

1.

THE REFORM OF THE TAX COLLECTION SYSTEM IN LATE ANTIQUITY

1. In his classic treatise dedicated to Roman law in late antiquity, its history and institutions, Lucio De Giovanni warns the readers to “focus on that particular observatory constituted by late antique legal history, through which – it is good not to forget – one of the greatest creations that antiquity has ever expressed was handed down to posterity: Roman law”.¹

2. Among the main sectors of the historical-legal research on the 4th and 5th centuries, De Giovanni attributes special importance to the issue of taxation, to which, not coincidentally, a large part of the investigation is dedicated, often centered on the problems that emerge from the reading of the legislative interventions of the sovereigns that occupied the position of emperor, among which the constitutions attributed to Diocletian stand out,² as “in order to sustain the considerable economic weight of his reforms”, Diocletian had to proceed without delay to implement a rigorous activity of financial reorganization of the empire”.³ The important legislative interventions – in terms of quality and frequency – of the emperor Constantine,⁴ defined as the

¹L. De Giovanni, *Istituzioni, scienza giuridica, codici nel mondo tardoantico*, Rome 2007, 19.

²On this theme, recently, see the proceedings of the twelfth edition of the CEDANT seminars, W. Eck-S. Puliatti (ed.), *Diocleziano: la frontiera giuridica dell'impero*, Pavia 2018, including, in particular, E. Lo Cascio, *Politica monetaria, politica fiscale*, 179 ff., also for the bibliography.

³L. De Giovanni, *Istituzioni, scienza giuridica, codici nel mondo tardoantico*, cit., 142 f.

⁴On the tax legislation of Constantine, see R. Delmaire, *Largesses sacrées et res privata. L'aerarium impérial et son administration du IVe au VIe siècle*, Rome 1989, 347 ff.; J.M. Carrié, *Le riforme economiche da Aureliano a Costantino*, in *Storia di Roma*, III.1, edited by A. Schiavone, Turin 1993, 306 ff.; J.P. Callu, *Succès et limites du solidus constantinien*, in G. Urso (ed.), *Moneta, mercanti, banchieri*, Pisa 2003, 205 ff., with bibliographical references.

“sovereign who profoundly influenced the economic-social history of his epoch”⁵ or of his children,⁶ as well as the reforms of Julian, who despite his brief reign, “made precise and radical choices, aiming at restructuring, on the one hand, through a policy of limiting public spending, and on the other following criteria of defense of the just demands of the “*collatores*” against the excessive power of the officials, in the hope that greater trust in the state by citizens could provide a decisive contribution to overcoming the crisis”.⁷ Analogously, a considerable portion of De Giovanni’s treatise is dedicated to tax policy, the subject of the imperial interventions attributed to Valentinian,⁸ with a detailed examination of a series of orders that are “not always uniform, but are of great interest because they reflect precisely the contradictions of that society and that economy, that the emperor however wanted to somehow regulate with his laws”. These are interventions, it should be noted, of special importance for the purpose of reconstructing “late antique taxation”, only considering that the Pannonian sovereign “had to deal with the dramatic socio-economic crisis that lashed the empire and with the problem of ensuring sufficient tax revenues for the coffers of the state”.⁹

3. Those last orders, represented in particular by a group of constitutions of the title 12.6 of the Theodosian Code, *De susceptoribus*, dedicated to the issue of tax collection, take on special importance for the purposes of this investigation, because their value goes beyond the contents of the single legislative interventions, since they offer, beyond their specific meaning in the framework of the tax legislation in the second half of the 4th century, a paradigmatic example of the process of formation of the legislative system and its structure, also in relation to the value and territorial efficacy of the imperial legislative orders.¹⁰

⁵L. De Giovanni, *Istituzioni, scienza giuridica, codici nel mondo tardoantico*, cit., 193.

⁶P.O. Cuneo, *Economia di mercato e dirigismo nella normativa di Costanzo II*, in S. Giglio-G. Crifò (ed.), *Atti Accademia Romanistica Costantiniana, XII Convegno Internazionale in onore di Manlio Sargentini*, Naples 1998, 203 ff.

⁷L. De Giovanni, *Istituzioni, scienza giuridica, codici nel mondo tardoantico*, cit., 225.

⁸Some reflections are present in my *La legislazione di Valentiniano e Valente (364-375)*, Milan 1993.

⁹L. De Giovanni, *Istituzioni, scienza giuridica, codici nel mondo tardoantico*, cit., 226.

¹⁰For an examination of the subject, I allow myself to refer to my contribution entitled *Sulla sfera di applicazione delle costituzioni imperiali in età tardoantica*, in E. Dovere (ed.), *Signa Amicitiae. Scritti offerti a Giovanni de Bonfils*, Bari 2018, 155 ff.

4. First of all, it is important to start from a text that is particularly significant, because it is of a general nature, constitution 7 *h.t.*, addressed to Mamertinus, carefully studied by De Giovanni, with which the emperors Valentinian and Valens established that the decurions were excluded from the *susceptio specierum*, and that in the provinces, a role was established of collectors chosen *ex corpore diversorum officiorum*, to whom entrust the *susceptio*:

CTh. 12.6.7: *Impp. Valentinianus e Valens AA. ad Mamertinum praefectum praetorio. Ad susceptionem specierum veniant, qui ante omnia sciant se decuriones non esse. Ex corpore igitur diversorum officiorum quisquis idoneus repperit tam moribus quam facultatibus, veluti matriculae per singulas provincias nomen suum adscribat, ut hac ordinatione dispositi annuas susceptiones peragant, ita ut nihil praeterea muneris pertimescant, atque expleta susceptione erogationibusque perfectis transacto illo officio cum aput iudicem fidele obsequium comprobarint, iudicii nostri digna praemia consequantur. Adiungi autem ad hoc corpus debent etiam illi, qui ex officiis singulis sint, hoc est ex tabulariis et numerariis similibusve officiis eorum officiorum, de quorum ordine hoc corpus constitui volumus. Quicumque vero ex his ad honores potiores per suffragium pervenerint, susceptionis munus perfungantur ita, ut salva sit dignitas quam habent, nec ex hac ordinatione curiale consortium pertimescant. Dat. prid. non. aug. Sirmio Valentiniano et Valente AA. cons.*

The aim of the order, that constitutes a true reform of the tax collection system, through the attribution of the position to a select corps of imperial officials rather than the *curiae*,¹¹ was – at least in the intentions of the imperial chancellery – to obtain the maximum efficiency of state organization, in order to guarantee greater social justice.¹²

¹¹ “Valentinian”, writes L. De Giovanni in *Istituzioni, scienza giuridica, codici nel mondo tardoantico*, cit., 226, “reversing what was established by Julian, set the principle that the curiales were not be appointed from among the *susceptores*: *ad susceptionem specierum veniant, qui ante omnia sciant se decuriones non esse*”.

¹² An order that appears to confirm the tax policy adopted by Valentinian is found in the constitution with the title *Ne praefectianus exactoris vel curiosi vel horreorum custodis fungatur officio* del *Codice Teodosiano* (12, 10), which indicates that the imperial chancellery intended to confirm the exclusion of the *praefecticiani* from the category of collectors who – the order states – performed their activity *ad perniciem provincialium*: *Impp. Valentinianus et Valens AA. ad Zosimum praesidem Epiri Novae. Comperimus imperatoriae iussionis auctoritate neglecta praefectianos ad perniciem provincialium exitiumque remeasse et exactionibus in provincia meritis tuis credita vel potius lucris et quaestibus suis contra vetitum laborare, praeterea vel horreorum gerere custodiam vel curarum ius atque arbitrium sibi praesumere. Horum si quis existat, volumus huius auctoritate praecepti in futurum susceptorum officiis eum deputari deque eius nomine universa clementiae nostrae auribus intimari. Dat. XIII kal. dec. Mediolano Valentiniano et Valente IIII aa. cons.* As is known, the text has serious and complex paligenetic problems, since it is indicated as having been issued in the year of the fourth consulate of Valentinian and Valens (373),

Considered carefully, the text presents a series of paligenetic problems, that need to be analytically addressed, *in limine*, even before investigating the contents of the measure and its relations with contemporary constitutions, to which it appears intimately linked.

First of all, the dating of the text is perplexing, as based on the *subscriptio*, it appears to have been issued on August 4, 365 as is the place of issue, Sirmium (*dat. Prid. Non. Aug. Sirmio Valentiniano e Valente AA. cons.*) and what can be derived from the *inscriptio* is also dubious, with specific reference to the recipient, the praetorian prefect Mamertinus.

These indications, in fact, go in two different directions and are mutually incompatible with the data available to us, both as regards the date, since in August 365 the emperors were not in Sirmium, a place where, as can be seen from the account of Ammianus Marcellinus,¹³ they had stayed in July of the previous year, and – above all – with reference to the position of the recipient Mamertinus, who no longer held the position of praetorian prefect at that point in time, having been substituted by Vulcacius Rufinus from at least June 365, as demonstrated by the constitutions of the Theodosian Code, with dates certain, CTh. 9.30, *Quibus equorum usus concessus est aut denegatum*, 3¹⁴ and 12.1.66.¹⁵

as well as problems regarding content, because it censures the violation of an imperial order (*Comperimus imperatoriae iussionis auctoritate neglecta*), on which O. Seeck, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr.*, Frankfurt 1984, 85; L. De Giovanni, *Istituzioni, scienza giuridica, codici nel mondo tardoantico*, cit., 226 and F. Pergami, *La legislazione di Valentiniano e Valente*, cit., 110 ff. The order references the precedent of Julian (CTh. 14.4.3), with which from the perspective of reducing the tax burden, Julian lamented the meanness of the imperial officials (*Officiales solent esse provincialibus perniciosi*). On the relationships between the two orders, see in particular J.M. Carrié, *L'economia e le finanze*, in *Storia di Roma*, III, Turin 1985, 768.

¹³ Amm. Marc. 26.5.1: *Acta agitur tranquillius hieme concordissimi principes, unus nuncupatione praelatus, alter honore specie tenus adiunctus, percursis Thraciis Naessum advenerunt, ubi in suburbano, quod appellatum Mediana a civitate tertio lapide disparatur, quasi mox seprandi partiti sunt comites ... Et post haec cum ambo fratres Sirmium introissent, diviso palatio ul potiori placuerat.*

¹⁴ CTh. 9.30.3: *Imp. Valentinianus et Valens AA. Rufino praefecto praetorio. Cum omnifariam urbicarias regiones ab omni crimine et adsiduis ab actorum rapinis quietas esse cuperemus, eo usque intentio nostra prospexit, ut istis in locis equo vehi his tantummodo liceret, quos ab huius modi sceleris suspicione locus aut dignitas vindicavit. Sed postea sanximus, ut suarii equis quidem uterentur, verum ad periculum suum pertinere cognoscerent, si quid in his regionibus sceleris esset admissum. Nunc quia advertimus, a suariis, qui propriis officiis occupantur, banc necessitatem alienam esse debere, excellentia tua ita his sedendorum equorum potestatem datam esse cognoscat, ut nullo prioris sanctionis timore teneantur per ea sane loca, quae neque ab actoribus neque aliis criminationibus infamata sunt. Dat. xi kal.Iul. Mediolano Valentiniano et Valente AA. cons.* This is the first constitution addressed to Vulcacius Rufinus in his position as praetorian pre-

Given those aporias, part of scholarship proposed anticipating the date to the year 364,¹⁶ suggesting the substitution of the consular year indicated in the copy of the legislative text available to us in the Code, from *Valentiniano et Valente* to *Divo Ioviano e Varroniano*, but the absence of a plausible justification in the text for such a radical change of the *subscriptio* makes it very problematic to accept such a solution.

To the contrary, it seems paleographically more correct to maintain the date in the year 365,¹⁷ assuming, based on the authority of Mommsen,¹⁸ that Sirmium was the place where the constitution was published on 4 August 365, with the consequence that the date of issue, considering the times of transmis-

fect, succeeding Claudius Mamertinus, who is certified as still being in office in the previous months. In this regard, see CTh. 8.5, *De cursu publico angariis et parangariis*, 26, dated to 26 April 365: *Imp. Valentinianus et Valens AA. ad Mamertinum praefecto praetorio. Cursu mancipis clavularii ex quo genere hominum debeant ordinari, apertissima lege decrevimus. Quorum si praedictae numerus functioni non potuerit occurrere, curiales ad hoc munus sunt vocandi. Dat. vi kal. Mai. Valentiniano et Valente AA. cons. The apertissima lex*, to which the text refers, relating to the *mancipes cursus clavularii*, can be identified in constitution 23 *b.t.* For the purposes of assumption of the position of praetorian prefect by Vulcacius Rufinus, c. 5, 11, 9 is not however useful, although the order is addressed *Imp. Valentinianus et Valens AA. ad Mamertinum praefectum praetorio*, because the version preserved is mutilated.

In consideration of the scarcity of textual data available (*propter fines incertos inter Mamertinum et Rufinum*), Th. Mommsen (ed.), *Codex Theodosianus*, Berolini 1905, *ad h.l.*, doubted the exactness of the dating.

¹⁵ CTh. 12.1.66: *Imp. Valentinianus et Valens ad Rufinum praefectum praetorio. Ordinibus curialium, quorum nobis splendor vel maxime cordi est, non adgregentur nisi nominati, nisi electi, quos ipsi ordines coetibus suis duxerint adgregandos, nec quis ob culpam, ob quam eximi deberet ex ordine, mittatur in curiam. Dat. xi kal. Iul. Ravennae Valentiniano et Valente AA. cons.* The text of the constitution was considered by Seeck (*Regesten*, cit., 224) as part of a single order with the previous 9, 30, 3. If we look carefully, however, the difference in content makes it unlikely that the two texts belong to the same legislative context. Moreover, it can also not be said that the two are contemporary, since Ravenna, where the constitution was issued based on the contents of the *subscriptio*, cannot but be the place of publication, since the emperor, at that point in time, was in Milan (Amm. Marc. 26, 5, 4: *Et post haec cum ambo fratres Sirmium introissent, diviso palatio, ut potiori placuerat, Valentinianus Mediolanum, Constantinopolim Valens discessit*).

¹⁶ O. Seeck, *Regesten*, cit., 85; J.R. Palanque, *Essay sur la préfecture du prétoire du Bas-Empire*, Paris 1933, 42, nt. 39; J. Gaudemet, *Le partage législatif dans la seconde moitié du IV siècle*, in *Studi in onore di Pietro De Francisci*, II, Milan 1956, 138, nt. 8; S. Mazzarino, *Aspetti sociali del IV secolo. Ricerche di storia tardo-romana*, Rome 1951, 187; R. Soraci, *L'imperatore Valentiniano I*, Catania 1971, 92, nt. 38.

¹⁷ As hypothesized also by H. Meyer, *Valentinian in Zürich?*, in *Zeitsch. Savig.-Stift. Rechtsges.* 23, 1943, 288 and A. De Dominicis, *Il problema dei rapporti burocratico-legislativi tra "Occidente ed Oriente" nel Basso Impero romano alla luce delle inscriptiones e subscriptiones delle costituzioni imperiali*, Pavia 1954, 346.

¹⁸ Th. Mommsen (ed.), *Codex Theodosianus*, cit., *ad h.l.*

sion of imperial orders from issue to publication, must be anticipated by a few months, although still in the year 365. This solution allows for maintaining unchanged the indication of the imperial consulate, as resulting from the text preserved in the official collection, assuming instead the loss of the indications of the date and place of issue.

5. Another valid support for maintaining the date of 365 comes from a comparison with the almost contemporary constitution 23 CTh. 8.5, issued on 10 March of that same year:

CTh. 8.5.23: *Impp. Valentinianus et Valens AA. Mamertino praefecto pretorio. Ad procurationem clavularii cursus eligendi sunt ex eo hominum genere, qui in provinciis codicillis comitivae et praesidatus aut rationum epistulis honorariis nixi ab omnium se civilium et publicorum officiorum ministerio removerunt. His tamen ab hac molestia segregatis, qui legationum reverentia, principalium beneficiorum iudiciis, honorem ipsis principibus tradentibus sunt adepti vel qui emeritis officii palatinis missione donati sunt. Locandi autem erunt per singulas mansiones vel quo longius sinceritas tua procurationem eorum existimaverit porrigendam. In quo negotio si quid neglectum secusve gestum fuerit, ad eorum, quidquid peccatum erit, crimen invidiamque referetur. Quanto autem tempore unusquisque iniuncti officii sarcinam debeat sustinere, celsitudinis tuae arbitriis relinquimus sancendum. 3. Qui viri et evectiones commeantium exactissima cura inspicere debebunt et animalibus alimenta, quae fiscus noster suggerit, ministrare. Dat. vi id. Mart. Mediolano Valentiniano et Valente AA. cons.*

The order, destined to govern the *procuratio clavularii cursus*, has objective similarities, in terms of content and language, with constitution 12, 6, 7 examined above, that lead to thinking that the two orders, even if not materially part of a single legislative intervention, set the goal of achieving a common legislative design of the imperial chancellery and were issued almost simultaneously, matching what we know of Mamertinus holding the position of praetorian prefect at that period of time.

6. Analogous conclusions are also suggested by two additional legislative orders, the opening constitution of the title *De militari veste* (CTh. 7.6.1) and c. 4 CTh. 12.6, *De susceptoribus, praepositis et arcariis*, for the correct comprehension of which it is appropriate to provide the texts in full:

CTh. 7.6.1: *Impp. Valentinianus et Valens AA. ad Mamertinum praefectum praetorio. Sive ex principalium sive ex honoratorum numero susceptor vestium nominetur,*

exceptis videlicet his, qui palatinae militiae privilegiis fulciuntur vel qui officiis ac ministeriis perfuncti merito stipendiorum consecuti sunt dignitates, et vir spectabilis proconsul Africae moneatur, ut ad excludendas fraudes uno anno, non plus, haec necessitas procuretur, ita tamen ut creationis periculum a proconsulari officio non recedat. Dat. xiii kal. Mai. Mediolano Valentiniano et Valente AA. cons.

CTh. 12.6.4: *Impp. Valentinianus et Valens AA. ad Mamertinum praefectum praetorio. Ad virum clarissimum proconsulem Africae dari litteras iubemus, ut, sive ex principalium sive ex honoratorum numero pro merito fidei suae industriaeque susceptor vestium electus fuerit, huiusmodi necessitatis sarcinam uno dumtaxat anno sustinere praecipiat: exceptis tamen his, qui palatinae militiae privilegiis muniuntur vel qui officiis ac ministeriis functi merito stipendiorum, merito dignitatis ornatum se adprobant consecutos: ita tamen, ut creationis periculum a proconsulari officio non recedat. Dat. xiiii kal. Iul. Valentiniano et Valente AA. cons.*

As emerges from the contents of the constitutions, in this case as well the two orders are very similar to each other, with almost identical formulations that both recommend that the praetorian prefect Mamertinus apply in Africa the annual limit on the duration of the position of the *susceptor vestium*, and simultaneously, they order that instructions be given to that effect to the proconsul with territorial jurisdiction.¹⁹

From the standpoint of dating, to 18 April and 18 June of the year 365, respectively, there do not appear to be doubts on the authenticity of the relative *subscriptions*, and more than hypothesize bringing them both back to the month of April,²⁰ as Seeck does, the two constitutions should be considered as the only slightly different formulation of a single provision of law.

For our purposes, however, it is especially relevant to consider how both of the orders assume a general law, that considering the contents of the texts in question, can likely be indicated as constitution 7 CTh. 12.6, with which I opened the investigation. This makes it possible, on the one hand, to reaffirm the temporal placement of the latter intervention in the early months of the year 365, confirming the hypothesis that the *scriptio* contains the date of publication of the order; on the other hand, to make the legislative design of the imperial chancellery on tax matters coherent,²¹ since it was conceived prior to the substitution of Mamertinus in the position of praetorian prefect.

¹⁹ R. Delmaire, *Largesses sacrées et res privata*, cit., 332.

²⁰ O. Seeck, *Regesten*, cit., 222.

²¹ S. Mazzarino, *Aspetti sociali del IV secolo*, cit., 187 ff.; A. Giardina-F. Grelle, *La Tavola di Trinitapoli: una nuova costituzione di Valentiniano I*, in *Mel. Ét. Fran. Rom.*, 95 (1983), 273 ff.

7. The particular interest for CTh. 12.6.7, as a general provision on the subject of taxation in the mid-fourth century, in terms of content and formulation, however, is not limited to these paligenetic aspects, although they provide precious information on imperial legislative activity and the higher positions of the imperial bureaucracy, but as I mentioned above, they offer the scholar elements of further interest, that go beyond the exterior fact of the legislative texts and involve substantive aspects.

Therefore, it is no coincidence that legislative provision 12, 6, 7 is also referenced by c. 5 CTh. 12.6:

Imp. Valentinianus et Valens AA. ad Secundum praefectum praetorio. Perpenso prospeximus studio, ut susceptores et praepositi horreorum ex praesidali officio, qui per diversa officia militiae sacramenta gestarunt, congrua ratione crearentur. Sed quoniam praeses Ciliciae adseruit deesse ex his corporibus quibus possit haec sollicitudo committi, ne in praesens tempus fisci nostri seu publica emolumenta vacillent, excellentia tua, ubi eos deesse perviderit, quos susceptores ac praepositos creari scitis prioribus iusseramus, vetustum morem consuetudinemque sectabitur, scilicet ut ex eo ordine constituentur, ex quo ante consueverant ordinari, modo ut ipse Ciliciae praeses et ceteri magnitudinis tuae litteris urgeantur, ut idoneos ex diversis officiis tota sagacitate vestigent eosque gerere praestitutam scitis nostrae mansuetudinis sollicitudinem faciant. Nam si qui per gratiam fuerint praetermissi, necesse habet exigere publica commoditas ultionem. Nec enim dubium est eos officiales, qui nunc diversis officiis obsecundant, plurimos praetermittere, quorum si qui in huiusmodi fuerint arte deprehensi, dabunt poenas, facultatibus traditis curiis, etiam capitis ac salutis. Dat. iiii non. Iul. Caesarea Valentiniano et Valente AA. cons.

As we see, this is a constitution addressed to the praetorian prefect of the East, Secundus Sallustius, issued in Caesarea, that starts from a general law with which – *perpenso studio* – it was established that the *susceptores* of the taxes and the *praepositi horreorum* were chosen from among the officials of the *officium praesidale*, *qui per diversa officia militiae sacramenta gestarunt*. But – the order adds – since the *praeses Ciliciae adseruit deesse ex his corporibus quibus possit haec sollicitudo committi*, in order to avoid a contingent situation in which the lack of personnel can jeopardize the revenue of the *publica emolumenta*, the praetorian prefect *ubi eos deesse perviderit, quos susceptores ac praepositos creari scitis prioribus iusseramus*, was authorized to allow that, in the wake of a *vetustum more consuetudinemque*, *susceptores* and *praepositi* continued to be chosen *ex eo ordine ex quo ante consueverant ordinari*, but at the same time inviting the *praeses Ciliciae* and other governors *ut idoneos ex diversis officiis tota sagacitate vestigent*, to assume the task assigned by the previous provision.

This is an example, from among the numerous collections in the Theodosian Code, of an order occasioned by a contingent situation and also referring to a local situation, that justified the derogation of a provision of a general nature, C. 12.6.7, of which, however, the full validity and effect was confirmed and reaffirmed.

8. Confirming the exactness of the legislative reference expressly made in the text (*perpenso prospeximus studio*), it is first necessary to preliminarily examine and attempt to resolve the serious and complex paleographic problems that the constitution has caused in scholarship. Seeck²² would like to postpone the date of issue, resulting from the *subscriptio* set on July 4, 365 (*Dat. iiii non. Iul. Caesarea Valentiniano et Valente AA. cons.*) to the subsequent 2 November of the same year, based on two reasons: first of all, the fact that the emperor Valens was still stationed in Constantinople in a period subsequent to the date indicated in the version of the order preserved in the Theodosian, as results from the later constitution of 30 July (CTh. 12.6.8); secondly, the substitution of the recipient, the praetorian prefect *Secundus Sallustius*, by Nebridius, who could not have been restored to the position before the emperor was informed of the usurpation of Procopius (28 September 365) and the arrest of Nebridius.

Considered carefully, though, this reconstructive hypothesis is not necessary, since the dating offered by the copy of the order at our disposal in the official collection is compatible with the Ammianean account of Valens' voyage to the East in the year 365. In fact, it appears that the emperor had already left Constantinople in at the end of the winter (*consumpta hieme*), after having crossed Bithynia, where he had received the news of the Goth threat in Thrace and had taken the military measures needed to address it. During the next summer, he had stopped in Cappadocia, to avoid the excessive heat of Cilicia and was still in Caesarea, where the constitution in question is indicated as having been issued on 4 July of that year, to then set out for, *vaporatis aestatibus, Ciliciae iam lenitis*.²³

²²O. Seeck, *Regesten*, cit., 33, supported by S. Mazzarino, *Aspetti sociali del IV secolo*, cit., 139, who considers the order an example of the adaptation of Valens' policy to the orientation of his brother, "after an uncertainty that extended until November 365". To the contrary, part of the scholarship considers the constitution in question as evidence of the different legislative policy, adopted by the two sovereigns in the two *partes Imperii*, on the subject of collection of taxes. In this regard, see in particular R. Andreotti, *Incoerenza della legislazione dell'imperatore Valentiniano*, in *Nuova Riv. Stor.*, 15 (1931), 458, nt. 5 and J. Gaudemet, *Le partage législatif*, cit., 144, nt. 7.

²³Amm. Marc. 26.7.2.

The date of issue of constitution 5 CTh. 12.6 of 4 July 365 thus fits with the information provided by Ammianus, and does not require paligenetic alterations, that in any event would lack certain justification in the text.

Nor is the indication of Secundus Sallustius as the recipient of the order an obstacle for that hypothesis. It is true that in September 365, at the moment of the coup by Procopius, the position of praetorian prefect in Constantinople was held by Nebridius, who Ammianus says *recens promotus in locum Sallusti* and that he was arrested on the order of the usurper,²⁴ but the *recens promotus* referring to the end of September does not at all exclude the possibility that Sallustius was still in office at the beginning of the month of July and that the substitution took place later.

Nor can the subsequent constitution 8 CTh. 12.6²⁵ be an impediment to that hypothesis of dating to 4 July 365, as – to the contrary – was held by Seeck,²⁶ since in reality, the date on which the order appears to have been issued, 30 July in Constantinople of that year, is not correct. In fact, at that time, Valens had already left the capital to travel to Antioch, and therefore it must be assumed that in this case as well, the *subscriptio* indicates the date of publication in Constantinople of an order issued some months earlier in the same year, in which as often happens in the imperial constitutions collected in the *Theodosian Code*, the indication of the *datum* fell off.

CTh. 12.6.8: *Impp. Valentinianus et Valens AA. ad Secundum praefectum praetorio. Iuxta inveteratas leges nominatores susceptorum et eorum, qui ad praeposituram horreorum et pagorum creantur, teneantur obnoxii, si minus idonei sint qui ab iisdem fuerint nominati, nec quicquam ex eorum substantia celebrata per interpositam personam emptione mercentur. Dat. iii kal. Aug. Constantinopoli Valentiniano et Valente AA. cons.*

This solution, that even allows for assuming that c. 8 CTh. 12.6 is part of a single legislative intervention with c. 6 *h.t.*, that also contains a series of provisions relating to the appointment of the *susceptores* and that could have been issued when Mamertinus was still in office, as the prefect of Italy, Africa and Illyria, Mamertinus, that is, as I argued above, before June 365, also considering that we cannot at all exclude that the possibility that the Theodosian com-

²⁴ Amm. Marc. 26.7.4: *Et quia res novae petulanter arreptae celeritate muniri solent interdum, nequid formidandum omitteretur, confestim Nebridius in locum Sallusti praefectus praetorio factione Petronii recens promotus.* See also Zosimus, *Hist. Nov.* 4, 6, 2.

²⁵ On the contents of the constitution, preserved also in the *Code of Justinian* (C. 10.72[70], 2), see A. Giardina-F. Grelle, *La tavola di Trinitapoli*, cit., 297 ff.

²⁶ O. Seeck, *Regesten*, cit., 33.

plers may have used different copies, addressed to various prefects and coming from different archives:

CTh. 12.6.6: *Impp. Valentinianus et Valens AA. ad Mamertinum praefectum praetorio. Tametsi iam lege apertissime cautum sit de officiis diversis, quae extra palatium sunt, susceptores debuisse constitui, tamen et hac iussione similiter designamus ab his, qui in officio magistrorum equitum et peditum militarunt, si quidem ordinis sint militaris, inquietudinem submovendam, eligendos autem susceptores e diversis officiis, scilicet quae extra palatium deputantur, additis etiam largitionalibus civitatum, quos post militiam volumus inter cetera corpora susceptionis munus agnoscere. Dat. xv kal. Aug. Valentiniano et Valente AA. cons.*

Indeed, the constitution in question cannot have been addressed to Mamertinus on 18 July 365, because as we said, in June of that year, the praetorian prefect had been substituted in his position by Vulcarius Rufinus, as indicated by constitutions CTh. 9.30.3²⁷ and 12.1.66²⁸ of 21 June, both addressed to the latter. In this case as well, we can likely assume that the dating derivable from the *subscriptio* is that of publication of an order issued in the first part of the year, and in any event in a period prior to Rufinus' entry into office as praetorian prefect.

Nor, in this regard, do I believe that Seeck's hypothesis²⁹ can be shared, as he proposes anticipating the date of CTh. 12.6.6 to 18 April, to combine it with CTh. 12.6.4³⁰ and 7.6.1,³¹ since the constitution in question, thanks to

²⁷ CTh. 9.30.3: *Impp. Valentinianus et Valens AA. Rufino praefecto praetorio. Cum omnifariam urbarias regiones ab omni crimine et adsidiis abactorum rapinis quietas esse cuperemus, eo usque intentio nostra prospexit, ut istis in locis equo vebi his tantummodo liceret, quos ab huius modi sceleris suspitione locus aut dignitas vindicavit. Sed postea sanximus, ut suarii equis quidem uterentur, verum ad periculum suum pertinere cognoscerent, si quid in his regionibus sceleris esset admissum. Nunc quia advertimus, a suariis, qui propriis officiis occupantur, hanc necessitatem alienam esse debere, excellentia tua ita his sedendorum equorum potestatem datam esse cognoscat, ut nullo prioris sanctionis timore teneantur per ea sane loca, quae neque abactoribus neque aliis criminationibus infamata sunt. Dat. XI kal. iul. Mediolano Valentiniano et Valente aa. cons.*

²⁸ CTh. 12.1.66: *Impp. Valentinianus et Valens AA ad Rufinum praefectum praetorio. Ordinibus curiarum, quorum nobis splendor vel maxime cordi est, non adgregentur nisi nominati, nisi electi, quos ipsi ordines coetibus suis duxerint adgregandos, nec quis ob culpam, ob quam eximi deberet ex ordine, mittatur in curiam. Dat. XI kal. iul. Ravennae Valentiniano et Valente aa. cons.*

²⁹ O. Seeck, *Regesten*, cit., 222.

³⁰ CTh. 12.6.4: *Impp. Valentinianus et Valens aa. ad Mamertinum praefectum praetorio. Ad virum clarissimum proconsulem Africae dari litteras iubemus, ut, sive ex principium sive ex honoratorum numero pro merito fidei suae industriaeque susceptor vestium electus fuerit, huiusmodi necessitatis sarcinam uno dumtaxat anno sustinere praecipiat: exceptis tamen his, qui palatinae*

the clause *tametsi iam lege apertissima cautum sit*, unlike the other two orders, assumes a legislative precedent, that was not particularly recent, of which c. 6 CTh. 12.6 specifies, and in part actually corrects, the contents.³²

For our purposes, what interests us the most here is that this legislative reference must be identified, once again, in the opening constitution 7 CTh. 12.6, whose prior issue with respect to the law under examination is confirmed. The provision of a general nature, that is expressly referenced, must in fact be identified in the order of the year 365, contained in the same title, that as I observed above, established the general law reforming the tax collection system in the 4th century, and that as stated, foresees the institution in the single provinces of a group of collectors selected *ex corpore diversorum officiorum*, to whom to entrust the *susceptio* from year to year.

9. It should be observed, though, that the reform of the tax collection system, that the general law contained in c. 7 CTh. 12.6 intended to introduce, was obstructed not only in Cilicia, as demonstrated by the constitution of the emperor Valens examined above (CTh. 12.6.5), but had been the subject of resistance and obstacles in Africa as well, as indicated by c. 9 CTh. 12.6.

CTh. 12.6.9: *Impm. Valentinianus et Valens ad Dracontium vicarium Africae. Susceptores specierum idcirco per Illyrici provincias ex officialium corpore creari praecepimus, quod cognitum est illos et re et fide idoneos haberi quam eos, qui in curia suscipere consueverint. Verum in provinciis Africae tua sinceritas hoc ab his officium iubeat amoveri atque eos susceptores specierum annonariarum manere, quos ad hanc necessitatem vetus consuetudo constringit, maxime cum, si susceptores de curia dati aliquid vel neglegentia vel fraude decoxerint, ad redintegrationem specierum, sicuti*

militiae privilegiis muniuntur vel qui officiis ac ministeriis functi merito stipendiorum, merito dignitatis ornatum se adprobant consecutos: ita tamen, ut creationis periculum a proconsulari officio non recedat. Dat. XIII kal. iul. Valentiniano et Valente aa. cons.

³¹CTh. 7.6.1: *Impm. Valentinianus et Valens aa. ad Mamertinum praefectum praetorio. Sive ex principalium sive ex honoratorum numero susceptor vestium nominetur, exceptis videlicet his, qui palatinae militiae privilegiis fulciuntur vel qui officiis ac ministeriis perfuncti merito stipendiorum consecuti sunt dignitates, et vir spectabilis proconsul Africae moneatur, ut ad excludendas fraudes uno anno, non plus, haec necessitas procuretur, ita tamen ut creationis periculum a proconsulari officio non recedat. Dat. XIII kal. mai. Mediolano Valentiniano et Valente aa. cons.*

³²It is necessary here to note that the text, reported in the *Codice Giustiniano* in the title *De apparitoribus magistrorum militum et privilegiis eorum*, C. 12.54[55].2, has entirely different contents, in terms of tone and content, with respect to the copy preserved in the *Teodosiano* (doubts are in fact raised on this point by Th. Mommsen (ed.), *Codex Iustinianus*, Berolini 1905, ad h.l.: *si est eadem* and P. Krüger (ed.), *Codex Iustinianus*, Berolini 1923, ad h.l.: *Qui in officio magistrorum equitum ac peditum militiam sortiti sunt, ordinis sint militaris*).

moris est, ordo qui creaverit possit artari. Acc. prid. kal. Sept. Constantinae Valentiniano et Valente AA. cons.

The constitution, *accepta* by Constantine on 31 August 365, a few weeks after the publication of the *lex generalis* (CTh. 12.6.7), also allowed, as for the provision relating to Cilicia (CTh. 12.6.5), for a derogation of application in relation to the choice of *susceptores specierum* for the African diocese,³³ where the office could have continued to be performed by those who *hanc necessitatem vetus consuetudo constringit*, i.e., essentially by the *curiales*.³⁴

10. That picture allows for the emergence of an emblematic example of the legislative process and the efficacy of the legislative orders in the second half of the 4th century.

In fact, while the general law, CTh. 12.6.7, that the Theodosian Code indicates as having been issued in Sirmium, but that could only have been published in that location, is an expression of the intentions of the Western chancellery, since the legislative work can be attributed to the emperor of the West, Valentinian, but whose territorial effect must be considered to extend to the entire empire.

The addressing of the order to Mamertinus, praetorian prefect of Italy, Illyria and Africa in the copy preserved in the Theodosian Code is not an impediment to this, in part because if we assume a limited territorial effect, it would exclude not only the *pars Orientis*, but all of Gaul.

Considered carefully, it is in fact not reasonable to assume that an order with such a scope, destined to radically reform the tax system, would have an effect limited only to the West, and even, if we were to refer to the indication of only Mamertinus, to just one part of the West. The fact is that, as demonstrated in numerous cases, in the drafting of the collection of laws the compilers of the Theodosian Code used the copies they had in the chancellery, that for contingent reasons only were addressed to a single recipient, but that – above all in cases of orders that rose to the level of *edictales generalesque constitutiones* – they necessarily had to be circulated to all of the officials of the empire.

Moreover, that the efficacy of the order contained in CTh. 12.6.7 aimed at radically reforming the collection of taxes was expressly extended to the entire empire, can be inferred precisely from the establishment of exceptions, repre-

³³ The order is considered a veritable “surrender” to the pressure from the African *Curia*, Mazzarino, *Aspetti sociali del IV secolo*, cit., 188.

³⁴ Still pertinent is S. Puliatti, *Note sulla evoluzione del condono fiscale da Costantino a Giustiniano*, in *Sodalitas. Scritti in onore di Antonio Guarino*, Naples 1984, 1723.