

## 8: JUSTINIANIC IDEOLOGY AND THE POWER OF THE PAST

*Charles Pazdernik*



For [Justinian], being by nature an innovator and covetous of whatsoever does not belong to him, unable to abide by what is established, has longed to take over the entire earth, and has been striving to bring every kingdom into his power.

– Procopius, *Wars*, 2.2.6

The words in the epigraph are the testimony of hostile witnesses, attributed by Procopius of Caesarea to envoys of the Ostrogothic king of Italy who have arrived at the court of Sasanid Persia in order to enlist support against Justinian's efforts to reconquer Italy.<sup>1</sup> Procopius himself qualifies these words in an aside: "[The Gothic envoys] were bringing as indictments against Justinian such things as would seemingly be encomiums for a worthy emperor, since he was striving to make his realm greater and much more splendid" (*Wars*, 2.2.14). While the historian discounts the motives of the speakers bringing the charges, his judgment as to the substance of the charges themselves is carefully nuanced. The very accomplishments that in the hands of Justinian's enemies supply material for invective, he states, might serve as the stuff of panegyric if viewed in a sympathetic light.

Justinian was a controversial and contradictory figure, whose policies and methods of self-presentation both attracted and repulsed contemporary observers. Two charges laid at Justinian's feet by the Gothic envoys are particularly relevant for the discussion that follows. The emperor is both an inveterate "innovator" and hostile to "what is established" – essentially two sides of the same coin.<sup>2</sup> Justinian's initiatives exposed tensions between the imperial office, which was capable

of drawing upon deeply ingrained habits of loyalty and obedience from its subjects, and other sources of authority and legitimacy deeply embedded in the social fabric of late antiquity. Questions emerged with special urgency about what it meant to be a Roman, to govern (or to be governed) lawfully, and to perpetuate institutions and practices sanctioned by their antiquity. Much was at stake: to the extent that Justinian's rule could be characterized as neither "Roman" nor "lawful," to the extent that it demonstrated contempt for the legitimizing power of the past, the emperor jeopardized not merely his own position but also his vision of a society characterized by an unprecedented degree of order, unanimity, and concord – a vision he considered himself to have been uniquely and providentially appointed to realize.

As a devout Christian, Justinian professed a conception of human history that was providential and eschatological. Seeking to make the earthly monarchy over which he presided more nearly resemble the heavenly monarchy upon which he believed it to be patterned,<sup>3</sup> he was intolerant of pluralism and heterodoxy and prepared to use the resources of the state to regulate the lives and beliefs of his subjects. Until the Kingdom of God might be realized on earth, however, change was natural and inevitable, and needed to be managed by a strong hand and with unstinting effort. In his determination to translate principle into practice, to seize opportunities, and to articulate a vision of his role in the imperial office that elevated the pragmatic and opportunistic to the level of principle, Justinian emerges as a genuine ideologue and a radical, a ruler determined to remake the world in accordance with his ideals.

As a canny opportunist in a society suspicious of change, Justinian appreciated the instrumental value of portraying change as a development within, or a recovery of, traditional values. Accordingly, he presented himself as preserving the most ancient traditions of the office he held and of the Roman Empire he ruled. A case in point is the ceremony, held in the capital in 534, marking the destruction of the Vandal kingdom in North Africa the preceding year, which was intended to evoke the triumphal processions of Rome's imperial heyday.<sup>4</sup> Yet Justinian refused to be limited or constrained by tradition. Suitable precedents, when they mattered, might conveniently be discovered or drummed up by his clever and capable lieutenants;<sup>5</sup> tradition itself could be discredited for being obscure or self-contradictory. The emperor put himself forward as both a conservator and a reformer.

Alongside Justinian's appreciation of the power of the past must be placed his seemingly unshakable convictions about the indispensable nature of his own role in history and his ability to give effect to his will. Those convictions were severely tested throughout a long and eventful reign that witnessed, among other things, a bloody uprising against his throne, a quagmire in Italy and military disasters in the East, plague, and intractable resistance to his plans for achieving theological and ecclesiastical unity. Far from being chastened by such challenges, the emperor seized them as pretexts for exposing opponents, eliminating error, and consolidating control.

This chapter focuses principally upon the relationship between Justinianic ideology and the political legacy of Roman law. Justinian used legislation as both a medium to advertise his conception of the imperial office he inhabited and a means of exercising authority over the secular and the sacred, the public and the private. Yet Roman legal traditions and political discourse characteristically drew upon the priority and integrity of Roman law as a source of legitimacy distinguishable from, and potentially a counterweight to, encroaching imperial autocracy. Two figures, the late-fourth-century soldier and historian Ammianus Marcellinus and the sixth-century bureaucrat and antiquarian John the Lydian, testify to the relative standing of emperors and the law in their respective periods. John's writings respond to and problematize Justinian's efforts to circumscribe the polyvocal and autonomous qualities of Roman law and his decidedly mixed record of conserving the distinguishing features of the past.

Justinian's willingness to embrace change, to impress his personality upon his age and thus to affect decisively the course of history, and to do so across a broad range of human endeavor is remarkable in any historical period. Procopius, in the citations quoted here, subtly draws a parallel with the past that communicates a sense of both the promise of his age and its potential for disaster. The words he places in the mouths of the Gothic envoys are patterned upon accusations leveled against classical Athens – in an allusion that Procopius surely intended to be noticed and appreciated by his readers<sup>6</sup> – that are placed by Thucydides in the mouths of envoys from the rival city of Corinth during the diplomatic exchanges that preceded the outbreak of the Peloponnesian War. The Corinthians denounce the Athenians – another regime impatient with the status quo – as “innovators,” a term, for readers of both Procopius and Thucydides, with connotations of revolution and social upheaval.<sup>7</sup>

## ROMAN IMPERIAL IDEOLOGY AND THE LEGACY OF ROMAN LAW

Ideology is an articulated and disseminated vision of “the way things ought to be” that may serve either to reinforce or to challenge the established order. The long process of conquest and acculturation that we call “Romanization” succeeded in predisposing the diverse peoples settled around the Mediterranean basin to believe that reciprocal ties of allegiance and responsibility existed between themselves and a figure in a distant capital who might be known indifferently to them as Caesar and recognized chiefly by means of images and slogans circulating on coins, statues and monuments in principal cities, and official portraits gracing the tribunals of local authorities.<sup>8</sup> Even after the collapse of central authority in the Latin West during the fourth and fifth centuries, the various successor kingdoms acknowledged a theoretical, if tenuous, deference to Constantinople.<sup>9</sup> The claims of the Roman emperors to universal jurisdiction, moreover, exercised a profound influence upon the development of European law and politics through the Middle Ages and beyond.<sup>10</sup>

Justinian was both the inheritor of this Roman imperial legacy and perhaps the single figure most responsible for establishing the form in which posterity would receive it. He distinguished himself from his predecessors and attributed a singular character to his achievements as emperor, not least in spearheading the creation of the *Corpus iuris civilis* and the elaboration of a remarkable program of legislative activism.<sup>11</sup> Justinian’s use of legislation as a vehicle of self-promotion, together with his efforts to redefine the relationship between the imperial office and the body of Roman law, offers insight into the emperor’s conception of his rule.<sup>12</sup> Because Caroline Humfress’s contribution to this volume treats legal history, this chapter focuses on how legal sources, together with contemporary testimony, illuminate many larger social transformations, heralding a conception of government and imperial leadership that was perceptibly more absolute, more exclusively Christian and orthodox, and more dedicated to enforcing uniformity of thought and behavior than some observers thought to be achievable or desirable.

Historians of the Roman Empire customarily distinguish between a “princely” of roughly the first and second centuries of the common era and a “dominate” that emerges in the fourth, following a period of instability frequently designated the “third-century crisis.” Fundamental to this distinction, which originates in late antiquity,<sup>13</sup> is the idea that whereas the emperors from Augustus (27 BCE–14 CE) to Marcus

Aurelius (161–180 CE) governed as *princeps*, a title with roots in the Roman Republic that indicated mere precedence within a body of fellow aristocrats (the position of being “first among equals”), emperors from the accession of Diocletian in 284 CE ruled as absolute monarchs claiming the title *dominus* (Greek *karios*, *despotes*) or “master,” which appears on imperial coins from the fourth century onward.<sup>14</sup>

Emperors displayed their power in the fourth, fifth, and sixth centuries in a manner decidedly different from that of their predecessors, but it would be misleading to distinguish the emperors of the two periods by positing a fundamental difference in the nature of that power. Two of the most consequential checks upon the arbitrary exercise of power in the Roman Republic, the principle of collegiality, which insured that the acts of any magistrate could be annulled by the veto of a fellow magistrate of greater or equivalent authority, and the principle of limited tenure in office, were as extinct under the first of the emperors, Augustus, as they were under Justinian. The principal check upon the ability of any emperor to give effect to his will was the need to secure the compliance and cooperation of the greater number of his subjects. The most successful emperors found it expedient to be seen playing the role prescribed for them by public expectations and the traditions of their office – expectations and traditions that, as some of their subjects were aware, had changed over the course of time.

The intellectual, aristocratic, and professional elites who produced many of our sources were conscious of such changes and of the reality of the autocratic power vested in the imperial office; to mitigate the more unpredictable and threatening uses of that power, they maintained and manipulated an ideological investment in a vision of civil society founded upon the continuity and stability of the law (Latin *lex*, plural *leges*).<sup>15</sup> The resulting tension between the imperative of ruling a large and fractious empire effectively and decisively, on the one hand, while governing lawfully, on the other, was far-ranging in its consequences. Roman imperial ideology never repudiated the principle that a good emperor should not appear to be above the law and that he should do nothing contrary to the laws;<sup>16</sup> an emperor who failed to evince a correct understanding of his role within the state was susceptible of being branded a tyrant, an outcome that might not only authorize insurrection but also represent the settled judgment of history. Although the observance of such strictures was in large measure a matter of decorum and modes of imperial self-presentation, part of political theater rather than an insurmountable limitation on power,<sup>17</sup> emperors well understood the value of conserving respect for the law and the appearance

of lawfulness as a critical underpinning of their authority. In seeking to preserve and to improve the law, Justinian for his part reaffirmed its centrality as a defining element of Roman civilization while also taking steps to identify it permanently with himself and to suppress its inherently polyvocal and disputatious nature.

As an extensively elaborated and systematic body of institutional knowledge, Roman law possessed attributes that help to explain why it retained its independent legitimizing force. The republican origin of the law had traditionally been closely associated with the expulsion of the Tarquins and with Romans' traditional hostility to monarchy. The history of the republic, and thus of *libertas* (liberty)<sup>18</sup> rested upon, as Livy put it, "the authority of laws superior to that of men."<sup>19</sup> By lending credence to that principle, Augustus succeeded in reconciling the rule of law with the reality of one-man rule. Having established his supremacy in a series of civil wars, Augustus distanced himself from extralegal expedients and refounded his rule on the basis of republican precedents.<sup>20</sup> As the pretense of popular participation in government was dispensed with, the notion took hold that the powers formerly held collectively by the Roman people had been duly delegated to the emperors, who exercised sovereignty on their behalf. This *lex regia*, as the *Corpus iuris civilis* calls it, established the emperor's legislative competence, which was expressed in the maxim "What the *princeps* (emperor) decides has the force of law."<sup>21</sup>

While an emperor's ability to make law was progressively acknowledged to be absolute,<sup>22</sup> a countervailing influence upon legislative initiative and interpretation in the area of private law continued to be exerted well into the sixth century by the writings produced during the classical period of Roman jurisprudence in the second and early third centuries. By giving expression to the conservative habits of mind characteristic of Roman legal reasoning, the classical jurists had ensured that legislative philosophy would always seek justification with reference to tradition and the sanction of the past.<sup>23</sup> Over time, juristic literature, which retained its private character despite the proximity of prominent jurists to imperial power,<sup>24</sup> itself acquired the sanction of the past. The Law of Citations of 426, which established a canon of juristic writings authorized for citation at legal proceedings and decided points of law (rather crudely, by the standards of earlier and later jurisprudence) on the basis of the majority of concurring opinions, evinced continuing respect for the pluralistic nature of juristic opinion and preserved it as a source of legal authority independent of the emperor.<sup>25</sup>

Justinian represented his own activities as a lawgiver as paradigmatic of his approach to the imperial office as a whole. A *constitutio* setting down standards for authenticating judicial documents declares, “The solicitude of Our Serenity is intent upon relieving the cares of our subjects, nor do we cease to investigate whether anything in our state is susceptible of correction.”<sup>26</sup> Legislation provided an ideal medium through which to advertise Justinian’s boundless energy, totalizing ambition, and accomplishments. The portrait of Justinian that emerges, then, is one of the emperor’s own making. The legal history of the period therefore furnishes an approach to an examination of Justinian’s “character,” the stylized, self-serving portrait he constructed for himself in his legislation.

While this imperial portrait was presumably intended for consumption mainly by educated elites, the extent to which Justinian’s lawmaking touched even the humblest social classes is illustrated by a *constitutio* of September 1, 537. The emperor complains that so many *adscripticii* (quasi-servile tenant farmers) have been challenging their status under a recently enacted law that the landowners have protested. Consequently a more restrictive restatement or clarification of the original policy is called for.<sup>27</sup> The fact that a significant number of humble persons attempted to assert what they believed to be their privileges under the original policy reminds us that law was not exclusively of interest to the privileged classes – even if, in this and other instances, the privileged managed to have the law “clarified” to their advantage.

The portrait that emerges is a complex and challenging one, not least because Justinian never aimed to conform to a static, idealized model of behavior based upon a canon of traditional imperial virtues. Consistent with his sense of election and mission was the conviction that his rule differed from that of his predecessors, whom he castigates on occasion for their laxness and complacency. Inseparable from his reforming zeal was his belief that he served a vengeful God who required propitiation. Imperial restoration through military and legal reform went hand in hand with campaigns of persecution and ecclesiastical controversy.<sup>28</sup> The boundless energy he was continually at pains to display, the relentless pursuit of perfection, the conviction that no project was too large or too small to engage his attention and furnish proofs of his determination – all of these qualities originate in his own imperial consistory, products of an unflagging determination to impress upon humanity a consciousness of the fact that they were living in the Age of Justinian.<sup>29</sup>

“LAWS, THE FOUNDATIONS OF LIBERTY”:  
AMMIANUS MARCELLINUS AND JOHN THE  
LYDIAN ON EMPERORS AND THE LAW

The measures which had helped Diocletian to resolve the third-century crisis,<sup>30</sup> while emphasizing the emperor's distance from the rest of mankind, also defined every individual's position with respect to the all-important imperial center of power. Such patterns of allegiance powerfully reinforced the precarious unity of the state. The need for unity placed a strong premium upon cultural and political continuity for both emperors and subjects. But change had to be addressed as well. As the historiography of Ammianus Marcellinus illustrates, evolutionary narratives, incorporating biological metaphors of growth and decay, furnished one means of accounting for historical change while insisting upon the preservation of an unchanging, essential kernel of identity. Particularly for imperial bureaucrats like John the Lydian, who served on the staff of the praetorian prefect and whose *De magistratibus* (*On Offices*) tendentiously traces the origins of that office back to Romulus, the perpetuation of Roman institutions and customs preserved palpable links with the past demonstrating that their world retained its intrinsically and authentically Roman core.

A military officer and a native speaker of Greek, Ammianus retired to Rome and composed history in Latin, the surviving portions of which carry his narrative from the 350s down to 378 CE. His work acknowledges the reality of imperial autocracy while upholding the Roman ideal of government according to law. Roman history is encapsulated in three successive ages, constituting a single life-span. Three hundred years marked the period from Rome's birth to the end of childhood, during which the Romans fought merely local wars. Adulthood was accompanied by expansion beyond Italy and world conquest. Ammianus's own times witnessed the approach of Rome's old age: "And so the venerable city, having humbled the proud necks of fierce nations and rendered laws, the foundations and everlasting moorings of liberty, has like a thrifty parent, shrewd and wealthy, passed along to the Caesars, as if to her children, the management of her inheritance."<sup>31</sup> As a whole, Ammianus's portrait evokes a stately maturity and well-being, achieved through a universal order resting upon complete military, political, and social concord. Rome herself is an aged grande dame, doted upon by capable children and well-wishers. The establishment of *libertas* through law belongs, like other Roman achievements, to an earlier, more vigorous age. Yet law and the underpinning of civil



society it supplies remain part of the inheritance entrusted to the emperors.

Ammianus pragmatically concedes that civil stability and security require the concentration of imperial authority and a corresponding diminution of freedom.<sup>32</sup> While acknowledging an emperor's right to defend his position (19.12.17), the historian knew that imperial self-interest could become an end in itself, and he looked to justice and the rule of law as the basis of imperial self-restraint. In his eyes, the neglect of the law, or the perpetuation of atrocities under the cover of law, was symptomatic of the absence of self-possession on an emperor's part, which in turn had a catastrophic impact on the rest of society. Just as good emperors protect the law, they deserve the protection of the law and the support of loyal subjects.

In contrast to Ammianus's measured assessment of Rome's continued vitality, and to the more precipitous sense of decline articulated by Zosimus early in the sixth century,<sup>33</sup> Justinian's presentation of his own regime, particularly from his accession in 527 until the capture of Ravenna in 540, radiated utter self-assurance: the drift of previous reigns, he asserted, had been decisively reversed, and the renewal and recovery (*renovatio*) of the Roman Empire was at hand.<sup>34</sup> Both John the Lydian and Procopius, his close contemporary, witnessed this "time of hope."<sup>35</sup> Like Ammianus, the two possessed a consciousness of the past and an intellectual and ideological investment in institutional and political continuity. Justinianic *renovatio* ideology was calculated to capture and mobilize the loyalties of such men. In discrediting his predecessors for squandering the Roman inheritance entrusted to their care, Justinian justified change as a return to an earlier, more felicitous period of imperial hegemony. Observers who interpreted this rhetoric as an investment in classical culture for its own sake, however, were bound to be disappointed.<sup>36</sup> While Justinian engaged and exploited antiquarian nostalgia, concrete initiatives the emperor pursued in the name of administrative efficiency, maximization of revenues, uniformity of religious belief, and regulation of public morals proved to be polarizing and alienating. John himself bitterly attributes economic devastation in his native province of Lydia to the emperor's rapacious fiscal officers and expresses with surprising candor his admiration for a prominent victim of Justinian's purges.<sup>37</sup>

Even so, John celebrated Justinian as the restorer of Roman greatness, as a patron of ancient culture, and as the defender of the traditions and prerogatives of the civil service as John had known them. Broad issues of cultural decline and rebirth were closely bound up with his

investment in the prestige and institutional integrity of the prefecture itself. Consequently, one discovers in John a pervasive tension between the defining principles of Roman civilization as he understood them and Justinian's own much more equivocal ways of perpetuating them – a tension relating to both John's own bureaucratic preoccupations and his sense of the overarching direction being pursued by the state.<sup>38</sup>

Justinian's early victories over the Vandals in North Africa and the Ostrogoths in Italy as well as the success of his legal reform project offered hope that anything was indeed possible if only Justinian would set his mind to it.<sup>39</sup> Rhetoric and reality seemed to be tantalizingly aligned. John's work reproduces themes of imperial omnipresence and omnicompetence that originate, as we shall see, in the emperor's own propaganda: "And through [Justinian] the state is greater than it had been formerly because Libya has been restored to us . . . and because Rome itself, too, the mother of deeds, has been released by the sweat of the emperor from her bonds and from the power of the barbarians" (*On Offices*, 3.1).

This recollection of the triumph of Roman arms gives rise to a more ambitious statement: "All the distinctive features which once belonged to the state are being preserved with greater vigor."<sup>40</sup> Parallel to the recovery of Rome, the font and origin of Roman achievement, is the recovery of the law: "The laws, too, have been released from disorders and burdensome confusion, and justice is seen clearly, and the litigious regret their former vigilance over points of contention because thanks to the clarity of the laws no dispute is any longer left behind."

The emperor emerges victorious over both external and internal forces of disorder and oppression, releases from their bonds both the imperial city that inspires heroic action and the laws that define and govern civil life, and thereby demonstrates the indispensability and renewed vitality of the Roman imperial legacy and his own worthiness to serve as the guardian of that legacy.

In spite of these expressions of confidence, however, John's statements regarding the Roman constitution and the manner in which Justinian inhabited the imperial role intimate a deeper unease. In a sketch of Roman political history in *On Offices*, John seeks a reconciliation between the republican origins of Roman freedom and the consolidation of power under the emperors with reference to a concept of "lawful Roman emperorship," in which the will of the sovereign is firmly subordinated to the law. A series of contradictions in the regime's own self-presentation, however, points to a genuine dilemma regarding both the "lawful" and the "Roman" character of Justinian's rule.

At the beginning of *On Offices*, John distinguishes lawful rule from both tyranny, which had characterized early Roman government under kings before the establishment of the republic, and the imperium (Greek *autokratoria*) wielded by supreme military commanders, first by the consuls of the republic and later by the Caesars (1.3f.). Lawful emperorship is characterized by the elective character of the office, by an unstinting determination on the part of the emperor to disturb neither the laws nor the form of the state, and by an approach to government that involves the leading men of the state in the formulation of policy. Such an emperor shows himself to be both a father and a leader toward his subjects. The tyrant, in contrast, will behave rashly without regard either for the law or for the opinions of the aristocracy. “For, while the law is the wont of a king, a tyrant’s wont is the law” (*On Offices*, 1.3).

These are commonplaces of sixth-century political discourse, with deep roots in Greco-Roman political speculation on the possibility of reconciling autocracy with the preservation of a civil order governed by the rule of law. The anonymous author of the sixth-century treatise *On Political Science* concentrates upon some notably Roman elements in his discussion of the “laws” of kingship, distinguishing between appointment by God and election by the people, insisting upon the legal inauguration of rule as essential to the auspiciousness of the reign, and underscoring the importance of collaboration with both the senate and the administration in the enforcement of the law.<sup>41</sup> This scrupulousness scarcely diminishes the king’s ties to divinity: he governs the state in conformity with the Platonic Idea of the Good, participating in the divine likeness of the Almighty twice over, in respect of both his humanity and his kingship.<sup>42</sup> Such an emperor is a father to his people, governing in the first instance as an exemplar of virtue, a pedagogical tool for his subjects. Political will flows outward from him into the administration, setting in motion the machinery of civil life in which each citizen discharges his particular duties responsibly (5.9ff.). It is a bureaucrat’s notion of the Christian *oikoumene* (inhabited world), conspicuously fitted out with citations from pagan political philosophy. The emperor heads a rigidly centralized and hierarchical civil order, initiating impulses that trickle down through society without directly intervening in the functioning of the apparatus.

Such restraint likewise seems to be at the heart of the *Ekthesis* of Agapetus, deacon of Hagia Sophia, who addressed this example of the “mirror of princes” genre to Justinian himself early in his reign. Kingly virtues include moderation and with it conscientious rule over

the state (18, 68). The king should remain vigilant, like a helmsman (2), while remaining consistent and just: “Impose upon yourself the obligation of preserving the laws,” Agapetus urges, “since no mortal can compel you” (27; see also 11, 13, 33–34). While conceding to the king an unlimited purview verging upon divinization, both the author of *On Political Science* and Agapetus insist upon self-control as the most exalted and, by implication, the most difficult application of kingly power. Kingship ought to be characterized not merely by distance from the rest of humanity, but by a restraint and moderation that cut to the heart of government.<sup>43</sup>

For his part, John states that the imperial office arose out of usurpation and that its power was mitigated as the result of Augustus’s personal example and the preservation of continuities with the institutions of the republic.<sup>44</sup> The office of the Caesars, in assuming the imperium exercised by the consuls, did not avail itself of the emblems of tyrants but contented itself with the purple robe in performing public and military functions. John applauds such ceremonial self-restraint. However, a change occurred under Diocletian, “who, because he was the first to have placed on his head a jeweled diadem and adorned his dress and feet with gems, turned to the habits of royalty or, to speak the truth, of tyranny” (*On Offices*, 1.4).

Once the imperial office had adopted the trappings of absolutism, the nature of imperial power was reduced to a mirror of the emperor’s temperament and capacity to live within the standards of lawful behavior. Romulus was a tyrant in view of his lawlessness and rashness, a fact John finds confirmed in the name *Quirinus* (a traditional name of Romulus): this John takes to be a title and glosses as *kurios*, master. “For,” he continues, “tyrants like themselves to be called *kurios* and *despotes*, but not *basileus* [emperor]” (*On Offices*, 1.5). John recalls the distaste for the title *dominus* in the republic and early principate: such a title suited Marius and Sulla, but it was an affront to Augustus and Tiberius to suggest that they were lords over a nation of slaves.<sup>45</sup>

Of course, Justinian himself was addressed as *dominus* and *despotes* and was scarcely unique among Roman emperors in this respect.<sup>46</sup> John knows this but nonetheless claims that the practice is a mark of insolence introduced in earlier times as a misbegotten title of respect: Justinian, the most moderate of emperors, understanding the epithet to mean “good father,” tolerated it so as not to discomfit those who supposed they were doing him honor.

John seems to conclude that Justinian rescues himself from the charge of tyranny, to which his participation in Diocletianic forms of

imperial self-presentation would otherwise leave him exposed, on account of his correct understanding of what lawful Roman emperorship entails. Is Justinian therefore being urged to shun such practices and to adopt the more restrained habits of Augustus and Tiberius? In fact, the strategy John adopts in interpreting, in excusing, and perhaps in seeking to amend the objectionable conduct of emperors is as old as the Roman imperial office itself. Recent scholarship has demonstrated that such an invocation of the father-son relationship as an “ameliorative paradigm” for the emperor’s relationship to his subjects, in opposition to the “invidious paradigm” of the master-slave relationship, was already a feature of elite discourse concerning the autocratic character of the emergent principate.<sup>47</sup>

While John is therefore participating in an old debate on the character of imperial authority, more recent developments had intensified that debate. John exposes deeper unease about the lawful character of Justinian’s rule when he turns to a discussion of the Roman consulship. Though this had long been a purely ceremonial office, and had effectively ceased to exist in 541, some ten years before John wrote, he nonetheless hails the consulship as “the mother, as it were, of Roman liberty,” established at the founding of the republic by Brutus, “the defender of freedom.” “For it stands in opposition to tyranny, and, when it prevails, tyranny ceases to exist.”<sup>48</sup> The demise of this magistracy, which is noted with bitter resentment by Procopius in the *Secret History*,<sup>49</sup> seems to imply, conversely, that tyranny has supplanted Roman liberty. It is characteristic of tyrants, as John observes in another context, to subvert ancient institutions.<sup>50</sup> However, echoing the language he used in discussing Justinian’s understanding of the title *despotes*, John once again disposes of the specter of tyranny by appealing to the emperor’s insight into the nature of his office: “Our father and most gentle emperor, by his reforms of affairs and bounties to his subjects, *is* a consul indefinitely, yet he becomes one formally<sup>51</sup> whenever he should wish to embellish his station, assuming the consular dignity as a more lofty rank than the imperial office” (*On Offices*, 2.8). Though the magistracy would henceforth be filled only exceptionally, and only by an emperor, John reassures himself that Justinian remains a consul in spirit.

John’s trust in an emperor’s capacity to use his power in the service of Roman liberty is tempered by his knowledge that no other check upon that power was readily to hand. In its essentials, his dilemma over the responsible use of imperial power is not all that different from the one that confronted elite observers of the evolving principate. What distinguishes John and the Age of Justinian, therefore, is not this

abiding concern for the perpetuation of civil government in the face of absolutism, but rather John's alarm over the disappearance of the specifically "Roman" character of his civilization. Like Ammianus's image of Roman civilization as an inheritance handed along to successive generations, John imagines the praetorian prefecture itself as a family heirloom, a large silver bowl that, owing to the folly of succeeding generations, has been squandered.<sup>52</sup> Against the backdrop of such devastating cultural erosion, John is desperate to credit Justinian with whatever success he can muster in stemming the flow. In the absence of other possibilities, he has no alternative but to look upon the emperor as a redeemer.

John's ambivalence about Justinian is illustrated by his allusions to tyranny. Justinian allowed himself to be addressed as *despôtēs*, which Augustus and Tiberius had refused to do; he had allowed the consulship to lapse, although the magistracy had preserved a living link with republican liberty. John can point only to Justinian's special insight into the nature of his role – his understanding that *despôtēs* signifies "good father," and that his rule embodies the values represented by the consulship – in order to escape the implications of such contradictions. His explanations, though strained, are not necessarily insincere. The problem is that cultural collapse, from John's point of view, has created a vacuum that only the imperial office is available to fill. Only Justinian's enlightened approach to his office, John takes pains to point out, distinguishes his rule from tyranny. Other defining and legitimizing features of Roman civilization have withered away, leaving the figure of the emperor to assume their role. John's dilemma, finally, stems from his uncertainty whether Justinian's eagerness to occupy this vacated cultural territory heralds a genuine reawakening or signals merely an impulse toward self-aggrandizement and an ongoing monopolization of authority.

### "OUR OWN INSPIRED MOUTH": JUSTINIAN AND THE LEGACY OF ROMAN LAW

Well before he hoped to reconquer the West, Justinian aimed to make his mark upon the law.<sup>53</sup> The compilation of imperial *constitutiones*, initiated in 528,<sup>54</sup> was his first major enterprise. The preface to the *constitutio* that, some fifteen months later, authorized the first edition of the resulting *Codex* insisted upon the complementary functions of "arms and laws" in maintaining the integrity of the state and enabling the Romans to gain predominance over all other nations.<sup>55</sup> In following

years, the emperor's ambitions encompassed the entire body of the law, the recovery of which he set on a par with the restoration of imperial authority over the West. The two objects constituted equal parts of a double legacy that Justinian became determined to rehabilitate. In the preface to the first of the "new" *constitutiones* promulgated after the completion of the *Corpus iuris civilis*, the emperor portrays himself turning his attention away from military triumphs abroad toward the project of achieving domestic concord in his legislative and judicial capacities.<sup>56</sup> This gesture unites Justinian's foreign and domestic policy, making arms and laws equivalent instruments of external and internal tranquility.

Publication of the *Codex* marked the first step in a process that did not simply preserve the law, but rather transformed it and reestablished it unambiguously as the product of Justinian's own legislative capacity. Henceforth the *novus codex Iustinianus* was to be the only valid source of citations of imperial *constitutiones*. The juristic writings, thus far untouched by Justinian's compilers, retained their authority, "insofar as citation of these *constitutiones* from our *Codex*, as supplemented by the works of the ancient jurists, will suffice for the resolution of every suit" (*Const. Summa*, 3). For the sake of practicality, however, the commission that produced the *Codex* had been expressly instructed to excise from the *constitutiones* included in the work any contradictions, excess verbiage, and obsolete rulings, restating the wording as necessary.<sup>57</sup> The resulting statute book did not so much repackaging the law as reissue it, the interventions in the text having been validated by Justinian himself,<sup>58</sup> who thereby reauthorized the law and promulgated it "under the happy designation of our name."<sup>59</sup>

A second edition superseded the original *Codex* in 534.<sup>60</sup> The origins of this further revision, incorporating new enactments aimed in part at settling outstanding controversies,<sup>61</sup> lay in the emperor's decision to expand upon his achievement by turning to the juristic legal corpus. Under the direction of Tribonian, a second law commission collected, edited, and organized the writings of the jurists in fifty volumes, producing a reference library of the most authoritative citations on every aspect of jurisprudence.<sup>62</sup> The *Digest*, or *Pandects*, appeared in December 533 after three years of effort, three months after the initial Roman victory over the Vandals.<sup>63</sup> Following the completion of a new first-year law textbook, together with a wholly revised law syllabus, Justinian could truly boast that the whole body of the law had been reformed.<sup>64</sup>

In the *Digest* the radical implications of Justinian's legal program had their greatest impact. The compilation was an attempt to preserve

a body of legal literature that had fallen out of circulation and was in danger of being lost.<sup>65</sup> It was not, however, a strictly historical enterprise. Only relevant and authoritative texts were to be included, once they had been altered, expanded, and rewritten to convey best the point being communicated.<sup>66</sup> No ambiguities, divergent opinions, or contradictions were to be introduced into the work, which was to be distinguished by total consistency and concord.<sup>67</sup> The variety of the opinions of the classical jurists was not to be preserved. To the contrary, this multiplicity of voices, we are led to believe, had plagued Roman jurisprudence from the very foundation of the city. The confusion and incomprehensibility of the laws throughout 1,400 years of Roman civilization is a recurring theme.<sup>68</sup> The *Digest*, in contrast, was intended to stand as “the temple of Roman justice,” enclosing the body of the law, which was cleansed of its blemishes and rendered a self-sufficient whole.<sup>69</sup> Reference to the original texts in legal proceedings was forbidden,<sup>70</sup> nor were any commentaries on the *Digest* itself to be written, lest they lead to further confusion.<sup>71</sup>

Henceforth the authority of the citations preserved in the *Digest* would be attributable not to the jurists, but to the emperor. The compilation was to be regarded “as if uttered by our own inspired mouth.”<sup>72</sup> Just as the legal capacity and power of the Roman people had been conferred upon the emperors by the *lex regia*, it was alleged, so too had the legal basis of the juristic writings originated in imperial authorization.<sup>73</sup> Once the private character of the juristic writings had been dispensed with, the emperor became the sole author of the law, its origin as well as its guarantor.

Justinian insisted, nevertheless, upon attributing the citations in the *Digest* to their original sources, substantiating his claim for the restoration of the ancient law and providing assurance of development within tradition rather than in spite of it.<sup>74</sup> Above all, the work was to be credited to God, under whose authority the emperor governed the empire, whose providence inspired the project and brought it to fruition.<sup>75</sup> The completion of the *Digest* testified to God’s collaboration in the project and to the auspiciousness of the reign.<sup>76</sup> The emperor’s authority, which was both Roman and Christian, delegated by the Roman people and by God,<sup>77</sup> assimilated to itself all other sources of legitimacy. In his totalizing ambition Justinian sought, moreover, to assert his supremacy over history, inasmuch as his attempts to discover historical precedents for his initiatives and to reconcile innovation with tradition constituted an authorized version of the past.<sup>78</sup>



Even as he celebrated his achievement in the *Digest*, however, the emperor stressed the inevitability of change:

Now divine things are entirely perfect, but the character of human law is always to hasten onward, and there is nothing in it which can abide forever, since nature is eager to produce new forms. We therefore do not cease to expect that matters will henceforth arise that are not secured in legal bonds. Consequently, if any such case arises, let a remedy be sought from the emperor, since in truth God has set the imperial function over human affairs so that it should be able, whenever a new contingency arises, to correct and settle it and to subject it to suitable procedures and regulations.<sup>79</sup>

Change itself had to be conceptualized as a historical process, justifying and perpetuating a program of imperial activism. Justinian broke new ground in Roman legislative philosophy by pointing to nature as one source of unpredictable and disruptive change, giving rise to situations unforeseen in earlier legislation.<sup>80</sup> Government under such conditions is a process of continual maintenance and refurbishment; law, like medicine,<sup>81</sup> is an evolving body of precedent confirmed by practice. Holding it all together is the emperor, whom God has appointed to restore equilibrium through the law.

Consistent with his conception of his imperial role, Justinian portrayed himself as a paragon of activity. The *Novels* advertise his sleeplessness and burden of cares, his constant concern, and his foresight in providing for the needs of his subjects, improving their welfare, and enhancing the glory of the government.<sup>82</sup> The impression is of ceaseless, tireless, relentless scrutiny. The implied rebuke to Justinian's imperial predecessors for their insufficiencies is often made explicit.<sup>83</sup> The legal reform project had reinstated the already perishing and diminished respect accorded to legislation;<sup>84</sup> the conquests were recovering the ancient Roman birthright;<sup>85</sup> further reforms would more fully realize the benefits of good government.

Justinian's legal reforms attest to his conception of the universal competence and all-encompassing authority of the imperial office. To govern lawfully, the emperor first claimed the law as an extension of his own indubitable will. As we have seen, figures such as John the Lydian,

for whom civil and administrative procedure was the focus of an ideological investment in cultural and political continuity, had to persuade themselves that Justinian's interventions in these areas betokened a return to old values. Justinian's own perspective was of course much larger. He viewed the law as the crystallization of his own unstinting efforts to preserve the state. The legitimizing power of tradition served as a means to that end.<sup>86</sup> The Roman constitution had been founded by God, as he saw it, and entrusted to the emperor for the care of all men.<sup>87</sup> The sole hope of survival depended upon divine favor.<sup>88</sup> His sense of election placed him at the center of an eschatological drama in which the fate of the world was his special responsibility. Consequently, no source of authority was reserved from his purview. Just as Justinian had assimilated the individual *loci* of Roman imperial and juristic law to himself, he declared that the canons of the four Christian ecumenical councils had the force of imperial *constitutiones* and subsequently observed, "If, for the welfare of our subjects, we have keenly enforced the civil laws, with whose execution God . . . has entrusted us, how much more keenly shall we look to the canons and divine laws established for the salvation of our souls?"<sup>89</sup> Though he was capable of describing himself as the most humble of God's servants,<sup>90</sup> he nonetheless called himself the father of his people and in that capacity presumed to associate himself with the Almighty directly.<sup>91</sup>

The extreme against which all of Justinian's claims to authority, secular and Christian, must be evaluated, finally, is his declaration of himself in a *constitutio* of December 537 as *nomos empsukhos*, the "incarnate law," to whom God has subjected the laws.<sup>92</sup> Such a claim, though latent in the direction to which imperial rule had run for centuries, had never been made by an emperor before, and Justinian did not repeat it.<sup>93</sup> It appears in a *Novel* setting out reforms in the consulship, the ultimate decline of which so disturbed John the Lydian.<sup>94</sup> Justinian sought to curb the enormous costs of the celebrations marking the consul's accession, which had caused candidates to shun the honor. Nonetheless, he exempted himself from his own sumptuary regulations, inasmuch as the emperor remained above the law. He thus reserved for the imperial office the right to assume the honor on a lavish scale, on the grounds that the consulship belongs to the emperor in perpetuity. John advanced this very claim as proof that the state preserved some vestige of Roman liberty under the rule of law. Could he have been unaware that Justinian's own words hinted at precisely the opposite conclusion?

## EPILOGUE

In earlier times those who attended upon the emperor used to call him “emperor” (*basileus*) and his consort “empress” (*basilis*), and to address each of the other magistrates in accordance with his present rank; but if anyone upon venturing into dialogue with either [Justinian or Theodora] should mention the words *basileus* or *basilis* and fail to call them “master” (*despotes*) and “mistress” (*despoina*), or should attempt to refer to any of the magistrates as other than “slaves” (*douloi*), such a person would be considered empty-headed and too free of tongue, and as one who had erred most grievously and affronted those whom he certainly ought not to have affronted he would withdraw from the place.

— Procopius, *Secret History*, 30.25–26

In his left hand he holds a globe, by which the sculptor signifies that all the land and sea have been subjected to him, yet he has neither sword nor spear nor any other weapon, but a cross stands upon the globe which he carries, through which alone he has obtained his empire and victory in war.

— Procopius, *Buildings*, 1.2.11

These passages, the first from Procopius’s *Secret History*, the second from the *Buildings*, appraise the character of Justinian’s tenure in the imperial office from dramatically opposed points of view. The former comments scathingly about court etiquette and relations between the imperial couple and their highest officials.<sup>95</sup> The latter respectfully contemplates the emperor as represented in a monumental equestrian statue in the heart of Constantinople.<sup>96</sup> In the former case Procopius affects to be an insider, one who knows well the dangers of an unbridled tongue; in the latter he speaks publicly as a grateful subject.<sup>97</sup>

The differing judgments Procopius presents in the two works are aptly illustrated by his comments on Justinian’s handling of the law. The *Buildings*, like John the Lydian’s *On Offices*, dutifully recapitulates the regime’s own rationale for legal reform: “Finding the laws obscure because they had become more numerous than necessary, and in manifest confusion because they disagreed with each other, [Justinian] preserved them by cleansing them of the mass of their pedantry and controlling their discrepancies most rigorously” (*Buildings*, 1.1.10). The *Secret History*, in contrast, excoriates the emperor for the confusion his misrule has introduced into the law.<sup>98</sup>

The *Buildings* lauds the emperor's policy and discredits tradition, while the *Secret History* paints the emperor as the malign wrecker of established institutions. Panegyric and invective assess the same record of accomplishment from diametrically opposed points of view. What is clear in both cases is that a former dispensation has yielded to a new way of doing things, which was to be Justinian's way. The emperor's impatience with the old order shines through in either instance. In spite of the differing perspectives Procopius brings to the two works, together they evince a remarkable unanimity about the autocratic character of Justinian's rule.

The differences between the two works must therefore reflect the different ideological stances apparent in each. The *Secret History*'s "insider" voices prejudices and insecurities about Justinian that are also apparent in John the Lydian's *On Offices*, but whereas John's ostensible purpose is to insulate Justinian from charges of tyranny, Procopius dwells only upon the invidious connotations of the title *despotes* without seeking an ameliorating interpretation. The Justinian of the *Secret History*, whom Procopius compares to the paradigmatic bad emperor Domitian,<sup>99</sup> conforms to classic Greco-Roman depictions of the tyrant, the enemy of civil order and the rule of law. In the *Buildings*, the grateful subject gazing at the emperor's statue dwells only upon the providential nature of his election, his indispensable role as the agent of victory, and the extent to which his universal, benevolent, and paternalistic rule mirrors that of the Christian God in the heavens.

Just as Justinian's determination to make the law his own reveals his character and his conception of the imperial office, so too the concerns his subjects express about the standing of the law reflect their own priorities. The fact that Justinian embraced the law as a means to express his vision of himself and to offer a philosophy of legislative change attests to the continuing value of law as the underpinning of civil life and as a vehicle of political legitimization. By identifying himself so closely with the law, however, Justinian threatened to dispense with the Roman traditionalist's last consolation in the face of imperial despotism, that the laws were good even if their human executors were wicked. Whereas nominal subjection to the law denoted freedom and recalled some vestige of republican norms, the emperor's gestures toward making himself consubstantial with the law threatened to erode a living link to the past and to lay bare the autocratic reality of the imperial office.

Those who embraced Justinian's vision accepted not only the authority he wielded over them but also the unique nature of his election and their own direct relationship to him. Even for John the Lydian, the

possibility that the emperor truly was motivated by paternal benevolence offered hope for a better future. At the same time, Justinian's determination to impose his vision not only upon the law but also upon the beliefs and actions of his subjects through the law was alienating even to persons whose investment in the Roman character of their civilization was tenuous, but who were nonetheless determined to live by their own lights. In spite of the artfulness with which Justinian engaged and exploited the values of his subjects, his attempt to forge a consensus about the nature and purposes of his rule and thus to unify his empire both geopolitically and ideologically was at best an imperfect success.

## NOTES

I would like to acknowledge the comments and suggestions of Cyril Mango, John Matthews, and James Howard-Johnston; Peter Brown, Michael Maas, and Josh Ober; the members of the Legal History seminar, organized by Bill Nelson, at New York University School of Law (1997–1998); Miriam Aukerman; Caroline Humfress and Peter Garnsey; and Beatrice Rehl at Cambridge University Press.

- 1 Translations of Procopius are based on that of H. B. Dewing, with modifications.
- 2 Procopius makes substantially this same charge, in his own voice, in his *Anecdota* or *Secret History*, 6.21; see also 6.23–25; 7.1, 6–7, 31–32, 39–41. Comparable charges had been lodged against Constantine by the emperor Julian (Ammianus Marcellinus, *Res gestae*, 21.10.8).
- 3 The idea that an earthly monarchy ought to imitate a heavenly one is by no means exclusively, or originally, Christian. See D. M. Nicol, "Byzantine Political Thought," in J. H. Burns, ed., *The Cambridge History of Medieval Political Thought* (Cambridge, 1988), 51; on pre-Christian concepts of monarchy, E. R. Goodenough, "The Political Theory of Hellenistic Kingship," *Yale Classical Studies* 1 (1928): 55–102, remains fundamental.
- 4 *Wars*, 4.9. See, further, Michael McCormick, *Eternal Victory: Triumphal Rulership in Late Antiquity, Byzantium, and the Early Medieval West* (Cambridge, 1986), 124–129; and Sabine MacCormack, *Art and Ceremony in Late Antiquity* (Berkeley, Calif., 1981), 73–76.
- 5 See the examples documented in Michael Maas, "Roman History and Christian Ideology in Justinianic Reform Legislation," *DOP* 40 (1986): 17–31.
- 6 On other such allusions in Procopius, see Charles F. Pazdernik, "Procopius and Thucydides on the Labors of War: Belisarius and Brasidas in the Field," *TAPA* 130 (2000): 149–187; and now Anthony Kaldellis, *Procopius of Caesarea: Tyranny, History, and Philosophy at the end of Antiquity* (Philadelphia, 2004).
- 7 Thucydides, *History of the Peloponnesian War*, 1.70.2.
- 8 J. E. Lendon, *Empire of Honour: The Art of Government in the Roman World* (Oxford, 1997), 1–29, esp. 13ff.
- 9 See the essays in Walter Pohl, ed., *Kingdoms of the Empire: The Integration of Barbarians in Late Antiquity* (Leiden, 1997). For a summary of political and diplomatic history from 476–568, see Patrick Amory, *People and Identity in Ostrogothic Italy, 489–554* (Cambridge, 1997), 6–12, 43–59; and Tony Honoré, *Tribonian* (London, 1978), 18–19.

- 10 See Peter Stein, *Roman Law in European History* (Cambridge, 1999); Olivia F. Robinson, T. D. Fergus, and William M. Gordon, *European Legal History: Sources and Institutions*, 3rd ed. (London, 2000); Paul Vinogradoff, *Roman Law in Mediaeval Europe* (1909; reprint, Holmes Beach, Fla., 1994); and Franz Wieacker, *A History of Private Law in Europe*, trans. Tony Weir (Oxford, 1995).
- 11 I use the following conventions to refer to the *Corpus iuris civilis*: the *Codex Iustinianus* is referred to simply as the *Codex* (CJ in citations); the *Digesta* as the *Digest*; the *Institutiones* as the *Institutes* (Inst.); and the *Novellae* as the *Novels* (Nov.). In citations, “pt.” designates the *principium*, or beginning, of each section or fragment of the material cited; similarly, “ep.” denotes the *epilogus*. Where an individual imperial legislative enactment (*constitutio*, plural *constitutiones*) is referred to, the Latin term is used for the sake of clarity (*Const.* in references, together with the opening words of the document; e.g., *Const. Tanta*). Important pre-Justinianic legal sources include Gaius’s *Institutes* (Gaius) and the *Codex Theodosianus* (CTh). Especially helpful on the conventions pertaining to Roman legal sources is A. Arthur Schiller, *Roman Law: Mechanisms of Development* (New York, 1978).
- 12 On political and military history, see J. B. Bury, *History of the Later Roman Empire from the Death of Theodosius I to the Death of Justinian*, vol. 2 (Oxford, 1923); Ernst Stein, *Histoire du Bas-Empire* (Paris, 1949); and J. A. S. Evans, *The Age of Justinian: The Circumstances of Imperial Power* (London, 1996). On administrative history, see A. H. M. Jones, *The Later Roman Empire, 284–602* (Oxford, 1964); on the legal history of the reign, see Honoré, *Tribonian* (London, 1978).
- 13 Sources such as John the Lydian impute to Diocletian the introduction of “Persian” court ceremonial (John Matthews, *The Roman Empire of Ammianus* [London, 1989], 231–252, esp. 244–249). The newness of these developments may have been overstated: see Andreas Alföldi, *Die monarchische Repräsentation im römischen Kaiserreiche* (Darmstadt, 1970).
- 14 See, further, D. Hagedorn and K. A. Worp, “Von ΚΥΡΙΟΣ zu ΔΕΣΠΟΤΗΣ: Eine Bemerkung zur Kaisertitulatur im 3./4. Jhdt.,” *Zeitschrift für Papyrologie und Epigraphik* 39 (1980): 165–177; Gerhard Rösch, *ONOMA ΒΑΣΙΛΕΙΑΣ. Studien zum offiziellen Gebrauch der Kaisertitel in spätantiker und frühbizantinischer Zeit* (Vienna, 1978).
- 15 The Latin word *ius* (plural *iures*) signifies various concepts covered by the word “law” in English; see Barry Nicholas, *An Introduction to Roman Law* (Oxford, 1962), 14ff.
- 16 P. A. Brunt, “Lex de imperio Vespasiani,” *JRS* 67 (1977): 109.
- 17 Compare M. Morford, “How Tacitus Defined Liberty,” *ANRW* II, 33.5 (1991): 3441: “There is an immense difference between the appearance of observing the laws . . . and the reality of autocratic behavior.” See also Andrew Wallace-Hadrill, “Civilis Princeps: Between Citizen and King,” *JRS* 72 (1982): 32–48, emphasizing imperial ritual as a serious means of articulating power.
- 18 *Libertas* in its political sense signifies primarily the absence of arbitrary or despotic uses of power as experienced by persons of free status; it also characterizes a civil order in which such persons are protected from such treatment. See P. A. Brunt, “*Libertas* in the Republic,” in P. A. Brunt, *The Fall of the Roman Republic and Related Essays* (Oxford, 1988), 281–350; Jochen Bleicken, *Staatliche Ordnung und Freiheit in der römischen Republik* (Kallmünz, 1972); Chaim Wirszubski, *Libertas as a Political Idea at Rome during the Late Republic and Early Principate* (Cambridge, 1950); and

- Matthew B. Roller, *Constructing Autocracy: Aristocrats and Emperors in Julio-Claudian Rome* (Princeton, N.J., 2001), 214–232.
- 19 Livy, *Ab urbe condita*, 2.1.1.
- 20 Augustus, *Res gestae*, 5ff.; see also Brunt, “Lex de imperio Vesp.,” 114ff.; Ronald Syme, *The Roman Revolution* (Oxford, 1939).
- 21 “Quod principi placuit legis habet vigorem” (*Digest*, 1.4.1 pr. = *Inst.* 1.2.6), attributed to Ulpian. See also *Digest* 1.4.1.1; *Const. Deo auctore*, 7 (= *CJ*, 1.17.1.7); and Gaius, *Institutiones*, 1.5. Brunt, “Lex de imperio Vespasiani,” 110–113, examines the juristic background. See also W. W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, 3rd ed., rev. Peter Stein (Cambridge, 1963), 6–20, esp. 15ff.; and Berthold Rubin, *Das Zeitalter Iustinians*, vol. 1 (Berlin, 1960), 125–127.
- 22 Brunt, “Lex de imperio Vespasiani,” 108ff., suggests the emperor’s total dispensation from the laws as early as Claudius and Nero; imperial *constitutiones* were acknowledged to be *leges* only later, although they had assumed such de facto authority in the second century (111ff.). See also Buckland, *Text-Book*, 3.
- 23 See Alan Watson, *The Spirit of Roman Law* (Athens, Ga., 1995), esp. 124ff., 146–157, which emphasizes that the Roman approach was atheoretical; the jurists were instead “very much tethered to the legal tradition that they themselves created” (126).
- 24 See Fergus Millar, *The Emperor in the Roman World* (Ithaca, N.Y., 1977), 94–97.
- 25 *CTh*, 1.4.3 (Nov. 7, 426), summarized in Buckland, *Text-Book*, 33ff. It had been incorporated in the first version of *CJ*; see the discussion in Honoré, *Tribonian*, 51ff., and more recently Jill Harries, *Law and Empire in Late Antiquity* (Cambridge, 1999), 33ff., and John Matthews, *Laying Down the Law: A Study of the Theodosian Code* (New Haven, Conn., 2000), 24–26. The compilers of the *Digest* were instructed to choose the more correct view without regard to the identity of the author (*Const. Deo auctore*, 5).
- 26 *Nov.*, 114 pr. (Nov. 1, 541).
- 27 *Nov.*, 54 pr. – 1; see also *CJ*, 11.48.24. See Jones, *LRE* vol. 2, 795–803, esp. 801ff. and n. 73. Further refinements to the policy were required in subsequent years.
- 28 On Justinian’s purges, see (with caution) Pierre Chuvin, *A Chronicle of the Last Pagans*, trans. B. A. Archer (Cambridge, Mass., 1990); Polymnia Athanassiadi, “Persecution and Response in Late Paganism: The Evidence of Damascius,” *JHS* 113 (1993): 1–29; Evans, *Circumstances*, 65–71; see also n. 37 below. On Justinian’s religious policy, see Francis Dvornik, *Early Christian and Byzantine Political Philosophy* (Washington, D.C., 1966), 815–839; W. H. C. Frend, “Old and New Rome in the Age of Justinian,” in *Relations between East and West in the Middle Ages*, ed. Derek Baker (Edinburgh, 1973), 11–28.
- 29 “It is important to appreciate that . . . Justinian is conscious of living in the age of Justinian” (Honoré, *Tribonian*, 16).
- 30 See n. 13.
- 31 Ammianus, *Res gestae*, 14.6.5. My translations of Ammianus are based upon that of J. C. Rolfe, with modifications. See Matthews, *Ammianus*, 250ff.; and John Matthews, “Ammianus and the Eternity of Rome,” in *The Inheritance of Historiography, 350–900*, ed. Christopher Holdsworth and T. P. Wiseman (Exeter, 1986), 17–29. Honoré claims, on the basis of this passage (*Res gestae*, 14.6.5), that Ammianus was “the ancient historian who best understood the place of law in the Roman polity” (*Tribonian*, 33ff.).



- 32 Morford ("Tacitus," 3434ff.) attributes a compatible view to Tacitus in the principate. See also Wirszubski, *Libertas*, 163.
- 33 On Zosimus's view of Roman decline, see Walter A. Goffart, "Zosimus, the First Historian of Rome's Fall," *American Historical Review* 76 (1971): 412–441; Walter Emil Kaegi Jr., *Byzantium and the Decline of Rome* (Princeton, NJ, 1968), 114ff.; Michael Maas, *John Lydus and the Roman Past: Antiquarianism and Politics in the Age of Justinian* (New York, 1992), 48–52; also Brian Croke, "A.D. 476: The Manufacture of a Turning Point," *Chiron* 13 (1983): 81–119.
- 34 See Amory, *People and Identity*, 135–148; Averil Cameron, *The Mediterranean World in Late Antiquity, A.D. 395–600* (New York, 1993), 104–127; Honoré, *Tribonian*, 14–20; McCormick, *Victory*, 67ff.
- 35 The expression is Honoré's (*Tribonian*, 19).
- 36 The idea that Justinian sponsored a "classical revival" in literature and the arts has been largely discredited. See Averil Cameron, *Procopius and the Sixth Century* (London, 1985), 19–23.
- 37 See Maas, *John Lydus*, 18–23, 70–82. On Phocas (*PLRE* 2, s.v. Phocas 5), an admired patrician persecuted for paganism, see *On Offices*, 3.72ff.; *Wars*, 1.24.18; *Secret History*, 21.6.
- 38 See Maas, *John Lydus*, especially 83–96 on *On Offices*.
- 39 Compare *On Offices*, 2.5: the passage of time corrupts all things given to birth and decay, "but the emperor's excellence is such that whatever has perished in the past awaits regeneration through him." My translations are based, with modifications, upon that of Anastasius C. Bandy.
- 40 See also *On Offices*, 2.28: Justinian was eager to contribute to the common good and to "recall the entire dignity of the ancient form."
- 41 Anonymous, *Peri politikēs epistēmēs* (*On Political Science*), 5.4. On its authorship, see Ernest Barker, *Social and Political Thought in Byzantium* (Oxford, 1957), 63–64; and C. M. Mazzucchi, ed., *Menae patricii cum Thoma referendario de scientia politica dialogus quae exstant in codice Vaticano palimpsesto* (Milan, 1982), xiii ff.
- 42 *Peri politikēs epistēmēs*, 5.7. Note also the Platonic color in Agapetus, *Ekthesis*, 3, 4.
- 43 See also Patrick Henry, "A Mirror for Justinian: The *Ekthesis* of Agapetus Diaconus," *Greek, Roman, and Byzantine Studies* 8 (1967): 281–308; Barker, *Social and Political Thought*, 63–68; Dvornik, *Early Christian and Byzantine Political Philosophy*, 706–711.
- 44 *On Offices*, 2.1ff. identifies both Marius and Sulla as tyrants; Pompey "emulated" Sulla (2.1), whereas Caesar "embraced the opposite faction and revered Marius and was captivated by his ways." The two men fought each other "as if they were heirs to the tyrants"; Caesar, victorious, declined the title of king (*basileús*, 2.2) and refused a crown. Instead he insisted upon holding a range of titles, symbolized by the triumphal garb he adopted, which John believes (mistakenly) to be the archetype of the vestments worn by Justinian to celebrate victory over the Vandals (*On Offices*, 2.2); see McCormick, *Victory*, 66. Octavian/Augustus did not at first make use of Caesar's regalia (*On Offices*, 2.3); following his defeat of Antony, however, he adopted all of Caesar's emblems. The implication that he thereby replicated Caesar's imperious demeanor as well as his prerogatives is alleviated by the remark that follows: "Nevertheless, he treated his subjects mildly."
- 45 For the references to Augustus (see also John the Lydian, *De mensibus* [*On the Months*], 4.112) and Tiberius, compare Suetonius, *Divus Augustus*, 53, *Tiberius*, 27.
- 46 See n. 14.



- 47 Roller, *Constructing Autocracy*, 213–288 (without reference to John the Lydian). Such discourse has “a long history in Greco-Roman political theory” (236, n. 39).
- 48 *On Offices*, 2.8; see also, 1.29–33.
- 49 *Secret History*, 26.12–15. The ordinary consulship had fallen vacant in the West after 534 and in the East in 536 and 537, upon which Justinian unsuccessfully attempted to reform it (*Nov.*, 105; see also n. 92). It was last held by a private individual in 541. See Jones, *LRE* vol. 1, 532ff.; Alan Cameron and Diane Schauer, “The Last Consul: Basilius and His Diptych,” *JRS* 72 (1982): 126–145.
- 50 *On Offices*, 2.19, with reference to Domitian.
- 51 Literally, “he becomes one in vesture.”
- 52 *On Offices*, 2.7. On this image, see Maas, *John Lydus*, 5–9.
- 53 Honoré suggests (*Tribonian*, 51) that the success of the legal program spurred the reconquest policy. After the Vandal defeat, the parallel between military and legislative success became explicit: *Const. Tanta/Dedoken*, pr., 23 (Dec. 16, 533).
- 54 *Const. Haec* (Feb. 13, 528) authorized a new collection of imperial *constitutiones* to supersede earlier compilations and incorporate all subsequent legislation. See Chap. 7 herein, Caroline Humfress, “Law and Legal Practice in the Age of Justinian.”
- 55 *Const. Summa* (Apr. 7, 529), pr.: “The safety of the state proceeds out of two things, the force of arms and the observance of laws; for this reason, the fortunate race of the Romans, having established their own power, achieved precedence and control over all nations in former times, and will do so forever, if God is propitious.” The notion is present in most of the prefaces of the *constitutiones* enacting the various elements of Justinian’s program. Nor did it originate with him: Honoré collects earlier instances (*Tribonian*, 35, n. 373). Translations of these *constitutiones* and the *Digest* are based upon those by Alan Watson et al.
- 56 “Although we were formerly occupied with the concerns of the entire government, and could take thought of nothing of lesser importance, now [inasmuch as the external security of the state has been firmly restored] . . . private concerns addressed unceasingly by our subjects have also reached us, to each of which we shall give an appropriate form” (*Nov.*, 1, pr. [Jan. 1, 535]).
- 57 *Const. Haec*, 2; compare *Const. Summa*, 1. In contrast, the compilers of the Theodosian Code had included old rulings of historical and academic interest (*CTh*, 1.1.5 [Mar. 26, 429]). The second law commission of Theodosius II, which compiled the code, was nevertheless instructed (*CTh*, 1.1.6 [Dec. 20, 435]) to make alterations and emendations for clarity and brevity. See Matthews, *Laying Down the Law*, 55ff.
- 58 *Const. Cordi* (Nov. 16, 534), authorizing the second edition of the *Codex*, reports Justinian’s instructions to the compilers, where there was any need of correction, “to act without hesitation, but confident, rather, in our authority” (3).
- 59 *Const. Haec*, pr. The idea is recapitulated in sec. 3; compare *Const. Summa*, 1.
- 60 *Const. Cordi*. This *constitutio* foresees (4) the necessity of further revisions to the *Codex*.
- 61 On the collection of *constitutiones* referred to as the Fifty Decisions (*Const. Cordi*, 1), see Humfress, Chap. 7 herein.
- 62 Authorized by *Const. Deo auctore* (Dec. 15, 530). On Tribonian’s role see Honoré, *Tribonian*, 48–51, 139–141. A more ambitious compilation, combining juristic writings with the imperial codes, was contemplated by Theodosius II but not carried out: *CTh*, 1.1.5; compare 1.1.6.

- 63 *Const. Tanta/Dedoken* (Dec. 16, 533). On the desperate and miraculous character of the project, see *Const. Tanta/Dedoken*, pr., 12; *Const. Deo auctore*, 2; *Const. Imperatoriam*, 2.
- 64 Justinian's *Institutes* were promulgated in *Const. Imperatoriam* (Nov. 21, 533), the law syllabus in *Const. Omnem* (Dec. 16, 533): "That the whole body of law of our state has now been reformed and arranged . . . who knows this better than you do?" (*Const. Omnem*, pr., addressed to the members of the law commission).
- 65 Tribonian claims that most judges and lawyers, and even law professors, had so few reference materials at their disposal that the condensed but much larger selection of citations in the *Digest* actually seemed larger than the corpus from which they were excerpted: *Const. Tanta/Dedoken*, 17; compare *Const. Omnem*, 1.
- 66 *Const. Deo auctore*, 7ff.; *Const. Tanta/Dedoken*, 17.
- 67 *Const. Deo auctore*, 8. Following the completion of the *Digest*, Tribonian was prepared to concede some redundancy and omission (*Const. Tanta/Dedoken*, 13–16). He would not, however, brook the possibility of contradiction.
- 68 *Const. Deo auctore*, 1, 5; *Const. Imperatoriam*, 2; *Const. Tanta/Dedoken*, pr., where the image of "Roman jurisprudence . . . wavering this way and that in strife within itself" is especially vivid. John the Lydian recapitulates the idea (*On Offices*, 3.1). See the preceding section of this chapter.
- 69 *Hoc iustitiae Romanae templum* (*Const. Tanta*, 20). Integrity and sufficiency of the *Digest*: *Const. Deo auctore*, 2ff., esp. 5; *Const. Tanta/Dedoken*, pr.
- 70 *Const. Deo auctore*, 7; *Const. Tanta/Dedoken*, 19.
- 71 *Const. Deo auctore*, 12; *Const. Tanta/Dedoken*, 21. See Fritz Pringsheim, "Justinian's Prohibition of Commentaries to the *Digest*," *RIDA*, 2nd ser., 5 (1950): 383–415.
- 72 *Const. Deo auctore*, 6. The *Institutes* was also promulgated as an imperial *constitutio* and therefore had the force of law.
- 73 *Const. Deo auctore*, 7. Tribonian had also argued that the altered excerpts collected in the *Digest* ought rightly to be ascribed to the emperor, because "one who corrects something that is not done accurately deserves more praise than the original author" (6). See, further, Humfress, Chap. 7 herein. On the *lex regia*, see the second section of this chapter.
- 74 *Const. Tanta*, 10: "Now we had such great reverence for antiquity that by no means did we suffer these men to consign to oblivion the names of those learned in the law." Nevertheless, the *constitutio* continues, whatever is inappropriate in the citations has been emended.
- 75 *Const. Deo auctore*, pr.; *Const. Tanta/Dedoken*, pr. On the origins of Christian theories of empire, see Norman H. Baynes, "Eusebius and the Christian Empire," *Annuaire de l'Institut de Philologie et d'Histoire Orientale* 2 (1934): 13–18; reprinted in Norman H. Baynes, *Byzantine Studies and Other Essays* (London, 1960), 168–172; Wilhelm Ensslin, "Gottkaiser und Kaiser von Gottes Gnaden," *Sitzungsberichte der Bayerischen Akademie der Wissenschaften zu München, phil.-hist. Abt.* 6 (1943): 1–133; F. Edward Cranz, "Kingdom and Polity in Eusebius of Caesarea," *Harvard Theological Review* 45 (1952): 47–66; Dvornik, *Early Christian and Byzantine Political Philosophy*, 611–626.
- 76 *Const. Deo auctore*, 14: "in order that the complete work, divided into fifty books, may be offered to us in complete and eternal memory of the undertaking, and as a proof of the providence of Almighty God and for the glory of our rule and of your service."

- 77 Compare the address Justin I delivered upon his accession in July of 518: “Having attained the throne by the will of Almighty God and by your unanimous choice, we call upon celestial providence.” All cried: ‘Well-being to the world. As you have lived, so rule. Well-being to the state. Heavenly king (*basileús*), preserve the earthly one’” (*De ceremoniis*, 1.93, trans. A. A. Vasiliev, *Justin the First: An Introduction to the Epoch of Justinian the Great* [Cambridge, Mass., 1950], 68–82); on the attribution of this material to a contemporary sixth-century source, see J. B. Bury, “The Ceremonial Book of Constantine Porphyrogenetos,” *English Historical Review* 22 (1907): 209–227.
- 78 Tribonian’s historical interests are not reflected in other quaestors’ legislation (Honoré, *Tribonian*, 223–242, 251–254; Tony Honoré, “Some Constitutions Composed by Justinian,” *JRS* 65 [1975]: 107–123, esp. 123). See also Maas, “Reform Legislation,” 27ff.
- 79 *Const. Tanta*, 18. Perhaps in anticipation of objections, the legislator hastens to add: “We are not the first to say this. It is of ancient descent” (*Const. Tanta*, 18). Appeal is made to precedents from the jurist Julian (compare *Digest*, 1.3.10–12) and the emperor Hadrian.
- 80 See Giuliana Lanata, *Legislazione e natura nelle novelle giustiniane* (Naples, 1984), esp. 165–187; also Maas, “Reform Legislation,” 29–31; W. S. Thurman, “A Juridical and Theological Concept of Nature in the Sixth Century AD,” *Byzantinoslavica* 32 (1971): 77–85; Honoré, *Tribonian*, 27 nn. 298–299; and Humfress in this volume.
- 81 For the comparison, see Honoré, *Tribonian*, 27ff., 254.
- 82 Honoré, *Tribonian*, 22.
- 83 *Nov.*, 30.11.2 (Mar. 18, 536): “We have good hope that God will grant us to rule over the rest of what, subject to the ancient Romans to the limits of both seas, they later lost by their easygoing ways.” See also *Const. Tanta/Dedoken*, 19; *CJ*, 1.27.1.6 (534); *Nov.*, 8.11 (Apr. 15, 535); 28.4.2 (July 16, 535); 40 ep. (May 18, 536); 80.10 pr. (Mar. 10, 539).
- 84 *Nov.*, 17, introductory matter (Apr. 16, 535); compare 2 pr. (Mar. 16, 535).
- 85 *Nov.*, 30.11.2. (n. 83). Compare 1 pr.; 8.10.2 (Apr. 15, 535); 69.1 pr., ep. (June 1, 538, remarking on the extent of the restored empire).
- 86 See Maas, *John Lydus*, 38–48.
- 87 *Nov.*, 18 pr. (Mar. 1, 536); 133 pr. (Mar. 16, 539). Compare 77 pr. (uncertain); 59 pr. (Nov. 3, 537); 69 ep. (June 1, 538); 73 pr. 1 (June 4, 538); 81 pr. (Mar. 18, 539); 86 pr. (Apr. 17, 539).
- 88 *Nov.*, 109 pr. (May 7, 541). See also *Const. Deo auctore*, pr.; *Nov.*, 116 pr. (Apr. 9, 542); 135 pr. (uncertain); 141 pr. (Mar. 15, 559).
- 89 *Nov.*, 131.1 (Mar. 18, 545); 137 pr. (Mar. 26 565). Compare 6 pr. (Mar. 16, 535). See, further, Humfress, Chap. 7 herein.
- 90 For example, *CJ*, 1.27.1.5: “*per me, ultimum servum suum*” (“*through me, [God’s] most humble servant*”).
- 91 *Nov.*, 98.2.2 (Dec. 16, 539): “He who is, after God, the common father of all – for thus do we describe the holder of the imperial office – preserves this through the law.”
- 92 *Nov.*, 105.2.4 (Dec. 28, 537): “But from everything which has been set down by us let the *tukhe* of the emperor be exempted, to which indeed God has subjected the laws, having bestowed it upon mankind as the incarnate law.” Reference to the emperor’s *tukhe* (*tyche* “fortune”) is perhaps intended to mitigate some of the

- implications of the remark. On the history of this phrase, see Goodenough, "The Political Theory of Hellenistic Kingship"; Ensslin, "Gottkaiser und Kaiser von Gottes Gnaden," esp. 115ff; Artur Steinwenter, "Nomos Empsychos. Zur Geschichte einer politischen Theorie," *Anzeiger der Akademie der Wissenschaften, Wien, phil.-hist. Klasse* 83 (1946): 250–268; Herbert Hunger, "Kaiser Justinian I (527–565)," *Anzeiger der österreichischen Akademie der Wissenschaften, Wien, phil.-hist. Klasse* 102 (1965): 354ff.; G. J. D. Aalders, "ΝΟΜΟΣ ΕΜΨΥΧΟΣ," in *Politeia und Res Publica*, ed. Peter Steinmetz, Festschrift R. Starks (Wiesbaden, 1969), 315–329; Dvornik, *Early Christian and Byzantine Political Philosophy*, 716–722.
- 93 The phrase had been applied to an emperor before, by Themistius to Theodosius I (Or., 19.228a4; see also 5.64b).
- 94 See the third section of this chapter and n. 49. Justinian may have been concerned about the opportunity the consulship offered for courting public favor. See Roger S. Bagnall, Alan Cameron, Seth R. Schwartz, and Klaas A. Worp, *Consuls of the Later Roman Empire* (Atlanta, Ga., 1987), 7–12.
- 95 On Theodora and the political role Procopius and other observers assign to her, see Charles F. Pazdernik, "'Our Most Pious Consort Given Us by God': Dissident Reactions to the Partnership of Justinian and Theodora, AD 525–48," *Classical Antiquity* 13 (1994): 256–281. I plan to examine Procopius's claim that imperial officials were obliged to identify themselves as *doúloi* more closely in a separate study.
- 96 *Buildings*, 1.2.1–12. See Glanville Downey, "Justinian as Achilles," *Transactions and Proceedings of the American Philological Association* 71 (1940): 68–78; Cyril Mango, *The Brazen House: A Study of the Vestibule of the Imperial Palace of Constantinople* (Copenhagen, 1959), 174ff.; Gervase Mathew, *Byzantine Aesthetics* (London, 1963), 81; McCormack, *Art and Ceremony*, 77ff.; and McCormick, *Victory*, 68ff.
- 97 Compare especially *Secret History*, 1.1–3 with *Buildings*, 1.1.4ff.
- 98 *Secret History*, 7.31. Abuse of the law by the imperial couple and their ministers is a continuing refrain in the *Secret History*; see e.g. *Secret History* 7.7, 8.11, 11.1ff., 13.20–23, 14.8ff., 14.20, 16.22 (Theodora), 20.15ff. (on abuse of the quaestorship and the foibles of Tribonian; compare *Wars*, 1.24.16), and 21.16ff.
- 99 *Secret History*, 8.13ff.