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SOME CONSTITUTIONS COMPOSED BY JUSTINIAN

By A. M. HONORÉ

During the reigns of Justin (518–527) and Justinian (527–565), as at other periods of the later Roman empire, the duty of composing imperial constitutions fell on the quaestor of the sacred palace (qsp). His chief duty was said to be *leges dictare*.[1] But this is perhaps too formal a description of his office. Composing laws was only part of his function. He, if anyone, was expected to initiate new legislation. Thus Procopius has an interesting passage about Proclus, the elegant draftsman who was Justin's quaestor.[2] Proclus, the only quaestor mentioned by Procopius with approval, was upright and incorruptible: 'He did not lightly compose laws nor was he willing to disturb the existing order.'[3] Here 'compose,' *graphein*, means to put a draft before the emperor in the form of a legislative proposal (*suggestio*), and the implication is that there would be little legislation unless the quaestor or some other official or body proposed it. But the quaestor was not confined to proposing and drafting laws. He was, as Cassiodorus, describing the Italian quaestorship, makes clear, the emperor's spokesman and minister of propaganda: 'The quaestorship necessarily involves close familiarity with the sovereign's ideas, so that the holder can correctly express what he knows the latter feels. He sets aside his own views and clothes himself in the sovereign's, so that his words seem to proceed from the latter.'[4] So if the emperor was lacking in administrative capacity, as was Justin, the quaestor, as his chief adviser, decided questions of policy according to his independent judgement: so, at any rate, says Procopius.[5] Even if the historian exaggerates, he cannot radically have distorted the known character of the relations between an emperor and a quaestor in his day. Thus it is likely on grounds of style that the ten letters addressed by Justin and Euphemia to pope Hormisdas (20 July 514—6 August 523) between 518 and 521,[6] with their impeccable Latin elegance, were written by Proclus.

It is very different with the correspondence addressed to that pope by the emperor's nephew, Justinian. This is composed in a Latin which at times aims at rhetorical virtuosity but seldom achieves its effect. It is marred by lapses into vulgarity. To all appearances when we read Justinian's letters to the popes of his time we are reading Justinian's own prose. If this is so, then an interesting possibility unfolds. Once the norms of Justinian's style, as revealed in these letters and documents, are established, we can then ask whether in the *Corpus Juris* there are any constitutions composed in the same style. We can thus decide whether one of the criticisms levelled against Justinian in the *Secret History* is borne out by the emperor's practice as regards the drafting of constitutions. Procopius complains that Justinian did not possess the qualities appropriate to the imperial office, nor did he cultivate them. Rather, he was in speech, dress and thought a barbarian. Instead of instructing the quaestor, as was usual, to settle documents emanating from the emperor, Justinian thought fit, despite the defects of his style, to undertake the task himself. The historian goes on to mention other instances in which, he alleges, Justinian encroached on the functions of his officials.[7]

[1] *Not. Dig. Or.* xii, *Occ.* x, 'sub dispositione viri illustris quaestoris: leges dictandae; preces'; A. H. M. Jones, *The Later Roman Empire* iii (1964), 74, n. 3.

[2] Elegant and subtle: *CJ* 2, 7, 25 (1 Dec. 519), 'sexaginta auri libras, quas sub imperio Zenonis divae memoriae pedaneis deputatas arbitris nec non fideiussorum vires aestimantibus tamen auferendas credidit parca posterioris subtilitas principis' (i.e. Anastasius reduced the perquisites of the bar); 5, 4, 23 (to Demosthenes pp., *c.* 520 enabling Justinian to marry Theodora, on which see D. Daube, *Catholic Univ. of America Law Review* 16 (1967), 380 f.).

[3] *Bell.* 1, 11, 11–12.

[4] *Varia* 6, 5: 'haec (quaestura) nostris cogitationibus necessario familiariter applicatur, ut proprie dicere possit quod nos sentire cognoscit: arbitrium suae voluntatis deponit et ita mentis nostrae velle suscepit ut a nobis magis putetur exisse quod loquitur.'

[5] *Hist. Arcana* 6, 12.

[6] To be found in J. P. Migne, *Patr. Lat.* 63, 426 (1 Aug. 518); 427 (13 Sept. 518); 448; 480 (19 Jan. 520); 486 (9 July 520); 526 (17 Nov. 519); 487; 499 (31 Aug. 520, received 1 Oct. 520); 501 (13 Sept. 520, rec. 30 Nov. 520); 521 (1 March 521). In one or two instances Migne's dates have been amended. A possible eleventh letter is discussed at nn. 28–30 below.

Proclus' style is marked by clausulae with four main stresses of which the phrase *parca posterioris subtilitas principis* (n. 2 above) is a good example.

[7] *Hist. Arcana* 14, 2–3: πρῶτα μὲν γὰρ οὐδὲν ἐς βασιλικὸν ἀξίωμα ἐπιτηδείως ἔχον οὔτε αὐτὸς εἶχεν οὔτε ξυμφυλάσσειν ἠξίου, ἀλλὰ τήν τε γλῶτταν καὶ τὸ σχῆμα καὶ τὴν διάνοιαν ἐβαρβάριζεν. ὅσα τε γράφεσθαι πρὸς αὐτοῦ βούλοιτο, οὐ τῷ τὴν κοιαίστωρος ἔχοντι τιμήν, ἥπερ εἰώθει, ἐπέστελλε διοικεῖσθαι (? γράφεσθαι, ἐξοίσεσθαι, οἴεσθαι), ἀλλ' αὐτός τε τὰ πλεῖστα, καίπερ οὕτω τῆς γλώττης ἔχων, ἐκφέρειν ἠξίου.

A METHOD FOR DETERMINING NORMS OF STYLE

Is it true that Justinian composed constitutions himself? In attempting to answer this question I shall assume that in general quaestors, not emperors, composed laws at this period, and that given sufficient material it is possible to detect their different styles of drafting. The nature of the evidence for the correctness of these assumptions in the sixth century is as follows. From the writings of historians and from the inscriptions to certain constitutions we know the names of six quaestors who held office, one of them twice, under Justinian. We also know from the same sources the approximate dates of their tenure. Proclus (to use the Greek form in order not to create confusion with the first-century founder of the Proculian law school) was Justin's quaestor and died before Justinian became sole ruler on 1 August 527.[8] Thomas is called quaestor in *C. Haec* (13 Feb. 528) and *C. Summa* (7 April 529). Tribonian is quaestor according to a law of 17 Nov. 529.[9] He was dismissed from this first term of office as a result of pressure from the Nika rioters on 14 or 15 Jan. 532.[10] Basilides was appointed to replace him.[11] In a Novel of 16 April 535 Tribonian is quaestor for the second time.[12] He was still holding that office according to a Novel of Nov./Dec. 537.[13] E. Stein gave reasons for thinking that he retained the quaestorship at least until 1 Nov. 541.[14] Procopius says that Tribonian was succeeded by Junilus, who, despite his shortcomings, remained for ' no less than seven years '.[15] According to the historian, Junilus was followed by Constantinus, the last quaestor he mentions.[16] Procopius was writing his *Secret History* between 10 July 550 and 9 July 551.[17] Constantinus is still attested as quaestor at the time of the Fifth Ecumenical Council of Constantinople.[18]

If the constitutions composed during the two reigns are studied chronologically it will be found that, given patience and discipline, in accordance with a method to be described, differences of style at different periods can be detected. By and large these correspond to the periods of office suggested by the external evidence, though they enable the tenures to be determined more accurately and at times suggest doubts about the other evidence. On grounds of style alone one would conclude that A was composing constitutions between 1 Dec. 518 and 22 April 527, B between 13 Feb. 528 and 7 April 529, C between 17 Sept. 529 and 27 Nov. 531, C again between 1 Jan. 535 and 1 May 542, D between 18 Dec. 542 and 1 May 546, and E between 1 Sept. 548 and 1 June 555. From this, if the styles have been correctly identified, it is natural to conclude that A = Proclus, B = Thomas, C = Tribonian, D = Junilus and E = Constantinus. In each case the evidence of style helps to fix the limits of the tenure, except that for Thomas the external evidence and that derived from a study of style give the same result, and for Basilides the evidence of style is insufficient for any conclusion to be drawn. For Junilus the evidence of style suggests a doubt about Procopius' statement that he held the quaestorship for ' no less than seven years '.[19] Supposing that Junilus was quaestor in 547 and early 548, for which we have no constitutions, his maximum term of office still comes to no more than a little over six years. But the historian is making the point that Justinian's disreputable appointees stayed in their posts for long periods. In this context a slight exaggeration is not to be excluded.

The great bulk of the constitutions between 518 and 555 (there is not enough evidence for the last ten years of Justinian) are in the styles of A, B, C, D or E. There is, however, a gap between January 532 and the end of 534, when the quaestor was Basilides but the

[8] Procopius, *Bell.* 1, 11, 11; *Hist. Arc.* 6, 13; *CJ* 12, 19, 15 (' Iustinus et Iustinianus AA. Tatiano mag. off.: excelsae memoriae Proculo viro suggerente ').

[9] *CJ* 7, 63, 5 (' Imp. Iustinianus A. Triboniano quaestori sacri palatii ').

[10] Procopius, *Bell.* 1, 24, 17; cf. J. B. Bury, *History of the Later Roman Empire* ii (repr. 1958), 41.

[11] Procopius, *Bell.* 1, 24, 18.

[12] *Nov.* 17 (' Imp. Iustinianus Triboniano quaestori sacri palatii et exconsuli ').

[13] *Nov.* 75 (=104 ' Idem Aug. Triboniano quaestori sacri palatii ').

[14] E. Stein, ' Deux questeurs de Justinien et l'emploi des langues dans ses novelles ', *Bulletin de la classe des lettres de l'Académie royale de Belgique*, 5e série xxiii (1937), 365.

[15] *Hist. Arc.* 20, 19 (οὐχ ἧσσον τε ἢ ἑπτὰ ἐνιαυτῶν χρόνον τοῦτον ἡ πολιτεία τὸν γέλωτα ὤφλεν).

[16] Ib. 20, 20–3.

[17] ' After thirty-two of Justinian ' counting from the reign of Justin (*Hist. Arc.* 18, 33; 23, 1; 24, 29, 33 and for the backdating of his reign 6, 26 and *Aed.* 1 3, 3).

[18] J. D. Mansi, *Sacrorum Conciliorum Nova et Amplissima Collectio* ix (Florence, 1759–98), 197, 198 (second session, 8 May 553).

[19] Above, n. 15.

laws pertaining to the work of the codifying commission, which form the majority, are in the manner of C, i.e. of Tribonian. This is not unexpected, since it is difficult to see how a quaestor who was not a member of the commission could have drafted the legislation pertaining to its work. The remaining laws of 532–534 are not numerous or coherent enough in style to make it possible to determine the marks of Basilides' style. Even apart from this period there are a few constitutions which do not fit the general pattern. Hence the hypothesis that Justinian composed some constitutions himself is not to be dismissed out of hand.

The hypothesis can be tested if the norms of Justinian's style can be determined independently of the constitutions whose authorship remains undetermined. A brief explanation of the method used to do this seems indispensable. Five stages are involved:—

(i) a body of material which is prima facie attributable to a given author is selected and its length measured by an appropriate count of lines, words, etc.;
(ii) a body of material representing the language of composition (Latin, official Latin, legal Latin etc.) is selected and measured in the same units as were chosen for (i);
(iii) a list is drawn up of words, expressions, constructions or other marks of style which occur with considerably greater frequency in (i) than in (ii);
(iv) the list in (iii) is reduced by eliminating from it those marks of style which, though they occur with considerably greater frequency in (i) than in (ii) also occur with comparable frequency in any author (naturally contemporary) who could be considered an alternative candidate for the authorship of the disputed documents;
(v) the final list is used in order to determine the authorship of the disputed documents on the assumption that, if they are by the same hand as (i), then, unless they are too short, they will contain one or more items from the list, and, if they are not, they will contain no such items.

Although the above procedure has been worked out for use on legal texts, it is in principle of general application. It is not intended as a substitute for common sense, a feeling for context or an appreciation of the historical evidence. It should rather be looked on as a method by which a scholar subjects his instinctive sense of style to a numerical discipline. Whatever its shortcomings it cannot fail to give more satisfactory results than the undisciplined guesswork which has so far characterised the textual studies of Roman legal science.

The procedure described is applied to Justinian's style in the following way:

(i) Certain letters of Justinian to pope Hormisdas and his successors and certain other writings in Latin on church affairs are taken to form the body of material prima facie attributable to his authorship. Of seventeen such documents attributed to him sixteen are in a mutually coherent style. These comprise ten letters to pope Hormisdas[20], a declaration of faith to pope John II,[21] a letter to pope Agapetus.[22] two declarations of faith to pope Agapetus,[23] the decree known as the Three Chapters,[24] a letter to John bishop of Anazarbene [25] and another to Cosmas bishop of Mopsuestia.[26]

Of these documents the first declaration of faith to Agapetus is a forgery, or at any rate is not in the same style as the remainder. The declaration of faith to pope John II recurs in *CJ*,[27] is covered by R. Mayr's *Vocabularium*, and as a matter of convenience is left for the fifth stage i.e. is treated as a disputed document. The letter to pope Hormisdas ' Cum in animo nobis sit ', though attributed to Justinian by Migne [28] and Thiel,[29] is put to Justin's account by O. Guenther.[30] On grounds of style I would prefer to adhere to the

[20] *Patr. Lat.* 63, 430 (after 13 Sept. 518, see ibid. 63, 427); 63, 450 (same); 63, 475; 63, 476 A; 476 C (all before 19 Jan. 520, see ibid. 63, 480); 63, 485 (before 9 July 520, ibid. 63, 486); 63, 496 (received Rome 17 Sept. 520); 63, 507 (after 13 Sept. 520, ibid. 63, 501); 63, 508 (521); 63, 530 (not later than 523: Hormisdas died 6 August 523).

[21] *Patr. Lat.* 66, 14 (6 June 533). John was Pope from 2 Jan. 533 to 8 May 535.

[22] *Patr. Lat.* 66, 35 (535). Agapetus was Pope from 13 May 535 to 22 April 536.

[23] *Patr. Lat.* 66, 41; 42 (the latter 15 March 535).

[24] *Patr. Lat.* 69, 30. Late 543 or early 544.

[25] *Patr. Lat.* 69, 119 (23 May 550).

[26] *Patr. Lat.* 69, 119 (22 May 550).

[27] *CJ* 1, 1, 8, 7, cited in John II's letter to Justinian of 6 April 534.

[28] *Patr. Lat.* 63, 485.

[29] A. Thiel, *Epistolae romanorum pontificum genuinae* i (Brunsberg, 1868), *Ep.* 114.

[30] O. Guenther, *Corpus Script. Eccles. Lat.* 35 (*Epistulae imperatorum* etc., Prague, 1895), *Ep.* 193.

former view and strike out ' Augustus ' (the date being during the sole reign of Justin), but to avoid a *petitio principii* it has been left out of account. There remain fourteen documents (henceforth called the Fourteen Documents) which amount, if the shorter of the two alternative versions of the Three Chapters is followed, to 812 lines or about 5,000 words.[31] In date the material stretches from 519 to 553, but is mainly concentrated in the reign of Justin. There is an overlap between two pairs of documents. The declaration of faith to pope John is repeated in the second declaration to pope Agapetus. The letters to the bishops John and Cosmas have passages in common. Words which occur in these doublets have been counted twice. Repetition is a feature of Justinian's style and the passages in question illustrate his practice, if he hit on what seemed a good formulation, of using it more than once.

(ii) The *Codex Justinianus*, analysed in v. Mayr's excellent *Vocabularium*,[32] provides a representative pool of official Latin, especially from 193 onwards. It contains 51,334 lines of Latin text, of which 812 is just under 1·6 per cent.[33] Hence any fairly common word might be expected to be found just over 60 times more often in *CJ* than in the Fourteen Documents. For some expressions it is appropriate to consider only the constitutions from Constantine onwards, when the language used became on the whole more rhetorical than before. From Constantine onwards there are 45,197 lines of Latin text in *CJ*, of which 812 is 1·8 per cent. With an expression that became current only in the age of Constantine one would therefore expect to find about 50 times more instances in *CJ* than in the Fourteen Documents.

To a lesser extent, and in a way which it would be inappropriate to explain here, the *Codex Theodosianus* and the *Novellae* of Theodosius II and his successors are taken into account in estimating the relative frequencies of words in the Fourteen Documents.

(iii) Nothing special need be said about this stage.

(iv) Justinian's style must be marked off from that of the various quaestors who held office under him and whose Latin style can be determined. In practice this means Thomas and Tribonian, since there is insufficient evidence about Basilides. The constitutions of Thomas come to 2,132 lines and those of Tribonian to 10,009.[34] The first is about $2\frac{1}{2}$ times the Fourteen Documents and the second about 12 times as much.

So far as Junilus and Constantinus are concerned we have only Greek constitutions to go by. Junilus is however the author, according to Kihn and E. Stein,[35] of the *Instituta regularia divinae legis*, a work in two books which comes to 1,520 lines, about twice the Fourteen Documents, in Migne. The comparison has been extended to include this work and also the constitutions of the quaestor Proclus who was a contemporary of Justinian though he was not quaestor during Justinian's reign. These comprise eleven dated [36] and seven undated [37] constitutions which together amount to 686 lines in *CJ*, together with the ten letters written by Proclus, as mentioned earlier,[38] for Justin and Euphemia, which amount to 316 lines in Migne. This makes a total of 1,002 lines for Proclus, about 20 per cent more than the Fourteen Documents.

It is unwise to adopt rigid arithmetical criteria of significance in judging questions of style, but to disregard word frequencies and rely on untutored impressions can be disastrous. As a rule of thumb I have counted nothing as a mark of Justinian's style unless it occurs within the Fourteen Documents with at least four times the frequency with which it occurs in the *CJ* as a whole, and also four times the frequency with which it occurs in

[31] The *Patr. Lat.* line is the same length as the *CJ* line in the stereotype edition.

[32] R. v. Mayr & M. San Nicolò, *Vocabularium Codicis Iustiniani* (2 vols, repr. Hildesheim 1965).

[33] To calculate the approximate number of words multiply the number of lines by 6·6.

[34] Not counting undated constitutions of this reign nor any texts drafted in the quaestorship of Basilides but in fact by Tribonian as chairman of the Digest commission.

[35] H. Kihn, *Theodor von Mopsuestia und Iunilus Africanus als Exegeten* (1880), 222–48; E. Stein, op. cit. (n. 14), 365, 380. The *Instituta regularia*, a work of Nestorian tendency, must have been written about 542, either just before or shortly after the appointment of Junilus as quaestor.

[36] *CJ* 7, 63, 3 (1 December 518); 5, 27, 7 (9 Nov. 519); 2, 7, 25 (1 Dec. 519); 7, 63, 4 (28 May 520); 6, 22, 8 (1 June 521); 2, 7, 26 (13 Feb. 524); 1, 3, 40 = 6, 23, 23 (19 Nov. 524); 2, 7, 27 (20 Nov. 524); 12, 33, 5 (25 Dec. 524); 7, 39, 7 (1 Dec. 525); 9, 19, 6 (1 Dec. 526).

[37] *CJ* 4, 30, 13; 5, 4, 23; 7, 62, 34; 12, 19, 13 (Proculo qsp.); 12, 19, 14 (all Justin); 5, 3, 19 (Iust. et. Iust.).

[38] Above, n. 6.

each of Thomas, Junilus and Proclus. As a precaution in view of their known close collaboration, an expression must occur in Justinian's writings with eight times the frequency with which it occurs in Tribonian's. No mathematical propriety is claimed for these proportions, which have been fixed by trial and error. They are perhaps somewhat stringent, since it is likely that Justinian's manner of composition was influenced by that of Proclus, and Tribonian may well have made some effort to compose in a way which at least bore a superficial resemblance to Justinian's speech habits. Justinian's style is idiosyncratic enough to emerge despite these handicaps.

(v) In a later section of this article the norms of style deduced from the preceding stages are used to identify certain constitutions as written by Justinian himself.

JUSTINIAN'S STYLE: THE FOURTEEN DOCUMENTS

With these premises we can now ask what marks of style are displayed by the Fourteen Documents. Openings and terminations are generally important marks. In the Fourteen Documents Justinian shows a liking for the opening ' we always ' or ' we have always '. Thus the Three Chapters decree begins *Semper studium fuit ... patribus nostris.*[39] The profession of faith encapsulated in the letter to pope Agapetus (essentially the same as in the letter to John II) has in the first sentence the two phrases *semper magnum nobis fuit studium* [40] and *semper nobis in voto fuit et est.*[41] It may be noted that the first sentence of the book against Origen composed in Greek runs: Ἡμῖν μὲν ἀεὶ σπουδὴ γέγονέ τε καί ἐστι.[42] Another letter to Pope Hormisdas has *fuimus ab initio* (' we have been from the start ') [43] in the first sentence and *nunquam cessavimus* in the second.[44]

The construction ' we always try to do so-and-so ' or ' we have always done so-and-so ' is slightly vulgar. The idiom occurs only twice in *C*ℑ. Both instances are found in a constitution of April 534 addressed to Belisarius on the reconquest of North Africa.[45] Two other constitutions drafted by Tribonian have related but different forms of expression.[46] It is of course possible to say the same thing in a less crude and egocentric way. Both Proclus [47] and Tribonian [48] have techniques for doing this. Similarly the final sentences of Justinian's compositions are at times rather colloquial.[49]

Justinian, though he was not emperor at the time of his letters to Hormisdas, usually calls himself *nos*,[50] but he is not entirely consistent. His second letter to Hormisdas is addressed *Domino meo sanctissimo Hormisdae primo archipontifici et papae*,[51] but later in the letter Justinian asks the pope to intercede *pro nobis quoque mandatorum vestrorum custodibus* [52] (custodian of the papal programme; it is interesting that the emperor's nephew thinks of himself already as standing in this relation to the pope). A later letter to Hormisdas begins by calling the pope *sanctitas tua* [53] but ends with him as *vestram sanctitatem.*[54] This equivocation within a single document is perhaps a sign that the drafter was not a professional writer. The equivocation recurs in *C*ℑ 1, 27, 1, one of two constitutions addressed

[39] *Patr. Lat.* 69, 30 (4 May 553).

[40] *Patr. Lat.* 66, 36 C (after Nov. 533 = *C*ℑ 1, 1, 8, 7, 6 June 533).

[41] See n. 33 and cf. 63, 508 C (*quam solliciti semper fuerimus propter uniendas ecclesias*).

[42] *Patr. Lat.* 69, 177, and cf. the letter about Theodore of Mopsuestia in Greek (ibid. 69, 267) which begins Σπουδὴ μὲν γέγονεν ἀεὶ τοῖς ὀρθοδόξοις, καὶ εὐσεβῶς προβεβασιλευκόσι τοῖς ἡμετέροις πατράσι.

[43] *Patr. Lat.* 63, 510 A.

[44] Ibid.

[45] *C*ℑ 1, 27, 2 *pr.* (*semper progredimur*), 9 b (*semper providimus*).

[46] *C. Cordi ... pr.* (16 Nov. 534) (*cordi nobis est ... semper, impendere*); 1, 17, 2 *pr.* (*tanta est providentia ... ut semper nos sustentare dignetur*).

[47] *Patr. Lat.* 63, 501, Justin to Hormisdas: *quo fuimus semper et quo sumus studio, palam fecisse dignoscimur* (13 Sept. 520).

[48] *Nov.* 114 (1 Nov. 541).

[49] *Patr. Lat.* 63, 431 B (*scimus etenim litteras vestrae beatitudinis quid super hac eadem causa contineant*); 63, 476 A (*nostri iubete iugiter facere memoriam*); 63, 477 A (*petimus vos disponere cautius ut ne locus ... detur*); 63, 497 A–B (*cognoscat vester apostolatus compositis ... capitulis universos sacerdotes istius reipublicae libenter amplecti vestram communionem*); 66, 42 C (*et profitemur ista inconcusse servari, quatenus suam habeant firmitatem*).

[50] Indeed a letter of 521 (*Patr. Lat.* 63, 509 B), when Justinian was only consul, runs *ultra non patiemur a quoquam controversiam religionis in republica nostra moveri, nec vestram sanctitatem convenit audire superflua concertantes.* This supports Procopius, *Hist. Arcana* 6, 19 (ἀδελφιδοῦς δὲ αὐτῷ [Justin] Ἰουστινιανὸς νέος ὢν ἔτι διῳκεῖτο τὴν ἀρχὴν ξύμπασαν: his nephew Justinian while still young conducted the whole government).

[51] *Patr. Lat.* 63, 450 C.

[52] Ib. 450 D.

[53] Ib. 508 D.

[54] Ib. 509 B.

to Belisarius in April 534.[55] But it must be admitted that the usage of Proclus himself in addressing the pope is inconsistent, and seems to depend on euphony [56] and the sex [57] of the nominal writer rather than a settled practice.

Divinitas for God occurs four times in the Fourteen Documents in the phrases *propitia* [58]*/favente* [59]*/placata divinitate.*[60] This excludes the standard farewell formula: *divinitas te servet per multos annos*, which appears thrice.[61] In *CJ* there are eleven instances of *divinitas.*[62] Of these Zeno (alone) has *nostra divinitas*,[63] the emperor's divinity, twice. Tribonian typically, has two texts with *summa divinitas* [64] and *maxima deitas*,[65] a little distant, even classical.

The Fourteen Documents breathe an air of hurry. Justinian forever chivvies his correspondents. It is convenient to begin with the word *festinare.* This occurs twelve times in the documents,[66] including one text with *festinamus*: [67] indeed the author conceives himself and everyone else, for example the Nestorian faction,[68] as festinating to do this or that. There are 28 texts in *CJ* with *festinare*,[69] whereas to keep up with Justinian one would need about 600. *Festinare* is the most prominent Justinianic word indicative of speed, but we also find *properate*,[70] *deproperet* [71] (twice) and the unusual *accelerate*,[72] 'hurry up', an undiplomatic hectoring way of addressing pope Hormisdas. *Properate* and *accelerate* are not in *CJ* but *deproperare* occurs four times in constitutions drafted by Tribonian,[73] so we cannot use it in isolation as a mark of Justinian's style, but only as one of a number of expressions indicative of haste. In the Fourteen Documents Justinian also has *celeriter*,[74] *celerrimo* [75] and *cum omni alacritate.*[76] A letter to Hormisdas has the unusual *absque quadam dilatione*,[77] which shows that it is wrong with Migne to amend *sine quadam macula* [78] in a later letter to *sine aliqua macula. Sine quadam* [79] is found four times in a quaestor of the reign of Anastasius (502–506) and this is probably Justinian's source. Finally in connection with haste he has an evocative turn of phrase: *nec expedit diutius causam vitae protrahi sempiternae*,[80] 'it is not advisable for the matter to be protracted to eternity'. The theory of dispatch in matters of faith is thus expressed in the Three Chapters: *cum enim qui de recta fide interrogatur diu protrahit nihil aliud est nisi abnegatio rectae confessionis*;[81] an ugly sentence.

In one letter to pope Hormisdas Justinian has picked up a striking metaphor of speed, and as is his wont repeats it: *iter arripere* 'to hit the road'.[82] This is found once in *CJ* in an eastern constitution of 445.[83] In all *arripere* occurs three times in the Fourteen

[55] *CJ* 1, 27, 1, 5 (*quod per me ultimum servum suum*); 9 (*per nos ultimos servos suos*) (April 534).

[56] *Sanctitudo tua* (63, 428 A bis; 499 C; 502 A;) *beatitudo tua* (63, 428 A; 480 B; but *vestra beatitudo* 63, 526 A); *vestra reverentia . . . suis orationibus* (63, 487 A); *vestra benivolentia* (63, 502 B); *vestra sedes* (63, 502 C), *vestra lenitas* (63, 502 C): *vestra apostolatus* (63, 502 C, contrast 63, 509 B, Justinian: *tuus apostolatus*).

[57] Proclus for Euphemia says *beatitudinis vestrae litteras* (*Patr. Lat.* 63, 487 B), perhaps because for a woman *tuae* would be too intimate. But see 63, 526 A, n. 56 above. Euphemia is made to speak of *nomen meum* probably because a name is strictly personal (63, 487 B).

[58] *Patr. Lat.* 63, 450 D: 475 B.

[59] Ib. 508 B.

[60] Ib. 508 D.

[61] Ib. 36 D; 66, 43 C; 69, 37 B.

[62] *CJ* 1, 12, 6 (466); 12, 29, 2 (474); 12, 35, 17 (Zeno); 1, 17, 2, 13 and 19 (16 Dec. 533); 1, 1, 8, 12, 15, 16 and 24 (6 June 533); 1, 27, 1, 8, (Apr. 534); 1, 29, 5 ('Iustinianus A. Zetae mag. mil. per Armeniam' etc.).

[63] *CJ* 12, 29, 2; 12, 35, 17, cf. n. 55 above.

[64] *CJ* 1, 17, 2, 19 (16 Dec. 533).

[65] *CJ* 1, 17, 2, 12 (16 Dec. 533).

[66] *Patr. Lat.* 63, 431 B; 475 C, bis; 496 B; 507 B; 66, 36 C, bis; 69, 31 C; 32 A; 33 B; 33 C, bis.

[67] Ib. 66, 36 C.

[68] Ib. 69, 31 C.

[69] *CJ* 2, 36, 1 (200); 9, 40, 1 *pr.* (211); 12, 22, 2, 2 (357); 8, 50, 19 *pr.* (366); 11, 6, 2 (372); 11, 8, 7, 1 (380); 5, 9, 2 (381); 11, 5, 9, 8 (388–92); 10, 48, 15, 1 (395); 1, 9, 9 (396); 12, 50, 16 (397); 12, 35, 13 (398); 1, 2, 9 *pr.* 11, 18, 1 *pr.* (439); 1, 3, 31, 1 (472); 1, 51, 14, 2 (27 Sept. 529); 8, 33, 3, 2 (18 March 530); 7, 37, 3, 5 (27 Nov. 531); 8, 10, 14, 2 (18 Oct. 532); 1, 8, 8, 8 and 22 (6 June 533); 1, 27, 1, 15 and 20 (Apr. 534); 1, 27, 2, 4, 4a and 15 (13 Apr. 534).

[70] *Patr. Lat.* 63, 476 D.

[71] Ib. 497 A, 508 B.

[72] Ib. 63, 431 B.

[73] *CJ* 1, 14, 31, 1 (1 Oct. 531); 7, 40, 2, 1 (18 Oct. 531); 8, 10, 14, 2 (18 Oct. 532); 1, 17, 2, 18 (16 Dec. 533).

[74] *Patr. Lat.* 69, 37 B.

[75] Ib. 63, 476 B.

[76] Ib. 69, 34 A.

[77] Ib. 63, 431 A; cf. *sine ulla dilatione* (*Patr. Lat.* 69, 119 B).

[78] Ib. 69, 33 C.

[79] *CJ* 3, 13, 7, 1 (15 Feb. 502); 4, 35, 22, 3 (23 July 505); 2, 7, 23, 2 (20 Nov. 506); 12, 19, 11 (Anast.).

[80] *Patr. Lat.* 63, 508 B.

[81] Ib. 69, 37 B.

[82] Ib. 63, 475 B and D.

[83] *CJ* 1, 2, 11 = 10, 49, 2 (445), *iter arripimus.* Not in *C. Th.*, but found in some fourth-century writers: *Thes. Ling. Lat.* 2, 643, 34.

Documents [84] and thirteen in *CJ*.[85] The opposite of speed is delay. For this Justinian uses *tarditas* [86] once and *morae* twice.[87] *Tarditas* occurs five times in *CJ*,[88] *morae* only once in a constitution of 394,[89] which, like one of the letters to Hormisdas,[90] has *moras nectere*; These constitutions are Justinian's likeliest source.

Next to haste, the impression which would most imprint itself on the sensibilities of such a man as Proclus would be the author's odd mixture of ambitious rhetoric and vulgarity. Justinian is capable of a striking phrase, and his vocabulary is by no means conventional. Among his unusual words, none of them in *CJ*, are to be numbered *salutiferus*,[91] *unanimus* [92] (*amicus*), *impetrabilis*,[93] *vaniloquia*,[94] *perculsus*.[95] He likes comparative adverbs, several of which again are not found in *CJ*: *enixius*,[96] *certius*,[97] *incertius*.[98] Of others which he uses, *cautius*,[99] which appears twice in the Fourteen Documents, occurs thrice in *CJ*,[100] *firmius* once in each.[101] *Saepius* [102] twice found in Justinian, occurs twenty times in *CJ*.[103] It is hardly practicable to count all the comparative adverbs in *CJ* without a computer. As a matter of impression, they occur rather frequently in the Fourteen Documents in comparison with any contemporary quaestor except Proclus.[104] Taking Proclus into account, it is only the particular adjectives found in the Fourteen Documents, not the habit of using such adjectives, which can be taken as a mark of Justinian's style.[105]

Justinian must have been instructed by a competent rhetorician. We do not know who. The grammarian Priscian, active in Constantinople at the right time,[106] will not meet the case. Generically Justinian can be classed in point of style with Proclus, Tribonian, Constantinus (the quaestor of 548 to 555) and pope Hormisdas' draftsman. Like these he prefers an ornate prose in contrast with the quaestor Thomas or, still more, Junilus. Indeed it would be difficult to find a plainer work than Junilus' *Instituta regularia divinae legis*. The plainness is only partly pedagogic: not every sixth-century writer liked the highly-spiced metaphors which excited Tribonian. Thomas, apart from a handful of banal metaphors like *amputare* for 'to repeal', attempts no adornment and little explanation. Proclus, less forceful and majestic than Tribonian, is more elegant than any of these.

At times, Justinian, for instance in his first letter to Hormisdas, aims high. *Desiderabile tempus quod summis votis optavimus divina clementia, dolores generis humani respiciens, largiri dignata est . . .*[107] It would be wrong to suggest that he never hits the mark, but colloquial speech, repetition and plain vulgarity often mar his attempts. *Cognoscere*, for to know that something is the case, is not unusual, but *cognoscere quod* is a bad construction. We find it twice in the Fourteen Documents[108] and only twice in *CJ*, once in a text of 446,[109] once in 1, 3, 54 (533–4) [110] to which I return. *Cognoscere quia*, on the other hand, is unparalleled in *CJ*: *ergo cognoscentes quia et merces et periculum huius rei vobis servatur*, 'and so as you know that the profit and loss in this matter falls on you'.[111] Nor can one be happy about a request to a bishop to ask certain persons if they know when the name of

[84] n. 82 above and *Patr. Lat.* 63, 496 A.

[85] *CJ* 9, 21, 1 *pr.* (300 ?); 2, 6, 6, 5 (368); 12, 60, 2 (395); 8, 11, 13, 2 (398); 9, 2, 17 *pr.* (423); 1, 9, 18 *pr.* (439); 1, 2, 11 (445); 1, 4, 15; 2, 6, 8 (468); 12, 33, 4 (472 ?); 1, 51, 14 *pr.* (27 Sept. 529); 7, 62, 32, 1 (Theo. et Val.); 12, 35, 16 (Leo).

[86] *Patr. Lat.* 63, 431 B.

[87] Ib. 431 B; 496 B.

[88] *CJ* 9, 9, 32 (392); 11, 10, 7, 2 (Leo, bis); 7, 63, 5, 4 (17 Sept. 529); 5, 37, 26, 1 (23 Aug. 531).

[89] *CJ* 4, 3, 1 (394). In *CJ* 1, 3, 45, 4 (18 Oct. 530) *moras* is the genitive singular of *mora*.

[90] *Patr. Lat.* 63, 496 B. Guenther (n. 30 above) reads *moras innectit*: *CSEL* 35, *Ep.* 196.

[91] Ib. 63, 450 D.

[92] Ib. 63, 431 A.

[93] Ib. 63, 450 D.

[94] Ib. 63, 475 C.

[95] Ib. 63, 475 C.

[96] Ib. 63, 508 A.

[97] Ib. 63, 476 B.

[98] Ib. 63, 508 B.

[99] Ib. 476 A and D.

[100] *CJ* 6, 2, 2 (204); 11, 18, 1, 2 (439); 5, 59, 4 (20 Feb. 531).

[101] *Patr. Lat.* 63, 476 A; *CJ* 8, 11, 12 (396).

[102] *Patr. Lat.* 63, 431 B; 69, 34 A.

[103] *Voc. Cod. Iust.* i, 2177.

[104] *Patr. Lat.* 63, 449 B (Justin, 22 Apr. 519: *enim gratius reperiri potest? quid iustius? quid illustrius?*); cf. 63, 486 D (Justin, 9 July 520, *ulterius, remissius*); 63, 526 A (Justin, 13 Sept. 520, *praestantius*); 63, 526 A (Justin, 17 Nov. 519, *opportunius*); cf. 63, 485 C (*temperantius* or *temperatius*, *expeditius*, above n. 28–30).

[105] Perhaps (though for present purposes one must not assume this) Proclus influenced Justinian's style in this respect.

[106] His *De laude imperatoris Anastasii* belongs perhaps to A.D. 503: J. B. Bury, op. cit. (above, n. 10), 12.

[107] *Patr. Lat.* 63, 430 A.

[108] Ib. 63, 475 D; 69, 36 A.

[109] *CJ* 1, 14, 8, 1 (446).

[110] *CJ* 1, 3, 54, 2 (533–4).

[111] *Patr. Lat.* 63, 476 B.

Theodore was stricken from the diptychs: *discere ab ipsis si cognoscunt tempus ex quo . . .*[112] and if it turns out that they do not, *confiteantur quod non cognoscunt*,[113] ' they are to admit they do not know '. *Sapere*, for to know or take a view, is alien to *CJ* apart from one text, yet Justinian writes that he asked pope Vigilius his view: *interrogavimus eum quid sapit.*[114] The Fourteen Documents have two other instances of this use.[115] The *CJ* text is the letter of pope John II to Justinian of March 534 printed in *CJ* 1, 1, 8.[116] So the usage may be ecclesiastical. If so, Justinian perhaps copied it from the papal letters.

Justinian's tone and word order is often that of ordinary speech. ' We will explain all this to you in good time ': *et haec omnia per suum tempus vobis manifestum faciemus.*[117] ' Some time ago an unhealthy dispute arose ': *ante tempus exstitit morbosa contentio.*[118] ' The bishop was too ill to travel but he is now better ': *iam melius habet.*[119] There are also quasi-auxiliary uses of *facere*: *fecit firmiter obtinere*,[120] *fecimus praedicare synodum*,[121] *fecit rectam praedicare fidem.*[122] Not far removed is *petimus vos disponere cautius*: [123] ' we urge you to reach a careful decision'. The formula *suasit ut praestet* which occurs twice in letters to Hormisdas is by no means easy to translate. ' Surely your see ought to follow the example of pope Leo ': *nonne igitur suasit vestra sedes ut praestet imitari Leonem*;[124] and again: *non est ergo grave quod suasit vestra sedes ut praestet*,[125] which evidently means ' it is not much to ask that your see should do what it asked to have done'. [126] Then there is the tangled expression of a simple point. ' If there is anything which obstructs world peace it should be removed ': [127] *quia si quid est quod adhuc a totius orbis pace dissentiat . . . hoc quoque societur.* This says the opposite of what is presumably meant.

Finally Justinian's use of *quidquid* with a comparative adverb is awkward. One letter to Hormisdas begins *Quidquid est cautius, quidquid firmius, ut . . . geratur, optamus* : [128] ' we hope that whatever is advisable and firmly based will be done ', a construction not found in *CJ*. The corresponding Tribonianic version is better: *quidquid utile invenitur*,[129] or *quidquid dubium inveniebatur.*[130]

Taken as a whole these expressions of Justinian fall below the standard one would expect of a sensitive and well-educated man. Since Latin is said by Tribonian to be Justinian's own language [131] we cannot deny that Procopius was right in accusing him, if not of barbarism, at least of a lack of refinement.[132] Against this it must be admitted that in substance the letters are forceful, even brutal. The emperor's nephew upbraids Hormisdas, challenges him, mindful of the last judgement, to show that he has been properly elected to the apostolic see and is really the successor of Peter.[133]

A trick of style which is also a weakness of construction must now be mentioned. In nine instances in the Fourteen Documents Justinian puts a clause beginning with *quoniam* after the main verb, often as the last clause of the sentence.[134] *CJ* has thirty-five

[112] Ib. 69, 119 A and D.
[113] Ib. 69, 119 B and D.
[114] Ib. 69. 34 A.
[115] Ib. 69, 36 A, bis.
[116] *CJ* 1, 1, 8, 25 (6 Apr. 534), *ea sapitis, ea scripsistis, ea populis fidelibus publicastis.*
[117] *Patr. Lat.* 69, 34 C.
[118] Ib. 66, 35 C. *Ante* for ' ago ' recurs in *CJ* 1, 27, 1, 1 (*ante centum et quinque annos*).
[119] Ib. 63, 508 B. Cf. 63, 485 C, *visum est itaque convenire ut nec faciamus impetum contra infinitarum vota multitudinum.* The end is good, the beginning inept, and the mixture points to Justinian as the author rather than Justin-Proclus. Cf. nn. 28–30 above.
[120] Ib. 69, 31 C.
[121] Ib. 69, 32 D.
[122] Ib. 69, 31 B.
[123] Ib. 63, 476 D.
[124] Ib. 509 A. Guenther (*CSEL* 35, *Ep.* 235) reads *non est igitur ⟨grave quod⟩ suasit vestra sedes ut praestet. Imitari debetis etenim . . . Leonem.*
[125] Ib. 63, 496 C.
[126] i.e. the papacy, having said that communion with the eastern churches could be restored once the name of Acacius was struck from the diptychs, should not now try to insist that his successors be struck out as well. Thiel, Hormisdas, *Ep.* 120. But the phrase is still incoherent, since the Pope cannot now *praestare* what his predecessor *suasit* the eastern church to *praestare.*
[127] *Patr. Lat.* 63, 475 D. The sense requires *removeatur* or the like.
[128] Ib. 63, 476 A.
[129] *CJ* 1, 17, 2, 11 (16 Dec. 533).
[130] *CJ* 1, 17, 2 *pr.* (16 Dec. 533).
[131] Just. *Nov.* 7, 1 (15 Apr. 535): οὐ τῇ πατρίῳ φωνῇ . . . ἀλλὰ ταύτῃ δὴ τῇ κοινῇ τε καὶ ἑλλάδι ; 15 *praef.* (13 Aug. 535): τῇ πατρίῳ φωνῇ ; 13 *praef.* 1, 1 (15 Oct. 535): ἡ μὲν γὰρ πάτριος ἡμῶν φωνὴ . . . καὶ τῇ μὲν ἡμετέρᾳ φωνῇ *praetores plebis.*
[132] *Hist. Arcana* 14, 2 (n. 7 above).
[133] *Patr. Lat.* 63, 508 B, *aeternitatis igitur supernae non immemor sanctitas vestra deproperet, ut ita intellegant cuncti recte vos apostolicae sedis esse primatum sortitos*; 63, 509 B, *ostendat ergo tuus apostolatus quod Petro successit apostolo . . . nec vestram sanctitatem convenit audire superflua concertantes*; 63, 510 B, *habentes prae oculis iudicium maiestatis supernae modis omnibus festinare dignemini.*
[134] Ib. 63, 475 C ; 476 D ; 477 A ; 496 A ; 508 B ; 509 A ; 66, 36 C and D ; 69, 32 A.

such instances, where in proportion we would expect 500.[135] A fourth-century official, who held office from about 316 to 326 is, it is true, equally fond or fonder of *quoniam*.[136] Justinian's use is further marked by the fact that with him *quoniam* often introduces not the reason for what has gone before but the occasion for it, or merely gives extra information causally unrelated to what precedes. An example of the former comes in the Three Chapters. The council anathematized Nestorius because some clerics hurried to his defence: *anathematizaverunt . . . Nestorium, quoniam tunc festinaverunt quidam defendere Nestorium*.[137] An example of connecting the disparate occurs in a letter to Hormisdas. A certain bishop who was ill will soon be able to leave for Rome, as he is now better. At the cost of repetition I set out the end of the sentence in full, as it encapsulates many features of Justinian's prose: *eum tamen mox dimittemus favente divinitate, quia iam melius habet, quoniam nec difficilia sunt quae cediderunt in ambiguitatem, nec expedit diutius causam vitae protrahi sempiternae ne dilatis temporibus aliquid nascatur incertius*.[138] 'Still, with the favour of the deity we will soon send him off, for he is now better, since the problems which have given rise to a difference of interpretation are not difficult and it is inadvisable to prolong them to eternity in case greater uncertainty arises.' Let it be so: still, the urgency of the problems is not the cause of the bishop's recovery. In ordinary speech this loose construction is quite common: 'I am sorry to hear you have a headache, because I came across a new type of aspirin only yesterday.' 'Because' here means something like 'and in this connection it is also relevant that'. Using *quoniam* in this sense, Justinian betrays his impatience and perhaps his habit of dictating. Besides *quoniam* the author six times uses *quia* to introduce a clause following the main verb,[139] and twice *quatenus*.[140] For numerical reasons these are not taken to be marks of the author's style unless they are used to introduce a redundant anticlimactic or dissociated clause. The constructions with *quoniam*, *quia* and *quatenus* after the main verb, transferred from oral discourse to literary composition, are indeed apt to create a sense of anticlimax.

It may also be because they were dictated that the Fourteen Documents contain many references back, of the type *ut superius dictum est*. One such type of reference may be numerically significant, though it is difficult to discount the figures to cater for the fact that the longer a document is the more likely are references of this sort. Justinian has six passages with *sicut dictum est* (four times),[141] *praedictum est* (once)[142] or *praefati sumus* (once).[143] The *CJ* has nineteen texts with *sicut dictum est*,[144] including five by Tribonian.[145] The expression is found only from 428 onwards, and if it were proportionately as frequent in *CJ* as in the Fourteen Documents we should find it about 120 times, six times as often as we in fact do. *Sicut* is a favourite word with Justinian. Apart from the six referential texts mentioned it is found on seven other occasions in our documents.[146] These thirteen occurrences compare with 117 in *CJ*.[147] Proportionately one would expect *CJ* to have about 780.

With references back and explanatory endings go repetitions. As was noted, the future emperor, having hit on *iter arripere*, uses it twice in the same letter,[148] which also

[135] *CJ* 3, 8, 1 (203); 4, 29, 2 (213); 8, 45, 1, 1 (223); 3, 33, 6 (230); 9, 23, 6 (290); 9, 22, 2 (316); 3, 11, 2 (318); 5, 5, 3; 7, 62, 15 (319); 3, 12, 2 (321); 7, 16, 42 (322); 6, 7, 2, 1 (326); 6, 9, 8 (320/326); 10, 32, 41 (340); 2, 6, 6 *pr.* (368); 10, 33, 33, 1 (381); 1, 7, 21 (391); 9, 7, 1 *pr.* (393); 4, 3, 11 (394); 11, 24, 1 (416); 1, 5, 5, 1 (428); 11, 59, 17 (444); 5, 14, 9, 4 (468); 5, 3, 18 (479); 5, 27, 7, 1 (519); 1, 1, 8, 8, 22 (6 June 533); 9, 13, 1, 2 (18 Nov. 533); 1, 27, 2, 4b and 9b (13 Apr. 534); 4, 39, 2 (Ant.); 7, 46, 2 (Alex.); 10, 34, 3 *pr.* (Zeno), 7, 51, 6 (Anast.).

[136] Note the eight texts between these dates in n. 135 above.

[137] *Patr. Lat.* 69, 32 A.

[138] Ib. 63, 507 A.

[139] Ib. 63, 431 B; 475 B; 496 C; 508 B; 509 A; 66, 42 B.

[140] Ib. 63, 497 A; 66, 43 C.

[141] Ib. 63, 475 C; 69, 34 C and D; 36 D.

[142] Ib. 69, 36 A.

[143] Ib. 66, 43 C.

[144] *CJ* 10, 34, 2, 1 (428); 10, 35, 2, 7 (443); 12, 21, 8, 7; 1, 3, 36 *pr.* (483–4); 3, 24, 3, 3 (485–6); 4, 20, 14 (486); 6, 49, 6, 1 and 3 (489); 11, 62, 14, 2 (491, bis); 7, 39, 7, 1 (1 Dec. 525); 6, 23, 29, 5 (20 Feb. 531); 6, 61, 8, 5a (29 July 531); 5, 37, 28, 2b (21 Oct. 531); 7, 72, 14, 3 (18 Oct. 532, bis); 7, 37, 2, 1; 2, 29, 3, 1 (Zeno); 12, 37, 16, 1 (Anast.). The expression is mainly found in a quaestor of late Zeno and early Anastasius. *Sicut praedictum est* occurs in *CJ* 1, 27, 2, 7 (13 Apr. 534); 6, 23, 31, 5 (5 July 534).

[145] n. 144 above.

[146] *Patr. Lat.* 63, 507 A; 508 C; 509 A; 66, 43 A (*sicut ante prophetae et ipse nos Christus erudivit*); 69, 33 C; 36 B; 37 A.

[147] Too numerous to set out: *Voc. Cod. Iust.* 1, 2260–1.

[148] *Patr. Lat.* 63, 475 B and D.

contains, in successive sentences, *ut superius dictum est* and *sicut supra dictum est*.[149] In another letter to Hormisdas *si est possibile* occurs twice,[150] and in yet another there are two uses of *cautissimus*,[151] in a third we find *pellere dignetur* and *pellere subeat*.[152] To end this survey of the style of the Fourteen Documents, I list some words or turns of phrase which are found in them and which do not occur at all or occur with much less frequency in *CJ*. The forms *repressimus* [153] and *gratulamur* [154] and the word *alacritas* [155] do not appear in *CJ*, nor does *cautissimus* [156] which the documents have twice. *Convenit audire* ' I hope to hear from you that . . .' occurs twice in the documents, not in *CJ*.[157] *Provenire* is found four times in the Fourteen Documents [158] and four times also in *CJ*.[159] The documents have four uses of *optare*,[160] including *optamus* once and *optavimus* once. *CJ* has *optare* fourteen times,[161] including *optamus* [162] twice and *optavimus* once.[163] Justinian's collection has *dignari* fifteen times :[164] in *CJ* it is only present on ten occasions.[165]

JUSTINIAN'S CONSTITUTIONS

The reader may have found the foregoing catalogue of expressions in the Fourteen Documents, and the counts of their occurrences and the comparison with *CJ* and the quaestors of the age, tedious. It gives us a tool, however, with which to tackle the final stage of the inquiry, the identification of the documents, if any, in the *Corpus Juris* which were written by the emperor. It is true that some caution is always needed in arguing from the style of one type of document or context to another—here from letters about church matters to imperial constitutions on various topics. The difficulty can be met to some extent by avoiding, so far as possible, listing as a mark of style any expression which is too ' contextual ' i.e. for the Fourteen Documents, too ecclesiastical. As to the ' type of document ' argument, this has weight with regard to all authors, but its weight varies according to the adaptability of the individual. Since Justinian uses much the same mixture of the rhetorical and the colloquial whether he is writing a letter or a theological treatise, it is unlikely that he adopted a different manner for imperial constitutions. Indeed the fact that he made known his theological views from time to time in the form of imperial constitutions seems to indicate that he did not attach a specifically legislative character to imperial constitutions or think of them as radically different from other documents he might compose.

For *CJ* the obvious starting point of an inquiry into constitutions composed by the emperor is the letter of Justinian to pope John II which appears in the middle of *CJ* 1, 1, 8.[166] This is a statement of faith dated 6 June 533, which the pope endorsed by a letter of 6 April 534.[167] Its opening sentence reappears in the emperor's letter to pope Agapetus already considered [168] and contains the phrases, already cited: *semper nobis in voto fuit et est* and *semper magnum nobis fuit studium*,[169] the only use in *CJ* of *festinamus* [170] and a *quoniam* clause following the main verb.[171] The authorship is confirmed by a number of indications. *Festinare* occurs a second time in the text.[172] *Properamus* [173] also occurs here:

[149] Ib. 63, 475 C, bis.
[150] Ib. 63, 476 B and B–C.
[151] Ib. 63, 476 C and D.
[152] Ib. 63, 475 C, bis.
[153] Ib. 66, 35 C.
[154] Ib. 63, 496 A.
[155] Ib. 69, 34 A.
[156] n. 48 above.
[157] *Patr. Lat.* 63, 431 A; 509 B. In the first passage Guenther (*CSEL* 35, *Ep.* 147) and Thiel (Hormisdas, *Ep.* 44) read *convenit ordiri consensum*, an implausible phrase.
[158] Ib. 63, 476 B, C; 496 B; 510 B.
[159] *CJ* 3, 12, 1 (305); 8, 11, 8 (385); 8, 50, 20, 5 (409); 1, 27, 2, 4b (13 Apr. 534).
[160] *Patr. Lat.* 63, 430 (*optavimus*); 476 A (*optamus*); 486 B; 496 B.
[161] *CJ* 12, 28, 2, 2 (319); 1, 2, 1 (321); 11, 48, 5 (366); 5, 35, 2, 1 (390); 4, 3, 1 (394); 12, 57, 10 (407); 11, 10, 4 *pr.* (412); 9, 2, 19, 1 (423); 11, 19, 1, 3 (425); 12, 16, 3, 3 (432); 12, 33, 5 *pr.* (524); 1, 17, 1, 2 (15 Dec. 530); 1, 17, 2 *pr.* (16 Dec. 533); 1, 27, 1, 15 (Apr. 534).
[162] *CJ* 11, 19, 1, 3 (425); 1, 27, 1, 15 (Apr. 534).
[163] *CJ* 1, 17, 2 *pr.* (16 Dec. 533).
[164] *Patr. Lat.* 63, 430 D; 431 A; 450 D; 475 C and D; 476 D; 496 C and D; 501 B; 508 A and D.
[165] *CJ* 1, 50, 2 (427); 5, 4, 23 *pr.* (520–3); 1, 17, 1, 4 (15 Dec. 530), 6, 61, 7 *pr.* (18 March 530); 1, 17, 2 *pr.* (16 Dec. 533); 1, 1, 8, 36 and 38 (from pope John II, 6 Apr. 534); 1, 27, 1, 1; 5 and 8 (Apr. 534).
[166] Ib. 1, 1, 8, 7–24 (6 June 533).
[167] Ib. 1, 1, 8.
[168] *Patr. Lat.* 66, 35.
[169] *CJ* 1, 1, 8, 8; cf. *Patr. Lat.* 66, 36 C.
[170] Ib. 1, 1, 8, 8; cf. *Patr. Lat.* 66, 36 C. A *hapax* in *CJ*, but 1, 27, 1, 15 has *festinemus* (Apr. 534).
[171] Ib. 1, 1, 8, 8.
[172] *CJ* 1, 1, 8, 22 (6 June 533).
[173] Ib. 1, 1, 8, 11 (6 June 533).

it is found otherwise in the controversial 1, 3, 54,[174] and twice in compositions of Tribonian.[175] There are two instances of a *quoniam* clause after the main verb.[176] There are two references back, one with *sicut dictum est*;[177] and *sicut* occurs a second time in the text.[178] *Divinitas*[179] occurs twice, *deitas* thrice.[180] There are some repetitions: the phrase *consubstantialem patri secundum divinitatem et consubstantialem nobis eundem ipsum secundum humanitatem* occurs, with immaterial variations, three times.[181] One of these repeats *eundem ipsum* thus: *eundem ipsum consubstantialem patri et . . . consubstantialem nobis eundem ipsum*,[182] highly emphatic. The phrase *quamvis manifesta et indubitata sint*[183] is followed in the next sentence by *quamvis manifestum et indubitatum sit*.[184] The word order of the last sentence is rather colloquial: *petimus autem vestram beatitudinem orare pro nobis*.[185]

Two other constitutions in *CJ* which can securely be put to Justinian's account together make up title 27 of book I. They were addressed to Belisarius in April 534 soon after the initial reconquest of North Africa, and deal with the civil and military administration of the liberated territories respectively. In the first[186] the author, in the euphoria of victory, is unable to decide whether he is singular or plural. He thanks God *quod per me ultimum servum suum ecclesiae suae iniurias vindicare dignatus est*,[187] but in a later passage asks the Virgin Mary *ut quidquid minus est rei publicae nostrae per nos, ultimos servos suos, restituat*.[188] The reader will note the use, unique in *CJ*, of *quidquid* with a comparative adverb,[189] also the ineptitude first of switching from singular to plural, then of supposing that the majestic plural implies a plurality of slaves. In the sixth century the imperial singular is unusual but not unprecedented. Tribonian uses it thrice. The first use is an *Institutes* text where he has *secta temporum meorum non patitur*.[190] This is an echo from a rescript of Gordian III,[191] and is left in the singular because the plural form *temporum nostrorum* spoils the sound. The second instance in the *CJ* is similar.[192] The third occurs in Novel 36 of 1 January 535,[193] where the epilogue begins *Quae igitur pro securitate Africae mea sanxit aeternitas, haec sublimitas tua . . . deproperet ut . . . festinet; mea* is here used to contrast with *tua*. But the use in one sentence of *meus*, *deproperare* and *festinare* in a constitution which does not otherwise bear traces of the emperor's fingers, is an indication that Tribonian, newly restored to the quaestorship, is indulging in a pastiche which verges on parody.[194] Proclus also on two occasions uses the imperial singular. Writing to the Pope on behalf of the empress Euphemia he asks him not to omit her from his prayers: *Igitur poscimus ac monemus . . . nunquam excedat nomen meum ac praecipue serenissimi coniugis nostri*.[195] Daring but in order: a name is the most personal of attributes. The other passage contains a bold juxtaposition intended to produce a rhetorical effect and at the same time a political point. Justin is burning with zeal *pro remuneranda caelitus pace nostrae reipublicae, pro conciliando subiectis meis superno praesidio*.[196] Urging moderation on the intransigent Pope, Proclus emphasizes Justin's personal responsibility for the salvation of his subjects.

The introduction to *CJ* 1, 27, 1 commits the author to a deplorable anticlimax or at least incongruity. Speaking of the use made by the heretical Vandals of the North African churches the author complains: *Ipsas quoque dei sacrosanctas ecclesias suis perfidiis macula-*

[174] Ib. 1, 3, 54 *pr.* (Idem = Iustinianus Iohanni pp.).
[175] Ib. 1, 4, 31, 1 (1 Oct. 531); 7, 40, 2, 1 (18 Oct. 531).
[176] Ib. 1, 1, 8, 11 and 17.
[177] Ib. 1, 1, 8, 11 (*ut dictum est*); 18 (*sicut dictum est*).
[178] Ib. 1, 1, 8, 19 (*sicut vestra apostolica sedes docet*).
[179] Ib. 1, 1, 8, 11 and 23.
[180] Ib. 1, 1, 8, 11 and 15.
[181] Ib. 1, 1, 8, 11, 15 and 18.
[182] Ib. 1, 1, 8, 11.
[183] Ib. 1, 1, 8, 9.
[184] Ib. 1, 1, 8, 11.
[185] Ib. 1, 1, 8, 23.
[186] Ib. 1, 27, 1 (Apr. 534).
[187] Ib. 1, 27, 1, 5.
[188] Ib. 1, 27, 1, 9.
[189] Ib. 1, 27, 1, 9: cf. *Patr. Lat.* 63, 476 A, n. 25 above.
[190] *Inst.* 2, 20, 35 fin. (impossible or immoral legacies).
[191] *CJ* 10, 11, 2, 1 (6 Sept. 238, Gordian III shortly after becoming sole emperor: *ne quid in persona tua quod est sectae temporum meorum alienum adtemptetur*).
[192] Ib. 2, 3, 30, 4 (1 Nov. 531): *secta temporum meorum non patitur*.
[193] *Nov.* 36, 6 (1 Jan. 535).
[194] Of which he was capable: hence the joke, taken seriously by Justinian, that Tribonian was afraid he might be swept up into heaven on account of his piety (Procopius, *Hist. Arcana* 13, 12).
[195] *Patr. Lat.* 63, 487 B.
[196] Ib. 63, 449 B.

bant : aliquas vero ex eis stabula fecerunt.[197] ' They stained the churches with their heresies and even stabled horses in some of them.'

In this text of 311 lines more than half is taken up by a schedule (*notitia*)[198] with a detailed list of officers and salaries. This contains seven back references in the form *ut supra scriptum est*[199] and there is no reason to doubt that it too is Justinian's: the emperor attended to detail. In the remainder of the text we find the usual traits. *Festinare* occurs twice,[200] once in the form *licet festinemus*,[201] the second of two cases in *CJ* in which this word is used of the emperor himself. Another word connoting speed, *celerius*[202] is found only here and in the next constitution. *Dignari* occurs twice[203] and *divinitas* for God reappears.[204] Some vulgarisms are present, for instance *faciat nos eas* (the North African provinces) *secundum suam voluntatem ac placitum gubernare* :[205] ' make us govern the provinces according to his (God's) will '. *Cognoscant eius habitatores quam durissima captivitate liberati*[206] (' let the inhabitants of North Africa realize how hard was the captivity from which they have been freed ') offends by its use of the superlative with *quam*. We meet for the first time a new phrase: *deo auxiliante* or *auxiliante deo*, which appears here thrice[207] and will recur in *CJ* only in the next constitution.[208] *Optamus*, encountered in the Fourteen Documents[209] recurs in *CJ* only here[210] and in a constitution of 425.[211] *Innotescere*, found in 1, 1, 8,[212] recurs.[213] There are four other texts with this word.[214] *Subiacebit*[215] and *sustinebit*[216] (' he will be subject to a penalty etc. ') are each repeated in successive sentences. The former, together with the plural *subiacebunt*,[217] is found fourteen times in *CJ*,[218] including the two in this constitution, one in the next[219] and one in 1, 3, 54.[220] Tribonian has only the plural, twice.[221] *Sustinebit* and *sustinebunt* appear thirteen times,[222] including these two. No other text is later than 469, but the expressions occur six times in 468–469.[223] *Captivare*,[224] not found otherwise in *CJ*, appears to be ecclesiastical.[225]

CJ 1, 27, 2, on the military administration of the liberated areas, complements *CJ* 1, 27, 1 which refers to it by prolepsis.[226] It was issued to the same addressee, Belisarius, on 13 April 534. One would presume the author to be the same, and this is confirmed by a number of signs. The first sentence has the characteristic *semper progredimur* :[227] ' we always proceed in the name of Jesus Christ '. The next essays an effect, but flounders in bathos. Through Christ the emperor has ascended the throne and made peace with the Persians, *per ipsum acerbissimos hostes et fortissimos tyrannos deiecimus, per ipsum multas difficultates superavimus.*[228] After the terrible tyrants, a little local difficulty. *Festinare* appears thrice.[229] *Celerius*[230] occurs for the second and last time in *CJ*, and *subiacebit* returns.[231] We have the construction *sic ... sicut*,[232] and the converse *sicut ... sic*.[233] Neither of these is found elsewhere in *CJ*, but *sicut ... sic* is in the Fourteen Documents.[234] There are two other uses of *sicut*,[235] one with *sicut praedictum est*[236] which we noticed in

[197] *CJ* 1, 27, 1, 1 (Apr. 534).
[198] Ib. 1, 27, 1, 21–42, 174 lines.
[199] Ib. 1, 27, 1, 23 (ter), 24 (quat.).
[200] Ib. 1, 27, 1, 15, and 20.
[201] Ib. 1, 27, 1, 15.
[202] Ib. 1, 27, 1, 16; 1, 27, 2, 15 (13 Apr. 534).
[203] Ib. 1, 27, 1, 1 and 8.
[204] Ib. 1, 27, 1, 8.
[205] Ib. 1, 27, 1, 8.
[206] Ib. 1, 27, 1, 8.
[207] Ib. 1, 27, 1, 10, 12 and 21.
[208] Ib. 1, 27, 2, 7 (13 Apr. 534).
[209] *Patr. Lat.* 63, 476 A ; cf. 63, 430 D (*optavimus*).
[210] *CJ* 1, 27, 1, 15.
[211] Ib. 11, 19, 1, 3 (425).
[212] Ib. 1, 1, 8, 11 (6 June 533).
[213] Ib. 1, 27, 1, 43.
[214] Ib. 8, 50, 4, 1 (290); 10, 72, 8 (386); 6, 22, 8, 1b (521); 6, 51, 1, 16 (1 June 534).
[215] Ib. 1, 27, 1, 20 (bis).
[216] Ib. 1, 27, 1, 20 (bis).
[217] Ib. 9, 19, 4, 3 (357); 9, 39, 2, 2 (451); 5, 51, 13, 3 (1 Aug. 530); 3, 1, 13, 6 (27 March 530).
[218] Ib. 9, 24, 14 (321); 8, 51, 2 *pr.* (374); 10, 22, 1, 4 (410); 10, 36, 1, 4 (442); 1, 12, 5 (451); 1, 27 1, 20 (bis); 1, 27, 2, 17a (13 Apr. 534); 1, 3, 54, 11 (533–4); 11, 43, 10, 3 (Zeno) and n. 21 above.
[219] Ib. 1, 27, 2, 17a (13 Apr. 534).
[220] Ib. 1, 3, 54, 11 (533–4).
[221] Ib. 5, 51, 13, 3 (1 Aug. 530); 3, 1, 13, 6 (27 March 530).
[222] Ib. 9, 30, 1 (384); 11, 9, 4, 4 (424); 10, 12, 2, 1a (444); 7, 51, 4 (450); 1, 5, 18, 3 (455); 1, 4, 15, bis; 2, 6, 8, bis; 9, 12, 10, 2 (468); 3, 12, 9, 3 (469); 1, 27, 1, 20, bis (Apr. 534).
[223] n. 222 above.
[224] *CJ* 1, 27, 1, 1.
[225] *Thes. Ling. Lat.* 3, 369.
[226] *CJ* 1, 27, 1, 43.
[227] Ib. 1, 27, 1, 18.
[228] Ib. 1, 27, 2 *pr.* (13 Apr. 534).
[229] Ib. 1, 27, 2, 4, 4a and 15.
[230] Ib. 1, 27, 2, 15.
[231] Ib. 1, 27, 2, 17a.
[232] Ib. 1, 27, 2, 13.
[233] Ib. 1, 27, 2, 11.
[234] *Patr. Lat.* 63, 496 D.
[235] *CJ* 1, 27, 2, 4, and 7.
[236] Ib. 1, 27, 2, 7.

the Fourteen Documents [237] but which does not occur elsewhere in *CJ*. *Illaesus*, twice used in 1, 27, 1,[238] occurs thrice more.[239] There are only three other instances in *CJ*.[240] An unusual word is *augmentare*, which occurs in the form *augmentemus*.[241] *Pervidere* comes twice in 1, 27, 2.[242] There are five other uses in *CJ*,[243] but all go back to Diocletian and Constantine.

This closes the list of Latin constitutions in *CJ* which can securely be attributed to Justinian. One further text, however, *CJ* 1, 3, 54,[244] demands consideration. This opens *Deo nobis auxilium praebente . . . properamus*.[245] The formula looks like an improved version of *deo auxiliante*.[246] In section two the text proceeds *cognitum etenim nobis est quod . . .*[247] and goes on to deal with the proprietary arrangements of married people, one or both of whom decides to opt for the monastic life. Since *cognoscere quod* appears in the Fourteen Documents but in *CJ* only in this text and in a constitution of 446 [248] the introductory part of 1, 3, 54 looks Justinianic. But the rest of the constitution hardly confirms this impression. For it goes on *quod nostrae mansuetudini satis religioni esse contrarium visum est*,[249] which is Tribonianic both in rhythm and in its use of the form *satis* so-and-so *est*.[250] There is no *festinare*, no *sicut*, no *quoniam* in this constitution of 89 lines. It is true that *remeare* [251] occurs in s. 7 and *subiacebit* towards the end.[252] The date is between 17 November 533 and 13 September 534, in the quaestorship of Basilides, whose style cannot be determined.[253] One of the problems with which the law deals is that of Jews, pagans and heretics who have Christian slaves. This is said to be particularly troublesome in Africa,[254] but the constitution is nevertheless of general application and is addressed to the praetorian prefect of the Orient. The subject matter cannot be said to arise out of the work of Tribonian's commission, so that if he drafted it, or part of it, the arrangement was unusual. One should not, for the Basilides interregnum, exclude the possibility that, when the matter did not fall within the competence of the commission, Justinian sketched out the law and someone else filled in the detail, or that the emperor added a sentence or two at the end of a draft made by Basilides or (unofficially) Tribonian.

It is tempting to speculate which if any Greek constitutions in *CJ* were composed by Justinian. The correct way to approach the matter would be to determine first the norms of his Greek style as displayed in his Greek writings.[255] For speculative purposes a short-cut is permissible. A Greek equivalent for *festinare* is σπουδάζειν. Mayr's *Vocabularium* covers Greek as well as Latin, so we can comb the *CJ* for uses of this and other Greek terms, though we must remember that the amount of Greek in the volume is only about one-tenth that of the Latin.[256] *CJ* 1, 1, 6 has the only instances of σπουδάζομεν [257] and ἐσπουδάσαμεν,[258] used of the emperor. *CJ* 1, 1, 6 and 1, 1, 7 are the only constitutions in

[237] *Patr. Lat.* 69, 36 A.
[238] *CJ* 1, 27, 1, 8 and 15.
[239] Ib. 1, 27, 2, 4, 4b and 10.
[240] Ib. 4, 65, 1 (213); 1, 2, 14, 2 (470); 1, 2, 37, 16, 4a (Anastasius).
[241] Ib. 1, 27, 1, 5.
[242] Ib. 1, 27, 2, 5 and 14.
[243] Ib. 2, 12, 16, 2; 4, 26, 7, 3 (293); 11, 33, 2 (314); 1, 35, 1 (320); 7, 4, 11 *pr.* ('Diocl. et Max. AA et CC').
[244] 'Iustinianus Iohanni pp.', between 17 Nov. 533 and 12 Sept. 534.
[245] *CJ* 1, 3, 54 *pr.*
[246] nn. 207–8 above.
[247] *CJ* 1, 3, 54, 2.
[248] nn. 108–110 above.
[249] *CJ* 1, 3, 54, 2 in fin.
[250] Of thirty-two such texts in *CJ* twenty-four are by their dates, and three others (apart from the present text) by their style, Tribonian's: 3, 15, 1 (196); 5, 37, 22, 3 (326); 3, 66, 5, 1 (383–4); 4, 32, 26 *pr.* (11 Dec. 528, Thomas); 4, 1, 11 *pr.*; 6, 57, 5, 1 (17 Sept. 529); 3, 28, 33, 1 (17 Oct. 529); 4, 21, 21, 4 (20 Feb. 530); 5, 12, 31, 6; 5, 27, 11, 3 (18 March 530); 4, 28, 7 *pr.*; 4, 29, 24, 1 (1 Aug. 530); 3, 33, 16, 1: 7, 4, 15 (1 Oct. 530); 4, 31, 14, 1; 5, 13, 1, 14a, ter (1 Nov. 530); 4, 18, 2, 1; 6, 40, 2, 2 (20 Feb. 531); 6, 43, 3, 2a; 2, 52, 7 *pr.* (1 Sept. 531); 7, 31, 1 *pr.* (18 Oct. 531); 7, 61, 1, 8 (1 Nov. 531); 6, 30, 22, 1 and 5; 7, 37, 3 ,1a (27 Nov. 531); 11, 48, 22, 4 (531); all Tribonian by date and 7, 24, 1 (531–4), 11, 48, 23 (531–4), 2, 3, 5, 2 (531–3), Tribonian by style.
[251] There are fourteen texts in *CJ*: 9, 51, 13 *pr.* (321); 11, 2, 1 (357); 12, 35, 13, 1 (398); 10, 19, 7, 1 (401); 1, 51, 5 (415); 11, 60, 3 *pr*; 12, 25, 1 (416); 3, 4, 1, 2 (440); 2, 7, 9 (442); 6, 37, 26, 1 (18 Oct. 532); 1, 27, 2, 13 and 15 (13 Apr. 534); 12, 29 1 (Zeno); 1, 3, 54, 7 (533–4).
[252] *CJ* 1, 3, 54, 11.
[253] p. 108 above.
[254] *CJ* 1, 3, 54, 11.
[255] *Adversus Originem* (*Patr. Lat.* 69, 177–226); *Confessio rectae fidei adversus tria capitula* (*Patr. Lat.* 69, 226–67); *Epistula ad sanctam synodum de Theodoro Mopsuesteno* etc. (63, 267–74); *Epistula ad nonnullos impium Theodorum* etc. *propugnantes* (63, 273–327).
[256] There are 5,842 lines of Greek out of 57,176, which is 10·2 per cent.
[257] *CJ* 1, 1, 6 *pr.* (15 March 533).
[258] Ib. 1, 1, 6, 1.

which we find μὴ γένοιτο.[259] If not exactly vulgar, this expression, in the text of a statute, is at least colloquial. Θεότης, a term equivalent to *divinitas* or *deitas* is found only in *CJ* 1, 5, 6 and 7.[260] These three texts, the first perhaps of 527, the second of 15 March 533 and the third of 7 April 533,[261] deal with Christian dogma and say much the same as Justinian does in his declaration of faith of the year 533 to pope John. They are more likely than any other Greek constitutions in *CJ* to be the emperor's work. One must remember that many of the Greek constitutions printed in the stereotype edition are paraphrases from the Basilica, which, just because they are paraphrases, provide no indications of style from which to identify the author.

So much for the *Codex Justinianus*. In the third volume of the *Corpus Juris* attention should be drawn to three Latin documents which are not actually Novels but are printed in the appendix to the stereotype edition.[262] The first is no. 3, dated 29 October 542 and addressed to Dacianus Metropolitan of Byzacena, is described as *Iussio Iustiniani Imperatoris pro Privilegio Concilii Byzaceni*.[263] It is the second of two documents on this subject, a council of North African bishops. The previous one, no. 2 in the Appendix, presents no clear marks of authorship,[264] but the second is by Justinian. It opens *Semper nostrae serenitati cura fuit servandae vetustatis maxime disciplinae, quam nunquam contempsimus nisi ut in melius augeremus*. Notice the characteristic opening statement by the emperor of what he has always or never done.[265] The sentence involves a misuse of *contemnere*. 'We have never disdained the discipline of the past except to improve it.' So he has disdained or disregarded tradition on the occasion when he has introduced improvements—which is not what Justinian means to say. The translation may be over-indulgent: *in melius augere*, 'to increase for the better' is at the least clumsy. *Augere* should refer to size rather than quality. *Augeremus* calls to mind the *augmentemus* of *CJ* 1, 27, 2.[266] The sentence continues: *praesertim quotiens de ecclesiasticis negotiis contingit quaestio, quae patrum constat regulis definita, immo superni numinis inspirata* : 'especially when the question concerns ecclesiastical affairs and is settled by the authority of the fathers, indeed by inspiration from on high' ... All would have been well had the sentence ended here. Unfortunately Justinian spells it out: *quia constat esse caelitus constituta quicquid apostolica decernit auctoritas*: [267] 'since it is settled (*constat* again) that the decrees of the apostolic authority are the decisions of heaven'.[268] A similar misfortune occurs later in the constitution. There is a splendid sentence *Nos tutores tantum sumus vetustatis et vindices : nec deerit ecclesiastica vindicta vel nostra in eos qui aut ambitiosa superbia aut subrepticiis postulationibus antiquitatem temerasse docebuntur*—'we are merely the custodians and executors of the past: and neither the sanction of the church nor our own will fail to strike those whose proud ambition or surreptitious pleas are shown to have contravened tradition'. There the sentence should have ended, but the author adds a postscript: *quoniam ad divinitatis tendit iniuriam qui sanctorum patrum constituta contemnere ac violare non metuit, sancte et religiosissime pater*: [269] 'since, holy and religious father, one who is not afraid to disdain and violate the decisions of the fathers tends to wrong the divinity'. Reprehensible but, by now, to be expected. *Divinitas* for God occurs twice.[270]

The constitution, couched in a rhetorical vein, contains a phrase reminiscent of one of Justinian's letters to pope Hormisdas: *nullus adripiat quod habuisse iugiter non probatur*: [271] 'let no bishop lay hold of a privilege which he is not shown to have held without interruption'.

[259] Ib. 1, 1, 6, 3 : οὐ καινίζοντες πίστιν, μὴ γένοιτο; 1, 1, 7, 19 (27 March 533) : ὅπερ οὐκ ἐνδέχεται πραχθῆναί ποτε, μὴ γένοιτο: 'which can never happen—and may it never happen', incoherent.

[260] Sixteen uses: *CJ* 1, 1, 5, 1, 2 and 3 (527 ?); 1, 1, 6, 4, 6 (bis) and 8 (13 March 533); 1, 1, 7, 4 (bis), 7 (quat.), 8, 10 and 11 (7 Apr. 533).

[261] *CJ* 1, 1, 6, 3 says that Justinian made his theological views clear at the beginning of the reign: the reference may be to *CJ* 1, 1, 5. The reign began on 1 April 527 and Justinian became sole ruler on 1 August 527.

[262] *Corpus Iuris Civilis* iii (Schoell–Kroll 1919), 797, 799, 803.

[263] *CJC* iii, 797.

[264] It falls in the quaestorship of Tribonian but presents no clear mark of his authorship. *Sicut* occurs in the last sentence.

[265] nn. 39–45 above.

[266] *CJ* 1, 2, 7, 2 and 5.

[267–8] On *quia* clauses after the main verb cf. n. 36 above.

[269] On *quoniam* clauses after the main verb see nn. 31–5 above.

[270] *CJC* iii, 797, 1, 25 and 28.

[271] Ibid. i, 17–18 cf. *Patr. Lat.* 63, 475 D (*subito autem iter arripiente praedicto agente in rebus etiam duo pallia sacra ad ornamentum altaris sanctorum apostolorum direximus quas suscipientes efficacissimis precibus vestris nostri iubete iugiter facere memoriam*).

There is a still stronger echo of Hormisdas' literary helper. Justinian, not strong on connectives, here uses *hinc est quod* to link two sentences.[272] *Hinc* is found only twice in *CJ*,[273] *hinc est quod* not at all. But in the letters of pope Hormisdas it is used thrice.[274] *Optare* is also found in this text.[275]

Our constitution was issued in the period following Tribonian's last known constitution of 1 May 542.[276] A novel of 18 December 542 [277] is by the next quaestor, Junilus Africanus. The present text may belong to an interregnum in the quaestorship or may have been composed by Justinian early in the tenure of Junilus. If the latter, the emperor perhaps reasoned that in the absence of Tribonian he was as competent as anyone to address Africans in Latin.

The next text is a short one, only 56 words apart from the inscription and subscription. Addressed to Paul, praetorian prefect for Africa, it is dated 6 September 552.[278] It deals with the recovery of serfs who had become free under the Vandal occupation. The opening runs *Pervidimus scribere tuae magnitudini (ut) neminem de colonis qui temporibus Wandalorum de possessione egressi sunt et inter liberos commorati sunt, iterum attrahi et ad colonatus condicionem iterum reduci ; quia volumus eos sicut temporibus Wandalorum erant, sic et modo sint. Pervidere* is Justinianic.[279] The false construction *ut* with the accusative and infinitive is probably a textual error, but among further marks of imperial composition one may note the repetition of *iterum*,[280] the rather clumsy *sicut . . . sic* [281] construction and the redundant *quia* [282] clause following the main verb. In what follows there is another strained use of *contemnere*.[283] Those who have abandoned their land and gone elsewhere are to be returned. *Insuper autem de cetero quicumque suam contempserint terram et ad alienam se ducere voluerint, eos restituere iubemus.* The construction is awkward and *de cetero* pleonastic after *insuper*.

The last constitution to be noticed again concerns the problems of North African serfs. It is addressed to Johannes, praetorian prefect for Africa, and dated 22 September 558.[284] Its opening, *cognitum nobis est quod*, is by itself revealing.[285] The pious phrase *auxiliante deo* recurs.[286] Delay is again a theme. Landowners are trying to recover wandering clerics: *iubemus nec ulterius dilatari ; veternosas enim lites et contentiones non patimur protelari.* This is a good phrase, and *veternosus* is a word not otherwise found in the *Corpus Juris*. *Innotescere* occurs once more.[287]

It would be unwise to assert that no other documents in Vol. iii of the *Corpus Juris* were composed by the emperor. The absence of a concordance to the Novels and the lack of a thorough study of Justinian's Greek style compel caution. The harvest is in any case far from negligible. Two and a half constitutions in *CJ* amounting to 755 lines, and three in the Appendix to the Novels, the equivalent of 98 more lines in *CJ*, are securely ascribed to him. One further Latin text in *CJ* may be partly his,[288] and three Greek constitutions,[289] amounting to 319 lines in *CJ*, are also possibly Justinianic. The minimum volume of Justinian's Latin in the *Corpus Juris* is roughly the same as that of the Fourteen Documents.[290] Taken as a whole the results of our investigations tend to support two of Procopius' jibes. Justinian *did* sometimes undertake tasks which were normally within the province of an official such as the quaestor.[291] When he did so he *was* inclined to βαρβαρίζειν, display his lack of refinement.[292] But, *pace* Procopius, he did not do it often. Six or even ten constitutions out of 434 is not a large proportion. So far as can be judged, he composed

[272] *CJC* iii, 797, 1, 15.
[273] *CJ* 9, 19, 5 *pr.* (363); 2, 7, 17 *pr.* (474).
[274] *Patr. Lat.* 63, 433 (Hormisdas to Justinian, *Ep.* 31); 63, 437 (Hormisdas to Euphemia, *Ep.* 33); 63, 440 (Hormisdas to Justinian, *Ep.* 37).
[275] *CJC* iii, 797, l.23; cf. nn. 160–3 above.
[276] *Nov.* 157.
[277] *Nov.* 117.
[278] *CJC* iii, 799 (appendix 6). E. Stein, op. cit (n. 14), 373 describes it as a translation from the original Greek, but without explanation. Perhaps he was struck by the awkwardness of the style.
[279] n. 242 above.
[280] nn. 148–52 above.
[281] nn. 232–4 above.
[282] n. 139 above.
[283] *CJC* iii, 797 (appendix 3, 20 Oct. 542), p. 120 above.
[284] Ib. 803 (appendix 9).
[285] nn. 108–10 above.
[286] nn. 207–8 above.
[287] nn. 212–4 above.
[288] *CJ* 1, 3, 54 (533–4).
[289] Ib. 1, 1, 5 (527 ?); 1, 1, 6 (15 March 533); 1, 1, 7 (6 Apr. 533).
[290] Ib. 1, 1, 8, 7–24; 1, 27, 1; 1, 27, 2; and Appendices 3, 6, and 9 to the Novels come to 853 lines, the Fourteen Documents to 812.
[291] Procopius, *Hist. Arcana* 14, 3 f.
[292] Ib. 14, 2.

texts himself in only two circumstances: (i) when they concerned the definition of Christian dogma, (ii) when they involved the affairs of liberated North Africa, and Tribonian was not available. As to the first it is important to grasp that Justinian did not in general draft constitutions which were concerned with church discipline or administration. He left these to the quaestor.[293] Dogma was another matter, in which he felt himself expert in comparison with anyone except the Pope; and his deference to papal authority at times nears vanishing point. As to North Africa, *CJ* 1, 27, 1 and 2 and Novels, Appendix 3, 6, and 9 concern its affairs.[294] Justinian evidently felt a special concern for and capacity to deal with its problems, perhaps rightly, since it would not have been recaptured had he not disregarded the advice of his military and civil officials. It is important to bear in mind, however, that constitutions addressed to North Africa in the quaestorship of Tribonian were composed by the latter: thus Novels 36 and 37 of 1 January and 1 August 535 to Salomon, praetorian prefect for Africa, are Tribonian's. It may be a matter for surprise that Junilus, a Latin-speaking African,[295] was not allowed to draft Latin constitutions destined for that area. But Junilus wrote in a plain unvarnished manner which may have seemed to Justinian, as it did to Procopius,[296] that of a lightweight. He had other qualities which appealed to the emperor, for he was pious enough to write an introduction to the study of divine law.

If the style is not always the man, it is often, when he is not available for cross-examination, the best clue to his personality and thought. So with Justinian. From his manner of composing we can see him as he is: forceful and persistent rather than polished; emphasizing, repeating, reformulating. His essays in elegance as often as not flounder. His descents to the colloquial or vulgar can be embarrassing. Yet his energy and determination evoke the passionate admiration of those whose main concern is to get things done. He is in a hurry, festinating in his youth, festinating as the years advance, veering one way and another, with no respite for helpers, friends, enemies.

It is far from my purpose to poke fun at a great, if divisive, ruler. But neither historians nor lawyers have done Justinian or history service by treating the splendid monuments of late Latin and Greek eloquence in the *Corpus Juris*—especially the prefaces to the codification and to the Novels—as if the emperor wrote or could have written them himself. That was not his sort of ability. He could not have made the mathematical calculations for the dome of Hagia Sophia either, yet both it and the *Corpus Juris* are in a certain sense his achievements. But in what sense? He gave the orders and never ceased prodding the recipients until they were carried out. He did not compose any but an insignificant portion of the *Corpus Juris* himself, and with the myth of imperial composition must go the myth of Justinian the connoisseur of classical antiquity.[297] The only references in Justinian's writings to the events, writers or institutions of the pagan age are some pejorative allusions to the views of Plato, Pythagoras and Plotinus on the soul:[298] a list of ideological enemies culled from the Christian fathers, no evidence of classical culture. Indeed the classicism of Justinian's reign turns out on scrutiny to have a still narrower base. Not one reference of a specific sort to the pagan world, its lawyers or its history is to be found in the pages of the *Corpus Juris* dating from his reign outside the two quaestorships of Tribonian. The remaining quaestors have at most vague phrases like *vetera iura*, *antiqui* and the like. Tribonian is another matter: he knew and loved the ancient world.[299]

[293] E.g. *CJ* 1, 2, 19 (528, Thomas); 1, 2, 21–3 (529 to March 530, Tribonian); 1, 3, 48–51 (23 Aug. 531 to 1 Nov. 531, Tribonian).

[294] So to some extent does *CJ* 1, 3, 54 (533–4).

[295] E. Stein, op. cit. (n. 14), 378.

[296] Procopius, *Hist. Arcana* 20, 17.

[297] Even A. H. M. Jones, *Later Roman Empire* i (1964), 270, 'he (Justinian) was by the standards of the times well versed in Roman history and antiquities and took pleasure in reviving such antique titles as praetor and quaestor in their primitive significance', apparently forgetting the quaestor's role which is described at *LRE* i, 352. B. Rubin, *Das Zeitalter Iustinians* i (Berlin, 1960), 89 makes the emperor a 'romantisch-antiquarischer Restaurator'. Still more naïve, E. Grupe, *Kaiser Iustinian* (Leipzig, 1923), 50, n. 3, and 'Zur Latinität Iustinians', *ZSS* 14 (1893), 224–37; 15 (1894), 327–42. The attribution of the mixed metaphors in the *Corpus Iuris* to Justinian's personal intervention, see W. Schubart, 'Iustinians Corpus Iuris', *Die Antike* 2 (1935), 265, 269, is mistaken; only Tribonian of the quaestors of the age is addicted to these.

[298] *Patr. Lat.* 69, 181 C; 223 A, C and D; 69, 225 A.

[299] *Nov.* 30 *praef.* (18 March 536: οἱ τῆς ἀρχαίας πολυμαθείας ἐρασταί) can be taken as a self-descriptive phrase of Tribonian.

Justinian's mind was formed, so far as we can judge, by reading of a Christian and bureaucratic sort: church fathers, constitutions of the Theodosian code and Novels, archives of the eastern empire in the fifth and sixth centuries, current correspondence. He plucks phrases from papal letters (*hinc est quod*) [300] or from constitutions of the Christian age (*iter arripere*).[301] His historical imagination reaches back a century, no more. When he says that none of his predecessors has managed to codify the constitutions [302] or to reconquer North Africa [303] he means none in the century that has elapsed since Theodosius II and Valentinian III.[304] He has read the laws of the men he is determined to outshine: Theodosius II, Marcianus, Leo, Zeno, Anastasius. He has picked up bureaucratic turns of phrase: *sicut superius dictum est.*[305] No Cicero, no Vergil, no Seneca and, alas for Tribonian's hero, no Marcus Aurelius.[306] Justinian, says Procopius, had none of the talents needed for an emperor.[307] Among those which Procopius overlooked was the knack of choosing and keeping loyal men whose abilities differed from his own.

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[300] nn. 272–3 above.

[301] nn. 82–3 above.

[302] *C. Haec* (13 Feb. 528: ' haec quae necessario corrigenda multis retro principibus visa sunt, interea tamen nullus eorum hoc ad effectum ducere ausus est '... Thomas, but expressing also Justinian's field of vision).

[303] *CJ* 1, 27, 1, 6 (6 Apr. 534: ' quod beneficium dei antecessores nostri non meruerunt quibus non solum Africam liberare non licuit, sed et ipsam Romam viderunt ab eisdem Wandalis captam et omnia imperialia ornamenta in Africam exinde translata '). Leo unsuccessfully tried to reconquer North Africa in 468: the Vandals took Rome in 455.

[304] The same is true *mutatis mutandis* of Justinian's Christianity, in which the immovable element is the Council of Chalcedon (451).

[305] n. 141 above.

[306] *CJ* 6, 35, 11, 2 and 3 (30 Apr. 531), ' divi Marci prudentissimi principis ... princeps philosophiae ... Merito enim nobis sanctissimi Marci per omnia constitutionem replere placuit: nihil etenim actum esse credimus dum aliquid addendum superest '; 5, 17, 12 (11 Aug. 534): Μάρκῳ τῷ φιλοσοφωτάτῳ τῶν αὐτοκρατόρων; *Nov.* 22, 19 (18 March 536): ὁ φιλοσοφώτατος ... Μᾶρκος; *Nov.* 60, 1 (1 Dec. 537): Μᾶρκος ὁ φιλοσοφώτατος τῶν αὐτοκρατόρων; *Nov.* 108 *praef.* 2 (1 Feb. 541): ὁ φιλόσοφος ἐν βασιλεῦσι Μᾶρκος.

[307] Procopius, *Hist. Arcana* 13, 2.