub-

ject index). The author's conclusions adds depth to the essential facts already known about the decline of vicars. These alone are worth the price of the book.

The book will be an incentive to students Later Roman history for years to come and be a spur for further study of the author's "preliminary," as he puts it, study.

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