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"Iudex vice Caesaris. Deputy Emperors and the Administration of Justice during the Principate", Michael Peachin, Stuttgart 1996 : [recenzja]

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REVIEW OF BOOKS

Michael PEACHIN, *Iudex vice Caesaris. Deputy Emperors and the Administration of Justice during the Principate* (= *Heidelberger althistorische Beiträge und epigraphische Studien*, Bd. XXI), Franz Steiner Verlag, Stuttgart 1996, pp. x+ 267, ISBN 3-515-06772-8

It should not surprise that political and constitutional changes in the Principate influenced the Roman administration of justice. The appointment of judges who substituted for the emperor at Rome was one of their results observed from the turn from second to third century A.D. About the judges *vice Caesaris*, Michael Peachin wrote his book *Iudex vice Caesaris. Deputy Emperors and the Administration of Justice during the Principate*, edited by Géza Alföldy as 21st volume of the *Heidelberger Althistorische Beiträge und Epigraphische Studien*. It consists of the table of contents (pp. V-VI), the preface (p. VII), the Vorwort des Herausgebers by G. Alföldy (pp. VIII-X), the introduction (pp. 1-9) and four chapters: *Emperors and the Administration of Justice* (pp. 10-91), *Prosopography* (pp. 92-153), *Work Performed by the Judges* (pp. 154-187), *Constantine's Reform* (pp. 188-199). The book finishes with conclusions (pp. 200-207) and five appendices (pp. 208-239), with the bibliography (pp. 240-256) and four indices: *Sources* (pp. 257-262), *Persons* (pp. 262-264), *Places* (pp. 264-265), *Subjects* (pp. 265-267).

In the first chapter on *Emperors and the Administration of Justice*, the author analysed mechanisms that led to the appearance of judges *vice Caesaris*. The mechanisms were presented in their broad historical context of political and constitutional changes that occurred during the transition from the Principate to the Dominate. The attention was focused on the emperors' role in the *cognitio extra ordinem*, especially in case of *iniquitas* and *imperitia iudicantium*. The possibility of an appeal to the emperor allowed him to impose his legal preferences when adjudicating at the last resort. Various imperial decrees were becoming the chief source of law when other sources started to expire: *ius praetorium* under Hadrianus, *senatus consulta* during the course of second

century A.D., and the law-making activity of juriconsults. The *responsa prudentium* were overshadowed by imperial *constitutiones* and terminated to be the source of new law. The *constitutiones* became substantial: judges not only applied their norms, but having doubts in complicated cases asked for the edition of new imperial decrees as well. Vagueness and injustice of law in force or simply judges' ignorance was the reason for the petitions. When the emperor was not able to take all the decisions personally, he welcomed the help of the imperial *consilium*. With the end of second century A.D., he relied on senators who had been state officials. These men, no necessarily with legal experience, were appointed to judge *vice Caesaris*.

Prosopography is the second chapter where fourteen *iudices vice Caesaris* were presented. The list of deputy emperors from time of Severus to that of Diocletian was based on numerous sources and inscriptions. All the available data on the *iudices* was collected: their family background, the course of their careers, the time and the place of *vice Caesaris* duties. The interesting conclusion is that the individuals came from politically influential patrician and consular families. The *iudices* represented all levels of aristocracy, mainly of senatorial rank. They had similar career patterns as they were the highest state officials before becoming deputy emperors.

The role of *iudices vice Caesaris* in the legal and administrative order of the Roman Empire either in Italy or in the provinces was discussed in the third chapter entitled *Work Performed by the Judges*. The fourth chapter on *Constantine's Reform* was concentrated on structural changes of the *iudices vice Caesaris* office introduced by this emperor.

The position of judges in Roman law has not been a subject of comprehensive study yet. It was a matter of interest neither for Roman jurists nor for modern Romanists. The presentation of fourteen *iudices* and description of their *cursus honorum* must be noted with praise. Although it was generally based on inscriptions only, two observations of the author are of exceptional importance. First, there was an increasing imperial participation in the law-making processes. Second, emperors paid attention to the social status rather than not to qualification of candidates to the *iudices vice Caesaris* office.

Under Antoninian dynasty, the responses of jurists who had *ius publice respondendi* were of binding legal force. Why the law-making activity of lawyers disappeared one century later? Did jurists become imperial officials? Did the *ius respondendi* ceased to exist because their opinions were continually exposed to the risk of imperial censure and revision? The second possibility appears to be suggested by the author (p. 14ff). Preparing their pronouncements, emperors were used to consult physicians, philosophers and lawyers (e.g., Gell. 13,16,12). Obviously, when the emperor considered opinions of the imperial *consilium* as his own decisions, the jurists were deprived of the discretion to create the law on their own.

Yet, the high social status of state officials did not surprise anybody. The author gave an accurate example of Aulus Gellius (p. 44ff), an antiquarist under Antoninian dynasty, who was appointed *iudex privatus* without any legal training. Earlier, he had

no opportunity to become familiar with jurisprudence and read *de officio iudicis* after the appointment. Before reaching the decision, he consulted jurists and a philosopher. Nevertheless, Aulus Gellius found himself unable to solve the case and swore *rem sibi non liquet*. The appointments of aristocrats to judge *vice Caesaris* did not differ from the general practice of judges appointments. Therefore, it appears that deputy emperors were prepared to adjudicate because of their social background, not so because of their knowledge, culture or education (see p. 153).

The author's conclusions based on epigraphical sources does not require any reservation. However, the representative qualities of the sources might be problematic. Nonetheless, it is beyond any doubt that broad and interesting researches on the administration of justice in the Principate has just begun with Michael Peachin's book.

[J. Zablocki]

A. J. B. SIRKS, P. J. SIJPESTEIJN, K. A. WORP (Eds.), *Ein frühbyzantisches Szenario für die Amtswechslung in der Sitione. Die griechischen Papyri aus Pommersfelden (PPG) mit einem Anhang über: die Pommersfeldener Digestenfragmente und die Überlieferungsgeschichte der Digesten (= Münchener Beiträge zur Papyrusforschung und Antike Rechtsgeschichte, Bd. LXXXVI)*, Beck, München 1996, ISBN 3-406-41343-9, pp. viii + 166 with 23 photographs.

The book, published as the 86th volume of the *Münchener Beiträge zur Papyrusforschung und Antike Rechtsgeschichte*, presents the readers with four extremely interesting, however rather different, topics. Firstly, it brings us a history of the papyri collection from Pommersfelden and of its transmission to the present day. This task is dealt with in Chapter One (pp. 1-36) which contains an exclusive introduction to the questions concerning the aforesaid papyri collection. The problem of the transmission of papyri of Pommersfelden and the history of their deciphering, however only introductory, shows the importance of this collection. It should be emphasized that we deal here with an interesting case of papyri which come from and were used in the western part of the Empire which makes them a relatively rare and important type of a relict (a comparison to pieces collected by J. O. Tjäder, *Die nichtliterarischen lateinischen Papyri Italiens aus der Zeit 445-700* suggests itself). They were also transmitted to the Western Europe relatively early. They survived as book-cover filling material. The time in which the papyri were used as a consolidation material of book bindings, as well as the moment of their discovery and extracting from the books is unknown. The former is most unclear and could happen after the eighth but before the eleventh century (the authors think it seems probable that the papyri had been already included in the bindings of the books donated to the Bamberg Chapter by emperor Henry II in 1007). The latter seems to have happened at the beginning of the seventeenth century