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Michael Maas

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ROMAN HISTORY AND CHRISTIAN IDEOLOGY IN JUSTINIANIC REFORM LEGISLATION

MICHAEL MAAS

In the early summer of 535, following upon some preliminary legislation that set the stage,¹ Emperor Justinian I enacted the first laws of an ambitious and innovative program of administrative reform in the eastern provinces. Laws continued

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I have used the text of the *Novels* prepared by R. Schoell and G. Kroll, *CIC*, III, ed. stereotypa 5 (Berlin, 1928). The translations are based on those of S. P. Scott, *The Civil Law*, vols. 16–17, *The New Constitutions of Justinian* (Cincinnati, 1932), with many changes.

¹Novel 23 (Jan. 535) concerned with appellate procedure, anticipates the reforms and offices to come. See W. Turpin, *The Late Roman Law Codes: Forms and Procedures*, Diss. (Cambridge University, 1982), 215; on the date, see E. Stein, *Histoire du Bas-Empire*, II (Paris, 1968), 805–10, and A. Honoré, *Tribonian* (London, 1978), 57.

Novel 8 (Apr. 535) forbade the sale of offices. See R. Bonini, *Ricerche sulla legislazione giustiniana dell'anno 535. Nov. Iustiniani 8: Venalità delle cariche e riforme dell'amministrazione periferica*, 2nd ed. (Bologna, 1980), and his "Note sulla legislazione giustiniana dell'anno 535," in G. G. Archi, ed., *L'imperatore Giustiniano storia e mito* (Milan, 1978), 161–78. See also S. Puliatti, *Ricerche sulla legislazione "regionale" di Giustiniano. Lo Statuto Civile e l'Ordinamento militare della Prefettura Africana*, Seminario Giuridico della Università di Bologna 84 (Milan, 1980), 1–8, which stresses the innovative aspects of the reforms, and Paul Veyne, "Clientèle et corruption au service de l'état: La venalité des offices dans le Bas-Empire Romain," *Annales* 36.3 (1981), 339–60, esp. 351 ff. Novel 17 (Apr. 535) issued a book of instructions for provincial magistrates. See Detlef Liebs, "Ämterkauf und Ämterpatronage in der Spätantike," *ZSav* 95 (1978), 158–86, esp. 161–67.

to be published in small groups over the next two years with one later addition.² Though the solutions to regional problems were piecemeal, the reform program was conceived as a unity. Its main lines were elimination of corruption, redefinition of relations between civil and military administrators, streamlining of judicial appeal, and enhancing the status and authority of provincial governors. In response to practical, immediate needs the laws restructured administrative and legal procedure in the provinces.³

Justinian undertook this project only after the completion of the *Code*, *Digest*, and *Institutes*,⁴ themselves works of reform intended to establish new foundations for the practice and study of the law, to solve all outstanding legal questions,⁵ and to replace the juriconsults with the emperor as the source of law.⁶ The program of provincial reform was in a series with the codification and was of equal

²Novels 24 (Pisidia), 25 (Lycaonia), 26 (Thrace), and 27 (Isauria) were issued on 18 May 535; Novels 28 (Helenopontus) and 29 (Paphlagonia) on 16 July 535; Novels 30 (Cappadocia) and 31 (Armenia) on 18 March 536; Novel 41 (Caria, Cyprus, the Cycladic Islands, Moesia, and Scythia) on 18 May 536; Novel 102 (Arabia) and Edict 4 (Phoenicia) on 27 May 536; Novel 103 (Palestine) in June 536. Sometime during the year following 1 September 538 Egypt was reorganized through Edict 13. (See below, note 43.)

³A. H. M. Jones, *The Later Roman Empire* (Oxford, 1964) (hereafter *LRE*), 280–83, 483; Stein, *Bas-Empire*, II, 463 ff; Turpin, *Law Codes*, 214–15 (on legal aspects).

⁴For the most recent discussion of the composition and dating of the *Code*, *Digest*, and *Institutes*, see Honoré, *Tribonian*, chaps. 5–7.

⁵F. Pringsheim, "Some Causes of Codification," *RIDA* 12 (1957), 301–11 (=Pringsheim, *Gesammelte Abhandlungen*, II [Heidelberg, 1961], 107 ff); A. Honoré, "The Background of Justinian's Codification," *Tulane Law Review* 48 (1974), 859–93.

⁶R. Bonini, "L'età giustiniana e bizantina," in *Lineamenti di storia del diritto romano*, ed. M. Talamanca (Milan, 1979), 766; F. Pringsheim, "Justinian's Prohibition of Commentaries on the *Digest*," *RIDA* 5 (1950), esp. 414; G. Ladner, "Justinian's Theory of Law and the Renewal Ideology of the *Leges Barbarorum*," *PAPS* 119 (1975), 193.

status. With the law thus put in order and firmly subordinate to his authority, and with his legal staff, especially Tribonian, available for new endeavors, Justinian turned to the internal reorganization of the empire.

The laws that make up this reform program, with a few exceptions, survive as originally published.⁷ They remain intact specimens of imperial propaganda, presenting Justinian and his reforms precisely as he wished. As would be expected in a project conceived and directed by the emperor himself, a great deal of care went into the composition of the laws. In format they conform to a general model,⁸ but they show originality in the choice and presentation of data in their prefaces. The laws are introduced in an unprecedented fashion.

Most of the prefaces and occasionally the first chapter of the laws contain much historical information. They combine data about the province affected by the law and its need for reform with a peculiar assortment of "facts." Many legends are recounted, and there is a striking emphasis on ancient titles of magistracies, methods of provincial administration, and ties between Rome and the provinces in the Roman Republic and in earlier times.⁹ These sketches of Roman history are detailed but often quite inaccurate. Overtly Christian references are infrequent throughout.

Though many scholars have scrutinized the mechanics of the reforms,¹⁰ the importance of the historical prefaces as a whole has been neglected.¹¹ This oversight is surprising because the prefaces are the best example of direct and programmatic reference to antiquity found in documents directly linked to court policy during the reign of Justinian, a period in which considerable interest was displayed in the classical past. The prefaces provide invaluable evidence for the role the Roman

past could play in the formulation of political propaganda and legal theory in Christian Constantinople. They help demonstrate how in the sixth century secular expressions of legitimacy and power, such as the prefaces' identification with ancient Roman accomplishments, were made accessible within a Christian framework.¹² Here lies the significance of the historical prefaces. They do not speak for a classicism independent of Christianity.¹³ Instead a controlling Christian theory is paramount and demonstrable. Examination of the reform prefaces provides a new view of classical reference in Justinian's propaganda.

While allusions to the past commonly appear in late antique legislation, never before in Roman law had historical data, often fanciful or inaccurate, as we shall see, been so systematically tailored to the needs of one specific legislative program. Since the time of Diocletian the prefaces of imperial laws had begun to exhibit more and varied sorts of rhetorical flourishes.¹⁴ By the fifth century the developed legal preface¹⁵ displayed many of the themes found in Justinian's laws. One of the most important of these was *reverentia antiquitatis*,¹⁶ an attitude of deference toward some aspects of the past, employed

¹²See, for example, A. M. Cameron, "Images of Authority: Elites and Icons in Late Sixth-Century Byzantium," in *Byzantium and the Classical Tradition*, Thirteenth Spring Symposium of Byzantine Studies, University of Birmingham, 1979, ed. M. E. Mullett and R. D. Scott (Birmingham, 1981), 205–34, esp. 206. The article is reprinted from *Past and Present* 84 (1979), 3–25.

¹³The bibliography is extensive. Particularly helpful in the field of law are: F. Pringsheim, "Die archaische Tendenz Justinians," *Studi in onore di Pietro Bonafante*, I (Milan, 1930), 549–87 (= Pringsheim, *Gesammelte Abhandlungen*, II, 1 ff); S. Riccobono, "La verità sulle pretese tendenze arcaiche di Giustiniano," *Conferenze per il XIV centenario delle Pandette* (Milan, 1931), 237–84; F. Schulz, *History of Roman Legal Science* (Oxford, 1946), 278 ff; Pringsheim, "Justinian's Prohibition," 383–415; K. H. Schindler, *Justinians Haltung zur Klassik. Versuch einer Darstellung an Hand seiner Kontroversen entscheidenden Konstitutionen* (Cologne, 1966), passim; F. Wieacker, "Ist Justinian Klassizist?" *Etudes Macqueron* (Aix en Provence, 1970), 683–91; Honoré, *Tribonian*, esp. 243–56; and Puliatti, *Ricerche*, 8–16.

¹⁴G. Ries, *Prolog und Epilog in Gesetzen des Altertums* (Munich, 1983), 178–79, 186–211; M. Benner, *The Emperor Says*, *Studia graeca et latina gothoburgensia* 33 (Stockholm, 1975), 15–30, 176–80; F. Wieacker, *Vulgarismus und Klassizismus im Recht der Spätantike* (Heidelberg, 1955) (= *Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Phil.-hist. Klasse* [1955:3], 50–61; R. Honig, *Humanitas und Rhetorik in Spätromischen Kaisergesetzen* (Göttingen, 1960), esp. 127–44; A. Fridh, *Terminologie et formules dans les Variae de Cassiodore*, *Studia graeca et latina gothoburgensia* 2 (Stockholm, 1956), 30–59; G. Donatuti, "Antiquitatis Reverentia," *Studi diritto romano*, II, Università di Parma pubblicazioni della Facoltà di Giurisprudenza 34 (Milan, 1977) (= *Studi parmensi* 3 [1953]), 205–40.

¹⁵Fridh, *Terminologie*, 54.

¹⁶Donatuti, "Antiquitatis Reverentia," 829–62.

⁷P. E. Pieler, "Rechtswissenschaft," in H. Hunger, *Die hochsprachliche profane Literatur der Byzantiner*, II (Munich, 1978), 409–11.

⁸F. Dölger and J. Karayannopoulos, *Byzantinische Urkundenlehre* (Munich, 1968), 71–82.

⁹See W. Christ, W. Schmid, and O. Stählin, *Geschichte der griechischen Litteratur. Die nachklassische Periode von 100 bis 530 nach Christus* (= *HAW* 7.22) (Munich, 1924), 1040–41. In the period following the Second Sophistic movement there was a growth of interest in the study of the histories of cities and territories. We know, for example, of Capito's treatise *Lycia and Pamphylia*, Pausanias of Antioch's *History of Antioch*, and Eustochios' *Cappadocian Antiquities*. The information in the *Novels* may be from sources related to this tradition.

¹⁰See notes 1 and 3.

¹¹H. Hunger, *Prooimion. Elemente der byzantinischen Kaiseridee in den Arengen der Urkunden* (Vienna, 1964), 175–76, mentions the prefaces but does not give a full discussion.

for various purposes and with different degrees of emphasis and subtlety by different emperors.¹⁷ In general *antiquitas* meant Roman antiquity¹⁸ but could often refer more specifically to ancient juridical regulations,¹⁹ Roman virtues, monuments, customs and practices of various sorts, language usage,²⁰ and Roman law as a whole.²¹ It must be emphasized that these pre-Justinianic prefaces did not characteristically use historical information to explain or justify the laws they introduced. The closest they came to this was to review the history of prior legislation on the topic being addressed in a given law.²² Thus while the legislation was placed in a historical context, it was only that of a point of law.

Why were the long historical prefaces of the reform laws written and why were they limited to a specific program of reform legislation? To understand the significance of the connection between reform and historical reference this paper considers several related issues. First, the prefaces themselves are examined to see the manner and purposes of their appeal to the past. The evidence will show that the prefaces represent a deliberate propaganda effort undertaken in response to political conditions in Constantinople at the time of composition. We will see that the choice of the historical tone of the prefaces was a function of authorship, and that it also reflected more fundamental attitudes toward change and imperial activity. Finally, this paper examines a newly developed legal theory that underlies the connection between the historical references and the reform laws.

DESCRIPTION OF THE USES OF THE PAST IN THE REFORM NOVELS

The prefaces share an interest in creating ties with the past, but the historical connections take different forms, variations on a general formula. Each novel contains two sorts of historical information. The provinces affected by the reforms are linked in some way to Roman antiquity, then an ancient title described in terms applicable to the immediate needs of reform is brought forward as an appropriate solution to the problems at hand.

¹⁷ *Ibid.*, 843–53, for a historical summary.

¹⁸ *Ibid.*, 831 note 17, for citations.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*, 842.

²² For example, *CTh* 5.10 (Constantine, 329); Fridh, *Terminologie*, 47.

Justinian obviously relished the reuse of old titles for new administrators of the reformed provinces and took pains to associate them explicitly with himself, thereby tying the magistracy to both the imperial office and the Roman past in a highly personal way.²³ Accordingly the choice of title received careful attention, for titles were the most visible signs of a reorganized hierarchy of administrators for the provinces. Though all the administrators received the rank of *spectabilis*, salary, status, and title varied with the importance and difficulty of governing each province.²⁴ This hierarchy did not duplicate any earlier Roman administrative system.

The provinces are treated as separate *ethnē* with individualized histories and characteristics. The relations drawn between the provincials and Romans in the past are not always accurate. Novel 25 begins:

We have thought it right to adorn the nation of Lycaonia with a greater form of government than its present one since we have considered those first beginnings from which comes the present nation of the Lycaonians, according to those who have written about ancient matters. They have informed us that the Lycaonian nation is most closely akin to the Roman people and, on the basis of the same evidence, practically wedded to it. Long ago Arcadia in Hellas was ruled by Lycaon, and he began the settlement of the territory of the Romans. After he had seized the land of the Oenutrians he gave a beginning to the Roman Empire. We are speaking of times far more ancient than those of Aeneas and Romulus. When a colony was established there he seized a large portion of Pisidia, which he named after himself, calling the land Lycaonia. Hence it is only just that the administration of this province should be ornamented by investing it with a sign of the ancient Roman magistracies. And now its current administrators, that is, the civil and military governors, should be joined into one office and decorated with the title of praetor. This title is part of the patrimony of Roman government. It was in use in the great city of the Romans before the title consul. Indeed, the ancient Romans called their military leaders praetors and gave them command of the troops. The Romans obeyed the laws that the praetors enacted. This magistrate was fair-handed in both capacities and displayed as much resolution in battle as he did in maintaining order with the laws.

The link made with Rome to justify the “ornamentation” of Lycaonia is weak, to say the least: a colony in Italy was founded by the son of a king who conquered the province affected by Justinian’s

²³ Honoré, *Tribonian*, 16–17.

²⁴ A complete list of officials, ranks, and salaries is given in Novel 8, *CIC* 3.80–89). Salaries are also given in the individual novels dealing with the new administration of provinces.

reform.²⁵ The true historical connection of Lycaonia with Rome (annexed in the late second century B.C. and not ruled as an independent province but by the governor of Asia)²⁶ is completely overlooked. Justinian's desire to join the civil and military government of the province under a praetor finds its justification not in the antiquity of Lycaonian-Roman connections but in the suitability of the dual character of the praetorship itself.²⁷

The preface to Novel 24 differs slightly. Like Novel 25 it explains that just as the praetors of the Republic combined military and judicial functions in provincial administration, so would Justinian's praetor wear both hats in Pisidia.

We believe that the ancient Romans would never have been able to establish an empire, as it were, of the whole world from such humble and insignificant beginnings and to have acquired and maintained it if they had not

²⁵ On the legend of Oenotrus: Pausanias (8.3.5) tells us Oenotrus, youngest son of Lycaon, established the first Greek colony with the aid of his brother. In his commentary on the passage J. G. Frazier, *Pausanias' Description of Greece*, IV (London, 1913), 190, cites Dionysius of Halicarnassus, *Antiq. Rom.*, 1.11–13, who makes the earliest inhabitants of Italy a colony of the Arcadians established by Oenotrus, son of Lycaon, seventeen generations before the Trojan War. This statement recalls the comment in the preface of Novel 25 that the events took place long before Aeneas or Romulus. At 1.12.2 Dionysius himself cites Sophocles' *Triptolemos* as well as the historians Antiochus of Syracuse and Perycles of Athens. In none of these sources was the treatment of Oenotrus and Lycaon different. Eusebius (*Chronica*, ed. A. Schoene [Berlin, 1875], 1.267) cites and follows the narrative of Dionysius. Thus this version of the story was brought into the Christian literature of late antiquity.

²⁶ For a general history of Lycaonia, see A. H. M. Jones, *The Cities of the Eastern Roman Provinces*, 2nd ed., rev. M. Avi-Yonah et al. (Oxford, 1971), 126–46. For its administration by the governor of Asia, see M. Hassall et al., "Rome and the Eastern Provinces at the End of the Second Century B.C.," *JRS* 64 (1974), 202 (lines 22–27 of an inscription from Cnidos).

²⁷ On the functions of the early praetorship, see R. Ogilvie, *Commentary on Livy*, I (Oxford, 1965), 230–31. The Greeks always translated praetor as strategos, emphasizing his close connection with military leadership. For discussion of the evidence, see H. Last, *CAH* 7, 437–39; T. Mommsen, *Römisches Staatsrecht* (Berlin, 1887; rpr. Basel, 1952), II.1, 194 note 1, discusses the relationship of strategos and praetor. E. Stuart Staveland, "The Constitution of the Roman Republic," *Historia* 5 (1956), 93 ff, discusses "prae-ire." Useful comments on the early Republican praetorship are in W. V. Harris, "The Development of the Quaestorship, 267–81 B.C.," *CQ*, n.s. 26 (1976), 92–106. Pomponius, the Antonine jurist whose work played an important role in the *Digest* of Justinian (*OCD*², 859; *RE* 21.6, cols. 2416–20), says of the praetor (*Dig* 1.2.2.27): "in urbe ius reddere posset . . ." (cited in Mommsen, *Römisches Staatsrecht*, II.1, 193). On dual legal and military functions, see H. F. Jolowicz and B. Nicholas, *Historical Introduction to the Study of Roman Law* (Cambridge, 1972), 48–49. On the separation of civil and military powers before the reign of Justinian, see R. S. O. Tomlin, "Notitia Dignitatum Omnium, tam Civilium quam Militarum," *Aspects of the Notitia Dignitatum*, *BAR*, Suppl. Series 15 (1976), 189–209.

granted great dignity to the eminent magistrates sent into the provinces and provided them with authority over both soldiers and laws, and chosen in every case suitable, worthy men. They called these men praetors because they preceded all others in character and rank. The praetors were in charge of directing matters of warfare and of writing laws as well. Consequently their residences were called *praetoria*, and many of the decisions they proclaimed became statutory. Many praetors governed Sicily, the island of Sardinia, and Spain, while others obtained further territories for Rome, conducting their affairs over land and sea.

The need for this change is not described in terms of ancient ties between Pisidia and Rome. Historical inquiry reveals a less happy justification to the legislators, as explained in chapter one.

Bearing this information in mind and recalling with honor the ancient institutions of the Republic, as well as the dignity of the Roman name, and being aware that neither of the two magistrates appointed to administer regions which have been hardest to control up to this time were perfectly content with their condition, so that in other of Our provinces subject to both civil and military jurisdiction the governors quarreled constantly among themselves . . . and so oppressed Our subjects, We have thought that it would be preferable to unite the civil and military jurisdictions and to give again the name of praetor to the magistrate invested with this authority . . . We have investigated the origin of the Pisidians and have learned from ancient writers that this people formerly exercised dominion over a large portion of the earth. Now that this province needs a powerful and energetic magistracy (for it contains a great number of villages and a large population which is especially seditious when it comes to the payment of taxes), We think it necessary to give to a country inhabited by a dishonest and bloodthirsty population of this kind, which on account of its greed and dishonest voracity has been called *Lycocraniae*, a magistrate who will leave here armed with proper power. . . .²⁸

A still different approach to the past is taken in Novel 26. The antiquity of the bellicose national

²⁸ If the Pisidians ever exercised a larger dominion it was in pre-Hellenistic times. For convenient histories of Pisidia, see A. H. M. Jones, *Cities*, 124–46, and B. Levick, *Roman Colonies in Southern Asia Minor* (Oxford, 1967), 15 ff; on the revival of brigandage in the Late Empire, see *ibid.*, 172 ff; and on the slight effect of Diocletian's administrative changes, *ibid.*, 175. Leo I created a new military command for Pisidia to control raids of Isaurians (Novel 14 of Leo: *CI* 12.59.10.5). A rescript of 527 found in Pamphylia promises to defend an oratory of St. John against both local brigands and the army: M. Amelotti and G. Luzzatto, *Le costituzioni giustinianee nei papiri e nelle epigrafi*, *Legum Iustiniani imperatoris vocabularium*, Subsidia I (Milan, 1972), 85–89. In 548 Pisidia was placed under a dux, but this arrangement was too oppressive, and the dux was removed in response to a petition in 553. See Stein, *Bas-Empire*, II, 747–56, "Abolition des réformes administratives de Jean de Cappadoce," for full documentation and discussion; see also 465 ff.

character of the Thracians is put forth as an explanation of reform.²⁹

It is an admitted fact that when anyone mentions the country of Thrace there straightway arises in his mind a spirit of courage and a desire for war and battle. And, indeed, such a desire is innate in this people and is, as it were, an inherited attribute. For this reason We first determined to establish better conditions in that country, and, after long having considered the subject, We have finally drawn up the present law.

Once the historical note has been struck, the argument continues, explaining the choice of magisterial title.

What name would be appropriate for us to confer upon a place of such importance? How shall We designate the official appointed to this magistracy? Is it not clear that just as the governor of Pisidia and the supreme magistrate of Lycaonia have been created and appointed by Us, so also in this instance the official should be called praetor joined with the name of Our Majesty? For if the ancient praetor of the Romans occupied the same position under the Republic as under the Empire, it must be admitted that no title is so applicable to this magisterial office as that of praetor, since this dignitary commands the soldiers and has not a few towns subject to his jurisdiction in which he dispenses justice in accordance with Our laws.

The preface to Novel 27 lacks the rich historical detail of the others seen so far, but provides a historical argument nonetheless.

The government that Our predecessors established in Isauria is at present in Our mind, and We remember at the same time that in First Galatia and in Pacatian Phrygia We united the office of regent, as it was formerly called, to the civil magistracy and honored the official who administers them with the ancient title of count,³⁰ because of which one of the dignitaries bears the title of Count of First Galatia and the other that of Count of Pacatian Phrygia, added to the name of Our Majesty.

This preface recalls the history of prior administrative systems. The historical reference is then immediately linked to Justinian's own reforms in other regions.

Novel 28 establishes a new official, moderator, to

govern the province of Helenopontus, which itself was formed by combining two small provinces, Pontus Polemoniacus and Pontus Galacticus.³¹ The logic of the preface of Novel 28 is simple.

It is certainly not the part of a well-established and powerful government without good cause to alter and divide what for a long time has been settled and confirmed, as the strength of an empire does not depend upon a multitude of words but upon the faithful and just administration of affairs. We have ascertained that this rule has been violated with reference to the two provinces of Pontus, that is, Helenopontus and Polemoniac Pontus, for they were formerly subject to the authority of a single governor . . . , while at present there are two officials without public necessity requiring it or anyone being able to give a good reason for their existence. The proof that there is no good cause for this is that up to this time the two provinces of Pontus have had only a single count for the collection and expenditure of taxes, and if anyone should undertake to enumerate the different towns situated in both of the provinces he would hardly find enough for a single province.

First the preface states a general rule: change of the status quo must not be made without compelling reason. Then the current problem which necessitates the legislation is described in terms of the general rule: the public has not benefited from having two administrators. The rule has been broken. Furthermore, the limited resources of the two provinces under discussion do not require that they be administered separately. Ideology and practicality are neatly joined here, and historical accuracy is high.

Chapter one contains further historical information which is used to explain the changes.

We hereby establish a single province composed of the two Pontuses, which include thirteen cities, and We grant them their ancient form of government while retaining their modern appellation, for they are called Helenopontus by everyone. This name was given them by Emperor Constantine in memory of his most honorable mother, Helena, who recovered for Us the sacred emblem of Christianity. The ancient name of Polemon, which the greater number of the rulers of Pontus applied to that province, shall hereafter be abolished, first, because it was derived from the name of one of the said rulers; second, because the province itself contains a city called Polemon; and finally, because it is better to designate Christian countries by the names of kings than to call them by a word that connotes war and confusion, that is, *polemoi*.

²⁹The Thracians were famous for their ferocity at least as early as the time of Herodotus (5.3); Thucydides displays similar attitudes (2.95–97). See also Tacitus, *Ann.*, 4.46; Polemon, *Physiognomica*, I, ed. R. Foerster (Leipzig, 1893), 110. For further discussion and bibliography on the Thracian character as "rauh und wild," see E. Oberhummer, "Thrakia," *RE* 6A, col. 402; J. P. V. D. Balsdon, *Romans and Aliens* (London, 1979), 64 and 66.

³⁰For the development of the office of comes, see Jones, *LRE*, 333–34, and O. Seeck, "Comites," *RE* 4.1, cols. 622–79.

³¹T. R. S. Broughton, "Pontus," *OCD*², 860; C. Roueché, "Rome, Asia and Aphrodisias in the Third Century," *JRS* 71 (1981), 112; Jones, *LRE*, 280.

Constantine did rename Diospontus in honor of his mother, Helena.³² Polemon was a king of Pontus before the territory was annexed by Rome, and there is a city Polemon in the interior.³³ The most important statement in this passage, however, concerns maintaining the “ancient form of government”—having one ruler for the whole Pontic region—but keeping the “modern” name of one of the provinces. In chapter two the choice of the new title moderator for the new administrator of Pontus is explained as “an ancient name, worthy of Roman greatness.” The word does in fact have a long history, but calling it ancient is going too far. Justinian was the first to use it formally and officially for a provincial governor.³⁴ The real innovation, making one province out of two, is presented as a return to something old and valuable. Maintaining the name already in current usage, hardly an innovation, is uncharacteristically explained in a Christian context.

The prefatory material of Novel 29 dealing with Paphlagonia is a garbled condensation of legend.

The Paphlagonians are an ancient and noble people. They sent out great colonies and established themselves in Venetia in Italy. There Aquileia was founded, the greatest of the cities of the West, often the residence of emperors.

A Paphlagonian migration to Italy was believed to have occurred at the end of the Trojan War. Its leader was Antenor, and he was usually credited with having founded Patavia.³⁵ The Enetoi of Homer, called “the most noble tribe of the Paphlagonians” by Strabo, were associated with the area of

Venetia.³⁶ The preface, however, does not mention Antenor, and Patavia is confused with Aquileia.³⁷ No ancient testimony links Aquileia and the Paphlagonians.

The first chapter of the law makes the link to present circumstances.

In the days of Emperor Honorius of pious memory Paphlagonia was reduced in size. Without any good reason a number of cities were taken away. We desire to recall Paphlagonia to its ancient form, to make one province again from two. We wish to accomplish for this province what We have done for the two Pontic provinces, in order that the official invested with authority who will govern the two provinces . . . may be designated praetor, which is a Roman name applicable to the governors of provinces.

The historical information in the preface of Novel 30 for Cappadocia is accurate,³⁸ and the tone of the preface reveals the confidence of a writer familiar with his subject matter. The preface is a smooth précis pitched at a learned audience.

Lovers of the varied knowledge of antiquity know full well how great are the name and people of Cappadocia and how from the beginning Cappadocia provided reasons to the Romans for its being made part of the Empire. Cappadocia controlled nearly all of Pontus. Many extremely distinguished men worthy of Roman attention were produced there. The land is both vast and wonderful and was so pleasing to the ruling power that they [the Romans] established a suitable magistrate over their possessions in Cappadocia, not lesser than the administrator of Pontus, indeed even of somewhat greater authority. The land is densely populated, and it contains a great city with the name of Caesar, a name which We dearly love: he made a fine beginning to the imperial rule which is now Ours, and consequently the name of Caesar is most celebrated among all the peoples of the earth and considered by Us the most honorable of all the attributes of imperial majesty.

The first chapter explains the new magistrate in light of this historical data.

³² See Jones, *LRE*, 43 and idem, “The Date and Value of the Verona List,” *JRS* 44 (1954), 21, for the epigraphic and literary evidence for the renaming of the province by Constantine. Fuller testimony is given by W. Ruge, “Helenopontus,” *RE* 7.2, col. 2844. For the most recent discussion of the Verona List, see T. D. Barnes, *The New Empire of Diocletian and Constantine* (Cambridge, Mass., 1982), 201–8. The remarks of W. Ramsay remain useful: *Historical Geography of Asia Minor* (London, 1890), 320. O. Seeck lists the sources that mention Helena’s bringing back of the Cross: “Helena (2),” *RE* 7.2, cols. 2820–22.

³³ On the naming of the province “Polemoniaco” when Polemon’s kingdom was annexed to Rome in A.D. 64, see Jones, *Cities*, 170, 427–28 note 45.

³⁴ Moderator had served in late antiquity as a sort of informal name for governor, “als zusammenfassende Bezeichnung”: see W. Ensslin, “Moderator,” *RE* 15, cols. 2315–18, which has a full discussion of the history of the title moderator and, at 2317.58, discusses the Justinianic usage.

³⁵ For the legend of Antenor, see A. Wlosok, *Die Göttin Venus in Vergils Aeneis* (Heidelberg, 1967), esp. 48–49, for the traditions in late antiquity; and R. G. Austin, *Commentary on Aeneid I*, at line 242, in *Aeneidos liber primus*, ed. and comm. R. G. Austin (Oxford, 1971), p. 91, for a discussion of Hellenistic reworkings of the Antenor legend and their influence on Roman writers.

³⁶ Strabo (3.2.13, 5.1.4, and 12.3.9) discusses alternate versions of the legend but favors linking the Enetoi or Henetoi with the Paphlagonians, Antenor, and Venetia. These passages are discussed by W. Leaf, *Troy: A Study in Homeric Geography* (London, 1912), 285–87.

³⁷ Aquileia was founded as a Latin colony in 181 B.C. after the expulsion of its previous inhabitants, Transalpine Gauls: Livy, 39.22, 39.54, 40.34. See E. T. Salmon, “Aquileia,” *OCD*², 90. The comprehensive history by A. Calderini, *Aquileia romana* (Milan, 1930), makes no mention of Antenor or Paphlagonia.

³⁸ For a history of the province, see Jones, *Cities*, 176–90, and *LRE*, 416–25, 483; D. Magie, *Roman Rule in Asia Minor* (Princeton, 1950), 495 ff, 574; W. E. Gwatkin, Jr., *Cappadocia as a Roman Procuratorial Province*, University of Missouri Studies 5.4 (October, 1930), chap. 5, “The Formation of the Galatia-Cappadocia Complex,” 55–62; and F. Cumont, *Bull. Acad. Roy.*

It seems to Us contrary to all propriety and dignity that Cappadocia hitherto should have been subject to the administration of an inferior magistrate.

The title proconsul itself is justified only in the fifth chapter.

We desire to place over Cappadocia a magistrate invested with greater power than in the other provinces, and as it was customary among the ancient Romans for the provinces to be apportioned by lot among consuls, or those officials who replaced them and were called proconsuls, We desire that the Cappadocians should also possess a proconsular magistracy . . . We place the government of Cappadocia in a class so superior to the others that We designate the official to whom it will be entrusted in the way that We do Our illustrious pretorian prefects. He shall be called in a paternal manner the Justinianic Proconsul of Cappadocia.

Novel 41, which survives only in the Latin abridgment made by the law professor Julian for his students in Constantinople in 556/57,³⁹ presents data about the quaestorship of the army intended for the newly formed administrative area of the Cyclades, Caria, Cyprus, Moesia, and Scythia.⁴⁰

This law makes a certain *vir magnificus*, Bonus by name, quaestor of the army. For according to ancient custom the quaestorship was a double office. One quaestor stayed by the side of the emperor and another was in command of an army.

This explanation is necessary because for centuries the quaestor had been known only as the quaestor *sacri palatii*. The preface notes that in ancient times military leaders could also have a quaestor.⁴¹

In July 536 Novel 103 was proclaimed to establish a proconsul for the province of Palestine. The preface of this law firmly ties it to the reform legislation of the previous year, which is described and explained as having been necessary to enable the provincial administrators to act again with force and zeal.

We have already granted more authority to the governors of other provinces who earlier had sunk in prestige and were unable to undertake vigorous action. We have raised them to the rank of *spectabilis*. We have augmented their salaries and those of their assessors and staffs. Among all the distinctions We have given them is the right to hear appeals. We have adorned some of them with the title of proconsul, oth-

ers with the title of count, praetor, or moderator. We are constantly adding some new ornament to Our Empire by the splendid new offices We keep seeking out.

The preface continues by discussing Palestine specifically.

Our attention has turned now to the metropolis of Caesarea, the capital of *Palestina Prima*, the province which deserves to receive more praise than all the others because once it was governed by a proconsul, although another magistrate was his superior. Later the magistracy was reduced to a lesser station from this lofty rank. At first Palestine was only one province, then it was divided into three parts, and the proconsulship did not remain; the province received a magistrate "ordinarius," as he is called. The city is ancient and has always been greatly honored, either because Strato led out a colony from Greece and first established a city there or because Vespasian of divine memory, the father of Titus of pious memory (who himself alone was worthy of all glory), changed the name of the city from Strato's Tower, as it was first called, to Caesarea. He granted the name Caesarea to the town as a reward, for after the victories of the Jewish War the city was reckoned loyal to the Emperor. We know that this land is inhabited by a great and remarkable people. We are particularly aware of its special merit by virtue of the great amount of taxes that it contributes to Our Empire and by its outstanding loyalty. The land also possesses cities of high renown and produces most excellent citizens full of wisdom as well as the most illustrious of clergy. The most important of all its reasons for greatness is that Our Lord Jesus Christ, the Creator of the World and Savior of Mankind, appeared in this land, and there He thought fit to take upon Himself our sins.

As we have come to expect, all of this historical information⁴² justifies the choices of magisterial title.

Knowing these things, how shall We *not* give honor to this province and exalt it with the dignity of the proconsulship and call the man who governs there proconsul? (chap. 1)

⁴² For a general history of Palestine, see Jones, *Cities*, 269–94, and L. Levine, *Caesarea under Roman Rule*, *Studies in Judaism in Late Antiquity* 7 (Leiden, 1975), *passim*. On its annexation by Rome, see Levine, *ibid.*, 136; for the city of Caesarea, see L. Levine, *Roman Caesarea: An Archaeological-Topographical Study*, *Qedem* 2 (Jerusalem, 1975), and J. Ringel, *Césarée de Palestine: Etude historique et archéologique* (Paris, 1975). For Strato's Tower, see Levine, *Caesarea under Roman Rule*, 6, and J. B. Peckham, *The Development of the Late Phoenician Scripts*, *Diss.* (Harvard Univ., 1964), 74.18, for the dates of Strato's reign. Herod, not Vespasian, named the city Caesarea when he refounded it; see Josephus, *Antiquities*, ed. B. Niese (Berlin, 1896), XV.293; Levine, *Caesarea*, 13; E. Schürer, *The History of the Jewish People in the Age of Jesus Christ (175 B.C.–A.D. 135)*, I, ed. F. Millar and C. Vermes (Edinburgh, 1973), 304; and E. M. Smallwood, *The Jews under Roman Rule: From Pompey to Diocletian* (Leiden, 1976), 78 and 285, for discussion of Herod's foundation.

Belg. (1905), 197. On the history of Cappadocian Caesarea, see Jones, *Cities*, 183–85, 187–90.

³⁹ H. J. Scheltema, *L'enseignement de droit des antécédents* (Leiden, 1970), 48.

⁴⁰ Jones, *LRE*, 280.

⁴¹ G. Wesener, "Quaestor," *RE* 24, cols. 820–23.

EXCEPTIONS

Several laws of provincial reform do not employ historical information in the manner just discussed though they are clearly of a piece with the other novels in the reform program. Novel 31, published with Novel 30 in the spring of 536, reorganized the administration of Armenia. It alludes in only a general way to the positive benefits of restoration.

Because matters in disarray may be organized and set right by substituting one condition for another, elegance may replace clumsiness and orderliness confusion. Restored and distinguished circumstances may take the place of those that were fragmentary and confounded. Since this observation applies to Armenia, We have thought that this country should be regulated and brought to order so that We might better render its condition more stable, impart greater strength to its judgment, and establish better rule within its territory.

Despite this theoretical statement, the absence of historical information is puzzling. Why did Cappadocia, in Novel 30, receive historical justification but not Armenia? The answer may be trivial. Perhaps the division of Armenia into four regions governed by magistrates with different titles made the invention of historical explanations too cumbersome.

Novel 102, issued in the late spring of 536, altered the administration of Arabia. Like the preface to Novel 103, it was written with the earlier reforms in mind. Mention of the prior reform legislation and the renewal of ancient titles takes the place of historical data in the preface. Justinian claims his own successes as precedent.

As We have already given a better form to the greater portion of the magistracies of the provinces which were previously in an inferior and abject condition and not adapted to the proper transaction of any public business, and as We have afterward appointed to them officials who were more qualified in every respect and the latter have begun to conduct the administration of affairs in such a way that everything shows great improvement, and as We have revived a large number of ancient titles, such as the proconsul, praetor, and moderator, and have increased the emoluments of these magistrates as well as added to their authority . . . for all these reasons We now turn Our attention to the country of the Arabs, where similar changes are necessary because the people are in great want, and in direct correspondence to the unhappy state of this people large numbers of its inhabitants apply to Us for relief, all of them giving utterance to lamentations . . . We have ascertained that the cause of all this evil can be traced to the incapacity and impotence of the magistrates entrusted with the government. For those

invested with civil magistracy have so little power that they are, by a custom in some respects of a servile character, subjected to the authority of a military commander and dependent upon him.

Edict 4, enacted in 536, has a preface of only one line. The first chapter, however, explains the purpose of the law: to establish for the province of Phoenicia Lebanica a new magistrate with heightened status called a moderator. The material in the first chapter is very similar to that in Novel 103. There is a brief summary of changes brought about in other provinces and a list of the new titles variously employed in them. The proven effectiveness of this magistracy in other provinces justified its employment in Phoenicia Lebanica.

In 538 or 539 Egypt was reorganized by Edict 13. No new magistracies were introduced. The duces Aegypti and Thebaidis had their authority increased at the expense of other offices which were abolished.⁴³ The absence of historical data in the preface of Edict 13 may be due to the time elapsed since the earlier reforms or, more probably, to the fact that no new magistracies were established which required historical justification. No single explanation for the absence of historical reference in this edict or in the laws pertaining to Phoenicia, Armenia, and Arabia may be advanced.

Novel 105, published in 536, is a different sort of exception. It has a lengthy historical preface but does not deal with provincial reform. Instead this law set limits upon the sums that a consul might spend on the ceremonies of his office. Justinian wished that the cost of holding the office might be more easily borne, as the preface states, "in order that the consulship might continue to exist among the Romans." The concern with the preservation of this most venerable and important magistracy links this law closely to the reform novels of 535–36.

The discussion above has shown that the prefaces used historical data selectively to pinpoint and describe, and even invent if necessary, past circumstances supposedly parallel to those of the present, circumstances that would be appropriate and beneficial to imitate. Regardless of the particular contrivance—and the variety of the appeals to history scarcely needs emphasis—the prefaces were intended to disguise and justify innovative changes

⁴³ Jones, *LRE*, 281; E. R. Hardy, "The Egyptian Policy of Justinian," *DOP* 22 (1968), 23–41, esp. 34–36; for the date of the edict, see p. 35. See also R. Rémondon, "L'édit XIII de Justinien a-t-il été promulgué en 539?" *Chronique d'Égypte* 30 (1955) 112–21.

by claiming that something old was being renewed or by suggesting that ancient ties between the "Romans" and the provincials warranted the reforms. The historical material in the prefaces served as deliberate propaganda, providing "precedents and pretexts"⁴⁴ for innovation. That antiquity could be a guide for action was a carefully nurtured pretense. Orderly and prosperous rule might be enjoyed again if the solutions to administrative problems of the past were reused. Justinian did not seek actually to recreate the past but rather to reestablish the *kosmia* and *taxis* that had characterized Roman rule in antiquity. By emphasizing selective and appropriate exploitation of only certain aspects of antiquity the priority of the present—the Justinianic present—and its problems was maintained. In substance the reforms were not archaizing. They responded to practical and immediate needs.

POLITICS AND PROPAGANDA

The reform laws themselves addressed technicalities of administration in specific provinces, while their prefaces dealt with the presentation of the reforms to the public. The reform laws were first of all intended to alleviate administrative problems. They sought in various ways to improve the lot of the provincials.⁴⁵ In this regard they must be seen as part of Justinian's all-embracing effort to impose good order and unity throughout the empire, thereby earning the divine favor necessary to maintain his throne.⁴⁶ Justinian began his reign with these ends in mind. His impulse to correct error let him interpret broadly his duty to his subjects and to God. No aspect of daily life lay beyond his scope, and an army of laws issued from the palace.

The importance of this imperial legislating cannot be stressed too much. Through law, which was granted to his care alone by God,⁴⁷ the emperor displayed his ties to divinity and fulfilled his obligations to his subjects.

We are always intent upon correcting anything we find to be confused or imperfect or removing it and making clear what is obscure in Our legislation. (Nov. 7)

The legislator of a government should direct his attention everywhere, should see that everything is properly conducted and that nothing is neglected . . . We mean by the one invested with sovereignty. (Nov. 72)

Justinian's theory of office had a strong religious dimension. The first actions of his reign were cast in religious terms. It is necessary only to mention that his desire to establish order and right belief led immediately to purges and persecutions of pagans, heretics, and homosexuals.⁴⁸ Insistence on orthodoxy contributed to foreign adventure as well. For example, Justinian initially justified his attack upon the Vandals in North Africa in 533 as a war against Arian heretics.⁴⁹ In short, the provincial reform laws not only addressed specific grievances, they also had a place within a broader conception of the obligations of the imperial office.⁵⁰

The presence of the historical material in the prefaces of the reform laws was in part a response to opposition to Justinian's autocracy. While Justinian may have interpreted his accomplishments as signs of divine favor,⁵¹ not all of his subjects shared God's enthusiasm for their emperor's schemes. Claims of divine support for imperial policies could scarcely reassure the aristocrats threatened by the efforts of the emperor and his "new men," like John the Cappadocian, to centralize authority.⁵² In January 532 Justinian nearly lost his throne in the Nika revolt. The insurrection was a milestone in his reign,⁵³ resulting in a significant hardening of the emperor's policies. At the same time it compelled him to adopt a different pose in his propaganda. Justinian recognized that he must take positive steps to restore faith in his regime, enhance his prestige, and inspire the loyalty of his subjects. This meant especially the senatorial class, some part of which had opposed him in the revolt.⁵⁴ To appeal to the

⁴⁴ Honoré, *Tribonian*, 254.

⁴⁵ See above, notes 1 and 3.

⁴⁶ On Justinian and Christian monarchy, see M. Amelotti, "Giustiniano tra teologica e diritto," in *L'imperatore Giustiniano*, ed. Archi (above, note 1), 133–60, esp. 133–36; H. Ahrweiler, *L'idéologie politique de l'empire byzantin* (Paris, 1975), 19–24, 129–47; Ladner, "Justinian's Theory" (above, note 6); W. Blum, "Justinian I: Die philosophische und christologische Fundierung kaiserlicher Herrschaft," in *Die Antike im Umbruch: Politisches Denken zwischen hellenistischer Tradition und christlicher Offenbarung bis zur Rechtstheologie Justinians*, ed. S. Otto (Munich, 1974), 109–24; F. Dvornik, *Early Christian and Byzantine Political Philosophy*, DOS 9 (Washington, D.C., 1966), 815–39; Hunger, *Prooimion*

(above, note 11), 49–83; B. Rubin, *Das Zeitalter Iustiniens* (Berlin, 1960), 125–39.

⁴⁷ Nov. 69.4.1; Nov. 73 pref.; Nov. 9; Nov. 113.3; Rubin, *Zeitalter Iustiniens*, 155.

⁴⁸ Honoré, *Tribonian*, 14–16.

⁴⁹ Nov. 78.4.1.

⁵⁰ A. M. Cameron, *Procopius and the Sixth Century* (London, 1985), 19 ff.

⁵¹ Dig, Constitutio "Deo auctore," 14.

⁵² Cameron, *Procopius*, 242–60.

⁵³ Stein, *Bas-Empire*, II, 449–56; Honoré, *Tribonian*, 53–56.

⁵⁴ Procopius, *BV*, I.24.57–58; *Anecdota*, 12.12 and 19.12; Honoré, *Tribonian*, 53–55, esp. note 118.

conservative, classically trained aristocrats⁵⁵ and the bureaucratic “sub-elite”⁵⁶ whose support he needed Justinian tried several measures.

For a brief period immediately after the revolt some patricians were raised to high positions, replacing Justinian’s favorites. These changes did not last long, but they clearly indicated the audience that Justinian sought to placate.⁵⁷ Not unlike Augustus, he took pains to permit the continuation of certain forms of aristocratic activity, all the while demonstrating his own paramount position. For example, as John the Lydian explains: “Since the Emperor is a broadminded gentleman, he naturally respects those men who vie with him to the best of their ability in distinction of birth, way of life, and generosity.”⁵⁸ In other words, aristocrats would continue to demonstrate their public munificence in concrete terms, but the emperor’s buildings would be the grandest.⁵⁹ Hagia Sophia was constructed by Justinian to replace a church gutted in the Nika revolt. It also met the challenge posed by Hagios Polyuktos, the largest church in Constantinople, constructed a few years before by Anicia Juliana,⁶⁰ last heiress of the previous ruling house. Justinian could afford no serious rivals after the Nika revolt, but he could allow some degree of aristocratic competition.⁶¹

Justinian, ever the Latin-speaking parvenu, found it expedient as well to cultivate an image as the restorer of Roman glory. Grandiose schemes of renewal and reconquest appealed to men like Procopius⁶² and John the Lydian,⁶³ who are representative of aristocratic sentiment in the early years of the reign. “To Rome Justinian restored what was Rome’s”⁶⁴ became the official line. Imperial

restoration had of course long been a topos in the repertory of imperial propaganda. In the mid 530s, however, Justinian began to emphasize the restorative aspects of his activities in foreign policy as he had not done in the earlier years of his reign.⁶⁵ As Novel 30, written after the conquest of Sicily in 536, proclaims:

We are inspired with the hope that God will grant Us rule over the rest of what, subject to the ancient Romans to the limits of both seas, they later lost by their negligence.⁶⁶

The ebullience produced by the victory in Africa in 534 found expression in self-conscious archaizing at court.⁶⁷ Justinian was quick to exploit the dramatic success of the Vandal war by presenting himself as a restorer of the territorial integrity of the empire in its heyday.⁶⁸ The emperor fed his own hopes and publicized his victories in an antique idiom. Most notably, Justinian’s conquering general, Belisarius, was permitted a triumph touted in antique terms and considered (by Procopius at least) to be a unique honor.⁶⁹ When Belisarius made obeisance to Justinian in the same manner as the captured Vandal king,⁷⁰ however, Justinian’s supremacy was clearly demonstrated. The consulship itself was ostentatiously protected, as noted above. In exactly this spirit, in the service of the provincial reforms ancient magisterial titles were dusted off and put to use again, but always tied to Justinian. We have seen Justinian’s Own Praetors and Own Proconsuls governing in the reformed provinces. The historical prefaces as a group were another very public demonstration of the emperor’s cultivation of ties with antiquity. When the prefaces furthermore emphasized a common history shared by the provinces and Rome, now embodied by Justinian’s government in the New Rome, they made a strong plea for the support of an audience predisposed to value the rhetoric of restoration. Not coincidentally the provincial aristocracies would soon be feeling inevitable dislocations of

⁵⁵G. Matthew, *Byzantine Aesthetics* (London, 1963), 67 ff; Cameron, “Images” (above, note 12).

⁵⁶T. P. Carney, *Bureaucracy in a Traditional Society: Romano-Byzantine Bureaucracies Viewed from Within*, I (Lawrence, Kans., 1971), 47 ff; F. S. Pedersen, “On Professional Qualifications for Public Posts in Late Antiquity,” *ClMed* 31 (1970), 161–213; H. Fichtenau, *Arenga: Spätantike und Mittelalter in Spiegel von Urkundenformeln* (Graz–Cologne, 1957), 22.

⁵⁷Honoré, *Tribonian*, 55–56.

⁵⁸John Lydus, *De magistratibus*, 3.38, ed. A. C. Bandy (Philadelphia, 1984), my translation.

⁵⁹P. Brown, “Art and Society in Late Antiquity,” in *Age of Spirituality: A Symposium*, ed. K. Weitzmann (New York, 1980), esp. 19–20.

⁶⁰R. Krautheimer, *Early Christian and Byzantine Architecture* (Baltimore, 1975), 230; Cameron, *Procopius*, 104 note 151.

⁶¹Procopius, *De aedificiis*, 1.8.5, describes Justinian’s limitations on the construction of churches.

⁶²Cameron, *Procopius*, 173, 225, 245–47.

⁶³See John Lydus, *De magistratibus*, 3.72, and my forthcoming monograph on Lydus and the Roman past.

⁶⁴John Lydus, *De magistratibus*, 3.55.

⁶⁵B. Croke, “Justinian and the Ideology of Reconquest” (forthcoming). I am indebted to Dr. Croke for providing me with a copy of his manuscript.

⁶⁶Nov. 30.11.2.

⁶⁷J. Deér, “Der Ursprung der Kaiserkrone,” *Schweizer Beiträge zur allgemeinen Geschichte* 8 (1950), 501 ff.

⁶⁸Croke, “Justinian.”

⁶⁹Procopius, *BV*, 2.9; John Lydus, *De magistratibus*, 2.2. For discussion of Belisarius’ triumph, see M. McCormick, *Eternal Victory. Triumphal Rulership in Late Antiquity, Byzantium, and the Early Medieval West*, 125–29 (Cambridge, 1985). I am indebted to Prof. McCormick for allowing me to read this portion of his typescript prior to publication.

⁷⁰Procopius, *BV*, 2.9.12.

patronage and power caused by the reforms in the provinces. By stressing common interests with the government in Constantinople Justinian sought to forestall hostility and encourage loyalty.

Undoubtedly the popularity and political utility of the antiquarian idiom at court bound the prefaces of the reform laws to the reconquests and the triumph of Belisarius. It still remains to discuss the formulation and internal logic of the theory of restoration.

AUTHORSHIP

To what extent is the historical material in the prefaces merely a product of the interests or literary style of their author? In a recent article and in his book *Tribonian* Antony Honoré has performed the salutary task of knocking Justinian from his pedestal as a Great Classicizer and writer of legislation.⁷¹ Honoré offers us Tribonian in his place. Tribonian was Justinian's legal mastermind who supervised most of the great codification and held office as quaestor (535–40) during the time when the reform novels were composed.⁷² Furthermore, Tribonian was famous in his day as a most learned man, well versed in the classics.⁷³ Only during his tenure of office did classical references appear in the Justinianic legal corpus.⁷⁴ In the historical prefaces of the reform novels allusions to classical antiquity were made most effectively and programmatically.⁷⁵ Since these novels were composed in Greek, and since, as Honoré admits, it is presently impossible to undertake a stylistic analysis because

there is no concordance to the novels,⁷⁶ he is forced to depend upon "certain features of style which can be counted without a concordance."⁷⁷ Among these elements of style is the character of the prefaces, which are longer during Tribonian's tenure of office and stress various themes including extended references to antiquity.⁷⁸

The case for Tribonian's authorship of the novels seems conclusively won by Honoré. Yet, some questions remain. Can such themes as references to the past be "frankly propagandistic"⁷⁹ and at the same time attributes of style? Propaganda is not a nuance of style, but a matter of theme and content. To get around this difficulty we must understand the nature of the collaboration of Justinian and Tribonian. Tribonian knew "how to amplify his master's voice,"⁸⁰ while Justinian knew how to exploit the talents of his minister. Tribonian's legal expertise may have made him indispensable for the compilation of the *Code* and *Digest* but not for formulating a program of administrative changes. He could add to the reform program his classical learning and affinity for antiquity. With these he turned the prefaces into an important propaganda statement for his emperor. Tribonian's literary skills let the changes of the reforms be presented in a manner appropriate to Justinian's real political needs and the mood of contemporary events.

We may believe that the formal composition of the laws with their historical prefaces was Tribonian's, that many practical administrative suggestions came from John the Cappadocian,⁸¹ but that the project in its entirety was the conception of Justinian. What must be understood is that the appearance of the historical allusions was not merely the consequence of individual stylistic idiosyncrasy but was a result of collaborative effort at the highest level.

In sharp contrast to these reform laws, for example, is Novel 145, published in 553 to alter some of the changes made twenty years before in Pisidia and Phrygia.⁸² It displayed none of the character-

⁷¹ Honoré, *Tribonian*, esp. 243–56; idem, "Some Constitutions Composed by Justinian," *JRS* 65 (1975), 107 ff: "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 Iuris* dating from Justinian's 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 past . . . Justinian did not compose any but an insignificant portion of the *Corpus Iuris* himself, and with the myth of imperial composition must go the myth of Justinian the connoisseur of classical antiquity . . ." (p. 123). Similar conclusions are reached by G. G. Archi, "Il classicismo di Giustiniano," in *Giustiniano legislatore* (Bologna, 1970), esp. 178–79: "La visione di un imperatore romantico, che si compiace del raffinato fascino delle cose del passato, non trova conferma nell'esame delle fonti." See also E. Stein, "Deux quaestors de Justinien et l'emploi des langues dans ses nouvelles," *Bulletin de la Classe des Lettres de l'Académie Belgique* 23 (1937), 365–90 (= Stein, *Opera Minora Selecta* [Amsterdam, 1968], 359–85).

⁷² Honoré, *Tribonian*, 47–48, 57–58, 236–37.

⁷³ John Lydus, *De magistratibus*, 3.20; Procopius, *BP*, 1.24.16; Honoré, *Tribonian*, 43–44, 251–54.

⁷⁴ Honoré, *Tribonian*, 125–26; Donatuti, "Antiquitatis Revertentia" (above, note 14), 831–32.

⁷⁵ Honoré, *Tribonian*, 126.

⁷⁶ *Ibid.*, 124.

⁷⁷ *Ibid.*, 126.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*, 26.

⁸¹ Stein, *Bas-Empire*, II, 433–37, 463–65; P. Lamma, "Giovanni di Cappadocia," *Aevum* 21 (1947), 80–100 (= Lamma, *Oriente e occidente nell'alto medioevo*, Medioevo umanismo 5 [Padua, 1968], 59–81).

⁸² In the 550s there were a number of changes of earlier reforms. See Stein, *Bas-Empire*, II, 747–56, "Abolition des réformes administratives de Jean de Cappadoce," for full documentation and discussion.

istics of the reform prefaces here under investigation. No historical allusions introduced the law. Instead a provincial petition was cited as the cause of the reform. Several factors explain the abandonment of the historical references. First of all, the purposes of the original program had been fulfilled: the reforms were accomplished in the provinces and Justinian was secure upon his throne. Furthermore, Tribonian was no longer quaestor. The learned jurist had died by 542,⁸³ and subsequent quaestors did not share his enthusiasm for classical antiquity.⁸⁴ But most important, the mood of the capital had changed. By 553 when Novel 145 appeared, Constantinople had endured the great plague which had carried off a huge portion of its population.⁸⁵ The war in the west had shifted from a glorious *reconquista* to a bitter struggle of attrition.⁸⁶ In the east Justinian's armies had fought another major war with Persia (539–45) and were currently engaged in Lazica.⁸⁷ Eyewitnesses writing in the 550s display feelings of gloom and despair at the policies of the aged Emperor Justinian.⁸⁸ In the two decades since the implementation of the program of provincial reform the spirit of the empire had markedly changed. Prefaces like those of 535–36 would have seemed out of place in this tired Constantinople even if Tribonian had been there to write them.

INNOVATION AND RESTORATION

The inclusion of historical prefaces cannot be fully explained by determination of authorship or political objectives. It remains to be understood why all of the legislation enacted during Tribonian's quaestorships does not employ long historical prefaces. The answer lies in the nature of the laws as acts of reform, often innovative reform. The Romans habitually gave high value to precedent and discredited and avoided innovation. It would have been unthinkable for Justinian to have advertised his provincial reforms as innovative, and in his legislation Justinian took pains to deny the charge.⁸⁹

⁸³ Honoré, *Tribonian*, 60–64.

⁸⁴ *Ibid.*, 223–42.

⁸⁵ Procopius, *BP*, 2.22–23; P. Allen, "The Justinianic Plague," *Byz 49* (1979), 5–20.

⁸⁶ Stein, *Bas-Empire*, II, 547–78.

⁸⁷ *Ibid.*, 485–510 (Persian War), 510–16 (Lazica).

⁸⁸ Cameron, *Procopius*, 142 ff.

⁸⁹ Honoré, *Tribonian*, 27 note 306; D. Constantelos, "The Term 'Neoterikoi' (Innovators) in the *Exabiblos* of Constantine Armenopoulos and Its Cultural-Linguistic Implications," in *Charanis Studies*, ed. A. E. Laiou-Thomadakis (New Brunswick, N.J., 1980), 1–17, esp. 2–8.

Appeal to precedent, on the other hand, allowed the present to be explained and legitimized in terms of the past, even if in some cases the past had to be invented. As we have seen, Justinian exploited this conservative tendency in the reform prefaces for immediate goals, primarily to mask the growth of his absolutism, cultivate the educated classes, and disguise the innovative nature of his reforms. Restoration was a quite legitimate imperial activity. Claiming precedent through the recognition and renewal of ancient ties could amply legitimize imperial actions. The very deliberateness of providing more-or-less phony precedent to mask contemporary reforms shows how volatile the accusation of innovation could be. It should come as no surprise that the opposition between innovation and restoration was a dominant theme in sixth-century political analysis. For example, Procopius' *Anecdota* presents a negative image of Justinian the restorer found in his *De aedificiis*. He portrays the emperor as a diabolical innovator, systematically destroying the empire by his disregard for tradition.⁹⁰ Through the cultivation of ties with antiquity in the prefaces of the reform laws Justinian sought to sidestep just such hostile interpretation of his legislation and his rule.

Identification of past and present problems in the laws of provincial reform went beyond simple antiquarianism. Significance and meaning were given to the acts of "restoration" by proper behavior on the emperor's part and by its consequences for the empire. Justinian's acts sought to ensure the consequences of proper administration and legislation, namely, the success of imperial designs and the favor of God.⁹¹ These objectives could be translated into real terms only through good rule.

⁹⁰ Procopius, *Anecdota*, 6.19, 8.24 ff, 14.1, 18.36, 20.7–9, 30.21; Cameron, *Procopius*, 56–59, 246. B. Rubin has discussed this most thoroughly: see *Zeitalter Iustinians*, 204–44, and esp. note 546, which is an extended discussion, 441–54; "Der Fürst der Dämonen," *BZ 44* (1951), 469–81; "Prokopius von Kaisareia," *ZDMG 110* (1960), 55–63. See also P. J. Alexander, "Historiens byzantins et croyances eschatologiques," *Actes du XII^e congrès international des études byzantines*, II (Belgrade, 1964), 2–3 (= *Religious and Political History and Thought in the Byzantine Empire* [London, 1978], art. XV). For late antique *Kaiserkritik*, see A. M. Cameron, "Early Byzantine *Kaiserkritik*: Two Case Histories," *Byzantine and Modern Greek Studies 3* (1977), 1–17; F. Tinnefeld, *Kategorien der Kaiserkritik in der byzantinischen Historiographie* (Munich, 1917); B. Rubin, "Zur Kaiserkritik Oststroms," *SBN (Atti del VIII congresso internazionale di studi bizantini, Palermo, 1951)*, VII (1953), 453 ff; and A. M. Cameron, *Agathias* (Oxford, 1970), 124 ff; J. Irmscher, "Justinianbild und Justiniankritik im frühen Byzanz," in *Studien zum 7. Jahrhundert in Byzanz: Probleme der Herausbildung des Feudalismus*, ed. H. Kopstein and F. Winkelmann (Berlin, 1976), 131–42.

⁹¹ Honoré, *Tribonian*, 15 and note 137.

As Justinian knew well, however, the disruptive forces that had separated his reign from the glories of the past were still to be combated every day. How this struggle was defined must now occupy our attention.

LEGISLATION AND CHRISTIAN THEORY

In Justinian's legislation of the 530s, including laws other than the provincial reform program, appear certain statements about the need for and function of legislation which illustrate how an idea of a valuable, useful past helped bring a version of Roman antiquity into the Christian realm. The emperor's role as legislator was crucial in the realignment of the two traditions. Justinian was first and foremost a Christian monarch,⁹² the conduit of divine authority to earthly institutions. Through the law, which was granted to his care alone by God,⁹³ Justinian, like a good doctor,⁹⁴ tried to ameliorate the condition of his subjects. Justinian claimed to be the incarnate law (*nomos empsychos*)⁹⁵ as no Roman emperor had yet dared—or thought necessary—to do, thus emphasizing his unique position as the source of law at the crux of human and divine activity. At the same time Justinian was the Roman emperor, and when he presented his project in terms of *antiquitas* he was manipulating the great legitimizing strength carried by reference to the past. As a result, the figure of the emperor as legislator realized a potential for the reconciliation of independent Christian and Roman expressions of authority. The history-laden prefaces of the reform program must be set against this background.

In the *Novels* as well as in the *Code* are found

many explicit statements that Nature (*natural/physis*),⁹⁶ a suprahuman agency, caused random, constant, unpredictable changes in society, in other words, constant innovations. The idea is stated in the *Code* (I.17.218) in 533.

For the reason that only divine things are perfect and that the status of man constantly and incessantly fluctuates and there is nothing in it that can endure for all time, for Nature herself hastens to bring forth many new forms, We think that matters may arise subsequently that have not as yet been provided for by Our laws. Therefore, if anything of this kind should happen, recourse must be had to the Emperor for a remedy since God has placed his imperial fortune above all human affairs so that he can correct and arrange all new cases that may arise and establish them by proper rules and regulations. This principle was not first promulgated by Us but has descended from our ancient race, for Julianus himself, the wisest author of laws and of the Perpetual Edict, stated in his own works that if anything should be found imperfect in Roman jurisprudence it should be supplied by an imperial decree and not stand alone without amendment.

Julianus, however, did not say anything about the force or agency of Nature in the original passage alluded to here.⁹⁷ The idea about Nature has deliberately been added to the older text of the *jurisconsult*.⁹⁸ The idea of Nature as an important disruptive force to which legislators must respond is new in the legislation of Justinian. Only the slenderest hint of such a concept of Nature is found in the prior Roman legal tradition.⁹⁹ Its origins lie in the field of Greek philosophy, as the important research of Giuliana Lanata has made plain.¹⁰⁰ Justinian may have introduced these ideas into legal theory through his knowledge of the Cappadocian fathers,¹⁰¹ who were of course well versed in the philosophical learning of the Hellenic tradition. Or, on the other hand, Tribonian may have been the agent.¹⁰² Nature's new role in legislation is developed particularly between 535 and 539,¹⁰³ precisely the years of his second quaestorship and not coincidentally the period in which the reform prefaces were composed. It is more than possible that the theory was developed by the quaestor in collaboration with his emperor.

⁹² See note 46.

⁹³ Nov. 69.4.1; Novel 73 pref.; Nov. 9; Nov. 113.3; Rubin, *Zeitalter Iustinians*, 155.

⁹⁴ G. Lanata, *Legislazione e Natura nelle Novelle giustinianee* (Naples, 1984), esp. 177–78, on imperial “therapy.” I am grateful to Prof. Lanata for graciously sending me a copy of her book.

⁹⁵ Lanata, *Legislazione*, 181, shows how this claim was consistent with Justinian's view of Nature. See also A. Steinwenter, “Nomos Empsychos: Zur Geschichte einer politischen Theorie,” *AnzWien* 83 (1936), 250 ff; W. Ensslin, “Gottkaiser und Kaiser von Göttes Gnaden,” *SB Münch. Philos.-hist. Abt.* 6 (Munich, 1943), esp. 98 ff, 115 ff; G. J. D. Aalders, “NOMOS EM-ΨΥΧΟΣ in Politeia und Res Publica,” 315–29, in *Beiträge dem Andenken R. Starks gewidmet = Palingenesia* 4 (1969); Hunger, *Prooimion*, 117–22; I. Ševčenko, “A Byzantine Source of Muscovite Ideology,” *HSS* 2 (1954), 141–79, esp. 145–49; Ladner, “Justinian's Theory,” 191–200; Blum, “Justinian” (above, note 46), 114 ff; Dvornik, *Political Philosophy* (above, note 46), 716–22, with criticisms by O. Murray, *JTS*, n.s. 19.2 (1968), 675–78.

⁹⁶ Lanata, *Legislazione*, 165–87; W. S. Thurman, “A Juridical and Theological Concept of Nature in the Sixth Century A.D.,” *BSI* 22 (1971), 77–85.

⁹⁷ *Dig* 1.3.10–12; Lanata, *Legislazione*, 169.

⁹⁸ Lanata, *Legislazione*, 169.

⁹⁹ *Ibid.*, 189–204.

¹⁰⁰ *Ibid.*, 205–19.

¹⁰¹ *Ibid.*, 235.

¹⁰² *Ibid.*, 221–46.

¹⁰³ *Ibid.*, 174; *Novels* 7, 39, 49, 69.

Novel 84 (A.D. 539), which claims to be but one of many statements of this belief, spells out Nature's role.

Nature, everywhere inclined to the production of numerous innovations (this prelude has often been employed in legislation but will constantly be repeated as long as Nature persists in these practices), has induced Us to enact many laws.¹⁰⁴

Thus we see that the constant variety of Nature provided an authentic motivation for imperial legislative activity.¹⁰⁵ Novel 69 (A.D. 538) restates the need for this activity.

. . . almost nothing remains stable in Nature, which is always inconsistent and introduces many changes which are neither easy to foresee nor possible to provide for, and . . . only God, and after him the Emperor, is able to exercise control over these things.

Instability in human affairs is the direct expression and consequence of Nature's activity.

This state of flux, which is characteristic of man, can never be stable but is ever becoming and never abiding, and is rather disturbing to legislative enactments. The variability of events has frequently unsettled that which seemed to be correctly disposed, fixed with certainty, and protected by technical precision. (Nov. 49 pref., A.D. 537)

The reasons for the innovations of Nature might not always be understood by man,¹⁰⁶ but the innovations themselves were readily visible in the daily lives of emperor and subject alike. They took the form of institutions fallen out of use, inadequate laws, or civil disturbances. From Justinian's point of view all of these required direct action. For "action" read "correction": Justinian believed it his responsibility to make right all the inadequacies of prior laws, to eliminate weaknesses of current administrative processes, to enforce religious orthodoxy.¹⁰⁷ Legislation was the God-given tool for this correction. Through the agency of law the emperor might cope with the surprises and confusions that inevitably afflicted his empire.¹⁰⁸ Through the agency of law the emperor's responsibility was to meet the challenge posed by these new circumstances. New legislation was constantly required, for it was admitted that no old law would be adequate forever.

¹⁰⁴ See also Nov. 18; Lanata, *Legislazione*, 172–73.

¹⁰⁵ Lanata, *Legislazione*, 181.

¹⁰⁶ Nov. 13.

¹⁰⁷ *Ibid.*

¹⁰⁸ Nov. 39 pref.

It has been very properly stated by our predecessors, and above all by the most learned Julianus, that no law or decree of the Senate has ever been promulgated by the Roman government which, from the beginning, has been sufficient to provide for all cares, but that laws have need of much correction in order to be adapted to the inconstancy and perversity of Nature. (Nov. 74)

There were limits to the emperor's freedom of action. Adaptation through legislation to the new circumstances created by Nature, that is, the acceptance of change, was acceptable only if it served a positive purpose—the establishment of orderly government. Legislation should not be rash or totally innovative. The emperor must imitate God's divine order, not the actions of Nature.

Therefore, as God rules the Empire of Heaven in order that He may afford good solutions to perplexing questions and interpret the laws in accordance with the variety of Nature, We have thought it proper to draw up this statute and render it generally applicable to Our subjects whom God has originally entrusted to our care . . . (Nov. 73)

Although the prefaces invoke the past to avoid charges of innovation, it would be incorrect to think that the past was indiscriminately quarried. On the contrary, immediate advantage governed the selection of data. That advantage was measured by proper behavior on the emperor's part and the degree of its success for the empire. Compelling cause was absolutely necessary before making any change.

It is certainly not the part of a well-established and powerful government without good cause to alter and divide what for a long time has been settled and confirmed, as the strength of an empire does not depend upon a multitude of words but upon the faithful and just administration of affairs . . . (Nov. 28)

Good rule, then, demanded responding to innovation and would earn God's favor for Justinian and the empire.

For if . . . the Empire, full of confidence in God, is administered equitably and judiciously, general good will result and whatever is beneficial will be bestowed upon the human race. (Nov. 6)

For Justinian, then, the "faithful and just administration of affairs" was equivalent to keeping up with and correcting the changes caused by Nature. Thus Justinian found himself between Scylla and Charybdis: how to meet new circumstance, that is, confront a changing world, without responding in

kind? How might the emperor avoid innovation? The answer now is obvious: not by inaction but by presenting imperial effort as restorative. This required finding adequate precedent, or, in other words, redefining the past to fit present needs. The call was to tradition, and the origin of that legitimizing tradition was early Roman history, the content of the prefaces. But most important, cast in the supreme position, judging the effects of imperial government and its recourse to the past, was the Christian God to whom Justinian owed his throne. Never before in legal theory had such a complex connection been forged between Rome's

past, imperial activity, and divine sanction in Christian terms.¹⁰⁹

Rice University

¹⁰⁹Compare the association of classical style and Christian meaning in the Barberini ivory, dated to the reign of Justinian. Above a mounted, triumphant emperor two angels hold a medallion with a bust of Christ, "making imperial authority an integral part of Christian order": D. H. Wright, "Ivories for the Emperor," *Third Annual Byzantine Studies Conference, Abstracts of Papers* (New York, 1977), 6; see also idem, "Justinian and an Archangel," *Festschrift Friedrich Deichmann* (forthcoming). I wish to thank Prof. Wright for allowing me to read this article in advance of publication. See also W. F. Volbach, *Elfenbeinarbeiten der Spätantiken und des frühen Mittelalters* (Mainz, 1976), p. 47, no. 48.