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The *XXviri ex senatus consulto rei publicae curandae* of 238. A Note on Senatorial Resistance against a Tyrannical *hostis publicus* that Recalls Rome’s Republican Constitution

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Summary: The *XXviri ex senatus consulto rei publicae curandae* played a decisive role in the civil war between Maximinus Thrax and the senate in 238. This note examines the actions of the extraordinary committee and interprets them against the backdrop of the reception of constitutional thought rooted in that, which was perceived as traditional political ideals of the Roman Republic during the Principate. The study will first look at the roots of the conflicts between Maximinus Thrax and the *ordo senatorius*, followed by an analysis of the origins and tasks of the *XXviri* together with their political goals and possible republican *exempla*. Finally, there will be observations on the *vigintivirate*’s significance and role after the senate’s triumph over its enemy. In doing so, this contribution will emphasize the importance of republican constitutional thought in times of crisis for the continued existence of the *res publica romana* under the Principate.

Keywords: Crisis of the 3rd century CE, Year of the Six Emperors (238), *XXviri ex senatus consulto rei publicae curandae*, Maximinus Thrax, Pupienus, Balbinus, Roman Constitutional Thought

In March 235, Maximinus Thrax was proclaimed ruler of the Roman Empire by legions stationed near Mogontiacum (modern Mainz).¹ After news about his elevation reached the capital, his claim to the imperial throne was confirmed by the senate. However, despite his successes in battles against Rome’s enemies beyond the Rhine, many senators considered him an unsuitable ruler of the Roman Empire

1 Herodian. 6,8,5 reports that soldiers put the imperial purple on the successful general: [...], πορφύραν ἐπιβαλόντες βασιλικὴν αὐτοκράτορα ἀναγορεύουσιν.

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due to his alleged humble origins, his excessively military character and what was perceived as inappropriate behavior towards members of the *ordo amplissimus*. He never visited Rome to directly interact with the *patres conscripti*, for instance, which was considered a serious faux pas. As vividly remembered by the senatorial historiographer Aurelius Victor in the second half of the 4th century, the beginning of the first soldier-emperor's reign thus marked a decisive *caesura* in the history of the Roman Empire:

“From that time on, the emperors, more eager to subdue their own than to subject foreigners and even more likely to be in arms against each other, overthrew the Roman Empire, as it were, at a moment's notice, and good and bad, noble and lowly, and among them many barbarians, were admitted to rule without difference. [...] For Caius Iulius Maximinus, commander of the Trebellica and hardly touched by education, was the first of the military to attain power by the vote of the troops. This, nevertheless, was also confirmed by the fathers, since they considered it dangerous to oppose the armed in an unarmed fashion.”²

It does not come as a surprise that Maximinus Thrax' reign remained unstable. When an imperial *procurator* was killed in the province Africa proconsularis in 238 and his murderers proclaimed the *proconsul provinciae Africae* Gordian I together with his son Gordian II as new emperors of Rome, the senate willingly recognized their claims to the throne.³ Maximinus Thrax, however, was declared a tyrannical enemy of the state (*hostis publicus*).⁴ Against all senatorial hopes, though, the reign of the two Gordians was only short-lived. Three weeks after they became emperors, they were defeated and killed by Maximinus Thrax's loyal *legatus Augusti pro praetore provinciae Numidiae* named Capel(l)ianus, who commanded the *legio III Augusta*.⁵ Angered by the senate's decisions, the first soldier-emperor took quick

2 Aur. Vict. Caes. 24,9; 25,1–2: *Abhinc dum dominandi suis quam subigendi externos cupientiores sunt atque inter se armantur magis, Romanum statum quasi abrupto praecipitavere, immissique in imperium promiscue boni maliq;ue, nobiles atque ignobiles, ac barbariae multi.* [...] *Namque Gaius Iulius Maximinus, praesidens Trebellicae, primus e militaribus, litterarum fere rudis potentiam cepit suffragiis legionum. Quod tamen etiam patres, dum periculosum existimant inermes armato resistere, approbaverunt.* See also Eutr. 9,1 who emphasizes that Maximinus Thrax came to power as a non-senator only via the support of his soldiers without the legitimation of the senate: *Post hunc Maximinus ex corpore militari primus ad imperium accessit sola militum voluntate, cum nulla senatus intercessisset auctoritas neque ipse senator esset.*

3 Herodian. 7,7; SHA Maximin. 15,2; 16,1–7; 18,2; 20,7; Gord. 11,1–10; 13,5–7. For an analysis of the historical events of the year 238 as well as their social, political and economic consequences see Lorient 1975, 657–787; Kolb 1977, 440–478; Dietz 1980; Potter 2004, 167–172; de Blois 2006, 25–36; Börm 2008, 69–86; Huttner 2008, 161–180; Sommer 2014, 32–36; Brandt 2021a, 491–494.

4 Kienast – Eck – Heil 2017, 176.

5 Herodian. 7,9; SHA Maximin. 19–20; SHA Gord. 15–16. See Dietz 1980, 109–120; Sommer 2020, 32–35.

countermeasures. Together with his armies, he rushed from the Germanic *barbaricum* towards Italy to subdue all senatorial opposition. Meanwhile, the city of Rome was torn apart in struggles between supporters and enemies of Maximinus Thrax.⁶ Fearing its immediate destruction, the senate organized armed resistance under the lead of a college of twenty men of consular rank, the *XXviri ex senatus consulto rei publicae curandae*.

Modern scholarship has dealt with questions about the reconstruction and dating of historical events in 238 as well as the actual composition, social backgrounds and political competencies of the *XXviri*.⁷ Karl-Heinz Dietz in particular underlined socio-political ties between the known members of the vigintivirate and the extinguished Severan dynasty, which most definitely contributed to the senatorial opposition against Maximinus Thrax.⁸ Scholars furthermore emphasized the exceptional ideological character of the vigintivirate, which highlighted the (at least temporary) political weight of the senate to a degree that apparently went far beyond the customary institutional framework of the Principate. This becomes clear when examining the extraordinary election of the emperors Pupienus and Balbinus at the behest of the senate, who both came from the circle of the *XXviri*.⁹ Under their leadership – and through smart usage of public resources, military skill and luck –, Maximinus Thrax was finally defeated during the siege of Aquileia.

Questions about the constitutional background and institutional paragons of the *XXviri ex senatus consulto rei publicae curandae*, which allowed them to make legitimate decisions in times of political and military crisis in the first place, for instance, the recruitment of soldiers, the command of armies against declared enemies of the state and the rightful election of emperors, have, however, remained unanswered for the most part. In fact, researchers have to refer back to Theodor

⁶ Herodian. 7,11–12; SHA Max. Balb. 9,1–2; 4; 10,5.

⁷ Cantarelli 1907, 197–201; Burian 1963, 49–50; Balil 1965, 145–146; Dietz 1980, 7; Lippold 1991, 652–654; Brandt 1996, 97; Brandt 2021b, 31 propose that the *XXviri* were created already during the lifetime of the two Gordians. Compare, however, Théodoridès 1947; Lorient 1975, 707–708; Zimmermann 1999, 272–273, who argue for the *vigintivirate*'s constitution after the deaths of Gordian I and his son. Townsend 1955 thinks that the senate's political decisions were part of a careful and long in advance prepared plan to defeat Maximinus Thrax, against, for instance, Mullens 1948, 65–77, who suggests that the uprising was a spontaneous act that surprised almost all political parties involved. The reception of this debate is traced in Dietz 1980, 22–25; Brandt 1996, 96–99; Haegemans 2010, 153–158. Strasser 2016 appears without a dating proposal for the constitution of the *vigintivirate*.

⁸ Dietz 1980, 326–340. See also Brandt 2021b, 32.

⁹ Herodian. 7,10,2–3; SHA Gord. 10,14; SHA Max. Balb. 1,2. On the election of Pupienus and Balbinus see Syme 1971, 166; Brandt 1996, 96–98; Christol 2006, 86–87; Heil 2008a, 721; Huttner 2008, 173. Compare, however, Drinkwater 2005, 31–32, who perceives the election of the named emperors as a political compromise between at least two feuding senatorial factions in 238.

Mommsen and his “Römisches Staatsrecht”, who counts the committee among the extraordinary constitutive authorities of the Roman state (“ausserordentlich constituierende Gewalten”) to find a possible starting point for responding to the query: He proposed that the committee’s goal was the ultimately unsuccessful renewal of the senate’s regime by modifying the Principate according to ideals of the Roman Republic in times of acute danger.¹⁰

This paper further explores Mommsen’s assessment by arguing that the establishment of the *vigintivirate* is to be interpreted against the backdrop of the reception of traditional constitutional thought rooted in that, which was perceived as political ideals of the Roman Republic during the Principate. The election and actions of the *XXviri* were thereby part of a set of consciously chosen strategies of political and military resistance in times of acute crisis that allowed for a successful mobilization of Rome’s public resources to meet a tyrannical *hostis publicus*, who threatened the continued existence of the *res publica romana*. From this perspective, the *patres conscripti* legitimately had the right to defend themselves and the commonwealth against Maximinus Thrax. Their extraordinary decisions were justified within a framework of ideologically charged communicative acts aimed both towards members of the Roman elites throughout the empire and to the inhabitants of the capital.

The study will have three parts: First, it will examine the reasons for the conflicts between Maximinus Thrax and the senate in the context of the socio-political organization of the Principate. Second, it will ask about the origins and tasks of the *XXviri* and will further examine their political ideals and republican *exempla*. Finally, there will be a brief analysis of the *vigintivirate*’s significance and role after the defeat of the first soldier-emperor. As a consequence of the senate’s triumph, all emperors after 238 sought to formally legitimize their claim to power by personally visiting the *patres conscripti* in Rome. However, the senate’s success did not lead to its long-term institutional empowerment. Instead, the importance of army leaders from the *ordo equester* continuously grew during the 3rd century CE,¹¹ while senators – among them also former members of the *XXviri* – continued to serve the emperors.

¹⁰ Mommsen 1874 II.1, 667. A similar argument is presented in RE 4.2, 1901, 1769 and by Herrmann 2013, 52–54.

¹¹ The steadily growing influence of the equestrian order is studied in detail by Davenport 2019. See on this topic also Heil 2008b as well de Blois 2019, 187–199 for changing appointment policies during the 3rd century CE.

Failed Communication between Emperor and Senate as a Cause of the Civil War of 238

During the Principate, imperial rule came to be realized *via* intensive, through-composed and usually ritualized communication between the emperor and various acceptance groups (“Akzeptanzgruppen”), i.e., the armies, the people of Rome and the senate.¹² The emperors depended on members of the *amplissimus ordo* because, on the one hand, they needed senators as office-holders in Italy, as provincial governors and as leaders of legions all over the empire. On the other hand, the approval of the senate legitimized an emperor’s claim to political power through a formal investiture.¹³ This remains true despite the fact that almost every imperial decision-maker was *de facto* designated by his predecessor or acted as an usurper backed by military power. Especially towards the end of the Principate, the senate did thus actually not choose the emperor in advance – it could only “elect”, i.e., confirm or better rubber-stamp the claim of a new ruler after it was already determined by other factors, among which the support of the army was usually the most important one.¹⁴ In addition, the *ordo senatorius* involved the emperors in a variety of social interactions in Rome in everyday contact and on special ceremonial occasions. In doing so, rulers were bound by (implicit) rules of conduct that limited their comprehensive powers. At the same time, this approach allowed the senate to present itself as a significant institution of the *res publica romana*. The standing of individual members of the *ordo amplissimus* derived from their proximity to the emperor.

If traditional forms of communication between the emperors and the senate, i.e., the public staging of political decision-making within the framework of carefully planned interactions between the regent and the *patres conscripti*, failed, considerable risks arose for both parties, which in turn endangered the stability of

12 Flaig 2019, 73–74.

13 Talbert 1984, 354. See also Mommsen 1875 II.2, 744–749; 787–821; Hammon 1956; Hammon 1959, 20, 36; Parsi 1963; Ausbüttel 1998, 10–11; Rainer 2006, 233–234. The fact that the emperor was formally granted his powers by the senate becomes clear, for instance, when studying the *lex de imperio Vespasiani* (CIL VI 930 = CIL VI 31207 = ILS 244; Tac. hist. 4,3,3), which likely preserves parts of a *senatus consultum* passed to recognize Vespasian at Rome in December 69 CE as legitimate ruler of the Roman Empire. He was granted a series of Republican competencies, offices and honors, such as the *imperium proconsulare maius* or the *tribunicia potestas*. Moreover, the law transferred all honors that had been granted to Augustus, Tiberius and Claudius to Vespasian, for instance, the name *imperator*, the office of the *Pontifex Maximus* or the membership in all priestly colleges. On the *lex de imperio Vespasiani* see Mommsen 1875 II.2, 818–819; Brunt 1977, 95–116; Talbert 1984, 355; Pabst 1989, 125–148; Capogrossi Colognesi – Tassi Scandone 2008; Flaig 2019, 525–530.

14 Flaig 2019, 157–160.

the entire Roman Empire. During such conflicts, the senate had several tools at its disposal to defend itself. It claimed the right to declare individuals public enemies (*hostes publici*), to abolish their names on official documents (*abolitio nominis*) and to revoke their acts.¹⁵ Armed activities against these enemies of the state were subsequently regarded as necessary components of a just war (*bellum iustum*). A rejection by the *ordo amplissimus* therefore had devastating consequences for the legitimacy of an emperor's claim to power.¹⁶ Thus, the senate never entirely ceased to play a role for the legitimate reign of Roman emperors, although its significance steadily declined during the Principate, primarily due to the growing influence of the military.¹⁷

Although literary sources, like the histories by Herodian and Aurelius Victor or the (infamous) *Historia Augusta*, retrospectively portray a profound antagonism between the senatorial order and Maximinus Thrax, their relation was more complex on closer examination. As mentioned, Maximinus Thrax' claim to the imperial throne was officially accepted by the senate after the assassination of Severus Alexander in March 235. It can be assumed that the first of the so-called soldier-emperors informed the senate via letters to formally announce his claim to power and to gain the support of the senatorial order, as it was common practice already before him.¹⁸ The reading of these missives in the senate was possibly followed by ritual acclamations as a matter of form after a *fait accompli*.¹⁹ Subsequently, many senators willingly sustained his rule by serving as provincial governors and as *legati legionum* from 235–238. In return, the emperor did not hinder his supporters to continue climbing the senatorial career ladder.²⁰ However, he did not engage in established interactions with the senate, since he never visited the capital in person after his elevation. Instead, attempts in unilateral communication on part of Maximinus Thrax to legitimize his rule apparently happened only *via* the sending of letters and visual representations of his military achievements against Germanic *gentes* to the senate and the people of Rome.²¹ Against this backdrop, it seemed to many that he based his reign primarily on the support of his soldiers and that he was not interested in or even incapable of typical interactions with the

¹⁵ See Vittinghoff 1936; Hammon 1959, 339–342; Talbert 1984, 356; Straumann 2016, 94–100.

¹⁶ Talbert 1984, 354.

¹⁷ Eck 1995c, 31–66.

¹⁸ Millar 2001, 352.

¹⁹ On senatorial acclamations see Hirschfeld 1905; Alföldi 1934, 79–88; Talbert 1984, 302; Wiemer 2004, 27–73; Wiemer 2013, 173–202.

²⁰ Hächler 2019, 154–172.

²¹ Herodian. 7,2,8; SHA Maximin. 12,5–11. See Haegemans 2010, 84–86; 96–106.

senatus populusque Romanus.²² Should this brief assessment be correct, it either hints at the acute danger emanating from Germanic *gentes* or even rebellious legions stationed near the Rhine for the commonwealth, which in turn required the constant presence of the emperor on site, or at a critical lack of understanding on the part of Maximinus Thrax regarding the filigree political organization of the Roman Principate.

Goals, Identities and Possible Paragons of the *XXviri*

In case of Maximinus Thrax, the lack of traditionally expected forms of communication between the emperor and the senate and the resulting dissatisfaction with his rule ultimately became important causes for the civil war in 238. Literary sources inform us about the election of twenty individuals among the senate's members to take care of the *res publica romana* during the expected struggles against Maximinus Thrax.²³ Among these *vigintiviri* Pupienus and Balbinus were chosen as new emperors. Herodian provides us with an overview of the election procedure together with reasons for this course of action:

“(2) They [the senators] therefore decided to meet and deliberate on the necessary measures and, since they had now plunged themselves into danger, to begin the war openly by putting elected emperors in the lead. These should share the ruling power, so that the authority lying undiminished with only one should not again turn into a tyranny. They came now not to the usual meeting place [= the *Curia Iulia*], but to the temple of Jupiter Capitolinus, whom the Romans worship on their acropolis [= the Capitol]. (3) They went into seclusion with themselves in the sanctuary, as if to take Jupiter as a witness and assessor and overseer over the events; they had chosen distinguished individuals according to age and dignity and intended to decide about them [= the future emperors] by voting. By far the greatest number declared themselves in favor of Maximus and Balbinus when the election was carried out, although others also received some votes. These two they made emperors.”²⁴

22 Maximinus Thrax' focus on military issues becomes clear also when studying the coins produced under his reign, see RIC IV 2, 129–157.

23 SHA Maximin. 32,3; SHA Gord. 10,1–2; 21, 1; Zos. 1,14,2–3.

24 Herodian. 7,10,2–3: (2) Ἐδοξεν οὖν συνελθεῖν καὶ περὶ τῶν πρακτέων σκέψασθαι ἅπασι τε ἀναρρίψαντας κίνδυνον πόλεμον ἄρασθαι προσησαμένους ἑαυτῶν χειροτονηθέντας βασιλέας, οὓς ἠθέλησαν μερίσαι τὴν ἀρχήν, ὡς μὴ παρ' ἐνὶ οὖσα ἡ ἐξουσία ἐς τυραννίδα πάλιν ἐξοκειλῆ. Συνῆλθον οὖν οὐκ ἐς τὸ σύνθεσι συνέδριον, ἀλλ' ἐς τὸν τοῦ Διὸς νεῶν <τοῦ> Καπετωλίου, ὃν σέβουσι Ρωμαῖοι ἐν ἀκροπόλει. (3) Συγκλείσαντες οὖν αὐτοὺς ἐν τῷ σηκῷ μόνους ὡσερ ὑπὸ μάρτυρι τῷ Διὶ καὶ συνόδῳ ἐπισκόπῳ τε τῶν πραττομένων ἐπιλεγόμενοι τῶν ἐν ἡλικίᾳ καὶ ἀξιώματι προυχόντων, οὓς ἐδοκίμαζον κατὰ ψηφοφορίαν, ἐχόντων καὶ ἄλλων ψήφους διακριθεισῶν τε καὶ τοῦ πλείστου τῆς

The election was held on ballots on the Capitol hill under the protection of Jupiter Capitolinus. Among “the chosen distinguished individuals according to age and dignity” (ἐπιλεξάμενοι τῶν ἐν ἡλικίᾳ καὶ ἀξιώματι προυχόντων), i.e., with some probability the members of the already established *XXviri*, Pupienus and Balbinus received the most votes by the senate, with others also awarded some. Subsequently, both were recognized by an official senatorial decree as new emperors of Rome.²⁵ To end the violent struggles in the capital and thereby further stabilizing their own reign, both emperors additionally recognized Gordian III as their co-ruler. The boy was favored by the people of Rome since he appeared to stand for dynastic continuity after the deaths of the well-liked emperors Gordian I and Gordian II.²⁶

Seven individuals are known to date among the *XXviri ex senatus consulto rei publicae curandae* thanks to literary and documentary sources. From today's perspective, it appears as if the college formed a representative selection of leading members of the senatorial elite,²⁷ i.e., a combination of people from patrician and non-patrician backgrounds, who attended the consulship at least once and were experienced in military matters, jurisdiction and public administration.

γνώμης Μάξιμόν τε καὶ Βαλβίνον ἀνεπόντος αὐτοκράτορας ἐποίησαν. Note that there exists a second, albeit far less trustworthy account of events, see Brandt 1996, 5; 112–114: According to SHA Max. Balb. 1,1–3, members of the senate met on July 9, 238, in the temple of the deity *Concordia* at the foot of the Capitol. After a seemingly chaotic gathering, in which first the discussion had been about trivial building projects, an unnamed *princeps senatus* (SHA Max. Balb. 1,2: [...], *qui primam sententiam erat dicturus* [...]) intervened and pointed out the danger on the part of Maximinus Thrax for the existence of the *res publica romana*. The prospective emperor Balbinus then suggested to elect two emperors for Rome's protection. An otherwise unknown *praefectus Urbi* named Vettius Sabinus (see Syme 1971, 100; Dietz 1980, 248; Brandt 1996, 127; Wojciech 2010, 333) subsequently took up this idea and proposed to the meeting to elect both Pupienus and Balbinus as new rulers of Rome. Both candidates were then unanimously proclaimed (*uno consensu*) as new emperors and provided with an imperial mandate to defend Italy and Rome against all public enemies (*hostes publici*) and bandits (*latrones*), see SHA Max. Balb. 2,10–12.

25 Herodian. 7,9,5.

26 Herodian. 7,10,9; SHA Maximin. 20,2; SHA Gord. 22,3; SHA Max. Balb. 3,5. On the reign of Gordian III see, for instance, Potter 2004, 170–172; Sommer 2020, 37–39; Herrmann 2013.

27 Regarding the term “senatorial elite” defined as the group of people who (had) held the consulate during the 3rd century (*viri consulares*), see Mennen 2011.

Table 1: Compilation of the known members of the *XXviri ex senatus consulto rei publicae curandae*. Note that the entries for both emperors Pupienus and Balbinus regarding the known sources remain empty due to the high amount of source material mentioning their names and actions as rulers of Rome.

Names	Social backgrounds	Titles and functions	Sources
L. Caesonius Lucillus Macer Rufininus	patrician	<i>electus ad XXviros ex senatus consulto rei publicae curandae</i>	CIL XIV 3902 = ILS 1186.
L. Valerius Claudius Acilius Priscilianus Maximus	patrician	<i>inter XX consulares</i>	ILS 8979 = AE 1903, 337 = AE 1904, 170 = AE 1904, 225 = AE 1948, 12.
Decimus Caelius Calvinus Balbinus	patrician	(future) emperor	–
Tullius Menophilus	<i>homo novus</i>	defender of Aquileia	Herodian. 8,2,5; SHA Maximin. 21,6–22,1; SHA Max. Balb. 12,2.
Rutilius Pudens Crispinus	<i>homo novus</i>	<i>electus dux ex senatus consulto bello Aquileiensi</i>	CIL VI 41229 = AE 1929, 158 = AE 1930, 76 = AE 1933, 1 = AE 1995, 124 = AE 1995, 762 = AE 2000, 656; Herodian. 8,2,5.
M. Cn. Licinius Rufinus ²⁸	<i>homo novus</i>	ἐν τῶι συνβουλίωι τῶν εἴκοσιν ἀνδρῶν	SEG 47, 1656 = AE 1997, 1425.
Marcus Clodius Pupienus Maximus	<i>homo novus</i>	(future) emperor	–

Members of the *vigintivirate* had various tasks to fulfill during the conflict with Maximinus Thrax. Rutilius Pudens Crispinus and M. Cn. Licinius Rufinus were chosen to defend Aquileia against the invading forces. They later received support from Pupienus, while Balbinus was entrusted with governing the capital. Another senator, whose name is unfortunately lost, was sent out in the name of the *vigintivirate* to prepare the defense of the *regio Transpadana* by recruiting young soldiers (*tirones*) and by coordinating weapons factories in Mediolanum (modern Milan).²⁹ Herodian and the *Historia Augusta* both document that the senate recruited and equipped young men as soldiers for the defense of Italy. Subsequently, cities were prepared to survive sieges by providing them with supplies and weapons under

²⁸ On Licinius Rufinus see also Brandt 2021b, 29–33.

²⁹ CIL XIII 6763 = AE 1888; 80 = AE 1893, 73.

the supervision of individual *virī clarissimi*.³⁰ Additionally, the senate attempted to pull provincial governors to its own side by sending legates and letters to them, in many cases apparently with success.³¹

The clearly exceptional position of the *XXviri* raises questions about their constitutional position in the Roman state. To answer these, it is necessary to elaborate first on the title of the college. The *XXviri ex senatus consulto rei publicae curandae*, as attested in CIL XIV 3902 from Tibur, apparently acted based on a senatorial decision to take care (*curare*) of the *res publica*. Thus, they formally functioned as *curatores* of the state. During the Roman Republic, the term *cura* denoted duties that were neither usually nor regularly associated with the ordinary magistracies (*magistratus*). Instead, *curatores* were assigned to an office of an extraordinary nature (*extra ordinem*), either in addition to regular annual magistrates or to specially elected extraordinary *officia*. Their term of office is either given by the time required to fulfill their exceptional function in question or established by special law.³² One of the most important protective tasks of such committees was the preservation of the Roman Republic's *libertas* even by force of arms if necessary.³³ An impactful example for the creation of such a senatorial commission can be seen in the formation of the famous *Xviri*, who were elected *maxima potestate, qui et summum imperium haberent et leges scriberent* after the ordinary magistrates had resigned in 451 BCE.³⁴

30 Herodian. 7,12,1; SHA Maximin. 23,2–3; SHA Max. Balb. 10,1–3.

31 Herodian. 7,4–6.

32 See RE 4,2, 1902, 1761; ThLL 4, 1466,82–1469,64; Hauser 1954, 33–36.

33 On the Roman concept of *libertas* see Wirszubski 1968; Klein 1969; Bleicken 1972; Shotter 1978, 235–255; Arena 2013. The defense of *libertas* necessarily meant the preservation of Rome's constitution, through which alone the freedom of its citizens, especially its aristocratic nobles, became possible.

34 Cic. rep. 2,61–63; Liv. 3,32,6–34,6. These magistrates were perceived as virtuous leaders in times of political crisis and allegedly produced ten of Rome's famous twelve *tabulae*, see Cic. rep. 2,61: [...], *qui cum X tabulas legum summa aequitate prudentiaque conscripserunt*. In the following year, a second decemvirate followed, which had been chosen previously by the first ten men, see Cic. rep. 2,61; Liv. 34,7. However, because this second committee was firmly in the hands of autocratic *principes* from patrician families, it quickly degraded into a tyranny according to Cic. rep. 2,62–63; 3,44–45; Liv. 34,8–67. See also Fögen 2003, 63–65; 86–98. This development was aggravated by additional factors: Neither were there *tribuni plebis* or other subordinate magistracies in office nor was the right of *provocatio ad populum* in use. There was thus no possibility of questioning the activities of the second set of *Xviri*, who – unsurprisingly – refused to appoint successors to their own rule after one year, resulting in a *maxima perturbatio et totius commutatio rei publicae*. Note that the composition, function, and importance of the historical *Xviri* are debated in modern scholarship, see CAH 7²/2, 114–117; 227–235 (based on Dig. 1,2,2,24); Fögen 2003, 63–74; 86–98; Straumann 2016, 74–88. To my knowledge, there is only one instance for the creation of a *vigintivirate* before the year 238 CE. This was set up in the context of the *lex agraria* in 59 BCE, see Cic. prov. 41. Dig. 1,2,2,25

Already during the final phase of the Roman Republic, special commissioners in Rome were given the title of a *curator*, as can be seen, for instance, in the case of the *curatores viarum*.³⁵ From Augustus onwards, *curatores* became a general phenomenon primarily in Rome itself, but also in other Roman cities.³⁶ Among the most important senatorial *curatores* belong the *curatores viarum*,³⁷ the *curatores aquarum* and the *curatores albei Tiberis*,³⁸ the *curatores aedium sacrarum et operum publicorum*³⁹ and the *curatores rerum publicarum*, whose primary task was to regulate finances in the municipalities placed under their authority.⁴⁰

The *XXviri ex senatus consulto rei publicae curandae* were not constituted following the example of the *curatores* of the Principate. Instead, they apparently imitated ideals of the Roman Republic, which were effectively illustrated, for instance, by Cicero in his depiction of the *rector(es) rei publicae*.⁴¹ We know that Cicero remained an influential author throughout the Principate since his texts became canonized in schools.⁴² Cassius Dio (ca. 155–ca. 235) reports Cicero's deeds (and his perceived shortcomings) in his "Roman History". Christian authors of the 3rd and early 4th centuries, for instance Tertullian, Lactantius or C. Marius Victorinus, also knew his texts well, as numerous references in their own writings suggest.⁴³

Cicero's *rectores* as ideal(ized) officials recruited from a group or even a class of statesmen (Cic. rep. 2,67: *genus hominis*) should become active in emergencies when the continued existence of the Roman commonwealth was at stake and traditional institutions were perceived as insufficient to avert the state's expected

mentions the constitution of perhaps about twenty *tribuni militum*, who had consular powers to deal with the constitutional crisis caused by the second *Xviri*: *Hique constituti sunt vario numero: interdum enim viginti fuerunt, interdum plures, nonnumquam pauciores.*

35 CIL XII 808; CIL XII 744 = ILS 5800. See Eck 1995b, 281–293.

36 See Eck 1979; Eck 1995d, 92–94; Ausbüttel 1998, 39–46; Rainer 2006, 268–281.

37 Hirschfeld 1905, 205–211; 258–264; Eck 1995b; Ausbüttel 1998, 95–103; Rainer 2006, 257.

38 Hirschfeld 1905, 273–284; Corbier 1984, 236–274; Bruun 1991; Eck 1995a, 167–174; Ausbüttel 1998, 115–122; Rainer 2006, 257–258.

39 Hirschfeld 1905, 265–272; Kolb 1993; Ausbüttel 1998, 123–134; Rainer 2006, 257.

40 Burton 1979; Rainer 2006, 278–279.

41 ThLL 11.2, 430,8–59. On the *rector(es) rei publicae* see, for instance, How 1930, 41; Wheeler 1952; Ferrary 1982, 787–788; Girardet 1983, 188–212 (similar Girardet 2007, 208–213 and Girardet 2018, 116–121); Ferrary 1984; Habicht 1990, 42–43; Powell 1994; Asmis 2005, 378; 410; Zarecki 2015, 80–104; 132–159 (regarding the failure of Cicero's *rector*-ideal); Atkins 2020, 73. Compare also Reitzenstein 1917, 481–486 (Cicero as a propagator of Augustus); Meyer 1919, 189; Stevenson 2005 (Cicero as a propagator of Pompey); Radford 2002, 71; Jehne 2003, 379–396 (Cicero as an early advocate of the Principate in general).

42 Marrou 1948 II, 80–81; 120–121; 136–138; Christes – Klein – Lüth 2006, 104–105; 140–142; Pietzner 2008, 869; Wolff 2015, 154–156; Burgersdijk 2021, 40–42.

43 Ellspermann 1949, 23–42; 67–100; Ogilvie 1978; Walter 2006, 140–142; MacCormack 2013.

demise.⁴⁴ *Rectores* were thereby not thought of as part of the regular Roman constitutional organization *per se*. Instead, they stood outside of the apparently (temporarily) insufficient political structures of the *res publica romana* to re-create its order, ideally by establishing just laws.⁴⁵ Following Cic. rep. 2,51, a *rector* acts *quasi tutor et procurator* of the state, i.e., like a guardian of the public constrained by law.⁴⁶ He is allowed to make binding decisions in favor of the *res publica*'s preservation, provided he has been granted corresponding positions and mandates for this purpose by the people of Rome.⁴⁷ This last point might have changed during the Principate: The *Enchiridion* by Sex. Pomponius from the 2nd century CE mentions that due to the growing number of the people of Rome, which made it difficult for them to be convoked in an assembly, the *cura* of the *res publica* was apparently transferred to the senate alone.⁴⁸

As experts on justice (*ius*) and on the laws (*leges*), *rector(es)* should prevent Rome's decay.⁴⁹ Comparable to tamers of wild beasts, they calm the unruly commonwealth and thus guard it effectively against tyrants.⁵⁰ For their wise foresight, rooted in their knowledge of what causes constitutional decay, and their selfless efforts to (re-)establish political harmony, justice and stability in the state without seeking personal gains, they are promised a generous reward in the afterlife, as famously depicted in book VI of Cicero's "Republic". Finally, they are prepared to step back and to follow and support the (just and effective) plans of other compe-

44 Cic. leg. 3,9. For such emergencies during the Roman Republic and the subsequent procedures see Ungern-Sternberg 1970, 55–85.

45 Girardet 1983, 196.

46 See on this point also Cic. leg. 3,2; Cic. off. 1,85.

47 Cic. leg. 3,10: *Ast quid erit quod extra magistratus coerari oesus sit, qui coeret populus creato eique ius coerandi dato*. See on this also Meyer 2006, 130. A reflection on such encompassing competences of the *rector(es)* can perhaps be seen in the depiction of the *augures*' idealized powers in Cic. leg. 2,30–32.

48 Dig. 1,2,2,9: *Deinde quia difficile plebs convenire coepit, populus certe multo difficilior in tanta turba hominum, necessitas ipsa curam rei publicae ad senatum deduxit*. I would like to thank Benjamin Straumann for this reference.

49 Cic. rep. 5,1–2; 5. These individuals are subsequently portrayed as wise (*sapiens*) and prudent (*prudens*) people, just as Plato's guardian (φύλαξ) and ruler (ἄρχων) is a friend and admirer of wisdom (φίλος τῆς σοφίας) as well as a prudent individual (φρόνιμος) (Plat. rep. 9, 590d–591a), see Kapust 2011, 92; Atkins 2018, 120.

50 Cic. rep. 2,51; 67–69. Scholars argued for the *rector* being a sage, who emerged from a completed training in philosophy, see, for instance, Pöschl 1936, 117–119; Lintott 1997, 83–84; Lintott 1999, 224–225 (the *rector* thought of as a Platonic philosopher king); Colish 1990 I, 95 (the *rector* as a Stoic sage). Compare, however, Wirszubski 1968, 87; 1954, 9; Lind 1986, 94–95; Galinsky 1996, 74, who suggest that the *rector* is not a result of only one philosophical tradition, but, above all, successfully merges his complete theoretical knowledge about the state's purposes and its ideal organization with encompassing practical experience in public government.

tent helmsmen of the state in favor of the envisaged salvation of the Roman commonwealth.⁵¹

There are some noteworthy parallels between Cicero's *rector(es) rei publicae* and the *vigintivirate* in 238. *Rectores* were not thought of as fixed constitutional positions within the Roman state. Instead, they were endowed in the name of Rome's people with extraordinary political competencies depending on varying political contexts to save the commonwealth in times of dangerous instabilities. This evokes the remarkable position of the *XXviri ex senatus consulto rei publicae curandae*, who should "take care" of the commonwealth during the expected struggles against Maximinus Thrax on behalf of the senate. Additionally, members of the *vigintivirate* were all experienced *viri consulares*, thereby belonging to a senatorial elite, as mentioned earlier. They thus complied with Cicero's demand that only the most experienced leaders of the state should serve as potential *rectores*. It is telling that Aurelius Victor uses the same term when he retrospectively portrays the *XXviri* as deputies of the state in times of crisis. He attributes the extraordinary engagement of these *vices potestatum* and the spectacular election of two new emperors by the senate to the fear caused by the absence of capable leaders during the conflict with Maximinus Thrax:

"The senate, though, fearing that in the absence of helmsmen of the state (*rectores*), as in a conquered city, something worse would happen, first appointed deputies (*potestatum vices*) and, later on, after raising young men (*conscripti iuniores*), declared Clodius Pupienus and Caecilius Balbinus as emperors (*Caesares*)."⁵²

Starting from notions of (supposed) republican ideals, the emergence of the *vigintiviri* and their actions should demonstrate that it was the senate alone that had the authority to grant an emperor his legitimacy. Additionally, armed resistance against a *hostis publicus* to defend the *res publica romana* was just, if declared by the assembly of the *patres conscripti*. Under the guidance of the *XXviri ex senatus consulto rei publicae curandae*, the war against Maximinus Thrax was thus a legal and from a senatorial viewpoint even a necessary act to protect the Roman commonwealth against tyranny.

The notion of resisting a tyrant and of defending the values of the *res publica romana* and thus the *libertas* of its people is also prominently treated in Herodian's account of events. Crispinus, who served as one of Aquileia's military defenders in

⁵¹ Meyer 2006, 131–133.

⁵² Aur. Vict. Caes. 26,7: *Ac senatus metuens, ne nullis rectoribus specie captae urbis atrociora acciderunt, primo potestatum vices, mox conscriptis iunioribus Clodium Pupienum Caecilium Balbinum Caesares constituit.*

238 (*electus dux ex senatus consulto bello Aquileiensi*),⁵³ addressed the inhabitants of the besieged city in a fictitious speech, emphasizing that they should not betray their loyalty to the Roman senate and people (σύγκλητος καὶ Ῥωμαίων δῆμος). Instead, they should prove themselves as champions and defenders of Italy and not trust false promises of a perjured and deceitful tyrant (τύραννος ἐπίορκος τε καὶ ἀπατεῶν).⁵⁴ A similar attitude regarding the avoidance of tyranny becomes apparent if one pays attention to the reason for the election of the two emperors Pupienus and Balbinus, as depicted by Herodian. The imperial power should be shared among both rulers so that the reign over the Roman Empire did not lie with only one person, who then could turn into a (new) tyrant (ὡς μὴ παρ' ἐνὶ οὕσῃ ἢ ἐξουσίᾳ ἐς τυραννίδα πάλιν ἐξοκεῖλη).⁵⁵ The decision to elect two instead of only one emperor may also have reminded Rome's inhabitants of the Republican ideal of a joint consular dominion, as already proposed by Theodor Mommsen,⁵⁶ as well as the short-lived shared reign of Gordian I and his son. In addition, the dual leadership might also have been a consequence of the vote counting on the capitol, in which Pupienus and Balbinus each received the most – and among themselves possibly equal votes – of those to be elected.⁵⁷ Finally, this decision may have had pragmatic reasons as well: Two emperors could have taken on different troubled zones within the Empire as well as at its borders. At least the *Historia Augusta* suggests indeed that Pupienus aimed to turn to military challenges on the eastern frontiers, while Balbinus planned to administer the city of Rome and the west.⁵⁸ Finally, it is also feasible that a combination of the above-mentioned reasons contributed to the elevation of Pupienus and Balbinus.

However, although the *XXviri* seem to be a successful adaptation of the ideal of Cicero's *rectores rei publicae* during the Principate, at least at first glance, they are – on closer examination – very different. To our knowledge, the *vigintivirate*, for instance, never established laws, thus clearly contrasting the intended activities of Cicero's *rector(es)*. This lack of legislative decisions also challenges Mommsen's definition of the *vigintivirate* as a constituting power (“constituierende Gewalt”) of the Roman state. Instead, the *XXviri* are to be seen primarily as an *ad-hoc* committee to – on the one hand – defend the Roman commonwealth against a *hostis publicus* and – on the other hand – to emphatically illustrate the senate's claims to

53 CIL VI 41229 = AE 1929, 158 = AE 1930, 76 = AE 1933, 1 = AE 1995, 124 = AE 1995, 762 = AE 2000, 656.

54 Herodian. 8,3,4.

55 Herodian. 7,10,2.

56 Mommsen 1874 II.1, 667, n. 6: “Vermuthlich spielten bei dieser Zweierherrschaft Reminiscenzen an das alte consularische Regiment mit.”

57 Herodian. 7,10,2–3.

58 SHA Max. Balb. 13,5.

legitimately elect emperors against the aspirations of powerful knights supported by the Roman military. Regarding the senatorial claim to be the primary guarantor of the legitimacy of an imperial election, though, Mommsen's classification of the *XXviri* among the extraordinarily constituent powers of the Roman state can still be agreed with, at least partially. As an expression of senatorial resistance, the committee acted as an ultimately successful safeguard against the perceived threat of Maximinus Thrax and his armies by preparing and guarding the Roman state against attacks of a feared tyrant.

A Short-lived Resurgence of Republican Ideals in Context of Roman 'Realpolitik' after 238

The decisive military confrontation between the senate and the first soldier-emperor took place before the walls of Aquileia. Here, the armies of Maximinus Thrax were successfully repelled. He subsequently died at the hands of his own men.⁵⁹ After his defeat, Pupienus and Balbinus initially attempted to rule together, despite their (alleged) differences in character.⁶⁰ They even employed the ideal of *Concordia* in their public representation to symbolize unity in political affairs, which becomes apparent, for instance, in numismatic iconography.⁶¹ In addition, they sought to gain the support of Maximinus' defeated army. To this end, a general amnesty together with rich donatives were granted to the troops. However, owing to growing tensions between the two emperors and a general dissatisfaction with their rule on the part of the soldiers, who much preferred to see the young Gordian III alone on the imperial throne, both were assassinated. Herodian reports how the regents were killed in a brutal and degrading manner by rebellious soldiers. In the process, he emphasizes, both were ridiculed as emperors elected only by the senate (*ἀποσκώπτοντες τοὺς συγκλήτου βασιλέας γενέων*).⁶² Remaining

⁵⁹ Herodian. 8,2–7; SHA Maximin. 21,6–23,7; Aur. Vict. Caes. 27,4; Eutr. 9,1; Zos. 1,13.

⁶⁰ See Herodian. 7,10,4; SHA Max. Balb. 1,2; 2,7; 5,1–6; 6,5; 7,1–6. Pupienus, on the one hand appears as a stern und *dutiful praefectus Urbi* and *homo novus* from the people (*unus e plebe*) with little education. Balbinus, on the other hand, is presented as a respectable patrician and *bon vivant*. In both texts, hope is expressed that their contrasting characters would ultimately work to the advantage of their shared dominion.

⁶¹ Coins highlight the notion of a shared and at the same time (seemingly) harmonious imperial dominion with inscriptions like: *CONCORDIA AVGG*, *FIDES MVTVA*, *CARITAS MVTVA* and *AMOR MVTVVS*, see RIC IV 2, 165–177 and Dietz 1976, 385–386; Brandt 1996, 113.

⁶² Herodian. 8,8,6. See also SHA Max. Balb. 12,5; 13,1–3; 14,1.

XXviri subsequently took over highly prestigious offices in Gordian's III services, thereby continuing the usual course of senatorial careers under the Principate.⁶³

Despite the senate's prominent position during the struggles against Maximinus Thrax, it was apparently not enough to be supported by the *patres conscripti* alone to secure personal claims to the imperial throne in 238 and afterwards. Instead, an emperor's reign could only succeed if he enjoyed the army's endorsement. Gradually, the political influence of the senate further declined during the 3rd century, especially after the reign of Gallienus (253–268). This waning power of the *ordo amplissimus* becomes evident, for instance, from the fact that no measures were taken by the senate equivalent to the ones in the Year of the Six Emperors when Aurelian (270–275) marched towards Rome to suppress an uprising of the local mint masters in 271. It seems that the offensive also claimed the lives of *virī clarissimi* who may have been involved in the revolt.⁶⁴ Subsequently, the emperor was hailed by the people of Rome and the army, while the senate feared him, as the anonymous author of the *Historia Augusta* remembers.⁶⁵

Against this backdrop, the establishment of the *XXviri ex senatus consulto rei publicae curandae* is not to be seen as the result of an allegedly ever-present constitutional “fail-safe” of the Roman commonwealth during the Principate, as the *rectores rei publicae* were thought of for the (idealized) organization of the Roman Republic in Cicero's works. Instead, the *vigintivirate* had a primarily strategic character as it was used as an effective instrument to underline the lawful-legitimate character of the senate's actions against an armed and dangerous *hostis publicus* with recourse to supposed traditional ideals of the political organization of the *res publica romana*. By emphasizing the rightful nature of senatorial action and simultaneously documenting the illegitimacy of Maximinus Thrax's reign with members of the Roman elites and the inhabitants of the capital in mind, the senate under the lead of the *vigintiviri* could thus effectively mobilize political, economic and military resources to defend itself and the Roman commonwealth.

Finally, the *XXviri ex senatus consulto rei publicae curandae* did never attempt to turn back the political clock, as it were, by abandoning the concept of imperial rule altogether. On the contrary, the senate clearly affirmed its position as the sole guarantor of the legitimacy of imperial power by electing two new emperors,

⁶³ Hächler 2019, 169–172.

⁶⁴ Watson 1999, 159–166; Cizek 2004, 167–172. Only in Rome did the political influence of the *ordo senatorius* apparently last until the end of the 3rd century CE and opposed the increasingly powerful soldier-emperors with supposedly traditional ideas about just imperial rule legitimized by the senate. This notion is exemplified by the remains of the so-called Four-Columns-Monument on the *Forum Romanum*, see Bauer 2012, 58–59; 63; Marlowe 2016, 255–258.

⁶⁵ SHA Aurelian. 50,5: *Populus eum Romanus amavit, senatus et timuit*.

under whose guidance the war against Maximinus Thrax was to be fought. Nonetheless, the existence and successful actions of the committee point to the longevity of republican idea(l)s and related constitutional thought under the Principate. From this perspective, the *XXviri* clearly contributed to the success of the senate in 238. This impressive demonstration of senatorial authority had consequences: All emperors after Maximinus Thrax travelled to Rome after their acclamation by the army to have their claim to the throne formally confirmed by the senate, even though the *patres conscripti*'s influence on the history of the Roman state continuously diminished during the 3rd century CE, especially outside of Rome and Italy.

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